

## Service of documents - Italy

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

Service of documents is a codified procedure whereby a natural or legal person can be informed of a legal step, with various effects set out in law.

The law provides specific procedures for service of documents so that it can be guaranteed that the addressees are legally apprised of such documents, which they must be if the document is to produce its intended effects. This means that, once the required procedure for service has been complied with, the addressee is deemed to have cognisance of the document, and there is no need to prove that the addressee is indeed acquainted with it; the document can then produce its desired effects in law.

## 2 Which documents need to be served formally?

Simple service (*comunicazione*) is carried out in cases where it is provided for by statute or ordered by the court; here a short notice is given of the document or of the fact that needs to be communicated. Simple service is effected to inform the parties or other persons involved in a court case that specified steps have been taken in the case or that certain procedural documents have been issued (e.g. the entry of a court judgment, a decision to schedule a hearing or to defer a hearing, or an order made by the court outside the formal hearings).

Formal notification (*notificazione*) must be carried out in cases where it is provided for by statute, and consists of the delivery of a certified copy of the original document to be served. Documents served in this way may emanate from the court (e.g. judgments where the time allowed for an appeal runs from the time of service) or from parties to a case (e.g. writs of summons to a hearing on the merits).

## 3 Who is responsible for serving a document?

Simple service is effected by the court registrar (the *cancelliere*; Article 136 of the Code of Civil Procedure – *Codice di Procedura Civile*, 'CPC').

Formal notification is effected:

- Generally by a bailiff (*ufficiale giudiziario*), on application by a party or by the prosecution service (*pubblico ministero*) or the registrar (Article 137 CPC). Bailiffs act in accordance with precise rules of territorial authority (Articles 106 and 107 of Presidential Decree (*Decreto del Presidente della Repubblica*) No 1229 of 15 December 1959). Bailiffs are the sole agents competent under Article 2 of Regulation (EC) No 1393/2007 for the transmission and receipt of documents for service in or from another Member State.
- In certain circumstances, by a lawyer (*avvocato*). A lawyer is permitted to effect formal notification either by post, provided that he or she holds an appropriate power of attorney in the case and is so authorised by the council of the bar (*Consiglio dell'Ordine*) at which he or she practises, or by direct delivery to the address of another lawyer who is authorised to accept service on behalf of one of the parties and who is registered with the same bar council as the lawyer effecting service (Law No 890/1982 and Law No 53/1994). Additionally, a lawyer does not need authorisation from the bar council to effect formal notification via certified email (*posta elettronica certificata*, 'PEC') to an email address obtained from the public registers (Article 3 *bis* of Law No 53/1994).

## 4 Address inquiries

**4.1 Under 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, 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 addressee no longer resides at the address known to the requesting authority?**

The receiving authority for Italy is the Single Office of Bailiffs at the Court of Appeal of Rome (*Ufficio Unico degli Ufficiali Giudiziari presso la Corte di Appello di Roma*, located in Rome at Viale Giulio Cesare 52); it transmits the request for service to the bailiff appropriate for the place.

If the addressee cannot be found at the address given by the requesting party, the bailiff will take the following steps:

- Natural persons: make enquiries with those living at the address given or with neighbours, make enquiries at the local population register office (*servizio anagrafe del comune*) (if the date and place of birth are indicated on the document).
- Legal persons: the bailiff returns the document to the requesting party so that the latter can request service to the addressee's legal representative. In this case, the name of the legal representative and his or her personal residence must be included in the document (Article 145 CPC).

**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?**

The address must be provided by the requesting authority or party, which will obtain it from the documents available to it. If a search has to be made, a distinction has once again to be drawn between:

- Natural persons: In civil matters there is no central register; a certificate has to be sought from the local population register office, which will normally respond to reasoned written requests from the parties or their lawyers, and will indicate whether there is a fee (in Rome it is currently EUR 0.26 for each certificate) or anything else that is required (in general a stamped envelope with the applicant's address for the reply). Since 2016, population register certificates requested by law firms for the service of legal documents have been exempt from stamp duty, and if requested electronically are also exempt from the administration fee of EUR 0.26.
- Legal persons and companies: The register of companies is public, and is managed by the provincial chamber of commerce (*camera di commercio*). It can be consulted via the portal [registroimprese.it](http://registroimprese.it). There is a fee of around EUR 7.00. There are also professional associations and web providers who will supply the desired information to subscribers..

**4.3 How do the authorities in this Member State deal with a request sent under the Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters aimed at discovering a person's current address?**

It is not possible to request an address in Italy on the basis of Regulation (EC) No 1206/2001.

**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)?**

Simple service is made with a 'registry note' (*biglietto di cancelleria*), which can be in paper form or sent via certified email (PEC), as provided for in Article 136 CPC (as amended by Law No 183/2011). If it is in paper form the note is in two parts, one of which is sent by the court registrar to the addressee, who signs a receipt form, while the other is kept on file at the registry. If it is sent by certified email the note consists of the message sent to the address that the lawyer must have indicated in the summons or other initiating document.

Certified email became obligatory for simple service with the entry into force of Article 16(4) of Legislative Decree (*Decreto Legislativo*) No 179/2012, which provides that simple service and formal notification from the registry must be effected exclusively via electronic means to the PEC address.

If it is not possible to serve via PEC the registry note can be sent by fax, or passed to the bailiff for formal notification.

Formal notification is effected by the bailiff; if the address is in the municipality (*comune*) in which the bailiff's office is located, the bailiff serves the document personally, whereas if the address is outside that municipality the bailiff serves the document by post (Articles 106 and 107 of Presidential Decree No 1229/1959) unless the requesting party or authority expressly demands personal service. Formal notification consists of delivery to the addressee of a certified copy of the original (Article 137 CPC) and must be effected between the hours of 07.00 and 21.00 on a weekday (Article 147 CPC).

Formal notification by personal service: The bailiff delivers the copy personally to the addressee, preferably at his or her home in order to protect his or her privacy, but otherwise anywhere within the limits of the bailiff's territorial authority.

Where a natural or legal person has indicated another person's residence or an office as an address for service, documents must be served on the person designated to receive service at that address, and this is deemed to constitute service on the addressee (Article 141 CPC). By way of exception to this rule, summonses with a view to eviction (*citazioni per convalida di sfratto*), enforceable titles (*titoli esecutivi*) and orders requiring payment (*precetti di pagamento*) cannot be served to an elected address for service.

Service on State administrations must by law be effected at the State Legal Office (*Avvocatura di Stato*, Article 144 CPC).

In the case of service on a legal person, the document is delivered to the representative or other persons empowered to receive service at the registered office of the company, or, in the absence of such persons, to the doorkeeper, but in this case service may also be effected on a natural person who represents the company, applying the procedures for formal notification on natural persons, provided that the document to be served indicates that person as representative and also indicates their residence, abode or centre of interests (Article 145 CPC).

Formal notification by post: As an alternative to personal service, formal notification may be effected by post, unless expressly prohibited by law (as established by Article 149 CPC and by Law No 890/1982). If service is to be carried out in the municipality in which the bailiff's office is located, the bailiff may use the postal service; if service is to be carried out elsewhere, the bailiff must use the postal service. In these cases the copy of the document is placed in a special envelope for registered post, complete with an acknowledgement of receipt slip, both of them coloured green and following a standard form that allows them to be traced. This also enables the bailiff to effect formal notification outside his or her own territory.

**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 foreseen? 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.)?**

Since the entry into force of Article 16(4) of Legislative Decree No 179/2012, simple service by the registry takes place exclusively via electronic means to the certified email (PEC) address; this procedure now becomes the primary method of effecting simple service, and can be used in all kinds of proceeding. Only where it is not possible to communicate via PEC can the registry note be sent by fax, or passed to the bailiff for formal notification.

Formal notification may be carried out via certified email, for which purpose an electronic copy may be taken from the paper document (Article 149 *bis* CPC). This procedure is now to become the ordinary method of effecting formal notification as well, as an alternative to direct personal service into the hands of the addressee, and it can be used in all kinds of proceeding

In order for the procedure to operate properly, various parties are required to make their certified email address available on the appropriate registers: legal professionals, legal persons, commercial undertakings, and public bodies. This will allow the bailiff and the legal representative of a party to effect formal notification in the form of an authenticated electronic document, digitally signed, by delivery to the PEC address (Article 149 *bis* CPC) obtained from a public register.

The receipt of formal notification must contain a certificate of conformity of the digital copy with the document from which it is copied, and the service provider's records of acceptance and of delivery into the addressee's inbox, both of which contain the message's identification code.

It is not permitted to effect simple service or formal notification by other forms of electronic communication (for example via text message, or to an email address other than the PEC address), as these methods would not provide a legal guarantee that the addressee had received the message.

## **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)?**

### Formal notification by personal service

Service can also be effected at the addressee's habitual residence (*abituale dimora*), and if that is not known, in a municipality where he or she has a temporary abode (*dimora temporanea*), or in the municipality where he or she has established his or her main centre of business and interests (*domicilio*), after enquiries have been made at his or her home or office or place of business,

If the addressee cannot be found in these places, the copy, in a sealed envelope, may be delivered to a member of his or her family, or to a person employed in his or her home or business, but not to a minor aged less than 14 or to a person who is manifestly unfit to be entrusted with it. The copy, still in its sealed envelope, may also be delivered to the doorkeeper of the building or to a neighbour, who must sign the receipt form; in that case the addressee must be advised by registered letter, without acknowledgment of receipt, that service has been effected. If the addressee habitually lives on board a merchant vessel, the document may be handed to the ship's master (Article 139 CPC).

Article 146 CPC provides that service upon active military personnel, when personal service is not possible, is made to the prosecution service, which sends it to the commander of the corps to which the addressee belongs.

If service is not possible in any of the ways described, because the addressee is absent for the time being and the other persons who might receive the document are absent, or unfit, or refuse to accept the service, the bailiff will deposit the copy of the document, in a sealed envelope, at the town hall of the municipality where the notification is to be served, affix a notice of deposit in a sealed envelope to the door of the addressee's home or office, and send the addressee a registered letter with acknowledgement of receipt to inform him or her that the document has been deposited at the town hall (Article 140 CPC).

#### Formal notification where the addressee's residence, abode or centre of interests is unknown

The addressee must be sought using ordinary diligence and in good faith. If, however, the addressee cannot be found, service is effected by depositing a copy at the town hall of his or her last known place of residence or, if no place of residence is known, at the town hall of his or her place of birth. If that is also unknown, or if it is located abroad, the document is delivered to the prosecution service (Article 143 CPC).

#### Methods of service ordered by the court

On application or of its own motion, the court may order methods of service other than the codified procedures in particular circumstances or for reasons of urgency. These methods can be chosen freely, but they must protect the addressee's privacy and right to defend himself or herself (Article 151 CPC).

A common example is authorisation to send a package via a mail carrier who will guarantee very quick delivery. Other systems, such as the use of telegrams, are now obsolete

#### Service by public announcement

On application by one of the parties, and after hearing the opinion of the prosecution service, the court may authorise service of this kind where there is a large number of addressees or where it is difficult to identify them all.

A copy of the document is deposited at the town hall of the municipality of the court of the proceedings, and an extract from the document is published in the Official Gazette (*Gazzetta Ufficiale della Repubblica*); the court can also order the publication of an extract in the most widely circulated newspapers, or use other forms of publicity (Article 150 CPC).

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

Personal service on persons other than the addressee: the date of service is the date of service on the person to whom the copy it was delivered. This is the date on which the addressee is legally deemed to have taken cognisance of the document, although he or she will in fact be acquainted with it only subsequently.

Formal notification under Article 140 CPC: The formalities required for such a notification are numerous, and not necessarily completed on the same day. The case-law has provided a conclusive interpretation of the legislation: it has established that the date on which service is effected, in respect of the applicant, coincides with the final formality, namely sending the registered letter containing the notice of deposit at the town hall, while in respect of the addressee it is the date upon which the ten-day post office holding period expires, or the date on which the document is collected, if earlier.

Formal notification by post: The formal notification is deemed effective, in respect of the applicant, on the date on which the document is handed to the bailiff, while in respect of the addressee it takes effect only when the addressee is legally deemed to have cognisance of the document. This is the date of delivery of the document indicated on the acknowledgement of receipt; in cases of absence or refusal by anyone who might be able to take receipt, the document is deposited at the post office, and in that event the relevant date is the end of the ten-day post office holding period, or the date of collection if earlier. If there is uncertainty, however, formal notification is effective from the date of the stamp affixed by the post office to the notice returned to the sender.

An uncollected document will be available to the addressee for six months, so that he or she can nevertheless acquaint himself or herself with its contents.

## Formal notification where the addressee's residence, abode or centre of interests is unknown

The document is considered to have been served 20 days after the deposit or delivery to the prosecution service.

## Methods of service ordered by the court

The date of service depends upon the method chosen.

### Service by public announcement

Service is effective when, following the required procedures, the bailiff files with the registry of the court before which the proceedings have been brought a copy of the record of service and of the documents demonstrating the action taken by the party at the request of the court (publication in the Official Gazette, etc.).

### Formal notification by means of PEC

Service is deemed effective from the moment at which the service provider makes the computerised document available in the addressee's email inbox. Thus the date of service is that of delivery, and there is no need to confirm that the recipient has read the message.

### **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?**

Notification in accordance with Article 140 CPC: The bailiff affixes to the addressee's door, in a sealed envelope, a notice setting out the essential purport of the document and an invitation to collect it from the town hall; the same notice is sent to the addressee by means of registered letter with acknowledgement of receipt.

The post office delivers this registered letter to the addressee, or to another suitable person; if no such person can be found, the document is deposited at the post office having responsibility for that district, for ten days, and another invitation to collect the document is left in the addressee's letterbox.

Formal notification by post: a postal worker who cannot find the addressee or another authorised person sends the addressee, by registered letter, a notice of deposit (*comunicazione dell'avvenuto deposito*, 'CAD') stating that the copy of the document has been deposited at the district post office; if the postal worker delivers the notification to an authorised person other than the addressee, he or she sends the addressee, again by registered letter, a notice of service (*comunicazione di avvenuta notifica*, 'CAN'). These notices of deposit or of service supplement the formal notification: the postal worker enters a note that they have been sent on the original acknowledgement of receipt. The notices are intended to ensure that the addressee can in fact acquaint himself or herself with the document, and do not affect the date of service, which remains the date of expiry of the ten-day post office holding period, or the date of collection, if earlier.

The postal worker can take these steps only if the addressee has a letterbox suitable for receiving correspondence, on which his or her name is written.

### **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 refuses formal notification by personal service, the bailiff records the fact in the record of service, and service is held to have been validly effected (Article 138 CPC).

In cases of formal notification by post, if the addressee refuses to accept the document or to sign the delivery register, the postal worker records the fact on the acknowledgment of receipt, and service is held to have been validly effected.

## **8 Postal service from abroad (Article 14 of the Service 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 14 of the Service 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?**

This area is governed by resolution 385/13/CONS of the Italian communications regulator (*Autorità per le Garanzie nelle Comunicazioni*, 'AGCOM') published in Official Gazette No 165 of 16 July 2013, available on the website <http://www.agcom.it>.

The postal worker delivers the registered letter to the addressee at the address indicated, or to another suitable person as provided for by the legislation relating to the delivery of registered letters: a member of the addressee's immediate family, a cohabitant, a co-worker, a doorkeeper or a neighbour who accepts it. Registered letters addressed to organisations, legal persons and associations are delivered to the legal representative or to a responsible staff member.

**8.2 Under the rules of postal delivery in this Member State how can the service of documents from abroad, under Article 14 of the Service Regulation No. 1393/2007, 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?**

If the postal worker cannot find any suitable person, the document is deposited at the post office having responsibility for that district.

**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?**

The post office holding period for legal documents is ten days; the postal worker responsible for the delivery informs the addressee that the document is being held by means of a notice in a sealed envelope sent by registered letter with acknowledgement of receipt which, if the addressee is absent, is affixed to the front door or placed in the letterbox of his or her home. This notice must contain an express request to collect the document within a maximum period of six months, with the warning that the formal notification will be considered to be served ten days after the document is deposited at the post office, and that if the document is not collected within six months it will be returned to the sender.

If the letter has not been collected by the addressee or by any representative of his or hers within ten days of the registered letter being sent, the acknowledgement of receipt must, within two days (this deadline is established by Law No 205/2017, and is applicable with effect from 1 June 2018), be returned to the sender by registered letter, specifying the date on which the holding period expired and, consequently, the formal notification became effective. If six months pass from the date on which the document was deposited at the post office and the addressee has not collected it, the document is returned to the sender.

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

The person effecting formal notification must enter the date, manner and place of service on both the notified copy and the original so as to allow an assessment to be made of the regularity of the procedure. He or she must indicate any searches carried out, including searches in the population register office (Article 148 CPC).

A record of formal notification by post must indicate the date and the post office sending the document. The acknowledgement of receipt to be returned to the sender must be attached as documentary proof that the document has been served.

When the postal worker indicates in the acknowledgement of receipt that the addressee is unknown or has left the address given on the envelope, service is not effected.

A bailiff's record is an official document, and unless it is shown to be false it is proof of what happened in the bailiff's presence and of the statements made to him or her; it is presumptive evidence of other circumstances that the bailiff did not ascertain personally (for example, the fact that the person who took delivery of the document was a family member or a person employed in the home of the addressee).

**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?**

Formal notification is null and void where the established procedures, which guarantee the principle that the party must be deemed to have cognisance of the document, have not been followed, that is to say when the rules concerning the person who is to take delivery of the copy have not been complied with, or if there is real uncertainty (*incertezza assoluta*) as to the person to whom or the date on which the document was handed over (Article 160 CPC).

Nullity of service can be remedied if the service has nevertheless achieved its purpose, for example if the addressee enters an appearance in court; otherwise a fresh attempt must be made to effect service.

Uncertainty concerning the date of notification must be real; it cannot be remedied if a deadline depends on it. Where there is a different date on the original and on the copy, the date indicated on the addressee's copy takes precedence, in order to guarantee the addressee's right to defend himself or herself.

The courts have held that there is no formal notification and that the absence of notification cannot be remedied when the document has not been served at all, or where it has been served in a location or to a person that is not linked to the addressee in any way. Nor can the nullity of a notification be remedied where there are discrepancies between the original and the copy such as to prevent the addressee from defending himself or herself properly. Where there has been no formal notification, no remedy is permitted, and the process of formal notification of the document must begin again.

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

In civil cases, the party that requests formal notification must cover the costs, consisting of fees payable to the Treasury (*erario*), as well as carriage and delivery charges owed to the bailiff for documents served away from the location of the bailiff's office.

This issue is regulated by Presidential Decree No 115 of 30 May 2002 (Consolidated Law on legal costs), which also fixes the amount of such costs. The party who initiates proceedings must pay in advance the fees, carriage and delivery charges for formal notifications served at the registrar's request, at a standard flat rate of EUR 27.00; for formal notifications requested by the parties, the applicant must pay a fee indicated in Articles 34 ff. of Presidential Decree No 115/2002, which varies in accordance with the number of addressees, the distance in kilometres and the urgency.

In other areas of law, including employment and welfare cases, separation and divorce proceedings, and cases in which a person of insufficient means is eligible for state legal aid, the party is exempt from paying the costs of service, which are charged to the Treasury.

Formal notifications requested under Regulation No 1393/2007 are exempt from costs, other than those occasioned by recourse to a bailiff or person competent under the law of the Member State addressed, which correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and nondiscrimination (Article 11 of Regulation No 1393/2007).

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