

Service of Documents

Set of Case Studies¹

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Table of contents

A.	Questions	2
I.	Starting scenario	2
II.	Case study I	2
III.	Case study II	2
IV.	Case study III.....	3
V.	Case Study IV	3
B.	Methodological advice	4
I.	General idea and core topics.....	4
II.	Working groups and structure of the seminar	4
III.	Additional material	5
IV.	Recent developments	5
C.	Solutions	6
I.	Starting scenario	6
II.	Case study I	7
III.	Case study II	10
IV.	Case study III.....	13
V.	Case study IV	15
D.	Annex: Case study to be distributed at the seminars	16



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Service of Documents

A. Questions

I. Starting scenario

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

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

II. Case study I

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

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

Question 2: How could the Court proceed under the European Service Regulation?

III. Case study II

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

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

Service of Documents

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

Question 3: The defendant, who is 30 years old, refuses to accept the document. What are the legal consequences if the entire contract negotiations had been conducted in the language of Member State 1 and if the defendant had passed 10 years of his life (from the age of 8 to 18) in this Member State?

Question 4: The defendant refuses to accept the document. What are the legal consequences, if the court is not satisfied that the defendant is familiar with the language of Member State 1? The claim is composed of one main document and a bundle of additional contract documentation (annex documents).

Question 5: The claimant had filed the claim only a few days before the prescription period expired. On 1st February, the defendant received the claim, but refused to accept it. On 3rd March, the defendant received a translation of the claim. When is the claim considered to be served for calculating the prescription period?

IV. Case study III

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

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

V. Case Study IV

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

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

B. Methodological advice

I. General idea and core topics

The idea of this training package is to make the court staff of the Member States familiar with the European rules on the service of documents abroad. The following aspects are the core topics:

1. Scope of application of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (Service Regulation).²
2. General structure of the Service Regulation.
3. Relationship between the Service Regulation and the national procedural laws of the Member States.
4. Flexible approach of the Service Regulation comprising different methods of serving documents abroad; relationship between these methods.
5. Protection of the interests of the addressee.
7. Administrative details: How should a national authority proceed in a particular situation? When should a national authority send a request to another Member State? Where can a national authority find the electronic version of the forms needed to formulate a request or an answer to a request? Which language is to be used? Where can a national authority or a private applicant find the institution to which a request for service of documents has to be sent?

II. Working groups and structure of the seminar

The session should commence with the trainer's introductory presentation on the main features of the Service Regulation. This should last approx. 60 minutes and include the discussion of the Starting scenario as well as case study I with the whole seminar group. Following the discussion of the two questions in case study I, the trainer should introduce the integrated interactive exercises (see page 10). Solving these exercises in plenary has the advantage that only one electronic device with internet access is required – should the seminar organiser be in a position to provide participants with more devices, this is of course welcome. Approx. 30 minutes should be scheduled for solving the exercises and sharing experience. After 90 minutes, a short break is recommended. To deal with the remaining case studies (case studies II to IV), the seminar group should be divided into

² Official Journal of the European Union, 10/12/2007, L 324/79:
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007R1393>.

Service of Documents

smaller working groups of 6-8 participants, who will have 60 minutes to go through all questions and exercises. Solutions and any remaining questions should finally be discussed in plenary (for approx. 45 minutes).

It might be helpful for the participants if the trainer clearly distinguishes between the perspective of the requesting authority and the perspective of the receiving State.

III. Additional material

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

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

IV. Recent developments

In May 2018, the Commission presented a proposal for a reform of the Service Regulation (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).³ This proposal has been presented with the aim of making service abroad more efficient, first and foremost by using modern means of communication. In addition, the proposal is meant to clarify the relationship between the Service Regulation and the domestic law of the Member States. The first reading in the European Parliament took place on 13 February 2019.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1553465200066&uri=CELEX:52018PC0379>.

C. Solutions

I. Starting scenario

In the area of cross-border service of documents, the European legislator adopted the first Service Regulation in 2000 (n° 1348/2000).⁴ In 2007, the legislator replaced this regulation by the Service Regulation 1393/2007, which is to be applied since 13 November 2008. Article 1 of both regulations limits the scope of application to cross-border situations between Member States of the European Union with the exception of Denmark. Recital 18 of the first Service Regulation and Recital 29 of the new Service Regulation respectively explain the reasons: “In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application [...]”⁵

These texts are, however, misleading. Due to an agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters⁶ and due to an additional notification of Denmark,⁷ the Service Regulation applies between Denmark and the other EU Member States.

The situation for Ireland is laid down in recital 28:

„In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Regulation.“

For the other Member States, there is no special regime. They are all bound by the regulations adopted by the European legislator in the area of judicial cooperation in civil matters. So, in the following, the term “Member State” does not exclude Denmark, but – in

⁴ Official Journal of the European Union, 30/6/2000, L 160/37: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32000R1348>.

⁵ Wording of the new Service Regulations; for the background, cf. the Treaty of Amsterdam, page 101 (https://europa.eu/european-union/law/treaties_en); due to the protocol on the position of Denmark, Denmark is not bound by regulations adopted in the area of judicial cooperation in civil matters. Therefore, Denmark was not automatically bound by the Service Regulation 1348/2000 and its successor 1393/2007. For the position of Denmark after the Lisbon Treaty, cf. the protocol No 22 to the Treaty on the Functioning of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FPRO%2F22>.

⁶ Official Journal of the European Union, 17/11/2005, L 300/55: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2005.300.01.0053.01.ENG&toc=OJ:L:2005:300:TOC#L_2005300EN.01005501. This agreement concerns the first Service Regulation 1348/2000.

⁷ Official Journal of the European Union, 10/12/2008, L 331/21: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2008.331.01.0021.01.ENG&toc=OJ:L:2008:331:TOC.

This notification concerns the new Service Regulation 1393/2007.

Service of Documents

contrast to the wording of Article 1(3) Service Regulation – it means all Member States of the European Union. The term “Service Regulation” means the new Service Regulation 1393/2007.

II. Case study I

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

„[the] Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there.“

The wording of this provision is not very clear because it does not address the question when a document has to be transmitted from one Member State to another. So, the wording of Article 1 would be open for an interpretation which refers to the national procedural laws of the Member States for determining whether a document has to be transmitted to another Member State or whether service can be effected within the forum State, for example by putting the document into the court file.

An analysis of the objectives of the Service Regulation might give better guidance: The Service Regulation has been adopted with the double objective of making proceedings more efficient and of guaranteeing a minimum standard of protection of the addressees. The existence of Article 19 Service Regulation concerning minimum conditions for default judgments makes this very clear. The protection of defendants provided for in this Article would be undermined if the Member States could decide by their national rules of civil procedure under which circumstances the regulation applies. As such, it seems convincing to qualify the Service Regulation in contrast to the Evidence Regulation as an instrument of exclusive nature, which the national authorities have to apply if the addressee of the document lives abroad. The European Court of Justice already had the occasion to clarify things in the following way:

Service of Documents

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

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

It follows from this decision that, in the case at hand, the court is not allowed to effect service by putting the document into the court file, but the court has to choose one of the methods provided for by the Service Regulation.

Information about the Commission's proposal to reform the Service Regulation

The Commission has proposed to insert the following Article 7a:

“Obligation to appoint a representative for the purpose of service in the forum Member State

1. Where a document instituting the proceedings has been served upon the defendant, the law of the forum Member State may impose an obligation upon parties who are domiciled in another Member State to appoint a representative for the purpose of service of documents on them in the forum Member State.

2. Where a party fails to comply with the obligation to appoint a representative in accordance with paragraph 1 and has not expressed his or her consent to use an electronic user account for service in accordance with point (b) of Article 15a, any method of service permitted under the law of the forum Member State may be used for service of documents during the proceedings, provided that the party concerned has been duly informed about this consequence.”

If this proposal becomes law, the new provision would change the answer to question 1 of Case study I.

Question 2: The Service Regulation provides for different methods of service. In section 1, the Regulation establishes rules for a request for service addressed to the competent authority of the Member State where the document is to be served. This is the traditional way of judicial assistance between the Member States. In this scenario, the receiving

Service of Documents

agency has to effect service in accordance with its own national law (cf. Article 7 Service Regulation).

In section 2, the Service Regulation provides for alternative methods, first and foremost the service by postal services under Article 14. In this scenario, the court of Member State 1 can charge a postal service of the forum State to effect the service by registered letter with acknowledgement of receipt or equivalent.

The Regulation itself does not establish any hierarchy between the different methods of service. The national authorities have to decide on the background of the individual circumstances of the case and in accordance with the national procedural law which way to choose. If speediness and certainty need to be combined at a maximum, it might even be an option to combine a direct service by postal services under Article 14 Service Regulation with a request for service under section 1 Service Regulation.

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

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

Exercises:

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

=> Consult the European e-justice portal

https://beta.e-justice.europa.eu/373/EN/serving_documents

Answer:

Amtsgericht Rheinbach, Schweigelstraße 30; 53359 Rheinbach

Phone: +49 2226 801-0; Fax: +49 2226 801-422;

Email: poststelle@ag-rheinbach.nrw.de

(2) Find the correct form to be used in order to formulate the request for service and fill in the information about the receiving agency; which language is to be used?

=> Read Article 4 Service Regulation

=> Consult the European e-justice portal

https://beta.e-justice.europa.eu/373/EN/serving_documents

Answer:

Form of Annex I; point 2; Germany accepts requests in German and English.

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

Service of Documents

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

=> Read Article 2(4) Service Regulation

=> Check the information provided by Germany at

https://beta.e-justice.europa.eu/373/EN/serving_documents

Answer: Germany accepts courier service and fax for the request. For further informal communications, email and telephone are accepted as well.

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

(4) How shall the receiving agency react?

=> Read the Articles 6 and 7 Service Regulation and consult

https://beta.e-justice.europa.eu/373/EN/serving_documents

Answer: The receiving agency has to send an acknowledgment of receipt using the relevant passage of the form of annex I within 7 days and to ask for further information if necessary. If no further information is needed, the receiving agency has to effect the service of the document within 1 month in accordance with the procedural rules of its domestic law, i.e. the law of the receiving State.

III. Case study II

Question 1: Article 8 Service Regulation gives the addressee the right to refuse acceptance of the letter if the documents are written in a language which is neither the official language of the receiving State nor a language which the addressee understands and if the documents are not accompanied by a translation into one of these languages. The addressee has to be informed of this right. The national authority which is responsible for the information is obliged to use the form of annex II of the Service Regulation.

This mechanism also applies to the direct service of documents by postal services, cf. Article 8(4) Service Regulation.

Question 2: The Service Regulation does not directly address the situation where the addressee has not been informed about his right to refuse acceptance of the documents. However, Article 8(3) Service Regulation lays down the consequences for the case where the documents are not accompanied by a translation in the sense of Article 8(1). Article 8(3) makes clear that the lack of translation does not render service invalid, but that it only constitutes a defect of procedure, which can be cured by sending a translation. Accordingly, the lack of information about the right to refuse acceptance can be cured by

Service of Documents

sending this information to the addressee. The form of annex II is to be used. This form has to be served on the addressee by one of the methods provided for by the Service Regulation. The European Court of Justice has developed this solution in two decisions.

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

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

That principle is now laid down in Article 8(3) of Regulation No 1393/2007. A similar solution must be reached where the receiving agency has failed to transmit the standard form set out in Annex II to that regulation to the addressee of a document.

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

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

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

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

The question whether the service is invalid or only defective influences the date of service (cf. Article 8(3) Service Regulation and the answer to question 5).

Question 3: The court where the proceedings take place has to analyse whether this refusal is justified or not. The standard to be applied is laid down in Article 8 Service Regulation: The refusal is not justified if the addressee was able to understand the language of the

Service of Documents

documents served. In order to evaluate the language knowledge of the addressee, the court has to take into consideration all the circumstances of the individual case. Under the case law of the Court of Justice of the European Union, the burden of proof for the language skills of the addressee is on the applicant. Circumstantial evidence is admissible.

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

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

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

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

Question 4: If the court is not satisfied that the addressee is able to understand the language of the claim, the court has to serve a translation upon the defendant. Article 8(3) Service Regulation makes clear that service is not invalid in case of the addressee’s refusal to accept the documents – even if this refusal is justified. Thus, the service of the documents has to be completed by a translation into a language which the addressee understands or into the official language of the receiving State. If the claim is composed of one main document and a bundle of annex documents, the question is whether each and every single document needs to be translated or whether a translation of the main document is sufficient.

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

“In the light of all the foregoing considerations, the term ‘document to be served’ in Article 8(1) of Regulation No 1348/2000, where such a document is a document instituting the proceedings, must be interpreted as meaning the document or documents which must be served on the defendant in due time in order to enable him to assert his rights in legal proceedings in the State of transmission. Such a document must make it possible to identify with a degree of certainty at the very least the subject-matter of the claim and the cause of action as well as the summons to appear before the court or, depending on the

Service of Documents

nature of the pending proceedings, to be aware that it is possible to appeal. Documents which have a purely evidential function and are not necessary for the purpose of understanding the subject-matter of the claim and the cause of action do not form an integral part of the document instituting the proceedings within the meaning of Regulation No 1348/2000.”

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

Question 5: Article 8(3) Service Regulation makes clear that the lack of translation does not render service invalid, but only constitutes a defect of procedure which can be cured. As a consequence, if the procedure of service is remedied, the date of service of the initial document without translation is the decisive date for calculating the prescription period under the laws of the forum State.

IV. Case study III

Article 14 Service Regulation does not explicitly state whether the service of documents by postal services has to be effected by handing the documents to the addressee in person or whether it is sufficient to hand the documents to somebody staying in the addressee’s premises. Article 19(1) Service Regulation concerning default judgments states that courts are not allowed to render a default judgment without checking whether, in case of service by postal services, “the document was actually delivered to the defendant or to his residence [...]“. This shows that the Service Regulation does not require the delivery of the documents to the addressee in person. It seems to be decisive, however, that service is effected at the addressee’s residence.

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

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

[...]

In those circumstances, if a third party can validly accept a judicial document in the name and on behalf of the addressee, that possibility must nevertheless be reserved for clearly defined situations, to ensure that the rights of the defence of that addressee are observed as

Service of Documents

fully as possible. Consequently, the concept of ‘residence’, within the meaning of Regulation No 1393/2007, must be understood as referring to the place where the addressee of the document habitually resides.

Furthermore, as provided for in Article 14(1)(a) of Regulation No 805/2004, as regards service of documents instituting proceedings regarding uncontested claims, the possibility for a third party to accept a judicial document instead of his addressee can only apply to adults who are inside the residence of the addressee, whether they are members of his family living at the same address as him or persons employed by him at that address.

It follows from this decision that, in the present case, service could be effected by handing the letter to the brother of the addressee staying in the addressee’s house. The problem remains that the court never has received a receipt of acknowledgement signed by the brother. So, the question is, whether a confirmation by the postal service that the letter was handed to the addressee’s brother at the addressee’s residence is sufficient. As Article 14 Service Regulation makes clear that the acknowledgement of receipt can be replaced by an equivalent, the answer is: yes. It is, however, important that the postal service has registered at least all the information which would be found on a receipt of acknowledgement, i.e. also the signature of the person having received the letter.

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

„However, as is clear from the wording of Article 14 of Regulation No 1393/2007, postal service does not necessarily have to be effected by registered letter with acknowledgment of receipt. That provision provides that such service may also be effected by means of transmission ‘equivalent’ to a registered letter with acknowledgment of receipt.

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

V. Case study IV

In the case at hand, Article 15 Service Regulation allows an applicant to contact the competent bailiff in Member State 2 in order to effect service of the document instituting proceedings. It should, however, be mentioned that Article 15 Service Regulation does not establish such a possibility for all Member States. The application of Article 15 depends on the national law of the Member State where service is to be effected. Only if this law provides for a direct service through judicial officers or other competent persons, Article 15 can be applied.

Exercise:

Find the competent authority, if the defendant is domiciled in France, 37042 Tours.

=> Consult https://beta.e-justice.europa.eu/373/EN/serving_documents

There, you will be redirected to <http://cnhj.huissier-justice.fr/Annuaire.aspx> where you find a list of bailiffs if you indicate the postal code 37042.

D. Annex Service of Documents - Set of Case Studies⁸

I. Starting scenario

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

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

II. Case study I

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

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

Question 2: How could the Court proceed under the European Service Regulation?

Exercises:

- (1) Find the competent receiving agency for a case where the document is to be served on a person situated in Germany, Swisttal, postal code 53913
- (2) Find the correct form to be used in order to formulate the request for service and fill in the information about the receiving agency; which language is to be used?
- (3) How should the form be sent to the requested court?
- (4) How shall the receiving agency react?

⁸ Developed by Prof. Dr. Stefan Huber in the framework of the project “Better applying European cross-border procedures: legal and language training for court staff in Europe”, Grant Agreement number: 806998.

Service of Documents

III. Case study II

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

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

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

Question 3: The defendant, who is 30 years old, refuses to accept the document. What are the legal consequences if the entire contract negotiations had been conducted in the language of Member State 1 and if the defendant had passed 10 years of his life (from the age of 8 to 18) in this Member State?

Question 4: The defendant refuses to accept the document. What are the legal consequences, if the court is not satisfied that the defendant is familiar with the language of Member State 1? The claim is composed of one main document and a bundle of additional contract documentation (annex documents).

Question 5: The claimant had filed the claim only a few days before the prescription period expired. On 1st February, the defendant received the claim, but refused to accept it. On 3rd March, the defendant received a translation of the claim. When is the claim considered to be served for calculating the prescription period?

IV. Case study III

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

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

Service of Documents

V. Case Study IV

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

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

Exercise: Find the competent authority, if the defendant is domiciled in France, 37042 Tours.