NATIONAL REPORT FOR THE NETHERLANDS ON CROSS-BORDER SERVICE OF DOCUMENTS

Sujecki B, Celis Aguilar M, Israël J, Pertegas Sender M

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Questionnaire for National Reports

On the Cross-border Service of Documents

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

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

- Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) (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.

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

For general assistance please contact Denis Baghrizabehi: denis.baghrizabehi@um.si

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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).)

   In the Netherlands, there is not a special act regulating the service of document in civil and commercial matters. The legal basis for service of legal documents is laid down in the Dutch Code of Civil Procedure (hereinafter referred to as: RV). The Dutch civil procedure has two methods of service of documents in civil and commercial matters. The first method is the service performed by the bailiff. In particular, the sixth section of the first title of the first book of the RV contain the provisions regarding the service of documents in civil and commercial matters. These provisions apply to the service performed by the bailiff. The second method is the service executed by the court and in particular the court clerk. The provision applying on the service method performed by the court are laid down in third section of the third title of the first book of the RV.

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.[1] A notarisation of delivery is no longer a constitutive part of service,[2] it only has an evidentiary function.)

   Dutch law does not contain a legal definition of the term "service". In the Dutch literature, the term "service" is defined as the delivery of a writ by a bailiff to the addressee for the purpose of disclosing to that person the contents of the writ and of the documents served thereby.[3]

   In cases the service of the document is performed by the court (court clerk or register), the term "summoning" ("*oproeping*") is used. This term is not defined by law. In the Dutch literature, a definition of this term is not given. Instead of a definition, this term is described as a postal notification of a judicial procedure performed by the court register.

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.)

   In the Netherlands, the term "civil and commercial matters" is not used in pure domestic cases.

[1] BGH NJW 1956, 1878; MüKoBGB/*Häublein/Müller*, § 166 para. 3.
[2] MüKoBGB/*Häublein/Müller*, § 166 para. 3.
[3] See W. Hugenholtz, W.H. Heemskerk and K. Teuben, Hoofdlijnen van Nederlands Burgerlijk Procesrecht (Convoy Uitgevers, 2021) p. 72 – 73.

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.)

   The definition "civil and commercial matters" is used only for the application of European Law and the Conventions adopted by the Hague Conference on Private International Law (HCCH), such as the 1965 *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters*.

   The definition developed by the case law of the European Court of Justice is being used here.

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.*)

   In the Netherlands, a distinction of judicial and extrajudicial documents is not provided by law. Therefore, a legal definition is not given by Dutch law. In practice, however, it is possible to "serve" an extra-judicial document (for example, a summon) by the bailiff. Such service of extra-judicial documents is regularly done if the contractual parties want to make sure that the documents are received by the addressee, and this is documented by the bailiff. There is, however, no legal definition of the documents that are considered to be extrajudicial.

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.[4] *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.*[5] *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).*[6] *In addition,* ***legal certainty*** *is to be established.)*
   (e.g. in Austria: The continuance of the trial, the right to be heard, …)

   The main purpose of the service of documents is to provide the addressee with the opportunity to take notice of the document and to take steps to defend himself in judicial proceedings. The service of documents is therefore a consequence of the right to be heard as well as the fair trial principle as laid down in article 6 para 1 ECHR. Based on this, the Dutch rules on service demand in the first place that the service takes place in person. The reason is to make sure that the addressee

[4] BVerfG NJW 1984, 2567, 2568.
[5] BVerfG NJW 1984, 2567, 2568.
[6] cf. VGH München NJW 2012, 950, 951.

actually receives the document and will be able to defend himself in the procedure. Therefore, the guaranty to effective access to court is the main purpose of the service.

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.)

Depending on the proceedings, either the bailiff or the court register (*i.e.* the court clerks) is responsible for the service of documents.

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?

In theory, it is possible to sue the state for damages. However, the hurdle to get a compensation of damages is very high. In practice, there is a communication between the attorneys and the court with regard to the service.

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

This depends on the instructions to be given to the bailiff. Usually, the bailiff gets instructions from the plaintiff, then he or she performs the service as instructed.

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?

This does not apply in the Netherlands.

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

The service must be done by the bailiff. The bailiff hands over a copy of the documents to be served and documents the service performed by him. In the event the addressee is performed by the court (court clerk), the document is sent via postal service to the address.

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])

In the Netherlands, the writ of summons has to be sent to the respondent. According to article 45 para 3 and article 111 para 2 RV the writ of summons must contain certain information for the respondent in order to provide the respondent with sufficient information to prepare a proper defence. If this information is not included in the writ of summons, the writ of summons shall be declared as null. The writ of summons is prepared by the representative of the claimant. If the claimant is represented by an attorney, it is the attorney who prepares the writ of summons. The bailiff

checks usually whether the writ of summons contains all the requirements as laid down in article 45 and article 111 RV before the writ of summons is served on the defendant.

In cases where the service is performed by the court register, the court prepares the document ("*oproeping*"). This document is prepared by the court and contains information with regard to the procedure and the place and time of a hearing to take place. Furthermore, the addressee receives information regarding the court fees.

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.[7])

The content of the documents depends on the kind of service which has to be done. As said before, the Dutch civil procedure has two different kinds of services, one performed by the bailiff, and one performed by the court (register).

In the event the service needs to be done by the bailiff, article 45 para 3 RV and article 111 para 2 RV contain the requirements which must be fulfilled with regard to the content of the writ which has to be served by the bailiff. Based on article 45 para 3 RV, the writ must contain the following information: date of service, name as well as the place of residence of the person initiating the service, the name as well as the address of the office of the bailiff, the name and residence of the addressee, the name of the person, who has received the served document. Based on article 111 para 2 RV the writ must provide the addressee (defendant) with the following information: the place of residence selected by the plaintiff, the name as well as the office address of the representative or attorney of the plaintiff, the claim and the grounds of the claim, the name and address of the court where the case takes place, the date and the hour until the defendant has time to react on the court, the way how the defence has to take place (by attorney or in person), the consequences, if the defendant does not react on time, the information that court fee shall be due in case the defendant is filing his defence as well as the amount of the court fees. The addressee receives information regarding legal aid. In cases, where there is more than one defendant, the information that the defendants can file together a defence, and that in such cases only one court fee shall be due. Finally, based on article 111 para 3 RV, the writ must state the evidence, which the plaintiff has, as well as the defence that has been made by the defendant in the pre-trial communication.

In cases the service is performed by the court register (court clerk), the requirements as to the content of the document are laid down in article 271 RV and article 276 RV. The document to be served on the addressee must contain the following information: place, date and time of the hearing which will take place in the procedure, the date of sending of the document, information that in case of a response, court fees shall be due, information regarding legal aid and information that in cases of one defence by two defendants only one court fee is due. In addition, the transcript of the document which was filed by the applicant is sent to the address.

[7] MüKoBGB/*Häublein/Müller*, § 166 para. 9.

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

The term "address for service" is defined in article 1:10 of the Dutch Civil Code (hereafter referred to as: "BW"). The residence of a physical person is according to article 1:10 para 1 BW there where this person has its actual habitual place. The Dutch Supreme Court ruled in an old decision that the domicile of a person is there, where a person actually lives with his/her family, and where this person has his or her property.[8] In the event, a person does not have a residence, the place of the actual place of residing is considered to be the residence of this person. The former implies a degree of permanency, whereas the latter does not.

In cases of judicial entities, the domicile is the place where this entity has its seat based on either the statutes of this legal entity or the law, see article 1:10 para 2 BW. According to article 1:14 BW a legal entity has also its residence where it has an office or a branch.

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

Date of service is the date on which the service is performed by the bailiff.
Procedure with an obligation of a representation by an attorney is a procedure in which the parties need to be represented by an attorney admitted to the Dutch bar. These are proceedings where the amount of the claim is higher than EUR 25.000,-, or where the claim does not relate to a certain topic, such as rental agreement, labour agreements, agreements regarding agents, consumer agreements, see further article 93 RV.
Procedure without an obligation of a representation by an attorney is a procedure where the parties do not need to be represented by a Dutch attorney. These are proceedings where the claim is below EUR 25.000,-, or where the claim relates to a certain topic, such as rental agreement, (collective) labour agreements, agreements regarding agents, consumer agreements, see further article 93 RV.
Date until the defence must be filed (*roldatum*) is the date on which the defendant has to appear in court. The appearance in court depends on the procedure and needs to be done either by an attorney or by a representative or even by the defendant.
Date of sending is the day the court sends the document to the addressee.

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.)

[8] See *Hoge Raad*, 19 January 1880, W (1880) 4475.

(e.g. in Austria: Documents are mainly served via the Austrian Postal Service.)

If the service is performed by the bailiff, the service is regulated by article 46 RV-63 RV. In practice, the service is performed by the bailiff, who leaves the transcript of the document to be served at the domicile of the addressee. The document is handed to the address or another person living at this address (article 46 RV), or the transcript is left in the mailbox of the address (article 47 RV). The bailiff documents the service performed.

In cases where the court is responsible for the service, the document is sent by simple postal service, see article 271 RV. This service method applies when the service has to be performed on the applicant and on a defendant who has already filed a defence. If the defendant has not filed a defence and does not have a domicile, the service takes place according to article 272 RV by publishing of the document in the Official Gazette (*Staatscourant*). The court has the opportunity to use an additional service method in these cases. If the defendant has not filed for a defence but has a domicile, the court shall serve the document according to article 272 RV via registered postal service.

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

For the service of documents within the scope of the Regulation, the service methods for the internal service and for the cross-border service are the same.

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

The Dutch civil procedure has a number of alternative methods of service. In cases where the service is performed by the bailiff, the bailiff can perform the service on the address at his or her habitual residence if the addressee does not have a domicile within the Netherlands, see article 54 para 1 RV. If the domicile and/or habitual residence is not known, the bailiff serves the document on the public prosecutor's office at the court where the procedure takes place or will take place. In addition, the document shall be published in the Official Gazette (*Staatscourant*).

In cases where the service is performed by the court register (court clerk), the service takes place according to article 272 RV by publishing of the document in the Official Gazette (*Staatscourant*), if the domicile or habitual residence of the addressee is not known.

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)

According to article 63 RV, it is possible to serve the document on the attorney of the addressee in cases of appeal proceedings or cassation proceedings. The writ of summon initiating such proceedings does not need to be served on the defendant but can be served on the lawyer who represented the addressee in the previous instance. This method is regularly used in procedure. However, this method only applies to the service which is performed by the bailiff.

In case service is performed by the court register (court clerk), a special method of service for lawyers does not apply. However, according to article 273 RV, the service on a state authority (judicial authority, public prosecution) takes place by simple postal service.

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

As stated earlier, the service is performed by bailiff. It is very common that the representative of the plaintiff gives instructions to the bailiff. If such instructions are not given, the bailiff usually tries to serve in person on the address.

In cases where the service is performed by the court register (court clerk), it depends regularly on the domicile of the addressee (known/unknown, in the Netherlands/outside the Netherlands) which service method is used by the court.

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?

No. The methods were not extended.

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 respondent's domicile or habitual residence in regards to the service of documents abroad.)

The service of documents to third-party countries is regulated in article 55 RV. This provision distinguishes between countries where the Hague Service Convention of 1965 applies and countries where the Hague Service Convention of 1965 is not applicable. In cases where the Hague Service Convention of 1965 is *not* applicable, the service takes place by service of the document on the public prosecutor's office of the place where the person initiating the service has his/her domicile. In addition, the bailiff sends a second transcript of the document via registered mail to the address. This must happen as soon as possible after the service of the document on the public prosecutor's office has been performed. This method of service is regulated in article 55 para 1 RV.

In cases where the Hague Service Convention of 1965 applies, service is effected according to one of the methods laid down in the Hague Service Convention of 1965. Based on article 55 para 2 RV, the service is considered to be in person.

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

No, there are no special methods of service for certain types of documents. However, the writ of summons must be served by the bailiff, see article 111 para 1 RV and article 45 RV. In addition, the service of court decisions must be performed by the bailiff in order to be executed in the Netherlands. This is laid down in article 430 para 3 RV.

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.)

Because the parties are responsible for the service, the bailiff receives the instructions of the person initiating the service or his/her representative. Therefore, the bailiff usually performs the service as instructed.

In cases where the court performs the service, the service can take a couple of days. The service via the Dutch Postal Service takes usually 1-2 days.

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.)

The document is considered to be served on the addressee once the bailiff hands over the document to the address or to a person living at the same address as the address. This person must be able to facilitate that the copy reaches the person to whom the writ is addressed in a timely manner, see article 46 para 1 RV. In the event no person is at the place of service, the bailiff leaves a transcript of the document in the mailbox of the address where the service should have been performed, see article 47 para 1 RV.

For the service, it is essential that the document is in the sphere of influence of the addressee. An actual knowledge of the content of the served document is not required for the performance of the service.

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.)

It is the risk of the addressee, if he/she does not change his/her current address. In cases where the address is still registered at one address and the service is performed there, then the service is considered to be valid, unless it was or should have been clear to the bailiff that the registered address was (no longer) valid (see next question). The requirement is, however, that the address of the addressee is registered in the Basisregistratie Personen (BRP) (Personal Records Database) in case of a natural person. In cases of legal entities, the situation is the same. Here the data which can be found in the Chamber of Commerce is essential for the service. The bailiffs as well as the courts examine these databases before they start the service of process.

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

Service of documents must in principle be done at a person's domicile. Domicile is defined in Article 1:10 DCC/BW as the place of residence or, in absence of a residence, the place where a person actually resides. A bailiff is under a duty of care to establish a person's domicile for the purpose of service of documents. A bailiff must therefore make reasonable effort to verify that a registered address is a person's domicile. If it is clear that the person does not have his or her domicile (art. 1:10 BW) at the registered address, a bailiff must make a reasonable effort to establish the current domicile of someone. If a person's domicile (place of residence or place of actually residing) cannot be established, service of documents is regulated by Article 54 Rv. According to Article 54(1) Rv, in case of *unknown domicile*, service should be done at a person's "actual residence". The meaning of this "actual residence" is unclear, as "actual residence" is part of the definition of domicile in Article 1:10 BW. If domicile and "actual residence" cannot be established, service must be performed at the public prosecutor's office at the court where the procedure takes place or will take place (Article 54(2) followed by publication in the *Staatcourant* (official Gazette).

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.)

According to article 45 para 2 RV, the bailiff can use an electronic method of service if the law allows this form of service. At this moment, the Dutch law allows only in one case an electronic method of service. Based on article 475 para 3-5 RV, an attachment order can be served on the bank (or other institution where assets are seized) in an electronic way. In the past, an electronic procedure was introduced in the Netherlands. However, this procedure has been withdrawn.

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.)

If the domicile and/or habitual residence is not known, the bailiff serves the document according to article 54 para 2 RV on the public prosecutor's office at the court where the procedure takes place or will take place. In addition, the document shall be published in the Official Gazette (*Staatscourant*).

In cases the service is performed by the court register (court clerk), the service takes place according to article 272 RV by publishing the document in the Official Gazette (*Staatscourant*), if the domicile or habitual residence of the addressee is not known.

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?

As mentioned in the answer to question 16, a substitute method of service is known in the Dutch civil procedure. The main factor in choosing this method is the question whether the addressee has a domicile or a habitual residence that is unknown. In cases where the document has to be served by a bailiff, the claimant first provides the bailiff with the information regarding the domicile or habitual residence of the addressee. In addition, the bailiff checks this information in the registers, in particular the Basisregistratie Personen (BRP) (Personal Records Database) and the register of the Dutch Chamber of Commerce. If a domicile or a statutory seat cannot be found, the substitute method of service could be used.

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

As seen in the answer to question 16, the service method used in cases of unknown domicile or habitual residence is a fictitious method of service. The service is completed at the moment the document is served on the public prosecutor's office. The document is not handed to the addressee and does not even reach the sphere of influence of the addressee. In addition, the publication of the document in the Official Gazette (*Staatscourant*) does not assure that the addressee will gain knowledge of the document.

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?

The fictitious method of service unfolds its effects at the moment the documents is served on the public prosecutor's office. The effect is the same as if the documents is served directly on the addressee.

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.)

The only step to assure that the document is actually made known to the addressee is the publication of this document in the Official Gazette (*Staatscourant*). However, the Official Gazette (*Staatscourant*) is not a very commonly read publication. Therefore, the chance that the addressee will actually get to know the document is small.

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

No. If the requirements are fulfilled, the knowledge of the document by the defendant is not essential for the further procedure. The defendant does not have a special remedy.

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?

The fictitious methods of service could conflict with national procedural principles, if such a fictitious method is chosen too quickly. In a case of the Court of Appeal The Hague, the fictitious method public service by publishing the writ in the Official Gazette (*Staatscourant*) had been chosen albeit the fact that the defendant had been registered in the Basisregistratie Personen (BRP) (Personal Records Database), previously known as the Gemeentelijke Basisadministratie Persoonsgegevens (GBA). The court declared that under such circumstances the service was void.[9]

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

In cases where the addressee has his/her domicile outside the Netherlands and the Hague Service Convention of 1965 is not applicable, the service takes place by service of the document on the public prosecutor's office of the place where the person initiating the service has his/her domicile. In addition, the bailiff sends a second transcript of the document via registered mail to the address. This must happen as soon as possible after the service of the document on the public prosecutor's office has been performed. This method of service is regulated in article 55 para 1 RV.

In cases where the domicile of the addressee is not known at all, the bailiff serves the document according to article 54 para 2 RV on the public prosecutor's office at the court where the procedure takes place or will take place. In addition, the document shall be published in the Official Gazette (*Staatscourant*).

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.)

[9] See *Gerechtshof Den Haag*, 6.10.2020, ECLI:NL:GHDHA:2020:1919.

In the Netherlands, article 46 para 3 RV applies. According to this provision, the bailiff notices on the document that the addressee refuses to accept the document. In addition, the bailiff either leaves a copy of this document in the mailbox of the addressee or sends the document per postal service to the addressee. The addressee is however considered to have accepted this document.

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].)

The Netherlands does not have a legal provision that the language of the court must be the Dutch language. As a common rule, the Dutch language is considered to be the official language of the Dutch courts. Therefore, the procedural documents must be in the Dutch language.[10] An exception is made for the Frisian language. According to article 15 of the Wet gebruik Friese taal (*Act on the use of Frisian language*), procedural documents can be drawn up in the Frisian language. However, this is only possible at the Regional Court of North-Netherland as well as the Court of Appeal in Arnhem-Leeuwarden. Therefore, this option is not possible in the other Dutch courts. Another exception is made for procedures at the Netherlands Commercial Court as well as the Netherlands Commercial Court of Appeals. Based on article 30r RV, the whole judicial procedure can be in the English language. This includes not only the procedural documents and the exhibits, but as well the language of the oral hearing. The whole judicial procedure can be in the English language.[11]

Regarding the language of the exhibits in general, it is possible to use documents in the Dutch, English, French and German language. These documents do not need to be translated into the Dutch language, unless one of the parties demands such translation. This rule has been made by the Dutch Supreme Court.[12]

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.)

There are no specific claim forms to be used for domestic service in the Netherlands.

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].)

The costs of service are regulated in the Besluit Tarieven Ambtshandelingen Gerechtsdeurwaarders (BTAG) (*Decree Rates Official Acts Bailiffs*).

[10] See *Hoge Raad*, 15 January 2016, ECLI:NL:HR:2016:65, in particular the conclusions of advocate general *Keus*, nr. 2.3.
[11] See in general regarding the Netherlands Commercial Court: https://www.rechtspraak.nl/English/NCC/Pages/contact.aspx
[12] See *Hoge Raad*, 15 January 2016, ECLI:NL:HR:2016:65, nr. 3.4.4 and 3.4.5.

LEGAL IMPLICATIONS OF SERVICE

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

The legal minimum requirements of an effective service are according to the Dutch civil procedural law:

- The document must contain the requirements as laid down in article 45 para 3 RV and article 111 para 2 RV or as laid down in article 271 RV and article 276 RV in case of a service by the court clerk (register).[13]
- The bailiff needs to hand the document to the addressee in person.
- In cases of service by the court clerk (register), the addressee needs to receive the document by postal service.

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 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)

The service of the document has no effect, if the served writ is not filed to the competent court. If the writ has been filed to the court after the service of the defendant, then the procedural effects are that the parties cannot bring the case before another court (lis pendens). The material effects are that the interest rates shall start after the service of the writ, if the writ has been filed to the court within the given time period.

23. What are the consequences of the <u>respondent'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 judgements against the respondent.)
(e.g. in Austria: The court can render a verdict in favour of the appearing party.)

In the event that the respondent (defendant) does not appear in the proceedings of after the writ has been served on him/her, a default shall be declared by the court (article 139 RV). The court decides in general in favour of the plaintiff, unless the claim is obviously not founded or illegal. In practice, the court waits around 4 weeks unless a default judgment is issued by the court. During this time, the defendant has the option to appear in court and to remedy the default.

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

In cases of incorrect service, the courts only decide that the service has been void if the defect cause unreasonably prejudice to the defendant's interests. There must have been there-

[13] See answer to question 9 above.

fore a violation of the interests of the defendant, see article 122 para 1 RV. However, if the defendant appears in the procedure and claims that the service was incorrect, the court will not state that the service is invalid. The fact that the defendant appears in court shows that the interests of the defendant were not violated by the incorrect service, as the defendant appeared in court. The Dutch courts are not very strict with the formal aspects in the initiation of the procedure. Only in cases where the defendant obviously did not have the opportunity to appear in court or to defend due to an incorrect service, the court will not issue a default judgment, but will order to start the service process again. This situation is based on the jurisdiction of the Dutch Supreme Court. The Dutch Supreme Court ruled that the defendant does not have an interest to claim the nullity of the service process if he/she appeared in court even with the incorrect service.[14]

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

(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.)

The Dutch civil procedure does not have the institute of a default judgement against the claimant if the claimant does not appear in court. If the claimant does not appear in court, the defendant can observe the case in the electronic court register and also not appear in court. In such an event, the case has never been brought up to court. Another option is that the defendant appears in court. If the claimant however does not file the writ to the court, nothing will happen. The court will not proceed further with this matter. According to article 127 para 1 RV, the defendant has the option to appear in court and file the writ of summons to the court. In addition, the defendant can claim according to article 127 para 2 RV that the court dismisses the case and orders the claimant to pay the procedural costs of the defendant. The court will then give the claimant to react on this claim of the defendant. If the claimant does not react on time, the court will order as claimed by the defendant.

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

The Dutch procedural law does not have any remedies if the claimant claims incorrect service.

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

In theory, the service and the writ are invalid. The service must be done again. In practice the court states that the service is invalid if the interest of the defendant has been violated by the improper service or the defendant could not file a defence due to the improper service, see the answer to question 23.1.

[14] See *Hoge Raad*, 29 April 1994, Nederlandse Jurisprudentie 1995/269; *Hoge Raad*, 16 February 2007, Nederlandse Jurisprudentie 2007/118.

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?

The court will not declare the service void and will continue the procedure, see the answer to question 23.1.

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.[15])

Deficiency in the service can be cured if the defendant appears in court, see the answer to question 23.1.

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?

No. This is not the case.

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

The consequences of the improper service do not differ.

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

No, the Netherlands did not make use of the option of article 22 No. 2 of the Regulation.

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.)

The possibility of reinstatement is not further regulated in Dutch law. Article 22 No. 4 of the Regulation applies without any modification. Based on article 9 para 3 of the Voorstel Uitvoeringswet EU-BetVO (Proposed Implementation Act of the Regulation)[16], only

[15] BeckOK ZPO/*Dörndorfer*, § 166 para. 5.
[16] Uitvoering van de Verordening (EU) van het Europees Parlement en de Raad van 25 november 2020 inzake de betekening en de kennisgeving in de lidstaten van gerechtelijke en buitengerechtelijke stukken in burgerlijke of

a maximum deadline for filing an application for *restitutio in integrum* has been introduced. This deadline is one year. This deadline was already introduced by article 7 para 3 of the previous Uitvoeringswet EU-BetVO (Implementation Act of the Regulation).

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

A decision can be revoked after it has become *res judicata*. However, this is not possible due to an incorrect service.

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.)

The service of documents is documented by the bailiff who is responsible for the service. The bailiff documents the service and states the date and time of the service as well as the method of service (to the addressee, another person or left in an envelope). This is regulated in articles 45 and 111 RV.

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.)

In the Netherlands, the service can be performed to the following persons:
- Members of the household or other persons in the house of the addressee if they are able to hand over the document to the addressee, article 46 para 1 RV;
- Legal representatives of a legal entity, article 50 RV;
- Liquidator in case of bankruptcy, article 52 RV;
- Heir or a liquidator of a deceased person, article 53 RV.

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

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in handelszaken (de betekening en de kennisgeving van stukken) nr. 2020/1784 (PbEU 2020, L 405/40) (Uitvoeringswet Betekeningsverordening), Tweede Kamer, 2021-2022, 36152, nr. 2.

(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.).

In theory, the consequence of an improper service of document is the nullity of the service. However, the nullity requires that the interest of the addressee is violated due to that improper service, see article 66 para 1 RV. This is, based on the case law of the Dutch Supreme Court,[17] only the case if the defendant does *not* appear in court.

In addition, a defect in the service process can be restored by a new service of the document, see article 66 para 2 RV.

30. What is considered a timely service of documents?

Article 114 RV states that the minimum period between the service and the appearance of the defendant is one week. In cases where the Regulation applies, this period is at least four weeks.

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

The claimant bears the risks if the service is not timely.

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.
(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.)

The bailiffs are the transmitting agencies.[18]

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

[17] See answer to question 23.1.
[18] https://www.kbvg.nl/zoekeengerechtsdeurwaarderskantoor; https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.

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 bailiffs are the receiving agencies.[19]

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.[20])

Bailiffs may receive documents by post.[21]

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 Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders (Royal Professional Organization of Judicial Officers in the Netherlands) is the central body.[22]

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

It is in discretion of the bailiff to decide which method of service will be used. In practice, the method is discussed with (the representatives of) the person initiating the service. The Dutch bailiffs regularly use a transmission between transmitting and receiving agencies as well as the service by postal service.

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.[23])

Based on article 6 para 1 of the Uitvoeringswet EU-BetVO (Implementation Act of the Regulation) the cost of an internal service of document within the scope of the Regulation is EUR 65,-.

[19] https://www.kbvg.nl/zoekeengerechtsdeurwaarderskantoor; https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.
[20] https://e-justice.europa.eu/content_serving_documents-373-de-de.do?member=1.
[21] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.
[22] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.
[23] https://e-justice.europa.eu/content_serving_documents-373-de-de.do?member=1.

Based on article 8 para 1 of the Voorstel Uitvoeringswet EU-BetVO (Proposed Implementation Act of the Regulation)[24] this fee shall increase to the amount of EUR 125,-.[25]

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

In cases of incomplete or insufficient request, the service will not be completed. The requests will be sent back to the transmitting agency with the request to complete the requests.

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.)

According to article 4 of the Uitvoeringswet EU-BetVO (Implementation Act of the Regulation) respectively article 4 of the Voorstel Uitvoeringswet EU-BetVO (Proposed Implementation Act of the Regulation),[26] the forms can be completed in the English and German language.

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.)

In the Netherlands, the Basisregistratie Personen (BRP) (Personal Records Database) contains the data regarding the residence of each citizen. This register is basically not accessible. In case of judicial procedures, this register may be accessed by claimants. This access can be done via an attorney, who will need to file a request to the local government of the place where the defendant has his domicile. Another option is that the attorney of the claimant files a request to the bailiff. The Dutch bailiffs have direct access to the Basisregistratie Personen (BRP). They examine regularly the documents to be served whether the address of the addressee is correct before they proceed with the service. As said before, the bailiffs are the transmitting and receiving agencies in the Netherlands. That means that they will fulfil the task as laid down in article 7 of the Regulation.[27]

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

[24] Uitvoering van de Verordening (EU) van het Europees Parlement en de Raad van 25 november 2020 inzake de betekening en de kennisgeving in de lidstaten van gerechtelijke en buitengerechtelijke stukken in burgerlijke of in handelszaken (de betekening en de kennisgeving van stukken) nr. 2020/1784 (PbEU 2020, L 405/40) (Uitvoeringswet Betekeningsverordening), Tweede Kamer, 2021-2022, 36152, nr. 2.
[25] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.
[26] Uitvoering van de Verordening (EU) van het Europees Parlement en de Raad van 25 november 2020 inzake de betekening en de kennisgeving in de lidstaten van gerechtelijke en buitengerechtelijke stukken in burgerlijke of in handelszaken (de betekening en de kennisgeving van stukken) nr. 2020/1784 (PbEU 2020, L 405/40) (Uitvoeringswet Betekeningsverordening), Tweede Kamer, 2021-2022, 36152, nr. 2 (*Implementating legislation regarding the Regulation n. 2020/1784*).
[27] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.

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.)

No, the Netherlands does not oppose this method of service.[28]

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

Yes, direct service under Article 20 of the Regulation is permitted provided that it is effected by a bailiff to a person residing in the Netherlands.[29]

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. The Netherlands did not indicate any additional bilateral or multilateral agreements within the meaning of article 29 of the Regulation.[30]

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?

The Netherlands did not exercise this option yet (to be determined).[31]

RIGHT OF REFUSAL

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

No, there is no possibility under Dutch law to refuse the acceptance of a document. Only in cross-border cases the addressee can refuse the acceptance of a document based on article 12 of the Regulation.

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

Not applicable.

[28] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.
[29] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.
[30] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.
[31] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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?

The implementation of this provision is yet to be determined.[32]

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 the Netherlands, an electronic service is admissible in only one situation. Based on article 475 para 3-5 RV, an attachment order can be served on the bank (or other institution where assets are seized) in an electronic way. The conditions of the use of the electronic service are laid down in the Besluit regels registratie elektronische adressen van derden en elektronische betekenen in geval derdenbeslag (*Decree rules on registration of electronic addresses of third parties and electronic service in case of garnishment*).[33] Furthermore, an electronic service is not admitted in the Dutch civil procedure.

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

[32] https://e-justice.europa.eu/38580/EN/serving_documents_recast?NETHERLANDS&clang=nl.
[33] https://wetten.overheid.nl/BWBR0025931/2009-07-01

It is required that the banks as well as the Dutch Provider of Employee Insurance Schemes (UWV) provide the bailiffs with an e-mail address. Only with this e-mail address, it is possible to use the electronic method of service in this case.

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?

As this is a closed IT-system, the identification will take place within the electronic system used by the bailiffs.

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

As this is a closed system, it is not possible to access the electronic system from outside.

47.4. How is the time of service determined?

There is no provision on this. Therefore, the moment of sending the document per e-mail determines the time of service.

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

Yes, the banks as well as the Dutch Provider of Employee Insurance Schemes (UWV) provide the bailiffs with an e-mail address and give their consent to the use of the electronic service.

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

The consent is given universally.

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

The electronic service applies only in one situation. See the answer to question 47.

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 applicable.

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?

A closed IT-system is used by the bailiffs and the banks as well as the Dutch Provider of Employee Insurance Schemes (UWV).

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

Not applicable

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

Then the normal service will take place.

54. What are the costs of electronic service?

The costs are EUR 74,66 ex VAT.

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

As said earlier, the electronic service is used only in one specific case, were a closed IT-service has been introduced. Issues on data protection do not play an important role here.

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?

The system of service works pretty well in the Netherlands. The problems which parties get confronted with are of practical nature. In particular, the time period in which the service is effected in another EU Member States can be very long. Practitioners indicate that for instance cross-border service to Poland can be very time consuming.

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.

In the Netherlands, it is not possible to file the application within the European Small Claims and European Payment Order in an electronic form.

PROBLEMS RESULTING OUT OF CROSS-BORDER SERVICE

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

Recently, there has been only one issue, which was caused by the Covid-19 pandemic. As the bailiff has to hand over the document to the addressee, a question that arose was whether it is possible to serve all documents by leaving the document in an envelope at the residence of the addressee. This method of service was allowed. At this moment, it is not practiced anymore by the bailiffs.

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

Cross-border service as regulated by the Regulation does not raise any fundamental issues. The Regulation provides for a good legal basis for cross-border service. There are just two issues:

The language problem is the main issue within the Regulation. The question whether a document should be translated or not just to avoid the possibility of refusing the acceptance, plays in practice an important role.

The confirmation of service made by the receiving authority constitutes a problem in relation to some EU countries. Out of own experience, Poland is one of these countries.

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

The provisions of the Regulation regulate the services process in a good way. The only issue where more emphasis should be put on is the use of information technology in the service process. While electronic service is not regulated in detail in the Regulation itself, there are other EU instruments (such as EU Regulation 910/2014) applicable, as well as the law of the forum Member State. Nevertheless, it would be useful to obtain further guidance on possible good practices and on any information as to how this is actually occurring in practice in the Member States.

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.

In the past years, the Regulation did not cause any significant problems regarding cross-border service of documents in the case law of the Dutch courts.

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].