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Service of documents: official transmission of legal documents

 Germany

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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"?

Service means giving notice of documents to the person being served (the addressee). This must be done and documented according to formal legal rules. Giving notice means making it possible for the addressee to take note of certain information. Service aims to ensure that the addressee actually becomes aware of proceedings, or at least has an opportunity to become aware of them. Service also provides proof of when and how the document was handed over to an addressee.

In court proceedings, documents are served to ensure due legal process and fair legal proceedings. This is why there are specific rules regarding the service of documents.

2 Which documents need to be served formally?

German law does not conclusively regulate which specific documents must be served formally. Formal service is required wherever appropriate or necessary – for example if rights are only established or deadlines only start running when notice is given. To some extent, the Code of Civil Procedure (*Zivilprozessordnung*, ZPO) specifies documents to be served. Documents which must be served by law are, for example, documents initiating court proceedings and court decisions against which an appeal can be lodged.

3 Who is responsible for serving a document?

Who is responsible for service depends on whether this is automatic service under Sections 166-190 of the Code of Civil Procedure, or service at the request of the parties under Sections 191-195 of the Code of Civil Procedure.

Automatic service is the norm. In principle, it is performed by the registry of the court where the proceedings are pending, in line with Section 168(1) of the Code of Civil Procedure. The registry may entrust the service to a postal operator or a member of judicial staff, or perform it by itself.

Service at the request of the parties only takes place where permitted or prescribed by law. Under Section 192 of the Code of Civil Procedure, it is usually performed by the bailiff. The bailiff is entrusted with the service either directly by the party or indirectly via the registry of the trial court. In turn, the bailiff may entrust a postal operator with the service in line with Section 194 of the Code of Civil Procedure.

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 general, a German authority requested by a foreign authority to serve documents in Germany will attempt to determine the addressee's current address if it finds that the addressee does not live at the address given in the request for service or if the address given in the request for service is incomplete or incorrect. However, the German authority does this voluntarily and is under no obligation to do so.

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?

Under Section 44 of the German Federal Registration Act (*Bundesmeldegesetz*, BMG), foreign public authorities and foreign private individuals may obtain a simple register excerpt (*einfache Melderegisterauskunft*) about a particular person from the German registration authorities without stating any reasons.

The simple register excerpt includes:

- the family name,
- given names, indicating name usually used,
- doctoral degree,
- current addresses and
- if the person is deceased, a statement to that effect.

The request must be addressed to the competent registration authority. As a rule, this will be the local population office (*Bürgeramt*) in the municipality, town or city where the person is thought to reside. A growing number of municipalities are offering the option of obtaining the register excerpt online.

There is a fee for the register excerpt. The amount varies from one *Land* to another.

The register excerpt may only be issued if the person being sought can be identified precisely from the details provided by the requesting authority. It is not possible to send a list of possible matches. In addition, the person or entity requesting the information must declare that they will not use the data for advertising or address trading purposes.

A register excerpt must not be issued if a disclosure block has been entered in the register for the person concerned in accordance with Section 51 or a conditional non-disclosure notice in accordance with Section 52 of the German Federal Registration Act and if the infringement of protected interests cannot be excluded.

In the context of activities that fall, in whole or in part, within the scope of EU law, data exceeding that scope may be transmitted, under Section 35 of the German Federal Registration Act, to public authorities in other Member States of the European Union, public authorities in other contracting states to the Agreement on the European Economic Area, to institutions and bodies of the European Union or institutions and bodies of the European Atomic Energy Community, to the extent necessary for performance of the tasks of the requesting authority.

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.

Germany provides assistance in address enquiries under Article 7(1)(c) of the Service of Documents Regulation by providing detailed information on the European e-justice portal on how to find the addresses of persons to be served in Germany.

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)?

The most common type of service is automatic service. This is usually performed by a postal operator. In line with Section 176(2) of the Code of Civil Procedure, the registry issues the postal operator with a request for service and physically hands over the document to be served in a sealed envelope together with a ready-to-use record of service form. The postal operator carries out the service, fills in the record of service form and immediately sends it back to the registry of the court.

The document to be served is handed over to the addressee in line with Section 177 of the Code of Civil Procedure. This can take place anywhere, and is not bound to a specific location. If the addressee does not have procedural capacity, the documents should be served on the addressee's guardian in line with Section 170(1), first sentence, of the Code of Civil Procedure.

There are several alternative methods of service. Under Section 171 of the Code of Civil Procedure, documents may also be served on the addressee's authorised representative. In court proceedings, documents are usually served against acknowledgement of receipt on the addressee's legal representative in line with Sections 172 and 174 of the Code of Civil Procedure. The legal representative sends the acknowledgement of receipt to the court.

If both parties in court proceedings have legal representation, documents can also be served from lawyer to lawyer under Section 195 of the Code of Civil Procedure. This also applies to documents which are to be served automatically, provided that the opponent does not have to be informed of a court order at the same time. The document must include a declaration stating that it is being served from one lawyer to another. Once again, it is the acknowledgement of receipt that provides proof of service.

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.)?

In principle, in line with Sections 173 and 130a of the Code of Civil Procedure, electronic documents may be served electronically by secure means of transmission (De-Mail, specific electronic mailboxes, CSO user account) in all civil proceedings. Lawyers, notaries, bailiffs, from 1 January 2023 tax advisers and public-law authorities, bodies and institutions, and from 1 January 2024 other persons who enjoy particular trust by reason of their profession, must set up a secure transmission channel for the electronic service of documents. Other parties to the proceedings may be served electronically only if they expressly consented to the transfer of electronic documents for the specific proceedings or, in the case of legal persons, consented to it in general.

Documents may also be served by fax on lawyers, notaries, bailiffs, tax consultants, other persons who enjoy particular trust by reason of their profession, public-law authorities, bodies and institutions. As proof of service by fax, the acknowledgement of receipt that has been signed and dated by the addressee is sufficient. The acknowledgement of receipt can be returned to the court on a pre-printed paper form, by fax or as an electronic document.

Service by SMS is not permitted.

Electronic service of electronic documents is permitted for all types of proceedings under the Code of Civil Procedure.

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?

Electronic service within the meaning of Article 19(1) of the Service of Documents Regulation is currently only possible in the form described in Article 19(1)(a).

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.

Electronic service within the meaning of Article 19(1)(b) of the Service of Documents Regulation is not yet possible.

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)?

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

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 following answer applies to questions 7.1-7.3:

If it is not possible to serve the documents on the addressee directly, a procedure called 'substituted service' may be followed instead. Substituted service may take the following forms:

a) Substituted service on a 'substitute addressee' (Section 178 of the Code of Civil Procedure):

The main form of substituted service is service on a substitute addressee under Section 178 of the Code of Civil Procedure. If the actual addressee cannot be found at their residence, at their business premises or in a collective institution (such as a prison or a hospital) where they live, substituted service can take place, the document being handed over to one of the following persons:

- at the residence of the addressee: an adult family member, a person employed by the family or an adult housemate who resides permanently at the accommodation,
- at the business premises of the addressee: a person employed there,
- at institutions: the head of the institution or a duly authorised representative.

However, under Section 178(2) of the Code of Civil Procedure, substituted service on the persons named above is not permitted if the person concerned is involved in the legal dispute as an opponent of the person on whom documents are to be served. In the case of substituted service on a substitute addressee, the document is deemed to have been served when it is handed over to the substitute addressee.

b) Substituted service by placement in the letterbox under Section 180 of the Code of Civil Procedure:

If substituted service on a substitute addressee at the residence or business premises of the addressee is not possible, substitute service through placement in the letterbox under Section 180 of the Code of Civil Procedure may take place. In this case, the document must be placed in a letterbox belonging to the residence or the business premises. The document is deemed to have been served when it is placed in the letterbox.

c) Substituted service by deposit of the document under Section 181 of the Code of Civil Procedure:

If it is not possible to perform substituted service at the addressee's place of residence or to perform substituted

service by placement in the letterbox, substituted service may be achieved by depositing the document with the court under Section 181 of the Code of Civil Procedure. The document can either be deposited with the registry of the local court (*Amtsgericht*) having jurisdiction for the place of service or, if the postal service has been entrusted with serving the document, at a location determined by the postal service at the place of service or at the location of the local court. A written notification of such deposit must be submitted to the addressee in the standard manner for delivering regular letters. If this is not possible, the written notification must be affixed to the door of the residence, the business premises, or the institution. The document is deemed to have been served when the written notification is provided.

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 is found at the residence, business premises or collective institution but refuses to accept service of the documents, a distinction must be made:

If the refusal is justified, the service procedure must recommence from the beginning. An example of a justified refusal would be if the address were incorrect or if the addressee had not been identified precisely.

If the refusal is not justified, the document must be left at the residence or the business premises under Section 179 of the Code of Civil Procedure. If the addressee does not have a residence or business premises, the document must be returned to the sender. If the document to be served is refused without justification, the document is still deemed to have been served.

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?

According to the case-law of the European Court of Justice, in its judgment of 2 March 2017 in Case C-354/15 – *Henderson*, service by post with acknowledgement of receipt is also effected by a handover to a third party, provided that it takes place in the addressee's home. This applies only to adults who are in the home of the intended addressee when service takes place, regardless of whether they are family members living at the same address or persons employed by the addressee. Under Article 18-003 No 4.1. of the Regulations of the Universal Postal Convention, the acknowledgement of receipt may be signed by a person other than the addressee, provided that this person is authorised to accept the delivery under the regulations of the country of destination.

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?

According to Article 19-104 No 5.3. of the Regulations of the Universal Postal Convention, the postal service must keep the mail ready for collection if the attempt to serve the documents fails. Deutsche Post AG will only deliver registered mail to the addressee in person or to someone who has been authorised by the addressee in writing to accept the delivery. In its judgment of 2 March 2017, Case C-354/15 – *Henderson*, the European Court of Justice states that a service under Article 18 of the Regulation on the Service of Documents can only be regarded as effected if the acknowledgement of receipt or an equivalent has been completed by the addressee or a substitute addressee. If the document sent is not collected, therefore, service is considered not to have taken place.

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?

According to Article 19-104 No 5.3. of the Regulations of the Universal Postal Convention, the retention period is defined by the respective national regulations. However, it should not be longer than one month. In very limited exceptional cases, the period may be up to two months. Deutsche Post AG keeps the post for one week from the notification of the addressee. The delivery agent leaves a notification in the addressee's letterbox with details of the branch from which the post can be collected and how long it will remain available for collection.

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

There are various types of written proof that the document has been served. As a rule, to prove that a document has been served, a record of service must be made on the pre-printed form provided for this purpose, and immediately returned to the registry of the court in line with Section 182 of the Code of Civil Procedure. The record of service contains all the details required for proof of service, including in particular:

- the identity of the person on whom the document is to be served,
- the identity of the person to whom the document has been handed over,
- the place, date and – at the order of the court – the time of service,
- surname, forenames and signature of the delivery agent and, where applicable, the details of the commissioned company or requested authority.

If documents are being served at the request of the parties concerned, the record of service must be delivered to the party on behalf of whom the documents were served, in line with Section 193(4) of the Code of Civil Procedure.

Upon request, the court registry confirms the time of service in line with Section 169(1) of the Code of Civil Procedure.

In cases of substituted service, the reason for substituted service must always be included in the record of service. In the event of substituted service by deposit of the document, a note must be made in the record of service to indicate how this deposit has been communicated in writing. If acceptance of the document is refused without justification, a note must be made in the record of service to indicate who refused to accept it and that the letter has been left at the place of service or has been returned to the sender.

In certain cases, no record of service is required:

- if a document is served by physically delivering it to the official premises of the court, a note on the document and in the files to indicate that it has been served and when this took place constitutes proof of service in line with Section 174, second sentence, of the Code of Civil Procedure.
- if a document is served on a lawyer, an acknowledgement of receipt by the lawyer is sufficient as proof of service in line with Section 175 of the Code of Civil Procedure.
- if a document is served by registered letter with acknowledgement of receipt, the acknowledgement of receipt is sufficient as proof of service in line with Section 176(1), second sentence, of the Code of Civil Procedure. The same applies to service by registered letter with acknowledgement of receipt abroad (Article 18 of the Regulation on the Service of Documents and Section 183(2), first part of the second sentence, and Section 183(5), first sentence, of the Code of Civil Procedure.
- if a document is served abroad with the aid of foreign authorities or via German diplomatic missions, a certificate from the requested authority constitutes proof of service (Section 16 of the Consular Act (*Konsulargesetz*), Section 183(5), second sentence, of the Code of Civil Procedure).
- if a document is served electronically, in the case of service on lawyers, notaries, bailiffs, tax consultants, other persons who enjoy particular trust by reason of their profession, public-law authorities, bodies and institutions, sending back an acknowledgement of receipt is sufficient in line with Section 173(3) of the Code of Civil Procedure. In the case of service on other addressees, there is no written proof. In those cases, in line with Section 173(4) of the Code of Civil Procedure, the electronic document is deemed to have been served on the third day after the day of receipt indicated on the automatic acknowledgement of receipt, unless the addressee proves that the document was not received or was received later.

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 service is effected in violation of the Code of Civil Procedure, it is in principle invalid. However, such a defect in service can be remedied in line with Section 189 of the Code of Civil Procedure if the document is factually received by the person to whom it was or could have been addressed under the Code of Civil Procedure. In that case, the document is deemed to have been served at the moment when it is factually received and the defect in the service is remedied.

If neither the addressee nor another person to whom the document was or could have been addressed under the Code of Civil Procedure (e.g. an adult relative of the addressee) receives the document, then no remedy is possible. The service is invalid and must be performed again from the beginning.

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.

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.

In principle, there is a fee for service of documents by the court. However, in domestic court proceedings in which the court fees are based on the amount in dispute, the court fees cover the first ten times that documents are served. For further service of documents and for service in other domestic proceedings, a flat-rate fee of EUR 3.50 is levied each time documents are served with a record of service, by registered letter with acknowledgement of receipt or by an employee of the judiciary. Electronic service of documents by the court is free of charge.

Service at the request of the parties concerned is performed by the bailiff.

To arrange service by handing the documents over to the postal service, the bailiff charges a fee of EUR 3.30. In addition to this, there are fees for the costs of the necessary copies and postage, as well as for flat-rate costs. If a document has been entrusted to the bailiff for service and it has to be certified, a special fee equal to the flat-rate document fee is payable. This is EUR 0.50 per page for the first fifty pages and EUR 0.15 for each subsequent page.

If the document is served by the bailiff in person, the fee is EUR 11.00. In this case, the bailiff must also be paid travelling expenses of between EUR 3.25 and EUR 16.25, depending on the distance to the addressee.

As a rule, no fees are charged for the performance of service requests from other Member States under Regulation (EU) 2020/1784, unless the service is carried out by a bailiff. If the document is served by the bailiff, the fees are the same as in domestic service requests. The exact costs in individual cases are set out in the Law on enforcement agents (*Gerichtsvollzieherkostengesetz (GvKostG)*), in particular its list of costs (*Kostenverzeichnis*).

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