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> Austria

Service of documents: official transmission of legal documents



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(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"?

'Service' is the process of handing a document over to an addressee in the legally prescribed form and in a documented manner, so that he or she becomes aware of the document.

Service is a legal act that is ordered by the court in the context of legal proceedings and carried out automatically in accordance with Section 87 of the Austrian Code of Civil Procedure (the *Zivilprozessordnung* – ZPO). Service must be officially documented so that it is possible to verify when service was performed and on whom. Certain procedural effects can only come into play if there is proof that the documents have been duly served.

2 Which documents need to be served formally?

As a basic principle, all court decisions (e.g. summonses, rulings and judgments) and all petitions by a party (e.g. claim, defence, appeal) and other declarations that are (also) addressed to the opposing party must be served formally.

3 Who is responsible for serving a document?

The service of documents and the service method are ordered by the decision-making body (judge, judicial officer). This order is called a service decree (*Zustellverfügung*) and must be issued by the decision-making body on the original copy of the document to be served. The actual service process itself is performed by a delivery service. This will generally be the postal service, but could also be some other universal service provider. For electronic service by the courts, see point 6.

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.

In principle, the answer is no. However, depending on what human resources are available, simple enquiries may be made – e.g. a register query (for further details, see point 4.3 below).

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?

Yes. Any person (including a foreign authority) may contact the Austrian reporting authorities (municipal authority, town council, municipal district office [*Gemeindeamt, Magistrat, Magistratisches Bezirksamt*]) to request information concerning a natural person's main residence. The registration data are stored in the central register (*Zentrales Melderegister - ZMR*). This is a public register that contains the names of everyone who is registered in Austria, together with details of their principal residence and - where applicable - their secondary residence(s). Registration or deregistration of a place of residence in Austria is mandatory.

To submit a register query, you will need at least the following details concerning the person you are looking for: Forename and family name/surname, plus an additional item of information that enables the person to be clearly identified (e.g. date of birth, birthplace, nationality or previous address).

Further information concerning register queries can be found at https://www.oesterreich.gv.at/en/themen/persoенliche_dokumente_und_bestatigungen/personen__meldeauskunft.html.

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.

Addresses of recipients in Austria are available from the following source (Article 7(1)(c) of the Service of Documents Regulation):

The Central Population Register (*das Zentrale Melderegister - 'the register'*), which is held at the Austrian Federal Ministry of the Interior (*Bundesministerium für Inneres*). This is a public register that contains the names of everyone who is registered in Austria, together with details of their principal residence and - where applicable - their secondary residence(s). The register contains data concerning individuals' identity (e.g. name, gender, date of birth, number in the register, nationality, etc.) and residence. Registration or deregistration of a place of residence in Austria is mandatory.

Entries in the register are made by the various reporting authorities, civil-registry offices and citizenship offices of the towns and municipalities of Austria. The register can be accessed online by all authorities (e.g. district authorities, police authorities). On request, banks, insurance companies, lawyers, notaries, etc. inspected by the Austrian Ministry of the Interior are also granted direct access.

On payment of a fee, anyone can request registration information concerning a person's main residence from the reporting authorities.

In order to locate an individual, both natural and legal persons may obtain information concerning registered persons from the register by requesting information concerning the person's main residence. Information concerning birth data may be requested only by persons who have an enforcement order against the requested person(s).

As a general rule, only information concerning a person's main residence is provided. If a person whose details are requested has no genuine main residence, information concerning their last deregistered main residence is provided.

Registration information may be obtained on condition that the person whose details are requested is individually distinguished by certain elements such that the information provided cannot relate to more than one person. In order to obtain information, the first name and surname and at least one additional element referring to the requested person are required in order to enable that person to be definitively identified (e.g. date of birth, place of birth, nationality or previous address).

The competent authority is the reporting authority, i.e. the municipal authority; in chartered towns it is the town

council and in Vienna it is the municipal district office.

Requests for registration details may be made informally in person, by post or via the internet.

Registration details may be requested online from the register website or via oesterreich.gv.at. This requires an 'ID Austria' or 'EU Login' account and an electronic payment facility. The requested information is provided as soon as the administrative charge has been paid. The current administrative charge of EUR 3.30 is due even if a search produces no clear result.

Official photo ID (*amtlicher Lichtbildausweis*) is required for the purpose of obtaining registration details. In the case of written applications, the original official document or a copy authenticated by a notary or a court of law must be submitted.

Written applications are subject to a fee of EUR 14.30. Request for information from the local population register cost EUR 2.10 and from the Central Population Register EUR 3.30.

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)?

In principle, service is performed by a delivery service (i.e. the postal service or some other universal service provider –see point 3 above), or by officers of the court (Section 88 of the Austrian Code of Civil Procedure).

However, the following alternative service procedures also exist:

Service by public announcement in accordance with Section 25 of the Austrian Service of Documents Act (*Zustellgesetz - ZustG*) and Section 115 of the Austrian Code of Civil Procedure:

Service on persons with an unknown delivery location or on a majority of persons who are unknown to the authorities and for whom no authorised recipient has been appointed may be performed by including a notification in the edict file (*Ediktsdatei* – may be accessed at <http://www.edikte.justiz.gv.at>) to say that the document to be served has been lodged with the court. The notification must also contain brief details of the following: the contents of the document to be served, the name of the court hearing the case, the matter in dispute and the options for collecting the document, together with information concerning the legal consequences of an announcement of this nature. Service is deemed to have been performed as soon as the notification enters the edict file.

Service through a court-appointed administrator (Sections 116–118 of the Austrian Code of Civil Procedure):

Where the only way to perform service is by making a public announcement (inclusion in the edict file), the court must appoint an administrator on request or of its own motion if the person(s) concerned would normally have to undertake legal steps to defend their rights in the light of the document to be served on them, particularly if the document to be served contains a summons for the person(s) in question. The appointment of the administrator must be announced in the edict file (Section 117 of the Austrian Code of Civil Procedure). As soon as this happens and the document is subsequently handed over to the administrator, service is deemed to have been performed (Section 118 of the Austrian Code of Civil Procedure).

For electronic service by the courts, see point 6.

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.)?

The courts can use the Austrian ERV electronic legal correspondence system (*Elektronische Rechtsverkehr* - ERV) for electronic service of documents on the parties and their representatives. This is a form of transmission that follows precise technical rules and operates within a circle of identified users. The ERV is in principle available to all natural and legal persons, although it needs special software and in principle the involvement of an intermediary agency.

If service via the ERV is not possible, it can also be performed via electronic delivery services in accordance with Part 3, Sections 28 ff of the Service of Documents Act. Under Austrian law, electronic service by e-mail is not permitted.

The persons required to use the Austrian ERV (but not other systems of electronic service) are: lawyers (*Rechtsanwältinnen und Rechtsanwälte*), other persons authorised to represent a defendant in criminal proceedings (*Verteidigerinnen und Verteidiger in Strafsachen*), notaries (*Notarinnen und Notare*), credit and financial institutions (Sections 1(1) and (2) of the Banking Act - BWG), undertakings within the scope of Section 1(1), points 1, 2, 4, 6, 7 and 8 of the Insurance Supervision Act 2016 (VAG 2016), social insurance institutions (Sections 23 to 25 of the General Social Insurance Act [ASVG], Section 15 of the Self-employed Persons' Social Insurance Act [GSVG], Section 13 of the Farmers' Social Insurance Act [BSVG], Section 9 of the Civil Servants' Health and Accident Insurance Act [B-KUVG] and Section 4 of the Notaries' Insurance Act [NVG, 1972]), pension institutions (Section 479 ASVG), the Construction Workers' Leave and Severance Pay Fund (Section 14 of the Construction Workers' Leave and Severance Act [BUAG]), the Pharmacy Workers' Salary Fund (Section 1 of the Salary Fund Act 2002), the Insolvency Contingency Fund (Section 13 of the Insolvency Contingency Provision Act [IESG]) and IEF Service GmbH (Section 1 of the IEF Act [IEFG]), the Confederation of Austrian Social Insurance Institutions (Section 31 ASVG), the Financial Prosecutor (*Finanzprokurator*, who represents the State in certain types of cases) (Section 1 of the Financial Prosecutor Act [ProkG]), the bar associations (*Rechtsanwaltskammern*), experts and interpreters (Section 89c(5a) of the Court Organisation Act [GOG])

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?

See response to point 6.

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.

This will not happen.

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)?

Substitute service:

If the law expressly forbids the server from delivering the document to a substitute recipient, the procedure is called personal service (where the documents have to be handed over in person to the person being served). This applies only in special cases.

In all other cases, substitute service is permitted. This means that if the addressee is not to be found at the delivery location, the documents may in principle be delivered to any adult residing at the same delivery location as the addressee or to any employee or employer of the addressee willing to take receipt of the documents (Section 16(2) of the Austrian Service of Documents Act). The legislation refers to this person as the substitute recipient (*Ersatzempfänger*).

However, substitute service is permitted only if the server has reason to believe that the addressee is regularly present at the delivery location.

Pursuant to Section 103 of the Austrian Code of Civil Procedure, a person cannot act as a substitute recipient if they are a party to the legal dispute as an opponent of the addressee.

Pursuant to Section 16(5) of the Austrian Service of Documents Act, substitute service is not deemed to have been performed if the addressee was not able to find out about the served documents in time because they were absent from the delivery location (e.g. because they were on a trip, in hospital or in custody). However, service becomes effective on the day following the addressee's return to the delivery location.

Depositing:

If the document cannot be served at the delivery location (because neither the addressee nor a substitute can be found) and the server has reason to believe that the addressee is regularly present at the delivery location, the document must – where service is performed by a delivery service – be deposited at the latter's relevant business premises, and in all other cases at the relevant town hall or authority if this is located in the same municipality (Section 17 of the Austrian Service of Documents Act).

For cases where the addressee is not found at the delivery location, see point 7.3.

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

For details, see points 7.1 and 7.3 above.

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 addressee must be made aware that the documents have been deposited by means of a deposit notice (placed inside the letterbox or affixed to the entrance doors). This must name the location where the documents have been deposited, specify the start and duration of the collection period, and indicate the effects of the documents being deposited (Section 17(2) of the Austrian Service of Documents Act). Pursuant to Section 17(3) of the Austrian Service of Documents Act, the collection period starts running on the day when the document is first made available for collection and must last for at least two weeks. The deposited document is deemed to have been served on the first day of this period (notional service). However, this does not apply if the addressee was not able to find out about the served documents in time because they were absent from the delivery location. However, Section 17(3) final sentence of the Austrian Service of Documents Act stipulates that, even in such a case, service is deemed effective on the day following the addressee's return to the delivery location within the collection period and is able to retrieve the deposited document. If the deposited document is not collected (which in no way changes how service was rendered effective by its having been deposited), it must be returned to the court that sent it at the end of the collection period.

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?

If the addressee or a substitute recipient living in the same household refuses to take receipt of the document without a valid legal reason for doing so, the document must be left at the delivery location or, if this is not possible, deposited without any written notification. The act of leaving or depositing the document renders service effective (Section 20 of the Austrian Service of Documents Act).

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?

Service by post must be performed in accordance with the Universal Postal Union Convention and with an international acknowledgement of receipt. The document must be delivered to the addressee or – if it cannot be served on them – to another person who is authorised to take receipt of it under the law of the country where it is being delivered (e.g. authorised recipient, substitute recipient). In Austria, Section 16 of the Austrian Service of Documents Act concerning substitute recipients applies (see point 7.1 above).

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?

The question of whether it is permissible to deposit the document and, if so, under what conditions, is based on the national legislation of the country where the document is being delivered. Under Austrian law, the document may be deposited provided that the necessary conditions are fulfilled (see point 7 above).

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?

See point 7.3 above.

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

Yes. The delivery agent must certify that the document has been served by recording this on the proof of delivery (confirmation of delivery, acknowledgement of receipt). The person taking delivery of the document must confirm service by signing the proof of delivery, entering the date and, if he or she is not the actual addressee, stating his or her relationship to the latter. If the person taking delivery refuses to provide confirmation, the delivery agent must note and date this fact on the proof of delivery and, where applicable, state how the person taking delivery is related to the addressee. The proof of delivery must be returned to the sender without delay.

Instead of sending the proof of delivery, an electronic copy of the proof of delivery or of the content thereof may be sent, provided that the authority has not ruled this out by affixing a note to that effect to the proof of delivery. The original proof of delivery must be kept for at least five years after dispatch of the electronic copy and must be sent immediately to the authority if the latter so requests. Where technically possible, documentation of service may also take place electronically. In such a case the addressee must sign for receipt using a technical device. The signature may also be replaced by identification and authentication via digital ID. The data relating to the authentication of service must be conveyed to the sender without delay.

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?

Although service is not deemed effective if performed contrary to the legal regulations, remedial action can be taken. Firstly, where the service procedure is defective, the basic rule of Section 7 of the Austrian Service of Documents Act means that service is still deemed to have been made at the point when the document was actually received by the addressee. If an authorised recipient has been appointed, this person must be named as the addressee; otherwise, service will be rendered effective only at the point when the document is actually received by the authorised recipient. In addition, the Service of Documents Act (Sections 16(5) and 17(3)) lays down specific rules for remedying defective service of documents in the following situations: when the addressee is unable to find out about the served documents in time because they are absent from the delivery location, when substitute service is ineffective or when the documents are deposited. The defect is remedied on the day following the addressee's return to the delivery location, but in cases where the documents have been deposited the crucial factor is that the addressee must return within the collection period and be able to retrieve the deposited document the next day. While there is no time limit for remedying defects in the event of ineffective substitute service, ineffective service through the deposit of documents can no longer be remedied if the addressee returns only after the end of the collection period.

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?

The right to appeal against the corresponding court decision.

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.

No fees apply.

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