

### 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' means transmitting documents.

The specific rules governing the service of documents determine the necessary conditions for making the submission of judicial or extrajudicial documents reliable and therefore to make clear the time, place, manner, and person to which the document has been submitted, both for the proceedings (judicial documents) and outside the framework of the proceedings (extrajudicial documents).

It should be noted that the case-law of the Spanish Constitutional Court establishes that service of documents constitutes a necessary preliminary guarantee without which other constitutional guarantees cannot come into effect (Constitutional Court judgment STC 1/1993 of 13 January 1993).

For their part, courts must ensure that documents are effectively served; if a judicial decision is adopted without one of the parties having been heard, this would constitute infringement of the adversarial principle and result in that party being left without a proper defence if it is found that the decision was indeed adopted without one of the parties having been heard (Constitutional Court judgment STC 54/2010 of 4 October 2010).

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

Pursuant to Article 149 of the Law on Civil Procedure (*Ley de Enjuiciamiento Civil*), procedural decisions adopted in judicial proceedings must be served formally by the Judicial Administration Support Bureaux (*oficinas judiciales*), i.e. by Courts and Shared Centres for Transmitting Documents (*Servicios Comunes Procesales de Actos de Comunicación*).

Judicial documents consist of:

1. Notifications, where these are intended to give notice of a decision or procedure.
2. Orders to act, requiring the addressee to appear in court and take some form of action within a deadline.
3. Summonses, specifying a place, date and time at which the addressee must appear in court and take some form of action.
4. Injunctions, ordering the addressee, in accordance with the law, to do or refrain from doing something.
5. Warrants, requiring the release of certificates or evidence or the performance of any other act which registrars, notaries or judicial officials are competent to perform.
6. Memoranda, for the purposes of communication with non-judicial authorities and officials.

Any document admitted by the court during the proceedings, whether provided by the parties, by third parties at the request of the court or produced by experts appointed by the court, must be served formally.

Extrajudicial documents (for example, notarial acts) as defined by the Court of Justice of the European Union in Case C-223/14 (Tecom Mican) are also served formally, even in the absence of judicial proceedings, as the Court of Justice held in Case C-14/08 (Roda Golf).

In summary, the documents that judicial bodies use to communicate with the parties to a case and with third parties can be classified as follows:

- Communication with the parties to a case: notifications, orders to act, summonses and injunctions.
- Communication with natural or legal persons not involved in the proceedings: summonses and injunctions.
- Communication with notaries, registrars or officials working for the Courts Service: warrants.
- Communication with non-judicial authorities and other officials: memoranda.

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

Under Article 152 of the Law on Civil Procedure, documents are served under the direction of the Court Registrar (*Letrado de la Administración de Justicia*) (known as the '*Secretario Judicial*' until 2015) attached to each court, who is responsible for the proper organisation of process serving.

Documents will be served by a bailiff or by the legal representative of the person requesting service, who will bear the costs.

Documents will be deemed lawfully served where the record of service contains adequate evidence that the documents in question were handed over in person or delivered to the addressee's home address. The legal representative is responsible for confirming the identity and status of the person who takes receipt of the document being served, and this must be recorded by their signing a copy of the document and indicating the date of service.

### 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?

No. The requesting authority must use the form provided for by Regulation (EC) 1206/2001 to make a request to establish the addressee's whereabouts.

#### 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?

Spain has no open register of this kind. However, Spanish courts do have available to them a number of restricted-access databases (the Punto Neutro Judicial network) which the Spanish legal authorities may use, where there is due cause, in order to make address and property inquiries. Thus, if the judicial authority does not know the address of the natural or legal person on whom the document is to be served, it must ask for an inquiry to be made by means of a search of the databases available to the courts.

To conduct the search, the authority will need the Spanish national identity card or tax identification details of the person to whom the inquiry relates, or their identification number as a foreign national residing in Spain. If the person concerned does not have such a Spanish identity document, the authority will need to provide other details in addition to the person's name and surname, such as their passport number, date of birth or nationality, since, without these details, the search may not yield any results. No fee is payable.

In addition, the parties can use other public registers to obtain address details. Access to these registers is subject to a fee which will vary according to the information sought.

#### 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?

Once the competent Spanish authority has received a Form A, as set out in Council Regulation (EC) No 1206/2001 of 28 May 2001, requesting a search for a person's current address, the Judicial Administration Support Bureau will consult the databases containing personal and business address details. If that form comes with a request for documents to be served under Regulation (EC) No 1393/2007 and the address inquiry shows that the Spanish authority does not have territorial jurisdiction to serve the documents in question, under Article 6(4) of the Regulation it must forward the request to the competent receiving agency and inform the transmitting agency accordingly using the standard form.

**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)?**

Pursuant to Article 152 of the Law on Civil Procedure, under the direction of the Court Registrar (*Letrado de la Administración de Justicia*), documents may be served in any of the following ways:

1. Via a legal representative (*procurador*), in the case of documents addressed to persons represented by that representative in the proceedings.
2. By post, telegram, e-mail or any other electronic means providing a reliable record of the receipt, date and time of receipt and content of the documents served.
3. By personal delivery to the addressee of a verbatim copy of the decision to be notified to them, the injunction issued by the court or Court Registrar, or the summons or order to act.
4. In any event, by staff from the Spanish Courts Service (*Administración de Justicia*), using remote means, in matters involving the Public Prosecutor's Office (*Ministerio Fiscal*), the State Legal Service (*Abogacía del Estado*), the Legal Advisers to the Spanish Parliament and Legislative Assemblies (*Letrados de las Cortes Generales y de las Asambleas Legislativas*), or the Legal Services of the Department of Social Security (*Servicio Jurídico de la Administración de la Seguridad Social*), the other government departments of the Autonomous Communities or the local authorities, if the addressee has not appointed a legal representative.

Documents will be deemed lawfully served where the record of service contains adequate evidence that the documents in question were delivered to the person concerned at their home address, to the e-mail address authorised for use as such, via an electronic notifications portal or by any remote or electronic means chosen by the addressee.

**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.)?**

Electronic judicial files are being introduced in Spain on the basis of Law 18/2011 of 5 July 2011 regulating the use of information and communication technology in the Courts Service. The Law on Civil Procedure was amended by Law No 42/2015 of 5 October 2015, making it mandatory, from 1 January 2016 onwards, for all professionals working in the justice sector to use remote systems to serve documents relating to proceedings. These systems have developed into the LexNET platform, the use of which is governed by Royal Decree No 1065/2015 of 27 November 2015 within the territorial jurisdiction of the Ministry of Justice.

To implement this, interested parties may sign up to notification procedures in Electronic Courthouses (*Sedes Judiciales Electrónicas*).

Under Article 273(3) of the Law on Civil Procedure, all justice-sector professionals must use the remote or electronic systems in place in the Courts Service to submit documents (initiating documents or otherwise), and other documents, in a way that guarantees the authenticity of the submission and ensures there is a reliable and complete record of the submission and receipt of those documents, as well as the date of submission and receipt. In any case, at least the following entities must use electronic means when communicating with the Courts Service:

- a) Legal persons.
- b) Entities without legal personality.
- c) Professionals working in areas requiring registration in a professional organisation for any formalities and actions that they carry out with the Courts Service when exercising their professional activities.
- d) Notaries and registrars.
- e) Representatives of an interested party that must have electronic dealings with the Courts Service.
- f) Public administration officials for any actions and steps that they carry out because of their position.

**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)?**

Where a copy of the decision or summons has to be sent by registered post or telegram with acknowledgement of receipt, or by any other similar means making it possible to place on file a reliable record of receipt of service, the date of receipt and the content of the document served, the Court Registrar must enter in the case file a statement giving details on the document's dispatch and its contents, and attach to the case file, where appropriate, the acknowledgement of receipt or the means by which receipt was recorded or the documentation provided by the legal representative to show that they have effected service.

Service by (public) notice may be authorised in Spain only by the judicial authority responsible for ruling on the action in the main proceedings, on the assumption that attempts to effect service at the addresses generated by the searches for the whereabouts of the person on whom the documents are to be served have failed (Article 164 of the Law on Civil Procedure). Consequently, the Court Registrar, as receiving agency for a request for service under Regulation (EC) 1393/2007, may not authorise service by (public) notice as their role is not to hear the action in the main proceedings but merely to provide judicial assistance.

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

Documents will be deemed served provided that the requirements laid down by law for each type of service have been fulfilled.

In any event, the methods used will make it possible to enter in the case file a reliable record of receipt of the document served, the date and time of its receipt and its contents.

Where a copy of the decision or summons has to be sent by registered post or telegram with acknowledgement of receipt, or by any other similar means making it possible to place on file a reliable record of receipt of service, the date of receipt and the content of the document served, the Court Registrar must enter in the case file a statement giving details on the document's dispatch and its contents, and attach to the case file, where appropriate, the acknowledgement of receipt or the means by which receipt was recorded or the documentation provided by the legal representative to show that they have effected service.

**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?**

If the notification or document cannot be delivered by post, the postal service will leave a note advising the addressee that the letter or document has been sent to them and that they may collect it within a specified period from a designated post office.

An attempt may also have been made to effect service by officials from the Judicial Administration Support Bureau, in which case a note specifying the period within which the document may be collected from the court will be put through the addressee's letter box.

Where the addressee is resident in the judicial district in which the court is situated, and the documents in question are not essential to representation by counsel or self-representation in the proceedings, the addressee may be sent, by any of the means referred to in the first paragraph, a notice of order to act requiring them to appear in that court for the purposes of the notification of a judicial decision or other procedural measure, the issue of an injunction or the disclosure of pleadings (Article 160(3) of the Law on Civil Procedure).

The notice will explain in due detail why the addressee is required to appear in court, by specifying the proceedings and the case to which the order to act relates and alerting the addressee to the fact that, should they fail to appear without just cause within the period indicated, the transmission or disclosure will be deemed to have been effected (Article 160(3) of the Law on Civil Procedure).

**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 to accept service without good reason, the documents will be deemed to have been served on the addressee and will produce the same effects as they would have if they had been served, it being understood that the various procedural time-limits will begin to run from the day following the refusal (Article 161(2) of the Law on 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?**

By law, postal items, depending on their type, must either be delivered to the addressee or a person authorised by them or else be deposited in post office boxes or put through residential letter boxes. A person will be deemed to be authorised by the addressee to take delivery of postal items at the latter's home address provided that they can prove their identity and assume responsibility for the items delivered, unless they expressly object to doing so (Article 24 of Law No 43/2010 of 30 December 2010 on the universal postal service, users' rights and the postal market).

**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 law must lay down rules applicable to situations in which postal items cannot, for any reason whatsoever, be delivered to the addressee or returned to the sender. Such rules will include those governing the procedure for ascertaining the addressee's address, the origin and destination of items, the hearing or summons to court of the senders of items, and the temporary storage, recovery and destruction of items.

**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 postal worker will leave a note informing the addressee that there is a letter to be collected from the post office indicated and within the time-limit given. Failure to collect the item within the specified time-limit will be recorded and the item will be returned to the sender.

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

The designated postal service operator will be presumed to be acting honestly and reliably in the distribution, delivery and receipt of process from administrative and judicial bodies, or in the event of refusal to accept, or impossibility of effecting, the service of such process, whether by physical or remote means.

Personal service by court staff will be documented in a written record in which the court official will indicate the outcome of the act of service. If that service can be effected on the addressee, the record of service will include the addressee's signature or an indication of their refusal to sign for receipt, together with a note stating that service is deemed to have been effected (see question 7.4; Article 161(3) of the Law on Civil Procedure).

Under Article 161(3) of the Law on Civil Procedure, if the address where an attempt is made to serve process is the addressee's home address according to the municipal register of addresses, for tax purposes or according to any other official register or publication of a trade association, or it is residential accommodation or any other premises rented to the defendant, and the addressee cannot be found there, process may be served, in a sealed envelope, on any employee or family member or person with whom they cohabit, over the age of 14, who is at that address, or on the caretaker of the building, should there be one, in any of which events the process server must inform the recipient that they are obliged to hand over the copy of the decision or summons to the person to whom it is addressed, or to notify that person of its existence, if they know the addressee's whereabouts, and must in any event alert the recipient to their responsibility to protect the addressee's data.

If the document is addressed to the addressee's place of non-casual work, it will, if the addressee is absent, be served on a person declaring that he knows the addressee or, if there is a unit responsible for taking receipt of documents or objects, on the person in charge of that unit, in which case the process server must bring to the recipient's notice the points mentioned in the preceding paragraph.

The name of the addressee of the document and the date and time at which the addressee was sought but found not to be at home will be entered in the record of service, as will the name of the person who takes receipt of the copy of the decision or summons and the latter's relationship with the addressee, any document served in this way being fully effective.

**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?**

Service not effected in accordance with the law will be invalid, since the person concerned may be left without a proper defence. According to CJEU case law (C-354/15 Henderson), if any notifications are not accompanied by a translation either in a language which that defendant understands, or in the official language of the requested Member State or, where there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be effected, or if the standard form set out in Annex II to that Regulation is not transmitted to the defendant, these notifications must be remedied in accordance with that Regulation by providing the interested party with the standard form set out in Annex II to that Regulation.

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

Where service is effected by a court, the Judicial Administration Support Bureau or the Shared Process Centre, the cost of service will be borne by the relevant judicial body and no fee will be payable by the requester.

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