

Service of Documents

Set of Case Studies¹

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A. Questions

I. Starting scenario

A German court needs to serve a document on three people: A, who lives in Ireland, B, who is domiciled in Denmark, and C, who lives in Poland.

Question 1: Is there any transnational instrument that might be of any help?

Question 2⁺: What if the German court needs to serve the document on D, who lives in the United Kingdom?

II. Case study I

A court of Member State 1 needs to serve a document on the defendant, who lives in Member State 2. At the beginning of the proceedings, the document initiating the proceedings had been properly served on the defendant, and the court had asked the defendant to communicate the address of a representative in Member State 1, who is qualified to receive judicial documents for the defendant. The defendant has, however, not done so. As a consequence, the court would like to apply a procedural rule of its national law which allows the court to refrain from a real service of documents if the defendant living abroad has not indicated the address of a representative in the forum state. Under this rule, the court would be allowed to effect service simply by putting the document into the court file.

Question 1: Is the court authorised to apply this national procedural rule and to effect service by putting the document into the court file?

Question 2: How could the court proceed under the Service Regulation?

Question 3: If the court proceeds with the service according to the Service Regulation, which forms should be used?

III. Case study II

Mr. Who has filed a contract claim in a court of Member State 1. The claim is to be served on the defendant, who lives in Member State 2. In Member State 1, the service of documents is arranged by the court. The claimant asks the court to send the claim, which is formulated in the language of Member State 1, to the defendant by postal services without any translation in order to accelerate the proceedings and to save money. The claimant explains that the defendant is familiar with the language of Member State 1.

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Question 1: How are the interests of the defendant protected?

Question 2⁺: How should the court proceed if the defendant has not been informed about his right to refuse acceptance of the document?

Question 3: The defendant, who is 30 years old, refuses to accept the document ‘because he does not understand its wording’. What are the legal consequences if the entire contract negotiations had been conducted in the language of Member State 1 and if the defendant had passed 10 years of his life (from the age of 8 to 18) in this Member State?

Question 4⁺: What is the timeframe in which the defendant can exercise the right to refuse?

Question 5: The defendant refuses to accept the document. What are the legal consequences if the court decides that the defendant is not familiar with the language of Member State 1? The claim is composed of one main document and a bundle of additional contract documentation (annex documents).

Question 6⁺: The claimant had filed the claim only a few days before the prescription period expired. On 1st February, the defendant received the claim, but refused to accept it. On 3rd March, the defendant received a translation of the claim. When is the claim considered to be served for calculating the prescription period?

IV. Case study III

A court in Member State 1 needs to serve a document on the defendant, who lives in Member State 2. The court decides to use postal services. The court never receives a receipt of acknowledgement. But the postal service confirms that the letter had been handed out to Mr. Why at the address of the defendant. Mr. Why is the 34-year-old brother of the defendant. He had passed his holidays in the defendant’s house.

Questions: Has service been effected properly under the Service Regulation? Would the Service Regulation allow a default judgment if the defendant never appears in court?

V. Case Study IV⁺

Under the laws of Member State 1, the claimant has to arrange the service of their complaint by requesting a bailiff to effect service. The defendant lives in Member State 2 where the same procedural system applies.

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Question 1: Is the claimant authorised to contact directly a bailiff in Member State 2 in order to arrange service of his claim?

Question 2: Who is considered an ‘applicant’ in the Service Regulation?

Question 3: Who bears the cost for service and/or translation of the documents to be served?

B. Methodological advice

I. General idea and core topics

The idea of this training package is on the one hand to make court staff and bailiffs of the Member States familiar with the European rules on the service of documents abroad. On the other hand, it wants to provide more advanced questions (marked with a '+' sign) to those that already have a basic comprehension of these European rules. These advanced questions offer more in dept discussions about the role of national procedural law in the Service Regulation. The following aspects are the core topics:

1. Scope of application of the Regulation 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents – recast)²
2. General structure of the Service Regulation.
3. Relationship between the Service Regulation, international instruments and the national procedural laws of the Member States.
4. Flexible approach of the Service Regulation comprising different methods of serving documents abroad; relationship between these methods.
5. Protection of the interests of the addressee.
7. Administrative details: How should a national authority proceed in a particular situation? When should a national authority send a request to another Member State? Where can a national authority find the electronic version of the forms needed to formulate a request or an answer to a request? Which language is to be used? Where can a national authority or a private applicant find the institution to which a request for service of documents has to be sent?

II. Additional material

It seems helpful to summarise the key elements of each solution in a PowerPoint Presentation and to provide the participants with further reading recommendations in the language of the seminar.

In any case, all participants need access to the Service Regulation. Experience shows that participants who are not familiar with the instrument are much faster in understanding the structure and content of the instrument if they are provided with a copy of the instrument.

² Official Journal of the European Union, 25.11.2020, L 405/40: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1784&from=EN>.

C. Solutions

I. Starting scenario

In the area of cross-border service of documents, the European legislator adopted the first Service Regulation in 2000 (no. 1348/2000).³ In 2007, the legislator replaced this regulation by the Service Regulation 1393/2007 which was applicable from 13 November 2008. In 2020, the European legislator deemed substantial amendments to the Service Regulation 1393/2007 necessary and made a recast in the interests of clarity. Regulation 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents – recast)⁴ is therefore the current applicable instrument. Service Regulation 2020/1784 is applicable from 1 July 2022⁵ and repealed and replaced the former Service Regulation.⁶ In this document the term ‘Service Regulation’ means the Service Regulation 2020/1784.

Question 1: Article 1.1 states that the Service Regulation ‘applies to cross-border service of judicial and extrajudicial documents in civil and commercial matters’. According to Recital (5) cross-border service means ‘service from one Member State to another Member State’.

- Since both Germany and Poland are Member States, the German court must apply the Service Regulation to serve the document to C, who lives in Poland.
- Recital (47) discusses the position of Ireland. According to the text of the Regulation Ireland has ‘notified [its] wish to take part in the adoption of this Regulation’. This means that the German court must use the Service Regulation to serve the document to A, who lives in Ireland. Why should we examine the position of Ireland, a Member State of the EU? Ireland obtains a particular position in the field of judicial cooperation in civil matters. Ireland has a flexible opt-out from legislation adopted in this area, which allows it to opt in or out of legislation and legislative initiatives on a case-by-case basis (Protocol no. 21 annexed to the Treaties⁷).
- Recital (48) mentions the position of Denmark. It states that ‘Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application’. Denmark has a more rigid opt-out from the area of freedom, security

³ Official Journal of the European Union, 30.06.2000, L 160/37: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32000R1348>.

⁴ Official Journal of the European Union, 25.11.2020, L 405/40: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1784&from=EN>.

⁵ See Art. 37 Service Regulation.

⁶ Recitals (1) and (46) Service Regulation.

⁷ Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice, Official Journal of the European Union, 07.06.2016, C 202/295: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FPRO%2F21>.

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and justice, which means that it does not take part at all in this policy (Protocol no. 22 annexed to the Treaties⁸). However, due to an agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters⁹ and due to an additional notification of Denmark¹⁰, the Service Regulation applies between Denmark and the other EU Member States. Thus, the German court needs to apply the Service Regulation to serve a document to B, who is domiciled in Denmark.

In conclusion, the Service Regulation applies to the cross-border service of judicial and extrajudicial documents in civil and commercial matters between the 27 EU Member States.

Question 2⁺: Recital (47) mentions that the United Kingdom has ‘notified [its] wish to take part in the adoption and application of this Regulation’. Its wording however does not entail that the German court can use the Service Regulation to serve a document to D, living in the UK. The Regulation was drawn up before Brexit. This means that from 31 December 2020 on, service to the UK does not fall within the scope of Service Regulation 2020/1784 or that of its predecessor Service Regulation 1393/2007.

The Hague Convention of 15 November 1965 on the Service abroad of judicial and extrajudicial documents in civil and commercial matters has instead become applicable between the UK and the EU Member States¹¹. All EU Member States are Contracting Parties to this Convention¹².

Between the EU Members States the Service Regulation prevails over other conventions or agreements, such as the Hague Service Convention of 1965 (Article 29.1 Service Regulation).

Exercise: find the Hague Convention of 1965 online. Invite the participants to read both legal texts and to compare them. Open discussion amongst the participants.

⁸ Protocol (No 22) on the position of Denmark, Official Journal of the European Union, 26.10.2012, C 326/299: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FPRO%2F22>.

⁹ Official Journal of the European Union, 17.11.2005, L 300/55: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2005.300.01.0053.01.ENG&toc=OJ:L:2005:300:TOC#L_2005300EN.01005501. This agreement concerns the first Service Regulation 1348/2000.

¹⁰ Official Journal of the European Union, 21.01.2021, L 19/1: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.019.01.0001.01.ENG&toc=OJ%3AL%3A2021%3A019%3AFULL; For the notification for the Service Regulation 1393/2007, see Official Journal of the European Union, 10.12.2008, L 331/21: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2008.331.01.0021.01.ENG&toc=OJ:L:2008:331:TOC.

¹¹ See the Service Section of the Hague Conference on Private International Law: <https://www.hcch.net/en/instruments/conventions/specialised-sections/service>.

¹² Contracting Parties: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>.

II. Case study I

Question 1: This question addresses the issue of the nature of the Service Regulation: is the Service Regulation an instrument of exclusive character or is it a complementary instrument, which the courts can apply to make the proceedings more efficient? If the Regulation is of complementary nature, the national courts would be free to choose whether the service of documents abroad is effected in accordance with the Service Regulation or whether the service will be effected on the basis of their domestic rules of civil procedure.

Article 1.1 Service Regulation, which defines the scope of application, states that ‘this Regulation applies to the cross-border service of judicial and extrajudicial documents in civil or commercial matters.’ Article 1, points 2 and 3, provides two exceptions to the application of the Service Regulation: (1) the Regulation does not apply when the address of the person to be served is not known and (2) the Regulation does not apply to ‘the service of a document in the forum Member State¹³ on a representative authorised by the person to be served, regardless of the place of residence of that person’.

Article 1 follows earlier case law of the Court of Justice of the European Union. The CJEU ruled that these are the only two circumstances in which the Service Regulation does not apply. The Service Regulation is therefore an instrument of exclusive character.

CJEU Case C-325/11, Alder, EU:C:2012:824¹⁴

“It thus follows from a systematic interpretation of the regulation in question that that regulation provides for only two circumstances in which the service of a judicial document between Member States falls outside its scope, namely (i) where the permanent or habitual residence of the addressee is unknown and (ii) where that person has appointed an authorised representative in the Member State where the judicial proceedings are taking place. In other situations, as the Advocate General has noted in point 49 of his Opinion, where the person to be served with the judicial document resides abroad, the service of that document necessarily comes within the scope of Regulation No 1393/2007 and must, therefore, be carried out by the means put in place by the regulation to that end, as provided for by Article 1(1) thereof.”

Recitals (6) and (7) of the Service Regulation confirm this ruling and limit the scope of the exceptions. Recital (6) confirms the application of national procedural law when the party has an authorised representative in the forum Member State. It also states that the Service Regulation must be applied when, next to a domestic service of the document to the appointed representative, the document also should be served according to the forum law in

¹³ Art. 2.1 Service Regulation: ‘forum Member State’ means the Member State in which the judicial proceedings take place.

¹⁴ Repeated in CJEU Case C-519/12, Alpha Bank Cyprus, EU:C:2015:603 and CJEU Case C-25/19, Corporis, EU:C:2020:126.

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another Member State. This means that the service again becomes cross-border, and that the Regulation applies. Recital (7) confirms the exception when the addressee has no known address.¹⁵ However, it also states that ‘where an addressee has no known address for service in the forum Member State but has one or more known addresses for service in one or more other Member States, the document should be transmitted to such other Member State for service under this Regulation. This situation should not be construed as domestic service within the forum Member State. In particular, the document should not be served on the addressee by a fictitious method of service, such as service by posting an announcement on the court notice board or by depositing the document in the court file.’

It follows from these Recitals and the case law of the CJEU that, in the case at hand, the court is not allowed to effect service by putting the document into the court file. The court has to choose one of the methods provided for by the Service Regulation and has to serve the document to the defendant in another Member State.

Question 2: The Service Regulation provides for different methods of service of judicial documents. In Chapter II, Section 1, the Regulation establishes rules for a request for service by a transmitting agency addressed to the competent authority of the Member State where the document is to be served. This is the traditional way of judicial assistance between the Member States. In this scenario, the receiving agency has to effect service in accordance with its own national law (cf. Article 11 Service Regulation).

In Chapter II, Section 2, the Service Regulation provides for alternative methods, first and foremost the service by postal services under Article 18. In this scenario, the sender in Member State 1 can charge a postal service of the forum State to effect the service by registered letter with acknowledgement of receipt or equivalent.

The Regulation itself does not establish any hierarchy between the different methods of service. The national authorities have to decide on the background of the individual circumstances of the case and in accordance with the national procedural law which way to choose. If speediness and certainty need to be combined at a maximum, it might even be an option to combine a direct service by postal services under Article 18 Service Regulation with a request for service under Section 1 Service Regulation.

CJEU Case C-325/11, Alder, EU:C:2012:824

“Regulation No 1393/2007 itself provides, in its Section 2, for other possible means of transmission, but without establishing a hierarchy between them (Case C-473/04 *Plumex* [2006] ECR I-1417, paragraphs 19 to 22), such as the transmission by consular or diplomatic channels, as well as service by diplomatic or consular agents, service by postal services, or

¹⁵ Member States are obliged to help each other in finding the address of the addressee. See Article 7 Service Regulation.

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even directly through the judicial officers, officials or other competent persons of the Member State addressed.”

For the advanced training events: the Service Regulation provides for a new method of service. In Article 19 it includes ‘Electronic service’. The addressee could be served directly by any electronic means of service available under the law of the forum Member State. This means that the addressee is served electronically using qualified electronic registered delivery services within the meaning of Regulation (EU) no 910/2014¹⁶ or, without the use of these systems, by using an email sent to a specified email address. In both cases the addressee should give prior express consent. If the service is done to a specified email address, a proof of receipt of the document by the addressee must be provided.

Every Member State may specify additional conditions under which it will accept electronic service.

Qualified electronic registered delivery services (QERDS) within the meaning of Regulation (EU) No 910/2014, also known as the eIDAS Regulation, refer to secure and reliable electronic delivery services that have been certified by a qualified trust service provider (QTSP). These services are designed to ensure the confidentiality, integrity, and authenticity of electronic communications and documents, and to provide evidence of delivery and receipt.

QERDS enable parties to exchange electronic documents and messages securely and efficiently, and they are recognized throughout the European Union as a valid means of communication in legal proceedings. To be considered a QERDS under the eIDAS Regulation, an electronic delivery service must meet certain technical and legal requirements, including the use of qualified electronic signatures or seals to ensure the authenticity and integrity of the delivery, and the maintenance of an audit trail that provides evidence of the delivery and receipt of the electronic communication or document.

Exercise: to see if a Member State has accepted electronic service and what the imposed conditions are, consult the European e-Justice Portal (https://e-justice.europa.eu/38580/EN/serving_documents_recast?clang=en). Find on the European e-justice Portal the communications made by your own Member State on electronic service. Open discussion amongst the participants.

Question 3: If the court proceeds with the service according to the Service Regulation, the following forms should be used.

¹⁶ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, Official Journal of the European Union, 28.08.2014, L 257/73.

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1. Service by transmission between the transmitting and the receiving agencies

- a) The document to be served, is send by the transmitting agency accompanied by a request for service drawn up using form A. The form is completed in the official language of the Member State addressed (Art. 8.2 Service Regulation).
- b) Upon receipt of the document, the receiving agency sends to the transmitting agency ‘as soon as possible’ an acknowledgment of receipt through the decentralised IT system or ‘as soon as possible and in any event within seven days of receipt’, an acknowledgment using form D (Art. 10.1 Service Regulation).
- c) When the request for service cannot be fulfilled, the receiving agency contacts the transmitting agency ‘without undue delay’ using form E (Art. 10.2 Service Regulation).
- d) When the request for service is manifestly outside the scope of the Service Regulation or ‘where non-compliance with the formal conditions required makes service impossible’, form F is used (Art. 10.3 Service Regulation).
- e) When the request for service falls outside the territorial scope of the receiving agency, the transmitting agency is informed using form G. The receiving agency sends the document ‘without undue delay’ to the receiving agency that has territorial jurisdiction. The latter sends an acknowledgment of receipt using form H to the transmitting agency (Art. 10.4 Service Regulation).
- f) The receiving agency makes sure that the document is served on the addressee. The receiving agency informs the transmitting agency via form K (certificate of service or non-service of documents) or form J (reply to request for information on service or non-service of documents) if the transmitting agency used form I (request for information on service or non-service of document) (Art. 11.2 Service Regulation).
- g) The receiving agency informs the addressee of the right to refuse to accept the document served by enclosing with the document form L (Art. 12.2 Service Regulation).

Exercises:

(1) Find the transmitting and receiving agencies of your own Member State (Art. 4 Service Regulation). Find the electronic version of the forms mentioned.
What if there are multiple official languages in a Member State? Can a Member State accept the form A in another (chosen) language?

European e-Justice Portal to find the transmitting and receiving agencies: https://e-justice.europa.eu/38580/EN/serving_documents_recast?clang=en

The online forms can be found on: https://online-forms.e-justice.europa.eu/online-forms/serving-documents-forms_en

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(2) Find the competent receiving agency for a case where the document is to be served on a person situated in Germany, Swisttal, postal code 53913.

Consult the European e-Justice Portal: https://e-justice.europa.eu/38580/EN/serving_documents_recast?clang=en

Answer:

Amtsgericht Rheinbach,

Schweigelstraße 30

53359 Rheinbach

Phone: +49 2226 801-0

Fax: +49 2226 801-181

Email: poststelle@ag-rheinbach.nrw.de

Website: <http://www.ag-rheinbach.nrw.de>

(3) How should form A be sent to the receiving court?

Check the information provided by Germany at https://e-justice.europa.eu/38580/EN/serving_documents_recast?GERMANY&member=1

Answer: Germany accepts reception by post, private courier service or fax.

Note for the trainers: It might be interesting to analyse this point also for a situation where a document has to be sent to the country of your seminar.

(4) Take the time to fill out one or two online forms with the participants. Are there any practical obstacles in providing all the necessary data?

2. Service by postal services or any other means

a) Articles 16 till 20 Service Regulation do not mention the use of any forms. Nevertheless, Article 12.6 states that the addressee's right to refuse the document served also applies to the other means of transmission and service mentioned in Section 2. This means that even with a postal service the sender should include form L.

CJEU Case C-354/15, Henderson, ECLI:EU:C:2017:157¹⁷

“59. Although the cases giving rise to the judgment of 16 September 2015, Alpha Bank Cyprus (C-519/13, EU:C:2015:603), and to the order of 28 April 2016, Alta Realitat (C-384/14, EU:C:2016:316), concerned a procedure for service of a document under Section 1 of Chapter II of Regulation No 1393/2007, relating to transmission of the document between the transmitting and receiving agencies designated by the Member States, the fact

¹⁷ Repeated in CJEU Case C-346/21, ING Luxembourg SA, ECLI:EU:C:2022:368.

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remains that, as is clear from the wording of Article 8(4) of that regulation¹⁸, those rules apply for the means of service of judicial documents referred to in Section 2 of that chapter. 60. Accordingly, on the one hand, the mandatory nature and systematic use of the standard form set out in Annex II to Regulation No 1393/2007¹⁹ applies to the methods of service referred to in Section 2 of Chapter II of that regulation and, on the other, failure to comply with that obligation does not render invalid either the document to be served or the procedure for service.

61. This is the case, in particular, where, as in the main proceedings, service is effected by the postal services under Article [18] of that regulation, set out in Section 2 of Chapter II thereof.”

For the advanced training events: as the goal is to ensure speedy transmission of documents between Member States, any appropriate modern communication technology should be used to send documents and forms. The conditions are that the integrity and reliability of the documents received are guaranteed. The EU legislator wants to use a decentralised IT system, such as, but not limited to, e-CODEX. The e-CODEX system enables communication between different IT systems used by the Member States, while ensuring secure and reliable transmission of information. This decentralised system enables each Member State to maintain control over its own IT infrastructure, while allowing for interoperability with other Member States. The use of this decentralised IT system between the Member States will become compulsory from 1 May 2025²⁰ on.

III. Case study II

Question 1: Article 12 Service Regulation gives the addressee the right to refuse acceptance of the letter if the documents are written in a language which is neither (a) a language which the addressee understands nor (b) one of the official languages of the place of service and if the documents are not accompanied by a translation into one of these languages. The addressee has to be informed of this right. As mentioned in Case Study I, this requires the receiving agency to enclose form L with the documents to be served.

According to Article 12.2 Service Regulation form L shall be provided to the addressee in the official language of the forum Member State *and* in that of the receiving Member State. Moreover, ‘if there is an indication that the addressee understands an official language of another Member State, form L shall also be provided in that language’.

¹⁸ Art. 12 Service Regulation.

¹⁹ Annex II Service Regulation 1393/2007 is now Form L.

²⁰ Art. 37.2 Service Regulation; Recitals (10) till (16); Commission Implementing Regulation (EU) 2022/423 of 14 March 2022 laying down the technical specifications, measures and other requirements for the implementation of the decentralised IT system referred to in Regulation (EU) 2020/1784 of the European Parliament and of the Council, Official Journal of the European Union, 15.03.2022, L 87/9.

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This mechanism also applies to the direct service of documents by postal services, cf. Article 12.6 Service Regulation.²¹ This means that the court as the sender of the letter should include form L. According to case law of the CJEU, the Service Regulation does not provide for any exceptions to the use of form L.

CJEU Case C-21/17, Catlin Europe SE, ECLI:EU:C:2018:675

“35. For the right of refusal in Article 8(1) of Regulation No 1393/2007²² to be effective, the addressee of the document must be duly informed in advance, in writing, of the existence of the right (judgment of 2 March 2017, Henderson, C-354/15, EU:C:2017:157, paragraph 53 and the case-law cited).

36. In the system established by that regulation, that information is provided to him by means of the standard form in Annex II to the regulation²³ (judgment of 2 March 2017, Henderson, C-354/15, EU:C:2017:157, paragraph 54 and the case-law cited).

37. As regards the scope which must be given to that standard form, the Court has held that Regulation No 1393/2007 does not provide for any exceptions to its use (judgment of 2 March 2017, Henderson, C-354/15, EU:C:2017:157, paragraph 55 and the case-law cited).

38. From that consideration and from the aim pursued by the standard form in Annex II to Regulation No 1393/2007, as described in paragraphs 35 and 36 above, it may be deduced that the authority responsible for service is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept the document, by using systematically for that purpose that standard form (judgment of 2 March 2017, Henderson, C-354/15, EU:C:2017:157, paragraph 56 and the case-law cited).”

Question 2⁺: The Service Regulation does not directly address the situation where the addressee has not been informed about his right to refuse acceptance of the documents. It only states that the addressee should be informed (Recital (24) and Article 12.2 Service Regulation).

However, Article 12.5 Service Regulation lays down the consequences for the case where the documents are not accompanied by a translation in the sense of Article 12.1. Article 12.5 makes clear that the lack of translation does not render service invalid, but that it only constitutes a defect of procedure, which can be ‘remedied’ by serving onto the addressee the original document together with a translation. Accordingly, the lack of information about

²¹ See also Recital (24): the addressee’s right to refuse the service ‘should also apply to any subsequent service once the addressee has exercised the right of refusal. The right of refusal should also apply in respect of service by diplomatic agents or consular officers, service by postal services, electronic service and direct service. It should be possible to remedy the service of the refused document by serving a translation of the document on the addressee’.

²² Art. 12.1 Service Regulation.

²³ Form L Service Regulation.

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the right to refuse acceptance can be cured by sending this information to the addressee. Form L is again to be used. This form has to be served on the addressee by one of the methods provided for by the Service Regulation. The Court of Justice of the European Union has developed this solution in multiple decisions.

CJEU Case C-519/13, Alpha Bank Cyprus, EU:C:2015:603

“[...] concerning the consequences of the refusal by the addressee of a document to accept it on the ground that that document was not accompanied by a translation in a language which he understands or in the official language of the receiving Member State, the Court has already held, with respect to Regulation No 1348/2000, which preceded Regulation No 1393/2007, that it was necessary not to declare the procedure invalid, but to allow, by contrast, the sender to remedy the lack of the required document by sending the requested translation (see, to that effect, judgment in Leffler, C-443/03, EU:C:2005:665, paragraphs 38 and 53).

That principle is now laid down in Article 8(3) of Regulation No 1393/2007²⁴. A similar solution must be reached where the receiving agency has failed to transmit the standard form set out in Annex II²⁵ to that regulation to the addressee of a document.

The lack of that standard form and the refusal to accept a document in the absence of an appropriate translation are closely linked in so far as, in both situations, the exercise, by the addressee of such a document, of his right to refuse to accept the document at issue could be impeded.

It appears therefore appropriate to conclude that identical legal consequences must be applied to those two situations.”

CJEU Case C-354/15, Henderson, EU:C:2017:157

“Although the cases giving rise to the judgment of 16 September 2015, Alpha Bank Cyprus (C-519/13, EU:C:2015:603), and to the order of 28 April 2016, Alta Realitat (C-384/14, EU:C:2016:316), concerned a procedure for service of a document under Section 1 of Chapter II of Regulation No 1393/2007, relating to transmission of the document between the transmitting and receiving agencies designated by the Member States, the fact remains that, as is clear from the wording of Article 8(4) of that regulation²⁶, those rules apply for the means of service of judicial documents referred to in Section 2 of that chapter.”²⁷

CJEU Case C-346/21, ING Luxembourg SA, ECLI:EU:C:2022:368

²⁴ Art. 12.5 Service Regulation.

²⁵ Form L Service Regulation.

²⁶ Art. 12.6 Service Regulation.

²⁷ See also CJEU Case C-7/21, LKW Walter Internationale Transportorganisation AG, ECLI:EU:C:2022:527, point 40.

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“46. Partant, il ne peut être valablement remédié au défaut d’information résultant de cette omission que par la remise, dans les meilleurs délais et conformément aux dispositions du règlement no 1393/2007, du formulaire type figurant à l’annexe II de celui-ci (arrêt du 2 mars 2017, Henderson, C-354/15, EU:C:2017:157, point 65).

47. Ainsi, une réglementation nationale telle que celle en cause prévue à l’article 191, paragraphe 1, de ce code n’est pas compatible avec le règlement no 1393/2007 dès lors qu’il découle de cette disposition qu’une signification d’un acte judiciaire dans un autre État membre est nulle lorsqu’elle est effectuée sans que le formulaire type figurant à son annexe II soit utilisé et donc en violation de l’article 8, paragraphe 1, de ce règlement, ainsi qu’il ressort du point 40 de la présente ordonnance. [...]”

Translation:

“46. Therefore, the lack of information resulting from this omission can only be validly remedied by transmitting, as soon as possible and in accordance with the provisions of Regulation No 1393/2007, the standard form set out in Annex II to that regulation (judgment of 2 March 2017, Henderson, C-354/15, EU:C:2017:157, point 65).

47. Thus, a national provision such as that at issue, provided for in Article 191(1) of that code, is incompatible with Regulation No 1393/2007, in so far as it follows from that provision that service of a judicial document in another Member State is null and void if it is carried out without using the standard form set out in Annex II thereto and thus in breach of Article 8(1) of that regulation, as follows from point 40 of this order. [...]”

The question whether the service is invalid or only defective influences the date of service (cf. Article 12.3 Service Regulation and the answer to question 6).

Finally, form L should also be used with any subsequent service of the same document and even if there is a translation present.²⁸

Question 3: The court where the proceedings take place has to analyse whether this refusal is justified or not. The standard to be applied is laid down in Article 12 Service Regulation: the refusal is only justified if the addressee was not able to understand the language of the documents served or if the document is not written in the official language of the Member State addressed. In order to evaluate the language knowledge of the addressee, the court has to take into consideration all the circumstances of the individual case. According to the case law of the Court of Justice of the European Union, the burden of proof for the language skills of the addressee is on the applicant. Circumstantial evidence is admissible.

²⁸ CJEU Case C-346/21, ING Luxembourg SA, ECLI:EU:C:2022:368.

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CJEU Case C-14/07, Ingenieurbüro Weiss, EU:C:2008:264

“In order to establish whether the addressee of a document served understands the language of the Member State of transmission in which the document is written, the court must examine all the relevant evidence submitted by the applicant.”

Recital (26) gives some factual elements that the court may take into account. The court can for example take into account ‘documents written by the addressee in the language concerned, whether the addressee’s profession involves particular language skills, whether the addressee is a citizen of the forum Member State or whether the addressee previously resided in that Member State for an extended period of time’.

In the present case, the addressee lived for 10 years – from the age of 8 to the age of 18 – in Member State 1 where the official language is the language of the documents. It can be assumed that a child usually learns the official language of the State where it goes to school for 10 years. This assumption is supported by the fact that the contract negotiations were conducted in the language of Member State 1. Against this background, the court might be sufficiently satisfied that the addressee was able to understand the language of the documents. As such, the refusal to accept the documents was not justified.

The consequences of this situation are not governed by the Service Regulation, but by the national procedural law of the forum State. Recital (26) states that the court ‘should consider an appropriate way of informing the addressee of that decision in accordance with national law’.

Note for the trainers: The participants could discuss the consequences under the national law of the Member State where the seminar takes place.

Question 4+: According to Article 12.3 Service Regulation the addressee may exercise the right to refuse the document ‘at the time of service’ or ‘within two weeks of the time of service’. The refusal is communicated to the receiving agency by a written declaration. The addressee can fill out form L or can draw up any written declaration. If the service is done by post, the addressee returns the written declaration to the sender, most likely the transmitting agency.

‘At the time of service’ means that the addressee just refuses to accept the document from, for example, the bailiff standing at the door. The timeframe of ‘within two weeks’ is a change compared to Article 8.1 Service Regulation 1393/2007. In the former Service Regulation the addressee had one week to refuse.

The Court of Justice of the European Union ruled that the addressee must have the full timeframe ‘to assess whether it is appropriate to accept or refuse service of the document and, in the event of refusal, to return it’.²⁹ This means that the addressee must have the full two weeks to assess and thus, must actually be in a position to exercise the right to refuse

²⁹ CJEU Case C-7/21, LKW Walter Internationale Transportorganisation AG, ECLI:EU:C:2022:527, point 41.

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acceptance of the document. Moreover, this timeframe influences the starting point of the period to launch an appeal according to national procedural law.

CJEU Case C-7/21, LKW Walter Internationale Transportorganisation AG, ECLI:EU:C:2022:527

“45. The objective of avoiding any discrimination between those two categories of addressees, pursued by Article 8(1) of Regulation No 1393/2007³⁰, requires that addressees who receive the document in a language other than those referred to in that provision must be able to exercise their right to refuse to accept that document without being placed at a procedural disadvantage by reason of their cross-border situation.

46. It follows that, where the document to be served is not written in or translated into one of the languages referred to in that provision, the starting point for the one-week period laid down in Article 8(1) of Regulation No 1393/2007 cannot, without undermining the practical effect of that provision, read in conjunction with Article 47 of the Charter, be the same as the starting point of the period within which a right of appeal is to be exercised in accordance with the legislation of the Member State of the authority which issued the document, which in principle must begin to run after the expiry of the one-week period referred to in Article 8(1) of the Charter.

[...]

Article 8(1) of Regulation (EC) No 1393/2007 [...], read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding legislation of the Member State of the authority which issued a document to be served, pursuant to which the starting point of the one-week period referred to in Article 8(1) of that regulation, within which the addressee of such a document may refuse to accept it on one of the grounds set out in that provision, is the same as the starting point for the period within which a remedy is to be sought against that document in that Member State.

Note for the trainers: This case law impacts on the national procedural law of all Member States. Do the participants see any practical difficulties with implementing this case law in their own procedural law?

Question 5: If the court decides that the addressee is not able to understand the language of the claim, the court has to serve the document again accompanied by a translation. Article 12.5 Service Regulation makes it clear that service is not invalid in case of the addressee's refusal to accept the documents, even if this refusal is justified. Thus, the service of the documents has to be completed by a translation into a language which the addressee understands or into one of the official languages of the receiving Member State. Recital (25)

³⁰ Art. 12.1 Service Regulation.

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explains that the attached translation should be certified or otherwise deemed suitable for proceedings in accordance with the law of the forum Member State.

Note for the trainers: The participants could discuss the requirements under their own national law.

If the claim is composed of one main document and a bundle of annex documents, the question is whether each and every single document needs to be translated or whether a translation of the main document is sufficient. The Court of Justice of the European Union ruled that not all the annexes must be translated:

CJEU Case C-14/07, Ingenieurbüro Weiss, EU:C:2008:264

“In the light of all the foregoing considerations, the term ‘document to be served’ in Article 8(1) of Regulation No 1348/2000³¹, where such a document is a document instituting the proceedings, must be interpreted as meaning the document or documents which must be served on the defendant in due time in order to enable him to assert his rights in legal proceedings in the State of transmission. Such a document must make it possible to identify with a degree of certainty at the very least the subject-matter of the claim and the cause of action as well as the summons to appear before the court or, depending on the nature of the pending proceedings, to be aware that it is possible to appeal. Documents which have a purely evidential function and are not necessary for the purpose of understanding the subject-matter of the claim and the cause of action do not form an integral part of the document instituting the proceedings within the meaning of Regulation No 1348/2000.”

So, the court has to decide on the basis of the individual circumstances of the case whether a translation of the main document is sufficient in order to protect the rights of the addressee, or whether all or at least part of the annex documents need to be translated as well.

Question 6⁺: Article 12.5 Service Regulation makes it clear that the lack of translation does not render service invalid, but only constitutes a defect of procedure which can be cured. Consequently, if the procedure of service is remedied, the date of service of the initial document without translation is the decisive date for calculating the prescription period under the laws of the forum Member State. This follows from the idea that the document had to be served within a particular period, otherwise the claimant would lose the right to go to court.

Yet it is not so easy to conclude that the date taken into account is the 1st of February. Article 13.2 Service Regulation states that ‘where the law of a Member State requires a document be served within a particular period, the date to be taken into account with respect to the applicant shall be that determined by the law of that Member State’. Consequently, we must examine the national procedure law of Member State 1 to determine if we take into

³¹ Art. 12 Service Regulation.

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consideration the date on which the defendant received the first service or the date – for example – on which the court gave the order to serve the document. This system is called ‘the double date system’ and exists only in a limited number of Member States.³²

Exercise: find the information given by Belgium on the European e-Justice Portal on Article 13 – date of service. Open discussion amongst the participants about their own national procedural law and the existence of the double date system.

IV. Case study III

Article 18 Service Regulation does not explicitly state whether the service of documents by postal services has to be effected by handing the documents to the addressee in person or whether it is sufficient to hand the documents to somebody staying in the addressee’s premises. Article 22 Service Regulation concerning default judgments states that courts are not allowed to render a default judgment without checking whether, in case of service by postal services, ‘the document was actually delivered to the defendant or to the defendant’s residence [...]’. This shows that the Service Regulation does not require the delivery of the documents to the addressee in person. It seems to be decisive, however, that service is effected at the addressee’s residence.

CJEU Case C-354/15, Henderson, EU:C:2017:157

“[...] it can be deduced from Article 19(1)(b)³³ of that regulation that the document to be served may be delivered not only to the addressee in person but also, in his absence, to a person present at his place of residence. In practice, delivery by hand to the defendant is not always possible. Regulation No 1393/2007 does not, therefore, exclude the possibility that, in certain circumstances, a third party may receive the document in question.

[...]

In those circumstances, if a third party can validly accept a judicial document in the name and on behalf of the addressee, that possibility must nevertheless be reserved for clearly defined situations, to ensure that the rights of the defence of that addressee are observed as fully as possible. Consequently, the concept of ‘residence’, within the meaning of Regulation No 1393/2007, must be understood as referring to the place where the addressee of the document habitually resides.

Furthermore, as provided for in Article 14(1)(a) of Regulation No 805/2004, as regards service of documents instituting proceedings regarding uncontested claims, the possibility for a third party to accept a judicial document instead of his addressee can only apply to

³² Recital (27) Service Regulation.

³³ Art. 22.1.b Service Regulation.

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adults who are inside the residence of the addressee, whether they are members of his family living at the same address as him or persons employed by him at that address.”

Recital (30) confirms that the service at the addressee’s home address is valid when the document can be delivered to an adult who is living in the same household as the addressee or who is employed by the addressee and who has the ability and is willing to accept the document.

It follows from the decision of the CJEU and Recital (30) that, in the present case, service could be effected by handing the letter to the brother of the addressee staying in the addressee’s house. The problem remains that the court never has received a receipt of acknowledgement signed by the brother. So, the question is, whether a confirmation by the postal service that the letter was handed to the addressee’s brother at the addressee’s residence is sufficient. As Article 18 Service Regulation makes clear that the acknowledgement of receipt can be replaced by an equivalent, the answer is: yes. It is, however, important that the postal service has registered at least all the information which would be found on a receipt of acknowledgement, i.e. also the signature of the person having received the letter.

CJEU case C-354/15, Henderson, EU:C:2017:157

“However, as is clear from the wording of Article 14 of Regulation No 1393/2007³⁴, postal service does not necessarily have to be effected by registered letter with acknowledgment of receipt. That provision provides that such service may also be effected by means of transmission ‘equivalent’ to a registered letter with acknowledgment of receipt.

In order to determine the meaning and scope of the term ‘equivalent’ within the meaning of Article 14, it must be stated that it follows from the purpose of that provision, as described in paragraphs 75 to 77 above, that an ‘equivalent’ transmission may be described as any means of service of a judicial document, and proof thereof, which provides guarantees comparable to those of transmission by registered letter with acknowledgment of receipt.”

Note for the trainers: The participants could discuss whether a brother vacationing in the house belongs to the same household. The CJEU has provided no guidance at this time.

V. Case study IV⁺

Question 1: In the case at hand, Article 20 Service Regulation allows an applicant to directly contact the competent bailiff in Member State 2 in order to effect service of the document instituting proceedings. It should, however, be mentioned that Article 20 Service Regulation does not establish such a possibility for all Member States. The application of Article 20

³⁴ Artikel 18 Service Regulation.

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depends on the national law of the Member State where service is to be effected. Only if this law provides for a direct service through judicial officers or other competent persons, this method can be applied.

It would however be more common, if a Member State calls upon a bailiff to serve the document initiating the proceedings or any judgment given, that this bailiff would be considered the transmitting agency. This means that if the claimant instructs a bailiff in the forum Member State to serve the defendant in Member State 2, the method of transmission and service according to Chapter II, Section 1 Service Regulation would apply. The bailiff in the forum Member State should therefore contact a bailiff in the Member State of the defendant, who would be the receiving agency.

Exercise: examine which Member States accept the possibility of direct service and which Member States know the concept of a bailiff. Let the participants check on the European e-Justice Portal (https://e-justice.europa.eu/39433/EN/service_of_documents_official_transmission_of_legal_documents?clang=en).

Question 2: Article 9 Service Regulation states that the transmitting agency shall advise the ‘applicant’ that the addressee may refuse to accept the document if it is not in one of the languages provided for in Article 12.1 Service Regulation. It follows from this Article that the transmitting agency is not the one having a legal interest in the service. In the case at hand, the claimant, who contacts the bailiff, is the applicant.

The question arises as to whether a court is the ‘applicant’ when the national procedural law of a Member State charges the court with transmitting the documents to be served. The Court of Justice of the European Union ruled that a court cannot be regarded as being the ‘applicant’ within the meaning of Article 9 Service Regulation.

CJEU Case C-196/21, SR, ECLI:EU:C:2022:427

“40. The commentary on Article 5(2) of that convention³⁵, the wording of which is, in essence, identical to that of Article 5(2) of Regulation No 1393/2007, in that explanatory report, states that “‘applicant’ means in all cases the party interested in transmission of the document. It therefore cannot refer to the courts’.

41. In those circumstances, it follows from the contextual and historical interpretation of Article 5(2) of Regulation No 1393/2007 that, where a court orders the transmission of judicial documents to third parties that apply for leave to intervene in the proceedings, that court cannot be regarded as being the ‘applicant’, within the meaning of that provision, for

³⁵ Art. 9.1 Service Regulation.

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the purposes of liability for any translation costs prior to the transmission of those documents.

42. In the second place, that finding is supported by a teleological interpretation of Regulation No 1393/2007.

[...]

46. An interpretation to the effect that the court before which proceedings have been brought in the Member State of origin should be regarded as the applicant, within the meaning of Article 5(2) of Regulation No 1393/2007, would run counter to the obligation on that court to ensure a fair balance between the interests of the applicant and those of the addressee of the document. Compliance with such an obligation necessarily means that the authority which has that obligation must be in a position of impartiality in relation to the interests of the applicant and those of the addressee. It follows that that authority cannot be confused with one of those interested parties, namely the applicant.”

Question 3: Determining who the applicant is, is important in determining who bears the cost of service and translation. Article 15.2 Service Regulation prescribes that the applicant pays or reimburses the costs of ‘recourse to a judicial officer or to a person competent under the law of the Member State addressed and the use of a particular method of service’. In the case at hand, the claimant thus pays for the service done by the bailiff.

Article 9.2 Service Regulation states that the applicant also bears ‘any cost of translation prior to the transmission of the document’. A bailiff or court – or any transmitting agency – can thus never be liable for the costs of translation of a document.³⁶

The applicant however only bears the initial cost. In the proceedings or following national procedural law, it is possible that the liability for such costs shifts to the other party or parties involved and that the applicant has to be reimbursed.

³⁶ Confirmed by CJEU Case C-519/13, Alpha Bank Cyprus, EU:C:2015:603; EJEU Case C-196/21, SR, ECLI:EU:C:2022:427; CJEU Case C-7/21, LKW Walter Internationale Transportorganisation AG, ECLI:EU:C:2022:527.

D. Annex: Set of case studies to be distributed at the seminars

I. Starting scenario

A German court needs to serve a document on three people: A, who lives in Ireland, B, who is domiciled in Denmark, and C, who lives in Poland.

Question 1: Is there any transnational instrument that might be of any help?

Question 2⁺: What if the German court needs to serve the document on D, who lives in the United Kingdom?

II. Case study I

A court of Member State 1 needs to serve a document on the defendant, who lives in Member State 2. At the beginning of the proceedings, the document initiating the proceedings had been properly served on the defendant, and the court had asked the defendant to communicate the address of a representative in Member State 1, who is qualified to receive judicial documents for the defendant. The defendant has, however, not done so. As a consequence, the court would like to apply a procedural rule of its national law which allows the court to refrain from a real service of documents if the defendant living abroad has not indicated the address of a representative in the forum state. Under this rule, the court would be allowed to effect service simply by putting the document into the court file.

Question 1: Is the court authorised to apply this national procedural rule and to effect service by putting the document into the court file?

Question 2: How could the court proceed under the Service Regulation?

<p>Exercise: Find the communications made by your Member State on electronic service.</p>
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Question 3: If the court proceeds with the service according to the Service Regulation, which forms should be used?

<p>Exercises:</p>

<p>(1) Find the transmitting and receiving agencies of your own Member State (Art. 4 Service Regulation). Find the electronic version of the forms mentioned. What if there are multiple official languages in a Member State?</p>
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- (2) Find the competent receiving agency for a case where the document is to be served on a person situated in Germany, Swisttal, postal code 53913.
- (3) How should form A be sent to the receiving court?

III. Case study II

Mr. Who has filed a contract claim in a court of Member State 1. The claim is to be served on the defendant, who lives in Member State 2. In Member State 1, the service of documents is arranged by the court. The claimant asks the court to send the claim, which is formulated in the language of Member State 1, to the defendant by postal services without any translation in order to accelerate the proceedings and to save money. The claimant explains that the defendant is familiar with the language of Member State 1.

Question 1: How are the interests of the defendant protected?

Question 2⁺: How should the court proceed if the defendant has not been informed about his right to refuse acceptance of the document?

Question 3: The defendant, who is 30 years old, refuses to accept the document ‘because he does not understand its wording’. What are the legal consequences if the entire contract negotiations had been conducted in the language of Member State 1 and if the defendant had passed 10 years of his life (from the age of 8 to 18) in this Member State?

Question 4⁺: What is the timeframe in which the defendant can exercise the right to refuse?

Question 5: The defendant refuses to accept the document. What are the legal consequences if the court decides that the defendant is not familiar with the language of Member State 1? The claim is composed of one main document and a bundle of additional contract documentation (annex documents).

Question 6⁺: The claimant had filed the claim only a few days before the prescription period expired. On 1st February, the defendant received the claim, but refused to accept it. On 3rd March, the defendant received a translation of the claim. When is the claim considered to be served for calculating the prescription period?

Exercise: Find the information given by Belgium on the European e-Justice Portal on Article 13 – date of service.

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IV. Case study III

A court in Member State 1 needs to serve a document on the defendant, who lives in Member State 2. The court decides to use postal services. The court never receives a receipt of acknowledgement. But the postal service confirms that the letter had been handed out to Mr. Why at the address of the defendant. Mr. Why is the 34 year old brother of the defendant. He had passed his holidays in the defendant's house.

Questions: Has service been effected properly under the Service Regulation? Would the Service Regulation allow a default judgment if the defendant never appears in court?

V. Case Study IV⁺

Under the laws of Member State 1, the claimant has to arrange the service of their complaint by requesting a bailiff to effect service. The defendant lives in Member State 2 where the same procedural system applies.

Question 1: Is the claimant authorised to contact directly a bailiff in Member State 2 in order to arrange service of his claim?

Exercise: Examine which Member States accept the possibility of direct service and which Member States know the concept of a bailiff.

Question 2: Who is considered a 'applicant' in the Service Regulation?

Question 3: Who bears the cost for service and/or translation of the documents to be served?



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