

**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 legal term for when notice of written declarations and decisions has to be effected and documented in a legal form. Notice may be defined as making it possible for an addressee to take note of certain information.

Documents are served in the interest of ensuring due legal process and fair legal proceedings. Service is intended to ensure that the addressee actually becomes aware of legal proceedings or, at the very least, that he or she has an unimpeded opportunity to become aware of them. Consequently, whenever documents are served, the purpose is always to draw attention to the contents. However, it is the responsibility of the addressee to actually take note of them. The party serving the documents must be provided with a means of verifying when and how a document was delivered to the addressee. This is a requirement of legal certainty.

**2 Which documents need to be served formally?**

There is no definitive legislation governing which particular documents have to be served formally.

Documents that have to be served automatically are those where there is a corresponding legal stipulation or court order (Section 166(2) of the German Code of Civil Procedure) (*Zivilprozessordnung – ZPO*).

Service at the instigation of the parties occurs where stipulated by law, such as in the event of an arrest, temporary restraining order, or an order of attachment with transfer of garnished claim (Section 191 of the German Code of Civil Procedure).

Formal service is required wherever appropriate and meaningful, and whenever necessary for legal certainty – for instance, because rights are only established or deadlines only start running by virtue of notice being given. This means, for example, that statements of claim or court judgements and decisions that can be challenged through immediate appeal must be served by law.

**3 Who is responsible for serving a document?**

A distinction must be drawn between automatic service and service at the instigation of the parties.

When documents are served automatically, they are always served by the registry of the court where the proceedings are already and still pending (Section 168(1) of the German Code of Civil Procedure). The registry is entitled to select the method of service according to its best judgement and is free to choose between the following options:

It may, for example, serve documents on a lawyer with return confirmation of receipt (Section 174 of the German Code of Civil Procedure).

It may serve a document on the addressee or his/her legal representative directly by physically delivering it to the official premises of the court (Section 173 of the German Code of Civil Procedure).

It may entrust the service of documents to the postal service. In Germany, the term 'postal service' means companies that are licensed by the Federal Network Agency (*Bundesnetzagentur*) to provide postal services. Within this context, it may choose a special submethod: service by registered mail, return receipt requested (Section 175 of the German Code of Civil Procedure).

It may instruct an employee of the judiciary to serve the documents.

In certain legally stipulated cases, the judge is responsible for arranging service, for example in the case of service abroad (Sections 183 and 184 of the German Code of Civil Procedure) or service by publication (Sections 186 and 187 of the German Code of Civil Procedure).

Service at the instigation of the parties must always be performed by the court-appointed enforcement officer, who is either entrusted with this task directly by the party or via the intermediary of the registry of the court hearing the case (Section 192(3) of the German Code of Civil Procedure).

In turn, the court-appointed enforcement officer may entrust the postal service with serving the documents (Section 194 of the German Code of Civil Procedure).

**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?**

Where an addressee does not reside at the address specified in the request for service, the German receiving agency to which recourse is made will usually endeavour to ascertain his or her current address. This does not only apply in cases where the addressee has moved but also when his or her address on the request for service is incorrect or incomplete. However, the receiving agency provides its services voluntarily in this regard and is under no obligation to do so.

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

In accordance with Section 44 of the German Federal Citizens' Registration Act (*Bundesmeldegesetz – BMG*), foreign public authorities and foreign private individuals are entitled to obtain certain information about a particular person from the German registration authorities without stating their reasons for requesting it. This document is called a simple register excerpt (*einfache Melderegisterauskunft*).

The simple register excerpt includes:

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

The request must be addressed to the competent registration authority. As a rule, this will be the administrative office for citizens (*Bürgeramt*) in the municipality, town or city where the person is thought to reside. More and more municipalities are offering the option of obtaining the information electronically via the Internet.

There is a fee for the register excerpt. The level of the fee varies from one federal state to another.

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

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

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

#### **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?**

In Germany, the process of ascertaining an address is not usually regarded as a judicial task.

Given that even foreign public authorities and foreign private individuals may obtain a simple register excerpt of their own accord, there is no need to submit a request under 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)?**

The most common type of service encountered in practice is automatic service. This is usually performed by the postal service. The clerk of the court issues a request for service and physically submits the document that is to be served in a sealed envelope together with a ready-to-use pre-printed record of service (Section 176 of the German Code of Civil Procedure). The document is then served by the postal employee. Preferably, the document should be served directly on the addressee, which means that it should be delivered to the addressee in person. This physical delivery can take place anywhere and is not tied to a specific location (Section 177 of the German Code of Civil Procedure).

The addressee referred to above is the person for whom the document is intended, his or her legal representative (Section 170 of the German Code of Civil Procedure), or his or her authorised recipient (Section 171 of the German Code of Civil Procedure).

Once the document has been served, the postal employee completes the pre-printed record of service and immediately sends it back to the registry of the court as proof of service.

If the party is represented by a lawyer, documents are usually served through the lawyer with return confirmation of receipt (Sections 171 and 174 of the German Code of Civil Procedure). On receipt of the document, the lawyer signs the confirmation of receipt and sends it back to the court.

If both parties are represented by lawyers, one attorney can serve documents through the other (Section 195 of the German Code of Civil Procedure). This also applies to briefs that are to be served automatically, provided that the opponent does not have to be informed of a court order at the same time. The brief must include a declaration stating that it is being served from one lawyer to another. Once again, it is the signed and dated confirmation of receipt that provides proof of service.

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

Legal documents associated with all civil proceedings can be served electronically. For the purpose of transfer, the document must be provided with a legitimate electronic signature and protected against unauthorised access by third parties. The documents may also be transferred using a De-Mail secure email system within the meaning of Section 1 of the De-Mail Act. Electronic documents must be delivered via a secure transmission channel (De-Mail, special electronic mailboxes) and protected against unauthorised access by third parties. Every lawyer, notary, court-appointed enforcement officer and tax consultant, and any other person who, due to their job, is expected to be exceedingly reliable, as well as every public law authority, body or institution is required to open a secure transmission route for electronically served documents. Documents may only be served electronically on other parties to the proceedings if they have expressly agreed to the transfer of electronic documents.

Documents may also be served by fax on lawyers, notaries, court-appointed enforcement officers, tax consultants, other persons expected to be extremely reliable by the nature of their profession, public law authorities, bodies and institutions.

As proof of service, the confirmation of receipt that has been signed and dated by the addressee is sufficient. The confirmation of receipt can be returned to the court on a preprinted paper form, by fax or as an electronic document.

Service by SMS is not permitted.

#### **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)?**

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

##### **Substituted service on a 'substitute recipient'**

The first option is substituted service at the residence, at business premises, and at institutions (Section 178 of the German Code of Civil Procedure).

According to this procedure, substituted service may be performed if the person on whom documents are to be served is not present at his or her residence, business premises, or an institution in which he or she is a resident.

Substituted service is performed by physically delivering the document to one of the following people:

At the residence of the addressee: an adult family member, a person employed by the family or an adult housemate who resides permanently at the accommodation

At the business premises of the addressee: a person employed there

At institutions: the head of the institution or a duly authorised representative.

However, substituted service on the persons named above is not permitted if the person concerned is involved in the legal dispute as an opponent of the person on whom documents are to be served.

##### **Substituted service by placement in the letterbox**

If substituted service at the residence or business premises cannot be performed, substituted service by placement in the letterbox is possible instead (Section 180 of the German Code of Civil Procedure). In this case, the document must be placed in a letterbox belonging to the residence or the business premises.

##### **Substituted service by deposit of the documents**

If it is not possible to perform substituted service at the addressee's place of residence or to perform substituted service by placement in the letterbox, substituted service may be achieved by depositing the document with the court (Section 181 of the German Code of Civil Procedure).

The document can either be deposited with the court registry of the local court (*Amtsgericht*) having jurisdiction for the place of service or, if the postal service has been entrusted with serving the document, at a location determined by the postal service at the place of service or at the location of the local court.

A written notification of such deposit must be submitted to the addressee in the standard manner for delivering regular letters. If this is not possible, the written notification must be affixed to the door of the residence, the business premises, or the institution.

The deposited document must be kept available for collection for three months. If it has not been collected by the end of this period, it has to be returned to the sender.

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

In the case of substituted service at the residence, at business premises, and at institutions (Section 178 of the German Code of Civil Procedure), service is performed by physically delivering the document to the substitute person.

In the case of substituted service by placement in the letterbox (Section 180 of the German Code of Civil Procedure), the document is deemed to have been served as soon as it is placed there.

In the case of substituted service by deposit of the documents (Section 181 of the German Code of Civil Procedure), the document is deemed to have been served as soon as the written notification is submitted.

#### **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?**

Not only must the documents be deposited, but a written notification must also be submitted at the address of the person on whom the documents are to be served, using the designated form and in the standard manner for delivering regular letters. If this is not possible, it must be affixed to the door of the residence, the business premises or the institution.

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

If the addressee is at home but refuses to accept the document, a distinction must be drawn between the following scenarios:

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

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

### **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?**

According to the case-law of the European Court of Justice, in its judgment of 2 March 2017 in Case C-354/15 – Henderson, service under Article 14 of the Regulation on the Service of Documents is also effected by any transfer to a third party if it takes place in the addressee's home. This applies only to adults who are in the home of the intended recipient when service takes place, regardless of whether they are family members living at the same address or persons employed by the party concerned. According to Article 18-003 No 4.1. of the supplementary provisions for letter post of the Universal Postal Union Convention, the signature on a return receipt may also be obtained from another person who is authorised to accept delivery of the mail on the basis of national regulations. (As a designated operator for international postal traffic, Deutsche Post AG refers to this person as a 'substitute recipient' ('*Ersatzempfänger*'), as defined by its general terms and conditions for national letter post (*Allgemeine Geschäftsbedingungen Brief National*.) In addition, substitute recipients can take the form of the persons specified in Section 178 of the German Code of Civil Procedure as listed under 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?**

According to Article 19-104 No 5.3. of the supplementary provisions for letter post of the Universal Postal Union Convention, the postal service must keep the mail ready for collection if the attempt to serve the documents fails. Deutsche Post AG will only deliver registered mail to the addressee in person or to someone who has been authorised by the addressee in writing to accept the delivery. In its judgment of 2 March 2017, Case C-354/15 – Henderson, the European Court of Justice states that a service under Article 14 of the Regulation on the Service of Documents can only be regarded as effected if the acknowledgement of receipt or an equivalent has been completed by the addressee or a substitute recipient. If the document sent is not collected, therefore, service is considered not to have taken place.

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

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

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

Yes. To prove that the documents have been served, a record of service must be made on the pre-printed form provided for this purpose and immediately returned to the registry of the court (Section 182 of the German Code of Civil Procedure). This contains all the details required for proof of service, including in particular:

The name of the person on whom the document is to be served

The name of the person to whom the document has been physically delivered

The place, date and – at the order of the court – the time of service

Surname, forenames and signature of the delivery agent and, where applicable, the details of the commissioned company or requested authority

In the event of service at the instigation of the parties, the record of service must be sent to the party on whose behalf the documents have been served (Section 193(3) of the German Code of Civil Procedure).

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

In certain legal scenarios, no record of service is required as proof.

When a document is served by physically delivering it to the official premises of the court, a note on the document and in the files to indicate that it has been served and when this took place constitutes proof of service (Section 173, second sentence of the German Code of Civil Procedure).

When a document is served on a lawyer, a confirmation of receipt from the lawyer constitutes sufficient proof (Section 174(1) and (4) of the German Code of Civil Procedure).

In the event of service by registered mail with return receipt requested, the return receipt constitutes sufficient proof (Section 175, second sentence of the German Code of Civil Procedure).

The same applies when documents are served abroad using the 'by registered mail, acknowledgement of receipt' procedure (Section 183(2), second sentence point 1, (5), first sentence of the German Code of Civil Procedure).

Where documents are served abroad with assistance from authorities of the foreign state or the consular mission of the Federal Republic of Germany (*konsularische Vertretung des Bundes*) or the Federal Foreign Office (*Auswärtiges Amt*), confirmation by the requested authority constitutes proof of service (Section 183(2), second sentence, (5), second sentence of the German Code of Civil Procedure).

**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?**

As a basic principle, service is rendered invalid if it fails to adhere to the legally prescribed form and thereby breaches fundamental regulations.

The law allows for exceptions to this principle which take account of the purpose of service, namely to prove whether the addressee received the document to be served and, if so, when.

If it is not possible to prove that a document has been served in due form or if the document has been received in violation of mandatory regulations governing service of documents, the document is deemed to have been served at the point in time when the document was actually received by the person to whom service of the document was or could be legally addressed (Section 189 of the German Code of Civil Procedure). In this case, the defect in the service is remedied. The court has no discretionary powers over the remedying of service regulation breaches. Even in cases where service triggers a fixed deadline, i.e. a non-negotiable deadline, a remedy may still be effected if the aforementioned conditions apply.

If the addressee does not receive the document to be served, two different scenarios are possible:

If service violates fundamental regulations, there can be no remedy. This means that the service procedure is invalid and must be performed again from the beginning.

If service has been performed in accordance with the legal regulations, notice is assumed to have been given by virtue of the substituted service provisions. Nevertheless, if – through no fault of his or her own – a party remains unaware that documents have been served, restoration of the status quo ante is possible (Section 230 et seq. of the German Code of Civil Procedure.)

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

A distinction must be drawn between automatic service and service at the instigation of the parties.

In the context of certain proceedings, where the fees are based on the amount in dispute, the procedural fee covers the first ten times that documents are served. In the event of documents being served subsequently and whenever documents are served in the context of other proceedings, a flat-rate charge of EUR 3.50 will be levied each time documents are served with a record of service, by registered mail with return receipt requested or by an employee of the judiciary. Service at the instigation of the parties is performed by the court-appointed enforcement officer. To arrange service by handing the document(s) over to the postal service, the court-appointed enforcement officer will charge a fee of EUR 3.00. In addition to this, charges are payable to cover the cost of the necessary photocopies and postage. If a document has been entrusted to the court-appointed enforcement officer for the purpose of serving it and it has to be certified, a special fee equal to the flat-rate document fee is payable. This is EUR 0.50 per page for the first fifty pages and EUR 0.15 for each subsequent page.

If the document is served by the court-appointed enforcement officer in person, the fee is EUR 10.00. In this case, the court-appointed enforcement officer must also be paid travelling expenses of between EUR 3.25 and EUR 16.25, depending on the distance to be covered in order to reach the addressee.

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