NATIONAL REPORT FOR SPAIN ON CROSS-BORDER SERVICE OF DOCUMENTS

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Digital communication and safeguarding the parties' rights: challenges for European civil procedure – DIGI-GUARD

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Questionnaire for National Reports

On the Cross-border Service of Documents

This questionnaire addresses practical and theoretical aspects regarding the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Each partner should provide substantive answers for their respective Member State (or additional Member State, if specifically stipulated by the coordinator). Where the term "Regulation" is used below, it refers to Regulation (EU) 2020/1784 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

For useful information please refer (among other sources) to:

- Regulation (EU) 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)
- Impact assessment of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters
- Opinion of the European Economic and Social Committee on a) Proposal for a Regulation of the European Parliament and of the Council amending 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 (COM[2018] 378 final — 2018/203 [COD]) and on b) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)
- The provided information in the European Judicial Atlas in civil matters on the service of documents
- Briefing of the European Parliamentary Research Service (EPRS) on the reform of the service of documents regulation (2019)
- Other travaux preparatoires of the Recast Taking of Evidence Regulation

The structure of each individual report should follow, to the utmost extent possible, the list of questions enumerated below and the given structure. If authors choose to address

certain issues elsewhere within the questionnaire, they are urgently requested to make cross-references and specify where they have provided an answer for the respective question (e.g., "the/an answer to this question is already provided in 1.6."). Following the structure of the questionnaire will enable and ease comparisons between the various jurisdictions.

The list of questions is not to be regarded conclusive. It might be that important issues in certain juris- dictions are not mentioned. Please address such issues on your own initiative where appropriate. On the other hand, questions that are of no relevance for your legal system can be left aside; in this case, you are requested to add a reference to the lack of relevance.

Please provide representative references to court decisions and literature. You are also asked to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data. Where the answer would be "no" or "not applicable", because something is not regulated in your national legal order, if possible, please specify how you think it should be regulated.

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

Language of national reports: English.

Deadline: 31 March 2023.

In case of any questions, remarks or suggestions please contact the project coordinators, prof. dr. Vesna Rijavec: vesna.rijavec@um.si and prof. dr. Tjaša Ivanc: tjasa.ivanc@um.si.

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Questionnaire for National Reports on the Cross-border Service of Documents

Country report: Spain

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Date: March 2023

NATIONAL SERVICE OF DOCUMENTS

1. What is the legal basis for service of documents in your Member State? Is there a special act regulating the service of documents within your national legal system.

The main legal basis for the service of documents in Spain is Chapter V, on court notices, articles 149-168 of the *Ley de Enjuiciamiento Civil* (LEC) [Civil Procedure Act]. These provisions are complemented by other laws and specific provisions, such as those on the regulation and use of digital platforms for the service of documents.

The different types of service regulated by Art. 149 LEC are as follows:

- *Notificaciones* [notices]: where the purpose is to inform the addressee about a decision or procedure.
- *Emplazamientos* [summons]: so that a person may enter an appearance and act within a certain time limit.
- *Citaciones* [orders to attend]: where the place, date, and time to appear and act are set.
- *Requeremientos* [injuctions]: to order a specific kind of activity or lack thereof pursuant to the law.
- *Mandamientos* [orders]: to mandate the issuance of records or affidavits, or the performance of any kind of action corresponding to Real Estate, Company, or Vessel Registrars on the hire purchase of moveable property, Notary Publics, or civil servants at the service of the Administration of Justice.
- *Oficios* [formal written requests]: for notices to non-judicial authorities and civil servants other than the ones set forth in the item above.

In Spain there is no special or specific law exclusively devoted to the service of documents.

2. Explain the term "service" as used in your national legal system. If there is a legal definition, please quote it.

Art. 149 LEC does not provide a definition of the term "service".

Service can be defined as the manner in which the communication reaches the addressee, the steps that must be taken for each act of communication to take place and for it to be presumed with the highest degree of reliability that the contents of the communication has reached its addressee. It is also the way in which the court contacts the parties to the proceedings or other parties in order to inform them of a decision handed down in the course of proceedings, the content of which affects them, so that they can adjust their conduct to the possibilities arising from its content.

3. How do you define "civil and commercial matters" in your national legal system? Does this definition differ from the term of the Regulation, and if so, in what way?

In the Spanish legal system, the term "civil and commercial matters" is used to designate private law *lato sensu*. From the point of view of substantive law, civil matters refer to pre-existing relations between citizens (natural or legal persons), in matters such as law of obligations, inheritance or marriage. Commercial matters, on the other hand, relate specifically to commercial relations and relations between enterprises.

We often use the term civil and commercial matters to define the material scope of application of our domestic laws (e.g., law on mediation in civil and commercial matters). The definition is substantially the same as in the Regulation and in line with the interpretation of the term as an autonomous concept of Union law given by the Luxembourg Court.[1]

4. For what purpose does your legal system define the concept "civil and commercial matters"?

The definition of civil and commercial matters —as well as the distinction between both matters— is used to delimit the scope of application of the law and, especially, to define the scope of competence of the courts from a procedural point of view. In Spain, within the civil jurisdictional order, there are courts and judges specialised in commercial matters (e.g., *juzgados de lo mercantil*) that deal exclusively with commercial claims and litigation, such as intellectual and industrial property; unfair

[1] Cfr. ECJ 11 June 2015, C-226/13, C-245/13, C-247/13 and C-578/13, Fahnenbrock and others, ECLI:EU:C:2015:383.

competition and advertising; commercial companies, cooperative societies, economic interest groupings; land transport, national or international; maritime law; and air law.[2]

5. **How are the concepts "judicial and extrajudicial documents" defined in your legal system? Does your national legal system distinguish between judicial and extrajudicial documents in the context of (official) service? If yes, please define these categories and give examples.**

   Judicial document is any legal document which has been issued in the course of civil or commercial proceedings and which must be served on one of the parties.

   Extrajudicial document is any legal document served but which is not part of the case file (e.g., an invoice, and out-of court payment order, a letter of demand).

   Regarding the term 'extrajudicial document' within the European Union judicial cooperation context, we do follow the relevant case law of the Court of Justice in Roda Golf[3] and Tecom Mican[4] —both cases stemmed from preliminary ruling requests issued by Spanish judicial authorities—. According to the Luxembourg Court, extrajudicial document in the EU context is an autonomous concept that covers not only documents issued or authenticated by a public authority or public official (e.g., notaries), but also private documents whose formal transmission to their addressee residing abroad is necessary for the exercise, proof or safeguarding of a legal right or claim in civil and commercial matters.

6. **What is the purpose of service of documents? Are there overarching principles of procedures that are intertwined with the service of documents in your Member State?**

   The service of judicial documents has the material purpose of bringing judicial decisions to the knowledge of those affected so that they can adopt the position they deem appropriate for the defence of their interests, avoiding situations of lack of defence.

   It is a clear link between the rules governing service of documents and the right to effective judicial protection and in no case may go undefended, proclaimed in Article 24.1 of the *Constitución Española* (CE) [Spanish Constitution][5]. The constitutional

[2] Art. 86 bis *Ley Orgánica 6/1985, del Poder Judicial* (OJ 157 02/07/1985).

[3] ECJ 25 June 2009, Case C-14/08, Roda Golf, ECLI:EU:C:2009:395.

[4] ECJ 11 November 2015, Case C-223/14, Tecom Mican S.L, ECLI:EU:C:2015:744.

[5] Cfr. among many others STC 16/1989, 30 January 1989, ECL:ES:TC:1989:16.

relevance of the acts of service with the parties in relation to Art. 24.1 EC has been declared by the Constitutional Court since its earliest case law.

Likewise, effective service is closely related to the fundamental right to a fair trial without undue delay enshrined in Art. 24.2 CE.

7. Who is responsible for the service of documents?

According to Art. 152 LEC, service shall be given under the supervision of the *Letrado de la Administración de Justicia* [judicial officer], who shall be responsible for appropriate organisation of the service. Such notices shall be materially served by civil servants belonging to the Legal Assistance Service or by the *procurador* [legal representative] for the party requesting it.

To this end, in any writ initiating legal proceedings, enforcement proceedings or other proceedings, the applicant must state whether he or she wishes all acts of communication to be carried out by his or her *procurador*. If nothing is stated in this regard, the judicial officer shall proceed, and these acts shall be carried out by the civil servants of the Judicial Assistance Corps. They shall also be carried out by the latter if the defendants, under enforcement or appellants, do not expressly request in their writ that they be carried out by their procurator or if the parties are entitled to free legal aid.

Applicants may, with good cause, request a change in the initial regime. The judicial officer may carry out the successive acts of communication in accordance with the new request if he or she considers it justified.

7.1. If the court is responsible for service: What can be done if the court has failed to act? Can one sue the state and claim damage? Or can one sue the court to initiate the service?

The judicial officer or the civil servant of the bodies at the service of the Justice Administration who give rise to undue hold-ups or delays in service, through malice or negligence, will be subject to disciplinary action by the authority they depend on in order to correct this situation. They also shall incur liability for damages (Art. 168.1 LEC). The affected party may claim disciplinary action and compensation for damages.

7.2. If the parties are responsible for service: Within what time frame must service be affected?

The parties in Spain are not responsible for the service. Service made by *procurador* cannot be considered as falling within the scope of this question.

7.3. If the responsibility of service is shared between the court and the parties: Under your Member State's law, how is it determined who is responsible for the service of documents?

Even though in Spain the parties are not responsible for the service, I consider it relevant to point out that if the service is made through a *procurador*, the latter may incur liability for his intervention in the service. Specifically, in accordance with Art. 168.2 LEC, the *procurador* who incurs *mens rea*, negligence or delay in the notices he has assumed or does not respect any of the legal formalities established, leading to damage to a third party, shall be liable for the damages caused and may be sanctioned in accordance with the provisions in legal or statutory rules.

Thus, the responsibility for service lies either with the court or with the parties' *procurador*, depending on who carries out the service in each case.

7.4. What are the national requirements for a valid service of documents in your Member State?

Pursuant to Art. 152.1 § 3 LEC, documents shall be deemed to have been validly served where the certification contains sufficient evidence that they have been delivered personally, at the address, at the e-mail address given for that purpose, over the internet or by the computer or electronic media chosen by the consignee. For these purposes, the *procurador* shall prove, at their own liability, the identity and status of the recipient of the notification, taking care that the copy contains a written record of the receipt, of the date and time and the content of the notification.

8. What documents must be sent to the respondent? Who prepares the documents?

The statement of claim must be accompanied by the following documents prepared by the claimant (there shall be as many copies of each as parties involved in the procedure):

a) Procedural documents
They serve to prove the concurrence of certain procedural prerequisites. According to Art. 264 LEC, these are as follows:

- The power of attorney for litigation conferred on the *procurador* (provided that he is involved in the procedure and the power is not granted *apud acta*).
- Documents certifying the representation that the litigant claims to hold (e.g., in the case of legal persons, documents certifying that the person acting on behalf

of the legal person is authorised, according to the statutes, to represent that legal person validly).
- Documents or opinions attesting that the subject-matter in dispute is of value for the purposes of jurisdiction and procedure.

Failure to provide these documents constitutes a procedural obstacle, which can be amended. The legal officer who finds that any of these documents is missing at the time of receiving the claim cannot admit it for processing and will require the claimant to amend the defect. If it is not amended, the claim may be rejected by the judge.

b) Documents concerning the substantive issues

In addition to the aforementioned documents, Art. 265 LEC refers to a series of documents that are related to what will be the subject of discussion and decision within the framework of the proceedings, and which must be provided insofar as they exist in the specific case and are available. They are therefore documents which are submitted for evidentiary purposes and which, as pre-constituted evidence, the claimant has the burden of providing with the claim. These are:

- The documents on which the claimant bases his or her rights: these are therefore the documents that make up the documentary evidence.
- The means and instruments that enable the storage, knowledge or reproduction of words, data, figures, and mathematical operations (e.g., DVDs, videos, cassettes).
- Certifications and notes on registry entries or on the content of registry books, proceedings, or files of any kind.
- Expert opinions on which the claimant bases his or her claims.
- Reports issued by legally authorised private investigators on the facts on which the claimant bases his or her claims.

The LEC requires the presentation of these documents and objects at such an early stage of the proceedings as they are pre-constituted evidence. If any of these documents concerning the substantive issues are not adduced, it is not possible to provide them at a later stage.

c) Documents required in special cases

Art. 266 LEC lists a series of documents that must be provided in special cases and whose failure to provide them will result in the rejection of the claim. These are, in all cases, documents related to proceedings on very specific matters:

- The documents that fully justify the title by virtue of which maintenance is requested (when this is the subject matter of the claim).

- Documents constituting *prima facie* evidence of the title on which the claim is based and the document proving that the price of the object of the claim has been deposited, if known, or that security has been furnished to guarantee the deposit as soon as the price is known (the latter only when the deposit of the price is required by law or contract).
- The document in which the succession *mortis causa* in favour of the applicant is reliably established, as well as the list of witnesses who can testify as to the absence of a possessor in title of owner or usufructuary (when it is intended that the court puts the claimant in possession of property that is claimed to have been acquired by virtue of that succession).

The documents must be prepared by the claimant.

9. What information or other aspects must be included in the documents?

In accordance with the provisions of Art. 155 LEC, the claim shall contain the details and circumstances of identification of the claimant and the respondent, as well as the address or place where they can be summoned. Together with the designation of the claimant, the name and surname of the *procurador* and the lawyer must be indicated, provided that they intervene in the proceedings. Following this, the facts and grounds in law must be stated.

The facts shall be set out in an orderly and clear manner in order to facilitate their admission or denial by the claimant when answering. The documents, means and instruments provided in connection with the facts on which the claims are based shall be presented in the same order and with the same clarity. Finally, if they appear to be appropriate to the litigant's rights, assessments or reasoning shall be made in relation to them.

Regarding the grounds in law, in addition to those relating to the substantive issue raised, the following shall be included, with appropriate separation:

- any allegations on the capacity of the parties, the representation of the parties or of the court representative,
- jurisdiction, competence and the type of proceedings on which the claim is to be based,
- any other facts on which the validity of the proceedings and the appropriateness of a judgment on the substance may depend.

The final petition must state clearly and precisely what is requested. Where several judicial rulings are requested, they shall be set out in the claim in such a way that they are duly separated. Alternative requests, where the main requests are rejected, shall be listed independently and separately.

9.1. Please provide the definition of the term "address for service" under your national legal system.

For purely domestic purposes, it is still important to bear in mind the concept of domicile for civil purposes in Spain. Arts. 40 and 41 Código Civil [Spanish Civil Code] establish that the domicile of natural persons for the purposes of the exercise of civil rights and the performance of civil obligations shall be their place of habitual residence and, as the case may be, their domicile as determined by the LEC. For legal persons, where neither the law which created or recognised them nor the statutes or rules of foundation fix its domicile, it shall be deemed to be the place where their legal representation is located, or where they exercise their main institutional functions.

Where the parties involved are not represented by a *procurador* or where the notice is an initial summons or order to attend, notices shall be sent to the litigants' domicile (address for service). The right to request free legal aid shall be stated in the summons or order to attend, as well as the time limit for requesting it.

According to Art. 155 LEC, the claimant's domicile is the address given in the claim, petition or application. For the purposes of giving notice of the initial summons or order to attend to the defendant, the claimant shall also indicate as the defendant's address for service one or more of the following places: the address appearing on the municipal registry of inhabitants or in any other official records for other effects may be designated, as may an address appearing in an official Registry or in the publications of professional associations in the respective cases of companies and other entities and persons exercising a profession requiring membership of a professional association. The place where professional or work activities are carried out on a non-temporary basis may also be designated as an address.

If the claim is addressed to a legal person, the address of any person appearing as director, manager or attorney of the trading company, or the president, member or manager of the board of any association appearing on an official register may be given.

If the claimant designates more than one place as the defendant's address, the claimant shall indicate the order in which, in the claimant's opinion, service may be effected.

The defendant may designate a different address for the purpose of subsequent notices once he or she has entered on appearance.

9.2. Provide definitions of other (mandatory) aspects mentioned in Question 9.

Relevant definitions have been already provided in questions 8 and 9.

10. How are documents without a cross-border element served in your national jurisdiction? What is the usual method of service? Please explain the different methods of service in detail

Domestic notices and documents are served —always under the supervision of the judicial officer— in any of the following ways provided by Art. 152 LEC:

a) Through the *procurador*, where notices are served to whoever may have entered an appearance in the proceedings and represented by the former.

b) By sending the notice via postal services —this is the method mainly used in practice—, telegram —outdated—, e-mail or any other electronic means which allows irrefutable proof of receipt, the date and time and the contents of notice to appear on the records.

c) Delivery to the addressee of a verbatim copy of the decision to be notified, of the order issued by the court or the judicial officer, or of the order to attend or summons.

d) where a *procurador* has not been appointed, by the personnel at the service of the Justice Administration, by electronic means, where the Public Prosecution Service, the Public Prosecutor, the Lawyers of the General Courts and Legislative Assemblies or the Legal Service of the Social Security Administration and other public authorities in the Autonomous Communities or Local Bodies are concerned.

Notices shall be served by electronic means where the parties to the proceedings are obliged to use the computer or electronic systems of the judicial administration or where, without being so obliged, they choose to use such means, subject in all cases to the provisions contained in the regulations governing the use of information and communication technology in the Administration of Justice (see answers 47 and 48). Obviously, service shall not be effected by electronic means if the instrument contains elements that cannot be converted into an electronic format or if the law so provides.

The addressee may indicate an electronic device, a simple messaging service or an e-mail address to be used to inform him or her that a notification is available, but it may not be used to serve notifications. In this case, regardless of the format in which the notification is made, the court office will send the aforementioned alert. The absence

of this alert shall not prevent from the service of documents being considered as fully valid.[6]

10.1. Does the method of service differ from the cross-border service of documents within the scope of the Regulation?

Apart from the future use of the decentralised IT system, the other methods envisaged within the Regulation are essentially compatible with those used in domestic affairs.

10.2. Are there several alternative methods of service in your Member State?

Yes. The answer to this question is provided in question 10.

10.3. Does your national legal system provide for special means for the service of documents for professionals (e.g., lawyers, notaries etc.) or state authorities? How do the methods of service relate to each other?

Legal practitioners, public authorities and courts are obliged to use electronic means for service. See questions 10 and 47.

10.4. What considerations must the deciding court take into account when choosing the method of service?

See questions 10, 12, 14.1, 14.2, 15, 16 and 16.1.

10.5. Have the methods of service laid down in your national legal system been extended for domestic service after the entry into force of the Regulation?

No. Article 152 LEC has not been amended after the entry into force of the Regulation.

11. How is service in third-party countries regulated?

In the absence of a specific international agreement, service on third States is regulated in Spain by *Ley 29/2015, de cooperación jurídica en materia civil* [Act on

[6] In relation to this last paragraph of Art. 152.2 LEC, the *Sala de lo Social del Tribunal Superior de Justicia de Castilla y León* [Social Chamber of the High Court of Justice of Castilla y León] raised a question of unconstitutionality for possible infringement of the right to effective judicial protection (Art. 24.1 CE). The Constitutional Court, STC 6/2019, 17 January 2019, ECLI:TC:2019:6, declared that this provision is fully compatible with our Constitution. The Constitutional Court declared, in essence, that this alert is a procedural act carried out by the judicial office that is of an accessory nature, as it only helps or facilitates knowledge of the fact that an act of communication has been carried out.

international judicial cooperation in civil matters].[7] Specifically, Arts. 20-28 refer to the service of judicial and extrajudicial documents.

Without going into details and specific exceptions,[8] Spanish courts may transmit requests for service of documents abroad by the following means:

a) through the Spanish central authority (Ministry of Justice), which will forward them to the competent authorities of the requested State by consular or diplomatic channels, or through its central authority.

b) Directly to the competent authority of the requested State.

Provided that the law of the State of destination does not preclude it, the Spanish authorities may effect service directly on the addressees by registered post or equivalent means with acknowledgement of receipt or other guarantee of proof of receipt.

For the service of judicial documents in Spain originating from a foreign authority, the methods cited above shall be acceptable. Direct communication to the addressee by registered post or equivalent means with acknowledgement of receipt or any other guarantee that provides proof of receipt is also acceptable.

Extrajudicial documents authorised or issued by a notary, authority or competent official may be subject to service in accordance with the channels and methods described above in so far as they may be applicable in view of their special nature.

12. Are there special methods of service for certain types of documents – regardless of whether they qualify as judicial or extrajudicial? Please provide examples.

For example, in cases where it cannot be proved that the addressee has received a communication intended for the purpose of enter on appearance in court or the personal involvement of the parties in certain procedural steps, it shall be served in the manner provided for in Art. 161 LEC. The copy of the decision or summons will be made in the court or usually to the domicile of the person who must be notified, summonsed, cited or required to appear (without prejudice to specific provisions in the field of enforcement). This must be done on a working day and at a working time between 8.00 a.m. and 10.00 p.m. (art. 130 LEC). Service shall be recorded on a

[7] Ley 29/2015, de 30 de julio de 2015, de cooperación jurídica internacional en materia civil (OJ 31/07/2015).

[8] For an in-depth analysis of this issue, see A. Rodríguez Benot, 'Ley de cooperación jurídica internacional en materia civil' Vol 18 Cuadernos de Derecho Transnacional (2016) pp. 234-259.

certificate signed by the civil servant or by the *procurador* delivering it and by the person to whom it is served, whose name shall be recorded.

13. What is the usual time frame of the service of documents in your Member State?

It depends on the method of service used. If the notification is made by postal service, the period usually ranges from 1 to 4 days. Service of documents made within the electronic platforms (see answers 47 and 48) are considered immediate. If the professional obliged to communicate with the Administration of Justice by means of electronic methods does not access the electronic notification within three days of it being made available, the documents will be considered to have been effectively served.

14. At what moment is a document considered to be served according to the national law of your Member State?

Documents shall be deemed to have been served if they comply with the requirements set out in the Spanish legislation —mainly, the LEC— for each type of existing service.

Thus, pursuant Art. 152 LEC, documents shall be deemed to have been validly served if the certificate contains sufficient evidence that they have been delivered personally, at the address, to the e-mail address provided for that purpose, over the Internet or by the computer or electronic means chosen by the recipient.

In any case, the means to be used shall be such as to provide a reliable record of the receipt, the date and time of receipt and the contents of the communication.

14.1. If and if so, under what circumstances is a document considered to be served according to the national law of your Member State when the recipient is served at an address they either do not use or do not know of?

In the event that the recipient is not to be found at the address at which notice is meant to be served, the judicial officer, civil servant or *procurador* shall make an effort to find out if the recipient resides there. If he no longer lives or works in the address attended and any of the persons consulted know their current one, this will be recorded on the certificate of non-notification and notice will then be served at the new address provided.

14.2. Please elaborate in this regard, how the national law of your Member State treats the following scenario: The claim contains the official, duly registered address of the respondent. However, when the postman (or responsible person of service) wishes to serve the document at that address, it is clear that the recipient does not live there any longer (i.e., the post-box has a different name, neighbours confirm that the person has moved or a new tenant opens the door and confirms that the recipient has moved there some months ago and he neither has any relation with the former tenant nor does he know where they live now).

If, as the question asks, it is impossible to identify the respondent's address by the means above mentioned in question 14.1 and the claimant does not designate a new address for service, the court will proceed to make the enquiries permitted by Art. 156 LEC. This provision allows the judicial officer to use any suitable means to find the address or place of residence of the respondent for the purposes of entering an appearance (e.g., get in contact with the Registries, organisations, professional, associations. Often using an specific IT platform called *Punto Neutro Judicial*).[9]

The judge or court will first consult the *Registro Central de Rebeldes Civiles* (Art. 157 LEC) [Central Civil Defaulters Registry]. This register has its headquarters in the Ministry of Justice and is the only one for the whole territory of Spain. It registers those natural or legal persons for whom it has been impossible to determine an address for the purpose of service; they are recorded in it as *rebeldes* [defaulters], i.e., as persons who are impossible to locate.[10] Any court which is obliged to make enquiries as to the respondent's domicile may, as a first step of investigation, apply to the register to ascertain whether the respondent is entered in it. If the respondent is entered in the register, the court

[9] The *Punto Neutro Judicial* is a network of services that offers judicial bodies the data necessary for judicial processing through direct access to applications and databases of the Council itself, of bodies of the General State Administration and of other institutions. For more information, see: <www.poderjudicial.es/cgpj/es/Temas/e-Justicia/Servicios-informaticos/Punto-Neutro-Judicial/>, visited 20 March 2023.

[10] See *Real Decreto 95/2009, de 6 de febrero, por el que se regula el Sistema de registros administrativos de Apoyo a la Administración de Justicia* (OJ no. 33 7/02/2009), available at <www.boe.es/eli/es/rd/2009/02/06/95>, visited 20 March 2023.

The primary purpose of the Central Civil Defaulters Registry is to lighten the burden on the courts called upon to ascertain the respondent's address: in cases where another court has already carried out this task unsuccessfully, a duplication of effort is avoided and direct service can be effected. The information to be supplied to the Central Civil Defaulters Registry must be provided by the courts themselves. Whenever a court has been obliged to find out the address of a respondent and its efforts have been unsuccessful, it is obliged to communicate his name and other particulars of identity to the register so that the appropriate entry can be made in the register. See F. Gascón Inchausti, Derecho Procesal Civil. Materiales para el Estudio. Curso 2020/2021 (ISBN: 9788409145003 2020), pp. 109-110.

shall be exempted from further enquiries and may without further ado notify the respondent by *comunicación edictal* [notification by public announcement].

Under no circumstances shall the designation of an address be deemed impossible for the purposes of serving notice if such address is recorded in public archives or registries to which access may be obtained. Should these enquiries lead to the address or place of residence of the respondent, notice shall be served according to Art. 152 § 2 LEC and, as appropriate, the provisions laid down in Art. 158 LEC (Notice through personal delivery) will apply.

When these enquiries on the respondent's address for service are unsuccessful, the judicial officer shall order the notification by public announcement in accordance with Art. 164 LEC by attaching the decision or the summons to the bulletin board at the Court Office. Such publicity may be replaced using other computer, IT or electronic means.

15. With what electronic methods can a claim be filed in court?

Legal practitioners are obliged to submit claims through the established electronic platform (LexNET).[11] In specific circumstances, parties may also file a claim through a digital platform established for this purpose (*Sede Judicial Electrónica*).[12]

The parties, when they are not obliged by law to be assisted by a lawyer and a *procurador*, can file writs of initiation and claims by themselves through this electronic platform.[13] Specifically, this is allowed in the following cases:

a) Civil order for payment: The total amount is not limited.

b) Written statement initiating a social order for payment: The total amount may not exceed 6,000 euros.

c) Written statement initiating an order for payment from a residents' association: The total amount is unlimited.

d) Written statement initiating a lawsuit (*juicio verbal*): The total amount cannot exceed 2,000 euros.

[11] Available at <lexnetjusticia.gob.es/>, visited 20 March 2023.

[12] Available at <sedejudicial.justicia.es/>, visited 20 March 2023.

[13] Basic information sheet available at <sedejudicial.justicia.es/documents/20142/109399/20220608+Presentaci%C3%B3n+escritos+SEDJUDE+V.F.pdf/56e84e0e-1851-9d84-b099-7eb3c8640173?t=1654775268699>, visited 20 March 2023.

e) Writ initiating the enforcement of a judicial order: The total amount for which enforcement is sought may not exceed 2,000 euros.

If the parties wish to file a writ exceeding the amounts indicated above, the professional assistance of a lawyer and a *procurador* will be required *ope legis* so they will not be able to file the claim themselves via the electronic platform.

16. What is the procedure under the national law of your Member State if the exact whereabouts of the recipient are unknown?

In those cases where the claimant states that it is impossible for him to designate an address or residence of the respondent for the purpose of his appearance, the legal officer shall use the appropriate means to ascertain those circumstances. This means are those provided by Art. 156 LEC (see answer 14.2).

Under no circumstances shall the designation of an address be deemed impossible for the purposes of serving notice if such address is recorded in public archives or registries to which access may be obtained.

16.1. Is a substitute method of service available under the national law of your Member State? If so, what factors does the deciding court have to take into account when assessing the admissibility of such service?

If the service is made at the address of the recipient, or of his address according to the municipal register or for tax purposes, or according to an official Register, or according to publications of official Colleges, and he is absent at the time of the service, the service may be made to any employee, or to any relative over fourteen years of age[14] who is on the premises, or to the caretaker of the property. In such cases, these persons shall be given the service in a sealed envelope and shall be advised of their responsibility with regard to data protection.

The officer or *procurador* effecting the service shall warn the person who receives the service in place of the recipient that he is obliged to deliver the document or copy of the decision to the addressee or to notify him of its receipt. If the person expresses the impossibility to comply with this mandate, the officer or procurator will normally refrain from delivery.

[14] However, in the European context, the Luxembourg Court declared that a document instituting proceedings is valid, even if 'the document to be served has not been delivered to its addressee in person, provided that it has been served on an adult person who is inside the habitual residence of that person and is either a member of his family or an employee in his service'. Cfr. ECJ 2 March 2017, Case C-345/15, Henderson, ECLI:EU:C:2017:157.

A record shall be made of these circumstances. In particular, the date and time of the attempt to serve the addressee at his or her address, the copy of the judgment, the name of the person who receives the communication in his or her stead and his or her relationship to the addressee.

If all the above requirements are met, the service shall be deemed to have been validly effected.

16.2. Is there a possibility of using fictitious methods of service in your Member State? Please elaborate.

It is possible to use the notification by public announcement (Art. 164 LEC). This method of service consists of the posting of the copy of the decision or of the writ of summons on the notice board of the court or tribunal, or by electronic means, where technically possible and in accordance with the provisions of Law 18/2011[15].

Spanish law reserves the notification by public announcement for exceptional cases, when despite having tried —without result— all channels and methods available to locate the respondent in order to proceed with effective service, it has not been possible to locate him or her.

16.3. If yes: When does a fictitious method of service unfold its effects? Are these equivalent to the effects of service where the document is served directly to the recipient?

If the notification by public announcement has been made in accordance with the procedures and in the exceptional circumstances established by law, this method of service produces its full effects from the moment the document has been published. If service by this method has been effected in accordance with the law, its effects are equivalent to those of direct personal service.

16.4. Service of publication frequently do not assure that the document was actually made known to the recipient. Does your system try to ensure that the document was actually made known?

It is not necessary for the announcement to be published in any official journal or other means of communication for service by this method to be considered

[15] *Ley 18/2011, de 5 de julio, reguladora del uso de las tecnologías de la información y la comunicación en la Administración de Justicia* (OJ 160 5/07/2011).

validly effected. Notification by announcement is a fictitious method of service, a mere formality necessary for the proceedings to continue.

Nevertheless, Spanish law (Art. 164 §2) allows the claimant to request —at his own expense— that the notice be published in in the Official Journal of the province or Autonomous Region, in the Official Journal of the State or in a national or provincial daily newspaper. Such publication is useful from the point of view of improving the claimant's legal position in the event that the defendant challenges the judgment in the future (see answer 16.5).

16.5. Does the system include special remedies if actual knowledge was not obtained by the defendant?

The defendant has two main special remedies at his disposal: *audiencia al rebelde* (Arts. 501-508 LEC) [hearing of the defendant in default and rescission of final judgments][16] and *revisión* (Arts. 509-516 LEC) [review of final judgments].[17]

The time limits for the expiry of the action of rescission of final judgments are as follows:

- 20 days counting from notification of final judgment, if this notification has been served personally.
- 4 months counting from the publication of the announcement informing of the final judgment, if it was not served personally.
- The time limits referred above may be extended in force majeure circumstances, but in no case the action of rescission can be exercised after 16 months from the date of service.

The time limits for the expiry of the action of review of final judgments are as follows:

- 5 years from the date of publication (not service) of the judgment.
- Within the 5 years time limit set out above, three months have not elapsed from the date on which the decisive documents, bribery, violence or fraud were discovered, or on which falsehood has acknowledged or declared.

In addition to these extraordinary 'remedies', the defendant who was not initially aware of the proceedings has the possibility to request the *nulidad de*

[16] Cfr. STC 289/1993, 4 October 1993, ECLI:ES:TC:1993:289.

[17] Cfr. STS no. 610/2017, 15 November 2017, ECLI:ES:TS:2017:4081; STS 129/2016, 3 March 2016, ECLI:ES:TS:2016:793.

actuaciones (Arts. 225-231 LEC) [set aside the proceedings] and, where appropriate, to appeal to the Constitutional Court (*recurso de amparo*) for violation of fundamental rights (*inter alia*, his or her right to effective judicial protection, Art. 24.1 CE).

16.6. Please explain whether fictitious methods of service may in certain circumstances be in conflict with national procedural principles (e.g., right to a fair trial, right to be heard). If so, how is this issue dealt with?

If the notification by announcement has been made without following the procedures and without complying with the requirements established by law, this method of service will naturally conflict with the fundamental rights to effective judicial protection, to due process of law and specifically the right to be heard of the defendant.

The Spanish Constitutional Court has repeatedly declared the infringement of the defendant's right to effective judicial protection and the right to be heard when the service is carried out by notification by announcement without making every effort to ascertain the respondent's actual address.[18] Thus, it must be assessed whether reasonable efforts have been made to determine the respondent's domicile before addressing the defendant by public announcement.

However, the Constitutional Court also recalls that the procedural burden incumbent on the claimant to identify the respondent does not exclude the minimum diligence of the recipient to heed the notices he receives, nor does it excuse the negligent attitude in this regard of the recipient himself or any conduct contrary to good faith.[19]

It is also possible that notification by public announcement has been properly effected from a formal point of view, but that the respondent may have a grounded reason for challenging the use of this method of service. This is the case when the respondent has been absent from the place where the proceedings have taken place or from any other place in the State or the Autonomous Community in whose Official Journals the announcement have been published (Art. 501 3.º LEC). Also, in cases where notification by announcement has been effected as a result of fraudulent scheming on the part of the claimant[20] (Art.

[18] Cfr. STC 82/2021, 19 April 2021, ECLI:ES:TC:2021:82; STC 60/2021, 15 March 2021, ECLI:ES:TC:2021:60; STC 125/2020, 21 September 2020, ECLI:ES:TC:2020:125.

[19] Cfr. STC 80/96, 20 May 1996, ECLI:ES:TC:1996:80; STC 81/96, 20 May 1996, ECLI:ES:TC:1996:81; STC 78/93, 1 March 1993, ECLI:ES:TC:1993:78; STC 227/94, 18 July 1994, ECLI:ES:TC:1994:227; STC 160/95, 6 November 1995, ECLI:ES:TC:1995:160.

[20] Cfr. STS no. 87/2022, 7 February 2022, ECLI:ES:TS:2022:442.

510.1 3.º LEC). In such cases, the defendant may proceed in accordance with the special 'remedies' described above (see question 16.5).

16.7. Are different actions taken if the person's whereabouts are presumed to be within the country or abroad?

The Spanish Constitutional Court has repeatedly stated that the same doctrine on the requirements for valid service is applicable to cases where the defendant's domicile was abroad.[21]

17. What is the procedure in your national jurisdiction if the recipient is responsible for a failure to serve?

If the addressee unjustifiably refuses to accept service, he shall be deemed to have been served and the same legal effects shall be produced as if the documents had been delivered. The procedural time-limits shall run from the day following the day on which the refusal is recorded. The same applies where the court finds that the failure to serve was due to lack of diligence or lack of interest on the part of the recipient of the service.

18. What language is to be used for domestic service?

As a rule, Castilian (Spanish) shall be used for domestic service. However, in some regions of Spain, the co-official language of that region (e.g., Catalan) may be used, if no party objects on the grounds of a lack of knowledge of that language which would cause them to be defenceless.

This is in accordance with Art. 231 *Ley Orgánica del Poder Judicial* (LOPJ) [Act on the Judiciary], that provides that in all judicial proceedings, Judges, Magistrates, Prosecutors, Registrars and other court and tribunal officials shall use Castilian (Spanish), the official language of Spain, and may use the official language of the Autonomous Community (region), if none of the parties objects on the ground of lack of knowledge of that language which might lead to lack of defence.

Judicial proceedings conducted and documents presented in the official language of an Autonomous Community shall, without the need for translation into Spanish, be fully valid and effective. Notwithstanding, they shall be translated ex officio when they are to be effective outside the jurisdiction of the judicial bodies located in the

[21] Cfr. STC 26/2020, 24 February 2020, ECLI:ES:TC:2020:26; STC 50/2017, 8 May 2017, ECLI:ES:TC:2017:50; STC 150/2016, 19 September 2016, ECLI:ES:TC:2016:150; STC 151/2016, 19 September 2016, ECLI:ES:TC:2016:151; STC 268/2000, 13 November 2000, ECLI:ES:TC:2000:268; STC 143/1998, 30 June 1998, ECLI:ES:TC:1998:143.

Autonomous Community, except in the case of Autonomous Communities with a coinciding official language. They shall also be translated when so provided by law or at the request of a party alleging lack of defence.

19. Are there specific claim forms to be used for domestic service in your Member State? If so, explain their content and the information required.

The Spanish Administration of Justice does make online interactive standard forms available to citizens for the filing of writs initiating payment order proceedings, oral proceedings, conciliation proceedings and bankruptcy proceedings. There are also forms for answering the claim or for initiating enforcement proceedings.[22] Some of these standard forms are also available at the *Oficinas del Decanato* [senior's judge offices] that can be used for claims of up to 2000€. They have also been published in the official journal and are available for download.[23]

The content and information requested in these forms depends on the type of procedure or document to be submitted. They all have in common the request for the personal data of the person who is interested in filing the document, the request for the data of the person to whom the document is to be served, as well as the description of the documents accompanying the main document and on which the claim is based.

20. How are the costs of service regulated in your Member State?

Where service of a document is effected by a court, judicial office or common procedural service, the cost of service shall be borne by the judicial body without payment of any sum by the applicant**.**

LEGAL IMPLICATIONS OF SERVICE

21. What are the legal (minimum) requirements of an effective service? Please list them.

Documents shall be deemed to have been effectively served provided that the requirements established by law for each type of service[24] are met. In any event, the method use for service shall be such as to provide:

[22] These forms are available at <sedejudicial.justicia.es/-/presentacion-de-escritos>, visited 20 March 2023.

[23] Available at <www.boe.es/boe/dias/2016/01/28/pdfs/BOE-A-2016-783.pdf>, visited 20 March 2023.

[24] See Art. 149 LEC.

- A reliable record of receipt.
- Date and time of receipt.
- Content of the communication.

Where the copy of the decision or of the writ of summons is sent by registered post or by telegram with acknowledgement of receipt, or by any other similar means which makes it possible to leave on the case-file a reliable record of the receipt of the service, of the date of receipt, and of its contents, the judicial officer shall record on the case-file that the service has been effected and the contents of the service. In cases where the service is made through a *procurador*, the judicial officer shall also record in the case-file that the service has been effected and the contents thereof and shall attach to the case-file, where appropriate, the acknowledgement of receipt or the means by which proof of receipt is evidenced or the documents provided by the *procurador* attesting that he or she has effected the service (Art. 160.1 LEC).

Regarding the requirements of an effective service using notification by public announcement (Art. 164 LEC), see answers 16.2 to 16.7.

22. What are the legal consequences (procedurally and, if applicable, materially) of the proper service of documents?

In the case of a claim, once it has been admitted by the court,[25] it will begin to unfold its procedural and material consequences from the moment it was filed.

From the procedural point of view, the admission of the statement of claim produces the effects of *lis pendens*, such as *perpetuatio iurisdictionis* (Art. 411 LEC) —once the proceedings have been initiated shall not lead to a change in jurisdiction or competence— and the prohibition of *mutatio libelli* (Art. 412 LEC) — Once the matter at issue of the proceedings has been established in the claim, in the statement of defence or, as appropriate, in the counterclaim, the parties may not subsequently change it—.[26] From the substantive point of view, the admission of the claim and the subsequent situation of *lis pendens* produce the interruption of the limitation and prescription periods, or the accrual of the legal interest in the case of a debt being claimed.

From the defendant's point of view, the time limit for answering the claim starts from the day on which the document has been served.

[25] In Spain, the admission of the claim can be decreed by the judicial officer. However, inadmissibility can only be declared by the judge or court.

[26] Except for the cases provided for in Art. 412.2 LEC in conjunction with Art. 426 LEC.

With regard to other types of service of documents, the main effects will be the start of the time limit for lodging observations or for lodging an appeal, as appropriate.

23. What are the consequences of the respondent' s failure to appear in the proceedings under the national law of your Member State?

The respondent may be declared in *rebeldía* [default]. This declaration is made by a decision which, in order to be effective, must be notified either personally or by public announcement (Art. 497.1 LEC).

The effects of the declaration of default are multiple. On the one hand, while this situation lasts, the respondent will not be able to carry out any procedural act. The situation of default of appearance does not imply either acceptance or admission of facts.

On the other hand, there are important consequences with regard to the notification of procedural acts to the respondent declared in default. Once the situation of default has been declared, only this declaration will be notified and no any other, with the exception of the judgement (Art. 497 LEC). In other words, the rest of the decisions issued within the proceedings will not be notified. On the other hand, the judgments that, where appropriate, may be pronounced in the second instance or in the extraordinary appeals in cassation and for procedural infringement (Art. 497.2 II LEC) will be notified.

23.1. What are the possibilities of legal remedy if the respondent claims incorrect service?

Once the respondent is aware of the proceedings, he or she has at his disposal the multiple remedies available in the Spanish legal system and, specifically, he can seek to set aside the proceedings and the reinstatement of the proceedings to the procedural moment in which the incorrect service took place. This includes the special 'remedies' against res judicata judgments already described in question 16.5.

24. What are the consequences of the claimant 's failure to appear in the proceedings under the national law of your Member State? (e.g., due to the absence of a summons to the preparatory hearing)

Failure of the claimant to appear at the preliminary hearing gives rise to an order of discontinuance which is tantamount to a discontinuance of proceedings,[27] unless the

[27] Cfr. STSJ M no. 539/2021, 4 June 2021, ECLI:ES:TSJM:2021:6600.

respondent who did appear shows an interest in continuing the proceedings —e.g., because he has an interest in having a decision on the merits of the case— (Arts. 414.3 §2 and 442.1 LEC).

24.1. What are the possible legal remedies if the claimant claims incorrect service?

The claimant has at his or her disposal the ordinary and extraordinary remedies available in the Spanish legal system and, specifically, he can request to set aside the proceedings and the reinstatement of the proceedings to the procedural moment in which the incorrect service took place.

25. What are the consequences of improper service in your national jurisdiction?

Art. 166.1 LEC sanctions with nullity the notices which are not carried out in accordance with the provisions of the law and which may cause lack of proper defence.

Thus, as a general rule, the main consequence will be the ineffectiveness of the improper service along with the procedural —and, where applicable, substantive— consequences that this lack of effectiveness entails (e.g., set aside the proceedings, restart of proceedings). The procedural consequence will depend on the seriousness of the deficiency and the kind of notice (e.g., the first summons of the defendant is one of the acts of service that requires enhanced protection as it crucially affects the defendant's rights of defence).

25.1. What is the procedure if the recipient nevertheless had the opportunity to prepare and therefore the principle of equality of arms was not affected?

If the irregular service has not led to a lack of defence, the deficiencies can be cured according to Art. 166.2 LEC (see answer 25.2 below).

25.2. Can a deficiency in service be cured in your national jurisdiction? If so, how?

Spanish law does allow improper service to be cured. According to Art. 166.2 LEC, when the person notified, summoned, or ordered to attend is aware of the case and fails to report the improper service at his first appearance before the court, from that time, the notice shall take full effect, as if it had been served according to the law.

25.3. Please explain whether such a cure may in certain circumstances be in conflict with national procedural principles (e.g., right to a fair trial, right to be heard). If so, how is this issue dealt with?

The cure of improper service may be in conflict with the right to due process of law and, in particular, with the affected party's rights of defence.

In this regard, the Spanish Constitutional Court has declared that the acts of communication between the court and the parties are of particular importance, as they are the ideal means for judicial protection to be effective, as required by Article 24 of the Spanish Constitution. It is only through knowledge of the judicial decisions that the parties can adopt a defensive conduct.[28]

However, not every procedural irregularity implies a lack of defence for the party. That lack of defence must have occurred in an actual and substantive manner to be of constitutional significance. Therefore, if the recipient improperly notified, summoned, or ordered to attend was aware of the proceedings, the irregularly executed service shall be considered fully effective.[29]

In short, despite the existence of deficiencies in the service, what the party cannot do is allow the proceedings to continue without denouncing the fault in order to subsequently seek, in a later stage, a declaration of nullity of a service which, although initially null and void, has subsequently been cured due to its inaction. This criterion is constantly used in practice by the Spanish courts.[30]

25.4. Do the consequences of improper service differ within the scope of the Regulation due to the provisions in Art. 22 of the Regulation? If so, how?

The consequences are substantially the same: if the service has been carried out irregularly, the recipient will have the opportunity to seek the rescission of the judgment against him.

What changes are the specific grounds and time limits set out in the Regulation (e.g., the power to relieve the defendant from the effects of the expiry of the time for appeal).

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[28] STC 30/2014, 24 February 2014, ECLI:ES:TC:2014:30; STC 176/2009, 16 July 2009, ECLI:ES:TC:2009:176; STC 121/1998, 21 June 1998, ECLI:ES:TC:1998:121.

[29] STC 278/1993, 23 September 1993, ECLI:ES:TC:1993:278.

[30] STS no. 171/2019, 20 March 2019, ECLI:ES:TS:2019:898; STS no. 698/1995, 13 July 1995, ECLI:ES:TS:1995:4179.

25.5. Has your Member State made use of the option in Art. 22 No. 2 of the Regulation?

Spain has declared that the judge may lift a stay of proceedings and rule as appropriate if all the requirements laid down in Article 22 of Regulation (EU) 2020/1784 are met.[31]

25.6. How is the possibility of reinstatement in Art. 22 No. 4 of the Regulation regulated in your Member State? What is the deadline for filing an application for restitutio in integrum?

If both conditions set out in paragraph 4 are fulfilled:

- the defendant, without any fault on the defendant's part, did not have knowledge of the document in sufficient time to enter a defence or did not have knowledge of the judgment in sufficient time to appeal
- the defendant has raised a *prima facie* defence to the action on the merits.

He or she will be able to apply for a relief from the effects of the expiry of the time for appeal from the judgment.

The deadline for filing such an application for relief shall be one year from the date of the decision.

26. Can a decision be revoked due to incorrect service in your Member State even after it has become res judicata?

Yes, using the procedures and 'remedies' already provided in answer 16.5.

27. How is the service of documents proven or documented? How is the date of service determined in the national law of your Member State?

Where the copy of the decision or of the writ of summons is sent by registered post or by telegram with acknowledgement of receipt, or by any other similar means which makes it possible to leave on the case-file a reliable record of the receipt of the service, of the date of receipt, and of its contents, the judicial officer shall record on the case-file the service has been effected and the contents of the service. In cases where the service is made through a *procurador*, the judicial officer shall also record in the case-file that the service has been effected and the contents thereof and shall attach to the case-file, where appropriate, the acknowledgement of receipt or the means by which

[31] Available at <e-justice.europa.eu/38580/ES/serving_documents_recast?SPAIN&member=1#a_160>, visited 20 March 2023.

proof of receipt is evidenced or the documents provided by the *procurador* attesting that he or she has effected the service (Art. 160.1 LEC).

The general rule is to consider that the document has been served on the day following the date of receipt.

Pursuant Art. 162.2 LEC, special rules apply to electronic notifications:[32]

- Where a judicial act or decision is served by the court or tribunal through the service organised by the service organised by the *Colegio de Procuradores* [legal representatives association], the common procedural rules applicable to such service shall apply. Consequently, they shall be deemed to have been served on the day following the date of their receipt.

In the rest of cases:

- Where there is evidence that the act of communication has been properly forwarded and three working days have elapsed without the addressee accessing its contents, it shall be understood that the communication has been served with full procedural effects. In such a case, the time limits for bringing an action to challenge the decision shall start to run from the day following the third day, all of which are working days.
- If the content is accessed on the day of submission or within three working days thereafter, the service is deemed to have been made on the day following such access. Thus, if the content is accessed on the third day, the service is deemed to have been effected on the fourth working day and the time-limits start to run from the fifth working day.

28. Except for the mentioned respondent, are there other authorised recipients, i.e. (temporary) representatives or persons authorised? Please provide the corresponding regulations within your national legal system.

The only comparable figure established in Spanish law is the *procurador*. Arts. 153 and 154 LEC allow service through this legal representative.

[32] These rules have been interpreted and further developed by our courts. See *Acuerdo del Pleno No Jurisdiccional de la Sala de lo Social del Tribunal Supremo de 6 de julio de 2016, sobre notificaciones a través del Sistema Lexnet en el orden social y plazos procesales*, available at: <www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Jurisprudencia-/Acuerdos-de-Sala/Acuerdo-del-Pleno-No-Jurisdiccional-de-la-Sala-de-lo-Social-del-Tribunal-Supremo-de-06-07-2016--sobre-notificaciones-a-traves-del-sistema-Lexnet-en-el-orden-social-y-plazos-procesales>, visited 20 March 2023.

Any notices to the parties of the proceedings shall be served through their *procurador*, where they are thus represented. The *procurador* shall sign any kind of notices, summonses, orders to attend and injunctions that have to be served to his grantor of power of attorney during the course of the proceedings, including judgements as well as notices concerning any procedures the grantor must perform personally.

Notices to procurators shall be served at the court's premises or through the common receipt service organised by the Colegio de *procuradores*. The Colegio de *procuradores* shall be responsible for the internal regulation of such service in accordance with the law. Sending and receiving notices to procurators within this service will be carried out, apart from the exceptions provided for by the law, by computer or electronic means (LexNET) and with the proof of receipt.

If the notice was served on paper, two copies of the order or summons shall be sent to the service, one of which shall be retained by the *procurador* and the other signed by him and returned by the service to the court office.

29. What are the legal consequences of an improper service of documents?

This question has been already answered in 25. Notices which are not made in accordance with the provisions of the law and may lead to the lack of proper defence shall be null and void. If the improper service has not led to a lack of defence, the deficiencies can be cured in accordance with the parameters and requirements established by law and interpreted by the case law of the Constitutional Court.

30. What is considered a timely service of documents?

Timely service is service made in accordance with the time limits laid down by law for each type of act of communication. Timely service may also be considered to be a service which allows the addressee to enter a defence in due time.

31. Who bears the risk of an untimely service of documents?

By contrast, untimely service is service which is not made in accordance with the time limits laid down by law or which does did not allow the addressee to have knowledge of the document in sufficient time to enter a defence. Untimely service may amount to improper service, which may lead to the nullity of the notice and may result in liability for disciplinary action and/or damages (see question 7).

CROSS-BORDER SERVICE WITHIN THE SCOPE OF THE REGULATION

32. Which bodies are considered to be "transmitting agencies" according to Art. 3 No. 1 of the Regulation in your Member State? If there are several transmitting agencies in your Member State, please describe their local jurisdiction.

Judicial officers are considered "transmitting agencies" for the transmission of judicial and extrajudicial documents within the scope of the Regulation.

33. Which bodies are considered to be "receiving agencies" according to Art. 3 No. 2 of the Regulation in your Member State? If there are several receiving agencies in your Member State, please describe their local jurisdiction.

Judicial officers in charge of the common service of notifications of the place where the notification is to be made are considered "receiving agencies". Where the common service of notifications does not exist, the judicial officer of the Court of First Instance of the place where the service is to be made shall be considered "receiving agency".

All requests shall be sent to the *Servicio de Registro y Reparto dependiente del Servicio Común General* [General Joint Centre's Registry and Distribution Service] and, where there is no such service, to the *Juzgado Decano* [Senior Court registry] for distribution to the competent authority for service. The Court registries and Central Services designated by Spain as the "receiving authority" will forward the request to the authority competent to effect service.[33]

34. What means of communication is accepted by the receiving agencies when receiving documents?

The Spanish courts accepts IT and digital means and, in the absence of IT and digital means, by post with acknowledgement of receipt**.**

35. Which public institution is the "central body" according to Art. 4 of the Regulation in your Member State?

The central body designated by Spain is the *Subdirección General de Cooperación Jurídica Internacional del Ministerio de Justicia* [Subdirectorate-General for International Legal Cooperation at the Ministry of Justice].

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[33] Available at <e-justice.europa.eu/38580/EN/serving_documents_recast?SPAIN&member=1>, visited 20 March 2023.

36. How is it decided which method of service will be used by the authorities in your Member State?

Leaving aside the obligation to use the decentralised IT system when it is finally available and operational (digital by default), the actual method used by the Spanish authorities in practice will depend on the nature of the document to be served, what is stated in the respective form and its compatibility with Spanish law. Although the Regulation states that the use of the decentralised IT system will be preferential to the other methods of communication permitted, the case law of the Court of Justice on the absence of hierarchy between the different methods of service in relation to Regulation 1393/2007 must be considered to be still fully in force.[34]

37. What are the costs of service under the Regulation if your Member State is the receiving State?

Where service of a document is effected by a court, judicial office or *Servicio Común Procesal*, the costs of service shall be borne by the judicial body without any payment by the applicant**.**

38. How are incomplete or insufficient requests for service to be dealt with?

In Spain, the use of Annex I of Regulation 1206/2001 on the taking of evidence was resorted to, given the impossibility of making enquiries about the address under Regulation 1393/2007. In fact, this method of proceeding still appears on the information sheet available at the e-justice portal.[35]

However, it should be noted that the Luxembourg Court has recently rejected[36] this interpretation of Regulation 1206/2011 and that, following the entry into force of the new recast Regulation, such enquiries can now be made under the conditions set out in Art. 7 (see question 40).

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[34] ECJ 2 March 2017, Case C-345/15, Henderson, ECLI:EU:C:2017:157; ECJ 19 December 2012, Case C-325/11, Alder, ECLI:EU:C:2012:824; ECJ 9 February 2006, Case C-473/04, Plumex, ECLI:EU:C:2005:698; On this issue, we fully share the view of Aguilera Morales, 'El Reglamento (UE) 2020 'El Reglamento (UE) 2020/1784 sobre notificación y traslado transfronterizo de documentos: novedades e implicaciones internas' 57 Revista General de Derecho Europeo (2022), pp. 20-26.

[35] See section 4 of the information provided on the e justice portal: <e-justice.europa.eu/39433/ES/service_of_documents_official_transmission_of_legal_documents?SPAIN&member=1>, visited 20 March 2023.

[36] Cfr. ECJ 9 September 2021, Cases C-208/20 and C-256/20, Toplofikatsia Sofia, ECLI:EU:C:2021:719.

39. In which languages can the standardised forms be completed (according to Art. 3 No. 4 lit. d of the Regulation) in your Member State?

Spain allows the submission of forms in Spanish, English, French and Portuguese languages.

40. To what extent does your Member State support address tracing according to Art. 7 of the Regulation? Please describe the process in detail.

The current regime is therefore as follows. The authority competent for service is responsible for carrying out address enquiries. In accordance with Article 7(1)(a) of the Regulation, transmitting agencies may address requests on the determination of the address of the person to be served with the document to the competent authority designated by Spain for service. In accordance with Article 7(2)(c) of the Regulation, the Spanish authorities competent for service will, on their own initiative, submit requests to domicile registries or other databases for information about addresses in cases where the address indicated in the request for service is not correct. The judicial officer will be in charge of making the address enquiries.

41. Has your Member State lodged a national reservation concerning the service by consular or diplomatic agents provided for in Art. 17 of the Regulation?

Spain is opposed to the service on its territory of documents from other Member States by consular or diplomatic services, unless they are served on a national of that Member State (Member State of origin).

42. Is the direct service method provided for in Art. 20 of the Regulation compatible with the national law of your Member State?

Direct service within the scope of the Regulation is not possible in Spain. *Procuradores* may not effect service, unless they are expressly authorised by a judicial officer in the terms established by our national law (see question 28).

43. Is there a bilateral or multilateral agreement within the meaning of Art. 29 of the Regulation between your Member State and one or more other Member States? If yes, please give reference to the agreement and elaborate. Please leave out the generally applicable agreement be- tween the EU and the Kingdom of Denmark of 19 October 2005 on the service of judicial and extrajudicial documents in civil or commercial matters.

Although there is no record of an express declaration by Spain on this issue, the agreement between the Kingdom of Spain and the Portuguese Republic on judicial

cooperation in criminal and civil matters can be cited.[37] In this agreement, it is stipulated that Requests and documents relating to international judicial assistance in criminal and civil matters, transmitted between the Ministries of Foreign Affairs and Justice, as well as between judicial authorities, may be drafted in the language of the requesting State, with both parties waiving any reservations they may have made in this respect in the multilateral treaties to which they are parties.

This convention also contains other provisions which at the time could have been considered more favourable, but which have now been superseded by the regime applicable in European Union law. e.g., Requests and documents transmitted between competent authorities shall be exempt from legalisation or apostille. Requests for judicial assistance in civil or criminal matters shall be transmitted directly between the judicial authorities of the border courts, without prejudice, where necessary, to the use of the channels of transmission provided for in the Conventions in force between the two parties.

44. Has your Member State exercised the option for early use of the decentralised IT system as defined in Art. 33 No. 2 of the Regulation?

Spain is not known to have exercised this option so far.

RIGHT OF REFUSAL

45. Is there a possibility under your national law to refuse to accept a document?

Yes. If the addressee of the notification is found at the address and refuses to receive the copy of the judgment or summons or to sign the certificate of service, the officer or agent in charge of service will inform him that a copy of the judgment or summons is at his disposal at the Registry of the Court and that the effects of service have been produced. This shall be recorded.

45.1. On what grounds can the acceptance of a document be refused?

Under Spanish law, no specific reason is required for the addressee to refuse the service. On the other hand, it should be borne in mind that in accordance with Art. 152.5 LEC, in the case of notices, summons and orders to attend, no response from the recipient will be admitted or recorded, unless this has been

[37] *Convenio entre el Reino de España y la República Portuguesa relativo a la cooperación judicial en materia penal y civil, hecho en Madrid el 19 de noviembre de 1997* (OJ no. 18 21/01/1999). Available at <www.boe.es/eli/es/ai/1997/11/19/(1) >, visited 20 March 2023.

ordered. Concerning injunctions, the reply given by the requested party shall be admitted and shall be recorded succinctly in the service of process.

45.2. How can the acceptance of documents served electronically be refused?

Service by electronic means is not deemed to have been refused. Even if the addressee does not access the contents of the notification, when there is evidence that the notification has been duly made by electronic means, the notification will be considered to have been carried out with full procedural effects from the third day (three working days) after it has been made available in the electronic mailbox according to Art. 162.2 LEC.[38]

Please note that, unless otherwise stipulated, no service will be made on professionals during the month of August. If this occurs during this period, the lack of access will not be considered a rejection of the service and, therefore, the above-mentioned effects will not be produced.

45.3. What factors does the deciding court have to take into account when assessing the admissibility of the refusal to accept?

The court will take into account in particular whether the service was effected correctly and in accordance with the law, the particular circumstances in which the refusal took place and whether the acceptance could have led to a lack of defence (e.g., for linguistic reasons or because time limits were not observed).[39] It will also assess the circumstances in which the refusal occurs and the possible existence of bad faith on the part of the addressee of the communication.

45.4. What are the consequences of such a refusal? Please distinguish between justified and unjustified refusals when responding.

If the addressee of the notification is found at the address for service and refuses to receive the copy of the judgment or summons or to sign the certificate of service, the officer or the *procurador* in charge of service will inform him that a copy of the judgment or summons is at his or her disposal at the Registry of the Court and that the effects of service have been produced. This shall be recorded.

[38] Cfr. AAP MA no. 56/2022, 28 January 2022, ECLI: ES:APMA:2022:120A. The case concerns a lawyer who was served with a notice of rejection of a pleading, but did not access the contents of this notice. The lawyer did not check her notifications in the Lexnet mailbox even though she could have done so, as there was no force majeure cause, technical incident, or scheduled shutdown of the service. The Court considers that the service was validly carried out, applying the jurisprudence of our Constitutional Court on Art. 162.2 LEC.

[39] Cfr. SAP OU 685/2021, 15 October 2021, ECLI:ES:APOU:2021:685.

Once the refusal has taken place, if the court finds that the refusal was not objectively justified, the effects described above will be fully produced —the service will be understood to have been validly carried out—. If, on the other hand, the court finds that the refusal was justified (e.g., because the addressee does not understand the language),[40] the service will be considered ineffective, and then the effects provided by Art. 166 LEC shall be produced (nullity, see answers 25 and 29). The specific consequences of such a declaration will depend on the stage of the proceedings (set aside the proceedings, new service in a regular manner, etc.).

46. How do the courts in your Member State review the admissibility of the refusal to accept a document under Art. 12 of the Regulation?

This question has been answered in question 59 paragraph 2.

ELECTRONIC METHODS OF SERVICE

47. Does your Member State's national law allow documents to be served electronically? If so, how?

Yes, through the different electronic systems and procedures provided by Law 18/2011 and Royal Decree 1065/2015.[41]

47.1. If dedicated internet portals are used for this purpose: Please describe the platform. Do users have to register beforehand?

Two main platforms are used for this purpose: LexNET (platform used by legal professionals, public authorities, etc., see question 48) and the *Sede Judicial Electrónica* (platform for natural and legal persons).

The LexNET system is a secure means of transmitting information which, using cryptographic techniques, guarantees the submission of documents and the receipt of communication acts, their dates of issue, availability and receipt or access to their content. The system allows:

[40] On this issue, cfr. ECJ 28 April 2016, Case C-384/14, Alta Realitat, ECLI:EU:C:2016:316.

[41] *Real Decreto 1065/2015, de 27 de noviembre, sobre comunicaciones electrónicas en la Administración de Justicia en el ámbito territorial del Ministerio de Justicia y por el que se regula el sistema LexNET* (OJ no. 287 01/12/2015), available at <www.boe.es/eli/es/rd/2015/11/27/1065/con>, visited 20 March 2023.

a) The filing and transfer of pleadings and accompanying documents, as well as their distribution and forwarding to the judicial or prosecutorial body or office responsible for their processing.

b) The management of the transfer of copies, in such a way that the date and time at which the transfer was effectively carried out and the identity of the other attorneys appearing is accredited on the copies.

c) The performance of acts of procedural communication.

d) The issuing of electronic receipts, which can be integrated into the procedural management applications, accrediting the correct filing of pleadings and annexed documents, the transfer of copies and the sending and receipt of acts of procedural communication and, in any case, the date and time of the effective performance.

e) The recording of an entry for each of the electronic transactions referred above carried out through the system, identifying each transaction with the following data: identity of the sender and recipient of each message, date and time of its effective execution provided by the system and, where appropriate, the judicial proceedings to which it refers, indicating the type of procedure, number, and year.

Prior to using the system, users must request registration with their user certificate by connecting to the web address <www.lexnetjusticia.gob.es>, except in those cases in which the connection can be established through the professional platforms of the different legal operators recognised by the Ministry of Justice. This application for registration must be validated by the competent administrators of the authorised user groups as a guarantee of belonging to a specific group. Without such validation, the user will not be able to use the system. All the information relating to the usability and accessibility of the system is available at the aforementioned web address.

The *Sede Judicial Electrónica* allows citizens who, not being required to be represented or assisted by legal professionals, choose to interact with the Administration of Justice by electronic means; or who are obliged to do so by law or regulation. This platform will provide the service of communications and notifications by electronic appearance to the addressee. In this case, the duly identified person will be able to access the content of the procedural decision to be communicated and notified. To access this platform, they do need to use the different credentials and electronic identification methods supported (see question 47.2).

47.2. How is the e-identification (and possibly e-signature) of electronically served documents executed in the national legal system of your Member State?

In Spain, for the use of electronic information and communication systems that so require, electronic identification and electronic signature systems that comply with the provisions of Law 6/2020, on regulating certain aspects of electronic trust services,[42] and EU Regulation no. 910/2014, on electronic identification and trust services for electronic transactions in the internal market (e-IDAS Regulation),[43] and are suitable for guaranteeing the identification of the participants and, where appropriate, the authenticity and integrity of electronic documents.

According to Art. 14 of Law 18/2011,[44] citizens and legal professionals may use the following electronic signature systems to interact with the Administration of Justice:

a) The electronic signature systems incorporated into the National Identity Document, for natural persons.

b) Advanced electronic signature systems, including those based on a recognised electronic certificate, admitted by the Public Administrations.

c) Other electronic signature systems, such as the use of keys agreed upon in a prior user registration, the provision of information known to both parties, or other non-cryptographic systems, under the terms and conditions determined in each case.

According to Art. 15 of Law 18/2011, legal persons and entities without legal personality may use electronic signature systems of legal persons or entities without legal personality for all those proceedings and actions before the Administration of Justice, under the conditions established by the procedural laws.

The Administration of Justice may use for its electronic identification and for the authentication of the electronic documents it produces electronic signature

[42] *Ley 6/2020, de 11 de noviembre, reguladora de determinados aspectos de los servicios electrónicos de confianza* (OJ no. 298 12/11/2020), available at <www.boe.es/eli/es/l/2020/11/11/6/con>, visited 20 March 2023.

[43] OJ L 257 28/08/2014, available at <data.europa.eu/eli/reg/2014/910/oj>, visited 20 March 2023.

[44] *Ley 18/2011, de 5 de julio, reguladora del uso de las tecnologías de la información y la comunicación en la Administración de Justicia* (OJ no. 160 06/07/2011).

systems for automated judicial proceedings, systems based on electronic certificates of the personnel in the service of the Administration of Justice and other signature systems that make it possible to attribute the signature to the signatory and to verify the authenticity of documents on the basis of Secure Verification Codes.

According to Art. 14 of Law 18/2011, the Administration of Justice may use the following systems for its electronic identification and for the authentication of the electronic documents it produces:

a) Electronic signature systems based on the use of secure device certificates or equivalent means that enable the electronic judicial headquarters to be identified and secure communications to be established with it.

b) Electronic signature systems for automated judicial proceedings.

c) Electronic signature of staff in the service of the Administration of Justice.

d) Electronic data interchange systems in closed communication environments, as specifically agreed.

47.3. How is it ensured that the right person receives the documents? How is the identity of the user verified?

This has been already answered above in question 47.2.

47.4. How is the time of service determined?

Electronic registers automatically issue a receipt consisting of an authenticated copy of the document or communication concerned, including the date and time of submission and the registration entry number. The electronic notification system makes it possible to prove the date and time when the document was received and made available to the person concerned, as well as the time at which the addressee accesses its content**.**

48. Is electronic service dependent on the consent of the person concerned in your Member State?

Natural persons who are not assisted or represented by legal professionals may, at any time, choose whether or not to communicate with the Administration of Justice and receive communications and notifications from it by electronic means.

Notwithstanding, some persons are obliged to communicate with the Administration of Justice through electronic channels: legal persons, entities without legal personality, persons who carry out a professional activity for which compulsory registering is required for the procedures and actions they carry out with the Administration of Justice, notaries and registrars, those who represent an interested party who is obliged to interact electronically with the Administration of Justice, civil servants of the Public Administrations for the procedures and actions they carry out by reason of their position.

Moreover, inter alia, all lawyers, *procuradores*, social graduates, state lawyers, attorneys of the Spanish Parliament, legislative assemblies and the legal services of the Social Security Administration, other public administrations, autonomous communities or local authorities, as well as the associations of lawyers, *procuradores* and insolvency administrators are obliged to use the electronic systems existing in the Administration of Justice for the presentation of pleadings and documents and for the reception of acts of communication[45].

Electronic information and communication systems, as well as other computer systems at the service of the Administration of Justice, must be compulsorily used by all members of judicial and public prosecutor offices (judges, public prosecutors, judicial officers, civil servants in the service of the Administration of Justice) in the performance of their duties.

48.1. If consent is required, can it be given universally or must consent be obtained for each individual case?

For persons obliged to communicate by electronic means, consent does not apply. For those natural persons who, being able to opt for this method, consent to electronic service, they may grant consent universally for all communications from that moment onwards. Since this method is optional, consent can also be revoked at any time.[46]

48.2. If universal consent is permissible, can certain matters (e.g., family law disputes) be exempted from the consent?

Even if consent to electronic notification has been given, our Constitutional Court has interpreted that the first summons to the defendant, due to its particular importance, must also be carried out by sending it to the domicile of

[45] See Annex II *Real Decreto 1065/2015*.

[46] There is a quick guide available at <sedejudicial.justicia.es/documents/20142/109384/20161228_SEDJUDE_Actos_Comunicacion_Notificaciones.pdf/88d15edf-0d4b-6ccf-11e3-edf3ee071dc6?t=1575026002404>, visited 20 March 2023.

the litigants in application of the provisions of Art. 155 and 273.4 §2 LEC. This exception is being applied even for those legal persons who are legally obliged to communicate electronically with the Administration of Justice.[47]

49. Is every citizen obliged to accept electronic service of documents in your Member State?

No. As it has been already answered in question 48, only those persons established by law and legal and judicial practitioners are obliged to accept electronic service of documents.

50. Is there a central body responsible for electronic service in your Member State?

The *Subdirección General de Planificación y Gestión de Transformación Digital del Ministerio de Justicia* [The Subdirectorate General for Planning and Management of Digital Transformation of the Ministry of Justice] is responsible for administering and maintaining the operational environment and the availability of the LexNET system.

51. What measures are taken in your Member State to ensure the security of electronic service?

The Judicial Interoperability and Security Scheme shall be applied in order to ensure access, integrity, availability, authenticity, confidentiality, traceability and preservation of data, information and services used in electronic filings, communications and notifications in the Administration of Justice.

Electronic information and communication systems shall comply with the minimum-security requirements laid down in the principles of the Judicial Interoperability and Security Scheme. These requirements, in accordance with the provisions of Article 54 of Law 18/2011, shall be developed by means of a technical security guide, in accordance with the provisions of the Technical Security Instructions of the General State Administration.[48]

52. What measures are taken in your Member State to ensure the efficiency of electronic service?

Among the measures ensuring the effectiveness of electronic service, perhaps the most important is the presumption that the service has been validly effected as of the

[47] STC 47/2019, 8 April 2019, ECLI:ES:TC:2019:47.

[48] Available at <www.cteaje.gob.es/gu%C3%ADas-de-interoperabilidad-y-seguridad>, visited 20 March 2023.

third day on which it is made available to the addressee. This is irrespective of whether or not the addressee has accessed its contents (see question 27).

In addition, in order to facilitate knowledge of the service, the addressee may receive a notice that the service is available to him on the electronic platform. But this notice is of an ancillary nature, it does not constitute part of the service, so the lack of notice cannot be invoked as a cause of ineffectiveness of the notification (STC 6/2019, see question 10).

53. What are the consequences if electronic service is not possible? (e.g., disrupted internet access)

When, for any reason, the LexNET system or the platforms technically approved by the Ministry of Justice and connected to LexNET are unable to provide the service under the established conditions, users shall be informed for the purposes of the possible filing of pleadings and documents and the transfer of copies, and of the performance of acts of communication in non-electronic form and shall be issued, upon request, proof of the interruption of the service or a certificate from the corresponding General Professional Council stating such impossibility, the length of time it remained inactive and the reasons for it[49].

The proof and the certificates issued shall have the effects provided for in the Art. 162.2 §2 LEC, so that the addressee of the electronic service may justify the lack of access to the system for technical reasons during that period**.** If the lack of access due to technical reasons persist at the moment they are notified, notice shall be served by delivering a copy of the decision. In any event, notice shall be construed to have been validly served the moment at which the possibility of accessing the system is proven.

54. What are the costs of electronic service?

Both the use of the LexNET platform and the use of the *sede electrónica* are free of charge for users.

55. What measures does your Member State take with regard to data protection in connection with electronic service?

The security and confidentiality of the data contained in the files, systems and applications of the Administration of Justice shall be observed and guaranteed under

[49] Examples are available at: <lexnetjusticia.gob.es/justificantes-lexnet>, visited 20 March 2023.

the terms established in Regulation (EU) 2016/679,[50] Organic Law 3/2018,[51] and Organic Law on the Judiciary.

Regarding this issue, in July 2017 LexNET suffered a serious security incident that allowed access to other users' mailboxes due to an IT flaw in the design of the platform. This security breach led the Spanish Data Protection Agency to sanction the Ministry of Justice for failing to guarantee the security of personal data.[52]

56. How could the rules on service in your national law be improved in order to facilitate cross-border service and to avoid legal uncertainty?

In the field of use of electronic platforms and service, it is crucial to achieve interoperability of the multiple systems and applications used in our Administration of Justice. Currently, each territory in Spain uses different IT applications and tools for procedural management (e.g., Adriano, Cicerone, Atlante, Fortuny, Minerva)[53] that are often not interoperable, which causes many problems in practice. Actually, in some territories (e.g., the Basque Country), LexNET is not even used. In this sense, there is a draft law that aims to make progress in this direction.[54] The implementation of the decentralised IT system based on e-CODEX provided for in the regulation — along with the adoption of the specific e-CODEX Regulation—[55] is a great opportunity to make further progress towards interoperability, even at the national level.

57. Please explain how the E-CODEX system operates if your Member State took part in the E- CODEX project concerning procedures in the case of European Small Claims and European Payment Order.

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[50] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4/05/2016).

[51] *Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales* (OJ no. 294 6/12/2018).

[52] According to the investigation compiled by the Spanish Data Protection Agency, 284 users accessed 692 mailboxes that did not belong to them, viewing 1,438 messages in an unauthorised manner.

[53] See <https://www.poderjudicial.es/cgpj/es/Temas/e-Justicia/Servicios-informaticos/Ministerio-de-Justicia-y-CCAA/>, visited 20 March 2023.

[54] Available at <www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-116-1.PDF>, visited 20 March 2023.

[55] Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system) and amending Regulation (EU) 2018/1726 (OJ L 150 1/6/2022).

Not applicable. Spain did not participate in the specific e-CODEX plus project[56] related to the European Small Claims and the European Payment Order.

PROBLEMS RESULTING OUT OF CROSS-BORDER SERVICE

58. What national issues arise out of the service of documents in your member state?

The main problem in Spain in relation to the service of documents is the use in practice of notification by announcement. This fictitious method must be used as a last resort of a supplementary and exceptional nature that requires the prior exhaustion of the ordinary means of communication and the conviction of the court that, as the whereabouts of the interested party are unknown or ignored, other means of service are unfeasible or useless.[57] This has led to condemnatory judgments against Spain by the Strasbourg Court for violation of Art. 6.1 of the Convention.[58] However, the Strasbourg Court has declared the application inadmissible when the lack of diligence in access is attributable to the party.[59]

Another recurrent problem in Spain concerns electronic service to legal persons. As has already been explained, legal persons are obliged to interact with the Administration of Justice by electronic means through an authorised electronic address. The use in practice of this method by the courts has often been in conflict with the right to effective judicial protection.[60]

59. What European issues arise out of the service in your member state?

The service of extrajudicial documents. Spanish law applies a strict conception for domestic purposes, but in the European context it has already been adapted to the

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[56] Available at <www.e-codex.eu/e-codex_plus>, visited 20 March 2023.

[57] STC 190/2021, 17 December 2021, ECLI:ES:TC:2021:190; STC 181/2021, 25 October 2021, ECLI:ES:TC:2021:181; STC 145/2021, 12 July 2021, ECLI:ES:TC:2021:145; STC 118/2021, 31 May 2021, ECLI:ES:TC:2021:118.

[58] Cfr. ECtHR 19 January 2021, Case no. 65610/16, Klopstra v Spain, ECLI:CE:ECHR:2021:0119JUD006561016; ECtHR 15 December 2020, Case no. 60750/15, Karesvaara and Njie v. Spain, ECLI:CE:ECHR:2020:1215JUD006075015. See M. Aguilera Morales, 'El Reglamento (UE) 2020 'El Reglamento (UE) 2020/1784 sobre notificación y traslado transfronterizo de documentos: novedades e implicaciones internas' 57 Revista General de Derecho Europeo (2022) pp. 34-35.

[59] Cfr. ECtHR (Decision) 26 May 2020, Case no. 69484/16, Immoterra International Denia, S.L. v Spain, ECLI:CE:ECHR:2020:0526DEC006048416.

[60] Cfr. STC 189/2021, 13 December 2021, ECLI:ES:TC:2021:189; STC 188/2021, 13 December 2021, ECLI:ES:TC:2021:188; STC 40/2020, 25 February 2020, ECLI:ES:TC:2020:40; STC 47/2019, 8 April 2019, ECLI:ES:TC:2019:47.

requirements of the case law of the Luxembourg Court (see cases Roda, Tecom, Alder).[61] Thus, the methods provided for in the regulation may be used for the formal transmission to an addressee residing abroad if it is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law.

Refusal to accept a document on the ground that the recipient does not understand the language[62]. According to Art. 161.2 LEC, Spanish courts interpret that where a defendant refuses to accept the documents served on him, they are to be deemed as having been validly served where the court finds that the refusal was not objectively justified (e.g., when it is obvious that the addressee does understand the language in which the documents are drafted). The Luxembourg Court declared that it is only after the addressee has effectively exercised his right to refuse to accept the document that it may verify whether that refusal was well founded or not. Where that court finds that the refusal by the addressee of the document was not justified, it may in principle apply the consequences under its national law.[63]

60. How could the provisions on service in your national legislation be improved in order to facilitate cross-border service and prevent legal uncertainty?

The main problems that arise in Spain in this regard relate to the system of service via notification by announcement without having previously exhausted all means of ascertaining the address for service. Although the jurisprudence of the Constitutional Court —in line with that of the Luxembourg and Strasbourg Courts— is certainly protective, the current wording of our law is excessively ambiguous. It would therefore be advisable to introduce improvements in the text of the law that would further restrict the possibility of using service via notification by announcement, thus ensuring its extraordinary nature.[64] In this sense, there is a draft legislative proposal to amend several of the articles of the LEC devoted to the service of documents (Arts. 148-168 LEC)[65] that is likely to be adopted in the near future.

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[61] Cfr. ECJ Roda, Tecom, Alder (op. cit.). On this case law, see M.J. Elvira Benayas, 'La notificación en el extranjero de documentos extrajudiciales: los documentos privados' 10-2 Cuadernos de Derecho Transnacional (2018), pp. 827-835.

[62] On this issue, N. Marchal Escalona, 'El nuevo marco europeo sobre notificación y obtención de pruebas en el extranjero, Revista Española de Profesores de Derecho Internacional y Relaciones Internacionales 74-1 (2022), pp. 176-178.

[63] ECJ 28 April 2016, Case C-384/14, Alda Realitat S.L., ECLI:EU:C:2016:316.

[64] M. Aguilera Morales, 'El Reglamento (UE) 2020 'El Reglamento (UE) 2020/1784 sobre notificación y traslado transfronterizo de documentos: novedades e implicaciones internas', 57 Revista General de Derecho Europeo (2022) pp. 34-35.

[65] Available at <www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-97-1.PDF>, visited 20 March 2023.

In the field of use of electronic platforms and service (see question 56), it is crucial to achieve interoperability of the multiple systems and applications used in our Administration of Justice. Indeed, each territory in Spain has its own applications that are often not interoperable, which causes many problems in practice. Actually, in some territories (e.g., the Basque Country), electronic platforms are not even used. In this sense, there is a draft law that aims to make progress in this direction.[66] In this respect, the implementation of the decentralised system based on e-Codex provided for in the regulation is a great opportunity to make further progress towards this objective.

61. Please list national cases in which problems occurred regarding the cross-border service of documents. If possible, please shortly summarise the respective issues and decision.

STC 162/2002:[67] Case brought prior to the application of the regulation. Infringement of effective judicial protection as a result of the service on a company whose headquarters were in England, but which had important business and social links in Spain. The Constitutional Court considered that it was neither unreasonable nor inappropriate to serve the summons in the place where it was carried out, given the appellant's connection with that place and the existing relations between the appellant and a co-defendant, which was served at the same address, after which the latter was deemed to have been served and appeared in the proceedings. It is also concluded, and this is what is relevant from the perspective of Art. 24.1 CE, that the appellant had extra-procedural knowledge of the proceedings in which it was a co-defendant, together with the co-defendant and other entities. The Constitucional Court rejected the application for amparo.

STC 214/2005:[68] lack of defence contrary to Art. 24.1 CE caused by the defective performance of the acts of procedural communication carried out, specifically the summons of the appellant in the civil proceedings which resulted in the seizure and auction of the co-ownership right to the property of which he was the owner. the judicial body not only has the duty to ensure the correct execution of the acts of communication, but also to ensure that these acts serve their purpose of guaranteeing that the party is heard in the proceedings. This entails, as far as possible, the requirement of personal service on those affected and, from another perspective, the limitation of the use of edictal service to those cases in which the address of the person to be served is not known or whereabouts are unknown. The Constitutional Court

[66] Available at <www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-116-1.PDF>, visited 20 March 2023.

[67] STC 162/2002, 16 September 2002, ECLI:ES:TC:2002:162.

[68] STC 214/2005, 12 September 2005, ECLI:ES:TC:2005:214.

considers that the judicial body cannot be considered to have acted with due diligence, as it only issued a single summons before resorting to service by way of edicts. On the other hand, the party cannot be accused of a lack of will or diligence, nor that it had extra-procedural knowledge of the same. For all these reasons, the Constitutional Court upheld the application for amparo.

STS no. 5/2021:[69] Effective service in relation to companies of the same group. It cannot be considered that one company can be summoned to the domicile of another, nor can its employees be required to accept and collect the documents addressed to another group company, nor, consequently, can the summons through another group company be considered to have been properly served. On the other hand, as the group as such lacks personality and an entity acting in the course of trade, the Spanish subsidiary could not be deemed to be a representative of the group in order to appear in the proceedings.

SAP LE 244/2018:[70] upholds an appeal against a judgment of the court of first instance on the ground that the applicant did not exhaust the possibilities of service on the defendant, since the first summons was sent to an address in France which did not correspond to her own, by letter, without the results being recorded. instead of effecting service at the defendant's designated address, by means of the mechanisms of international judicial cooperation provided for in Regulation (EC) No 1393/2007, the Court decided to make a second attempt at service at an address at which it was not foreseeable that the defendant could be located, and considered the steps taken to effect service sufficient to resort to service by edicts.

[69] STS no. 5/2021, 18 January 2021, ECLI:ES:TS:2021:87.

[70] SAP LE 244/2018, 28 February 2018, ECLI:ES:APLE:2018:244.