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portugalščina

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Service of documents: official transmission of legal documents

Portugalska

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 act by which a person (defendant, respondent, judgment debtor) is informed that a legal action has been brought against them. It is used to summon them for the first time in order to defend themselves. Service is also used for the initial summons of a person with an interest in the proceedings who was not initially involved in them to appear on the side of the applicant or the defendant.

Notification is used to summon a person to appear in court or to inform them of a fact.

There are specific rules in the Portuguese Civil Procedure Code governing how service and notification should be effected, and specifying the information to be transmitted in relation to the addressees, the nature of the facts to be transmitted and the purpose of transmission. The reason for these rules is to ensure that the communication actually reaches addressee and, if they are a party to the proceedings, to guarantee the right of defence.

2 Which documents need to be served formally?

The following information is served:

- The duplicate of the initial petition with which the applicant brought the action and copies of the accompanying documents, which are delivered to the defendant
- Information that the person has been summoned for that action
- Indication of the court, division and section in which the proceedings are being heard, the deadline for submitting a defence, and of the need to appoint a legal representative, if this is mandatory
- Warning of the consequences of failure to defend the action

The following information is notified:

- Court orders and judgments
- Statements of case submitted by the parties, applications and documents included in the case file and the deadline for the parties to exercise their right to adversarial proceedings
- Summons of a party, witness, expert, technical adviser or lawyer to be present in **judicial proceedings**;
- Requests for expertise, other evidence or information to entities that have a duty to cooperate with the court.

3 Who is responsible for serving a document?

In proceedings under way service and notification may generally be effected by judicial officers, enforcement officers or by the legal representative of one of the parties, depending on the cases indicated in the answer to question 5.

Service and notification may be effected by notaries in probate proceedings.

In certain cases provided for in the New Urban Lease Law (Novo Regime do Arrendamento Urbano), notification may be effected by lawyers, solicitors or enforcement officers before an action has even been brought.

Service and notification may be effected by civil registrars in voluntary jurisdiction proceedings that are heard before the Civil Registrar, particularly in family and juvenile matters.

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?**

Under Portuguese law it is the duty of judicial officers to carry out on their own initiative all requisite steps to serve notice on a person.

If they are unable to serve notice, judicial officers consult information that is electronically available in other government departments in order to find out if there has been a change of residence and establish the current address of the person to be served.

The same rule applies in certain cases expressly provided for by law for the notification of the parties or their representatives.

Enforcement officers also have access to certain databases of government departments to enable them to check the tax residence of judgment debtors, for example, in enforcement proceedings.

In all cases, access to the databases requires prior authorisation from the court.

Under Portuguese law, whenever a party justifiably claims to have serious difficulty in obtaining information – particularly regarding a change of residence of the person to be served or notified – something which impacts on the effective exercise of a procedural right, duty or claim, the court may order any persons or entities to cooperate in order to obtain this information. Regardless of whether or not they are parties to the proceedings, they have a duty to cooperate with the court by providing the information ordered by it.

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. This possibility exists only for the national authorities and entities mentioned in the answer to question 4.1.

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?

The courts consult the databases of other government departments and, if this proves insufficient, order other persons, entities or even the police authorities to gather and/or provide information on the current address of a person, as mentioned in the answer to question 4.1.

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 various ways in which a document may be served or notified are indicated here. The cases in which service and notification are used have already been indicated in the answer to question 1.

Service

A document may be served on a **person** or served **by publication**. Either of these forms of service may be addressed to **natural** or **legal persons**. The rules on the service of natural persons apply, *mutatis mutandis*, to legal persons, unless some aspect of the service of legal persons is specifically regulated, in which case these specific regulations apply.

Service on persons

In practice, a document may be served on a person:

By electronic data transmission e.g. to the Public Prosecutor's Office when it is the principal party in the action

By post, in the form of a letter with acknowledgement of receipt addressed to the residence or workplace of the person to be served, in the case of a natural person, or to the office registered in the National Register of Legal Persons, in the case of a legal person

By personal contact of the enforcement officer with the person to be served, when service by post proves impossible or the applicant states that this is their wish in their initial petition

By personal contact of the judicial officer with the person to be served, if the applicant states that this is their wish in the initial petition and pays a fee for it

By a legal representative:

Legal representatives must immediately state in the initial petition that they will effect service themselves, by way of another legal representative or by way of a solicitor

Legal representatives may request service at a later date if any other form of service proves impossible

The rules on service by enforcement officers or judicial officers apply to service by legal representatives

Service on persons may be effected:

On the person to be served;

On a person other than the person to be served who is charged with transmitting the content of the document to them, when the law so provides;

On the legal representative of the person to be served when granted power of attorney less than four years ago, which gives them special powers to receive the document served;

On a temporary guardian of the person to be served appointed by the judge when the enforcement officer or judicial officer is aware that the person to be served is unable to receive the document as a result of their legal incapacity (known mental disorder or other temporary or permanent legal incapacity).

Service by publication

In practice, service by publication may take place:

when **the person to be served is missing** and cannot be found;

when **the identity of the persons** to be served is unknown.

Service by publication is effected by:

posting a notice on the door of the last residence or registered office in Portugal of the person to be served;

followed by the publication of a notice on a publicly accessible web page provided for by law.

Notification

During proceedings notification may take place in one of the following ways:

Notifications to parties who appoint a legal representative and/or solicitor are always made to the latter, as described in the answer to question 6

Notifications that are intended to summon a party to appear in person are sent to the party by recorded postal delivery (in addition to the legal representative being notified as described in the answer to question 6)

Notifications to parties who do not appoint a legal representative are sent to the party themselves by registered letter addressed to their residence, registered office or place chosen for this purpose

In addition, notifications of final decisions are always made to the parties by registered letter addressed to their residence, registered office or place chosen for this purpose

Notifications which are intended to summon witnesses, experts or other persons with intermittent involvement in the proceedings to attend court are made by recorded postal delivery;

Notifications are not sent when a party undertakes to produce a person, but the party may request that the court registry sends them the notices concerning the persons they undertake to produce

Final decisions handed down in any case are always notified to the Public Prosecutor's Office as described in the answer to question 6

As explained in the answer to question 6, the Public Prosecutor's Office is notified of interim rulings that may give rise to the lodging of appeals required by law

Communications and invitations sent in a procedural document to interested parties present are deemed to be notifications, provided they are documented and ordered by the presiding entity

Notifications between legal representatives are made by the legal representatives themselves, by way of electronic data transfer or as otherwise indicated in the answer to question 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.)?

Yes, the following are preferably carried out **by electronic data transmission** through the courts' computer system:

Service of documents to the Public Prosecutor's Office

Notifications to the Public Prosecutor's Office, lawyers, solicitors and enforcement officers, insolvency administrators/court-appointed receivers (in insolvency, payment agreement or revitalisation proceedings) and notaries (in inventory proceedings)

The submission to the court of procedural documents and documents by lawyers, solicitors and enforcement officers, insolvency administrators and notaries

Proof of prior payment of the court fee (which is part of the legal costs)

Proof of or application for legal aid

When the size of the procedural document to be submitted is incompatible with electronic transmission, or the documents to be sent exist only on physical media, or the case does not require a legal representative to be appointed and the party has not appointed one, or in the case of a justifiable reason:

Procedural documents may be delivered to the court registry, sent by mail or by fax

Procedural documents may be notified by record of delivery, by mail or by fax

In addition, the court services may:

Transmit any messages by post, fax or electronic means

Telegrams, telephone communication or other similar means of telecommunications may be used in urgent cases

Telephone communication is always documented in the case files and followed by confirmation by any written means

In relation to the parties to the proceedings, telephone communication may be used only to transmit a summons or cancel a summons for acts of legal procedure

These rules apply in legal proceedings of a civil or commercial nature heard in the courts of first instance. They also apply in certain cases for proceedings before notaries (e.g. inheritance) or civil registrars (e.g. family matters where there is an agreement).

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)?

In addition, Portuguese law also provides for **service of documents at a set time** as follows:

For service on a person if the enforcement officer or judicial officer finds that the person to be served resides or works in the specified location but is unable to serve them because they cannot be found

A notice should then be left indicating the time at which service will be effected;

The notice may be delivered to the person who is in the best position to pass it on to the person to be served or, when this is not possible, it must be posted in the most appropriate location

On the day and time specified in the notice, the enforcement officer or judicial officer serves the document on the person to be served or, if they are unable to find them, a third party who is in the best position to transmit the letter to the person to be served and who is tasked with doing so

If it is not possible to obtain the cooperation of third parties, service is effected by posting a notice, in the most suitable location and in the presence of two witnesses, indicating that the person has been served, which court the proceedings are being held in and that the duplicate and documents are available to the person to be served at the court registry

N.B.

In cases where:

(i) the acknowledgement of receipt is not signed by the person to be served (postal service);

(ii) service on a person at a set time is effected on a third person;

(iii) or service on a person at a set time is effected by posting a notice of service at the location

the enforcement officer or court registry must always send **a registered letter** to the person to be served, within two business days, to notify them, as appropriate, of:

the date and the way in which the service was deemed to be effected;

the deadline for the defence and the consequences of failure to defend the action;

the location of the duplicate of the writ of summons and the documents to be served;

the identity of the person on whom service was effected.

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

Service by post is deemed to be effected on the day when the acknowledgement of receipt is shown to be signed, either by the person to be served or by a third person (assuming in this case that the third person delivered the letter to the person to be served, unless proven otherwise).

Service on a person by enforcement officers, judicial officers and legal representatives is deemed to be effected on the date when the record of service is drawn up.

Service by posting a notice of service is deemed to be effected on the date indicated therein.

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?

In the case of service or notification by registered letter – with or without acknowledgement of receipt – a delivery notice is left in the mailbox if the postman is unable to find anyone at the address indicated.

The delivery notice informs the addressee that the letter has been left at the post office, indicating the address, opening hours and deadline for its collection.

If the letter is not collected within the period specified (and there is no request to extend that period or resend the letter to another address), it is returned to the sender.

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 service is effected by post and there is evidence of refusal to receive the letter or to sign the acknowledgement of receipt, service is deemed to be effected in the following manner and circumstances:

By a notice drawn up by the postman certifying the refusal by the natural person, the representative of the legal person, or an employee thereof, to sign the acknowledgement of receipt or to receive the letter

In cases where the parties are permitted to agree on the address for service:

(i) by leaving a second registered letter with acknowledgement of receipt at the agreed address, when the first registered letter with acknowledgement of receipt sent to that address is returned or

(ii) by certificate, drawn up by the postman, of refusal by the person to be served to receive the letter or to sign the acknowledgement of receipt, when it is sent to the agreed address

When service is effected personally by the enforcement officer or judicial officer, and there is evidence of refusal by the person to be served to sign the certificate of service or to receive the duplicate, service is considered to be effected, in which case:

The enforcement officer or judicial officer informs the person to be served that the duplicate is at their disposal in the court registry and refers to this information and the refusal by the person to be served to receive it in the certificate of service

In addition, the registry notifies the person to be served by registered letter indicating once again that the duplicate of the initial petition and accompanying documents are at their disposal in the registry

Service is deemed not to be effected only if the refusal is legitimate. Refusal is legitimate when the person to be served cannot be found because they do not reside or are not based at the address indicated, or if a third party states that they are not in a position to deliver the letter.

The same rules apply in certain cases where the law provides that **personal notification** of the parties or their representatives must take place with the formalities of service.

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?

When service or notification by post, with acknowledgement of receipt, originates from abroad, the Portuguese postal services may deliver the letter and documents to the person to be served or a third party at the same address who states that they are in a position to hand over the letter to the addressee.

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?

See answer to question 7.3.

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?

In principle, the addressee has **six business days** to collect the documents from the post office.

The addressee is informed of this period and the fact that the documents can be collected at the post office by way of a **delivery notice** that the postal service leaves in the mailbox whenever the postman does not find anyone at home.

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

Yes, in the case of service, the acknowledgement of receipt, the certificate of service or the notice of service are written proof that service has been effected. In the case of notification, the recording of the acknowledgement, the recording of the letter or the file or record drawn up in the proceedings are written proof that notification was effected.

In the case of service or notification by electronic data transmission, the courts' computer system certifies the date and time of issue.

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?

Failure of service is a major deficiency that renders invalid the entire procedure from, but not including, the initial petition.

Failure of service is understood to occur in the following cases:

complete omission of service;

error in identifying the person to be served;

improper service by publication;

service effected following the death of the natural person or termination of the legal person to be served;

proof that the addressee of the service was not made aware of the document for reasons not attributable to them.

This invalidity is deemed to be remedied only if the defendant or the Public Prosecutor's Office (where it is the principal party) acts in proceedings without immediately objecting to the failure of service.

Outside of the abovementioned cases, the omission of any act or formality required by law regarding service or notification constitutes a simple irregularity. If this irregularity is cited or the court becomes aware of it in the course of the procedure, the court will order it to be remedied. In other cases, an irregularity of service or notification renders the act invalid only when the law so declares or when it may influence the examination or decision in the case. In this case, the remaining procedural acts not affected by the invalid act remain valid.

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

Yes, in some cases, detailed below, the cost of service and notification is estimated in UA (Unit of Account). The value of the UA in 2019 was EUR 102.

Thus:

Service and notification of persons by enforcement officers costs 0.5 UA when successful and 0.25 UA when unsuccessful

Service and notification on persons and service and notification by publication effected by judicial officers costs 0.5 UA when successful and nothing when unsuccessful

Transport costs, when the act is effected by a judicial officer, and VAT, when due, may be added to these amounts

Final Note

The information in this form is general in nature, is not exhaustive and does not bind the Contact Point, the European Judicial Network in Civil and Commercial Matters or the courts or any other recipients. Applicable legislation must always be consulted.

Last update: 27/12/2019

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