UNIVERSITÀ DEGLI STUDI FIRENZE

DMI
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UPPSALA UNIVERSITET

Study on the service of documents

Comparative legal analysis of the relevant laws and practices of the Member States

FINAL REPORT

No JUST/2014/JCOO/PR/CIVI/0049

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European Commission

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This project is implemented by DMI in consortium with the University of Florence
and the University of Uppsala

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FINAL REPORT

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TENDER No JUST/2014/JCOO/PR/CIVI/0049

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ACRONYMS AND ABBREVIATIONS

§	section
¶	paragraph
AG	Advocate General
AJA	Administration of Justice Act (*Retsplejeloven*) – Denmark
Art. / Art	Article
B2B	Business to business
BGH	*Bundesgerichtshof* (Federal Court of Justice of Germany)
Brussels I Regulation	Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
Brussels II Bis Regulation	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000
CCP	Czech code of civil procedure
Charter	Charter of Fundamental Rights of the European Union
cf.	confer
Code Judiciaire	Civil Procedure Code (Belgium)
CPC	Civil Procedure Code (generic)
CPL	*Civilprocesa likums* (Civil Procedure Law) – Latvia
CJEU	Court of Justice of the European Union
CJP	Code of Judicial Procedure (Finland or Sweden)
EC	European Commission
EC Treaty	Treaty establishing the European Community
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950
ECtHR	European Court of Human Rights
e.g.	*exempli gratia* (for example)
EO	Enforcement law (*Exekutionsordnung*) – Austria
European Enforcement Order / EEO	Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
European Order for Payment Procedure / EOPP	Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
etc.	*et cetera*
EU	European Union
European Service	Convention on the service in the Member States of the European

Convention	Union of judicial and extrajudicial documents in civil or commercial matters of 26 May 1997
ff.	following
fig.	figure
GOG	Law on the Organisation of the Court (*Gerichtsorganisationsgesetz*) – Austria
Hague Service Convention	Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
Hague Service Convention Practical Handbook	Practical Handbook on the Operation of the Service Convention 4th edition (e-Book), 2016, available at https://www.hcch.net/en/publications-and-studies/publications2/e-books
Hague Choice of Court Convention	Convention of 30 June 2005 on Choice of Court Agreements
HCCH	Conférence de La Haye de droit international privé – Hague Conference on Private International Law
i.a.	*inter alia* (among others)
ICT	Information and Communications Technology
i.e.	*id est* (that is)
KPC	Polish Code of Civil Procedure
LEC	Code of civil procedure (*Ley de Enjuiciamiento Civil*) – Spain
Lugano Convention	Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007
Maintenance Regulation	Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
MS(s)	Member State(s) of the European Union
New York Convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
r(r)	Rule(s)
p./pp.	page / pages
para(s).	paragraph(s)
PD	Practice Direction – England CPRs
PEC	Certified e-mail (*Posta elettronica certificata*) – Italy
PIL	Private International Law
POA	Power of Attorney
Regulation 1348/2000	Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

RPVA	*Réseau Privé Virtuel des Avocats* (Attorneys' Virtual Private Domicile)
RPSH	*Réseau Privé Sécurisé Huissiers* (Bailiffs' Secured Private Domicile)
RSC	Rules of Superior Court – Ireland
SA	Swedish Act on Service (*Delgivningslag*) 2010
Service Regulation / the Regulation	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
Small Claims Regulation	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
TFEU	Treaty on the Functioning of the European Union
UK	The United Kingdom of Great Britain and Northern Ireland
v	*versus*
webERV	*web-basierte Elektronische Rechtsverkehr* (web-based electronic legal communication) – Austria
ZPO	*Zivilprozessordnung* (Code of civil procedure) – Germany, Austria
ZRHO	*Rechtshilfeordnung für Zivilsachen* (Law on the Legal Assistance in Civil Matters) – Germany
ZustG	Federal law on the service of official documents (*Bundesgesetz über die Zustellung behördlicher Dokumente – Zustellungsgesetz*) – Austria
ZPP	*Zakon o pravdnem postopku* (Code of Civil Procedure) – Slovenia

1. ABSTRACT AND EXECUTIVE SUMMARY

1.1. Abstract

This study provides a comparative overview of how domestic service of judicial and extra-judicial documents is effected in all EU MSs. Areas covered span a broad range of questions including: the identification of relevant actors (e.g. initiator, executor and addressee of service), the analysis of available methods of service (personal, substituted, by post, through electronic channels, constructive), difficulties in finding the addressee, default of appearance and default judgments, remedies and cure of defective service. The study also includes some questions of cross-border or transnational service. The goal is to identify the areas in which the systems of service of the MSs converge or diverge, to identify where divergence may affect cross-border service of documents and to provide recommendations and suggestions in view of possible uniform answers for the European judicial space.

1.2. Executive Summary

1.2.1. *Background and General Findings*

The EU Service Regulation has been enacted as part of the attempts of the Union to create an Area of Freedom, Security and Justice. Cross-border service of documents in civil and commercial matters falls under the policy area of judicial cooperation in civil matters in Article 81(2) TFEU (formerly Art. 65 of the EC Treaty). The broad mandate of Article 81 aims at creating an integrated system of circulation of judgments and other documents from one Member State to another, as a fifth freedom alongside the traditional EU rights of free movement (for goods, capital, services and people). Some of the other EU instruments enacted under judicial cooperation in civil matters, however, prevent the circulation (either the recognition or enforcement) of judgments when at the origin of the proceedings there was a defect in service of process, such that the defendant did not receive proper notice of the existence of proceedings.[1] At a time when *exequatur* procedures are being gradually abolished, thus removing preventive verification of proper service before enforcement, the need to ensure that the defendant received actual notice is even more important.

Service of documents is a highly technical matter, but its importance should not be overlooked. Its main purpose, giving notice to the defendant party that a claim is being brought against him/her, is directly linked to the right to be heard, one of the most fundamental rights, enshrined in Article 6 ECHR, Article 47 of the Charter and in national Constitutions. At the same time, and for the same reasons, the right of the claimant party to

[1] See, e.g., Art. 34(2) of the old Brussels I Regulation (44/2001) and Art. 45(1)(b) of the Brussels I Regulation as recast.

have his/her claims adjudicated by a court must also be protected. Therefore, legal systems customarily also include rules intended to address default or even potential abusive conduct on the part of the defendant and to ensure, when all efforts have been made, that judicial proceedings may proceed even in the absence of one party. Such rules (on what may be called "substitute" or "fictitious" service), however, often include a set of guarantees for the defaulting party and a possibility for that party to remedy such default when not depending on his/her fault. Thus, a full system or set of service rules encompasses rules to protect the interests of both parties and creates a sophisticated balance between these interests. In general, service of documents is linked to a number of other aspects of procedural law. The design of a system of service is also related to the procedural culture and the organization of judicial bodies and functions of a given legal system. To name a few of the many connected or related matters: *lis pendens*, time limits, formalism vs. pragmatism, the way proceedings are initiated and the existence of documents with higher evidentiary values (such as when the certificate of service is considered as a "public document").

Furthermore, on the international arena all States understand service as closely linked to their own sovereignty. For example, in common law countries, traditionally, jurisdiction could only be exercised when service was possible (*ubi service, ibi jurisdiction*). More generally, the link that exists between service and jurisdiction (between service and a State's *imperium*), has long justified the hostility showed toward service by foreign agents in another sovereign territory, forcing parties and foreign courts to face high hurdles before being able to serve documents abroad. Traditionally this could not be accomplished without resorting to diplomatic or consular channels to perform service. The 1965 Hague Service Convention on service represented a first, meaningful and very successful, step toward creating a transnational, multilateral, simplified and more effective legal framework for service of documents abroad.

In this context the team, upon instructions by the Commission, carried out a comparative study based on the circulation in all MSs of a questionnaire covering several questions related to the topic of service of documents. Upon receipt of responses to the questionnaire, national experts compiled the information Country Summaries. Theses Summaries form the basis for our comparative study together with other general material.[2]

The comparative study demonstrates that MSs have adopted a great variety of solutions in the design of their domestic systems of service. This variety confirms the comment made above in relation to the links and connections between the system of service, legal culture

[2] A very interesting project is being carried out in a joint effort by the European Law Institute and Unidroit, with the aim of building upon the ALI/Unidroit Principles of Transnational Civil Procedure and to develop European Rules of Civil Procedure. The project was launched in Vienna in October 2013 . Some of the working groups, including the working group on service of documents (chaired by Prof. A. Stadler and Dr. Eva Storskrubb) are already in an advanced stage. For more information see http://www.unidroit.org/work-in-progress-studies/current-studies/transnational-civil-procedure.

and other aspects of procedural law and design of the judicial system. The variety therefore reflects different principles and fundamental choices made by each legal system in the field of civil procedure that often go to the core of the procedural system. One can thus say that the differences among MS systems are deeply rooted and in many cases it may not be possible to amend the service rules without also addressing underlying fundamental aspects or choices of the divergent judicial systems of the MS. In addition, in the design of a service system fundamental choices will impact on the functioning of the rules as a whole. To only change one single aspect or rule may therefore prove not to be practically feasible.

A first *summa divisio* is found between those systems in which proceedings are initiated by first serving the documents on the defendant and then filing them with the court, and those systems in which filing comes first and service takes place later. In the first case, as a general rule, the initiator of service is the claimant party, the moment in which service takes place determines the pending of proceedings for *lis pendens* purposes and it is up to the party to locate the addressee. In the second case, instead, the initiator is often the court, proceedings are pending as of the date the statement of claim is filed with the court and the court shares responsibility with the relevant party to locate the addressee.

Another difference relates to systems that prefer service by a bailiff, judicial officer or other process server and systems in which service is customarily achieved through postal channels. In the first case, the certificate of service is often given a higher evidentiary value that can only be challenged through special proceedings for forgery. In contrast, in the second case a postal return receipt will usually constitute a presumption of service to be freely evaluated by the court. In a number of MSs a series of constructive methods of service are also used, sometimes very extensively, while in others attempts are made at ensuring that the addressee of service receives actual notice of the proceedings.

A further division concerns the place of service. In half of MSs an addressee can be served only at specific locations, whilst in the other half anywhere the person is found. In case of legal persons, a vast array of different places and individuals may be served depending on the MS concerned.

The consequences of default of the defendant are also dealt with in different ways among the MSs. In certain MSs a default judgment may be entered when the defendant fails to appear at the first hearing or file a defence in the correct time. In some MS such a default judgment may simply grant what has been claimed by the claimant, in other MSs the default judgment is issued on the basis of the evidence presented before the court. However, there are also MSs in which default of the defendant does not lead to a default judgment, and proceedings continue as usual in the absence of one party.

There are only a few convergences that are common among almost all MSs. For instance, MSs converge in not allowing parties to agree (e.g. in a contract) on a method of service, while often allowing parties to agree on a place for service. Equally convergent is the

prohibition for a foreign executor to perform service within the territory of another sovereign.

1.2.2. *Recommendations*

Building upon the comparative study and its general findings, the team has elaborated recommendations in view of possible European common answers on selected issues. The team tried to identify the areas in which the differences between national systems may pose an obstacle on the functioning of the Service Regulation, although there may be instances in which harmonisation would be difficult taking into account the fundamental differences in the systems and the cross-border limitation in the legal basis. The team also tried to identify those recommendations that may improve, also from a practical point of view, the operation of the Service Regulation. Each recommendation should be read against two principles: (a) the legal basis for a EU action in the field of service, which is limited to "the cross-border service of judicial and extrajudicial documents" (article 81(2)(b) TFEU); (b) the principle of subsidiarity, according to which the EU should take action only insofar as it MS cannot deal with the issue on their own.

Below is a summary of recommendations on selected issues, which are described in further details in the final part of the report, along with suggestions on other areas.

Service of extra-judicial documents – the broad, autonomous and liberal notion of "extra-judicial document" for the purpose of service developed by the CJEU in *Tecom Mican* could be codified, for sake of certainty and clarity, in a revised Service Regulation. This would ensure that service of extra-judicial documents would be available in all MSs.

Who is to be served – if a party is represented by a **lawyer**, the other parties and the court should be entitled to perform service on that lawyer, although for documents initiating proceedings additional safeguards may be warranted. With reference to **legal persons**, when registered offices are located abroad and there is no registered establishment within the territory, service should be limited to those employees who have legal representation, or at least who hold certain positions (e.g. a director or other officer); these persons should be served wherever found, including at their domicile. Clerical workers and similar categories should not be considered substituted recipient. In case of **minors** or **incapacitated** persons, service should take place – as it already happens in most MSs – on a legal representative (e.g. parent, curator, tutor, guardian).

Direct service ex Article 15 of the Service Regulation – Direct service is a very useful option that is left open by the Service Regulation, allowing parties to bypass the complex and long process of transmission of documents between designated agencies, as well as the uncertainty of post service. Only some MSs grant to parties the possibility to perform direct service. The EU should encourage all MSs to allow direct service as provided by Article 15 of the Service Regulation. If feasible, the possibility for a MS to prevent parties to resort to this method should be excluded by the scope of the Service Regulation and some of its aspects

should be regulated (e.g., translation, costs, certificate of service, accommodation of special requests and compatibility between the legal rules of the two States involved).

Copies, translations and certifications – Service of documents under the Service Regulation should be, as far as possible, deformalized along the lines of Article 4(4) of the Service regulation to make it simpler, cheaper and quicker. Ideally it should be up to the initiator or the executor to certify, under their responsibility, that what is being delivered is a perfect copy of the original documents. The Regulation should make clear that a translation, when requested by the addressee, needs not be certified. As a counterbalance, the addressee should be free to raise the issue for the court to evaluate that the documents delivered are not a true copy of the originals or are not properly translated.

Hierarchy – While no hierarchy between methods of service should be established (in accordance with the CJEU's decisions in *Plumex*[3] and *Tecom Mican*[4]), the initiator or executor should choose the most appropriate method to give actual notice to the addressee given the circumstances. Constructive methods should be allowed, but employed only when it is not possible to deliver actual notice, given the circumstances.

Confidentiality – Document served should be made available solely to the addressee, and all methods of service should ensure confidentiality.

Service by post – Service by post is a cost-effective method of service, widely used both in the domestic and cross-border context. However, a number of issues have been highlighted with reference to this method (delays, forms not properly filled, return receipts lost, difficulties in delivering to the right address, etc.). Standards for service by post should be developed to ensure that all postal operators follow similar rules in the context of cross-border service.

e-Service – This area is identified as having great potential for reform, especially in the cross-border context. When it comes to e-service, MS can be roughly divided in 3 groups: first, there is a group of MSs that has already developed special digital platforms for e-service of documents. Secondly, another group of MS does not use any platform but allows e-service to be performed through ordinary digital channels, such as through e-mail. Thirdly, there is a group of MS that has not yet started to explore the potential of using technology for service purposes. Any EU action should ensure a technical framework which provides for a secure exchange of electronic documents among various domestic systems in a broader scale and in an easily accessible way to users. In this context the possible exploitation of recent technical developments co-funded by the EU should be considered. From the legal aspect, the main principle of any EU intervention should be to dismantle unnecessary legal

[3] *Plumex*, C-473/04 (ECLI:EU:C:2006:96), ¶20. This has also been reinstated in *Alder*, C‑325/11, ECLI:EU:C:2012:824, ¶31.
[4] *Tecom Mican*, ¶59 .

obstacles from the way of cross-border electronic service of documents there where the secure transmission of documents from the sender to the addressee is technically feasible. A European solution should aim at ensuring recognition of the legal validity of a delivery of an electronic document which was transmitted successfully to the recipient in a secure electronic environment.

Address unknown – The topic should be included within the scope of the Regulation, at least ensuring minimum levels of assistance between MSs. An easy and low cost online access to certain databases should also be allowed for parties willing to locate a defendant for service purposes, possibly with minimum language assistance or translation. Data on authorities for assisting in locating addressees and database available should be communicated by the MSs to the EU Commission to be included in the European Atlas and be readily available for initiators and executors wishing to perform service in a given MS.

Whereabouts unknown – This topic should also be included in the scope of the Regulation, with rules on the available methods of service and on the appointment of a temporary representative.

Default, default judgment and related remedies – While this is a very complex issue, one that cannot be thoroughly addressed in this context, a recommendation may be made that a mixed solution be adopted. The addressee should always be clearly informed of the consequences of not appearing at the first hearing and/or not submitting a defence. In case of a defendant's absence, the court must verify *ex officio* whether service has been duly performed and may, in any case, order additional service in case it appears proper or necessary, for instance because the court is convinced that the defendant did not receive any notice. In such cases the court may or should also order such additional method or additional service as it may appear proper through other channels (e.g. email, social media, phone). If the court is satisfied that the defendant has been duly served, but chose not to appear, the court should then be entitled, at claimant's request, to enter a default judgment accepting claimant's demands in full (or to the extent they do not appear disproved by the evidence presented before the court). Such judgment should be served on the absent defendant. As Article 19 states, the defendant should have access to a special remedy in case his/her absence was not voluntary and caused by a defect in service, by another serious obstacle not depending from his/her fault, and where he/she presents a *prima facie* defence on the merits.

Validity and cure of defective service – The issue of defective service should be dealt with in a pragmatic fashion. If because of defective performance, service did not give actual notice to the addressee, service should be deemed void and renewed. On the other hand, if a defective service reaches its intended goal of giving actual notice to the addressee, this should be deemed to have procured service, with the possibility for the addressee to request additional time or be excused for any default that has been caused by the defects. In any

case the addressee should timely challenge a defect about service in his/her first written or oral defence submitted after the defective service, or consider to have waived it.

Delays – Delays are perhaps the weakest point of Service Regulation, but have a plurality of causes. It is recommended that measures of simplification and digitalisation are put in place to reduce the time for cross-border service below the one-month time frame provided for by Article 7 of the Regulation.

2. THE PROJECT

2.1. Sources of information and data

The project made use of the following sources for information and data.

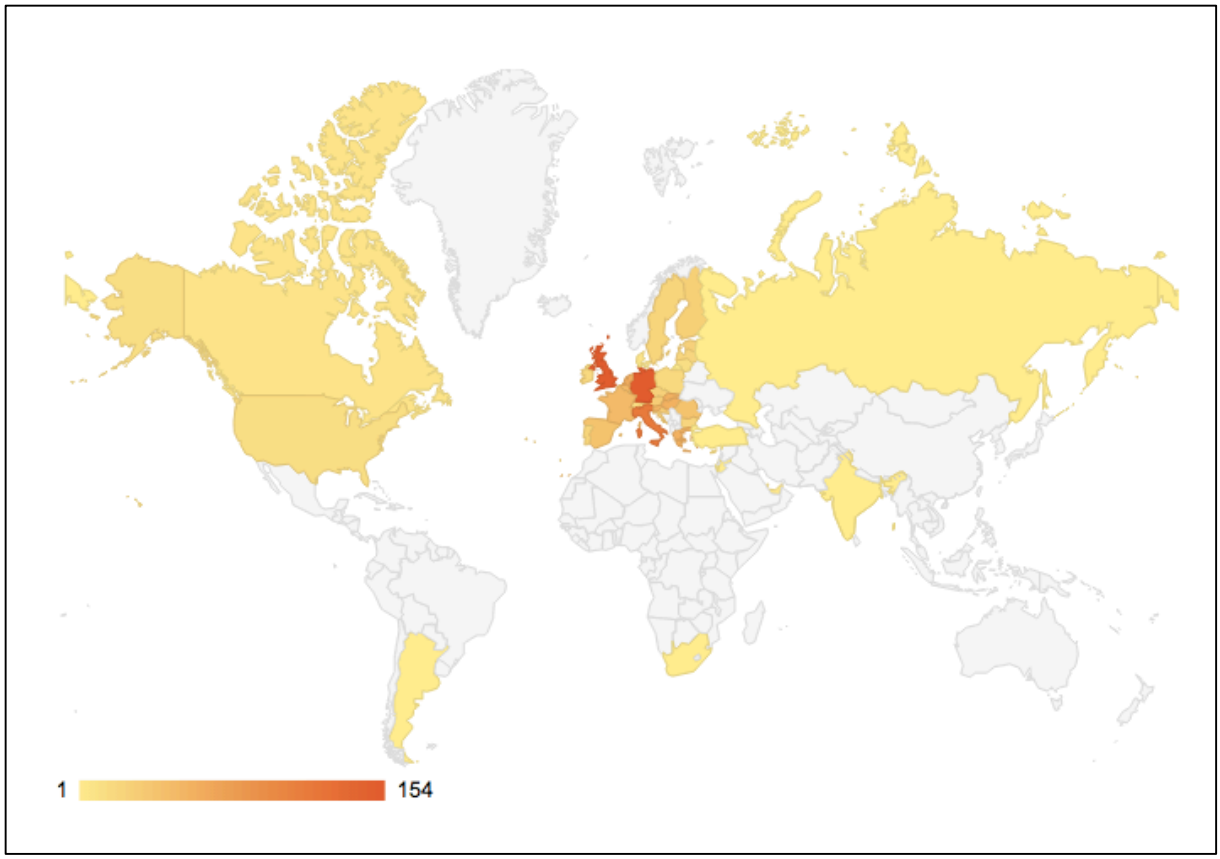
- EU material (reports, studies, case law, Atlas information, information made available by the EU Commission);
- ECHR case law, especially on Article 6 of the European Convention on Human Rights;
- Primary legal sources (civil procedure rules on service, landmark decisions – see Annex D and Annex E);
- Secondary sources including national leading commentaries and manuals;
- Analyses and verification by national experts;
- Statistical data, where available;
- Answers to questionnaire.

2.2. The questionnaire and supporting infrastructure

The Team built upon the work performed during the initial stage of the project to develop a detailed questionnaire on the service of documents in EU MSs (Annex A). After the questionnaire has been developed by the Team, and following approval by the Commission, the translation and dissemination phase begun. The questionnaire was translated in almost all languages of the EU. It was agreed that the questionnaire would not be translated into Danish, Swedish and Finnish given the high level of English proficiency in these countries.

To support the dissemination, to inform and make all material easily downloadable, the Team also prepared a mini-website hosted on a Wordpress® platform at the address < http://euservicestudy2015.wordpress.com >. According to the statistics collected by the platform, the web-site has been viewed 1.302 times by 467 visitors.

Geographic origin of top viewers has been as follows:



(fig. 1 – Map of viewers by country of origin – source: wordpress.com)

Country	Views
Germany	154
United Kingdom	152
Italy	118
Netherlands	61
Greece	58
Hungary	57
Slovakia	57
Slovenia	53
France	48
Belgium	47
Spain	41
Romania	39
Luxembourg	35
Austria	30
Croatia	30
Finland	27
Estonia	25
Czech Republic	25
Sweden	23
Portugal	21
Latvia	20
Bulgaria	20
Ireland	19
Poland	18

(fig. 2 – List of views by country of origin – source: wordpress.com)

An online version of the questionnaire, in English, was aired to make it easier to answer and collect both targeted and unsolicited answers. The online questionnaire was hosted on Google® forms and available through the mini-website and the link < http://goo.gl/71ip3L >.

2.3. Targets and dissemination

The questionnaire was addressed, for each Member State, to a mix of the following targets:

- **National authorities** (e.g. central body, Ministry judicial department);
- **Judicial officers/service agents**;
- **Courts**;
- The **bar** (lawyers and lawyers' associations);
- The **academia** (professors of civil procedure);
- Other **stakeholders** (e.g. postal service providers, commercial associations, consumer associations, banks/financial associations, advisory service providers).

The questionnaire has been sent to targets in English, French and national language, to specific addressee to be answered electronically (e.g. word/open office) or in paper version. A list of contributors who agreed that their names be added to the contributor's list is enclosed hereto as Annex B.

The team supplemented the work of experts in targeting potential addressees by advertising the questionnaire on a number of websites and international networks, including:

- **Blogs** (e.g., Conflictoflaws.net, aldricus.com, marinacastellaneta.it, conflictuslegum.blogspot.com; JuristaVards.lv)
- **Specialised mailing lists** (e.g. 'Practica Law' – Thompson Reuters);
- **Networks** (e.g. Conseil des barreaux européens (CCBE), Union Internationale des Avocats (UIA), Chambre européenne des huissiers de justice (CEUJ); the Union International des huissiers de justice (UIHJ); the Society of Legal Scholars (SLS).

According to the data collected, few entities belonging to the category 'other stakeholder' (e.g. postal service providers, commercial associations, consumer associations, banks/financial associations, advisory service providers) have contributed to the study, probably for lack of knowledge and/or interest to cover such a technical area of procedural law and to answer such an extensive questionnaire.

2.4. Collection of answers and coverage

The project collected 214 replies from the 28 MSs (with a total of 29 legal systems covered, dividing the United Kingdom into two of its major-subunits: England & Wales and Scotland), as reported in the table below.

	Country	Online answers	Paper answers	Total
1	Austria	1	16	17
2	Belgium	0	3	3
3	Bulgaria	2	48	50
4	Croatia	4	2	6
5	Cyprus	1	5	6
6	Czech Republic	0	3	3
7	Denmark	0	3	3
8	Estonia	1	2	3
9	Finland	1	4	5
10	France	1	4	5
11	Germany	3	14	17
12	Greece	1	14	15
13	Hungary	0	7	7
14	Ireland	0	2	2
15	Italy	0	8	8
16	Latvia	0	10	10
17	Lithuania	0	2	2
18	Luxembourg	0	1	1
19	Malta	0	6	6
20	The Netherlands	3	1	4
21	Poland	0	1	1
22	Portugal	1	4	5
23	Romania	0	1	1
24	Slovakia[5]	1	3	4
25	Slovenia	3	5	8
26	Spain	0	7	7
27	Sweden	2	6	8
28a	UK (England & Wales)	1	3	4

[5] Slovakia reformed its civil procedure in 2015, adopting a new Act No. 160/2015 Coll. Civil Proceedings Code for Adversarial Proceedings (Civilný sporový poriadok), toghether with Act No. 161/2015 Coll. Civil Proceedings Code for Non-adversarial Proceedings (Civilný mimosporový poriadok), and Act. No. 162/2015 Coll. Administrative Proceedings Code (Správny súdny poriadok). The Code will enter into force on 1st July 2016. In this report, due to its time frame, we tried to accommodate both the old and the new discipline. With reference to service, the new Code introduce electronic delivery of court documents, which in most cases is deemed effected three days after being sent, regardless whether the addressee has read it or not. Moreover, under the new Code if the addressee has not provided the court with a different address, the court will deliver processes for natural persons to the address found in the register of population, and in the case of legal persons, to the address found in the Commercial or other public register. If a natural person does not have such a registered, documents are deemed served after 15 days of publishing the information regarding delivery on the court's wall and on the court's website, regardless of whether the addressee gained knowledge thereof. In case of legal person, constructive service in case of impossibility to deliver at the registered offices applied also under the old Code of civil procedure.

28b	UK (Scotland)	3	0	3
	TOTAL	**29**	**185**	**214**

Although respondents were given the freedom to reply only to part of the questionnaire, only few of them chose this option. On average, received answers have been thorough and of high quality, signalling that those who decided to participate to the study, put care, efforts and time into providing detailed and complete answers to such an extensive questionnaire.

2.5. Country Summary

Each expert and the Team have prepared a report (country summary) for each State summarising the replies received and using the questionnaire as a template, analysing all the material gathered. The profiles contain references to statutes and, where applicable, case-law. Selected case-laws have also been compiled in Annex E. Especially in those instances in which the number of answers collected was relatively low, the experts have been directed to pay special care in supplementing the information gathered through the questionnaire with additional materials.

The 29 country summaries have formed the main basis for the development of the comparative part of this final report, but have been supplemented with additional materials as described *supra* and as contained in the Annexes.

3. COMPARATIVE ANALYSIS

3.1. Introduction

The Service Regulation, successor of Regulation 1348/2000 and of the European Service Convention of 1997 – and a relative of the Hague Service Convention of 1965, has been enacted as part of the European Judicial Area under the competency for civil justice elaborated in Art. 81(2) of the TFEU (formerly Art.65 of the EC Treaty). The broad mandate of Art.81 aims at creating an integrated system of circulation of judgments and other documents from one Member State to another, as a fifth freedom alongside the traditional EU rights of free movement (for goods, capitals, services and people). This is the backdrop against which any European instrument of judicial cooperation should be understood, along with the protection of fundamental guarantees of fair trial, as provided for by Art. 6 ECHR, Art.47 of the Charter, and in national Constitutions.

Service of documents is a highly technical and not very thrilling legal field, but its importance should not be underestimated nor overlooked. Its main purpose, i.e. to give notice to the defendant party that a claim is being brought against it, is directly linked to one of the most fundamental rights: the right to be heard, including the right to defend, the right to bring evidence, and in general the right to participate in the judicial process. This right is recognised in the Charter, in the ECHR and in the constitutional tradition of all Member States. Rules on service aim, thus, at giving the defendant party actual notice of the fact that proceedings are pending and allowing the defendant to actively participate in the proceedings – and it is against this standard that the effectiveness of rules of service of documents should be assessed.

At the same time, the right of the claimant (and in general of the initiator of service) must also be protected. Therefore, a system of rules on service customarily includes as well rules intended to address potential abusive conduct on the part of the defendant and to ensure, when all efforts have been made, that judicial proceedings may proceed even in absence of one party. Such rules (on what may be called "substitute" or "fictitious" service), however, often include a set of guarantees for the defaulting party and a possibility for that party to remedy such default when it was involuntary (without fault). Thus, a full system or set of service rules encompasses rules to protect the interests of both parties and creates an intricate balance between these interests.[6]

[6] See, e.g., the statement by the ECtHR in *Miholapa v. Latvia*, 3rd chamber, 31st May 2007 (application n. 61655/00), ¶23: "D'après la jurisprudence constante de la Cour, l'article 6 § 1 de la Convention consacre le « droit à un tribunal », dont le droit d'accès, à savoir le droit de saisir le tribunal en matière civile, ne constitue qu'un aspect. Ainsi, peut l'invoquer quiconque, estimant illégale une ingérence dans l'exercice de l'un de ses droits de caractère civil, se plaint de n'avoir pas eu l'occasion de soumettre pareille contestation à un tribunal

Many provisions of EU regulations prevent the circulation (either recognition or enforcement) of judgments when at the origin of the proceedings there was a defect in service of process, such that the defendant did not receive proper notice of the existence of proceedings,[7] confirming the importance of this area of law. In other words, defective service may have the effect of constraining a judgment within the borders of the country in which it was issued, hindering it from freely circulating in the European judicial area. As *exequatur* procedures are being gradually abolished, and thus no preventive verification of the respect of certain requirements (including those in relation to service) is in place at the enforcement stage, the need to ensure actual service is even more important to avoid the defendant being subject to attachment and enforcement of an unknown judgment.

While one might assume that such a universal topic has been solved in the same manner in the Member States, the reality is the opposite. The same problem of giving actual notice in a rapid and cost-efficient manner, protecting the right to be heard while not paralysing judicial proceedings has been dealt with in a multitude of ways.[8] The divergences do not necessarily follow the traditional civil law/common law divide.

Furthermore, on the international arena all States understand service as closely linked to their own sovereignty. For instance, in common law countries, traditionally, jurisdiction could only be exercised when service was possible (*ubi service, ibi jurisdiction*). More generally, the link that exists between service and jurisdiction (between service and a State's *imperium*), has long justified the hostility showed toward service performed by foreign agents in another sovereign territory, forcing parties and foreign courts to overcome serious hurdles before being able to serve documents abroad. Traditionally, this could not be accomplished without resorting to diplomatic or consular channels to perform service. The 1965 Hague Service Convention on service represented a first, meaningful and very successful, step toward creating a transnational, multilateral, simplified and more effective legal framework for service of documents abroad. The Convention naturally provided a good

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répondant aux exigences de l'article 6 § 1 (voir *Cañete de Goñi c. Espagne*, no 55782/00, § 34, CEDH 2002-VIII, et la jurisprudence y citée). Un autre élément de la notion plus large de « procès équitable », au sens de cette disposition, est le principe de l'égalité des armes, qui exige un « juste équilibre » entre les parties : chacune doit se voir offrir une possibilité raisonnable de présenter sa cause dans des conditions qui ne la placent pas dans une situation de net désavantage par rapport à son ou ses adversaires (voir, par exemple, *Gorraiz Lizarraga et autres c. Espagne*, no 62543/00, § 56, CEDH 2004-III). Ces principes visant l'ensemble du droit procédural des États contractants, s'appliquent également dans ce domaine particulier qu'est la signification et la notification des actes judiciaires aux parties".

[7] See, e.g., Art. 34(2) of the old Brussels I Regulation (44/2001) and Art. 45(1)(b) of the Brussels I Regulation as recast.

[8] The ECtHR has repeatedly stated that it is not for the Strasbourg Court to specify which methods of service may or may not be employed and that States enjoy a margin of appreciation in this field (e.g. case of *Samoilă v. Romania*, 16 July 2015, application no. 19994/04, ¶¶ 35-36). However, "un formalisme excessif dans leur application peut s'avérer contraire à l'article 6 § 1 de la Convention lorsqu'il est opéré au détriment de l'une des parties" and "[l]es tribunaux doivent faire tout ce que l'on peut raisonnablement attendre d'eux pour citer les requérants et s'assurer que ces derniers sont au courant des procédures auxquelles ils sont partie" (case of *S.C. Raisa M. Shipping Srl v. Romania*, 8 January 2013, application no. 37576/2005, ¶29-30).

basis and inspiration for the EU to build upon when it chose regulate cross-border service, albeit that the system in place present significant variations in the different MSs.

Service of process is also an issue that is closely intertwined with a number of other aspects, namely *lis pendens*, time limits, default of the party and the possibility to issue a default judgment, and in the end whether more weight is given to formalism or to pragmatism, to constructive (i.e. notional/fictional) notice or to actual notice.

The original EU Service Regulation (Regulation 1348/2000) text met some resistance on the part of the Member States in giving up their sovereignty and diminishing what they perceived as their power of *ius dicere*. This was quite evident in the wide use of reservations available under the original Regulation with respect to certain methods of service (particularly direct, consular and postal service of documents). Significantly, as part of the amendments introduced in the current Regulation, the possibility for Member States to make reservations has been almost completely removed.

One of the most interesting features of the regime for service of process under the Regulation is the number of methods of service that are made available. Aside from the "ordinary" method, i.e. that of transmission between national authorities (one transmitting, the other receiving, performing the service and returning the documents), the Regulation allows for other methods of service. Two of these methods, direct service and postal service, can be particularly useful to the parties. Direct service entails serving a foreign document as if it were a domestic document, possibly overcoming any difficulties in the interaction between the national authorities and simplifying in terms of costs and delays. However, direct service remains only possible if domestic rules in the Member State of the addressee allow for such service, creating a regime that is not uniform. Postal service, as noted by the Commission, is perhaps the most widely employed method of service, due to its inexpensive and simplified nature. This method, however, requires exact knowledge of the recipient's address, depends on the practices of local post offices for example with the reference to delivery to absentees. Too often, proof of receipt is not returned to the sender, thus impairing the purpose of ensuring that the defendant received actual notice and not fulfilling the requirements under the Regulation.

As in so many other areas of European civil procedure, the role of the CJEU in interpreting the provisions of the Regulation and its contribution to the evolution of the EU service regime cannot be underplayed. The Court has provided some important clarifications (some of which have been included in the text currently in force).

As AG Stix-Hackl noted in her opinion on *Leffler*:

> "*the transmission and service of documents lie within a triangle of conflicting priorities concerning the right to administration of justice, the protection of defendants and procedural economy. Realisation of the above mentioned objectives therefore appears problematic in that prejudicial effects on the protection of*

defendants may be inherent in the expedition of the transmission of documents, for example if it is no longer guaranteed that the defendant will be able to prepare his defence effectively, whether for linguistic, temporal or other reasons. Protection of the defendant cannot, in turn, cause the claimant to be deprived of his right to a lawful judge, for example because the defendant is able to frustrate service."[9]

In the following pages we present the results of the comparative study conducted since April 2015 among all 28 MSs.

3.2. Which types of documents are to be served and on which occasions

3.2.1. *Definition of "documents instituting proceedings"*

With reference to what constitutes a "document instituting proceedings", there are many differences among Member States.

Usually, each system knows a plurality of ways of initiating legal proceedings, often depending on the level or type of court seized, on the subject-matter or on the type of proceedings chosen (special proceedings are usually simplified and sometimes only the court order is to be served).

Differences also include instances when forms are being employed (e.g. generally used in England and Cyprus, as well as for special cases in Portugal, e.g. for injunctions; before lower courts in Ireland and for low value claims in Latvia and Romania); it also includes circumstances when a specific defendant form or letter instructing the defendant on the following steps to be taken or allowing defendant to reply must be attached to the documents to be served (such as in England again and in Estonia for objection to order of payment, in Germany – §271(2) ZPO – and generally in Denmark, Slovenia, Sweden).

Moreover, sometimes the documents to be served all emanate from the claimant, while in certain systems additional court-originated documents are to be served (such as an order setting a hearing date and time, or authorising the proceedings). The difference may also depend on whether service is initiated by the party or by the court (see *infra* para 3.3).

Usually an order is also attached when proceedings are initiated by filing an application with the court (an option open in many MSs depending on the subject-matter or the selected type of proceedings). In Estonia, the statement of claim must be served along with a court ruling on acceptance of the claim, and in Spain along with a decision on the admission to the procedure (art. 393(1) CPC). In Austria, for instance, in proceedings before the Regional Court (*Landesgericht*) a Court Order setting a deadline of four weeks for defence is served (§ 230(1) ZPO) and in proceedings before the local court (*Bezirksgericht*) the summons for the

[9] *Leffler* AG opinion (ECLI:EU:C:2005:409), ¶20.

first preparatory hearing (§ 437 ZPO). In Belgium this may happen when the proceedings are commenced through a petition to the court (*requête*) and the court later serves the petition along with the court order setting the date for the hearing to the parties, through *notification* by judicial letter (*pli judiciaire*) or via post with registered letter (art. 46 *Code judiciaire*). In Germany a court order is served informing the defendant that proceedings have started, the deadlines for filing an answer and the consequences of not taking any action (e.g. the possibility that a default judgment be issued, cf. § 276(2) ZPO) and, when applicable, information that the defendant must be represented by a lawyer (§ 271(2) ZPO).

The need to serve a court order along with the application filed by the claimant is quite usual in special proceedings, such as order for payment procedures, applications for injunctions, attachment measures and the like. In Austria, this happens, for instance, in proceedings on claims arising from a bill of exchange (§§ 555ff. ZPO), contingent payment orders (§§ 244ff. ZPO), preliminary seizure and injunctions (§§ 378ff. ZPO) and other special proceedings. Similarly, in Czech Republic, the payment order procedure envisages that only the payment order is served on the debtor (CCP §§ 172ff.). In Germany for payment orders (§§ 688 et seq. ZPO) and preliminary seizure and injunctions (§§ 916 et seq. ZPO, if there is no oral hearing) only the court order is served on the defendant.

Another difference is whether all exhibits and documents are to be attached to the documents served, or not. The need to serve also the supporting documents (e.g. annexes, exhibits), seems to be a general rule in Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland,[10] Latvia, Lithuania, Malta, Portugal, Slovakia, Slovenia, Spain and Sweden.[11] In Germany the requirement to have all supporting documents always served has been eased by a decision of the BGH of 2013 and is now required only if they are necessary to identify the claim.

Common law jurisdictions such as England, Ireland and Cyprus usually differentiate between the service of a document instituting proceedings (it is called a "claim form" in England, "writ of summons" in Cyprus and "originating summons" in Ireland) and the specification of the claim (claim particulars or statement of claim) that can be served on the defendant together or also at a later date, within a given time frame. In occasions such as *ex parte* requests, supporting affidavits must also be served.

[10] Documents need not to be served if Chapter 5, Section 3, CJP, applies ("If the case relates to (1) a debt of a specific sum, (2) restoration of possession or a disrupted circumstance, or (3) eviction, and the plaintiff states that to his or her knowledge the matter is not under dispute"). In such event, "the summons shall state that the documents are available to the defendant in the court registry and that they will be sent to the defendant upon request" (Chpater 5, Section 12, CJP).

[11] As in Finland, if documents are too voluminous or is otherwise inappropriate to send them, they may be left with the court and a notice to collect is sent to the addressee. This does not apply to documents instituting proceedings, but it may apply to the exhibits annexed thereto.

Among the many and very different types of actions and ways of instituting an action, it is very difficult to identify a common core or uniform process. The main points that can be highlighted relate to:

- the identification of parties, claim and relief sought
- the specification of supporting evidence
- information on hearing, date and consequences of default
- the information to the defendant on how to react

This seems to form a common core or minimum set of information that every defendant should receive in order to be able to defend him/herself and for his/her right to be heard to be respected. It should be noted that the addition of a "defendant package" instructing the defendant on the possible next steps and, possibly, including forms to decide how to reply, seems to be an element that could be considered to increase the protection of defendants especially in cross-border cases.

On the definition of "documents instituting proceedings" we also recall the decision of the CJEU in the *Weiss* case where, discussing the issue of translation, the court noted that:

> "*Article 8(1) of Regulation No 1348/2000 is to be interpreted as meaning that the addressee of a document instituting proceedings which is to be served does not have the right to refuse to accept that document, provided that it enables the addressee to assert his rights in legal proceedings in the Member State of transmission, where annexes are attached to that document consisting of documentary evidence which is not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, but which has a purely evidential function and is not necessary for understanding the subject matter of the claim and the cause of action. It is for the national court to determine whether the content of the document instituting the proceedings is sufficient to enable the defendant to assert his rights or whether it is necessary for the party instituting the proceedings to remedy the fact that a necessary annex has not been translated*".[12]

According to this jurisprudence, it seems that a European notion of "documents instituting proceedings" is a "*document* [that is sufficient to] … *enable*[] *the addressee to assert his rights in legal proceedings in the Member State of transmission … and is … necessary for understanding the subject matter of the claim and the cause of action*".

It should be noted that the "institution of proceedings" has also important consequences on other legal aspects, such as the determination of the moment in which the proceedings can be deemed as pending for *lis-pendens* purposes (see, also, *infra* para. 3.18.4) and the interruption of any substantive (e.g. a statute of limitation/prescription period) or

[12] *Weiss*, C-14/07, ECLI:EU:C:2008:264, ¶78.

procedural (e.g. to file an appeal) time limits. According to the domestic procedural laws, only in certain MSs are such effects produced by serving the documents and usually, where the proceeding is commenced first by the action of serving the documents on the addressee and only later by filing them with the court (Austria (§ 232(1) sentence 1 ZPO, but deadlines are interrupted already when the document is filed with the court, § 232(1) sentence 2 ZPO), Croatia (art. 194 CPC), Cyprus, Denmark, Germany (§§ 261(1), 253(1) ZPO), Greece, Hungary (§128 CPC), Malta, Poland (art. 192 KPC) and Slovenia (§189 ZPP)). Where documents are first filed with the court through an application, and only later served (upon initiative of the party or of the court) on the defendant, often along with a court order setting a hearing date or containing an injunction, the *lis pendens* and interruptive effects are usually produced at the moment when the application is filed with the court (although the law may still provide a time limit for serving the application and the order on the defendant). This is the case in Bulgaria, the Czech Republic (CCP § 82), Estonia, Finland (Chapter 5, Section 1.2, CJP), France (the date of pending is always the date in which the act is registered with the court: i.e. the day in which a *requête* is filed with the court to be later served or the day in which a served *assignation* is enrolled with the court), Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Spain, Sweden (Chapter 14, Section 4, CJP), Scotland and England). In Italy it depends on whether the proceedings are commenced through a *citazione* or a *ricorso*: the *citazione* belongs to the first group, the *ricorso* to the second.

It will be recalled that, in civil and commercial matters covered by the Brussels I Regulation, after a first decision by the CJEU leaving the question to each national procedural law,[13] this issue has been solved with an autonomous European rule. Article 32 of the Brussels I Regulation, in fact, states:

> "1. For the purposes of this Section [9 on Lis pendens – related actions], a court shall be deemed to be seized:
>
> > (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

[13] Case 129/03, *Zelger v. Salinitri*, ECLI:EU:C:1984:215, ¶15-16: "Since the object of the Convention is not to unify those formalities, which are closely linked to the organization of judicial procedure in the various states, the question as to the moment at which the conditions for definitive seising for the purposes of article 21 are met must be appraised and resolved, in the case of each court, according to the rules of its own national law. That method allows each court to establish with a sufficient degree of certainty, by reference to its own national law, as regards itself, and by reference to the national law of any other court which has been seised, as regards that court, the order or priority in time of several actions brought within the conditions laid down by the convention.
… Article 21 of the Convention must be interpreted as meaning that the court "first seised" is the one before which the requirements for proceedings to become definitively pending are first fulfilled, such requirements to be determined in accordance with the national law of each of the courts concerned".

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served".

3.2.2. *Service of judgments*

Another element that deserves to be underlined and that demonstrates a difference in many Member States is whether a decision (judgment) is to be always served on the parties. Generally speaking in certain MSs service of the judgment is necessary for triggering legal consequences, such the counting of time-limits (e.g. for appeal or performance) or enable enforceability, whereas in other MSs legal effects produced by the judgment are triggered without the service of that judgment. There is a strong convergence on the need to serve the judgment on the defaulting party, when one of the parties was in default (see *infra* chapter 3.13). For instance, in Belgium, Bulgaria (arts. 259 and 283 CPC), Hungary (art. 228(1) CPC), France, Greece, Luxembourg and Spain (art. 210 LEC) the time limit for appeal starts to run only when the judgment is served. In Italy service of a judgment allows a shorter term (30 days; for cassation it is 60 days) for appeal to run, *in lieu* of the longer term of 6 months from the date of the judgment (arts. 325-27 CPC). In Greece, service of a judgment triggers the short 30 days time limit to file an appeal, otherwise the term is 3 years from the date of the judgment (art. 518 CPC).

The duty to serve the judgment is particularly strong in France (and Luxembourg), where the law requires judgments to be served to the parties and, if lawyers representation is mandatory, impose that judgment is first served between their lawyers (which may be easily done with an *acte du palais* or electronically through the RPVA, see *infra* 3.9) and only after on the party, under penalty of being a void service (arts. 675-678 CPC). Also, time limit for appeal only starts to run when the judgment is served (but there is a final deadline of 2 years from the date of judgment, art. 528-1 CPC). Other countries in which service of judgment to the parties is required are Austria (§ 416 ZPO; except when judgment is based on the plaintiff's abandoning the claim or the defendant recognition of the claim, and the decision is pronounced at the hearing before both parties, § 416(3) ZPO; and a default judgment needs not be served on the plaintiff, § 416(3) ZPO), Estonia (§ 306(5) CPC – the County Court and the Circuit Court always serve the court judgment – CPC arts. 455(1) and 655(1), the Supreme Court transmits and publishes the judgement, art. 694(1) CPC), Germany (§ 317 ZPO), Latvia, Portugal (but service through the party's lawyer is enough), Romania, Slovakia, Slovenia and England. In Belgium a judgment is served by the court clerk through *notification* (art. 792 *Code Judiciaire*).

In other countries, presence of the parties at (or the fact that they have been duly summoned for) the final hearing where – and if – the decision is read out loud or delivered

to them, counts as service of the judgment, such as in Croatia,[14] Cyprus, Czech Republic (CCP § 158(3)), Ireland and Poland.

In those systems in which electronic communication between court and lawyers is being increasingly used, judgments are often communicated on the party's lawyers via those electronic channels (such as in Czech Republic and Italy, see also *infra* at para. 3.9).

In Finland the judgment given in a civil case is not separately served to the parties. If a party has been present at the hearing and has been orally notified of the date when the judgment will be available at the Court Registry, no additional information on the issuing of the judgment is necessary. If the party has not been orally notified about the date of the judgment, the court has to notify the parties in writing of the date when the judgment will be available to them, well in advance of that date (Chapter 11, Section 6, CJP). According to Chapter 24, Section 13, CJP the parties shall be issued with copies of the judgment in the form of a court instrument upon request. In Denmark decisions are not served, but only communicated (i.e. the document is informally delivered to the parties without the safeguards and requirements of a proper service). Also in Malta judgments are not served upon the parties, but are read aloud by the judge, with or without the parties present. The time limit to appeal starts running from the following day. The only exception is where the remedy of requesting a new trial is exercised. In that case, there is a specific exception in the case of judgments delivered *in absentia* of the other party where the limitation period shall start running once the other party has knowledge of the decision.

3.2.3. *Service and enforcement proceedings*

As there is a plurality of ways for starting proceedings on the merits, each Member State knows a variety of titles that form the basis for enforcement proceedings. Enforcement is not a topic covered by the Service Regulation and the list or analysis of the types of enforcement titles existing in each jurisdiction is beyond the scope of this study. Suffice to note that (i) there are countries in which enforcement titles are specified in great detail, with a precise listing, and others in which there are general categories; (ii) that in many MSs judgments may only be enforced when they are final or when made provisionally enforceable by a specific court order; and (iii) that, generally, every legal systems extends the possibility to enforce also extra-judicial titles, such as act and deeds received by a notary public.

Still, it is relevant to explore the relation between service of documents and enforcement proceedings. The main issues covered here are (1) whether the enforcement title must be served on the defendant before beginning enforcement; and (2) whether there is any

[14] Until recent amendments, courts had to serve judgments on the parties pursuant to art. 337 CPC (today repealed). It is reported that courts often still serve the judgment on the parties, although this is not required by the law anymore.

minimum delay between service (or delivery of the judgment) and the first act of enforcement.

As to the first point, service of a judgment or other enforcement title prior to enforcement is required in Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Slovakia, Slovenia, Spain and Scotland. In some countries, such as Slovenia, the decision is only served to allow the time for appeal to expire and the decision to become final, and then enforcement may be carried out based on a decision on enforcement served on the debtor. In other countries, such as Italy, a final judgment (or other enforcement title) has to be served on the debtor before being able to begin enforcement, regardless of any prior service of the decision to allow the short-time for appeal to expire; furthermore, as a rule, in the case of enforcement the title is served upon the debtor (art. 479 CPC), while for the short-time of appeal to run (see *supra* para. 3.2.2) service is made on the party's lawyer (arts. 285 and 170 CPC). Also in Belgium a judgment (and other enforcement titles) may not be enforced until it has been served.

In Bulgaria in general a decision on the merits has to be served before enforcement may begin. On the contrary, provisional measures or enforcement orders issued in so-called execution order proceedings (*ex parte* procedure for issuance of order for payment based on some authentic documents and other special titles – art. 417 CPC) are served together with the first step of enforcement. In any case, enforcement takes place upon an enforcement order by the court (writ of execution and notice of voluntary compliance), which verifies the validity of the enforcement title. The debtor may challenge the enforcement order within two weeks after service (art. 407 CPC).

In certain Member States, enforcement does not require service of the title, but a notice of application for enforcement (Sweden and Finland) or an order of acceptance of enforcement documents (Lithuania) is served. In Poland a notice is served with brief indication of enforcement title (which must be showed by bailiff upon request by the debtor). In Portugal, Malta and England enforcement may begin before service of title, as well as in Germany for seizures and injunctions (but service is to be performed maximum one week after enforcement and no later than one month after issuance of the order, § 920(2), (3) ZPO). In Romania service of the title is usually simultaneous with the first act of enforcement; this is something that is possible in many other Member States, especially when there is urgency or the threat that the debtor may conceal his/her assets (e.g. Italy, art. 482 CPC),[15] for certain orders (e.g. in France for *ordonnance de référé* or *ex parte* orders, arts. 490 and 495 CPC, art. 503 CPC) or in certain forms of enforcement (e.g. in Austria for orders of seizure and injunctions).

[15] A similar solution is provided for by Art. 40 of the Brussels I Regulation: "An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed".

Extra-judicial titles need not to be served in all MSs, such as notarial deeds in Czech Republic, Estonia, France and Slovenia, upon the presumption that the party who signed the deed has a copy thereof.

With reference to the minimum delay that needs to be respected before being able to take the first step of enforcement, there is no such requirement in Belgium,[16] Cyprus (unless set in the judgment), Estonia (after entry into force of the judgment – i.e. no ordinary appeal is possible – or if declared immediately enforceable; if the debtor is a public body, a 30 days delay applies), Finland and Ireland (unless set in the judgment). In France and Luxembourg no delay is required after the judgment has become final because the term for appeal has expired. In the other MSs the minimum delay varies and is calculated from service or from the day the court renders its judgment. It ranges from the short 24/48 hours after judgment in Malta (arts. 255(a) and 256 CPC), or 3 days after judgment in Czech Republic (CCP § 160, the term can be increased by the court) and Slovakia, or 3 days after service in Greece, to the average 10 to 15 days after service of Austria (where it is up to the court to specify a "performance period" for voluntary compliance, starting with service of judgment, which is otherwise 2 weeks, § 409(1) ZPO), Croatia (15 days, but only 8 days in commercial and labour cases), Hungary, Italy (10 days, art. 482 CPC), Lithuania and Scotland. In England a judgment may be enforced after a time limit set in the court order (usually 14 days) has expired, while in Spain enforcement may begin 20 days after the judgment becomes final (in Slovenia 15 days); in Denmark enforcement may begin 14 days after communication of the judgment by the court. In the Netherlands the delay appears to vary depending on the assets to be attached, but usually a 2 days minimum delay applies.

It should also be noted that in certain countries, as a rule (naturally subject to exceptions), only judgments that enjoy a *res judicata* effect may be enforced, and hence also the time-limit for appeal has to have expired before enforcement is possible (e.g. in Austria, where such time-limit is 4 weeks).

While usually failure to comply with prior service of the judgment or the delay leads to the suspension or termination of enforcement proceedings, in certain MSs, failure to comply with these requirements does not affect enforcement (e.g., Cyprus, Denmark – where if judgment is not communicated this may affect time for appeal but not enforcement –, Malta, and Scotland), but the debtor may challenge enforcement on other grounds once he/she has notice of the enforcement being carried out. In Denmark, where the decision is communicated and not served by the court, if it results that the defendant did not receive it this does not suspend enforcement (but will allow the defendant to have more than the usual 4 weeks to lodge an appeal against the decision).

[16] Where judgments may also be provisionally enforceable, including when appeal is pending (arts. 1397ff *Code Judiciaire*. An order to pay may be served together with the judgment (or other enforcement title), but then 24 hours must pass before being able to commence a seisure.

At the European level, Article 43 of the Brussels I Regulation provides that

> "1. Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.
>
> 2. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, he may request a translation of the judgment in order to contest the enforcement if the judgment is not written in or accompanied by a translation into either of the following languages:
>
> (a) a language which he understands; or
>
> (b) the official language of the Member State in which he is domiciled or, where there are several official languages in that Member State, the official language or one of the official languages of the place where he is domiciled.
>
> Where a translation of the judgment is requested under the first subparagraph, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought.
>
> This paragraph shall not apply if the judgment has already been served on the person against whom enforcement is sought in one of the languages referred to in the first subparagraph or is accompanied by a translation into one of those languages.
>
> 3. This Article shall not apply to the enforcement of a protective measure in a judgment or where the person seeking enforcement proceeds to protective measures in accordance with Article 40".

3.2.4. *Service of extra-judicial documents*

Service of extra-judicial documents (as defined by national laws, and not in the meaning of the specific "autonomous" term of the Regulation on service of documents) is allowed in a majority of MSs, usually with no or little difference with service of judicial documents. It is generally allowed in Belgium, Cyprus, Denmark, Finland (with partially different rules), France, Germany (with different fees), Greece, Hungary, Italy (some additional costs), Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden (with a fee) and Scotland. Usually service of extra-judicial documents is not required by the law (with some exceptions) and the extra-judicial documents may also be communicated through other channels (e.g. return-receipt mail, mail, email, fax, etc.); in these cases, service is deemed useful in order to ensure that important communications and notices (such as notice of termination, notice of defects, declarations) are received by the addressee and that, if they are not received, the formal mechanisms for substituted service can be employed. This can also prove useful as good proof of their receipt in subsequent judicial

proceedings. Instances in which service of an extra-judicial document is required by the law are reported in Cyprus, where, e.g., eviction must be preceded by service and 21 days for paying and winding up application also must be served 3 weeks before. In Czech Republic a plaintiff that has succeeded in proceedings on the performance of an obligation is entitled to the reimbursement of costs of proceedings against the defendant only if he/she previously served to the defendant a call to perform such obligation to the delivery address or to the last known address at least 7 days before filing the petition for initiating the proceedings. Other instances include service of an extra-judicial enforcement title (e.g. a notary deed) for enforcement purposes (e.g. in Croatia and Italy).

In Bulgaria extra-judicial service is allowed only for service by notaries according to so-called notary invitation and only with personal service (if addressee is not found by the notary, a notice is placed at his/her address and service is deemed fictitiously performed after 14 days). Also in Croatia, service of extra-judicial documents is in principle limited to notary documents, especially enforcement titles. In Czech Republic service is allowed if attached to a judicial document. In Estonia service is allowed through bailiffs (§ 212 Code of enforcement) but not through courts, and the different rules on "making declaration of intention" apply (General Part of Civil Code § 69).[17] In Malta service of extra-judicial documents alone is not allowed, but a practice is reported of attaching non-judicial docs to a judicial letter. In England, the topic is less relevant due to the de-formalised nature of service.

At the European level, Article 16 of the Service Regulation simply states that: "Extrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Regulation." The definition of "extra-judicial document", however, had to be clarified twice by the CJEU. In a first instance, Case C-14/08 (*Roda Golf*), the Court held

[17] General Part of Civil Code § 69. Making declaration of intention " *(1) A declaration of intention directed at a certain person (recipient of the declaration of intention) shall be expressed by the party making the declaration and enters into force upon receipt. A declaration of intention which is not directed at a certain person enters into force upon expression of the intention.*
(2) A declaration of intention is received when it has been communicated to the recipient personally. A declaration of intention directed at a party not present is deemed to be received when it has arrived at the residence or seat of the recipient of the declaration of intention and the recipient has had a reasonable opportunity to review the declaration.
(3) A declaration of intention relating to a contract, which is directed at a party not present, is deemed to be received when it has been delivered to such place of business of the recipient of the declaration of intention which is most related to the performance of the contract and the recipient has had a reasonable opportunity to review the declaration. If the place of business of the recipient of a declaration of intention cannot be ascertained or if the recipient does not have a place of business, the declaration of intention is deemed to be received when it has arrived at the residence or seat of the recipient and the recipient has had a reasonable opportunity to review the declaration.
(4) If a declaration of intention which was supposed to reach the recipient within a certain period of time reaches the recipient later, the declaration of intention is deemed to be received on time if the declaration did not reach the recipient on time due to circumstances for which the recipient bears the risk.
(5) A person may make a declaration of intention to another person also through a bailiff pursuant to the procedure provided for in the Code of Enforcement Procedure."

that the notion of 'documents' in the Regulation is an 'autonomous' European concept[18] and that therefore it is not for national law to determine which documents may be transmitted in accordance with the Regulation. Hence, service of a notary act was found to be within the scope of the Regulation even in the absence of legal proceedings.

Building upon this notion, the CJEU decided that the term 'extra-judicial' documents includes a 'purely private document':

> "*Article 16 of Regulation No 1393/2007 must be interpreted as meaning that the concept of an 'extrajudicial document' referred to in that article encompasses not only documents drawn up or certified by a public authority or official but also private documents of which the formal transmission to an addressee residing abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law*".[19]

The Court has also clarified that, to be allowed to serve an extra-judicial document according to Regulation 1393/2007, there is no need to "*ascertain, on a case-by-case basis, whether the service of an extrajudicial document has cross-border implications and is necessary for the proper functioning of the internal market*".[20] The only requirement is that service of an extra-judicial document is performed from the territory of a MS into the territory of another. Hence, the European concept of extra-judicial document is very broad, encompassing all kind of public and private documents, and is coherent with the view of a majority of MSs.[21] Also those MSs that domestically limit or prohibit service of extra-judicial documents, are required to allow such a service when it is directed to another MS, creating a two-layer system in which the European regime seems to be more generous toward the sender.

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[18] The 'autonomous' European interpretation of certain legal concepts, detached from specific national rules or practices is a powerful and quite often used mechanism through which the Court is able to overcome national differences and to provide a uniform and *super partes* meaning to European provisions.

[19] *Tecom Mican*, C-223/14 (ECLI:EU:C:2015:744), ¶46.

[20] *Tecom Mican*, ¶69.

[21] The Court had already rejected the view that with such a broad notion "*national courts* [c]*ould become courier services for litigants who have not even commenced proceedings*" and *Roda Golf* and *Tecom Mican* surely reinforces this view. As noted by the AG Bot in his opinion, this notion is broader than what is accepted under Article 17 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters: "Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention". According to the Hague Service Convention Practical Handbook (¶78 at p. 30) extra-judicial documents: "differ from judicial documents in that they are not directly related to a trial, and from strictly private documents in that they require the involvement of an 'authority or judicial officer' [and] … include … notarial documents, demands for payment, notices to quit in connection with leaseholds or contracts of employment, protests with respect to bills of exchange and promissory notes … . Objections to marriage, consents for adoption, and acceptances of paternity are also in this class insofar as they comply with certain formalities". The report makes an express reference to the *Roda Golf* decision by the ECJ at p. 30, fn 121.

It may be worth to assess in light of the recurrent decisions of the CJEU interpreting the concept of "extra-judicial documents" under the Regulation on service of documents, if greater legal certainty could be achieved by codification of the concept in the secondary EU law, and if such an exercise should follow the autonomous interpretation of the concept given by the CJEU.

3.3. Who requests service to be performed (the initiator)

In this study we mean under "*Initiator*" a person who is obliged or burdened by the law in the context of civil proceedings to take the necessary steps so that service of documents is launched. In other words, she/he is the person or body who takes responsibility for setting the service process in motion. The main categories differentiating between MSs hinge on whether (i) such responsibility lies always with the party (and his/her lawyer or representative), (ii) always with the court (either the clerk or the judge), or (iii) either on the party or on the court depending on the case.

Initiating service seems to be the sole province of the party, who can get directly to the executor (e.g. bailiff or post) without a prior court authorisation, in Belgium, Cyprus (Order 5B, r. 5, CPR: "*Service by a bailiff is the responsibility of the party. The selection of bailiff for effecting service is made by the party*"), Greece,[22] Ireland, Malta and Scotland. As opposed, courts are generally in charge in Austria (§87 ZPO and §5 ZustG; except for exchange of documents to and between lawyers during proceedings, which is performed electronically through webERV; courts may also instruct bailiffs or a municipal officer), Bulgaria (arts. 56-58 CPC); but for enforcement the initiator is the bailiff and in notarial matters is the notary), Denmark (§ 350(1) AJA, but a defendant can waive the right to have a writ of summon served – § 160(2) AJA – and in any case, the claimant must check and fill in missing information on the writ of summon as necessary to carry out service, § 349(2) AJA), Slovenia (but during proceedings, parties may exchange documents between their lawyers, if both represented – not for judgments or other acts), and Spain (court clerk).

Many MSs offer a mix of solutions, sometimes depending on whether proceedings are started with a summon or with an application, sometimes based on the type of proceedings, other times laying down a general rule but providing for ample exceptions. In the following countries, the rule is that service is initiated by the court, but on certain occasions, subject to specific conditions, it may also be initiated by parties: Croatia (communication of briefs in ordinary or commercial cases, upon court order – arts 133c and 409 CPC), Czech Republic (the main responsibility lies with the court, CCP § 79, but the parties may voluntarily serve and in enforcement, it is the enforcement officer), Estonia (the initiator is usually the court, §306(3) CPC, but parties may request authorisation to be the initiator but must execute

[22] Except when court did not deliver the judgment at hearing because the judge died or retired and a new hearing is summoned.

through bailiff, § 315[1] CPC; in any case it is for parties to specify address and telecommunication channels with the addressee, § 338 CPC), Finland (the main initiator is the court, Chapter 11, section 1, CJP, but parties may be entrusted, with their consent, to effect service through a bailiff, Chapter 11, section 2 and 4(3), CJP, e.g. for urgent matters and have duty to serve default judgments), Germany (§167 ZPO – unless party is expressly authorised, as for orders of seizures and injunctions; or between lawyers), Hungary (where a judge can have the parties send documents to each other; service for enforcement is initiated by the bailiff), Lithuania (upon authorisation by the court – art. 117(2) CPC, and between lawyers – art. 119 CPC), Portugal (the main initiator is the court, art. 220 CPC, but parties may request to be allowed to perform service through their lawyer), Sweden (parties may be entrusted the task of initiating service unless the court finds it inappropriate).[23]

In England the general rule is that a document is served by whom it is prepared. Claim forms are normally served by the court, unless the party notifies the court that it wishes to serve it or where a rule directs so (e.g. in commercial cases). A party serves the remainder of the documents, especially the particulars of claim.

In France and Luxembourg it is either the parties or the court, depending on whether the action is commenced with an *assignation* or a *requête*;[24] similarly it can be the party or a court officer in the Netherlands (where the party is still required to instruct the court officer) and Poland (but, as far as the parties are concerned, they may perform service only by post through their lawyers and only during proceedings). In Italy it is generally the party (either one specified or the most diligent of the two), but there are instances in which service is performed by the court. In Latvia, depending on the act, the initiator may be the court (§54 CPL), parties, an authorised representative or bailiffs. In Romania before proceedings are started, the initiator is the party; during proceedings, serving is made with judge's order or consent and enforcement is initiated ex officio by bailiff. In Slovakia also it may be judges, court officer or executor (for enforcement), depend on proceedings (in probate, notaries are initiators).

From the preceding paragraphs, it can be easily seen that there exists a variety of solutions adopted by each MSs, greatly depending on the structure of proceedings and on procedural choices and traditions. Furthermore, the topic is also connected to the determination of when proceedings can be deemed as pending for *lis pendens* purposes (see *infra* para. 3.18.4).

[23] Moreover, in matters that are capable of being settled, if service by the court is ineffective, claimant may be offered by the court the chance to try to initiate service, or proceedings are discontinued.

[24] An *assignation* (art. 56 French CPC) is a statement of claim sent by the plaintiff to the defendant summoning the defendant before a court at a set date, which is later filed with the court (and is the ordinary method for seizing a first instance court). A *requête* (art. 58 French CPC) is a petition that is filed with the court in special cases, pursuant to which the court will set a hearing date and serve such order on the parties to summon them.

3.4. By whom service is performed (the executor)

"*Executor*" means the person or body who actually delivers the documents to the addressee or performs the legally relevant acts constituting a valid service. This is another point where MSs show many differences based on a number of criteria. In certain countries service is strongly perceived as a matter for public bodies, usually a public bailiff (e.g., Belgium, France and Luxembourg, the Netherlands), in other it is mainly a private matter between the party and his/her lawyer and the addressee (e.g., Cyprus, Ireland and England). Generally, MSs have chosen a mix between various options, sometimes leaving free choice to the initiator, other times prescribing which type may be used depending on who the initiator or the executor is. For instance, in Croatia if the party wishes to perform service, he/she must use the post; while the court can use a variety of methods; similarly in Sweden, the party may only use post or private process server, while the court may employ an array of methods.

In some MSs, the bailiff may only perform personal service and may not use the post or other channels (e.g. Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Latvia, Poland, Sweden – see *infra* para. 3.6.1). Sometimes it is the nature of the act to be served that determines the method, as in Belgium, France and Luxembourg where the law prescribes that judgments be served with *signification* and both on the party and his/her lawyer); on the contrary, when service is initiated by the court, the law prescribes that a first attempt be made by *notification* (through mail or judicial letter), followed by a *signification* in case of failure (see *infra* para. 3.6.6).

Bailiffs/judicial officers, postal operators and process servers seem to be the main types of "executor" (but are not always available in all MS). Technology, in some instances, is capable of bridging the gap between the initiator and the addressee, dispensing with the need of having intermediaries.

Only in half of the MSs, parties are allowed to serve directly, through their lawyers or by post: Austria (only through lawyers and provided that no statutory deadline is connected with the service, §112 ZPO, using webERV during proceedings), Croatia (only during proceedings, when authorised by the court and only through Croatian Post, with registered letter with receipt confirmation – arts. 133c and 409 CPC), Czech Republic (if authorised by the court, CCP §§ 45(3)(b) and 50e), Finland (if the initiator is not the court and the party is represented by a lawyer – Chapter 11, section 4(3), CJP), Ireland, Italy (only through the lawyer, by post if generally authorised by the bar association and by certified e-mail if recipient has a registered certified e-mail address – see the law of 21 January 1994, no. 53), Latvia (with the consent of the judge), Lithuania (by lawyers and, with court authorisation, also parties directly), Poland (only through post and during proceedings), Portugal (through lawyers, arts. 237-38 CPC), Romania (only when proceedings are pending), Sweden (Chapter 33(6) CJP – only when authorised by the court and only through 'normal service' by post or private provider), Scotland (only through solicitors and only via post) and England (usually performed by the lawyer via post). In Cyprus in principle parties cannot perform direct

service, unless the addressee cannot be found and alternative means are specifically authorised by the court.[25] In Germany lawyers can exchange briefs, but not a court order or judgment, as in Slovenia where during proceedings lawyers can perform service between themselves via registered letter or digital secured channels, but cannot serve a final decision. In many other countries, such as Italy (art. 136 CPC), service (or better, communications) during pending proceedings is deformalized and made by leaving the documents at the court office (which, today is performed electronically and also forwarded to the other parties' lawyers); other deformalized method pending proceedings exist also in France and Luxembourg, where lawyers, bailiffs and court officers exchange documents with *acte du Palais*.

As noted above, public bailiffs are the main executors of service in Belgium, France, Luxembourg, and the Netherlands; in contrast, private bodies or persons may perform as "executors" in Cyprus (a private authorised bailiff is generally used – Order 5B, r. 1, CPR), Croatia, Germany (private postal providers may be used as a means of transmission of document by the bailiffs or by the court, §168 ZPO), Ireland, Latvia, Lithuania, Malta (but not for certain acts, such as applications for appeal), Slovakia (private post), Slovenia (private servers authorised by the Ministry of Justice), Sweden (private authorised companies are available since 2010) and England. In Romania the main executor is the agent server with the court, but in case this method of service cannot be used, service by post is allowed (art. 154 CPC). At the party's request, service may be made by bailiff or via express courier (art. 154 (5) CPC).

It should be stressed that postal operators may have a twofold nature: 1) they can be understood as "executors" if the person responsible for the service (the initiator) is entitled to directly asks the assistance of a postal provider; 2) but they can be understood also as a mere means of transmission of the document to the addressee, if another executor (such as a bailiff) fulfils its task by using the postal service for the delivery of the document. It is not always easy to make a distinction between the role of the postal operator as executor or as a means of transmission of documents.

In certain systems all or some of the possible executors have a limited territorial competence, but the fact that the service is performed by the executor outside the area of his/her competence leads only in a few legal systems to the invalidity of the service (e.g.,

[25] See Order 5 CPR, "*9. If it be made to appear to the Court or a Judge that from any cause it is not possible promptly to effect service in the manner provided in Rule 2 of this Order, the Court or Judge may make such order for substituted or other service, or for the replacement of notice for service by letter, public advertisement, or otherwise, as may be just.*
10. An order under Rule 9 of this Order shall appoint the time within which the defendant shall enter his appearance to the writ, and shall also contain a direction that, if the defendant does not enter an appearance within the appointed time, notice of any application in the action may be given by posting an office copy of the notice on the Court notice board."

Belgium, France, Greece, Latvia, possibly for Malta[26] and Spain), while in other legal systems this error is considered to be cured if the act is received by the addressee or this error does not affect the validity of the service at all (e.g., Austria §7 ZustG, Bulgaria, Croatia, Estonia, Finland, Germany and Italy). Post (allowed in most jurisdictions, and either instructed directly by the initiator as an executor, or used as a means of transmission of documents by another executor) and digital channels usually extend to the entire territory of the State. Service abroad is performed usually according to the Service Regulation, other multilateral (e.g., Hague Service Convention) or bilateral instruments, or based on comity (via diplomatic/consular channels) Service abroad is sometimes allowed only with court's authorization, which may specify the type of service to be used, as in Cyprus, Ireland, England.

Examining each MS in further detail and in addition to what has been observed above, in Austria service on the person of the addressee is usually made via post, whereas, if parties are represented by a lawyer, the digital webERV channel is used. In case of difficulties (urgency or need to investigate the address), if service of a document is to be performed together with another official act, to prisoners, or if the addressee is close to a courthouse, also a court clerk, bailiff or municipal officer can be entrusted with the task (§ 88(1) ZPO, § 3 ZustG). In Bulgaria a number of solutions exist (art. 42 CPC), and the executor can be a court officer specially appointed to the case or service may be entrusted to the post. Also a private bailiff may be entrusted on express request of party and consent of the court. If there is no court office in the area, a municipal officer can be entrusted. In Croatia courts employ court clerks or post. Cyprus is essentially based on the operation of private bailiffs, authorised by the Supreme Court and having competence over the entire territory of the Republic of Cyprus. In Czech Republic, usually the executor is the court itself and the preferred method is using a data box or via e-mail or post (or delivering the documents in court).

In Estonia decision on who should be the "executor" is taken by the court (postal provider, bailiff, court clerk, or even police and state agency or officers of local municipality if not possible in another way). In Finland if the initiator is the court, it may choose between court personnel, process servers,[27] post or to serve electronically, while a party is in principle obliged to use a process server. In Belgium, France and Luxembourg *signification* is carried out only by a bailiff (personally, via post or electronically), while *notification* by court clerk is

[26] Although there is a legal obligation on the party to request the relevant Registrar (either the one for Malta or the one for Gozo) to execute service and if that is somehow bypassed there is a good argument that service is void, from a practical standpoint it is unlikely to happen since service is internally managed by the Registrars and service is allocated to the respective territory. For example, in a situation where a claim is to be filed in Malta and the courts in Malta are competent to hear that case—if one of the respondents is domiciled and resident in Gozo, service of the application will be conducted through the Registrar for the courts in Gozo.

[27] Chapter 11, section 26, CJP: "For the purposes of this chapter, "process server" means also a person competent to serve notices as provided in section 6 of the Process Servers Act (505/1986) and a process server referred to in the Act on the Bailiff Office of Åland (898/1979). "

made only with registered letter (if it fails, then the court officer has to instruct a bailiff).[28] In Germany, if service is initiated by the court, a variety of methods can be employed: a court clerk may send by registered letter, fax, or electronically and ask for a receipt confirmation; service may be made directly by a court officer or postal service; and bailiffs or other public authority officers can be used if other methods do not look promising. If the initiator is a party, a bailiff should be instructed. A distinctive feature of Greece is that service is usually performed through a bailiff, while post is used only when no bailiff has been appointed for a particular area of competence (art. 122(3) CPC), a thing that rarely happens in practice. Postal service is, instead, the rule in Hungary, except in cases of urgency when a court officer can be instructed. Enforcement process is served by a bailiff or process server (it is reported that in practice many documents are served directly by the parties, and the court simply asks the addressees to acknowledge receipt). In Ireland service is essentially a private matter.

A variety of executors is available in Lithuania, where service can be entrusted to the post, private service providers, bailiffs, other officials or also be performed by the clerk though electronic means. In Malta officers of the court (who have exclusive competence over service of certain acts, such as appeals) and private postal provider are the only executors (it is reported that before certain courts, such as the Industrial Tribunal in labour matter, there is a practice of employing informal service via e-mail, but this does not create the same legal effects as formal service through the proper channels at law). Also in Poland the preferred, but not exclusive, method is post – a bailiff can be also used. In Portugal executors are mainly judicial officers/bailiff and enforcement agent (art. 231 CPC). In Slovakia a number of channels may be used: the judge may serve documents during the hearing; court clerks, private postal service providers, court executors and other characters can also be executors. Slovenia prefers the post, but bailiffs, court officials, or authorised process server (upon party's motion, who has to advance the costs – art. 132 ZPP) may be used at the court's choice (electronic means are foreseen, but not yet implemented). In Spain the executor is the court clerk, who may delegate service to judicial agents or habilitated procurators. In Sweden the most used method is by post, but bailiffs or other government personnel and accredited service companies (since 2010) may be used. Finally, in England service is

[28] The difference between the two terms is that *signification* refers to the service of documents by a bailiff (which usually takes the form of the physical delivery of an authentic copy of the documents by the bailiff to the addressee), while the *notification* (which is a general term) is usually used to mean the service performed usually by the *court clerk office* (*Greffe*) and that entails sending the documents via judicial letter or post (registered or ordinary). Communications of documents between lawyers and between the court and lawyers is a deformalized process that goes under the name of *acte du Palais* (arts. 671 ff. CPC).
See, e.g., Art. 32 of the Codei judiciarie belge "Pour l'application du présent Code, l'on entend par :
1° " signification " : " la remise d'un original ou d'une copie de l'acte; elle a lieu par exploit d'huissier de justice ou, dans les cas prévus par la loi, selon les formes que celle-ci prescrit ";
2° " notification " : " l'envoi d'un acte de procédure en original ou en copie; elle a lieu par les services postaux ou par courrier électronique à l'adresse judiciaire électronique, ou, dans les cas prévus par la loi, par télécopie ou selon les formes que la loi prescrit".

performed primarily by post, either initiated by the court or by a lawyer (or a party). Private investigators, service providers or bailiffs may also be used.

As we can see, there is a great degree of variety in the Member States in terms of the solutions, based on a division between private and public actors, or on whether or direct service by parties or their lawyers is allowed. Postal service providers (sometimes only public, others also private) are widely used or accepted, but sometimes only if another executor (e.g. a bailiff) instructs them (see above on the double nature of postal service as executor or means of transmission of documents). Once again, differences among MSs depend on who the initiator is, cultural and procedural traditions, existence or absence of a public monopoly on service, pragmatism vs. formalism and more or less liberal approaches. The need for a public and independent intermediary is strongly felt in those systems in which the intermediary also guarantees with high evidentiary reliability that a true copy of an act has been delivered to a specific place and person at a given time; while it is less felt in those systems where trust is placed on private parties to perform these duties, either under a general mutual trust between actors of the judicial system, or by replacing the need for a public intermediary with private affidavits under penalty of perjury.

The Regulation on service of documents in this respect is mainly limited to coordinating existing institutions to ensure that a proper (and possibly quick and cost-effective) service is performed. But in Article 14 the Regulation went a step further and tried to identify a European standard that is supposed to be available in every MS under the same conditions: "*Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent*" (article 14).

3.5. Who is to be served

In virtually all MSs, the addressee of service of documents initiating proceedings should be, in principle, the party named on the document itself (not to be confused with the possibility to perform substituted service on another person, see *infra* para. 3.7). In Spain, third parties who may be affected by the proceedings are also to be served (art. 150 LEC).

3.5.1. *Service on legal persons*

In all MSs, service on legal persons may be performed on the officer, or on an employee or an agent of the legal persons who, by virtue of the bylaws, law or by having a special proxy, is considered legal representative or is otherwise authorised to receive service of process (e.g., President of Board of Directors or Managing Director).

In many MSs, however, other persons can also be the targets of a service addressed to a legal person, or service can be made in simplified ways. In Austria service can be made on any Director or other person having a Power of attorney (§ 13 ZustG, § 93(2) ZPO). According

to § 92 ZPO, if service to a company's address registered in the Company Register cannot be effected, and there are no other known places where delivery can be made, service may be effected by pubic notice (§ 115 ZPO) and is deemed performed after 14 days. In Belgium, the bailiff performs *signification* to a legal person (art. 34 of the *Code judiciaire*) by delivering the documents to the head of the company at the registered offices (art. 42 CPC)[29] or, if there is no registered address, to the head's domicile.[30] In Bulgaria anybody present within the premises at the registered offices can be served, no special connection to the legal person is required (art. 50 CPC). If the legal person is not present at the registered address, constructive service is effected by placing the documents in the case file. If the legal person is present, but there is nobody to accept delivery, service is made by posting a notification of service and depositing the documents to be collected (art. 47 CPC, see *infra* para.3.7.4). In Croatia, service can be made on any designated officers or any other employee found in the office or business premises (art. 134 CPC). If the legal person is registered in a specific court or other register, service must be attempted firstly at the address given in the complaint and secondly at the address written in the register. If service is not effected at that address either, it is effected by displaying the communication on the court's bulletin board. The service shall be deemed to have been effected on the expiry of the eighth day from the day the communication is displayed on the court's bulletin board (art. 134a CPC).

In Cyprus, service is made to any officer or also leaving the process at the offices, while for foreign company, service may be made at any local office or any person within the jurisdiction appearing to be transacting business for such foreign company.[31] Article 372 of

[29] Art. 42 CPC: "Les significations sont faites : 5° aux sociétés ayant la personnalité civile, à leur siège social ou, à défaut, à leur siège d'opération ou, s'il n'y a pas, à la personne ou au domicile de l'un des administrateurs, gérants ou associés; 6° aux sociétés étrangères ayant la personnalité civile, à leur siège social, à leur succursale ou au siège d'opération qu'elles possèdent en Belgique; 7° aux sociétés en liquidation, au siège social ou au domicile de l'un des liquidateurs ou, à défaut de liquidateur, au procureur du Roi dans le ressort duquel le dernier siège social était établi."

[30] Different rules may apply depending on the type of legal person. Cfr. Art. 42: "*Les significations sont faites: 1° à l'Etat, (au cabinet du ministre compétent pour en connaître ou au bureau du fonctionnaire désigné par celui-ci), ou, si l'objet du litige entre dans les attributions du Sénat ou de la Chambre des Représentants, au greffe de l'assemblée mise en cause, sans préjudice des règles énoncées à l'article 705; 2° à la province, au siège du gouvernement provincial; 3° à la commune, à la maison communale; 4° aux établissements publics, d'utilité publique et aux fondations, au siège de leur administration; 5° aux sociétés ayant la personnalité civile, à leur siège social ou, à défaut, à leur siège d'opération ou, s'il n'y a pas, à la personne ou au domicile de l'un des administrateurs, gérants ou associés; 6° aux sociétés étrangères ayant la personnalité civile, à leur siège social, à leur succursale ou au siège d'opération qu'elles possèdent en Belgique; 7° aux sociétés en liquidation, au siège social ou au domicile de l'un des liquidateurs ou, à défaut de liquidateur, au procureur du Roi dans le ressort duquel le dernier siège social était établi.*"

[31] Order 5, r. 7, CPR: "*In the absence of any statutory provision regulating service of process upon a corporate body, service of an office copy of a writ of summons or other process on the president or other head officer, or on the treasurer or secretary of such body, or delivery of such copy at the office of such body, shall be deemed good service; and in the case of any company not formed in Cyprus, the copy may be left at its place of business in Cyprus, or if there is no such place, with any person in Cyprus who appears to be authorized to transact business for the company in Cyprus, and such leaving of the copy shall he deemed good service unless the Court or a Judge otherwise orders. And where by any law provision is made for the service of any writ of summons or*

the Companies Act (Cap. 113) further states that a document may be served on a company by leaving it at or sending it by post to the registered office of the company. In the Czech Republic, process can be served on any officer, any authorised person or any persons to whom, by virtue of the tasks performed within the company, it would be common to deliver process (CCP §§ 21, 21a, 21b and 50a(2)). In Denmark, suitable recipient are officers or any employee above 18 years (§ 157a(1) and (2) AJA). In principle service should be performed at the legal person's premises, but is valid anywhere performed (§ 157a(1) AJA) In Estonia, service can be made on the legal representative (§318 CPC) or on any person authorised to receive procedural documents (§ 319(2) CPC), or to a person usually staying in the business premises of the recipient or to a person usually providing services to the recipient on similar contractual basis (§ 323 CPC) as well as to the legal person's mailbox or digital address. In Finland, service on a company, co-operative or association, on another corporation or consortium or on an institution or foundation is normally performed on the person who is competent to represent the legal person (Chapter 11, section 14, CJP). If there is no such representative, service is performed by publication (Chapter 11, section 10, CJP – see *infra* para. 3.12) or to an employee (Chapter 11, section 7, CJP). In France, service on a corporate entity is made on the legal representative or to any other person empowered for this purpose (art. 654 CPC) or on a substituted recipient (see *infra* para. 3.7.3). The notification directed to a corporate entity is made in principle at the registered offices, but, in absence of such a place, it can be made personally on one of its members empowered to receive it (art. 690 CPC).

In Germany, all members of the board of directors may be served (§170 ZPO). In Ireland, Section 51 of the Companies Act 2014 (which replaced s. 379 of the Companies Act 1963) provides that a document may be served on a company by leaving it at, or sending it by post to, the registered office of the company. If the company has not given notice to the Registrar of Companies of the situation of its registered office, service may be effected by delivering the document to the Registrar. For other entities, "[i]n the absence of any statutory provision regulating service, every summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation" (Order 9, r. 7, RSC). In Italy, service on legal entities is performed at their registered offices, by delivering the documents to legal representative or any other person authorised to receive the process (art. 145 CPC); service may also be performed to the legal representatives, following the rules for service on natural persons, at their personal addresses. In the event that all these methods fail, service can be by depositing the documents (art. 140 CPC) or pursuant to the methods provided for addressee whose whereabouts are unknown (art. 143 CPC) (on both see *infra* paras. 3.7.4and 3.10.2). In Greece, service to any of the legal representatives normally suffices, but if the corporate statute or bylaws provide explicitly for joint representation, service should be effected to all

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other process on any corporate body or any society or fellowship or any body or number of persons, corporate, or unincorporated, the service of the office copy of a writ may be effected accordingly."

(art 126 CPC). In Latvia, service is effected to the registered address of the legal person (§56(6) CPL). In Lithuania, service is performed on the head of the company, any authorised officer, employee of the secretary office or, if not present, any employee. All court documents should be delivered to legal persons to the address of the registered office shown in the register of legal persons, except for cases where the legal person indicates another address (art. 122 CPC). If the person delivering the court document fails to find the addressee at the location of the legal person's registered office or another location indicated by the legal person, the court document shall be delivered to any employee of the legal person who is at the place of delivery. If there is no possibility to deliver the court document by the procedure established to the location of the legal person's registered office indicated in the register of legal persons, delivery to the head of administration indicated in the register of legal persons or to the management body members, as natural persons, or to the adult members of their families in the case provided in paragraph 3 of this article shall be considered as a proper delivery of the court document (art. 123(4) CPC). Moreover, if not successful, service may be performed by sending the process via post to the statutory registered offices, and it is deemed received after 10 days. In Malta, service to a legal person is to be made at the registered office, principal office, or place of business or postal address with any of the persons mentioned in article 181A(2) CPC ("person or persons vested with the legal or judicial representation thereof or by any company secretary or by any other person authorised in writing by such body to file judicial acts on its behalf") or with an employee of such body. Service may also be made directly with any of the persons mentioned in article 181A(2) with ordinary means of service and, upon failure, also by way of publication (art. 187(5) CPC). Where it appears that all the persons mentioned in article 181A(2) are absent from Malta or there exist no such persons, the court appoints a curator in its interest (art. 187(6) CPC).

In the Netherlands, service to legal persons is to be effected at their office, or to the person or the domicile of one of the directors (arts. 50-51 CPC). In Poland, service to legal persons is effected to the legal representative or any employees authorised to accept service (art. 133(2) KPC. Service is made at the address specified in the Registry of Company.

In Portugal, the usual process is to serve via post to the legal person's registered offices to be delivered on the legal representative or any employee (arts. 246 and 228-30 CPC). In this case, if nobody is present to accept delivery, a second attempt is made, with a warning that service is deemed effected when the documents are left in the addressee's mailbox or, in absence thereof, eight days after a notice of deposit at the post office is left at the address (art. 230(2) CPC). Service can be also made in person or via post on the legal representative. In Romania, among the accepted recipients, there are clerks or other employees responsible to accept judicial docs, or if absent, the building manager or a security agent. Service should be made at the legal person's registered offices (art. 155(1)(3) and (4) CPC). In Slovakia, documents requiring personal service must be served on the legal representative or on another official authorised to act on behalf of the authority or legal entity; other documents

may be served on any of their staff who are willing to accept them (§48/1 CPC). Where the document cannot be served on the legal person at its registered office address given in the commercial or other register and no other address is known to the court, the document are deemed served three days after the return of the non-served document to the court, even if the person authorised to act on behalf of the legal person did not learn about it (§48/2 CPC).[32]. Employees in charge of receiving mail at registered address or otherwise present in the offices are valid recipient in Slovenia (§133 ZPP). If service cannot be effected at the address entered in the Register of legal person, it may be effected by depositing the documents or a notice of deposit at the address entered in the Court Register (§141 ZPP).

In Spain, service on a legal person may be carried out at the legal person's registered address, at the place where work activities are carried out on a non-temporary basis or the address of anyone appearing as the company's administrator, manager or power of attorney holder, or as of the chairman, member or manager of the Board of any association appearing in an official registry (art. 155(3) LEC). In Sweden, service is made on any director, and, if absent, on any authorised deputy (§13 SA). If no member of the board of directors is resident in Sweden, a resident authorised representative is to be appointed. In Scotland, service is made "by leaving the document and any citation or notice, as the case may be, in the hands of an individual at, or depositing it in, the registered office, other official address or a place of business, of that other person, in such a way that it is likely to come to the attention of that other person; or by posting the document and any citation or notice, as the case may be, to the registered office, other official address or a place of business, of that other person" (Chapter 16.1(1)(b)). Finally, in partnership in England are served at partnership's premises or on one partner or manager at principal place of business. For companies service is to be made at registered offices, to any other place of business or in any place agreed in a contract (it may also be made on a officer, but it is reported as rarely done).[33] With reference to the place of service on legal persons, see *infra* para. 3.7.2.

3.5.2. *Lawyers and authorised representatives*

An authorised legal representative may also be served in virtually all MSs, but sometimes only if a specific proxy is provided for. In Ireland, a solicitor may be served with documents initiating proceedings if he/she confirms in advance that he/she has the authority to accept service on behalf of the party or when he/she enters an appearance on behalf of the party (Order 9 RSC – but in any case an order for attachment and committal for contempt of court, other than for money judgment, must be served on the party on person with a penal endorsement). A similar rule exists in Scotland, where an authorised solicitor can normally

[32] Under the new Code, documents are to be delivered at the legal person's registered offices (§106 CPC). If nobody is present to accept delivery at such address, service is deemed effected when the documents are returned to the court (§§ 111-112 new CPC).

[33] According to CPR 6.3(2)-(3) companies and limited liability partnership may be served both under the rules provided by CPR 6 and also according to the Companies Act 2006 (¶¶1139ff.). Foreign companies may be required to specify a person resident in the UK authorised to accept service, §1056 Companies Act 2006.

be served, with exceptions in case personal service is required; in England where, if a solicitor is appointed for purposes of receiving service, this has to be made to the solicitor only; and in Finland, where service may be made on a lawyer specifically empowered.

Once proceedings begin, lawyers appointed by the parties (as legally authorized representatives) are considered as appropriate persons to accept service on behalf of their clients or, in any case, their addresses are considered as valid place for service to the assisted party in many MSs:

- in Austria (§93(1) ZPO, §9 ZustG), Bulgaria (art. 51 CPC), Croatia (arts. 138 and 142 CPC) service on the appointed legal representatives is mandatory, unless the party is personally summoned at hearing, in which case both of them are served,
- in Czech Republic (CCP § 25),
- in Denmark service may be performed upon the party's lawyer in all civil cases (§ 161 AJA)
- in Finland, except for an order to appear personally (Chapter 11, section 16, CJP);
- in France, it is served through an *acte du Palais*, but for a judgment double service on party and lawyer is required, see 3.2.2,
- in Germany (§172 ZPO), when legal representation is mandatory, then service on lawyer is mandatory as well, except e.g. for examination of the party as witness,
- in Greece (art. 143 CPC), except if the documents to be served are judgments or actions requiring in person action of the person concerned
- in Hungary, (art. 97 CPC) this is also the rule, but not for writs of summons ordering the party or the party's legal representative to appear in person
- in Ireland, unless personal service is mandatory (e.g. Order 121, r. 8, RSC);
- in Italy, either as elected domicile (art. 141 CPC) or where provided by the law (with some exceptions, such as service of enforcement title before enforcement that is to be made personally to the party; moreover, to have the short term for appeal applied, decisions must be served on the lawyer; appeals are also served on the lawyer appointed for the first instance),
- in Poland, (art. 133(5) KPC), Slovenia (§137 ZPP) and Spain (art. 153 LEC), only in proceedings in which representation by a lawyer is mandatory,[34]
- in Portugal (art. 221 CPC);
- in Romania (art. 169 CPC);
- in Sweden (Chapter 12(14)(2) CJP);
- in Scotland and in England (except for any injunction having penal consequences).

[34] In Spain parties are represented by a procurator (court representative) who is a graduated in law habilitated before the tribunal seizing the case. Representation of a procurator is not mandatory in cases of less than 2 0002000 euros and also in actions on behalf of all creditors, where the appearance is limited to the submission of titles of credit or rights, or to attend meetings and finally with regard to incidents concerning the contesting of decisions on free legal assistance and where urgent pre-trial measures are requested. See art. 23 LEC.

In Belgium (Art. 39 *Code judiciaire*) and the Netherlands, where it is mandatory to name an authorised representative for service during proceedings (except for guardianship proceedings or proceedings aimed at placing the party in a closed institution in Belgium), service is made on the party's lawyer only if the party has specified such address as "elected domicile". Similarly, in Cyprus during proceedings service is made at address for service mandatorily provided by the parties (Order 50 CPR), which is usually the party's lawyer's office, but personal service is always required for order of disobedience, witness summons and enforcement (and courts have discretion to order personal service in all cases). If parties have stated in an agreement (e.g. a contract) that a third party or a lawyer may be served, then service may be also performed on them. In Latvia, a representative (and a lawyer) may be served if it has a proxy to accept service. In Malta, parties may designate the lawyer as an authorised representative for purposes of service (art. 182 CPC) and, in any case, it is reported that in practice usually during proceedings service is made to the party's lawyers under the direction of the court. A notice of trial must be served personally on the addressee (art. 182(2) CPC).

A lawyer can be served in Estonia if he/she is representative of the party (§ 321(1) CPC), is otherwise authorised to receive service (§ 319 CPC) or is an employee of the party (§ 323 CPC). Otherwise, there is no duty to appoint a representative, unless there are difficulties in service and the court requires so (§ 320 CPC).[35] If a representative is appointed, service is only made on the representative (§ 321(1), except for guardianship proceedings). If, despite a request of the court, the representative is not appointed, constructive service applies (service is made with unregistered letter and deemed effected after 15 days) (§321(3) and (4) CPC).

In England, parties are required to provide an address for service during proceedings (for any service other than service of a claim form, which is the document that institutes proceedings). In Greece, parties are allowed to appoint a representative with a proxy, but they may also be served personally, however, service is always personal for acts to be executed only in person. In the latter MS, lawyers may be named as proxy, but the proxy is strictly limited to the case and the instance of the proceeding (i.e. if given for the 1st instance, it is not valid for appeal and appeal cannot served on the lawyer). In Romania and Slovenia, appointing a representative is not mandatory, but if done so, then service is performed solely on the representative, as in Lithuania (in the latter, unless personal service is expressly requested).

[35] And also if "a procedural document is served through a competent authority of a foreign state, a competent consular official or envoy representing the Republic of Estonia in a foreign state or the Republic of Estonia Ministry of Foreign Affairs, the court may demand that the recipient of the document appoint a person residing or staying in Estonia who is authorised to receive procedural documents unless the recipient has appointed a representative for the proceeding." §320(1) CPC.

In Denmark, it is reported that, as a matter of practice, usually defendants waive their right to service and allow it to be simply made on their lawyers. If a party is trying to avoid service, instead, personal service by a bailiff will be used, as the sole method in Denmark guaranteeing that service has taken place. Also in Ireland, it is usual practice to ask the other party to name a solicitor to accept service (written proof is required and is to be filed along with the statutory certificate of service). The same possibility is left open in Scotland.

In Slovakia, appointing an optional authorised representative with a full Power of Attorney makes service on the representative mandatory, with the exception of any act requiring actions to be performed by the party in the proceedings for which service is made, both on the representative and the party (§49 CPC). A similar rule applies in Sweden, where a general Power of Attorney includes the power to accept service for new claims in matters capable of being settled[36] (unless explicitly excluded) while for matters not capable of being settled, personal service is required. In Spain, when a representative is appointed, service is to be made only on him/her and not on the party. In Luxembourg, representation by a lawyer is not always mandatory and does not replace personal service on the party. Service on authorised representative is optional (can be made to the party) in Bulgaria. In Czech Republic (art. 50b CCP) if a representative is appointed, service is made only on the representative, unless otherwise provided by the law (art. 50b(4) CCP).[37]

In Italy, if the address provided by a party during proceedings is outside the territorial district belonging to the jurisdiction of the court, service is to be made by simply leaving the documents at court offices (but today a certified e-mail is always sent to the lawyer, often with the documents – and the progressive digitalisation of proceedings diminish the relevance of this point).

[36] Throughout this report, with "matters capable of being settled" we refer to those matters in which the parties may settle a dispute by making an agreement and negotiating terms and conditions. Ordinary civil and commercial matters are usually amenable to being settled by the parties, while, for instance, many aspects of family law or inheritance are not.

[37] CCP § 50b(4): "The paper shall also be delivered to the participant in the proceedings: a) if the participant in the proceedings is to appear in person for interrogation or any other court act, or if the participant in the proceedings is to perform in person any other act in the proceedings, b) if the participant in the proceedings is represented by a legal representative pursuant to Section 23, c) if delivery of a guardian appointment resolution pursuant to Section 29 is concerned; a resolution of appointing a guardian to the participant in the proceedings the residence of whom is not known, participant in the proceedings to whom papers have failed to be delivered to the known address abroad, unknown heirs of the testator if the range of heirs has not been specified in the inheritance proceedings, and a legal entity that as the participant in the proceedings cannot be a party to the legal proceedings because there is no person entitled to act on behalf of such party, or it is questionable who the person entitled to act on behalf of such party is, however, is only delivered to other participants in the proceedings and the appointed guardian and is posted to the court's official noticeboard, d) if a guardian has been appointed to the participant in the proceedings because the participant in the proceedings cannot take part in the proceedings due to health reasons other than permanent mental disorder, or the participant in the proceedings is not able to express comprehensibly, e) if decided so by the court."

The CJEU, based on Recital 8 of the Service Regulation, stated that where the addressee has appointed an authorised representative in the Member State where the judicial proceedings are taking place, the matters falls out from the scope of the Service Regulation.[38]

3.5.3. *Foreign person or company*

Foreign persons or companies without an address within the territory of the State are required to specify an address or appoint an authorised representative for purposes of accepting service within the boundaries of the State in several MSs, such as Austria (§98 ZPO also § 121 ZPO applies)[39], Bulgaria (if having an address abroad or leaving the country for more than 1 month – art. 40 CPC – otherwise constructive notice by placing the documents in the case file applies), Croatia, art. 84(2)(5) CPC, a guardian may be appointed by the court, arts. 146(2)[40] and 85-86 CPC; Cyprus (obligatory to specify an address within the municipal limits of the court seized), Estonia (may be required by the court § 320(1) CPC), Germany (may be required),[41] Greece (art. 143 CPC; constructive notice pursuant to art. 134 CPC may apply), Hungary (act is deemed as known 15 days after service on the agent appointed by the party, art. 100/A CPC),[42] Ireland (when appearing a party is required to provide an

[38] C‑325/11 *Alder* EU:C:2012:824, paragraph 24., C-223/14 *Tecom Mican* ECLI:EU:C:2015:744, paragraph 51.

[39] §121 ZPO: "(1) For service to persons in a foreign country who are not one of the recipients listed in § 11(2) and (3) ZustG the federal minister for justice can, in agreement with the federal chancellor, allow by way of a regulation service by post using an advice of receipt as usual in international mail to those States in which service according to § 11(1) ZustG is impossible or causes difficulties.
(2) If the confirmation of service to a person in a foreign country is not received within reasonable time, the party for whom service was effected may, depending on the situation, demand service by publication (§ 25 ZustG) or the designation of a curator according to § 116. The same applies in case service abroad was attempted without success or the request does not promise success because of obvious refusal by the foreign authority to grant legal assistance.
(3) The provisions of Regulation (EC) No 1393/2007 … remain unaffected"

[40] Art. 146(2) CPC: "On the occasion of the service of the first communication from the court, the court shall order a respondent or his/her representative who are in a foreign country when the respondent does not have an agent in the Republic of Croatia, to appoint an agent for receiving communications from the court in the Republic of Croatia, with a caution that if he/she fails to do so, the court will appoint a representative for the respondent, at his/her expense, to receive court communications from the ranks of attorneys or notaries public and inform the respondent through this representative or his/her representative about this appointment ". It should also be noted that, as regards the plaintiff, art. 146(1) CPC: "A plaintiff or his/her representative who are in a foreign country, and the plaintiff does not have an agent in the Republic of Croatia, are obliged when filing the complaint to appoint an agent to receive communications from the court in the Republic of Croatia. If they fail to do this, the court shall dismiss the complaint.".

[41] § 184 ZPO: "(1) For service pursuant to section 183, the court may order the party to name, within a reasonable period of time, an authorised recipient who is a resident of Germany or who has business premises in Germany, unless the party has appointed an attorney of record. Should no authorised recipient be named and until such recipient is named retroactively, documents may be served subsequently by being mailed to the address of the party.
(2) Two (2) weeks after it has been mailed, the document shall be deemed served. The court may set a longer period. In the order issued pursuant to subsection (1), attention is to be drawn to these legal consequences. By way of recording proof of the documents having been served, it is to be noted in the files at which time and to which address the document was mailed."

[42] Art. 100/A CPC: "(1) Any plaintiff who has no permanent or temporary residence (hereinafter referred to collectively as "permanent residence") or registered office in Hungary, and has no authorized representative

address within jurisdiction and to give the address of a solicitor, otherwise the documents are not accepted or set aside – Order 12, r. 7-8, RSC), Poland (originally during proceedings if the defendant's address was outside Poland, and now after the *Alder* decision only if such address is outside the EU),[43] Sweden (only for companies or patent holder or holder of

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with a permanent residence or registered office in Hungary for arguing the case on his behalf, shall indicate the name and address of his agent for service of process at the time of submission of the statement of claim. The party's contract with the agent for service of process fixed in an authentic instrument or a private document with full probative force shall be attached to the statement of claim.
(2) If the defendant has no permanent residence or registered office in Hungary, and has no authorized representative with a permanent residence or registered office in Hungary for arguing the case on his behalf, the court shall instruct such defendant at the time of submission of the statement of claim to delegate an agent for service of process. The defendant shall report the name and address of his agent for service of process on or before the first hearing, and shall simultaneously submit the contract referred to in the last sentence of Subsection (1).
(3) If the plaintiff fails to discharge the obligation set out in Subsection (1), the court shall advise the plaintiff in the writ of summons dispatched for the first hearing to report the name and address of his agent for service of process within thirty days of receipt thereof, or during the first hearing at the latest, and to submit the contract referred to in the last sentence of Subsection (1) simultaneously.
(4) If the party fails to delegate - without special notice - a replacement agent for service of process within the time limit specified in Subsection (2) or (3), or without delay upon termination of the previous service contract either by the party or the agent, or if documents cannot be delivered to the agent for service of process, to this end no order for subsequent disclosure or any special notice shall be issued, and the documents in this case shall be delivered by way of public notification. This provision shall not apply to the service of the writ of summons for the first hearing and the statement of claim to the defendant; as to the service abroad of these documents Section 100 shall apply.
(5) In connection with any litigation concerning companies, if the nonresident party has no authorized representative to argue the case on his behalf, his agent for service of process shown in the register of companies shall proceed in the capacity of agent for service of process subject to the provisions of Subsection (8) relating to procedures and service. The court shall take into consideration the fact if the party has an agent for service of process shown in the register of companies of its own motion.
(6) If a non-resident party has an authorised representative with a permanent residence or registered office in Hungary to argue the case on his behalf, the restriction contained in the second sentence of Section 97 shall not apply. As regards the writ of summons ordering the party or his legal representative to appear in person, the provisions of Subsection (8) shall apply relating to procedures and service.
(7)[42] The agent for service of process may be a natural or legal person with a permanent residence or registered office in Hungary, such as, in particular, an attorney (law firm).
(8) The agent for service of process shall be responsible for collecting the documents of the proceedings addressed to his principal and to forward these documents to the principal subject to liability under the rules of civil procedure. Where any official document is delivered to the agent for service of process on the party's behalf, it shall be presumed that the party has knowledge of them on the fifteenth day after they are delivered to the agent in due process.
(9) Non-resident parties shall be specifically advised concerning the provisions of this Section."

[43] Article 1135[5] CPC: "1. A party whose place of residence or habitual abode or registered office is outside the Republic of Poland and who has not appointed, for purposes of the conduct of proceedings, an authorised representative resident in the Republic of Poland must appoint a representative who is authorised to accept service of documents in the Republic of Poland.
2. If no representative authorised to accept service is appointed, judicial documents addressed to that party shall be placed in the case file and shall be deemed to have been effectively served. The party must be notified to that effect at the time of the first service. That party must also be informed of the possibility of submitting a response to the document initiating the proceedings and written statements of position, and must also be informed of those persons who can be appointed as an authorised representative.'

design who are not resident).[44] In Malta, if the party is absent from the national territory, a curator can be appointed by the court to represent them during the proceedings.[45] See also *infra* para. 3.12. In Romania summon to parties with a foreign address is made (a) if there is a representative within the country, only on the representative, (b) generally by registered letter sent to the foreign address (or according to any international treaty) (art. 155(1)(12) CPC), (c) if there is no known address, or if service proves too difficult, according to art. 167 CPC (service by publication, see *infra* para. 3.12). These parties, during proceedings, have to specify an address in Romania or service is made by simple letter and deemed performed by handing the documents to Romanian post (art. 156 CPC).

In Slovenia, if a party does not have an address in the territory of the State, special rules apply (art. 146 ZZP): a claimant is required to name an authorised representative within Slovenia, or the court appoints a temporary representative (at the party's expenses) and, by making service on her, requires the party to name a representative within a given time-frame. If the time frame expires without a representative being named, the proceedings are rejected on procedural grounds. When a defendant is involved, if no authorised representative with an address in Slovenia is named in the statement of defence, the court appoints a temporary representative for the defendant (at the party's expenses) informing the party through the appointed representative. In Czech Republic, if service to a foreign address abroad fails, the court may appoint a guardian for the party (see also *infra* para. 3.10.2).

In Belgium, in case the addressee has no domicile or residence in Belgium (and has not specified an address pursuant to art. 39 *Code Judiciaire* – "*domicile élu*"), but has a foreign address, according to art. 40 *Code judiciaire* the bailiff may perform service by sending the documents to the foreign address with registered letter. Service is deemed made when the documents are handed over to the postal service. If there is no known address, service may be performed through a *remise au Parquet* to the *procureur du Roi* (see, infra, para. 3.12). Also in France, if the addressee is residing abroad and neither the Regulation on service of documents nor another international instrument apply, service is performed by simply handing the documents to the office of the public prosecutor ("*remise au parquet*" – arts. 660-61 and 684 CPC), which will take care of transmitting the documents to the foreign address.

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[44] Furthermore, Chapter 33(8) CJP: "If a party lacking residence within the Realm has not notified the court of the commission of a counsel who resides within the Realm or in another state within the European Economic Area and who is authorized to accept service in the case on the party's behalf, the court may direct the party, upon his first appearance in court, to engage such a counsel and notify the court of his assignment. If the party fails to comply with the directive, service upon the party may be made by ordinary mail at his last known address".

[45] That being said, it is reported that practitioners tend to tread carefully when requesting the appointment of a curator on behalf of the defendant in proceedings, whether natural or legal. In fact this may jeopardise the chances of obtaining a final and definite judgment which is defendable and enforceable across borders.

In Cyprus service can be performed to an agent pursuant to O. 5, r. 8: "Where a contract has been entered into in Cyprus by or through an agent residing or carrying on business in Cyprus on behalf of a principal residing or carrying on business outside Cyprus, a writ of summons in an action relating to or arising out of such contract may, by leave of the Court or a Judge given before the determination of such agent's authority or of his business relations with the principal, be served on such agent. Notice of the Order giving such leave and an office copy thereof and of the writ of summons shall forthwith be sent by prepaid double-registered post letter to the defendant or defendants at their address out of the jurisdiction: provided that nothing in this Rule shall invalidate or affect any other mode of service provided by these Rules". Furthermore, in case of a foreign company, service may be performed at the company's place of business in Cyprus, or if there is no such place, with any person in Cyprus who appears to be authorised to transact business for the company in Cyprus (O. 5, r. 7, CPR).

Similarly, in Lithuania, where a party residing abroad has failed to assign his representative in the proceedings, the party must assign an authorised person residing in the Republic of Lithuania for service. When the party does not appoint anyone, all documents can be served by placing them in the case file (Art. 805 CCP).

In Latvia appointment of an authorised representative is not required even if a party has a foreign address.

In the Netherlands, those who have no known domicile or habitual residence in the Netherlands, but whose domicile or habitual residence outside the Netherlands is known, are served at the office of the official of the prosecution (to be forwarded through the Ministry of Foreign Affairs). A second copy is immediately sent by registered post to the domicile or habitual residence of the person concerned (Art. 55 CPC) (subject to the Hague Service Convention and the EU Service Regulation, art. 56 CPC).

Naturally, in the European context all these provisions have to be applied in compliance with the principles set by the CJEU in the Alder[46] case. In this case the Court found that where the addressee of the document resides in another Member State the service of a judicial document must necessarily be effected in conformity with the requirements of the Regulation on service of documents.[47] As a result, a system that obliges a party residing in other Member States to appoint a representative in the forum Member State for purposes of serving judicial documents on him/her appears to be incompatible with the Regulation, if any failure by that party of meeting the obligation triggers legal consequences which deprive that party of the actual and effective receipt of the document to be served:

[46] Judgment of 19 December 2012 in Case C-325/11 *Alder* ECLI:EU:C:2012:824.
[47] Judgment in Case Alder paragraph 25.

> "*Article 1(1) of Regulation (EC) No 1393/2007 … must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorised to accept service and is resident in the first Member State, in which the judicial proceedings are taking place*".

According to this principle, the above mentioned domestic rules should not be applied where the concerned party is domiciled in another MS and this address is known to the person or body initiating the service.

3.5.4. *Service to minors, incapacitated addressees; service on deceased persons.*

Service on minors or incapacitated persons is usually to be performed on a person who, with a variety of qualifications, is entrusted with the duty to care for those concerned: may be the parents, a guardian, a curator or the like. The terminology varies from MS to MS, and we will refer generally to a guardian/curator.

In some MSs, if there is no named curator/guardian, the latter may be appointed by the court also "ad hoc", i.e. for the purposes of serving documents (e.g., Czech Republic, CCP §§22-23; Hungary, Lithuania and Malta). In Romania, enforcement on a minor or an incapacitated person is also to be served on the office of the public prosecutor. In those countries (such as Croatia, art. 79(3) CPC; Estonia, §202(2) and (4); or Slovenia) where minors between 15 and 18 years may enjoy a limited procedural capacity for small value matter, they may also be served with process.

Some jurisdictions allow service to be performed also on any adult person residing with the minor or the incapacitated person (Cyprus, Order 5, r. 4, and 5 CPR; Ireland Order 9, r. 5-6, RSC; and England). In Sweden, in principle service is performed on the guardian, but if there is a valid reason, service is also directly performed on the incapacitated person. In Scotland, the court decides and usually directs service to be made on an adult representing the interest of the minor or the incapacitated person. A guardian or curator *ad litem* may be appointed.

As far as the incapacitated is concerned, sometimes double service (both on the guardian and on the incapacitated person) is required, as in Belgium and Luxembourg (for proceedings relating to the incapacitation).

Service on a deceased person's estate varies, in substance, on whether service can be only performed individually on each heir (generally admitted in all MSs), or whether it can also be performed in a simplified manner on the estate administrator (e.g., Austria, Cyprus, Finland, Ireland, Portugal; Scotland; in England and Malta also on a curator appointed by the court)

or collectively on the heirs, without specifically naming them (e.g., Belgium, Finland;[48] Italy,[49] Luxembourg, the Netherlands,[50] Hungary). In Hungary, collective service on heirs by public notification is allowed only if it is not known who the individual heirs are. In Slovenia, the court asks heirs or the estate administrator to enter proceedings, and then serve the documents. In Sweden, service can be made on the estate administrator (if appointed), collectively on the heirs or, in exceptional cases, on one of the heirs who then has the duty to notify the others. In France, a collective notification on the heirs may be made in order to have the time limit for means of review (e.g. for appeal) to begin to run after being interrupted by the addressee's death (art. 532 CPC).

3.5.5. *Service on multiple addressees*

With reference to service when there are multiple addressees, MSs may be grouped in three main categories (see also *infra* para. 3.12 for constructive service in case of multiple addressees).[51] The first includes those MSs that, regardless of the number of parties or co-parties, require an individual service on each (Cyprus, Czech Republic, France, Germany, Greece, Ireland, Luxembourg, Malta,[52] the Netherlands, Spain, Scotland and England; the same is true in Hungary and Latvia – unless they have named a common representative). In Portugal, in case there are co-defendants, the time limit to file a statement of defence begins to run for all co-defendants from the day in which service on the last co-defendant is made. Furthermore, if the addressees are undefined, service may be performed through publication (art. 243 CPC). The second includes those systems in which co-parties are or may be required to name a common representative for purposes of service (Austria, §97 ZPO;

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[48] Chapter 11, section 14(2), CJP: "The service of a notice on a decedent's estate shall be performed by delivering it to the parties to the estate. If the estate has been assigned to an administrator, the notice shall be served on him or her. The notice may also be served on a person administering the property of the estate, even it is not under the administration of the parties, or on a person who otherwise is competent to represent the decedent's estate and to speak on its behalf. The recipient of the service shall without delay provide each party to the estate and, if the recipient is a party, the person administering the estate with a copy of the served documents."

[49] Not for entirely new lawsuits. Only to continue proceedings interrupted by the passing of one party (art. 303 CPC), for appeals (art. 330 CPC) or enforcement (art. 477 CPC); all within 1 year from the passing of the party. After such term, all heirs must be individually served.

[50] Art. 53 CPC: Service in respect of the joint heirs of a deceased person mentioning their names and domiciles can be omitted if this is done:
a. the last domicile of the deceased, provided there is the surviving spouse, registered partner or other life companion, a brother, a sister or a relative in the direct line lives,
b. the person or the domicile of an executor or by the court-appointed liquidator of the estate of a at the time of death acting curator or the receiver, or if it is appealed to a subpoena objection, appeal or appeal, to the office of the lawyer or bailiff with whom the deceased last has an address, or
c. the person of the domicile of one of the heirs, provided that within a year after the death, in which case the writ of summons must also be announced in a national newspaper or appearing in a regional newspaper where the last residence of the deceased was; without prejudice to the possibility of service to each of the heirs separately in the usual way."

[51] Please note that this study does not address collective actions or special service in collective actions.

[52] Art. 185 CPC, but if two or more parties are pleading or defending a claim together, they must designate one for service purposes (art. 186 CPC).

Bulgaria, art. 39(2) CPC; Croatia, art. 147 CPC; Lithuania, art. 120 CPC;[53] Slovakia; Slovenia §147 ZPP – the court may order to name one common representative). The third group is made by those MSs that for complex cases or if difficulties are encountered allow collective service through publication or other collective means: Finland (in principle service is individual, but if it is too difficult then service may be performed on only one party and then completed through publication in the official journal – Chapter 11, section 11, CJP), Italy (if there are too many addressees or it is difficult to identify them all, service can be made by public proclamation, art. 150 CPC), Sweden (service by publication is allowed).

3.6. Available methods of service of documents – General comments

3.6.1. *Available, effective and preferred methods of service*

The number and types of methods of service available in the MSs greatly varies. This variety offers the opportunity of structuring the various ways available in the Member States, from which we will prefer the commonly used division by the recipient of the document based on the degree of probability if the addressee actually receives the document. In this context we can differentiate between personal service, substituted service and constructive (fictitious) service. In case of personal service, the document actually reaches the addressee. There is a high degree of probability of this also in the context of substituted service, under which we will understand in this study two different ways of service: on the one hand the service of the document to a person substituting the recipient, and on the other hand if the document is deposited at a place for collection by the recipient and the notice is left about this in his/her mailbox. As to the contrary, constructive service methods dispense with the objective of the actual delivery of the document to the addressee, and mainly serve the interest of procedural economy (and the right of the claimant of access to justice). Regardless of this division, several other differences exist between the various methods of service, from personal or substituted service carried out by a bailiff (or by any other authorised process server), through service by post or technological means, to service by fictitious methods or even communicated through oral means (see *infra* the next para.). Notary public may also get involved (e.g. in Croatia, art. 133a CPC). The main methods will be addressed in the next paragraphs, while here we will deal with general and common issues as well as main trends.

At the outset, it is to be noted that in certain MSs (e.g., Belgium, Greece, Scotland, the Netherlands) only a few methods are at the disposal of the parties concerned, while in others (e.g., Denmark, Estonia, Germany, Sweden) a number of different methods can be used. Sometimes choice is left to the initiator, sometimes to the executor, whereas in certain situations it is the law that prescribes which methods may be used in relation to certain acts

[53] According to art. 130 CPC, when there are 10 or more co-parties the court may also direct service to be made through publication.

or documents (e.g. in France and Luxembourg, service of judgment may only be made through *signification* by a bailiff).

In many MSs the methods differ depending on whether service concerns documents instituting proceedings or documents when proceedings are already pending. For instance, in Austria, specific forms can, in principle, be used whenever service without confirmation of receipt is allowed (in practice, fax or e-mail are used in urgent cases). In France and Luxembourg, communications between the court and the party's lawyers occur through a deformalized *acte du Palais*. In Cyprus, pleadings, inter parties notices, objections to interim applications, and other acts may be delivered to the other party by leaving them at the Court Box of the lawyer representing such party. In Estonia, procedural documents for which the law does not require service (§306(5) CPC) may be sent by post and it is deemed to have been received three days after posting, or fourteen days after posting if abroad, unless the participant in the proceeding substantiates to the court that he or she received the document later or did not receive the document (§ 310 CPC). In Germany, written communication between the court and the parties which are not qualified as service and do not share the legal consequences of service exists, as it is not necessary to formally serve all documents in the proceedings: the court and the parties can use normal mail (§ 270 ZPO) and other forms of communication like telephone calls or e-mail. Furthermore, service on lawyer may be made against return confirmation of receipt, fax or through electronic means (§174 ZPO). In Greece, there are circumstances in which the law grants the discretion to the court to communicate with the litigant parties via informal means (e.g. asking the party to supplement some missing formality from his/her case folder). In Italy, when a party appears in a proceeding (i.e. is not in default), service during proceedings is replaced by simple communication by the court (including by fax or email) (art. 136 CPC). If a party is represented, communication is made to his/her lawyer. Nowadays, all such communications are made via certified email (PEC). In Ireland, during proceedings, court may authorise service of non-originating documents[54] via e-mail for solicitors, if both parties are represented. In the Netherlands, when a party has been summoned and has already appeared in the procedure, the court can continue correspondence by normal letter by post. In Poland, during proceedings, lawyers directly exchange documents among themselves (art. 132(1) CPC). In Portugal, pending proceedings service can be made on and between the parties' lawyers (arts. 247ff. and 255 CPC). If the party is not represented by a lawyer, further service is made via registered post to his/her domicile (art. 249 CPC). In Slovenia, there may be informal communications (e.g. in case the court must inform the parties urgently on a matter, such as the cancellation of a hearing) via fax or email, but the court will usually also serve the document later in a legally proper way. In commercial litigation, it is possible for the judge – in urgent cases – to schedule hearings via phone. During proceedings, attorney may exchange documents directly between them (§139a ZPP). In

[54] These are documents not instituting proceedings.

Sweden, during the proceedings, the courts do send written notifications and communications to the parties and their counsels without using formal service rules. This informal communication is also reported in Denmark (e.g. communication of judgments, § 219(6) AJA) and Finland (some documents may be served without proof of receipt and ordinary communication between the court and the parties, by e-mail or even by phone.)

Some MSs allow an extensive use of substituted service (such as Slovenia, where service is often valid if simple documents or a notice are left in the addressee's mailbox), while others aim at actual notice being given to the addressee in person.

As far as the preferred method of service (especially for a summon) is concerned, registered post is reported to be the first choice in Austria (§88 ZPO), Croatia, Finland, Germany, Hungary, Latvia (art. 56 CPL), Lithuania, Poland, Portugal, Romania (although art. 154 CPC would prescribe service by an agent server as first choice), Slovakia,[55] Slovenia, Sweden (called 'normal service' – §§16-18 SA), Scotland, England (first-class mail, not registered). On the contrary, personal delivery by bailiff or judicial officer is the preferred method in Belgium (Art. 33 *Code Judiciaire*), Bulgaria, Cyprus, Denmark (§ 155(1)(5) AJA – however, usually defendants waive their right to have documents served and allow documents to be sent between lawyers), France, Greece, Ireland (Order 9, r. 2-3, RSC), Italy (where registered post, via bailiff – art. 149 CPC – or via lawyer, is also widely used), Luxembourg, Malta, the Netherlands, Spain, Scotland. Electronic service is increasingly used in some MSs such as Austria (webERV), Czech Republic (data box), Estonia (electronic service is the preferred method, followed by registered letter), Finland, Italy (increasingly via certified e-mail – PEC), Lithuania and Spain (through lexnet, but only after a lawyer has been appointed) (see *infra* para. 3.9.1).

In some countries (e.g. Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Latvia, Poland, Sweden, Scotland), when service is entrusted to a bailiff or judicial officer, such actor may only perform direct service and cannot use postal channels (which, usually can be applied directly by the court).

As far as the Regulation on service of documents is concerned, it is to be noted that the Regulation, under certain conditions, recognises "direct service" as a valid way of serving documents abroad. According to Article 15 of the Regulation "*Any person interested in a judicial proceeding may effect service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State*". According to the declarations rendered by Member States,[56] direct service according to Article 15 is permitted

[55] Under the new Code, the preferred methods when personal delivery is not required are delivery in court or delivery through electronic means (§105 new CPC).

[56] Information are available at http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm

in Belgium, Cyprus, Denmark, France, Finland, Germany (with limitations)[57], Greece, Italy, Luxembourg (under condition of reciprocity), Malta, the Netherlands, Portugal (arts. 228ff. CPC), Scotland, Sweden. It is not permitted in Austria, Bulgaria, Czech Republic, Estonia, Hungary, Ireland, Latvia, Lithuania, Poland, Romania, Slovenia, Slovakia, Spain, England.

3.6.2. *Special methods*

Under special methods of service, we mean in this context methods that are not considered in the domestic laws as general methods of service of documents, but which may be allowed exceptionally, on a case-by-case basis, by the judge.

In common law jurisdictions, a party is commonly entitled to request the court to authorise service to be performed in an alternative manner (often labelled "substituted service"), with the order of the court specifying which method should be used. Usually it is required that the plaintiff shows that the other methods have proved unsuccessful. For instance, in England, if the addressee is absent (and a postal service cannot be left into the mailbox) it is normally not possible to deliver the documents to a different recipient: a different method is to be used, or an order of the court for substituted service shall be sought (CPR. 6.15).[58] In Cyprus, "substituted" service is regulated by Order 5, rules 9 and 10, according to which "9. If it be made to appear to the Court or a Judge that from any cause it is not possible promptly to effect service in the manner provided in Rule 2 of this Order, the Court or Judge may make such order for substituted or other service, or for the replacement of notice for service by letter, public advertisement, or otherwise, as may be just. 10. An order under Rule 9 of this Order shall appoint the time within which the defendant shall enter his appearance to the writ, and shall also contain a direction that, if the defendant does not enter an appearance within the appointed time, notice of any application in the action may be given by posting an office copy of the notice on the Court notice board". In Ireland, substituted service may be attempted if the initiator and executor has shown due diligence in finding the addressee. In case of a substituted service, in Ireland, it is necessary to obtain an order of the court either authorising such substituted service or deeming service as performed to be sufficient (Order 10 RSC).

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[57] According to the declaration made by Germany: " in the territory of the Federal Republic of Germany only those documents may be served in respect of which German law on civil procedure also explicitly permits such direct service (Article 166(2) ZPO). An application initiating proceedings cannot be served in this way. Direct service is permitted, for example, in the case of an enforcement order under Article 750 ZPO, an enforceable title under Articles 794(1)(5) and 797 ZPO, distraint orders under Article 923(2) ZPO and interlocutory procedures under Articles 935 and 936 ZPO. Details of permissible direct service are governed by Articles 191 et seq ZPO".

[58] CPR 6.15: "*(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.*
(2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service."

In civil law countries, it is much less common for the judge to be entitled to exceptionally allow a method not specifically provided by the law. This is partly counter-balanced in those legal systems in which the law already allows for a wide number of methods to be used. On the other side, the failure of the effectiveness of the ordinary methods of service is compensated by the use of constructive notice. A tension between formalism and actual notice can be seen here: systems may prefer that only highly formalised methods with a certificate of service are applied in lieu of unformalised but perhaps more effective means, but are ready to accept constructive notice and allow proceedings to run despite the fact that the defendant was not informed, where an unformalised method (on a case by case analysis) could have reached better practical results (such as reaching the defendant or the person concerned by phone or via social media).

Certain MSs also allow for additional special methods to be employed. In Bulgaria (art. 382(2)(1) CPC) and Estonia (CCP § 311^1(2)), service through social media is possible in collective actions if the court so orders. In Croatia, parties during proceedings may agree that service is performed between them or their lawyers (with a court order). In Finland, the court may direct that service is performed via telephone (Chapter 11, section 3b, CJP), but a confirmation in writing is to be sent to the addressee's address and such method cannot be used to serve a summon outside the matter listed in Chapter 5, section 3, CJP (cases relating to (1) a debt of a specific sum, (2) restoration of possession or a disrupted circumstance, or (3) eviction). In Germany, if there is consent of both parties and the court, service during proceedings may be made through electronic mail or through DE-Mail (see *infra* para. 3.9.1.6 for info on the German electronic platform "DE-Mail"). Similarly, in Latvia, parties to proceedings may agree to exchange documents via e-mail. In Hungary, in case of urgency, communications may also be made by phone, verbally at hearing or via electronic mail and may have the value of a service. In Italy (art. 151 CPC), Malta and the Netherlands (reported as not used in practice), a special order by the judge may allow for any special methods other than those provided in the code to be employed (e.g. directly by the party's lawyer beyond the cases allowed by the law, by fax, etc.). In Slovakia, if there is consent of both parties, documents may be exchanged via e-mail and are deemed served the 5^{th} day after they were sent (but not possible for decisions on the merits, summons or other documents to be served in person). In Slovenia, in principle no special methods are allowed, but lawyers may use fax and e-mail between them and, if an acknowledgment of receipt is given, this may be sufficient. In Sweden, rules are technology neutral, which means that technological means may be used (but only for service made via the court) in all cases. See also *infra* paras. 3.10.2 and 3.12 for further information.

A number of MSs allow communications having the value of a service to be performed via phone (e.g. Denmark[59]) although usually this method is limited to exceptional cases (e.g.,

[59] §155(1), no. 6 AJA.

Bulgaria, art. 42(3) CPC; Czech Republic,[60] Hungary[61] and Slovenia[62]) or cannot be used for instituting proceedings (e.g., Finland[63]).

3.6.3. *Possibility to agree on methods or places of service*

Service of process is a topic where party autonomy usually plays little role. While in several MSs, parties may specify in an agreement the addresses where notices should be sent (e.g. for the purposes of giving notice of termination of a contract, or to give notice that defects in the goods where found), such a possibility is usually denied as far as service of judicial documents is concerned. The main reasons behind this generally accepted practice may be on one side the need in certain jurisdiction to achieve actual notice of the process being served, on the other the supremacy of procedural rules over party autonomy.

There are some exceptions. In Bulgaria and Cyprus[64], parties may agree in a contract on a place, which will be considered as a valid place for service in addition to the others provided for by the law. Also, in Portugal, parties can choose the place of serving documents on them, but cannot affect the method. In Italy, it is always possible to serve a party who has specified a domicile (*domicilio eletto*)[65] at a third party's address or office, and such service is considered to be made with personal delivery (art. 141 CPC). If such *domicilio eletto* is specified in a contract as mandatory, service is to be carried out only at that place (but not if the third party is the opposing party in a lawsuit, if he/she has deceased, moved or office has closed). A similar rule exists in Belgium (art. 39 *Code judiciaire*) and Croatia (art. 133b CPC). Also in England, parties to a commercial contract may agree on the place of service, although

[60] §51 CCP.
[61] §96(3) CPC.
[62] To schedule hearings in commercial cases.
[63] Section 3b (362/2010) (1) When the court sees to the service, this may be carried out also by informing the addressee by telephone of the contents of the document to be served (*service by telephone*). However, service of a summons other than in a matter referred to in chapter 5, section 3(1) [proceedings for uncontested monetary claim] may not be carried out by telephone. (2) Service may be carried out by telephone if this is a suitable manner of service in view of the size and nature of the document and if the addressee will undoubtedly be informed of the document by telephone and understands the significance of the service.(3) The addressee shall in respect of the document by telephone be informed of the matter, the claim or obligation and its primary grounds, the deadline and threat as well as other necessary issues. When service of a document has been carried out by telephone, it shall be sent without delay by letter or as an electronic message to the address indicated by the addressee, unless for a special reason this is deemed manifestly unnecessary. Service by telephone shall be carried out by a process server or an official of the court in question. A certificate shall be issued of the service, following as appropriate what is provided in section 17(1) and a copy of it shall be sent without delay as a letter or as an electronic message to the address indicated by the addressee.
[64] According to Order 6 r.2 the parties to any contract may agree that service of any writ of summons in any action brought in respect of such contract may be effected at any place in or out of Cyprus on any party or any person on behalf of any party or in any manner specified or indicated in such contract.
[65] In Italy parties are entitled to specify an address for the purposes of a contract or of judicial proceedings. In this case, such address is named *domicilio eletto* and communication/service may be performed to the addressee at such address (unless the law forbids service to the *domicilio eletto*, such as for service to begin enforcement proceedings, art. 479 CPC). During litigation, typically parties specify their *domicilio eletto* at their lawyers' office.

it is questionable whether this may exclude other methods allowed by the law. In Romania, parties are reported to have the chance to decide, e.g. in an agreement concluded before litigation, among the methods provided for by the law. As seen above, in Denmark, parties may waive their right to have service performed in person on them (AJA § 160(2)) and allow it to be made on their lawyers, as it may happen both in Scotland and Ireland (in the latter, parties are also free, in a contract, to agree on another place).

3.6.4. *Certification/written record of delivery*

The certificate of service is generally drawn up by the executor and usually its minimum content is determined by the law. Commonly such minimum information includes the date on which service was attempted or made (possibly with specification of the hour – as in Italy upon request by the party – art. 47 final provisions of the CPC), the full name and address of the executor and the full name of the recipient (and capacity or quality, if different from the addressee). Possibly the cost of service is also included. Often the certificate also specifies which steps have been undertaken by the executor in performing service or in searching for the addressee (due diligence) and additional information if the addressee is not found at the place (e.g. whether it appears that the addressee does not live there, whether additional info on his or her whereabouts have been collected, whether the documents have been deposited for collection by the addressee) or refusal to accept delivery. It also normally bears the signature of the executor and often also the signature of the recipient who accepted the documents. In Scotland the signature of a witness is also required when personal service is made by a bailiff.

Usually the certificate is returned to the initiator, meaning that if the initiator is not the court the certificate is not always necessarily filed with the court. Usually, but not always, a copy of the service process is also given to the recipient. In some MSs, the bailiff keeps an original or a copy of the process served for her records (e.g. in France or Luxembourg).

In several MSs, forms are used (Austria, Bulgaria, Croatia, Germany, Hungary, Lithuania, Slovakia, Scotland), usually approved with secondary legislation (such as a Ministerial decree), but in many others, there are no official forms (e.g. Estonia, Finland, Italy, the Netherlands). See also *infra* para. 3.8.3 for further information in case of service by post.

Going into more details, in Austria there are standard forms (Rsa and Rsb) established by regulation (*Zustellungsverordnung*), cf. § 27 ZustG. The forms contain the date of an attempt of service, the date of successful service and the signature of the recipient or the date of when the document was deposed, cf. § 22 ZustG. The certificate must be sent back directly to the court, there is no obligation of a party. In Belgium, according to Art. 43 *Code Judiciaire*, the certificate of service to be valid must be signed by the bailiff and must contain (1) the specification of the day, month and place of service, (2) name, family name, qualification and registration at the Registry of company of the person requiring service (the initiator), (3) name, family name, domicile or residence and (from January 2017) the

electronic judicial address and the qualification of the addressee, (4) name, family name and qualification of the person to which the documents are delivered or where the documents are deposited (5) name, family name of the bailiff, its office's address and (from January 2017) its electronic judicial, (6) the costs. If the addressee refuses to take delivery, the refusal is annotated on the certificate.

In Bulgaria certificates of service are drawn up on standard paper forms provided by a State Ordinance issued by the Minister of Justice (art. 55 CPC). The certificate for service has value of official document issued by the court officer who proves the acts done in front of the officer. In the certificate, the officer attests, by signing it (art. 44 CPC): the date and the manner of service, as well as all steps in connection with the service; the capacity of the person to whom the communication has been served. The certificate is also signed by the documents' recipient or a refusal to accept is attested by the signature of the officer. Communications by telephone or by telefax having the value of service are attested in writing by the officer, and service by telegram is attested by a receipt of delivery of the telegram. Service by post is attested by the addressee's acknowledgment of receipt. Service at an electronic address shall be attested by a copy of the electronic record of the service. In any case, the receipt attesting service has to be returned to the court immediately after being drafted.

In Croatia (art. 149 CPC), the certificate of service is signed by the recipient, usually on a form made according to court administration regulations, who also writes the date of receipt on it. If the service is on a state body, legal person or physical person who performs a registered occupation, the recipient also places the seal of that body or person alongside the signature. The courier writes on the certificate of service the name and last name of the person to whom the communication was delivered and the document by which he/she established his/her identity. A courier who is not a notary public shall indicate legibly on the acknowledgement of delivery his/her name and surname and capacity, and sign it. The certificate of service is a public document and as such a proof of the service.

In Cyprus the bailiff is required, according to the Order 5, r. 2, CPR, to sign an affidavit and swear before the Registrar of the relevant court within seven days after service. The affidavit details the process of service including the name of the person who received the document and the address where that person received the document, by the person effecting service or the person who is responsible for the service process. There is a standard form affidavit of service which is sworn by private bailiffs introduced by the Civil Procedure Rules – secondary legislation. The legal value of the certificate of the service and the affidavit attached to it has the validity of any affidavit, i.e. it is considered as true, until challenged.

In Czech Republic (CCP § 50f) if the court delivers a document during court hearing or at any other court act for which a transcript is drawn up, description of service is included in the proceedings transcript, specifying which document has been delivered. The transcripts are signed by both the deliverer and the recipient. In case of electronic service to a data box

through a public data network, the system generates a notice of delivery for each document when the addressee logs into the data box. If delivery is made via email, the court calls the addressee to confirm delivery within 3 days following the document being sent in the form of a data message signed by the recognised electronic signature of the addressee. If the court delivers a document during an act for which a transcript is not drawn up or through a delivering body, a notice of delivery is made, which is a public document and is considered true unless there is contrary evidence. Delivery notice includes confirmation of receipt with the date and signature of the recipient. If delivery cannot be proved in any of these manners, it can be proved in any other way. CCP §§ 50g-50i specifies the requirements for each type of service, and in general prescribes that the following information is included: a) the court that has submitted the paper to be delivered, b) delivered paper, c) addressee and addresses at which the envelope including the paper is to be delivered, d) delivering body, e) name and surname of the deliverer and signature thereof, (f) statement of the delivering body of which day the addressee was missed, on which day the paper was given to the addressee or recipient, on which day the paper was ready to be collected, on which day receipt of the paper was refused, or assistance necessary for proper paper delivery was not provided, (g) name and surname of the person that has received the paper or that has refused to receive the paper.

In Denmark, the way the delivery of the document to the addressee is documented depends on the chosen method of service. Service by letter is documented by the addressee signing a copy of the service documents or signing a special proof of receipt (§ 155(1)(1) AJA). Digital service is documented either by use of so-called digital signature or by sending a personally signed copy of the message (§ 155(1)(2) AJA). Simple digital service is documented by the addressee opening the mail which consequently sends information of this back to the original sender (§ 155(1)(3) AJA). Service by post is documented by an attestation of deliverance (§ 155(1)(4)AJA). Communication by phone is documented by the caller, cf. section 22 of the ministerial order on services. Documentation of service by a *stævningsmand* (bailiff) is not regulated by law except when this happens under the rules of Regulation 1393/2007 on the service of documents.[66]

[66] As stated in the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters: "According to Article 3(2) of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, concluded by Council Decision 2006/326/EC, whenever amendments to Council Regulation (EC) No 1348/2000 [on service of documents] are adopted, Denmark shall notify to the Commission of its decision whether or not to implement the content of such amendments. … In accordance with Article 3(2) of the Agreement, Denmark has by letter of 20 November 2007 notified the Commission of its decision to implement the contents of Regulation (EC) No 1393/2007. In accordance with Article 3(6) of the Agreement, the Danish notification creates mutual obligations between Denmark and the Community" (available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:331:0021:0021:EN:PDF).

In Estonia, if a procedural document is served on the recipient in the court premises, the time is specified in the file and the recipient signs a receipt of the document. Service of a document in a court session is indicated in the minutes of the session (§ 311 CPC). In case of electronic service of procedural documents, the information system registers the service of the document automatically (§ 311^1(3) CPC). If a recipient cannot be expected to be able to use the information system used for the service of procedural documents or if service through the information system is technically impossible, the court may also service procedural documents on the recipient electronically in another manner (CCP art 311^1 sec 4). A procedural document is deemed to be served on the recipient when the recipient confirms the receipt of the procedural document in writing, by fax or electronically. The confirmation shall set out the date of receipt of the document and bear the signature of the recipient or representative thereof (§ 311^1 (5) CPC). Service of a document sent by registered letter is certified by the delivery notice which must be returned to the court without delay. A delivery notice shall set out the following information (§ 313(3) CPC): 1) the time and place of service of document; 2) the name of the person on whom the document had to be served; 3) if the document was served on a person who is not the recipient, the name of the person to whom the document was handed over and the reason why the document was handed over to such person; 4) the manner of service; 5) in the case of refusal to receive the document, a notice to such effect and information on where the document was left; 6) the name, position and signature of the person who served the document; 7) the name and signature of the person who received the document and information concerning identification of the person and, above all, identity document number, and the date of receipt of the document unless, due to a reason specified by law, the document was actually not delivered. The minister responsible for the area may establish the format for a delivery notice, but such format hasn't been established (§ 313(1), (3) and (4)CPC). A document sent by unregistered letter or fax is deemed to have been served if the recipient sends the court a confirmation on the receipt of the document by letter or fax or electronically, as chosen by the recipient. The confirmation sets out the date of receipt of the document and bears the signature of the recipient of the document or representative thereof (§ 314(1) and (3) CPC). If a procedural document has been served through a bailiff, court security guard or, in conformity with the internal rules of the court, another competent court official or police authority or another state agency or local government or its agency, likewise through another person to whom the court assigns the duty of service upon agreement, a delivery notice is prepared concerning service which shall set out the data specified in § 313(3) CPC (including date). After service, the delivery notice is returned to the court without delay.

In Finland (Chapter 11, Section 17, CJP), a written certificate of the service of a document is issued indicating the date and place of the service and the person who received the service. The recipient of the service is provided with a copy of the certificate. The person performing the service signs the certificate. If the document is served by normal letter with a proof of receipt, the addressee is obliged to fill in the required information and to return the certificate of service to the court. There are standard forms used by the post, the process

servers, and the courts of a non-official nature. According to Chapter 11, Section 25, CJP the written certificate issued by a process server constitutes adequate proof that the service of a notice has been performed as indicated in the certificate.

In France, the content of the certificate is specified by art. 648 CPC: "*Every process served through a bailiff must state, further to other particulars as otherwise prescribed: 1° its date; 2° a) if the petitioner is a natural person: his surname, first names, occupation, domicile, nationality, date and place of birth; b) if the petitioner is a corporate entity: its form, denomination, address of its registered head office and the body serving as its legal representative. 3° the surname, first names, domicile and signature of the bailiff. 4° if the process must be served, the surname and domicile of the addressee, or, where it is a corporate entity, its denomination and registered head office. These particulars will be prescribed under penalty of nullity*." Furthermore, (art. 663 CPC): "*The originals of the process of the bailiff must contain a reference of the formalities and steps to be carried out in application of the provisions of this Section, with an indication of their dates. Where the service was not personal, the originals of the process must specify the surname and capacity of the person to whom the copy was left. It will be likewise in the case specified under Article 654 (sub-article 2)*". The form to prove delivery is standardised by the Office of the bailiff – containing all elements prescribed by the law. What the bailiff reports in the certificate of service is deemed as valid (art. 1137 code civil) unless disclaimed as false with special proceedings for forgery. A copy of the certificate is given to the initiator, and is to be filed with the court only if issues with the service arise (the original is kept by the bailiff at his/her offices).

In Germany, the certificate of service depends on the type of service performed. If service is performed by handing over the document in the courthouse, this must be recorded on the document and in the file recording the date, the representative, if any, and the signature of the court official (§ 173 sentence 2, 3 ZPO). If service is performed against confirmation of receipt according to §§ 174, 195 ZPO, the dated and signed certificate confirming receipt is sufficient, §§ 174(4), 195(2) ZPO. If service is performed via registered mail (§§ 175 sentence 1, 183(1) sentence 2 ZPO), the advice of delivery is sufficient, §§ 175 sentence 2, 183(4) ZPO. If service is performed by sending the document to an addressee abroad and outside the EU who refused to designate an authorised representative, the date and address must be recorded in the court file, § 184(2) sentence 4 ZPO. If service is performed by publication, the day of publication and its end must be recorded in the court file, § 186(3) ZPO. In all other cases, the certificate of service is governed by § 182 ZPO.[67] There is a form for the

[67] It must include: "1. The designation of the person on whom service is to be made, 2. The designation of the person to whom the letter or the document was physically submitted, 3. In the case provided for by § 171, the statement that the power of attorney was produced, 4. In the case provided for by § 178 and § 180, the reason justifying this form of service and, if the procedure set out in § 181 was followed, the note on how the written notification was submitted, 5. In the case provided for by § 179, a note as to who refused acceptance and that the letter was left at the place of service or was returned to the sender, 6. The note that

certificate of service designed by the Federal Ministry for Justice which was introduced on the basis of § 190 ZPO by a regulation ("Zustellungsvordruckverordnung", ZustVV, of 12 February 2002, last amended 23 April 2004). The legal value of the various forms of proof differs. The private confirmations of receipt or an advice of delivery (§§ 174, 195, 175 ZPO) establish '"full proof" that the declaration was effectively pronounced at the date and time indicated, cf. § 416 ZPO. Parties may, however, claim and prove that the information is not true. As regards the certificate of service, according to § 182(1) sentence 2 ZPO, § 418 ZPO applies. This means that the certificate establishes "full proof of the facts set out" in it, i.e., that the document was delivered to the named person at the day and time indicated in the certificate and in the way described. Parties may claim that the information in the certificate are not true, cf. § 418(2) ZPO. However, this can only be proven if all possibilities that the certificate is correct can be excluded. If these forms of proof are missing, service can nevertheless be valid. According to § 182(3) ZPO, the certificate must be returned to the court. The court will put it in the file where it can be inspected by both parties, according to the general rule on access to the court files § 299 ZPO. If the initiator of service is a private party, the certificate of service must be returned to the bailiff, who will deliver it to the party for which the document was served, §§ 194(2), 193(3) ZPO.

In Greece, according to art. 139 CCP, the bailiff who performed the service issues a report, which must contain a) the order for service, b) a clear definition of the document served and the persons concerned, c) an indication of the place, the day and time of service, d) an indication of the person to whom the document was delivered and the way it was served in his or her absence or refusal of the recipient. The indication of the place, the day and time of service is evidence in favour of the person for whom it was served. The report has full proof and may not be disputed unless challenged as forged. In the latter case, the challenging party bears the burden of proof.

In Hungary, according to Government Decree No. 335/2012. (XII. 4.) on the detailed rules of providing postal services and of the service of the official documents, and on the general terms and conditions of the postal service providers, and consignments forbidden for the service postal service or consignments that can only be delivered with conditions (Sections 27-29), the General Postal Service Framework Contract contains the requirements of the form and content of the prescribed domestic and foreign acknowledgement of receipt or of the electronic document equivalent thereof. When an official document is being served, as a proof of handing the document over, the following details have to be indicated on the delivery form or on other technical device recording the signature: 1) the name and number of the document proving the identity of the person taking delivery, 2) the legal title of accepting the service – except if it is delivered personally to the addressee – and 3) the name

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the day of service was noted on the envelope containing the document to be served, 7. The place, the date and, should the court registry so have instructed, also the time of service, 8. The surname, given name, and signature of the person serving the documents as well as the name of the enterprise contracted for service, or the public authority charged with this task."

and the signature of the person who takes delivery of the documents. If a foreign official document is being served, then the address of the person accepting the service has to be indicated as well. By providing the sufficient certificate of the service, the judicial document is deemed to be served to the party.

In Ireland, the methods for proving service (other than oral evidence in court) are prescribed by statute and the Court Rules and Forms are provided in the Schedules to the CCR (Form 1B) and the DCR (Form 41.01, 41.02 or 41.03, Schedule C, DCR). The server of an originating document (i.e. instituting proceedings) must also specify details of the service within 3 days of service (section 7(6) of the Courts Act 1964 as amended – Order 9, r. 12, RSC). An affidavit of service must also be sworn, which specifies the precise mode by which service was performed. The onus is on the plaintiff to prove service. When service has been performed by registered prepaid post, a statutory declaration of service must be made not earlier than ten days after the day on which the envelope containing the copy of the document for service was posted. This is to allow for the possibility that it will be returned by the postal service. A statutory declaration of service by registered post must be made by the person who posted the envelope; it must exhibit the certificate of posting; it must state, where appropriate, that the original document was duly stamped at the time of posting, and that the envelope has not been returned undelivered to the sender. Where service has been performed on the party's solicitor by document exchange service, the statutory declaration verifying such service must exhibit the written confirmation from the solicitor accepting service that such service was acceptable and it must also contain a statement that this confirmation had not been revoked at the time of the delivery or service concerned. A statutory declaration of service is *prima facie* evidence of the mode, time and place of service as set out in the declaration. It is not necessary for the server to attend in person at the Court to prove service on oral evidence but the Court may, if it considers it necessary, require the server to attend before it and give evidence concerning the service notwithstanding the making of a statutory declaration.

In Italy, the bailiff (or the lawyers when he/she is the executor) writes at the bottom of the served documents (both on the original returned to the initiator and on the copy delivered to the addressee) a certificate of service. Forms are not employed. As a matter of practice, it is widely common that the lawyer pre-writes the certificate of service to speed up the bailiffs' work. The certificate is later completed and signed by the bailiff who takes full responsibility. The certificate is signed by him/her and by the receiving party. Its content is specified in art. 148 CPC: «*The judicial officer certifies that the service has been accomplished by a certificate of service, dated*[68] *and signed by him, written at the bottom of the original and of the copy of the deed to serve. The certificate indicates the individual to whom the copy of the deed is delivered, his qualification, the place of delivery, or the research, also*

[68] Art. 47 final dispositions CPC – "Hour of the service": «*In the report of service under article 148 of the code, if the interested party so requires, the hour when the service has been accomplished shall be indicated.*»

research concerning personal data of the addressee, ran by the judicial officer, the reasons for the failure to deliver, and the news gathered on the possibility to find the addressee.» The certificate is considered a public deed and has a stronger evidentiary value. It can be disclaimed only through a particular proceeding (action for forgery – *procedimento per querela di falso*, art. 221 ff. CPC).

In Latvia (§ 56 CPC), in case of personal delivery to the addressee, the addressee signs the signature part of the summons, which is to be returned to the court. In case of service on a substituted recipient, the recipient sets out their name and surname and their relationship with the addressee. In case nobody is found, the executor specifies this circumstance and also the time when the addressee is expected to return (if available). The executor always specifies the time of service.

In Lithuania, service is documented with a form set by the Order of the Minister of Justice, which is signed by the recipient and filed with the court. The executor has to inform the court about the date of service, the person served, about failure to serve and reasons for such failure or about repost of a document to other address provided by the court (art. 124 CPC).

In Luxembourg, the originals and the copies of the documents served by the bailiff must contain all the formalities and diligences required by signification; dates must also be indicated. If the addressee does not find the addressee, the original of the document served by the bailiff must specify the names and status of the person to whom the copy was left. It is the same when the signification was delivered to the person entitled to represent the addressee. What the bailiff reports in the certificate of service is deemed as valid, unless disclaimed as false with special proceedings for forgery.

In Malta, the certificate of service takes the form of a stamp imprinted at the back of the judicial act which requires notification. The form of the stamp is prescribed by the Registrar of Courts as per its authority in terms of law. If the service is successful, the certificate states the name and surname of the person on whom service was effected and, if the act was not served directly on the person on whom service was to be effected, the name and the surname of the person to whom the copy was delivered and the place where the act was served (art. 188 CPC). If the service is not successful, the certificate states the reason why service was not effected. The certificate of service sets a rebuttable presumption that the document was notified, however, it may be challenged by the party who was allegedly served.

In the Netherlands, the certificate of service is the writ prepared by the bailiff (no forms are used), which is signed by the addressee or substituted recipient. The bailiff also specified how service has been performed. The certificate has full proof.

In Poland, pursuant to the ministerial regulation of 12 October 2010, service is performed in a certified mail with confirmation of receipt. In the (rare) case of service by court officer, it is the court officer that draws up a certificate of service.

In Portugal, the executor makes a certificate of service, including the date and place of the service, the case number and the court. It also mentions the period to present the defence and the need for legal representation. The addressee must sign the service certificate.

In Romania, the content of the forms for the registration of the procedural delivery of the document are determined by the CPC - the contents of the form to be returned by the addressee served by electronic means or by fax are provided under art. 154 par. 6 Civil Procedure Code, the contents of the subpoena form are provided under art. 157 Civil Procedure Code, the contents of the proof of personal delivery and of the delivery-receipt report are provided under art. 164 CPC and the contents of the notice is provided under art. 163(3) CPC: a) year, month, day and hour when the certificate was made; b) name and qualification of the agent and, if necessary, of the officers from the municipality; c) name or trading name, if necessary, and place of residence of the addressee, plus whether the documents were handed over in his/her house or other place, deposited in the mailbox or displayed on the front door; d) name and quality of the substituted recipient, if any; e) name of the court that issued the summons or other procedural document and the file number; f) signature of the person who received the summons or other procedural document and signature of the agent. Regarding the legal value of the proof of receipt or of the report, as well as of the acknowledgement of receipt of the service made by mail or fast mail (courier services), these documents certify the service, the date and the facts that took place when performing the service (art. 164(4) CPC). They may be challenged both in relation to the non-fulfilment or non-corresponding fulfilment of the service or they can be declared false, but make full proof until declared otherwise by the competent court. The addressee is required to submit an acknowledgement of receipt of the service only when service is made by fax or e-mail and the receipt form shall be submitted immediately after the addressee comes into possession of the served documents.

In Slovakia, proof of service is made on special delivery reports (and official records when delivering personally) for private service operator, court-clerk or executor service. Forms are developed in rules that have no legislative character and include the name of the recipient and the date of service. The recipient signs the record, prints a date of acceptance, and returns it back to the serving person. Official records are “public documents” and deemed true until negative proof is clearly proved (§ 45(2) CPC).[69]

In Slovenia, the certificate confirming that the document has been served (certificate of service) is signed by the recipient and the process-server. The recipient records the date of receipt in words on the certificate of service. There is a standard form (prepared by the

[69] Under the new Code the relevant provision is §111/1 new CPC.

Ministry of Justice, which has the power to amend or change it, in Court Order Act, or *Sodni red* that contains various information (next to the date), i.a., which court sends the documents, what is the content of the service. If service is performed under the second paragraph of Article 142 ZPP, the certificate must confirm receipt and also state that the addressee was notified in writing beforehand. The certificate can be declared false at a later stage of the trial, but the burden of proof is high (the certificate of service is a public document and it can be disclaimed at a later stage under strict conditions). Acknowledgment deposited with the court is prescribed by Slovenian law (Arts. 141(1), 141a(6) and 141a(8), 144 and 149 ZPP).

In Spain, the delivery is recorded in a service record (*diligencia de notificación*) that includes the served resolution and its content and the delivery date. It is possible that there are certain standard forms, but they are not official forms and they have no legal effects. A certificate of service has full legal value. The proof of receipt does not have to be deposited at the court. Nevertheless, some practitioners point out that, when the addressee enters an appearance, they shall deliver the writ of summons (*cédula de emplazamiento*) which is included as documents of the case.

In Sweden under *normal service,* the court will customarily use a receipt slip or use registered mail where the addressee signs for receipt (§§16-18 SA). There are however no form requirements for the acknowledgement of receipt. The addressee may also confirm receipt in another manner, e.g. by telephone or e-mail (if authenticity can be established). It is also possible to prove service in another manner, e.g. if the addressee declines to sign a receipt note when served by a courier company. A signed receipt of service generally proves the service, but since Sweden has free evaluation of evidence, other evidence may trump it, e.g. if it is proven that the signature was falsified. The party wishing to refute a piece of evidence must provide counter evidence. In *service by bailiff* the person carrying out service produces the certificate (§31ff. SA).

In Scotland, most of the forms of schedules of citation and certificates of execution of citation are now statutory ones. The name and signature of the "executor" of service, the date, place and method of service, and the name and signature of a witness to the service are usually required. The formal execution (signature) of a certificate of service is accepted in law as proof of the facts until any are disproved. The officer of court certifies and service is presumed.

Finally, in England, when the court serves a claim form it will send the claimant a notice and certificate of service, see CPR r. 6.17(1). This will specifically set out the date on which the claim form is deemed to be served under r. 6.14. Where a claimant serves a claim form, they must file a certificate of service with the court within 21 days of the particulars of claim having been served unless the defendant has already filed an acknowledgment of service, see CPR 6.17(2). A certificate of service must state the method of service used and the date on which the claimant effected service i.e., if served via the post the date on which the claim

form was placed in the post: see r. 6.17(3). Similar provision applies to other documents (see CPR r. 6.29). There is a specified court form for a certificate of service (Form N215). The Form is a CPR Form and thus can only be changed by the Civil Procedure Rules Committee.

Usually, in those MSs that allow for electronic service, the certificate of service is also electronic and is generally made by the system used for e-service. In some MSs, however, service via e-mail or other telecommunication channels (e.g. fax or simple e-mail) is acknowledged in a different manner (see *infra* in para. 3.9.2). When service is made by the court via post, return receipt (usually on a form agreed by the postal provider or regulated by postal ministerial regulation) may be enough (e.g. in Poland and Portugal), but not in all MSs (e.g. in Italy return receipt completes the certificate of service made by bailiff and specifying that service has been made via post on a certain date to a certain address and via a certain postal office). When the method of service is delivery of documents during a hearing in court, certifications of receipt are usually contained in the hearing transcripts (e.g. in Czech Republic and Estonia).

In many MSs, the certificate of service has an increased evidentiary value, typically that of act drawn by public officials giving "public faith" to the acts that the official reports to have performed or that happened before him, and is deemed valid until it is set aside through specific proceedings for forgery or by giving strong evidence to the contrary (Austria, §292 ZPO; Belgium, Bulgaria, Croatia, Czech Republic, France, Greece, Italy, the Netherlands, Romania, Slovenia, Spain).

This is not necessarily true for all MSs, as in others the certificate merely gives a *prima facie* evidence of service that may be rebutted and freely evaluated by the judge (as it is specifically the case in Estonia, Finland and Sweden). In Slovakia, the certificate lies down a presumption of service until clear negative evidence are given to the court.

In common law jurisdictions, usually an affidavit is sworn by the executor and is valid until challenged. There are criminal penalties for perjurers, similarly to those civil law countries in which the executor may be criminally prosecuted for false statements made in the certificate of service. Statutory standard forms are commonly used in these common law jurisdictions: in Cyprus and Ireland standard form for bailiffs by secondary legislation, in England is in the CPR.

Service without any form of recording is highly unusual. Service without any written statement of receipt from the addressee is available in some MSs, such as in Austria (§26 ZustG, but only if the documents served do not imply a deadline and have no other direct legal consequences)[70]; in Bulgaria (where court officer records all steps and reports to court); Denmark (for service via phone the caller records all steps – section 22 of the

[70] In addition, the addressee has the right to claim that documents were not received and this issue is easily remedied.

Ministerial order on services); Estonia (where a letter of confirmation is needed with date and signature); Hungary (for all methods which do not result in a return receipt, everything is recorded by the executor); Lithuania (notices not instituting proceedings are not served with recorded means, but parties should already be aware because summons are served with confirmation of receipt); Sweden (in case, e.g., of 'simplified service' – §§22-26 SA).

Usually the addressee is not required to file an acknowledgement of receipt with the court, although this may be requested if service is made through a method that does not provide for a receipt confirmation. In Denmark, a widely used method is service by letter with a form for acknowledgment that must be returned by the party; in Romania where fax, e-mail or other technological means are employed, a form for acknowledgement of receipt that has to be filled and sent back; in Sweden under normal service a receipt slip to be returned by the addressee may be used (confirmation may also be made by phone or e-mail by court officer if there is authenticity can be established). Also in Czech Republic if service is made via e-mail (with an e-signed message), the court officer will call within 3 days to verify receipt and in Estonia, if service is made in an electronic manner without e-confirmation, a signed and dated confirmation is required to be returned.

England is the country where acknowledgment of service by the addressee (CPR 10) is most common and may be filed as an alternative to filing a statement of defence (CPR 15) in case the defendant wishes to extend the time to prepare a defence or is appearing to object to the court's jurisdiction (and wishes to avoid submitting and accepting the court's jurisdiction) (see *infra* para. 3.13.29 for more information). Finally, both in Italy (art. 166 CPC) and Spain, defendants are required to file along their statement of defence, the served writ of summon, to allow the court to check the validity of service should any issue arise.

The fact that unrecorded means of service are not used does not exclude that there are forms of communication between the court and lawyers (or the parties), pending proceedings, that do not qualify as service or that are carried out in a simplified manner (e.g. in Sweden the simplified service, §§22-26 SA; or in Cyprus, Croatia (art. 134b CPC)[71] and

[71] Article 134b CPC " … Communications which are served through a post box may not be accessible to the persons on whom they are being served until they have signed the acknowledgement of delivery. Communications are served in the closed envelopes, used to effect service by post. When the communication is handed over, all the communications placed in the post box must be taken together.
On each communications served in the manner prescribed in Paragraphs 1 and 2 of this Article, a note shall be made of the day it was placed in the post box of the person on whom service is effected in this manner.
In the cases in Paragraphs 1 and 2 of this Article attorneys are obliged to take the communication from the post box within eight days in the manner prescribed in Paragraphs 3 and 4 of this Article. If the communication is not taken within that time limit, service shall be effected by placing the communication on the court's bulletin board. It shall be deemed that service has been effected on the expiration of the eighth day from the day the communication was placed on the bulletin board.
Service is deemed to be valid when in the cases in Paragraphs 1 and 2 of this Article, it is effected in other ways prescribed by law, other than by means of a post box.

Malta documents of proceedings can be left at court box; court boxes exist in other MSs, such as in Italy, where bailiff may use them to return served documents to the initiating lawyer).

With reference to the certificate of service, Art. 10 of the Service Regulation provides that, when service via transmission is used in cross-border service, the certificate of service should be drawn up using a standard form provided by the Regulation, in the language of the MS of origin.[72] This should be returned to the MS of origin along with a copy of the documents served (if an additional copy has been provided pursuant to article 4(5) of the Service Regulation). The importance of the certificate of service has been underlined by the ECtHR, as a means to give evidence that the addressee has been enabled to defend his or her rights and that his or her default is not the consequence of a lack of notice.[73]

3.6.5. *What is delivered to the addressee*

In a majority of MSs, only original documents or, more often, a true/authentic/signed copies (e.g. in Czech Republic, the Netherlands, Romania, Slovakia) may be delivered to the addressee. The process of certification of the copy differs from system to system: sometimes the responsibility lies with the court or the court registrar (e.g. Croatia, Cyprus, Latvia and Portugal), other times it is the executor that certifies that the copy is a true copy of the original (e.g. in Italy, Belgium, Bulgaria and France), others it is the initiator (e.g. Greece – where also the court secretariat may certify; Malta, art. 191(2) CPC).[74] In the Netherlands and in Italy, for enforcement proceedings, the bailiff must carry the original enforcement title when performing service of the writ of execution, although only an authenticated copy is handed over to the addressee. In Germany (§169(2) ZPO), the court registry certifies the documents to be served, unless an attorney has already certified the documents submitted to the court. In Slovenia and Spain, an original or signed copy is delivered (while attached documents are simple copies), but also non certified copies may be used. The court, which is the initiator of service in Slovenia, ordinarily checks with diligence that the copy corresponds

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The president of the court shall withdraw his/her approval from Paragraph 1 of this Article if it is established that the person to whom it was given does not take the communications regularly or attempts to abuse this form of service. "

[72] Article 10 – Certificate of service and copy of the document served, Service Regulation:"*1. When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form set out in Annex I and addressed to the transmitting agency, together with, where Article 4(5) applies, a copy of the document served.*

2. The certificate shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept. Each Member State shall indicate the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form".

[73] ECtHR, *Trudov v. Russia*, 13 December 2011, application no. 43330/09, ¶¶ 25-28.

[74] And according to art. 192 CPC: "In case of non-compliance with [art. 191 CPC], the party shall be entitled to have another copy made in conformity with the said article at the expense of the person who prepared the irregular copy, provided that the request for such other copy be made to the registrar by the party concerned within two days after the delivery of the irregular copy; and in any such case, if a time is fixed, it shall not commence to run except on the delivery of the regular copy."

to the original, but does not certify it (ordinary remedies are available if issues arise). In England an original form with the red stamp of the court is delivered. A certification of the form is not required, although the claimant signs a statement of truthfulness in the content of the form.

In those systems in which supporting documents should be served along with the statement of claim, usually those documents can be simple copies and no certification is required.

In some MSs, there is no requirement that a true copy must be delivered. In those instances, usually the executor still verifies that the copy corresponds to the original, and in general it is possible for the addressee to challenge any issue that may arise in this respect (and the court will make an assessment based on all the evidence). This happens in Denmark (where falsity in service is punished by damages and criminal penalties); Finland (non-authenticated copies may suffice because in principle it is the court that serves, guaranteeing that there are no issues); in Hungary, in principle only originals are delivered, but if there are not enough of them, simple copies may also be used, giving rise to possible objections by the defendant (a thing that is reported to happen in practice); in Sweden, if the documents to be delivered are too voluminous, there is the possibility to serve only a notice and make the documents available for the addressee to collect (in case of documents instituting proceedings, this may relate only to exhibits or annexes, while the statement of claim has to be served in full, §5 SA). In Scotland, simple copies signed and dated by the executor are delivered, but the bailiff carries the original or certified copy (and in case of sheriff summonses, special service forms are used). Similarly, in Ireland, a simple duplicate copy is delivered, but the addressee must also be presented the original by the executor.

When technological channels are used, usually authenticity is guaranteed using an electronic signature or by the specific features of the e-platform used (encryption, log-in). See *infra* at para. 3.9 for more details.

When service may be made via fax, the original must be provided afterwards (Austria) or may be required to be shown (Bulgaria). In Germany, when service is performed via fax, it must display the name of the sending clerk (§ 174(2)[75]). In Greece, a telegram may be used for interim measures only (and original must be kept).

3.6.6. *Hierarchy between methods of service*

Hierarchy between service methods does not exist in all MSs. Usually, however, a substituted (para. 3.7), constructive or fictitious (3.12) method may only be used (or authorised by the court) when the other available methods have proven unsuccessful. There

[75] § 174(2) ZPO: "The document may also be served by telefax on the parties set out in subsection (1). In its heading, the transmission is to bear the note, "Service against return confirmation of receipt" and is to set out the sender, the name and address of the party on whom documents are to be served, as well as the name of the employee of the judiciary effecting the transmission of the document".

are instances in which constructive or substituted notice also become part of the ordinary methods of service and can be immediately resorted to at the first attempt (e.g. in Slovenia, where in case the addressee is absent, service may be performed by simply leaving the documents or a notice in the mailbox).

In certain countries a hierarchy is provided by the law or is followed in practice. In Austria, postal or electronic channels (webERV) are preferred over personal channels (§88 ZPO), but the choice is up to the court (§89 ZPO). In Belgium, France and Luxembourg, the law prescribes that certain methods be used (e.g. for judgments the "signification"). In case service is initiated by the court, in general a first attempt will be made by *notification* (through mail or judicial letter), followed by a *signification* in case of failure. In Croatia service is made in principle via post, but may be performed through other means (e.g. by court officer or by a notary public) upon party's motion and advancement of costs (arts. 133ff. CPC). In Czech Republic, according to CCP § 45, documents are, when possible, delivered by the court during hearings. If this is not possible, service through data box should be employed (see *infra* para. 3.9.1.2), or service to another address or e-address provided by the addressee (CCP § 46a). Only if it fails, service should be made through a delivery body upon judge order (e.g. postal). In Estonia, Slovenia and Latvia, there is no hierarchy, the court official may choose from the various methods, but a party may request that the service be made by bailiff (at its expenses). Another restriction is that in Estonia (§ 315(2) CPC), service by a police officer should be made only if other methods have proven unsuccessful (but there is no procedural sanction if it is used in breach of this rule of ranking). In Finland, service by post, electronic means or even by phone should be preferred to service by bailiff, which is justified only if there are special reasons, such as the addressee is trying to avoid service (cfr. Chapter 11, section 4, CJP). In Ireland, service of a summon on an individual (natural person) shall be firstly attempted in person (Order 9, r. 2-3, RSC) and other methods should be used only if this method fails (but in case the addressee is a company, the method to be used is via registered post). In Malta, it is the party that proposes to the court which methods should be used, however, unless the addressee is abroad or his/her residence is unknown, personal service must be attempted before trying other methods. In Portugal, a first attempt is usually made via post, and only in case of urgency or if service via post fails, then personal service is made by the bailiff or upon request by the party, entrusted to the lawyer. In Sweden, there are implicit priorities to minimise interference with the personal sphere of the addressee ('normal service' is attempted in the majority of cases, while bailiff, which is more expensive and intrusive, is used only in case of emergency or when other methods are practically not available – cfr. §4 SA).

Even in those countries in which there is no hierarchy prescribed by the law, some methods may be preferred for evidentiary reason (e.g. in Bulgaria service by bailiff is preferred because it reduces the possibility of objection on how service has been made).

As far as cross-border service is concerned, the position of the Court of Justice is that the Service Regulation

> "*does not establish any hierarchy between the method of transmission and service under Articles 4 to 11 thereof and that under Article 14 thereof and, consequently, it is possible to serve a judicial document by one or other or both of those methods*".[76]
>
> Furthermore, "*as regards the service of extrajudicial documents, an applicant is perfectly entitled not only to choose any of the means of transmission laid down by Regulation No 1393/2007, but also to resort, simultaneously or successively, to two or more of the methods of service which he deems the most suitable or appropriate in the light of the circumstances of the case*".[77]

Hence the position taken by the court is of considerable liberalism in choosing which of the channels made available by the Service Regulation (especially transmission by agency or directly via post) should be used, and also whether to use more than one simultaneously to ensure that service is performed successfully.

3.6.7. *Confidentiality*

Confidentiality, especially as far as protection of personal data is concerned, is a fundamental principle in many MSs and at the European level. Protection of private life and communications is enshrined in article 7[78] and protection of personal data in article 8[79] of the Charter, as well as in article 8[80] of the ECHR.

However, confidentiality of the content of served documents is not ensured in all MSs. When service is made via post, usually a sealed envelope is used, and this can guarantee confidentiality to a certain extent: if the law allows delivery to be made also to a person different from the addressee, such envelope might well be opened by such person. Usually, such an issue is dealt with the rules ensuring the respect of correspondence and criminal

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[76] *Plumex*, C-473/04 (ECLI:EU:C:2006:96), ¶20. This has also been reinstated in *Alder*, C‑325/11, ECLI:EU:C:2012:824, ¶31.

[77] *Tecom Mican*, ¶59 .

[78] Article 7 Charter – Respect for private and family life: "*Everyone has the right to respect for his or her private and family life, home and communications*".

[79] Article 8 Charter – Protection of personal data: "*1. Everyone has the right to the protection of personal data concerning him or her.*

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority".

[80] Article 8 CEDU – Right to respect for private and family life "*1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*".

penalties for opening someone else's mail. Balancing the need to allow for an efficient service (thus allowing for service to a substituted person) and the need to ensure confidentiality of the content, the use of a closed envelope seems enough of a precaution (especially if coupled with criminal laws protecting the confidentiality altogether). Perhaps the need to ensure confidentiality could be one of the necessary warnings given to the recipient.

The real issue arises in cases when delivery is made by bailiff or process server. There are at least two instances in which confidentiality is not ensured. First, when substitute service is performed by delivering the open documents to a recipient (other than the addressee), without placing them in a closed envelope (as may happen in Finland and often in Italy, although in the latter the law would prescribe such step, art. 137 CPC). Also service via fax, where allowed, does not ensure confidentiality (e.g. in Romania, where otherwise confidentiality seems to be properly addressed). Secondly, confidentiality may not be ensured in those system in which it is allowed to leave the documents pinned at the door, as this may make them available to third parties (e.g. in Greece, although this is done in a closed envelope).

Confidentiality of the content of the document is specifically not always ensured in Bulgaria, Cyprus, Finland, Greece, Ireland (although generally service is personal), Italy, Portugal, Spain (confidentiality warning are given, but anyone can actually read the content) and Scotland. usually in England, documents are delivered in a closed envelope, but there is no specific requirement and once proceedings are commenced, claim form become publicly available (this is also reported for Sweden). In many other MSs, judicial proceedings are in principle public, although access to documents may be limited to persons showing an interest.

By its own nature, service by publication is not subject to confidentiality requirements, but usually not the entire content is published and only certain information are made public (see *infra* para. 3.12). In Spain, the law specifically requires that, in posting the documents to the court's bulletin board, the court officer safeguards "the rights and interests of minors, as well as other rights and liberties which might be affected by announcing the notices" (art. 164 LEC).[81]

When electronic methods are used, it is usually easier to ensure confidentiality by using a secured access with private log-in credentials and it is the responsibility of the party not to share those credentials. However, when other digital channels are used, such as social

[81] Also, in case of digital publication, "In any case, in the notice or announcement referred to in the preceding paragraphs, for the higher interest of minors and in order to preserve their privacy, the personal data, names and surnames, addresses or any other data or circumstance which could permit their identification, whether directly or indirectly, shall be omitted" (art. 164 LEC).

media, confidentiality may become an issue and suitable safeguards should be used (such as those used for service by publication).

Considering the importance that confidentiality and respect for privacy has within the European Union and the relatively minor burden for an executor to carry envelopes, it is recommended that documents are never left in a non-secured environment (other than a personal mailbox) and that efforts are made to ensure confidentiality when documents are not delivered to the addressee in person.

3.7. Personal service and substituted service – Place of service

3.7.1. *Personal service*

Personal service is an accepted method in all MSs. This should not hide the many and substantial differences that exist among MSs in the way this kind of service is understood.

1. First of all, in some MSs, “personal service” is considered as such only when documents are directly and personally (hand by hand) handed over on the addressee by a judicial officer (i.e. a bailiff), meaning that the scenarios when the judicial officer uses postal operators for the delivery of the document on the addressee are not included (e.g. Belgium, Italy, France; but the law also equates other instances to personal service). In France, art. 651 CPC states that *signification* by bailiff is always available as a method of service, even when the law specifies another method to be used.
2. In other legal systems, the term "personal service" refers to the actual recipient of the document to be served, and not to the applied way of transmission of that document: in this context, "personal service" means the delivery of the document on the addressee in person (as opposed to the substituted service), which can be performed also throughout postal channels, once the return slip is signed by the addressee himself/herself. Member States following this line of interpretation are: Austria, Bulgaria, Germany, Poland, and Romania. In certain MSs, such as Latvia, personal service is also performed by summoning the party to the court to collect delivery of documents against signature of a certificate (§ 56(3) CPL).
3. Finally, in Slovenia, “personal service” has an entirely different meaning as it refers to a method of postal service, often with constructive implications (see *infra* at para. 3.8).

As seen above, personal delivery by bailiff or judicial officer is the preferred method of service in Belgium, Bulgaria, Cyprus, Denmark, France, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Spain, Scotland.

In some countries, when service is entrusted to a bailiff or judicial officer, it may only be performed directly by him/her and not via post (e.g. Austria, Belgium, Bulgaria – although

here electronic service may be allowed by order of the court, Croatia, Cyprus, Estonia, Finland, Greece, Latvia, Poland and Sweden).

In some jurisdictions, personal service is allowed until a party is represented by a lawyer, and afterwards service is made only to the lawyer (see *supra* para. 3.5.2 and related exceptions).[82] In other MSs, direct service is not a main method and should only be used when prescribed by law or at court's direction when there is urgency or there are serious reasons and/or greater care is needed (e.g. in Estonia, for service by a police officer; in Finland, service by bailiff is justified only if there are special reasons, such as the addressee is trying to avoid service, Chapter 11, section 4(1), CJP; in Portugal, normally only in case of urgency or if service via post fails service is made by the bailiff or entrusted to the lawyer; in Sweden, bailiffs are used only in case of emergency or when other methods are not practically available – see above at para. 3.6.6).

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[82] As noted above, lawyer's address is considered as valid place for service to the assisted party in many MSs:

- in Austria (§93(1) ZPO), Bulgaria (art. 51 CPC), Croatia (arts. 138 and 142 CPC) service on the appointed legal representatives is mandatory, unless the party is personally summoned at hearing, in which case both of them are served,
- in Czech Republic (CCP § 25),
- in Denmark service may be performed upon the party's lawyer in all civil cases (§ 161 AJA)
- in Finland is also mandatory, except for an order to appear personally,
- in France it is served through an *acte du Palais*, but for a judgment double service on party and lawyer is required,
- in Germany, when legal representation is mandatory, then service on lawyer is mandatory as well, except e.g. for examination of the party as witness,
- in Hungary this is also the rule, but not for writs of summons ordering the party or the party's legal representative to appear in person,[82]
- in Italy (with some exceptions, such as service of enforcement title before enforcement that is to be made personally to the party; moreover, to have the short term for appeal applied, decisions must be served on the lawyer; appeals are also served on the lawyer appointed for the first instance),
- in Poland, in Slovenia and in Spain only in cases in which representation by a lawyer is mandatory,[82]
- in Scotland and in England (except for any injunction having penal consequences).

In Belgium (Art. 39 *Code judiciaire*) and the Netherlands, where it is mandatory to name an authorised representative for service during proceedings and this relieves from performing personal service on the party, service is made on the party's lawyer only if the party has specified such address ("elected domicile"). Similarly, in Cyprus during proceedings service is made at address for service mandatorily provided by the parties (Order 50 CPR), which is usually the party's lawyer's office, but personal service is always required for order of disobedience, witness summons and enforcement (and courts have discretion to order personal service in all cases). In Latvia a representative (and a lawyer) may be served if it has a proxy to accept service. In Malta parties may designate the lawyer as an authorised representative for purposes of service and, in any case, it is reported that in practice usually during proceedings service is made to the party's lawyers under the direction of the court. A lawyer can be served in Estonia if he/she is representative of the party (§ 321(1) CPC), is otherwise authorised to receive service (§ 319 CPC) or is an employee of the party (§ 323 CPC).
In England parties are required to provide an address for service during proceedings (for any service other than service of a claim form, which is the document that institutes proceedings). In Portugal parties are allowed to appoint a representative with a proxy, but they may also be served personally, as in Greece (where, however, service is always personal for acts to be executed only in person). In the latter MS, lawyers may be named as proxy, but the proxy is strictly limited to the case and the instance of the proceeding (i.e. if given for the 1st instance, it is not valid for appeal and appeal cannot served on the lawyer). In Romania and Slovenia appointing a representative is not mandatory, but if done, then service is performed solely on the representative, as in Lithuania (in the latter, unless personal service is expressly requested).

3.7.2. *Place of service*

As to the place where service is to be performed, the main differences are among those legal systems that leave it up to the executor (sometimes upon direction by the initiator) to decide where service should be performed, and those systems in which the law limits the places in which attempts of service may be carried out. Usually, however, substituted service on a person other than the addressee may be performed only in certain locations (commonly at the personal residence and at the workplace – e.g. Bulgaria, Italy, Sweden).

3.7.2.1. Service on natural persons

Service on **natural person** addressees can be performed anywhere the addressee found within the territory in Belgium (art. 33 CPC),[83] Bulgaria (art. 49 CPC),[84] Cyprus (any time, day or night, the initiator specifies where – O. 5, r. 3, CPR), Czech Republic (§ 46a CCP),[85] Denmark (but possibly should be attempted at permanent or temporary residence or workplace – AJA § 157(1)); Estonia; Finland (at process server's choice), France (only if directly to the addressee, art. 689 CPC), Germany (§177 ZPO; the executor decides), Ireland (claimant decides – for non-originating documents – i.e. documents not instituting proceedings – service is made at the address given for the lawsuit), Italy (art. 138 CPC), Lithuania (art. 122 CPC, until the party specifies a physical or electronic address for service during proceedings), the Netherlands (only when service is performed in person, and in any case it has to be effected preferably at the residence), Sweden (bailiff are also entitled to enter private properties and search – §46 SA), Scotland (Chapter 16.1(1)(a), residence, place of business or anywhere found – the decision is made by executor). In certain cases, the law designates places in which service can be attempted, sometimes providing a hierarchy. In Latvia, service should be attempted first at the address declared for proceedings, then any additional declared address or the address declared as the residence of the addressee (service on natural persons is also possible at the workplace of the person concerned) (§56(5) CPL). If none is known or neither attempts of services proved to be successful, any address declared by the other party may be used. In Malta, service may be made at the residence, business place, workplace or postal address (initiator specifies where). In Slovakia,

[83] But service on a substituted recipient is more limited, cfr. art. 35 CPC: "Si la signification ne peut être faite à personne, elle a lieu au domicile, ou à défaut de domicile à la résidence du destinataire et, s'il s'agit d'une personne morale, à son siège social ou administratif. La copie de l'acte est remise à un parent, allié, préposé ou serviteur du destinataire".

[84] Irrespectively of this general rule, there is also a hierarchy on where the service should be attempted: the court should first attempt service at the address specified by the plaintiff in his/her statement of claim. Then it has to try the current address (the place registered as actual residence, if such exists) and finally serve at the permanent address (the place registered as permanent residence) (art. 38 CPC). The last attempt may lead to a constructive notice. Bulgarian citizens are required to have a current Bulgarian address or they are registered *ex officio* in a special district in Sofia.

[85] The law also specifies certain "addresses for service" at § 46b CCP, such as "for a natural person, the address registered in the population registration information system to which papers are to be delivered; if such address is not registered, then the domicile address kept under a special legal regulation or the address of the foreigner's place of stay in the territory of the Czech Republic according to the foreigner's kind of stay".

service is made at the residence registered or at the actual residence (courts take all steps to ascertain actual residence), but may also performed wherever the addressee is reached (§46[1]/1 CPC).[86] In Spain, service is to be made at one of the following addresses: at the registered address or at any other address appearing from official records, or at addresses used for professional activity or at the address of a non-temporary workplace (art. 155 LEC). For summons, the claimant has to specify one or several of these addresses and specify the order in which they should be tried (art. 152 LEC). Official databases must be used to locate the addressee before making resort to a constructive method (art. 161 LEC). In England, service within the jurisdiction is to be made in the places determined pursuant to CPR 6.9 (usual last known residence), but an order for substituted service in any place can be sought (CPR 6.15).

Other MSs follow a mixed approach, providing for the possibility to serve the addressee anywhere it is found, but only subject to certain conditions (e.g. if previous attempts at certain determined places failed or if the addressee voluntarily accepts the document). For instance in Austria, the addressee should be served at a "delivery point" (i.e., residence, seat, workplace, office), but can be served anywhere found if the addressee is willing to accept service or if there is no such "delivery point" (§24a ZustG). In Romania, domicile is the place of service preferred by law, and other places, such as known residence, place of choice and the place where the addressee permanently conducts his/her own activities can be resorted to only, if the addressee is not found at his/her domicile (art. 155(1)(6) CPC). The addressee may also be served anywhere found if he/she signs the return receipt (art. 161(2) CPC). In Croatia, in principle service should be attempted at the dwelling, at the workplace of the addressee or at the court (if the person is found there), however the addressee can be served anywhere he/she is found if he/she is willing to accept delivery and, in any case, in case of necessity the court may allow also other places to be attempted (art. 140 CPC). In Greece, the bailiffs decide whether to serve at home or at the workplace, but service can be made anywhere if the addressee is willing to accept service (art. 124 CPC). Service cannot be performed at a church, in course of the rite or other religious ceremony, nor at the courtroom during the hearing. In Italy, in principle the party should be served at his/her domicile or anywhere found within bailiff's territorial competence (art. 138 CPC), but in practice it is the initiator who specifies where service should be attempted (see *infra* para.

[86] Under the new Code, in general (with the exception of cases listed in §107 new CPC) addressee are served at the address specified for service or, in the absence thereof: a) a natural person to the address registered in the population register of the Slovak Republic or the address of the place of residence of aliens in the Slovak Republic; b) a legal person to the address entered in the commercial register or other public register (§106/1 new CPC). If a natural person does not have an address registered in the population register, documents are delivered by displaying a notice on the official board and on the website of the court and service is deemed effected 15 days after publication of the notice, even if the addressee is not aware of it (§ 106/3 new CPC). In case of service of a document instituting proceedings on a natural person, the court is required to take all the necessary steps to ascertain the actual address; if it fails to ascertain the actual address, service is made by posting a notice on the court's wall and website and is deemed effected after 15 days (§116 new CPC). Subsequent documents are delivered under the ordinary rules.

3.10.1). In Poland, the dwelling is the preferred place, but service can be made also at the workplace or anywhere the addressee is found (art. 135 KPC). Finally, in Portugal, the addressee can be served at any address specified by claimant among residence, workplace or the place agreed in a contract. If the addressee is not found there, it is possible to serve on him/her at any other addresses (Art. 224 CPC) pursuant to researches made by the executor (art. 236 CPC, see also *infra* para. 3.10.1). Slovenia (anywhere found, but a first attempt at registered residence should be made and the initiating party can be required to provide another addresses – §139 ZPP).

Another difference is found between those systems in which service in particular places (e.g. a registered or permanent address) can establish conclusive evidence that service has been performed irrespectively of the fact that the document reached the addressee (e.g. Bulgaria – where a curator is appointed, and Romania), and systems in which it is not possible to serve to a registered address if it is clear that the addressee no longer lives there (e.g. Belgium, Cyprus, Estonia, Germany, Lithuania, the Netherlands). In Ireland, if service is made by post (as agreed upon by the parties or upon order of the court), service on a natural person is not considered as validly effectuated if it is clear that the defendant no longer lives at the place (but before lower courts, service at last known address is sufficient unless proved that the copy has not been delivered to such address). For companies, a different rule applies (see *infra* in this paragraph). In Italy and Austria, service at registered address is presumed to be valid unless clear evidence shows that the addressee no longer lives or exists at that address. In Cyprus, the question whether it is sufficient to find the registered address largely depends on whether service at the registered address can be proved to be sufficient to give to the addressee knowledge of the document being served. If it is, then the registered address will suffice; if it is not, then service shall be effected at the actual address. When actual address cannot be ascertained, the most common course of action is to make an application to the court for permission to carry out substituted service (see *infra* paras. 3.7.3 and 3.10). Greek law does not provide the notion of registered address and therefore, the party initiating the service and bailiffs have always the burden to seek for the actual and true address of the recipient. If the recipient has already declared a specific address (e.g., by designating it when filing his/her statements in the lawsuit), then the other litigant parties are entitled to serve on him/her at this latter address until they are formally notified of a change of address. In addition, if the recipient is the plaintiff and he/she fails to nominate a specific address for purposes of service, the other litigants are entitled to serve documents meant for him/her to the Secretariat of the Court. In Latvia, a registered address is just one of many criteria used to determine an address of residence (the Civil Code Art 2.17(1) states that length and continuity of actual residence at the place, data on person's residence in public registers as well as his own public statements about his residence shall be taken into account in determining residence of a natural person). The Civil Procedure Code Art 123(4) sets as a method of last resort to serve a legal person by sending the documents to the address of its statutory seat, and service is deemed performed ten days after the dispatch.

In many MSs, parties are required (e.g. Cyprus, O. 50, r. 1, CPR; Finland, Chapter 5, section 2(2), CJP; Hungary, Latvia, Lithuania, Luxembourg, Malta, Slovenia, Spain, Sweden, England), or strongly advised (e.g. Austria, Greece, Italy) to provide an address for service when proceedings are started. In Bulgaria, (art. 41 CPC) any party who is absent for more than one month from the address which the said party has communicated under the case or where a communication has already been served once, is required to notify the court of the new address, and the same obligation applies to the legal representative, the curator and the attorney in fact of any such party. In practice, in many MSs, the address for service during proceedings coincides with the address of their lawyers (including in countries that do not require providing an address, as in Portugal). In Ireland, an actual address within the jurisdiction must be provided by the plaintiff in the summons and by the defendant in his/her memorandum of appearance, otherwise the brief may not be accepted or may be set aside by the court (cfr. Order 12, r. 7-8, RSC). In addition, if a party properly served does not appear or does not provide an actual address, service may also be made by filing the documents with the court's central office (Order 121m r. 5, RSC). In Scotland, the Netherlands and Romania, indicating an address is not mandatory for the parties, as well as in Croatia: if the address is given it should anyway be updated.

In many MSs, including those in which actual notice of the addressee is generally favoured to legal constructions, failure to provide or update the address given for purposes of the proceedings may result in legal consequences that enable the presumption of service: in some of those MSs, service is deemed validly performed at the given address (e.g. Cyprus, O. 50, r. 2, CPR) or other constructive notice may apply (e.g. Belgium, art. 36(2) CPC; Bulgaria art. 41 CPC, documents are placed in the case file; Croatia, art. 145 CPC, documents are posted and deemed served after 8 days; Cyprus, Czech Republic CCP § 46a – unless the new address is known by the court, Estonia –deemed served after 3 days from service; Finland – service is deemed effected 7 days after posting, Chapter 13, section 3a, CJP, unless actual signature is required or the document is a summon; Greece – if an address is provided; Ireland – Order 121, r. 5, RSC; Lithuania, art. 121 CPC; Romania, art. 172 CPC; Spain), whereas in the other group of those MSs subsequent services may be made by depositing the documents with the court (e.g. Austria, Italy, Greece – if address is not provided by the party, Poland, art. 136 KPC; and Slovenia, §145 ZPP – by clipping it to the court notice board). In Italy, however, according to the current practice, a notice via certified e-mail is always sent to the lawyer, often attaching the filed document. In Slovakia, if a mandatory address is not provided, service is validly made at the registered residence. If delivery in person is returned from the addressed designated by the party for the service, from the place of his residence or from the chosen representative for service as undelivered, the court can deposit all following documents with notice to the party that document will be deemed served by depositing at the court on the seventh day after the dispatching of the document (§49/3 CPC). In Latvia: if the address is not duly updated in the course of the proceedings, service at the last known address is appropriate and a fine of up to 50 euros may also be issued (§58 CPL).

3.7.2.2. Service on legal persons

With reference to **legal persons**, MSs show less deference toward ensuring an actual notice to the legal representative, increasing the number of cases in which substituted or even constructive notice may be performed (the main reason being the perceived less intense need to protect legal persons, and business in particular, the existence of an officially registered address at the Registry of Company and the increased care that business should pay to correspondence).

We could distinguish two groups of MSs, classifying them depending on whether service to a legal person is restricted to the business premises or can also be performed in other places, such as the domicile of it directors. The first group would be constituted by Bulgaria, Croatia, Czech Republic, Latvia, Lithuania, Romania, Slovenia, Scotland and England. A second group, giving the possibility to also serve directors at their domicile ,would include Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France – and provided that there is no registered address, Greece, Germany, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Spain and Sweden.

In France, if a legal person has no premises known at its registered address, constructive service may be performed. In Bulgaria service is to be made at the last registered address of the legal person to any employee willing to accept, otherwise the bailiff can post a notification that the documents are to be collected at the court office in 14 days. In Ireland, service to a legal person is always performed via registered post to the registered seat and is considered always as a valid service. If no registered address is provided, the legal person may be served at the Registry of companies (although in practice service is also made on directors to ensure actual notice). Also in Lithuania service should be made at the statutory seat, except when another address is provided (or if documents are served electronically). If such service fails, service can be performed by sending the documents to the statutory seat by post and deemed to be served 10 days after dispatch. In Denmark, in principle service should be made at the place of operation or registered offices, but it can also be made on officers at their addresses; in general, in Denmark, personal service is valid anywhere it is made (§ 157(1)(1) AJA). In Poland, service can be made to the registered address and is valid also if the company is no longer there (but other addresses can be used, too). The same holds true in Slovenia, unless it is proved that the other party knew the actual place of business. Finally, in Scotland, service is always made at the registered address (but for limited liability companies, also any place of business may be attempted).

Many MSs allow service to be made on any authorised officer or legal representative also at their personal or business address (e.g., Belgium – if other addresses fail, Italy, Estonia – also other places, Greece, Luxembourg, the Netherlands, Portugal and Spain), other Member States allow service of document at the place where business is conducted or anywhere the addressee is found if willing to accept (e.g., Austria), while there are those which cumulate both options (e.g., France, Cyprus, Germany, Malta, Slovakia). Today in Italy, all businesses

(as well as public entities and professionals) are required to hold a valid certified e-mail address (PEC) to which documents may also be served (see *infra* para. 3.9.1.7). Other MSs give ample freedom such as Denmark and Finland, where any address is viable for personal service to be performed, Sweden, when service is made (usually by post) at either the registered address or the legal representative address. In Czech Republic (§46b, lett. e, CCP), the address of the office registered in the appropriate register or an address of the representative for delivery specified in the contract for disputes arising from such contract should be served; if the legal entity has a branch, then the organisation branch office address is also a valid address. In Hungary legal persons are usually served at the registered set or on a service agent, but during proceedings legal persons may specify a different address, or be served on their appointed lawyer.

Finally in England CPR 6.9 specifies the place where a legal person may be served, which in principal is an office or any other place where business is conducted and which is related to the claim (if it is a foreign addressee, any place where business is conducted suffices).

Virtually in all MSs it is not up to the legal person to limit the address for service among those allowed by the law (short of the possibility, equally for individuals and legal persons, in some MSs to agree in a contract on the place for service discussed *supra* at para. 3.6.3 or to specify an address during proceedings).

3.7.3. *Substituted Service*

3.7.3.1. Service on a substituting recipient

When the addressee is not found at the place where the service of the document is attempted, in almost all MSs (with the notable exception of England),[87] there is the opportunity to perform service on a substituting person, sometimes after a prescribed or optional number of additional attempts. For instance, in Denmark, personal service should be attempted by bailiff six times (for post only twice). Also in Finland, further attempt may be required, including at other places or also with the assistance of the police. The executor may then decide to allow delivery to a substituting person if the addressee cannot be found and it appears that he or she is trying to avoid service (Chapter 11, section 7(1), CJP). In this event, the executor must also inform the addressee by letter and service is deemed performed when such letter is given to the post (Chapter 11, section 7()3 and (4), CJP). In Croatia, if personal delivery to the addressee is required by the law or by the court, and the addressee is not found, on the first attempt the executor acquires information on when the addressee will be back and leaves a notice specifying the date and hour when another delivery will be attempted. If, during the second attempt, it is also impossible to deliver in person to the addressee, substituted delivery is allowed (art. 142(2) CPC). In Sweden, if the

[87] However, in England, service is often performed by simply sending the documents with first-class mail, which are left in the addressee's mailbox. See, *supra*, para. 3.8.

addressee is absent, the bailiff should perform service on a substituted recipient (§§34ff SA) or, if nobody can be reached at the addressee's premises or it appears that the addressee is trying to evade service, service may be performed by nailing the documents at the door (§ 38); the bailiff's report is sent to the court and the court can decide, based on the circumstances, if further steps are needed or whether to attempt another method. In Austria, if the addressee is not present, the executor decides whether to attempt another service or rather to perform a substitute service.

In Portugal, if the addressee is absent, delivery can be made to any other person present at the address. The recipient has the duty to deliver the documents to the defendant and service is deemed equivalent to personal service, assuming that the addressee had appropriate knowledge of the service, unless proven otherwise. A registered letter is also sent informing the addressee that service was made on a substituted recipient (art. 233 CPC). It is still possible for the addressee to object to the service by giving proofs that the documents were not actually delivered to him/her. If nobody is available at the place of address to accept the documents, the plaintiff is required to specify another address and the executor must carry out due diligence by using private or public services or other databases (with court order) or exceptionally the police to locate the addressee. As a last option, constructive service may be used (see *infra* the next para.).

Usually, substituted service is made by serving another person located at the place of service who shows some form of connection to the addressee (e.g. the dwelling, place of business, place of employment). The degree of connection required varies from MS to MS, and in some systems a weaker tie allows the person to refuse to accept service on behalf of the addressee. Generally, when service is performed at the personal address of the addressee (either actual or registered, as the case may be), close members of the family, persons co-habiting with the addressee or household employees may be served, usually under an obligation to accept service and later deliver the documents to the addressee. When a porter, neighbour or other person living nearby is concerned, if the law allows such a service, usually consent of the recipient is required (see, e.g., Croatia, art. 141(1), (2) and (3) CPC) (see *infra* para. 3.11.1). Another place that is commonly accepted for service is the workplace, where usually the employer or workplace manager has a duty to accept service on behalf of the addressee, while co-workers are generally left with the choice of accepting or not. In Cyprus (O. 5, r. 3, CPR), service to a family member may be performed anywhere such person is found, while service on the employer should be performed only at the place of employment.

In a majority of MSs, only adult persons may be served, but there are some exceptions: in Belgium (art. 35 CPC), Cyprus (O. 5, r. 2(1)(i) CPR) and Scotland, a person over 16 years can be delivered the documents; in Finland, a co-habitant of 15 years is a possible recipient (Chapter 11, section 7(1), CJP); in Estonia (§322 CPC), Hungary, Italy (art. 139 CPC), Malta (art. 187(1) CPC) and Spain, the minimum age is 14 years. In Ireland, a child without any

specified age may accept service (but for clerks the minimum age is 16) (Order 9, r. 2, RSC), while in the Netherlands any minor who can understand what is being done can be a recipient (the bailiff is required to assess whether such person may act as a recipient, otherwise a different method must be used).

Persons appearing clearly incapacitated cannot or should not be served. Also, persons having an opposed interest in the lawsuit cannot be served. In the Netherlands, substituted service to a person different from the addressee cannot take place when two opposing parties live at the same address (personal or postal service must be made), and a similar rule applies in Austria (§103 ZPO), Estonia (§322 CPC, documents are not deemed to be served), Croatia (art. 141(4) CPC), Germany (§178(2) ZPO), Greece (arts. 128(3) and 129 CPC), Hungary (art. 99(3) CPC), Lithuania (art. 123(3) CPC), Poland (art. 138 KPC) and Slovenia (§140 ZPP). In Bulgaria, substituted service is presumed to be valid but party may request to reopen the time limit for challenging this presumption if he/she can prove that he/she was absent and unable to learn about the service of the documents (art. 46(4) CPC). Also, substituted service may not be performed on a person having an opposed interest in the proceedings (art. 46(3) CPC). In Denmark, in case of substituted service of documents, a refusal by the substituting person to accept service of documents without any reasonable cause can result in a court order holding the refusing person liable for any costs resulting from his or her refusal (§ 157(4) AJA).

3.7.3.2. Other ways substituting personal service

Another form of substituted service, when no one is present at the place when delivery is attempted, is the deposit of the documents either directly in the mailbox or at a special place (usually a post office or a municipal office – see also para. 3.8 for service by post). There are differences among the legal systems in the legal assessment of such deposition: in certain MS this establishes the presumption of a valid service after a certain period of time (defined in laws); whereas in other MS in which the documents are to be returned by the depositor after the prescribed time period the service is deemed as unsuccessful. In Hungary, in case nobody is present at the address and the documents are not claimed, a constructive notice applies: documents are considered served on the fifth working day following the day of the second attempted postal delivery in the absence of proof to the contrary (art. 99 CPC). In Slovakia, if service is not to be strictly personal, it can be delivered on a substituted recipient (§46^1 CPC) willing to take delivery or, if it cannot be served in this manner, be deposited with the post office or municipality. If service is strictly personal (§ 47 CPC), it cannot be delivered to another recipient, but in case of absence of the addressee a constructive notice easily applies: a first notice is left at the address with date and hour when a second attempt will be made. If also the second attempt fails, documents are

deposited and deemed served (no other notice is required). On how service is performed when nobody is found at the address, see also *infra* para. 3.7.4.[88]

3.7.3.3. General remarks on the substituted service methods

Another element that differentiates MSs in cases of substituted service is whether additional registered or unregistered notices shall be sent to the addressee (e.g., in Austria,[89] Belgium, Finland, Chapter 11, section 7(2), CJP; France arts. 657-58 CPC; Italy (art. 140 CPC), Luxembourg, Sweden §34 SA) or not (e.g. in Bulgaria – where it is reported that objections in case of substituted service are frequently raised, Malta, Poland, Scotland). In Germany, additional notice is required only if service is performed by depositing the documents with a local court or at the postal office. In Hungary, the court sends an additional notice in case the documents to be served are a statement of claim or a judgment and service is effected by depositing the documents (art. 99 CPC).

As it has been noted, forms of substituted service do not always ensure that actual notice is delivered to the addressee. In case the documents are left with another person who has either voluntarily or mandatorily accepted service, usually the law transfers on such recipient the duty (and corresponding liability) to ensure that the addressee is quickly informed.

But when service is deemed performed by simply leaving the documents in the mailbox or by leaving a notice and depositing the documents in some other secured place (to be collected within a certain time-frame), the method acquires the characteristics of a constructive method. In those instances, it should be ensured by additional means (sending a registered notice, by e-mail, by phone) that the addressee received actual notice of the service and the existence of proceedings.

There are instances in which personal service is provided as mandatory by the law regardless of any hierarchy, usually in case of sensitive matters, when failure to comply may bring serious consequences to the addressee or depending on his/her quality. It is often the rule in case of service on special categories of addressee, such as prisoners, member of armed forces or persons in closed institutions. For instance, in Austria, personal service is mandated if the addressee is incapacitated (in addition to documents being served on the guardian) and in some real estate cases, in Estonia may be ordered by the court, in Croatia it is mandatory for a broad category of documents (statement of claim, ex parte payment order,

[88] According to the new Code, when service is not strictly personal, service should in principle be made to the party's electronic address. In any case (and in case of mandatory personal service, such as a service of a payment order §266 new CPC), under §106/3 new CPC, if a natural person cannot be served at the address registered in the population register of the Slovak Republic, documents are delivered by posting a notice on the court's walls and website, and service is deemed effected 15 days after publication of the notice, even if the addressee is not aware of. In case of a legal entity, service is deemed effected when delivery at the registered address fails (§§ 111-112 new CPC).

[89] § 17(2) ZustG.

legally effective judgment, judgment and ruling against which appeal and legal remedy are permitted). In Cyprus, personal service on the actual addressee is required for any service when contempt of court is a possible consequence of failure to appear or to comply. In Czech Republic, the possibility to serve a person different from the addressee is limited (§50a CCP) and personal delivery may be required by the law or by order of the court (otherwise constructive methods can be used). In Finland, personal service is mandatory when a party is personally summoned to a hearing (Chapter 11, section 16(4), CJP). In Hungary, mandatory personal service (via post) is required for summons or order to appear in person (art. 97 CPC). In Malta, personal service is mandatory for judicial letters (i.e. an order of payment for small debts – arts. 166A and 166B CPC) and in applications for summary judgment (unless otherwise authorised by court). In many MSs (e.g. Portugal and Italy), proceedings for the declaration that an adult is incapacitated must be necessarily served on such individual. In Scotland, personal service is mandatory if opposing parties share the same address (Chapter 16.1(2)), on prisoner or for certain interim orders in family matters, interdict and other urgent proceedings. In Sweden, personal service is favoured, from the moment that substituted service cannot be used for instituting proceedings, unless when it appears that the addressee is trying to avoid service.

3.7.4. *Service when the address is correct but nobody is present to accept it*

As already seen, when no one (addressee or other substituted person) is present at the address specified for service (usually a personal address, either registered or unregistered), but it is clear that the addressee lives there, the laws of a number of MSs allow for service to take place, usually without prior authorisation by the court.

More specifically, in Austria, documents are deposited at a local court or municipal authority and kept for a minimum of two weeks to be collected, but service is deemed valid when notice of deposit is left to the addressee or posted at her door and documents are available to be collected (§17 ZustG). In Belgium, if nobody is present, documents may be left at the addressee's residence or domicile, provided that the bailiff informs the addressee by letter (art. 38 CPC).

In Bulgaria, if the addressee is not present and nobody's present to accept substituted service, court officer makes at least two attempts in different days (3 attempts total in 30days30 days) and if it fails, service is validly made, upon court authorisation, by posting the notification in the addressee's mailbox or door (or even front door), informing that documents can be collected within 14 days (art. 47 CPC). Service is deemed as validly performed upon the expiry of such period. Courts may also require the claimant to provide a search record, and if address is not the permanent address, court orders service at permanent address (also in this case the court appoints an ad hoc representative at the claimant's expenses). Subsequent services are performed by placing the documents in the case file (art. 47(6) CPC).

In Croatia, a special procedure applies: if the addressee is not found, the postal operator gets information on the addressee's whereabouts and leaves a notice specifying the date and hour when he/she will be back to attempt a second delivery. If the addressee is still not present, delivery may be made to any adult person living at home (who is obliged to accept) or to a neighbour or co-worker (only if they consent). If also such delivery is not possible, then documents are returned to the court with the indication of the addressee's whereabouts (art. 143 CPC). The court may then have a guardian appointed for the absent addressee (arts. 84-86 CPC) or direct constructive service to be performed by posting the documents at the court board, which are deemed as validly served after 8 days (art. CPC).

In Czech Republic (CCP §49), as it has been discussed *supra*, if the addressee is absent, special rules apply depending on the kind of service (determined by the law or the judge on the basis of the kind of document delivered). When service is strictly personal and the addressee is absent, service fails. But when service is personal, "replacement delivery" is allowed in case of absence of the addressee, a notice to collect the documents is left in the mailbox and service is deemed performed after a term of 10 days expires (a notice is then placed on the court notice board). Electronic service is deemed performed at the latest 10 days after the documents have been electronically sent to the addressee's data box.

In Estonia, if no one is present and service was attempted twice in three days at different hours, service is deemed performed by placing the documents in the mailbox (§326 CPC). Documents may also be deposited at the municipality (or post office, office of the local county court), leaving a notice in the mailbox (§327 CPC). In this latter case, service is deemed completed 3 days after leaving the notice of deposit in the mailbox, and the documents are returned to the sender within 15 days (or a longer period, as decided by the court) after the date on which the document is deemed served.

In France, if no one is present or willing to accept the documents, but it is clear that the addressee lives at the address, service is performed by depositing the document at the city hall and leaving a non-delivery notice in the mailbox, with information on how to collect the documents (art. 656 CPC). The bailiff also sends a letter informing the addressee containing a copy of the certificate of service and keeps the documents at his or her offices for three months (arts. 657-58 CPC).

In Germany, service may be completed by (a) simply depositing the documents in the addressee's mailbox (§180 ZPO) or, in absence thereof, (b) by leaving a notice in the addressee's mailbox and depositing for three months the documents at a local public office to be collected (§ 181 ZPO). In this latter case, service is deemed effected when a written notice of deposit is left at the addressee's address.

In Greece, service on an absent addressee may be performed by pinning the documents in a closed and stamped envelope at the addressee's door (art. 128 CPC). In this case the bailiff

also delivers a copy of the documents to local police within 24 hours and sends a notice by registered letter to the addressee informing them that service was performed.

As discussed above, in Hungary, when service is made by post (as it is the norm), if the first attempt of delivery fails and the addressee or another suitable recipient is absent, a notice of delivery of official documents is left, informing that delivery will be attempted again after 5 working days and that during such period the addressee may collect them. If also the second attempt fails, a second notice is left and documents are kept for 5 more working days, after which they are returned as "not claimed" and service is deemed as validly performed (art. 99(2) CPC). Such presumption of service may be challenged by the addressee pursuant to art. 99/A CPC (see *infra* para. 3.14).

In Italy, in case no one is at the address to accept the delivery, the rules applied are different depending on whether service is made in person by the bailiff or is made by post. In the first case (art. 140 CPC), a notice in a sealed envelope is left at the addressee's domicile and the documents are placed at the *Casa comunale* (public registry with the municipality, nowadays a place in the post office) to be collected. A registered letter is sent and addressed to the addressee, giving further notice that the documents have been placed at the *Casa comunale*. Documents are considered delivered upon receipt by the addressee of the registered letter (or after 10 days from its despatch).[90] In case of delivery by post, the procedure is similar, but service is performed 10 days after the deposit of documents at the post office (or when actually collected by the addressee, if earlier).

In Lithuania, in case of service on a legal person, as a last resort when other methods have failed, service can be made by post at the statutory seat and is deemed performed 10 days after dispatch. In case of service through electronic channels, if the party is under a duty to have an electronic address, but does not create one when so ordered by the court, documents are considered served when they are created.

In the Netherlands, if the bailiff cannot leave a copy to the addressee or a substituted recipient (art. 46(1) CPC), he/she leaves a copy to the domicile in a sealed envelope or, if it is not possible, he/she immediately sends a copy by post (art. 47(1) CPC).

In Poland, if no one is found at the correct address, a notice is left in the mailbox informing that the documents may be picked up at the local communal office in the next 7 days (the notice is renewed after 7 days), after which service is deemed performed (a court may order that this kind of substituted service is not to be used and that personal delivery is required) (art. 139 KPC).

In Portugal, if nobody is present to accept delivery, but the bailiff has ascertained that the addressee is living or working at the address specified, a notice is left specifying an hour and

[90] Pursuant to the decision of the Constitutional Court no. 3 of 14 January 2010.

a date when the bailiff will attempt a new delivery. If on the second attempt there is nobody to accept delivery, the bailiff effects service by leaving a notice, at the presence of two witnesses, stating that the documents are to be collected at the court (art. 232 CPC). A registered letter is also sent to the addressee specifying that service has been effected (art. 233 CPC).

In Romania (art. 163(8) CPC), if the addressee refuses to accept delivery, or if no one is present or willing to accept delivery, the documents are left in the mailbox and deemed as served. If no mailbox is present, a notice to collect the documents at the court (or municipality) within 7 days (if urgency 3 days) is left on the door and if the addressee fails to collect the documents without good reason, documents are deemed served.

In Slovakia, service to be strictly personal cannot be delivered to another recipient, but in case of absence of the addressee a constructive notice easily applies: a first notice is left at the address with date and hour when a second attempt will be made (§47 CPC). If also the second attempt fails, documents are deposited at the post office or local communal office and deemed served (no other notice is required). If personal service is not required, in case of absence of the addressee, documents are immediately deposited (with notice) and service is performed (§46^1 CPC). With regard to a legal person or to an individual authorised to do business, when it is not possible to deliver the documents at the registered seat or at the place of business, and no other address is known, service is deemed performed 3 days after the return of the non-served documents (§48/2 CPC).

As described *infra*, para. 3.8.2, in Slovenia, if the addressee is absent, "personal service" is deemed performed 15 days after a notice to collect documents at the post office has been left in the addressee's mailbox and "ordinary service" immediately when documents are left in the mailbox.

In Sweden, if nobody is present at the addresses, the bailiff can leave the documents by nailing them to the door or putting them in the mailbox and service is deemed performed (§38 SA). For legal person, a special method of service is available when others have failed and the court does not consider it inappropriate (§§27-30). The document is sent by regular post and a day later a control message informing of the service is also sent by post to the registered address of the legal person. Service is deemed as performed after 2 weeks have passed since the first letter was sent, provided that the control message is also sent and, based on the circumstances, it is not improbable that the documents have reached the addressee.

In Scotland, documents may be served by depositing at the dwelling or business place where the person executing service, after due enquiry, has reasonable grounds for believing that that individual resides or carries on business (Chapter 16.1(1)(a)). In case of a legal person, service may be made by depositing in the registered office, other official address or a place of business in such a way that it is likely to come to the attention of that other person, or by

posting the document and any citation or notice, as the case may be, to the registered office, other official address or a place of business, of that person (Chapter 16.1(b)).

In England, it is usually not relevant whether the addressee is absent or present and whether actual notice was given, as normally service is made by first-class mail and put in the mailbox. Service is deemed performed "on the second business day after completion of the relevant step" (CPR 6.14).

There appears to be a common core among the MSs in allowing service to be performed when the addressee appears to be living at the address where service is attempted, but is absent and there is no substituted recipient to accept delivery of documents. MSs differ, though, on whether service can be performed by simply leaving the documents in the addressee's mailbox, whether service is performed by depositing the documents and leaving a notice at the addressee's mailbox, or whether additional steps are required to increase the chances that the addressee receives actual notice of the service. The latter is, for instance, the case in Italy and Sweden (for legal persons), where an additional message is sent to the addressee informing of the service; or of Slovakia, where a second attempt is required before deeming service to be performed by depositing the documents.

3.8. Service by post

Service by postal means is an allowed method for service in a vast majority of MSs and, as seen above, it is reported as the preferred method in roughly half of them: Austria, Croatia, England, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, and Sweden.

Among the few exceptions, in Cyprus, postal service is not a proper method for serving initiating documents, which should be effected with personal delivery by a private bailiff instructed by the party. However, where this method proves to be unsuccessful, using postal providers is one of the possible options upon a court order for substituted service. It is also the generally accepted method for service out of the jurisdiction (with court's authorisation and often also via an international courier). Similarly, in Ireland, originating documents (i.e. documents instituting proceedings) in the Superior Court cannot, as a matter of rule, be served by post on individuals (Order 9, r. 2-3, RSC), unless an order for substituted service has been granted by the Court (Order 10 RSC). Service by post is a common method, though as far as legal persons or service on authorised solicitors are concerned and is the standard method of service in lower courts both for originating documents and once proceedings have started. Also Greece represents an exception as the law allows service by post only in those areas in which there is no appointed independent bailiff and is in practice never used. In the Netherlands, service by post is usually not used in civil cases.

Some countries allow service by post as an alternative method only if prior attempts (usually personal service) have failed. In Belgium, France and Luxembourg, service performed by a

court clerk (*notification*) is always made via post. If any problem arises with the *notification*, then a bailiff is instructed by the court clerk to perform a *signification*.[91]

3.8.1. *Providers, rules, envelopes, forms*

As far as postal service providers are concerned, MSs are divided on whether only national universal providers (either public or privatised) are allowed to perform postal service of judicial documents (Belgium, Bulgaria, Finland, France, Hungary, Italy, Malta, Portugal, Spain, Scotland), or also other private sector operators (such as parcel delivery services) may get involved, often with a special authorisation of the relevant Ministry being required (Austria, Croatia, Czech Republic, Denmark, Estonia, Germany, Latvia – but in practice courts have an agreement with the national post provider, Lithuania, Poland, Romania, Slovakia – in practice it is the national provider, Slovenia, Sweden, England).

In a majority of MSs, service by post is governed by rules that are different from those applicable to the delivery of ordinary or registered mail. Often, such rules are to be found in the code of civil procedure or in special laws on postal providers or on service by post (Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Germany, Hungary, Italy, Lithuania, Portugal, Romania, and Slovenia). A certain number of States do not make distinction between service of judicial documents and service of normal post though, and usually in these cases the postal operator does not need to follow any specific procedure different from that concerning normal postal delivery and is often not informed of the special content of the documents delivered (e.g., Bulgaria, Finland, France, Latvia, Poland, Slovakia, Spain, Sweden, Scotland and England).

Furthermore, special envelopes, with specific colours or signs, are used only in certain MSs and are usually defined by secondary legislation (e.g., Belgium, Croatia, Czech Republic, Germany, Italy, Lithuania and Slovakia), while in other MSs, normal envelopes with no specific signs are employed (e.g., Bulgaria, Finland, France, Poland, Scotland and England). Postal forms for return receipt are used in almost all MSs, but only in some of them are such forms different from those used for ordinary (private) registered letters[92] (e.g., Belgium, Croatia, Denmark, Germany, Italy and Portugal). Forms are generally also defined by secondary legislation, but sometimes are developed by postal provider based on the minimum requirements provided for by the law (e.g., in Estonia). In Hungary, the form used is the same, but containing different options that need to be selected when judicial service is made.

From a practical point of view, in a majority of MSs it is the initiator, or more often the executor, who brings the documents to the post for shipping (Belgium, Bulgaria, Croatia,

[91] in this context it is worth to recall that in these countries the documents instituting proceedings and judgments are served always through *signification* by the bailiffs.

[92] It should be stressed the importance that all forms and procedures employed by MSs be in compliance with the standards developed by the *Union postale universelle*.

Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Lithuania, Malta, Poland, Portugal, Spain, Scotland and England), but in some MSs documents are collected by the postal operator (usually at the court – e.g. in Austria, Slovenia, Sweden; in Romania – where it depends on the arrangements). In Italy, in practice, the party's lawyer, as initiator, usually buys and pre-fills both the envelope and the form, and then gives those and the documents to be served to the bailiff who will perform service (or, when authorised, performs service directly through the postal provider – see *supra* para. 3.4); a similar practice is also reported for Romania.

3.8.2. *Duty to search, addressee absent, deemed service*

In no MS the postman has the duty to search for the addressee at the address specified on the envelope (other than paying the ordinary and required professional due diligence in looking for the name at the address). Similarly, they do not have the duty to collect additional information on the addressee's whereabouts. Any difficulty in finding the addressee is likely to result in the envelope being returned to the sender (usually the executor) with a mark reporting the issue experienced, such as "addressee not found at address", "address non-existing" or "addressee moved to another address". An exception is Finland, where the postal operator should make efforts to find the addressee using the register of addresses and other publicly available registers (otherwise, returns the documents to the court); and Romania, where postal operators are entitled to ask persons who are present at the place where service is attempted if they have information on where to find the addressee (and later inform the initiator).

If the addressee is absent but the address is correct (i.e. the addressee lives there), delivery is usually performed on another suitable person following rules identical or similar to those that govern service on a substituted person (see *supra* para. 3.7.3). If nobody is present, in a number of MSs a notice is left in the mailbox (or left on the addressee's door) and the documents are deposited at a post office nearby to be collected within a given number of days. MSs differ in their subsequent proceedings: in some of them (such as Slovakia or Hungary), another service attempt is made with a new deposition period at the post office in case of failure; whereas in other MSs the documents are returned right after the first period to the sender as "unclaimed". Member States also differ in terms of the legal consequences attached to the return of the documents: in some of them (e.g. Austria, Estonia, Germany, Hungary, Italy, Latvia, Slovenia), service is deemed performed, while in others (e.g. Bulgaria, Czech Republic if service is to be 'strictly personal'; Belgium, France and Luxembourg for *notification*; Portugal, Spain and Scotland), service is considered as unsuccessful. In certain MSs, documents are directly left in the mailbox (e.g. in Finland and Latvia when ordinary mail is used and in Slovenia when 'ordinary service' is ordered).

In Austria, documents are deposited at a local post office and kept for a minimum of two weeks to be collected, but service is deemed valid when notice of deposit is left to the addressee or posted at her door and documents are available to be collected (§17 ZustG). In

Belgium, when service is made via *notification*, undelivered documents are deposited for eight days and, if not collected by the addressee, those documents are returned to the initiator as an unsuccessful service (art. 46 *Code Judiciare*).

In Croatia, a special procedure applies: if the addressee is not found, the postal operator gets information on the whereabouts of the addressee and leaves a notice specifying the date and hour when it will be back to attempt a second delivery. If the addressee is still not present, delivery may be made to any adult person living at home (who is obliged to accept) or to a neighbour or co-worker (those only if consent). If also such delivery is not possible, then documents may be posted at the court board and deemed validly served after 8 days.

Also in Czech Republic, if the addressee is absent, special rules apply depending on the type of service (determined by the law or the judge on the basis of the kind of document delivered). When service is to be made only strictly personally to the addressee and he/she is absent and fails to collect the documents within 10 days, the documents are returned to the court, service fails and must be repeated or another method has to be attempted. When service is personal, but so called "replacement delivery" is allowed and the addressee is absent, a notice to collect the documents is left in the mailbox. After the expiry of a time-period of 10 days, service is deemed to be validly performed, and documents are left in the addressee's mailbox or, when there is no such mailbox or if the court orders so, are returned to the court, which places a notice in its notice board. Usually in all these cases it is not possible to serve on another recipient (§ 50a CCP).

In Estonia, service by post may either be performed via registered or unregistered letter (with a form for acknowledging receipt). In the former case, if the addressee is absent, the postal operator leaves a notice in the mail and returns after at least 3 days at significantly different hours. If also the second attempt fails, it places another notice in the mailbox and keeps the document to be collected for 15 days. Service is deemed valid after 3 days have expired from the moment the second notice is left in the mailbox. Moreover, during proceedings, court may send an unregistered letter to the address provided, which is deemed validly served after 3 days (or 14 days if the address is abroad).

In Germany, if personal or substituted delivery is not possible, documents are deposited at a local office and a notice for collection is left in the addressee's mailbox. Service is deemed effected in the moment in which the notice is delivered (§ 181 ZPO).

In Hungary, documents are never left in the mailbox. If the first attempt of delivery fails and the addressee or another suitable recipient is absent, a notice of delivery of official documents is left,[93] informing that delivery will be attempted again after 5 working days and

[93] The notice informs the addressee that 1) the postal service provider tried to serve an official document, 2) it will attempt to serve the document on the fifth working day following the day of the unsuccessful delivery and 3) the addressee can collect the official document at the post office upon proof of identity.

that during such period the addressee may collect them. If also the second attempt fails, a second notice is left and documents are kept for 5 additional working days, after which they are returned as "not claimed" and service is deemed as validly performed (art. 99(2) CPC). Such presumption of service may be challenged by the addressee pursuant to art. 99/A CPC (see *infra* para. 3.14).

In Italy, if no one is found at the address, but it is clear that the addressee is living there, the postal operator leaves a notice in the mailbox and deposits the documents at a near postal office. Then they send another notice by registered letter with return receipt to the addressee informing that documents are available to be collected. Service is deemed performed 10 days after the deposit at the post office, or when addressee actually collects the documents, if earlier (the documents are left deposited for a maximum of 6 months). As seen *supra* para. 3.7.3, a notice to the addressee is also to be sent via registered mail when delivery is performed on a substitute addressee.

In Latvia, in case the addressee is absent, regular mail can be placed in the mailbox, while registered mail can be served on a substituted recipient or a notice is left, stating that the documents are to be collected. In any case, though, service by post is deemed performed on the seventh day after it was sent (art. 56^1 CPC).

In Slovenia, “personal service” (§142 ZPP) refers to a method of service by post in which documents (claims, judgments, court orders that may be appealed, summons for first hearing, or others upon court order) are either delivered to the addressee in person or deposited at a post office (i.e. they cannot be delivered to a substituted recipient other than an authorised lawyer). If the addressee is absent, service is deemed performed 15 days after a notice to collect documents at the post office has been left in the addressee’s mailbox: it is clearly a method that appears to be easy and a constructive one and, thus, does not resemble what other legal systems attach to “personal service”. It is also reported that the 15 days rule, which also applies when lawyers are designated as recipient on behalf of an assisted party of a personal service, causes several issues within Slovenian civil procedure. As an alternative to this “personal service”, in Slovenia “ordinary service” can either be delivered to a recipient other than the addressee or left in the mailbox and deemed served (§141 ZPP).

Unclaimed postal service is not considered in all MSs as a successful service. In Belgium, for instance, if the addressee is absent, a notice is left in the mailbox and documents are kept for 8 days at a nearby post office. After this period has elapsed, documents are returned to the executor (court clerk) and service is deemed unsuccessful (as noted above, a bailiff needs then to be instructed). The same holds true in France (but the time to collect is 15 days) and in Luxembourg (7 days). Also in Bulgaria, if the documents are not delivered to the addressee or another recipient, a notice is left and documents are kept for collection for 30 days. If within such term they are not collected, the service is not valid and another method has to be attempted.

In Sweden, there are three different kinds of service by post: (1) "normal service" (§§ 16-18 SA), which can be accompanied by a return receipt slip (to be filled and returned at the addressee's care) or delivered by registered letter or registered letter with receipt of delivery (if it is thought that the addressee will not cooperate); (2) "simplified service" (§§ 22-26 SA) without receipt, which cannot be used for instituting proceedings and is allowed only during proceedings (and provided that a party has been informed about which kind of documents may be served in this way); and (3) special service on a legal person (§§ 27-30 SA), sent by regular post and followed the next day by another controlling message sent to the addressee (this method can be used only if normal service failed and it does not seem inappropriate). If the addressee is absent, the mail can be left in the mailbox, but if the return slip is not returned, service is unsuccessful and it is up to the court to decide whether to attempt a different method (sometimes the court asks a confirmation via phone or reminds the addressee to return the slip acknowledging receipt). The proof of delivery is freely evaluated by court, but reported problems are very rare.

In Finland, there are three main methods of service by post: sign-for-delivery, ordinary with receipt slip and ordinary without receipt (only when allowed by the law). In the first case a notice (and not the documents) is left in the mailbox, informing that documents may be collected with a signature at a near post office (court informs how much time to keep them and when to return them). When ordinary mail is used, the envelope is placed in the mailbox and the addressee has to return the receipt slip to the court, when present. In all cases it is irrelevant if the addressee is absent.

Also in Portugal (unless the address for service is an elected domicile or the addressee is a legal person with a registered office – arts. 228 and 231 CPC), Spain and Scotland, if the addressee is absent and delivery cannot be made on another recipient, attempts are to be repeated or another method of service must be used (such as service by bailiff).

In Denmark, there are two types of service via post: service by letter (§ 155(1)(1) AJA) or service by post (§155(1)(4) AJA). *Service by letter* entails that the document to be served with potential attachments is sent or delivered to the addressee, and only to the addressee, together with a request of acknowledgement of service on a copy of the document, or if the service is effected by the court/prosecutor on a special acknowledgment of receipt form is used. *Service by post* entails that the document is sent to the addressee with a sign for receipt system, and can also be delivered on a different recipient.

3.8.3. *Certificate of service and effectiveness*

As far as the **certificate of service** is concerned, in some MSs this is still drawn up by the executor, who explains all steps taken and that service has been performed via postal channels (e.g. Italy, Malta). The return receipt filled by the postman and signed by him/her and the recipient, usually shares the same evidentiary value and completes the certificate of service in proving whether delivery has been made, to whom and on what date. In other

MSs, the certificate is essentially replaced by the certificate of delivery or the return receipt filled by the postman and signed by the addressee and the postman (Czech Republic).

In Denmark, delivery with “service by letter” is proved by a signed confirmation of receipt or other special proof, while in “service by post” the postal operator draws an attestation of deliverance. In Estonia, when unregistered letters are used, service is confirmed by the addressee by returning a signed form to acknowledge receipt, which should be returned without delay (§314 CPC).

In Cyprus, when service is allowed with an order for substituted service by the court, the proof of delivery has not the same value as that of an affidavit and can be disregarded by the court.

In Ireland, when service by post is allowed (see *supra* in this paragraph) it is generally possible to use both registered or pre-paid post, the latter being without a receipt. The former is either delivered to the addressee or a substituted recipient or returned (no deposit is envisaged) and is to be used when initiating documents are served on an authorised solicitor, and preferably also in cases when a legal person is to be served at its registered office or when the court orders this as a specific method of service. Pre-paid post can be used once proceedings have started or if the court orders so. If either fails, another method is to be used.

In England, there is no requirement for a recorded delivery. Usually, service by post (the most frequently used method) is performed by simple first-class mail and the documents are placed in the addressee’s mailbox (his/her presence is irrelevant). Documents are generally “deemed served on the second business day after completion of the relevant step” (CPR 6.14).

As to the effectiveness of service through postal means, it is to be noted that this method is reported as properly working in Austria, Estonia, Finland (where, if the addressee seems to be trying to evade service, a process server may be instructed afterwards), Hungary, Italy, Lithuania, Malta (but preference is for service on person by a court officer), Poland (although issues are reported after privatisation of the postal sector), Portugal, Romania, Slovenia, Sweden, Scotland and England. On the contrary, ineffectiveness is reported in Belgium (where personal service by bailiff is preferred), Bulgaria (in practice it is reported that post is not used because it leads to uncertain results), Cyprus (needs to be authorised by the court as substituted service and there is no clear regulation), Denmark (not effective, it is easy to avoid service), France (especially when receipt of "*notification*" has not been signed by the addressee or by another recipient having a Power of Attorney, or if the document remains unclaimed) and Luxembourg (it is reported that post is cheap but bailiff is preferred as it is the safest method to ensure proper delivery to the addressee).

Among the problems with postal service commonly reported are delays, forms mistakenly filled in, return receipts lost, difficulties encountered by postmen in delivering to the correct

address and finally the situations in which the addressee is not found at the indicated address. More specifically for Croatia, it was reported that post officers are not always familiar with the complex regulation for postal service and do not always correctly fill in the form, as well as sometimes the address is not located and return receipt is not returned. In Estonia, where postal service is widely used, sometimes the addresses are not up to date and the documents are returned because the party is reported as not living at the place of delivery or this turns out from the fact that the party does not collect the documents from the mailbox and later claims that they have not been delivered. In Hungary, postal service is effective and clearly regulated, but there are often delays and sometimes proofs of receipt are not returned, not clearly legible or filled in incorrectly. As to Ireland, there are mixed opinions on effectiveness since it is a cheap method, but pre-paid mail, when used, may get lost and many mails are returned or not claimed (and sometimes it takes time until a mail is returned to the sender). In Italy, the method is effective and cheap, but sometimes forms are not properly filled in or are not signed, or some postal officers fail to locate even easily identifiable addresses, or there are delays, or the return receipts get sometimes lost. In Latvia, this method is not always effective because postal service is usually performed at the declared residence of the addressee, while many people usually live elsewhere, and postmen just leave the notification in the mailbox, without even trying to serve on a person. In Romania, postal service is considered as efficient and cheap, but there are reported issues relating to delays and to non-returned receipts (it is also reported that bailiffs often use postal service operators because they are unable to cover all requests in person). In Slovenia, where service by post may easily become constructive, it is reported that it is usual for notices, which are small in size, to get easily misplaced and that there are delays in returning proofs of service. In Sweden, reported issues concern the incorrect identification of the addressee or the failure of a party to return the slip acknowledging service (all these issues are independent from operation of the postal providers). Finally, also in Scotland, service by post is deemed as effective, although delays are experienced and sometimes documents are not delivered.

With reference to the CJEU's case law, we should note that a Portuguese Tribunal has referred a request for preliminary ruling, C-354/15 *Henderson*, to the CJEU asking:

> "Where a Portuguese court hearing a civil action against an individual residing in another Member State of the European Union has ordered that notice of service of those proceedings be served on that individual by registered letter with acknowledgment of receipt, and the corresponding acknowledgment of receipt has not been returned, may the Portuguese court consider, in the light of the above Regulation [EC 1393/2007] and the principles underlying it, that such service was effected, on the basis of the documents of the postal authority of the state in which the addressee of the letter resides which prove that the registered letter with acknowledgment of receipt was delivered to the addressee?"

Finally, on the topic, it should be noted that there are some EU Regulations that expressly specify postal delivery as a permissible (and cheap) method of service of documents. This is the case of Article 14 of the EEO Regulation, which establishes, for the purpose of certifying a judgment as EEO, certain permissible method of service, including "postal service without proof pursuant to paragraph 3 where the debtor has his address in the Member State of origin". Similarly, article 13 of the Small Claims Regulation, provides that "1. Documents shall be served by postal service attested by an acknowledgement of receipt including the date of receipt. 2. If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No 805/2004 [i.e. the EEO Regulation]".[94]

3.9. Service through electronic channels

Service through electronic channels (e-service) has been introduced in practice in a number of MSs in the last decade, either by creating specific platforms, or by allowing service to be performed via ordinary e-mail. In other MSs, instead, electronic service is provided for in the

[94] Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure provides a new Article 13 for the Small Claims Regulation: "Article 13 Service of documents and other written communications.
1. The documents referred to in Article 5(2) and (6) and judgments given in accordance with Article 7 shall be served:
(a) by postal service, or
(b) by electronic means:
(i) where such means are technically available and admissible in accordance with the procedural rules of the Member State in which the European Small Claims Procedure is conducted and, if the party to be served is domiciled or habitually resident in another Member State, in accordance with the procedural rules of that Member State; and
(ii) where the party to be served has expressly accepted in advance that documents may be served on him by electronic means or is, in accordance with the procedural rules of the Member State in which that party is domiciled or habitually resident, under a legal obligation to accept that specific method of service.
The service shall be attested by an acknowledgment of receipt including the date of receipt.
2. All written communications not referred to in paragraph 1 between the court or tribunal and the parties or other persons involved in the proceedings shall be carried out by electronic means attested by an acknowledgment of receipt, where such means are technically available and admissible in accordance with the procedural rules of the Member State in which the European Small Claims Procedure is conducted, provided that the party or person has accepted in advance such means of communication or is, in accordance with the procedural rules of the Member State in which that party or person is domiciled or habitually resident, under a legal obligation to accept such means of communication.
3. In addition to any other means available in accordance with the procedural rules of the Member States for expressing acceptance in advance, as required under paragraphs 1 and 2, of the use of electronic means, it shall be possible to express such acceptance by means of the standard claim Form A and the standard answer Form C.
4. If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Article 13 or 14 of Regulation (EC) No 1896/2006.
If communication in accordance with paragraph 2 is not possible, or, on account of the particular circumstances of the case, not appropriate, any other method of communication admissible under the law of the Member State in which the European Small Claims Procedure is conducted may be used."

legislation, but is still not available in practice due to the lack of necessary implementation of technical developments. Finally, a few MSs do not allow e-service and do not seem to have made known any specific plan for its concrete implementation in the short term (e.g. Luxembourg and Scotland).

Cyprus is among those MSs in which there is neither an ICT platform for e-service in use, nor is service by e-mail authorised as an ordinary method for service: in principle service is to be made through personal delivery by a bailiff. However, in case ordinary methods fail, the court has discretion to order substituted service through alternative means, which also include e-mail[95] (and possibly other methods, such as communication through web-based social media tools (e.g. Facebook). There are no specific safeguards, other than those potentially prescribed by the court when allowing such types of substituted service, but it seems that an e-signature is generally required. It is also possible for parties, when proceedings are pending, to agree that they will exchange documents (other than writ of summons) via e-mail or fax (Order 51.1B). Substituted service through electronic channels is also available in other common law jurisdictions, where the court has discretion to choose the method for the service of the document (typically Ireland under Order 10, r. 1, RSC and in England under CPR 6.15).[96]

3.9.1. *E-service through specific digital platforms*

Nearly half of MSs allow electronic service to be performed through special platforms designed for electronic communications mainly between legal and judicial professionals (e.g. lawyers, judges, clerks, bailiffs), but sometimes also for private (pre-registered) users. Sometimes these platforms are within the frame of a wider project of e-government and can be used beyond service of judicial documents or beyond the context of judicial proceedings (it seems to be the case in Czech Republic); in other MSs, platforms are dedicated to judicial proceedings, although usually not limited to service of documents. There are common trends in the functioning of such platforms: normally the platform requires user pre-registration with secured log-in credentials and safety and authenticity are ensured by using encryption protocols, e-signature and other certificates. In a number of MSs (e.g. Austria, with limitations Germany), certain actors (usually lawyers, public bodies and other characters as notary public, accountants) are required to have an account within those platforms and can always be served electronically. In certain countries, all legal persons and

[95] For instance, service was conducted through e-mail in *Bank of Cyprus v 1. PHILIP PHILIPPOU, et al.* No. 1803/2012 dated 30.4.2014, of the District Court of Larnaca (Court of first Instance). In this case a court order was obtained for substituted service via e-mail at the first defendant. It was held that based on the facts of the case, service via e-mail was a good and valid method of service.

[96] Including via Facebook, see for instance the decision in AKO Capital LLP & Another v TSF Derivatives & Others of 2011 by the High Court, reported online at: http://www.pannone.com/media-centre/articles/dispute-resolution-articles/service-via-the-social-network-service-of-claims#sthash.rNE4swIr.dpuf. Other reported decisions are Blaney v Persons Unknown (October 2009) where service was allowed via Twitter, or Re A Debtor (No 0274 of 2010) on 22 October 2014, service via Facebook. See also http://blogs.lexisnexis.co.uk/randi/court-likes-notification-via-social-media/.

businesses are required to have a digital account and can therefore be served (e.g. Czech Republic – only for legal entities; Denmark; Estonia; Italy – for all public bodies, businesses, and professionals; Lithuania – for certain categories). On the contrary, in other MSs, participation in the system, and thereby the acceptance of service through the platform, is voluntary and requires prior consent, either generic or specific, of the person concerned(e.g. France and Germany, see below paras. 3.9.1.5 and 3.9.1.6), although express consent prior to acceptance of the service method is rather a feature of service through ordinary e-mail (see *infra* para. 3.9.2).

Despite such common features, each MS concerned seems to have developed its own IT system without paying attention to the possibility of making it inter-operable with the systems of other MSs. We report the main features of each one below.

No legal provision seems to limit the possibility to use such channels when a party is a foreign individual or legal person, but in practice it is rare that such actors have pre-registered on the platform (an option that usually is not restricted).

There is a widespread assumption that these kinds of augmented e-service methods and electronic service in general are more effective, quicker and cheaper than ordinary service. A number of issues, however, can be highlighted in connection with this new way of serving documents which have a general relevance throughout all MSs:

- One of these issues concerns the access to justice of persons not using or not able to use computers, such as some of the elderly people or persons with certain disabilities, which is a serious concern in the context of the principle of access to justice, e.g. if all members of the population are to have a digital box or user account. So far, the categories of actors that usually are required to have a digital account for service are public bodies, courts, legal officers and legal professionals, with the possible addition of other professionals and legal persons. But where plans exist to extend this duty to other parts of the population (usually as part of a broader e-government strategy), suitable safeguards should be ensured vis-à-vis certain categories, such as exemptions from the requirement to have a digital account or the assistance to third parties.
- Another question is the legal consequence of the situation if the party fails to establish such a mandatory account. The consequence of such failure may be either that service can be performed through a constructive method (e.g. placing the documents in the court file) or that another physical method to be employed (with or without some form of procedural sanction for failing to set up such an account, e.g. imposition of costs).
- Another practical issue relates to the use of e-service on foreign individuals or legal persons, which can be partially eased by establishing the need, for any such person doing business or creating an establishment in the territory of a MS, to set up a digital account for service. This does not come without a risk and it is left for further

interpretation whether such a possibility remains after the *Alder* judgment, especially in case of failure to set up such a digital account would lead to the possibility to perform a constructive service: this may be interpreted as an impermissible form of notional service, similarly to the Polish rule that was at stake in *Alder*, which required that a foreign person appointed an authorised representative (see *above* para. 3.5.3).

- Finally, it has also been noted that the widespread use of e-service, if rendered mandatory and requiring an intermediary (e.g. a lawyer), might push justice farther away from ordinary people, especially in those categories of small disputes in which they may sue or might be sued without mandatory legal representation.

In any event, e-service is really an important element, capable of solving many of the practical issues that are usually met in the context of service of documents, such as cost (beside establishing and maintaining the digital platform), time (usually allowing for instantaneous delivery) and receipt (by letting the system send a receipt when the documents are either delivered or read by the recipient).

3.9.1.1. Austria

In Austria, e-service (see §§ 89a ff.) may be performed through the platform named "webERV", which was created to allow communication with the court, not only in the context of judicial proceedings, but also when access is needed to the databases of the commercial registry and of the land registry (which are maintained by the courts). The communication is not direct, but the user is required to log into an authorised "transmission provider".[97] The transmission provider collects the user's input and sends it through the Federal Computing Centre, which in turn transfers it to the courts or another agency. The platform uses the so-called "ERV-interface" and special software is required to send the data in the correct format. Sometimes documents are sent in PDF format attached to the communication, but in other occasions (e.g. to request an order for payment) a form is directly filled in by the user. It is also possible for ERV-users to directly communicate between themselves, as if a registered letter were used.

The use of the webERV is allowed in all kinds of proceedings and is mandatory for communications between courts and lawyers, notaries and certain other professionals (such as credit and financial institutions, social security and pension bodies – §89c GOG). Other persons may have an optional account, although this is not very common. Safeguards and security features include e-signature, protection against third party intrusion and encryption. Moreover, webERV does not operate via regular e-mail, but by using specific software.

[97] Requirements are in §3, ZustG.

The date of service is determined by the system with a certificate of delivery and lawyers have the duty to regularly check the digital box: absence or other impediments may not be an excuse.[98]

To register a webERV account, private users must:

a) either have a registered address in Austria at the date of their request to be granted access to WebERV; or

b) have been registered at least once during the last 30 years;

c) alternatively, they can be registered in a special registry.

3.9.1.2. Czech Republic

In Czech Republic, if service is not performed by handing out the documents to the addressee during a court hearing, it is preferably made through e-service via a public data network, or – as a third option – through the delivery of the documents to another physical or electronic address which is provided by the party.[99] According to official information,

> "[a] data box is an electronic storage site, intended for delivery of official documents and for communication with public authority bodies. Data boxes are established and managed by the Home Office. A data box is not obligatory for citizens and private individuals who carry out business activities. Establishment of a data box is obligatory for legal entities and public authority bodies (state administration). A document (data message), which is delivered to a data box, is delivered at the moment the authorised individual logs into the data box. The fiction of delivery applies similarly to letter mail: if you do not log-into your data box within a time limit of 10 days from the day the document was delivered to the data box, this document is considered delivered on the last day before expiry of this time limit. Delivery of the document has the same legal effects as personal service of document. A data box is not an e-mail box; you cannot use it to communicate directly with individual clerks, only with the whole office. And you also cannot use the data box to communicate with another private individual, private individual carrying out business activities or legal entity".[100]

The use of data-box is possible in all kinds of civil proceedings and the owner of the data-box has the right and the duty to use it (it is mandatory to have a data box for lawyers,

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[98] OGH Beschluss vom 22.1.2014, 2 Ob 239/13f.

[99] § 45/2 CCP: "(1) A service of document is effected by the court during the proceedings or during any other procedural legal act.
(2) If service has not been effected pursuant to Subsection 1, it shall be effected by the court through a public data network to a data box. If a service cannot be effected through the public data network to a data box, the court shall effect the service, upon the request of the addressee, to a different address or electronic address".

[100] See http://www.czech.cz/en/Business/How-it-works-here/Data-Boxes . The official website for data-box reports that 704.000 data-boxes have been established as of 25 Jan 2016. See www.datoveschranky.info .

enforcement officers, tax advisors, liquidators, public authorities, legal entities registered in commercial register and other entities as established by law). Service of documents to data boxes is regulated by §45 CCP.

Foreign citizens living in the Czech Republic can use data boxes. Foreign legal persons are bound to be listed in the Czech commercial register if they want to use this system. There is no special provision about foreign residents and data boxes.

Once a subject has established a data-box, either mandatorily or voluntarily, all state authorities are allowed to serve documents to such data-box. There are only a few exceptions, for instance when the court serves the document directly during the hearing. No other authentication or confirmation is needed. If the addressee does not access his/her data-box and does not claim the served documents , there is a fiction of successful service 10 days after original service to the data-box.

Czech Republic also allows service by e-mail upon request by the party and provided that this is not excluded under the law or by the nature of the matter (§ 46a(2) CCP). In this case, the court requests the addressee to confirm delivery to the court within 3 days following delivery with a data message signed with the recognised electronic signature of the addressee. In case such confirmation is not returned, service is not deemed to have taken place (§47 CCP).

3.9.1.3. Denmark

According to p. 8 of the document *Guidelines for use of e-mail and other digital documentation in Danish courts* (last update in October 2015), courts may today communicate digitally in the following ways:

- Official Digital Post (borger.dk, virk.dk or e-Boks)[101]
- Ordinary e-mail
- Certified option ("simplified digital service" using a digital mailbox for secure digital communication with the public)

Official Digital Post is one means by which the courts may effect electronic service under § 155(1)(2) AJA.

Secured digital mailboxes have been rendered mandatory for companies since 2013 and for all citizens (with few exemptions) since 1 November 2014. It is mandatory for all citizens over 15 years of age, who are domiciled or permanently resident in Denmark, to sign up for Official Digital Post. One can be exempted if one: 1) Does not have access to a computer or sufficient internet connection in one's home/residence 2) Has a physical or cognitive disability that hinders receipt of digital post 3) Has been registered as living abroad 4) Is

[101] Available at http://www.e-boks.com/

homeless 5) Has a language difficulty 6) Has practical problems in acquiring NemID (a common log-in solution for Danish Internet banks, government websites and some other private companies). Signing up for Digital Post is also mandatory for all legal persons with a CVR-registration number. It is possible for a legal person to be exempted from this obligation if it is not possible for the organisation to have an established internet connection with a downstream speed of at least 512 Kbit/s.

As to the first ("digital service"), which is performed by ordinary e-mail, service is deemed served if receipt of the notification is confirmed either by a message sent via digital communication using a digital signature, or by a personally signed copy of the message (§ 156b AJA) that the addressee has to send to the court. Service is considered done on the day the receiver claims to have received the message. If no date of receipt is specified or the date specified is posterior to that of receipt of the digitally transmitted confirmation (or date of postmark, if confirmed by paper), service is deemed served on the registered date of receipt or postmark. In case of "simplified digital service", service is performed on the day the message is opened (§ 156c AJA).

According to § 154a AJA, the use of digital communication is allowed when: 1) the recipient has agreed to receive communications in this way (consent may be given for a specific case or in general); 2) if a notice is to be served; 3) there is a subsequent telephone confirmation of the service; or 4) a reminder is sent to the person who is required to appear in court on the time and place of the hearing. Messages containing confidential information must be encrypted or secured in some other manner.

3.9.1.4. Estonia

In Estonia, the court may serve procedural documents via e-mail or by using a special information system (called E-toimik).[102] E-toimik is a web-based information system, which allows the parties and their representatives to electronically participate in civil, administrative, criminal and misdemeanour proceedings. It is possible to submit documents and to monitor the conduct of the proceedings via E-toimik. Access is only granted to the procedures and data that are related to the person.

E-toimik can be used for all types of proceedings and, for certain categories (lawyers, notaries, bailiffs, trustees in bankruptcy, state or local government), service is to be made solely through E-toimik, unless there are good reasons to use other methods. Other than that, the system is not mandatory in any proceedings. It should be noted that when service is performed through E-toimik, an application to set aside can be heard only when good reasons are provided (is a standard higher than normal – see CCP § 415 and *infra* para. 3.14). Service is confirmed when documents are opened to be read, as a receipt is automatically returned to the sender. Confirmation may also be sent voluntarily by the addressee (or any

[102] E-toimik. Accessible at www.e-toimik.ee

other person authorised to access) without opening the documents. Authenticity is ensured by using the E-toimik system and safety is ensured as access to the system is made through an Estonian ID-card or a special Mobile-ID. Foreigners may access the system with e-Residency of Estonia (https://e-estonia.com/e-residents/about/).

A court may serve procedural documents electronically through the designated information system by transmitting a notice on making the document available in the system: 1) to the e-mail address and phone number notified to the court; 2) to the e-mail address and phone number registered in the information system of a register maintained in Estonia concerning sole proprietors or legal persons; 3) to the e-mail address and phone number of the addressee and his or her legal representative entered in the population register; 4) to the e-mail address and phone number of the addressee and his or her legal representative in the database of another state register where the court can check information independently by making an electronic query; 5) upon the existence of Estonian personal identification code, to the e-mail address personal-identification-code@eesti.ee (CCP § 311[1] (1)). The court may also send a notice on making the document available to the phone number or the e-mail address found in the public computer network, on the presumed user account page of a virtual social network or on a page of another virtual communication environment that the addressee may be presumed to use according to the information made available in the public computer network or where, upon sending, such information may be presumed to reach the addressee. If possible, the court makes the notice available on the presumed user account page of a virtual social network or on a page of another virtual communication environment in such a manner that the notice cannot be seen by any other persons than the addressee (CCP § 311[1] (2)).

If a recipient cannot be expected to be able to use the information system used for the service of procedural documents, or if service through the information system is technically impossible, the court may also serve procedural documents on the recipient electronically in another manner, complying with the requirements for notification provided in CCP § 311[1](1) 1)–5)[103] and the requirement for search of information (CCP § 311[1] (4)).

[103] CCP § 311[1](1) 1)–5) " (1) A court may serve procedural documents electronically through the designated information system by transmitting a notice on making the document available in the system:
1) to the e-mail address and phone number notified to the court;
2) to the e-mail address and phone number registered in the information system of a register maintained in Estonia concerning sole proprietors or legal persons;
3) to the e-mail address and phone number of the addressee and his or her legal representative entered in the population register;
4) to the e-mail address and phone number of the addressee and his or her legal representative in the database of another state register where the court can check information independently by making an electronic query;
5) upon the existence of Estonian personal identification code, to the e-mail address personal-identification-code@eesti.ee."

If a procedural document has been served on the recipient in the same court proceeding, a procedural document or information about making it available may be sent using the same address or telecommunications numbers and the procedural document is deemed to be served on the recipient when three days have passed after sending it (CCP § 314[1] (1)). If the recipient of a procedural document has provided the address or telecommunications numbers of the recipient or of his/her representative to the court in the same court proceeding, a procedural document or notification about making it available may be sent using the same address or telecommunications numbers, and the procedural document is deemed to be served on the recipient when three days have passed after sending (CCP § 314[1](2)). A court may serve procedural documents pursuant to the procedure provided for in CCP § 314[1] (1; 2) by sending procedural documents: 1) using the address or telecommunications numbers of the participant in the proceeding which are known to the court in another court proceeding which is currently being conducted; 2) using the address or telecommunications numbers of the participant in the proceeding which are known to the court in the expedited procedure in a matter of payment order which preceded the action (CCP § 314[1] (3)).

When service is not performed through E-toimik, the addressee is required to confirm receipt of the documents in writing, by fax or electronic means, specifying date and signing (or e-signing) the receipt. Confirmation is to be sent without delay or a fine can be issued by court.

Authenticity of documents is ensured by placing the digital signature of the judge.

3.9.1.5. France

Since 2012,[104] in France, the use of electronic channels is available,[105] but only for *signification* by a bailiff, through a platform managed by the National Chamber of Bailiffs (SECURACT). The service is equivalent, but not all rules are applicable.[106]

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[104] Décret n° 2012-366 du 15 mars 2012 relatif à la signification des actes d'huissier de justice par voie électronique et aux notifications internationales.

[105] Article 653 "*La signification est faite sur support papier ou par voie électronique.*"

[106] Article 662-1 "*La signification par voie électronique est faite par la transmission de l'acte à son destinataire dans les conditions prévues par le titre XXI du présent livre. Les articles 654 à 662 ne sont pas applicables.*"
It is also possible for court clerk to send notices through electronic means. Art. 748-8 CPC: "*Par dérogation aux dispositions du présent titre, lorsqu'il est prévu qu'un avis est adressé par le greffe à une partie par tous moyens, il peut lui être envoyé au moyen d'un courrier électronique ou d'un message écrit, transmis, selon le cas, à l'adresse électronique ou au numéro de téléphone qu'elle a préalablement déclaré à cette fin à la juridiction.*
Cette déclaration préalable mentionne le consentement de cette partie à l'utilisation de la voie électronique ou du message écrit transmis au numéro de téléphone, pour les avis du greffe transmis dans l'instance en cours, à charge pour elle de signaler toute modification de son adresse électronique ou de son numéro de téléphone. Ce consentement peut être révoqué à tout moment".
Article 748-9: "*Par dérogation aux dispositions du présent titre et lorsque les personnes mentionnées à l'article 692-1 y ont préalablement consenti, les convocations émanant du greffe peuvent aussi leur être adressées par*

To use such platform, prior consent of the addressee to receive acts through the platform is required (consequently it is not mandatory in any proceedings).[107] For its use, thus, there are three ideal steps:

- consent of the addressee is registered on the platform (defining the scope and the period during which documents can be e-served; the consent may be revoked);
- the serving bailiff verifies whether the addressee has given his/her consent and its scope;
- e-signification can be performed.

From a technical point of view, when e-signification is performed, an act is processed with the software by the bailiff and then sent to a secured e-space under the responsibility of the National Chamber of Bailiffs. The communication between the bailiff and the secured e-space is accomplished from the secured e-domicile of the bailiff (RPSH – *Réseau privé sécurisé huissiers*), which can be accessed via a secured platform (called "e-huisser") or via internet by using an encrypted communication. When documents are served, the addressee is given notice that documents have been served via an e-mail or SMS sent by the bailiff and the addressee logs into his secured e-space. When the addressee opens the e-document, a notice is sent back to the bailiff.

If the addressee opens the documents on the same day they are sent, the e-service is deemed to be performed as personal service. If it is opened another day, it is deemed to be performed at the domicile (art. 662-1 CPC).

The date and hour of service are those in which the documents are sent to the secured e-space, but if the service is made as a personal service, the certificate of service also specifies the date and hour in which the addressee viewed the documents. Security is granted by an electronic signature of the bailiff and the use of secured e-space and a secured platform.[108] If there are technical difficulties that prevent a timely service, an additional time-limit of one

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courrier électronique dans des conditions assurant la confidentialité des informations transmises. Ce consentement peut être révoqué à tout moment. La date de la convocation adressée dans ces conditions est, à l'égard du destinataire, celle du premier jour ouvré suivant son envoi. Elle est réputée faite à personne si un avis électronique de réception est émis dans ce délai et faite à domicile dans le cas contraire".

[107] Article 748-2 CPC: "*Le destinataire des envois, remises et notifications mentionnés à l'article 748-1 doit consentir expressément à l'utilisation de la voie électronique, à moins que des dispositions spéciales n'imposent l'usage de ce mode de communication.*
Vaut consentement au sens de l'alinéa précédent l'adhésion par un auxiliaire de justice, assistant ou représentant une partie, à un réseau de communication électronique tel que défini par un arrêté pris en application de l'article 748-6."

[108] Art. 748-6 "*Les procédés techniques utilisés doivent garantir, dans des conditions fixées par arrêté du garde des sceaux, ministre de la justice, la fiabilité de l'identification des parties à la communication électronique, l'intégrité des documents adressés, la sécurité et la confidentialité des échanges, la conservation des transmissions opérées et permettre d'établir de manière certaine la date d'envoi et celle de la réception par le destinataire.*"

day can be granted (art. 748-7 CPC). As usual, there are no legal restrictions for foreigners to use the system, but in practice it is rare that they previously consent to the use of e-service.

At present, the main obstacle to the widespread use of this system is the need to have acquired the consent of the addressee before being able to perform e-service. There have been discussions to impose on certain categories of persons (such as companies) to provide consent and an e-mail address for e-service.

3.9.1.6. Germany

In Germany, there is available technology for purposes of electronic service and either normal electronic channels or the newly introduced DE-mail platform can be used. Current limits are set by the provisions §§ 174[109] and 195[110] ZPO. Accordingly, if a lawyer, notary, bailiff, tax advisor or other trustworthy professional or a public entity are to be served against confirmation of receipt, § 174(2) ZPO allows service by fax, and § 174(3) ZPO allows service by electronic means (electronic document with electronic signature), which includes ordinary channels or the use of the special platform called "DE-Mail". The same rules apply for service "from lawyer to lawyer", § 195 ZPO, who cannot refuse such digital service.

DE-mail is a service provided by authorised private providers upon technical specifications determined by the government. It ensures encryption and identification of both sender and receiver, in addition to confirmation of when documents are sent and received. From March 2016 on, most public administrations must be accessible for DE-Mail. In addition, but not to be confused with DE-mail, since the 1st of January 2016, the Federal Bar Association should

[109] §174 ZPO Service against return confirmation of receipt: "(1) A document may be served, against return confirmation of receipt, on an attorney, a notary, a court appointed enforcement officer, a tax consultant or any other person of whom it can be assumed, based on that person's profession, that he is highly reliable, a public authority, a corporation, or a corporation under public law.
(2) The document may also be served by telefax on the parties set out in subsection (1). In its heading, the transmission is to bear the note, "Service against return confirmation of receipt" and is to set out the sender, the name and address of the party on whom documents are to be served, as well as the name of the employee of the judiciary effecting the transmission of the document.
(3) A document may also be served on the parties set out in subsection (1) as an electronic document. The same shall apply to other parties involved in the proceedings, provided they have expressly consented to the documents being transmitted as electronic documents. The document is to be signed digitally for the transmission and is to be protected against its becoming known to unauthorised third parties. Such transmission may also be effected using De Mail services in the sense as defined by section 1 of the Law on De Mail Services in Electronic Communications (Gesetz zur Regelung von De Mail Diensten, De MailG).
(4) Service shall be deemed sufficiently proven by the return confirmation of receipt being returned to the court, such confirmation setting out the date and signature of the addressee. The return confirmation of receipt may be returned by letter, by telefax, or as an electronic document (section 130a). Should it be sent as an electronic document, it is to be signed by a qualified digital signature pursuant to the Electronic Signature Act (Signaturgesetz)".

[110] §195 ZPO Service of records or documents from one attorney on another attorney: "(1) If the parties to a dispute are represented by counsel, a document may also be served such that the attorney serving a document transmits it to the other attorney (service of documents from one attorney on another attorney). … Section 174 (2), first sentence, and subsection (3) first and third sentences shall apply mutatis mutandis to the service of documents on an attorney".

provide every lawyer with a secured e-mailbox for the exchange of documents; however, the realisation of this project was delayed. From 2022 on, all briefs (e.g. party's pleadings, defences, motions, etc.) in civil proceedings should be transmitted electronically, and only if this is not possible will traditional transmission be admitted.

Service by electronic means (electronic document with electronic signature, DE-Mail) is always possible if the recipient expressly agreed to receive documents in this form, § 174(3) sentence 2 ZPO, but the law is silent on whether it has to be a specific or general consent. According to § 169 ZPO "(4) A document may be served as a certified electronic copy. The copy is to be furnished with the qualified digital signature of the records clerk of the court registry. (5) A judicial electronic document executed in accordance with section 130b may be served as an original; it need not be certified".

As far as receipt of service is concerned, §182 ZPO establishes that "(1) By way of providing proof of service pursuant to section 171 and sections 177 to 181, a record is to be prepared using the corresponding form. Section 418 shall apply to this record of service. … (3) The record of service is to be returned to the court registry, without undue delay, as an original or as an electronic document". Hence, confirmation of receipt by the addressee is always necessary (and if electronic, must be e-signed) and the date of service is the date determined in the confirmation.

The use of technology as described above is not restricted for any kind of proceedings, nor is it mandatory in any of them. It is usually the initiator or the executor who decides whether to employ it, when possible. Safeguards are usually ensured by e-signature and protection against third parties notice. DE-mail, which is new and not yet very popular, is a special e-mail service and has its own encryption.

3.9.1.7. Italy

In Italy, e-service can be made by using certified e-mails (called "PEC"), which differs from regular e-mails. According to this system, when the sender sends a certified e-mail to another certified e-mail address, the PEC provider of the sender delivers a receipt of acceptance to the sender's inbox, digitally signs the PEC message (ensuring it cannot be altered in any way) and transmits it to the PEC provider of the recipient. The PEC provider of the recipient verifies the signature and then delivers the message into the recipients PEC inbox. At the same time, it sends back to the PEC provider of the sender a receipt of delivery, with time and date, which is then delivered by the PEC provider of the sender into the sender's inbox. Date of service is determined by the time and date of delivery of the PEC message to the recipient PEC inbox, regardless of whether and when the addressee actually reads the message (hence, there is duty of diligence requiring each person to routinely check his or her own PEC account).

Service by electronic means is only possible if the addressee has a certified e-mail address recorded in a public register. This can be voluntarily obtained from an authorised provider

and is mandatory for all legal persons, businesses, professionals and public entities (other than that, no prior consent to this method of service is required). There is no restriction based on the subject-matter of the dispute. Similarly to the situation with regard to postal service, executor in course of the electronic service may be a bailiff (ex art. 149-*bis* CPC) or a lawyer (art. 1 and 3*bis*, law 53/1994). Service by PEC is considered equal to normal service and there is no special rule. It is controversial of whether service can be deemed performed if it fails because the addressee does not have (or fails to maintain) a valid PEC when it would be mandatory; the answer is probably negative, and a different method must be attempted.

Safeguards are guaranteed by the presence of third-party providers certifying both the actual acceptance and the delivery of certified messages and their time and date. The message and these two receipts may be filed with the court to prove correct delivery and correct service (paying attention to produce them in the correct digital format). Moreover, documents to be served are signed by the sender with e-signature. PDF scanned version of original paper documents served by PEC must be also accompanied by a certification of conformity digitally signed by the bailiff or the lawyer. A digital fingerprint (an algorithm that univocally identifies the document being served) of the files is also required to connect the digital document being served with the certificate of service prepared by the bailiff or the lawyer (i.e. the certificate of service, which is a separate, digitally signed file, contains the digital fingerprints of the document served to guarantee that the certificate relates to those documents).

Service by PEC is growing to become the standard in civil and commercial matters when business or public entities are involved, along with recent reforms of digitalisation of all proceedings in civil and commercial matters. While PEC is greatly effective, quicker and much cheaper than usual service (only the account is to be maintained), related technical and legal rules are perhaps over-complex. Another obstacle is that, currently, not every citizen is required to have a PEC address. Foreigners may access all these services on equal footing.

3.9.1.8. Lithuania

In Lithuania, service of documents may be performed in all civil and commercial proceedings via the Public Electronic Services Subsystem of Lithuanian Courts' System ("LITEKO") (not via e-mail). Upon the receipt of a document, the court officer examines if the addressee is included in the list of persons obliged to receive documents by electronic means, if her LITEKO Public Electronic Services Subsystem is active, and also if the addressee has submitted a request to receive documents via his LITEKO Public Electronic Services Subsystem account. If the service via electronic means is mandatory for an addressee or if an addressee has expressed a request to be served via electronic means, the court officer transmits the documents to the addressee's LITEKO Public Electronic Services Subsystem account and informs the addressee via e-mail. Documents are considered as served the

following business day after the dispatch day (Art 175^1(10) CPC). Service through LITEKO also allows payment of a smaller stamp-duty for the lawsuit.

The Civil Procedure Code 175^1(9) states that documents to attorneys, assistants to the attorney, bailiffs, assistants to the bailiff, notaries, state and municipal enterprises, institutions and organizations, financial institutions and insurance companies are served via electronic means of communication. Electronic means of communication are also used to serve the persons that are obliged to receive documents via electronic means of communication by laws or by agreements between that particular person and the manager of the courts' information system. Other persons are served with documents via electronic means of communication if they express their will to be served in this particular way in accordance with Civil Procedure Code and if they provide the required contact information. The Order of the Minister of Justice on Submission of Documents to the Court and Service of Documents by Electronic Means of Communication of 13 December 2012 (hereinafter – the "Order") states that if an addressee is obliged to receive documents via electronic means, but his or her addressee's LITEKO Public Electronic Services Subsystem account is not active, the court uses registered mail to inform an addressee about his/her duty to activate such an account and sets a time-limit of at least 7 days to do so.

As far as security is involved, in order to sign in to LITEKO Public Electronic Services Subsystem account, a person has to confirm his or her identity either by using the means provided by interoperability system of public administration institutions' information systems, or by using the identifying sign in data provided by the court. Service may be limited to foreigners, as apparently persons must have a Lithuanian personal ID card or a Lithuanian bank account to be able to register with the system.

3.9.1.9. The Netherlands

In the Netherlands, electronic service is at present possible only for enforcement procedures of garnishment (and with the necessary consent of the third party debtor –arts. 45 and 474 CPC). Service is made through a special ICT platform (ordinary e-mails cannot be used) with pre-registered user account. Security is guaranteed by the use of e-signature and a specific platform. As of 2019, digital proceedings should become mandatory in the framework of the Project *Kwaliteit en Innovatie Rechtspraak* (KEI) (Project Quality and Innovation of the judiciary).

3.9.1.10. Poland

In Poland, e-service is the ordinary method of service in digital proceedings (art. 131-1 KPC). Documents submitted by this method are deemed to be served either when the acknowledgement of receipt is received or 14 days after sending them. According to a modification of Art. 131 KPC scheduled to enter into force on the 1st of April 2016, e-service will be extended beyond current boundaries (i.e. not limited to proceedings started *ab initio* with digital proceedings) and will be allowed in any type of proceedings when the party has

chosen to file an act with digital means. From the 8th of September 2016, e-service will be allowed in all cases in which the party has chosen digital filing of acts as a general method of filing.

Following modification of Art. 131 KPC, on the 20th of October 2015, a Ministerial Regulation on electronic service has also been issued by the Ministry of Justice, to enter into force on the 1st of April 2016. The Regulation provides the details of how e-service is meant to work. E-service takes place between actors that have an account on a digital platform for judicial proceedings. According to para. 3 of the Regulation, e-service is made by uploading the documents to the platform in a way that allows the other party to access it through his or her account. Certificate of delivery is returned as soon as the addressee views the documents or, at the latest, after 14 days have passed (para. 4). According to para. 5, when a party subscribes to a new account, information on the effects and consequences of e-service are provided.

3.9.1.11. Portugal

In Portugal, e-service can be performed through the platform CITIUS,[111] which is a general platform for digital proceedings. Service through CITIUS is mandatory in general civil matters in first instance when parties have legal representation for: 1) notification from courts to lawyers; or 2) notification between lawyers.[112] An exception is made when documents are

[111] Portaria n.º 280/2013, de 26/8 (last modified by Portaria n.º 44/2013 de 25/10) – Articles 24 to 26 – Article 25 Electronic Notifications: "1 – Notification by via electronic data transmission is performed through the CITIUS computer system, which automatically ensures its availability and consultation in the site address http://citius.tribunaisnet.mj.pt.
2 – When the pleading to be notified contains documents that only exist in the physical support, a copy must be sent to the legal representative's domicile of the other party by registered letter, or can also be notified personally by the justice official in the court building.
3 — The provisions of this chapter shall apply to notifications sent by or to the Public Prosecutor in the exercise of powers resulting in paragraphs a), d), e), g) and o) of paragraph 1 of Article 3. of the Statute of the Public Ministry (*Estatuto do Ministério Público*).

[112] *Portaria* n.º 280/2013 – Article 26 Electronic notifications between legal representative: "1 - The computer system of the courts activity ensures, by indication of the notifying legal representative, the notification by electronic transmission data automatically after the submission of any pleading or document through the computer system that support the activity of the courts.
2 – Notwithstanding the following paragraphs, the notifying attorney is exempted from sending any copy or duplicate of pleading or document delivered through the computer system that support the activity of the courts to the counterparty and to put in evidence document proving the date of notification to the counterparty.
3 - When the procedural document to notify contains documents delivered on physical support, pursuant to paragraph 5 of Article 6 or paragraph 4 of Article 10, shall be made available copy thereof to the counterparty, within five days, by one of the means provided for in paragraph 7 of Article 144 of the Civil Procedure Code, applicable mutatis mutandis.
4- The declaration made in the form by the legal representative of the date which he has proceeded or will proceed to send the documents referred to in the previous paragraph exempts the submission of proof of dispatch, notwithstanding the judge can order its presentation if the date declared is contested or there are given grounds for it.
5 - Where the legal representative declares in forms, that he will proceed to send the notification to the counterparty, this shall be notified no later than one business day.

not on paper or are thicker than 127 g/m^2 or lower than 50g/m^2, or bigger than the A4 format. The CITIUS platform is restricted to lawyers, judges and judicial officers. CITIUS is widely used and ensures safety and authenticity of all transmissions.

When the use of CITIUS is not mandatory, service can be made via e-mail and is deemed served 3 days after its preparation (when they are sent) or on the next working day. In case of service via e-mail, safety is ensured by using an e-signature and a certificate.

3.9.1.12. Spain

In Spain, e-service can be performed in all types of proceedings through a specific platform (LEXNET), but is never mandatory for now (service by ordinary e-mail is not allowed).[113] Previous consent of the party is required for each specific procedure, unless consent is already provided by legal professionals. In practice, electronic service is only used in the relations between court and procurators, through the LEXNET platform (Royal Decree 84/2007). The use of the system requires a card reader, the configuration of computers and the electronic signature. The documents are sent from the court to the professional college of procurators and the latter forwards the documents to the procurator. The ICT platform determines the date of service.

3.9.2. *E-service through ordinary e-mails*

[113] Article 162 LEC – Notices though electronic, computer and other similar means: "1. Where Court Offices and the parties or addressees of notices are equipped with electronic, computer or information and communications technology means or similar, which allow documents and written statements to be sent and received, so that the notices' authenticity and the contents are ensured and the integral sending and reception as well as the time thereof are irrefutably recorded, notices may be served by such means with the appropriate certificate proving reception.
Any parties and professionals involved in the proceedings shall inform Court Offices of the fact that they are equipped with the aforementioned means, along with their address.
Similarly, an electronically accessible Registry of such means and of the addresses corresponding to public bodies shall be set up at the Ministry of Justice.
In any event, where it is recorded that notice has been properly sent by such technical means, except for any served through the notice services organised by the court representatives professional associations, it shall be construed that notice has been served after three days have elapsed without the addressee accessing its contents and it shall then take full legal effect.
Any cases in which the addressee can prove the lack of access to the notices system shall be excluded from such period. Should the lack of access be due to technical reasons and should these persist at the moment they are notified, notice shall be served by delivering a copy of the decision. In any event, notice shall be construed to have been validly served the moment at which the possibility of accessing the system is proven.
Nonetheless, should access come about once such period has elapsed but before notice through delivery has been served, notice shall be construed to have been validly served on the date appearing on the certificate proving its reception.
2. Where the authenticity of any rulings, documents, opinions or reports filed or transmitted by the means referred to in the preceding paragraph may only be recognised or verified through their direct examination or other procedures, they may, nonetheless, be filed on electronic media by means of digitised images of the same in the way set forth in Articles 267 and 268 herein. Nonetheless, in proceedings dealing with family, incapacity or kinship matters, such documents shall be filed in original hard copy documents within the time limit or procedural stage set forth for such a purpose should any of the parties, the court or the Public Prosecution Service should so request."

As seen in the preceding paragraph, some of the MSs which have developed a specific digital platform for service also allow service to be performed via ordinary e-mail (e.g. Czech Republic, Denmark, Estonia, Germany and Portugal), although this is often only with a qualified electronic signature and if certain professionals are served or the addressee agreed to this form of service (e.g. Germany). Other MSs, on the contrary, allow e-service to be performed only through ordinary e-mails.

Service via ordinary e-mails, although expressly seen as a permissible method[114] by the Article 13 of the EEO Regulation, presents some evident issues, especially when is used for giving notice to the other party that proceedings are being instituted against him or her. As will be seen in this paragraph, those MSs that allow service through e-mails for instituting proceedings, usually require that a confirmation of receipt is signed and returned by the addressee to the executor. Generally, the use of ordinary e-mails as possible means of service and communication between the parties and with the court is permitted only when the proceedings have already started and consent is given to the use such method. It is permitted in particular if legal representation is mandatory and the service is made upon the party's lawyer. Overall, using ICT solutions such as ordinary e-mails that do not guarantee the transfer or the receipt of the message always entails the risk of failures. In addition to any potential technical defect of the transmission, it may happen that the recipient overlooks them (due to the application of some filtering software or just because normal e-mail accounts are being used for many other purposes and the addressee might underestimate the legal significance of judicial service of documents through his/her e-mail account – see, also, *infra* at para. 3.9.4).

Going into greater details, in Bulgaria there is no digital platform for service of documents for now, but service by ordinary e-mails (as well as by phone or fax) is allowed (art. 42(3) and (4) CPC). Such type of e-service may only be performed if the addressee has provided his/her e-mail address for the specific procedure and consented to digital service. Consent is required for each single proceeding. Notably, service by e-mail is not obligatory even if the addressee has requested it. Such method may be used for all kinds of proceedings in civil and commercial matters, without restrictions based on the subject-matter or on the nature of the person of the addressee. No special safeguards or guarantee are envisaged, there are no special rules to determine the date and no qualified e-signature is required: a simple e-mail message is sent, the court-officer attests that service has been performed and then the message is printed out and attached to the court file. Authenticity is solely granted by

[114] Cf. Article 13 EEO Regulation: "1. The document instituting the proceedings or an equivalent document may have been served on the debtor by one of the following methods: … (d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor". It is also to be noted that service by electronic means became a preferred method equal to the postal service in Article 13 of the recently adopted revised Small Claims Regulation (Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure).

subsequent verification by the court and the addressee is always entitled to require from the court that the original document be submitted to him/her (in case such a request is not made, documents are considered as duly served). As a result, service via e-mail is rarely or almost never used and is perceived to be ineffective. Currently, there are plans for the introduction of "electronic justice", but no concrete steps with regard to the service of document are foreseen in the short term.

In Finland, service of a document of the proceedings other than a writ of summons may also be carried out by sending the document as a normal letter to the post address or another address notified to the court by the interested party. This means that subpoenas, invitations by the court and notices may be served electronically on a party to civil proceedings, if the party in question has specified to the court an e-mail address or a fax number for service (so called "procedural address"). This type of service is never mandatory and requires the consent of the addressee (to be given in any form, either for specific proceedings or in general). Under the Act on Electronic Services and Communication in the Public Sector (2003), Section 18, [115] a document may also be served via verifiable electronic service if according to other laws the document should be served in a verifiable way, e.g. sign-for-delivery-post. According to Section 19[116] of the Act on Electronic Services and Communication in the Public Sector, documents other than decisions may be served on the person concerned as electronic messages in the manner requested by this person, e.g. as an appendix to an e-mail. The delivered documents are generally considered authentic reflecting the original as the court administers the service. Finally, according to Section 16 the document must bear the e-signature of an authority that meets the requirements for an acceptable electronic signature as provided in section 18 of the Act on Electronic Signatures. However, summons, application for a summons, court decisions and other documents of the proceedings may also be signed mechanically, i.e. the signature does not need to be

[115] Section 18 - Verifiable electronic service. A document may be served via verifiable electronic service if according to other laws the document should served in a verifiable way with the consent of the party, but not, however, as a telefax or by similar means. In such cases, the authority shall notify the party that the decision is available for retrieval by the party or a representative of the party on a server, in a database or other link designated by the authority.
The party or the representative of the party shall identify himself/herself at the time of retrieval of the decision. For the identification, a certificate complying with the requirements for a qualified certificate in the Act on Electronic Signatures or another secure and verifiable identification method shall be used.
The service of the decision shall be considered effected when the document has been retrieved from the link designated by the authority in accordance with subsection (1). If the decision is not retrieved within seven days of the notification, the provisions on service in other applicable statutes shall be complied with in the service of the decision.

[116] Section 19 - Other electronic service Documents other than decisions may be served on the person concerned as electronic messages in the manner requested by this person. However, if the protection of the privacy of the person concerned or other special protection or the ensuring of his/her rights so requires, the provisions on service of a document in section 18 of this Act or in other applicable statutes shall be complied with.
The document shall be deemed served on the third day of the sending of the message, unless proven otherwise.

authenticated.[117] Safeguards depend on the method applied in practice by the court. If the document is sent as an attachment to an e-mail, usually the addressee is required to return a certificate of service with signature and date (can be returned also via e-mail). In other cases, when a link to where the documents can be retrieved is provided in the e-mail, the date of service is the date when the documents are in fact retrieved. If documents are not retrieved within 7 days, another method must be attempted. Such method is not intended to be used for service on an address abroad.

In Hungary, according to the Section 96 (3) of the CPC, in case of urgency, a writ of summons may be served at short notice (by phone, verbally at the hearing, or by means of electronic mail or by a process server). This type of service of the writ of summons shall be indicated in the relevant documents. Moreover, under the Part Seven of the CPC, titled "electronic communications in civil actions" (Chapter XXVIII of the CPC) in civil actions in certain cases the party has the option of submitting pleadings and relevant exhibits also by way of electronic means, in which case all further communication with the court during the proceedings of first instance are to be conducted electronically, and the court is to make all deliveries of judicial documents to the party also by way of electronic means. When pleadings and relevant exhibits are submitted by the party by way of electronic means, this is considered as the party's consent for carrying out communication by electronic means. However, in case the party is represented by a legal representative, but the documents have to be delivered to the party rather than to his/her representative, or if they cannot be delivered to the representative, the court is required to deliver them to the party on paper (the court should then inform the party of the option to maintain communication with the court by way of electronic means). The party is not allowed to submit pleadings electronically in actions ensuing order for payment procedures (Section 315 of the CPC), and in cases transferred from the district court (pursuant to Subsection (1) of Section 27 of the CPC) to the general court (Section 129). The court delivers to the defendant any statement of claim that was submitted by electronic means in the form of a paper-based document prepared in compliance with the relevant legislation. The court then informs the defendant of the option to submit arguments and statements by way of electronic means. If the party has opted to maintain communication by way of electronic means, an exemption from the requirement of submission by way of electronic means applies if in the procedure for taking evidence the document is to be presented on paper (in particular, if, due to the large quantities of documentary evidence that was originally submitted on paper, digitization would impose unreasonable hardship, or if the authenticity of the paper-based document is disputed). The court may order submission on paper of its own motion or at the party's request. The detailed regulation of electronic communication is contained in Sections 349/F – 349/G of the CPC.

[117] Section 20 - Mechanical signature Applications for a summons, summons and trial documents delivered as electronic messages may be signed mechanically.

In addition, based on Act LII of 2009 on the electronic delivery of official documents and on electronic registered mail, the delivery of judicial documents is possible electronically. This method is used in certain procedures based on direct provisions of law. The most significant of these are the following: company registration and winding-up procedures based on Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings; the registration and winding-up procedures of civil societies (e.g. associations and foundations) based on Act CLXXXI of 2011 on the judicial registry of civil societies and the relevant procedural rules; and bankruptcy and liquidation proceedings based on Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings. This service does not come with additional fees.

According to art. 349/C CPC, in civil actions – and if so prescribed by law in respect of other civil proceedings – the following provisions shall apply as of 1 July 2016: economic operators shall submit statements of claim, as well as all other submissions and documentary evidence to the court by way of electronic means only, and the court shall deliver all official documents electronically as well; if an economic operator is involved in the proceedings as the defendant (obligor, judgment debtor), the court shall make all deliveries to this economic operator by way of electronic means, and the economic operator shall present all submissions and documentary evidence exclusively by way of electronic means; if the party is represented by a legal representative, the legal representative shall submit statements of claim, as well as all other submissions and documentary evidence to the court by way of electronic means only, through his official port of entry, and the court shall deliver all official documents to the legal counsel electronically as well; an exemption from the requirement of submission by way of electronic means may be granted in the case of originally paper-based documentary evidence if such document is to be presented and inspected during the performance of taking of evidence on paper; this shall apply, in particular, if, due to the large quantities of paper-based documentary evidence involved, digitization would impose unreasonable hardship, or if the authenticity of the paper-based document is disputed; the court may order submission on paper of its own motion or at the party's request. The exact ICT background of new electronic service is not yet specified. There are other communications sent by the court via e-mail (e.g. minutes of the hearing), typically when the documents sent have no relevant legal effect or consequence. A new law, the Act CLXXX entered into force on 4th December 2015, has clarified and expanded the rules governing electronic communication during the civil procedure. The act increased the digitalisation of civil procedures and ensures consistency of mandatory electronic communication in the area of the CPC and the Act CXL of 2004 on the general rules of administrative proceedings and services.[118]

In Ireland, as noted, service of documents instituting the proceedings by e-mail is permitted only where this is ordered by the Court. It is open to the Court to order electronic service of

[118] The Act also modified arts. 141, 155/A, 173, 321/A, 340/B, 341/J, 386/U, 394/B-P CPC.

documents when an application for substituted service is submitted. The service of non-originating documents by e-mail is permitted when this is ordered by the Court. This does occur in practice, particularly in the Commercial List, the Competition List and the Chancery List (i.e. Commercial, Competition and Chancery divisions of the Court). The RSC governing proceedings in the Commercial List (Order 63A RSC) and the Competition List (Order 63B RSC) expressly provide that the trial judge may make directions at the initial directions hearing providing for the exchange of documents or information between the parties, or for the transmission by the parties to the Registrar of documents or information electronically (on such terms and subject to such conditions and exceptions as a Judge may direct). This generally occurs without the need for a formal direction in cases entered in these Lists. Both Order 63A and Order 63B provide that documents required to be served or exchanged in proceedings in the Commercial List and Competition List respectively may, where the President of the High Court by practice direction permits, and on such terms and conditions and subject to such exceptions as the President of the High Court may by such practice direction specify, be served or exchanged, as the case may be, electronically. No practice directions identifying the circumstances in which electronic service is permissible have been issued by the President of the High Court to date. It is not necessary for an addressee to expressly consent to electronic service. However, given that electronic service will only be permitted where it is ordered or directed by the Court, it is open to a party to inform the Court that they do not wish to consent to the service of documents by e-mail. In general there are no special safeguards and technical specifications and security issues are not regulated by Irish law.

In Latvia, service via ordinary e-mail is allowed in all proceedings, but is never mandatory. According to art. 56(6^1) CPC, consent of the addressee is a necessary precondition and can be given only for specific proceedings: “Judicial documents shall be delivered by electronic mail, if a participant in the proceedings has notified the court that he or she agrees to use electronic mail for correspondence with the court. In that case judicial documents shall be sent to the electronic mail address indicated by the participant in the proceedings. If the court encounters technical obstacles for the delivery of judicial documents by electronic mail, such documents shall be delivered by other methods …”. Documents sent via e-mail needs to be e-signed. According to art. 56^1 CPC, n. 4, service is deemed to have been performed “on the third day from the day of sending, if the documents have been sent by electronic mail”.

In Romania, the Code of Civil Procedure allows service by e-mail, but not for all documents (summons and other proceedings docs). Service by e-mail is not mandatory and can be performed only if party gave her consent by indicating the relevant data (e.g. e-mail address) in her briefs. Electronic service is not extensively regulated, although there are rules on e-signature. Usually the documents are sent with a receipt form to be returned by fax, e-mail or other means.

In Slovakia, service by e-mail is allowed if the party or the party's lawyer consented to such method and provided an electronic address (possible only when proceedings have already started). Service is considered performed on the 5th day from when the e-mail has been sent, even if the addressee has not read it (§ 45/4 CPC). Such method cannot be used for judgments, summons and other documents that are required to be served directly in the addressee's hands (§ 45/5 CPC). There are no special safeguards other than the use of qualified e-signature or, otherwise, the sending of also an original documents in paper. It is reported that there is an agenda for the digitalisation of judiciary, but it is not clear what the next steps will be and whether they will involve service of documents.

In Sweden, the provisions of the SA are deemed to be "technology neutral", and hence electronic service may be used for service (e.g. to perform normal service). There are no specific rules, but as a general principle courts are always required to use the method that appear most appropriate given the circumstances (if sensitive data are to be sent, or if documents are voluminous or difficult to read, service by e-mail might be not appropriate). Even if consent is not expressly required, for service to be performed via e-mail the addressee must have provided a relevant e-mail address or other digital address (in principle also social media such as Facebook could be used, but there is no record of such practice or of relevant case law). Often, the parties and their lawyers ask for service to be made via e-mail during proceedings. Safeguards are usually ensured by using an encryption which can be read only with a specific code. When a foreign party (i.e. with a foreign address) is concerned, there is no limitation to service via e-mail, but §3 SA allows in general service abroad only if the foreign state accepts it. Courts (especially district courts) seem to use e-mail more and more often, although each district makes its own decision and there is no uniformity. The Supreme Court on 25 August 2015 published a note informing that in principle it will use only e-mail to communicate with lawyers and other authorities, using addresses taken from a registry and with a duty for any potential addressee to update their contacts. There seems to be plans for future development, but no concrete step ahead.

Finally, in England, service can be made by fax or e-mail (CPR 6.3) in all general civil matters according to PD 6A, para. 4.[119] Consent of the addressee for service other than with fax, is

[119] PD 6A – Service by fax or other electronic means

4.1 Subject to the provisions of rule 6.23(5) and (6), where a document is to be served by fax or other electronic means –

(1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –

(a) that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and

(b) the fax number, e-mail address or other electronic identification to which it must be sent; and

(2) the following are to be taken as sufficient written indications for the purposes of paragraph 4.1(1) –

(a) a fax number set out on the writing paper of the solicitor acting for the party to be served;

(b) an e-mail address set out on the writing paper of the solicitor acting for the party to be served but only where it is stated that the e-mail address may be used for service; or

required (CPR 6A para 4.1). When service is performed through electronic channels, there is no need for additional hard copies (4.3). As to the date, service is deemed performed on the date when the fax or e-mail is sent. For e-mail, however, CPR 6.26 specifies that "[i]f the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was sent". As noted above, in England a substituted service order by the court pursuant to CPR 6.15 may also include the use of other electronic methods (and possibly even the use of social media).

3.9.3. *Future possible use of digital technology for service*

We have already seen above some of the planned steps that some MSs are taking in order to expand the use of e-service. Below are some developments that are expected to take place in some of those MSs which currently do not allow for e-service.

In Belgium, in theory, there was a project/system for the digitalisation of the judiciary, under the name of Phenix, meant to provide for the digitalisation of both internal and external flows (including the service of documents, at least the *notification*). However, it has not been implemented despite its creation with the law of 10 August 2005. Today the project seems to have been replaced by another project dealing with the digitalisation of justice called Just-X.

Some modifications to the "code civil" and the code of the judiciary to allow room for electronic service have been introduced by the law of 5 august 2006 "*modifiant certaines dispositions du Code judiciaire en vue de la procédure par voie électronique*" (see arts. 32ff., 36, 42bis, 46 and 52 of the *Code Judiciaire*) which are scheduled to enter into force, after several postponements, on 1st January 2017. In substance, these provisions would allow the court clerk to perform notification to the electronic judiciary address of a lawyer or of a party. It rests to be seen whether the deadline will be further postponed.

In 2013, the Belgian Ministry of Justice released a news statement according to which:

> "*Le Conseil des Ministres approuve la Phase 1 du projet Just-X. Cela signifie qu'une banque de données centrale sera créée, dans laquelle toutes les applications devront centraliser leurs jugements et arrêts. Toutes les demandes de copies, de duplicatas et d'extraits pourront être introduites par le biais d'une seule application et être conservées de manière centralisée. Ce sera à la base d'une évolution, dans les phases*

(c) a fax number, e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court.

4.2 Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

4.3 Where a document is served by electronic means, the party serving the document need not in addition send or deliver a hard copy.

> *ultérieures, vers une version entièrement électronique d'un jugement. Avec Just-X, on dispose d'une source authentique permettant de lancer une dizaine de projets d'informatisation, car l'information est précisément disponible de manière centralisée pour les différents acteurs*".[120]

In Croatia, e-service is in principle allowed in commercial disputes, but necessary bylaws are yet to be implemented, while service by ordinary e-mail is not permitted. It will be likely made mandatory only for service to public bodies, notaries public and experts and safeguards will feature e-signature and the use of an ICT platform.

Also in Greece, e-service has been made into law but it is not operational yet. According to art. 122(5):

> "The petitions can be served, according to paragraph 1, with electronic means as well, provided that they carry an advanced electronic signature, pursuant to the meaning of Article 3(1) of the presidential decree 150/2001. The application served with electronic means is considered as served, provided that the receiver sent the sender of the application an electronic receipt, carrying an advanced electronic signature, according to the above meaning, whereas this receipt will be regarded as the report for the service".

Paragraph 5 was added by Article 10(2) leg. 3994/2011, GG. A 165/25.07.2011. Art. 72(10-11) of the law 3994/2011 states that:

> "The provision of paragraph 5, Article 122 of the Code of Civil Procedure will be put into force in application of the presidential decree to be issued upon the proposal of the Ministry of Justice, Transparency and Human Rights, in which the special prerequisites required would be specified. A common decision by the Ministers of Finance and of Justice, Transparency and Human Rights determines the specific way for the payment and collection of fees and stamps for the petitions filed and served electronically".

The decree has not been issued yet and no concrete steps have been taken toward such goal.

In Slovenia, e-service by ordinary e-mail is not allowed, but rules allow service to be made through secure electronic channel, Art. 141a ZPP and Rules on electronic operations in civil procedures. However, necessary and general measures of implementation have not been taken yet. As a result, e-service can only be used in limited instances, such as enforcement on the basis of a trustworthy document (similar to payment order proceedings combined

[120] Available at http://justice.belgium.be/fr/nouvelles/communiques_de_presse/news_pers_2012-11-30.

with enforcement), bankruptcy proceedings,[121] and application to the land register[122] (maintained by the court).

According to the rules, documents should be served to the party via secure electronic channel into secure electronic mailbox (which is considered to be the same value as an address of residence or registered seat) in two situations:

- if the party notifies the court that he or she wants this manner of service and indicates the address of his/her secure electronic mailbox;
- if the party sends a writing to the court via secure electronic channel, unless he or she indicates he/she wants other manner of service.

With regard to persons acting in their private capacity, their consent is always required (either explicit consent or tacit agreement with sending the document to the court in that way). It cannot be given for any future proceedings, but only for specific procedures. If service by secure electronic channel is not possible or consent is not given, the documents are to be delivered physically (Article 132/IV Civil procedure act).

Art. 132/VII prescribes that documents to state bodies, lawyers, notaries, enforcement officers (bailiffs), court-appointed expert witnesses, court appraisers, court interpreters, insolvency administrators or other persons and entities for whom/which higher reliability is expected because of the nature of their work, should always be served by secure electronic channels into their secure electronic mailbox. Those persons and entities are obliged to open a secure electronic mailbox and to notify the Supreme Court of the address thereof (as well as of any future changes of this). A list of these addresses is published on the webpage of the Supreme Court. As noted, however, until implementation is completed, the system and these rules are not yet in use.

E-service is deemed effected when the addressee electronically signs the electronic delivery form. Otherwise, the document is kept for 15 days after delivery in the secure electronic mailbox and then is erased and the addressee is notified that she can get it at the court. Service is deemed performed on that day. The system informs the court about the date of the service. There are no other safeguards regarding the date and validity of the service (art. 141a ZPP).

From a technical point of view, service by secure electronic channel is to be done via information system "*e-sodstvo*" (i.e. "e-judiciary"), which is managed by Centre for informatics at the Supreme Court. Subjects, who want to or have to communicate with a court electronically, need to obtain a secure electronic mailbox. Currently there are two providers of those in Slovenia.

[121] According to paragraph 3 of Article 123a of Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.
[122] Article 125.b of Land Register Act.

Apart from secure electronic mailbox, subjects also need a secure electronic certificate, which enables registration at the web portal "e-sodstvo". This certificate verifies electronic signatures and confirms the identities. Currently there are four providers of secure electronic certificates in Slovenia. Secure electronic certificate and electronic signature together prove the identity of the subjects (Article 15 Electronic Commerce and Electronic Signature Act). The document, signed with a secure electronic certificate, is sent by the court via information system "e-sodstvo" to the information system for secure electronic service, where the addressee's secure electronic mailbox is. This system confirms the system "e-sodstvo" reception of the document and sends it to the secure electronic mailbox of the addressee. At the same time the system sends an electronic mail to the his/her e-mail address, notifying the addressee about the electronic service, giving him/her 15 days to download it and warning him/her of the consequences in case of failure to do so. The addressee downloads the document from the secure electronic mailbox with a secure electronic certificate, which proves his/her identity. At the same time she electronically signs an electronic delivery form.

The regulation for ICT service in civil procedures was introduced in 2007 and was meant to come into effect by 2014, but so far it has not. It is not clear when the system will be fully functional, beyond the limited circle of proceedings mentioned above (special enforcement payment order based on trustworthy documents, insolvency proceedings and land register).

In Malta, e-service is not yet possible but it is noteworthy that on the 29th of July 2015, the Ministry of Justice, Culture and Local Government launched an online service named "MyActs"[123] meant to allow users to see the judicial acts filed in their name and follow their progress. However, users cannot view judicial acts filed against them "so as to prevent people avoiding the notification process". The system also allows legal representatives to access the status of notification of judicial documents, written transcripts of witness examinations, and other relevant information about past and future sittings.

3.9.4. *Interoperability, diversity and geographical limitations*

As noted, none of the methods for electronic service seems to be legally limited to the territory of a particular MS or to exclude directly foreigners. Secured digital mailboxes can normally be accessed over the Internet by their users wherever they are physically located, and usually foreigners are admitted to subscribe to these methods on an equal footing with nationals of the MS. There may be, however, practical limitations. For instance, in certain MSs, only legal professionals, courts and public bodies are required to obtain and maintain an account on such digital platforms. Other persons may voluntarily sign up, and as a result not many of them in fact do so. Moreover, it would seem that each system has been developed independently, for the purposes of domestic service of documents and irrespectively of the possibility to extend it outside the boundaries of the MS concerned, nor

[123] Available at http://justice.gov.mt/onlineservices

to make it interoperable with other systems. While a technical assessment would be beyond the scope and the expertise of this report, it appears to us that each system is in principle limited to the territory of a MS and is not designed with the primary objective to of enabling interoperability with other MSs' platforms.

An exception to this territorial limitation is represented by service through ordinary e-mail. Today, all business actors and a vast majority of individuals have at least one e-mail account for a variety of purposes. Certain MSs allow using such addresses for purposes of serving judicial or extrajudicial documents, although usually not documents instituting proceedings, but only subsequent documents. Furthermore, the possibility of service to e-mail addresses is usually subject to the consent of the party. Although there may be certain procedural cultures in which the addressees are more willing to acknowledge service voluntarily by replying to the e-mail or sending a confirmation of service, this does not appear to give a general solution to situations when difficulties arise.

The area of cross-border e-service seems to be one where an action at the European level may be desirable.

There have been some activities carried out by the European Union which appear to be worthwhile in the context of considering the future European frame of transmitting or serving documents electronically from one Member State to another.

One of those activities was the EJS project,[124] co-financed by the European Commission from November 2011 to November 2013, and bringing together 6 MSs through their national representative bodies of judicial officers (France as leader, Belgium, Luxembourg, the Netherlands, Hungary, and Estonia) in partnership with the French Ministry of justice. The main goal of the EJS project is mainly to create an electronic platform to secure cross-border exchange of documents in Europe between judicial officers. The project has then signed a partnership agreement with the E-codex project on 20th February 2013 to improve the interoperability between national systems of electronic communication, for the development of E-justice in Europe and to pursue the need to ensure better coordination and full interoperability of technical solutions proposed by the two European projects. The European chamber of judicial officers is in charge of the sustainability and development of the EJS project since October 31st, 2013.

Another digital project financed by the EU is the so called e-CODEX project. According to its website[125], the e-CODEX project's goal is to "[i]mprove the cross-border access of citizens and businesses to legal means in Europe as well as to improve the interoperability between

[124] See http://www.cehj.eu/en/activities/projects/e-justice/.

[125] Available at http://www.e-codex.eu/home.html . See also the SPOCS project on a one-stop-shop for business wishing to extend to another MS (http://www.eu-spocs.eu/ and http://www.eu-spocs-starterkit.eu/) and PEPPOL on online public procurement (http://www.peppol.eu/).

legal authorities within the EU", providing "an easier (digital) way to exchange legal information between EU-countries".[126]

Another relevant measure of the EU constitutes the so called e-IDAS Regulation[127]. In the process of envisaging future solutions for the electronic service of judicial and extrajudicial documents between the MS, one should certainly analyse to what extent the technical environment to be established by the Regulation may be of use for the purposes of ensuring the flow of data across the various domestic digital platform, or the cross-border access to such digital services.

3.10. Address or whereabouts unknown

As we have already seen above, the place of service in certain MSs is limited to certain addresses (e.g. registered or actual dwelling, workplace), while in others the addressee may be served anywhere found (see *supra* para. 3.7.2). Both assume the localisation of the addressee, i.e. that the initiator of the service has the information on the address or the place where the service can be performed. In this context two questions may arise: namely, who has the responsibility to search for the addressee's address in case it is not known to the initiator nor to the executor where service should be performed; secondly, what to do when, despite all reasonable efforts being made, it is not possible to find a place where service can be performed on the addressee or another substituted person, i.e. when the addressee's whereabouts are unknown.

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[126] "The aim of the project is:

1. Contributing to the implementation of the EU legal framework and the e-Justice action plan, in due respect of subsidiarity
2. Achieving interoperability between existing national judicial systems
3. Enabling all Member States to work together towards a more effective judicial system in Europe
4. Improving the effectiveness and efficiency of the processing of the increasing number of cross-border proceedings, especially in civil, criminal and commercial matters
5. Contributing to a safer environment for citizens inside the EU
6. Modernizing the judicial systems in Europe
7. Increasing collaboration and exchange between judicial systems of the Member States

In a nutshell:

1. Easy and secure access to legal information and procedures in other EU Member States for businesses and citizens
2. Greater cross-border effectiveness of legal processes through common standards and greater interoperability of information systems
3. Improved efficiency of cross-border judicial processes through standards and solutions that ease and facilitate the cross-border case-handling activities."

[127] The Regulation (EU) N° 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation). See also https://ec.europa.eu/digital-single-market/en/trust-services-and-eid.

It should be noted at the outset that currently the issue of unknown address falls outside the scope of the Service Regulation, since Article 1(2) states that "*This Regulation shall not apply where the address of the person to be served with the document is not known*".[128] However, such a topic may be even more relevant in the context of cross-border service, where additional obstacles (distance, language, expenses) may arise. The time may be ripe for uniform rules or standards in the context of cross-border service relating to the assistance in finding the addressee's address and on procedures and guarantees relating to the case in which whereabouts are unknown.

3.10.1. *Who searches or investigates for the address*

MSs are divided on who has the responsibility to find the addressee's address, if this is not known for the claimant or to the party in whose interest service is being made. For roughly a half of the MSs, this responsibility lies exclusively with that party (being the initiator or not – e.g. Austria, Cyprus, Estonia, Germany, Hungary, Ireland, Italy, Lithuania, Malta, Portugal, Poland, Scotland, England). In the others, while the party may still be required to specify an address for the addressee, the court seized, the court officer or the bailiff have a duty to take certain measures in order to trace the whereabouts of the addressee. This general distinction should not conceal that there are intermediate and mixed solutions that envisage the participation and cooperation of both the party and the court.

Information needed for the localisation of the addressee is usually taken from public registries and databases (e.g. registry of official address, company register, tax databases), but other actors, such as the police or private investigators may also be involved. Searching such databases always raises issues of data protection or rules regarding the privacy of persons.

Coming to the group of MSs in which the responsibility for searches lies in first line with the party, in Austria a person trying to find the whereabouts of an addressee can demand information from the central office of residents' registration. All other means, like private investigators or consulting databases, are possible. A normal information from the residents' registration office may cost between € 3,00 and 15,00 (as determined by the municipality), while detective costs vary (one respondent indicated that a detective may cost around € 400,00).

In Cyprus, when the address is unknown, it is up to the party initiating proceedings to find out the address or to provide any information that might lead to finding the address of the addressee, including by hiring a private detective (not being able to ascertain an address for service may lead to the withdrawal or expiration of proceedings due to inability to serve). There are no particular steps to be followed in such circumstances. It is not the responsibility of the executor to investigate or find the address in question. The executor shall perform the

[128] See as well CJEU, Alder, C-325/11, EU:C:2012:824, ¶24.

service once the address is known. For legal persons, such as companies, their registered address can be identified through the database of the Cyprus Registrar of Companies, as the existence of such an address is a prerequisite for the formation and registration of a company. The registered address of a company registered in Cyprus may be obtained free of charge.

In Estonia, the party should either specify the other party's address and other data or indicate the measures taken to find such information (§ 338(3) CPC). In case no address is provided, the court is entitled to request information to a number of subjects (e.g. the chief processor or an authorised processor of a state or local government database, a previous or current employer of the person, a credit institution, an insurance company or another person or institution) concerning the residence of a participant in a proceeding or a legal representative of a participant in a proceeding. Information are to be provided without delay and free of charge, on paper or electronically. If technical means allow, the court may also check the necessary information from the database independently (§ 306(4) CPC).[129] The police may also be asked. Private services are not allowed.

Also in Germany, it is the responsibility of the claimant to provide an address of the defendant, and of the party demanding witness testimony to provide an address of the witness. The party may use all means that appear to be adequate (e.g., ask relatives of the addressee, the police, former neighbours, the former landlord, the postal service, the residents' registration office or other public authorities, call a telephone number, or send an e-mail). There is no list of necessary steps except asking the residents' registration office, which is always required. The actual address must be provided. While it is normally not the task of courts or judicial bodies to locate the addressee, if the party has taken all reasonable steps and those public or private bodies which might have information on the addressee are only allowed and obliged to answer a request by a court, the court (upon application of the claimant) will make such a request. Depending on the kind of search, costs may range from € 10,00 and 50,00. A normal information from the residents' registration office costs between € 4,00 and 15,00 (average is € 10,00). The commercial register can be consulted physically for free of charge and in some of the German States online consultation is also possible.

In Hungary, the claimant has to provide the address of the domicile of the parties. If the claimant does not know it, he/she can turn to the relevant authority that can provide the

[129] § 306(4) CPC: "In order to serve a procedural document, the court has the right to demand that the chief processor or an authorised processor of a state or local government database, a previous or current employer of the person, a credit institution, an insurance company or another person or institution provide information concerning the residence of a participant in a proceeding or a legal representative of a participant in a proceeding who is a legal person or a witness and other contact information. The chief processor or authorised processor of a database or such other person or institution is required to provide the information without delay and free of charge on paper or electronically. Upon existence of technical means, the court must be provided with an opportunity to check the necessary information from the database of the person or institution independently."

registered domestic address of a person. There is one exception according to the Section 96 (4) of the CPC, in connection with actions concerning child support or placement of a child, claims relating to birth, and other actions for the establishment of fatherhood and origin. In these proceedings, if the whereabouts or the habitual residence of the defendant, the mother and/or the child is not known, the court may order a search for the defendant, the mother and/or the child. As far as costs are concerned, the address of a natural person can be retrieved from the Central Office for Administrative and Electronic Public Services (KEKKH) for HUF 3500 (ca. € 11,00), which can provide the registered address of any citizen, if the requestor substantiates that the data is necessary for the purposes of court proceedings. For legal persons, the Corporate Registry may be easily accessed online, free of charge. Private investigators may also be hired.

In Ireland, the initiator is tasked with investigating and finding the address. The concept of 'registered address' is not recognised in Ireland in relation to natural persons and it is necessary to find the actual dwelling of the defendant or another place where personal service may be performed. Companies' addresses can be retrieved from the Companies Registration Office (CRO) and if a company has not provided the CRO with its registered offices, service may be effected on it by delivering the document to the Registrar itself. In addition to investigating public databases and resources, private investigators (registered under the Private Security Authority) are often hired for this purpose and also for the purpose of performing personal service (usually with a cost ranging between € 100,00 and 150,00).

In Italy, in principle the bailiff may carry out researches to find the addressee, but in practice, also due to workload, it is the initiator that has the burden of locating the addressee and bringing evidence to the bailiff. No specific step is prescribed, but minimum diligence includes accessing all permissible public records. A company report from the Registry of Company may be obtained for around € 5,00, while certificate of residence may either be obtained free of charge (for lawyers) or cost around €16,00. A private detective may also be hired.

In Lithuania, any claimant has to state the defendant's address while filing a claim. The claim can still be filed even if the address is unknown. If it is not possible to find the place of residence of the addressee (Civil Code Art 2.16(1), Art 2.17) then the addressee will be deemed to live at the place of his last known residence (Art 2.17(2)). General searches in the registers of population and companies are free of charge; more detailed searches should not cost more than € 20,00.

In Malta, the responsibility to locate the address is with the party requesting service. In practice a first attempt is often done at electoral registers (for a nominal fee, approximately € 1,00 for each of the 13 districts of Malta), but these are not very reliable where the party to be served frequently changes his or her residence. Usually practitioners rely on their clients, but some of them engage private investigators or use other resources. If it is known

that the party to be served has a residence in Malta, but that residence is unknown, the party requesting service may also ask the court to allow for fictitious service (through publication in newspapers and/or posting of statements in public places).

In Poland, both the party and the court may perform searches. Searches in the registers are effected directly on the web, however for a complete search on personal data at the competent body of the Ministry of the Interiors, the payment of a tax of 31 zloty (little more than 7 Euros) is requested.

In Portugal, it is the party that has to specify the address and, if service fails, he/she should provide another address. However, the executor may also acquire information about the addressee's whereabouts or last known residence by consulting private or public entities or services. Subject to prior court order, the plaintiff may ask consultation of public databases like civil identification services, social security, tax and customs authority and the Institute of mobility and Land Transport is also possible. When the court considers it absolutely necessary, police authorities may also be involved. The search performed directly by the judicial officer in the public databases is free of charge. When it is not possible to perform the service in the address indicated by the claimant, it will be tried in different addresses that may be found through researches performed as provided in art. 236 CPC.

In Scotland, the party has the sole responsibility to find the addressee. Enquiries can be carried out by private investigators by the person trying to serve the documents.

In England, the party initiating proceedings has the obligation to find an address. It is for the party who wishes to serve the document to find the party on whom service must be effected. In case of companies, it is the registered address. For individuals, according to CPR 6.3 and 6.9 the default place of service is that person's usual or last known address, although the initiator must take reasonable steps to ascertain the current address.

As noted above, in the other half of the MSs, the responsibility of finding the addressee is mainly with the court, the court clerk or the bailiff/judicial officer performing service, who are obliged to intervene in order to find out the whereabouts of the addressee, if the party does not know the address or his/her efforts to locate the addressee fail. In Belgium, it is the bailiff who has to check the National Register. If there is no official address, it may be hard to locate the current address. The bailiff may look at the local population registers to find the last known domicile or even ask information from the local police. The party may also hire a private investigator. If all fails, service may be made with *remise au parquet* to the public prosecutor, who may perform additional searches.

In Bulgaria, the party has to ask permission from the court to investigate the address from the competent municipality authorities (GRAO). The court may request the party to present a statement of search of records of the addressee's registered address (art. 47(3) and (4) CPC) and may also check the validity of the address *ex officio* by entering the information system of register of population. There is no requirement to search for the actual dwelling if

this information is not at the disposal of the party – the registered address is of importance. The court certificate costs 5 BGN (ca. € 2,50), the check in the population registers costs 10 BGN (ca. € 5,00). No private person is allowed to assist the authorities in this procedure (de facto private investigation can be done, but at the risk of the interested party).

In Croatia, the parties have the duty to provide the court with the address of the service of document. Finding the address with private sector services costs around 40 Kuna, ca. € 5,00, or also a request to the competent police station, subject to proof of the legal interest, can be made and the police are obliged to provide the information. If a party is unable to find out by himself or herself the address of the person on which a communication of the court is to be served, the court shall make efforts to obtain the necessary information from the competent state body or in another way. Furthermore, the executor is authorized to seek police assistance to establish the identity of persons he/she finds at the place where the service is to be effected and for the performance of other service activities (art. 133 CPC). Moreover, "[i]f a party is unable to find out by himself or herself the address of the person on which a communication of the court is to be served, the court shall make efforts to obtain the necessary information from the competent state body or in another way" (art. 148 CPC).

In Czech Republic, the judge has the duty to carry out an investigation on the whereabouts of a party before being able to state that the address of the participant is unknown also for the competent authorities of the state (population register) and the participant cannot be reached at a certain address. The court must carry out the investigation properly, a formal letter sent to the competent authority and a short answer from this authority that the address is unknown or not sufficient. The court also must take into account that the record in the population register is not necessarily up-to-date. However, unless the law requires documents to be served personally in hand to the addressee (without the possibility for fictitious method of service), finding the registered address may be enough.

In Denmark, parties are required to give information about the other party (§ 348(2) AJA), and if such information is missing or is inaccurate to the extent that makes service based on the information provided by the claimant impossible (§ 350(2) AJA), the action may be dismissed. However, in case of service by a *stævningsmand* (i.e. process server/bailiff), the *stævningsmand* is obligated to try to obtain the relevant information (§15(2) of the Ministerial order on services – *Bekendtgørelse om forkyndelse*). According to § 23(1) information can be obtained by contacting the National Register of Persons, the Directory Enquiries and, as last resort, the police.

In a similar fashion, in Finland, a party should either indicate the defendant's address in the application for summons or specify the steps taken to discover such address (Chapter 5(2), CJP). If the claimant has no knowledge of the address, the court shall take necessary actions to locate the respondent, e.g. from data in the population register. In practice, that often means that the court will ask the process server to conduct investigations to find the address. A process server has extensive rights to get information from other authorities,

registers etc. (see the Act on Process Servers, Section 4a). The necessary steps are decided case-by-case. A private person may search information in the district registries and the Population Register Centre that has a Population Information System that contains basic information about Finnish citizens and foreigners residing permanently in Finland (cost is € 1,24).[130] It is possible to deny the right for the Centre to share one's information. There are also private actors that provide similar services.

In France, the bailiff is charged with the task of performing researches to find the place where the addressee actually lives in, through the Internet, public registries, and any other resource. Some registries are public, others (such as for bank accounts or cars) may only be accessed by the bailiff. The cost of a company report is around € 5,00.

In Greece, the party bears the burden to locate the actual address of recipient (to the extent that such an address exists), since any failure to serve at the proper address may result in the nullity of service, if the addressee suffered an irreparable procedural damage by the fact that the document actually did not reach him. The bailiff, in principle, is bound by the address specified by the party in the order of service. In case, however, the party has not specified an address, it is the bailiff's duty to locate the addressee. The bailiff is also entitled to ask information from the police and tax authorities for the purpose of locating the proper address of a person (there are no particular fees applicable).

In Latvia, if the defendant does not have a declared place of residence in Latvia, the plaintiff has a duty to indicate the address of the place of residence of the defendant to the court, if he or she knows it (§ 54^1 CPL). If neither the initiator nor the executor knows the address, it is for the judge or the assistant of the judge to look for it (§ 60 CPL) by using the Personal data database of The Office of Citizenship and Migration Affairs. As a rule, it is enough to find the registered/declared address. The court's use of such database is free of charge.

In Luxembourg, as in France, the bailiff can proceed to research to identify the residence of the recipient. Some registers are accessible to the public, such as the company and trade register and the cadastral register. On the other hand, other registers such as register RNPP (national register of the natural people) and the civil registers are accessible only by the bailiffs, as ministerial public officers. Some municipal authorities can require up to € 5.00 for any request for address.

In the Netherlands, the bailiff can access the personal records database to find the address when neither the initiator nor executor knows it. Usually the bailiff will rely on the addressee's registered address, unless there are reasons to suspect that such address is not the actual address.

[130] Available at see http://www.vaestorekisterikeskus.fi/default.aspx?id=44 .

In Romania, the party is required to carry out due diligence (art. 167(1) CPC) to find the addressee. However, if the steps taken by the party are unsuccessful, the courts have direct access right to the electronic databases or to other information systems held by authorities and public institutions (art. 154(8) CPC). As to costs, a certificate of good standing of a legal person from the National Trade Registry Office costs 45 lei (ca. € 10,00).

In Slovakia, if the claimant is unable to provide the address of the defendant, and it is not possible to deliver the statement of claim on him/her, the court should take all steps necessary to ascertain the actual residence.

In Slovenia, documents must be served to the legal entity in the registered address, but on natural persons in the actual dwelling (art. 148 ZZP). If the actual dwelling is different from the registered address, the court must find the actual dwelling. Nevertheless, for the claim to be complete, it is sufficient for the claimant to state the registered address of the defendant. If this address is not the address where the defendant actually lives, the court may report this issue to the administrative authority and then time-consuming proceedings for the determination of the correct address can be initiated by the administrative authority. However, the claimant is well advised to make steps to find the addressee on his own motion (i.e. by hiring a private investigator). The registered addresses of legal entities could be found in online business register on the website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES).[131] A person can also file an enquiry for finding registered address of natural person to the Ministry of the Interior, Central Population Register in accordance with Article 148 ZPP (legal interest must be demonstrated) and second paragraph of Article 22 of Personal Data Protection Act (ZVOP-1). Costs range from € 10,00 to € 100,00 (for private sector services). Searching in business register and obtainment of data from Central Population Register is free of charge.

Also in Spain, claimant has to prove the location of the domicile of the defendant as well as to inform about all details of the defendant. In absence of these details, Article 156 LEC applies:

> "1. In cases where the claimant states that he is unable to designate the defendant's address or place of residence for the purposes of entering an appearance, the Court Clerk shall use any suitable means to find it and may, as appropriate, get in contact with the Registries, organisations, professional associations, entities and companies referred to in paragraph 3, Article 155. Upon receiving such communications, the Registries and public bodies shall proceed pursuant to the provisions governing their activities.
> 2. Under no circumstances shall the designation of an address be deemed impossible for the purposes of serving notice if such address is recorded in public archives or registries to which access may be gained.

[131] Available at www.ajpes.si.

> 3. Should the investigations referred to in paragraph 1 lead to the address or place of residence being found, notice shall be served in the second manner set forth in paragraph 2, Article 152 and, as appropriate, the provisions set forth in Article 158 shall apply.
> 4. Should these investigations turn out to be fruitless, the Court Clerk shall issue an order stating that notice shall be served through public notices."[132]

In Sweden, parties have a responsibility to provide information. If there are details missing necessary for service the court can order a party to provide additional information (Chapter 33(1), CJP). The court is also responsible to conduct own investigations if necessary since it is the court's responsibility that service is effected in accordance with the rules (§7 SA). The court may request information from all other authorities, which are obliged to hand over any information available (including tax authorities, which in principle have information on everybody legally resident and working in Sweden).

As it can be easily seen, there are various solutions adopted by MSs. Nevertheless, it seems that as a common element, in every jurisdiction there are certain registries or databases in place which contain information on recorded addresses of persons (both of natural and of legal ones) and that usually these registries are accessed by the responsible person or body to trace back the whereabouts of the addressee. It is to be evaluated how access to these databases may be facilitated in a cross-border context in order to better exploit the potentials provided by the Regulation on service of documents. One may recommend as a minimum, that information on such public databases or registries, or on authorities which provide assistance for purposes of locating addressees should be published and kept up-to-date in the European e-Justice Portal. As a further improvement, it may be considered if the e-Justice Portal could be used as a single entry point for submitting on-line requests to the relevant authorities or registries of other MSs concerning the localization of the whereabouts of the addressees. Finally, it may be useful to evaluate if certain high level principles could be defined concerning the provision of assistance in the localisation of persons apparently residing in their territory, with which MSs should comply.

3.10.2. *Whereabouts of the addressee unknown*

A topic that is close to, but not identical with, the one dealt with in the preceding subchapter, is that of what is to be done when, despite all reasonable efforts, it is not possible to locate the addressee: in other words, when the addressee's whereabouts are unknown. All MSs have legal solutions to deal with this kind of situation that usually involves the use of a constructive method of service (e.g. by publication) that allows proceedings to continue. In some MSs, as an additional safeguard for the defendant the court also appoints a special representative (e.g. a guardian or curator *ad litem*) with the duty to represent the

[132] If these searches yield to no result, the court directs that the name of the defaulter is registered in the Central Civil Defaulters Registry (art. 157 LEC).

interests of the untraceable party (this is the case, e.g., in Austria, Bulgaria, Hungary, Lithuania, Poland, Slovenia).

A practical consequence of this situation is that the addressee in lack of any actual notice of the proceedings will not enter into appearance and will be considered by the court as being "in default". For the definition of "default" and the possibility for the court to issue a default judgment (see *infra* para. 3.13 and para. 3.14 for remedies available).

In Austria, if the initiator is not able to ascertain an address for the addressee and no substituted service to another person is possible, the court may order service by publication (§ 25 ZustG[133] and § 115 ZPO). Service is deemed as performed two weeks after publication. However, if the document to be served contains a summons or requires the addressee to take a procedural act, the court must also designate a "curator" who can act for the addressee (§ 116 ZPO). The designation of the curator and a brief description of the document to be served must be published in the edict (§ 117 ZPO). Service is deemed performed when a copy of the edict is registered in the edict record ("Ediktsdatei") and documents are delivered to the curator (§ 118 ZPO). The addressee can at any time appear in the proceedings. In this case, the designation of the curator will be terminated.

In Bulgaria, the code of procedure states that if the addressee has no registered permanent or current address, service can be effected by publication in the State Journal, upon motion by the claimant. The publication is to be performed at least one month before the hearing. The court shall authorize this way of service after the claimant certifies by a statement of search of records that the respondent does not have a residence registration and the claimant declares that he/she is not aware of any address of the defendant abroad. If, despite the publication, the defendant fails to appear in court, the court appoints an ad hoc representative at the claimant's expenses.

Also in Croatia, if the addressee's whereabouts are unknown and he/she does not have an agent within the territory, the court appoints a temporary representative (art. 84(2)(4) CPC) and publishes a notice[134] in the Official Gazette and also posts it on the court's bulletin board, and advertises it also in another appropriate way, if necessary (art. 86 CPC).

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[133] §25 ZustG: "§ 25. (1) Except in cases of criminal proceedings, or when no authorized recipient has been appointed and proceeding according to § 8 is not required, the document may be served to persons whose place of delivery is not known, or to a large number of persons not personally known to the authority, by placing an announcement on the official bulletin board that a document to be served has been deposited with the authority. If addressee does not come and pick up the document (§ 24), and the law does not provide differently, service of delivery is considered having been effected after a two weeks period has elapsed since the information was placing an announcement on the official bulletin board.
(2) The authority may supplement the public announcement in any other suitable manner. ".

[134] Art. 86(2) CPC: "The notice shall specify: the designation of the court which appointed the temporary representative, the legal basis, the name of the party for whom a representative is appointed, the matter of dispute, the name of the representative and his/her occupation and residence and information that the

In Cyprus, as seen above, when whereabouts are unknown, the most common course of action is to make an application to the court for permission to carry out substituted service in various ways, as determined by the court (e.g. by public advertisement, by placing a note on the Court's board etc.).[135]

In the Czech Republic, documents can be served on the addressee at his or her address in principle by way of constructive service, unless documents are required to be served personally in hand to the addressee. When the residence of the addressee is unknown and all attempts to find the address from the accessible databases and registers were unsuccessful, the presiding judge may appoint a guardian upon which service is to be validly performed (§ 29(3) CCP). Primarily, a guardian has to be appointed to the participant in the proceedings by the court if his/her residence is unknown or because it was not possible to send the documents to his/her known address abroad.

In Denmark, concerning persons whose whereabouts are unknown, service is performed by way of 'constructive' service (§ 159 AJA) (see *infra* para. 3.12).

In Estonia, where the addressee's address is not entered in the register or the person does not live at the registered address and the court has otherwise no knowledge of the actual address or place of stay of the person, and the documents cannot be delivered to a representative or another person authorised to receive the document or in any other manner provided by the code, the court may allow service to be performed by public announcement (§ 317(1), sub. 1, CPC).

In Finland, if no information is available regarding the whereabouts of the recipient or of a person empowered by him or her to receive service, the court may perform service by way of formal publication (Chapter 11, Section 9, CJP). Service by way of formal publication is seen to be a last resort remedy for performing service, used, in practice, only after extensive research by the process server.

In France (and a similar provision applies in Luxembourg, cf. Art. 157 CPC), Art. 659 CPC states that:

> "Where the person upon whom the process must be served does not have any known domicile, residence or place of employment, the bailiff will draw minutes in

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representative will represent the party in the proceedings up until the party or his/her agent appears before the court or up until the guardianship body informs the court that it has appointed a guardian".

[135] In a relevant case (Karim v Konidari 1 A.A.Δ. 36, 1994) a District Court of Cyprus, due to the address of the defendant being completely unknown, allowed for the service of the writ of summons to be made to the lawyer which the defendant had used in previous other actions against him. The Court mentioned that in such situations the main question is whether the proposed means of service will put the document to be served to the knowledge of the person being served. In the aforementioned case it was considered that the proposed method had a significant possibility of it being put to the knowledge of the defendant due to the fact that it had been proved that he had very frequent communication with the lawyer, upon whom the substitute service was to be effected.

which he will narrate in detail the steps he has taken to look for the addressee of the process.

On the same day, or no later than the first following working day, under penalty of nullity, the bailiff will transmit to the addressee, at the last known address, by a registered letter with the advice of delivery slip sought, a copy of the minutes to which is annexed a copy of the process which is the subject-matter of the service.

On the same day, the bailiff will inform the addressee, by an ordinary letter, of the formality carried out.

The provisions of this Article will apply to service of a process upon a corporate entity that has no premise known at the place indicated as its head office in the Commerce and Companies Register."

If it is not established that the addressee has in fact been notified, the judge may order *ex officio* any additional steps save where he orders provisional or protective measures necessary to safeguard the rights of the plaintiff (art. 662 CPC).

In Germany, the law makes no distinction whether there is no address or the address is unknown. If the initiator of service does not know the address after having used all reasonable care to find it (and having proved this to the satisfaction of the court) and substituted service to another person is not possible, the court may order service by publication (§§185 ff. ZPO). Before ordering service by publication, the court must make sure that the address is unknown and that the interested party has taken all reasonable steps. If the court is of the opinion that the interested party has taken all reasonable steps, it may ask information from other entities which would not otherwise be allowed or obliged to answer questions from individuals.

In Greece, judicial documents addressed to persons of unknown domicile are served to the attorney general of the respective court and a summary is published at two daily papers elected by the attorney.

In Hungary, if the party[136] cannot locate the addressee, service may be performed by way of public notification upon request by the other party, who has to substantiate the grounds for which service by publication is allowed (§§101-102 CPC). According to §102(1) CPC, the public notice is posted for 15 days on the bulletin board of the court, on the bulletin board of the mayor's office in the town of the last known residence of the party and is also published on the central website of the judiciary as well. In those cases, the court also appoints a "guardian *ad litem*" for the defendant to whom the statement of claim is also to be delivered

[136] As already seen, according to the § 96(4) CPC, in connection with actions concerning child support or placement, claims relating to birth, and other actions for the establishment of fatherhood and origin, if the whereabouts or the habitual residence of the defendant, the mother and/or the child is not known, the court may order a search for the defendant, the mother and/or the child.

(§ 74 CPC). Guardians *ad litem* – unless otherwise provided for by law – are subject to the provisions governing the legal status of persons authorized to argue the case, with the exception that guardians *ad litem* are not allowed to collect money or rights *in rem* without the court's consent, and may conclude settlements, or recognize or waive any disputed right only if this is required to protect the represented party from a threat of imminent harm.

In Ireland, if the claimant is unable to serve the addressee personally, but believes that the defendant is within the jurisdiction,[137] service may be effected on a connected person and an application to deem the service effected sufficient may then be made (Order 9, r. 2, RSC). In the alternative, an application for substituted service can be filed, and the court may make an order for substituted service (for example, service on a connected person or service by post on a number of addresses where it is believed the defendant may reside) or an order for service by advertisement or notice. When a person is believed to reside in another country and no address is available, the Court may order service on connected persons within the jurisdiction. An alternative option used in practice is service by advertisement in a national newspaper in the foreign country, as well as a regional newspaper if the defendant's whereabouts in a particular city or locality is known.

When an application to deem service sufficient (Order 9, r. 15, RSC) or an application for substituted service (Order 10 RSC) is made, the claimant will have to satisfy the court that due and reasonable diligence have been exercised in endeavouring to locate the defendant and effect personal service. The concern of the Court will be to ensure that the proceedings are actually brought to the attention of the defendant, and that he or she has not suffered any prejudice by reason of any default in service. If an order for substituted service is made, and the defendant was not put on notice of the proceedings, he or she may later challenge any order made in his or her absence on that ground.

In Italy, if by making all reasonable efforts, the initiator and the bailiff cannot find a valid address where to perform service, then a constructive service by depositing can be performed (art. 143 CPC): «If the addressee's residence, dwelling place or domicile are unknown and the addressee has not appointed a procurator pursuant to article 77, the judicial officer accomplishes the service by depositing a copy of the deed with the city hall of the municipality of the last residence or, if this latter is unknown, in the municipality of the place of birth of the addressee. If the place of the last residence and the place of birth are unknown, the judicial officer delivers a copy of the deed to the public prosecutor. … Service is considered as accomplished on the twentieth day following the day when the prescribed formalities have been accomplished.»

[137] As already seen, if the claimant is outside the jurisdiction, an application for leave to serve outside of the jurisdiction will also be required, unless the case is within the scope of the Brussels I Regulation, the Lugano Convention or Brussels II Bis, in which case the appropriate indorsements must be included on the originating summons.

In Latvia, art. 30(1) CPC allows a claimant to file a claim even when the defendant's place of residence is unknown. In such cases, documents can be served by appointing a curator or by public announcement. In the latter case, a notice is published in the official gazette (*Latvijas Vēstnesis*), summoning the addressee to the court. After publication of the summons in the official gazette is done, the addressee is deemed informed about the service.

In Lithuania, when whereabouts are unknown, a curator to represent the interest of the addressee is appointed (art. 129 CPC) when service involves a copy of a statement of claim or other court documents, which raise the necessity to defend the rights of a party. The court appoints a curator provided that the interested person gives evidence that the place of residence or work place of the addressee is unknown and/or the party has no body representing him/her. Court documents are deemed delivered to the party from the day of their delivery to the curator. If the appointment of a curator is not possible, the documents may be served by announcing them publicly on the special website (art. 130 CPC). Also, as the last resort, the court may institute search for the defendant through the police (art. 132 CPC).

In Malta, if the whereabouts are unknown (or traditional means of service fail), the courts have the discretion to order that service is effected by the following means:

> 1. by the posting of a copy of the written pleading or act at the place, in the town or district in which official acts are usually posted up, and by publishing a summary of such written pleading or act in the Government Gazette and in one or more daily newspapers (generally one in the English language and the other in the Maltese language, but not always the case) as the court may direct and, where possible, when the residence is known, by posting up a copy of the pleading on the door leading to such residence (service shall be deemed to have been made on the third working day after the date of last publication or after the date of such posting, whichever is the later);
>
> 2. such other measures as it may deem fit to bring the pleading or act to the notice of the person upon whom the same is to be served.

In the Netherlands, if both the domicile and actual residence of the addressee are unknown, a writ can be served on the public prosecutors and a digital advertisement must be placed in the law gazette (*Staatscourant*) (Art. 54 CPC). In addition, an excerpt of the writ of summons is published as soon as possible in a national or regional newspaper, specifying the name and office address of the bailiff or lawyer of whom a copy of the writ of summons can be obtained.

In Poland, in case of whereabouts unknown, service is performed in the hands of a curator appointed by the court upon request of anyone interested (arts. 143-44 KPC). Service is valid until the person whose whereabouts are unknown appears. After that, it is the addressee who decides to enter appearance or not (possibly leading to the default judgment in case of non appearance). In case appointing a curator is not required by arts. 143-44 KPC, service is

made by posting the documents to the court's wall and is deemed effected one month after posting.

In Portugal, if the addressee's whereabouts are unknown and it is not possible to ascertain his/her address pursuant to the searches made by the court (art. 236 CPC), service can be made through publication (see. *infra* para. 3.12).

In Romania, if the claimant demonstrates that, even by making all the possible endeavours, he or she was not able to find out the defendant's domicile or a different place where the defendant may be subpoenaed according to the law, the court may order service by publicity (Art. 167 CPC). In substance, the service by publicity is conducted by posting the documents on the court's door, on the webpage of the competent court and at the last known address of the targeted person. If necessary, the court may also order publication in the Official Journal of Romania or in a widely read newspaper. Service is deemed effected 15 days after the three methods specified above are used: on the court's door, on the court's website and at the last known defendant's domicile. If the court appreciates publicity of the summons in the Official Journal or in a widespread newspaper as being necessary, the procedure must be weighed against these forms of publicity, as well. The Civil Procedure Code introduces an additional guarantee in favour of the party. Art. 167 (3) CPC provides that, with the approval of the service of summons by publicity, the court shall also appoint a special curator from the lawyers registered in a list notified by the Bar to the court, who has to be served also and to represent the defendant's interests. The appointment of the curator shall be carried out according to the procedure regulated by Art. 58 CPC through a decision by the court. In the absence of a list notified by the Bar, the court will send a letter to the Bar requesting to indicate the lawyer assigned to represent as curator of the interests of the party served by publicity. The same court decision also determines the temporary remuneration of the curator, as well as the payment method. Notwithstanding the appointment of a curator, the defendant is continued to be served by publicity (Art. 167(2) CPC).

In Slovakia, according to § 106 CPC, if the court does not succeed in ascertaining the addressee's residence, it appoints a legal guardian on whom service is to be delivered. On person who or whose whereabouts are unknown to the court, service may also be made by posting the documents on the court's wall and is deemed effected from the fifteenth day of its posting (§47a CPC). Where the document cannot be served on the natural person who is not authorised to do business at the address of his permanent or temporary residence, and it is not possible to learn the place where the person checks his post, and it is not possible to represent the person by the guardian, the court may decide that documents served to these persons will be delivered only by filing in the court file. This decision is published on the notice board of the court until the end of the proceedings. Documents served by filing are deemed served after seven days from date of their creation (§48/4 CPC).

In Slovenia, the court must begin the process of finding the addressee's address in accordance with Article 8 of Residence Registration Act and inform claimant of possibility of

appointment of a curator *ad litem* in accordance with Article 82(2), sub. 4, ZPP[138] (as a rule: an attorney at law or a public notary). The claimant is required to advance any costs, or the action is dismissed. The service is then effected on the temporary representative who has "the same rights and duties as are vested in the statutory representative" (i.e. in a representative appointed for minors or incapacitated persons) and retain them until the defendant appears in court (art. 83, ZZP). In fact, litigation through such temporary representative often equals to an only fictitious possibility of defence: if the temporary representative is also not able to establish contact with the defendant, he or she will rarely be in a position to effectively pursue the defendant's case. When the court appoints a temporary representative because the whereabouts are unknown, it must also publish a notice on the official gazette.[139]

In Spain, in case whereabouts are unknown, a constructive service by publication is made (see *infra* para. 3.12), as well as a communication to the Central Civil Defaulters Registry according to Art. 157 LEC.[140] Also in Sweden, service by publication is available as a method pursuant to a decision by the court (§§47ff. SA – see *infra* para. 3.12).

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[138] Art. 82 ZPP (2) "The court shall appoint the representative ad litem under the proviso referred to in the first paragraph of this Article and particularly in the following cases: … 4. if the residence or registered office of the defendant is unknown and the defendant is without an attorney;
(4) The court shall appoint a representative ad litem from among notaries, practicing lawyers and other qualified persons.
(5) The expenses incurred by the appointment of a representative ad litem shall be paid in advance by the plaintiff. If the plaintiff fails to advance the costs for the temporary representative, the court shall reject the action. …"

[139] Art. 84 ZZP: "If a representative ad litem is appointed to the either party for reasons referred to in clauses 4 and 5 of the second paragraph of Article 82 of the present Act, the court shall issue an announcement thereon which it shall publish in the Official Gazette of the Republic of Slovenia and on the court notice board or, when necessary, in another appropriate way.
The announcement shall contain the following: the name of the court which has appointed the representative ad litem; the legal ground for appointment; the name of the defendant or the plaintiff to whom the representative is appointed; the matter in dispute; the name of the representative, his occupation and residence; and a notice to the effect that the representative will represent the defendant, or the plaintiff, in the proceedings as long as the defendant or the plaintiff, or their respective attorneys, appear in court or until the body competent for social affairs notifies the court on appointment of a guardian".

[140] Art. 157 LEC. Central Civil Defaulters Registry. "1. Where the investigations referred to in the preceding article may have turned out to be fruitless, the Court Clerk shall order the defaulter's name and other identification details to be reported to the Central Civil Defaulters Registry, which shall be located at the Ministry of Justice, indicating the date of the ruling on giving the defaulter notice through a public notice in order to proceed with the defaulter's registration.
2. Any Court Clerk who has to investigate the address of a defendant may get in contact with the Central Civil Defaulters Registry to verify whether the defendant appears in such Registry and if the details contained therein coincide with those in the possession of the Court Clerk. Should this be the case, the Court Clerk may decide to issue a public notice directly to the defendant by means of an order to move the proceedings forward.
3. At the request of the interested party or at its own initiative, any judicial body knowing the address of a person registered in Central Civil Defaulters Registry shall seek the cancellation of such registration by providing information on the address to which court notices may be sent. The Registry shall send information on the aforementioned address for the purposes of giving notice to any Court Offices where proceedings

In Scotland, in such cases service can be carried out by leaving the copy for the addressee at the court in Edinburgh, while posting a copy to the last known address, if the case is of competence of the Court of Session (edictal service). In the procedure before Sheriff Courts, service may be carried out by display on the walls of court. Courts may also order a party to publish an advertisement in newspapers in the area of the addressee's last known address.

In England, if no address is known and cannot be found with reasonable efforts, a party can apply to the court for a substituted service to be authorised, and this usually is a method that is capable of drawing the documents to the attention of the defendant (CPR 6.9(3) and 6.15).

Despite many differences, a common rule in almost all MSs is that, when it is not possible to ascertain an addressee's whereabouts, service may be made through constructive methods and proceedings may, thus, be allowed to continue. It seems that in the majority of MSs the method applied is the publication of the notice in various platforms: official gazette, court board (either in paper or electronic form), newspaper, the addressee's last known addresses (for confidentiality issues, see *supra* para. 3.6.7). Some MSs also provide for the appointment of a curator/temporary representative/guardian *ad litem* with the task of representing the interest of the absent addressee. As noted, if the curator fails to establish contact with the party, he/she may certainly have a hard time in effectively protecting the interests of the absent party, as he/she will have limited access to evidence and knowledge of the case. It should also not be forgotten that there are costs relating to the appointment of a curator, usually to be advanced by the claimant.

As already indicated, so far, the Regulation on service of documents does not contain any rules relating to the situation when the whereabouts of the addressee are unknown. Still it may contribute to a greater transparency of the proceedings and thereby reinforce the protection of the defence in cross-border cases, if some streamlining – to a reasonable extent – would take place at the European level in this regard. One may reflect for example, if the European e-Justice Portal as an easily accessible Europe-wide platform can be used for publishing information on constructive notices, thereby raising the chances that the information with regard to the service actually reaches the addressee. Furthermore, it may be worth to think on the feasibility of certain minimum requirements with regard to the national methods of constructive service or concerning the appointment of a temporary representative. Ideally, service should be made by publication trying to achieve – as far as possible – actual notice, without incurring too many costs. This could be accompanied by the

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against such defendant have been brought, and any notices served at such address shall be valid as from that moment.

4. Notwithstanding the above, any Court needing to know the current address of a proceedings' defendant whose whereabouts is unknown subsequent to the entry of appearance stage may contact the Central Civil Defaulters Registry so that the relevant entry may be recorded to provide it with the address to where court notices may be sent, should such information come to be known at such Registry."

minimal guarantee of appointing a temporary representative (preferably coming from a legal profession) with a double task: trying to locate the absent party and represent his/her interests in the best possible manner given the circumstances. Such appointment should terminate upon the absent party entering appearance in the proceedings.

3.11. Refusal to accept service and legal consequences

Each legal system contains rules on dealing with the situation if the addressee refuses to accept delivery of the served documents. In almost all MSs, in such cases, the documents are either left at the addressee's address (e.g. in a mailbox) or deposited to be collected.

Only a few MSs require the addressee to be expressly informed of the consequence of refusing service (i.e. that service is deemed as performed). Among those, in Croatia, the consequences of refusing to accept service are stated on the service notes and should also be explained to the addressee by the person performing the delivery. In Bulgaria, there is no legal requirement but it is reported to be often done in practice. In Czech Republic, § 50c CCP states that the executor informs the addressee of the consequences of refusing. In Hungary, in connection with the service of a statement of claim or a decision delivered in conclusion of proceedings, the court shall inform the parties concerning the presumption of service within eight working days with a notice enclosed with the official document (art. 99(4) CPC). Similar information is given in Slovakia (§50 CPC) and Slovenia.

3.11.1. *Justified refusal*

Generally, service may be refused in all MSs when there are serious mistakes, such as the intended recipient is neither the addressee nor any another related subject who is considered by the law as a valid substituted recipient or where service is effected upon a person in his/her capacity as representative of another person (e.g. legal representative) and he/she denies such capacity. However, refusal may be limited when there are only minor irregularities.[141]

Also, generally, service may be refused when the documents to be served are neither in the official language of the Member State where service is performed nor in a language which is not understood by the addressee – this is derived both by those national provisions that prescribe national language to be used for proceedings (to give a few examples in Estonia § 32 CPC and in Italy art. 122 CPC) or more specific provisions on service (e.g. in Bulgaria arts. 610 and 612; in Croatia, art. 103 CPC; in Cyprus, O. 58, r. 1, CPR; in France art. 688-6 CPC), as

[141] To give a single example, according to art. 313 of the Estonian CPC, in case of service on a substituted recipient "[t]he obligation to deliver the document shall be explained to the [substituted] person" but "[t]he document is deemed to be served regardless of whether or not such explanation is given".

well as by art. 8 of the Service Regulation.[142] If refusal is justified, service is not deemed as performed and a new service is to be carried out.

In Austria, service can be refused by a person who is not the addressee and not a person mentioned in § 16 ZustG, or when it is performed at an inadequate place, occasion or time (cf. § 100 ZPO). There is neither statutory nor other deadline for refusing service except for documents without a translation, for which there is a three days deadline, cf. § 12(2) ZustG.

In Cyprus, CPR specifies a timeframe during which service can be refused in respect of interim applications. According to Order 48 r.3, an office copy of an application made by summons shall be served on all persons affected thereby; and the service shall be effected at least four days before the day fixed for the hearing of the application. Therefore, person may refuse to accept the service of an application if service is attempted less than four days prior to the day fixed for hearing. Also, a person is allowed to refuse service of an out-dated writ of summons. According to order 4 r.1 "no writ of summons shall be in force for more than 12 months from the day of its issue including that day. But if any defendant named in it has not been served, the claimant may, before the 12 months expire, apply for an order to renew the writ; and the Court, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reasons, may order that the writ be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ". Therefore, if the writ has expired and it is not accompanied by an order

[142] Article 8 "Refusal to accept a document

1. The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:

   (a) a language which the addressee understands; or

   (b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

3. If the addressee has refused to accept the document pursuant to paragraph 1, the service of the document can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1. In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document determined pursuant to Article 9(2).

4. Paragraphs 1, 2 and 3 shall also apply to the means of transmission and service of judicial documents provided for in Section 2.

5. For the purposes of paragraph 1, the diplomatic or consular agents, where service is effected in accordance with Article 13, or the authority or person, where service is effected in accordance with Article 14, shall inform the addressee that he may refuse to accept the document and that any document refused must be sent to those agents or to that authority or person respectively".

renewing it, or it is not stated on the face of the writ that it has been renewed, then refusal of such service is legitimate.

In Estonia, a substituted recipient may refuse to accept the documents only if he or she substantiates that she is unable to deliver the document to the recipient (§ 313 (2) CPC) or provided he/she has a "good reason" (§325 CPC).

In Germany, service can be refused by a person who is not the addressee and not a person mentioned in § 178 ZPO, or when it is performed at an inadequate place, occasion (e.g., during a wedding) or time (i.e., at night, on a Sunday). There are no rules for how to refuse service, it can be done expressly or implicitly and is documented in the certificate of service. As there is no statutory or other deadline for refusing service, when service consists in a physical delivery, refusal must take place immediately.

In Italy, refusal is legally justified if service is performed before 7 or after 21 (art. 147 CPC). If another person different from the addressee refuses service, service is never deemed as performed and the bailiff must proceed according to art. 140 CPC.

In Lithuania, refusal of service is deemed a valid service, unless it was performed by a party to whom service had been entrusted by the court (arts. 117(2) and 124(2) CPC).

As already noted, in case the addressee is not found and service can be legally performed on a substituted recipient, in some MSs (e.g. Bulgaria, art. 46(1) CPC; Croatia; France, art. 655(3) CPC; and Italy) the latter is entitled to refuse to accept service, and object to the related duty to deliver the documents to the addressee, especially if his/her ties with the addressee are not particularly close (e.g. neighbours, co-worker). As to the contrary, a member of the family living at the same address is usually required by the law to accept delivery of the documents (see *supra* para. 3.7.3).

In some MSs (e.g. Austria, Romania, Croatia, Greece and Poland), when the law defines specific places for the performance of service, service may be carried out on the addressee out of these places only if the addressee is willing to accept service, which implicitly includes the right of refusal to accept service under those circumstances (see *supra* para. 3.7.2).

3.11.2. *Unjustified refusal*

Cases in which refusal is justified and service is not deemed as performed have to be considered as exceptions. Usually, refusal is not permitted by the law and the consequence of it is that service is deemed performed. Usually, the refusal to accept delivery is registered by the executor in the certificate of service or on the return receipt. There are differences, however, in the ways in which service is actually performed. In certain MSs, documents are left at the addressee's premises (e.g. in Austria, Croatia, Estonia, Finland, Germany, the Netherlands, Romania and Slovenia), in others, they are returned to the court (or to the initiator) (e.g. in Belgium, France, Italy, Luxembourg, Poland and Spain).

For instance, in Austria § 20 ZustG states that:

> "(1) Should the addressee or a person living in his household refuse the acceptance of the document to be served without justification, the document is to be left at the delivery point or, if this is not possible, be deposed according to § 17 without the written notice this provision otherwise requires.
>
> (2) Documents left at the delivery point are deemed served.
>
> (3) If the executor of service is hindered to access the delivery point, if the addressee negates his or her presence, or if he or she makes others negate his or her presence, this is deemed refusal of acceptance."

In Belgium (art. 33 CPC), France and Luxembourg (art. 155(4) CPC), the bailiff notes the refusal on the certificate of service, encloses together the original documents and the copies to be delivered and returns them to the court. The *signification* is then deemed to be made in person. In Belgium, in case of *notification*, the refusal is reported on the return receipt by the postal operator (art. 46 CPC).

In Bulgaria (art. 44 CPC), a refusal to accept a service shall be noted on the receipt and shall be attested by the signature of the court officer.

In Croatia, if the addressee (or another substituted recipient who is obliged to take delivery by the law, arts. 134 and 141 CPC) refuses service, the executor leaves the documents at the dwelling or in the premises where such person works or attach it to the door, and service is deemed effected. The executor registers on the certificate of service the day, time and reason for such refusal, as well as the place where the communication of the court was left (art. 144 CPC).

In Cyprus, the law does not provide for any legitimate grounds for which the addressee may refuse service of documents and even if a person refuses to receive the documents served, the bailiff can leave the documents in the presence of such person and service will normally be deemed as valid by the court.

In Czech Republic, if the addressee or recipient refuses to receive the delivered document, the document shall be deemed delivered on the day the receipt of document was refused; the addressee or document recipient must be notified thereof. The addressee or the recipient of the document are also obliged to identify themselves to the executor, and to provide any other assistance necessary for proper service. If the addressee or the recipient of the document refuse to identify and provide assistance, documents are deemed delivered on the day on which the identification or the provision of assistance was refused (CCP §50c(1)).

In Estonia, if the recipient refuses to accept a document without a reason (§ 313 (2) CPC), the document is deemed to be served on the person on the day of the refusal (§ 325 CPC).

The document is left at the dwelling or business premises or in the mailbox of the recipient, in the absence of these, the document is returned to the court.

In Finland, if service using the means of post is not successful in situations where proof of service is necessary, the court will decide to attempt service by a process server. If the recipient refuses to take the documents handed over by the process server, service is deemed performed when the documents are left with the recipient.

In Germany, according to § 179 ZPO:

> "Should acceptance of the document to be served be refused without justification, the document is to be left at the residence or at the business premises. Should the party on whom documents are to be served not have a residence, or should no business premises exist, the document to be served is to be returned. Upon such refusal of acceptance, the document shall be deemed served."

The refusal and the reaction must be documented in the certificate of service, § 182(2) no. 5 ZPO.

In Hungary, documents served by post are considered served on the day of attempted delivery if the addressee refused to accept it. If service failed because the addressee refused to accept the document (it was returned to the court marked "unclaimed"), the document shall be considered served on the fifth working day following the day of the second attempted postal delivery in the absence of proof to the contrary (art. 99 CPC).

In Ireland, if the defendant refuses to accept service or evades service, the claimant may apply to the Court for an Order deeming the service effected sufficient or an Order for substituted service. In case of service by post, however, if the addressee of an envelope which is being delivered by registered post refuses to accept it and /or to sign for it, service will not be deemed effected. This is reported as not being unusual. The postal operator will return the envelope marked "refused" and a different alternative, such as personal service, has to be attempted.

In Italy, if refusal is unjustified, service is deemed to be performed personally to the addressee.[143] If service is performed via post, in case of refusal to accept delivery of the envelope, service is equally deemed as performed (art. 8 of law no. 890/ 1982). In Latvia, refusal to accept service is not an impediment to the adjudication of a matter (§57 CPL).

In Malta, if a person who is addressed a pleading refuses to receive it personally from an executive officer of the courts, the court may upon an application by the interested party and after hearing the executive officer of the courts and considering all the circumstances of

[143] Article 138 – Service in the hands of the addressee: «… If the addressee refuses to receive a copy of the deed, the judicial officer acknowledges that in his report [see Article 148, second paragraph ICCP], and the service is considered as accomplished in the addressee's hands.»

the incident, declare by means of a decree that service shall have been effected on the day and time of the refusal and such decree shall be considered as a proof of service for all purposes of law (art. 187 CPC) upon an application by the interested party and after hearing the executive officer of the courts and considering all the circumstances of the incident.

In Portugal, the refusal should be recorded on the postal envelope, when the service is performed by postal service or in the certificate of service. The service is considered performed (see Articles 229, paragraph 3, and 231, paragraph 4 of the Civil procedure Code) and is then sent by registered letter to the addressee.

In Romania, if the recipient refuses to receive the summons, the agent puts the documents into his/her mailbox or, in case of absence, it displays a notice on the door of the recipient's home. The notice must, i.a., inform the addressee that after a day, but no later than 7 days after the posting of the notice (in case of urgency, no later than 3 days), the recipient is entitled to appear at the court (or municipality) to take the served documents and that even if the addressee does not show, service is deemed effected when the term expires (art. 163 CPC).

In Spain, where the addressee of the document is present at the address at the time of the delivery and he/she refuses to accept the copy of the decision or summons or refuses to sign the certificate of service, the civil servant or, as appropriate, the court representative in charge of serving the document shall inform him/her that a copy of the decision or of the summons remains at his disposal at the Court Office and that service is deemed as duly performed, all of which shall be stated in the certificate (Art. 161.2 LEC). Then service is legally performed and all the documents are remained in the Court Clerk.

In Sweden, if *normal service* is affected by regular post and the addressee does not return the receipt slip, this is not considered automatically as a “refusal”, but it rather serves as evidence that the addressee has received the documents. However, afterwards the court often turns in practice to other means of service e.g. *service by bailiff*. If the addressee refuses to take the documents in *service by bailiff,* the bailiff can leave the document at the premises (§32 SA). If the addressee appears to be avoiding service, the *“nailing”* of the documents or *service by publication* may take place. *Service by publication* requires a specific decision by the court based on information of the earlier attempts at service in the matter that lead the court to presume that the addressee is avoiding service.

In Scotland, service by a judicial officer in person cannot be refused, in the sense that the expression by a party of refusal does not prevent the officer from recording the service as a personal citation, notwithstanding the explanation that the addressee may have refused to take hold of the document, or threw it down.

Finally, in England, most of the time service of documents is not performed in person but is done by putting an envelope in the mailbox of the addressee, a way of service cannot therefore be refused. If a party declines to take possession of a document that is being

served personally, service would still be effective. It is for the party served to apply to the court for an order that service has not been properly performed.

3.12. Constructive (“fictitious” or “notional”) service

MSs show a number of methods of service that can be considered constructive or fictitious, in that they are deemed valid even if it is almost certain that the documents will not reach the addressee. Applying such fictitious methods of service is necessary from the principle of procedural economy, and from the perspective that access to justice should also be ensured (to the claimant) in cases where the actual whereabouts of the adversary party are not known. These objectives of the procedural institution also explain why they are usually allowed only as a "last resort", meaning that they can be applied only after reasonable efforts from the part of the initiator or executor of the service have been made by way of other usual methods of service of documents to give actual notice to the addressee. Turning to such notional types of service of documents, therefore, usually requires the proof of preceding attempt and failure of 'normal types' of service. But this precaution of the procedural laws is understandable if we accept that fictitious service of documents is an exception, where the right of defence is temporarily overruled by the principle of access to justice (for the sake of procedural economy), which may only be partially compensated by additional safeguards of special reviews at a later stage of the proceedings.[144]

It is important to stress that the terminology in this study makes a distinction between the types of services called "fictitious" or "notional" and the types of substituted service of documents where no certainty of actual notice to the addressee is ensured, but there is a high probability that the document reaches the addressee. In the context of a substitute service, the documents are handed over to a "substituting person", the close ties of that person with the addressee or legal obligations put on that person to actually forward the documents to the addressee create the presumption that service is performed in due order (under the preservation of the right of defence). In cases of substitute service where nobody is present at the place of delivery and the law allows that the service be accomplished by either leaving the documents in the addressee’s mailbox or leaving a notice and depositing the documents at a local post office or other public place for the addressee to collect them within a given period of time (see *supra* para. 3.8.2), the fact that the information of the attempted service has been left at an actual address of the recipient justifies the assumption that the document will reach the addressee . Although it is arguable that there is a lesser degree of probability of an actual notification of the addressee on the service of the

[144] See, e.g., the decision by the ECtHR in *Miholapa v. Latvia*, 3rd chamber, 31st May 2007 (application n. 61655/00), ¶29, where the court stated that, according to the guarantees set in article 6, § 1, of the ECHR: “Quant à la publication de la citation au Journal Officiel, la Cour estime qu'il s'agit là d'une mesure exceptionnelle qui ne peut entrer en jeu que subsidiairement, lorsque toutes les autres voies de citation ont échoué.”

document, than it is with the service to a substituting person, especially in cases where the documents are returned as uncollected to the sender after the period foreseen for the deposition is expired, still in the majority of cases the documents are delivered to the addressee by this type of service, therefore we cannot denote them as being purely "notional".

With this distinction in mind, this chapter will deal with the "constructive (fictitious)" methods of service used in the Member States.

A common method of constructive service, used when it is not possible to locate the addressee otherwise, is by **publishing a notice** in an official journal or in one or several newspapers.[145] This is a system known, for instance, in Denmark (AJA § 159): when service cannot be made at the permanent or temporary residence or at the workplace, or in case service is to be made abroad but foreign authorities neglect to assist in performing service. Publication of an extract is made in the official gazette, along with a notice that documents are available to be collected, and, since the law does not provide otherwise, service is deemed performed on the same day of publication.

In Estonia, service by public announcement, is authorised by a court ruling (§ 317 CPC) and made online at www.ametlikudteadaanded.ee and in any other publication as the court may direct. This method of service can be used if 1) service at registered address is not possible and no other address or representative is known and no other service is possible, 2) the address is abroad and no other method is possible, 3) the document cannot be served because the place of service is the dwelling of an “extra-territorial person” (i.e. an Estonian citizen living in a foreign state), or 4) in case of service on a legal person if service through its electronic and registered address, as well as to any address provided to the court, has been unsuccessful. The court may request to the party such service to submit a confirmation by a police authority, rural municipality or city government that the addressee’s whereabouts are unknown. If necessary, the court may also make independent enquiries to ascertain the addressee’s address. An excerpt of the documents is published in the official publication, as well as in other publications, as the court may direct, and service is deemed validly

[145] The ECtHR, in the case *Diaz Ochoa v. Spain*, 22 June 2006, application no. 423/03, ¶¶50-51, noted: “La Cour admet que ni la présomption de connaissance des actes de procédure par le biais de leur publication au Journal officiel, ni le principe de sécurité juridique, qui empêche de rouvrir un procès lorsque le délai de cinq ans à partir de la notification du jugement s’est écoulé, peuvent, en tant que tels, être mis en cause. A cet égard, les juridictions internes ont certes appliqué le droit interne pertinent. Néanmoins, la combinaison très particulière des faits dans cette affaire, dans la mesure où le requérant ne pouvait pas se douter de la procédure entamée à son encontre alors que son adresse figurait dans le dossier soumis pour jugement au juge du fond, eut pour effet de priver le requérant d’un accès effectif à un tribunal afin de contester la procédure diligentée à son encontre. Par ailleurs, les juridictions saisies dans le cadre de l’action en nullité et du recours d’amparo n’ont pas porté remède à une telle absence de participation dans la procédure principale en procédant à une interprétation excessivement restrictive du droit. Par conséquent, la Cour estime qu’il y a eu atteinte à la substance même du droit du requérant à un tribunal.
Partant, il y a eu violation de l’article 6 § 1 de la Convention.”

performed 15 days after the date of publishing (or when the longer term set by the court has expired). The court may refuse to authorise this method if it is likely that the decision will be subject to recognition and enforcement in another country, and it is likely that the decision will not be recognised or enforced due to the public service.

In Finland, formal publication is ordered by a judge when there is no knowledge of a valid address in the country or abroad, despite the claimant's efforts to find the addressee. The main elements of the process are published in the Official Journal and on the court board (and possibly a newspaper) and service is deemed performed (Chapter 11, section 10, CJP). This method can be used to institute proceedings, but cannot be used to request the addressee's personal appearance.

In Germany, service by publication (or electronic publication) (§§185ff. ZPO) is usually available when all other methods failed upon an order of the court, and is deemed performed one month after the day of publication (§ 188 ZPO).[146]

[146] There are very strict requirements in §§ 185-188 ZPO.

§ 185 Service by publication

The documents may be served by publishing a notice (service by publication) wherever:

1. The abode of a person is unknown and it is not possible to serve the documents upon a representative or authorised recipient,

2. It is not possible to serve documents upon legal persons obligated to register a domestic business address with the Commercial Register, neither at the address entered therein nor at the address entered in the Commercial Register of a person authorised to receive service of documents, or at any other domestic address obtained without any investigations,

3. It is not possible to serve documents abroad, or if such services does not hold out any prospect of success, or

4. The documents cannot be served because the place of service is the residence of a person who, pursuant to sections 18 to 20 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*, GVG), is not subject to jurisdiction.

§ 186 Approval of and implementation of service by publication

(1) The court hearing the case shall decide on whether or not to approve service by publication. The decision may be given without a hearing being held.

(2) Service by publication shall be implemented by hanging a notification on the court's bulletin board or by publishing the notification in an electronic information system that is publicly accessible in the court. Additionally, the notification may be published in an electronic information and communications system established by the court for such notifications. The notification must set out:

1. The person on whose behalf the documents are to be served,

2. The name of the party to whom documents are to be served and the address last known,

3. The date, the reference number of the document, and the designation of the subject matter of the proceedings, as well as

4. The office at which the document may be inspected.

The notification must include the note that a document is being served by publication, that this service may trigger periods, and that once they have lapsed, the party to whom the documents are being served in this way may have forfeited rights. In serving summonses in this way, the notification must indicate that the document sets out a summons to a hearing and that should the party fail to comply with it, such failure may act to the party's detriment in legal terms.

(3) It is to be recorded in the files when the notification was displayed on the bulletin board and when it was removed.

§ 187 Publication of the notification

In Italy, service by public proclamation is allowed when there are too many addressees or it is impossible to identify them all (art. 150 CPC). The order is made by the president of the court and the public prosecutor is also required to give his/her opinion, and specifies how the service is to be performed. A copy of the documents is always placed in the local municipality office (today at the post office) where the court sits and an extract is published on the Official Gazette. Service is deemed performed when the bailiff, having made all the required actions, files a certificate of service in the court file. If the address and whereabouts are unknown, it is possible to perform service by depositing the documents at the local municipal office in the place of last known residence or, in default, in the addressee's birthplace. If none of the two is known, service can be made by delivering the documents to the public prosecutor. In those cases, service is deemed performed 20 days after depositing the documents or delivering them to the prosecutor.

In Latvia (§149 CPL), if there is no known address or other methods failed, service may be made by publishing a summon for the party to go to court and collect the documents on the official gazette. Service is deemed performed and proceedings may continue one month after publication.[147] An additional notice is also to be sent to any address specified by the other party. In Lithuania, if the addressee is unknown and no curator is appointed (art. 129 CPC), service may be made by public proclamation (art. 130 CPC). Service is to be made at least 14 days before the date of the hearing, but is deemed performed on the day of publication.

In Malta (art. 187(3) CPC), in case the addressee's address is unknown or nobody can be found at the address, the court may order service by posting a copy of the documents on the official board of acts in the relevant town and publishing a summary in the Government Gazette and one or several newspapers (generally one in English and one in the Maltese language), plus, if the residence is known, also posting a copy at the addressee's door. The court may also adopt such other measures as it may deem fit to bring the pleading or act to the notice of the person upon whom the same is to be served. Service is deemed completed 3 days after the last act is performed (in case of urgency, the court may order that service is deemed effected on the same day of the publication).

In Portugal, public citation can be used when whereabouts are not known or if it is not possible to identify all the defendants (arts. 225(6) and 240-44 CPC). The notice is published in an information page for public access (on the CITIUS website, see also *supra* 3.9.1.11) and is deemed served on the same day as the publication. In Spain, notification by edicts is used

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The court hearing the case additionally may order the notification to be published once, or several times, in the Official Gazette (*Bundesanzeiger*) or in other publications.

§ 188 Time at which service by publication has been effected

The document shall be deemed served should one (1) month have lapsed since the notification has been displayed on the bulletin board. The court hearing the case may set a longer period.

[147] On such method see also the decision of the ECtHR in *Miholapa v. Latvia*, 3rd chamber, 31st May 2007 (application n. 61655/00).

when other methods have failed or the address is unknown (art. 164 LEC). Service is made by posting the decision or the summons to the court’s bulletin board (or with electronic means). At the request and expense of a party, the notice is also published in the Official Gazette or in a provincial daily newspaper.

In Sweden, service by publication (§§47ff SA) is performed by publishing an extract of the main content of the document in the official journal (now online) and, if necessary, also on local newspapers. It can be ordered when: 1) both the address and whereabouts of the addressee in Sweden are not known; 2) the address is known but the addressee cannot be reached and substituted service failed (also used if an address given is changed without contacting the authorities); 3) where an undetermined group of person has to be served; 4) a large amount of addressees is to be served and it is not reasonable to serve all of them (court may find reasonable to send notice to a few); 5) in case of a legal person without an authorised representative in Sweden, if other methods proved unsuccessful; or 6) in case a legal person lacks a registered address to perform ‘special service’ (see *supra* at para. 3.8.2). It is deemed as performed after 2 weeks have passed since the decision allowing for publication was made.

In Scotland, if all other methods have failed and inquiries performed by a private investigator did not succeed in locating the addressee, service may be made with advertisement, when the matter is of competence of the Court of Session, publication of an advertisement in a specified newspaper circulating in the area of the last known residence of that person or elsewhere (Chapter 16.5). When the case belongs to a Sheriff Court, instead, service can be made by posting the documents on the wall of court and/or advertising it in newspapers.

A similar system that is used for constructive service is **posting the documents on the court board** or placing them in the court file. For instance, in Croatia, after all other methods have proved unsuccessful, or when the addressee’s address or whereabouts are unknown, or if the addressee resides abroad, service may be made by posting the documents to the court board and service is deemed performed 8 days later.

In Czech Republic, if there are difficulties in performing service and the party fails to appoint an authorised representative when ordered by the court (CCP § 46), court may order that service be performed by depositing the document with the court (CCP § 46c).

In Hungary, service can be made by publication on the court board, on the board of the mayor's office at the place of the last known address and on the website of the judiciary, where the address is unknown or it is abroad and no legal assistance is provided by the foreign State (but a notice via mail is also to be dispatched), or when it appears that there are insurmountable obstacles for ordinary service (art. 101 CPC). Such method may be used with the authorisation of the court, upon request by the other party substantiating the relevant ground. Such service is deemed performed after the 15 days for publications have expired and a guardian *ad litem* is appointed for the absent party. If the facts presented by

the party turn out to be untrue, the party should have been aware, of this, and service of process by public notice and the ensuing procedure are declared null and void, and the party may be ordered to cover all applicable costs and to pay a financial penalty (art. 120 CPC). Also, if the document was served by publication although Art. 100/A CPC on the service on an authorised agent should have been applied, the service by public notice becomes null and void. Any defect may be cured if the addressee has approved the service, even implicitly, but the party may be ordered to cover the extra costs incurred.

The public notice is posted for fifteen days on the bulletin board of the court, and on the bulletin board of the mayor's office of the community where the last known residence of the testator is located in respect of unknown heirs, and is also published on the central website of the judiciary as well. The public notice contains: *a)* the date of posting, and in the case of publication on the central website of the judiciary, the date of publication; *b)* the name of the court having competence; *c)* the case number; *d)* name and last known home address (registered office) of the addressee in Hungary, or failing this his habitual residence; *e)* the reason which prompted the use of service of process by public notice; and *f)* an indication of the legal consequences of public notice, and that the documents dispatched for service may be collected in the court administration office (art. 102 CPC). If the party resides in a State where there is no legal assistance available as to service, the notice is also sent – preferably by registered post – to the party's address in that State. In case a statement of claim is to be served by way of public notice, the court also appoints a guardian ad litem (art. 74 CPC) to the addressee and serves the documents on the guardian ad litem as well. The costs of service by public notification are advanced by the party that has requested such method. Service is deemed effected on the fifteenth day following the time when posted on the court's bulletin board (or in the different term as provided in the court order).

As noted above, constructive service by depositing the documents with the municipality at the addressee's last known residence applies in Italy in case the addressee's whereabouts are unknown (art. 143 CPC). If there is no last known address, documents are handed to the public prosecutor. Furthermore, there are instances in which documents are deemed served by placing the documents in the court file (such as when a party does not specify an address for service during proceedings, or in case of default, see *supra* paras. 3.7.2 and 3.13).

In Romania, when it is not otherwise possible to serve the addressee and the party shows that all efforts were made to find an address for service, service may be made via posting the documents on the court's wall and, at the court's discretion, by also publishing a notice in the Official Gazette (as discussed *supra* para. 3.7.4).

In Slovakia, in case of service to a natural person who is not authorised to do business (i.e. not an entrepreneur), where service at his or her temporary or permanent address fails and no guardian is appointed, documents are delivered by filing them in the court's case file and service is deemed performed 7 days after the documents are create and filed (a notice is posted on the court board for the entire duration of proceedings). In case whereabouts are

totally unknown (and no temporary or permanent address is found), service is made by posting the documents to the court board and is deemed performed 15 days after posting (§47a CPC).[148]

As seen above, in Lithuania, when a party residing abroad has failed to assign his representative in the proceedings, the party must assign an authorised person residing in the Republic of Lithuania for service. When the party does not name any, all documents can be served by placing them in the case file (Art. 805 CCP).

In certain MSs, as seen *supra* at para. 3.7.2, during proceedings, documents are validly served by placing them in the case file or posting them at the court board if one of the party fails to provide or update an address for service (e.g. Austria, § 8(2) ZustG; Italy, Greece, Poland and Slovenia). Also *supra* at para. 3.10.2, we have seen that a number of MSs prescribe the appointment of a curator/temporary representative/guardian *ad litem* in cases addressee's whereabouts are unknown. In these cases, service is to be made on such curator and/or also by way of publication.

In other MSs, service may be exceptionally made by delivering the documents to the office of the **public prosecutor** (see also *infra* in this para. for this type of service in France and Italy). In Belgium, when actual or substituted service on the addressee is not possible, service may be made by serving the documents to the office of the public prosecutor who takes responsibility for finding and delivering the documents to the addressee (art. 38(2) *Code Judiciaire*). Service is deemed performed on the day documents are handed to the office of the public prosecutor, but is invalid if it is later proved that the other party knew the actual address. If the address is known albeit foreign, the bailiff may perform service by sending the documents to the foreign address with registered letter. Service is deemed made when the documents are handed over to the postal service (art. 40 *Code Judiciaire*).

In Italy, as just mentioned, if the addressee's whereabouts are unknown and there is no last known address, service may be performed by delivering the documents to the public prosecutor (art. 143 CPC).

Similarly, in the Netherlands, service can be made by handing the documents to the office of the public prosecutor if the addressee resides abroad or if her whereabouts are not known (art. 54 CPC). In this second case, a notice has to be also published on the digital legal gazette. Service is deemed performed when documents are handed to the public prosecutor.

[148] Under the new Code, if a natural person does not have an address registered in the population register, documents are delivered by displaying a notice on the official board and on the website of the court and service is deemed effected 15 days after publication of the notice, even if the addressee is not aware of it (§ 106/3 new CPC). In all other cases service is deemed effected when documents are returned as undelivered (§§111/3 and 112 CPC).

Rules on constructive service also apply when the **party has a foreign address** and no authorised representative for service within the territory of the State is involved (see subchapter 3.5.3). In Austria (§98 ZPO) and Germany, when an addressee has an address abroad, extra-EU, the court may oblige the defendant to appoint a representative to accept service of documents within the borders. If the party fails to obey the order, then service can be made by simply handing the documents to the post for forwarding at the address abroad, and is deemed valid when two weeks have passed.

In Bulgaria, when the party has no address or has an address abroad but service has been unsuccessful, the court may authorise service to be performed by publication in the Unofficial Section of the State Gazette at least one month before the hearing. The court requires the plaintiff to prove by presenting a statement of search of records that the addressee does not have a registered address and that the plaintiff shows that he/she is not aware of the address of the addressee abroad. If the addressee does not show up, the court appoints an *ad hoc* representative at the plaintiff’s expenses (art. 48 CPC).

If the addressee is residing abroad and neither the Regulation on service of documents nor another international instrument apply, in France service is performed by simply handing the documents to the office of the public prosecutor (“*remise au parquet*” – arts. 660-61 and 684 CPC), which will take care of transmitting the documents to the foreign address. Service is deemed performed on the day the documents are handed to the public prosecutor’s office.

Similarly, in Greece, where actual service is the general rule, on an exceptional basis service when the address is unknown or abroad and neither the Service Regulation or the Hague Service Convention or other international instruments apply, service may be performed by handing the documents to the office of public prosecutor and by publishing the notice also in two newspapers (the latter step is not required when the address is abroad) (arts. 134-35 CPC).

In Hungary, service on a foreign party that has no address in Hungary is obliged to appoint an authorized representative in the territory of Hungary for the purpose of accepting service. In such cases service is made by delivering the documents to this authorised agent and is deemed validly performed 15 days later regardless of actual notice to the addressee. If the party failed to appoint an authorized representative, service can be made by publication (as discussed above). If, however, the document is to be served to a defendant residing abroad and contains the summon to the first hearing or is the document instituting the proceedings, the service cannot be done by publication (Art. 100/A CPC).

In Bulgaria, constructive service on person residing abroad is possible as per Art. 48 and Art. 40 CPC and Art. 35 Code on PIL. In both cases the service is made by publication in the State Journal. The document is deemed served on the moment of publication. The method is similar to that provided when the addressee’s whereabouts are unknown (see *supra* para.

3.10.2). Service on an agent is provided for in Art. 34 Code on PIL. As noted above (and see also *supra* paras. 3.5.3 and 3.5.2) also in other MSs (such as Austria, Estonia, Germany, Greece, Hungary, Malta, Poland, Romania and Slovenia), parties with a foreign address are required (or may be ordered by the court) to appoint an authorised representative and allow constructive service if such representative is not appointed (subject to the *Alder*'s prohibition).

As seen *supra* paras. 3.6.2 and 3.7.3, in certain MSs the court authorising substituted service also determines the method that should be followed. In all those countries, typically belonging to the tradition of common law, the methods may be various, depending on what the applicant and the court find adequate (e.g. by public advertisement, by placing a notice in the court's main board, or in front of the addressee's house, in a newspaper, or delivering the documents to a person known to have contacts with the addressee). The application for substitute service must show that other methods would not be adequate and be supported by an affidavit that the suggested method may work. Usually, service is then deemed performed when the relevant actions prescribed in the order are performed. Similarly, in Ireland, constructive service may be allowed by court order upon the claimant's request only when it is not reasonably practicable to perform ordinary service and due diligence has been paid (Order 10 RSC). This may be the case, for instance, when defendant is trying to avoid service, if address is unknown or when other methods already failed.

Also in Italy, it is possible to apply to the court to serve the documents with an alternative method (art. 151 CPC), as well as in Malta (e.g. service at location socially frequented by addressee). In England, the renown CPR 6.15 provides that:

> "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
>
> (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service."[149]

Finally, in France (art. 659 CPC), if the addressee is unknown, the bailiff draws minutes describing in details all steps taken and the due diligence paid in searching for the addressee's whereabouts. On the same day, or the next day, the bailiff sends the minutes and the certificate of service by registered letter at the addressee's last-known address (or

[149] Accordingly, "(3) An application for an order under this rule – (a) must be supported by evidence; and (b) may be made without notice.
(4) An order under this rule must specify – (a) the method or place of service; (b) the date on which the claim form is deemed served; and (c) the period for – (i) filing an acknowledgment of service; (ii) filing an admission; or (iii) filing a defence".

service is considered void) and also sends a notice via ordinary mail. Service is deemed performed on the day the minutes are drawn and the registered letter is sent.

Only a few MSs (such as Estonia, Hungary, Portugal, Spain, Slovakia[150] and Sweden) are reported to employ ICT technology when performing constructive service, i.e. displaying a notice of service on the court's website or other sites. The use of technology in constructive service should be increased, as a notice on a website has a greater chance of being eventually brought to the addressee's attention than a notice displayed on the court's walls or put in the case file.

3.13. Default of the addressee and default judgments

Usually, when service was properly performed but the addressee does not enter an appearance in the proceedings (e.g. does not file a statement of defence nor appear at the first hearing), he or she may be considered to be "in default".[151]

In a majority of MSs, in case one of the parties does not enter an appearance, the court checks *ex officio* the validity of the service of the documents.[152] The main goal is to ensure that the addressee's default corresponds to an informed choice not to participate in the proceedings, and that it is not just a consequence of the lack of actual notice. That is the reason why in several MSs remedies against default or default judgments require that the interested party proves that either the service was in fact defective or that, in any case, he/she did not gain actual knowledge of the proceedings due to circumstances without any fault of his/her part.

As to the consequence of default, it is to be noted that in a number of MSs the non-defaulting party may request the court to issue a default judgment against the defaulting party. In certain MSs, the court simply accepts all claims made as if the defendant admitted all facts as being true (e.g. Belgium, Estonia, Hungary, Ireland, Poland, Portugal, Scotland and England), while in others, the default judgment is granted only insofar as the claim is supported by the evidence presented and does not appear otherwise ill-founded (e.g. Austria, Croatia, Denmark, France, Germany, Luxembourg and Romania). In a majority of MSs , a default judgment can be rendered only in cases that are amenable to settlement (such as in Czech Republic, Finland, Greece, Latvia, Slovakia, Slovenia and Sweden), while proceedings are required to continue in their ordinary way in cases where the subject-matter of the dispute corresponds to some public interest (e.g. in family law matters).

[150] Under the new Code, § 106/3.
[151] In this section we will not deal with the less common issue of default of the claimant as, usually, this does not relate to question of service of documents.
[152] See, also, art. 28 of the (recast) Brussels I Regulation.

In some other MSs (e.g. Italy and Spain, see *infra*), on the contrary, default does not represent a major deviation from the ordinary course of proceedings and the judge will still require the claimant to present his/her own case and all required evidence: witnesses may be heard, inspection may be carried out and experts may be appointed. This does not mean that, from a practical point of view, the claimant will be better placed and his/her chance of succeeding against an absent defendant will be higher.

When a default judgment is not rendered immediately and proceedings continue, there may be simplified rules for any subsequent service of documents on the absent party, and for instance, the law may allow that service shall take place in a constructive manner. Such simplification may be justified by the assumption that the absent party has seemingly refused to take part in the proceedings, and therefore it may seem unfair to burden the appearing party with the duty to serve each and every document on the absent defendant (e.g. in Spain and Italy). Irrespectively of this, it is also possible that certain important acts or documents (e.g. an order to appear in person, or the final judgment) still need to be served on the absent party, preferably in person (e.g. France, Italy, Spain).

Again, if proceedings continue despite the absence of one of the parties, usually the absent party is entitled to enter proceedings at any stage, before the final judgment is rendered. In those cases, generally he/she will not be allowed to perform actions that are time-barred in relation to the current phase of the proceedings, unless he/she shows that service has been defective or that he/she did not acquire actual notice of the existence of the proceedings without any fault of his/her part, or that his/her absence was otherwise justified (e.g. because of *force majeure* or another serious impediment). On similar grounds, the absent party is usually allowed to request a remedy against defective service or the resulting judgment (see *infra* para. 3.14).

Default of the defendant is a sensitive matter seriously affecting the right of the defence and European instruments often contain provisions aimed at ensuring that (a) a party is defaulting by his or her own choice and not due to a defect in the service on him/her of documents instituting proceedings, and (b) that some remedy be available if a default judgment is rendered against a defaulting party.

In this context, Article 19 of the Service Regulation is to be highlighted, as an attempt to balance the opposing needs of, on the one hand, protecting a party being absent from the proceeding against involuntary default and, on the other hand, avoiding that the claimant's founded demands are upset by a lack of procedural cooperation on the part of the defendant. As to the possibility to issue a default judgment, Article 19 states that:

> "1. Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given until it is established that:

> (a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or
>
> (b) the document was actually delivered to the defendant or to his/her residence by another method provided for by this Regulation;
>
> and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Article 19(2) gives the possibility to MSs to declare that their courts may render a default judgment also in the event that no certificate of delivery is returned, provided that certain requirements were met.[153]

Article 19(4) also prescribes that an absent party must have the possibility to pursue a special remedy against a default judgment issued as a consequence of his/her failure to appear, including when the time-limit for ordinary appeal has expired. Such special remedy must be available if:

> "(a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and
>
> (b) the defendant has disclosed a *prima facie* defence to the action on the merits".

Such special remedy is available only if filed within a reasonable time after the defendant has gained knowledge of the judgment and within a maximum time-limit, no less than one year from the judgment, as declared by MSs. Notably, in its judgment of 7 July 2016 in *Lebek*, the CJEU stated that Art 19(4) of the Service Regulation "exclud[es] the application of provisions of national law concerning the system of applying for relief where the period for filing such applications, as specified in the communication of a Member State to which that provision refers, has expired",[154] implying that Art. 19 is not a minimum standard but a binding rule which does not leave any flexibility to MS to apply complementarily their national rules allowing additional opportunities for relief in terms of challenging a default judgment.

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[153] Article 19(2). "Each Member State may make it known, in accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- the document was transmitted by one of the methods provided for in this Regulation;
- a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;
- no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed".

[154] *Lebek*, C-70/15, ECLI:EU:C:2016:524, ¶58.

This important Article of the Regulation on service of documents, which constitutes a uniform standard against the domestic rules on service of documents, reproduces, in fact, Articles 15 and 16 of the Hague Service Convention.[155] These provisions do not aim at empowering a judge to issue a default judgment, a power that is regulated by national law, but at ensuring that some guarantees are respected before and after a default judgment is rendered. First of all, for proceedings to continue and/or a default judgment to be entered, there must have been a valid service, effected in due time so to give to the defendant sufficient time to defend. Secondly, when a default judgment is rendered, the defendant must be given some kind of relief (as determined by national law) after the expiration of the time limit to appeal, provided that the defendant shows that, without fault, he/she did not gain notice of the proceedings and that he/she has a *prima facie* defence on the merits.[156]

A similar safeguard is also found in Article 28 of Brussels I Regulation (as well as in Article 18 of the Brussels II bis Regulation), according to which, and subject to other special rules contained in the Service Regulation or the Hague Service Convention,

> "1. When a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.
>
> 2. The court shall keep the proceedings as long as it has not been shown that the defendant was able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps have been taken to this end.

With reference to such provision (under the different numbering of Regulation 44/2001, art. 26), the CJEU specified that "*a court having jurisdiction pursuant to that regulation may reasonably continue proceedings, in the case where it has not been established that the defendant has been enabled to receive the document instituting the proceedings, only if all necessary steps have been taken to ensure that the defendant can defend his/her interests. To that end, the court seized of the matter must be satisfied that all investigations required by the principles of diligence and good faith have been undertaken to trace the defendant*".[157]

Furthermore, both recognition and enforcement of a judgment may be refused (arts. 45(b) and 46 Brussels I Regulation) "where the judgment was given in default of appearance, if the

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[155] Milos Hatapka: Service of documents Regulation, in: Civil Law – European Judicial Cooperation, e-book of the Council of the European Union, 2013, p. 1440. Available at: http://bookshop.europa.eu/en/civil-law-pbQC3011327/.

[156] See the Hague Service Convention Practical Handbook, pp. 98-105.

[157] CJEU, judgment of 15 March 2012, C-292/10, *Cornelius de Visser*, ¶ 55 and CJEU, judgment of 17 November 2011, C-327/10, Hypoteční.

defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his/her defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so".[158]

Many other European Regulations, especially those abolishing exequatur procedures, allow a judgment to circulate only if domestic law provides minimum standards of review of a decision. For instance, according to art. 19 of the EEO Regulation: "a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where: (a) (i) the document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Article 14; and (ii) service was not effected in sufficient time to enable him/her to arrange for his/her defence, without any fault on his part; or (b) the debtor was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his/her part, provided in either case that he acts promptly."[159] An identical rule is provided by art. 20 of the European Order for Payment and art. 18 of the European Small Claims Regulation.

Article 19 of the Maintenance Regulation, also provides that "A defendant who did not enter an appearance in the Member State of origin shall have the right to apply for a review of the decision before the competent court of that Member State where: (a) he/she was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him/her to arrange for his/her defence; or (b) he/she was prevented from contesting the maintenance claim by reason of *force majeure* or due to extraordinary circumstances without any fault on his/her part; unless he/she failed to

[158] The CJEU has further clarified in its judgment of 14 December 2006, *ASML Netherlands BV v Semiconductor Industry Services GmbH (SEMIS)*, C-283/05, ¶49, that these provisions are "to be interpreted as meaning that it is 'possible' for a defendant to bring proceedings to challenge a default judgment against him only if he was in fact acquainted with its contents, because it was served on him in sufficient time to enable him to arrange for his defence before the courts of the State in which the judgment was given".

[159] The CJEU specified in its judgment of 17 December 2015, C-300/14, *Imtech Marine Belgium NV v. Radio Hellenic SA*, ¶¶31 and 42 that "Article 19 of [EEO], read in the light of Article 288 TFEU, must be interpreted as not requiring Member States to establish in their national law a review procedure such as that referred to in Article 19 of that regulation" but that "in order to certify a judgment delivered *in absentia* as a European Enforcement Order, the court ruling on such an application must satisfy itself that its national law effectively and without exception allows for a full review, in law and in fact, of such a judgment in the two situations referred to in that provision and that it allows the periods for challenging a judgment on an uncontested claim to be extended, not only in the event of *force majeure*, but also where other extraordinary circumstances beyond the debtor's control prevented him from contesting the claim in question." Similarly, with reference to the service of an European Order for Payment, the CJEU noted in its judgment of 4 September 2014, *eco cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy*, C-119/13,¶49 "Regulation No 1896/2006 must be interpreted as meaning that the procedures laid down in Articles 16 to 20 thereof are not applicable where it appears that a European order for payment has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of that regulation. Where it is only after a European order for payment has been declared enforceable that such an irregularity is exposed, the defendant must have the opportunity to raise that irregularity, which, if it is duly established, will invalidate the declaration of enforceability".

challenge the decision when it was possible for him/her to do so. 2. The time limit for applying for a review shall run from the day the defendant was effectively acquainted with the contents of the decision and was able to react, at the latest from the date of the first enforcement measure having the effect of making his/her property non-disposable in whole or in part. The defendant shall react promptly, in any event within 45 days. No extension may be granted on account of distance. 3. If the court rejects the application for a review referred to in paragraph 1 on the basis that none of the grounds for a review set out in that paragraph apply, the decision shall remain in force. If the court decides that a review is justified for one of the reasons laid down in paragraph 1, the decision shall be null and void. However, the creditor shall not lose the benefits of the interruption of prescription or limitation periods, or the right to claim retroactive maintenance acquired in the initial proceedings." And Article 24 states: "A decision shall not be recognised: (a) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The test of public policy may not be applied to the rules relating to jurisdiction; (b) when it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him/her to arrange for his/her defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him/her to do so".

Also the ECtHR, extending to civil proceedings the principles developed for criminal proceedings, held that "although proceedings that took place in the [defendant] absence were not, of themselves, incompatible with Article 6 of the Convention, a denial of justice nevertheless occurred, where a person convicted *in absentia* was subsequently unable to obtain a fresh determination on the merits […], in respect of both law and fact, from a court which had given him a hearing, in circumstances where it had not been established that he had waived his right to appear and to defend himself" and also that "neither the letter nor the spirit of Article 6 of the Convention prevent a person from waiving, of his or her own free will, either expressively or tacitly, the safeguards of a fair trial […]. However, such a waiver must be established in an unequivocal manner, must be attended by the minimum safeguards commensurate with its importance […] and must not run counter to any important public interest".[160] This seems to confirm that, while a party's default is not an absolute obstacle to reach a decision on the merits, including a default judgment, there must be adequate safeguards that (i) prevent involuntary default, (ii) allow a party who defaulted without fault, to seek review of a default judgment.

The spectrum of different solutions adopted by MSs in the area of default of the parties and issuance of default judgment is very broad. On one side of the spectrum we may find England, where default judgments are not considered as an extraordinary matter, and are

[160] ECtHR, case of *Ažd*ajić *v. Slovenia*, 8 October 2015, application no. 71872/12, ¶¶ 50-51. See, also, the case of *Dilipak y Karakaya v. Turkey*, 4 March 2014, applications nos. 7942/05 and 24838/05 (¶¶ 80ff.).

sometimes dealt with at an administrative level by the court clerk, and no particular examination of the merits of the claims is taking place: the defendant is required to appear if he or she wishes to defend his/her claim, otherwise the claimants' demands are accepted in full. Eventual concerns with regard to the default judgment can be dealt with at a later moment, upon initiative of the absent defendant, who will either have a right to request that the judgment be set aside, or will only be entitled to submit the matter to the court's discretion, depending on the case. At the other end of the spectrum we find MSs such as Italy and Spain, where the default of the defendant only leads to the practical consequence that the absent party will not be able to defend his/her case, but otherwise will not have any negative effect. In such cases, judicial resources are still put into ascertaining whether the claims made are founded, and if so, to what extent. In the middle of this spectrum there are mixed solutions, where usually default judgment is limited to cases in which the matter is amenable to settlement and can be entered only to the extent that the claims appear to be founded: there is no need to allow proceedings to be fully carried out, but at the same time the claimant's demands are not unconditionally accepted as confessed by the other party.

The two extremes of the spectrum all have their downsides. The English (and common law) approach is very peculiar to that procedural tradition. It should not be overlooked that, normally, service is made by first-class post without return receipt and the court simply accepts the party's certificate of service. The issuance of a default judgment is not seen as a major problem, as the party is granted the right to contest service and the default judgment at a later stage and courts always retain a discretional power to relieve a defendant if this seems just. The Italian and Spanish approach is more concerned with protecting the defendant and evaluates the default in a neutral way: this procedural behaviour of the party neither creates an admission of the claims, nor a rejection of them. At the same time, unless there are serious defects in the service of the documents instituting proceedings, the judgment arising out of proceedings carried out *in absentia* will not be subject to extraordinary remedies. On the other hand, in cases when the defendant's absence is voluntary, spending judicial resources to protect his/her interests during the default may also be seen as a waste of (scarce) judicial resources.

While this is a very complex topic, which cannot be adequately addressed in the context of this study, it may be useful for greater efficiency of cross-border service of documents in the MSs to reflect on the benefits of certain provisions at the European level addressing it. As a minimum, it should be reconsidered to what extent the variable geometry in the context of Article 19 of the Regulation on service of documents created through the individual declarations by the Member State is still justifiable. Streamlining the time period barring MSs from issuing a default judgment or the one opening for the application requesting relief from the consequences of the default could create a more transparent and balanced situation concerning the rights of defence. Furthermore, it may be also desirable to assess if uniform standards could be introduced which enhance the probability that actual notice of the defendant takes place before a default judgment is issued. Such solution may prescribe

that in case of the defendant's absence, the court must verify *ex officio* whether service was duly performed and may, in any case, order additional service of the documents if this appears proper or necessary, because the court is convinced that the defendant did not receive any notice, for instance. In such cases, the court may or should order additional method of service through any means of communication it may consider appropriate, e.g. also through e-mails, social medias or by phone. In any case, the addressee should always be duly informed in advance of the consequences of his/her eventual default. Such an approach may ensure that only if the court is satisfied that the defendant has been duly served, and has not entered an appearance by his/her own fault, should it be entitled, at the claimant's request, to issue a default judgment. Such a judgment should be served on the defaulting defendant. A special remedy along the lines of Article 19(4) from the Regulation on service of documents should be preserved for the situations in which the absence of the defendant was caused by a defect of the service, or by other serious obstacles, beyond his/her control.

In the following pages we will present the main features relating to default and its legal consequence in each MS, including the possibility to issue a default judgment and any specific remedy against a default judgment. Other remedies are examined *infra* in para. 3.14.

3.13.1. *Austria*

In Austria, if the addressee does not appear in the hearing, the court has a duty to verify whether service was correct and valid, by verifying the certificate of service. If the court finds out that service was invalid and that the defect was not cured by actual delivery according to §7 ZustG, service must be repeated. Otherwise the party may be found to be in "default" in case of her non-appearance in the first hearing (§ 396(2) ZPO) or following the removal from the hearing for indecent behaviour, § 401 ZPO. Default is also given if the defendant does not submit his/her statement of defence against the claim within due time, § 396(1) ZPO. In general, a defaulting party is barred from taking the procedural action with respect to which it is in default (§ 144 ZPO) and default has no effect on further services.

In case of default, upon request by the claimant, the court can enter a default judgment against the defendant, provided that the factual allegations of the claimant are not refuted by evidence submitted in support of the claim (§396(1) ZPO – cf. also §§ 396 et seq., 442, 442a ZPO). The court may also take evidence and accept evidence which have already been taken, § 402(2) ZPO.

The defaulting party can appeal against a default judgment. In case of a default judgment for lack of response to the statement of claim (§ 396(1) ZPO), the defendant can raise an objection within 14 days from service of the judgment on the defendant (§ 397a ZPO). This objection must contain all elements which a response to the statement of claim (i.e. a statement of defence) would contain, but it needs not give any reason for the default. If the objection is admissible, the proceedings will be resumed. Costs must be borne by the defendant, § 397a ZPO.

3.13.2. *Belgium*

In Belgium, if the defendant does not enter an appearance, the court has the duty to verify whether service was performed correctly. If service was valid, the party is considered in default and the court can render a default judgment (Arts. 802ff. *Code Judiciaire*).[161]

If the default judgment is not entered at the first hearing, the party may request in writing from the court officer to summon the other party at a next hearing. At such hearing, if the absent party summoned is not present, a default judgment may be issued. If the party appears or files a defence the proceedings are considered to be in *contradictoire*.

When a default judgment is entered, all claims made by the claimant are granted, unless those are contrary to the *ordre public*.

Except when otherwise provided for by the law, an extraordinary remedy (*opposition*) may be filed against a default judgment (Arts. 1047ff. *Code Judiciaire*). The application must be filed no later than one month after the default judgment was notified to the defaulting party (Art. 1048 *Code Judiciaire*).[162] No opposition can lie if a second default judgment is issued against the same defendant (Art. 1049 *Code Judiciaire*).

3.13.3. *Bulgaria*

In Bulgaria, the court verifies *ex officio* the service even if parties appear before it: the court gives them the opportunity to object to the commencement of proceedings and give them additional time for preparation of their defence. If service has been properly effected and the party does not enter an appearance, he/she is considered in default. Further services are performed in ordinary ways. If the absent party enters appearance later in the proceedings, he/she can only perform activities that are not barred by that stage of the proceedings and he/she is not allowed to raise defences which are precluded due to expiration of time limits.

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[161] Art. 803 CPC "*La partie défaillante contre laquelle le défaut n'a pas été pris à l'audience d'introduction, est convoquée, sous pli judiciaire, par le greffier, à la demande écrite de la partie adverse, pour l'audience à laquelle la cause a été remise ou ultérieurement fixée*".
Art. 804 CPC "*Si, à l'audience à laquelle la cause a été fixée ou remise, l'une des parties ne comparaît pas, jugement par défaut peut être requis contre elle. Toutefois, si une des parties a comparu conformément aux articles 728 ou 729 et a déposé au greffe ou à l'audience des conclusions, la procédure est à son égard contradictoire*".
Art. 805 CPC "*La prononciation du jugement par défaut ne peut avoir lieu avant la fin de l'audience ou le défaut a été constaté, et pour autant que celui-ci n'ait été auparavant rabattu. Le défaut sera rabattu et l'instance poursuivie contradictoirement si les parties le sollicitent conjointement au cours de l'audience ou le défaut a été requis*".
Art. 806 CPC "*1 Dans le jugement par défaut, le juge fait droit aux demandes ou moyens de défense de la partie comparante, sauf dans la mesure où la procédure, ces demandes ou moyens sont contraires à l'ordre public*".

[162] Longer terms provided for by mandatory international rules, such as Article 19 of the Service Regulation, apply. Art. 1048 *Code Judiciaire*: "*([1 Sous réserve des délais prévus dans des dispositions impératives supranationales et internationales, le délai d'opposition]1 est d'un mois, à partir de la signification du jugement ou de la notification de celui-ci faite conformément à l'article 792, alinéa 2 et 3*".

He/She may request that his/her right to file certain defences be restored by proving that service was not regular.

If service was duly performed and the defendant fails to file a timely defence and does not appear at the first hearing without justification, plaintiff may move for a judgment by default (art. 238 CPC). The court renders a judgment by default where (art. 239 CPC): "*1. the parties have been instructed about the consequences of a failure to observe the time limits for exchange of papers and of the non-appearance of the parties during a court hearing; 2. the action is probably well-founded considering the circumstances cited in the statement of action and the evidence presented or is probably unfounded considering the oppositions raised and the evidence supporting the said oppositions.*" The judgment by default does not need to provide a full reasoning on the merits, but only state that the requirements for a judgment by default have ben met. A judgment by default cannot be appealed.

Art. 240 CPC provides two specific remedies against a judgment by default. The first is a motion to reverse the default judgment, which can be lodged before the court of appeal within one month after the service of the judgment by default, provided that he/she has been deprived of an opportunity to participate in the case because of: "*1. undue service of the duplicate copy of the statement of action or the summonses for the court hearing; 2. an impossibility to learn in due time of the service of the duplicate copy of the statement of action or the summonses for the court hearing owing to special unforeseen circumstances; 3. an impossibility to appear in person or through counsel owing to special unforeseen circumstances which the party was unable to overcome*" (art. 240 CPC).

A second specific remedy is available when new circumstances or new written evidence of material relevance to the case are discovered, which could not have been known to the said party upon adjudication of the said case or which the said party could not procure in due time. In such an event, the defaulting party may bring the motion to reverse described above, within three months from learning the new circumstances or written evidence, but in any case not later than one year after.

3.13.4. *Croatia*

Also in Croatia, a valid service is the first prerequisite for valid proceedings and it is what the court verifies first *ex officio*. In case service is valid, the party is deemed to be in default and hearings can be conducted without that party. A defaulting party can enter at a later stage but may only perform activities that are not barred at that stage of the proceedings. The party can challenge the validity of the service on the basis that in fact she was not served with the document in a way which is compatible with his right of defence.

When a duly served defendant fails to appear at the preparatory hearings, or if he or she appears at these hearings but does not enter the litigation or leaves the hearing without having challenged the claim, upon a motion by the claimant or *ex officio*, the court may

render a judgment granting the claim, if the following conditions have been met (arts. 331b and 332 CPC):

- the respondent has been orderly summoned;
- the respondent has not challenged the claim by a submission;
- the claim appears to be well-founded from the facts stated in the complaint;
- the facts on which the claim is founded are not contrary to the evidence given by the claimant himself/herself, or to facts that are common knowledge;
- there are no generally known circumstances from which it so happens that the respondent was prevented by justified reasons from submitting an answer to the complaint.

Default judgment is allowed only if the matter is amenable to settlement. If, from the facts given in the complaint the grounds for the claim are not discernible, the court schedules a preparatory hearing and if the plaintiff does not amend the claim at that hearing, the court dismisses the claim. The rendering of a default judgment may be postponed if there is no evidence that the complaint and the order to answer the complaint have been duly served on the defendant, but it is certain that they were sent to him/her. In this case, a time limit is set, which may not be longer than thirty days for service within this country, or longer than six months for service in a foreign country, to investigate whether the complaint and the order to answer the complaint were orderly served on the respondent. If it is established within that time limit that the communications were orderly served on the respondent, a default judgment is rendered.

A default judgment may be appealed by the defendant within fifteen days after service of the judgment (art. 348 CPC). The defendant may also seek a repetition of proceedings in default by proving that, because of failure to make service, he/she was not given an opportunity to be heard (art. 421 CPC). This remedy must be lodged within 30 days from service of the judgment and no later than five years after the rendering of the judgment (art. 423 CPC).

3.13.5. *Cyprus*

In Cyprus, every person has the constitutional right to be notified of legal proceedings pending against him/her and to be heard and when a writ cannot legally be served upon a defendant, the court can exercise no jurisdiction over him/her. Jurisdiction, according to Cypriot law is based on the act of personal service. Therefore the Court, before issuing a default judgment, must be satisfied, upon the evidence before it (i.e. the bailiff's affidavit or any other document evidencing service) that a valid service was performed. If the Court is not satisfied about the validity of the service it must not issue a default judgment but order a new service.

An addressee is considered as being in default if he/she does not perform the actions required by the served document: e.g., if the document served is a writ of summons then

the addressee is obliged to enter an appearance with the Registrar of the Court where the action was filed within a period of 10 days (it must be noted that the party being served can enter a conditional appearance, objecting to the service of the writ of summons and requesting it being set aside from the start of the proceedings).

Once a party is declared as being in default there is no need to perform further service on him/her. If no default judgment is rendered, a defaulting party may file a memorandum of appearance at any point in time and at any point in the proceedings and take part in the subsequent phase of the proceedings. It lies with the discretion of the Court (depending on the stage the proceedings have reached), what types of activities the defaulting party will be permitted to perform in the proceedings. According to Order 16, r. 7, CPR, "A defendant may appear at any time before the judgment. If he/she appears at any time after the time limited by the writ for appearance, he/she shall be ordered to pay any costs properly incurred by the plaintiff by his/her failure to appear within the time limited by the writ". Such costs may include the costs of an application for the issue of a default judgment.

If a party wishes to challenge the validity of a service, he/she must still comply with the document served and avoid defaulting. If for example, a party has been served with a writ of summons then that party can enter a conditional appearance and request at the same time or within reasonable time thereafter for the service to be set aside.

The legal consequence is that upon proof of service, proceedings may continue in his/her absence. According to Order 17 CPR,[163] the claimant may apply ex parte for judgment if the

[163] Order 17 CPR: "1. (1) Where no appearance has been entered to a writ of summons for a defendant who is either:
(a) an infant not having a guardian authorized to defend proceedings on his behalf under the Guardianship of Infants and Prodigals Law, Cap. 102, or (b) a person of unsound mind whether or not a mental patient or criminal mental patient under the Mental Patients Law, Cap. 120,
the plaintiff shall, before further proceeding with the action against such defendant, apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least four days before the day in such notice named for hearing the application, served upon the person with whom or under whose care such defendant was at the time of the service of the writ of summons and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon the father or mother, or guardian (if any) of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.
(2) Notice of the application shall also be served upon the person sought to be assigned guardian, but if he is served and fails to attend or is unwilling to act, the Court or Judge may appoint any advocate as guardian to appear and defend the action, and direct that the costs to be incurred by him and his remuneration as such guardian (as fixed in the order of appointment or to be fixed later) be borne and paid either by the parties to the action or some one or more of them and may also direct either that security be given therefor, or that they be borne by and paid out of any fund in Court in which the defendant for whom he is appointed as such guardian may be interested, and may give directions for the repayment or allowance of such costs and remuneration as the justice and circumstances of the case may require.
(3) The order of appointment shall limit the time within which the person appointed is to enter an appearance, and if such person fails to enter an appearance within the time so limited, his appointment may be revoked and

he may be ordered to pay personally any costs occasioned by his failure. Upon an appointment being revoked, another appointment may be made upon such proceedings being had as the Court or Judge may direct.
2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may he, if such affidavit has not already been filed by the Registrar.
3. Where the writ of summons is for a liquidated demand, whether specially indorsed or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may apply for judgment for any sum not exceeding the sum claimed by the writ, together with interest at the rate specified in the claim (if any) and costs.
4. Where the writ of summons is for a liquidated demand, whether specially indorsed or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may apply for judgment, as in the preceding Rule, against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared.
5. Where the writ is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant fails, or all the defendants, if more than one, fail, to appear, the plaintiff may apply ex parte to the Court or a Judge for judgment, and the Court or Judge may ascertain the value of the goods or the amount of the damages in any way in which the Court or Judge may think fit and give judgment accordingly.
6. Where the writ claims as in the last preceding Rule mentioned, and there are several defendants, of whom one or more appear to the writ and another or others of them fail to appear, the plaintiff may apply ex parte to the Court or Judge for interlocutory judgment against the defendant or defendants who have failed to appear and the value of the goods and the damages, or either of them, as the case may be, may be assessed as against such defendant or defendants at the same time as the trial of the action or issue therein against the other defendant or defendants who have appeared, unless the Court or Judge shall otherwise direct.
7. Where the writ is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and is further for a liquidated demand, whether specially indorsed or otherwise, and any defendant fails to appear, the plaintiff may apply for judgment for the debt or liquidated demand, interest and costs against the defendant or defendants failing to appear, and proceed as mentioned in Rule 5 or 6 of this Order, as the case may require, in regard to the value of the goods and/or the damages.
8. Where the writ is for the recovery of immovable property and the defendant fails to appear to the writ within the time limited for appearance, or if an appearance is entered but the defence is limited to part only, the plaintiff may apply for judgment for recovery of the property or of the part thereof to which the defence does not apply.
9. Where the plaintiff has a claim for arrears of rent, or damages for breach of contract or wrong or injury to the property claimed, upon a writ for the recovery of immovable property, if the defendant fails to appear thereto, the plaintiff may apply for judgment as in the last preceding Rule mentioned for the property and liquidated sum claimed for arrears of rent, and the action may proceed as in the other preceding Rules of this Order mentioned as to such other claim.
10. Where judgment is entered pursuant to any of the preceding Rules of this Order, it shall be lawful for the Court in a proper case to set aside or vary such judgment upon such terms as may be just.
11. In all actions for which no other provision is specially made by the Rules of this Order, in case the party served with the writ does not appear within the time limited for appearance, upon proof of service and, if the writ is not specially indorsed under Order 2, Rule 6, upon the filing of a statement of claim, the plaintiff may apply ex parte for judgment.
12. Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff or applicant may apply to the Court or a Judge for an appointment for the hearing of such summons, and the Court or Judge shall appoint a time for the hearing of such summons, upon such conditions (if any) as they or he shall think fit.
13. The provisions of this Order shall be read subject to this qualification, namely that in all cases in which it is sought to obtain judgment by default the Court or Judge may, where it seems to be necessary or desirable, call upon the plaintiff to prove his claim, and whether the plaintiff is so called upon or not the Court or Judge may only give judgment to the extent to which the plaintiff is in law entitled.

document served is the writ of summons. If the writ of summons is in form 2 (so-called "specially indorsed") then a judgment can be ordered; if the writ of summons is in form 1 (so-called "generally indorsed") then the plaintiff has to file his/her particulars of claim before he can apply for a judgment.[164] If the document served on the defaulting party is an application, then upon no objection filed, the sought order might be issued against the defaulting respondent. The Court may, where it seems to be necessary or desirable, require the claimant to prove his/her claim, depending on which the Court may give the judgment to the extent to which the claimant is legally entitled.

3.13.6. *Czech Republic*

In the Czech Republic, if the addressee does not enter an appearance in the proceedings the court verifies *ex officio* if service was validly performed and may then enter a default judgement (§153b CCP). Default judgment cannot be rendered in matters that are not amenable to settlement (e.g. in family law issues). In cases where a participant or a representative thereof missed a term for a justifiable reason and has therefore been excluded from performing an act, he/she may apply within 15 days from removal of the obstacle for such term to be restored.

According to §153b(5), default judgment cannot be entered:

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14. (1) The Registrar shall, once a month or at such times as he may be required by the Court or a Judge, furnish the Court or Judge with a list of actions in which there has been default of appearance within the time limited by the writ and in which the plaintiff has failed to proceed upon such default under the preceding Rules of this Order for one mouth after the expiration of the time so limited, and the Court or Judge may thereupon direct the Registrar to give notice to the plaintiff requiring him so to proceed within fourteen days after the giving of the notice, and informing him that upon failure so to proceed within the fourteen days aforesaid the action shall stand dismissed for want of prosecution.
(2) Upon failure so to proceed within the fourteen days aforesaid, or within such extended time as may be allowed, the action shall be dismissed for want of prosecution but without prejudice to the institution of a fresh action, και τίθεται για το σκοπό αυτό ενώπιον του Δικαστηρίου.
(3) The notice from the Registrar mentioned in paragraph (1) of this Rule shall be served at the plaintiff's address for service, and a copy thereof sent by post to the plaintiff if in Cyprus; and the fourteen days mentioned in the notice shall be reckoned as from the day of service or posting, whichever be the later. An affidavit of service and posting shall be filed".

[164] A specially indorsed writ of summon already states the grounds of fact and law that support the claim, while a generally indorsed writ does not and requires that particulars of the claim (i.e. grounds of fact and law) are later served on the defendant. Cfr. Order 4, Rules of Superior Court: "1. An indorsement of claim shall be made on every originating summons before it is issued.
2. The indorsement of claim on a plenary summons shall be entitled "GENERAL INDORSEMENT OF CLAIM" and there shall be an indorsement of the relief claimed and the grounds thereof expressed in general terms in such one of the forms in Appendix B, Part II, as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require.
3. In the indorsement required by rule 2 it shall not be essential to set forth the precise ground of complaint or the precise remedy or relief to which the plaintiff considers himself entitled.
4. The indorsement of claim on a summary summons and on a special summons shall be entitled "SPECIAL INDORSEMENT OF CLAIM," and shall state specifically and with all necessary particulars the relief claimed and the grounds thereof. The indorsement of claim on a summary summons or a special summons shall be in such one of the forms in Appendix B, Part III, as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require."

a. if it leads to creation, change or end of legal relation between the parties,
b.in international commercial disputes,
c. in dispute which are not amenable to settlement,
d. in dispute regarding the claim derived from consumer contract if the defendant is the consumer, if there are unfair conditions in the contract

3.13.7. *Denmark*

In Denmark, if the defendant does not enter appearance, service is to be repeated. If the defendant fails to file his/her defence within a specified period, though, the court will enter a default judgment in favour of the plaintiff to the extent that the plaintiff's claim is found to be justified on the basis of the statement of claim and any other information available to the court (§352(1) AJA). Claims and allegations which are not included in the writ of summons may be taken into account to the detriment of the defendant only if they have been served on the defendant.

A party against whom a judgment in default of appearance has been given may demand the case to be reopened by submitting a written application in this respect to the court within four weeks of the judgment (§367(1) AJA). The court may by exception reopen the case if an application in this respect is submitted at a later point in time but within one year of the judgment. The court may require that in order for the case to be reopened, the defendant must pay the costs he or she has been ordered to pay or provide security for their payment.

3.13.8. *Estonia*

In Estonia, if the party who has been served an invitation to court session fails to appear in the court session, including a preliminary hearing, the court may adjudicate the matter or postpone the hearing (CPC §§408-410). If the claimant does not appear in the court session, the court may refuse to hear the case (CPC § 409 (1)(1)), but this does not prevent the claimant from bringing the same action again (CPC § 426 (1)). Defaulting does not affect the manner in which further services should be performed. However, by this time the court usually has ascertained which methods are unsuccessful and this affects the choice of method during subsequent services.

If the defendant did not know about the proceedings due to defective service and the judgment has not been made, the activities that the party can perform are not limited by law. The most important thing for defendant at this stage is to submit its response to the action as fast as possible to avoid a default judgment. At this stage, the party can also submit a petition for restoration of a term, which is a request to the court to allow a new term for the party to submit his/her statement of defence (CPC §§ 67 – 68).

When the court is given evidence that service of documents has been carried out in a permissible manner, and the defendant fails to file a statement of defence in due time or to appear in the court’s session, the court may enter a judgement by default, including when

the action was served on the defendant in a foreign state or by public announcement (CPC § 407 (1), § 413 (1)). However, the court may refuse to make a judgment by default if the action was served on the defendant by public announcement and there are probably indications that the decision to be made in the proceeding will have to be recognised or enforced in a foreign state and it is probable that the decision would not be recognised or enforced due to the public service of the action.

After the default judgment has been issued, the defendant may apply to set aside the default judgment provided that the defendant's failure to act, which constituted the basis for making the judgment by default, was due to a good reason (CPC § 415 (1). However, an application to set aside a default judgment may be filed regardless of whether a good reason existed, if the action or the summons was served in any other manner than by personal delivery against a signature or by electronic means (CPC § 415 (1)(1) and (2)). A good reason for setting aside is also not necessary, if pursuant to law, the default judgment could not have been made (CPC § 415 (1)(3). A petition to set aside a default judgment may be filed within 30 days after the service of the default judgment. If a default judgment is served by public announcement, a petition to set aside a default judgment may be filed within 30 days after the date on which the defendant became aware of the default judgment or of the enforcement proceedings commenced to enforce the default judgment (CCP § 415 (2)).

If a petition to set aside a default judgment has been submitted in the correct form and at the correct time, and the petitioner has substantiated the good reason for his/her failure to perform the procedural act which constituted the basis for the default judgment and for his/her failure to inform the court thereof or if there are other grounds why the default judgement could not have been made, the court satisfies the petition to set aside the default judgment and reopens the proceeding, in compliance with the request to set aside the default judgment, at the point in which the proceeding was before the petitioner's failure. A good reason is not required for reopening the proceeding if a good reason is not required for filing a petition to set aside a default judgment (CCP § 417 (2)).[165] If a proceeding is reopened, a default judgment does not enter into force and it cannot be enforced. A reopened proceeding continues, according to the extent of the petition to set aside the default judgment, at the point in which the proceeding was before failure to perform the act which constituted the basis for making the default judgment (CCP§ 418 (1)).

3.13.9. *Finland*

[165] CCP § 417(2): "(2) If a petition to set aside a default judgment has been submitted in the correct form and at the correct time, and the petitioner has substantiated the good reason for failure to perform the procedural act which constituted the basis for the default judgment and for failure to inform the court thereof or if there are other grounds why the default judgement could not have been made, the court satisfies the petition to set aside the default judgment and reopens the proceeding, to the extent of the petition to set aside the default judgment, at the point in which the proceeding was before the petitioner's failure to perform the act which constituted the basis for making the default judgment. A good reason is not required for reopening the proceeding if a good reason is not required for filing a petition to set aside a default judgment."

In Finland, there appears to be no special rules on entering appearance and on default. As a main rule, a party is required to enter appearance during the preparatory stage of the proceedings and may present claims and evidence and otherwise participate in the proceedings. Under Chapter 5, Sections 20 and 22, CJP, at the preparatory stage of the proceedings, a party shall present its claims and the grounds for them and list the evidence that it intends to present and what it intends to prove with each piece of evidence. Furthermore, the court may direct a party to fulfil those duties before a deadline under the threat that after the deadline he/she may not refer to a new claim or circumstance, or present new evidence, unless he/she can show that it is probable that there is a valid reason for his/her conduct. Thus, even if a defaulting party later enters appearance during proceedings he/she may not necessarily present his/her claims or evidence.

When a party is declared to be in default, this does not automatically affect the manner of further services. However, it is possible for the court to order a party to appear in court for the oral proceedings and to impose a fine or even to have someone brought by force to court (cfr. Chapter 12, Sections 6ff., and Chapter 5, Section 28, CJP). Such fines and bringing to court by means of force are not usually imposed in civil matters amenable to settlement, as it considered sufficient to give each party a possibility to be heard and leave it to the party to decide whether to exercise this right or not.

During proceedings, challenging the validity of the service of documents is regulated in the Chapter 11, §18.2, CJP. If a defaulting party enters the proceedings and claims that the service was not performed before the deadline or that it was erroneously performed, the court shall delay the proceedings or set a new deadline for the requested written response, unless it is deemed unnecessary due to the insignificance of the error.

If service was performed properly and the addressee fails to appear in the proceedings, in civil matters amenable to settlement, a default judgment may be rendered against the defaulting party (Chapter 5, Section 13, CJP). A party is seen to have accepted the rendering of a default judgment when it fails to deliver a written response before the deadline set by the court. Under Chapter 12, §§10-11, CJP the court may also render a default judgment if a party fails to appear in court or where a party has already delivered a written response and some of the evidence has been presented but he/she then subsequently fails to appear in court.

The issuing of a judgment by default needs not to be notified by the court. When a judgment has been issued by default, the party on whose request the case has been decided by a judgment by default shall ensure that the opposing party is informed of the judgment (see Chapter 24, Section 8, and Chapter 12, Section 14, CJP). If a judgment by default is not notified on the defendant it will not gain legal force. However, as an exception, the court shall see to the service of the notice of the judgment by default, if a debt has been ordered payable from the real property that is collateral for the debt; or the person against whom

the case was decided by the judgment by default has been ordered in the decision to pay compensation to the State in accordance with the Legal Aid Act.

According to the Chapter 12, §15, CJP the party against whom the case has been decided by a default judgment has the right to seek review of the judgment in the court that rendered the judgment, and cannot appeal directly to a court of appeal. The application for review shall be submitted to the court in writing within thirty days from the date when the party received notice of the judgment. The validity or invalidity of service is not relevant in respect of the admissibility of a request for review. If after a valid notification of a default judgment the party has been unable to apply for review due to a valid excuse (cf. Chapter 12, §28, CJP), he or she may, on an application, be granted a new deadline (Chapter 31, §§17–18, CJP). If the application for review is approved the case is reopened.

3.13.10. *France*

In France, according to Art. 471 CPC,"[t]he defendant who does not appear may, on the initiative of the plaintiff or on a decision taken *ex officio* by the judge, be invited to appear again where the citation has not been served on him personally. … The judge may order that this must be done by a process served by a bailiff where the first citation was done by a clerk of the court. … The judge may also inform the interested party, by ordinary letter, of the consequences of his failure to appear." A defaulting party may enter proceedings at a later stage and perform any activity that is not time-barred. He/she can also challenge the validity of service.

In case of default and proper service, proceedings continue and the judge makes a decision based on the evidence offered by the plaintiff.[166] In addition to the usual requirement of French law that a judgment must be served on the parties (see *supra* para. 3.2.2), any judgment rendered in default of one party "becomes void on the sole ground that it has not been notified within six months as from its date" (Art. 478 CPC).

There are two categories of proceedings (proceedings *par défaut*, and proceedings in *réputé contradictoire* – i.e. after trial) depending on whether or not the addressee has been served in person. According to Art. 473 CPC, "Where the defendant does not appear, the judgement will be rendered by default [*par défaut*] if the decision is of final instance and where the summons has not been served in person. The judgement will be regarded as a judgement after trial [*réputé contradictoire*] where the decision is subject to appeal or where the summons has been served personally on the defendant."

The main difference between the two types of default is the regime of appeal. A judgement rendered *par défaut* may be impugned by way of a motion to set aside named *opposition* (Arts. 571ff. CPC), except in cases where this means of review is made unavailable by an

[166] Art. 472 CPC "If the defendant fails to appear, a ruling will nevertheless be made on the merits of the case. The judge will uphold the claim only to the extent that he considers it valid, admissible and well-founded."

express provision (Art. 476 CPC). The *opposition* may be viewed as an extraordinary method of review and is filed before the same court that rendered the default judgment. If the application is granted, the case is resumed. As in Belgium, if a second default is issued against the same party, no further *opposition* can be filed. On the contrary, if a judgement is considered as a judgement *réputé contradictoire*, it may be impugned only by the means ordinarily available against judgements rendered after trial; hence it is considered as if the judgment was rendered with the participation of both parties (Art. 477 CPC). The time for both appeal and *opposition* is one month from service of the judgment (Art. 538 CPC).

3.13.11. *Germany*

In Germany, the court must verify *ex officio* whether the missing party was duly summoned, based on the certificate of service (§335(1) no. 2 ZPO). Defective service may be repeated. Default is the non-appearance (§§ 330, 331 ZPO) in any (§ 332 ZPO) hearing or the lack of pleading (§ 333 ZPO), i.e., the lack of pleading on the merits of the case, cf. § 137 ZPO – this is also the case if representation by a lawyer is mandatory, § 78 ZPO, and the party appears and pleads without a lawyer. Default is also established if the defendant does not announce that he/she will defend against the claim within a deadline of two weeks; see, for details, §§ 276, 331(3) ZPO.

Default has no effect on further services (cf. § 335(2) ZPO). A party may enter proceedings at a later stage and must claim that service was defective (and he or she did not receive the document, cf. § 189 ZPO) in the next hearing, § 295(1) ZPO. If this is not done, there is no remedy against a later decision.

If the addressee does not appear, a default judgment is possible (§§ 330-347 ZPO). Not every failure to appear leads to a default judgment:[167] if the complaint is inadmissible, it will be dismissed regardless of whether there is default or not. If the complaint is admissible and the plaintiff does not appear, the court will enter a default judgment against the plaintiff on motion of the defendant (§330 ZPO). If the complaint is admissible and the defendant does not appear, the court will render a default judgment against the defendant upon motion of

[167] See, e.g., §335 ZPO – Inadmissibility of a default decision: "(1) The petition for a default judgment, or a decision on the basis of the record as it stands, is to be dismissed wherever:

4. The party appearing is unable to procure the proof or evidence demanded by the court on the grounds of circumstances that are to be taken into account ex officio;
5. The party that has failed to appear was not duly summoned, and in particular was not summoned in due time;
6. Facts as submitted to the court in oral argument, or a petition, have not been communicated by a written pleading to the party that has failed to appear;
7. In the case provided for by section 331 (3), the defendant was not informed of the deadline provided for by section 76 (1), first sentence, or he has not been instructed in accordance with section 76 (2);
8. In the cases provided for by section 9 3), the refusal to accept a party as attorney-in-fact or the prohibition of continued representation are pronounced only at the hearing, or were not communicated in due time to the party not appearing.

(2) If a hearing has been adjourned, the party that has failed to appear is to be summoned to the new hearing".

the claimant only to the extent that the facts alleged support the claim (§331 (1), (2) ZPO). Insofar as the facts alleged do not support the claim, the complaint will be dismissed by a regular judgment. A default judgment needs not to be proclaimed in a public hearing, service is sufficient, § 310(3) ZPO. Instead of moving for a default judgment, a party may also apply for a decision according to the status of the file, § 331a ZPO. If there are no motions, the court can schedule a new hearing or suspend the case.

A first default judgment can be set aside following a special application ("*Einspruch*", § 338 ZPO) within two weeks (§ 339 ZPO). The defaulting party needs not give any reasons for his or her default (cf. §340(2) ZPO). The court will then schedule a new hearing. If the losing party does not appear in this new hearing either, the second default judgment can only be attacked with an appeal (§ 345 ZPO); appeal will be granted if there was no correct service (cf. § 514(2) ZPO). If the motion to set aside the default judgment is admissible, the proceedings are treated as if the default had never occurred, § 342 ZPO. Costs must, in principle, be borne by the defaulting party, § 344 ZPO. If service was defective, the same rules apply. However, the defaulting party must not bear the costs, as the default judgment was not handed down after correct proceedings (cf. § 344 ZPO). Thus, in case of a default judgment, the default as such does not bar any activities once the default judgment was successfully set aside. However, defences that were already barred before the default remain barred.

In case of a default judgment, a party can make an application to set aside the default judgment also if the judgment should not have been rendered due to a defect of the service of documents. As the party needs not give reasons for his/her default, this application will be granted if made in due time and form.

3.13.12. *Greece*

In Greece, in case a party fails to appear, the court verifies *ex officio* whether service has been duly performed (art. 271 CPC) and may order its renewal. In case a party who was served a judicial document as "recipient of unknown residence" is informed of the proceedings and wishes to participate, he/she is entitled to appear without any particular formalities, upon condition that the hearing of the case has not yet taken place.

In case a recipient who has been duly and properly notified of the proceedings fails to attend the hearing, the judgment is issued *ex parte* and all factual allegations of the other party are deemed as admitted. In case of a) disputes related to family matters, b) labour disputes, c) *juridiction gracieuse* (i.e. non contentious matters) the court still rules *ex parte*, but is entitled to examine the evidence as if the adversary party was participating in the proceedings.

If a default judgment has been entered against a person who had not been duly served with document instituting the proceedings, the defaulting party may challenge it through the following remedies: a) within fifteen days after actual service of the default judgment by

filing an "objection" (*anakopi erimodikias*) before the Court that issued the judgment; b) within thirty days after actual service of the default judgment or within three years since the judgment was published (in case no actual service took place) by filing an appeal, to the competent second instance Court; c) in case the judgment was issued by default because the introductory document of the proceedings was served to the defendant erroneously as person of unknown domicile, by filing a request for reopening of the proceedings (*anapsilafisi* – art. 544 CPC). The term is 60 days for persons living in Greece and 120 days for persons living abroad, from the date of service of the judgment. If the decision was not served, the deadline is 3 years from the day the judgment became final (art. 545 CPC).

3.13.13. *Hungary*

In Hungary, the court has to verify *ex officio* that all parties have been duly served (§135 CPC). If service was found to be defective, then the phase of the proceedings which affect the party who has not been duly served are terminated and service is repeated. If the document is duly served to the addressee, but he/she fails to comply with whatever the document prescribes, then he/she is considered as being in default. The most important legal effect of such default is that if a certain deadline is prescribed for an action and the defaulting party misses that, then he/she cannot take that action in the future. A party may enter proceedings at a later stage but if he/she was duly served, then he/she can only perform those actions that are allowed during that stage of the proceedings.

If the defendant fails to appear at the first hearing, and did not present his/her defence in writing, the court may issue – upon claimant's request – a court order against the defendant granting the claim described in the writ of summons, including legal fees. The court may not issue the order if the action should be dismissed (§136 CPC). If the defendant objects to the court order within 15 days following its delivery, the court will set a new date for the trial and the proceedings will continue (§136 CPC). It is also possible to challenge the presumption of service within one year, and as a consequence, the default judgment may be set aside and the proceeding may be repeated.

3.13.14. *Ireland*

In Ireland, the Court must verify whether service was validly effectuated and will not grant a judgment in default of appearance without having done so. If service is found to be defective, the plaintiff is required either to make an application for an order deeming the service effected sufficient, or to make proper service again in compliance with the RSC. An addressee of service is considered to be in default, when he/she has been served with the proceedings and failed to enter an appearance within the prescribed time or within any extended period allowed for this purpose (e.g. the court may require the plaintiff to send a 14 day warning letter to the defendant specifying plaintiff's intention to seek judgment in default – see below in this para.). The Courts also have the power to extend the time period allowed for entering an appearance. Where no appearance has been entered by a party, or

where a party or his solicitor, as the case may be, has omitted to give an address for service as required by the RSC, any document which does not need to be served personally and for which no other method of service is directed by the court, may be served by filing the same in the Central Office (Order 121, rule 5).

When a party refuses to accept service or fails to enter an appearance, and the plaintiff does not seek judgment in default of appearance, the defaulting party may subsequently seek to enter an appearance to the proceedings and seek to participate. In order to file an appearance beyond the deadline foreseen for such purpose, the defendant will require the consent of the plaintiff or an order from the Court extending the time period for the entry of an appearance.

When a defendant has not been properly served but is aware of the proceedings, he or she can enter an appearance (in which case the defect in service is cured), or decline to participate in the proceedings at all and subsequently seek to set aside any judgment obtained against him/her on the basis that service was defective. The latter is, however, a high risk strategy, as a court may refuse to set aside a default judgment obtained in default of appearance if the plaintiff is in a position to prove that the proceeding were actually brought to the attention of the defendant.

In case of defendant's default, the plaintiff may seek judgment in default of appearance. The courts take a strict approach to the proof of service in cases, where a judgment in default of appearance is sought.[168] The procedures for the assessment by the court of the evidence depend on the type of the originating document and the nature of the claim (Orders 13 and 13A). A plaintiff who wishes to seek a judgment in default of appearance must file an affidavit of service before taking any steps to seek that judgment in default. This requirement is strictly enforced. Particular procedural rules apply where the defendant is an infant or a person of unsound mind (Order 13, rule 1).[169]

The summary procedure which is processed by the Court Office is available for debt claims. In the District Court (but similar provisions apply in the Circuit Court Orders 26 and 27 CCR), this procedure is governed by Order 47 DCR which requires lodgement of the following documents with the relevant court clerk: (i) an affidavit or statutory declaration (Form 41.01,

[168] See *Crane & Son v Wallis* [1915] 2 IR 411.

[169] Order 13, r. 1: "1. Where no appearance has been entered to a summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall, before taking any further step in the proceeding against the defendant, apply to the Master for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend the proceeding. But no such order shall be made unless it appears on the hearing of such application that the summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwellinghouse of the person with whom or under whose care such defendant was at the time of serving such summons and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwellinghouse of the father or guardian, if any, of such infant, unless the Master at the time of hearing such application shall dispense with such last mentioned service. ".

41.02 or 41.03, Schedule C, as appropriate) of service of the claim notice; and (ii) a certificate (Form 47.01, Schedule C), which may be endorsed on the affidavit of debt signed by the claimant's solicitor or by the claimant (if acting in person) that no appearance, has been received from the respondent; (iii) an affidavit of debt verifying the claimant's claim (Form 47.02 or 47.03, Schedule C, as appropriate); and (iv) by a form of judgment (decree) (Form 47.04 or 47.05, Schedule C, as appropriate).

Before the court issues and the plaintiff serves this notice of motion, the claimant must write – at least 14 days before the issuance of the notice of motion – to the respondent informing him/her of the claimant's intention to serve a notice of motion for judgment and at the same time requesting him/her for appearance and defence within 14 days from the date of that letter. The notice of motion, which must be served on the respondent, can only be issued after this 14 day period expires without delivery of the appearance and defence. The 14 day letter serves as an essential proof. If it is not reasonably practicable to effect personal service (because the defendant cannot be located or is evading service), an application for an order for substituted service or an order deeming service sufficient may be made. It is possible, therefore, that the proceedings and the motion for judgment in default of appearance may be served otherwise than by personal service. Nevertheless, where a judgment in default of appearance is sought, the court will do its utmost to ensure that the defendant actually receives notice of the proceedings.

When an originating summons has been issued outside of the jurisdiction under the Brussels I Regulation, the Lugano Convention or Brussels II bis Regulation, Order 13A provides that the plaintiff is not entitled to enter judgment without leave (permission) of the Court. The application for leave must be grounded on an affidavit which confirms that service outside of the jurisdiction has taken place in due and proper form, and gives the grounds for such belief. In addition, before making an application for judgment in default of appearance, the plaintiff must file a statement of claim in the Central Office of the High Court if the proceedings were commenced by plenary summons or a grounding affidavit if the proceedings were commenced by personal injury summons, summary summons, special summons or any other originating document. The contents of the affidavit grounding the application for judgment in default of appearance must comply with the provisions of Order 13A, rule 2 RSC.

Additional requirements apply where the proceedings were served outside of the jurisdiction in accordance with the Regulation on service of documents or the Hague Service Convention. In such cases, it is necessary to establish that the originating document was served in a method prescribed by the internal law of the member state addressed for the service of documents in domestic actions upon persons who are within its territory, or that the originating document was actually delivered to the defendant or to his residence by another method provided for by the Regulation on service of documents. In either case, it is necessary to establish that service or delivery was effected in sufficient time to enable the

defendant to defend the claim (Order 11D, rule 5). Again, before making an application for a judgment in default of appearance, the plaintiff must file a statement of claim in the Central Office of the High Court if the proceedings were commenced by plenary summons or a grounding affidavit if the proceedings were commenced by personal injury summons, summary summons, special summons or any other originating document. The contents of the affidavit grounding the application for judgment in default of appearance must comply with the provisions of Order 11, rule 5 RSC.

The court may grant leave to enter judgment if no certificate of service or delivery has been received by the transmitting agency from the receiving agency in the member state in which service was to be effected, provided that: (i) the document was transmitted by one of the methods provided for in the Service Regulation; (ii) a period of time (not less than 6 months) considered adequate by the Court has elapsed since the date of transmission of the document; and (iii) no certificate of any kind has been received from the transmitting agency, even though every reasonable effort to obtain it has been made through the competent authorities of the member state addressed. Similar requirements apply where an application for judgment in default of appearance is made in proceedings that were served outside of the jurisdiction in accordance with the Hague Service Convention (Order 11E RSC).

The District Court Rules provide that an application can be made using Form 44.02 Schedule C (with the necessary modifications) to the District Court in the Court area in which the judgment was obtained for an order to vary or set aside the judgment on the ground that the same was obtained by fraud, misrepresentation, surprise, mistake or other sufficient ground. The defendant may also make an application to set aside service in accordance with Order 12, rule 26 (Superior Court). While such applications are generally instituted by defendants who wish to challenge the jurisdiction of the Irish courts in circumstances where service was effected outside of the jurisdiction, this procedure may also be used to challenge the efficacy of service effected within the jurisdiction. For example, such an application may be made where there is a defect in the proceedings served (e.g. an expired summons is served), or there was a deficiency in the service effected.

Order 13, rule 11 provides that where final judgment was entered pursuant to the rules of the Order (which governs judgment in default), the court may set aside or vary the judgment upon such terms as may be just. The case law establishes that the court will do so in two categories of case: (i) where there was some irregularity in the proceedings or the procedure by which the judgment which it is sought to set aside was obtained; and (ii) where the judgment was obtained in a regular manner but the defendant may have a good defence to the claim and the interests of justice require that he be given the opportunity to defend the proceedings.

Where judgment was obtained irregularly, then the court will normally set aside the judgment without enquiring into the merits of the proposed defence.

Order 11D, rule 6 applies to proceedings served outside of the jurisdiction in accordance with the Service Regulation, and provides that the court may extend the time for appealing the judgment if it is satisfied that: (i) the application was made within a reasonable time after the defendant had knowledge of the judgment; (ii) the defendant, without any fault on his part, did not have knowledge of the originating document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal it; and (iii) the defendant has a defence to the action on the merits. An application to set aside a judgment obtained in default of appearance will not be entertained if it was not made within a time that the court deems to be reasonable, or in respect of judgments concerning the status or capacity of persons.

Order 11E, rule 4 governs applications to set aside a judgment obtain in default or to extend the time for appealing same in proceedings which were served outside the jurisdiction in accordance with the Hague Service Convention. The same three requirements apply on such an application - the defendant must establish that: (i) the application was made within a reasonable time after the defendant had knowledge of the judgment; (ii) the defendant, without any fault on his part, did not have knowledge of the originating document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal it; and (iii) the defendant has a defence to the action on the merits.

Order 27, rule 14 further provides that any judgment by default may be set aside by the court, on such terms as to costs and otherwise as the court may think fit, if the court is satisfied that, at the time of the default, special circumstances existed which explain and justify the default.

Applications to set aside a judgment in default have been successful in a number of cases on the basis of a defect in service. Recently, authorities suggest that it is necessary for the defendant to establish that he/she did not have notice of the proceedings. It appears, therefore, that the court may refuse to set aside judgment if there was a defect in service but the defendant did have actual notice of the proceedings.

The RSC make particular provision for an application to set aside a judgment obtained in default of appearance or to extend the time for appealing same in circumstances where the proceedings were served outside of the jurisdiction in accordance with the Service Regulation or the Hague Service Convention.

3.13.15. *Italy*

In Italy if the addressee does not appear, the judge shall verify *ex officio* whether service was duly performed or he/she can order a new service of the document (art. 291 CPC)[170]. If this

[170] According to art. 291 – Defendant in default of appearance "If the defendant does not file his appearance and the judge finds a defect which causes the service of the complaint to be null, the judge assigns to the plaintiff a final time-limit to renew the service. The renewal avoids any waiver.

renewed service has been performed correctly, any defect is cured *ex tunc*, but if it is not, the proceedings are terminated. If the judge finds that service was duly performed, but the addressee chose not to appear, the judge declares the addressee as being in default and special rules apply. In the Italian legal system a party is entitled to choose not to appear and no particular negative consequences are attached to such a choice (other than not having the practical possibility to present his/her own side of the case).

If the service of the document has been properly performed and the addressee does not appear, he/she can be declared by the judge to be in default (art. 171 CPC). No default judgment is issued: proceedings continue *in absentia* and the claimant still has to prove his/her case. Service of all documents on a defaulting party may be performed by filing the document in the case file, but some documents as specified in art. 292 CPC, including the judgment have to be served personally to the defendant[171].

A party may appear at a later stage, but, unless he/she gives a good justification, he/she may not perform activities that are time-barred, but he/she may disqualify any writing produced by the other party against him/her[172]. The party may contest the validity of service and request to be allowed to perform all activities that are time-barred. According to art. 294 CPC,

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If the order of renewal of the complaint under the first paragraph is not accomplished, the judge orders the striking of the case from the General Register of Proceedings, and the proceeding extinguishes pursuant to article 307, third paragraph".
If the defects do not relate to service but to the statement of the claim and the defendant decides not to appear, a different rule applies and cure has no retroactive effects.
See Article 164 – Nullity of the complaint "… The complaint is null if any of the requisites set by article 163 numbers 1) and 2) lacks or is completely uncertain, if the indication of the hearing of appearance lacks, if the plaintiff assigned to the defendant a time-limit for appearing shorter than the one provided by the applicable law provisions, or if the warning under number 7 of article 163 lacks.
When the defendant does not appear before the judge, if this latter assesses the nullity of the complaint pursuant to the first paragraph, he orders *ex officio* the renewal of the complaint by a final time-limit. The renewal cures the defects of the complaint, and the substantial and procedural effects of the claim occur since the time of the first service. If the renewal is not accomplished, the judge orders the striking of the case from the General Register of the proceeding and the proceeding extinguishes pursuant to article 307, third paragraph".

[171] Article 292 CPC – Service and communication of acts to the party in default of appearance "The order admitting the examination or the oath, and the pleadings containing new claims or counterclaims by whomever filed, shall be served personally upon the party in default of appearance, by the time-limits fixed by the investigating judge by order.
The other pleadings are considered as communicated when they are filed with the clerk office and approved by the court clerk in the original document.
All the other pleadings shall not be served or communicated.
The judgments shall be served in the party's hands."

[172] Article 293 CPC – Appearance by the party in default of appearance "The party declared in default of appearance may file his appearance at any time in the proceeding, until the hearing for the specification of each party's conclusions.
The filing of appearance may be accomplished by filing an answer, the power of attorney and the documents with the clerk office, or by appearing before the judge at the hearing.
In any event, the party in default of appearance filing his appearance may disclaim the authorship of the writings exhibited against him, at the first hearing or by the time-limit fixed by the investigating judge".

> "If the party in default of appearance files his appearance and manages to prove that the nullity of the claim or of its service prevented him/her from knowing about the proceeding, or that a cause non attributable to him/her prevented him/her from appearing, may request the judge to be allowed to accomplish activities which would otherwise be precluded to him.
>
> If the judge deems the facts alleged as credible, he/she admits the party to prove the impediment, and decides on whether to put the parties back within the relevant time-limits.
>
> The provisions of the previous paragraphs shall apply also when the party in default of appearance files his/her appearance and intends to accomplish, without the other parties' consent, defensive activities which delay the referral to the panel of judges of the case which is ready to be decided with regard to the other parties".

Once the final judgment is rendered, the absent party, upon whom the judgment is to be served personally, may use ordinary methods of review in which the defective service serves as a legitimate ground. Two special rules apply. First, when the party in default of appearance shows that he/she was not informed of the proceeding because the service of the complaint or of the other acts prescribed under art. 292 was void, art. 327 CPC on the waiver of the right to challenge a decision after six months from its publication does not apply. This means that a party defaulting without fault on his/her part may challenge the validity of the decision beyond the usual six-month time-limit. Secondly, if on appeal the court finds that service in first instance proceedings was in fact void and has not been cured, it shall annul the entire proceedings and refer the parties back to the first judge (art. 354 CPC).

3.13.16. *Latvia*

In Latvia, if the addressee does not enter appearance in the proceedings and does not provide her/his reply to the statement of claim, the court has a duty to verify whether service was valid or defective. If defective, the court adjourns the hearing and directs that service be renewed (Art. 209(1) CPL). Otherwise, the addressee may be considered as 'defaulting'.

If a party failed to promptly notify the court of the reasons for its failure to attend the court hearing, a monetary fine can be imposed in the amount of € 80.00. If such reasons are inexcusable in the eyes of court, the fine may reach € 150.00 (Art. 156 CPL). Forced appearance may also be ordered[173].

[173] Art. 69 CPL:"(1) In cases prescribed by this Law a court may take a decision on forced conveyance of a person to the court.
(2) Such decision shall be enforced by a police institution specified by the court."

A defaulting party may enter proceedings at a later stage and make use of all of the procedural rights that are not time-barred. Challenging the service as defective entails rebutting the presumption of valid service based on Art. 56^1(2) CPL. If the presumption is rebutted, the party may use its procedural rights by for e.g. submitting explanations. If the presumption is not rebutted, the court may, in its discretion, allow the party to exercise its procedural rights.

There are certain cases that can be heard only when all the parties are present, such as divorce (Art. 236 CPL), matters relating to custody and access rights (Art. 244^4). In other cases, a default judgment (if certain conditions are met) or a decision that the addressee does not object to may be entered according to Art. 208^1 CPL:

> "(1) A default judgment is a judgment, which is rendered by first instance court in a matter where the defendant has failed to provide explanations regarding the claim and has failed to attend pursuant to the court summons without notifying the reason for the failure to attend.
>
> (2) A default judgment shall be rendered by the court on the basis of the explanations by the plaintiff and the materials in the matter if the court recognises such as sufficient for settling of the dispute.
>
> (3) A default judgment may not be rendered in matters:
>
> 1) which may not be terminated by settlement;
>
> 2) in which the declared place of residence, place of residence, location or legal address of the defendant is not in the Republic of Latvia;
>
> 3) in which the defendant has been summoned to court by a publication in the official gazette *Latvijas Vēstnesis*;
>
> 4) in which there are several defendants and at least one of them participates in proceedings
>
> (4) Provisions regarding the default judgment shall not apply to the special adjudication procedures.[174]"

[174] CPL § 251. "Matters to be Adjudicated in Accordance with Special Adjudication Procedures – Courts shall adjudicate the following matters in accordance with special adjudication procedures:
1) regarding approval and setting aside of adoption;
2) regarding declaration of a person as lacking capacity to act and establishment of trusteeship;
3) regarding establishment of trusteeship for persons because of their dissolute or spendthrift lifestyle, or because of excessive use of alcohol or narcotics;
4) regarding establishment of trusteeship for the property of absent or missing persons;
5) regarding declaration of missing persons as deceased;
6) regarding determination of such facts as are legally significant;

If the first instance court has adjudicated the case without notifying a party of time and date of the hearing, then in accordance with Art. 427(2) CPL, the judgment is set aside and the case is heard again. For other remedies, see *infra* para. 3.14.

3.13.17. *Lithuania*

In Lithuania if a party and his/her representative are not informed properly about time and place of a court hearing, and neither a party nor a representative appears before the court, the hearing is postponed (Art 246(1) CPC). A party, or his/her representative, may be fined by the court, if he/she failed to appear before court when mandatory appearance is required by the law or by the court and a default judgment cannot be entered (arts 246(3) CPC).

If the defendant is properly served and fails to appear before the court without providing any legitimate justification, the court may adopt a judgment by default upon claimant's request. If there is no such request by a claimant, the court may either postpone the hearing or decide to hear the case.

According to art. 285 CPC, a judgement *in absentia* may be rendered in case one of the parties, which had been duly notified of the time and venue of the hearing, fails to appear at the hearing and to file a petition to hear the case in its absence, and the attending party requests to adopt such a judgement. When adopting a judgement *in absentia*, the court makes a formal examination of the evidence submitted in the case, i. e., ascertain whether there is a ground to adopt such a judgement in case the contents of the evidence are proved to be true. The court dismisses a request of the party present at the hearing to render a judgement *in absentia* and defer the case hearing, if: 1) the party who failed to appear has not been duly notified of the time and venue of the court hearing; 2) a request from the absent party to adjourn the case hearing, by specifying and substantiating the reasons for non-appearance, has been obtained and the court held such reasons to be relevant. A default judgment specifies the time-limit and procedure for filing a petition to review this judgement (art. 286 CPC) and is served to the defaulting party no later than three days after it is rendered.

A default judgment may not be subject to ordinary means of review (e.g. appeal or cassation – art. 285(5) CPC), but the defaulting party may file a petition for reviewing the judgement *in absentia* with the court that rendered the default judgement. The time-limit is twenty days after the entering of such judgement. In the petition the party must also state the reasons

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7) regarding extinguishing of rights in accordance with notification procedures;
8) regarding renewal of rights pursuant to debt instruments or bearer securities;
9) regarding inheritance rights;
10) regarding pre-emption with respect to immovable property;
11) regarding insolvency of a business or a company;
12) regarding liquidation or insolvency of a credit institutions;
13) regarding declaration of a strike or an application to strike as being unlawful; and
14) regarding declaration of a lock-out or an application to lock-out as being unlawful."

that prevented him/her from appearing or informing the court of the default and any circumstances which may affect the legality and motivation of the judgement with supporting evidence (art. 287 CPC). In case the petition is granted, the judgement *in absentia* is reversed and hearing on the merits is resumed. A ruling dismissing the petition may be appealed. If the party fails again to appear without any good reason, the court may enter a second default judgment, which cannot be subject to a petition for review (art. 289 CPC).

3.13.18. *Luxembourg*

In Luxembourg, according to Art. 158 CPC, if the addressee is not found or if it is not proved that he/she has been correctly served, the judge can prescribe all further diligences, as well as all temporary measures required to ensure the rights of the applicant. A defendant who fails to appear may, at the applicant's initiative or after a decision taken *ex officio* by the judge, be invited to appear again if the writ of summons was not served on anyone (Art. 81 CPC).

If the defendant's absence is not justified, the court may nevertheless adjudicate the merits of the case, but only insofar as it considers it lawful, admissible and well founded (Art. 78 CPC). As in France, a distinction is made when the defaulting party was served in person (*réputé contradictoire*) or not (*par défaut*), arts. 78ff. CPC; the remedy known as *opposition* is only available for the latter case, arts. 90ff. CPC (see *supra* para. 3.13.10).

3.13.19. *Malta*

In Malta, courts are not duty bound to verify whether notice has actually been given to the addressee, but they are required to verify that the certificate of service indicates that the other party was served in accordance with Maltese law. If the party was not properly served, service is to be repeated. Proceedings may be declared null and start afresh if the rights of the other party were prejudiced by a defective service.

Default means the failure of the defendant to file the sworn reply or the reply within the prescribed time period allowed by law following service. If being in default, the party is deprived of his/her right to challenge the other party formally by way of oral or written submissions and to produce evidence. Nonetheless, both jurisprudence and legal provisions presume that the defendant contests all the allegations, requests and legal arguments raised by the applicant. Accordingly, "if the defendant or his advocate, or, in the causes before the inferior courts, the defendant or his advocate or legal procurator, fails to appear, the cause may be determined according to law on the acts available after hearing such evidence as the court may consider necessary, notwithstanding his default of appearance" (art. 201 CPC). The defendant will remain entitled to be present to all hearings, receive copies of any documents produced and, eventually, to file an appeal. Furthermore, the defaulting party may also show to the satisfaction of the court that there was a reasonable excuse for the default. A reasonable excuse has been defined by jurisprudence as one which was not voluntary, negligent and which consisted in a legitimate impediment.

3.13.20. *The Netherlands*

In the Netherlands, when an addressee does not enter an appearance and all formalities are complied with, a default judgment may be rendered, provided that service is found to be valid and the claim does not seem to be unlawful or unfounded. A defaulting party may challenge the validity of the service on him/her on the basis that in fact he/she was not served with the document in a way that is compatible with his/her right of the defence. As long as no judgment is made, he/she can still appear in court. Default has no consequence on methods for subsequent service of documents. When a default judgment is entered, the defendant must formally appeal the judgment.

3.13.21. *Poland*

In Poland, if the addressee does not enter the appearance and service is found to be valid by the judge, the judge may render a judgment by default. According to art. 339 KPC, in case of default the facts and the claims made by claimant in the statement of claim or in the documents served to the addressee are deemed to be true, unless there are reasonable doubts or they are found to be fraudulent. In general, the judge immediately issues a default judgment. An absent party may object to a default judgment by lodging an opposition within 7 days from the date on which the judgment was served on him/her (art. 344 KPC). Such opposition must also specify a statement of defence against plaintiff's claims and supporting evidence. Upon motion by the defendant, the court may stay the enforceability of the judgment in certain cases, including when the defendant alleges that he/she did not receive proper notice of the first instance proceedings (art. 346 KPC). After renewal of the proceedings, the court issues a new judgment which either confirms or revokes all or part of the default judgment, and grants or reject plaintiff's claims (art. 347 KPC).

3.13.22. *Portugal*

In Portugal, when the defendant does not appear, he/she is considered as being in absolute default and the court determines whether the service was performed with all formalities required by the law. The court orders renewal of service when it finds irregularities or defects.

The defendant can be considered as being in absolute default if, in addition to not having opposed the claim, he/she does not appoint a legal representative, or does not intervene in any way in the proceedings. This should not be confused with the mere absence of the addressee.

A default judgment may be entered against a defaulting defendant, as if the facts alleged by the claimant were true. However, when service was performed by public citation, the facts are not considered as confessed. The defaulting party may intervene later on during the proceedings regardless of the validity of the service. If the service of document was invalid, the defaulting party may invoke the defect and all the acts will be revoked. In all other cases the party may only perform activities that are not barred at that stage of the proceedings.

3.13.23. *Romania*

In Romania, if a party was not properly served and did not appear, service is to be renewed upon direction by the court *ex officio* (art. 153 CPC). The court may also order that other methods be used to ensure that the defendant receives notice of the proceedings (Art. 154(7) CPC). If the party attending in court, in person or by representative, objects that it did not receive the summons or received it in a shorter term than as provided by art. 159 CPC or there is a different nullity cause regarding the summons or its delivery by hand, the trial is postponed at the interested party's request (Art. 160 CPC), otherwise the defect may be cured (see *infra* para. 3.15).

If an absent defendant enters appearance in court and proves that he/she was summoned by publicity in bad-faith (i.e. against the better knowledge of the whereabouts of the addressee by the claimant), the consequences incurred by the claimant emerge on several levels. Summoning the defendant in bad-faith is considered as a breach of procedural rules (art. 187 (1), pct. 1, letter c, CPC). At the same time, claimant may be forced to pay compensations (Art. 189 CPC) and the documents and subsequent actions performed after the approval of the summoning by publicity can be cancelled at the defendant's request.

When, despite proper service, the defendant is in default, the court may still adjudicate on the merits of the claim after hearing the submission of the parties who are present and based on the evidence presented (art. 223 CPC). A party entering proceedings may also exceptionally request that the hearing be postponed so that he/she will be able to submit a defence, but only upon showing a good reason not attributable to the party or his/her representative (art. 222 CPC).

3.13.24. *Slovakia*

In Slovakia, if a party has been validly served and does not enter an appearance, proceedings may either continue or the judge may enter a judgment against the defaulting party. [175]

The case might be decided by default of the party if (§153b CPC):

> 1. the defendant did not appear to the hearing even though he/she was given notice in due time (§ 79(4) and § 115(2) CPC) and was also informed on the consequences of not showing up and on the possibility of the default;

[175] Under the new Code the relevant provisions are §§ 172 and 273ff. A default judgment may be issued if the claim is for the performance of an obligation (§137(a) new CPC), defendant was given notice of the consequence of defaults and service was made personally to the defendant. A default judgment contains a brief identification of the claims and of the legal grounds for the default judgment. The defaulting party may apply to have the default judgment set aside (§277 new CPC) in case there is a justification for the default. The application must be accompanied by the statement of defense on the merits and, if successful, the judgment is set aside and proceedings on the merits are restarted. The deadline is 15 days since the party learned of the default judgment. §§278ff. of the new CPC regulate default of the plaintiff.

2. the defendant did not make any written statement in 15 days after service and was informed by the court about the consequences thereof (§ 114(3) CPC);
3. the defendant did not justify his absence in due time and on ground of serious circumstances.

In case a default judgment is rendered, the facts as claimed by the claimant are considered by the court to be uncontested and accepted as true. A default judgment may not be rendered in certain cases, such as when the subject-matter of the dispute is not amenable to settlement (§153b(5) CPC).

A defendant may apply to set aside a default judgment entered pursuant to § 153b CPC if he/she has a reasonable excuse for not being present at the hearing in which the court gave such judgment. If the court grants the application, the judgment is revoked and the hearing takes place again (§153c CPC).

3.13.25. *Slovenia*

In Slovenia, the court has the duty to verify whether service has been duly performed. The court cannot proceed without prior valid service, if service is found to be defective, it has to be renewed. The defendant is considered in default if service was correct and he/she did not file any defence plea. A defendant may enter proceedings at a later stage, but he/she can only perform activities not yet barred. If the guardian ad litem in accordance with Article 82 ZPP has been appointed, the party will enter in the proceeding in the phase in which the proceeding is, as the guardian ad litem has all rights and obligations of the legal representative until the moment when the party enters the proceeding. The party may also challenge the validity and correctness of the service, but the burden of proof is high. Service on a defaulting party is made the same way through the trial.

If the defendant has failed to file his/her statement of defence within the time period provided by the ZPP (Art. 277 ZPP), the court renders a default judgment, provided that (Art. 318 ZPP):

1. the action has been duly served upon the defendant to file the defence plea;

2. the action does not contain a claim which is not amenable to settlement;

3. the claim is founded upon the facts stated in the statement of claim;

4. the facts upon which the claim is based upon are not in contradiction with evidence adduced by the claimant or with judicial knowledge.

If additional inquiries are to be made with respect to these circumstances, the court may postpone the issuance of the default judgment. If the facts stated in the statement of claim do not justify the claim to a sufficient extent, the court may dismiss the claim.

If the defendant filed the defence plea, but did not appear afterwards in the main hearing, he/she is not considered to be in default and no judgment by default can be issued. The main hearing can be conducted in absence of either of the parties (Art. 282 ZPP). If the defendant is absent only from the main hearing (Art. 282 ZPP), but the judge still issues a default judgment against him/her, this may be annulled by the Constitutional Court.

3.13.26. *Spain*

In Spain, in case the addressee does not enter appearance, the court verifies whether service has been duly performed. If defects are discovered, the service has to be repeated. In case service was valid, the court declares the defendant who fails to appear on the date or within the time-limit stated in the summons or in the order to attend as being in default (Art. 496 LEC). The declaration of default is not considered as the acceptance of the claim neither as the admission of the facts.

The defendant is notified by mail or, if his/her address is not known, by public notices, of the decision which declares the default. Once this notification is made, no other notification is required, except for notification of the decision that terminates the proceedings (art. 497 LEC). The defendant is notified personally of the judgement or decision that terminates the proceedings (but if the address is unknown, notification is made through publication).

A party may enter proceedings at a later stage (Art. 499 LEC). A defaulting party may appeal against the final decision issued in its absence. *Rescission*, a special remedy, may be available when certain conditions are met (Arts. 501-508 LEC). According to Art. 501 LEC, "[t]he defendants who have remained constantly in default may request the rescission of the final judgement by the court which issued this judgement, in the following cases:

(i) Uninterrupted force majeure, which prevented the party in default from appearing at any time even though he knew of the case, as he had been properly summoned or ordered to attend.

(ii) Ignorance of the claim and the case when the summons or order to attend is carried out through a summons pursuant to Article 161, but this had not reached the defendant in default due to a reason not attributable to him.

(iii) Ignorance of the summons and the case when the defendant in default has been summoned or ordered to attend through public notices and was absent from the place in which the proceedings take place and from any other place in the State or autonomous region, in whose Gazettes these were published".

3.13.27. *Sweden*

In Sweden, the court verifies *ex officio* whether service has been duly effected according to the chosen and correct method. If service has been correct there are different consequences depending on the particular circumstances. On a case-by-case basis, if there is an uncertainty

as to whether documents have reached an absent addressee, the court may sometimes try to effect service in another manner.

In case the proceedings continue despite of the default of the party (after valid service) and service of further documents are necessary, there are no particular or special rules on service of documents. This fact, however, will presumably affect the court's choice of method to the extent that different methods are available.

When a party is absent, this may lead to several consequences: e.g., judgment in default, the matter is dismissed, a fine is imposed on the party, a person or party is brought by force to the court hearing, a new date is set for the hearing in case of acceptable cause. The consequences depend on which of the parties are in default and whether the matter in substance is such that it is amenable to settlement between the parties. Some civil matters are not considered amenable to settlement between the parties because they have a public interest element, e.g. some family law matters. According to Chapter 44(2), CJP:

> *"If the matter at issue is amenable to out of court settlement, and if a party fails to appear at a session for oral preparation and he was directed to appear with the consequence that otherwise a default judgment might be entered against him, on request of the appearing party, such a judgment shall be entered. If a default judgment is not requested, the case shall be removed from the court's list.*
>
> *However, if the non-appearing party is the defendant, on request of the plaintiff, the case may be continued for oral preparation on a subsequent date. If the defendant fails to appear at the subsequent conference, the rules in the first paragraph shall apply."*

According to Chapter 44(7a), CJP:

> *"If the defendant fails to obey a directive to submit a written answer with the consequence that otherwise a default judgment can be entered against him, such a judgment may be entered unless the plaintiff has opposed this.*
>
> *The defendant shall be considered to have followed a directive to submit an answer if he has made manifest his position to the plaintiff's claim and has alleged reasons which can be of importance at the trial of the matter at issue."*

For a judgment in default the requisite basic procedural requirements need to be fulfilled. Furthermore Chapter 32(6), CJP, prevents the application of the consequences of default if there is a valid legal cause for the default. According to Chapter 44(8) CJP, a judgment by default against the defendant is based upon the plaintiff's statement of the case to the extent that the defendant has received notice of such statement and the statement is not contrary to matters of common knowledge and it is not without legal reasons or otherwise clearly without foundation. When a default judgment is entered, Chapter 44(9-10) CJP allows

parties to apply for the reopening of the case within one month from the date on which the judgment was served upon them. The application is submitted to the same court that rendered the default judgment. If the default judgment was entered during the preparation of the case, the application is required to contain everything necessary to complete the preparation by the applicant. In fact, if the application to reopen is granted, proceedings are resumed at the stage it had reached prior to the entering of the default judgment. A party against whom a default judgment has been entered twice cannot apply for a reopening of the case.

3.13.28. *Scotland*

In Scotland, the court verifies whether the service of documents was valid or defective through examination of the certificate of execution of service. The certificate of execution of service is accepted as proof of service until its veracity is disproved. If service is found to be defective, the court may order its renewal.

In case the absence is unjustified, a decree in absence may be granted in all cases. In certain instances, such as divorce cases, the present party may be required to submit an affidavit before default judgment is entered.

A decree in absence (Chapter 19) may be entered upon claimant's application when the defendant fails to enter appearance, or, having entered appearance, fails to lodge defences. The court grants the decree in absence accepting all or any of the conclusions of the summons if it is satisfied that it has jurisdiction and that service has been duly performed.

As a special remedy against default judgments, an absent party may seek recall of decree in absence. Within a tight time-limit (7 days or more as directed by the court – Chapter 19(2)(2))[176], the defendant may apply to the court for recall of the decree and to allow defences to be received. The application must be accompanied during the same time allocated to filing defences in the original proceedings. If the court grants the application for recall, the action proceeds as if the defences had been timely filed.[177] The recall of a decree

[176] Chapter 19(2): "Recall of decrees in absence 19.2.-(1) A decree in absence may not be reclaimed against. (2) A defender may, not later than- (a) 7 days after the date of a decree in absence against him, or (b) the last day of the period for which extract of the decree has been superseded, apply by motion for recall of the decree and to allow defences to be received". Superseded: Chapter 19(1)(5): "(5) In an undefended action in which a defender is designed as resident or carrying on business furth of the United Kingdom and has no known solicitor in Scotland, the court shall, in the interlocutor granting decree in absence against him, supersede extract of that decree for such period beyond 7 days as it thinks fit to allow for the number of days required in the ordinary course of post for the transmission of a letter from Edinburgh to the residence, registered office, other official address or place of business, as the case may be, of that defender and the transmission of an answer from there to Edinburgh."

[177] In case service on the defendant had been made outside the United Kingdom, more generous rules apply. Chapter 19(2): "(5) Where a summons has been served on a defender furth of the United Kingdom under rule 16.2 and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the motion of that defender, recall the decree and allow defences to be received if-

(a) without fault on his part, he did not have knowledge of the summons in sufficient time to

is made "without prejudice to the validity of anything already done or transacted, of any contract made or obligation incurred, or of any appointment made or power granted, in or by virtue of that decree" (Chapter 19(2)(7)).

3.13.29. *England*

In England the court does not verify whether service has been duly performed. If the defendant does not either acknowledge service (CPR 10)[178] or does not enter a defence (CPR 15) and the claimant has certified that service has been effected, default judgment will be entered against the defendant upon claimant's request or application (CPR r.12).[179]

A default judgment is largely considered to be an administrative matter, not usually requiring going before a judge since the court records will show that the defendant has not acknowledged service or served a defence. The conditions for its granting are in CPR 12. Default judgment may be entered by simple request made with the relevant form in case the claim is for a specified amount of money - to be decided by the court -, the delivery of goods where the claim form gives the defendant the alternative of paying their value or any combination of these remedies. In other cases, the claimant is required to file additional information with an application for default judgment (CPR 23).[180]

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defend;
(b) he has disclosed a prima facie defence to the action on the merits; and
(c) the motion is enrolled within a reasonable time after he had knowledge of the decree or in any event before the expiry of one year from the date of the decree;
and, where that decree is recalled, the action shall proceed as if the defences had been lodged timeously.
(6) On enrolling a motion under paragraph (5), the defender shall lodge defences in process".

[178] CPR 10 "10.1 Acknowledgment of service – …
(3) A defendant may file an acknowledgment of service if – (a) he is unable to file a defence within the period specified in rule 15.4; or (b) he wishes to dispute the court's jurisdiction [CPR 11].
10. 2 Consequence of not filing an acknowledgment of service – If – (a) a defendant fails to file an acknowledgment of service within the period specified in rule 10.3; and (b) does not within that period file a defence in accordance with Part 15 or serve or file an admission in accordance with Part 14, the claimant may obtain default judgment if Part 12 allows it."

[179] CPR 12.3 "(1) The claimant may obtain judgment in default of an acknowledgment of service only if –
(a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
(b) the relevant time for doing so has expired.
(2) Judgment in default of defence may be obtained only –
(a) where an acknowledgement of service has been filed but a defence has not been filed;
(b) in a counterclaim made under rule 20.4, where a defence has not been filed,
and, in either case, the relevant time limit for doing so has expired.
(Rule 20.4 makes general provision for a defendant's counterclaim against a claimant, and rule 20.4(3) provides that Part 10 (acknowledgement of service) does not apply to a counterclaim made under that rule)"

[180] Practice Direction to Rule 12 – Obtaining default judgment
2.1 Rules 12.4(1) and 12.9(1) describe the claims in respect of which a default judgment may be obtained by filing a request in the appropriate practice form.
2.2 A default judgment on:
(1) the claims referred to in rules 12.9(1)(b) and 12.10, and

(2) claims other than those described in rule 12.4(1),
can only be obtained if an application for default judgment is made and cannot be obtained by filing a request.
2.3 The following are some of the types of claim which require an application for a default judgment:
(1) against children and protected parties1,
(2) for costs (other than fixed costs) only2,
(3) by one spouse or civil partner against the other3 on a claim in tort4,
(4) for delivery up of goods where the defendant will not be allowed the alternative of paying their value; and
(5) Omitted.
(6) against persons or organisations who enjoy immunity from civil jurisdiction under the provisions of the International Organisations Acts 1968 and 1981.
Default judgment by request
3.1 Requests for default judgment;
(1) in respect of a claim for a specified amount of money or for the delivery of goods where the defendant will be given the alternative of paying a specified sum representing their value, or for fixed costs only, must be in Form N205A or N225, and
(2) in respect of a claim where an amount of money (including an amount representing the value of goods) is to be decided by the court, must be in Form N205B or N227.
3.2 The forms require the claimant to provide the date of birth (if known) of the defendant where the defendant is an individual.
Evidence
4.1 Both on a request and on an application for default judgment the court must be satisfied that:
(1) the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence),
(2) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired,
(3) the defendant has not satisfied the claim, and
(4) the defendant has not returned an admission to the claimant under rule 14.4 or filed an admission with the court under rule 14.6.
4.2 On an application against a child or protected party5:
(1) a litigation friend6 to act on behalf of the child or protected party must be appointed by the court before judgment can be obtained, and
(2) the claimant must satisfy the court by evidence that he is entitled to the judgment claimed.
4.3 On an application where the defendant was served with the claim either:
(1) outside the jurisdiction7 without leave under the Civil Jurisdiction and Judgments Act 1982, or the Lugano Convention or the Judgments Regulation, or
(2) within the jurisdiction but when domiciled8 in Scotland or Northern Ireland or in any other Convention territory9 or Member State,
and the defendant has not acknowledged service, the evidence must establish that:
(a) the claim is one that the court has power to hear and decide,
(b) no other court has exclusive jurisdiction under the Act or the Lugano Convention or Judgments Regulation to hear and decide the claim, and
(c) the claim has been properly served in accordance with Article 20 of Schedule 1 to the Act, Article 26 of the Lugano Convention, paragraph 15 of Schedule 4 to the Act, or Article 26 of the Judgments Regulation.
4.4 On an application against a State10 the evidence must:
(1) set out the grounds of the application,
(2) establish the facts proving that the State is excepted from the immunity conferred by section 1 of the State Immunity Act 1978,
(3) establish that the claim was sent through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State or, where the State has agreed to another form of service, that the claim was served in the manner agreed; and
(4) establish that the time for acknowledging service (which is extended to two months by section 12(2) of the Act when the claim is sent through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State) has expired.
(See rule 40.8 for when default judgment against a State takes effect.)
4.5 Evidence in support of an application referred to in paragraphs 4.3 and 4.4 above must be by affidavit.

In certain matters, such as those covered by the Consumer Credit Act 1974 or those listed in PD 12.1.3,[181] default judgment may not be entered.

If default judgment has been entered, the defendant will need to apply for an order that service has not been effected properly and to set aside the judgment entered against her before the proceedings can effectively restart or rather start from the point at which default judgment is set aside. In terms of other defaults, the consequences of default will depend on the nature of the default and the consequences any rule or court order has due to that default. A defaulting party may, for instance, be barred from relying on evidence not served in time, may have their statement of case struck out, may have judgment entered against them.

If no judgment has been entered, there is usually no obstacle to a defendant acknowledging service late and then taking part in the proceedings in the usual way.

When the defendant finds that a default judgment has been entered against him/her, he/she can apply to set aside the judgment on the ground that service was not properly effected (CPR r.13). 1). If the conditions for entering a default judgment according to CPR 12 are not met, the court must set aside the judgment. In other cases, the court has discretion to set aside the default judgment if the defendant has a real prospect of successfully defending the claim, or there is some other good reason why the judgment should be set aside or varied or the defendant should be allowed to defend the claim. (CPR 13.3). The court also takes into account whether the party in default acted promptly.

As noted above, the party against which a default judgment is entered could apply to have it set aside. If a judgment was entered at a hearing to which a party was not present because they were unaware of it, due to a failure to give actual notice of the hearing or the trial, again that party could seek to have that decision set aside: see CPR r.39.3.

4.6 On an application for judgment for delivery up of goods where the defendant will not be given the alternative of paying their value, the evidence must identify the goods and state where the claimant believes the goods to be situated and why their specific delivery up is sought.
General
5.1 On all applications to which this practice direction applies, other than those referred to in paragraphs 4.3 and 4.4 above11, notice should be given in accordance with Part 23.
5.2 Where default judgment is given on a claim for a sum of money expressed in a foreign currency, the judgment should be for the amount of the foreign currency with the addition of 'or the Sterling equivalent at the time of payment'.

[181] PD 23.1.3 "Other rules and practice directions provide that default judgment under Part 12 cannot be obtained in particular types of proceedings. Examples are:
(1) admiralty proceedings;
(2) arbitration proceedings;
(3) contentious probate proceedings;
(4) claims for provisional damages;
(5) possession claims".

3.14. Remedies against "defective" service of documents

In this study we use "defective service" in a broad sense, covering both legal and practical errors of the process aiming at the delivery of the documents to the addressee. On one hand, this concept covers situations when the documents are not duly served, i.e. not in the manner and according to the procedure prescribed by the law. On the other hand, it covers situations where service of the documents was properly done from the legal point of view, and although no irregularities took place during the process, the service of documents still did not actually achieve its objective, because the documents neither reached the addressees nor were they informed about the fact that a service had been attempted on them. In this latter case, which will usually occur when fictitious methods of service are used (but sometimes also in situations of substituted service), the law accepts the service as validly performed (either in form of a rebuttable presumption or as a matter of fact), although in reality the addressee did not get knowledge of the documents. The rights of defence may justify under certain circumstances that legal remedies are offered to the addressees in such cases, too, which enable them to challenge the service of the document.

As repeatedly noted, the service of documents – and in particular the service of documents instituting proceedings – is directly linked to the right to be heard and to the guarantees of due process and fair trial. As we have seen, in the majority of MSs, a default judgment accepting the claimant's requests may be rendered against a defaulting party (see *supra* para. 3.13), and in any case, also in those MSs in which the judge may only grant a judgment in so far as the claim has been proved by the claimant; an absent party loses the opportunity to bring its own case and evidence. This is why a defective service may taint the proceedings and any decision resulting from there.

With regard to the remedies against a service of a document which was duly done in accordance with the applicable procedural rules but where the document did not reach the addressee (because a constructive method was used, or in case of a substituted service the deposited document was returned to the sender), the addressee as a defendant or respondent of the procedure may also apply the remedies for removal of default (may they be granted by domestic or by the European law, see *supra* para. 3.13). But proving the facts of not having been actually informed of the service without any fault on his/her part usually also opens the addressee those remedies which aim at setting aside the procedural act of service of document and at restoring the procedure in a prior stage.

if it is proven that the service of a document was not properly carried out (for e.g. because the requirements for using a constructive method of service were not met, or a special procedure was not followed or there were other, less fictitious, methods available), the addressee (party) may avail himself/herself of the procedural remedies which aim at setting aside the act of service (or a resulting judgment).

The consequence for a party succeeding in applying for a remedy depends on the remedy in question, which may result in that service is set aside and must be renewed, that any expired time limit is lifted and the party is allowed to perform any action that was time-barred, or that a given judgment is annulled or reviewed. In most serious cases, proceedings may be sent back to first instance.[182]

Often, remedies are not available when, despite defects in service, the addressee received actual notice of the proceedings and decided not to participate, trying to exploit at her/his advantage the procedural defect, or when she/he has in any other way cured the defect, for instance when entering appearance without rising objections (see *infra* para. 3.15).

In Austria, the defaulting party can demand restitution in the *status quo ante* and put forward that his/her absence from the proceedings was without any fault on his/her part (§ 146 ZPO). One reason for the lack of fault can be defective service, which is expressly mentioned as an example in § 146(1) ZPO. If the application is granted, there are no negative consequences and the party is given the opportunity to file his/her defence as if it was timely done. Moreover, if a defective service was not cured, this can constitute a violation of the right to be heard. In turn, no objection can be made if the document served has been actually received by the addressee. This, in turn, can be the basis for an appeal, see § 477(1) no. 4 ZPO. In case of defective service, even a final judgment (res judicata) can be annulled. As also described above, enforcement cannot start if the execution title was not served on the debtor. If enforcement proceedings have already started, the party can demand their suspension, § 7(3) EO.

As for Belgium, other than an *opposition* against a default judgment (see *supra* para. 3.13.2), an ordinary appeal may also be lodged (Art. 1050 *Code Judiciaire*) within one month from the *notification* or *signification* of the judgment (Art. 1051 *Code Judiciaire*).

In Bulgaria, a party may apply for restoration of the time limit or appeal against the final decision. In case fictitious service by publication or by posting a notification was performed, the party may prove that the registered address was known to the plaintiff or that no adequate attempts were made for service at the address abroad. In addition, the party may prove that the official document verifying the service is false. The addressee may also give evidence that substitute service was performed on a recipient that is not known to him/her or that the substituting recipient did not forward the documents or that service was, in any other way, defective. In such case the presumption of valid service may be overcome and the party may request that a time-limit (art. 64(2) CPC) be restored by proving that he/she has been absent and unable to learn about the service of the documents (art. 46(4) CPC).

[182] The ECtHR found in *Miholapa v. Latvia*, 3rd chamber, 31st May 2007 (application n. 61655/00), ¶ 30, that in case there is a defect in service that causes the default of one of the party, according to article 6, § 1, ECHR, "il appartient aux juridictions supérieures de réparer la violation des droits procéduraux en ordonnant un réexamen complet de l'affaire".

The petition for restoring a time limit must be filed within one week after the communication of expiration of the time limit and is not granted if extension of the time limit of the omitted step was possible. The time limit for the submission of a petition for resumption of a time limit may not be extended. A refusal to grant the petition may be subject to appeal (art. 66(2) CPC). All costs, which have arisen for the opposite party from the expiration of the time limit and in the proceeding for restoration of the time limit, are borne by the petitioner (art. 67 CPC). A defective service may also be ground for revocation of the decision in a procedure before the Supreme Court (art. 303(5) CPC). Revocation must be filed within three months after the judgment has been rendered (art. 305 CPC).

There is a special procedure for setting aside (reversal or revocation) of final judgments that are not subject to further appeal. According to Art. 303(1), p.5, CPC if the party, due to the violation of a legal provision, has been deprived of an opportunity to participate in the procedure or has not been duly represented, or where the said party has been unable to appear in person or through a counsel owing to special unforeseen circumstances which the said party was unable to overcome, a claim for revocation can be filed with the Supreme Court of Cassation. An application for reversal must be submitted within three months from the day when the party gained knowledge of the decision. The application for reversal is examined by the Supreme Court of Cassation sitting in public session, where the parties are heard and evidence is taken. An application for reversal does not have a suspensive effect on the enforcement of the judgment. The court, upon a party's request, may stay the enforcement if a security is provided. If the judgment is reversed, enforcement is stayed, the judgment is set aside and the case is returned to the first instance court for new hearings.

In Croatia, if a party fails to appear at a hearing or to meet a deadline for taking an action in the proceedings, and, for that reason, he/she loses the right to take that action, the court may permit such party, upon his or her motion, to take that action later (motion to restore a prior status – arts 117ff. CPC), if it deems that there were legitimate reasons for the omission. The motion to restore prior status must be filed within fifteen days from the day when the reason for the omission ceased or from learning about the procedural omission, and no later than three months from the omission (Art. 118 CPC). If service is found to be defective, the court will repeat it and all the actions based on such defective service will be revoked. Defective service of documents is a significant breach of civil procedural rules and can be a cause for annulment of the final decision on appeal.

There are also two extraordinary legal remedies which can be used if the judgment due to default becomes final. One of them - revision (*revizija*) – is regulated by Arts. 382ff. ZPP and it depends on the value of the subject matter (it must exceed 200.000 kuna – ca. € 26,000.00) and is to be used for serious violations of laws, including "if, because of unlawful actions, and especially because failure to make service, any of the parties was not given opportunity to be heard by the court" (art. 354 ZPP). The other one – repetition proposal (*prijedlog za ponavljanje postupka*, arts. 421ff. ZPP) – can also be used "if, because of

unlawful actions, and especially because of failure to make service, any of the parties were not given opportunity to be heard by the court". Such application is to be filed with the court that rendered the decision, no later than 30 days after finding out about the existence of the decision. In both cases the court may order repetition of the proceedings.

In Cyprus, the usual remedies are to set aside service and to set aside a default judgment or an order issued *ex parte* (including an order authorising substituted service). Grounds relating to service include that the method used was not sufficient to give notice, that the order of court was not followed correctly, or that ordinary or other more effective methods of service of document were available. The party upon whom the defective service of documents was made may apply to the court for the decision of the court, including final decision, to be set aside provided such application is filed within reasonable time from the moment the party receives knowledge of the decision issued. If judgment has already been rendered in default of appearance, then, pursuant to order 17 r.10 «it shall be lawful for the court in a proper case to set aside or vary such judgment upon such terms as may be just,» upon an application by the defendant. The defendant, in such an application, must show either that there has been an irregular service (in such case the decision can be set aside *ex debito justitiae* – i.e. "in the interest of justice") or in any other case that there is good reason why he/she did not appear on time in the proceedings and that he/she has a good defence on the merits of the case.[183] If, upon such application, the court refuses to set aside the default judgment, an appeal might be filed against the decision refusing that the default judgment be set aside.

In the Czech Republic, a party to the proceedings may apply to the court in case of a defective service pursuant to §50d CCP. The application must be filed within 15 days following the day when the addressee or document recipient has or could have received the documents. The application must include the day the participant in the proceedings has or could have received the delivered document, and evidence to support that the application has been filed in time. It shall also contain supporting evidence that the application is well grounded. If the court that served the documents finds that the participant in the proceedings or his/her representative could not gain knowledge of the documents for a justifiable reason, it should declare the service of documents ineffective. A justifiable reason does not include the fact that the natural person does not permanently stay at the address for delivery, or the fact that nobody lives at the address for delivery of a natural person conducting entrepreneurial activity or of a legal entity. If the court has decided that the document delivery is ineffective, the documents are deemed delivered on the day when the court's decision on such ineffectiveness enters into force.

[183] In the case *Giorgallides v. Christou (Ttomi)* (1997) 1A. A.A.D. 247, it was held that since the service was proved to be irregular, then the Court of First Instance was obliged *ex debito justitiae* to set aside the default judgment and this was not a matter of discretionary power.

If the documents (action and summons) were not served at all or the service was defective, the participant can contest the decision of the court issued in the first instance by lodging an appeal in accordance with § 205(2) lett. c, CCP, because this procedural deficiency constitutes an error that could have generated an incorrect decision in the matter. The period is fifteen days from service of the judgment (§ 204 CCP). The participant can also contest a final judgement or a final resolution of the court of appeal by nullity plea in accordance with §229(3) CCP (within three months from learning about the judgment – § 234 CCP). If a judgment was rendered by default, the party may either appeal it or apply to the court for its revocation (§153b(4) and (5)).

In Denmark, as a matter of principle, any objections on points of law must be made in the defence (§351(4) AJA). In general, it is the courts which set the standard for the evidence one must produce as being satisfactory for the court. If it turns out that the document has not been validly served, the procedure must start over. If the defects result in a default judgment being issued, an application for reopening the case may be filed (§367(1) AJA – see *supra* para 3.13.7).

In Estonia, if a party was not notified of a petition, application, evidence or objection of the opposing party in time before the court hearing and, due to such fact, is unable to form a sufficiently clear position concerning such submissions, the court may set a term to provide such position (§331(2) CPC). If a default judgment has been issued, the main remedy is an application to set aside such judgment and reopen proceedings as explained above (CCP § 415 ff. – see *supra* para. 3.13.8). If the term for an application to set aside the judgment has expired, the party may try to file an application for review with the Supreme Court (CCP § 702 ff.) within two months after the date during which the decision was rendered to the participant in the proceeding (public service is not taken into consideration in this context, CCP § 704 (1)). The ground for the review is the failure to inform a participant in the proceedings pursuant to the requirements of law, including the failure to serve the statement of claim on the participant in the proceeding or the failure to summon the participant in the proceeding to court pursuant to the requirements of law although the decision was made with regard to the participant in the proceeding (CCP § 702(2), sub. 2). If the Supreme Court finds that a petition for review is justified, it annuls the decision and refers the matter for a new hearing to the lower court that made the decision. If the facts are obvious, the Supreme Court amends the decision of a lower court or annuls the decision of a lower court and makes a new judgment or ruling (CCP § 710 (1)). It is reported that in practice most of such petitions are not successful.

In Finland, there are remedies against default, such as a request for a time-extension or an application for review of a default judgment (see *supra* para. 3.13.9). Grounds may vary and if the application is successful, usually the consequence is that the case is reopened. There is also an extraordinary remedy based on grave procedural error, such as “if an absent person who had not been summoned is convicted or if a person who had not been heard otherwise

suffers inconvenience on the basis of the judgment" (Chapter 31(1), CJP). The application is to be filed within 6 months from the date when the absent party receives notice of the judgment. If the application is successful and it is found that a procedural fault occurred, the judgment is annulled in full or in part and the case is returned to the court where the error occurred. Under Chapter 11, Section 18.2, CJP a party may enter a plea notifying that the service has not been performed before the deadline or that it has been erroneously served. As the grounds for such plea are not restricted, the party may claim that a certificate of service is false.

In France and Luxembourg, the time limit to file an ordinary appeal or an *opposition* against a default judgment (see *supra* paras. 3.13.10 and 3.13.18) runs from the date when the judgment has been rendered to the addressee (Art. 678 CPC). This is the expression of a general principle, according to which "[t]he time limit, at the expiration of which a review action may no longer be brought, will run as from the notification of the judgement, save where the time-limit has begun to run, as provided by law, as from the day of the judgement"[184] (Art. 528 CPC).

In Germany, general remedies apply. In case of defective fictitious service, deadlines do not run until the addressee actually received the document (§ 189 ZPO) or correct service was repeated. However, the addressee must take the appropriate general remedies. If a default judgment is issued, an application to set aside the default judgment may be filed (see *supra* para. 3.13.11). A party who has not lost its right to claim that service was defective (see *infra* para. 3.15 on cure of defective service) can raise this issue at the appeals level or – if an appeal is not possible because the party loses with less than €600 and the first instance court did not allow for an appeal – a party can demand a reopening of the proceedings for violation of its right to be heard (§ 321a ZPO). There is also a special review called "*Wiedereinsetzung in den vorigen Stand*" (*restitutio in integrum* or *restoration of the status quo ante*), governed by §§ 233-238 ZPO[185]. This review is not limited to a defective service, but may be applicable in this case as well.

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[184] There seems to be only few cases, such as when the review is against an omission by the Court of Appeal to decide on a part of the appeal (arts. 463 and 500 CPC).

[185] § 233 Restoration of the status quo ante
Where a party was prevented, through no fault of its own, from complying with a statutory period or the deadline set for submitting the particulars of its appeal, the grounds for filing the appeal on points of law, the complaint against denial of leave to appeal, or the complaint on points of law, or where a party was prevented from adhering to the period stipulated in section 234 (1), that party is to be granted the restoration of the status quo ante upon a corresponding petition being filed. It will be presumed that the party was not at fault if no instruction on available legal remedies was provided, or if it was deficient.
§ 234 Period for the restoration of the status quo ante
(1) The petition for such restoration of the status quo ante must be filed within a two-week period. The period shall amount to one (1) month if the party is prevented from complying with the deadline set for submitting the particulars of its appeal, the grounds for filing the appeal on points of law, the complaint against denial of leave to appeal, or the complaint on points of law.
(2) The period shall commence on the date on which the impediment has been removed.

In Greece, as seen *supra* para. 3.13.12, remedies against a default judgment include filing an objection (*anakopi erimodikias*) before the same court that issued the default judgment or by filing an appeal before the appellate court.

In Hungary, defective delivery can be challenged during the proceedings. If documents were deemed to have been validly served based on a presumption of service, this presumption may be challenged also after the judgment has been delivered, during court enforcement proceedings (as set out by art. 99/B CPC). The party can also file an application for retrial according to art. 99/A CPC challenging the presumption of service on the following grounds:

> (i) service was carried out in violation of the provisions of specific other legislation on the service of official documents, or it was illegitimate for other reasons; or
>
> (ii) stating that he/she was unable to collect the document for other reasons (e.g. for being unaware of the attempted service for reasons beyond his/her control – this ground is only available if the addressee is a natural person, a general partnership, a limited partnership or a sole proprietorship – art. 99/A(4) CPC).

The application may be filed within fifteen days after gaining knowledge of the effective date of service. No application may be submitted after six months have elapsed from the effective date of the presumption of service, except if the presumption of service concerns

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(3) Following the expiry of one (1) year, counting from the end of the period that has not been met, filing a petition for the restoration of the status quo ante is no longer an available remedy.
§ 236 Petition for restoration of the status quo ante
(1) The form of the petition for the restoration of the status quo ante shall be governed by the rules pertaining to the action that was not taken in the proceedings.
(2) The petition must set out the facts based on which the restoration of the status quo ante is justified; they must be demonstrated to the satisfaction of the court in the course of filing the petition or in the procedure regarding same. The action that was not taken in the proceedings is to be retroactively taken within the period set for the petition; if this has been done, the restoration of the status quo ante may be granted also without a petition having been filed.
§ 237 Responsibility for restoration of the status quo ante
That court shall decide on the petition for restoration of the status quo ante that is to decide on the action to be taken in the proceedings and the retroactive arrangement of same.
§ 238 Procedure in the event of the status quo ante having been restored
(1) The procedure regarding the petition for restoration of the status quo ante is to be tied to the procedure regarding the retroactive arrangement of the action to be taken in the proceedings. However, the court may initially limit the procedure to a hearing for oral argument on the petition and the decision on same.
(2) Those rules are to be applied to the decision as to the admissibility of the petition, and to any contestation of the decision, that apply in these relationships to the retroactive arrangement of the action to be taken in the proceedings. However, the party that has filed the petition shall not be entitled to enter a protest.
(3) The restoration of the status quo ante is incontestable.
(4) The party filing the petition shall be charged with the costs that the restoration of the status quo ante has entailed, unless such costs were engendered by an unfounded objection having been lodged by its opponent".
In case of a default judgment, the motion to set aside such judgment is available (§§ 338 et seq. ZPO, described above). This motion also does not only cover cases of belated service, but is applicable in such a case as well.
Moreover, the regular remedies and the motion for a reopening of the proceedings, § 321a ZPO, are available. If service was defective and not cured, deadlines for the remedies did not start to run. Note, however, that the regular remedies and § 321a ZPO no forms of "exceptional review".

documents instituting proceedings. In this case, the party may submit the application within fifteen days after gaining knowledge of the effective date of service of process (also in course of the enforcement procedure aiming at the enforcement of a judgment which resulted from the original procedure where the service was performed erroneously). The application must prove the alleged defect of service and demonstrate that the applicant is not at fault in the case referred above in point. The application is adjudicated by the same court that is hearing the case to which the service in question pertains. Before adopting a decision, the court interviews both the applicant and the other parties. Upon decision by the court, enforcement proceedings may be stayed. The decision rejecting the application may be appealed. A decision granting the application may not be appealed separately, but only together with the decision on the merits of the case. If granted, arts. 106-110 CPC on the justification for default apply (see *infra* in this para.),

There is a special remedy in case of fraudulent service by publication. According to §101(2) CPC if the facts presented by the party requesting service by publication appear to be untrue, and the party who requested this type of service was aware or should have been aware of such circumstance by paying reasonable care, service of process by way of public notice and the ensuing procedure is declared null and void, and the party is ordered to cover all applicable costs and to pay a financial penalty as well. However, if the opposing party (to whom the document was served by way of public notification) has approved the procedure ensuing the public notification, whether implicitly or otherwise, the procedure is not declared null and void (§101(3) CPC). The financial penalty can still be imposed and the party in fault may be ordered to cover the extra costs incurred. The party may also request the retrial of a final and enforceable decision if the statement of claim or any other document was delivered to the party by way of public notification in violation of the provisions on service of process by public notification (§260 CPC).

If the court considers that service has been validly performed and by this the party concerned fails to appear in a hearing or to perform an act within a prescribed time-limit, then the defaulting party may submit a request of justification for his/her default as set out by arts. 106ff. CPC. The application may be filed within fifteen days from the missed deadline or from gaining knowledge of the missed deadline. No application may be submitted after three months have elapsed. If the request of justification or the challenge of the fictitious service was accepted by the court, then those trials that the addressee missed shall be repeated and all actions of the addressee shall be deemed as performed within the prescribed time limit (as set out by arts. 109 (4), 99/A (8)-(9) CPC)

In Ireland, remedies often relate to setting aside a defective service or a default judgment (see *supra* para. 3.13.14). The party may also obtain the consent of the claimant to the later filing of an appearance, in the absence of which an application to the court for an order extending the time for entry of an appearance will be required. Objections against the service process can also be made in the course of the remedy against the judgment / final

decision delivered in default of appearance. However, if the defendant has actual notice of the proceedings, the Court may refuse to set aside the judgment on the basis of an irregularity in service.

In Italy, defective service, when not cured, should be challenged during proceedings. If such an objection has been timely raised during proceedings, and the court has ruled against it, this may be a ground for ordinary appeal. In case of default there are no special rules, but a defaulting party may be allowed to appeal a decision after the time limit has passed if it proves that service of the final judgment was defective (Art. 327 CPC). In any case a party may request the restoration of a time-period when it failed to timely take an action without fault (arts. 153 and 294 CPC).

In Latvia, beside remedies against default and default judgments (see *supra* para. 3.13.16), any objections as to the service of documents have to be made, depending on the stage of the proceedings, by means of application or appealing the decision on the basis of which the mistake in service has been made.

In Lithuania, to attack a defective service, a party has to rebut the presumption that the documents have been validly served. This may be done, for example, when specific service-related provisions of the Civil Procedure Code have not been complied with. Ordinary methods of review are allowed, including review of default judgments, the latter within 20 days from service thereof (see *supra* para. 3.13.17). Furthermore, according to art. 77 CPC, a court may extend unexpired procedural terms and may require a bail of up to one thousand litas (ca. € 300.00) that will pass to the state, when a person, who asks to extend the term, fails to perform actions, for which the procedural term was extended. An expired term may be restored because of reasons that are considered important by court (art. 78 CPC). According to art. 131 CPC, "if it is revealed that a request to appoint a curator or deliver court documents by making a public announcement was without grounds, the court by a ruling shall establish an ordinary means of delivering the court's documents and, if necessary, by a ruling reopen the proceedings from the moment of the appointment of the curator or the delivery of the documents by making a public announcement. The court hearing the case may impose a fine of up to one thousand litas (ca. € 300.00) on a party, who in supplying false information influenced the invalid appointment of a curator or the public announcement of court documents".

In Malta, a party who was served with a constructive method may request from the court that the service is declared null on the basis that he/she was not properly served. The principle of the jurisprudence, as highlighted, is that service of judicial acts by means of posting/public notices should be used only if "absolutely necessary". The law also provides for a special remedy where the court has delivered a final and definitive judgment (which

cannot be challenged by ordinary appeal[186]) in proceedings where the defendant was not properly notified (arts. 811ff. CPC). Where a sworn application was not served, the party concerned may request a new trial (re-trial proceedings) from the same court that rendered the judgment (art. 814 CPC) – provided that such party has not entered an appearance at the trial. This remedy may be exercised within 3 months from the day the party became aware of the judgment (art. 818(1)(b) CPC) and in any case within 5 years from the date of the judgment. If a new trial is granted, the judgment complained of being set aside, and the case is reheard (art. 820 CPC). The demand for a new trial may not be made more than once, except on grounds which arise subsequently to the first demand (art. 821 CPC). Furthermore, it is not possible to grant another new trial in respect of a judgment given upon a new trial (art. 824 CPC).

In the Netherlands, objections as to service have to be made in the course of the proceedings or the remedies against the judgment or against the enforcement of the judgment shall be used. For instance, an addressee may claim that he/she did have a current address. In that case this address should be in the register. The addressee has to prove that the constructive service was wrongful because the plaintiff had knowledge of that actual address (or could have known the address). If this is proved to be successful, proceedings can be reopened or the enforcement of the judgment can be prohibited. Hence, if service was done incorrectly, the service is void. Objections may also be raised at the enforcement stage, objecting to the enforcement within 4 weeks to the same court that rendered the judgment. If there is proof that service of the proceedings has been defective, the judge may prohibit further enforcement of the judgment.

In Poland, there is no special remedy with regard to defective service of document. An appeal against a default judgment may be filed within 7 days from the service of the decision by the court (Art. 344 KPC). If the addressee's appeal is successful, the same court institutes the proceedings and decides the merit of the case.

In Portugal, service can be revoked if there are mistakes in the identity of the recipient or of the addressee, if service was defective, public citation was incorrectly used, the addressee passed away or, in case a legal person was dissolved or when the addressee did not gain knowledge of service without fault on his/her part. Beside ordinary means of review, an extraordinary appeal (*revisão*) based on the ground that the defendant's default was caused by a lack or nullity of service (art. 696(g) CPC), can be made.) The *revisão* is filed with the same court that rendered the final judgment. The term to seek review is 2 years from the date when defendant gained knowledge of the final decision (art. 697 CPC), provided that no *revisão* may be brought 5 years after *res judicata* (however, if the decision infringes personal

[186] According to art. 812 CPC: "A new trial may also be demanded in respect of a cause decided by a judgment of a court of first instance and constituting a *res judicata*, by any of the parties concerned, on any of the grounds mentioned in the last preceding article, provided the facts constituting the grounds for such new trial shall have come to the knowledge of the party after the expiration of the time limited for the appeal.".

rights, there is no time-limit for extraordinary appeal). If the remedy is granted, the judgment is revoked and the court rehears the case on the merits (art. 700 CPC). Finally, it is possible to react by opposition in enforceability procedure (art. 729(d) CPC).

In Slovakia, in addition to application against a default judgment (see *supra* 3.13.25) available remedies are restoration of time limit, appeals on point of law, applications for miscarriage of justice to the Constitutional court of the Slovak Republic. According to the new Code, §114, when documents are served by constructive notice (§§ 111/3 and 112 new CPC), the addressee that missed a deadline is entitled to apply to the court to have the time limit restored, but only by providing a reasonable excuse for failing to take delivery at the registered address specified in § 106 new Code. According to §122 the application must be filed within 15 days. In case of a default judgment, the defaulting party may apply to have the default judgment set aside (§277 new CPC) in case there is a justification for the default. The application must be accompanied by the statement of defence on the merits and, if successful, the judgment is set aside and proceedings on the merits are restarted. The deadline is 15 days since the party learned of the default judgment.

In Slovenia, if a document is served in violation of the rules on service, this is considered a serious procedural error and as a legitimate ground for appeal. If, on appeal, the court rules that the failure to serve documents has deprived the party of the opportunity to bring a matter before the court, it may set aside the judgment given by the court at first instance in a proceeding in which there was a material infringement of procedure. The court of first instance will have to repeat the proceedings in a way that is not defective and hence serve the document anew in accordance with the rules on service. In addition, extraordinary remedies include reopening the case (*obnova postopka*) provided in Article 394 ZPP and reinstatement of a case (*vrnitev v prejšnje stanje*) provided in Article 116ff. ZPP. Whether to apply for reopening of proceedings or for reinstatement depends on whether the service was formally correct. If it was not performed in accordance with the law, the party can apply for the reopening of proceedings (which is an extraordinary appeal). The term is 30 days from the service of the decision (Art. 396 ZPP). If the service was effected in accordance with the law, but the party was prevented from receiving the documents due to force majeure or for other reasons out of his/her control (there is a well-founded reason for the omission), he/she can apply for the reinstatement. The term for filing an application for reinstatement of the case is 15 days from cessation of the reason for which the party missed the hearing or the time period, or from the day the party has come to know about the default. No petition may be entertained when three months have passed since the day of default (Art. 117 ZZP).

In Spain, beyond the extraordinary remedy of rescission of a judgment rendered by default (art. 501 LEC – see *supra* para. 3.13.26), other remedies include ordinary appeals[187] or

[187] Article 500 LEC. Lodging of ordinary appeals by the defendant in default. "The defendant in default who has been personally notified of the decision may only use a recourse to appeal against this, and an extraordinary

exceptional incidents of nullity of procedures (Art. 228 LEC)[188]. According to art. 225 LEC any procedural action is null and void "where the essential rules of the procedure are disregarded, as long as a lack of proper defence may have come about as a result thereof".

In Sweden, a party who wishes to raise an objection to service can do so during the proceedings, on appeal (Chapters 49-50 CJP) or on extraordinary appeal depending on the circumstances. The consequences depend on when the matter is raised and on the remedy; if successfully invoked it can lead to new service or to a new hearing of the matter in the original court. To render judgment against somebody who has not been served the documents instituting the proceedings is a procedural error. If the judgment is appealed to the Court of Appeal it shall be set aside (Chapter 50(26) CJP). If the judgment has been rendered in default, the party may not appeal it but instead apply for the case to be reopened (Chapter 44(9-10) CJP, see *supra* para. 3.13.27). In addition, if the judgment has gained final legal force and the time limit to reopen the case has lapsed, the judgment can under certain circumstances be set aside for grave procedural error (Chapter 59(1)(2) CJP "if

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appeal due to breach of procedure or an appeal in cassation, when these apply, if they are lodged within the legally established time limit.
The same appeals may be used by the defendant in default who has not been personally notified of the decision. However, in this case, the time limit for lodging these shall count from the day following the date of publication of the public notice, with notification of the judgement in the "Official State Gazette", Official Gazette of the autonomous region or the Official Gazette of the Province or, as appropriate, through the telematic, computing or electronic means referred to in paragraph 2 of Article 497 herein, or in the manner set forth in paragraph 3 of the same article".

[188] Article 228. Exceptional incident of nullity of procedures. "1. Incidents of the nullity of procedures on a general basis shall not be given permission to proceed. Nonetheless, on an exceptional basis, whoever may be a legitimate party or should have been so may seek through a written statement the nullity of any procedures on the grounds of the violation of any of the fundamental rights referred to in Article 53.2 of the Constitution, as long as such violation could not have been denounced before the ruling bringing the proceedings to an end and as long as such ruling is not subject to either an ordinary appeal or an extraordinary appeal.
The same court that issued the final and unassailable ruling shall hold competence for dealing with such an incident. The time limit to apply for nullity shall be twenty days from the date notice of the ruling is served or, in any event, from the date the defect leading to a lack of proper defence is known. Nonetheless, in the latter case, the nullity of the procedures may not be requested once five years have elapsed from the date notice of the judgement has been served.
The Court shall not give any incident seeking to raise any other matters leave to proceed by means of a procedural court order. No appeals may be lodged against a ruling rejecting the incident leave to proceed.
2. Once the written statement requesting nullity on the grounds of the defects referred to in the preceding paragraph of this article is given leave to proceed, the enforcement or effects of the judgement or ruling against which an appeal has been lodged shall not be suspended to prevent the incident from losing sight of its purpose. The Court Clerk shall transfer such written statement along with any documents attached thereto seeking to prove the defect upon which the plea is grounded, if any, to the other parties, who may file their pleas within five days by means of a written statement, to which they may attach any documents they may deem relevant.
Should the plea for nullity be upheld, the procedures shall be reversed to the stage immediately prior to the defect that gave rise to it and the legally established procedures shall proceed. Should the plea for nullity be dismissed, the applicant thereof shall be sanctioned to pay all the costs arising from the incident by means of a court order and, should the Court deem it was recklessly filed, it shall additionally impose a fine ranging from ninety to six hundred euros.
No appeals may be lodged against the ruling resolving the incident".

the judgment was given against someone who was not properly summoned nor did appear in the case"). The time limit is six months from the time when the party learned of the judgment. If the appellant learned of the judgment before it entered into final force, the time shall be computed from the day when the judgment entered into final force. If the judgment is set aside, the court also directs that new proceedings be carried out in the court that rendered the judgment.

In Scotland, a defaulting party may seek recall of decree in absence or set aside the judgment, as described *supra* at para. 3.13.28.

Finally, in England, a defendant can always apply to extend the time for doing a particular act and set aside, for example, a default judgment on the basis that the defendant did not know about the documents. If a judge orders an alternative method of service (necessarily an ex parte application), a defendant can apply to set aside service if, for example, the method was not appropriate or the claimant misled the court. Or again, if an individual has not received actual notice of a claim or a hearing or trial and wishes to set aside a default judgment or judgment on the merits entered as a consequence they may apply to set aside such decisions under CPR r. 12 or r. 39.3.

Deemed service cannot, as a matter of law, be rebutted. If a party wishes to set aside a default judgment he/she must either: i) show that the conditions for such judgment were not made out i.e., that he/she had, for instance, filed an acknowledgement of service or that the time for doing so had not expired (see CPR r. 13.2(a)); or ii) that he/she had a real prospect of successfully defending the claim or there is another good reason for the court to set it aside (see CPR r. 13.3). If the judgment is rendered following a hearing a party has not attended because, for instance, he/she did not have notice of it, in order to set that judgment aside he/she will need to show that: i) he/she acted promptly when he/she found out about the judgment in applying to set it aside; ii) he/she had good reason for not attending the trial; and ii) he/she had a reasonable prospect of success at trial (see CPR r. 39.3(5)). If judgment is set aside the procedural time table commences from whichever point it had reached prior to the now set aside judgment.

3.15. Validity of service and cure of defective service

The validity of a service of document requires that the delivery of the document is performed in accordance with the steps prescribed by the law or any applicable regulations.[189] This includes checking if the requirements of a certain method of service are

[189] As noted by the ECtHR in the case of *Société anonyme thaleia karydi axte v. Greece*, 5 November 2009, application no. 44769/07, ¶¶25-28: "*Certes, il n'appartient pas à la Cour de contrôler la façon dont la haute juridiction a interprété et appliqué le droit interne pertinent. La Cour ne conteste pas non plus la justesse du formalisme institué par les articles 933 et 934 du code de procédure civile, qui tend à assurer la sécurité des transactions relatives aux ventes aux enchères et à éviter que les procédures y afférentes traînent en longueur.*

met, giving certain information to the addressee, using some diligence to find him/her or his/her address, properly recording the steps taken in the certificate of service, or sending an additional notice if service is made on a substituted recipient or documents are left in the mailbox. Validity may also be affected by the person by whom and for whom service is made. Each method of service has its own rules and specificities that need to be followed.

As we have also seen, constructive service by publication is usually available only after other methods have proven unsuccessful and it can be performed only in accordance with specific procedures. Consequently, a party may challenge the validity of such service on the ground that there was in fact another method available that has not been used, or that the requirements have not been duly followed (see *supra* paras. 3.10.2 and 3.12).

Not all errors encountered in course of the process of service lead necessarily to the invalidity of service.[190] Minor defects usually do not affect the validity of service. In certain MSs the law expressly specifies which kind of procedural defects of the delivery procedure may invalidate the service of document. A clear example is art. 659 of the French CPC, which, while allowing service to be performed to a person whose whereabouts are unknown by drawing minutes, also prescribes that the bailiff sends a copy of the minutes and of the documents to the addressee at his/her last known address by registered letter, no later than the first following working day, "under penalty of nullity" (see *supra* para. 3.10.2).

Generally, defects in service may not be raised if they were already cured in some way. The three most common ways of curing defects are the following:

Elle estime, néanmoins, que le respect du délai de recours institué par l'article 934 présuppose que l'individu lésé ait effectivement pris connaissance de l'acte litigieux pour qu'il puisse l'attaquer utilement en justice (voir, dans ce sens, Tsironis c. Grèce, no 44584/98, § 27, 6 décembre 2001). Or, dans le cas d'espèce, les circonstances de la cause démontrent que l'huissier de justice n'a pas respecté, à plusieurs reprises, les prescriptions du code de procédure civile lors de la notification de l'annonce de la vente aux enchères. A la lumière du dossier et des observations des parties, rien ne vient remettre en cause l'affirmation de la société requérante qu'elle n'a pas pu avoir connaissance de la vente en raison des déficiences dans la notification de l'annonce de la vente. De surcroît, il ne ressort d'aucun élément du dossier que l'intéressée pouvait se douter de l'imminence d'une telle vente, qui se déroula de toute évidence à son insu.

Toutefois, la Cour de cassation, tout en acceptant, ne serait-ce qu'implicitement, la nullité de l'acte de notification de la vente aux enchères, se contenta de spéculer sur l'hypothèse que la société requérante avait malgré tout pris connaissance qu'une procédure d'exécution forcée avait été déclenchée à son encontre et lui reprocha de ne pas avoir formé son opposition avant le début de la vente aux enchères de ses biens. La société requérante fut ainsi pénalisée pour les erreurs commises par l'huissier lors de la notification de l'acte annonçant la vente aux enchères et se trouva privée de toute possibilité de faire valoir ses arguments dans le cadre de la procédure litigieuse.

Par conséquent, la limitation imposée au droit d'accès de la société requérante à un tribunal n'a pas été proportionnelle au but de garantir la sécurité juridique et la bonne administration de la justice.

Partant, la Cour estime qu'il y a eu violation de l'article 6 § 1 de la Convention."

[190] The idea that some kind of "procedural damage" must be found to invalidate a service, and that the addressee must always act with diligence, can be also read in the case law of the ECtHR on art. 6 ECHR, see e.g., the case of *Lay Lay Company Limited v. Malta*, 23 July 2013, application no. 30633/11), ¶¶60-62.

1) The addressee, despite all defects of the procedure, received the document or at least got actual notice of the proceedings;
2) the addressee submits in due time his/her statement of defence to the court and/or appears at the first hearing without challenging the procedure of service on him/her;
3) when service is repeated in a correct manner.

Curing defective service by repeated attempt of delivery has only in a few MSs (e.g. Italy and Spain) a retroactive effect (as far as the sending party is concerned) going back to the moment in which the first defective service was performed. In such situations usually only the date of the new service will be taken into account and any negative consequence arising out from the passage of time will be borne by the sending party. As a contrast, the other two methods listed above (e.g. receiving actual notice or failing to timely raise an objection) usually have the consequence of curing that particular defective service and can be considered as having an implied retroactive effect.

Austria is a clear example of all these elements. Service can always be repeated, but only the new service will be considered as valid. In this case there is no "cure" in the strict sense, i.e., with retroactive effects. According to § 7 ZustG, however: "If defects happen in the procedure of service, service is deemed effective in the moment in which the addressee actually receives the document". Moreover, if the party renounces to challenge the service or does not timely raise an objection in the next oral hearing after the defective service has taken place, it cannot invoke such a defect afterwards.

In Belgium, defective service may be either void or merely irregular, if the addressee's procedural rights have not been violated by the defect (art. 861 *Code Judiciaire*). The law specifies which defects determine the nullity of service (art. 860 *Code Judiciaire*), such as art. 43 *Code Judiciaire* on the certificate of service or art. 45 on the copy delivered to the addressee. The court may order to repeat a defective service that damaged the addressee's procedural rights.

In Bulgaria, if the service is not duly performed and the addressee does not appear, the court repeats the service unless the communication actually reached the addressee, curing the defective service (art. 54 CPC). The proceedings are postponed until proper service is made. If the party enters the court hearing and expressly decides not to challenge the defective service, the court continues with the proceedings. A defective service of documents instituting proceedings serves as a legitimate ground for appeal and also for cassation on the ground of serious breach of procedural rights. If a decision has already been issued and is not subject to appeal anymore, the defective service may be used as a ground for revocation of the decision in a procedure before the Supreme Court (see *supra* para. 3.14).

In Croatia, service may be cured if the addressee enters an appearance or if the service is renewed upon the judge's order (but in this case, cure does not have retroactive effects in favour of the plaintiff, i.e. it is considered a new service).

In Cyprus, as a rule, a defective service cannot be cured and a valid service must be performed afresh. However, where unconditional appearance is entered without filing an application for setting aside service within reasonable time thereafter, then the person is deemed to have submitted to the court's jurisdiction and thus, defective service is in effect cured. [191]

In the Czech Republic, there is a distinction between the ineffectiveness of a valid delivery (for cases where the addressee actually did not receive the document) and the ineffectiveness of the service due to the defect of the service procedure. In the first case, the addressee challenges the service and if the application is granted, "the documents shall be deemed delivered on the day on which the decision of the court on the ineffectiveness was in full force and effect" (§50d CCP, see *supra* para. 3.14). In the second case the court must serve the documents again *ex officio* and defective service is cured by repeated service.

In Denmark, if a defendant enters an appearance or acknowledges the service of the documents, any defect is deemed to be cured and plaintiff needs not to take any further step.

In Estonia, where proof of service as provided by law has been presented or is available to the court, the court has no duty to further verify the validity of the service. If the party proves that the service was defective (i.e. not performed in accordance with legal rules), then the proceedings continue as if no service had been performed. This primarily affects the time periods that apply for procedural remedies (e.g. the time-limit for appeal is calculated based on the service of the judgment of the court, see CCP § 632 (1)). Therefore the time limit for the appeal may not have expired. However, it might not be necessary to repeat the service at this point by virtue of CCP § 307 (3). Under CCP § 307 (3): "if a document reached a party on whom the document had to be served but there was no possibility to certify the delivery or the procedure for service was violated, the document is deemed to be served on the party as of the time the document actually reached the recipient". Generally, the party has received the documents later by some other means (e.g. via its representative). Thus, the court relies on the date that can be ascertained as the one on which the document indeed reached the party. A defective service can also be cured by its repetition. Furthermore, the law does not exclude the possibility to serve the documents by using different methods of service simultaneously. Thus the court may serve the document by post and by e-mail, so that even if service by post is defective, then service is still effective and brings legal consequences due to service by e-mail. Curing the service does not have retroactive effect in favour of the initiator (it is *ex nunc*).

[191] For example, in the case *Nigerian Produce v. Sonora Shipping* (1979) 1 C.L.R. 409 it was held, drawing guidance from English case law, that service after the expiration of the validity of a writ, without prior renewal pursuant to O.4 r.1 of the CPR, is a mere irregularity which may be waived by the entry of an unconditional appearance.

In Finland, if the service has not been performed before the deadline or if it has been erroneously performed, and the party fails to appear in court or to deliver a requested written response or statement, service shall be performed again, unless a new service is deemed unnecessary due to the insignificance of the error (Chapter 11, Section 18(1), CJP). The court has thus a duty to verify whether service was valid or defective. If, however, the party does appear in court or delivers a requested written response or statement, there is no requirement to perform the service again. Under Chapter 11, section 18(2), CJP, if a party invokes the fact that the service has been defective, the handling of the matter will be postponed or a new time limit for submitting a written response shall be submitted. Again, this is unless it is deemed unnecessary due to the insignificance of the error.[192] According to Chapter 11, section 19, CJP, if the service of a summons has been entrusted by the court to the plaintiff and he or she has not, at the time when the court resumes the hearing of the case, delivered to the court a certificate that the service has been performed before the deadline and in accordance with the provided procedure, the case shall be discontinued. The case is not discontinued if the defendant has responded to the main issue without entering a plea or if the court, on the request of the plaintiff for a valid reason, has granted an extension to the deadline, set a new deadline or decided to take care of the service itself.

In France, the judge verifies *ex officio* the service validity and if he/she finds it to be defective, he/she orders its renewal. According to Art. 662 CPC "If, in the cases specified under Articles 659 and 660, it is not established that the addressee has in fact been notified, the judge may order *ex officio* any additional steps save where he/she orders provisional or protective measures necessary to safeguard the rights of the plaintiff". It is possible to repeat the service, provided that the time limit has not expired, as the renewal has no retroactive effect. If a party appears, this cures the defective service (art. 114, 2º al., CPC) and in any case the right to challenge a defect is "waived if the one who raises it, has, subsequent to the impugned pleading, presented his defence on the merits of the case or raised only the plea of non-admissibility without raising the plea of nullity" (art. 112 CPC). According to art. 694 CPC, the validity of the service is regulated by the provisions relating to the *nullité* of pleadings (arts. 112ff. CPC).

In Germany, if the service is found to be defective, no default judgment is possible. The court will dismiss the corresponding motion for default judgment and, after res judicata of the dismissal of the motion, will schedule a new hearing and summon both parties. This has no retroactive effects in favour of the plaintiff. Objections to a defective service, however, may be excluded if the addressee actually received the document (§ 189 ZPO)[193] or if the addressee did not raise the issue in the next oral hearing (§ 295 ZPO).[194]

[192] Cf. Supreme Court case KKO 2008:48.

[193] §189 ZPO: "Should it not be possible to prove that a document has been served in due form, or should the document have been received in violation of mandatory regulations governing service of documents, it shall be

Also in Greece, any defect or nullity relating to the service of documents is cured if the addressee attends proceedings without raising a timely objection.

In Hungary, if the documents were not served on the addressee in person but the validity of the service has been established through a presumption of the service, then the addressee can challenge this presumption of service on the grounds that (i) the service has violated the relevant rules or (ii) that he was unaware of the service or was unable to accept it because of reasons beyond his control (§99/A(3) CPC[195] – see also *supra* para. 3.14). If, despite the irregularities, the defendant enters an appearance and does not object to service, this cures the defects of the service. If a service is declared null, it must be repeated.

In Ireland, the defendant's unconditional appearance constitutes an acknowledgement that the defendant has been notified of the proceedings and, as such, constitutes a waiver of the right to object to any defect in service. It will also preclude the defendant from relying on an irregularity in the form of the summons. However, it will not cure a defect in the form of the proceedings, for e.g. if the wrong originating procedure was used, or if there was a deficiency in the "indorsement" of claim. If there are difficulties in service, the serving party may file an application to the court to declare service sufficient (Order 9, r. 15, RSC). If the service originally performed is defective and the plaintiff subsequently carries out service in compliance with the RSC, or in accordance with an Order of the Court for substituted service, then the defects in service are cured. However, substantial and procedural effects will generally run from the date on which service was properly effectuated. Order 41 Rule 13 DCR 13 provides that the District Court may, if it considers it just to do so, deem the service of any document actually effected in any civil proceedings to be good and effected service, even though the service was not effected in a manner prescribed by the Rules.

In Italy, cure of a defective service is possible by the voluntary appearance of the addressee, or by renewing service after the court has given permission. Cure has retroactive effects with reference to the initiating party (e.g. for purposes of statute of limitation or respect of procedural terms). Following general rules on nullity of procedural acts, a "service is null if it is not accomplished in compliance with the provisions concerning the person to whom a

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deemed served at that point in time at which the document was factually received by the person to whom service of the document was addressed, or could be addressed".

[194] §295 ZPO – Objections to process "(1) The infringement of a rule to which the proceedings are subject, and in particular of a rule governing the form of a procedural action, no longer may be objected to if the party has waived the rule's being applied, or if the party has failed to object to the irregularity at the next hearing taking place as a result of the corresponding proceedings or at the hearing in which reference was made to the rule, in spite of the fact that the party appeared at the hearing and that it was aware, or must have been aware, of the irregularity. …".

[195] Art. 99/A(3): "A petition for challenging the presumption of service may be submitted alleging that the petitioner was unable to accept the official document through no fault of his own:
a) stating that service was carried out in violation of the provisions of specific other legislation on the service of official documents, or it was illegitimate for other reasons, or
b) stating that he was unable to collect the document for reasons not covered by Paragraph a) (e.g. for being unaware of the attempted service for reasons beyond his control)".

copy of the act should be delivered, or if the person served with the act or the date of the service is completely uncertain"(Art. 160 CPC) but firstly "[t]he nullity shall not be stated if the act reached its end" (i.e. giving actual notice to the addressee – Art. 156 CPC) and secondly the party on whose interest the nullity is prescribed "shall raise the objection in the first motion or defence following the act or the notice of the act, [otherwise he/she will have] renounced … implicitly, to claim the nullity" (art. 157 CPC). Hence receiving actual notice or appearing in time without raising the objection to service in the first available defence (either in writing or orally) cures the defective service. If service was performed on a person who is not related in any way to the addressee, courts do not consider it as null, but regard the service as non-existent and as such it cannot be cured.[196]

In Latvia, defective service may be cured by the concerned parties if they voluntarily enter an appearance before the court and acknowledge the receipt of documents. If a party submits a statement of defence, explanations or other documents for which the defective service constituted the basis, such an action will also be considered as a cure of the defective service. Finally, a defective service may also be cured by granting additional time to the defaulting party. Pursuant to §51 CPL, upon a party's application, the court may renew expired procedural time-limit, if the reasons for default are justified, allowing the delayed procedural action to be carried out. A party may also request the judge to extend a procedural time-limit (§52 CPL). An application regarding the extension of a time period or the renewal of a time period during which there has been default is filed with the court where the delayed action had to be carried out.

In Luxembourg, in case of defective service the court orders a new service to be made at the claimant's expenses (Art. 103 al. 3 CPC). The addressee may challenge the validity of a *notification* or *signification*. If nullity is pronounced, a new service is made to regularise the situation. If the person appears at the hearing without challenging the service, the defects are cured (Art. 264 al 2. CPC).

In Malta, defects may generally be cured by renewal of service or if the other party willingly enters an appearance. The cure of defective service does not have retroactive effects. More generally, according to art. 789 CPC, in case of errors in service a plea of nullity of judicial acts is admissible: a) if the nullity is expressly declared by law; b) if the act emanates from an incompetent court; c) if the act contains a violation of the form prescribed by law, even though not on pain of nullity, provided such violation has caused to the party pleading the nullity a prejudice which cannot be remedied otherwise than by annulling the act; d) if the act is defective in any of the essential particulars expressly prescribed by law. A plea of nullity for defects in the form of an act is not admissible if the party pleading such nullity has proceeded, or has knowingly suffered others to proceed, to subsequent acts, without pleading such nullity. When the plea of nullity of a judgment is raised before an appellate

[196] See, e.g., Cass., 1 March 2002, no. 3001.

court, such plea is not heard if the judgment is found to be substantially just, unless such plea is founded on the want of jurisdiction or default of citation or on any defect which prejudices the right to a fair hearing (Art. 790 CPC). With specific reference to service, art. 187(1) CPC provides that, even when service is (unlawfully) made to a person under the age of fourteen years, or having a mental disorder or other condition, which renders him/her incapable of giving evidence of such service, no objection may be raised if it is shown that the copy has actually reached the addressee, and thus the defect is cured.

In the Netherlands, no default judgment is given if the service is found to be defective. It is possible to cure a defective service by renewing the service. According to art. 65 CPC, "A writ of summons or instrument of justice can be annulled only if this writ of summons or this deed is suffering from a deficiency that is explicitly threatened with nullity or if the invalidity arises from the nature of the defect". Furthermore, the non-compliance with rules on service makes the service void only insofar as it is likely that the person to whom the writ of summons is addressed to, is unreasonably prejudiced by the defect. Any defect of service, which entails nullity, may, unless the law provides otherwise, be restored by writ of summons (art. 66 CPC).

In Poland, the judge always verifies whether service is valid or defective. According to art. 214 KPC, the judge postpones the hearing and orders service to be renewed if service is found to be defective.

In Portugal, according to art. 187 CPC, if the defendant has not been served (so called "lack of service"), all that takes place after the application (i.e. the filing of the statement of claim with the court) is void, and only the application itself is saved. "Lack of service" is defined by art. 188 CPC and occurs: a) when service has been completely omitted; b) when there has been a mistake on the identity of the addressee; c) when service by publication has been improperly used; d) when service was effected after the death of the addressee (or dissolution in case of a legal person); or e) when it is established that the addressee did not gain knowledge of the served documents, without fault. Any defect is cured if the addressee appears without immediately rising the point of lack of service (art. 189 CPC). The nullity of service is regulated by art. 191 CPC and it occurs when the formal requirements provided for by the law have not been duly followed when performing service. The nullity must be raised within the same time limit available to defend the claim on the merits (in case of service by publication, also on the first appearance). If the irregularity is that a longer term to appear has been specified, the addressee is entitled to this longer term. Finally, the court grants the plea of nullity only in case the formal defect caused some procedural damage to the addressee. Both in case of lack of service or nullity of service, the service of the court order granting the plea is considered a renewal of service, provided it is accompanied with all the required documents to be served (arts. 192 and 227 CPC).

In Romania, if the party attending in court, in person or by representative, did not receive the service or received it in a shorter term than as stipulated in art. 159 CPC (i.e. five days

before hearing) or if there is a different nullity cause regarding the service or the delivery by hand, the trial may be postponed at the interested party's request (Art. 160 CPC). Any defect regarding service will no longer be taken into consideration if the postponement of the trial is not requested, as well as in case the party failed to object to service in the next hearing following its occurrence, if it attended or was legally served to attend to such a hearing. In the absence of the illegally summoned party, the irregularity regarding the summoning procedure can be invoked by the other parties or *ex officio*, but only during the hearing when it occurred. Generally, in Romania, an act may be void if it does not reach its intended goal because of defects, including formal defects (art. 174 CPC). Normally a nullity is considered conditional and requires a party to show that the defect caused some form of harm that cannot be removed except by cancelling the act (art. 175 CPC). If the nullity is prescribed by the law, the harm is presumed. Nullity must be invoked on the first chance and the right to invoke the relative nullity may be renounced expressly or tacitly (art. 178 CPC).

In Slovakia, only if service of statement of claim is defective, the court is obligated to take all steps necessary to ascertain the actual residence. Otherwise the court only verifies whether the documents were sent to the addressee's registered address. The court may also postpone the hearings to a new date, ordering the renewal of service. There is also a limited possibility to extenuate default of time period to act caused by false service (Section 114 CPC).

In Slovenia, the court has a duty to verify *ex officio* the validity of service. Service may be cured, without retroactive effect, by renewing the service or if the addressee enters an appearance filing her/his defence. Furthermore, according to Art. 139(6) ZPP: "Violation of the rules of service of process shall not be invoked provided the process has been served to the addressee despite the violation. In this case service shall be deemed to have been effected at the time the process was in fact received by the addressee".

In Spain, defective service is "not made in accordance with the provisions [of the CPC] and may lead to the lack of proper defence shall be null and void", but "when the person notified, summoned or ordered to attend is aware of the case and fails to report the nullity of the notice procedure at his first appearance before the court, from that time, the notice shall take full effect, as if it had been served in keeping with the law" (Art. 166 LEC). Service may also be cured by a new service with retroactive effects. In other words, the proceeding runs back at the moment when the service should have been correctly made.

In Sweden, if the service is found to have been defective, a new attempt at service will be undertaken and as a consequence the proceedings may be delayed, and an oral hearing adjourned until a later date. There is no retroactivity, if the service is correctly effected; following the new attempt, the date of service will be based on the latter correct service. If a party confirms receipt even if there may have been a formal defect in service, there is no need to effect service again. If a party has been allowed to effect service but has been unsuccessful, the court will as a main rule step in and attempt to effect service.

In Scotland, the service may be cured by entering an appearance. According to Chapter 16.11: "A person who enters the process of a cause shall not be entitled to state any objection to the regularity of the execution of service or intimation of a document on him; and his appearance shall be deemed to remedy any defect in such service or intimation".

In England, a defendant is not obliged to challenge the validity of improper service if it does not wish to do so. If service has not been properly effected, the court will usually require service to be effected properly, though the claimant can apply for an order dispensing with service (CPR 6.16). Errors of procedure do not generally invalidate any step in proceedings and can be rectified by the court under CPR 3.10. Service of a claim form must however be served within six months of issue (CPR 7.5). If there has been defective service of the claim form the court can give retrospective approval to steps taken to effect such service (CPR 7.6).

At the European level, in its judgment of 16th September 2016 in Case *Alpha Bank Cyprus*[197] the CJEU has clarified that

> "– the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to that regulation; and
> – the fact that that agency, when serving a document on its addressee, fails to enclose the standard form set out in Annex II to Regulation No 1393/2007, does not constitute a ground for the procedure to be declared invalid, but an omission which must be rectified in accordance with the provisions set out in that regulation".

With this decision the CJEU seems to confirm that there may be different categories of defects and that they do not all necessarily lead to the service being considered void or voidable. In certain cases a defect will imply that service may be cured and its effects preserved by the renewal of the delivery or by the rectification of the errors committed during the procedure. It seems possible to read the same *ratio* in the *Leffler*[198] decision that

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[197] C-519/13, *Alpha Bank* (ECLI:EU:C:2015:603).

[198] *Leffler*, C-443/03, ECLI:EU:C:2005:665, especially ¶¶65-67: "The effect that sending a translation has on the date of service should be determined by analogy with the double-date system developed in Article 9(1) and (2) of the Regulation. In order to uphold the effectiveness of the Regulation, it is important to ensure that the rights of the various parties to the case are accorded maximum, and balanced, protection.
The date of service may be important for an applicant, for example when the document served constitutes the bringing of proceedings that must be instituted within a mandatory time-limit or is designed to interrupt the running of a limitation period. In addition, as has been stated in paragraph 38 of this judgment, failure to comply with Article 8(1) of the Regulation does not result in nullity of service. In view of those factors, it is to be held that the applicant must be able to benefit, as regards the date, from the effect of the initial service in so far as he has displayed diligence in regularising the document by sending a translation as soon as possible.
However, the date of service may also be important for the addressee, in particular because it constitutes the point at which time starts to run for having recourse to a remedy or preparing a defence. Effective protection of the document's addressee entails taking into account, in his regard, only the date on which he was able not

(although out-dated by the new Service Regulation) signals that, according to the CJEU, service should be cured with retroactive effect to the claimant whenever possible.

In view of a common approach shared by many MSs, the issue of defective service should not be dealt with in a formalistic way, but rather in a pragmatic fashion. On this basis, and in line with the jurisprudence of the CJEU, it appears desirable to give preference to the cure of a defective service of documents, whenever it is possible without the harm of the principle of the rights of the defence, and to leave the declaration of its invalidity only for the situations in which major infringement of those rights were committed. Furthermore, it also appears useful to determine the circumstances by which a defective service of document can be cured: certainly, a situation where – irrespectively of the irregularities of the procedure – the documents to be served were actually delivered on the defendant or he/she was actually informed about the proceedings in sufficient time so as to enable him/her to arrange for his/her defence should be considered as one amenable to the cure of the defects of service. Similarly, one may also accept as a situation curing the service, when the defendant enters an appearance or submits his/her arguments to the substance of the case, without objecting the irregularities of the service of the document. Finally, it may also be worth to consider whether general standards for a procedure of curing errors of a service of documents could be established at a European level, for e.g. how a repeated sending of the documents may be performed, or what kind of effects such repetition may have on the various time-limits, etc. [199]

3.16. Frauds during service and sanctions

Procedural fraud during service is not specifically addressed in many MSs. The main reason is that, in case parties do not behave correctly, general rules apply. For instance, if addressee tries to escape service, in many MSs service is made by means of substituted or constructive methods, thereby neutralising such attempts, possibly with a default judgment being issued (see *supra* para. 3.13). Similarly, if the initiator or the executor commits something against the law, this may result in either considering the service as defective and therefore setting it aside, possibly along with any resulting judgment, or imposing civil and administrative fines and raising the criminal liability of the wrongdoer (for public officers, possibly additional professional or disciplinary liability applies). In certain jurisdictions (e.g. Denmark), when it appears that the addressee is trying to escape service, the assistance of the police in locating the addressee can also be sought. In certain countries, the court seized by the civil proceedings may impose a fine for procedural violations: this is the case in the Czech Republic (up to 50,000 CZK), Greece (up to € 1,500.00), Hungary (for fraudulent request of

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only to have knowledge of, but also to understand, the document served, that is to say the date on which he received the translation of it."

[199] A good solution is to consider differently the time of service for the claimant and for the defendant as in art. 9 of the Service Regulation.

service by publication, a party may be required to pay costs and a fine of up to 500,000 HUF, around € 1,600.00), Latvia (up to € 800.00/1,000.00), Lithuania (on the substituted recipient who refuses to take delivery, when there is a legal duty, or who fails to hand the documents to the addressee), Spain (up to € 186,000.00, but not more than one-third of the amount of the claim pursued).

In Bulgaria, pursuant to art. 88 CPC "*The court shall impose a fine on any server who has misserved a communication, who has failed to duly attest the service, or who has not returned to court, in due time, the receipt proving service, or who has failed to comply with any other commands of the court in connection with the service. (2) The court shall impose a fine on the manager of the office, where a person willing to accept a communication cannot be found in the office of a government institution or a municipality within normal business hours.*" The court officer bears the administrative liability (fine from 50 – ca. €25 – to 1,200 BGN – ca. €600), the discipline liability under labour laws and the penal liability for issuance of false official document.

In Croatia fines are possible in case a person refuses to prove his/her personal identity or hinders the service, and such person is also liable for damages to the other party (art. 149a CPC). Fines and damages may also be imposed on the executor (art. 149b CPC). In Cyprus, a bailiff may be held liable for non compliance with the rules (Section C, Part 2, CPR) or in case of perjury.

In other MSs (e.g. Estonia, Italy,[200] Portugal, Slovenia,[201] Spain,[202] Sweden) the wrongful behaviour may be relevant in the context of the adjudication of the costs and expenses of the proceedings (being placed upon the party who breaches specific procedural duties as well as the general duty to act in good faith towards the court and the other party).

Liability of the executor is usually based on general rules (civil tort, disciplinary, administrative and criminal), but there are legal systems that provide for specific rules, such as those in Spain (art. 168 LEC),[203] Italy (art. 60 CPC),[204] France (art. 650 CPC)[205] and Scotland

[200] See art. 96 CPC.
[201] Art. 11 ZPP.
[202] Abuse of process may result in the claim be rejected, the fine discussed in the text and, if performed by a member of a professional association, a notice of the behavior being sent to the association in view of disciplinary proceedings.
[203] Art. 168 LEC: "Article 168. *Responsibility of civil servants and professionals intervening in procedural notices l.* 1. The Court Clerk or the civil servant of the bodies at the service of the Justice Administration who, while carrying out their work assigned to them by this chapter, give rise to undue hold-ups or delays, through malice or negligence, disciplinary action shall be taken by the authority they depend on in order to correct this and they shall incur liability for damages. 2. The court representative who incurs mens rea, negligence or delay in the notices he has assumed or does not respect any of the legal formalities established, leading to damage to a third party, shall be liable for the damages caused and may be sanctioned in accordance with the provisions in legal or statutory rules".
[204] Art. 60 CPC, Liability of the court clerk and of the judicial officer: "The court clerk and the judicial officer shall be liable in the following cases: 1) where, without any just reason, refuse to accomplish the activities

(where the bailiff, a Messenger-at-Arms, have a compulsory insurance scheme). In certain systems (e.g. Austria, Finland, Germany), liability of the executor is transferred to the State. In Belgium a bailiff is liable for his/her faults up to €5m, and is required to have an insurance covering such a sum (art. 509(3) *Code judiciaire*).

3.17. Costs of service

The costs of transmitting judicial and extra-judicial documents vary from MS to MS, depending on a number of factors, such as the method used (personal service by a bailiff or private server vs. service by post), whether these costs are included in the court fees (e.g. Austria in pending proceedings, Bulgaria, Croatia, Estonia, Finland, Germany – up to 10 services, Hungary, Slovakia and Slovenia) or are borne by the court in any case (especially when the court is the initiator), the complexity of the transmission and the volume of documents delivered, as well as the use of official tariffs and regulations. Some aspects and specificities relating to cross-border delivery are dealt below in para. 3.19.

As we will see in the following paragraphs, there is a connection between particular methods of transmitting documents and their costs. Delivery costs are significantly higher if the intervention of an (independent) legal professional, such as that of a bailiff, is required. Whereas in cases where the delivery is executed through a postal operator, the costs are minimal (in fact they are equivalent to the usual delivery fee of the consignment). These differences are nevertheless connected, in link with the varying degree of legal liability of the executor, and consequently they result in a discrepancy in terms of quality of the service provided (a frequently used argument in support of the "bailiff" systems is that the bailiffs carry out their duties of documents transmission with the highest professionalism and that any mistake from their part is exposed to administrative – and criminal – sanctions).

The nationality of the initiator or of the addressee does not play a role in any of the MSs, although, of course, the place where the delivery is to be made can influence the costs, for instance when the bailiff must perform a personal service to a distant addressee within or outside the territory of the State (usually through registered post when outside the territory of a MS where allowed). Special rules apply to the transmission of documents originating from another State according to international conventions or to the Regulation on the service of documents.

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prescribed by the applicable law provisions, or fail to accomplish the same activities by the time-limit that, upon the party's request, was scheduled by the judge on whom they depend or by whom they were delegated; 2) where they accomplished a null and void act, with malice or gross negligence".

[205] Art. 650: "Les frais afférents aux actes inutiles sont à la charge des huissiers de justice qui les ont faits, sans préjudice des dommages-intérêts qui seraient réclamés. Il en est de même des frais afférents aux actes nuls par l'effet de leur faute."

The person responsible for paying the costs of the delivery is usually the party that is either directly concerned, such as the initiator, or indirectly involved, such as the one obliged to pay the court fees. Generally, the "loser pays all" principle applies, meaning that a successful party may recover the costs of litigation, including the cost he/she spent on the service of documents, from the other party. In all the MSs, the costs are predictable overall and are determined *ex ante*, even though in a few MSs the exact amount is calculated *ex post* in case additional difficulties arose (such as the need to do multiple attempts to deliver a document or to change the method of transmission – e.g. in Scotland and Italy).

In a vast majority of MSs, there are rules on the exemption of the party in whose interest the service of a document is initiated, and which are usually related to the general admission to legal aid schemes of low-income litigants (this also includes MSs in which the costs of service are included in the court fees). In a few MSs, there are exemptions based on the subject matter of the dispute (e.g. in Italy, for instance in family and labour-related matters).

Usually transmission through electronic channels does not raise any costs, except those related to the establishment and maintenance of the digital address or the login credentials for the platform.

3.17.1. *Average costs*

Reported average costs usually depend on the method employed.

In Austria, for pending proceedings, the costs of service are included in the court fee. For delivery under the Service Regulation, Austria has communicated that it will not charge a fee.

In Belgium there are no additional costs for a notification by court clerk while transmission by bailiff ranges from €170.00 to €310.00 (Royal Decree of 30/11/1976). For cross-border service from another MS under the Service Regulation, €135.00 (+VAT).

In Bulgaria, the costs are included in the general court fee paid by the claimant to institute proceedings (i.e. no special court fee for service to defendant). If the party is authorised by the court to perform the delivery through a bailiff, costs are around €40.00 – 80.00 (only within the territory of the bailiff's country). If the delivery is performed by a special courier (DHL) on request of the claimant, the costs are also covered by the claimant and the average fee for document service to witness is about €10.00 – 20.00 within the territory of Bulgaria. The same applies to delivery under the Service Regulation.

In Croatia, postal service is free of charge for parties (the costs of documents delivery being included in the court fees). The Court has to pay about 15.00 Kuna (appx. €2). If the transmission is done by a court clerk, it is around 130.00 Kuna (appx. €15).

In Cyprus, the costs of delivery through a bailiff depend on the number of documents, the number of persons to whom the documents must be delivered and the distance to be

covered by the bailiff. The costs for a domestic service of a judicial document by a bailiff to a single person is €11.00. Service in a foreign country, depending on the country of destination, is in average around €30.00). Service from another MS under the Service Regulation is charged a fixed fee of €21.00.

In the Czech Republic, domestic service costs are in average around CZK 100 – 500 (ca. €3.70 – 18.50), while service abroad costs in average CZK 200 – 1000 (ca. €7.40 – 37.00); inbound service under the Service Regulation is free of charge.

In Denmark, the costs for document transmission by a bailiff are determined by a ministerial order (*Bekendtgørelse om vederlag til stævningsmænd og til vidner i fogedforretninger*). The bailiff is paid a fixed amount for each person a document has been delivered to. If an attempt to deliver a document fails, the bailiff is nevertheless paid as if the attempt was a success. The bailiff is also reimbursed for driving costs. For service under the Service Regulation, no fee is charged.

In Estonia[206], in general, service is free of charge and included in the court fee. In cases where service is to be performed by a bailiff or by sending documents to a foreign state, the

[206] In Estonia (see §§ 138, 143 and 144 CPC), procedural expenses (i.e expenses when a person files a lawsuit to the court) are divided between the legal costs (procedural costs) and extra-judicial costs. The legal costs are: the state fee, security and the costs essential to the proceeding.
The extra-judicial costs are:

1) the costs related to the representatives and advisers of the participants in a proceeding;
2) travel, postal, communications, accommodation and other similar costs of the participants in the proceeding which are incurred in connection with the proceeding;
3) unreceived wages or salaries or other unreceived permanent income of the participants in the proceeding;
4) the costs of pre-trial proceedings provided by law unless the action was filed later than six months after the end of the pre-trial proceedings;
5) the bailiff's fee for securing an action and the costs related to the enforcement of a ruling on the securing of an action;
6) the bailiff's fee for the service of procedural documents;
7) the costs related to the processing of an application for procedural assistance in bearing procedural expenses;
8) the costs of expedited procedure in matters of payment order;
9) the costs of participation in a conciliation proceeding if the court imposed an obligation on the parties to participate in such proceeding pursuant to subsection 4 (4) of this Act or if it is a mandatory pre-trial conciliation proceeding pursuant to subsection 1 (4) of the Conciliation Act.

The legal costs include the costs of service and sending of procedural documents via a bailiff or in a foreign state or to extra-territorial citizens of the Republic of Estonia. The extra-judicial costs include the bailiff's fee for the service of procedural documents (see above). As a rule, such legal costs like the costs of service and sending of procedural documents via a bailiff or in a foreign state or to extra-territorial citizens of the Republic of Estonia, are paid in advance, to the extent ordered by the court, by the participant in the proceeding who filed the petition to which the costs are related. The extra-judicial costs, like the the bailiff's fee for the service of procedural documents, are also paid in advance by the party. For all the other ways of delivering the documents, participants do not have to pay. Those costs are already covered by the state fee, and, therefore, those costs are covered by the court. As a rule the costs of an action (legal costs and extra-judicial costs) are covered by the party against whom the court decides. Among other, the party against whom the court decides is required to compensate the other party for any necessary extra-judicial costs which arose as a result of the court proceeding. In the case an action is satisfied in part, the parties cover the procedural expenses in

costs are to be borne by the party in whose interest service is made. If the service is performed by the bailiff, the price is determined by the Bailiffs Act § 48(2), and is between €30.00 – 60.00. This also applies for service under the Service Regulation (although the fee communicated by Estonia ranges from € 13.00 to 23.00). Also in In Finland, in general, there is also no extra costs for the transmission of judicial documents if the court performs the service (included in court fee). Service of judicial documents is around € 60.00 if the court entrusts the service to a party and the party requires assistance from a process server (costs are determined in a decree). Similarly, service of extra-judicial documents performed by a process server has a fixed cost of € 60.00. For service abroad: (a) judicial service to a foreign country is free of charge unless exist some costs charged by the foreign State; (b) if a party is responsible for the service abroad and assistance is sought by the Finnish authorities, the charge is a fixed amount of € 60.00, plus any fees and costs incurred abroad; and (c) cross-border service originating from abroad and performed in Finland as part of international judicial assistance is free of charge.

In France, *notification* by court clerk is free of charge for the parties, while *signification* by a bailiff depends on a variety of parameters, such as distance, method, complexity, number of parties (data report an average of €80.00-100.00 for the signification of a judgment). Service originating from abroad to France has a fixed cost of €50.00, pursuant to the Service Regulation. For service from France to a foreign State, the cost is between € 36.30 to € 72.50 (depending on value below or above € 1,250.00).

In Germany the costs of service relating to court proceedings are included in the court fees regardless of the method, but with a maximum of 10 services; each further service costs €3.50 (no. 9002 table to Act on Court Costs [*Gerichtskostengesetz* – GKG]. Costs of delivery by a bailiff on demand from a private individual outside the court proceedings are governed by the Act on the Costs of Bailiffs (*Gesetz über Kosten der Gerichtsvollzieher, Gerichtsvollzieherkostengesetz* – GvKostG): service via post costs €6.45 (no. 101, 701 table to GvKostG); personal service of a document by the bailiff within a 10 km radius around the local court to the addressee costs €13.25 Euro (no. 100, 711 table to GvKostG). Service abroad is normally up to €20.50.

In Greece the costs of service, domestic or abroad (outbound),) is around €30.00. For inbound service under the Service Regulation a fixed fee of € 50.00 is charged.

In Hungary, there are differences in the delivery of extra-judicial and judicial documents and the postal tariffs on official documents are applicable:[207]

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equal parts unless the court divides the procedural expenses in proportion to the extent to which the action was satisfied or decides that the procedural expenses must be covered, in part or in full, by the parties themselves.

[207] Up to date postal tariffs are published online at: https://www.posta.hu/ugyfelszolgalat/dijszabasok

	Delivery to addressee in person (HUF)	Others (HUF)
up to 2 kg	435 (ca. € 1.40)	330 (ca. € 1.10)
up to 20 kg	3,090 (ca. € 9.90)	2,875 (ca. € 9.20)
up to 40 kg	5,895 (ca. € 19.00)	5,685 (ca. € 18.25)

Service by an independent court bailiff (limited cases) is HUF 1000 (ca. € 3.20) and HUF 6000 (ca. € 19.30) for the service of judicial documents as a process server (Section 11 b) and 11/A of the IM decree No. 14/1994). Other costs may be applicable based on the decree in cases of failure of delivery. Delivery costs of extra-judicial documents depend on the method of service. In the case of delivery by post, the tariffs of Magyar Posta (detailed in the published tariff rates referred to above) are applicable, starting from HUF 415 (ca. € 1.30) for a registered delivery. It is also common to deliver such documents via a private carrier. The price of such services can range from HUF 1,000 to HUF 3,000 – 4,000. According to section 99 (5) of the CPC, the addressee may collect a document that was addressed to him in the court offices, subject to positive proof of identification (no costs). For service abroad, the cost is HUF 1,000 (ca. € 3.20) to serve from Hungary to another country and it is equal to the postal tariff for service originating from abroad to Hungary (but no fee is charged under the Service Regulation).

In Ireland, delivery service by post has an average cost of € 6.10 (registered post). Personal service, including fees charged by summons server, their reasonable expenses (e.g. travel), and number of attempts, usually ranges around € 100.00 plus VAT and mileage. A party may also perform personal service of the document directly to the other party (no cost). There is no fee for service under the Service Regulation.

In Italy, service by the bailiff in person (depending on distance, number of addressees) has an average cost of € 16.00. If the bailiff delivers using postal services (depending on the weight of the envelope), the average cost is € 13.00. Service made by the lawyer, via post, costs (depending on the weight of the envelope) on average € 7.00, but e-service by PEC is free of charge. The costs of serving an attachment during enforcement procedures is around € 40/50. For outbound cross-border service the costs are around €10.00 – 20.00, while inbound service to be performed in Italy is free of charge.

In Latvia[208], domestic service via registered mail ranges from € 1.42 under 20 gr. up to € 3.04 for packages less than 2 kg. Service abroad varies from € 1.71 – 11.45 to EU countries and € 2.13 – 20.25 to non-EU countries.

In Lithuania, the cost of service by bailiff is € 18/h of service[209]. Inbound service under the Service Regulation is free of charge.

The effective postal tariff table in English is available at: https://www.posta.hu/static/internet/download/2015_tarifatabla_EN_2015_01_VEGLEGES.pdf

[208] See Cabinet of Minister regulations No. 983 on the calculation of the service of documents. Available at http://likumi.lv/doc.php?id=197041 (in Latvian).

In Luxembourg, domestic delivery by a bailiff costs in average between €100.00 and €150.00[210]. The cost is of € 138.00 for inbound service (same as the fee under the Regulation on service of documents), and around € 100.00 – 150.00 for outbound service by bailiff (sent by post).

In Malta, service during normal working hours is € 7.20, and € 14.40 outside working hours. If service is to be performed personally by an executive officer of the Court the cost is € 32.00. For outbound service abroad, the same costs apply, while under the Service Regulation a fixed fee of €50,00 is charged. In the Netherlands[211], the average cost of service is around € 75.00 - € 90.00. For inbound service under the Service Regulation, the cost charged is €65.00, while for outbound service, normal costs apply.

In Poland, postal charges for service through registered mail with proof of receipt range from 4.50 zloty (ca. € 1.00) to approximately 11 zloty (€ 2.50), and is included in the court fee[212]. Service under the Service Regulation is free of charge.

In Portugal, each service by bailiff costs €51, while; service by post is between € 3.15 and € 11.50 depending on the weight. Service under the Service Regulation is free of charge.

In Romania, service made by the court through a process server is free of charge (art. 722 CPC), including under the Service Regulation. Service by bailiff is between 20 lei (ca. € 4.40) and 400 lei (ca. € 88.00), plus VAT, plus possible mail charges (according to ORDER no. 2550/C of 14 November 2006 on the approval of the minimum and maximum fees for the services provided by bailiffs, as subsequently amended).

In Slovakia, domestic service by post has an average cost of € 1.40 (see http://cennik.posta.sk/en# for differences based on the weight of the document). Service abroad by post costs € 2.30 for transmission to MSs, € 2.50 to third countries. Inbound service under the Service Regulation is usually free of charge, unless a bailiff is instructed (charges a fixed amount of € 6.64 per document).

In Slovenia, service by post is free of charge. Service by bailiff is around € 50.00 (more if extensive enquiries need to be performed in order to find the addressee). Service abroad has no extra costs.

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[209] See the Study on the Transparency of Costs of Civil Judicial Proceedings in the EU, p. 152 (available at https://e-justice.europa.eu/content_costs_of_proceedings-37-en.do).

[210] According to the Study on the Transparency of Costs of Civil Judicial Proceedings in the EU, p. 152, the average cost is € 150-500.

[211] Determined by the decree "*Besluit tarieven ambtshandelingen gerechtsdeurwaarders*", see http://wetten.overheid.nl/BWBR0012638/geldigheidsdatum_04-02-2016 (in Dutch).

[212] Service by post has the same costs as of the postal service and depends on the size and weight of the envelope. If the service is performed by the judicial officer, parties do not pay any costs. Art. 5, clause 2, law of July 28, 2005 (Official Journal 167/2005 "Law on procedural costs in civil proceedings") explicitly provides that "The costs related to the service of documents are not in charge of the parties". Any other delivery by post has the costs established by the postal service and they depend on the size and weight of the envelope.

In Spain, there is usually no cost. If a party requests the intervention of procurators, the costs are borne by this party (the same applies for service under the Service Regulation). For service of extra-judicial documents via notary, the costs start from € 70.00 and increase depending on the number of documents and pages. Service made via bureau-fax (i.e. a registered fax) starts at a cost of € 20.00.

In Sweden, the cost of service is usually included in the court fee. When police officers are used for service by bailiff by the courts there is a cost. Private service companies charge between SEK 200 to 694 (ca. € 21.30 – 74.15) per assignment when using *Svensk Delgivningsservice AB* (Court Service Handbook). For extra-judicial service, the Regional Authority charges an administrative fee of SEK 500 (ca. € 53.40). Service under the Service Regulation has no charge.

In Scotland, service by post is £ 0.90p (ca. € 1.20). Service via bailiff depends on the originating court and is fixed at £ 99.85 (ca. € 131.30) per service by messenger-at-arms, and £ 78.10 (ca. € 102.70) for service by sheriff officer. For inbound service under the Service Regulation, the official fee by messenger-at-arms is £ 137.10 (ca. € 180.25) for personal or hand service and £ 43.70 (ca. € 57.50), if postal service is used.

In England, service by post, depending on the size and weight of the envelope, ranges from 63p for 100gr. to around £ 5.45 up to 2Kg (ca. € 0.80 – € 7.15). Service under the Service Regulation has no extra charge.

With reference to service under the Service Regulation (knowing that a similar rule applies under art. 12 of the Hague Service Convention), art. 11 states that:

> "*1. The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the Member State addressed.*
>
> *2. However, the applicant shall pay or reimburse the costs occasioned by:*
>
> > *(a) recourse to a judicial officer or to a person competent under the law of the Member State addressed;*
> >
> > *(b) the use of a particular method of service.*
>
> *Costs occasioned by recourse to a judicial officer or to a person competent under the law of the Member State addressed shall correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. Member States shall communicate such fixed fees to the Commission*".

As seen above, certain MSs have opted for a no-charge fee for inbound service of documents originating from other MSs, while other have fixed a fee. When service is performed by post

under art. 14 of the Service Regulation, different costs may apply in relation to international registered mail rules and any additional cost imposed by the executor.

3.17.2. *Predictability*

As noted above, the cost of service is usually determined in accordance with tariffs and regulations and is established and paid before the service is performed (except in some MSs, such as Cyprus where it is generally payable after the delivery of the document), often depending on the method, distance and number of parties and documents to be served. However, in a number of MSs (for e.g. in Belgium, France, Italy, Latvia, Luxembourg, Slovenia and Scotland), adjustments may be made afterwards, if during the performance of the service of the document unusual problems arose, such as the need to change the method of delivery, or the repetition of several attempts.

In Cyprus, in urgent cases, a private agreement might be made (as a matter of practice not regulated by the CPR) between the initiator and the bailiff.

In Denmark, the costs of service of documents by a *stævningsmand* (process server/bailiff) are determined by a ministerial order (*Bekendtgørelse om vederlag til stævningsmænd og til vidner i fogedforretninger*). The *stævningsmand* is paid a fixed amount for each person the message has been delivered to. If an attempt to perform a service of document fails, the *stævningsmand* is nevertheless paid as if the attempt was successful. The *stævningsmand* is also reimbursed for driving costs.

In Greece, the bailiff's fees are regulated by law. The parties, however, are entitled to proceed with an alternative fee arrangement to the extent that it is higher that the regulatory fee scale. Bailiffs' fee structure in Greece is regulated as follows: a) a basic fee for each act a bailiff may request; b) an additional remuneration for the kilometres the bailiff has to travel in order to conduct the delivery; c) an additional remuneration for each extra page drafted by the bailiff in his reports.

In Ireland, additional costs will be incurred if an application to Court is required for an order permitting substituted service.

3.17.3. *Who is charged with paying the costs of service*

Usually it is the party in the interest of which the service is performed who is charged with the costs related to the service, either directly or indirectly by paying the court fees for the institution of the proceedings. Service made *ex officio* by the court, instead, is generally borne by the court.

In all MSs a winning party may recover legal expenses from the losing party, in accordance with the general procedural rules on the adjudication of the court fees, and in most MSs these also include the costs of the service of documents and/or the court fee for instituting the proceedings.

In those MSs where service is normally initiated by the court without direct costs for the party, the latter is only required to cover the costs of any special method of service requested by this party or in case the party requests from the court an authorisation to assume responsibility for service. This is the case, for e.g. in Bulgaria, where the party, who requests the use of a special courier or the summoning of a witness, is required to pay in advance the fee for this.

In Germany, costs of service relating to court proceedings are (up to 10 services) included in the court fees (paid by the claimant but recoverable if she/he wins the case), but additional services are to be paid.

Also in Lithuania, as a general rule, the court covers the costs of service, unless a party demands service by a specific method. Then such a party has to pay the costs of the requested service.

In Slovenia, as a rule, the party does not have to pay for the service of documents, except where the court orders - at a party's request - that documents be served by a legal or natural person that performs service as a registered activity on the basis of a special authorisation from the Minister responsible for justice. In that case the party proposing service by process-server must pay an advance on the costs of service. At the end of the proceedings the costs of the proceedings are borne by the party that loses or by both parties, each in proportion to its success in the case.

3.18. Time

3.18.1. *Average duration and predictability*

In the following pages we report on the results of the replies gathered through the questionnaires with reference to the average duration of domestic and transnational service of documents. It should be stressed that the following data is neither official nor statistically meaningful, and reflects only the perception of the persons answering the questionnaires (lawyers, bailiffs, judges, etc.). Some control data are available in the context of the Hague Service Convention.[213]

For each MS, if data is available, we report information on domestic service, transnational service and on whether their duration is predictable and there is a maximum duration for service provided for by the law. Data on transnational service are only mere indication, as it will often depend on the States involved.

In Austria, domestic service by post or bailiff is reported to have an average duration of 2-5 days, while e-service through Web ERV takes place instantaneously. As far as cross-border

[213] Available at https://www.hcch.net/en/instruments/conventions/publications1/?dtid=33&cid=17 . Not all MSs have participated to the study conducted by the HCCH.

service is concerned, inbound takes no more than a week, while outbound varies from three weeks to six months. There is no maximum duration prescribed by the law.

In Bulgaria, service by court officer takes between 10 days and 2 months depending on the size of the city, while service by posting (by publication) up to 4 months. Inbound cross-border service is usually performed with priority, but the communication after the service could take additional time. As a result, the time frame is similar to the domestic one. For outbound, reported time are 3 months or even longer. No maximum duration for service provided by the law and it is not possible to predict the duration of service *ex ante*.

In Croatia, service through domestic post takes from few days to few months. In very complicated situation, it can even take years. It depends mostly on the pace of work of the court. The documents are first delivered to the court by the parties and then served. Once the document is sent from the court it is usually served within a couple of days. Transnational service by post takes a few months. There is no maximum duration provided by the law and the duration it is not predictable ex ante.

In Cyprus, for domestic: service, provided that the address of the person being served is known, service is a matter of days (one said 5-15 days). According to rule 5 of Part II of Annex C, the service is effected, according to the chronological order the documents were delivered to the bailiff for service, unless, due to special circumstances which must be registered at the bailiff's registry, service in another order is justified. Applications, however, for interim orders and injunctions, as well as the respective Court Orders have priority in service. Then the service of documents in the course of proceedings which are set for hearing or directions before the Court, follows, as a matter of priority. For cross-border service, transmission through agencies takes months (one said 2-4 months), while interim orders of urgent nature are usually served also by substitute service through express courier services, which takes only a few days, even though such service is not always acceptable as good and valid service. The duration of service is usually not predictable ex ante and there is no general rule for maximum duration for service. However, if the service is performed pursuant to relevant Court Order, the said order might stipulate a certain time for service, which can be renewed upon a relevant application (oral or written) pursuant to the discretion of the Court. Furthermore, O. 4 r.1 CPR provides that the writ of summons expires after the expiration of 12 months of its issuance and thus if service is not performed within this period, the writ will expire, unless renewed upon a relevant application being filed by the Claimant.

In the Czech Republic, domestic service by post usually takes 2 or 3 days. Delivery via data box is basically immediate, the document is then delivered when the owner of the data box signs up. If there is a possibility of replacement delivery, the 10 days period starts from the moment of receipt of the message. Inbound cross-border service takes 2 or 3 days, while outbound approximately takes 1 or 2 months. The duration of service is usually predictable, but no maximum period for service is set by the law.

In Denmark, it takes 1-2 weeks for domestic service to be performed, while for cross-border the duration is close to one month. Duration is not predictable and there is no maximum duration.

For Estonia, the court marks on the delivery notice the obligatory time period in which the postal service provider has to return either the undelivered documents or the certificate of delivery to the court. Those time periods are: a) without delay (instantly), b) 15 days or c) 30 days. For electronic service, delivery is immediate, but service is deemed performed when documents are opened by the addressee or a receipt is otherwise delivered without opening the documents. Outbound cross-border service usually takes 1-2 months. The duration of service is not predictable ex-ante.

In Finland, domestic service by post, electronic service or communication through telephone is a matter of a couple of days. Service through a process server depends on how quickly the addressee can be found. For cross-border service, reported times are less than a month for inbound service, and an average of 3-7 months for outbound service. No maximum duration for service is provided when the court handles service of documents. Therefore, the duration is not fully predictable as it also depends on the caseload. The court may set a deadline when service is entrusted to the plaintiff (Chapter 11, Section 2, CJP) or to a process server (Chapter 11, Section 4.3, CJP).

In France, a domestic *notification* usually takes 2-3 days for the registered letter to arrive at destination, but if letter is not delivered then it is deposited for 15 days at the post office. *Signification*, if urgent, is performed the very same day; if non urgent, is performed in 2-3 days. As far as cross-border service is concerned, inbound is performed in few days, while outbound of course depends on the authorities concerned, and can take months. The duration is not entirely predictable.

In Germany, for domestic service the following applies: (a) under normal circumstances, 1-5 days; (b) bailiff, 3 days, but this can be accelerated, cf. § 5(3) GVGA; registered mail, 3-5 days; (d) for service against confirmation of receipt, this depends on the behaviour of the addressee, normally, 2 days. In cross-border service, inbound requests are handled in less than two months, while for outbound there is no general answer, but delays may occur. With reference to a maximum duration, for domestic service, there are explicit indications only for the bailiff (§ 5(3) GVGA). However, these are only indications; there are no direct consequences of a delay. As a matter of principle, the durations reported above can be relied on.

In Greece, domestic service by bailiff takes 1-2 days from the day the order is granted (depending on the bailiff's workload, the degree of difficulty to locate recipient and the distance that the bailiff is expected to travel to serve the document). For inbound cross-border service, a performance time of 1 month since receipt of the documents is reported. For outbound the duration reported is an average of 3-6 month (under Hague Service

Convention). There is no maximum duration for service, but there may be the need to grant to the defendant enough time to prepare for a hearing (30 or 60 days depending on the applicable procedural rules). Failure of the party to meet the respective deadline results to the cancelation of the hearings (but bears no further procedural penalties).

In Hungary, domestic service by post takes from 1 to 5 working days, priority mail via post or via courier service takes 1 working day, while a service made through the court system can employ 2-4 weeks to be performed. In case a registered mail is not directly accepted by the addressee, the postal service leaves a notice at the address for 10 working days, during which time the addressee can collect the item. In these cases the return of receipt can take up to 3 weeks. In case of urgency, statement of claims/summons may be served at short notice (by telephone, verbally at the hearing, or by means of electronic mail or by a process server) (§96(3) CPC). For inbound cross-border service, the duration is reported in 2 months from the arrival of the documents in Hungary. For outbound it can take 2-6 months, but when direct postal service is used (art. 14 Service Regulation) it can take up to 3 weeks. There is no maximum duration and it is not predictable ex-ante.

In Ireland, there is no specific data, but an originating summons will expire if it is not served within a period of 12 months from the date thereof (subject to a leave to renew the summons).

In Italy, the duration of domestic service depends on the method and on the office, usually from 3-4 days or few weeks. It is possible to request urgent service by bailiff at a higher cost, and service will be performed on the same day of the request (*urgente oggi*) or on the next day (*urgente*). E-service by PEC takes place instantaneously. Inbound cross-border service can take very long, about 2-3 months. For outbound, it depends on the country, but when direct postal service is used (art. 14 Service Regulation), the time frame is of 2-3 weeks. Duration is not predictable (unless urgent service is requested) and there is no maximum duration provided by the law.

In Latvia, domestic service takes an average of 7 days (because of the operating of the presumption on service in Art. 56^1 CPL – see also *supra* para. 3.8.2). Inbound cross-border service is usually performed within 7 days from the moment when they are received by the competent authority. Outbound service is variable, depending on the foreign competent authority and transnational postal service providers. There is no maximum duration provided by the law, but after 7 days, the presumption of receipt takes effect. For Lithuania, there were no data reported, in some cases a presumption of service applies.

In Luxembourg, a domestic *notification* by registered letter with acknowledgement of delivery takes 2 to 3 days. *Signification* is made the following day (in the event of urgency), or within the next 2-3 days. Inbound cross-border service is usually performed with similar durations. Duration is usually reasonably foreseeable, unless there are difficulties. In Malta, a domestic personal service (direct or indirect) can take between a few hours up to 1/2 days.

Service by registered mail takes approximately 2 weeks. Constructive service takes about 4 days to obtain the leave of the court and the actual process can take up to 1 week. For outbound cross-border service it can take about 3 months if done through the central authority. The duration of service is not predictable ex-ante and there is no maximum time periods laid down in the law. In the Netherlands, domestic service can be performed within a day (if necessary), but on average it may take a few days until a week.

We had no data for Poland and Portugal.

In Romania, domestic service is effected on the same date or, in the case of service by mail or fast mail, within a few days. In Slovakia, domestic service takes 2-5 days depending on the method of service and the place of service. In Slovenia, domestic service by post or private service company takes 5 days, while a service by bailiff can take up to 30 days or even more. Service by e-mail takes place immediately. Duration is not predictable and there is no maximum duration in national law.

In Spain, service by post may take up to a week, while through a judicial agent it can take two weeks. For inbound cross-border service, the duration is around 2 weeks once the foreign documents are received. For outbound duration is around 1 or 2 months (but can go up to 6-12 months). The duration of service is not predictable ex-ante. The maximum duration is one month and, if this duration is reached, the causes of the delay shall be communicated to the court of origin.

In Sweden, for domestic service there is no data, but it is generally effected in a quick manner. There is no maximum duration when the court effects service. When a party is exceptionally the initiator of service the court may set a specific time limit for the party within which to effect service (Section 8 SA).

In Scotland, domestic service takes 2/3 days. Inbound cross-border service usually takes 7-14 days after payment has been received.

Finally, in England, domestic service by first class post takes 1/2 days, while a DX is generally delivered on the next day. Service of a claim form must be effected within four months if to be served within the jurisdiction or six months if outside (CPR 7.5). The court can, however, extend these time periods (CPR 7.6).

3.18.2. *At what time service can be performed*

MSs are divided on whether service may be performed at any time of the day, any day of the year, or whether limitations apply. Usually, where a specific time frame is provided by the law, in service outside the permitted hours or in non-business day is allowed in case of urgency with the authorisation of the court. Moreover, the consequence of serving outside the legitimate hours usually is that service can be legally refused, or is being regarded as null and void (but only in Greece).

Any day, any time is the rule in Bulgaria, Cyprus (except on workplace, which is limited on working hours and at the place of work – O. 5, r. 3, CPR), the Czech Republic (but postal services are active only from 8am to 4pm), Estonia (§ 309 CPC), Germany (but service at night or on Saturdays or Sundays may be deemed inappropriate and allow a justified refusal. In this case, also substituted service is not allowed. Cf. § 758a(4) ZPO), Hungary (no special rule is provided, but normal postal hours apply), Latvia, Lithuania, Malta (with extra charge; reported as used in practice), Portugal, Slovakia, Sweden, Scotland (except on a Sunday) and England.[214]

In Austria, as a matter of principle, service which is not executed by post may be performed on Saturdays, Sundays and holidays, or at night, only with the permission of the court and when delivery is urgent (§ 100 ZPO). Service at night or on Saturdays or Sundays may be deemed inappropriate (cf. § 30 EO) and allow a justified refusal. In this case, neither substituted service is allowed. In Belgium, service may not be performed in a public place before 6am and after 9pm. Service on a Saturday, Sunday or holiday may be performed only in case of urgency and with the court's authorisation (art. 47 *Code Judiciaire*). In Croatia, service can be performed only on working days from 7 am to 8 pm or in any other moment if the addressee accepts it (art. 140 CPC). When necessary and important, the court can order the delivery regardless of these rules. In Denmark, Section 13 of the ministerial order on services asserts that service by a *stævningsmand* at the permanent or temporary residence of the addressee shall as far as possible be performed between 7 am and 22 pm. In Finland, there are no official restrictions. Service by process server is generally performed during office hours, but in practice depending on the circumstance the process servers (or bailiffs) may be willing to perform service outside regular office hours, e.g. during the weekend. In France, "[n]o service may be made before 6 o'clock in the morning or after 9 o'clock in the evening or on Sundays, public or non-working days, except by permission of the judge in case of need" (Art. 664 CPC). In Greece, service of documents may take place on working days (Monday – Friday) and between 7 am and 7 pm, unless the addressee is willing to accept delivery (art. 125 CPC). Service of documents that took place outside the above timeframe is null and void; in exceptional cases however service may take place in non-working hours and days, upon the condition that prior permission of the president of the court before whom the case is pending has been granted and in case there is no pending case, by the local magistrate court.

[214] In England service can be performed at any time but cannot be effected, or be deemed to have been effected, on any bank holiday or weekend (see, e.g., CPR 6.26). More precisely, the relevant step may be performed on any day, including Saturdays, Sundays and bank holidays and at any time day or night. Once the relevant step has been completed, the claim form is deemed to be served on the second business day after the completion of the relevant step. 'Business day' means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day (CPR 6.2(b)). 'Bank holiday' means a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where service is to take place (CPR 6.2(a)).

In Ireland, Order 122, r. 9, RSC provides that service of summonses, pleadings, notices, orders, and other proceedings, shall be effected before the hour of five o'clock in the afternoon, except on Saturdays, when it shall be effected before the hour of one o'clock in the afternoon. Service effected after five o'clock in the afternoon on any weekday except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after one o'clock in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday. This rule is not, however, applied strictly in practice and it is not uncommon for service to be effected outside of the prescribed hours.[215] Order 122, r. 4, RSC provides that, unless directed by the Court or on consent a pleading shall not be delivered or amended during the long vacation. The long vacation runs from 31 July to commencement of the new legal term in early October.

In Italy, service before 7am or later than 9pm can be legally refused. In Luxembourg, service cannot be made before 6.30 am and after 8 pm, or on Sundays or bank holidays (Art. 1264 CPC). The judge, in the event of extreme urgency, can authorise service outside standard times (Art. 1264 CPC). In the Netherlands, service can be performed from 7 am to 8 pm on all days except for Sundays and official holidays (Art. 64 CPC), unless special permission by the court is granted. In Poland, service can be performed on public holidays and in the night time (from 9 pm to 7am) only in exceptional cases and subject to the order of the president of the court (art. 134 KPC). In Romania, service may be performed only on business days, from 7 am to 8 pm. In case of emergency, service can be performed on non-business days or on legal holidays, but only with the court president's consent (Art. 171 CPC). In Slovenia, time for service is between 6am and 10pm, but by electronic means 24h/day (Art. 139(1) ZPP). In Spain, service is performed only on working days from 8am to 8 pm, unless otherwise is determined by the court in relation to a particular procedural act (Art. 130 LEC).

3.18.3. *On what date service is deemed performed*

The time when service is performed is usually determined in relation to the method of service (see *supra* the relevant paragraphs). As a general rule, in a majority of MSs service is deemed performed on the day the documents are actually delivered on the addressee or on a substituted recipient. When another form of service is employed, the date of service may vary. In certain cases it may be the date when the documents or the notice of deposit are left in the addressee's mailbox, or otherwise after a set number of days or when addressee actually collects the documents from the local post or municipal office. Service by publication is usually subject to specific rules, and may be deemed performed immediately

[215] In Re. Dunne (a bankrupt) [2015] IESC 42, the Court stated that "*in general, common sense prevails in relation to the application of that rule, notwithstanding that a five day working week has been the norm for almost half a century*." In that case, the Supreme Court concluded that service was defective, but refused to set aside an adjudication of bankruptcy on this basis in circumstances where the Court was satisfied that the proceedings had actually been brought to the attention of the defendant, and that he had suffered no prejudice as a result of the defect in service.

when the last formality concerning publication is completed, or after a definite number of days have passed. England stands outside the group, as normally a “claim form served within the United Kingdom in accordance with this Part is deemed to be served on the second business day after completion of the relevant step under rule 7.5(1)” (CPR 6.14; CPR. 6.26 establishes the time for deemed service for documents other than a claim form on similar lines).

Giving more details, in Austria, personal service is deemed performed in the moment of actual delivery to the addressee. Substituted service is performed on the date of delivery to the person substituting the addressee; in case of service by deposition on the first day of the period of deposition which is the first day when the document is made available at this place (§ 17 ZustG). In Belgium, service is performed when the addressee accepts or refuses the documents or when a substituted person accepts the documents; in case of a foreign addressee, when the documents are handed to the post or to the *Procureur de Roi* to be forwarded to the address abroad. In Bulgaria, service is deemed as performed when the addressee or another authorised person signs the certificate of service. In Cyprus, in case of personal service, it shall be deemed as validly affected by leaving a copy with the person to be served or a substituted recipient (Order 5, r. 2, CPR). In the context of substituted service will be deemed to have been validly effected if it was made in the manner permitted by the Court giving leave for substituted service (Order 5, r. 9 and 10, CPR). In Czech Republic, in case of personal service, service is deemed as validly effected on the day when the documents have been hand over the addressee or when the addressee has refused to accept the documents (CCP § 50c). In case of substituted service, if the delivering body has missed the addressee, the documents are deposited and the addressee left, in an appropriate manner, with a written notice to collect the paper. If the notice cannot be left at the place of delivery, the delivering body returns the document to the court that had sent the document and state the day the addressee was missed. The court that sent the document posts a notice on the official notice board to collect the document at the court. If the addressee fails to collect the document within 10 days following the date it was ready to be collected, the documents are deemed as delivered even if the addressee had not known of the deposition (CCP §§ 49). After the expiration of such period, the delivering body posts the document to a house post box or other post box used by the addressee, unless the court excludes posting the document to a post box. If no such post box exists, the document shall be returned to the court that sent the document and a notice thereof shall be posted to the official notice board. With ordinary delivery, if the delivering body has missed the addressee, it posts the document to a house post box or any other post box used by the addressee; the documents are deemed delivered by the posting thereof to the post box; the delivering body marks the post date on the notice of delivery (CCP § 50).

In Estonia, service is deemed performed when the documents are delivered to the addressee. Furthermore, in case of electronic service of procedural documents a procedural document is deemed to be served when the recipient opens it in the information system or

confirms the receipt thereof in the information system without opening the document and also if the same is done by another person, whom the recipient has granted access to see the documents in the information system. The information system registers the service of the document automatically (§ 311[1](3) CPC). If a recipient cannot be expected to be able to use the information system used for the service of procedural documents or if service through the information system is technically impossible, the court may also service procedural documents on the recipient electronically in another manner (§311[1](4) CPC). A procedural document is deemed to be served on the recipient when the recipient confirms the receipt of the procedural document in writing, by fax or electronically. Service of a document sent by registered letter is certified by the delivery notice which must be returned to the court without delay and is deemed performed on the day of receipt specified on the delivery notice. A document sent by unregistered letter or fax is deemed to have been served if the recipient sends the court a confirmation on the receipt of the document by letter or fax or electronically, as chosen by the recipient. The confirmation shall set out the date of receipt of the document and bear the signature of the recipient of the document or representative thereof (§ 314(1) and (3) CPC).

In Finland when service is made by post with acknowledgement of receipt (Chapter 11, Section 3.1, CJP) or by letter with acknowledgement of receipt slip (Chapter 11, Section 3.1, CJP), the date of service is the day in which the party signs the acknowledgment of receipt. In case of service by regular letter to the address notified by the party, the date of service is seven days after the letter was sent. In case of service by bailiff (or other process server) the date of service is when the addressee personally was handed the document (Chapter 11, Section 4, CJP), or the date when the subsequent notice was sent in case of delivery to a substituted recipient (Chapter 11, Section 7, CJP). For service by publication (Chapter 11, Sections 9-10, CJP), the date of service is when the relevant official journal is published.

In France, a *notification* is performed on the day the letter is delivered to the addressee, as specified on the proof of receipt returned to the initiator. According to art. 668 CPC: "*Subject to Article 688-10, the date of the notification by post will be, with regard to the sender, the date of emission, or with respect to the person to whom it is directed, the date of reception.*" For *signification* (art. 653 CPC), in case of personal service, it is the date in which the act is delivered to the addressee (art. 654). In case of substituted service, it is the date in which the act is delivered to the substituted person at the place of domicile (art. 655). In case of absence or refusal to take deliver, it is the date in which a notice of attempt to delivery is left at the place of domicile (art. 656). If service is performed by the bailiff by drawing minutes (art. 659 CPC – address unknown), the date of service is the day when the minutes are made (art. 653 CPC: "*The date of a service of a process through a bailiff … in the case specified under Article 659, that of the drawing up of the minutes*").

In Germany, in the case of personal delivery, the date of service is the date of delivery. In the case of substituted service to another person (§ 178(1) ZPO), service is deemed effective in

the moment this other person is being served. In the case of unjustified refusal to take service (§ 179 ZPO), if the document is deposed in the premises of the addressee or, if there are no such premises, if the document is sent back, service is deemed effective in the moment of refusal. In the case of substituted service by putting the document in the mailbox (§ 180 ZPO), service is deemed effective in the moment when the document is put in the mailbox. In the case of substituted service by deposing the document with the local court of a postal office (§ 181 ZPO), service is deemed effective in the moment when the notice about the deposition is sent to the addressee or posted on his door. In the case of service to an addressee abroad outside the EU who refused to designate an authorised representative for the purpose of service (§ 184 ZPO), service is deemed effective two weeks after the document was handed over to a postal service provider (the court may determine a longer period). In the case of service by publication (§§ 185-188 ZPO), service is deemed effective one month after publication of the notice that there is a document for the addressee concerning a certain case (the court may determine a longer period). The date is the same for both parties. However, if service is relevant to respect a deadline, it takes retroactive effect on the moment of the petition for service provided that a delay does not fall in the responsibility of the party, § 167 ZPO.

In Greece, (art. 136 CPC) service is considered to have taken place at the date and time of actual delivery of the document to the recipient of service; in case substitute service took place the relevant time is the date the document was delivered to the co-habitant or co-worker/director/partner or to the public authorities that are in some case eligible to accept substitute service (e.g. in case of service to prisoners, service to hospitalized persons, service to sailors). When the document is pinned to the doorstep of the recipient's address due to his absence or denial of receipt, the relevant time is the date and time the pinning took place (provided that all subsequent steps are properly carried out). When service of documents to recipients of unknown address or domiciled abroad takes place then the time of service is determined: a) for people of unknown residence at the time of publication of the summaries of the serviced document to the daily press; b) for people domiciled abroad since the document to be serviced is delivered to the competent attorney general.

In Hungary, the date of service is the day when the item is delivered to the recipient. The date of service can also be based on the presumption of delivery, i.e. the presumption of delivery applies if (i) the addressee of the document refuses to accept service, in which case the document will be deemed to be served on the day when the service was refused; and (ii) if the postal service attempts to serve the document twice and both attempts are unsuccessful, then on the fifth day following the second attempt, the document will be deemed to be served.

In Ireland, service is deemed as validly effected in the case of personal service when a document is either handed to a person or, where he refuses to take it, the defendant is told what the document contains and a copy is left with or near him. Where an issue arises or is

likely to arise in relation to the sufficiency of the service effected, an application may be made pursuant to Order 9, r. 15, RSC to have the service actually effected declared sufficient. In the case of substituted service, this will be effective where service is effected in compliance with the Order for Substituted Service made by the Court in accordance with Order 10, rule 1. The form of substituted service ordered will depend on the circumstances. The most common form is service by registered post, but other methods include delivery in person of the originating document to the defendant's address or place of business, or pinning it to the door of same. In the event that the defendant's residence and place of business are unknown, the court may order notice by advertisement or otherwise. Furthermore, Order 121, r. 3, RSC provides that the delivery or service by post of any document, which is authorised to be delivered or served by post, shall be deemed to have been served at the time at which it would be delivered in the ordinary course of post.

In Italy, service is considered performed for the initiator when he hands over the documents to the executor (provided that service is duly performed). For the addressee, the date of service is when documents are actually delivered to the addressee in his/her hands or to a substituted recipient as specified by the law. If delivery is refused without cause, is deemed as immediately performed. If the addressee or another person is not found, a notice in a sealed envelope is left at the addressee's domicile and the document is placed at the *Casa comunale* (public registry with the municipality) to be collected. A registered letter is sent and addressed to the addressee, giving further notice by registered letter that the documents have been placed at the *Casa comunale*. Document is considered delivered upon receipt by the addressee of the registered letter (or after 10 days from its despatch). Postal service is performed when documents are delivered to a person at the address specified. If the person is not found, a notice is left in his mailbox, the documents are placed at the post office and a registered letter is sent to him/her, with further notice of the deposit. Service is deemed performed when the addressee collects the documents or, in any case, at the latest 10 days after the date the documents have been placed at the postal office.

In Latvia, the date of service is regulated by art. 56^{1}(1) CPL: *"(1) If judicial documents have been delivered in accordance with the procedures laid down in Article 56 of this Law, except the case provided for in Paragraph nine thereof, it shall be considered that a person has been notified regarding the time and place of a court sitting or procedural action or regarding the content of the relevant document and that the judicial documents have been served: 1) on the date when the addressee or another person has accepted them in accordance with Article 56, Paragraph three, seven or eight of this Law; 2) on the date when the person has refused to accept them (Article 57); 3) on the seventh day from the day of sending, if he documents have been sent by mail; or 4) on the third day from the day of sending, if the documents have been sent by electronic mail."*

In Lithuania, service is deemed to be effected when the document is served either to an addressee personally or to other persons that are allowed to accept the service under the law (Art 123(5) CPC).

In Luxembourg, *notification* is deemed as validly effected when the document is delivered to the addressee with the acknowledgement of receipt. *Signification* is deemed as validly effected when the document is delivered to the addressee or a substituted person. Article 155 of the NCPC establishes the date of signification according to the way in which it was carried out is "*that of the day when it is made on anybody, at the place of residence or, in the case mentioned in Article 157, that of the official report of research*". More precisely, the time of signification to the addressee is the date when the document is handed over to the addressee himself/herself or to the person present at his/her place of residence; the time of signification if there is nobody at the address but the address is correct is the date when the bailiff leaves a copy of the document and a transit advice note in the letterbox in a sealed envelope. The bailiff draws up a report of these procedures, which is attached to the original document served.

In Malta, personal service (direct or indirect) is deemed to be completed upon delivery of the documents. Service by registered mail: service is deemed to be completed upon delivery of the documents. Notional service (i.e. publication in newspapers and posting in public places) is deemed to be completed on the third working day after the date of last publication or after the date of such posting, whichever is the later.

In the Netherlands, the date of service depends on the method of service. The date of service is the actual date of service by the bailiff (or the date of refusal to accept delivery).

In Poland, service is deemed as performed when the documents are received by its addressee or, if absent (art. 138 KPC) by an adult person living with her, or, if not present, by the house administrator, the doorman. If the addressee refuses to accept service, service is deemed to be performed (art. 139, c. 2, KPC). In case of temporary impossibility to perform service, the act is deposited at the municipality and a notice is left at the house (service is deemed performed on the 7^{th} day). If the party did not comply with the duty to update the change of his/her domicile or registered offices, service may be effected by depositing the act in the file of the proceedings and is deemed performed on that date.

In Portugal, service is performed when the documents are delivered to the recipient. Service by publication is considered deemed on the day of publication of the notice in information page for public access.

In Romania, the date of service (art. 165 CPC) is the date when the addressee or a substituted recipient signs the proof of receipt. In case nobody is found, the relevant date is when documents are left in the mailbox, or if there is no mailbox and service is made by depositing the documents with the court or with the city hall, the date of service is the day

when the depositing term expires (7 days, or 3 days in case of urgency – art. 163 CPC). In case of service by publication, the date of service is 15 days from the last formality.

In Slovakia, personal service is deemed as valid when addressee or substituted recipient signs delivery report. See § 49(3) and (4) CPC). (2). If the documents are deposited with the post office or municipal authority, document are deemed served on the day of deposit. When personal service is required (§ 47 CPC) the date of service is the day in which the documents are returned to the court. When the law provides that the decision be posted on the notice board of the court, the decision is deemed served on the parties who or whose whereabouts are unknown to the court as from the fifteenth day of its posting (§ 47a CPC). Documents addressed to public authorities or legal persons, in case it is not possible to deliver the documents at the registered office address, are deemed served three days after the return of the non-served document to the court (§ 48 CPC).

In Slovenia, in case of documents for which rules on ordinary service apply, the document is immediately left in the addressee's post box and is deemed to be served. In case of documents for which rules on personal service apply, the document is deemed to be served (and left in the addressee's post box) upon the expiry of the 15th day after leaving the notice at the addressee post box.

In Spain, service is validly effected when the certificate is signed by the addressee or other substituted recipient as provided by the law. In case of e-service, if the addressee does not access its content, service is deemed performed after three days from delivery.

In Sweden, service by bailiff is deemed validly effected when the document has been handed over (§39 SA). Substituted service is deemed validly effected when the notification has been sent to the addressee. Service by nailing is deemed performed when the nailing has taken place/the document has been left at the premises. Simplified service and special service on legal persons are deemed as performed when 2 weeks have passed since the letter was sent (if the control message was sent and it is not based on the circumstances improbable that the document has reached the addressee) (§26-30 SA). Service by publication is deemed effected two weeks from the decision to conduct service by publication (§51 SA).

In Scotland, the date of service is, with postal service, the day after posting; for service by the hand of a judicial officer, the date of delivery.

Finally, in England, personal service of a claim form is deemed effected on the second business day after it has been left with the party served (CPR 6.14, 7.5(1) and 6.5(3)). Where service of a claim is effected by an alternative method (substituted service) the deemed date will be specified in the court order authorising such service (CPR 6.15(4)(b)).

As a rule, the date of service is the same for both parties, the claimant and the defendant. Italy stands as an exception, as the date when service is deemed performed is in relation to the initiator the day in which service is commenced (provided service is then validly

performed). For the addressee it is the day of actual receipt of documents, unless a constructive notice applies. Also for *notification* by post in France (and Luxembourg), art. 668 CPC states that "*Subject to Article 688-10, the date of the notification by post will be, with regard to the sender, the date of emission, or with respect to the person to whom it is directed, the date of reception.*" As seen above, in Germany if service is relevant to respect a deadline, it takes retroactive effect on the moment of the petition for service provided that a delay does not fall in the responsibility of the party (§ 167 ZPO). This is similar to the solution adopted by Article 9 of the Service Regulation to determine the date of service in cross-border context, and which seems a reasonable choice that balances the interest of both parties:

> "1. Without prejudice to Article 8, the date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed.
>
> 2. However, where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be that determined by the law of that Member State".

According to the CJEU, when a party uses more than one of the methods provided by the Service Regulation, the date of the first service validly effected is the relevant date for purposes of time limits (and, we should add, possibly also for *lis pendens* purposes).[216]

3.18.4. *Lis pendens*

As highlighted throughout this report, service is a procedural step that is linked to many other actions of civil procedure in a legal system, from interruption of a statute of limitation (or prescription), to the running of time limits, to the pending of proceedings. In this respect, in a number of MSs, the moment when service of the documents instituting proceedings is performed on the defendant is the moment by which proceedings are deemed as pending for *lis pendens* purposes. As a general, but not universal, rule, the relevance of service for purpose of *lis pendens* is determined on the way how proceedings are started: whether first the claimant serves the defendant and then files the statement of claim (along with the certificate of service) with the court, or whether the statement of claim is first filed with the court, and only later served on the defendant (sometimes by the court acting as initiator). In the former case, usually the date of service will also be the relevant date when proceedings are deemed as pending. In the latter case, usually the relevant moment for *lis pendens*

[216] CJEU, *Plumex c. Young Sport NV*, C-473/04 (ECLI:EU:C:2006:96): "Regulation No 1348/2000 must be interpreted as meaning that, where transmission and service are effected by both the method under Articles 4 to 11 thereof and the method under Article 14 thereof, in order to determine vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service, reference must be made to the date of the first service validly effected".

purposes is the filing of the statement of claim with the court, and the later service has no relevance in this respect.

As already seen, the Brussels I Regulation overcomes this split of approaches by a uniform rule in its Article 31 (similar to art. 9 of the Maintenance Regulation), which determines the moment of *lis pendens* for the purpose of the European instrument in a unique way:

> "court shall be deemed to be seised:
>
> (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or
>
> (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.
>
> The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served".

In a first, smaller, group of MSs in which service of the documents instituting proceedings is relevant for *lis pendens* purposes we can group Austria (§ 232(1) sentence 1 ZPO, but deadlines are interrupted already when the document is filed with the court, § 232(1) sentence 2 ZPO), Croatia (art. 194 CPC), Cyprus, Denmark, Germany (§§ 261(1), 253(1) ZPO), Greece, Hungary (§128 CPC), Malta, Poland (art. 192 KPC) and Slovenia (§189 ZPP).

In a second group, where the relevant moment is the date in which the claim is filed with the court, we can group Bulgaria (art. 125 CPC), the Czech Republic (CCP § 82), Estonia, Finland (Chapter 5, Section 1.2), France (the date of pending is always the date in which the act is registered with the court: i.e. the day in which in a *reqûete* is filed with the court to be later served or the day in which a served *assignation* is enrolled with the court), Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Spain, Sweden (Chapter 14, Section 4, CJP), Scotland and England.[217]

In Italy, it depends on how the proceedings are started. If the proceedings are started with an *atto di citazione*, which is first served and then filed, the relevant date for *lis pendens* is the date of service. If proceedings are started with a *ricorso* (an application to the court, which is the standard in labour matters, evictions, interim measures or summary

[217] Proceedings are pending before the English courts when they are issued at court, i.e. the court stamps the documents as issued: article 32(1)(a). Issue of a claim form counts as commencement for the purposes of determining when a claim is brought in respect of statutory limitation periods: see Limitation Act 1980.

proceedings ex art. 702-*bis* CPC), the proceedings are pending as soon as the *ricorso* is filed with the court (hence before service).[218]

3.18.5. *Delays*

In several, but not all MSs (e.g. Austria, France, Germany, England), delays in domestic service (and other issues seen *supra*) are reported (for issues in transnational service, see *infra* para 3.19). Usually delays do not affect the procedural position of either party, although, for instance, a hearing may be rescheduled if the date in which the addressee has received the document does not allow for enough time to file a defence. In countries such as Cyprus, Ireland and England there might be a time frame within which service of claim form (or of the particulars of claim) must be performed.

Commonly reported issues relate to:

a) understaffed personnel or other issues relating to the executor of service (e.g. in Bulgaria, Croatia, Finland, Hungary, Italy, Latvia and Romania). For postal service see also *supra* para. 3.8. A debate arose in Poland on the accuracy of the delivery by the private provider, but today the concession of the service to the private provider has been confirmed. In addition, problems with postal operators have been reported in Latvia;

b) frequent attempts by the addressees to evade service (e.g. in Bulgaria, Croatia, Denmark, Estonia, Finland, Ireland, Lithuania, Slovenia and Spain);

c) difficulty in locating the addressee or incorrect information (in a majority of MSs, such as in Bulgaria, Croatia – often for out-dated data in public registries, Cyprus, Estonia, Finland, Greece, Ireland, Malta, the Netherlands, Portugal, Slovakia, Slovenia, Spain and Sweden)

In Scotland, a common reason for delays is the failure of the party to pay costs of service prior to service. In Greece, delays may also occur whenever the document to be serviced is addressed to a legal entity lacking legal representation (e.g. commonly because the legal representative has resigned). In the latter case whoever is seeking to enforce service, is obliged under the prevailing view to seek an injunction from the competent court in the context of provisional relief proceedings, appointing a temporary administrator to the recipient. It is apparent that imposing to the litigant party the burden of conducting a secondary, interim relief proceeding for the purpose of appointing a temporary administration to the legal entity merely for the purpose of conducting service of the document, is obviously disproportionate to the benefit sought in terms of time, effort and cost, still the entire procedure is not satisfactory.

[218] Article 39 CPC – Lis alibi pendens and actions containing other actions: "…The action where the complaint is first served or the motion is first filed is deemed to be first filed".

Information on delays or on the state of play of the service of document is usually obtained through informal channels or inquiries with the executor or via post provider website.

The ECHR has stressed that, according to article 6, § 1, ECHR, "il incombe aux Etats contractants d'organiser leur système judiciaire de telle sorte que leurs juridictions puissent garantir à chacun le droit d'obtenir une décision définitive sur les contestations relatives à ses droits et obligations de caractère civil dans un délai raisonnable … . Cela implique également la mise en place de procédés de notification efficaces, permettant d'assurer la notification de la date des audiences aux parties en temps voulu".[219]

3.19. Transnational service

While the study and this report are in first line concerned on domestic service of documents, we included certain questions in the questionnaire on the operation of transnational service, such as the existence of provisions implementing the Regulation on service of documents, the possibility to perform direct service, opinion on the level of knowledge of EU rules and on the existence of language and other issues and, finally, the issue of translation and their certification.

3.19.1. *Existence of domestic provisions implementing the Service Regulation*

Some MSs have either implemented rules or addressed the Regulation on service of documents in some provisions, such as Austria (§ 12 ZustG[220] and § 121 ZPO[221] – Austria is

[219] ECHR, *Gospodinov v. Bulgaria*, 10th May 2007, application no. 62722/00, ¶40.

[220] § 12 ZustG Service of foreign documents

"(1) Service of documents emanating from foreign authorities must be executed according to the existing international treaties, in the absence of such according to this federal law. A request to respect a certain procedure different from the procedure in this law may be followed, provided such service is compatible with the fundamental values of the Austrian legal order.

(2) Service of a foreign document in a foreign language which is not accompanied by a translation, in judicial proceedings by a certified translation, into German is only admitted if the addressee is willing to accept the document; this is assumed if he or she does not declare within three days to the authority which executed service of the document that he is not willing to accept it; this deadline starts with service and cannot be prolonged.

(3) If the declaration according to (2) is belated or inadmissible, it will be rejected; otherwise, the authority has to certify that service of the document in foreign language was not carried out for lack of willingness of the addressee to accept it. …"

[221] § 121 ZPO Service abroad

"(1) For service to persons in a foreign country who are not one of the recipients listed in § 11(2) and (3) ZustG the federal minister for justice can, in agreement with the federal chancellor, allow by way of a regulation service by post using an advice of receipt as usual in international mail to those States in which service according to § 11(1) ZustG is impossible or causes difficulties.

(2) If the confirmation of service to a person in a foreign country is not received within reasonable time, the party for whom service was effected may, depending on the situation, demand service by publication (§ 25 ZustG) or the designation of a curator according to § 116. The same applies in case service abroad was attempted without success or the request does not promise success because of obvious refusal by the foreign authority to grant legal assistance.

(3) The provisions of Regulation (EC) No 1393/2007 … remain unaffected".

not yet a party to the Hague Service Convention), Bulgaria (Arts. 608 –613a CPC), Croatia (Arts. 507.a, 507.b, 507.c, 507.ć and 507.č.CPC), Estonia (§316[1] CPP), Germany (§§ 183(5), 1067-1069 ZPO, ZRHO), Hungary (Law-Decree No. 13 of 1979 on International Private Law,[222] Section 59 (3) in Act L of 2009 on the Order for Payment Procedure,[223] §§135 and 136/A(3) CPC), Ireland (integrated in RSC Order 11D and Order 121A; Circuit Court Order 14B), Latvia (Art. 56[2] CPL and Chapter 81 CPL), Lithuania (the Law on Implementation of EU and International Rules on Civil Procedure contains provision on Art 19(4) of the Regulation), Malta (Court Practice and Procedure and Good Order Rules, Subsidiary Legislation 12.09), the Netherlands (Art 56 CPC),[224] Portugal (Best Practice Noted for the judicial professionals), Sweden (Decree on rules complementary to the Service Regulation), Scotland (incorporated into Scotland rules of service) and England (CPR 6.48ff, Practice Direction 6B of the Civil Procedure Rules). Other MSs, instead, simply rely on the direct application of the Service Regulation or other international instruments for cross-border service.

3.19.2. *Direct service by foreign executors*

Direct service by a foreign executor into the territory of another MS, (not to be confused with direct service under Article 15 of the Service Regulation), is not allowed in any of the MSs, with the possible exception of Cyprus and England. It is to be noted, however, that Article 13 of the Service Regulation enables – in line with the general trends of public international law – that diplomatic or consular agents of other Member States serve documents, without application of any compulsion, on persons residing in the territory of the receiving State. Member States, however, may declare that this method of service is only be used in relation to such persons who are nationals of the originating State.[225]

Service originating from a foreign MSs is usually allowed where is made through postal channels (according to Article 14 of the Service Regulation or equivalent provisions in multilateral or bilateral instruments) and, possibly, through electronic channels.

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[222] The law states that with respect to Member States of the European Union, in order to facilitate the transmission and the service of documents under mutual legal aid, the Hungarian courts shall directly contact the courts and other authorities of Member States of the European Union in accordance with Regulation (EC) No. 1393/2007 of the European Parliament and of the Council.

[223] In connection to the European order for payment procedures the law states that no agent for service of process is required for European order for payment procedures and the order for payment may not be served by process servers. If the documents are to be delivered inside of Hungary, this shall be governed by the Act on the Order for Payment Procedure, the CPC, and by the provisions of specific other legislation on the service of official documents, whereas if said documents are to be delivered to another Member State, Regulation (EC) No. 1393/2007 shall apply.

[224] This article gives a provision for Art 9 in cases where service has to be performed within a certain time. The date of sending the request for service by the transmitting agency is taken into account as the date which "saves" the term, even when the actual service in the Member State will happen later. The "*Uitvoeringswet EG-betekeningsverordening*" is implementing Regulation (EC) No 1393/2007 in the Netherlands.

[225] Service by a consular officer of the sending state to a citizen of that state in the territory of the receiving state is accepted generally according to the article 8 of the Hague Service Convention (but Austria is not a party to the Hague Service Convention).

3.19.3. *Knowledge of EU rules on service of documents, language and other issues experienced*

The questionnaire asked respondents to provide their opinion on the average level of knowledge of legal operators relating to the Service Convention. Overall, the perception seems to be that there is fair level of knowledge of EU rules on the service of documents. In certain MSs, it is reported a good level of knowledge, especially in Cyprus and Luxembourg due to the frequent use of the Service Regulation in these jurisdictions. Sufficient or good knowledge has been reported by respondents in Austria, Czech Republic, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, The Netherlands, Portugal, Slovakia, Sweden and England. A poor level has been instead reported for Bulgaria, Croatia, Latvia, Slovenia, Spain, Estonia and Italy.

From the replies gathered, considering also the replies on knowledge of EU rules, it seems that if the respondents encounter difficulties concerning the application of the Regulation on service of documents in the approach of the other MSs. This, in facts, supports the impression that there are still problems with regard to the operation of the Regulation, in general.

One of the main issues highlighted, which is also a consequence of other issues, concerns the delays in terms of performance of a request of service of document in another MS. Service through transmitting agencies takes too much time, usually counted in months. The one-month deadline under Article 7 of the Regulation on service of documents, as well as the duty to inform the transmitting agency of eventual delays in the performance, is reported often not complied with. A partial remedy to this issue is the use of service by post under Article 14 of the Service Regulation because there the effectuation of the request is not exposed to the intervention of the judicial agencies of the other MSs and the whole process is taken care of by the postal operators of the respective MSs. Here, however, a frequently reported problem is that the proof of receipt is not always returned back to the executor or the initiator, frustrating the very goal of this method of service.

Other reported concerns are connected with the poor knowledge of EU rules and poor language skills, especially by the receiving agency. Not all language declared by MSs under Article 2 and 4 of the Regulation on service of documents are actually understood by the receiving State's authorities or their judicial operators. It is also reported that often the forms are sent in a language that is not accepted by the receiving agency (usually in the language of the transmitting agency), or with illegible handwriting, or that they are sometimes not used at all or not returned.[226] Another issue arises when documents are sent to the wrong authority.

[226] See e.g. C-519/13, *Alpha Bank* (ECLI:EU:C:2015:603) and *supra* para. 3.15.

In general concerns in terms of the time and cost of translating the documents are also reported, as well as issues relating to incomplete translations being sent .

3.19.4. *Translations and certifications*

When it comes to translation and certification, generally it is requested that the documents to be served be entirely translated into an official language of the receiving State or, at least, in a language understood by the addressee (but see also *supra* para. 3.2.1 for different definitions of documents instituting proceedings, and *infra* for the CJEU in the *Weiss* case). A majority of MSs would require a certified translation to be used, despite the fact that the Regulation on service of documents does not expressly require a certified translation. Exceptions reported include Bulgaria, where in theory documents in foreign language translated into Bulgarian should be simply verified by the party responsible for the translation (Art. 185 CPC), although in practice if the documents are to be attached and accepted as proofs to the court file, the parties usually act in a cautious way and provide translation by authorised translators (approved by BG Consulate Office to the Ministry of Foreign Affairs). in Portugal the document can also be translated even by the claimant, but if doubts on the translation arise, the judge may order the claimant to produce a translation which is made by a notary or the content of which is authenticated by diplomatic or consular officer of the respective State or by an expert appointed by the court. Finally, in England it would appear that a translation needs not to be certified by an authorised translation: "Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include that person's name, address and qualifications for making the translation" (CPR r. 6.45(3)).

Since one of the major problems highlighted with regard to the Regulation on service of documents derives from the costs of and delays caused by the translations, the need to provide a certified translation should be expressly excluded from the Regulation and a simple non-certified translation should be allowed. Safeguards protecting against poor quality translations may include the English solution (a statement of correctness signed by the translator, whoever he/she is), and the possibility for the addressee to raise (serious) mistakes or quality issues of the translation during the proceedings.

In some MSs where certified translation is usually required, parties may dispense with such requirement in course of the proceedings by agreement (e.g. in Denmark, Finland and Germany).

In a majority of MSs, when service is performed in a language different from the official language of the receiving State, a party is usually allowed to give evidence that the other party knew the language in which documents have been served (e.g. as being the language commonly used in a contractual relationship).

At the European level, it should be stressed that Article 8 does not actually require that documents be always accompanied by a translation into an official language, but merely

entitles the addressee to refuse service when a translation is not provided in an appropriate language.[227] As such, if the service is performed in a language different from the official language of the receiving MS and from the one the addressee understands it is not invalid from the beginning. Furthermore, as the CJEU has specified also when the addressee refuses service, this does not invalidate the whole process, which can be remedied by the sender by serving, according to the Regulation, a translation 'as soon as possible'. [228]

In its decision C-14/07 (*Weiss*)[229] in relation to the need to also have attachments (e.g. exhibits) translated into the addressee's language, the Court aptly clarified that no such duty exists (and no related right of refusal is granted) if the document itself enables the addressee to defend himself/herself in legal proceedings in the Member State of transmission. In other words, if the annexes attached are of purely evidentiary nature, there is no need for translation. Consequently, where the attachments are necessary for understanding the subject matter of the claim and the cause of action, they should be translated as well.

The Court further explained that "the fact that the addressee of a document served has agreed in a contract concluded with the applicant in the course of his business that correspondence is to be conducted in the language of the Member State of transmission does not give rise to a presumption of knowledge of that language, but is evidence which the court may take into account in determining whether that addressee understands the language of the Member State of transmission".[230] And, also, that "the addressee of a document served may not in any event rely on that provision in order to refuse acceptance of annexes to the document which are not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, where the addressee concluded a contract in the course of his business in which he agreed that correspondence was to be conducted in the language of the Member State of transmission and the annexes concern that correspondence and are written in the agreed language".[231]

In a different context, the CJEU already noted that "the addressee of the instrument permitting enforcement must be placed in a position to identify with a degree of certainty at the very least the subject matter of the claim and the cause of action. In a proceeding such

[227] A similar rule is laid down by Art. 688-6 of the French CPC: "The process will be notified in the language of the originating State. However, the addressee who does not speak the language in which the process is written may refuse the notification thereof and ask for a translation or a French version annexed to it with and at the expense of the petitioner."
[228] *Leffler*, C-443/03, ECLI:EU:C:2005:665. ¶71.
[229] *Weiss*, C-14/07, ECLI:EU:C:2008:264, ¶78.
[230] *Weiss,* ¶88.
[231] *Weiss,* ¶92.

as that in the main action, such is the case where the notification is made in an official language of the Member State in which the requested authority is situated."[232]

In these decisions the Court seems to confirm a pragmatic approach, according to which the overall goal of the Regulation on service of documents is to ensure that the addressee receives actual notice of pending proceedings (or of a judgment). If this is achieved because the addressee understands the language, then there is no issue. Otherwise, the addressee deserves to be protected and a translation needs to be provided. If this is done, service is saved.

As to remedies the Court has specified in the Case *Leffler* that "[i]n order to resolve problems connected with the way in which the lack of translation should be remedied that are not envisaged by the Regulation as interpreted by the Court, it is incumbent on the national court, as indicated in paragraphs 50 and 51 of this judgment, to apply national procedural law while taking care to ensure the full effectiveness of the Regulation, in compliance with its objective".[233]

Finally, on April 26, 2016, the Court issued an order to dispose of the preliminary ruling in *Alta Realitat*,[234] stating that:

> "Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, must be interpreted to the effect that, when serving a document on its addressee residing in the territory of another Member State, in a situation where the document has not been drafted in or accompanied by a translation in either a language which the person concerned understands, or the official language of the Member State addressed, or, if there are a number of official languages in that Member State, the official language or one of the official languages of the place where service is to be effected:
>
> – the court seised in the transmitting Member State must ensure that the addressee has been properly informed, by means of the standard form in Annex II to that regulation, of his right to refuse to accept that document;
>
> – where that procedural requirement has not been complied with, it falls to that court to return the proceedings to a lawful footing in accordance with the provisions of that regulation;

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[232] *Milan Kyrian*, C-233/08, ECLI:EU:C:2010:11, ¶¶59-60, in the context of the Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties.
[233] *Leffler*, ¶69.
[234] *Alta Realitat*, C-384/14, ECLI:EU:C:2016:316.

– it is not for the court seised to prevent the addressee from exercising his right to refuse to accept that document;

– it is only after the addressee has effectively exercised his right to refuse to accept the document that the court seised may verify whether that refusal was well founded; for that purpose, that court must take into account all the relevant information on the court file in order to determine whether or not the party concerned understands the language in which the document was drafted; and

– where that court finds that the refusal by the addressee of the document was not justified, it may in principle apply the consequences under its national law in such a case, provided that the effectiveness of Regulation No 1393/2007 is preserved".

3.20. Service on States

The last topic covered in this report relates to whether service on a State follows ordinary or special rules. In a number of MSs, the service of a document on the own State is performed in accordance with the ordinary procedure, but on certain specific bodies in all or some instances. For instance, in Austria, the Federal Republic is normally represented by the *Finanzprokuratur*, the State by the *Landeshauptmann*, the municipality by the mayor. In Belgium, service on the King or on the State is regulated by arts. 41 and 42 CPC. In the Czech Republic for the State, service is made at the registered office of the State branch; for the Office of the Government Representation in Property Affairs, service is made at the address of its appropriate regional office (§46b, lett. k, CCP). In France, service is made via the *procédure de remise au parquet*, through the public prosecutor. In Ireland, in practice service on the State is effected by serving the proceedings on the Chief State Solicitor, but service on State entities is effected in accordance with the normal rules of service. In Greece, service of documents addressed to the Hellenic Republic should be mandatorily served on the Minister of Finance via the Legal Council of the State, upon penalty of nullity. Service of documents concerning tax disputes should be served on the Director of the Tax Authority involved. Service of documents addressed to other public legal entities (e.g., municipalities, universities, state owned companies) are addressed to their legal representatives. The Hungarian State is represented by the Ministry of National Development in Civil Relations, thus all judicial documents will be delivered to the legal department of this ministry (§3:405 of the Act V of 2013 on the Civil Code). In Italy, in some cases service names the relevant Ministry as addressee but is effected upon the State Advocates.[235] In other cases, usual rules

[235] Article 144 – Service upon the public authorities of the State:
"With reference to the administrative agencies, the provisions of special laws providing that the service should be accomplished at the offices of the State Advocates shall be applied.

for legal persons apply (art. 145 CPC). In any case, service can also be performed via electronic channels (PEC – see *supra* para. 3.9.1.7). In Malta, every application, whether sworn or not, or other judicial act filed against Government must be served upon each head of a government department against whom it is directed and upon the Attorney General. The registrar does not charge any fees for effecting the service on the Attorney General. If the entity to be served is a state corporation, there is no need to serve the judicial document against the Attorney General as well. In the Netherlands, service on the State is performed in The Hague on the public prosecutor's office connected to the Supreme Court (Art. 48 CPC), while service on state entities is performed where the "board" is located/seated (Art. 49 CPC). In Portugal, the State is served on the Public Attorney by personal service. In certain actions (especially before administrative and tax courts) the public entity can be directly served. In Slovenia, service to State entities (as well as other legal entities) is effected by delivery of the documents to the person authorised to accept it, which is usually only the State Attorney, or to an employee working in the office, business premises or headquarters (Art. 133 ZPP). In Slovakia, service is made to an administrative body that acts for the State (as specified by the law). In England, service on the UK is effected under CPR 6.10, "[i]n proceedings against the Crown … service on the Attorney General must be effected on the Treasury Solicitor; and … service on a government department must be effected on the solicitor acting for that department". In Sweden, §12 SA directs service to be effected on the person authorised to accept service at the government entity that acts for the State in the particular matter. If no statues or other legislative provision stipulates which government entity shall act on behalf of the State in a particular matter, the addressee is the Chancellor of Justice.

Normal rules for service apply in other MSs. In Bulgaria, Government institutions and municipalities shall be obligated to ensure an official to accept communications within normal business hours (Art. 52 CPC). In Finland, service on the State is performed by delivering it to the regional administrative office or the authority representing the State in the case under Chapter 11, Section 12, CJP, and service is possible by all ordinary methods. In Croatia, Denmark, Germany, Latvia, Lithuania, Luxembourg, Romania, Scotland the methods are the same as to any other legal person. In Estonia, service on the State and State entities is usually performed electronically through the designated information system, unless there is a good reason not to do so (Art 311^1(6) CCP).

Subject to any applicable bilateral or multilateral international agreement,[236] service on a foreign State requires permission or a passage through the diplomatic channels via the

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Except for the cases under the previous paragraph, services upon the administrative agencies should be accomplished at the address of the person representing the administrative agency, where the judge before whom the proceeding is pending has his residence. Services are accomplished by delivering a copy of the deed at the office, to the head of the office or to the persons indicated in the following article".

[236] Such as the European Convention on State Immunity of 1972 to which a few MSs (Austria, Belgium, Cyprus, Germany, Luxembourg, the Netherlands, UK) are signatory. See Article 16:

responsible Ministry in the MSs: Austria (via the Federal Ministry of Justice which serves directly or via the Federal Ministry for Foreign Affairs or on the embassy), Bulgaria, Croatia (art. 136 CPC), the Czech Republic (§ 7 paragraph 5 of the Act No. 91/2012, on Private International Law – ministry of Foreign Affairs), France (*remise au parquet* and diplomatic channels), Germany (only if there is no immunity and via the diplomatic way),[237] Hungary (§100 CPC), Italy, the Netherlands (Art. 3a *Gerechtdeurwaarderswet* – Judicial Officers

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"1 In proceedings against a Contracting State in a court of another Contracting State, the following rules shall apply.

2 The competent authorities of the State of the forum shall transmit

– the original or a copy of the document by which the proceedings are instituted;

– a copy of any judgment given by default against a State which was defendant in the proceedings,

through the diplomatic channel to the Ministry of Foreign Affairs of the defendant State, for onward transmission, where appropriate, to the competent authority. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the defendant State.

3 Service of the documents referred to in paragraph 2 is deemed to have been effected by their receipt by the Ministry of Foreign Affairs.

4 The time-limits within which the State must enter an appearance or appeal against any judgment given by default shall begin to run two months after the date on which the document by which the proceedings were instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.

5 If it rests with the court to prescribe the time-limits for entering an appearance or for appealing against a judgment given by default, the court shall allow the State not less than two months after the date on which the document by which the proceedings are instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.

6 A Contracting State which appears in the proceedings is deemed to have waived any objection to the method of service.

7 If the Contracting State has not appeared, judgment by default may be given against it only if it is established that the document by which the proceedings were instituted has been transmitted in conformity with paragraph 2, and that the time-limits for entering an appearance provided for in paragraphs 4 and 5 have been observed".

See, also, the United Nations Convention on Jurisdictional Immunities of States and Their Property signed in New York, 2 December 2004 and not yet into force, of which several MSs are signatory or party (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Italy, Latvia, Portugal, Romania, Slovakia, Spain, Sweden and UK). Article 22 states "

1. Service of process by writ or other document instituting a proceeding against a State shall be effected:

(a) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or

(b) in accordance with any special arrangement for service between the claimant and the State concerned, if not precluded by the law of the State of the forum; or

(c) in the absence of such a convention or special arrangement:

(i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or

(ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

2. Service of process referred to in paragraph 1 (c) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3". See, also, Article 23 on default judgments.

[237] The request is fist verified by the Federal Office for Justice (*Bundesamt für Justiz*), § 54 ZRHO. Then, the Federal Foreign Office (*Auswärtiges Amt*) has to decide on whether diplomatic interests forbid service. Service is performed by the Embassy in the addressed State. If the State refuses to take service, service by publication is possible.

Act),[238] Slovakia, Spain,[239] and England (§12 of the State Immunity Act 1978 and CPR 6.44 apply).[240]

In Greece, under the prevailing view, service to the establishment of the embassy of a foreign State is breaching the recipient State's sovereignty; thus direct service to an Embassy under Greek Law is not accepted. The interested party should seek under the prevailing view to effect service via the channels of Hague Convention or (to the extent that the dispute is private) Regulation 1393/2007. Permission from a Greek State authority, however, is not a requirement.

In other MSs, there are no specific provisions and, subject to any international obligation, service on a foreign States follow ordinary rules: Cyprus (but ordinary authorisation to serve out is required),[241] Estonia (Art. 316 CCP), Ireland, Latvia,[242] Lithuania, Luxembourg, Malta, Portugal, Romania, Sweden[243] and Scotland.

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[238] Article 3a Judicial Officers Act: "1. An judicial officer who is instructed to perform an official act shall notify Our Minister of the receipt of such instructions without delay in the manner provided for in the ministerial regulations, if that officer has reasonable grounds to believe that the performance thereof may breach the State's obligations under international law.
2. Our Minister can notify an judicial officer that an official act with which he has been or shall be charged, or which he has already performed, breaches the State's obligations under international law.
3. A notification can only be issued ex officio. A notification may be issued verbally on account of the necessary speed, in which case it must be confirmed in writing without delay.
4. A notification shall be announced by means of a publication in the [Netherlands] Bulletin of Acts, Orders and Decrees.
5. If the official act has not yet been performed when the judicial officer receives a notification as described in paragraph 2 above, the notification shall entail that the judicial officer is unauthorised to perform that act. An official act which is performed in breach of the first sentence shall be null and void.
6. If the official act has already been performed when the judicial officer receives a notification as described in paragraph 2 above, and if this act constituted a writ of attachment, the officer must immediately serve this notification on the person on whom that writ had been served, must lift the attachment and must undo the consequences thereof. The costs of serving the notification shall be for the State's account.
7. The judge of the District Court, rendering judgement in preliminary relief proceedings, can cancel the consequences of the notification referred to in paragraph 5 above, first sentence, and the obligations referred to in paragraph 6 above, without prejudice to the powers of the ordinary courts. If the official act constituted an attachment, section 438(4) of the Netherlands Code of Civil Procedure is applicable".

[239] The Royal Decree 997/2003, in the same line that the UN Convention of 2004 on immunities of the States, contains rules about the service to Spain. Firstly, the international conventions between Spain and the State of origin must be applied. In absence of convention, a specific way provided by the State of origin could be applied according to international practice. Otherwise, the diplomatic mechanism or the service to Spanish Ambassador is necessary unless that the public lawyers of the Foreign Office consider that the service meets the requirements for a good service. Only the Ambassador or the Public Lawyers of the Foreign Office have competence for making a proof of receipt unless the international law provides otherwise.

[240] A document on foreign State or a foreign States' entity must be served by transmission through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State to be served (State Immunity Act, sec. 12). This is done by filing in the Royal Courts of Justice a request for service to be arranged by the Foreign and Commonwealth Office (CPR 6.44(3)). Service is deemed to have been effected only when the document is received at the Ministry of Foreign Affairs of the State served (State Immunity Act, sec. 12).

[241] Service to a foreign state can be effected on the Embassy of that State in Cyprus, however, since Embassies are regarded as subordinate organs of their State and form part of the Ministry of External Affairs of the accrediting State (*The Attorney General (No.1) (*1999) 1B A.A.D. 802, the usual procedure for service of

documents out of the jurisdiction must be followed, even if service is to be effected to the Embassy of a State, in Cyprus (*Unitica Enterprices Ltd v. The Slovak Republic* (2004) 1B A.A.D. 730. Hence, authorisation of the court is needed.

[242] Some years ago, it was necessary to direct all the documents through the Ministry of Justice, however, now the Latvian courts in civil matters serve the documents directly to the competent foreign authority and the Ministry of Justice does not take part anymore.

[243] §3 SA generally stipulates that service on parties abroad can be effected if the relevant State allows service. Thus, it will presumably depend on the rules of the foreign State.

4. CONCLUSIONS

4.1. Recommendations and suggestions

The technical specifications of this project set by the European Commission invited the contractor to draw conclusions from the comparative legal analysis above and to "make suggestions for addressing the identified problems, either by way of minimum standards or otherwise". These conclusions might also include suggestions on how the Regulation could potentially be revised in order to enhance the attainment of its goals if the findings of the study support such proposals. Complying with this objective of the study, we collect and set forth below relevant recommendations and suggestions.

The team has elaborated recommendations in view of possible European common answers on selected issues. The team tried to identify the areas in which the differences between national systems may pose an obstacle on the functioning of the Service Regulation, although there may be instances in which harmonisation might be difficult taking into account the fundamental differences in the systems. The team also tried to identify those recommendations that may improve, also from a practical point of view, the operation of the Service Regulation. Each recommendation should be read against two principles: (a) the legal basis for a EU action in the field of service, which is limited to "the cross-border service of judicial and extrajudicial documents" (article 81(2)(b) TFEU), taking into account that a harmonisation of substantive law may be justified if necessary to attain the objectives of the Treaty, in this case the mutual recognition of judgments; (b) the principle of subsidiarity, according to which the EU should take action only insofar as it MS cannot deal with the issue on their own.

Documents instituting proceedings

A common core of a European concept about what constitutes a "document instituting proceedings" has been already set by the case-law of the CJEU. In the *Weiss* case the Court said that:[244] a "document instituting proceedings" is a "*document* [that is sufficient to] … *enable the addressee to assert his rights in legal proceedings in the Member State of transmission … and is … necessary for understanding the subject-matter of the claim and the cause of action*". EU action in this area may further develop this concept giving more clarity to it taking into account that such documents are designed in each MS in the light of their legal systems and procedures.

[244] *Weiss*, C-14/07, ECLI:EU:C:2008:264, ¶78.

As such, a minimum set of information that every defendant should receive in the course of the service of the "document instituting proceeding" may be considered reinforcing the protection of the right of the defence in civil and commercial litigation.

In terms of the obligation of informing the defendant served with the "document instituting proceedings" on how to react to the service and on the consequences of a default, MS deal with this matter in different terms and only some of them give extensive information to the defendant on the next steps to be taken. This is particularly important in a transnational context, where a party may be less familiar with the procedure in another MS and where locating a lawyer in the foreign MS may take more time. Beyond the specific forms included in the Service Regulation, the addition of a “defendant package” instructing the defendant, briefly but in an exhaustive fashion, on the possible next steps, the consequences of default and, as it may be the case, including forms to decide how to reply, could be an important addition and should be considered to increase the protection of defendants especially in cross-border cases (but the same solution seems advisable also domestically).[245] Such defendant package in the cross-border context could be either in the same language prescribed by Article 8 of the Service Regulation, as well as in commonly understood languages such as English and French. More extensive information could be provided in a link to be viewed online. Such a package would be readily available for any cross-border service and should only be duly updated in case of modification to rules or procedures.

With reference to *lis pendens* and time limits, Article 32 of the Brussels I Regulation and Article 9 of the Service Regulation already provide a uniform answer.

Service of judgments and enforcement proceedings

As we have seen, service of a judgment and, as the case may be, service of an enforcement title before any enforcement measure is taken are important guarantees for the losing party or the judgment debtor. It must be admitted that these rules are inevitably closely interrelated with other fundamental aspects of civil procedure (e.g., *res judicata*, reviews and enforcement). Nevertheless, it should be noted that a vast majority of MSs already requires, as a general rule, that either the judgment and/or the enforcement title is served prior to the first enforcement measure, which is also required by Article 43 of the Brussels I Regulation.

With reference to the service of default judgments, a different approach and the development of a common European solution may be warranted (see *infra*).

[245] Cf. also Art. 17 of the EEO Regulation.

Service of extra-judicial documents

At the European level, art. 16 Regulation 1393/2007 simply states that: "[*e]xtrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Regulation.*" As interpreted by the CJEU,[246] the European concept of extra-judicial document is very broad, encompassing all kinds of public and private documents, and is coherent with the view of a majority of MSs. It may be worth assessing in light of the recurrent decisions of the CJEU interpreting the concept of "extra-judicial documents" under the Regulation on service of documents, if greater legal certainty could be achieved by codification of the concept in the secondary EU law, based on the principle of an autonomous interpretation of the concept as given by the CJEU.

Initiator of service

There is a variety of solutions adopted by each MS with reference to the initiator, greatly depending on the structure of proceedings and on procedural choices and traditions. A minimum common denominator, however, is that in the vast majority of MSs parties, who generally have a strong interest in the proceedings they are starting and in service being performed, are allowed to initiate service, either as a rule or by way of exception.

Executor of service

It is equally difficult to tackle the topic of executors of service without having to modify also core principles and the very structure of the judicial system of the MSs. It is not a coincidence that the Regulation on service of documents in this respect is mainly limited to coordinating existing institutions to ensure that a proper (and possibly quick and cost-effective) service is performed. But in Article 14 the Regulation went a step further by imposing uniform standards for cross-border postal service of documents and actually stating that postal operators should be generally accepted as "executors" in terms of serving documents under the Regulation. This provision of the Regulation confirms the view that instead of establishing common rules on executors at European level, it could be wiser to identify minimum standard relating to accepted methods of service (see *infra*).

Who is to be served

With reference to who should be the addressee of service, besides the obvious commonly accepted rule that in principle the persons named in the documents should be the

[246] in *Roda Golf* and *Tecom Mican*, C-223/14 (ECLI:EU:C:2015:744).

addressee, the Regulation could clarify for the cross-border context certain aspects with regard to persons who should be considered as authorized representatives for accepting service on behalf of the addressee.

In terms of **lawyers** appointed by the addressee for specific procedures or with a general proxy it seems to be evident that they should be regarded a valid recipient for service in cases covered by their mandate. In this context, one question is if and under which circumstances laws may prescribe a mandatory service of the document on the party (addressee) himself/herself, in addition to the service on the representative of the party (i.e. the lawyer). Another question relates to the scope of the Regulation on service of documents, and addresses situations where the foreign party who resides in another Member State has a lawyer in the Member State where the service of the document is initiated and the service is performed on that lawyer. It is a recurrent problem in such situations that the documents are not translated in a language which the foreign party addressed can understand or that the lawyers do not properly inform their clients about the contents of the documents. Consequently, it would be sensible to require that a translated copy of the document should also be sent to the party in the other Member State.

With reference to **legal persons** with registered offices abroad, the starting point for any future European approach should be to remedy the deficiencies which result from the great variety in the legal provisions on legal representation of such persons in the applicable national laws, which raise difficulties in practice if diverging concepts prevail in the State where the legal person has its registered seat and in the one where the service of document is initiated. Instead, it would contribute to legal certainty and to greater efficiency of cross-border service of documents, if common minimum standards on the scope of the representatives authorized to accept service would be defined from the particular perspective of the procedural act of service, taking into account its specific objectives while ensuring adequate balance of the conflicting interests involved. For example, it appears appropriate to allow service on a legal person with registered office in another Member State to persons belonging to the management of that legal person or to employees who have an impact on the operations and affairs of that legal person. Furthermore, it seems sensible to accept that service on foreign legal persons be performed by delivering the documents to the establishments of that legal person which operate apparently under the name and control of the legal person. For low value cases, further situations of representation may be addressed.

In the case of **minors** or **incapacitated** persons, service should take place – as it happens in most MSs – on a legal representative (e.g. parent, curator, tutor, guardian) and, in relevant cases, also on the minor or incapacitated himself/herself. It should not be possible to serve any other person not having a legal entitlement to provide for the minor or incapacitated (e.g. an adult simply resident with the minor or incapacitated).

In case of **deceased** persons, especially in the cross-border context, it may be burdensome and costly to identify all heirs. Until the estate is devolved to heirs and provided that such devolution is recorded and that heirs are identifiable, service should be allowed on the estate, on the estate administrator or collectively on all heirs by serving them at the deceased's last known residence (in addition, possibly, to serving also all known heirs).

Methods of service of documents

A variety of methods exists in each MSs and there seems no need to harmonise them fully at EU level. What could be done to a certain extent is, instead, to identify certain types of service of documents and qualify them as minimum standards that should be allowed in every MSs in the context of cross-border service. As indicated above, the Regulation on service of documents already goes in this direction in Article 14 where it defines the uniform criteria of cross-border postal service and qualifies this method as a general method of serving documents abroad (while the other "methods" in the Regulation "just" regulate the ways of transmission of documents from one Member State to another).

In this context future work revising the Regulation on service of documents should explore the potential lying in the enhanced use of direct service (provided for in Article 15 of the Regulation), which allows that any person interested in judicial proceedings effect service directly through the judicial officers, officials or other competent persons. This may be achieved obviously by broadening the scope of this Article, currently limited by restrictions of domestic laws of the Member States, and by assessing the conditions under which a party to a procedure may directly turn to a competent body or person in another Member State with the request to effect service there. The possibility that every party to a proceeding may choose to be the initiator of service in a State abroad appears to be a valuable asset that should be reinforced at the European level.

It is without any doubt that issues related to electronic service should be addressed in the future by the Regulation (see details in a separate subchapter below).

Special methods

It may be useful to consider if courts of the Member States should be granted the discretion to order extraordinary methods of serving a document in exceptional circumstances, if attempts under ordinary service methods proved to be unsuccessful. Such an exceptional circumstance would be, e.g. if there are indications that the addressee intentionally avoids service. The court should ensure that the method prescribed is better suited to give actual notice to the addressee than other methods provided for by the law.

Agreements on the place or method of service

Although a majority of MSs traditionally limit the possibility to agree to the method and place of service, it may be worthwhile assessing if party autonomy could play some role in this context, under precisely specified circumstances, especially in the context of transnational litigation, in commercial relations when parties are deemed to be on an equal footing.[247]

Allowing the parties to define the place or method of delivery between them should expand the ways of communication between them beyond the formal frame of the relevant laws, thereby contributing to the chances that documents are actually delivered to the addressee.

As a first impression, such agreements should not have any exclusive effect which would eliminate the formal service methods and annul service of document duly performed on the ground that it was not compatible with the agreement of the parties.

The possibility to make agreements on the place of service should be limited with reference to weaker parties, similar to the jurisdictional protection already ensured under the Brussels I Regulation for insured persons, consumers and workers.[248]

Certificate of delivery

It stems from the objective of the service of documents in civil matters that it should provide for a (written) record of delivery of a document, since the procedural act itself has legal relevance in triggering various time-limits and in preserving legal rights. As a result, only those mechanisms may be considered as covered by the scope of the Regulation which provide for a record of the measures performed in course of the delivery process, which may be used as an evidence in case of any dispute about the facts.

For this reason, the role of standardized forms certifying the process cannot be underestimated, and this role is already adequately acknowledged by Art. 10 of the Service Regulation which foresees the use of a standard form for this purpose when service of the

[247] We also reported a well drafted and pragmatic proposal contained in a reply to the questionnaire on England & Wales made by Sarah Garvey and Karen Birch of Allen & Overy LLP: "It should be open to parties engaged in a commercial activity to agree that service may be effected out of the jurisdiction in another Member State by a contractually agreed method where service within the relevant jurisdiction would be permitted by such a method. So, for example, parties should be able to agree to serve documents directly between claimant and defendant by courier, hand delivery, post or fax without involving the Central Body either in the Member State in which proceedings have been commenced or the Member State where service is to be effected. If the Commission takes the view that, for policy reasons or otherwise, it should not be possible to agree contractually on particular methods of service, limits could be placed on the scope of any such agreement (for example the Regulation could specify that parties are not free to agree to accept service by email)".

[248] See sections 3, 4 and 5 of the Brussels I Regulation.

document was performed through its transmission between transmitting and receiving authorities. It may be useful to evaluate if the use of further standard certificates under the other service methods of the Regulation would be sensible and feasible.

Irrespectively of that, the use of standard forms and acknowledgments of receipt should mean only an option from the arsenal of evidence proving that service has been effected properly, and the courts assessing the validity of the service should be given discretion in accepting other equivalent means of evidence for that purpose.[249] Furthermore, if may be considered if common standards relating to the evidentiary value of the certificate of service (e.g. if it is contained by a standardized form) could contribute to legal certainty.

What kind of document is delivered

As to what is delivered to the addressee, MSs are once again divided between formalism and pragmatism among those that require only authentic or certified copies, and those that allow simple copies. If issues arise, however, it is usually possible for a party, the executor or the court to verify whether the documents delivered correspond to the originals by simply confronting the two documents. Ideally, the initiator or the executor should certify, under their responsibility, that what is being delivered is a perfect copy of the original documents. In the light of this, a pragmatic approach removing strict formal requirements but acknowledging trust stemming from the credibility of the person or body delivering the document as an appropriate compensation for any lack in the authenticity or genuine nature of the document delivered should be preferred.

Hierarchy

As far as cross-border service is concerned, the position of the Court of Justice is that the Service Regulation "*does not establish any hierarchy between the method of transmission and service under Articles 4 to 11 thereof and that under Article 14 thereof and, consequently, it is possible to serve a judicial document by one or other or both of those methods*".[250] Furthermore, "*as regards the service of extrajudicial documents, an applicant is perfectly entitled not only to choose any of the means of transmission laid down by Regulation No 1393/2007, but also to resort, simultaneously or successively, to two or more*

[249] It is to be noted that the CJEU is currently considering a referral dealing with the question if and how an "acknowledgment of receipt" can be replaced by other type of evidence in the context of cross-border postal service under Article 14 of the Regulation (Case C–354/15 *Henderson*).

[250] *Plumex*, C-473/04 (ECLI:EU:C:2006:96), ¶20. This has also been reinstated in *Alder*, C-325/11, ECLI:EU:C:2012:824, ¶31.

of the methods of service which he deems the most suitable or appropriate in the light of the circumstances of the case".[251]

The position taken by the Court is of considerable liberalism in choosing which of the channels made available by the Service Regulation (especially transmission by agency or directly via post) should be used, and also whether to use more than one method simultaneously to ensure that service is performed successfully.

It is recommended that no fixed hierarchy be imposed, but that the initiator or executor may choose the most appropriate method to give actual notice to the addressee given the circumstances and that, when there is no proof of actual notice, notice be given with additional methods regardless of whether the first method already satisfied the requirements for constructive service. Constructive methods, especially service by publication or by appointing a guardian *ad litem*, should be allowed only when previous attempts of service of documents proved to be unsuccessful or when there is evidence that the party initiating service, despite reasonable efforts, could not trace back the whereabouts of the addressee. The initiator should be allowed to use more than one method of service, including simultaneously.

Confidentiality

Considering the importance that confidentiality and respect for privacy have within the European Union, it is recommended that all methods of service ensure, to the greatest extent possible, the confidentiality of the communication, which should be made available solely to the addressee.

Place of service

MSs are divided on whether service may take place only in certain places identified by the law (usually the addressee's registered or actual residence or workplace) or at any place where the addressee is found.

For this reason, it is not easy to find a common ground, unless limiting the places is accompanied by the possibility to perform substituted or constructive service. A common standard in this respect could specify the places where the addressee may be served, at the same time allowing service to be performed anywhere the addressee is found and is willing to accept service or upon court's authorisation.

[251] *Tecom Mican*, ¶59 .

Another difference relates to whether service at the registered address is sufficient or the actual address should be searched. It is recommended that the service at the registered address is considered only as a presumption, which may be rebutted when it is proven that the addressee no longer lives at that address or the address does no longer exist.

Substituted service

A majority of MSs allows service to be performed on a substituted recipient at the addressee's home or workplace in case the addressee is absent. Sometimes such service can be refused, other times not. To draw a common standard, it is recommended that substituted service be allowed in the context of cross-border service, provided that the recipient has a close and current connection to the addressee, that a duty to deliver the documents be imposed, and that the person is not of minor age or incapacitated. Remedies (such as restoration of time limits) should be provided in case the addressee can prove that his/her failure to react in due time to the service depends on the substituted recipient's failure to deliver the documents.

Service by deposit should be generally allowed, especially when neither the addressee nor a substituting recipient is present at the time service is attempted, but there is evidence confirming that the address specified for service is correct. In such case delivery of the documents (or of a notice that documents have been deposited at a local office to be collected) in the addressee's mailbox should be considered as a valid method of service. However, the addressee should be allowed to rebut this presumption and prove that he/she did not have actual notice of the proceedings due to exceptional circumstances not depending from his/her fault.

Service by post

Service by post is a cost-effective method of service, widely used both in the domestic and cross-border context. There are differences, though, in the way service by post is effected. While in many MSs such method of service entails delivery of a registered letter with a return receipt filled by the postal operator and signed by the recipient, there are MSs in which service by post is made with first-class mail, not registered and without a receipt, and other MSs in which service by post is made by sending a registered mail with a form to be filled in by the addressee and later returned to the court. Searching for a European common answer, the higher standard should be endorsed as one capable of satisfying also lower standards of unregistered mail or mail where the confirmation of delivery is under the responsibility of the addressee. Hence a European service by post should prescribe the use of registered mail with acknowledgment of receipt or any equivalent means.

In a number of MSs service by post is not made with special forms or envelopes that are different from ordinary post, and this may lead, on the part of the addressee, to underestimating the importance of the documents that are being delivered. This is particularly true in the cross-border context, as also some of those MSs that prescribe the use of special envelopes in the domestic context do not require doing so when transnational service is concerned. It is, thus, recommended that for service by post under the Regulation a special standard form certifying the reception of the document or the process carried out is developed and that the postal operator is alerted to the nature of the document to be delivered (and to the special care to be exercised in course of its performance). By such additional formalities in terms of service by post, the issues reported as problems with regard to this type of service of document could be partly solved. It is recommended that standards for service by post ensure that all postal operators follow similar rules in the context of cross-border service.

e-Service

There are various issues to be considered in course of an upcoming reform of the Regulation on service of documents:

- From the aspect of information technology, any EU action should ensure a technical framework which provides for a secure exchange of electronic documents among various domestic systems in a broader scale and in an easily accessible way to users. In this context the possible exploitation of recent technical developments co-funded by the EU should be considered. Furthermore, it should be promoted that existing domestic IT systems (or those under establishment) designed for electronic service of documents meet in the greatest number the requirements of 'qualified electronic registered delivery service' under the eIDAS Regulation. It should also be assessed how far for the purposes of interoperability of the various systems the output achieved by the CEF[252] e-Delivery and e-CODEX projects can be reused, or how a workable e-Delivery Messaging Infrastructure (built on the experience gained from similar structures existing in other policy domains) could be developed in the context of service of documents.[253]
- From the legal aspect, the main principle of any EU intervention should be to dismantle unnecessary legal obstacles from the way of cross-border electronic service of documents there where the secure transmission of documents from the sender to the addressee is technically ensured. In this context it should be addressed, once various electronic systems of different Member States are interoperable, which law should be

[252] "Connecting Europe Facility"

[253] In either case, the consensus reached by Member States, in the "e-SENS Large Scale Pilot", on the adoption of the 'e-SENS profile' of the AS4 messaging protocol should be taken into account. See more details at: http://www.esens.eu/node/355.

applicable in assessing the validity of the service of the document. From this perspective a solution which would require for the validity of a cross-border electronic service the simultaneous compliance with several domestic laws (meaning both with that of the initiator's and that of the recipient's) does not appear to be sensible in practical terms.[254] A European solution should aim at ensuring recognition of the legal validity of a delivery of an electronic document which was transmitted successfully to the recipient in a secure electronic environment. It should also be considered if the consent of the addressee to the acceptance of electronic service could overwrite legal formalities required by the applicable law. Furthermore, future work should also address the practical issue if a party having his residence in a Member State of the EU becomes a user of an e-delivery system of another Member State. The role of the Regulation should be clarified in this context. In our view such situations should not be regarded from the legal perspective as purely domestic issues of service of documents, but as instances of cross-border transmission of documents and should consequently imply the application of the EU Regulation on service of document.

Address unknown

The solutions adopted by MSs are various and it is not possible to establish a common core to be used in cross-border service. The Service Regulation does not cover service when the addressee's address is not known (cf. Article 1(2) of the Service Regulation). This situation is unsatisfactory and needs to be addressed. One solution could be to ensure minimum levels of assistance between MSs, for instance by requiring MSs to specify which authorities may be consulted for purposes of at finding information on the defendant's registered addresses, possibly at a low cost. In addition, although registers for addresses vary from MS to MS (from registers of population, to electoral lists, to tax databases, to company registries), a number of MSs are granting the possibility to perform digital searches: in a cross-border context, an easy and low cost online access to certain databases should be allowed for authorities needing to locate a defendant for service purposes, possibly with minimum language assistance or translation. In this context, it may be considered if the e-Justice Portal could be used as a single entry point for submitting on-line requests to the relevant authorities or registries of other MSs concerning the localization of the whereabouts of the addressees, taking due account of data protection requirements. Finally, it may be useful to evaluate if certain high level principles could be defined concerning the provision of

[254] The solution introduced by Article 2(8) of Regulation (EU) 2015/2421 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure should not be therefore taken as a precedence. This rule requires in the context of European small claims procedures for the application of electronic service methods that the electronic means concerned should be technically available and admissible both in accordance with the procedural rules of the Member State in which the European procedure is conducted and in accordance with the procedural rules of the Member State where the party has his/her residence.

assistance in the localisation of persons apparently residing in their territory, with which MSs should comply.

Whereabouts unknown

All MSs have mechanisms to deal with the situation in which the addressee's whereabouts are unknown. Despite many differences, a common rule in almost all MSs is that, when it is not possible to ascertain an addressee's whereabouts, service can be made through constructive methods and proceedings may, thus, be allowed to continue. It seems that in a majority of MSs the method employed to give constructive notice is the publication of the notice on a number of resources: official gazette, court board (either in paper or electronic form), newspaper, addressee's last known addresses. A number of MSs also foresee the appointment of a curator/temporary representative/guardian *ad litem* with the task of representing the interests of the absent addressee. It should also not be forgotten that there are costs related to the appointment of a curator, usually to be anticipated by the claimant.

In the European context it would be worthwhile to explore how far the European e-Justice Portal could be used for enhancing the transparency of public notices (publications) made through constructive service of documents in the Member States. Once again it could be considered if such notices could be made accessible from the e-Justice Portal and if a search engine should be developed for the enquiries in the various national systems, again taking due account of data protection requirements.

Refusal

Refusal of service is already partially covered by the Service Regulation in relation to translation of documents. These rules could be further clarified, e.g. on what information should be given to the addressee by the executor of service and on how a refusal of service is to be performed (e.g., how to return the documents to the receiving agency).

Default, default judgment and related remedies

Default of the defendant is a serious matter and European instruments often contain provisions aimed at ensuring that (i) a party is defaulting by his/her own choice and not because of a defect in service, and (ii) that some remedy be available if a default judgment is rendered against a defaulting party (see, e.g., Article 19 of the Service Regulation and Article 28 of the Brussels I Regulation).

The spectrum of different solutions adopted by MSs in the area of default of the parties and issuance of default judgments is very diverse. On one side of the spectrum we may find England where default judgments are not considered as an extraordinary matter, sometimes dealt with at an administrative level by the court clerk, and no particular examination of the merits of the claims is entertained: the defendant is required to appear if he/she wishes to defend his/her claim, otherwise claimant's demands are accepted in full. Possible issues can be dealt with at a later moment, upon initiative of the absent defendant, who will either have a right to ask the judgment be set aside, or will only be entitled to submit the matter to the court's discretion, depending on the case. At the other end of the spectrum we find MSs such as Italy and Spain where default only leads to the practical observation that an absent party will not be able to defend her case, but where default has no negative consequence attached. In such cases, judicial resources are still put into ascertaining whether the claims made are founded, and to what extent they are. In the middle mixed solutions exist, where usually a default judgment is limited to cases in which the matter is amenable to settlement and can be entered only to the extent that the claims appear to be founded: there is no need to allow proceedings to be fully carried out, but at the same time claimant's demands are not unconditionally accepted as admitted by the other party.

While this is a very complex topic, which cannot be addressed in full in the context of this study, it may be useful for greater efficiency of cross-border service of documents in the MSs to reflect on the benefits of certain provisions at the European level addressing it. As a minimum, it should be reconsidered to what extent the variable geometry in the context of Article 19 of the Regulation on service of documents created through the individual declarations by the Member State is still justifiable. Streamlining the time period barring MSs from issuing a default judgment or the time period allowing for the application requesting relief from the consequences of the default could create a more transparent and balanced situation concerning the rights of defence. Furthermore, it may be also desirable to assess if uniform standards could be introduced which enhance the probability that actual notice of the defendant takes place before a default judgment is issued. Such solution may prescribe that in case of the defendant's absence, the court must verify *ex officio* whether service was duly performed and may, in any case, order additional service of the documents if this appears proper or necessary, because the court is convinced that the defendant did not receive any notice, for instance. In such cases, the court may or should order additional method of service through any means of communication it may consider appropriate, e.g. also through e-mails, social medias or by phone. In any case, the addressee should always be duly informed in advance of the consequences of his/her eventual default. Such an approach may ensure that only if the court is satisfied that the defendant has been duly served and has failed to enter an appearance for reasons outside his/her own will, should it be entitled, at the claimant's request, to issue a default judgment. Such a judgment should be served on the defaulting defendant. A special remedy along the lines of Article 19(4) from the Regulation on service of documents should be generally preserved for the situations in which the absence of the defendant was caused by a defect of the service, or by other

serious obstacles, beyond his/her control. The remedy in Article 19(4) should be strengthened in two ways in the future: first, it is recommended to extend its application to domestic situations, i.e. where the documents instituting proceedings are to be served in the Member States where the proceedings were carried out. By this, the right of the defence would be reinforced in cases in which the initial domestic service actually did not reach the addressee and the resulting default judgment is to be enforced in another Member State. Second, it is recommended that future work clarifies certain aspects of the rule, in line with relevant judgments of the CJEU[255], such as the timeframe within which an action from the side of the defaulting party after taking knowledge of the judgment against him seems to be "reasonable".

Validity and cure of defective service

In view of a common rule, it is recommended that, as shared by many MSs, legal consequences resulting from a defective service should not be dealt with in a formalistic way, but rather in pragmatic fashion. On this basis, and in line with the jurisprudence of the CJEU, it appears desirable to give preference to the cure of a defective service of documents, whenever it is possible without the harm of the principle of the rights of the defence, and to leave the declaration of its formal invalidity only for the situations in which major infringement of those rights were committed. Furthermore, it also appears useful to determine the circumstances by which a defective service of document can be cured: certainly, a situation where – irrespectively of the irregularities of the procedure – the documents to be served were actually delivered on the defendant or he/she was actually informed about the proceedings in sufficient time so as to enable him/her to arrange for his/her defence should be considered as one amenable to the cure of the defects of service. Similarly, one may also accept as a situation curing the service, when the defendant enters an appearance or submits his/her arguments to the substance of the case, without objecting the irregularities of the service of the document. Finally, it may also be worth to consider whether general standards for a procedure of curing errors of a service of documents could be established at a European level, for e.g. how a repeated sending of the documents may be performed or what kind of effects such repetition may have on the various time-limits, etc. [256]

Costs of service of documents

[255] See in particular judgment of the Court of 14 December 2006 in case C-283/05, *ASML Netherlands BV v. Semiconductor Industry Services GmbH;* or judgment of 7 July 2016 in Case C-70/15 *Lebek.*

[256] A good solution is to consider differently the time of service for the claimant and for the defendant as in art. 9 of the Service Regulation.

We have seen that costs of serving judicial and extra-judicial documents vary from MS to MS, depending on a number of factors. There is a connection between particular methods of transmitting documents and their costs, accepting that the use of certain methods is an inherent part of particular legal traditions. This, however, should not discourage the European legislator to work towards a solution which provides for a full transparency in terms of costs and which ensures that these costs are kept at a minimum possible standard for the parties involved. It must be also ensured that there are no extreme differences between Member States in terms of costs under the application of the Regulation so as to allow equal access to justice for EU citizens and equal treatment of citizens.

Delays

As seen, and as common knowledge, service through the system of sending and receiving agencies has an unpredictable duration that is usually measured in months rather than weeks. Delays are explained by several reasons (e.g. poor knowledge of EU rules and poor language skills; forms are sent in wrong languages; forms are not used or returned; requests of service are not timely performed).

A partial remedy to the issue of delay is the use of direct ways of transmitting documents involving less stages of intervening authorities or persons (such as service by post under Article 14, or direct service under Article 15 of the Service Regulation).

The future work on this matter should try to find solutions by which the one-month timeframe provided for by Article 7 of the Service Regulation (which is already generous) is followed more properly. Another gain in terms of time of cross-border service could be achieved by the promotion of electronic service methods or of ways of electronic exchange of documents (see *supra* the recommendation on e-service).

Translations and certifications

A majority of MSs requires a certified translation of the document to be used for purposes of service, although it should be noted that the Service Regulation does not expressly require a certified translation and, according to the general rule laid down in Article 4(4) of the Service Regulation, “documents and all papers that are transmitted shall be exempted from legalisation or any equivalent formality”.

In order to reduce the costs and delay of translation, the need to provide a certified translation should be expressly excluded from the Service Regulation and the use of simple non-certified translation should be allowed. Safeguards may include a statement of correctness signed by the translator, whoever that is and the possibility for the addressee to raise (serious) translation issues during the proceedings (perhaps on first defence, subject to

any cure of defective service) or against a default judgment (e.g., when the translation did not make it possible to understand or does not reflect the content of the documents).

4.2. Conclusive remarks

To conclude, as demonstrated throughout this report, service of documents is deeply connected with the way each system understands civil procedure, the relation between legal actors and their role, the weight to be given to formalism or pragmatism and the very structure of proceedings. Each system has many peculiarities as we have tried to highlight. This should not discourage in searching for common solutions or, at least, minimum standards aiming at improving the current situation of cross-border service of documents.

In addition, as outlined above, there are several areas in which rules, standards, best practices, education and training could contribute to the system of cross-border service within the EU.

5. LIST OF ANNEXES

A. Questionnaire on the service of judicial and extra-judicial documents in civil and commercial matters

B. List of contributors

C. Country summaries

D. Compilation of laws relating to the service of documents in the Member States of the European Union

E. Compilation of selected judicial decisions

F. Team composition

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