NATIONAL REPORT FOR SWEDEN ON CROSS-BORDER SERVICE OF DOCUMENTS

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Questionnaire for National Reports

SWEDEN

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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) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1784)
- 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 (service of documents) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2018:287:FIN)
- 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) (COM[2018] 379 final — 2018/204 [COD]) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2019.062.01.0056.01.ENG&toc=OJ%3AC%3A2019%3A062%3ATOC)
- The provided information in the European Judicial Atlas in civil matters on the service of documents (https://e-justice.europa.eu/38580/EN/serving_documents_recast)
- Briefing of the European Parliamentary Research Service (EPRS) on the reform of the service of documents regulation (2019) (https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642240/EPRS_BRI(2019)642240_EN.pdf)
- Other *travaux preparatoires* of the Recast Taking of Evidence Regulation (see e.g. https://www.europeansources.info/record/proposal-for-a-regulation-amending-regulation-ec-

no-1393-2007-on-the-service-in-the-member-states-of-judicial-and-extrajudicial-documents-in-civil-or-commercial-matters-service-of-documents/)

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 jurisdictions 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.

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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?**
(e.g. in Germany: The Code of Civil Procedure (hereafter: ZPO) offers a legal basis for service of documents. Section 2 of the third chapter gives a general overview on the procedure for the service of records or documents. The ZPO differentiates between service ex officio (sub-section 1, §§ 166 et seq. ZPO) and service of records or documents at the instigation of the parties (sub-section 2, §§ 191 et seq. ZPO).)

The Service of Process Act (2010:1932) (*Delgivningslagen [2010:1932]*)[1] offers a legal basis for service of documents. According to Sec. 1 para. 1, the law applies to service in court cases or matters or in other authorities, or when service is to take place according to law or a regulation. However, it does not state when a document is to be served. The Act is supplemented by the Service of Process Regulation *(Delgivningsförordningen [2011:154]*). Additionally, the Act on Authorization of Service of Process Companies *(2010:1933) (lag [2010:1933] om auktorisation av delgivningsföretag)*, and the Regulation on Authorization of Service of Process Companies (*förordning [2011:155] om auktorisation av delgivningsföretag)* can be mentioned.

The Service of Process Act is subsidiary to other provisions in Swedish law, see Sec. 1 para. 2. There are many special rules on service in various Swedish statutes, for example in the Code of Judicial Procedure *(Rättegångsbalken)*[2], the Land Code *(Jordabalken)*[3] and the Inheritance Code *(Ärvdabalken)*.[4] However, these special statutes often rely on the methods of service provided for in the Service of Process Act. There are also international conventions on cross-border service to which Sweden is a party.

As just mentioned, the Service Act applies in courts' or authorities' cases or matters. But it can also apply in situations where service need to take place without the connection to a case or matter. Hence, the Swedish legislator differentiates between service of documents in cases or matters, and service of documents not connected to existing cases or matters. Some examples of the latter situation are the following.

- Electricity providers' service of notifications, *cf.* Ch. 11 Sec. 4 para. 1 of the the Act of Power/Electricity (1997:857) *(ellagen* [1997:857]),
- Service of a will in order to start the time limit for appeal (*klanderfrist*), *cf.* Ch. 14 Sec. 4 of the Inheritance Code, and
- A landlord's service of notification of notice of termination, *cf.* Ch. 12 Sec. 44 para. 1 of the Land Code.

A brief comparison: In German law, an issue not connected to a court's or authority's case or matter seems to be regarded as extrajudicial service. This is not the case under Swedish law.

[1] For a non-official English translation of the Service Act, please visit https://juno-nj-se.ezproxy.its.uu.se/b/documents/3301609?tab=translations visited 10 March 2023.
[2] There are for example special rules for service of summons in civil procedure, see the Code of Judicial Procedure Ch. 33, Secs. 5-6.
[3] Cf. Ch. 12, Sec. 8 of the Land Code.
[4] Codes are not referred with SFS number in Sweden.

In principle, the Service of Process Act is not directly applicable to arbitral proceedings, *cf.* for example NJA 1996 s. 330, NJA 1999 s. 300 and NJA 2001 s. 855.[5]

2. **Explain the term "service" as used in your national legal system. If there is a legal definition, please quote it.**
(e.g. in Germany: We do have a legal definition in § 166 (1) ZPO, "(1) The term "service" designates the issuance of a document to a person in the form stipulated in the present Title" Service means to enable a person to be inform about a document. For the service itself and its legal validity a documentation of the service is not necessary. The documentation is regulated in a separate paragraph, 182 ZPO. The definition of service applies for service which is carried out ex officio, § 166(2) ZPO. The effectiveness of service requires intent. A notarisation of delivery is no longer a constitutive part of service, it only has an evidentiary function.)

Sec. 2 para. 1 of the Service of Process Act provides a definition of the meaning of service.

> *''Service means that a document is sent or handed to the person or persons authorized to accept service* [recipient of service] *or that some of the methods of service provided in this Act are employed.''*

Under Swedish law, service does not generally mean that the recipient of service actually has to read the content of the document. The legal validity of the service is determined by an assessment of the evidentiary value of the service. For details, see **Question 27**.

According to the general clause in Sec. 4 of the Service of Process Act, the form of service shall be determined with reference to what is appropriate with regard to the document's contents and extent, and it shall entail as low costs and inconvenience as possible. Service may not be affected in a way that is unsuitable with reference to the circumstances of the case.

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?**
(e.g. Germany does not use this term in pure domestic cases.)

Swedish law does not use this concept in domestic cases. The concept civil and commercial matters are employed in the application of European Law.

The fact that the Service Regulation No. 2020/1784 use the concept civil *or* commercial matters, whereas the Brussel I *bis* Regulation No. 1215/2012 employ the concept civil *and* commercial matters should not affect the meaning of the concept.[6] Accordingly, it seems correct to give the concept the same meaning in both instruments.

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

(As we [in Germany] do no not us the term in your legal system, we only us the definition for the application of European Law.)

Not relevant, as the concept is not used in domestic situations.

[5] But some sections of the Service of Process Act might be applicable by analogy according to NJA 1999 s. 300 but it is not completely sure to which extent.
[6] See T.C. Hartley, Civil Jurisdiction and Judgments in Europe. The Brussels I Regulation, the Lugano Convention, and the Hague Choice of Court Convention (Oxford University Press 2017) p. 46–48.

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.**
(*e.g. in Germany: Extrajudicial service is understood as the service of a document outside of a court proceeding and not only the service of documents related to a court proceeding.*)

The definition of extrajudicial documents in the Service Regulation No 2020/1784, indent (8), provides that the concept includes documents that have been drawn up or certified by a public authority or official.[7] The concept is not really established in Swedish law. Official deeds issued by a court or an authority without connection to a case or matter could be regarded as legal or non-legal, all depending on their contents. This fact is in part explained by the free siftning of evidence in Swedish procedural law. It is for a court to determine whether documents pleaded are relevant to the decision-making in the case or not. See **Question 27**.

The Service Regulation 2020/1784 can compel Sweden to serve extrajudicial document from other Member States, documents that perhaps would not be served in domestic cases.

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?**
*(e.g. in Germany: The purpose of service is to give the addressee (§ 182 II Nr. 1 ZPO) the opportunity to take notice of the document and to prepare his legal defence or prosecution thereon. This purpose is a consequence of the **right to be heard**, which is considered as a fundamental right, Article 103(1) of the German Constitution. Hence, the purpose of service is based on the **rule of law** for the area of judicial proceedings. Furthermore, the right to service promotes the course of proceedings and thus relieves the process, which serves the principle of **effective access to justice** (Article 19(4) of the German Constitution). In addition, **legal certainty** is to be established.)*
(e.g. in Austria: The continuance of the trial, the right to be heard, ...)

The *purpose* of serving documents is to secure the parties' opportunity to take notice of the documents, to prepare for their legal defences, and to guarantee that the parties have had the possibility to be heard regarding the material that forms the basis of the legal decision, *cf.* RH 2016:60. Service of documents also have an evidentiary function or purpose; after a certain period of time after service an appeal can no longer be lodged.

The purposes flow from several *overarching principles*. The purposes are to safeguard the fundamental requirement of **the right to a fair trial** and **the right to be heard** under Art. 47 of EU Charter and Art. 6.1 of the European Convention on Human Rights, all according to **the rule of law** that supports the equality of all citizens before law. The provisions on service are important to **legal security**. Simultaneously, they must not hinder or delay legal procedures. Problems in serving a respondent may cause harm to both parties and the State. Therefore, provisions on service needs to secure efficient **access to justice** and **legal certainty**.[8] Access to justice and legal certainty are two sides to a coin and applies two ways, both to the claimant and the respondent. The **principle of proportionality** is also relevant in the sense that the method of service shall be efficient and adequate in the individual case, and should not cause disproportionate costs or other negative consequences.[9]

[7] See ECJ 25 June 2009, Case C-14/08, Roda, Golf & Beach Resort SL, ECLI:C:EU:2009:395.
[8] To this end, see the Swedish preparatory works, prop. 2009/10:237, Ny delgivningslag [New Service of Process Act] p. 91.
[9] A. Andersson and S. Synnergren, Delgivningslagstiftningen. En kommentar [The service legislation. A commentary] (Norstedts Juridik 2022) p. 30. See also JO 2022-02-24 1685-2020 (decision by the Parlamentary Ombudsmen).

Also, see **Question 10.4**.

7. Who is responsible for the service of documents?
(e.g. in Germany: "The court registry shall perform service of documents pursuant to §§ 173 to 175, § 168(1) ZPO. Hence, the court is responsible for sending the documents but the claimant is responsible for enabling the court to do so by providing enough/sufficient information.)
(e.g. in Austria: The court is generally responsible for transmitting the documents and is obligated to monitor the service process. The recipient of the documents has a duty to collaborate.)

The authority that administers a case or a matter is responsible for service, *cf.* Sec. 7 of the Service of Process Act. If an authority is responsible for service, the authority decides the form for service, and is accountable for the costs of service, see Sec. 2 of the Service of Process Regulation. See NJA 2012 s. 244, on the confusion of whether it was the court or the Swedish Enforcement Authority (*Kronofogden*) that was responsible to serve.

If a party, or anyone in a similar position, requests to serve, and this is not inappropriate, the court or authority can decide that the party or person shall conduct service (*partsdelgivning*). In the decision, the court or authority shall determine a time limit when proof of service shall be handed in to the court or authority. If proof of service has not been handed in within the set time, the court or authority is responsible for conducting the service. All this flow from Sec. 8 of the Service of Process Act.[10] The provision does not prevent that the court or authority grant additional time for service. However, in cases amendable to out of court settlements (*dispositiva tvistemål*), and in the summary proceedings at the Swedish Enforcement Authority, the rule is instead that the action expires under certain circumstances, if the party responsible for service does not deliver proof of service in due time.[11]

In order to apply Sec. 8, a party must have requested the court of authority to serve. However, the court or authority itself can raise the question. The situation must be decided in the light of the circumstances; it must not be inappropriate for a party to serve. Service by a party should not be allowed if it entails delays in the proceedings or risks other negative consequences. The authority shall balance the interests of both parties.[12]

Sec. 10 of the Service of Process Act lays down the various forms of service allowed when service is performed by a party. Only regular service (*vanlig delgivning*) and service by process server (*stämningsmannadelgivning*) can be used. When the County Administrative Board (*länsstyrelsen*) provides assistance with service according to Sec. 9 of the Service of Process Act, *i.e.* when service is taking place without the connection to a case or matter, two other forms of service may also be employed, namely special service with legal person (*särskild delgivning med juridisk person*), and service by publication (*kungörelsedelgivning*). Therefore, service not connected to a case or a matter can be performed by a party, a process server or by the assistance of the County Administrative Board.

Service by agent (*buddelgivning*) means that the document to be served is sent to another authority for service. Prior contact must have been made with the authority. This form of service can for

[10] Cf. prop. 2009/10:237, supra n. 8, p. 103.
[11] See the Swedish Code of Judicial Procedure, Ch. 32, Sec. 2 and Sec. 30 the Act on Payment Orders and Judicial Assistance (*lag om betalningsföreläggande och handräckning*). See also Andersson and Synnergren, supra n. 9, p. 37 f.
[12] See prop. 2009/10:237, supra n. 8, p. 104.

example be employed if the recipient is in hospital. A counsellor or another employee at the hospital can affect service.

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?

If the court fails to serve correctly this may be a procedural error, and it could result in remanding of a case to a lower court (in the case of an appeal to a higher court).[13] Under other circumstances, depending on the relevant procedural form, the case might be reinstated.[14] These questions are being analysed more in detail under the Section regarding Legal Implications of Service below (see **Question 21 ff**.).

There is also a possibility to bring an action for reparation of damages against the State. This matter is regulated by the Tort Liability Act (*Skadeståndslag* [1972:207]). According to Ch. 3 Sec. 2 p. 1, the claimant must have suffered damage caused by an error or negligence in the exercise of public authority. The last part of the provision implies that the damage must be linked to the authority when the authority is acting in that manner. This enables the claimant to seek reparation of pure economic loss for errors occurring in the court's judicial activity, for example when the court is providing service. When errors occur from the application of law, the error must be evident. There is often a provision of reparation, when service is provided wrongfully.[15] The Office of the Chancellor of Justice (*Justitiekanslern*) is the authority for administrating these claims, see Sec. 3 of Regulation (1995:1301) on the administration of claims for damage against the State (*förordning [1995:1301] om handläggning av skadeståndsanspråk mot staten*). As a court is part of the State, instituting proceedings against the State is indirectly suing the court.

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

As the time frame for service affected by a party is determined by a court or other authority under Sec. 8 of the Service of Process Act, no exact time frame can be specified. However, if service has not been affected within a given time frame, the court or authority is "again" responsible for the service, see Sec. 8 second and third sentences of the Service of Process Act. The court or authority determines if the pleaded proof of service can be acknowledged.[16]

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?

Not relevant, as a court or authority is responsible for service, see above **Question 7.2**, with some exceptions.

Some exceptions are also provided in **Question 1**.

[13] RH 2011:50 and RH 2016:60.
[14] NJA 2017 s. 252 p. 11.
[15] JK 319-05-40 (decision by the Office of the Chancellor of Justice in 2006).
[16] Of interest, a decision of the Greek Supreme Court, Supreme Court of Cassation (Areios Pagos) nr. 1182/2022.

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

There are no general requirements for valid service. Valid service is dependent on the method of service used. See below **Questions 10**, **14** and **30**.

The most common method, regular service (*vanlig delgivning*), implies that a document is sent or handed over to the recipient. Documents are normally sent by mail or courier. The time when the service is affected is when the party or other receivers of service have received the document, see Sec. 16 and Sec. 18 of the Service of Process Act.[17] The underlying principle is that it is irrelevant in what way the recipient has received the document. But the serving court, authority or party must be able to prove that the recipient actually has received the document.[18] This provision in neutral as far as technique is concerned. However, according to Sec. 17 of the Service of Process Act, only courts or authorities can serve documents by electronic means, for example by e-mail, text messages or fax.

If a notification of service has not been signed, the time for service is calculated from the day when the notification returned to the court.[19] If the document to be served has been picked up by a courier, the respondent is served when the courier collect the document at the postal office, *cf.* Sec. 18 second para. of the Service of Process Act.[20] If the respondent claims otherwise, he or she has to prove it or give a plausible explanation.[21]

In a Swedish Supreme Court's decision,[22] the Court found that a respondent had given a plausible explanation as to why he had not received an application of a payment order, despite the fact that a signed notification of service had been re-sent to the Swedish Enforcement Authority. According to the respondent, his daughter-in-law had taken out loans in his name, without him knowing, and she had signed the notification in his name without permission. This had happened because the daughter-in-law had changed his address, and he had not received the documents.

Under Sec. 6 of the Service of Process Regulation, the recipient shall confirm that the document to be served has been received. There are no legal requirements on the recipient's confirmation of service, it can be made by post, electronically or orally. According to Swedish *travaux prépartoires*, proof of service can come in other forms besides the recipient's confirmation, for example if a courier has handed over the document and the service receiver has refused to sign the receipt.[23] Usually, however, an acknowledgment of receipt is used.

Under Sec. 16 of the Service of Process Act, the following requirements should be met for a proper service, *if* the recipient refuses to accept the service.[24]

[17] See also prop. 2009/10:237, supra n. 8, p. 124.
[18] See NJA 2008 s. 890, NJA 2016 s. 1891 I and III and the Swedish Supreme Court's decision 2018-02-07, Case No. Ö 989-17.
[19] See Andersson and Synnergren, supra n. 9, p. 74. *Cf.* also NJA 2013 s. 364.
[20] See prop. 2009/10:237, supra n. 8, p. 123 ff.
[21] Cf. NJA 2008 s. 890.
[22] See the Swedish Supreme Court's decision 2019-04-10, Case No. Ö 4287-18.
[23] See prop. 2009/10:237, supra n. 8, p. 239.
[24] Andersson and Synnergren, supra n. 9, p. 70 f.

- ✓ The servicing party should introduce him- or herself or be known to the service recipient.
- ✓ The servicing party should be accompanied by other persons that can act as witnesses. These persons should know the content of the document that the service is concerned with.
- ✓ The servicing party shall try to hand over the document in a way so the recipient understands that service is to be affected.
- ✓ If the recipient refuses to accept the document, the document shall be left at the site, unless it is unsuitable considering the circumstances. If it is unsuitable to leave the document at the site, a new service must be performed.
- ✓ If it is suitable, the servicing party should take notes immediately after service on how service was affected, date and time, and where the document was left.

Regarding evidence, see **Question 27**.

8. What documents must be sent to the respondent? Who prepares the documents?
(e.g. in Germany: The claim must be sent to the respondent (prepared by the claimant) in pursuance with § 253 ZPO as well as an information form prepared by the court to inform the respondent about their procedural rights [§ 499 ZPO])

The most obvious document that must be sent to the respondent from the court is of course the application for summons, as prepared by the claimant. The information form about procedural rights etc. is prepared by the court will also be served.

If regular service is used, there are no limits to which documents that can be served, if it is deemed suitable in the individual case, see Sec. 4 of the Service of Process Act. This is determined by the court.

In some situations, not connected to a case or matter, documents need to be served. Some examples are, electricity providers' service of notifications, and the document is prepared by the electricity provider, *cf.* Ch. 11 Sec. 4 para. 1 of the Act of Power/Electricity. A landlord's service of notification of notice of termination, *cf.* Ch. 12 Sec. 44 para. 1 of the the Land Code. The notification is prepared by the landlord.

9. What information or other aspects must be included in the documents?
(e.g. in Germany: Formally, the claimant has to provide the name, address, and other information necessary to identify the respondent. Materially, the claimant has to provide the facts that are necessary to establish the legal claim [§ 253 ZPO]. Furthermore, the form in which a document is to be served (original, copy, transcript) is not governed by the law on service but by the substantive law [e.g. § 132 (1) in conjunction with § 2296 (2) cl. 2 of the German Civil Code (hereafter: BGB)] or other procedural law (§§ 377, 402). Without special provisions, the delivery of a certified copy is sufficient.)

According to Ch. 33 Sec. 1 of the Code of Judicial Procedure, applications, notices, and other pleadings in litigation shall state the name of the court and the name and residence of the parties.

The party's first written pleadings shall specify the party's:
1. occupation and the national registration number of the person or organization,
2. postal address, the address of the place of work and, where appropriate, any other address where the party can be found for service by a bailiff,
3. telephone number to the residence and workplace; however, the number of a secret telephone subscription needs to be stated only if the court so orders,

4. e-mail address, and
5. other circumstances of importance for service upon him.

If a legal counsel is representing a party, the same information shall be provided.

Materially, the claimant has to provide the facts that are necessary to establish the legal claim, see Ch. 42 Sec. 2 of the Code of Judicial Procedure.

If the court is to inform someone about the contents of a document or of something else, this can be affected through service, see Ch. 33 Sec. 3 a) of the Code of Judicial Procedure. Service is to be used if it is provided by law or, if the purpose of the provision of notification appears that service shall be used. Service should, however, only be employed when the circumstances so require.

A claim form in a case amenable to out of court settlement may be served by process server according to Secs. 34–37 of the Service of Process Act, only if the recipient has absconded or there are reasons to believe that this will occur, or that the recipient in other ways will take refuge, see Ch. 33 Sec. 5 of the Code of Judicial Procedure.

If service of a claim in a case amenable to out of court settlement has not been affected, the court shall decide if new efforts to serve shall be made, or if the claimant shall serve the recipient (service by party). Costs and efforts already made, as well as other circumstances shall be taken into consideration. If the claimant does not want to serve, the claim is dismissed, see Ch. 33 Sec. 5 second para. of the Code of Judicial Procedure.

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

There is no definition of the concept address for service. The relevant address depends on the method of service. Regarding service with legal person, a control message should be sent to the postal address which is registered in a special register regarding different company forms, see Sec. 28 of the Service of Process Act. It was noted in the preparatory works that some companies would likely monitor their services by external lawyers or by deputies with special competence. For these reasons, it can be inappropriate to use the registered address as it could lead to loss of rights and be inefficient. It was therefore regarded as necessary to make it possible to register another address for service.[25]

When using simplified service, the document and the control message should be sent to the recipient's latest known address. If this address is not possible to use, the national registration address could be used instead, if such an address exists and is different than the latest known or used address, see Sec. 23 of the Service of Process Act. An increased lack in surveillance of regular mail and recipients spending longer time away from their national registration addresses, motivated this. The provision is technically neutral, so it is possible to use the latest known e-mail address.[26]

There is also a duty to report a change of address without delay, according to Ch. 33 Sec. 1 of the Code of Judicial Procedure, and Sec. 25 of the Population Registration Act (*folk-*

[25] Prop. 2009/10:237, supra n. 8, p. 159 f.
[26] Prop. 2009/10:237, supra n. 8, p. 131.

bokföringslag [1991:481]). The use of different addresses is therefore possible. The document and the control message should not be sent to different addresses, but nothing stops an authority from serving the recipient by other methods.[27]

A person who has moved to Sweden, and is regarded as a resident here, shall be subject to national registration. A person is regarded as a resident if the person can be assumed to regularly spend their night rest or 24-hour rest in Sweden during at least a year. This is also the case if the person is assumed to spend time both in Sweden and abroad, and the person is considered to have his or her habitual residence in Sweden, see Sec. 3 § of the Population Registration Act. The national registration address should reflect these circumstances, and if incorrect or false information has been given, there is a penalty sanction, see Sec. 42 of the Population Registration Act.

Some additional information can also be provided in this context. In Sweden, anyone can turn to the Swedish Population Address Register Board (*Statens personadressregister* [SPAR]), accessible also to foreign individuals and authorities.[28]

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

There are no other general definitions of mandatory aspects than the ones described under **Questions 9 and 9.1**.

Some clarifications should, however, be made. One difficulty is the concept summons/lawsuit. The claimant's application for summons and documents annexed thereto shall be served on the respondent according to Ch. 42 Sec. 5 second para. of the Code of Judicial Procedure.[29]

According to the first para. of the same provision, if the application is not dismissed, the court shall issue a summons calling upon the respondent to answer the case. If the plaintiff's statement does not constitute a legal basis for the case, or if it is otherwise clear that the case is unfounded the court may, however, immediately enter judgment in the case without issuing a summons.

One difficulty concerns the concept summons, which can be quite imprecise with regard to the application, the order, and provided service. The summons in Ch. 42 Sec. 5 of the Code of Judicial Procedural is addressed to the respondent to provide a reply to a charge. When the content of the summons is mentioned, this means the information in the claimant's application, and not the information in the order. The claimant's application for summons, and the order are the documents that shall be served to the respondent, see Ch. 42 Sec. 5 para. 2 of the Code of Judicial Procedure.[30]

When the content of the summons is mentioned, it should be seen as information concerning the claimant's claim. Statement of the circumstances invoked as the basis of the claim, *cf.* Ch. 42 Sec. 2 para. 1 p. 2), are the legal facts which forms the basis of the claim.[31] This is needed in order to potentially issue a default judgment against a respondent, see Ch. 44 Sec. 8 para 2 of the Code of Judicial Procedure. The application for summons must also be sufficiently detailed so the respondent can give a reply to the claim in accordance with Ch. 42 Sec.7 of the Code of Judicial Procedure.

[27] Prop. 2009/10:237, supra n. 8, p. 132.
[28] See precept from ministry Ds 2021:21, Nya regler för delgivning och bevisupptagning inom EU [New regulations for service and presentation of evidence in the EU] p. 50.
[29] Ekelöf et al., Rättegång V [Judicial process V] (Norstedts 2011) p. 23.
[30] Ekelöf et al., supra n. 29, p. 23.
[31] Ekelöf et al., supra n. 29, p. 27.

Ch. 42 Sec. 7 of the Code of Judicial Procedure:

During the preparation the defendant shall state immediately his answer. This shall contain:

1. the objections regarding procedural impediments that the defendant desires to make,

2. to what extent the plaintiff's claims are admitted or contested,

3. if the plaintiff's claim is contested, the basis therefore including the defendant's position as to the circumstances being the basis of the plaintiff's claim and also the defendant's statement of the circumstances made in defence, and

4. a specification of the means of evidence invoked by the defendant and what he will prove by each means.

The documentary evidence invoked should be handed in simultaneously with the submission of the answer.

10. How are documents <u>without a cross-border element</u> served in your national jurisdiction? What is the usual method of service? Please explain the different methods of service in detail. *(e.g. in Germany: National service of documents is done in accordance with §§ 168-176 ZPO, in practice mainly via postal services or fax. Following § 177 ZPO: "The document may be physically submitted to the person on whom it is to be served at any location at which the person is found". § 175(1) ZPO: "A document may be served on the persons referred to in § 173 (2) against receipt (e.g. lawyers, notaries, bailiffs as well as public authorities, corporations or institutions under public law)." It has to be noted, that service of electronic documents [§ 173 (1) ZPO] has only been recently allowed through safe communication methods. Since the change of the ZPO lawyers, notaries, and bailiffs as well as public institutions have to be attainable through such a safe communication method, § 173(2) ZPO, [a specialised e-mail system] while other persons have to explicitly agree to electronic communication methods, § 173(4) ZPO.)*
(e.g. in Austria: Documents are mainly served via the Austrian Postal Service.)

THE SERVICE OF PROCESS ACT IS SUPPLEMENTARY

Swedish law provides several methods of service aimed at legal certainty and effectiveness. Before explaining the options, something needs to be said about Swedish legislation on the subject. The Service of Process Act applies in general when a law or a regulation provides for service. The Service of Process Regulation contains more detailed complementary rules, mainly addressed at courts and authorities.

When special regulations contain deviant rules, the special rules shall apply before the Service of Process Act, see Sec. 1 of the Service of Process Act.[32] There are some cases where service is prescribed by law that are not connected to a court case or matter, see above **Question 1**. International instruments may also have priority. The Service of Process Act shall apply in cases where authorities and courts are involved, and it is not directly applicable to private organs or to arbitration boards.[33]

To be completely sure if and how service shall be affected, one must consider the general and special legislation, which can be applicable to the case at hand.[34] Special regulations or laws can commend that service can or must be affected. In many regulated cases, special regulations or laws contain references to the Service of Process Act, or deals itself with the question of which methods are allowed.

[32] See for example Ch. 33 Secs. 5 – 8 the Code of Judicial Process.
[33] See Ekelöf et al., Rättegång III [Judicial process III] (Norstedts 2018) p. 334.
[34] Ekelöf et al., supra n. 33, p. 336.

Sec. 2 of the Service of Process Act contains a definition of service. Service means that a document is sent to or provided to someone who is certified to receive it, or that some of the other methods provided by the Act are being used. The parties certified to receive service is specified in Secs. 11 – 15 of the Act.

The final paragraph of Sec. 2 contains an enumeration of the *six* methods of service provided for by the Service of Process Act, which will now be described together with two additional special methods.

ORDINARY SERVICE

The most common method is ordinary service (*vanlig delgivning*), which means that the relevant document, and a receipt, is being sent or handed over to the relevant recipient, see Sec. 16 of the Service of Process Act. The concept "sent" means that the document is delivered by post. If a court or an authority is responsible for service, this can also be affected by electronic means, see Sec. 17 of the Service of Process Act, and **Questions 47 ff.** below.

Ordinary service can be used for all service as long as it does not interfere with a special regulation. Service is completed when the document is received by the recipient, or when picked up by an agent, see Sec. 18 of the Service of Process Act. This provision does not deal with how confirmation should be affected, since it is technically neutral. However, the most common way is that the recipient signs a receipt of acknowledgment (*delgivningskvitto* or *mottagningsbevis*) and sends it in return.[35]

VERBAL SERVICE

Another method is verbal service (*muntlig delgivning*). This means that the document is read aloud to the recipient, for example over the telephone, see Sec. 19 of the Service of Process Act. The method can be used for documents which do not yet exist in written form. When a document exists in a written form, it shall be sent or handed over to the recipient according to the provision just mentioned. This method may only be used by authorities, and is a forbidden method when serving lawsuits, see Sec. 20 of the Service of Process Act. Service is completed when the content has been read aloud to the recipient according to Sec. 21 of the Service of Process Act.

SIMPLIFIED SERVICE

Simplified service (*förenklad delgivning*) consists of two parts. First, the document is sent to the recipient, second, the recipient also obtains a control message sent on the following workday, see Sec. 22 of the Service of Process Act.

The method is only used by authorities when the recipient is in a position of being a part or similar, and is informed about the possible use of the method in advance, see Sec. 24 of the Service of Process Act. The information on the use of simplified service must be provided by the use of another method of service (ordinary, verbal or the two methods listed below), with minor, but detailed exceptions, see Sec. 25 of the Service of Process Act.

Service is completed when two weeks have passed from the sending of the control message in the regulated way, and it is plausible that the document arrived during this time, see Sec. 26 of the Service of Process Act. This method is often somewhat modified in special regulations.

[35] Prop. 2009/10:237, supra n. 8, p. 120 and Ekelöf et al., supra n. 33, p. 339.

SPECIAL SERVICE WITH LEGAL PERSON

Another method is special service with legal person (*särskild delgivning med juridisk person*), and is quite similar to simplified service. This method can only be used by authorities. The document is sent to the legal person, and the following work day a control message is sent, which informs the legal person of the first document, see Sec. 27 of the Service of Process Act. As the document must be sent to the legal person, this method requires a registered address of the legal person under the provisions that are laid out in Sec. 28 of the Service of Process Act.

This is a subsidiary method, and the details in this part will be assessed under the part of substitute methods (see **below under subsidiary methods**). The time of completed service is the same as for simplified service, see Sec. 30 of the Service of Process Act, but the difference is that this service can also be used for documents that institute proceedings, for example, a lawsuit regarding bankruptcy.[36]

SERVICE BY PROCESS SERVER

A special method is service by process server (*stämningsmannadelgivning*). This method consists of a person with special authority and competence, who leaves the document in one of the ways regulated in Secs. 32 – 38 of the Service of Process Act, see Sec. 31 of the Service of Process Act. Perhaps the most important one of these special methods are service by "surrogacy", which means that the document is handed over to another person than the recipient under detailed circumstances,[37] see Secs. 34 – 37 of the Service of Process Act, and service by "nailing", which means that the document is left at the recipient's habitual residence, see Sec. 38 of the Service of Process Act. The one responsible for service can, for example, appoint a police or prosecutor, or private, authorized, service companies to serve the document, see Sec. 40 of the Process of Service Act. The list of authorized process servers in Sec. 40 of the Service of Process Act is quite long.

Leaving the document directly to the recipient can be used straight away when it is adequate to assume that the recipient will not respond to ordinary service, when the matter is urgent or when contact details are missing. Although, the general clause in Sec. 4 of the Service of Process Act should always be considered before this method is used.[38]

SERVICE BY PUBLICATION

There is also a method known as service by publication (*kungörelsedelgivning*). It can take place after decision of an authority. The document to be served is kept available at a certain time at the authority or at another given place. A message about this, and the content of the document shall be announced ten days from the decision, in some of the listed forms, see Sec. 47 of the Service of Process Act. This method can be used when the recipient's habitual residence is unknown, or when the person is hiding, when the numbers of recipients are unknown or may consist of a large group, and finally, when a legal person has omitted registration, see Secs. 49 and 50 of the Service of Process Act. Service is completed when two weeks have passed from the decision to serve by publication, and the measures have been performed correctly, see Sec. 51 of the Service of Process Act. The announcement shall generally be made by publication in the nation-wide Swedish Official

[36] See Ekelöf et al., supra n. 33, p. 344.
[37] See also ECJ 16 September 2015, Case C-519/13, Alpha Bank Cyprus Ltd v Dau Si Senh and others, ECLI:EU:C:2015:603.
[38] Prop. 2009/10:237, supra n. 8, p. 171 f.

Gazette (*Post- och Inrikes Tidningar)*, and if necessary in a local newspaper. See **Question 16.4** for more details.

PARTY SERVICE

Another special form of service that should be mentioned, is service requested by party (*partsdelgivning*). Consequently, it can be requested by a party to the case or one of a similar position, so the party him- or herself serves the document. The concerned authority decides on the issue, and should grant the request if it is not inappropriate. The authority shall set a date when proof of service shall be handed in to the authority, or otherwise the authority is to perform service itself, see Sec. 8 of the Service of Process Act. The methods that can be used when party service is granted, are ordinary service and service by process server, see Sec. 10 of the Service of Process Act.

SUBSIDIARY METHODS

Most methods of service in Swedish law are not subsidiary in a formal meaning. One exception is special service with legal person, which necessitates that other methods of service are not accessible. This method demands that at least one attempt of ordinary or simplified service has been executed, but failed, or that these two methods are deemed to be fruitless, see Secs. 29 and 30 of the Service of Process Act.

Another example is service by process server, as one of the possible methods, so-called "nailing", only is allowed when service by "surrogacy" is not possible to use, and, furthermore, when it is unclear where the recipient is to be found. There must also be well-founded reasons to think that the person is staying away or has absconded, see Sec. 38 of the Service of Process Act.

The last formal subsidiary method is service by publication regarding legal persons, which requires that a neglected registration has led to failure of other methods of service, or that these are seen as pointless, see Sec. 50 of the Service of Process Act.

The general clause in Sec. 4 of the Service of Process Act requires a special assessment in every case before finally deciding on the method of service available. The type of method will therefore depend on the present case and circumstances, which may rule out one method before another, for example when one method is more costly, and maybe more personally intrusive than others. The conclusion is that most of the service methods available in Swedish law are not of direct subsidiary character, but most of them consist of special conditions, which rule out other methods of service. An example is verbal service, this method is in not allowed for service of lawsuits. The general opinion is that ordinary service should be used in the first place.[39]

FICTITIOUS METHODS

There is especially one method that can be seen as fictitious, that is service by publication.[40] As this method foresees that the document is held available at a decided place, and this is notified by advertisements in newspapers, there is no guarantee that the recipient actually received the information. The *raison d'être* is of course to inform the recipient, but the method is a last resort. The Swedish Supreme Court has stated that this method is not allowed if the person in question has a

[39] See U. von Essen, Förvaltningsrättens grunder [The grounds of administrative law] (Norstedts 2020) p. 210.
[40] Prop. 2009/10:237, supra n.8, p. 189.

known habitual residence in Sweden or abroad.[41] This obliges the court or authority to make proper investigations on the whereabouts of the recipient.

It can be argued that service by process server is also a fictitious method, as service is completed if the process server finds the person concerned, but he or she refuses to accept the document, see Sec. 39 of the Service of Process Act. Depending on how the concept is understood, simplified service and special service with legal person, also contain a presumption of completed service after the passing of a certain time, and it is not seen as impossible that the message have arrived during this time, see Secs. 26 – 30 of the Service of Process Act.

For details, see **Question 16.2**.

Something should also be said about the boundaries of service. When an authority provides service, it must be based on a provision. This view has been established by the Swedish Supreme Court in NJA 2005 s. 175. The judgment is clearly motivated by the view that service is a safeguard for legal certainty.

SERVICE BY AVAILABILITY

The last method is service by availability (*tillgänglighetsdelgivning*), which consists of the documents being held available at a district court (the first instance for civil and criminal cases) in criminal cases. The procedure was until 2023 regulated by a special law, and was a method used on trial until 2023-01-01.[42] The suspect is given information of the possible use of the method by police or prosecutor, and this is an attempt to counter inefficacy in criminal procedures.[43] The method has been evaluated with arguments concerning efficiency and legal security,[44] and is now standing in accordance with Sec. 53 of the Service of Process Act.

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

Direct service as foreseen in Art. 19 of the Regulation 2020/1748 was previously only allowed if it was affected by regular postal mail or, in certain circumstances, through diplomatic or consular channels.

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

See above **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? *(e.g. of equal rank, subordinate)*

Yes, special service with legal person *(särskild delgivning med juridisk person)*. This method is quite similar to simplified service, and can only be used by authorities. As the document to be served must be sent to the legal person, this method requires a registered address of the legal person under the provisions that are laid out in Sec. 28 of the Service of Process Act. This is a subsidiary method. The time of completed service is the same as for simplified

[41] NJA 2021 s. 960 p. 14 f.
[42] Lag (2018:160) om försök med tillgänglighetsdelgivning i brottmål.
[43] Ekelöf et al., supra n. 33, p. 349.
[44] Prop. 2021/22:279, Snabbare lagföring av brott [More efficient prosecution of crimes], p. 38.

service, see Sec. 30 of the Service of Process Act. However, this method of service can also be used for documents that institute proceedings, for example a lawsuit regarding bankruptcy.[45]

Also, see above **Question 10** and below **Question 28**.

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

Sec. 4 of the Service of Process Act contains a general clause, which shall be considered before choosing the method of service. The chosen method should be appropriate for the content and scope of the document, and entail as low costs and as little inconvenience as possible. Thus, the court can take any kind of circumstances into account, like personal capacities of the recipient.[46] Moreover, service shall not be affected in a manner which is inappropriate, taking into consideration the circumstances of the matter.

The second part of the provision concludes that service is not allowed in a way that interferes with the circumstances of the case. The provision indirectly contains a principle of proportionality. Focus is often on the easiest and cheapest method. Other considerations that should be taken into account when a method is chosen, is who the recipient is, how difficult the person is to serve, and the character of the document. Another important factor is the type of process that the case is linked to, as it can affect the suitability of certain methods, especially in criminal procedures.

Sec. 3 of the Service of Process Regulation provides that service shall be affected in a manner that does not cause the recipient of service or others unnecessary inconveniences. In case law, circumstances that have been deemed to be of importance is if the recipient is intoxicated.[47] Under such circumstances, it was inappropriate to give the recipient information about simplified service. Another example, concerns the situation where the court was informed that the recipient was homeless, but served the document by simplified service, sending the documents to his former address.[48] In the latter case, the Supreme Court stated that the assessment of whether service has been affected in a correct manner, the assessment should be objective, and based on the factual circumstances of the individual case.

Service by publication has also attracted attention, as it can be problematic to use in cases involving environmental law, as it might not reach all parties concerned. These examples show that several considerations need to be observed in the individual case. Again, special regulations must also be considered, as they can exclude some of the methods.

Other factors that need to be considered when choosing methods is integrity, personal data, and sensitive or confidential details. Another thing of importance is the recipient's possibility to comprehend the content of the document. There is also a general provision in Sec. 5 of the Service of Process Act, which deals with cases where the relevant document is so extensive that it cannot be served *in toto*, but is held available at the authority or at another given place.

In cases connected to persons staying abroad, service is only allowed when the law of the State where service is to take place, allows it, see Sec. 3 first para. of the Service of Process Act. In such a case, the law of the place in question can be applied, if it is not in conflict

[45] See Ekelöf et al., supra n. 33, p. 344.
[46] Andersson and Synnergren, supra n. 9, p. 31.
[47] See, *i.a.*, RH 2016:60.
[48] NJA 2017 s. 252

with Swedish general legal principles, see Sec. 3 second para. of the Service of Process Act. If a request is made from abroad, and the requested procedure deviates from methods provided in the Service of Process Act, this should be allowed, but with the same restriction as mentioned above according to Sec. 4 a) of the Service of Process Act.

In summary, the court or authority can take all kinds of circumstances into consideration when choosing method of service. Furthermore, it is stated in *travaux prépartoires* that such considerations should not only be made when *choosing* the method of service, but also when the service is *carried out*.[49]

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

An adaption has been made. According to Sec. 6 a) of the Regulation (2008:808) on supplementary provisions regarding EU's Service Regulation (*förordning [2008:808] med kompletterande bestämmelser till EU:s delgivningsförordning*) an authority using the method regular service may send documents by electronic means to a person who has a known address for service in another Member State according to Art. 19.1 b) of the Service Regulation.

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

(e.g. in Germany: § 183 (1) cl. 1 ZPO regulates the service in EU-countries, whereas § 183 (1) cl. 2 ZPO states: "Insofar as the aforementioned provisions do not apply to service abroad, paragraphs 2 to 6 shall apply to service abroad". § 183 (2) ZPO regards delivery via post or through authorities of the other country. When there are no international agreements, § 182(4) ZPO is applicable in pursuance to § 183 (3) ZPO. § 183 (6) ZPO recognises the jurisdiction of the local court of the drespondent's domicile or habitual residence in regards to the service of documents abroad.)

This issue is regulated in Sec. 3 of the Service of Process Act, and it applies both to natural and legal persons.[50] There are different rules depending on whether service is to be performed within the Nordic countries, within the EU or in third countries.

Service abroad by a Swedish authority can only be affected if the receiving state allows it. Typically, this is regulated in international conventions, *i.a.* the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matter. However, the possibility to serve in another State can also be accepted, for example, if the State has provided information to that end, or if the State has approved that service takes place on its territory in a specific case.

From a practical point of view, it should be considered whether or not a country accepts service by mail, but Sec. 3 of the Service of Process Act also allows other methods of service, *i.a.* oral service. Some countries do not allow service on persons residing in their country in absence of an international convention, as it can conflict with the principle of territoriality.

The County Administrative Board in Stockholm is the Central Authority in Sweden concerning international service. A very useful and practically oriented brochure published by the Board is available on-line, where Sweden's international obligations are listed country-wise.[51]

[49] Prop. 2009/10:237, supra n. 8, p. 101.
[50] See prop. 2009/10:237, supra n. 8, p. 96 ff., and prop. 2012/13:182, Internationell delgivning [International service] p. 44 ff.
[51] The website of County Administrative Board, 'Delgivning till utlandet' [Service abroad], https://catalog.lansstyrelsen.se/store/39/resource/61, visited 23 March 2023.

According to Sec. 3 of Regulation (2013:982) on Assistance in Serving Abroad and in Sweden (*förordning [2013:982] om bistånd med delgivning utomlands och i Sverige*), a Swedish court or authority may apply for the Central Authority's assistance in servicing abroad, if

1. the authority itself unsuccessfully has tried to serve the respondent in the other State,
2. the authority is itself unable to apply for assistance in the other State, or
3. the other State requires that an application for service is sent through a Central Authority.

If the applicant is not a Swedish court or authority, but a single party, such as a service company, a landlord, a bank, an undertaker or a law firm, assistance with service in third States may also be affected by the County Administrative Board. According to Sec. 5 of Regulation (2013:982) on Assistance in Serving Abroad and in Sweden, this assistance will only be provided if the party has tried to affect service of the recipient in the third State, but this has been unsuccessful, or if the party is not able to apply for assistance in servicing in the other State.

This means that the County Administrative Board will not assist in servicing abroad in a third State, unless the applicant first has exhausted the possibilities to serve the document him- or herself.

On the law applicable, Sec. 3 second para. of the Service of Process Act provides that service according to the first paragraph of Sec. 3 may be affected according to the law of the foreign place unless it is contrary to general Swedish general legal principles. Consequently, the wording of the provision holds that a Swedish authority may serve a person abroad according to Swedish law, but the Service of Process Act does not stop the Swedish authority from applying the foreign law at the place where the recipient is resident.

Often, Swedish authorities will rely on Swedish law, as it is more expedient, see for example NJA 2004 s. 407. The case concerned service of a legal person in Ukraine by a method similar to a method in the Service of Process Act and was therefore allowed. See also the case NJA 2006 s. 588 where simplified service by mail as foreseen in Swedish law to a respondent in Denmark was permitted. In other cases, it may be necessary to apply foreign law in order to be assisted by foreign authorities in the receiving State. The cases are described more in detail under **Question 61**.

Service according to a foreign law shall be accepted, unless the service is contrary to general Swedish legal principles.[52] This part of the provision resembles a public policy clause. Service cannot be affected in a way that is contrary to the right of a fair trial, see Art. 47 of the EU Charter and Art. 6 of the European Convention on Human Rights.

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

One example is the situation where the documents to be served are extensive. This is regulated in Sec. 5 para. 1 of the Service of Process Act. If a document that an authority is to serve a recipient is extensive, or if there are other reasons why it is unsuitable to send or hand over the document, the authority can decide that the document should be held available at the authority (or at some other place that the authority decides). This could for example be the case with maps. A message concerning the contents of the decision should, however, be served.[53] According to Sec. 5 para. 2 of the Service of Process Act, this does not apply to documents instituting court proceedings, but can apply to annexes to a claim form.

[52] See prop. 1970:13, Förslag till ny delgivningslag [Proposal for new Service of Process Act] p. 125.
[53] The format of the messages is determined by Domstolsverket [Swedish National Courts Adminstration].

The provision provides an exception to the obligation to serve all the documents.[54] The exception only applies to courts and other authorities.

13. What is the usual time frame of the service of documents in your Member State?
(e.g. in Germany: A fax and an electronic service of documents via the secure communication methods is considered immediate; postal service takes 1-3 days with the exception that there is no postal service on Sundays.)
(e.g. in Austria: Service via the Austrian Postal Service takes around 1-2 days, service within the platform for the electronic service of documents is more or less instantaneous.)

According to information provided by the Swedish Enforcement Authority, it is impossible to give an average time frame for service of documents in Sweden.

14. At what moment is a document considered to be served according to the national law of your Member State?
(e.g. in Germany: A document is in general served once it is handed over to the respondent; actual knowledge is not important and, in some cases, service is even fictitious, §§ 180 cl. 2, 181 (1) cl. 4; 184 (2) cl. 1, 188 ZPO.)
(e.g. in Austria: a document is generally served once it is handed over to the respondent who thereby takes notice of the service.)

When a document is considered to be served depends on which method of service has been used.[55]

Ordinary service (v*anlig delgivning*). According to Sec. 18 of the Service of Process Act, service has been affected when the respondent has received the document. If a messenger has collected the postal item, the respondent is deemed to have received the item when the messenger collected it.

In the average case, proof of service is that the respondent returns a signed receipt of acknowledgment. In order to rebut this, it is for the recipient to leave a reasonable explanation and to adduce evidence to the contrary, see NJA 2008 s. 890, NJA 2003 C 43 and NJA 2002 C 60. Other ways to confirm service is if the respondent use his or her Bank-ID (a digital service) or e-identification.

Verbal service (*muntlig delgivning*). According to Sec. 21 of the Service of Process Act, spoken service has taken place when the contents of the document to be served has been read out aloud.[56] The document shall thereinafter be sent to the recipient. Even if the authority does not send the document later, this point in time is not affected.

Simplified service (*förenklad delgivning*). According to Art. 26 of the Service of Process Act, simplified service is affected when two weeks has elapsed from when the document was sent, if the control message has been sent in the prescribed manner, and it is not unlikely that the document has arrived in time with regard to the circumstances.

An example of when simplified service has not been affected is when the document is sent in return with at statement that the addressee is unknown, or has moved without a forwarding address. If only the control message is returned, this may also indicate that service has not been affected.[57] The

[54] Andersson and Synnergren, supra n. 9, p. 34.
[55] ECJ 9 February 2006, Case C-473/04, Plumex v Young Sports NV, ECLI:EU:2006:96.
[56] See prop. 2009/10:237, supra n. 8, p. 128 ff.
[57] Cf. also prop. 1990/91:11, Om några delgivningsfrågor [Some questions regarding service] p. 51.

requirements are accordingly that the document to be served, and the control message has been sent to the right address and – with reference to the message – in the right time.[58]

Special service with legal person (s*ärskild delgivning med juridisk person*). According to Sec. 30 of the Service of Process Act, service is affected when two weeks have elapsed after the document has been sent, if a control message has been sent in the prescribed manner, and it is not unlikely that the document has arrived in time with regard to the circumstances.

Service by process server (s*tämningsmannadelgivning*). Sec. 39 of the Service of Process Act lays down that service according to Secs. 32, 33 or 38 has been affected when the document or the message has been consigned in the given manner, or when the respondent has refused to accept the document or message. Service by process server according to Secs. 34 – 37 has been affected when the document has been consigned or the message has been sent.

Service by publication (*kungörelsedelgivning*). Service by publication has been affected when two weeks have elapsed after the decision to serve by publication, if the publication and other required measures has taken place in the right time.

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?

(This question refers to the service to an official or known address of the recipient, but one which is not (anymore) used by the recipient. Please elaborate on national treatment of negligent behaviour (of the recipient who might have forgotten to de-register the address or to make arrangements to be informed about service of documents to this address), multiple places of residence, service to a "wrong" address (either unknowingly by the competent institution or maliciously of the opponent by providing/using the wrong address), and differences of the relevant address regarding the determination of jurisdiction (domicile) and the address used for the service of documents.)

See above **Question 14**.

An example of when service has not been affected is when the document to be served is returned with at statement that the addressee is unknown, or that the recipient has moved without a forwarding address. Habitual residence refers to the address where the recipient is resident. That he or she is nationally registered on the address is only an indication, lacking self-standing importance.[59]

However, according to Sec. 48 p. 1 of the Service of Process Act, service by publication may be used if the recipient lacks a known habitual residence, and it is not possible to verify his or her whereabouts. It has to be determined in each individual case what kind of investigation is needed to determine the location of the recipient. This provision mainly applies to natural persons.

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

[58] When can simplified service be used? See NJA 1995 s. 601, NJA 1999 s. 376, NJA 2013 s. 49, NJA 2017 s. 252, Högsta domstolens beslut 2018-11-07, Case No. Ö 4494-18, RH 2011:50 and RH 2019:40.
[59] See NJA 1988 s. 89.

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).

See above **Questions 14 and 14.1**.

Under Swedish law, a new attempt to serve the recipient will be made, and most likely another method of service will be used.

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

(e.g. in Germany: Only lawyers can electronically a claim through a specialised lawyer's electronic communication system, BEA. Usual method of filing a claim at court is via postal service or through personally hand the document in at court.)
(e.g. in Austria: Parties can also file a claim themselves, if certain requirements are fulfilled.)

A claim can be filed digitally by using Courts of Sweden's (*Sveriges Domstolars*) e-service. A form is filled out online and sent digitally to www.domstol.se, and the application is signed electronically.[60]

The claim *cannot* be filed by using regular e-mail, as the application has to be signed in the original.

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

(e.g. in Germany: The service by publication means that a notice of service is hanging on the courts bulletin board or an electronic equivalent; we do not know a central public register for publication of service. In an addition to the bulletin board the court can order that the notice of service by publication must be published in the Official Gazette (Bundesanzeiger). We only publish basic information like the person on whose behalf the document is served, the last known address or number of the document, but not the document to be served itself.)

Service by publication (*kungörelsedelgivning*) is a method of service that can be employed if the recipient does not have a known habitual residence, or if he or she is actively evading service. Sec. 48 p. 1 of the Service of Process Act states that if a respondent lacks a known habitual residence, and it is not possible to verify his or her whereabouts, service by publication may be used.[61] In Swedish law, a distinction is thus made between situations where the recipient is not in his or her home, and the situation where the respondent's whereabouts are unknown.

What kind of enquiry that is needed to decide that the recipient's whereabouts cannot be determined must, according to Swedish national law, be decided in each individual case according to the circumstances.

[60] Courts of Sweden [Sveriges domstolar], 'Ansökan om stämning [Application for summons]', https://www.domstol.se/globalassets/filer/gemensamt-innehall/blanketter/tvist/ansokan-om-stamning---dv-161.pdf, visited 10 March 2023.
[61] See prop. 2009/10:237, supra n. 8, p. 189 ff., and 197 ff.

Compare the judgment of the European Court of Justice in *Hypotečhní Banka v. Lindner*.[62] In this case the respondent's domicile was unknown and there was no firm evidence allowing for the conclusion that the respondent was residing outside the EU. The ECJ held that all investigations with a view to tracing the respondent must abide by the **principles of diligence and good faith**.[63]

Sec. 48 second para. of the Service of Process Act provides how service by publication must be affected. The main rule is to advertise in the Swedish Official Gazette (*Post- och Inrikes Tidningar)*, which has national coverage, and if necessary in a local newspaper.[64] The aim is to reach and inform the recipient. The Swedish Official Gazette is published on the Swedish Companies Registration Office's *(Bolagsverket*) website: www.bolagsverket.se/poit. Hence, announcements can be published rather quickly, and are accessible.

Also, see **Question 16.4**.

If service by announcement has been used according to Sec. 48 of the Service of Process Act, and new service is to take place after that, in the same case or matter, there is no need to advertise in newspapers again. Instead, a message will be posted at the authority's venue. However, the provision is non-mandatory, so it is for the authority to decide if publication shall take place a second time, or not.

On service by publication in Swedish legal practice, see for example NJA 1979 s. 283, NJA 1997 s. 207, NJA 1997 s. 270, NJA 2004 s. 826, NJA 2008 s. 873, NJA 2022 s. 173, RH 1997:70 and RH 2018:27.

Service by process server may also be employed under certain circumstances, see above **Question 10**.

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?

Most methods of service in Swedish law are not subsidiary in a formal meaning but could be seen as substitute methods. One exception is special service with legal person, which stresses that other methods of service are not available. This method requires that at least one attempt of ordinary or simplified service has been affected, but failed, or that these two methods are deemed fruitless according to Sec. 29 – 30 of the Service of Process Act.

Another example is service by process server, and so-called "nailing". "Nailing" is only allowed when service by "surrogacy" is not available, or when it is unclear where the recipient's whereabouts are. There must also be founded reasons to believe that the recipient is staying away or has absconded, see Sec. 38 of the Service of Process Act. See also Sec. 50 of the Service of Process Act, which lays down a formal substitute method by providing for service by publication of legal persons. This method requires that neglected registration has led to failure of other methods of service or that these are seen as pointless.

[62] ECJ 17 November 2011, Case C-327/10, Hypoteční banka a.s. v Udo Mike Lindner, ECLI:EU:C:2011:745.
[63] See also NJA 1979 s. 283, where the investigations were defective.
[64] Advertisement in a local newspaper can be necessary if a natural person is presumably staying at a particular place, se Andersson and Synnergren, supra n. 9, p. 140. Special provisions on announcements in local newspapers can be found in Act (1977:654) on announcements in authorities' cases and matters etc. *(lag [1977:654] om kungörande i mål och ärenden hos myndighet m.m.)*

When choosing a method of service, and when performing service, the general clause in Sec. 4 of the Service of Process Act must be observed. See above **Question 10.4**. The provisions prescribe a special assessment for every case.

The type of method will therefore depend on the present case and circumstances, and one method can rule out another, for example, when one method is more expensive, and maybe more personally interfering than another. One example is when ordinary service has failed, and it is necessary to use service by publication.

The conclusion is that most of the service methods available under Swedish law are not of direct subsidiary character. Most of them consist of special conditions, which rule out other methods of service. An example is verbal service; this method is not allowed for service of lawsuits. The general opinion is that ordinary service should be used first.

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

Yes, see above **Question 10**.

There is especially one fictitious method, and that is service by publication.[65] This method means that the document is held available at a determined place, and made public, usually by publication in newspapers. However, there is no guarantee that the recipient will see it, and is informed of service.

When the recipient's habitual residence is unknown, the Supreme Court has stated that service by publication is not allowed if the person in question has a known habitual residence in Sweden or abroad. This obliges the authority to make a proper investigation, and try to serve abroad.[66] See Sec. 48 of the Service of Process Act.

It can be argued that service by process server is a fictitious method, in that it is realised by a process server. Service is completed if the process server finds the person concerned, even if the recipient refuses to accept the document, see Sec. 39 of the Service of Process Act. Depending on how the concepts are understood, simplified service and special service with legal person, contain presumptions of completed service after the passing of a certain time, and it is not impossible that the message has arrived during this time, see Secs. 26 – 30 of the Service of Process Act. The explanation is the negative consequences that may occur from the recipient's unwillingness to accept service. It is therefore required that a recipient who is aware of an ongoing case, or another matter, regularly checks the mail and other contact channels.

According to the preparatory works, simplified service is efficient, without setting aside important aspects of legal security. It places greater responsibility on parties to cases or other matters, and to extend the use of simplified service.[67] Whether the method is suitable should be assessed objectively. The method should not be used if there are well-founded concerns that the documents possibly will not reach the recipient.[68] Again, it must be stressed that simplified service can only be used by governmental authorities. The recipient must also be informed that the method will be used. The method is not allowed when servicing a document that commences a court procedure, see Sec. 24 of the Service of Process Act.

[65] Prop. 2009/10:237, supra n. 8, p. 189.
[66] NJA 2021 s. 960 p. 14 f.
[67] Prop. 2009/10:237, supra n. 8, p. 131.
[68] NJA 2017 s. 252.

In summary, simplified service demands no proof, if the recipient has obtained the document.[69] The same could be said about service by publication and special service with legal person.

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?

See above **Questions 10 and 14**.

The unfolding of effects is regulated differently depending on the method of service employed. The time of completed service is unique for every method in the Service of Process Act. In most cases, the question can be assessed by evaluation of evidence.

For example, service by publication is completed when two weeks have passed from the decision of service by publication, if the publication and the other regulated measures have been completed in correct time, see Sec. 51 of the Service of Process Act.

The document will be held available at an authority or at another previously determined place. A message about the place, and about the main contents of the document shall be published in ten days, see Sec. 47 of the Service of Process Act. The authority must check that the publication is made according to Sec. 19 of the Service of Process Regulation. The message should be published in the Swedish Official Gazette, and in local newspapers, if there are special reasons for that, see Sec. 48 second para. of the Service of Process Act. Publications are nowadays provided through internet by the website of the Swedish Companies Registration Office.[70]

Special service with legal person is completed when two weeks have passed from sending the document, if the control message was sent in the regulated way, and if it could not be regarded as unlikely that the document has arrived during this time considering the circumstances, see Sec. 30 of the Service of Process Act. The service is provided when the document has been sent to the legal person, followed by a control message the following workday, see Sec. 27 of the Service of Process Act, to the registered postal address provided for in the relevant register of registration for the concerned company, see Sec. 28 of the Service of Process Act.

When a document is being sent in return by postal service, with a sign of unknown address or signs of moving without forwarding an address, doubts are at hand concerning affected service. If only the control message is sent in return, it indicates that the document has not arrived, and has not been served.[71] This is also the case regarding simplified service according to Sec. 26 of the Service of Process Act.

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?
(e.g. in the USA: A Court can order to publish a whole page in a newspaper.)

See above **Question 16** concerning service by publication in general.

We have to admit that there are difficulties to monitor parties' interests in taking part of publications regarding service. It must be underlined that the purpose of service by publication is

[69] NJA 2022 s. 741 p. 13.
[70] Prop. 2009/10:237, supra n. 8, p. 198.
[71] Andersson and Synnergren, supra n. 9, p. 106.

to make the recipient aware of the document, and the service,[72] but this is not checked after the publication. To be completely sure that the document has been made known to the recipient, he or she must regularly read the Swedish Official Gazette (*Post- och Inrikes Tidningar*).[73] This source is easier to obtain than local newspapers, but in cases where the recipient's whereabouts is known, the latter can be more appropriate. The responsible authority decides on the choice of method.

If the recipient's habitual residence is unknown it is more appropriate to publish in the Swedish Official Gazette, which is also provided electronically.[74] The issues regarding the uncertainty about the method were mentioned in the preparatory works. It was held that there were cases where the recipient contacted the authority after service by publication. First, this was the main reason for the survival of this "ancient" method, and second, its efficiency could be enhanced by electronic publication.[75]

There is also special provisions concerning what is regarded as a local newspaper, and how extensive the distribution must be in order to be regarded as a suitable newspaper, and to ensure that no one is discriminated against by their choice of local newspaper, see Sec. 3 of the Act (1977:654) on the publication of authorities' cases and matters (*lag [1977:654] om kungörande i mål och ärenden hos myndighet m.m.*).[76] It should also be stated that the purpose of service by publication is to make the recipient aware of the document,[77] but this is not controlled after publication is completed.

The Swedish Supreme Court has held that the aim of service by publication is to inform the recipient, and to ensure that he or she has the possibility to assimilate the content. The method should therefore not be carried out in a discriminatory way in comparison to other methods.[78] However, there is no assurance, or requirement that the recipient actually has taken in the information. In NJA 2022 s. 173, the recipient was situated in China, and the document was served correctly according the Supreme Court by using the method service by publication.

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

There are no special provisions on remedies, if actual knowledge was not obtained by the respondent. Usually, this is not a concern, as service by publication is completed without the need for the recipient to be aware of the information. Also, see **Question 61**.

The respondent can make a complaint to the authority, or try to use extraordinary legal measures if the respondent claims incorrect or inappropriate service. See **Question 23.1**.

[72] Prop. 2009/10:237, supra n. 8, p. 198.
[73] Andersson and Synnergren, supra n. 9, p. 140.
[74] Andersson and Synnergren, supra n. 9, p. 140.
[75] Prop. 2009/10:237, supra n. 8, p. 189.
[76] Prop. 2009/10:237, supra n. 8, p. 198.
[77] Prop. 2009/10:237, supra n. 8, p. 198.
[78] NJA 2022 s. 173 p. 10.

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?

Case law is lacking, but it can be stated that wrongful use of a fictitious method can produce a procedural error, as service is regarded as an important part of legal security. The authority that is to serve a document must safeguard that the conditions are fulfilled, and suitable to the case at hand. For example, if the investigation of the recipient's whereabouts is insufficient this is generally regarded as a procedural error.[79] The principle of equality of arms is to protect both parties, and to give them equal opportunities to plead their case, and no party should be in an inferior position. The principle of contradiction ensures that a party must be given the opportunity to present his or her case, including evidence, to obtain knowledge of all the relevant material, decisive to the decision-making, and the opponent must be able to counter this.[80] These opinions was expressed by the Supreme Court in a criminal case, but they must also have bearing in civil cases.

Other rights that potentially can be affected is the right to a fair trial, and the right to an effective trial in a reasonable time. Service by publication could possibly be in conflict with these principles, but this has not been discussed in detail in Swedish literature.

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

In both situations, Swedish courts or authorities must diligently use the means available to trace the respondent in accordance with the general clause in Sec. 4 of the Service of Process Act.[81] See, for example, NJA 1997 s. 270 (a domestic Swedish case) and NJA 2004 s. 826 (Sweden – Canada).

In cross-border cases it is suggested that recommended EES-letter with an acknowledgment of receipt is used. In this case the acknowledgment of receipt is referred to as a red card (*rött kort*).

Service by publication is possible to use when the recipient's domicile is unknown or if it can't be ascertained where his or her whereabouts are, see Sec. 48 first para. of the Service of Process Act. Service by publication can be used when the recipient has neglected to report a changed address, which could imply that simplified service cannot be used.[82] The authority has a great responsibility to assure that the recipient's habitual residence or whereabouts really are unknown, and must ensure this before deciding to use service by publication. These measures might include checking the population registration in detail, for example by controlling details with the Swedish Tax Authority, telephone numbers, e-mail addresses and different registers (under provision of secrecy and personal data). If all these measures have been realised, service by publication can be the last resort if it is determined that the recipient has moved to an unknown place abroad.

In other cases, it might be compulsory to provide one or several efforts to try to serve abroad. Service by publication is not allowed when the recipient has a known habitual residence or whereabouts abroad.[83] In case there is a national procedure, and the recipient has a known habitual residence or whereabouts abroad, service can be provided according to the law of that

[79] See for example NJA 2004 s. 826 and NJA 2011 N 39.
[80] NJA 2021 s. 960 p. 22.
[81] Prop. 2009/10:237, supra n. 8, p. 190.
[82] Prop. 2009/10:237, supra n. 8, p. 191.
[83] See NJA 2011 N 39 and 2021 s. 960.

location if the foreign law do not conflict with general Swedish procedural principles, see Sec. 3 of the Service of Process Act.

An important case in this regard is *Hypotečhní Banka v. Lindner*.[84]

17. What is the procedure in your national jurisdiction if the recipient is responsible for a failure to serve?
(e.g. in Germany: The German ZPO provides rules for cases in which the acceptance of the document to be served is refused without justification [§ 179 ZPO]. It then should be left at the residence or business premises, in cases without such residences or business premises, the document shall be returned and is deemed served notwithstanding the refusal of acceptance.)

See **Questions 7, 16 and the section regarding right to refusal**.

18. What language is to be used for domestic service?
(e.g. in Germany: Documents must be written in German, as this is the official language of the court, § 184 of the Courts Constitution Act [hereafter: GVG].)

This is governed by the Swedish Language Act (2009:600) (*språklagen [2009:600]*). According to Sec. 10 of the Act, Swedish is the official language for authorities, and according to Sec. 13, Swedish is Sweden's official language in an international context.[85]

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.
(e.g. in Germany: There are regularly no claim forms to be used with the exception of European orders for payments or other European forms such as in small claim procedures.)

The Swedish National Courts Administration (*Domstolsverket*) designs forms that can be used when serving documents according to the Service of Process Act. The Service of Process Act and the Service of Process Regulation contain provisions on various methods of service, and in what cases the various forms can be utilised.

Form for acknowledgment of reciept (*delgivningsbekräftelse*): www.domstol.se/globalassets/filer/gemensamt-innehall/blanketter/delgivning/delgivningsbekraftelse-dv-802.pdf

Message of decision to serve (*meddelande om beslut om delgivning*): www.domstol.se/globalassets/filer/gemensamt-innehall/blanketter/delgivning/meddelande-om-beslut-om-delgivning-dv-815.pdf

Control message concerning service (*kontrollmeddelande om delgivningsförsändelse*): www.domstol.se/globalassets/filer/gemensamt-innehall/blanketter/delgivning/kontrollmeddelande-om-delgivningsforsandelse-dv-807.pdf

Control message concerning simplified service (*kontrollmeddelande om förenklad delgivning*): www.domstol.se/globalassets/filer/gemensamt-innehall/blanketter/delgivning/kontrollmeddelande-om-forenklad-delgivning-dv-804.pdf

[84] ECJ 17 November 2011, Case C-327/10, Hypoteční banka a.s. v Udo Mike Lindner, ECLI:EU:C:2011:745.
[85] See also EJC 8 May 2008, Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin, ECLI:EU:C:2008:264.

Control message concerning service – specific service with legal person (*kontrollmeddelande om delgivningsförsändelse – särskild delgivning med juridisk person*): www.domstol.se/globalassets/filer/gemensamt-innehall/blanketter/delgivning/kontrollmeddelande-om-delgivningsforsandelse---sarskild-delgivning-med-juridisk-person-dv-821.pdf

20. How are the costs of service regulated in your Member State?
(e.g. in Germany: For services at the instigation of the parties, the law on costs of judicial officers [hereafter: GVKostG] governs the costs [Annex to § 9 GVKostG].)

According to Sec. 2 of the Service of Process Regulation, the court or authority responsible for service bears the cost. This implies for example that a claimant in a civil procedure does not have to reimburse the court for the costs to serve the respondent.

However, the Service of Process Regulation also contains provisions on costs. If a single party wants to serve someone, that party bears the costs for service. If the Police Authority are used as process server the fee is SEK 1 000 (appr. EUR 100), see Sec. 21 of the Service of Process Regulation.

When the County Administrative Board assists a single party with service, it will charge a fee of SEK 500 (appr. EUR 50), see Sec. 22 of the Service of Process Regulation. In certain circumstances the Board may charge additional costs.

See also Regulation on fees (1992:191) (*avgiftsförordning* [1992:191]).

LEGAL IMPLICATIONS OF SERVICE

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

There is no general legal minimum requirement of an effective service. According to Sec. 4 of the Service of Process Act, the chosen method of service should be appropriate with regard to the content and scope of the document, and entail as few costs and inconvenience as possible. Service is not allowed to be carried out in a way that is inappropriate with regard to the circumstances of the case. The consequences of this assessment can be that service should not be carried out, or that another method of service should be used.[86] Therefore, there is a margin of discretion for the courts and authorities to uphold an appropriate and effective service, however, within some general boundaries. For details, see **Question 10.4**.

The legislator has also laid down some general, but uncodified, conditions in legislative preparatory works. The purpose of the service provisions in general is to create reasonable guarantees for the recipient to comprehend the content of the relevant document. On the other hand, the provisions should also promote effective access to justice. Consequently, the provisions try to balance between principles of the **rule of law** and **efficiency**.[87] The possible use of electronic means is also something that could promote effectiveness.[88]

22. What are the legal consequences (procedurally and, if applicable, materially) of the proper service of documents?
(e.g. in Germany: Lis pendens, procedural effects: § 261 ZPO: As long as the dispute is pending, none of the parties may bring the dispute before another court or tribunal and jurisdiction of the

[86] Andersson & Synnergren, supra n. 9, p. 31.
[87] Prop. 2009/10:237, supra n. 8, p. 91.
[88] Prop. 2009/10:237, supra n. 8, p. 1.

court hearing the case will not be affected by any change to the circumstances giving rise to its competence. Material effects, Interest during legal proceedings.)
(e.g. in Austria: The time period for appeals starts from the date of service of the document and is therefore necessary so that later res judicata and enforceability occurs)

Service is of importance when a case is being appealed, or in cases where a party seeks a petition for a new trial.[89] Service could affect time limits of appeal, and proper service could therefore result in the recipient's loss of appeal, as the time limit is often calculated from the time when the party was informed of a decision.[90] Correct service could also affect the statutes of limitation.

The relevant time for when an action is brought is the following according to Ch. 13 Sec. 4 para. 3 of the Code of Judicial Procedure: "An action shall be deemed initiated when the summons application is received by the court or, if a summons is not necessary, when the action is filed at the court." When an action is instituted in court, the relevant time, is the time when a proper summons has come in to the court, see Ch. 13 Sec. 4 of the Code of Judicial Procedure, and not the time when service of the claim form has been realised.

The reasons behind this solution are that the court has the main responsibility for service, and the claimant should not stand the risk for the respondent's failure. A creditor might want to accomplish an interruption of time bars, which the creditor can do by bringing a summons before court. The interruption is not fulfilled until the respondent is served, but the risk of the service lays with the court instead of the creditor. If service is not completed the creditor will have an additional year to interrupt a claim being time barred.[91]

Previously, the time limit for an application for reopening a default judgment did not start, if service had not been affected.[92] This order was changed in the year 2000 so the relevant starting time is now the day of the judgment, which is motivated by the fact that it could be uncertain when the judgment is served on the recipient, and there is a risk for a claim of reopening a long time after the judgment.

The order to reply to a claim could fulfil the same function as service, and it was therefore of importance to combine the order with a time limit, and to inform the respondent that a default judgment can be issued immediately after this time.[93]

The Swedish Supreme Court has rues that the order must include such information, and that the default judgment is issued relatively soon after the expiration of the time limit. The counterpart should also have been able to fulfil his or her claim, if necessary. If this is not the case the respondent may have a legal excuse, which can result in restoration of expired time.[94] It should also be mentioned that the order to reply to a claim is a notification that shall be served.[95]

Service is also of importance regarding the competence of the court, as the time of service with the respondent is when assessing the court's competence, see Ch. 10 Sec. 15 of the Code of Judicial Procedure. This means that changes of circumstances that establish the competence are irrelevant after this time, which means that the court keeps its competence even if circumstances have changed.[96]

[89] Ekelöf et al., supra n. 33, p. 333 n. 21.
[90] JO 2020/21 s. 561.
[91] Ekelöf et al., Rättegång II [Judicial process II] (Norstedts 2015) p. 117.
[92] NJA 1981 s. 988.
[93] Prop. 1999/2000:26, Effektivisering av förfarandet i allmän domstol [Streamlining of the process in the general courts] p. 120 f.
[94] NJA 2015 s. 275 p. 16.
[95] NJA 2022 s. 741 p. 10.
[96] Ekelöf et al., supra n. 91, p. 44.

The relevant time is when an action is brought before court, and not the time of affected service. Therefore, there is no real connection between service and *lis pendens*. *Cf.* also Ch. 13 Sec. 6 of the Code of Judicial Procedure.

23. What are the consequences of the <u>drespondent's</u> failure to appear in the proceedings under the national law of your Member State?
(e.g. in Germany: There is the threat of a default judgment or a decision according to the state of the files. § 331 ZPO concerns default judgments against the respondent.*)*
(e.g. in Austria: The court can render a verdict in favour of the appearing party.)

In cases where an action is amenable to out of court settlement, the consequences can be that a default judgment is issued against the absent party. However, this would require that the party has been summoned to be present in court under the threat of a default judgment. This instruction should be provided by service.[97] The case shall be dismissed if no such claim has been pleaded by the claimant, see Ch. 44 Sec. 2 first para. of the Code of Judicial Procedure. The claimant can also request a new meeting, and the first section of the provision shall then apply if the respondent is absent again, see Ch. 44 Sec. 2 of the Code of Judicial Procedure. A default judgment can also be issued if a party is absent by the time of the main hearing, see Ch. 44 Sec. 4 of the Code of Judicial Procedure.

A default judgment shall be based on the claimant's statement of the circumstances of the case, given that the respondent had taken part of the statement and that the representation does not conflict with commonly known conditions. If the statement does not contain legal reasons for the claim or it is obvious in other ways that the claim is unfounded, the claim shall be dismissed on the merits, see Ch. 44 Sec. 8 of the Code of Judicial Procedure. A claim that is dismissed on the merits will be affected by *res judicata*.

A brief reflection: If understood correctly, some States do not check whether or not a claim is well-founded before issuing a default judgment in the absence of the respondent. This could potentially affect a public policy-decision at a later stage when the default judgment is to be recognized or enforced in another State.

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

A party against whom a default judgment has been delivered, can apply for a reopening (*återvinning*) of the default judgment. This must be done in a month starting from the day that the judgment was announced according to Ch. 44 Sec. 9 of the Code of Judicial Procedure.

The legal remedies described below could be used against decisions of district courts, as well as decisions of courts of appeal. As the rules are the same by cross-reference according to Ch. 55 Sec. 15 of the Code of Judicial Procedure, only the provisions regarding the procedure in the courts of appeal will be described to illustrate the answer.

The respondent may appeal a judgment to a court of appeal (or to the Supreme Court depending on which court has delivered the judgment), as long as it has not entered into force (*laga kraft*). A final court decision may also be appealed, unless there are provisions stating otherwise, see Ch. 49 Sec. 3 of the Judicial Code of Procedure. Other decisions can only be appealed together with an appeal of the judgment or a final decision, unless regulated otherwise.

[97] NJA 2022 s. 741 p. 10.

A decision on service will in principle be regarded as a non-final decision, as a final decision implies that the court separate itself from the case in another way than by a judgment, see Ch. 17 Sec. 1 of the Code of Judicial Procedure. An appeal of a judgment is only possible when the judgment has gone against the party, and could be changed in favour of the respondent according to the general principle of appeal. This means that the respondent can appeal the conclusion of the judgment, but not the findings.[98] In civil cases where out of court settlement of the matter are permitted, leave of appeal is required to the court of appeal to review a district court's judgment, see Ch. 49 Sec. 12 of the Code of Judicial Procedure. Leave of appeal shall be granted if there are reasons to doubt that the district court's judgment is correct, or if it is essential to assess the correctness of the conclusion, if a leave of appeal for a trial by a higher court is of importance for the application of the law, or there are other extraordinary reasons to grant leave, see Ch. 49 Sec. 14 of the Code of Judicial Procedure. A claim regarding incorrect service can, for example, be a reason to doubt a district court's judgment.

If the judgment has entered in to force, the respondent can plead that there has been a procedural error. Setting aside a judgment means that a judgment from a lower court is deprived of its validity by a decision of a higher court, but without the higher court's own assessment of the case.[99] A procedural error is described as a disregard or wrongful application of a procedural rule which is not dependent of negligence.[100]

Especially two grounds of procedural errors should be mentioned in this context. The first ground of procedural error is if the judgment was given against someone who was not properly summoned, or did not appeared in the proceedings, or if the rights of a person who was not a party to the action were adversely affected by the judgment, see Ch. 59 Sec. 1 of the Code of Judicial Procedure. If a grave procedural error of the kind referred to in Ch. 59 Sec. p. 1 of the Code of Judicial Procedure has occurred in a district court, the court of appeal shall set aside the district court's judgment even if not requested to do so. The judgment may be set aside in whole or only in part, see Ch. 50 Sec. 26 of the Code of Judicial Procedure.

An improper service can result in such a procedural error, which can be illustrated by court practice. A respondent had received a notification from the court that service would be provided by ordinary service, but then the court decided to use simplified service. In this case, the respondent was not summoned to court correctly according to the court of appeal, and a procedural error had occurred in the district court.[101] In other cases, acknowledgments of receipt not saved have had the consequences that correct service cannot be proved.[102]

Another ground that could be relevant is the one of other grave procedural errors, see Ch. 59 Sec. 1 p. 4 of the Code of Judicial Procedure. A judgment that has entered into final force shall be set aside for grave procedural errors on appeal by the person whose legal rights the judgment concerns, if the procedure was tainted with another grave procedural error occurred in the course of the proceedings that can be assumed to have affected the outcome of the case.

[98] J. Munck and L. Welamson, Processen i hovrätt och Högsta domstolen: judicial process VI [The process in Court of appeal and The Supreme Court: judicial process VI] (Norstedts 2022) p. 32.
[99] Munck and Welamson, supra n. 98, p. 117.
[100] Munck and Welamson, supra n. 98, p. 118 f.
[101] RH 2011:50.
[102] NJA 2016 s. 189 I and NJA 2016 s. 198 III.

The parties shall have an opportunity to give their opinion, unless it is regarded as unnecessary according to Ch. 50 Sec. 28 of the Code of Judicial Procedure. When a provision of general importance to legal certainty is applied incorrectly, one could speak of a presumption of a grave procedural error.[103] The presumption may be applied when the error in service effects something else than that a party was not being properly summoned, but is quite rarely applied in case law. It could also be argued that a negligence by a higher court to request a preliminary ruling from the European Court of Justice in unclear cases may result in a procedural error.[104]

Swedish law also provides for the possibility to apply for a restoration of expired time, for example regarding time for appeal, which can result in the reopening of the case. This option requires the respondent's lawful absence, *i.e.* a valid legal excuse for his or her delay, see Ch. 58 Sec. 11 of the Code of Judicial Procedure. Improper service could be regarded as a legal excuse.[105] It is possible to plead both a procedural error, and restoration of expired time in cases of incorrect service. In cases when the time limit for appeal concerning a procedural error has expired, there is no possibility of restoration of this time limit, but it may be possible to apply for a new trial by restitution, see **Question 26**.

24. What are the consequences of the <u>claimant's</u> 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)
(e.g. in Germany: If the claimant does not appear at the hearing, a default judgment may be issued against the claimant at the request of the respondent, § 330 ZPO. In the context of a default judgment, the action is then dismissed.)

A default judgment can be issued against an absent claimant according to Ch. 44 Sec. 2 of the Code of Judicial Procedure. If the matter at issue is amenable to out of court settlement, and if a party fails to appear at a session for oral preparation and he or she was directed to appear, or a default judgment could be issued against him or her, on the request of the appearing party, such a judgment shall be delivered. If a default judgment is not requested, the case shall be removed from the court's list.

According to Ch. 44 Sec. 8 of the Code of Judicial Procedure, when a judgment by default is issued against the claimant his or her claim shall be dismissed on the merits, unless the claim has been consented to by the respondent or it is otherwise evident that the claim is well founded. A judgment by default against the respondent shall be based on the claimant's statement concerning the circumstances of the case, to the extent that the respondent has received notice of the statement and the statement is not contrary to matters of common knowledge. To the extent that the statement does not comprise legal reasons for the claimant's case or it is otherwise clearly without foundation, the claim shall be dismissed on the merits. A judgment by default shall be marked as such.

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

There are no different legal remedies in general for a claimant than the ones a respondent can rely on, see **Question 23.1**. There is one particular situation where a claimant can appeal a non-final decision of a court. That is if the decision leads to unnecessary delays. According to Ch. 49 Sec. 7 of the Code of Judicial Procedure "[a]ny party who is of the opinion that the

[103] Munck and Welamson, supra n. 98, p. 122 and NJA 2007 s. 209.
[104] Decision by the Swedish Supreme Court in 2022 HD Ö 5978-21.
[105] Compared to Munck and Welamson, supra n. 98, p. 184 and NJA 2016 s. 1004.

processing of the case has been delayed without reason by a district court decision may appeal from that decision separately".

This can be a possible avenue if the court has decided to use a special method of service, or if a court has decided to use service where there are other more efficient measures to reach the respondent. However, clear case-law is missing.

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

See **Question 23.1**. The legal consequences of improper service may result in a procedural error.

There are no general rules regarding improper service, but improper service could result in a change of the method of service. A recipient can also complain to the Parliamentary Ombudsman, which may render a decision of criticism against the authority affecting the improper service.

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?

There is no general provision for this kind of matters, but as has been stated under **Question 23.1**, a grave procedural error can be cured in higher court, and an insignificant error does not necessarily affect the decision of the lower court. The consequence is that no grave procedural error has taken place.

Ch. 50 Sec. 28 of the Code of Judicial Procedure states that "if in the district court an error other than those referred to in Section 26 or 27 has occurred, the court of appeal may set aside the district court judgment only if the error can be assumed to have affected the outcome of the case and correction of the error cannot be accomplished in the court of appeal without substantial inconvenience. The parties shall receive an opportunity to express themselves as to the issue of vacation unless it is clearly unnecessary."

A judgment from a court of appeal concerning a criminal case can illustrate that service, which is inappropriate in some cases, is not necessarily inappropriate when the recipient had a possibility to take part of the content.[106] In this case, no copy had been sent to the recipient, who complained that he had not been served correctly. The court found that nothing indicated that the recipient had not understood the content of the decision, or that he was not able to obtain the information concerning the circumstances. Verbal service was therefore correct. The case could have resulted in another outcome if, for example, the content was particularly complicated. If so, that could indicate that the method of service was inappropriate. Regarding the absence of more case law, the question cannot be answered with certainty. But if the recipient has been able to obtain the information in another way it will probably not be seen as a problem.[107]

[106] RH 2014:51.
[107] See prop. 2009/10:237, supra n. 8, p. 103.

25.2. Can a deficiency in service be cured in your national jurisdiction? If so, how?
(e.g. in Germany: The service is ineffective if mandatory service provisions have been violated [for example if the recipient of service is not a part of the group of persons defined in § 178 ZPO]. Ineffective service can be remedied by retroactive approval, in accordance with § 189 ZPO and by waiver of objection, § 295 ZPO. The ineffectiveness of the earlier service can also be overcome by reperformance. However, the new service has no retroactive effect.)

As improper service can result in a procedural error, it should be noted that wrongful summons to court cannot be cured by a higher court. "If a grave procedural error of the kind referred to in Chapter 59, Section 1, clauses 1 through 3, has occurred in the district court, the court of appeal shall set aside the district court judgment even if not requested to do so", see Ch. 50 Sec. 26 of the Code of Judicial Procedure.

If the matter concerns improper service in other cases, a remand due to grave procedural error can be avoided if the error can be cured without substantial inconvenience in the higher court. Ch. 50 Sec. 28 of the Code of Judicial Procedure lays down that "[i]f in the district court an error other than those referred to in Section 26 or 27 has occurred, the court of appeal may set aside the district court judgment only if the error can be assumed to have affected the outcome of the case and correction of the error cannot be accomplished in the court of appeal without substantial inconvenience. The parties shall receive an opportunity to express themselves as to the issue of vacation unless it is clearly unnecessary".

In cases not concerning court proceedings, the deficiency can be cured by changing method of service or by trying to reach the recipient again or in another way. There is also a possibility that service is believed unnecessary, or that the recipient has received the information in another way and this could be seen as sufficient. The answer is quite uncertain. In court proceedings, there might also be a possibility to cure some defects by formal or material direction of proceedings.

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?

As service is regarded as an important aspect of legal certainty and security, it is of great importance that it is carried out properly. An error can be cured in a higher instance, if the result of the case is handled satisfactory. The Swedish principle of court hierarchy means that the main part of the administration of justice should be carried out in first instance.[108]

Another issue concerns the substantive direction of proceedings and equality of arms. Of importance is also that the relevant material, which the judgment is based upon, is shared with both parties so that they can comment on it in an effective way.[109] At least it must be completely sure that the error can and has been cured in order to be acceptable.

[108] Munck and Welamson, supra n. 98, p. 123.
[109] NJA 2005 s. 175.

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?

Only some brief reflections concerning Art. 22 will be provided here. Art. 22 would benefit from a more thorough investigation, and analysis. *Cf.* also indent (35) of the Service Regulation 2020/1784.

Depending on whether a Member State has made a communication to the Commission or not, the time frame for service appears to vary. Art. 22.4 seems to be conducive to prolonged litigation, and may also encourage "procedural manoeuvres", contrary to the principle of effectiveness. Under Art. 22.4, rules on evidence also assert their application if an application for relief is filed, which additionally can burden the start of proceedings. For, example, what is reasonable time under the Service Regulation 2020/1784? What does a relief entail? Is it always the same court that issued the default judgment, which will try an application for relief? How should the time frames be understood?

The Brussel Regulation No 1215/2012 also contains safeguards for these situations, see Arts. 28 and 45 of the Brussels Regulation No 121572012.[110]

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

Not applicable.[111] Sweden has made no declaration with reference to Art. 22.2 of the Service Regulation 2020/1748.

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*?
(e.g. in Austria there is a 14-day period to file the application after the obstacle has ceased to exist.)

According to Ch. 58 Sec. 12 first para. of the Code of Judicial Procedure, "a person who wishes to apply for the restoration of expired time for an appeal to a court of appeal or for an application for reopening or reinstatement in a district court shall do so in writing with the court of appeal within three weeks of the termination of the excuse and, at the latest, within one year of the expiration of the period."[112]

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

No clear case law exists regarding the matter. The extraordinary measures to counter incorrect service entail applying for restoration of expired time, or apply for setting aside a judgment because of a procedural error. There is a possibility that relief for a substantive effect can be relevant, if the time to apply for setting aside a judgment (because of procedural error) has expired. The expiration of time for an extraordinary legal measure is not possible to cure by restoration of expired time.[113]

[110] Cf. also ECJ 6 September 2012, Case C-619/10, Trade Agency Ltd v Seramico Investments Ltd, ECLI:EU:C:2012:531.
[111] E-justice portal Sweden, https://e-justice.europa.eu/38580/EN/serving_documents_recast?SWE-DEN&clang=en visited 10 March 2023.
[112] See also ECJ 7 July 2016, Case C-70/15, Emmanuel Lebek v. Janusz Domino, ECLI:EU:C:2016:524.
[113] Munck and Welamson, supra n. 98, p. 181.

Relief for a substantive effect is not subsidiary to the other two extraordinary measures. An application can be made for the first one, even if this could have been possible to counter through restoration of expired time.[114]

If the claim consists of a complaint regarding a grave procedural error, the claim shall be sent to the court of appeal in six months from when the judgment became legally binding. Where a party has not been summoned correctly, the request shall be sent in six months after the party became aware of the judgment, see Ch. 59 Sec. 2 second para. of the Code of Judicial Procedure.

According to Ch. 58 Sec. 1 of the Code of Judicial Procedure, "after a judgment in a civil case has entered into final force, relief for a substantive defect may be granted for the benefit of any of the parties:

1. if a member of the court or an officer employed at the court, in respect of the case, is guilty of criminal conduct or neglect of official duty or if an attorney or a legal representative is guilty of an offence with regard to the case, and the offence or neglect of duty can be assumed to have affected the outcome of the case;

2. if a written document presented as proof was forged, or if a party examined under truth affirmation, or a witness, expert, or interpreter gave false testimony, and the document or statement can be assumed to have affected the outcome;

3. if a circumstance or item of evidence that was not presented previously is invoked and its presentation would probably have led to a different outcome; or

4. if the application of law forming the basis of the judgment is manifestly inconsistent with a statutory provision."

The first three grounds shall be presented in application in one year from the time when the part became aware of the invoked circumstances. In the latter case, the application must be done in six months from the time when the judgment became fully legally binding according to Ch. 58 Sec. 4 para. 2 of the Code of Judicial Procedure. Therefore there is a difference in time for applications for setting aside a judgment, because of procedural error, and applications for relief of a substantive effect. It should also be said that these time limits are not possible to restore through restoration of expired time.

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?

(e.g. in Germany: according to § 182 ZPO the proof of service is done through a separate certificate. The minimum requirements of that certificate are set out in § 182(2) ZPO. Following this, the record of service shall for example include: the designation of the person on whom service is to be made; the designation of the person to whom the letter or the document was physically submitted; in the case of § 171 ZPO, the certificate of the power of lawyer; the note that the day of service was noted on the envelope containing the document to be served; the place, the date and, should the court registry so have instructed, also the time of service; the surname, given name, and signature of the person serving the documents as well as the name of the company contracted for service, or the public authority charged with this task.)

(e.g. in Austria: A proof of service is not always necessary; the proof of service itself is regulated in § 22 Zustellgesetz (Austrian Act on the service of documents.)

[114] Munck and Welamson, supra n. 98, p. 197 and NJA 1961 s. 62.

The most common way to prove service is the recipient's return of an acknowledgment of receipt.

The general provision about documentation is found in the Service of Process Regulation. An authority handling a case or another matter shall make a note about the service in a diary, a register or a similar method of documentation. In other cases, a note on service is completed in a special register for service. The authority shall note the date of sending or handout, control message or other message, notification and information about simplified service. If it is not regarded as unnecessary, the authority shall note the measures that has been taken to affect service, and other reasons of importance for service with the recipient. The case number of service, the number or designation of the case or another matter, shall be specified on the document which will be served. The regulation also deals with some detailed provisions regarding some special methods of service.

In some cases, it is of great importance that evidence about service is saved, and that documentation is provided as it may affect the evaluation of evidence. If service cannot be proved for reasons of inadequate documentation, the service can be incorrect, and may result in a procedural error.[115]

Ordinary service shall regularly be confirmed by an acknowledgment of receipt attached to the document to be served, if this is not unnecessary, see Sec. 5 of the Service of Process Regulation. Other ways to prove service can also be accepted, *i.a.* by witnesses.[116] The court or authority responsible for service has the burden of proof, *i.e.* that the recipient has received the document (or that service has been completed in compliance with the relevant method that is used). This corresponds to the ordinary demands of documentation presented above, but it also shows that the circumstances may demand more proof than the minimum limit of documentation that is regulated.[117]

It is for the recipient to show that service was not been carried out properly, for example if he or she claims that a documented confirmation was false.[118] He or she should provide a plausible explanation, and some evidence to support the claim.[119] An acknowledgment of receipt signed by the recipient is usually regarded as sufficient evidence.

If an acknowledgment of receipt has been returned to the court or authority, the burden of proof shifts to the recipient, *i.a.* if the recipient claims that the information was obtained later than the date of the confirmation.[120] It should also be noted that free sifting of evidence and production of evidence prevails in general, see Ch. 35 Sec. 1 of the Code of Judicial Procedure.[121]

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.
(e.g. in Germany: § 170 ZPO [service on statutory representatives]; § 171 ZPO [service on authorised agents]; § 172 ZPO [service on legal representatives], etc.)

There are several regulations on whom is to be considered to be the proper recipient of service. But there is no general regulation regarding accepted methods for the service of documents for professionals. The first matter shall be examined below.

When service is carried out on a natural person, that person is the correct recipient, see Sec. 11 of the Service of Process Act. If the natural person has a deputy or a guardian he or she is the correct recipient. If there are reasons, both the natural person and the deputy or guardian can be regarded as

[115] NJA 2016 s. 189 III.
[116] Prop. 2009/10:237, supra n. 8, p. 239.
[117] Andersson and Synnergren, supra n. 9, p. 69 f.
[118] NJA 2008 s. 890.
[119] NJA 2018 not 2.
[120] NJA 1987 s. 941.
[121] NJA 2016 s. 189 II.

recipients. For example, both parents are usually seen as recipients for under-aged persons.[122] There are special provisions for persons with secured identity, and regarding persons apprehended by society.

When the State is to be served, the correct recipient is the competent person of the authority who shall monitor the interest of the authority. This is usually regulated by special provisions, but if that is not the case, the Office of the Chancellor of Justice (*Justitiekanslern*) should be regarded as recipient, see Sec. 12 of the Service of Process Act.

When service is be carried out to a legal person, the relevant deputy agent should receive the service according to Sec. 13 of the Service of Process Act. The CEO of a limited company is always the correct recipient in those cases. In other cases, one must establish the deputy agent. If the deputy agent cannot be reached, service on the vice CEO is regarded as the correct recipient. This person should then address the correct recipient as soon as possible (normally the head CEO). One must also consider that incorrect service with deputy agent can later result in the use of service by legal person, see Sec. 27 of the Service of Process Act.

An accountant is not regarded as a correct recipient regarding limited companies.[123] The company register can often be used to determine who is the correct recipient, however, one must be aware that the register can be out of date, for example, because of a company's bankruptcy.[124] There is also provisions concerning partners in different federations, which is overall the same as the service with another legal person than the State, *cf.* Sec. 14 of the Service of Process Act.

If the ordinary recipient is represented by a legal representative competent to receive documents, then both are regarded as recipients under Sec. 15 of the Service of Process Act. If the document is sent to the person their legal representative should be informed about this. The legal representative is not regarded as recipient when the matter concerns an order to fulfil something personally. If the legal representative is not notified in other cases, it could be a cause for restoration of time loss or a procedural error.[125] The authority must examine if the legal representative is competent, by procuration for example, before service is carried out to the representative.[126] Communication with the legal representative is in most cases a fundamental principle of the procedure, and the representative should therefore be informed about time for appeal and similar matters.[127]

There is also the possibility of substitute service in cases when service by process server is being used. This means that another person than the ordinary recipient can be served, see Sec. 34 of the Service of Process Act. If the recipient has a known habitual residence, but is not found there, the document can be left to an adult member of the same household, if this person is encountered in or in instant connection with the residence, see Sec. 35 of the Service of Process Act. A message should then be sent to the ordinary recipient regarding that service has been carried out in this way and who the document was left to, see Sec. 34 of the Service of Process Act.

[122] NJA 2016 s. 189 II.
[123] NJA 2005 s. 175.
[124] NJA 1997 s. 762.
[125] NJA 2016 s. 1004.
[126] RÅ 1982 2:29 (older decision by the Supreme Administrative Court).
[127] NJA 2014 s. 75.

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

(e.g. in Germany, if there is no proof of receipt in accordance to § 182 ZPO, a cure for defects in the service is the actual perusal, § 189 ZPO)
(e.g. the Austrian civil procedure code contains numerous rules regarding the consequences of service defects. The general rule is that as soon as the document reaches the party, service defects are considered immaterial.).

If there is no proof that service has been carried out, this could result in service not having taken place, and that the definitive time regarding an appeal has not expired.[128] This could also result in new service, or a change of method for service. If service is carried out incorrectly, this can result in the use of extraordinary measures.[129] There are no provisions on the consequences of improper service, but it is not impossible to cure formal defects.[130] Improper service can result in remanding a case, especially if it is doubtful if the recipient has received the document.[131] In other cases, improper service can be criticized by the Parliamentary Ombudsmen.[132]

30. What is considered a timely service of documents?

It is not possible to state an exact time for timely service. There are no provisions, or case law, as far as we know, that consider timely service. This varies from one case to another. Some special regulations contain detailed information about the relevant time for service. In general, the question is rather when service is seen as complete, not if service is timely or not. For example, the court decides the time limit to confirm an ordinary service. If this turned out to be impossible, the court should try to serve by using a different method, see Sec. 6 of the Service of Process Regulation. Another example is service of an appeal to the adversary party, which should be done at a time that the court sets according to Ch. 50 Sec. 8 first para. of the Code of Judicial Procedure.

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

The risk is often placed on the subject that shall implement service (often a court or an authority), but in some cases the burden of proof might be placed on the recipient. No general provisions regulate the matter, but it should be kept in mind that the main rule is that the authority is responsible for service according to Sec. 7 of the Service of Process Act.

If the court or authority finds that appropriate measures has not been carried out, for example, that a control message has not been sent, or that publication has not taken place in correct time, the result is that service has not been carried out. New service measures may therefore be needed, unless the purpose of service has expired because the recipient has taken part of the content in another way.[133] Also, see **Question 27** above.

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.

[128] NJA 2014 s. 75.
[129] NJA 2016 s. 189 I.
[130] Prop. 2009/10:237, supra n. 8, p. 103.
[131] NJA 2016 s. 189 I.
[132] See for example JO 2020/21 s. 561.
[133] Prop. 2009/10:237, supra n. 8, p. 103.

(e.g. in Germany: § 183 ZPO regulates the service abroad. For the purposes of implementing the Regulation, §§ 1067 (1), 1069 (1), 1070 and 1071 ZPO shall apply according to § 183 (1) ZPO. § 1069 (1) no. 1 ZPO provides the German court which is in charge of the service with competence for the service of judicial documents and no. 2 declares that generally, the court at the residence or habitual residence is competent for extrajudicial documents.)
(e.g. in Austria: The trial courts are considered transmitting agencies.)

According to Sec. 3 of Regulation (2008:808) on supplementary provisions regarding EU's Service Regulation (*förordning [2008:808] med kompletterande bestämmelser till EU:s delgivningsförordning*), Swedish transmitting agencies are courts, the Swedish Enforcement Authority (*Kronofogden*), the County Administrative Board in Stockholm (*Länsstyrelsen i Stockholm*), and other Swedish authorities that are to serve documents in cases and errands in civil or commercial matters.

With regard to jurisdiction, the district courts' geographical jurisdictions are regulated in Regulation (1982:996) on district courts' judicial districts (*förordning [1982:996] om tingsrätternas domkretsar*). The geographical jurisdiction of the six courts of appeal in Sweden are regulated in Regulation (1992:128) on courts of appeal judicial districts (*förordning [1992:128] om hovrätternas domkretsar*). The Swedish Supreme Court's (*Högsta domstolen*) geographical jurisdiction covers all of Sweden.

The Enforcement Authority is one national authority, and will divide cases or matters to the relevant office. Courts and the Enforcement Authority are the Swedish authorities that most commonly need to serve documents according to EU's Service Regulation 2020/1784. Part and parcel, service needs to be affected in several thousand errands every year.[134]

The County Administrative Board in Stockholm provides assistance to all Swedish authorities, *cf.* Sec. 4 of Regulation with supplementary provisions regarding the Service Regulation. Documents to be served can be provided to the Board on paper, by fax or e-mail.[135] No special provisions on the matter have been adopted.

A list of the district courts' contact information is available on-line: e-justice.europa.eu/cdbCompetentAuthPrint.do?clang=sv&articleContentId=-1&articleId=68&taxonomyId=373&msId=27.

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.
(e.g. in Germany: § 1069 (2) ZPO regulates which bodies are considered to be "receiving agencies", Within the meaning of Article 3 (2) of the Regulation the office of the local court in whose district the document is to be served shall be the receiving agency, § 1069 (2) cl. 1 ZPO. The state governments may assign the duties of receiving agency to a district court for the districts of several district courts by statutory order, § 1069 (2) cl. 2 ZPO.)
(e.g. in Austria: The district courts are considered receiving agencies.)

The County Administrative Board in Stockholm is the receiving authority according to Art. 3 No. 2 of the Service Regulation, see Sec. 2 of Regulation on supplementary provisions regarding EU's Service Regulation.

For contact information to the County Administrative Board, see https://e-justice.europa.eu/cdbCompetentAuthPrint.do?clang=sv&articleContentId=-1&articleId=69&taxonomyId=373&msId=27.

[134] Ds 2021:21, supra n. 28, p. 45.
[135] Ds 2021:21, supra n. 28, p. 46.

34. What means of communication is accepted by the receiving agencies when receiving documents?
(e.g. in Germany: The following means of communication are available for receiving and sending: mail and private delivery services, fax; and for informal communications: telephone and e-mail.[136])

The point of departure is the Service Regulation 2020/1784. Documents can be transmitted and received in the ways provided for in Art. 5 of EU's Service Regulation 2020/1784. In case the decentralised IT system should not work, documents can be sent by regular mail, courier, fax, or – after a special agreement – in other way ways. As the Service Regulation 2020/1784 regulates how documents can be transmitted under Art. 5.4, and indent (15), no supplementary Swedish provisions have been adopted.[137]

35. Which public institution is the "central body" according to Art. 4 of the Regulation in your Member State?
(e.g. in Germany: The state governments "determine by statutory order the body responsible in the respective state as the German central office pursuant to Article 4 of Regulation [… It] shall be the Federal Office of Justice", § 1069(3) and (4) ZPO.)
(e.g. in Austria: The Federal Ministry of Justice)

The County Administrative Board in Stockholm is Central Authority according to Art. 4 of the Service Regulation 2020/1784, see Sec. 6 of Regulation on supplementary provisions regarding EU's Service Regulation.

See above **Question 33**.

36. How is it decided which method of service will be used by the authorities in your Member State?
According to the general clause in Sec. 4 of the Service of Process Act, the method should be chosen with regard to what is appropriate with reference to the documents' contents and scope, and it should entail as few costs and inconveniences as possible.

See above **Question 10.4**.

37. What are the costs of service under the Regulation if your Member State is the receiving State?
(e.g. in German: Expenses may be up to 20.50 EURO under ordinary circumstances. They are calculated according to the type of service requested in accordance with the Judicial Costs Acts.)

According to Sec. 7 of the Service of Process Act, the court or authority responsible for service stands the cost of service. However, see **Question 20** above.[138]

[136] See e-justice portal, https://e-justice.europa.eu/content_serving_documents-373-de-de.do?member=1, visited 12 March 2023.
[137] See Ds 2021:21, supra n. 28, p. 47 f.
[138] The European e-justice portal service (Sweden), https://e-justice.europa.eu/373/SV/serving_documents?SWEDEN&member=1, visited 10 March 2023. See also Handbok KFM 943 Utgåva 1, Internationell verkställighet [International enforcement] 2016 p. 383.

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

They will most likely be dismissed, but it is for the County Administrative Board in Stockholm to decide.[139]

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?
(e.g. in Germany: According to § 1070 ZPO, requests for service, certificates of service and other notices pursuant to the Regulation received from abroad must be in German or in English or accompanied by a translation into German or English.)

Only forms filled out in Swedish and English will be accepted. According to Sec. 5 of the Regulation on supplementary provisions regarding EU's Service Regulation, documents to be served in Sweden sent to the County Administrative Board in Stockholm as receiving authority, will be served only if the standard form provided in Art. 8.2 of the Service Regulation 2020/1784 has been filled out in Swedish or English.

40. To what extent does your Member State support address tracing according to Art. 7 of the Regulation? Please describe the process in detail.
(e.g. in Austria: The "Zentrales Melderegister" [Central Register of Residents] can be consulted by various official bodies. Only a small administrative fee is charged.)

When the address to a recipient of service is unknown, the Swedish Tax Agency (*Skatteverket*)[140] will assist in deciding an address to natural persons, and the Swedish Companies Registration Office (*Bolagsverket*)[141] will assist regarding legal persons' addresses. There is no formal procedure to access this information.

The requested authority will retrieve new information of the recipient's address *ex officio*, if the recipient has moved from the address provided in the documentation.

See also **Question 9.1** above.

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?
(e.g. in Germany: "Service pursuant to Article 17 of Regulation (EU) 2020/1784 by the competent German diplomatic mission or consular post abroad shall only be effected in justified exceptional cases. Service pursuant to sentence 1 on an addressee who is not a German national shall only be admissible if the Member State in which service is to be effected has not excluded this by a declaration pursuant to the first sentence of Article 33(1) of Regulation (EU) 2020/1784. Service pursuant to Article 17 of Regulation (EU) 2020/1784 to be effected in the Federal Republic of Germany shall be admissible only if the addressee of the document to be served is a national of the transmitting State", § 1067 ZPO.)

[139] Ds 2021:21, supra n. 28, p. 46.
[140] Webpage of the Swedish Tax Agency, http://www.skatteverket.se, visited 10 March 2023.
[141] Webpage of the Swedish Companies Registration Office, bolagsverket@bolagsverket.se visited 10 March 2023.

Not applicable.[142]

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

Previously, direct service was only allowed if regular postal mail was used or, in certain cases, by the use of diplomatic or consular channels.[143]

The professions and competent parties to affect direct service under the Service Regulation 2020/1784 are the Swedish Police Authority (*Polismyndigheten*) and authorised service companies (*delgivningsföretag*).[144]

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 between the EU and the Kingdom of Denmark of 19 October 2005 on the service of judicial and extrajudicial documents in civil or commercial matters.

Not applicable.

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?

No.[145] Also, see **Question 47.1**.

RIGHT OF REFUSAL

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

In the preparatory works, the legislator held that is was a problem that recipients could undermine service by refusing to accept it.[146] Therefore a special provision was enacted when service by process server was used as service method. If the recipient refuses to accept service, the document shall, as a main rule, be left at the place where the recipient was found by the process server, see Sec. 32 of the Service of Process Act. If the recipient refuses to accept the document, service is still affected according to Sec. 39 of the Service of Process Act. According to this provision, the recipient has understood that service was affected, which requires personal contacts between the process server and the recipient.

A refusal could be performed in several ways, for example by not opening the door to the process server. However, the process server must ensure that it is the recipient behind the door. In such cases it is appropriate to leave the document in a postal box or similar in a sealed envelope, see Sec. 11 of

[142] The European e-justice portal service (Sweden), https://e-justice.europa.eu/38580/SV/serving_documents_recast?SWEDEN&clang=sv, visited 10 March 2023.
[143] Ds 20121:21, supra n. 27, p. 35.
[144] The European e-justice portal service (Sweden), https://e-justice.europa.eu/38580/SV/serving_documents_recast?SWEDEN&clang=sv, visited 10 March 2023.
[145] Ds 2021:21, supra n. 28, p. 55 f.
[146] Prop. 2009/10:237, supra n. 8, p. 172.

the Service of Process Regulation.[147] It is of importance that the measure is documented, and/or witnessed.

If appropriate, the document could also be left at the place where the recipient was found.[148] It is generally inappropriate to leave the document on public ground, as it must be assured that unauthorized subjects cannot obtain the document.[149] To leave the document on a car, in which the recipient was sitting, has been regarded as appropriate according to case law.[150] If it is regarded as inappropriate to leave the document at the scene, another try or another method should be considered. Other appropriate measures such as substitute service could also be considered. If service by process server is used, the measures shall be documented and presented, as shall failed attempts and other circumstances of importance, see Sec. 16 of the Service of process Regulation.

See also **Question 27**.

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

There are no general grounds for refusal, and service by process server can be carried out against a recipient who refuses to accept the service.[151] The recipient will be served when the document is placed appropriately after the refusal. This method could be used if there are reasons to believe that the recipient will refuse, or not respond to another method of service.[152]

Also, see **Question 45**.

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

There are no general grounds for when acceptance of a document served electronically can be refused. But if this happens, for example if the recipient does not respond to e-mails demanding confirmation of ordinary service, the authority serving should try other ways to come into contact with the recipient with the purpose of obtaining a confirmation, see Sec. 6 of the Service of Process Regulation. The recipient could contact the authority, if the document is too extensive or difficult to read through an electronic device. According to Sec. 17 second para. of the Service of Process Act, only authorities are allowed to serve electronically.

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

The court must first asses which method of service has been used to establish if service has been carried out correctly, or carried out at all. The court should also asses if the method was

[147] Prop. 2009/10:237, supra n. 8, p. 172.
[148] Andersson and Synnergren, supra n. 9, p. 69 f.
[149] Prop. 2009/10:237, supra n. 8, p. 249.
[150] RH 2011:47.
[151] See also ECJ 7 July 2022, Case C-7/21, LKW WALTER Internationale Transportorganisation AG v CB and others, ECLI:EU:C:2022:527.
[152] Prop. 2009/10:237, supra n. 8, p. 172.

appropriate given the contents of the documents and other circumstances according to Sec. 4of the Service of Process Act.[153] See above **Question 10.4**.

If service by process server was used, and the document has been left on the scene, the court must consider if this was done in an appropriate way, and if the provisions for using that method are fulfilled. It should also consider if the recipient has understood that an attempt of serve was carried out. Should this not be the case, it is plausible that a procedural error has occurred.[154]

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

A refusal will in most cases concern service by process server, and it will be dependent on whether or not the recipient has understood that an attempt of service was made. If so, the refusal could be seen as unjustified if the method was appropriate. A case where the recipient previously had been notorious difficult to serve can be used as an example. The recipient was found by the process server near an elevator in his apartment building. The recipient ran outside to his bike, and the process server then attached the document to the bike, saying that service had taken place. The recipient took the document and threw it on the ground. The Supreme Court found that the recipient's earlier behaviour, and other circumstances indicated that he had received the document.[155]

Another case indicates that the process server's statement often is strong proof, but it cannot be reliable when circumstances show that the recipient has been mistaken for another person by the process server.[156] These two cases show that the question of justified or unjustified objection is mainly a question of evaluation of evidence which is completely under the court's discretion.

Also, see **Question 27**.

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?

As stated previously, under **Question 46**, whether or not a refusal is admissible is a question of evidence. The provisions in Art. 12 will fill a gap in national law in reference to the principle of prevalence of EU law.[157]

Art. 43.2 of the Brussels I Regulation No. 1215/2012 contains a similar provision in the area of enforcement of judgments.

[153] See also ECJ 8 May 2008, Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin, ECLI:EU:C:2008:264.
[154] See for example RH 2011:47.
[155] NJA 2013 s. 262.
[156] NJA 2016 s. 189 II.
[157] Delgivning till utlandet [service abroad] by the Swedish County Administration 2017, https://catalog.lansstyrelsen.se/store/39/resource/61, p. 5 visited 12 March 2023.

ELECTRONIC METHODS OF SERVICE

47. Does your Member State's national law allow documents to be served electronically? If so, how?
(e.g., in Germany: Court documents may only be served electronically on addressees in the Federal Republic of Germany in accordance with Article 19 (1) (a) of the Regulation, § 1068 ZPO. In addition to that, § 173 ZPO regulates the general service of electronic documents.)

In domestic cases, concerning regular service, the document is sent or handed over to the recipient. Normally, this is affected by regular mail or by using a courier. As proof of service, the recipient signs a receipt of acknowledgment (*delgivningskvitto*). This is called a white card. No formal requirements exist regarding the notification from the recipient.

If appropriate, documents can also be sent electronically, by fax, e-mail or by text message. The recipient of service can confirm in the same electronic way that he or she has received the document. The recipient can also confirm that he or she has been served orally. In this case, the authority shall ask control questions to verify the person's identity. If the receipt of acknowledgment is sent by e-mail it is required that it has been sent from an address which is known to the authority, or that can be checked retrospectively. The recipient of service can also confirm service in other ways. For example, the recipient can use his or her "Bank-ID" or "e-ID" to notify the authority of service at the authority's website. That a recipient has been served can also be proved in other ways, for example by the information of a courier or witnesses.

In order to use electronic service, it is required that the document is sent to an address that the recipient has provided in the case or matter. Documents containing sensitive personal information or secret information, should not be sent electronically. If this happens anyway, suitable technical and structural measures must be taken to protect the information. Another situation where it could be inappropriate to use electronic service is if the information is extensive or difficult to read on a screen.[158] *Cf.* Sec. 4 of the Service of Process Act.

According to Sec. 17 of the Service of Process Act, only Swedish authorities can serve documents electronically, if regular service is the method of service. Electronic means fax, e-mail and text messages. Sec. 17 implies, *e contrario*, that an individual may not serve documents electronically. According to Swedish preparatory works, it is difficult to verify whether an e-mail address is correct, and information sent to the wrong party cannot be kept undisclosed. Furthermore, if an individual is to serve a document without connection to a case or matter, there is no control of the service or whether it was affected in a suitable manner. As wrongful service may have vast consequences for the recipient, the time was not ripe to allow individuals to serve documents electronically.[159]

To determine whether electronic service can be employed, the general clause in Sec. 4 of the Service of Process Act applies, see above **Question 10.4**. A fundamental requirement in order to employ electronic service is that the authority can determine, with a reasonable degree of certainty, that the document reaches the recipient on a certain fax number or e-mail address. The risk that others will access the content of the document must also be considered. An e-mail address provided by someone else than the recipient of service cannot not be used.[160]

[158] Andersson and Synnergren, supra n. 9, p. 73.
[159] Se prop. 2009/10:237, supra n. 8, p. 121.
[160] Andersson and Synnergren, supra n. 9, p. 75–76.

Also, see **Question 55.**

Now, Sec. 6 a) of the Regulation on supplementary provisions regarding EU's Service Regulation provides that regular service may be affected electronically if a person has a known address for service in another Member State according to Art. 19.1 b of the Service Regulation No. 2020/1784.

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

Sweden did not participate in the e-CODEX infrastructure. However, the Swedish government has commissioned the Swedish Prosecution Authority to implement a Swedish accession to the e-Evidence system.

A Swedish authority that needs to serve documents in a case or matter, but has no access to the decentralised IT system has to apply for assistance with the County Administrative Board in Stockholm according to Sec. 5 of the Service of Process Act, an authority that has access to the decentralised IT system. It was not deemed necessary to provide access to every Swedish authority.[161] Work is currently going on to analyse the implementation of the system.[162] Therefore, Sec. 4 of the Regulation on supplementary provisions to EU's Service Regulation provides that a Swedish authority serving documents in civil or commercial matters, which does not have access to the decentralised IT system as foreseen in Art. 5 of the Service Regulation, can apply for assistance on service with the County Administrative Board in Stockholm.

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?

See above **Question 47**.

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

See above **Question 47**.

47.4. How is the time of service determined?

When the recipient has received the document, regular service has been affected.[163] This can be seen as a consequence of the principle of free sifting of evidence in Swedish procedural law. If the recipient claims that he or she has not been served, the burden of proof shifts to him or her.

See above **Questions 14**, **27**, **30** and **31**.

[161] See Ds 2021:21, supra n. 28, p. 30 f. and 45.
[162] Regeringens beslut [Decision by the Swedish Government] den 17 juni 2021 om Uppdrag om införande av digital kommunikation för rättsliga samarbeten inom EU [Assignment on introduction of digital communication for judicial cooperation in the EU], dnr Ju2021/02436.
[163] Prop. 2009/10:237, supra n. 8, p. 162.

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

Under the Service Regulation 2020/1748 prior consent is necessary. Under Swedish law, the question is more loosely framed. See above **Questions 10.4 and 47**.

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

See above **Question 48**.

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

See above **Question 48**.

49. Is every citizen obliged to accept electronic service of documents in your Member State?
(e.g. in Austria: Not everyone is obligated to accept electronic service via dedicated internet portals.)

Not everyone is obligated to accept electronic service via dedicated internet portals, but it is for the court or authority to determine which method of service is the most suitable and effective one in the individual case.

See above **Question 10.4.**

49.1. If yes: What provisions does your Member State's national law provide in case the recipient has no possibility to receive electronic deliveries? (e.g. for elderly people)

Not applicable.

50. Is there a central body responsible for electronic service in your Member State?
(e.g. in Austria the "Bundesrechenzentrum" (Federal Computing Centre) is responsible)

Not applicable.

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

See **Questions 47 and 55**.

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

See above **Question 47.**

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

Other methods of service can be used.

See also **Questions 16.1 and 34**.

54. What are the costs of electronic service?

According to the Swedish National Courts Administration, the costs for electronic service is not accounted separately from other costs and is not something that is followed up in general.[164] If the County Administrative Board is assisting a private subject with service the Board shall charge a fee of 500 SEK for providing the assistance, see Sec. 22 of the Service of Process Regulation.

See above **Question 20**.

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

The confidentiality of the information in the document to be served shall be taken into consideration and put in relation to how secure the method of transmission is. High security requirements are of essence if the document contains sensitive personal information, information of criminal offences or confidential information.

The problem is identified in the preparatory works to the Service of Process Act. When choosing electronic service, an authority must consider regulations regarding data protection and secrecy. If the information is specifically sensitive, electronic service may be regarded as inappropriate, see the general clause in Sec. 4 of the Service of Process Act, or specific measures of security must be taken. A possible safeguard could be that the authority sends a message to the recipient that the document is possible to obtain by entering a website where electronic id-confirmation, for example, *BankID*, is mandatory for access, and for confirmation of the service.[165]

According to the Swedish Tax Agency, the strict requirements that the data protection regulations prescribe mean that it is prohibited to use unencrypted e-mail or similar methods concerning extra sensitive personal data, such as personal identity numbers.[166] This concern has also been expressed by the Parliamentary Ombudsman. If an authority sends information containing sensitive personal data, it must take appropriate security measures to ensure that only the right recipient accesses the information, for example by using encrypted systems for e-mail. There is a strong indication that personal data is regarded as extra sensitive if it is confidential.[167] A court must also take protection of personal data into account when deciding what information will be included in the judgment or other relevant documents that may be public.[168] If the authority has extra sensitive information concerning personal data on e-mail or likewise, it should ensure that it is deleted from the e-mail system as soon as possible, or transfer the data to an allowed security system.[169] It should also be mentioned that most authorities have adopted their own internal provisions regarding such matters, and many authorities fall under special regulations concerning the authority in question.

Regarding confidential information, it is forbidden for authorities to provide such information to private subjects according to Ch. 8 Sec. 1 of the Public Access to Information and Secrecy Act (2009:400) (*offentlighets- och sekretesslag* [2009:400]). It is forbidden to reveal such information

[164] According to a financial administrator at the Swedish National Courts Administration.
[165] Prop. 2009/10:237, supra n. 8, p. 121 f.
[166] Guidelines regarding service provided by the Swedish Tax Agency, https://www4.skatteverket.se/rattsligvagledning/edition/2023.3/326240.html visited 10 March 2023.
[167] JO 2018/19 s. 274.
[168] JO 2004/05 s. 29.
[169] Guidelines regarding e-mail and personal data provided by the Swedish Authority for Privacy Protection, https://www.imy.se/verksamhet/dataskydd/det-har-galler-enligt-gdpr/informationssakerhet/personuppgifter-i-e-post/ visited 10 March 2023.

in all possible ways, *i.e.* verbally or by handing out a document by e-mail, see Ch. 3 Sec. 1 of the Act.

According to Ch. 22 Sec. 5 of the Service of Process Act, information concerning private circumstances is subject to secrecy, if it can be presumed that the private subject or a close relative can suffer detriment if the information is disclosed. According to the Swedish principle of public access to documents, the privacy of private subjects is quite weak regarding personal information connected to service.[170]

Confidentiality may also exist according to Ch. 21 Sec. 7 regarding GDPR, if the information could be used in a forbidden way. But this provision only regulates when the information is handed out, and not the authority's internal use. Information that may be public according to other provisions, may be confidential according to this provision.[171]

It can be mentioned that there is a general provision of breach of secrecy regarding service in Ch. 10 Sec. 26 of the Public Access to Information and Secrecy Act. The secrecy does not preclude that information about a private party's address, phone number and workplace or information in form of a photographic picture, is handed over to an authority from another authority, if the information is necessary for the authority to serve according to the Service of Process Act, or to assist with service. Other measures (than the ones just mentioned) can only be handed in, in accordance with other regulations, primarily in accordance with the general clause in Ch. 10 Sec. 27 of the same Act.[172]

See above **Question 47**.

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 order to enhance legal certainty and security it could be discussed if the various methods of service should be fewer, and time frames for service more clearly set. The provisions in Secs. 4 and 4 a) of the Service of Process Act give room for discretionary decision on service, detrimental to legal certainty. Moreover, natural persons should be allowed to use electronic service in certain cases, in particular when service outside a court case or matter is at hand.

See also **Question 60** below.

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.

Not applicable.

[170] Prop. 2009/10:237, supra n. 8, p. 222.
[171] Prop. 2017/18:105, Riksdagens öppna data [The Parliaments open data] p. 136.
[172] Prop. 2003/04:93, Några frågor om sekretess m.m. [Some questions regarding secrecy and more] p. 42.

PROBLEMS RESULTING OUT OF CROSS-BORDER SERVICE

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

Certain methods of service are not very predictable, and may actual be contrary to fundamental principles, for example because the information to be served does not actually reach the recipient. See above **Question 16.2**.

There are also uncertainties as to what constitutes correct service. This is explained by the fact that Swedish procedural law has the principle of free production of evidence and free sifting of evidence.

It could also be argues that private actors, such as landlords, should be allowed to serve a notification of termination electronically. On this topic, currently, if private actors serve electronically (although not allowed) there are no legal sanctions. In that sense, Sec. 17 of the Service of Process Act, lacks content for private actors.

- Another Swedish concern is the lack of research on service legislation, and especially on cross-border service.
- A practical concern is that the postal service in Sweden only delivers mail every second day, and in some parts of Sweden the mail is delivered very far from the recipient.

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

Swedish law on service allows more service methods than the Service Regulation 2020/1784, and Swedish law seems to authorise a larger scope of fictitious methods than the Regulation.

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

Some thoughts on the topic relate to decreasing the available methods of service in Sweden. Moreover, the Swedish legislator could have provided more guidance for courts, authorities and others in the application of the Service Regulation 2020/1784, but did not do so because of the prevalence of EU law. At least, preparatory works to national law adopted in Sweden relating to the Regulation could have clarified and provided arguments on how Swedish complementary rules should be understood in relation to the Service Regulation 2020/1784.

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.

NJA 2004 s. 407: The main question in the case was if service to a Ukrainian company corresponded to Swedish provisions regarding service (the case concerned arbitration). There was no investigation regarding Ukrainian law, which showed that the measures taken were in accordance with Ukrainian law. The question was therefore if service had been affected. The Swedish Supreme Court compared the procedure with Swedish legislation regarding service with representatives for legal persons. The measures, which was taken in Ukraine, were held to be in accordance with Swedish legalisation, and there was no reason to believe that the conditions at the foreign place differed from what was normal in Sweden, so the measures could be accepted as service in accordance with Swedish law. Service had therefore been affected, and the appeal was approved.

The case regarded the older Service of Process Act but should be in accordance with the current Service of Process Act. In conclusion, the case shows that it was appropriate to use the Swedish law

regarding service, but it could be more appropriate to use a foreign law in other cases. This is also a possibility according to Sec. 3 para. 2 of the Service of Process Act.[173]

NJA 2006 s. 588: A respondent in a criminal case had an address abroad. This did not constitute a hindrance, neither according to domestic nor to international law, to use simplified service concerning an order to attend a main hearing in person. The Supreme Court held that it was no domestic obstacle for foreign authorities to serve recipients in Sweden by mail. However, the deciding authority must take appropriateness into account before using simplified service, see Sec. 4 of the Service of Process Act. The case at hand concerned service on an address in Copenhagen (Denmark), and it could therefore be assumed that the mail was fast and reliable, and no other circumstances indicated that the method of service was inappropriate. The claimant's absence in the main trial was not affected by the fact that he did not have reasonable time to appear before the court, but because his specified address was no longer relevant. Therefore, the claimant had no legal excuse for his absence, and the claim for appeal was therefore rejected.

It can be inappropriate to use simplified service when the recipient has an address abroad or is a foreigner. This is because the assumption that the Swedish mail is delivered quickly and reliably, whereas this cannot always be assumed when the recipient has an address abroad. Simplified service on a person abroad could also be inappropriate because of the position of the foreign State regarding the matter. Some States allow service with mail to persons being on its territory, others do not.

NJA 2011 N 39: The case concerned an appeal regarding relief on a procedural error in a criminal case. The subpoena to the hearing was served by the method service by publication. According to the Service of Process Act (the old law was applicable in the case but there is no substantial difference regarding the present act), service by publication can be employed when the recipient does not have a known habitual residence, and it is not possible to determine it. It was proved that the recipient could not to be found on his national registration address or on other addresses. Controls of different registers had been unsuccessful. The appeal informed that the recipient would start studies at a school in Denmark, together with information on a confirmation of registration and contact details to the relevant school. As the Court of Appeal had not tried to contact the school in Denmark, the court had not fulfilled its duty to investigate the recipient's whereabouts. The requirements for serving by publication were therefore not fulfilled. The claimant's appeal regarding a relief for a procedural error was therefore granted.

NJA 2012 s. 244 concerned an appeal of a Swedish exequatur decision declaring a Norwegian judgment enforceable. The judgment debtor had been served with the decision, and thereinafter appealed it. The question was whether the appeal was too late, and which authority was responsible for service of the original decision.

According to Art. 42.2 of the 2007 Lugano Convention "the declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party". Under Art. 43.5 of the Convention "an appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a State bound by this Convention other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance".

[173] Andersson and Synnergren, supra n. 9, p. 28.

The circumstances of the case were the following. The court of appeal had served the exequatur-decision on the judgment debtor 22 March 2001. Prior to that, 11 March 2011, the Swedish Enforcement Authority had served the exequatur-decision on the judgment debtor, after the judgment creditor had applied for enforcement of the judgment. An appeal of the exequatur-decision was filed 19 April 2011 with the Enforcement Authority, and forwarded to the court of appeal 21 April 2011.

The Swedish Supreme Court held that the responsibility to serve lies with the court of appeal according to Ch. 33 Sec. 2 second para. of the Code of Judicial Procedure, as the judgment debtor had appealed the decision within four weeks of the court of appeal's service of the decision. According to the Supreme Court, the service performed by the Enforcement Authority was not service in the sense of Art. 42.2 of the Convention. Under this provision, the declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party. The service affected by the Enforcement Authority did not trigger the time limit to appeal in Art. 43.5 of the Convention. So, the appeal had occurred on time.

NJA 2015 s. 275: A default judgment was issued against a company in Malta, several weeks after the time had expired for the company to reply to a claim. Time to reopen the default judgment was granted when the company claimed that the default judgment had not been delivered in time. Furthermore, the company claimed that the documents had been sent to the wrong address. (*Cf.* also NJA 2012 s. 435.)

The Supreme Court held that the party applying for restoration of expired time has the burden of proof of a legal excuse. As it can be very difficult to prove that documents sent actually arrived on time, the evidentiary requirement must be set low. If a case or matter is based solely on the documents, without a hearing, and a party is not informed in advance of the time when a decision will be issued, a party's claim that the decision did not reach him or her will be accepted, unless the circumstances indicate otherwise.

NJA 2022 s. 173: The Supreme Court held that service by publication should, as other methods, aim at informing the recipient, so that he or she has the possibility to take part of the document's contents. The method should therefore not be carried out in a way disadvantageous to other methods of service.[174] Even though there is no assurance or requirement that the recipient actually has taken part of the information, in this case, service by publication was used and considered to be correct, despite the fact that the recipient was situated in China.

See also **Justitiekanslerns beslut den 18 april 2007, dnr 4276-05-4**, according to which an authority affecting service must consider international agreements in situations with international connections.

[174] NJA 2022 s. 173 p. 10.

Instructions for contributors

1. References

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to examine carefully our sample references which are preceded by [-]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

1.1. Reference to judicial decisions

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2], [ECLI] (NB: the "v" is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission, ECLI:EU:C:1990:353.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

1.2. Reference to legislation and treaties

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol).
- Art. 267 TFEU.
- Art. 5 Uitleveringswet [Extradition Act].

1.3. Reference to literature

1.3.1 First reference

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

- J.E.S. Fawcett, The Law of Nations (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, 'et al.' will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English, French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, The Relation Between International Law and Municipal Law in the Netherlands and the United States (Sijthoff 1961) p. 10 – 13.

- D. Chalmers et al., European Union Law: cases and materials (Cambridge University Press 2010) p. 171.
- F.B. Verwayen, Recht en rechtvaardigheid in Japan [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

1.3.2 Subsequent references

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

1.4. Reference to contributions in edited collections

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co- editors only the name and initials of the first editor are given, followed by 'et al.'):

[Author's initial(s) and surname(s)], ['Title of contribution'], [in] [Editor's initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, 'The Growth and Retreat of Federal Competence in the EU', in R. Howse and K. Nicolaidis (eds.), The Federal Vision (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

1.5. Reference to an article in a periodical

References to an article in a periodical should present the following form (NB: titles of well- known journals must be abbreviated according to each journal's preferred style of citation):

[Author's initial(s) and surname(s)], ['Title of article'], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, 'Re-Creating Legal Space for the First Law of Aotearoa-New Zealand', 17 Waikato Law Review (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, 'Bicameral Politics in the European Union', 48 JCMS (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

1.6. Reference to an article in a newspaper

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

- [Author's initial(s) and surname(s)], ['Title of article'], [Title of newspaper], [Date], [Page(s)]: T. Padoa-Schioppa, 'Il carattere dell' Europa' [The Character of Europe], Corriere della Serra, 22 June 2004, p. 1.

1.7. Reference to the internet

Reference to documents published on the internet should present the following form: [Author's initial(s) and surname(s)], ['Title of document'], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, 'Les Roms sont aussi des citoyens européens', <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens- europeens_1409065_3232.html>, visited 24 October 2010. (NB: 'http://' is always omitted when citing websites)

2. Spelling, style and quotation

In this section of the authors' guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like to emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as 'common' and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

2.1 General principles of spelling

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
- [...] the Court's case-law concerning direct effect of directives [...]
- The Court ruled on the applicability of Directive 2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.
- There is no requirement that the spouse, in the words of the Court, 'has previously been lawfully resident in another Member State before arriving in the host Member State'.
- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

2.2. General principles of style

- Subdivisions with headings are required, but these should not be numbered.
- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., 'the Court' for 'the European Court of Human Rights'). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.

- In English titles, use Title Case; in non-English titles, use the national style.

2.3. General principles of quotation

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: 'aaaaa').
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: 'aaaaa "bbbbb" aaaaa').
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].