

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

Where cases are brought to court, communication is extremely important. It is absolutely vital for the parties to proceedings and the judge to be aware of the plaintiff's claims, the defendant's arguments, the course of proceedings and the court ruling. A party which does not accept the ruling and appeals to a higher court must inform the other parties of its decision by submitting or sending documents (e.g. summonses, applications, submissions to the court, judgments, appeals, etc.). We are not concerned here with the documents themselves but with the way in which they are remitted to the parties and, where appropriate, the court. The relevant rules are set out in Articles 32 to 47 of the Judicial Code [*code judiciaire*].

In Belgium a distinction is made between notification [*notification*] and service [*signification*].

In essence, service means issuing a document to another person via a government official. In Belgium that official is known as a bailiff. In practice, the bailiff serves a certified copy of the document on the person in question.

The bailiff may deliver various writs to you (referred to below as 'service' or 'record of service'). The best known are:

- summons to appear in court;
- service of a judgment (possibly with an order to pay);
- order to pay;
- order to vacate premises;
- seizure (e.g. from your personal property, accommodation);
- service of prior notice;
- ...

In contrast to service, notification is effected when a court document (original or copy) is sent by post, i.e. without the involvement of a government official. The date of service is significant.

In the case of summonses, certain timescales have to be adhered to between the time of service and the time at which the case is dealt with in the initial court hearing.

When a judgment is served, that date is the commencement date of the period for objections or any appeal that might be brought.

In general, documents are served. Notification is used in specific cases defined by law.

The writ [*l'exploit de signification*] must be signed by the executing bailiff and must indicate the following, as specified in Article 43 of the Judicial Code, failing which it shall not be valid:

- 1° day, month, year and place of service;
- 2° name, first name, occupation, domicile and, if applicable, capacity and listing on the commercial or trade register of the person at whose request the writ is being served;
- 3° name, first name, domicile, or, in the absence of domicile, residence and, if applicable, capacity of the addressee of the writ;
- 4° name, first name and, if applicable, capacity of the person to whom the copy has been given, or where a copy where left in the cases referred to in Article 38(1), or to where the writ has been posted in the cases referred to in Article 40;
- 5° name and first name of the bailiff and address of their office;
- 6° breakdown of the cost of the document.

The person to whom the copy is given endorses the original. If they refuse to sign, the bailiff notes the refusal on the notice.

According to Article 47 of the Judicial Code, the bailiff may not serve documents:

- 1° before 6 a.m. or after 9 p.m. in a place not open to the public;
- 2° on Saturdays, Sundays or public holidays (this restriction does not apply to service in criminal cases, see Court of Cassation case-law, Cass., 27 March 1984, R.W. 1984-1985, 1093; Antwerp, 2 October 1975, R.W. 1976-1977, 1834), except in urgent cases and with the permission of the magistrate [*juge de paix*] for summonses in cases to be brought before him or her, the judge who authorised the document for documents requiring prior authorisation and in all other cases the president of the Court of First Instance.

When the document is served, the person on whom it is served is given a copy of the document (service) and the bailiff retains the original whilst the case is ongoing at his office. In the case of summonses, the bailiff does not retain the original but sends it to the court to be added to the case list (notice of the summons to the court).

The copy of the notice must contain all the information on the original and be signed by the bailiff (Article 43 of the Judicial Code), failing which it shall not be valid.

## 2 Which documents need to be served formally?

The law specifies which documents must be served or notified. However, they are too numerous to be listed in full. Examples include summonses, applications, judgments, appeals and objections.

## 3 Who is responsible for serving a document?

Documents are served by bailiff and must therefore be served by the bailiff themselves.

Notification is effected by the clerk of the court (on rare occasions by the public prosecutor's office) by judicial recorded delivery (a special type of registered letter with acknowledgement of receipt) or by ordinary or registered post. The rules governing judicial recorded delivery are set out in Article 46 of the Judicial Code.

## 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?**

Yes.

In the case of Belgium, the receiving agencies designated in accordance with Article 2(2) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) are bailiffs with territorial jurisdiction.

Under Article 1 of the Royal Decree of 16 May 1986 authorising access by bailiffs to the National Register of Natural Persons (*Arrêté royal du 16 mai 1986 autorisant l'accès des huissiers de justice au Registre national des personnes physiques*), for the performance of the tasks for which they have competence, bailiffs are allowed access to the information referred to in Article 3(1)(1) to (9) and Article 3(2) of the Law of 8 August 1983 establishing a National Register of Natural Persons (*loi du 8 août 1983 organisant un Registre national des personnes physiques*). The information includes, in particular, the address registered as the main address for each natural person in the population registers (domicile).

**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.

In principle only the Belgian persons, public authorities, public bodies and professions referred to in Article 5 of the Law of 8 August 1983 establishing a National Register of Natural Persons may be granted access to the information in the National Register.

The authorisation is given by the Sectoral Committee of the National Register (*Comité sectoriel du Registre National*) set up at the Commission for the Protection of Privacy (*Commission de la protection de la vie privée*) pursuant to Article 15 of the Law of 8 August 1983 establishing a National Register of Natural Persons.

**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?**

They cannot act on it unless finding the address is deemed to be an investigative measure for the purpose of obtaining evidence to be used in civil or commercial judicial proceedings, commenced or contemplated.

The concept of 'evidence' is not defined in 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. It covers, amongst other things, interviews of witnesses, parties or experts, the production of documents, investigations, establishing the facts, consulting family and child welfare specialists.

According to Article 1(2) of the aforementioned Regulation (EC) No 1206/2001, a request may not be made 'to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated'.

In principle, the address of a person for whom service or notification of a judicial or extrajudicial document is required cannot therefore be considered evidence within the meaning of Article 1 of Regulation (EC) No 2006/2001.

Furthermore, Article 4(1) of Regulation (EC) No 2006/2001 expressly states that the request must contain 'the names and addresses of the parties ...'.

**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)?**

(a) Service

The method of service is governed by Articles 32 to 47 of the Judicial Code and applies to both civil and criminal cases.

- Service in person (Articles 33 to 34 of the Judicial Code)

If the bailiff intends to serve a document, he will first endeavour to give the copy of the document to the addressee in person. That is service in person.

Documents may be served in person on the addressee wherever the bailiff finds them. This does not necessarily have to be at the addressee's place of residence; valid service may be effected, for example, at the addressee's place of work, on the street or at the bailiff's own office.

The condition is that the place of service must be within the bailiff's area of jurisdiction.

In the absence of any information on the whereabouts of the addressee, the bailiff goes directly to the addressee's domicile in the hope of finding them there.

If the bailiff locates the party (wherever that might be) and the party refuses to accept the copy of the document, the bailiff notes the refusal on the original (the copy is then attached to the original) and service is deemed to have been effected in person.

With regard to legal persons, service is deemed to have been effected in person when the copy of the document has been given to the agency or an employee authorised by law, by the articles of association or by due delegation to represent the legal person in judicial proceedings, even on a joint basis.

Thus in the case of a private limited company, for example, service is valid if effected on the manager, whether they are at the registered place of business or elsewhere, away from the registered place of business.

- Service at domicile/registered place of business (Article 35 of the Judicial Code)

If service cannot be effected in person, it is effected at the domicile of the addressee. 'Domicile' means the place listed as the main address for the addressee in the population registers, i.e. the domicile address.

For an addressee with no official domicile address, service may be at their residence. 'Residence' means any other establishment, such as the place at which the person has an office or operates a business or industry. The chief police officer must inform the executing bailiff of the place of residence of a party not having an official domicile when instructed to do so.

In the case of a legal person, service may be at the registered place of business or administrative office if service in person is impossible.

With service at domicile, the copy of the document is delivered to a relative, in-law, servant or employee of the addressee. It may not be given to a child under the age of 16. The bailiff notes on the original and the copy the capacity of the person to whom the copy was given (e.g. relationship to the addressee).

- Service by countersignature (Article 38(1) of the Judicial Code)

If the bailiff is unable to serve the document by one of the specified methods (Articles 33 to 35 of the Judicial Code), service will be effected in accordance with Article 38(1) of the Judicial Code, i.e. by leaving the writ at the domicile or, in the absence of a domicile, at the residence of the addressee (service by countersignature).

The copy of the document is issued at the address using the letterbox, in a sealed envelope (showing the office of the bailiff, the name and first name of the addressee and the place of service, marked '*Pro Justitia – A remettre d'urgence* (to be delivered urgently)').

If there is no letterbox, the bailiff is authorised to leave the copy, in an envelope, by any means (e.g. sliding it under the door, putting it through a gate or hedge, attaching it to the door with adhesive tape).

The bailiff indicates the date, time and place at which the copy was left on the original writ and on the copy served.

No later than the first working day following service of the writ, the bailiff sends a signed letter to the domicile, or, in the absence of a domicile, the residence of the addressee. The letter indicates the date and time of delivery and states that an identical copy of the writ may be collected by the addressee in person or by a proxy duly authorised in writing from the bailiff's office within three months of the date on which the writ was served.

Where an addressee has applied for a change of domicile (request to change address), the registered letter referred to in paragraph 3 will be sent to the place where they are listed on the population registers and the address at which they have indicated they wish to establish their new domicile.

When a proposal has been made for removal from the public register (of the domicile address) for the addressee and the bailiff cannot infer from the facts that the addressee is no longer actually resident at the domicile address, it is sufficient for service to be effected according to Article 38(2) of the Judicial Code (see below).

Where removal from the public register has been proposed, service on the public prosecutor in accordance with Article 38(2) of the Judicial Code (see below) is only permissible when the bailiff confirms that the addressee no longer resides at the domicile address (e.g. when the bailiff has established that the addressee at the address in question has been evicted) or it is physically impossible to serve the documents.

As mentioned above, notification is by letter, registered letter or judicial recorded delivery. In future electronic notification might also be an option.

- Physical impossibility of service (Article 38(2) of the Judicial Code)

If it transpires from the facts established at the address (e.g. home destroyed by fire, domicile address found to be waste ground) that it is physically impossible to effect service by leaving a copy of the writ at the domicile (or, in the absence of a domicile, the residence) of the addressee, the copy is given to the public prosecutor with local jurisdiction.

The original and the copy state the circumstances necessitating service on the public prosecutor.

The same applies when the property (at which the addressee is domiciled) has clearly been abandoned and the addressee has not applied for a change of domicile (e.g. in the case of eviction the addressee is not present. Service is then effected on the public prosecutor in accordance with Article 38(2) of the Judicial Code).

As stated above, service in accordance with Article 38(2) of the Judicial Code also applies in the case of a proposed removal from the public register, when the bailiff can establish that the addressee does not actually live at the address in question.

Service on the public prosecutor is not valid if the party at whose request it was effected was aware of the elected domicile or the residence of the addressee, whichever is applicable.

- Service at elected domicile (Article 39 of the Judicial Code)

When the addressee has elected domicile with an agent, documents may be served or notified at the elected domicile. This is an option and not an obligation. There is therefore no reason why service should not be effected at the actual domicile (in Belgium) rather than at the elected domicile (Cass. (1st Ch.), 26 February 2010, J.T., 2010, no 6397, 371; Cass. (1st Ch.), 10 May 2012, R.W., 201213, 1212).

There is only one exception, when an addressee whose actual domicile (or registered place of business) is abroad has an elected domicile in Belgium, service must take place at the elected domicile, failing which it shall not be valid (Article 40 of the Judicial Code, see also Cass. (1st Ch.), 9 January 1997, R.W. 1997-98, 811: 'When the party at whose request service has been effected is aware of the elected domicile of the addressee, that party is required to have the writ served at that place; that is not an option but an obligation and is a matter of public policy').

If the copy is handed to the agent in person at the elected domicile, that is deemed to be service in person. Service and notification are longer possible at the elected domicile if the agent is deceased, is no longer domiciled there or has ceased operations.

Domicile is elected on the basis of a legal relationship between parties (i.e. in a procedure between the parties). Hence it is only valid between those parties and is confined to that legal relationship. Thus the Court of Cassation ruled that election of domicile in a procedural act of first instance (e.g. in the summons or pleadings) was only valid for the whole of the first instance proceedings, the enforcement of the subsequent judgment and an appeal against that judgment (by the opposing party). If that election of domicile was not repeated in subsequent proceedings (e.g. in an appeal) it did not apply to those subsequent proceedings (Cass. 1st Ch., 30 May 2003, R.W. 2003-2004, 974; Cass. 2nd Ch., 10 May 2006, R.W. 20082009, 455; Cass. 1st Ch., 29 May 2009, R.W. 2010-2011, 1561).

A distinction has to be made between the concept of 'elected domicile' and the concept of an 'accommodation address', which is discussed below.

As regards the application of the language legislation (Law of 15 June 1935 on the use of languages in judicial matters, *loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire*), the judge of attachments [*juge des saisies*] gave a clear ruling in Bruges (judge of attachments, Bruges, 11 October 2006, T.G.R. 2010, 95): it is the place where service actually took place (in this case the elected domicile) that counts and not the actual domicile. In that instance, both the applicant and the party lived in the French-speaking region. However, the party summonsed had elected domicile in the Dutch-speaking region. He was summonsed (in Dutch only) in opposition before the judge of attachments in Bruges. According to the language legislation, the summons had to be in Dutch. The question was whether a French translation should have been appended to it in accordance with Article 38 of the Law on the use of languages. The judge found that a French translation did not need to be appended to the summons in Dutch, since the choice of language was determined only by the place of service.

- Service when domicile is not known (Article 40 of the Judicial Code)

'For persons having no known domicile or residence or elected domicile in Belgium, the bailiff sends the copy of the document by registered post to their domicile or residence abroad, by air if the destination is not in a neighbouring State, without prejudice to the other forms of transmission agreed between Belgium and their country of domicile or residence. Service is deemed to have been effected when the documents are given to the postal service against a proof of postage as indicated in this article.

For persons having no known domicile or residence or elected domicile in Belgium or abroad, service is effected on the public prosecutor for the district in which the judge who is to hear or has heard the application sits; if no application is or has been made to the judge, service is effected on the public prosecutor in whose jurisdiction the plaintiff has his domicile or, if he has no domicile in Belgium, the public prosecutor for Brussels.

...

Service may always be effected in person if they are located in Belgium.

Service abroad or on the public prosecutor is null and void if the party at whose request it was effected was aware of the domicile or residence or elected domicile of the addressee in Belgium or abroad, whichever is applicable'.

The Court of Cassation takes the view that that is not an option but an obligation that is a matter of public policy (Cass., 1st. Ch, 9 January 1997, R.W. 1997-1998, 811).

A party on whom a writ is served who argues that the opposing party was aware of his residence for example and therefore invokes the rule that service on the public prosecutor was null and void must provide evidence. The burden of proof therefore lies with the party on whom the writ was served (Ghent judge of attachments, 18 March 2008, R.W. 2010-2011, 124).

- Special rules for service (see Articles 41 and 42 of the Judicial Code).

- Service and notification to be effected for persons with a trustee are effected on those persons themselves and at the domicile or residence of the trustee, in so far as the service or notification relates to the function of the trustee (Article 499/12 of the Civil Code).

Accommodation address: 'Accommodation address' means the address either of a natural person listed on the population register at the place where they have established their main residence, or of a legal person, at which, with the consent of that natural or legal person, a natural person with no fixed residence is registered (Article 1(2) of the Law of 19 July 1991 on population registers, identity cards, identity cards for foreign nationals and residence documents, amending the Law of 8 August 1983 establishing a National Register of Natural Persons (as amended on 31 August 2015) (*Loi du 19 juillet 1991 relative aux*

registres de la population, aux cartes d'identité, aux cartes d'étranger et aux documents de séjour et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques (dans sa teneur modifiée au 31 août 2015)).

A person with no fixed residence uses the domicile address of another person as it were. A person who authorises a natural person to use their domicile address as an accommodation address undertakes to pass on all documents (e.g. post) sent to them free of charge. Furthermore, certain benefits (requiring an official address) (such as family allowances, unemployment benefits, mutual benefits) may be sent to an accommodation address (however, no accommodation address is needed to receive social integration payments!)

Persons (with no fixed domicile or residence) who may use an accommodation address are:

- persons living in a mobile residence (e.g. a boat or caravan) (not including residential caravans);
- persons who are absent on study or business trips for less than one year;
- civil and military armed forces personnel based abroad and their households;
- persons not or no longer having a place of residence due to a lack of resources.

The social services office (*Centre public d'aide sociale*) or a natural person may provide an accommodation address.

When a person has an accommodation address, the bailiff may serve all documents at that address, in contrast to the concept of an elected domicile defined above: the bailiff may only serve at that address documents relating to the legal transaction/proceedings for which domicile has been elected there.

However, bailiffs may not make seizures at the accommodation address (from the person having the accommodation address), since that person is deemed not to own any movable property at that address.

(b) Notification

Article 46(1) [..].

'When the judicial registered letter is sent in printed form, the postal service office gives it to the addressee in person or at their domicile as specified in Articles 33, 34, 35 and 39. The person to whom the letter is given signs and dates the acknowledgment of receipt and the postal service returns it to the sender. The postal employee notes any refusal to sign at the bottom of the acknowledgment of receipt.

When the judicial registered letter cannot be handed over to the addressee in person or at their domicile, the postal employee leaves a delivery notification. The letter is held at the postal depot for eight days. It may be collected during that period by the addressee or a proxy duly authorised in writing.

However, if the addressee has asked for their mail to be redirected or kept at the post office, the letter is returned or kept at the address designated by the addressee during the period covered by the request.

A letter addressed to a bankrupt person is handed over to the administrator.

The rules for the application of paragraphs 3 to 5 are laid down by the King.

...

Article 46(4) The Minister responsible for justice may determine the forms and indications of service that must accompany the dispatch of the judicial registered letter. If the destination is abroad, the judicial registered letter is replaced by a letter registered with the post office, without prejudice to the methods of transmission provided for by international conventions and the application of paragraphs 2 and 3.

If so agreed by one of the plaintiffs or applicants, either in the writ of summons or the application, or in writing, by the time of first appearance before the court, judicial registered letters are replaced by service at the request of the party responsible for making those arrangements.

Art. 46/1 Service solely by letter to a party for whom a lawyer is acting in accordance with Articles 728, 729 or 729/1 and who has not informed the court registry in accordance with Article 729/1 that he was ceasing to act for that party is effected solely by letter to that lawyer'.

Article 32b of the Judicial Code creates a legal framework for communications and notifications between a number of participants in the judicial system.

**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.)?**

A system for the electronic service of documents will be introduced in the near future. The legal structure has already been created but has not yet come into effect. Bailiffs may decide in civil or criminal cases whether to serve their writs electronically or in person. The principle of territoriality will continue to apply.

In practice, service will take place at an electronic legal address dictated by the authorities or an electronic elected domicile address. In order to receive service at the electronic address of the electronic domicile, addressees will have to give express consent via their e-ID.

## **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)?**

Belgian law provides for several methods of transmitting documents (see answer to question 5).

The usual method for transmitting judicial documents is service by writ by a bailiff.

Article 32 of the Judicial Code defines service as 'the handover of an original or copy of the document; it is effected by writ by a bailiff or, in the cases provided for by law, as indicated by the law'.

However, the law defines certain instances in which documents may be sent purely by **notification**.

Article 32 of the Judicial Code defines notification as 'dispatch of the original or a copy of a procedural document by the postal service or electronic mail to the electronic judicial address or, in the cases provided for by law, by fax or as indicated by the law'.

Article 14 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) states that service by post must be 'by registered letter with acknowledgement of receipt or equivalent'.

### **1. Main forms of service**

(a) Service in person (Articles 33 and 34 of the Judicial Code)

According to Article 33 of the Judicial Code, 'service is effected in person when the copy of the document is given directly to the addressee. Service may be effected in person wherever the bailiff finds the addressee. If the addressee refuses to accept the copy of the document, the bailiff notes the refusal on the original and service is deemed to have been effected in person.

Article 34 of the Judicial Code adds that 'service on a legal person is deemed to have been effected when the copy of the document has been handed over to the agency or employee authorised by law, by the articles of association or by due delegation to represent the legal person in judicial proceedings, even on a joint basis'.

(b) Service at domicile (Article 35 of the Judicial Code)

Article 35 of the Judicial Code provides that 'if service cannot be effected in person, it shall take place at the domicile or, in the absence of a domicile, the residence of the addressee and, in the case of a legal person, their registered place of business or administrative office. The copy of the document is to be delivered to a relative, in-law, employee or servant of the addressee. It may not be given to a child under the age of 16 ...'

According to Article 36 of the Judicial Code, domicile is 'the place listed as the main address for the person on the population registers', whereas residence is 'any other establishment, such as the place where the person has an office or operates a business or industry'.

(c) Service by leaving a copy of the writ (Article 38(1) of the Judicial Code)

Article 38(1) of the Judicial Code provides that when it was not possible to serve the document in person or at the domicile, 'service is effected by the bailiff leaving a copy of the writ in a sealed envelope at the domicile or, in the absence of a domicile, the residence of the addressee'. The envelope must show certain information specified by Article 44(1) of the Judicial Code.

Article 38(1) of the Judicial Code goes on to state: 'No later than the first working day following service of the writ, the bailiff sends a signed letter to the domicile, or, in the absence of a domicile, the residence of the addressee. The letter indicates the date and time of delivery and states that an identical copy of the writ may be collected by the addressee in person or a proxy duly authorised in writing from the bailiff's office within three months of the date on which the writ was served'.

(d) Election of domicile (Article 39 of the Judicial Code)

According to Article 39 of the Judicial Code, 'when the addressee has elected domicile with an agent, service and notification may be effected at that domicile. If the copy is given to the agent in person at the elected domicile, that is deemed to be service in person. Service at the elected domicile is longer possible if the agent is deceased, no longer domiciled there or has ceased operations there'.

## **2. Notification by registered letter with acknowledgement of receipt**

When the document is sent by registered letter with acknowledgement of receipt, if the addressee cannot be found at the address shown on the letter, a delivery notification is left at that address. In that case the letter may be collected from the place designated on the delivery notification or the place agreed between the postal service and the addressee within 15 days, not including the date of remittance.

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

When the document is sent by registered letter with acknowledgement of receipt, if the addressee cannot be found at the address shown on the letter, a delivery notification is left at that address. In that case the letter may be collected from the place designated on the delivery notification or the place agreed between the postal service and the addressee within 15 days, not including the date of remittance.

When the document is **served**, the record of service must show the date of service (Article 43 of the Judicial Code).

When the document is **notified**, Belgium uses a dual-date system.

The date applicable for the sender differs from the date applicable for the addressee of the document.

For the sender, the notification date is the date of dispatch.

Article 53 bis of the Belgian Judicial Code states that, save as otherwise provided by law, the period for the addressee shall commence on the first day following the date on which the letter was delivered to their domicile, or their residence or elected domicile, as applicable.

### **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?**

For **service** by leaving a copy of the writ, see above: Service by leaving a copy of the writ (Article 38(1) of the Judicial Code).

### **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?**

When the document is **served**, there is no possibility for the addressee to object to it, apart from the ground for refusal referred to in Articles 5 to 8 of the abovementioned Regulation (EC) No 1393/2007 (translation requirement).

When the document is sent by **notification**, Article 53a of the Judicial Code states that, save as otherwise provided by law, the period for the addressee shall commence on the first day following the date at which the letter was **delivered** to their domicile, or their residence or elected domicile, as applicable. Hence there is no possibility for the addressee to object to notification by registered post with acknowledgement of receipt.

However, an addressee of a notification by registered letter with acknowledgement of receipt may subsequently contest the validity of that notification by showing that they were not at their domicile, or their residence or elected domicile at the address shown on the registered letter. Service by a bailiff therefore provides more legal certainty than notification by registered post with acknowledgement of receipt. With service, the executing bailiff verifies the address of the recipient in the National Register of Natural Persons. Furthermore, the date of the notification by registered letter cannot be reliably established if the addressee did not date or sign the acknowledgement of receipt when the registered letter was (first) presented at their domicile, residence or elected domicile, whereas the date of service is always shown on the record of service.

Apart from that, it is apparent from the preparatory work on the abovementioned Regulation (EC) No 1393/2007 and, in particular, the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, presented by the Commission on 11 July 2005, that the amendment of Article 14 was aimed at introducing 'a uniform rule for all Member States concerning postal services [by providing for] a uniform requirement (registered letter with acknowledgement of receipt or equivalent) ... This requirement guarantees with sufficient certainty that the addressee has received the document, and that there is sufficient proof thereof'. Hence the requirement for an acknowledgement of receipt is designed to ensure legal certainty for the parties. According to that preparatory work, it cannot be established that addressees have 'received' the document if they have not signed the acknowledgement of receipt. However, the solution adopted in Article 53 bis of the Belgian Judicial Code means that notification has been given when the document is 'presented' at the domicile, residence or elected domicile of the addressee, without the need for the document to actually be handed over to them or for the acknowledgement of receipt to be signed.

## **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?**

Article 1 of the Royal Decree of 27 April 2007 on postal services (*Arrêté royal du 27 avril 2007 portant réglementation du service postal*) states that recorded delivery post consists of registered post and post with a declared value.

In principle, registered post with acknowledgement of receipt can only be handed over to the addressee after verification of their identity, against signature of the acknowledgement of receipt (Articles 30, 53 and 54, *a contrario*, of the Royal Decree of 27 April 2007).

However, Article 57 of the Royal Decree of 27 April 2007 states that 'recorded delivery post on which the address designates a person with whom the addressee has elected domicile may be given to that person'.

Article 62 of the Royal Decree of 27 April 2007 states that 'persons capable of receiving correspondence, in accordance with the rules of ordinary law, shall be deemed addressees of correspondence addressed to any companies, associations, organisations, firms and communities'.

Article 58 of the Royal Decree of 27 April 2007 provides that 'recorded post addressed to minors under the age of 15 shall be given to the persons under whose authority or guardianship they are placed'.

Finally, according to Article 65 of the Royal Decree of 27 April 2007, registered post 'may be given ... to an agent of the addressee ... on remittance of a postal authority formally conferring power to receive the items of post'.

**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?**

Post is sent to the address indicated, except where there is a manifest error (e.g. misspelt street name, wrong house number, obviously incorrect postcode). If the addressee cannot be located at the address indicated, the registered post will not be delivered, unless the addressee has asked for the post to be sent to a different address by means of a redirection service (Article 51 of the Royal Decree of 27 April 2007 on postal services).

**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 60 of the Royal Decree of 27 April 2007 on postal services, 'if an unsuccessful attempt is made to deliver registered post at a domicile, a delivery notification shall be left. In such cases, post may be collected from the place indicated on the delivery notification or the place agreed between [the postal service] and the addressee within 15 days, not including the date of remittance'.

Article 66 of the abovementioned Royal Decree of 27 April 2007 states that: 'post that could not be delivered to the addressee shall be returned to sender ... Registered post and books must always be returned'.

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

In the case of service, Article 43 of the Judicial Code stipulates that the person to whom the copy is given must sign the original. If they refuse to sign, the bailiff notes that refusal on the writ. Hence there will be proof of service in all cases. It is very difficult to contest a bailiff's record.

In the case of notification, there is of course written proof in so far as it is by registered post. In the case of judicial notification also, Article 46 provides for proof of receipt. That proof is kept on the case file.

**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?**

Under normal circumstances the risk of the addressee not receiving the writ is low, given that under Belgian law it is served on the person themselves. In other words, the bailiff hands the copy to the addressee in person. However, the law also makes provision for the document to be served on a third party (Article 35 of the Judicial Code) or left at an address (Article 38). In such cases service is deemed fully valid even if the document has not been delivered to the addressee in person. Individuals who have taken receipt of a writ as per Article 35 and failed to pass it on or to inform the addressee may incur civil liability. These arrangements work very well in practice.

However, the possibility of the law being broken when a document is served or notified cannot be ruled out (e.g. failure to include certain information in the writ). The procedural penalty for incorrect service or notification is that the procedural documents are declared null and void. The rules governing nullity are set out in Articles 860 to 866 of the Judicial Code.

In conclusion, it should be noted that persons causing nullity may be held liable should it emerge that they were at fault.

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

Bailiffs receive payment, the rates being governed by Article 522(1) of the Judicial Code.

The precise rates, which must be adhered to, are set out in the Royal Decree of 30 November 1976 establishing the rates for bailiff services in civil and commercial cases and for certain allowances (*Arrêté royal du 30 novembre 1976 fixant le tarif des actes accomplis par les huissiers de justice en matière civile et commerciale ainsi que celui de certaines allocations*),

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1976113030&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1976113030&table_name=loi) ).

Last update: 28/03/2018

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