



# Transnational civil litigation and International commercial arbitration

*Service of judicial documents abroad*

Prof. Marco Farina

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UNIVERSITÀ DI MACERATA

INTERNATIONAL EUROPEAN COMPARATIVE  
LEGAL STUDIES

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# SERVICE OF JUDICIAL DOCUMENTS ABROAD

## *Introductory remarks*

- **Service of judicial documents:** Service of a judicial document is the process that ensures that any person to whom a legal document related to a civil proceedings is to be delivered receives it in a manner that complies with the relevant legal provisions. In more practical words, we may say that **service** means bringing documents used in court proceedings to a person's knowledge and attention.
- **Judicial documents:** this definition includes a number of documents with the common element of being somehow and to some extent related to civil proceedings to be commenced or already commenced. The first and most important document that must be served is the **act that institutes the proceedings** containing the claim brought by the plaintiff against the defendant. At the end of the proceedings, the **judgment** may have to be served on the losing party to trigger the time limit for appeal or for enforcing it.
- **Methods of service:** method of service refers to the way a document is delivered to the other party in accordance with the rules and procedures set out by the law of State where proceedings is taking place. It is for the national law to determine who may serve legal documents and how they may be served
- **Personal service vs substituted service:** When a document is handed to an individual personally, this is known as **personal service**. If the person refuses to take the document, it must be deemed to be served unless just cause exists for refusing delivery. Alternative means of service consist in delivering a copy of the document to an adult member of the same household who is major age. If the person to be served can't be reached at his/her premises, the next option is to serve the documents dropping them off at a place where the person can go and collect them. Methods of **substituted service** (which include also publication in a newspaper or on social media) which do not guarantee that the party will actually learn of the service but that create just a presumption of knowledge might be used when the party to be served can not be reached. Such method of service are also referred to as **fictitious service** and they can be used just when all the efforts to reach the person to be served have been made



## SERVICE OF JUDICIAL DOCUMENTS ABROAD

### *Judicial cooperation*

- Service of judicial documents might be problematic in cross-border cases. The service of documents involves, in most countries, the exercise of public authority, so when the party to be served is located abroad, the assistance of the public authority of the state where the notified person resides is required. Judicial cooperation is the performance of a judicial act by one country on its territory upon the request and for the benefit of another state.
- Judicial cooperation in civil and commercial matters can be governed by bilateral (or multilateral) international treaties or by uniform rules applicable in a particular territory
- In the territory of the European Union, the service of judicial documents in cross-borders cases is governed by a source of uniform law, **Regulation EU 1784/2020**
- Outside the UE, the matter is governed by **The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters**

## SERVICE OF JUDICIAL DOCUMENTS ABROAD

### *Regulation EU 1784/2020 – Scope of application*

- Regulation EU 1784/2020 shall apply to cross-border service of judicial and extrajudicial documents in civil or commercial matters
- Cross-border service should be construed as service from one Member State to another Member State
- In principle, the Regulation does not apply where the address of the person to be served is not known.
- Where the notified person has no known address for service in the forum Member State, but has one or more known addresses for service in one or more other Member States, the document should be transmitted to such other Member State for service under this Regulation and it should not be served on the addressee by a fictitious method of service, such as service by posting an announcement on the court notice board or by depositing the document in the court file.



## SERVICE OF JUDICIAL DOCUMENTS ABROAD

### *Regulation EU 1784/2020 – Scope of application*

- Regulation EU 1784/2020 shall apply to judicial and extrajudicial documents in civil or commercial matters
- Judicial documents are acts that are related to a civil proceedings already started or to be commenced (e.g., claim form, orders, judgments)
- Extrajudicial documents include documents whose formal transmission to an addressee residing in another Member State is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law. As such they are not limited to documents that are connected to legal proceedings alone (for example, notice of payment, exercise of pre-emption right, etc.)

## SERVICE OF JUDICIAL DOCUMENTS ABROAD

### *Regulation EU 1784/2020 – Transmission and service of documents*

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- According to the Regulation, each MS shall designate
  - a) the public authorities competent for the transmission of judicial or extrajudicial documents to be served in another Member State (“**transmitting agencies**”)
  - b) the public authorities competent for the receipt of judicial or extrajudicial documents from another Member State (“**receiving agencies**”)
  - c) a **central body** that is responsible for supplying information to the transmitting agencies and seeking solutions to any difficulties which may arise during the transmission of documents for service
- Judicial documents shall be transmitted directly and as quickly as possible between the transmitting and receiving agencies
- The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State



## SERVICE OF JUDICIAL DOCUMENTS ABROAD

### *Regulation EU 1784/2020 – Refusal of service*

- The addressee may refuse to accept the document to be served if the document is not written in, or is not accompanied by a translation into, either:
  - (a) a language which the addressee understands; or
  - (b) the official language of the Member State addressed.
- The addressee must be informed of his/her right to refuse service where the document is not written in, or is not accompanied by a translation into, the official language of the Member State addressed
- The addressee may refuse to accept the document either at the time of service or within two weeks of the time of service by making a written declaration of refusal of acceptance
- The service of the refused document may be remedied through the service on the addressee of that document together with a translation into official language of the Member State addressed. In such a case, the date of service of the document shall be the date on which the document and its translation were served in accordance with the law of the Member State addressed

## SERVICE OF JUDICIAL DOCUMENTS ABROAD

### *Regulation EU 1784/2020 – Other means of transmission and service*

- Each Member State should be free to effect the service of documents by postal services on persons residing in another Member State directly by registered letter with acknowledgement of receipt or equivalent. Service by postal service will be valid even if the document was not delivered to the addressee in person, where it was served at the addressee's home address on an adult person who is living in the same household as the addressee or who is employed there by the addressee and who has the ability and is willing to accept the document
- The service of judicial documents may be effected directly on a person who has a known address for service in another Member State by any electronic means of service available under the law of the forum Member State for the domestic service of documents, provided that the addressee gave prior express consent to the use of electronic means for serving documents during legal proceedings
- Any person with an interest in particular judicial proceedings may effect the service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State in which the service is sought



## SERVICE OF JUDICIAL DOCUMENTS ABROAD

### *Regulation EU 1784/2020 – Date and completion of service*

- Upon completion of the formalities concerning the service of the document, the receiving agency shall draw up a certificate of completion of those formalities using the form attached to the regulation and send it to the transmitting agency
- The date of service shall be the date on which the document was served in accordance with the law of the Member State addressed. However, where the law of a Member State requires a document be served within a particular period, the date to be considered with respect to the applicant shall be determined by the law of that Member State
- Where a defendant fails to appear, judgment may not be given until it is established that
  - (i) the document has been served by a method prescribed by the internal law of the Member State addressed; or
  - (ii) the document has been delivered to the defendant or to his residence by another method provided for by the Regulation,
  - (iii) in either cases service or delivery was effected in sufficient time to enable the defendant to defend its case