


[Home](#) > ... > [Court Procedures](#) > [Civil Cases](#) > [Service of Documents: Official Transmission of Legal Documents](#)
> [Netherlands](#)

Service of documents: official transmission of legal documents

 Netherlands

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European Judicial Network
(in civil and commercial matters)

1 What does the legal term "service of documents" mean in practical terms? Why are there specific rules regarding the "service of documents"?

Basically, service (*betekening en kennisgeving*) refers to the formal act carried out by a bailiff (*gerechtsdeurwaarder*). They deliver the writ (*exploot*) to the addressee by 'serving' it in person. They complete the writ by making a written record, on the spot, of how they have delivered it to the addressee and by signing it. Service naturally coincides with notification (*kennisgeving*). The bailiff gives notification of a judgment (*vonnis*) handed down or a summons to a court (*oproeping voor een gerecht*), for example.

These specific rules have been developed for service within the European Union, to facilitate communication in this area between residents of Member States. Other rules apply to service on persons outside the European Union.

2 Which documents need to be served formally?

Regulation (EU) 2020/1784 of the European Parliament and of the Council (the Service of Documents Regulation) defines 'extrajudicial documents' as 'documents that have been drawn up or certified by a public authority or official, and other documents of which the formal transmission to an addressee residing in another Member State is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law. The term 'extrajudicial documents' should not be understood to include documents issued by administrative authorities for the purposes of administrative proceedings. See recital 9 of the Service of Documents Regulation.

3 Who is responsible for serving a document?

Article 11(1) of the Service of Documents Regulation provides that: 'The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.'

In the Netherlands the bailiffs act as the receiving agency. See also the Implementing Act.

4 Address enquiries

4.1 Does the requested authority in this Member State on its own initiative, try and establish the whereabouts of the addressee of the documents to be served if the address indicated is not

correct ? See also notification under Article 7(2)(c) of the Service of Documents Regulation.

Yes, since the bailiff is carrying out an official act, they always consult the Personal Records Database (*Basisregistratie personen(BRP)*) beforehand, even if there is already an address in the register. This is always verified.

4.2 Do foreign judicial authorities and/or parties to judicial proceedings have access to registers or services in this Member State enabling the establishment of the person's current address? If yes, which registers or services exist and what procedure must be followed? What fee, if any, should be paid?

No, foreign authorities must contact a Dutch bailiff, who will retrieve or check the address. A fee is charged for this service.

4.3 What type of assistance in address enquiries from other Member States do the authorities of this Member State provide under Article 7(1) of the Service of Documents Regulation? See also notification under Article 7(1) of the Service of Documents Regulation.

This is a new provision. Previously, bailiffs did not retrieve addresses from the Personal Records Database until they had received an official document. That is no longer necessary. Addresses can now be verified before an official document is sent.

5 How is the document normally served in practice? Are there alternative methods which may be used (other than substituted service referred to in point 7 below)?

See Section 2 of the Service of Documents Regulation: Articles 16 to 20 describe the other methods of service of documents.

6 Is electronic service of documents (service of judicial or extrajudicial documents through remote means of electronic communication, such as e-mail, internet based secured application, fax, sms etc.) permitted in civil proceedings? If so, for which types of proceedings is this method provided for? Are there restrictions with regard to the availability/access of this method of service of documents depending on who the addressee is (legal professional, legal person, company or other business actor, etc.)?

See Article 19 of the Service of Documents Regulation: this depends on what the Member State allows. The express consent of the addressee is required.

6.1 What type of electronic service within the meaning of Article 19(1) of the Service of Documents Regulation are available in this Member State where service is to be effected directly on a person, who has a known address for service in another Member State?

Only the service of certain attachment orders is effected digitally. However, the second service of such attachment orders is still carried out physically. This advantage of this is that the bailiff can then give further explanations at the door. This is perhaps the most important of the bailiff's tasks.

6.2 Has this Member State in accordance with Article 19(2) of the Service of Documents Regulation specified additional conditions under which it will accept electronic service via e-mail referred to in Article 19(1)(b) of that Regulation? See also notification under Article 19(2) of the

Service of Documents Regulation.

As of 1 January 2021, electronic service of attachment orders is required where an addressee indicates to the Royal Professional Organisation of Bailiffs (*Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders*) that they have opted for this method of attachment. See Article 475(3) of the Code of Civil Procedure (new). To be able to effect service electronically, both the bailiff and the addressees must be affiliated to the system developed for this purpose by the Bailiffs' Network Foundation (*Stichting Netwerk Gerechtsdeurwaarders*) on behalf of the Royal Professional Organisation of Bailiffs.

7 'Substituted' service

7.1 Does the law of this Member State allow for other methods of service in cases where it has not been possible to serve the documents to the addressee (e.g. notification to the home address, to the bailiff office, by postal service, or by poster advertising)?

See Articles 46 to 63 of the Code of Civil Procedure.

7.2 If other methods are applied, when are the documents deemed to have been served?

Once the bailiff has signed and delivered the writ. They complete the writ or official report on the spot, keeping a written record of how they have delivered it and to whom. They then either deliver the document to the addressee by hand or place it in an envelope and leave it in the letterbox.

7.3 If another method of service is the deposit of the documents in a particular place (e.g. at a post office) how is the addressee informed of that deposit?

The documents are not left at a post office. If the street is flooded, there is no letterbox or the addressee is so aggressive that the bailiff is not even able to leave an envelope in the letterbox, the documents are sent by post. The bailiff then completes the writ at the office, setting out the reasons why it was not possible to serve it in person. The documents are then sent by post in a bailiff's envelope.

This is an odd feature of Dutch legislation, because it is clearly questionable whether a postal worker will succeed any better than a bailiff, although where the addressee is aggressive it is undoubtedly easier to leave a letter in the letterbox. This is also questionable under the other circumstances mentioned. However, this is what the law provides in such circumstances.

7.4 If the addressee refuses to accept service of the documents, what are the consequences? Are the documents regarded as effectively served if the refusal wasn't legitimate?

This will be assessed in the proceedings. The addressee may only refuse service on the grounds set out in Article 12 of the Service of Documents Regulation. The Court has previously ruled that a receiving agency does not have the power to assess whether refusals relating to language requirements are justified. In itself, this is also logical and reasonable.

After all, it is quite difficult for a receiving agency to assess whether an addressee knows the language in which the document is written or is proficient enough in that language. An authority responsible for the service of documents may not necessarily have the means to make such an assessment. Moreover, that assessment is a matter for an independent court.

If the language of the receiving Member State is chosen, there is no right of refusal, and service cannot be blocked. Refusal of service can be remedied by serving a translation on the addressee.

Finally, it should be noted that the Service of Documents Regulation has direct effect in that an enforceable order is deemed to have been served only when it has been validly served in the receiving Member State.

If the document is refused in accordance with the Service of Documents Regulation and the refusal is not remedied, then service has not been effected.

8 Postal service from abroad (Article 18 of the Service of Documents Regulation)

8.1 If the postal service delivers a document sent from abroad to an addressee in this Member State in a situation where acknowledgment of receipt is required (Article 18 of the Service of Documents Regulation), does the postal service deliver the document only to the addressee himself/herself or may it, in accordance with national rules of postal delivery, deliver the document also to another person at the same address?

The latter applies; the document is simply registered mail. This is not coordinated in advance with the postal service. Documents are often sent directly to an agency, in which case they are not sent by registered mail.

8.2 Under the rules of postal delivery in this Member State how can the service of documents from abroad, under Article 18 of the Service of Documents Regulation, be effected if neither the addressee nor any other person authorised to receive the delivery (if possible under national rules of postal delivery – see above) has been reached at the address of delivery?

In this case the document would be returned.

8.3 Does the post office allow a specific period of time for collection of the documents before sending the documents back as undelivered? If yes, how is the addressee informed that there is mail for him to collect at the post office?

No. In the case of documents sent by registered mail or left at the post office, postal workers (in the Netherlands) always leave a notification that the document has been delivered to the post office and can be collected.

9 Is there any written proof that the document has been served?

Yes, see Article 14 of the Service of Documents Regulation.

10 What happens if something goes wrong and the addressee does not receive the document or the service is effected in violation of the law (e.g. the document is served on a third person)? Can the service of the document nevertheless be valid (e.g. can violations of the law be remedied) or must a new effort to serve the document be made?

If the person concerned does not receive the document, service has not been effected. Another attempt at service must then be made.

11 If the addressee refuses to accept a document based on the language used (Article 12 of the Service of Documents Regulation) and the court or authority seised of the legal proceedings decides upon verification that the refusal was not justified, is there a specific legal remedy to challenge that decision?

No, the addressee will have to defend themselves in the same proceedings.

12 Do I have to pay for service of a document, and if so, how much? Is

there a difference where the document is to be served under domestic law and where the request for service originates from another Member State? See also notification under Article 15 of the Service of Documents Regulation, concerning service of a document from another Member State.

Yes, the price varies depending on the Member State. The Netherlands currently charges EUR 65. However, this amount is increased under the Implementing Act. In Belgium, for example, EUR 165 is charged. Where service is effected under the Service of Documents Regulation the price is always the same. In the Netherlands, service is governed by the Bailiff Fees Order (*Besluit tarieven ambtshandelingen gerechtsdeurwaarders*)

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