

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

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

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

2 Which documents need to be served formally?

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

3 Who is responsible for serving a document?

The service of documents and the service method are ordered by the decision-making body (judge, judicial officer). This order is called a service decree (*Zustellverfügung*) and must be issued by the decision-making body on the original copy of the document to be served. The actual service process itself is performed by a delivery service. This will generally be the postal service but could also be some other universal service provider (Section 2(7) of the Austrian Service of Documents Act (*Zustellgesetz* - *ZustG*) in conjunction with Section 3(4) of the Austrian Postal Market Act (*Postmarktgesetz*)). For electronic service by the courts see point 6.

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?**

In principle, the answer is no. However, depending on what human resources are available, simple enquiries may be made, e.g. a register query (for further details, see point 4.2 below).

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

Yes. Any person, including a foreign authority, may contact the Austrian [registration authorities](#) (municipal office, municipal authorities, municipal district office (*Gemeindeamt, Magistrat, Magistratisches Bezirksamt*)) to request [registration information](#) about the [principal residence](#) registered for a natural person. The registration data are stored in the central register (*Zentrales Melderegister – ZMR*). This is a public register that contains the names of everyone who is registered in Austria along with details of their [principal residence](#) and – where applicable – their secondary residence(s). In Austria, it is obligatory to [register/deregister](#) your residence.

To submit a register query, it is necessary to have the following details about the person you are looking for as an absolute minimum: Forename and family name/surname plus an additional characteristic that enables the person to be clearly identified (e.g. date of birth, birthplace, nationality or previous address). The fee for submitting a register query in writing is €14.30. An oral or electronic query using a Citizen Card is free of charge. You will also need to pay a federal administration charge of €3.30.

Further information about submitting a register query can be found at <http://www.help.gv.at> under [Dokumente und Recht \(documents and legal information\)](#) / [Personen-Meldeauskunft \(personal/registration information\)](#).

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?

Where the requested authority classifies the request as the taking of evidence within the meaning of Article 1 of the Regulation, e.g. because it is necessary to ascertain the address for a legal procedure (particularly the service of documents), the authority will proceed in accordance with the provisions of the Regulation and will attempt to determine the current address using the resources at its disposal, for example, by submitting a central register query or querying other registers.

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

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

However, the following alternative service procedures also exist:

Service by public announcement in accordance with Section 25 of the Austrian Service of Documents Act and Section 115 of the Austrian Code of Civil

Procedure:

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

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

Where the only way to perform service is by making a public announcement (inclusion in the edict file), the court must appoint an administrator on request or of its own motion if the person(s) concerned would normally have to undertake legal steps to defend their rights in the light of the document to be served on

him/her, particularly if the document to be served contains a summons for this/these person(s). The appointment of the administrator must be announced in the edict file (Section 117 of the Austrian Code of Civil Procedure). As soon as this happens and the document is subsequently handed over to the administrator, service is deemed to have been performed (Section 118 of the Austrian Code of Civil Procedure).

For electronic service by the courts see point 6.

6 Is electronic service of documents (service of judicial or extrajudicial documents through remote means of electronic communication, such as e-mail, internet based secured application, fax, sms etc.) permitted in civil proceedings? If so, for which types of proceedings is this method 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.)?

There is a special system to enable the electronic service of documents by the courts. This is called the *Elektronischer Rechtsverkehr* (electronic legal correspondence) system, or ERV for short. The only people who are required to participate in this system are lawyers and counsels for the defence, notaries, credit and financial institutions, Austrian insurance companies, social insurance providers, pension institutes, the Construction Workers Leave and Severance Pay Fund (*Bauarbeiter-Urlaubs- und Abfertigungskasse*), the pharmaceutical salary fund (*Pharmazeutische Gehaltskasse*), the bankruptcy contingency fund (*Insolvenz-Entgelt-Fonds*) and IEF-Service GmbH, the Main Association of Austrian Social Security Organisations (*Hauptverband der österreichischen Sozialversicherungsträger*), the office of the state attorneys at the ministry of finance (*Finanzprokurator*) and the bar associations. Other people may also participate in this system but are under no requirement to do so.

Where service is performed using the ERV, electronically transmitted judicial resolutions and legal petitions (Section 89a(2) of the Court Organisation Act) (*Gerichtsorganisationsgesetz – GOG*) are deemed to have been served on the working day immediately following their arrival in the electronic domain of the addressee (Saturday is not classed as a working day for this purpose).

If service via the ERV is not possible, it can also be performed via electronic delivery services in accordance with the provisions of the Service of Documents Act (Section 89a(3) of the Court Organisation Act in conjunction with Sections 28 et seq. of the Austrian Service of Documents Act).

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)?

Substituted service:

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

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

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

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

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

Depositing:

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

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

For details, see points 7.1 and 7.3 above.

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

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

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

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

8 Postal service from abroad (Article 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?

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

8.2 Under the rules of postal delivery in this Member State how can the service of documents from abroad, under Article 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?

The Universal Postal Union Convention does not contain any provisions to address the issue of whether it is permissible to deposit the document and, if so, under what conditions. Therefore, these matters are based on the national legislation of the country where the document is being delivered. According to the relevant provisions of Austrian law, the document may be deposited provided that the necessary conditions are fulfilled (see point 7 above).

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

See point 7.3 above.

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

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

Instead of sending the proof of delivery, it is possible to send an electronic copy of the proof of delivery or its content, provided the authority has not ruled this out by affixing a note to that effect to the proof of delivery. The original proof of delivery must be kept for at least five years after sending the electronic copy and must be sent immediately to the authority if it so requests.

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

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

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

No.

Last update: 28/10/2019

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.