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

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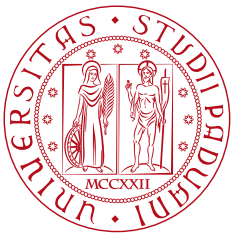

UNIVERSITÀ DEGLI STUDI DI PADOVA

DiPIC
Dipartimento di Diritto Pubblico Internazionale e Comunitario

National Report

Italy

Prepared by

Università degli Studi di Padova

Dipartimento di Diritto pubblico Internazionale e Comunitario

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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.

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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).)

Within the framework of the Italian Civil Procedural Law, the service of judicial documents represents the fundamental point from which a proper introduction of proceedings originates, both in first instance proceedings (before the *Tribunal* - *Tribunale*, or before the *Justice of Peace* - Giudice di Pace), appeal proceedings (before the Court of Appeal - *Corte di Appello*) and proceedings before the Supreme Court (*Corte di Cassazione*).

The main source governing the service of documents is the Italian Code of Civil Procedure (articles 137 - 151), henceforth CPC)[1], but on this topic several reforms modified these general rules over the years, above all following the entry into force of the "*On-Line Civil Trial*" – "*Processo Civile Telematico"* (henceforth "PCT"), recently amended by a reform in force since 28th February 2023[2].

Specific rules are dictated for notification by mail[3], by lawyers[4], on tax[5], bankruptcy[6] or corporate law[7] matters.

[1] Codice di procedura civile, approvato con regio decreto 28 ottobre 1940, n. 1443 - Code of Civil Procedure, approved by Royal Decree No 1443 of 28 October 1940.
[2] The Law Decree 179/2012 has made the PCT mandatory also for the telematic filing of injunctions and pleadings (after constitution) in new cases from June 2014, for all pleadings (after constitution) from January 2015. More recently, the PCT has been amended by the Legislative Decree 10 October 2022, No. 149, in O.J., n. 243, 17 October 2022, as the Law November 26, 2021, n. 206 delegated the Italian Government to issue within one year a legislative reform for the efficiency of the civil process and for the reorganization of the disciplines on alternative dispute resolution mechanisms and urgent measures for the rationalization of the proceedings in matters of family and persons, as well as regarding the enforcement of civil claims. See R. TISCINI (ED.), *La riforma Cartabia del processo civile,* Pisa, 2022.
[3] Law 20 November 1982, No. 890.
[4] Law 21 January 1994, No. 53.
[5] Art. 60, d.P.R. 29 September 1973, No. 600, art. 26, d.P.R. 29 September 1973, No. 602 and art. 32 d.P.R. 26 October 1973, No. 636.
[6] Art. 15, R.D. 16 March 1942, No. 267, Law Decree 12 January 2019, n. 14.
[7] Art. 17, Legislative Decree No. 5 of 17 January 2003, now replaced by Art. 54 of the Law of 18 June 2009, No. 69.

The Law Decree 179/2012[8], which provides the general rules for service in proceedings before Courts, introduced the obligation of telematic transmissions of all communications (to lawyers, professionals and parties) as of February 2013 for courts of first and second instance. For proceedings before the Supreme Court, the PCT, although provided by in the Law Decree 179/2012, has been implemented through several Acts adopted in Italy in the context of the Pandemic Emergency[9]. Thanks to these Acts[10], the PCT before the Supreme Court was introduced, even if at first only on optional basis, from 31 March 2021[11].

More generally, the advent of information and communication technologies and their application to civil proceedings have deeply affected the traditional system of communication and service of documents. On the one hand, the enhancement of tools for the telematic exchange of computerised documents and the possibility of drafting the deeds using video writing software, signing them with the electronic signature mechanism and, on the other hand, the procedure for extracting IT copy by image of deeds formed on analogue support in computerised documents, have enabled the legislator to codify new methods of transmitting civil process acts[12].

New Rules concerning service are stated by the Law Novembe 26, 2021, n. 206, which delegates the Italian Government to issue within one year a legislative reform for the efficiency of the civil process and for the reorganization of the disciplines on alternative dispute resolution mechanisms and urgent measures for the rationalization of the proceedings in matters of family and persons, as well as regarding the enforcement of civil claims. By the

[8] Law Decree 18 October 2012, No. 179, subsequently converted into the Law 17 December 2012, No. 221

[9] On this point see: G. RUFFINI, *Emergenza epidemiologica e processo civile*, in *Questione giustizia*, 2021, p. 6.

[10] The Law 24 April 2020, n. 27 converting the Law Decree – so called "Decreto Cura Italia"- 17 March 2020, n. 18 - the first decree containing urgent measures in the field of justice following the Covid-19 epidemiological emergency - introduced (art. 83) the possibility of telematically filing with the Supreme Court the deeds and the acts of the proceedings in compliance with the legislation on the signing, receipt and transmission of IT documents. The law provided that the service could only be activated following an official Act of the General Director of the Automated Information Systems of the Ministry of Justice who should have ascertained the installation and suitability of the IT facilities. As this Act could not be adopted within the timeframe provided by the Law Decree n. 18/2020, a new Law Decree was adopted confirming the PCT option at the Italian Supreme Court. The Law Decree 28 October 2020, n. 137, subsequently amended by the Law Decree 1 April 2021, n. 44, confirmed the PCT option; in the meanwhile, the General Director of the Automated Information Systems of the Ministry of Justice adopted the Decree of 27 January 2021, confirming the start date of the PCT before the Supreme Court as 31 March 2021.

[11] The Law Decree 179/2012 has made the PCT mandatory also for the telematic filing of injunctions and pleadings (after constitution) in new cases from June 2014, for all pleadings (after constitution) from January 2015. More recently, the PCT has been amended by the Legislative Decree 10 October 2022, No. 149, in O.J., n. 243, 17 October 2022. See R. TISCINI (ED.), *La riforma Cartabia del processo civile,* Pisa, 2022.

[12] F. PORCELLI, *Le comunicazioni e le notificazioni,* in G. RUFFINI, *Il processo telematico nel Sistema del diritto processuale civile*, Milano, 2019, p. 329.

legislative Decree 10 October 2022, No. 149[13] the Italian Government has implemented the civil litigation reform, delegated to Government with the Law November 26, 2021, no. 206, introducing significant amendments to the provisions of the Italian Code of Civil Procedure.

Rules on the service of judicial and extrajudicial documents in civil and commercial matters in the Member States of the European Union are laid down in 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)[14], henceforth "Service Regulation". This Regulation replaces the EU Regulation 1393/2007[15] as of 1st July 2022, with the exception of the most innovative provisions concerning the use of IT data transmission (Article 5, Article 8 and Article 10), which will enter into force on 1st May 2025[16].

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,

[13] In O.J., n. 243, 17 October 2022.
[14] In O.J., L 405, 2 December 2020, pp. 40 – 78.
[15] Regulation (EC) No. 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), repealing Council Regulation (EC) No 1348/2000, of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (O.J., L 160, 30 June 2000, pp. 227 – 242), in O.J. L 324 of 10 December 2007, pp. 171 – 212. See generally: B. BAREL, *Le notifiche nello spazio giuridico europeo*, Padova, 2008; G. CAMPEIS, A. DE PAULI, *Le regole europee ed internazionali del processo civile italiano*, Padova, 2009, p. 275; P. FRANZINA, *La notificazione degli atti giudiziari e stragiudiziali in ambito comunitario*, in A. BONOMI (ed.), *Diritto internazionale privato e cooperazione giudiziaria in materia civile*, Torino, 2009, p. 217; F. C. VILLATA, *Il regolamento C.E. sulle notificazioni di atti giudiziali negli Stati membri*, in *Riv. dir. proc.*, 2009, p. 153; A. GALIC, *Service Abroad in Civil and Commercial Matters-From the Hague Conventions to the EU 1393/2007 Regulation. Available at* **www.researchgate.net/publication/338358127_SERVICE_ABROAD_IN_CIVIL_AND_COMMERCIAL_MATTERS_-FROM_THE_HAGUE_CONVENTIONS_TO_THE_EU_13932007_REGULATION (accessed 24 February 2023).**
[16] For these provisions, which are intended to replace Articles 4 and 6 of Regulation 1393/2007, the effectiveness is deferred from the first day of the month following the period of three years after the date of entry into force of the implementing acts which, pursuant to Art. 25 of the Regulation, the Commission has issued to lay down the conditions of non-exchange of documents system: Commission Implementing Regulation (EU) 2022/423 of 14 March 2022 laying down the technical specifications, measures and other requirements for the implementation of the decentralized IT system referred to in Regulation (EU) 2020/1784 of the European Parliament and of the Council (O.J. L 87, 15 March 2022). On this topic, see: B. BAREL, *Le notificazioni nello spazio giuridico europeo dopo il Regolamento (UE) 2020/1784*, in *Riv. dir. int. priv. proc.*, 2022, p. 531.

§ 166(2) ZPO. The effectiveness of service requires intent.[17] *A notarisation of delivery is no longer a constitutive part of service,*[18] *it only has an evidentiary function.)*

In the Italian system it's not possible to find a legal definition of service, but the CPC states different rules for the communication of acts in charge to the Bailiffs and the service, necessarily requested by the parties of the proceeding.

Service of documents is a codified procedure by which a natural or legal person can be informed of a legal act, with various effects established by law[19].

The law provides specific procedures for service of documents, so as to ensure that the addressees are legally informed of these documents and that the act produces the intended effects. This means that, once the required service procedure has been accomplished, the addressee is deemed to have had knowledge of the document, which can then produce its legal effects. The Italian legal system is generally known for adopting the service through "*signification au parquet*"[20], on the model of the French System, under which the service is effected with the fulfilment of the formalities, or with the sending of the deed to the addressee.

Simple service (*comunicazione*) is carried out in cases where it is provided for by law or ordered by the court; in this case a short notice is given of the document or fact that needs to be communicated. Simple service is effected to inform the parties or other persons involved in a court proceeding that specified steps have been taken in the case or that certain procedural documents have been issued (e.g. the issuance of a judgment, a decision to schedule a hearing or defer a hearing, or an order issued by the court outside the formal hearings).

Formal notification (*notificazione*) must be carried out in cases where it is provided for by law and consists of the delivery of a certified copy of the original document to be served. Documents served in this way may emanate from the court (e.g. judgments whose time limit allowed for appeal runs from the time of service) or from the parties to a case (e.g. summonses to a hearing on the merits).

The legal knowledge of the deed granted by service aims to guarantee the right of defence or in any case to be heard.

The notification procedure is divided into 3 phases:

[17] BGH NJW 1956, 1878; MüKoBGB/*Häublein/Müller*, § 166 para. 3.
[18] MüKoBGB/*Häublein/Müller*, § 166 para. 3.
[19] C. PUNZI, voce *Notificazione,* in *Enciclopedia del Diritto*, XXVIII, 1978, p. 641.
[20] F. CARPI E B. CIACCIA CAVALLARI, *Notificazioni all'estero in materia civile e commerciale (convenzione dell'Aja e legge di ratifica 6 febbraio 1981 n. 42)*, in *Nuove leggi civ. comm.*, 1982, p. 321

Impulse – by the person who has an interest in having the document served. This is a phase that doesn't require any particular formality. If it's not possible to identify the party ordering it, the notification shall be deemed to have been uselessly carried out[21] " (…) if it is completely omitted in the notification report the indication of the instant part. Starting from the premise that the omission is in no way sanctioned, the existence of a formal nullity must be excluded (…)"[22].

Execution - by authorised persons - of all the formalities necessary to determine legal knowledge of the act. The notification is considered accomplished when all the formalities required by law have been completed. In this regard, the Supreme Court[23] establishes that, if "the parcel has been delivered to a person other than the addressee, without, moreover, there is no certification of mailing to the addressee of the registered letter provided for by Law No. 890 of 1982, art. 7, quoted new paragraph 6 (...) it must be considered that said omission does not constitute a mere irregularity, but a vice of the postal agent's activity that determines, without prejudice to the effects of the delivery of the deed to the judicial officer, the nullity of the notification in respect of the addressee (...)".

Documentation of all the activities carried out. It is very important the service report in which all the operations performed are shown; in Italy the serving report is the evidence of service.

According to the provisions of the Supreme Court "the lack of the service report, provided for in art. 148 c.p.c., can't be compensated by any circumstantial element (...)."[24]

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.)

Italy does not use this term in pure domestic law.

The concept of "*civil and commercial matters*" comes from the 1968 Brussels Convention[25] and it is usually interpreted as overlapping with the one adopted by the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition

[21] Civ. Cassation, Section I, 7 May 2003, No. 6928.
[22] Civ. Cassation, Section I, 7 May 2003, No. 6928.
[23] Civ. Cassation, Section V, January 25, 2010, ord. No. 1366.
[24] Civ. Cassation, Section I, 25 June 2004, No. 11853.
[25] Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (O.J. 1972, L. 299)

and enforcement of judgments in civil and commercial matters (so-called Brussels I bis and Regulation n. 1215/2012[26], replacing Regulation 44/2001[27]). The Italian legal system accepts the term of the EU Regulation as autonomously interpreted[28], with reference to the objectives of the EU Acts, as suggested by the Court of Justice of the European Union (henceforth ECJ)[29]. Italian Scholars refer to the notion of "civil and commercial matters" as a "frame-notion"[30].

The ECJ has addressed the concept of "*civil and commercial matters*" in several cases, stating, for example, that if both parties to the proceedings are private persons, the matter will, in principle, be civil or commercial, even if the dispute originates from an act of the State. If one of the parties is a public authority, the key element to exclude the application of the EU Acts is whether the Public Authority acted (or omitted to act) "in the exercise of its public powers". A typical manifestation of these powers is, for example, the ability to enforce and execute a claim without going through the general Courts[31]. The main purpose of the reference to "*civil and commercial matters*" in the EU Acts is to distinguish between civil law matters, where the Acts apply, and public law matters where they do not.

With regards to the scope of application of the EU Regulation 1393/2007 and the notion of "civil and commercial matters" in the field of service, it was particularly doubtful in Italy whether the service abroad of Italian administrative sanctions (fines) for violations of the "Codice della Strada", could be ruled by the Regulation, but the Supreme Court finally excluded these sanctions from the scope of Regulation 1393/2007[32].

Now the Recital n. 8 of the Regulation 1784/2020 overcomes these doubts by stating that "For the purposes of this Regulation, the expression 'extrajudicial documents' should be

[26] Regulation (EU), No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of Judgments in civil and commercial matters (recast), entered into force on 1st January 2015 (OJ 2012 L 351).
[27] Regulation (EC), No. 44/2001 of 22 December 2000, on Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (O.J. 2001 L 12).
[28] G. CAMPEIS, A. DE PAULI, *Le regole europee ed internazionali*, cit., p. 343.
[29] ECJ 15 May 2003, Case C-266/01, Préservatrice foncière, ECLI:EU:C:2003:282, p. 21; ECJ 15 February 2007, Case C-292/05, Lechouritou, ECLI:EU:C:2007:102, p. 45; ECJ 7 May 2020, Case C-641/18, LG and others v. RINA, ECLI:EU:C:2020:349, p. 34.
[30] P. BIAVATI, *Notificazioni e comunicazioni in Europa,* in *Le discipline comunitarie relative al processo civile,* Milano, 2001, p. 177; A. PANZAROLA, *La notificazione degli atti giudiziari ed extragiudiziari negli Stati membri dell'Unione europea*, in *Nuove leggi civili commentate*, 2000, p. 1163.
[31] ECJ 12 September 2013, Case C-49/12, The Commissioners for Her Majesty's Revenue & Customs v. Sunico ApS and others, ECLI:EU:C:2013:545.
[32] Civ. Cassation, s.u., 5 February 2021, No. 2866, in *Foro it.*, I, 2160. According to the Italian Supreme Court Italian administrative sanctions for violations of the "Codice della Strada" are administrative acts connected with the exercise of the State's sanctioning power and therefore their service must be effected, pursuant to Art. 142 CPC, or according to the 1977 European Convention for service abroad.

understood as including documents drawn up or certified by a public authority or official, and other documents the formal transmission of which to an addressee residing in another Member State is necessary for the purposes of exercise, proof or safeguarding of a right or a claim under civil or commercial law. The expression 'extrajudicial documents' should not be understood to include documents issued by administrative authorities for the purposes of administrative proceedings"[33].

With regards to the notion of "civil and commercial matters" within the EU Regulation 1784/2020, it is important to highlight the need to follow the autonomous interpretation already outlined by the ECJ in its interpretation of Regulation 1393/2007[34], in cases where, to recall the Regulation, the contractual aspects of the case have been judged more important than the administrative nature of the contractual parties.

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.)

In Italy, as already mentioned in point 3 (see above), the concept used in the European Union Law, is followed to define the scope of application of the EU Regulations within the Italian Civil Procedural System.

5. **How is 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 Italy there isn't a definition of Judicial and Extrajudicial Documents[35].

[33] For some doubts concerning Spanish Legal System, see ECJ 25 June 2009, Case C- 14/09, Roda Golf & Beach Resort SL, ECLI:EU:C:2009:395

[34] ECJ 6 October 2021, Case C-581/20, Skarb Państwa Rzeczypospolitej Polskiej reprezentowany przez Generalnego Dyrektora Dróg Krajowych i Autostrad v TOTO SpA - Costruzioni Generali and Vianini Lavori SpA, ECLI:EU:C:2021:808; ECJ 25 March 2021, Case C-307/19, Obala i lučice d.o.o. v NLB Leasing d.o.o., ECLI:EU:C:2021:236.

[35] It's therefore possible to follow the notion of „extrajudicial document" outlined by the ECJ in the case ECJ 25 June 2009, Case C- 14/09, Roda Golf & Beach Resort SL, ECLI:EU:C:2009:395. See also ECJ 9 February 2006, Case C-473/04, Plumex v. Young Sports NV, ECLI:EU:C:2006:96.

Simple service (*comunicazione*) is carried out in cases where it is provided for by law or ordered by the court; in this case, a short notice is given of the document or of the fact that is to be communicated. Simple service is effected to inform the parties or other persons involved in a court proceeding that specified steps have been taken in the case or that certain procedural documents have been issued (e.g. the issuance of a court judgment, a decision to schedule a hearing or defer a hearing, or an order made by the court outside the formal hearings).

Other rules concern, for example, the notification of "*Atti tavolari*" (art. 13 Law 20. November 1982, n. 890), acts concerning the property rights in some former Austrian Empire Regions (for example in Trieste). The notifications of these acts are ruled by the Law 1982/890 which states that they must be sent via mail by the bailiff of the competent office - "*ufficio tavolare*".

Pursuant to the regulations on the "On-Line Civil Trial", notifications are handled with the certified mail system (called PEC, acronym for "Posta Elettronica Certificata") which is adopted according to national legislation and technical rules, valid both for all public administrations and citizens.

In summary, these rules and specifications require that e-mail messages receive an official delivery receipt to be certain of delivery and its exact time. Both messages and receipts are digitally signed by the sender's provider and the recipient's provider to guarantee authenticity, non-repudiation and integrity.

PEC providers are authorized by the "*Agenzia per l'Italia Digitale*" (which can be translated as "Agency for Digital Italy", henceforth AgID), the highest authority for ICT in Italy, which also supervises providers to ensure compliance with the rules, especially on the security side. For e-filing of legal acts by external users, the payload (i.e. the electronic act itself and all attachments) consists of an encrypted S-MIME envelope, which must be attached to the PEC message. The envelope must contain the legal act in PDF format, digitally signed by the author, together with a specific XML file, providing structured information (according to the type of act), also digitally signed, and all documents attached to the legal act. The official time of delivery to the court, to be taken into account in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent back to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is

provided to the court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceedings for on-line queries. A PEC message is also sent whenever an electronic communication or notification has to be delivered to the lawyers or other recipients: in this case the content and the message are automatically prepared and sent by the Case Management System after recording the specific procedural event and in case the recipient owns a PEC address (retrieved from the Electronic Address Book). Once sent, the system automatically retrieves the PEC receipts of the message from the PEC provider and stores them into the File System, alerting the court clerk in case of a delivery failure (the PEC system tries to deliver the message within 24 hours).

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.[36] 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.[37] 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).[38] In addition, **legal certainty** is to be established.)*
(e.g. in Austria: The continuance of the trial, the right to be heard, ...)

In Italy, the purpose of service is to give the addressee the opportunity to take notice of the document and to prepare the legal defence or prosecution thereon. The main goal is basically to ensure that the recipients are informed with undue delay that a proceeding is pending against them so as to allow for the full exercise of their right of denfence, as enshrined in the EU Charter of Fundamental Rights[39], and in the Constitution. At the same time, this must protect the legitimate expectations of the claimant, thus avoiding paralysing the judicial system.

[36] BVerfG NJW 1984, 2567, 2568.
[37] BVerfG NJW 1984, 2567, 2568.
[38] cf. VGH München NJW 2012, 950, 951.
[39] OJ C 326, 26 October 2012, p. 391–407, available at data.europa.eu/eli/treaty/char_2012/oj last visited on 24 February 2023. On this topic, see: X. KRAMER, *Cross-border enforcement in the EU: mutual trust versus fair trial? Towards Principles of European Civil Procedure*, International Journal of Procedural Law, 2011, 2, pp. 202 – 230; A. LEANDRO, *L'equo processo nel diritto processuale civile internazionale europeo,* in *Rivista di diritto internazionale private e* processuale, 2016, p. 22; M. ZLINSKY, *Mutual trust and Cross-border enforcement of judgments in Civil Matters in the EU: does the step-by-step approach work?* Netherland International Law Review, 2017, 64, pp. 115 – 139.

These purposes are a consequence of the right to be heard and of the right to defence, which are considered fundamental rights. 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, serving the principle of effective access to justice (art. 24 of the Italian Constitution) and the principle of equality between claimant and respondent (art. 111 of the Italian Constitution and art. 101 CPC)[40].

Civil proceedings are in fact instituted with the service on the counterparty of the writ of summons. After notification, the claimant must register within 10 days by filing with the Registrar of the court of first instance. The file must contain the served document with a litigation proxy and other required documents. The writ of summons must include, inter alia, the summons to the party to appear at a scheduled hearing and the warning to the defendant to join the case at least 70 days (art. 166, CPC, recently amended)[41], before the hearing in order to avoid non-compliance with the provisions of the law. It must propose procedural and substantive objections that are not ascertainable by the judge, and it must put forward counterclaims and call upon third parties. From the day of the notification of the writ of summons and the first appearance at a hearing, no less than 120 clear days must pass if the place of the notification is in Italy (art. 163 *bis*, par. 1 CPC, recently modified)[42] and 150 clear days if it is abroad. In urgent cases, the claimant may ask that the president of the court to halve the time.

The defendant, upon receipt of the notification of the writ of summons, must appear before the court at least 70 days before the initial hearing on the date set in the summons (art. 166, CPC, recently amended)[43]. The defendant must register a file at the Chancery, containing the act of appearance in court and the response, with a copy of the notified summons. The

[40] P. COMOGLIO, *Diritti fondamentali e garanzie processuali nella prospettiva dell'Unione europea,* in *Foro it.*, 1994, V, c. 153; M. MARESCA, *Principi generali di diritto comunitario nella disciplina del processo,*in *Dir. Un. Eur.,* 1997, p. 341; M. FRAGOLA, *Sovranità diffuse e diritti umani nella prospettiva comunitaria*, in *Riv. dir. eur.*, 1999, p. 3; C. DELLE DONNE, *Principio del contraddittorio (art. 101 c.p.c.),* in R. TISCINI, *La riforma Cartabia del processo civile,* Pisa, 2022, p. 59.

[41] Par. 12, d, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022. On this see C. DELLE DONNE, *La fase introduttiva, la prima udienza e i provvedimenti del giudice istruttore,* in R. TISCINI, *La riforma Cartabia del processo civile,* cit., p. 278.

[42] Par. 12, b, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022. Before this last reform, no less than 90 clear days were fixed from the day of the notification of the writ of summons to the first hearing. See on this C. DELLE DONNE, *La fase introduttiva, la prima udienza e i provvedimenti del giudice istruttore,* in R. TISCINI, *La riforma Cartabia del processo civile,* cit., p. 278.

[43] Par. 12, d, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022. On this see C. DELLE DONNE, *La fase introduttiva, la prima udienza e i provvedimenti del giudice istruttore,* in R. TISCINI, *La riforma Cartabia del processo civile,* cit., p. 278.

defendant must propose procedural objections and merits, claims and counterclaims, and provide documents relating to the case, or the intention to sue a third party (art. 167 CPC). The application of the aforementioned intertwined principles results in a complex regulatory framework that makes it difficult for both practitioners and authorities to get familiar with this system and to develop an expertise in cross-border litigation[44]

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.)

In Italy, in general, the service of documents is the responsibility of the claimant, who has to notify them to the defendant using different means and activating different types of professional actors (bailiffs, lawyers).

In the Italian civil procedural system there are different kinds of service.

Simple service is effected by the court registrar (*cancelliere*), according to Article 136 CPC.

Formal notification is effected:

- By a lawyer (*avvocato*). A lawyer may effect formal notification either by mail, provided that he or she holds an appropriate power of attorney in the case and is so authorised by the Council of the Bar Association (*Consiglio dell'Ordine*) where he or she practises, or by direct delivery to the address of another lawyer authorised to accept service on behalf of one of the parties and registered with the same Council of the Bar Association as the lawyer effecting service (Law No- 890/1982 and Law No. 53/1994). Moreover, a lawyer does not need the authorisation of the Bar Council to effect formal notification by certified e-mail (*posta elettronica certificata*, 'PEC') to an e-mail address obtained from the public registers

[44] R. AMATO, *Exploring the Legal Requirements for Cross- Border Judicial Cooperation: the case oft he Service of Documents*, European Quarterly of Political Attitudes and Mentalities, 2019, 8, 2, p. 37; X. KRAMER, *Judicial Cooperation in Civil Matters*, in P. J. Kuijper, F. Amtenbrink, D. Curtin, B. De Witte, A. Mc Donnell, S. Van den Bogaert (eds.), *The Law of the European Union*, Alphen aan den Rijn, Kluwer Law International, 2018, pp. 721 – 740.

(Article 1, Article 3 *bis* and Article 9 of Law No. 53/1994). Pursuant to the rules concerning the "On Line Civil Trial"- PCT, service are handled with the certified mail system (called PEC, acronym for "Posta Elettronica Certificata"- "Electronic Certified Mail"), adopted according to national legislation and technical rules, valid both for all public administrations and citizens.

These rules and specifications require that e-mail messages receive an official delivery receipt to be certain of delivery and its exact time.

Both messages and receipts are digitally signed by the sender's provider and the recipient's provider in order to ensure authenticity, non-repudiation and integrity. PEC providers are authorized by AgID, which can be translated as "Agency for Digital Italy"), the highest authority for ICT in Italy, which also supervises providers to ensure compliance with the rules, especially on the security side.

For e-filing of legal acts by external users, the payload (i.e. the electronic act itself and all attachments) consists of an encrypted S-MIME envelope, which must be attached to the PEC message. The envelope must contain the legal act in PDF format, digitally signed by the author, together with a specific XML file, providing structured information (according to the type of act), also digitally signed, and all documents attached to the legal act. The official time of delivery to the court, to be taken into account in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceedings for on-line queries. A PEC message is also sent whenever an electronic communication or notification has to be delivered to the lawyers or other recipients: in this case the content and the message are automatically prepared and sent by the Case Management System after recording the specific procedural event and in case the recipient owns a PEC address (retrieved from the Electronic Address Book). Once sent, the system automatically retrieves the PEC receipts of the message from the PEC provider and stores them into the File System, alerting the court clerk in case of a delivery failure (the PEC system tries to deliver the message within 24 hours).

- By a bailiff (*ufficiale giudiziario*), on application by a party or by the public prosecutor (*pubblico ministero*) or the registrar (Article 137 CPC). Bailiffs act in accordance with precise rules of territorial jurisdiction (Articles 106 and 107 of Presidential Decree (*Decreto del Presidente della Repubblica*) No. 1229 of 15 December 1959). Bailiffs are the sole agents competent under Article 2 of Regulation (EC) No. 1784/2020 for the transmission and receipt of documents to be served in or from another Member State. It must be pointed out that by the aforementioned legislative Decree 10 October 2022, No. 149, the service by bailiff has become an exceptional way of servings, as the main service must be performed by the lawyers.

Moreover, Art. 149*bis* CPC[45] rules that Italian Bailiffs shall serve formal notification by certified e-mail (*posta elettronica certificata*, 'PEC') to an e-mail address resulting from the public registers. Pursuant to the rules concerning the "On Line Civil Trial"- PCT, service are made by means of the certified mail system (called PEC, acronym for "Posta Elettronica Certificata"- "Electronic Certified Mail"), adopted according to national legislation and technical rules, valid both for all public administrations and citizens[46].

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?

Although in Italy, in general, service of documents is the responsibility of the claimant, who has to notify them to the defendant using different means and activating different types of professional actors (bailiffs, lawyers), on application or *ex officio*, the court may order methods of service other than the codified procedures in special circumstances or for reasons of urgency. Such methods may be freely chosen, but they must protect the addressee's privacy and right to defence (Article 151 CPC). A common example is the authorisation to send a package via a mail carrier which will guarantee a very quick delivery. Other systems, such as the use of telegrams (art. 151 cpc+art. 2706 of the Italian Civil Code, henceforth CC), are now obsolete.

[45] As amended by Art. 3, Par. 11, e, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022.

[46] This rule is scarcely applied due to the lack of PEC mail from Italian Bailiffs ("UNEP - Ufficio Notifiche Esecuzioni e Protesti"- henceforth UNEP). On this see V. BERTOLDI, *Notificazioni,* in R. Tiscini*, La riforma Cartabia del processo civile,* cit., p. 130.

As regards the service performed by a court bailiff on plaintiff's request, Art. 59 of the Italian CPC states that "the bailiff is responsible for the service of documents".

As regards the bailiff's liability towards the claimant, Art. 60 of Italian CPC states only two cases: 1) when, without just cause, bailiffs refuse to perform the legally required acts or fail to perform them within the time limit which, upon request of a party, is set by the judge on whom they depend or from whom they have been delegated; 2) when they perform a void act with wilful misconduct or gross negligence. These cases are interpreted restrictively by the Italian Supreme Court and it is difficult to highlight different forms of bailiff's liability[47].

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

In certain circumstances, a lawyer may effect formal notification either by mail, provided that he or she holds an appropriate power of attorney in the case and is so authorised by the Council of the Bar Association (*Consiglio dell'Ordine*) where he or she practises, or by direct delivery to the address of another lawyer who is authorised to accept service on behalf of one of the parties and who is registered with the same Council of the Bar Association as the lawyer effecting service (Law No. 890/1982 and Law No. 53/1994).

Moreover, a lawyer does not need the authorisation of the Bar Council to effect formal notification by certified e-mail (*posta elettronica certificata*, 'PEC') to an e-mail address obtained from the public registers (Article 3 *bis* of Law No. 53/1994).

With regard to timing, Art. 147 CPC[48]. provides that:

" (1) Notifications may not be made before 7 a.m and after 9 p.m. (Law 28 December 2005, n. 263 and Law Decree 10 October 2022, n. 149 for the entry into force of this rule on 30th June 2023)[49].

(2) Notifications via certified e-mail or qualified certified electronic delivery service may be effected without time limits.

[47] See Civ. Cassation ord. 13 September – 4 October 2018, n. 24203.

[48] As amended by Art. 35, par. 1 of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022- in force since 1st March 2023. On this see V. BERTOLDI, *Notificazioni,* in R. TISCINI, *La riforma Cartabia del processo civile,* cit., p. 117.

[49] For a different application of this rule in case of postal service, see App. Milan, 16 October 2017, in *Giur. It.*, 2018, p. 617 and F. COSSIGNANI, *Il tempo delle notificazioni telematiche e la „conciliazione delle opposte esigenze"*, *ibidem*, p. 620.

(3) Notifications made pursuant to the second paragraph shall be deemed to be completed for the notifier at the time of the production of the acceptance receipt and for the addressee at the time of the production of the delivery receipt. If the latter is generated between 9 p.m. and 7 a.m. of the following day, the service shall be deemed completed for the addressee at 7 a.m.[50].

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

In Italy, the parties concerned are required to check with the competent office whether the documents to be served are ready, request (and pay for) a copy and then contact (and pay) a bailiff to serve them on the other party.

This might turn out to be a major hurdle for foreign parties, in the application of EU Regulations. For example, Art. 5(2), of Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (henceforth the ESCP Regulation), as amended[51], according to which "[a] copy of the claim form […] shall be served on the defendant") is usually interpreted as meaning that the court itself must serve the documents. Italian Justices of Peace interpret the same provisions as meaning that the interested party must check when the document is ready and then serve it to the other party[52]. Moreover, it must be considered that contacting the Justices of Peace may not be

[50] On this point, see Constitutional Court 9 April 2019, n. 75: it declared the unconstitutionality of the rule insofar as it provides that the notification by electronic means whose acceptance receipt is generated after 9 p.m. and before midnight shall be deemed completed for the notifier at 7.a.m. of the following day instead of at the time of generation of the receipt

[51] The consolidated version of the ESCP Regulation is available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02007R0861-20170714. For an overview of the aims and contents of the ESCP Regulation, cf. M. HAZELHORST, *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*, Cham, Springer, 2017, p. 383-397; X. KRAMER, *European Procedures on Debt Collection: Nothing or Noting? Experiences and Future Prospects*, in B. HESS, M. BERGSTRÖM, E. STORSKRUBB (eds.), *EU Civil Justice. Current Issues and Future Outlook*, Oxford-Portland, Hart, 2015, p. 97-122; S. KRAMER, *The European Small Claims Procedure. Striking the Balance between Simplicity and Fairness in European Litigation*, Zeitschrift für europäisches Privatrecht, 2008, p. 355-373; P. MCELEAVY, *Current Developments – Private International Law*, in "International and Comparative Law Quarterly", 2008, p. 449-465.

[52] G. YEIN NG, *Testing Transborder Civil Procedures in Practice: Findings from Simulation Experiments with the European Payment Order and the European Small Claims Procedure*, in F. CONTINI, G.F. LANZARA (eds.), *The Circulation of Agency in E-Justice*, Springer, 2014, p. 265-286, at 278-279.

easy. The Justices of Peace's websites are not always up-to-date and communication by phone or letter may only be available in Italian[53].

With regard to electronic services via PEC, Attorneys, Professionals, Individual and Collective Companies, and the Public Administration are responsible for the management of their own e-mail boxes and are required to check their PEC boxes by checking for incoming PEC messages, ascertaining the functioning of anti-spam, anti-saturation, anti-virus software and avoiding the classification of incoming messages in Junk Mail. The negative consequences of non-compliance with the obligations imposed on the holder of the PEC mailbox fall on these subjects (owners of PEC). However, in case of failure to serve for reasons beyond the addressee's control, the lawyer, carefully evaluating this circumstance, may ask for a new service through the bailiffs, pursuant to art. 137, par. 7, CPC[54].

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

Simple service is made with a 'registry note' (*biglietto di cancelleria*), which can be in paper form or sent via certified e-mail (PEC), as provided for in Article 136 CPC (as amended by Law No. 183/2011). If it is in paper form, the note consists of two parts, one of which is sent by the court registrar to the addressee, who signs a receipt form, while the other is kept on file in the registry. If it is sent by certified e-mail, the note consists of the message sent to the address that the lawyer must have indicated in the summons or other initiating document.

Certified e-mail became compulsory for simple service with the entry into force of Article 16(4) of Legislative Decree (*Decreto Legislativo*) No. 179/2012, which provides that simple service and formal notification from the registry must be effected exclusively via electronic means to the PEC address.

If it is not possible to serve via PEC, the registry note can be sent by fax or delivered to the bailiff for formal notification.

[53] G. YEIN NG, *Testing Transborder Civil Procedures in Practice*, cit., p. 278-279.

[54] As amended by Art. 3, par. 11, b, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022- in force since 30th June 2023. On this see V. BERTOLDI, *Notificazioni,* in R. TISCINI, *La riforma Cartabia del processo civile,* cit., p. 163.

Formal notification is effected by the bailiff; if the address is in the municipality (*comune*) where the bailiff's office is located, the bailiff serves the document in person, whereas if the address is outside that municipality the bailiff serves the document by mail (Articles 106 and 107 of Presidential Decree No. 1229/1959) unless the requesting party or authority expressly requires personal service. Formal notification consists of the delivery to the addressee of a certified copy of the original (Article 137 CPC) and must be effected between 7 a.m. and 9 p.m. on a working day (Article 147 CPC).

Formal notification by personal service: the bailiff delivers the copy in person to the addressee, preferably at his or her domicile in order to protect his or her privacy, but otherwise anywhere within the limits of the bailiff's territorial authority.

Where a natural or legal person has indicated another person's residence or office as address for service, the documents must be served on the person designated to receive service at that address, and this is deemed to constitute service on the addressee (Article 141 CPC). By way of exception to this rule, summonses with a view to eviction (*citazioni per convalida di sfratto*), enforceable titles (*titoli esecutivi*) and orders requiring payment (*precetti di pagamento*) may not be served to an elected address for service.

By Law, service on State administrations must be effected at the State Legal Office (*Avvocatura di Stato*, Article 144 CPC).

In the case of service on a legal person, the document is delivered to the representative or to other persons empowered to receive service at the registered office of the company, or, in the absence of such persons, to the doorkeeper, but in this case service may also be effected on a natural person who represents the company, applying the procedures for formal notification on natural persons, provided that the document to be served names that person as representative and also indicates their residence, abode or centre of interests (Article 145 CPC).

Formal notification by mail: as an alternative to personal service, formal notification may be effected by mail, unless expressly prohibited by law (as established by Article 149 CPC and by Law No. 890/1982). If service is to be carried out in the municipality where the bailiff's office is located, the bailiff may use the postal service; if service is to be carried out elsewhere, the bailiff must use the postal service. In these cases, the copy of the document is placed in a special envelope for registered mail, complete with an acknowledgement of receipt slip, both of them coloured green and according to a standard form that allows them

to be traced and that must to be sent to the mailbox of the addressee (home, office). This also enables the bailiff to effect formal notification outside his or her own territory[55].

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

The claim must be prepared by the claimant in pursuance with art. 163 CPC, according to Art. 137 ff. CPC.

The first application to the Court is served upon the defendant together with the Court's order setting the first hearing.

As regards the service through PEC, Article 3 bis, par. 4, of Law 53/94, provides that the PEC must contain the indication, in the subject line, "*Notificazione ai sensi della legge n. 53/1994*" – "*Notification pursuant to Law n. 53/1994*". In the event of non-compliance with this requirement, there are cases affirming the nullity of the notification[56], which can be remedied according to the provisions of Art. 156, par. 3 CPC, and cases identifying a mere irregularity of the service[57].

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.[58])

[55] On this topic, see the Judgment of Corte Costituzionale, 23 September 1998, n. 346, in *Giust. Civ.*, 1999, I, 2253 and *ibidem* P. FRAULINI, *Osservazioni sulla nuova disciplina della notificazione a mezzo posta dopo l'intervento della Corte costituzionale*.

[56] Giudice di Pace Brescia, 24 November 2017, No. 1848, available at www.ilcaso.it

[57] Civ. Cassation, s.u. 28 September 2018, No. 23620, www.altalex.com/massimario/cassazione-civile/2018/23620/procedimento-civile-notificazione-al-procuratore-notificazione-della-sentenza-a-mezzo-pec

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

Formally, the Claimant must provide the name, address and other information necessary to identify the respondent. Materially, the claimant must provide the facts necessary to establish the legal claim (*causa petendi*) and the evidence supporting the claim (Art. 163 c.p.c.)[59]. New rules, specifically dedicated to family proceedings, are now laid down by the recent reform of the CPC[60]. According to these rules, the claimant must provide the facts necessary to establish the legal claim and the evidence supporting the claim (art. 473bis.1. CPC).

In case of service performed by the Attorney, through PEC, the Power of Attorney (see infra § 12) must be included in the PEC message relating to the notification pursuant to Art. 3 bis l. 53/1994 as an attachment to the file containing the main deed to be notified and the one containing the Power of Attorney.

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

The address for service is the address elected by a natural or legal person as address for service, pursuant with Art. 47 CC.

Where a natural or legal person has indicated another person's residence or office as address for service, the documents must be served on the person designated to receive service at that address, and this is deemed to constitute service on the addressee (Article 141 CPC). By way of exception to this rule, summonses with a view to eviction (*citazioni per convalida di sfratto*), enforceable titles (*titoli esecutivi*) and orders requiring payment (*precetti di pagamento*) may not be served to an elected address for service.

Article 16 *sexies* of the Law Decree No. 179/2012 rules the "digital domicile" of the attorney or of other subjects such as private companies (PEC mail notified to the Bar and entered in the ReGIndE- "Registro Generale degli indirizzi elettronici"- General Registry of the Elec-

[59] As tothe required clarity of the claim, see: Civ. Cassation, 30 April 2020, n. 8425; Civ. Cassation, ord, 21 March 2019, n. 8009; Civ. Cass., s.u., 17 January 2017, n. 964; Civ. Cassation, 20 October 2016, n. 21297.

[60] Art. 3, par. 33, Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022, introducing Art. 473 bis- 473bis.71 CPC. On this see M. A. LUPOI, *Procedimento in materia di persone, minorenni e famiglie,,* in R. TISCINI, *La riforma Cartabia del processo civile,* cit., p. 755 ff.

tronic Addresses" – managed by the Ministry of Justice, or in the INI-PEC – "Indice Nazionale degli Indirizzi di PEC" – "General Index of PEC Addresses", of Companies and Professionals managed by the Ministery of Economic Development).

More generally, the "digital domicile", i.e. the certified e-mail address, nowadays stands alongside the physical address in Italy[61], i.e. the registered office for legal persons and the residence for natural persons[62].

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

The proceedings are commenced by the service of a writ of summons upon the defendants or, depending on the disputed matter and on the Court having jurisdiction, by the filing of an application with the Court which is then served upon the defendant together with the Court's order setting the first hearing.

The writ of summons must include: the name of the court before which the action is brought; the names and addresses of the claimant and the defendant; the subject of the claim, the complaint and the allegation of facts (*causa petendi*); the relief sought; the type of evidence that the plaintiff intends to use in support of his/her claim; the date of the first hearing and the warning to the defendant to file its statement of defence by 70 days before the first hearing in order to bring counterclaims, join third parties to the proceedings or rise those objections which cannot be examined by the judge *ex officio*[63].

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

[61] See App. Bari, 5 April 2022, No. 562, at www.judicium.it highlighting the necessary evolution of the notion of domicile in case of the provision of servicespursuant to art. 170 CPC, which must necessarily also include the digital domicile ruled by art. 16 sexies Law Decree No. 179/2012, on which see infra….

[62] On this point, see in general: G. RUFFINI, *Il processo civile di fronte alla svolta telematica*, in *Riv. Dir. Proc.*, 2019, p. 973 ff.; F. PORCELLI, *Gli indirizzi pec ove eseguire le notificazioni telematiche, ibidem*, 2020, p. 1355 ff.

[63] Par. 12, d, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022. On this see C. DELLE DONNE, *La fase introduttiva, la prima udienza e i provvedimenti del giudice istruttore,* cit., p. 277.

(e.g. lawyers, notaries, bailiffs as well as public authorities, corporations or institutions under public law)." It has to be noted, that service of electronic documents [§ 173 (1) ZPO] has only been recently allowed through safe communication methods. Since the change of the ZPO lawyers, notaries, and bailiffs as well as public institutions have to be attainable through such a safe communication method, § 173(2) ZPO, [a specialised e-mail system] while other persons have to explicitly agree to electronic communication methods, § 173(4) ZPO.)
(e.g. in Austria: Documents are mainly served via the Austrian Postal Service.)

In civil proceedings, the first application to the Court is served upon the defendant together with the Court's order setting the first hearing.

Service is generally performed by a lawyer and in some cases by a court bailiff on plaintiff's request.

In certain circumstances, a lawyer may effect formal notification either by mail, provided that he or she holds an appropriate power of attorney for the case and is so authorised by the Council of the Bar Association (*Consiglio dell'Ordine*) where he or she practises, or by direct delivery to the address of another lawyer authorised to accept service on behalf of one of the parties and registered with the same Bar Council as the lawyer effecting service (Law No. 890/1982 and Law No. 53/1994). Moreover, a lawyer does not need the authorisation of the Bar Council to effect formal notification by certified e-mail (*posta elettronica certificata*, 'PEC') to an e-mail address obtained from the public registers (Article 3 *bis* of Law No. 53/1994).

Italian bailiffs perform the service of documents either by personal service in the hands of the addressee, by post, or electronically via certified e-mail[64]. Service may be effected by hand delivery or by mail. Specific means of service are set in case the recipient cannot be traced.

For the time being, however, the electronic transmission of documents by certified e-mail is only accepted before the tribunals. Before Italian Justices of Peace ("giudici di pace"), on the other hand, documents cannot be served electronically; only service at the addressee's hands and by post is possible[65]. Art. 149*bis* of the CPC[66] provides that Italian Bailiffs shall

[64] Art. 137 of the Italian CCP.

[65] This is due to the circumstance that the Justices of Peace have so far been excluded from the process of digital transformation of Italian civil proceedings. According to Art. 32(5) of the Legislative Decree of 13 July 2017, No. 116, the procedure before Justices of Peace will be digitalized (as it is already the case for tribunals) from 31 October 2025.

[66] As amended by Art. 3, Par. 11, e, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022.

effect formal notification by certified e-mail (*posta elettronica certificata*, 'PEC') to an e-mail address resulting from public registers. Pursuant to the rules on the "On Line Civil Trial"- PCT, service are made by means of the certified mail system (called PEC, acronym for "Posta Elettronica Certificata"- "Electronic Certified Mail"), adopted according to national legislation and technical rules, valid both for all public administrations and citizens[67].

In some cases, defensive briefs may be served by fax (Legislative Decree No. 5/2003 for corporate proceedings) or by certified e-mail. Pursuant to the rules concerning the "On Line Civil Trial", service is handled by the certified mail system (called PEC, acronym for "Posta Elettronica Certificata") adopted according to national legislation and technical rules, valid both for all public administrations and citizens.

In summary, these rules and specifications require that e-mail messages receive an official delivery receipt to be certain of delivery and its exact time. Both messages and receipts are digitally signed by the sender's provider and the recipient's provider to guarantee authenticity, non-repudiation and integrity. PEC providers are authorized by AgID- "Agency for Digital Italy", the highest authority for ICT in Italy, which also supervises providers to ensure compliance with the rules, especially on the security side.

For e-filing of legal acts by external users, the payload (i.e. the electronic act itself and all attachments) consists of an encrypted S-MIME envelope, which must be attached to the PEC message. The envelope must contain the legal act in PDF format, digitally signed by the author, together with a specific XML file, providing structured information (according to the type of act), also digitally signed, and all documents attached to the legal act. The official time of delivery to the court, to be taken into account in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent back to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceeding for on-line queries. A PEC

[67] This rule is scarcely applied due to the lack of PEC mail from Italian Bailiffs ("UNEP - Ufficio Notifiche Esecuzioni e Protesti"- henceforth UNEP). On this see V. BERTOLDI, *Notificazioni,* in R. Tiscini*, La riforma Cartabia del processo civile,* cit., p. 130.

message is also sent whenever an electronic communication or notification has to be delivered to the lawyers or other recipients: in this case the content and the message are automatically prepared and sent by the Case Management System after recording the specific procedural event and in case the recipient owns a PEC address (retrieved from the Electronic Address Book). Once sent, the system automatically retrieves the PEC receipts of the message from the PEC provider and stores them into the File System, alerting the court clerk in case of a delivery failure (the PEC system tries to deliver the message within 24 hours).

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

Outside Italy, service in the EU and/or within the EU is regulated by EU Regulation No. 1784/2020 (replacing EU Regulation 1393/2007 and EU Regulation 1348/2000[68]) which provides for the transmission and service of judicial documents in civil and commercial matters from one Member State to another through specially appointed Authorities in each Member State as the main method of service.

Outside EU, service may be effected according to bilateral or multilateral international Conventions (i.e. the Hague Convention of 15 November 1965[69]). Under both the Regulation on

[68] On this topic, see M. DE CRISTOFARO, *La nuova disciplina delle notificazioni intracomunitarie in materia civile*, in *Studium iuris*, 2001, p. 517; G. CARELLA, *La disciplina delle notificazioni e comunicazioni intracomunitarie; dalla cooperazione intergovernativa all'integrazione europea?*, in P. PICONE (a cura di), *Diritto internazionale privato e diritto comunitario*, Padova, 2004, 125 ss.; A. PANZAROLA, *La notificazione degli atti giudiziari ed extragiudiziali negli Stati membri dell'Unione Europea, Regolamento (CE) n. 1348/2000 del 19 maggio 2000*, in *Nuove leggi civ. comm.*, 2000, 1161 ss.; G. GIANCOTTI, *Prime note sul regolamento CE n. 1348/2000 del Consiglio, del 29 maggio 2000, relativo alla notificazione e alla comunicazione negli Stati membri degli atti giudiziari ed extragiu- diziali in materia civile o commerciale*, in *Contratto e impresa-Europa*, 2001, 799 ss.; G. CAMPEIS E A. DE PAULI, *Prime riflessioni sulla disciplina delle notifiche in materia civile e commerciale nell'Unione europea (Regolamento del Consiglio 29 maggio 2000 n. 1348/2000/CE)*, in *Giust. civ.*, 2001, II, 239 ss.; M. FRIGO, *Il regolamento comunitario sulle notificazioni in materia civile e commerciale*, in *Riv. dir. proc.*, 2002, 102 ss; B. BAREL, *Le notificazioni nello spazio giuridico europeo*, Padova, 2008; P. FRANZINA, *Le notificazioni degli atti giudiziari e stragiudiziali in ambito comunitario*, in A. BONOMI (a cura di), *Diritto internazionale privato e cooperazione giudiziaria in materia civile*, Torino, 2009, 217 ss.

[69] The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters has been in force internationally since 10 February 1969. In Italy it has been in force since 24 January 1982- see the Law 6 February 1981, n. 42 (text available at www.hcch.net). On this topic, see v. F. POCAR, *L'assistenza giudiziaria internazionale in materia civile*, Padova, 1967; F. POCAR, *Note sull'esecuzione italiana della Convenzione dell'Aja del 1965 sulle notificazioni all'estero*, in *Riv. dir. intern. priv. proc.*, 1982, 574; F. CARPI E B. CIACCIA CAVALLARI, *Notificazioni all'estero in materia civile e commerciale (convenzione dell'Aja e legge di ratifica 6 febbraio 1981 n. 42)*, cit., 1982, p. 321; B. COSTANTINO E A. SARAVALLE, *Il regime della notificazione all'estero secondo la convenzione dell'Aja del 15 novembre 1965*, in *Riv. dir. intern. priv. proc.*, 1984, 451; M. POLITI, *La Convenzione dell'Aja del 1965 sulle notificazioni civili all'estero e le noti- fiche a cura dei consoli italiani*, in *Riv. dir. intern.*, 1983, 375; G. BETTONI, *Le notificazioni all'estero secondo l'attuale normativa internazionale e interna*, in *Diritto comunitario e de- gli scambi internazionali*, 1981, 753; M. FRIGO, *voce Notificazione all'estero*, in *Dig. Disc. Priv.*, sez. civ., XII, Torino, 1995, p. 247; M. DE CRISTOFARO, *La nuova disciplina delle notificazioni infracomunitarie in materia*

the Service of Documents and the Hague Service Convention, service of a document from one country to another must be effected through the central authority designated for that purpose by the relevant country. The party may then choose to request service by mail or through a process agent.

In order to serve documents from another country in Italy, the party must send the Italian central authority a copy of the document with the relevant translation into Italian and an attached form, as prescribed by the Regulation on the Service of Documents or the Hague Service Convention. The Italian central authority will then ask the competent bailiff to serve the recipient in accordance with Italian rules of civil procedure.

Moreover, it is necessary to consider Article 71 of the Italian Private International Law Act, Law 218 of 31 May 1995[70], stating that the service of writ of summons before foreign authorities or other documents from a foreign State is authorized by the public prosecutor at the court in whose jurisdiction the service is to be performed[71]. Service requested by diplomatic means is carried out either by the public prosecutor or by a bailiff requested by him. Notification takes place in accordance with the procedures established by Italian law. However, the methods required by the foreign authority are effected insofar as they are compatible with the principles of the Italian legal system. In any case, the deed may be delivered, by the person effecting service, to the addressee who voluntarily accepts it.

As a general rule, in Italy, the service of judicial acts is carried out by lawyers and in some cases by bailiffs ('*ufficiali giudiziari*')[72], who are also the only ones competent under Regulation (EC) No. 1784/2020 to perform the transnational service of documents.

In general, Italian bailiffs perform the service of documents either by personal service in the hands of the addressee, by post, or electronically via certified e-mail[73]. For the time being,

civile, in *Studium Iuris*, 2001, p. 517; A. GALIC, *Service Abroad in Civil and Commercial Matters-From the Hague Conventions to the EU 1393/2007 Regulation. Available at* **https://www.researchgate.net/publication/338358127_SERVICE_ABROAD_IN_CIVIL_AND_COMMERCIAL_MATTERS_-FROM_THE_HAGUE_CONVENTIONS_TO_THE_EU_13932007_REGULATION**

[70] Legge 31 maggio 1995, n. 218; Riforma del sistema italiano di diritto internazionale privato, O.J.No. 128, 3 June 1995.

[71] The President of the Tribunal territorially competent shall transmit the request for service to the public prosecutor. On this point, see generally F. POCAR, *L'assistenza giudiziaria internazionale in materia civile*, cit., p. 115.

[72] See art. 59 of the Italian CCP: "The bailiff has the responsibility of […] serving documents".

[73] Art. 137 of the Italian CCP.

however, the electronic transmission of documents by certified e-mail is only accepted before the tribunals. Before Justices of Peace, on the other hand, documents cannot be served electronically; only service at the addressee's hands and by post is possible[74].

Italian Justices of Peace are not in the habit of serving documents. Interested parties are required to check with the competent office whether the documents to be served are ready, request (and pay for) a copy and then contact (and pay) a bailiff to serve them on the other party. While other European courts interpret the provisions of the ESCP Regulation (such as art. 5(2), according to which "[a] copy of the claim form […] shall be served on the defendant") as meaning that the court itself must serve the documents, Italian Justices of Peace interpret the same provisions as meaning that the interested party must check when the document is ready and then serve it on the other party[75]. This might turn out to be a major hurdle for foreign parties, especially considering that contacting Justices of Peace might not be easy. The Justices of the Peace's websites are not always up-to-date, and communication by phone or letter may only be available in Italian[76].

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

Article 16, par. 4 of the Law Decree 179/2012 states that "In civil proceedings, communications and notifications by the Registry shall be made exclusively by telematics means to the certified e-mail address ("*posta elettronica certificata*" – PEC), resulting from public registries, or in any case accessible to public administrations, according to the legislation, including regulations, concerning the signing, transmission and receipt of electronic documents". An exception to this general rule is provided for in par. 8 of Article 16, stating that "When it is not possible to proceed pursuant to par. 4 for reasons beyond the addressee's control, in

[74] This is due to the circumstance that the Justices of Peace have so far been excluded from the process of digital transformation of Italian civil proceedings. According to Art. 32(5) of the Legislative Decree of 13 July 2017, No. 116, the procedure before Justices of Peace will be digitalized (as it is already the case for tribunals) as of 31 October 2025.

[75] G. YEIN NG, *Testing Transborder Civil Procedures in Practice: Findings from Simulation Experiments with the European Payment Order and the European Small Claims Procedure*, in CONTINI, LANZARA (eds.), *The Circulation of Agency in E-Justice*, Springer, 2014, p. 265-286, at 278-279.

[76] G. YEIN NG, *Testing Transborder Civil Procedures in Practice*, cit., p. 278-279.

civil proceedings service shall be effected pursuant to Art. 136 par. 3 and Art. 137 et seq. of the CPC".

It's clear that in Italy the advent of information technology led to telematic notifications prevailing over the traditional methods of document delivery. This evolution has affected communications and notifications made by the Registry as well as notifications made by bailiffs and those made by Attorneys themselves pursuant to the Law No. 53/1994[77].

In the cases stated by par. 8 of Article 16 of the Law Decree 179/2012, simple service is effected by means of a 'registry note' (*biglietto di cancelleria*), which may be in paper form or sent by certified e-mail (PEC), as provided for in Article 136 CPC (as amended by Law No. 183/2011). If it is on paper form, the note consists of two parts, one of which is sent by the court registrar to the addressee, who signs a receipt form, while the other is kept on file in the registry. If it is sent by certified e-mail, the note consists of the message sent to the address that the lawyer must have indicated in the summons or other initiating document.

Certified e-mail became compulsory for simple service with the entry into force of Article 16(4) of Legislative Decree (*Decreto Legislativo*) No. 179/2012, which provides that simple service and formal notification from the registry must be effected exclusively via electronic means to the PEC address.

If it is not possible to serve by PEC, the registry note can be sent by fax, or delivered to the bailiff for formal notification.

Formal notification is effected by the bailiff; if the address is in the municipality (*comune*) where the bailiff's office is located, the bailiff serves the document in person, whereas if the address is outside that municipality the bailiff serves the document by mail (Articles 106 and 107 of Presidential Decree No. 1229/1959) unless the requesting party or authority expressly requires personal service. Formal notification consists of the delivery to the addressee of a certified copy of the original (Article 137 CPC) and must be effected between 7 a.m. and 9 p.m. on a working day (Article 147 CPC).

Formal notification by personal service: the bailiff delivers the copy in person to the addressee, preferably at his or her domicile in order to protect his or her privacy, but otherwise anywhere within the limits of the bailiff's territorial authority.

[77] G. RUFFINI, *Il processo telematico nel Sistema del diritto processuale civile*, cit., p. 333.

Where a natural or legal person has indicated another person's residence or office as address for service, the documents must be served on the person designated to receive service at that address, and this is deemed to constitute service on the addressee (Article 141 CPC). By way of exception to this rule, summonses with a view to eviction (*citazioni per convalida di sfratto*), enforceable titles (*titoli esecutivi*) and orders requiring payment (*precetti di pagamento*) may not be served to an elected address for service.

By Law, service on State administrations must be effected at the State Legal Office (*Avvocatura di Stato*, Article 144 CPC).

In the case of service on a legal person, the document is delivered to the representative or to other persons empowered to receive service at the registered office of the company, or, in the absence of such persons, to the doorkeeper, but in this case service may also be effected on a natural person who represents the company, applying the procedures for formal notification on natural persons, provided that the document to be served names that person as representative and also indicates their residence, abode or centre of interests (Article 145 CPC).

Formal notification by mail: as an alternative to personal service, formal notification may be effected by mail, unless expressly prohibited by law (as established by Article 149 CPC and by Law No. 890/1982). If service is to be carried out in the municipality where the bailiff's office is located, the bailiff may use the postal service; if service is to be carried out elsewhere, the bailiff must use the postal service. In these cases, the copy of the document is placed in a special envelope for registered mail, complete with an acknowledgement of receipt slip, both of them coloured green and following a standard form that allows them to be traced. This also enables the bailiff to effect formal notification outside his or her own territory.

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

In certain circumstances, a lawyer may effect formal notification either by mail, provided that he or she holds an appropriate power of attorney for the case and is so authorised by the

Council of the Bar Association (*Consiglio dell'Ordine*) where he or she practises, or by direct delivery to the address of another lawyer authorised to accept service on behalf of one of the parties and registered with the same Bar Council as the lawyer effecting service (Law No. 890/1982 and Law No. 53/1994). Additionally, a lawyer does not need authorisation from the bar council to effect formal notification via certified email (*posta elettronica certificata*, 'PEC') to an email address obtained from the public registers (Article 3 *bis* of Law No. 53/1994). Pursuant to the rules concerning the "On Line Civil Trial", service is handled by the certified e-mail system (called PEC, acronym for "Posta Elettronica Certificata") which is adopted according to national legislation and technical rules, valid both for all public administrations and citizens.

In summary, these rules and specifications require that e-mail messages receive an official delivery receipt to be certain of delivery and its exact time. Both messages and receipts are digitally signed by the sender's provider and the recipient's provider to guarantee authenticity, non-repudiation and integrity. PEC providers are authorized by AgID- "Agency for Digital Italy", the highest authority for ICT in Italy, which also supervises providers to ensure compliance with the rules, especially on the security side. For e-filing of legal acts by external users, the payload (i.e. the electronic act itself and all attachments) consists of an encrypted S-MIME envelope, which must be attached to the PEC message. The envelope must contain the legal act in PDF format, digitally signed by the author, together with a specific XML file, providing structured information (according to the type of act), also digitally signed, and all documents attached to the legal act. The official time of delivery to the court, to be taken into account in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent back to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceedings for on-line queries. A PEC message is also sent whenever an electronic communication or notification has to be delivered to the lawyers or other recipients: in this case the content and the message are automatically prepared and sent by the Case Management System after recording the specific procedural event and in case the recipient owns a PEC address (retrieved from the Electronic Address Book). Once sent,

the system automatically retrieves the PEC receipts of the message from the PEC provider and stores them into the File System, alerting the court clerk in case of a delivery failure (the PEC system tries to deliver the message within 24 hours). The different methods of service have equal value and may be alternatively chosen.

10.4. What Considerations must the deciding Court take into account when choosing the method of service?

The shortage of personnel in the Italian judicial offices has highlighted the need for the reform that allowed lawyers to carry out notification on their own.

It is necessary to notify through the bailiff in the cases referred to in Art. 143 c.p.c., in notifications abroad or when recourse to art. 140 c.p.c. is considered convenient, as well as when the authority orders that the notification is carried out in person (and not by mail).

The addressee must be sought with ordinary diligence and in good faith. However, if the addressee cannot be found, service is effected by depositing a copy at the town hall of the last known place of residence or, if the place of residence is unknown, at the town hall of the place of birth. If this is also unknown, or if it is located abroad, the document is delivered to the prosecution service (Article 143 CPC)[78].

Moreover, if service is not possible in any of the ways described, because the addressee is absent for the time being and the other persons who could receive the document are absent, or unfit, or refuse to accept the service, the bailiff will deposit the copy of the document, in a sealed envelope, at the town hall of the municipality where the notification is to be served, affix a notice of deposit in a sealed envelope to the door of the addressee's home or office, and send the addressee a registered letter with acknowledgement of receipt to inform him or her that the document has been deposited at the town hall (Article 140 CPC).

[78] Civ. Cassation, s. I, 7 February-27 March 2008, n. 7964.

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

The new regulation of cross-border services is a legislative instrument of enormous practical importance for legal actors, individuals and businesses. This latest update and modernisation should help to reduce delays and costs, two of the great fears that users of the administration of justice very often have.

However, we must point out that the stratification of different sources has increased following the entry into force of the EU Regulation 1784/2020. Each source provides for slightly different rules on the subject matter, content, format and attachments to the certified e-mail message, the technical regulation of the methods of execution of communications and notifications of procedural documents, which vary according to the documents to be served. After 1st July 2022, as already outlined (see above par. 1), Italy adopted some acts following Law 206/2021, again modifying the PCT[79].

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.)

Article 142 of the Italian CPC[80] states that if the addressee does not have residence, abode or domicile in the State and has not elected domicile there or set up a legal representative pursuant to art. 77 CPC, the deed is served by sending it to the addressee by registered mail and delivering another copy to the public prosecutor who takes care of forwarding it to the Ministry of Foreign Affairs and International Cooperation for delivery to the person to whom it is addressed[81].

[79] Law Decree 10 October 2022, No. 149, Law Decree 29 December 2022, No. 198.
[80] As amended by the Legislative Decree 30 June 2003, No. 196.
[81] Cass., sec. II, 31 January 2019, No. 2966.

This is without prejudice to the application of the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention) [82].

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

YES, within the Italian civil procedure system, we can outline several services for special documents.

Procura alle liti – Power of Attorney

Article 83, par. 3 CPC rules the Power of Attorney, as amended by Article 45, par. 9, of the Law No. 69/2009. The Power of Attorney may be signed electronically by the Claimant and inserted in the same file signed by the Attorney and certified by the latter. The Power of Attorney must be included in the PEC message relating to the notification pursuant to Art. 3 bis l. 53/1994 as an attachment to the file containing the main deed to be notified and the one containing the Power of Attorney[83].

Sentenza- Judgment

Article 326 CPC states that the time limit for Appeal provided for in Article 325 CPC run from the service of the Judgment. Therefore, if one of the parties wishes to speed up the formation of the res judicata, that party must proceed with the service of the judgment on the attorney of the counterparty legally constituted in the proceeding that led to the Judgment[84]. In this case, the serving should be effected to the elected domicile of the attorney but the

[82] The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters has been in force internationally since 10 February 1969. In Italy it has been in force since 24 January 1982- see the Law 6 February 1981, n. 42 (text available at www.hcch.net). See above par. 10.1.
[83] G. RUFFINI, *Il processo telematico nel Sistema del diritto processuale civile*, cit., p. 400.
[84] Civ. Cassation, 1 September 2014, No. 18493.

serving may be made also to the office of the attorney according to the Italian Supreme Court[85].

Esecuzione di una sentenza-Enforcement of a local Judgment

Before enforcing a judgment, the judgment creditor must first:

Ask the clerk's office of the court that issued the judgment to affix a special stamp - called "*formula esecutiva*" - to the judgment (this is the official order to the bailiff to enforce the judgment).

Serve on the debtor a formal request to pay the amount due within a period of not less than ten days from the service of the formal request.

In the event of non-payment by the deadline indicated in the formal request, the creditor may start enforcement proceedings by:

- Seizing the debtor's assets, including movable assets and real estate. These assets will then be auctioned according to the judge's instructions to enable the creditor to recover his or her credit through the auction proceeds;
- Freezing the debtor's funds and/or credits owned by a third party. The judge will then allocate these funds and/or credits to the creditor.

Decreto ingiuntivo- Injunction

Article 643 CPC rules that once the injunction has been obtained, the lawyer of the claimant must proceed to notify it together with the claim for the injunction[86]. Thus, it's clear that service is a task of the claimant.

Moreover, Art. 644 CPC states that the plaintiff is required to serve the order for payment within 60 days from the issuanceof the order, otherwise the order for payment is declared void.

[85] Civ. Cassation, 14 December 2017, n. 30139; Civ. Cassation, 11 May 2017, n. 11593; Civ. Cassation 28 September 2018, n. 23620. Generally see N. GARGANO, *Notifica telematica delle sentenze ai fini della decorrenza del termine breve per l'impugnazione*, in www.ilprocessotelematico.it

[86] A. NERI, *I procedimenti speciali, Il procedimento di ingiunzione,* in G. RUFFINI, *Il processo telematico nel Sistema del diritto processuale civile*, cit., p. 774.

That is why there is much debate in Italy as to who is in charge of serving the European Payment Order - henceforth EPO - provided for in the EU Regulation 1896/2006[87]. It's widely debated whether it is the duty of the parties to serve the EPO when the court communicates the issuance or rejection of the EPO to the applicant[88].

The service of the "*Decreto Ingiuntivo*" may be made by the Claimant's Attorney by means of PEC (art. 3 l. 53/1994), by bailiffs (art. 137 CPC), in the case of the debtor's lack of PEC address, and by the UNEP - Ufficio Notifiche Esecuzioni e Protesti, following a formal request of the claimant, pursuant to Article 17 d.m. No. 44/2011.

In case of provisional enforceability of the "Decreto Ingiuntivo", pursuant to Article 642 CPC, the Attorney, before proceeding to serve, must request a copy of the deed issued pursuant to Article 153 disp. att. CPC from the Court Registry, as it is not currently possible to issue an executive copy of an IT deed.

Small Claims Procedure

Article 5(2) of the Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (henceforth the ESCP Regulation), as amended[89], according to which "[a] copy of the claim form […] shall be served on the defendant") is usually interpreted as meaning that the court itself must serve the documents, through the registry of the Court[90]. Italian Justices of Peace interpret the

[87] Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (the so-called EOPP Regulation), the consolidated version of which is available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1896-20170714.

[88] M. MELLONE, *L'onere della notifica nell'ingiunzione di pagamento europea: il difficile rapporto tra modello processuale europeo e norme nazionali*, in *Diritto dell'Unione europea*, 2014, 2, p. 273; M. R. CULTERA, *Il procedimento di ingiunzione europeo. Le ragioni della scelta regolamentare,* Le nuove leggi civili commentate, 2008, p. 714.

[89] The consolidated version of the ESCP Regulation is available at . For an overview of the aims and contents of the ESCP Regulation, cf. M. HAZELHORST, *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*, Cham, Springer, 2017, p. 383-397; S. KRAMER, *European Procedures on Debt Collection: Nothing or Noting? Experiences and Future Prospects*, in B. HESS, M. BERGSTRÖM, E. STORSKRUBB (eds.), *EU Civil Justice. Current Issues and Future Outlook*, Oxford-Portland, Hart, 2015, p. 97-122; S. KRAMER, *The European Small Claims Procedure. Striking the Balance between Simplicity and Fairness in European Litigation*, in *Zeitschrift für europäisches Privatrecht*, 2008, p. 355-373; P. MC ELEAVY, *Current Developments – Private International Law*, in *International and Comparative Law Quarterly*, 2008, p. 449-465.

[90] E. D'ALESSANDRO, *Regolamento 11 luglio 2007, n. 861 istitutivo di un procedimento per le controversie di modesta entità*, in www.judicium.it , 5 October 2010.

same provisions as meaning that the interested party must check when the document is ready and then serve it to the other party[91].

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.)

Electronic document service via secure communication methods is considered more or less istantaneous; postal service in Italy takes around 5-10 days with the exception that there is no postal service on Sundays and National Holidays.

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 general principle is that a document is served once it is handed over to the respondent, who thereby accepts service.

Art. 147 CPC[92], applicable to bailiffs and lawyers alike, codifies the principle of the objective division. As for the claimant, the document is served when the "ricevuta di accettazione" - "acceptance receipt" is issued; as for the respondent, when the "ricevuta di avvenuta consegna - receipt of successful delivery" is generated. (Art. 147, par. 3 CPC).

Art. 149 bis, par. 3, CPC states that the notification is effected when the provider makes the electronic document available in the recipient's certified e-mail box.

[91] G. YEIN NG, *Testing Transborder Civil Procedures in Practice: Findings from Simulation Experiments with the European Payment Order and the European Small Claims Procedure*, in F. CONTINI, G. F. LANZARA (eds.), *The Circulation of Agency in E-Justice*, Springer, 2014, p. 265-286, at 278-279.
[92] As recently amended by Art. 3, par. 11, d, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022. On this see V. BERTOLDI, *Notificazioni,* cit., p. 138.

Many Scholars harshly criticise these rules[93]; on one hand, they point out that these rules do not clearly distinguish the case of service through a bailiff from the case of the serving through lawyers and, in fact, Art. 147 par. 3 CPC seems to have been conceived only for the lawyers' activity; on the other hand, Art. 149bis, par. 3 CPC is inconsistent with the principle of the objective splitting, considering only the moment of delivery of the document to the certified e-mail box, and the position of the respondent. To solve this contradiction, it's therefore necessary to follow the solution proposed by many Scholars[94] and to consider, when applying Art. 149bis, par. 3 CPC to bailiffs' service, as for the claimant the moment of the material delivery of the paper document to the bailiff.

The considered rules apply in any case, regardless of the successful reading of the PEC message[95].

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.)

When the recipient is served at an address not used, several cases must be distinguished:

- The recipient forgot to erase the address or make arrangements to be informed of the service of documents at this address: in this case, Article 143 CPC states that if the residence, abode and domicile of the addressee are unknown and there is no attorney pursuant to Article 77, the bailiff carries out service by depositing a copy of the deed in the town hall of the addressee's last residence or, if this is unknown, in that of the addressee's place of birth, and by posting another copy in the register of the judicial office before which the service is made.

[93] V. BERTOLDI, *Notificazioni,* cit., p. 138; F. PORCELLI, Le comunicazioni e le notificazioni, in G. RUFFINI, *Il processo telematico nel Sistema del diritto processuale civile*, cit., p. 375.
[94] F. PORCELLI, *Le comunicazioni e le notificazioni*, cit., p. 375.
[95] M. GUALTIERI, *Sulle notifiche in proprio dell'avvocato a mezzo posta elettronica certificata*, in *Riv. dir. proc.*, 2013, p. 1081.

If neither the place of last residence nor the place of birth are known, the bailiff delivers a copy of the document to the public prosecutor [disp. att. 49].

- In case of notification made pursuant to Art. 140 CPC, at the addressee's place of residence resulting from the personal records, if the addressee has moved elsewhere and the notifier or the bailiff has knowledge of this fact, or, using ordinary diligence, could have known the actual residence, abode or domicile, where he is required to serve the deed, the service is null and void[96].
- In case of service to the addressee's PEC, I would like to recall once again the fact that Attorneys, Professionals, Individual and Collective Companies, and the Public Administration are responsible for managing their own e-mailboxes and are required to check the PEC box by verifying the presence of incoming PEC messages, ascertaining the correct functioning of anti-spam, anti-saturation, antivirus software, and avoiding the classification of incoming messages in Junk Mail. The negative consequences of non-compliance with the obligations imposed on the holder of the PEC mailbox fall on these subjects (owners of the PEC). However, as telematic notification is not mandatory for attorneys, in case of service difficulties due to the lack of the addressee's PEC, attorneys may use the service through mail to the elected domicile, by means of bailiffs or at the Judicial Authority registry.

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).

Article 139 CPC states that in the case of service effected by bailiffs at the domicile of the recipient, service is valid, even if made to a neighbour, who is at least 14 years old and apparently capable, and who accepts and signs the receipt as stated by the Italian Supreme Court[97].

[96] Civ. Cassation 4 May 1993 No. 5178, Civ. Cassation, 25 November 1988 No. 6344, Civ. Cassation, 7 October1982 No. 5137, Civ. Cassation, 16 March 1982, No. 1714.
[97] Civ. Cassation 28 March 2018, No. 7638.

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.)

Lawyers can electronically file a claim through a specialized lawyer's electronic communication system. Pursuant to the rules concerning the "On Line Civil Trial", service is handled by the certified e-mail system (called PEC, acronym for "Posta Elettronica Certificata") which is adopted according to national legislation and technical rules, valid both for all public administrations and citizens.

In summary, these rules and specifications require that e-mail messages receive an official delivery receipt to be certain of delivery and its exact time. Both messages and receipts are digitally signed by the sender's provider and the recipient's provider to guarantee authenticity, non-repudiation and integrity. PEC providers are authorized by AgID- "Agency for Digital Italy", the highest authority for ICT in Italy, which also supervises providers to ensure compliance with the rules, especially on the security side.

For e-filing of legal acts by external users, the payload (i.e. the electronic act itself and all attachments) consists of an encrypted S-MIME envelope, which must be attached to the PEC message. The envelope must contain the legal act in PDF format, digitally signed by the author, together with a specific XML file, providing structured information (according to the type of act), also digitally signed, and all documents attached to the legal act. The official time of delivery to the court, to be taken into account in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent back to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on the files are available for all parties involved in the proceedings for on-line queries. A PEC message is also sent whenever an electronic communication or notification has to be delivered to the lawyers or other recipients: in this case the content and the message are automatically prepared and sent by the Case Management System after recording the specific procedural event and in case the recipient owns a PEC address (retrieved from the Electronic

Address Book). Once sent, the system automatically retrieves the PEC receipts of the message from the PEC provider and stores them into the File System, alerting the court clerk in case of a delivery failure (the PEC system tries to deliver the message within 24 hours).

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.)

The addressee must be sought with ordinary diligence and in good faith. However, if the addressee cannot be found, service is effected by depositing a copy at the town hall of his or her last known place of residence or, if the place of residence is unknown, at the town hall of his or her place of birth. If this is also unknown or if it is abroad, the document is delivered to the prosecution service (Article 143 CPC).

In this case, the document is considered to have been served 20 days after deposit or delivery to the prosecution service.

In these cases (unknown domicile of the recipient), it is considered appropriate to search for the addressee's digital domicile, using the IT services, in order to comply with the fundamental principle of effective knowledge of judicial acts[98] .

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?

Other methods of service can be used in Italy, including (*Service of Documents Regulation*; *Hague Service Convention*).

- Direct service through an Italian bailiff.

[98] As affirmed by App. Bari, 5 April 2022, no. 562 cit. In this case, the Court of Appeal of Bari stated that service pursuant to Art. 143 of the CPC is considered null and void if the notifier has not previously attempted to reach the addressee at his/her digital domicile – a notion necessarily included in the domicile pursuant to Art. 170 CPC.

- Transmission of documents through consular or diplomatic channels between Member States' central authorities.
- Service through diplomatic or consular agents (only when the document must be served on a citizen of the same Member State requesting service).
- Service through postal services.

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

Even if residually, Italian System provides for two methods of fictitious service made in Italy on a person resident abroad, or in Italy on a person with unknown residence.

Article 142 of the Italian CPC states that if the addressee does not have his or her residence, abode or domicile in the State and has not elected domicile there or set up a legal representative pursuant to Art. 77 CPC, the deed is served by sending it to the addressee by registered mail and delivering another copy to the public prosecutor who takes care of forwarding it to the Ministry of Foreign Affairs and International Cooperation for delivery to the person to whom it is addressed.

Article 143 CPC states that if the residence, abode and domicile of the addressee are not known and there is no attorney pursuant to Article 77 CPC, the bailiff carries out the service by depositing a copy of the deed in the town hall of the addressee's last residence or, if this is unknown, in that of the addressee's place of birth, and by posting another copy in the register of the judicial office before which the service is made. If neither the place of last residence nor the place of birth are known, the bailiff delivers a copy of the document to the public prosecutor [disp. att. 49].

Recalling the considerations developed by the ECJ in the *Alder* case[99], the Italian Supreme Court affirmed that virtual service provided for by Article 142 CPC in the case of service

[99] ECJ 19 December 2012, Case C-325/11, Krystyna Alder and Ewald Alder v Sabina Orlowska and Czeslaw Orlowski, ECLI:EU:C:2012:824. In this case, the ECJ excluded that Regulation 1393/2007 could allow the application of a Member State's legislation, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State shall be included in the case file and deemed effectively served, if that party has failed to appoint a representative authorized to accept service and residing in the first Member State where the court proceedings take place.

abroad must be the *"extrema ratio",* if the addressee cannot be identified after a very careful and diligent research[100].

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?

As already poined out (see above par. 2), the Italian System is generally known for adopting service by "*signification au parquet*", under which service is perfected with the fulfilment of the formalities, or with the sending of the deed to 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.)

In Italy we may find a service similar to that of publication within the rule of Article 150 CPC.

In fact, Article 150 CPC states that when service in the ordinary manner is extremely difficult due to the large amount of addressees or the difficulty of identifying them all, the head of the judicial office before which the proceeding is pending may authorize, upon request of the interested party and having heard the public prosecutor, service of publication - or service for public announcements. The authorization is given by a decree of the Judge included in the deed to be notified; where necessary, the addressees on whom the notification must be made in the ordinary forms are designated and the methods that seem most appropriate for bringing the deed to the attention of the other interested parties are indicated. In any case, a copy of the deed is deposited in the town hall of the place where the judicial office before which the trial is promoted or held is located and an extract from it is inserted in the Official Gazette – "*Gazzetta Ufficiale*"- of the Republic and in the notice sheet lawyers of the provinces where the addressees reside or where most of them are presumed to reside. Service shall be deemed to have taken place when, after carrying out what is prescribed in this article, the bailiff deposits a copy of the deed, together with the report and supporting documents,

[100] Cass., 16 December 2021, No. 40467, in *De Jure*. For the application of this principle, see also Trib. Vicenza, 24 November 2021, in *De Jure*; App. Bari, 5 April 2022, No. 562 cit.

at the registry of the judge before whom the proceedings are pending. This form of notification is not permitted in proceedings before the Justice of Peace.

This type of service is used, for example, in proceedings concerning the usucaption of immovable when there are several heirs and it is not easy to find their correct addresses.

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

Italian case law concerning the conditions of service highlights the possibility of assessing such conditions by the Court of Appeal, as stated by the Supreme Court[101], in case of service pursuant to Art. 150 CPC, pointing out that the service of the writ of summons, insofar as it is aimed at bringing the claim to the attention of the party against whom it is proposed, constitutes an indispensable condition of the proceedings. In case of omission of the fulfilments foreseen by the law for the notification of public proclamations, the Court of appeal may declare the non-existence of the notification.

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?

Fictitious or virtual methods of service may be in conflict with fundamental rights.

International and national legislation on service aims at offering a smooth cross-border service of judicial and extra-judicial documents in civil and commercial matters, while safeguarding a high level of security in the transmission of legal documents and the rights of the addressee. Proper service is a necessary step for starting proceedings and from this point of view, fictitious service could contribute to this aim, but at the same time service is an essential requirement for exercising the addressee's right of defence. For this reason, fictitious or virtual service could be in conflict with fundamental principles, such as the right to a fair trial and the right to be heard, enshrined in several Acts of International Law such as the

[101] Civ. Cassation, s. II, 19 December 2011, No. 27520, Civ. Cassation, sec. II, 19 December 2011, n. 27520 available at https://sentenze.laleggepertutti.it/sentenza/cassazione-civile-n-27520-del-19-12-2011 .

European Convention on Human Rights (henceforth ECHR) – Art. 6[102] - or such as the Charter of the Fundamental Rights of the European Union (Art. 47), and also recalled by national law, as for example by the Article 24 of the Italian Constitution. In Italy, the principle of cross-examination enshrined in Article 111 of the Constitution could also be at stake in the case of fictitious or virtual service[103].

More generally, this issue is part of the variety of questions related to the need to balance the drive for efficiency of supranational legislation with respect for the fundamental rights of the parties involved, such as those related to the language regime envisaged and the procedures established for the possible rejection of the document served (see *infra*)[104].

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

Service is necessarily functional to these fundamental rights and the Hague Convention 1965 provides two rules highlighting the conflict of fictitious methods of service with international and national procedural principles.

Article 15, par. 1, of the 1965 Hague Convention states that, when a document instituting proceedings or an equivalent document has been transmitted abroad for service in accordance with the provisions of the Convention and the defendant has not appeared, the judge is required to stop the proceedings until he has ascertained: a) that the document was served in the manner prescribed by the law of the requested State, or b) that the document was actually delivered to the defendant or to his/her residence according to another procedure provided

[102] B. JURATOVICH, *The European Convention on Human Rights and English Private International Law*, in *Journ. Private Int. Law*, 2007, p. 183; S. BESSON, *General Principles of International Law – Whose Principles?* In S. BESSON, P. PICHONNAZ, *Les principes en droit européen. Principles in European Law*, Zurich, 2011, pp. 19 – 64; S. BESSON, *La structure et la nature des droits de l'homme,* in M. Hottelier, M. Hertig (eds)., *Introduction aux droits de l'homme*, Brussels, 2014, pp. 19 – 38.

[103] As outlined by Italian Case Law: Cass., 16 December 2021, No. 40467, cit.; Trib. Vicenza, 24 November 2021, in *De Jure*; App. Bari, 5 April 2022, No. 562 cit.

[104] On this topic, see: S. DOMINELLI, *Current and Future Perspectives on Cross-border Service of Documents. Current and Future Perspectives on Cross-Border Service of Documents, Scritti di diritto privato europeo e internazionale*, 2018, available at **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3259980**, V. RICHARD, *La refonte du règlement sur la notification des actes judiciaires et extrajudiciaires,* in *Revue Critique de Droit International Prive,* 2021, pp. 349–60; P. GIELEN, M. SCHMITZ, *La signification des actes judiciaires et extrajudiciaires in Europe. Analyses, jurisprudences et perspectives du règlement UE n. 2020/1784,* available at : **https://www.librairiedalloz.fr/livre/9782802766926-la-signification-des-actes-judiciaires-et-extrajudiciaires-en-europe-patrick-gielen-marc-schmitz-collectif/**.

for by the Convention, and that, in each of these cases, "both service and delivery took place in sufficient time for the defendant to have had the opportunity to defend himself/herself".

However, Article 15.2 of the 1965 Hague Convention gives States Parties the right to declare that their judges may continue the process, despite the lack of proof of service, communication or surrender, provided that a period of at least six months has elapsed since the date of sending of the deed and that the methods for transmitting the deed provided for by the Convention have been respected.

Moreover, Article 16 of the 1965 Hague Convention provides that the judge may grant the parties new terms of appeal, if an introductory claim has to be served abroad and a decision has been issued against a defendant who has not appeared, if the latter, without fault, has had no knowledge of the deed in sufficient time to defend himself/herself or of the decision in sufficient time to appeal, and if the reasons for the appeal do not appear to be wholly unfounded.

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.)

In Italy, the CPC provides rules for cases where acceptance of the document is refused by the recipient.

Art. 140 CPC states that if service is not possible in any of the ways described, because the addressee is absent for the time being and the other persons who could receive the document are absent, or unfit, or the addressee refuses to accept the service, the bailiff will deposit the copy of the document, in a sealed envelope, at the town hall of the municipality where the notification is to be served, affix a notice of deposit in a sealed envelope to the door of the addressee's home or office, and send the addressee a registered letter with acknowledgement of receipt to inform him or her that the document has been deposited at the town hall (Article 140 CPC).

In this case, the formalities required for such a notification are numerous and not necessarily completed on the same day. The case-law has provided a conclusive interpretation of the

legislation: it has established that the date on which service is effected, as far as the applicant is concerned, coincides with the last formality, namely sending the registered letter containing the notice of deposit at the town hall, while as far as the addressee is concerned, it is the date of expiry of the ten-day period of deposit at the post office, or the date on which the document is collected, whichever is earlier.

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].)

In Italy, the use of Italian language is mandatory in civil proceedings pursuant to Art. 122 of the Italian CPC, according to which "The use of the Italian language is mandatory throughout all the proceedings".

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.)

In Italy there are no regular claim forms to be used, with the exception of European payment injunctions or other European forms such as in Small Claims Procedures.

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].)

In civil cases, the party that requests formal notification must cover the costs, which consist of the fees to be paid to the Treasury (*erario*), as well as the transport and delivery charges owed to the bailiff for documents served away from the location of the bailiff's office.

This issue is regulated by Presidential Decree No. 115 of 30 May 2002 (Consolidated Law on legal costs), which also fixes the amount of such costs. The party who initiates proceedings must pay in advance the fees, transport and delivery charges for formal notifications served at the registrar's request, at a standard flat rate of EUR 27.00; for formal notifications

requested by the parties, the applicant must pay a fee indicated in Articles 34 ff. of Presidential Decree No. 115/2002, which varies in accordance with the number of addressees, the distance in kilometres and the urgency.

In other areas of law, including employment and welfare cases, separation and divorce proceedings, and cases in which a person of insufficient means is eligible for state legal aid, the party is exempt from paying the costs of service, which are charged to the Treasury.

LEGAL IMPLICATIONS OF SERVICE

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

Simple service is made with a 'registry note' (*biglietto di cancelleria*), which can be in paper form or sent via certified email (PEC), as provided for in Article 136 CPC (as amended by Law No. 183/2011). If it is on paper form, the note consists of two parts, one of which is sent by the court registrar to the addressee, who signs a receipt form, while the other is kept on file in the registry. If it is sent by certified e-mail, the note consists of the message sent to the address that the lawyer must have indicated in the summons or other initiating document. Certified e-mail became compulsory for simple service with the entry into force of Article 16(4) of Legislative Decree (*Decreto Legislativo*) No. 179/2012, which provides that simple service and formal notification from the registry must be effected exclusively via electronic means to the PEC address. If it is not possible to serve by PEC, the registry note can be sent by fax, or delivered to the bailiff for formal notification.

Formal notification effected by the bailiff; if the address is in the municipality (*comune*) where the bailiff's office is located, the bailiff serves the document in person, whereas if the address is outside that municipality the bailiff serves the document by mail (Articles 106 and 107 of Presidential Decree No. 1229/1959) unless the requesting party or authority expressly requires personal service. Formal notification consists of the delivery to the addressee of a certified copy of the original (Article 137 CPC) and must be effected between 7 a.m. and 9 p.m. on a working day (Article 147 CPC).

Formal notification by personal service: the bailiff delivers the copy in person to the addressee, preferably at his or her domicile in order to protect his or her privacy, but otherwise anywhere within the limits of the bailiff's territorial authority. Where a natural or legal person has indicated another person's residence or office as address for service, the documents must be served on the person designated to receive service at that address, and this is deemed to constitute service on the addressee (Article 141 CPC). By way of exception to this rule, summonses with a view to eviction (*citazioni per convalida di sfratto*), enforceable titles (*titoli esecutivi*) and orders requiring payment (*precetti di pagamento*) may not be served to an elected address for service.

Formal notification by mail: as an alternative to personal service, formal notification may be effected by mail, unless expressly prohibited by law (as established by Article 149 CPC and by Law No. 890/1982). If service is to be carried out in the municipality where the bailiff's office is located, the bailiff may use the postal service; if service is to be carried out elsewhere, the bailiff must use the postal service. In these cases, the copy of the document is placed in a special envelope for registered mail, complete with an acknowledgement of receipt slip, both of them coloured green and following a standard form that allows them to be traced. This also enables the bailiff to effect formal notification outside his or her own territory. Art. 149*bis* of the CPC[105] provides that Italian Bailiffs shall effect formal notification by certified e-mail (*posta elettronica certificata*, 'PEC') to an e-mail address resulting from public registers. Pursuant to the rules on the "On Line Civil Trial"- PCT, service are made by means of the certified mail system (called PEC, acronym for "Posta Elettronica Certificata"- "Electronic Certified Mail"), adopted according to national legislation and technical rules, valid both for all public administrations and citizens[106].

As already pointed out (under par.2 and 16.3.), the Italian Legal System is generally known for adopting the service through "*signification au parquet*", whereby service is perfected with the fulfilment of the formalities, or with the sending of the deed to the addressee.

[105] As amended by Art. 3, Par. 11, e, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022.

[106] This rule is scarcely applied due to the lack of PEC mail from Italian Bailiffs ("UNEP - Ufficio Notifiche Esecuzioni e Protesti"- henceforth UNEP). On this see V. BERTOLDI, *Notificazioni,* in R. Tiscini*, La riforma Cartabia del processo civile,* cit., p. 130.

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)

Procedural effects

Lis pendens is a procedural effect of proper service: notification is the official notice to the public that a lawsuit involving a claim has been filed. Therefore, as long as the dispute is pending, none of the parties may bring the dispute before another court or tribunal and the jurisdiction of the court hearing the case will not be affected by any change in the circumstances giving rise to its competence.

Another procedural effect of service concerns the time required for appeals.

An appeal must be started within either:

- 30 days from the date on which the judgment is served by one party on the other.
- Six months from the date of publication of the judgment, if the judgment has not been served.

Therefore, as already pointed out (see above par. 12.), pursuant to Article 325 CPC and Article 326 CPC, if one of the parties wishes to speed up the formation of the ***res judicata***, it must proceed to the service of the judgment on the attorney of the counterparty legally constituted in the proceeding that led to the Judgment[107] .

Substantial effects

In Italy, service may produce effects on the limitation period of rights. In principle, the limitation period for bringing a claim is related to the underlying statutory right. The standard limitation period is ten years. This applies, for example, to monetary claims. However, shorter limitation periods apply in the following cases:

[107] Civ. Cassation, 1st September 2014, No. 18493.

- Claims arising from torts: five years (unless the tort is considered a criminal offence, in which case the limitation period is the same as that provided under Italian criminal law for the prosecution of the crime).
- Claims relating to dealings between companies: five years.
- Claims for the recovery of legal interest due on a sum and claims related to wages to be paid annually: five years.
- Claims relating to insurance matters: two years.
- Claims relating to shipping matters: one year.

The limitation period starts to run from the date on which the relevant right can be exercised (Article 2934 CC), or, in the case of a tort, from the time when the injured party is in a position to know the damage and the author of the damage.

The limitation period may be interrupted by serving a written notice on the counterparty requesting the fulfilment of the relevant claim or by filing a civil complaint with the court. The running of time may be either suspended (e.g., if a legal proceeding is filed) or interrupted (e.g., by sending a written notice to the defaulting party.

Article 2943 of the Civil Code states that:

The prescription is interrupted (1073(6), 1310(1)) by the service of the paper whereby judicial proceedings are commenced, whether on the merits or conservation or enforcement.

It is also interrupted by actions instituted in the course of judicial proceedings (2945(2)).

The interruption is effective even if the court before which the action is submitted lacks jurisdiction.

The prescription is interrupted by any other act capable of placing the debtor in default (1219, 1957(4)) and by a duly served document whereby a party, in the presence of an arbitration agreement or an arbitration clause, declares to the other party its intention to institute arbitration proceedings, lays down its claim and proceeds, in its own name, to appoint arbitrators

Another substantial effect concerns the deadline for taking legal action. If the law sets this deadline, the notification of the application before the expiry of the deadline prevents the estoppel of the claim ("*decadenza*").

Another substantial effect concerns the debtor of an obligation, after service of the creditor's claim, the debtor is officially "put in default" -"*costituito in mora*" by the creditor.

Finally, from the day of the application's service, the overdue interest produces other interest (so-called "anatocism" – "*anatocismo*").

23. **What are the consequences of the respondent's 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.)

The writ of summons must be served on the defendant. There is a mandatory period of 120 days (Art. 163-*bis*)[108] between the date of service and the first hearing (150 days if the defendant is served abroad). The defendant has up to 70 days before the first hearing (art. 166 CPC[109]) to enter an appearance and file a statement of defence. The statement must include the defendant's position in relation to the facts described by the claimant in the writ of summons. Within the same time limit and under penalty of forfeiture, the defendant must formulate his or her counterclaims (if any).

At the first hearing, the court verifies the appearance of the parties.
If the defendant has failed to make appearance, the court will not immediately declare the absence of the party, but will check whether the writ of summons was served in accordance with the correct procedure. If this is established, the proceedings will formally go ahead in the absence of the defendant. This does not mean that the defendant may not participate in the proceedings at a later stage; however, the defendant is precluded from making submissions if the deadlines for them have expired during its absence.
It is important to note that there is no default judgment in Italy. The court will decide the claim on its merits, having followed, as far as possible, the procedural phases set out below. Clearly, the fact that the court will only hear the claimant's arguments makes a judgment in claimant's favour likely, but this is not a foregone conclusion.

[108] Legislative Decree 10 October 2022, n. 149, in O.J., n. 243, 17 October 2022..
[109] As amended by the Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022..

An extensive debate concerns the provision of Art. 7(3) of the ESCP Regulation: "If the court […] does not receive an answer from the relevant party within the time limits […], it shall issue a judgment".

Besides allowing for the issuance of a default judgment in the event of a defendant's failure to respond, Does Art. 7 of the ESCP Regulation also imply that the defendant's inactivity may be considered as fault? Can the defendant's silence be equated with what in Italian, using a Latin expression, is called a '*ficta confessio*', that is an implied admission of the legal worthiness of the claim? While a simple reading of Art. 7 of the ESCP Regulation seems to allow such a conclusion, the Italian judiciary tends to answer these questions in the negative.

It is interesting to recall two decisions here.

The first one was rendered by the Court of Milan on 30 May 2016, on an appeal against a decision rendered by a Justice of Peace in a dispute on copyright infringement in which the defendant had never appeared in court and the Justice of Peace had held that the defendant's absence equated to a *ficta confessio*[110]. The Court of Milan quashed the original decision. According to the Court, outside the areas covered by Art. 19 of the ESCP Regulation, the ESCP is governed by Italian rules of civil procedure; under the domestic rules, the claimant bears the burden to prove its claim even if the defendant did not appear before the court. Since, according to Italian civil procedure, the defendant's inactivity is never equated with an acceptance of the plaintiff's claim, a Justice of Peace judging pursuant to Art. 7(3) of the ESCP Regulation cannot rule in favour of the plaintiff merely because the defendant is absent, but is nevertheless obliged to examine the merit of the case.

A similar decision was adopted by the Court of Trieste on 3 March 2022, on an appeal against a decision by a Justice of Peace in a dispute over allegedly defective goods[111]. Before the Justice of Peace, the claimant argued on form A that the defective goods supplied to him by the defendant had caused him damage worth 5,000 EUR, while the defendant, in replying with form C, contested (to no avail) the applicability of the ESCP Regulation, without raising any defence on the merits; the Justice of Peace therefore awarded the claimant the sum of 5,000 EUR. Upon the defendant's appeal, the Court of Trieste quashed the decision. According to the Court, the first instance judge failed to verify whether the claimant's request was founded and, in particular, failed to require evidence that the defendant's negligence caused

[110] Tribunal of Milan, 30 May 2016, at https://www.uantwerpen.be/en/projects/ic2be/

[111] Tribunal of Trieste, 3 March 2022.

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the damage complained of by the claimant. For the Court of Trieste too, the defendant's silence could not be interpreted as relieving the claimant from proving the circumstances justifying its claim.

The question remains, of course, whether such a conclusion is in line with the aim of speeding up litigation pursued by the ESCP Regulation.

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

In Italy, service is considered effected when the formalities required by the law are fulfilled; in fact, this gives rise to a presumption of knowledge of the deed by the addressee. However, if the addressee detects the irregularity of service, he/she may assert this circumstance with relevant consequences in several cases.

Article 160 CPC states that "Service is void if the provisions regarding the person to whom the copy is to be delivered (1) are not observed, or if there is absolute uncertainty as to the person to whom it is to be made (2) or as to the date (3) (4), save for the application of Articles 156 and 157." The nullity of the notification may be remedied if the party served demonstrates to have had knowledge of the notified deed, e.g. by appearing in court following the irregular notification of the summons.

The case ruled by Article 153 CPC, pursuant to which peremptory terms may not be shortened or extended, even with the agreement of the parties, is different. The party who demonstrates that it has - for reasons not attributable to it - incurred in the expiry of time limit for defence may ask the judge to be relieved of the effect of the expiry of time. The Judge states pursuant to Article 294, par. 2 and par. 3 CPC that the time limit has expired. In the case of a "*ricorso per Cassazione*", served through certified e-mail (PEC), service sent to the mail address of the Corte di Cassazione, and not to the PEC address of the Cassazione cause the nullity of the service (not the non-existence) and allows the claimant to apply for relief from the effect of the expiry of time limit due to the mistake in sending the service to the wrong mailbox[112].

Moreover, Article 650 CPC allows opposition to the injunction, even after the expiry of the term set for opposition, when the respondent demonstrates that he or she did not have timely

[112] Civ. Cassation, 17 October 2019, No. 26430

knowledge of the provision due to irregularities in the service or due to unforeseeable circumstances and force majeure[113].

Article 668 CPC rules a similar remedy in cases of irregular service of summonses to validate evictions (*citazioni per convalida di sfratto*).

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.)

If the claimant does not appear at the first hearing and at the subsequent one fixed by the judge (on the respondent's request) and the respondent doesn't ask for a default proceeding, pursuant to Art. 181, par. 2, CPC, the Judge considers this act as an actual waiver of the action by the claimant and removes the proceeding from the registry.

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

If the claimant complains about the incorrectness of the service, the Italian Supreme Court's indication is to consider the service effective if the right of defence is considered to be guaranteed, notwithstanding the mistakes in service.

This indication has recently been reaffirmed by the Italian Supreme Court through the case law concerning service through certified e-mail (PEC). In this regard, it may be noted that the subject of the validity of notifications made by means of certified e-mail has always attracted particular attention in the development of case law. To date, there is a constantly evolving jurisprudential direction, but one that is consistent in recognizing this type of service as being valid to the widest extent.

For example, if the "subject" of the mail was not correctly written "*notificazione ai sensi della l. n. 53 del 1994*" – "service pursuant to Law No. 53/1994", as provided for by article

[113] Civ. Cassation, 12 May 2005, No. 957; Civ. Cassation, 29 November 2016, No. 24253, available at https://www.dirittoegiustizia.it/#/documentDetail/9185817. See L. GARBAGNATI, *Il procedimento di ingiunzione*, Milano, 2012, p. 205.

11 of Law 53/94, the service may be considered validly effected, as the Supreme Court observes that the right to defence is also guarantee through different means, such as the mention, in the subject line of the e-mail of "*notifica telematica*", instead of "*notificazione ai sensi della l. n. 53 del 1994*" – "service pursuant to Law 53/1994"[114].

Moreover, the Italian Supreme Court of Cassation[115] denied the possibility of invoking the addressee's lack of knowledge and/or unawareness of the notification of documents by means of PEC in the event that the certified e-mail notification is stored in the "junk mail" box and is mistakenly trashed without being opened.

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

If the Judge states service to be null, he/she must order service to be renewed, and the fees of the new service must be in charge to the registry or the bailiff or the attorney who caused the nullity of service, also considering the possibility of assessing the damages caused by the nullity of service (Article 162 CPC).

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

If the recipient has the opportunity to appear at the hearing, it's clear that the principle of equality of arms is not affected and indeed the CPC provides for the possibility to overcome the nullity of service (Article 156, par. 3 CPC), as the act reached its purpose.

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

[114] Civ. Cassation, 24 June 2020, No. 12488; Civ. Cassation 24 September 2020, No. 20039, in N. GARGANO, L. SILENI, G. VITRANI, *100 e più casi pratici di procedure telematiche,* Milano, 2021, p. 132.

[115] Civ. Cassation 23 June 2021, No. 17968, available at https://www.cfnews.it/media/1848/corte-di-cassazione-sezione-3-civile-23-giugno-2021-n-17968.pdf . In this case, the Italian Court of Cassation excluded that the erroneous deletion of the PEC message, which ended up in the junk mailbox, could constitute a fortuitous event or force majeure capable of supporting the failure to timely lodge the opposition. In fact, the Supreme Court ruled that it is the recipient's duty to ensure that the PEC box is working properly, in particular, "it is part of the ordinary diligence of the person in charge of receiving electronic mail (delegated by the owner, who is responsible for it) to also check the junk mail folder, given that messages coming from safe and reliable senders and not containing any attachment prejudicial to the recipient can be automatically placed in that folder". Consequently, the owner of the PEC account is obliged to carefully and constantly check all incoming e-mail, including that considered by the management software as "junk mail".

(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.[116])

In this respect, we may outline several cases[117].

1) When the nullity of service depends on a defect in the bailiff's activity, as in the cases indicated in Article 160 CPC, it does not also determine the nullity of the writ of summons. Therefore, such nullity may be rectified, not only by the appearance of the defendant at the hearing, but also by the renewal of the notification, which the judge must order if the defendant fails to appear (Article 291 CPC) and in this case the nullity is rectified with effect *ex tunc*.
2) Where the nullity depends on the activity of the party or the Attorney and concerns the person of the addressee or the place where the notification is to be performed (e.g. writ of summons to a corporation served in a place other than its seat), it gives rise to the nullity of the writ of summons and not only of the service. The misaddressed summons is not capable of achieving proper effect and the nullity of the service depends on the party's fault that extends to the writ of summons.
3) In the case of nullity of service and of the writ of summons, the defendant claiming not to have had any knowledge of the proceedings at first instance, due to nullity of service, may be relieved from the expiry of time to propose appeal (1 year from the publication of the Judgment), if he/she demonstrates such lack of knowledge.

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?

In the case underlined under point 25.2 and concerning the defendant claiming not to have had any knowledge of the proceeding at first instance, due to nullity of service, and being relieved from the expiry of time to propose appeal, it's clear that some principles may be compromised.

[116] BeckOK ZPO/*Dörndorfer*, § 166 para. 5.
[117] In case of serving affected by gross vices as for example serving to persons totally different from the ones addressed in the act or in case of return to the sender of the deed sent due to the absence of the addressee- see Cass., 14 May 1991, n. 5375, *Giur. It.,* 1992, I, 1, 522.

Article 327 CPC allows the claimant to be relieved from the expiry of time to appeal the Judgment only in case of total lack of knowledge of the proceedings at first instance, with a very heavy burden of proof in charge to the claimant.

This issue has been deeply analysed by Italian Scholars, above all in comparison with the similar rule provided for in Article 16 of the 1965 Hague Convention[118], requiring a less heavy requirement of lack of knowledge[119]. Arguably, Article 327 CPC highlights the need to speed up the Italian proceedings also against the cure provided for to overcome the irregularity of service and the right to a fair trial.

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?

As already pointed out (under par. 25.3.), the national discipline is stricter than the one set by the EU Regulation.

Article 22 of the EU Regulation provides several guarantees in favour of the respondent in the event that, notwithstanding the service effected pursuant to Regulation, the respondent fails to appear at the hearing[120]. The application of this rule, already provided for in Article

[118] Article 16: "When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge may relieve the defendant from the effects of the expiry of the time for appeal if the following conditions are fulfilled – a) the defendant, without any fault on his/her part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and b) the defendant has disclosed a prima facie defence to the action on the merits. An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.
Each Contracting State may declare that the application will not be considered if it is filed after the expiry of a period to be specified in the declaration, but which shall in no case be less than one year from the date of the judgment.
This Article shall not apply to judgments concerning the status or capacity of persons".

[119] P. BIAVATI, *Notificazioni e comunicazioni in Europa,* cit., p. 197; F. CARPI E B. CIACCIA CAVALLARI, *Notificazioni all'estero*, cit., p. 327.

[120] Article 22:" 1. Where a document instituting the proceedings or an equivalent document had to be transmitted to another Member State for the purpose of service under this Regulation and the defendant has not appeared, judgment shall not be given until it is established that the service or the delivery of the document was effected in sufficient time to enable the defendant to arrange a defence and that:
(a) the document was served by a method prescribed by the law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or
(b) the document was in fact delivered to the defendant or to the defendant's residence by another method provided for by this Regulation.
2. Each Member State may inform the Commission that a court, notwithstanding paragraph 1, may give judgment even if no certificate of service or delivery of the document instituting the proceedings or an equivalent document has been received, provided that all the following conditions are fulfilled:
(a) the document was transmitted by one of the methods provided for in this Regulation;
(b) a period deemed appropriate by the court in the particular case, which shall not be less than six months, has elapsed since the date of the transmission of the document;

19 of Regulation 1393/2007, and Article 19 of Regulation 1348/2000, is very doubtful in the Italian System. On one hand, some Scholars and some cases affirm the need to suspend proceedings to better guarantee the respondent's right of defence[121], while, on the other hand, other Scholars only highlight the need to avoid the pronunciation of the Judgment[122].

The evaluation of the "sufficient time" referred to in Article 22 to help the defendant is not uniformly fixed and this leaves the States with a wide marge of appreciation in assessing the violation of the right to defence and eventually declaring a renewal of service.

The option provided by Art. 22 par. 2 could help to speed up proceedings and guarantee the effective right to justice within a reasonable time.

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

NO. Italy has not made the communication required by par. 2 of Article 22 and therefore the Italian judges, in the absence of evidence of effective service of the deed abroad, will not be able to assume that it has occurred and will not be able to decide on the application[123].

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed.

This information shall be made available through the European e-Justice Portal.

3. Notwithstanding paragraphs 1 and 2, in justified cases of urgency, the courts may order any provisional or protective measures.

4. Where a document instituting the proceedings or an equivalent document had to be transmitted to another Member State for the purpose of service in accordance with this Regulation and a judgment has been entered against a defendant who has not entered an appearance, the judge shall have the power to relieve the defendant from the effects of the expiry of the time limit for appeal where both of the following conditions are fulfilled:

(a) the defendant, without any fault on the defendant's part, did not have knowledge of the document in sufficient time to arrange a defence or did not have knowledge of the judgment in sufficient time to appeal; and

(b) the defendant has raised a *prima facie* defence to the action on the merits.

An application for such relief may only be filed within a reasonable time after the defendant has knowledge of the judgment. Any Member State may notify the Commission that an application for relief will not be admissible if it is filed after the expiry of a deadline set by the Member State in such communication. That deadline may in no case be earlier than one year from the date of the judgment. Such information shall be made available through the European e-Justice Portal.

5. Paragraph 4 shall not apply to judgments concerning the status or capacity of persons.

[121] Trib. Torino, 17 July 2002, in Giur. Merito, 2003, p.1 G. CAMPEIS, A. DE PAULI, *Le regole europee ed internazionali*, cit., p. 313; P. FRANZINA, *La notificazione degli atti giudiziari*, cit., p. 256.

[122] L. A. SCARANO, *Il Regolamento CE n. 1348/2000 sulle notifiche internazionali intracomunitarie,* in I. AMBROSI, L. A. SCARANO (ed.), *Diritto civile comunitario e cooperazione giudiziaria civile,* Milano, 2005, p. 144.

[123] On this point, see B. BAREL, *Le notificazioni nello spazio giuridico europeo*, cit., p. 558.

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.)

As set forth Article 22, the judges shall have the power to relieve the defendant from the effects of the expiry of the time limit to appeal the judgment when both of the following conditions are fulfilled:

(a) the defendant, without any fault on its part, did not have knowledge of the document in sufficient time to enter a defence or did not have knowledge of the judgment in sufficient time to appeal; and

(b) the defendant has raised a *prima facie* defence to the action on the merits.

The defendant's fault must be proved by the claimant (burden of proof), or inferred by the Judge based on the circumstances of the specific case. Even proper service could result in blameless ignorance if the respondent really could not have been aware of the claim[124].

Italy did not communicate how to interpret the "reasonable time" required by par. 4 of Article 22. In Italy, therefore, this term is subject to the appreciation of the Judges who might consider convenient a longer term than the annual one fixed by the rule when required by the circumstances of the case.

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

Article 395 par. 4 CPC provides for the possibility to revoke a decision.

In the Italian civil procedural system, it is debated whether lack of communication and irregular service may be relevant to the revocation procedure. According to the. Supreme Court[125], "the principle according to which the revocation of the sentence (or ordinance) of Cassation is allowed for procedural defects that have not been taken into account due to an

[124] P. FRANZINA, *La notificazione degli atti giudiziari e stragiudiziali*, cit., p. 258.
[125] Civ. Cassation, s.u., 30 December 2004, No. 24170.

error of perception also concerns the examination of the documents of the same cassation process [...] and (…) when an interpretative question arises regarding the proper notification of the hearing notice...".

However, there are contrary rulings which, ignoring the Judgment of the United Sections, have affirmed the following principle of law: "Failure to notify the notice of setting the hearing for discussion pursuant to Article 377 of the Civil Procedure Code constitutes an "error in proceeding" which does not fall within the hypothesis of revocation of the sentences of the Court of Cassation, pursuant to Articles 395 No. 4 and 391 bis of the Civil Procedure Code, as it cannot be configured as an error on a procedural fact on which the decision is based, given the lack of the requirement of decisiveness of the error, since there is no direct causal link between the omitted notification of the hearing's notice and the content of the sentence adopted by the Supreme Court"[126].

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.)

Service of documents in Italy is proved or documented through the service report.
According to the provisions of the Supreme Court "the lack of the service report, provided for by Art. 148 c.p.c., can't be compensated for by any circumstantial element (...)"[127].
The service report is different according to the various forms of service. For example, in the case of service pursuant to Article 150 CPC, service is deemed to have taken place when, after having carried out what is prescribed by that article, the bailiff deposits a copy of the deed,

[126] Civ. Cassation, ord. 20 November 2015, No. 23832.
[127] Civ. Cassation, Sec. I, 25 June 2004, No. 11853.

with the report and supporting documents of the activity carried out, in the registry of the judge before whom the proceedings are pending.

As of today, in civil proceedings, communications and notifications by the office of the court are exclusively carried out electronically to the PEC (Posta Elettronica Certificata, Electronic Certified Mail) address of the lawyers, in accordance with the regulations on the signing, transmission and receipt of computerized documents (Art. 16(4) of Italian Decree-Law 179/12). In the civil proceedings, moreover, notifications by means of PEC are developing to such an extent that, in some cases, lawyers have also been granted the power to carry out notifications (previously an exclusive prerogative of the bailiff) on their own by ordinary mail or even by PEC. However, in the proper use of one's PEC box, the notifier (which in this case is the lawyer) must use an account that is attributable to him and registered in a public register[128].

With regard to these notifications, the rules and specifications set out in the Italian System provide that electronic mail messages receive an official delivery receipt in order to be certain of successful delivery. PEC is a type of electronic mail by means of which "electronic documentation certifying the sending and delivery of digital documents is provided to the sender" (Art. 1, par. 2, letter g) of the Italian Presidential Decree No. 68 of 2005, Regulation containing provisions for the use of certified electronic mail - henceforth, the "Presidential Decree"). Since the system generates the message's acceptance and delivery receipts, the PEC is commonly associated with registered mail with acknowledgement of receipt "for the purposes of the law" (Art. 4 of the Presidential Decree).

With regard to the date of service, Article 147 CPC[129] provides that:

" (1) Notifications may not be made before 7 a.m and after 9 p.m.[130].

(2) Notifications via certified e-mail or qualified certified electronic delivery service may be effected without time limits.

[128] Whereas natural persons may have a PEC mailbox, companies, professionals, artisans and public administrations are obliged to provide themselves with a PEC mailbox. In fact, corporations, cooperative entities, individual firms, companies in liquidation, sole proprietorships, and foreign companies with a secondary office in Italy are obliged to have a PEC mail address, which must be communicated to the Commercial Register at the time of registration.

[129] As amended by Art. 35, par. 1 of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022- in force since 1st March 2023. On this see V. BERTOLDI, *Notificazioni,* in R. TISCINI, *La riforma Cartabia del processo civile,* cit., p. 117.

[130] For a different application of this rule in case of postal service, see App. Milan, 16 October 2017, in *Giur. It.*, 2018, p. 617 and F. COSSIGNANI, *Il tempo delle notificazioni telematiche e la „conciliazione delle opposte esigenze"*, *ibidem*, p. 620.

(3) Notifications made pursuant to the second paragraph shall be deemed to be completed for the notifier at the time of the production of the "acceptance receipt" and for the addressee at the time of the production of the "delivery receipt". If the latter is generated between 9 p.m. and 7 a.m. of the following day, the service shall be deemed completed for the addressee at 7 a.m.[131].

In the case of electronic notifications, the official time of delivery to the court, to be considered in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent back to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceeding for on-line queries.

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 Italian System of Civil Procedure, **Article 139** CPC states that in the case of service effected by bailiffs (see supra) at the domicile of the recipient, the service is valid, even if made to a neighbour, who is at least 14 years old and apparently capable, and who accepts and signs the receipt as stated by the Italian Supreme Court[132] .

Where a natural or legal person has indicated another person's residence or office as address for service, the documents must be served on the person designated to receive service at that address, and this is deemed to constitute service on the addressee (**Article 141** CPC). By

[131] On this point, see Constitutional Court 9 April 2019, n. 75: it declared the unconstitutionality of the rule insofar as it provides that the notification by electronic means whose acceptance receipt is generated after 9 p.m. and before midnight shall be deemed completed for the notifier at 7.a.m. of the following day instead of at the time of generation of the receipt

[132] Civ. Cassation, 28 March 2018, n. 7638.

way of exception to this rule, summonses for eviction (*citazioni per convalida di sfratto*), executive titles (*titoli esecutivi*) and payment orders (*precetti di pagamento*) may not be served at the elected address for service.

By Law, service on State administrations must be effected at the State Legal Office (*Avvocatura di Stato*, **Article 144** CPC).

In the case of service on a legal person, the document is delivered to the representative or to other persons empowered to receive service at the registered office of the company, or, in the absence of such persons, to the doorkeeper, but in this case service may also be effected on a natural person who represents the company, applying the procedures for formal notification on natural persons, provided that the document to be served names that person as representative and also indicates their residence, abode or centre of interests (**Article 145** CPC).

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

If the Judge declares the nullity of service, the legal consequence is that he or she must order the renewal of the service, and the fees of the new service must be charged to the registry or to the bailiff or to the attorney who caused the nullity of service, also considering the possibility of assessing the damages caused by the nullity of service (Article 162 CPC).

30. **What is considered a timely service of documents?**

In Italy, service is generally considered effected when the formalities required by the law are fulfilled.

With regard to service by mail, the Constitutional Court[133] has held that service of a court document is completed, for the sender, at the moment the document is handed over to the

[133] Judgments No. 477 of 26 November 2002 and No. 28 of 23 January 2004.

court bailiff, whatever the subsequent means of transmission (mail or delivery by the bailiff), whilst it is completed, for the recipient, on the date of receipt of the document[134]. This principle means that the moment of service of the document by the sender is distinct from the moment of receipt by the addressee. The principle relates only to the timeliness of the service of the document, in that the legal time limit is deemed to have been observed by the serving party if the document is delivered to the court bailiff before the applicable time limit expires. It does not affect the starting point of other time limits, which is the time of notification or delivery of the document to the addressee, or the publication of a judgment.

With regard to service effected by Certified Electronic Mail – Posta Elettronica Certificata – PEC, the official time of delivery to the court, to be considered in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent back to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceeding for on-line queries. A PEC message is also sent whenever an electronic communication or notification has to be delivered to the lawyers or other recipients: in this case the content and the message are automatically prepared and sent by the Case Management System after recording the specific procedural event and in case the recipient owns a PEC address (retrieved from the Electronic Address Book). Once sent, the system automatically retrieves the PEC receipts of the message from the PEC provider and stores them into the File System, alerting the court clerk in case of a delivery failure (the PEC system tries to deliver the message within 24 hours).

Article 147 CPC[135] provides that:

"(1) Notifications may not be made before 7 a.m and after 9 p.m. (Law 28 December 2005, No. 263 and Law Decree 10 October 2022, No. 149 for the entry into force of this rule on 30th June 2023)

[134] F. RUSSO, M. RUVOLO, *Notifiche e diritto vivente,* in *Corriere Giuridico,* 2013, p. 119.
[135] As amended by Art. 35, par. 1 of Legislative Decree 10 October 2022, No. 149, in O.J., no. 243, 17 October 2022- in force since 1st March 2023. On this see V. BERTOLDI, *Notificazioni,* in R. TISCINI, *La riforma Cartabia del processo civile,* cit., p. 117.

(2) Notifications via certified e-mail or qualified certified electronic delivery service may be effected without time limits.

(3) Notifications made pursuant to the second paragraph shall be deemed to be completed for the notifier at the time of the production of the acceptance receipt and for the addressee at the time of the production of the delivery receipt. If the latter is generated between 9 p.m. and 7 a.m of the following day, the service shall be deemed completed for the addressee at 7 a.m. (on this point, see Constitutional Court 9 April 2019, n. 75: it declared the unconstitutionality of the rule in the part insofar as it provides that the notification by electronic means whose acceptance receipt is generated after 9 p.m. and before midnight shall be deemed completed for the notifier at 7.a.m. of the following day instead of at the time of generation of the receipt.

As already said (see above par….), Art. 147 CPC[136], applicable to both bailiffs and lawyers, codifies the principle of objective division. As to the claimant, the document is served when the "ricevuta di accettazione" - "acknowledgement of receipt" is issued; as to the respondent, when the "ricevuta di avvenuta consegna - receipt of successful delivery" is generated. (Art. 147, par. 3 CPC).

Art. 149 bis, par. 3, CPC states that the notification is effected when the provider makes the electronic document available in the recipient's certified e-mail box.

Many Scholars harshly criticize these rules[137]; on one and, they point out that these rules do not clearly distinguish the case of service through a bailiff from the case of the serving through lawyers and, in fact, Art. 147 par. 3 CPC seems to have been conceived only for the lawyers' activity; on the other hand, Art. 149bis, par. 3 CPC is inconsistent with the principle of the objective splitting, considering only the moment of delivery of the document to the certified e-mail box, and the position of the respondent. To solve this contradiction it's therefore necessary to follow the solution proposed by many Scholars[138] and to considere, when applying Art. 149bis, par. 3 CPC to bailiffs' service, as for the claimant the moment of the material delivery of the paper document to the bailiff.

[136] As recently amended by Art. 3, par. 11, d, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022. On this see V. BERTOLDI, *Notificazioni,* cit., p. 138.
[137] V. BERTOLDI, *Notificazioni,* cit., p. 138; F. PORCELLI, Le comunicazioni e le notificazioni, in G. RUFFINI, *Il processo telematico nel Sistema del diritto processuale civile*, cit., p. 375.
[138] F. PORCELLI, *Le comunicazioni e le notificazioni*, in G. RUFFINI, *Il processo telematico nel Sistema del diritto processuale civile*, cit., p. 375.

The considered rules apply in any case, regardless of the successful reading of the PEC message[139].

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

In case of an Appeal, an untimely service of the claim is a risk for the appellant, as in the case of a Claim before the Supreme Court, since the service of the judicial documents represents the fundamental point from which a proper introduction of proceedings originates, both in the appeal proceedings (*Corte di Appello*) and in the proceedings before the Supreme Court (*Corte di Cassazione*).

In the case ruled by Article 153 CPC, peremptory terms may not be shortened or extended, not even with the agreement of the parties, the risk being for the party receiving untimely service. Thus, a party who demonstrates that it has incurred - for reasons beyond its control - the expiry of the time for defence may ask the judge to be relieved from the effect of the expiry. The Judge states pursuant to Article 294, par. 2 and par. 3 CPC.

[139] M. GUALTIERI, *Sulle notifiche in proprio dell'avvocato a mezzo posta elettronica certificata*, in *Riv. dir. proc.*, 2013, p. 1081.

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.)

Each Member State must designate a transmitting agency, a receiving agency and a central body to assist the transmitting agencies. An applicant wishing to serve documents on a defendant within the EU must apply to the transmitting agency. The transmitting agency in the applicant's Member State sends the documents to the receiving agency in the defendant's Member State which serves the document on the defendant.

The documents must be translated into the language of the receiving State or into the language understood by the defendant, if necessary.

In Italy, the agencies competent for receiving and transmitting documents to be served are the Uffici Notificazione Esecuzioni e Protesti (Notification, Enforcement and Protest Office), better known as UNEP[140]. The Notification, Enforcement and Protest Offices operate within the Italian Courts of First Instance and Appeal, but have organisational, administrative and budgetary autonomy. They are specialised offices responsible for serving acts and executing orders at the request of private parties and judicial authorities in civil and criminal matters. Notably, in the context of civil proceedings they must ensure the service of judicial and extrajudicial documents within the domestic and international jurisdictions, including the service of documents to be notified abroad under the Service Regulation.

All UNEPs have been designated Transmission Agencies for Italy and are therefore responsible for forwarding the documents to be served abroad (Article 2 of the Service Regulation). They have a capillary presence throughout the national territory. According to the official Ministry of Justice data, there are 142 UNEPs currently operating (113 UNEPs at the Courts

[140] R.D. 30 January 1941, n. 12 (Judicial System), Article 3 and following modifications.

of First Instance and 29 at the Courts of Appeal)[141]. As Transmitting Agency, the territorially competent UNEP must first check whether the transmitted document falls within the Regulation's scope. Accordingly, the office must verify the civil or commercial nature of the document to be transmitted and its formal accuracy. It also has to inform the applicant (or his/her attorney) of the possibility that the addressee may refuse the document if a translation into one of the languages explicitly indicated in the Regulation is not provided [142].

33. **Which bodies are considered to be "receiving agencies" according to Art. 3 No. 2 of the Regulation in your Member State? If there are several receiving agencies in your Member State, please describe their local jurisdiction.**
(e.g. in Germany: § 1069 (2) ZPO regulates which bodies are considered to be "receiving agencies", Within the meaning of Article 3 (2) of the Regulation the office of the local court in whose district the document is to be served shall be the receiving agency, § 1069 (2) cl. 1 ZPO. The state governments may assign the duties of receiving agency to a district court for the districts of several district courts by statutory order, § 1069 (2) cl. 2 ZPO.)
(e.g. in Austria: The district courts are considered receiving agencies.)

In Italy, the agencies competent for receiving and transmitting documents to be served are the Uffici Notificazione Esecuzioni e Protesti (Notification, Enforcement and Protest Office), henceforth UNEP[143]. The Notification, Enforcement and Protest Offices operate within the Italian Courts of First Instance and Appeal, but have organisational, administrative and budgetary autonomy. They are specialised offices responsible for serving acts and executing orders at the request of private parties and judicial authorities in civil and criminal matters. Notably, in the context of civil proceedings they must ensure the service of judicial and extrajudicial documents within the domestic and international jurisdictions, including the service of documents to be notified abroad under the Service Regulation.

With regard to the receipt from abroad of documents to be served in Italy, the approach adopted at the national level differs widely from what is set out in the Regulation which provides for centralised jurisdiction. In Italy, in fact, the only competent authority in the passive service procedure is the UNEP at the Court of Appeal in Rome, which, at the same time, is also the designated central authority (Art. 3 of the Service Regulation). In essence,

[141] See "Giustizia Map" at the official Ministry of Justice website https://www.giustizia.it/giustizia/it/mg_4.page (accessed on 25 July 2022).
[142] R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures in the EU from the Perspective of Italian Practitioners – The Lessons Learnt and the Process of Digitalisation of the Procedure through e-CODEX*, in *Laws*, 2022, https://www.mdpi.com/2075-471X/11/6/81
[143] R.D. 30 January 1941, n. 12 (Judicial System), Article 3 and following modifications.

UNEP at the Court of Appeal in Rome does not provide assistance and support in the transmission phase, but is also the only authority in charge of receiving notification requests from other Member States and redirecting them to the territorially competent offices[144]. The purpose of this procedure, supposedly, is to reduce the possibility of error in the selection of the competent body by the foreign transmitting authority and to avoid mistakes that could lengthen the time needed to complete the procedure.

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.[145])

The postal service is the main means of communication, partly because the postal service has often been designated as the sole means of receiving documents[146], partly because of the reluctance of the actors involved to exploit the potential of recent technological developments[147]. Thus, in Italy, the electronic copies received via PEC (certified electronic mail service, valid for the service of documents in Italy) are usually refused when the request for service of documents has to be made pursuant to the Service Regulation.

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)

[144] R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures*, cit.
[145] https://e-justice.europa.eu/content_serving_documents-373-de-de.do?member=1.
[146] See Justice Portal page about the use of the Service Regulation in Italy. Available online: https://e-justice.europa.eu/373/EN/serving_documents?ITALY&member=1
[147] Working party on e-Law (e-justice) — expert group on e-Service of documents and e-Communications Delegations, Brussels, 19 July 2018, 11275/18, p. 17. In any case, it should not be overlooked that since the end-user of the service must typically be served on paper, electronic communication may be limited to that between the sending and receiving entities. Documents and forms transmitted electronically must still be printed in order to be served to the recipient. This could raise validity issues regarding the conformity of the document served with the original; R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures*, cit.

As already pointed out (see above par. 32), the UNEP at the Court of Appeal in Rome[148] is the only receiving agency and, at the same time, the designated central authority. In fact, it's clear that in Italy the approach adopted at national level deviates widely from the Regulation which provides for centralised jurisdiction.

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

The agencies competent for receiving and transmitting documents to be served are the Uffici Notificazione Esecuzioni e Protesti (Notification, Enforcement and Protest Office), henceforth UNEP, and the UNEP in Rome decides the method of service. As already pointed out above in point 34, UNEPs are usually reluctant to exploit the potential of recent technological developments and prefer the postal service. Another problem concerning Italy is the reluctance of domestic agencies not to seek assistance from their counterparts abroad, as would be required by the Regulation Service (Article 6).

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.[149])*

For the time being, no fees are charged for the service of documents originating abroad other than those laid down for documents served, at the request of a party within Italy. Italy has not set a general cost for service from abroad[150].

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

[148] Ufficio unico degli ufficiali giudiziari presso la Corte d'Appello di Roma, viale Giulio Cesare, n. 52, I-00192-Roma.
[149] https://e-justice.europa.eu/content_serving_documents-373-de-de.do?member=1.
[150] https://e-justice.europa.eu/38580/EN/serving_documents_recast?ITALY&member=1

As Transmitting Agency, the territorially competent UNEP must first check whether the transmitted document falls within the Regulation's scope. Accordingly, the office must verify the civil or commercial nature of the document to be transmitted and its formal accuracy. It also has to inform the applicant (or his/her attorney) of the possibility that the addressee may refuse the document if a translation into one of the languages explicitly indicated in the Regulation is not provided. UNEP staff must therefore ensure that the accompanying standard form is duly filled in (or assist the party or its attorney in completing it) and attached to the document for which service is requested.Central Authorities are designated at the national level to play a supporting role, providing information or solving difficulties that may arise during the transmission process. Only in exceptional cases (or at the request of a transmitting agency), they are allowed to forward service requests abroad[151].

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.)

Italy accepts that standardized forms are completed in Italian, English and French[152]. In practice, even if the Service Regulation does not stipulate the obligation to notarise the translation, in some UNEPs this is considered a requirement to be met in order to go ahead with the procedure.

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.)

As for the way in which practitioners enforce the European Regulation in their daily activities, one problem that may impair the proper and swift execution of the service process is the scant support offered by UNEPs in Italy. The court clerk's offices merely carry out a few routine checks to verify that the document to be served falls within the scope of the Regulation,

[151] R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures*, cit.
[152] https://e-justice.europa.eu/373/IT/serving_documents?ITALY&init=true&member=1

whether the standard form is actually attached, complete and shows the addressee's address, but no other support is provided. With regard to the address search, the results show that errors, omissions and inaccuracies in the documentation to be served are often a source of practical problems and cause of delays; in particular, the provision of an incorrect recipient address is usually among the circumstances that most frequently lead to a failure of the notification procedure or to prolonged delays beyond the maximum 30 days provided for in the Service Regulation. Although Article 7 states new forms of administrative cooperation among States, following a suggestion of the EU Commission[153], and the Regulation stipulates that the receiving agency must make an effort to contact its foreign counterpart by the most expeditious means possible to obtain the missing elements and complete the service process[154], in Italy as in other countries the authorities are reluctant to consult the transmitting agency directly, partly for reasons related to the use of different languages. Moreover, this cooperation among authorities in different EU countries is compromised by the fact that the postal service remains the primary main means of communication between transmitting and receiving agencies used by Member States, even for correspondence intended only to obtain clarification (e.g., additional address information)[155].

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

Italy is opposed to the service of judicial documents on persons residing in another Member State directly by diplomatic or consular agents (except where the document is to be served on an Italian national residing in another Member State).

[153] *Report of the Commission on the application of 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(2013) 858 final.
[154] See also the Recital 19 of Service Regulation and B. BAREL, *Le notificazioni nello spazio giuridico europeo*, cit., p. 543.
[155] R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures*, cit.

Italy is opposed to the service of judicial documents by the diplomatic or consular agents of a Member State on persons residing in Italy, except where the document is to be served on a national of the Member State in question[156].

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

Yes, as in Italy, attorneys may effect service (see above par.1, par.2) - this type of service could be included in the scope of application of Article 20 of the Service Regulation. A lawyer may effect formal notification via certified e-mail (*posta elettronica certificata*, 'PEC') to an e-mail address found in public registers (Article 3 *bis* of Law No. 53/1994). Pursuant to the rules concerning the "On Line Civil Trial", service is handled by the certified e-mail system which is adopted according to national legislation and technical rules, valid both for all public administrations and citizens.

These rules and specifications require that e-mail messages receive an official delivery receipt to be certain of delivery and its exact time. Both messages and receipts are digitally signed by the sender's provider and the recipient's provider to guarantee authenticity, non-repudiation and integrity. PEC providers are authorized by AgID- "Agency for Digital Italy", the highest authority for ICT in Italy, which also supervises the providers to ensure compliance with the rules, especially on the security side.

For e-filing of legal acts by external users, the payload (i.e. the electronic act itself and all attachments) consists of an encrypted S-MIME envelope, which must be attached to the PEC message. The envelope must contain the legal act in PDF format, digitally signed by the author, together with a specific XML file, providing structured information (according to the type of act), also digitally signed, and all documents attached to the legal act. The official time of delivery to the court, to be taken into account in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent back to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the

[156] This, consistent with the civil law tradition which saw the service of documents as an exercise oft he State's judicial power. On this point, see D. Mc CLEAN, *International Cooperation in Civil and Criminal Matters,* Oxford University Press, 2012, 3d ed.

court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceeding for on-line queries. A PEC message is also sent whenever an electronic communication or notification has to be delivered to the lawyers or other recipients: in this case the content and the message are automatically prepared and sent by the Case Management System after recording the specific procedural event and in case the recipient owns a PEC address (retrieved from the Electronic Address Book). Once sent, the system automatically retrieves the PEC receipts of the message from the PEC provider and stores them into the File System, alerting the court clerk in case of a delivery failure (the PEC system tries to deliver the message within 24 hours).

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.**

Article 29 of the Service Regulation states that the Regulation shall not preclude Member States from maintaining or concluding agreements or arrangements to expedite o simplify the transmission of documents, provided that those agreements or arrangements are compatible with the Regulation.

Many States have ratified the 1965 Hague Convention, so generally, service of deeds between Italy and other States are ruled by the 1965 Hague Conventions if ratified by these other States[157].

[157] See generally https://www.esteri.it/mae/resource/doc/2019/02/guida_notifiche_civile_2019pdf

In some cases there are bilateral Treaties compatible with the Service Regulation[158], such as the *Treaty between the Italian Republic and the People's Republic of China on Mutual Assistance in Civil Matters,* with annexes (Beijing, 20 May 1991)[159], in force since 1 January 1995 (not for Macao and Hong Kong), by which the parties rule the right to serve judicial and extrajudicial documents, translated in the language of the receiving Party, or in English or French, through the Central Authority[160].

As regards service in Russia, the Convention between the Italian Republic and the Union of Soviet Socialist Republics on judicial assistance in civil matters (Rome, 25 January 1979) is in force[161].

As for the service in Libya, the Treaty adopted on 4 July 1998 provides for a consular service at the request of the administrative Authorities[162]. This service was suspended due to the war erupted in 2011 and only after the reopening of the Italian Embassy in that country (2017) may the service be provided by consular way[163].

As regards service in Morocco, the Convention on Mutual Legal Assistance, Enforcement of Judgements and Extradition between Italy and Morocco (Rome, 12 February 1971) is in

[158] See P. BRUNO, *Le notificazioni all'estero in materia civile,* Milano, 2020, p. 85. Bilateral Treaties on Service are in force with: Algeria (22 July 2003), Argentina (9 December 1987), Armenia (25 January 1979), Australia (17 December 1930), Azerbaigian (25 January 1979), Belarus (25 January 1979), Bosnia and Herzegovina (3 December 1960), Brasil (17 October 1989), Canada (17 December 1990), China (20 May 1991), Vatican (6 September 1932), Egypt (2 April 1974), Jamaica (17 December 1930), Japan (5 October 1937), Kazakhstan (25 January 1979), Kenia (17 December 1930), Kirghizistan (25 January 1979), Kuwait (11 December 2002), Lesotho (17 December 1930), Lebanon (10 July 1970), FYRM (3 December 1960), Malaysia (17 December 1930), Morocco (12 February 1971), Moldova (7 December 2006), Montenegro (3 December 1960), New Zealand (17 December 1930), United Kingdom (17 December 1930), Russia (25 January 1979), Saint Kitt and Nevis (17 December 1930), San Marino (31 March 1939), Serbia (3 December 1960), Singapore (17 December 1930), Sri Lanka (17 December 1930), Swaziland (17 December 1930), Sweden (17 December 1930), Switzerland (2 June 1988), Tagikistan (25 January 1979), Tanzania (17 December 1930), Tunisia (15 November 1967), Turkmenistan (25 January 1979), Turkey (10 August 1926), Ukraine (25 January 1979)

[159] Law 4 March 1994, No. 199, available at https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1994-03-04;199!vig=

[160] On this point, see the suggestions of the Italian Ministry of Justice about the length of proceedings in China and the opportunity to follow the bilateral Convention, in *Circolare Prot. 0068035.U , 5 April 2017*, available at https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=1_1%282017%29&facetNode_2=1_1%28201704%29&contentId=SDC47620&previsiousPage=mg_1_8

[161] Law 11 December 1985, No. 766, available at https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1985-12-11;766!vig=

[162] https://security-legislation.ly/sites/default/files/lois/7-Law%20No.%20%282%29%20of%202009_EN.pdf

[163] *Circolare 9 Novembre 2017, Ripresa delle procedure di notifica in territorio libico a seguito della riapertura dell'Ambasciata d'Italia a Tripoli*, available at https://www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=11&facetNode_2=1_1%282017%29&contentId=SDC64084&previsiousPage=mg_1_8

force[164]. This Convention states that service is effected only through the diplomatic service, with the exception of service on citizens residing in the other country through diplomatic and consular representatives. Due to the reluctance of the diplomatic authorities to practice this service, usually between Italy and Morocco deeds are served pursuant to the 1965 Hague Convention, also ratified by Morocco. The Italian Ministry of Justice affirms the need to follow the bilateral Treaty rather than the Hague Convention[165].

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

NO

RIGHT OF REFUSAL

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

The notification of a judicial document has the clear purpose of bringing its content to the attention of the addressee.

With regard to national service, the discipline governing the notification provides for a very specific procedure which may allow the addressee to refuse the deed: "The bailiff may always carry out the notification by delivering the copy to the addressee's own hands, at his/her residence or, if this is not possible, wherever he/she finds the addressee within the district of the judicial office on which he/she has notified. If the addressee refuses to receive the copy, the judicial officer shall note this in the report and the service is deemed to have been effected by hand." (Article 138 CPC).

The refusal of a judicial document may also be effected by persons other than the addressee. The Art. 139 CPC in fact provides that the deed may be delivered to people who have some connection with the addressee (a person in the family or employed in the house, office or company provided that they are not less than 14 years old, a porter, a neighbour or a captain if the person lives on a ship). If the person connected to the addressee refuses the notification, the law states that the bailiff must deposit the copy of the deed at the office of the municipality where service is to be necessarily carried out, then the bailiff must post the notice of deposit

[164] Law 12 December 1973, No. 1043, available at https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1973-12-12;1043!vig=

[165] Circolare Prot. 0003791.U, 10 January 2017, available at https://www.auge.it/wp/wp-content/uploads/2017/02/Marocco-reciproca-assistenza-3-trascinato.pdf

in a closed and sealed envelope on the door of the home or office or company of the addressee, and finally give notice by registered mail with acknowledgment of receipt. This refusal of national service has no legal consequences.

With regard to service from the EU Countries, Article 12 of the Service Regulation rules the refusal procedure, imposing precise duties on receiving agencies that must be observed at the time of service. The person effecting service must be well aware that when the document is not drawn up or accompanied by a translation into the official language of the place where service is to be effected, the addressee must be informed of his or her right to refuse service and how to exercise that right. Furthermore, the appropriate form must be delivered in the official language of the Member State of origin and in a language that the addressee understands.

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

The CPC doesn't rule the grounds for refusing a document, since in Italy refusal of a deed has no legal consequences, and service, despite refusal is considered to have been effected. Article 1335 CC provides for a presumption of knowledge, if the deed has been sent to the recipient's registered residence (or to the company's registered office): this means that knowability produces the same effects as effective knowledge. The addressee is presumed to know the contents of a given communication by the mere fact that it arrived at his or her address, to which it was directed, not even considering that the delivery took place in exact compliance with the postal regulations, since what matters is the delivery thereof. This is a *juris tantum* presumption which is subject to the possibility that the addressee proves that he or she was, through no fault of his/her own, unable to receive news of the communication, to be assessed on the basis of the concrete methods of communication, delivery or dispatch, circumstances to be assessed on a case-by-case basis by the judge. In order to exclude the presumption in question, it would not be sufficient for any subjective cause of impediment, such as hospitalization or being absent for a journey (and not even the refusal to receive it!), but an extraordinary and unforeseeable event, such as a natural disaster. Certainly it will never be considered innocent having left a registered letter in stock or having refused it.

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

The acceptance of documents served electronically via PEC in Italy can't be refused. As already mentioned, with regard to these notifications, the rules and specifications set out in the Italian System provide that electronic mail messages receive an official delivery receipt in order to be certain of successful delivery. PEC is a type of electronic mail by means of which "electronic documentation certifying the sending and delivery of digital documents is provided to the sender" (Art. 1, par. 2, letter g) of the Italian Presidential Decree No. 68 of 2005, Regulation containing provisions for the use of certified electronic mail - henceforth, the "Presidential Decree"). Since the system generates the message's acceptance and delivery receipts, the PEC is commonly associated with registered letter with acknowledgement of receipt "for the purposes of the law" (Art. 4 of the Presidential Decree).

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

Refusal has no legal effects, unless it is based on an extraordinary and unforeseeable event, such as a natural disaster (see par. 45.1. above). In order to evaluate this refusal, it would not be sufficient to have any subjective cause of impediment, such as hospitalization or absence for travel, but an extraordinary and unforeseeable event, such as a natural disaster (earthquake, hurricane, etc.). Certainly, it will never be considered innocent to have left a registered letter in the mail or to have refused it.

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

Refusal has no legal effects.

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 judge will evaluate whether the opposition to the notification pursuant to Art. 12 of the Regulation is founded by analysing the elements present in the documents of the proceeding, as indicated by the ECJ in the case *Weiss und Partner*[166].

The burden of proving the addressee's knowledge of the language in which the document was written falls on the party requesting service of the document. This assessment, however, is far from simple, since it cannot be merely based on formal grounds. As the EU Commission pointed out[167], the assessment of the addressee's ability to actually understand the language of the document received is not a simple task and requires a thorough evaluation of various subjective factors and cannot be carried out on the basis of objective circumstances alone, such as those related to citizenship, residence or domicile, etc., which should be considered as mere indications. However, the Regulation does not provide any guidance on how to conduct such an assessment and what standard should be used to carry out this task.

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.)

YES. Communications and notifications by the office of the court are made electronically to the PEC (Posta Elettronica Certificata, Electronic Certified Mail) address of the lawyers, in accordance with the regulations on the signing, transmission and receipt of computerized documents (Art. 16(4) of Italian Decree-Law 179/12). In the civil proceedings, moreover, notifications by means of PEC are developing to such an extent that, in some cases, lawyers

[166] ECJ, 8 May 2008, Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v. Industrie-und Handelskammer Berlin, ECLI: EU:C: 2008:264, and on this case see: P. FRANZINA, *Translation Requirements under the EC Service Regulation: The Weiss und Partner Decision of the ECJ. Year-book of Private International Law* 10: 565–77; P.BOHUNOVA, *Regulation on Service of Documents: Translation of Documents Instituting Proceedings Served Abroad*, sub 4, available at **http://www.muni.cz/research/publications/818211**; A. GALIC, *Service abroad in civil and commercial matters—from The Hague Conventions to the EU 1393/2007 Regulation. Collection of Papers, Faculty of Law, Nis* , 2013, 65: 64.

[167] See Commission Staff Working Document Impact Assessment Accompanying the document 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), SWD/2018/287 final, para 2.2.1.3. See also paragraph 5.1.2.2. of the Annex 8: Evaluation Report.

have also been granted the power to carry out notifications (previously an exclusive prerogative of the bailiff) on their own by ordinary mail or even by PEC. However, in the proper use of one's PEC box, the notifier (which in this case is the lawyer) must use an account that is attributable to him and registered in a public register[168].

With regard to these notifications, the rules and specifications set out in the Italian System provide that electronic mail messages receive an official delivery receipt in order to be certain of delivery. PEC is a type of electronic mail by means of which "electronic documentation certifying the sending and delivery of digital documents is provided to the sender" (Art. 1, par. 2, letter g) of the Italian Presidential Decree No. 68 of 2005, Regulation containing provisions for the use of certified electronic mail - henceforth, the "Presidential Decree"). Since the system generates the message's acceptance and delivery receipts, the PEC is commonly associated with registered letter with acknowledgement of receipt "for the purposes of the law" (Art. 4 of the Presidential Decree).

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

Pursuant to the rules concerning the "On Line Civil Trial", service are handled with the certified mail system (called PEC, acronym for "Posta Elettronica Certificata") adopted according to national legislation and technical rules, valid both for all public administrations and citizens.

These rules and specifications require that e-mail messages receive an official delivery receipt to be certain of delivery and its exact time. Both messages and receipts are digitally signed by the sender's provider and the recipient's provider in order to ensure authenticity, non-repudiation and integrity. PEC providers are authorized by AgID- "Agency for Digital Italy", the highest authority for ICT in Italy, which also supervises providers to ensure compliance with the rules, especially on the security side. For e-filing of legal acts by external users, the payload (i.e. the electronic act itself and all attachments) consists of an encrypted S-MIME envelope, which must be attached to the PEC message. The envelope must contain the legal act in

[168] Whereas natural persons may have a PEC mailbox, companies, professionals, artisans and public administrations are obliged to provide themselves with a PEC mailbox. In fact, corporations, cooperative entities, individual firms, companies in liquidation, sole proprietorships, foreign companies with a secondary office in Italy are obliged to have a PEC mail address, which must be communicated to the Commercial Register at the time of registration.

PDF format, digitally signed by the author, together with a specific XML file, providing structured information (according to the type of act), also digitally signed, and all documents attached to the legal act. The official time of delivery to the court, to be taken into account in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the court clerk for final acceptance and update of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceedings for on-line queries. A PEC message is also sent whenever an electronic communication or notification has to be delivered to the lawyers or other recipients: in this case the content and the message are automatically prepared and sent by the Case Management System after recording the specific procedural event and in case the recipient owns a PEC address (retrieved from the Electronic Address Book). Once sent, the system automatically retrieves the PEC receipts of the message from the PEC provider and stores them into the File System, alerting the court clerk in case of a delivery failure (the PEC system tries to deliver the message within 24 hours).

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?

The Regulation (EU) n. 910/2014[169] on electronic identification and trust services for electronic transactions in the internal market (better known as the eIDAS Regulation) has applied directly to the EU Member States since **1 July 2016**, when it came fully into force and the 1999 eSignature Directive was repealed.

The new legal framework ensures legal certainty for the cross-border use of e-signatures, e-seals, time-stamps, eDelivery services and website authentication certificates. The main changes introduced by the eIDAS Regulation are:

- a regulation, not a directive, making it directly applicable across Europe without the need for transposition into national legislation

[169] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (O.J.L 257, 28 August 2014).

- paving the way for new remote qualified signature solutions and an improved user experience
- a pan-European harmonization of electronic signatures
- electronic documents cannot be denied legal effect just because they are in electronic form
- qualified trust services across Europe
- the introduction of electronic seals, available to legal persons, technologically similar to electronic signatures and ensuring identity and integrity
- the introduction of time stamping
- the constitutive effect of national Trusted Lists
- a qualified validation service for qualified electronic signatures

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

In Italy, the use of electronic signatures and certificate-based digital signatures is widespread in both the public and private sectors. The increasing digitization of e-commerce as well as the functions of Italian public authorities are helping to expand the use of e-signatures for a range of electronic transactions.

Besides eIDAS, the main legislation that governs electronic signatures in Italy is the Codice dell'amministrazione digitale or the Digital Administration Code (CAD). Although the CAD is mainly intended to regulate public administrations, some of its provisions, including those on electronic signatures and electronic documents, are also applicable to private individuals and businesses. In addition to the CAD and the eIDAS Regulation, other regulations governing electronic signatures in Italy are:

1. Presidential Decree of 22 February 2013, "Technical rules on advanced electronic signature, qualified electronic signatures and digital signature"
2. Agenzia per l'Italia Digitale (AgID) "Technical Rules and Recommendations relating to the generation of qualified electronic certificates, qualified electronic signatures and seals and qualified electronic time stamps"

3. "Technical Rules for the Electronic Signature of Documents pursuant to Art. 20 of the CAD" which regulates how service providers (both public and private) may use the Italian Sistema Pubblico di Identità Digitale or Public Digital Identity System to electronically sign documents.

The CAD is largely based on the types of electronic signatures provided for in the eIDAS Regulation. However, the CAD also introduces the concept of a "Digital Signature" which is a type of qualified electronic signature (henceforth QES) based on a specific technological solution known as a dual cryptographic key. The Digital Signature is cryptographically linked to the document to help manifest and verify the origin and integrity of the electronic document. This format requires the use of asymmetric cryptography, such as public key infrastructure (PKI) managed by qualified and regulated trust service providers.

The CAD also provides for another form of electronic signature which involves the use of an Italian citizen's Public Digital Identity (SPID). Specifically, an Italian citizen is able to use his or her SPID to be identified and "sign" a document with private or public service providers within the SPID framework. This type of signature is considered equivalent to a QES.

In Italy, QES (including Digital Signatures), electronic signatures using an Italian citizen's SPID and Advanced Electronic Signatures (AdES) are defined as "strong" electronic signatures due to the higher level of trust and security they ensure. These strong electronic signatures are considered to have the same legal effect as a handwritten signature.

The essential difference between the two signatures consists in the creation of a file with the .p7m extension, for CAdES mode, and a file with a .pdf extension, for PAdES one. While the format of the first file has the disadvantage that it does not allow the document being subscribed to be easily viewed, since it is necessary to use a specific application, the format of the second file, on the other hand, is readable with common readers available for this format.

The matter was recently resolved by the United Sections of the Supreme Court of Cassation in Judgment No. 10266 of 27 April 2018, which ruled that the technical provisions in force, both at national and European level, "exclusively entail the use of the digital signature in CAdES format, as opposed to digital signatures in PAdES format. Nor is there any objective evidence, in doctrine and practice, to suggest that only the CAdES format signature offers guarantees of authenticity". Consequently, today, CAdES and PAdES digital signatures are

both permitted and must, therefore, be recognized as valid and effective in civil proceedings without exception.

47.4. How is the time of service determined?

With regard to the date of service, Article147 CPC provides that:

" (1) Notifications may not be made before 7 a.m and after 9 p.m.[170] ;

(2) Notifications via certified e-mail or qualified certified electronic delivery service may be performed without time limits[171];

(3) Notifications made pursuant to the second paragraph shall be deemed to be completed for the notifier at the time of the production of the acceptance receipt and for the addressee at the time of the production of the delivery receipt. If the latter is generated between 9 p.m. and 7 a.m of the following day, the service shall be deemed completed for the addressee at 7 a.m.[172]

In case of electronic service, the official time of delivery to the court, to be taken into account in the case of procedural deadlines, is the timestamp of the PEC delivery receipt sent back to the sender. Once delivered to the Court's PEC mailbox, the PEC message is automatically retrieved and checked by the system, then the envelope is decrypted and the content is formally checked; a PEC message is sent back to the sender with the result of these checks, then the content is provided to the court clerk for final acceptance and updating of the Case Management System. A final PEC message is sent back to the sender with the result of the acceptance: from this moment on, the files are available for all parties involved in the proceeding for on-line queries.

Art. 149*bis* CPC[173] provides that Italian Bailiffs shall effect formal notification by certified e-mail (*posta elettronica certificata*, 'PEC') to an e-mail address resulting from public registers. Pursuant to the rules on the "On Line Civil Trial"- PCT, service are made by means

[170] Law 28 December 2005, n. 263 and law decree 10 October 2022, No. 149 in force since 28h February 2023, for proceedings starting since 1 March 2023.

[171] Law decree 18 October 2012 No. 179 and Law 17 December 2012 No. 221.

[172] On this point, see Constitutional Court 9 April 2019, No. 75: it declared the unconstitutionality of the rule insofar as it provides that the notification by telematic means whose acceptance receipt is generated after 9 p.m. and before midnight is completed for the notifier at 7.a.m. of the following day instead of at the time of the receipt is generated.

[173] As amended by Art. 3, Par. 11, e, of Legislative Decree 10 October 2022, No. 149, in O.J., No. 243, 17 October 2022.

of the certified mail system (called PEC, acronym for "Posta Elettronica Certificata"- "Electronic Certified Mail"), adopted according to national legislation and technical rules, valid both for all public administrations and citizens[174].

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

The electronic service depends on the fact that the addressee has a PEC address.

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

NO, the PEC address may be used for all civil proceedings services.

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

NO

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.)

NO, Not everyone is obligated to accept electronic service through dedicated Internet portals

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)

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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)

In Italy, PEC providers are authorized by AgID - "Agency for Digital Italy", the highest authority for ICT in Italy, which also supervises providers to ensure compliance with the rules, especially on the security side. For e-filing of legal acts by external users, the payload

[174] This rule is scarcely applied due to the lack of PEC mail from Italian Bailiffs ("UNEP - Ufficio Notifiche Esecuzioni e Protesti"- henceforth UNEP). On this see V. BERTOLDI, *Notificazioni,* in R. Tiscini, *La riforma Cartabia del processo civile,* cit., p. 130.

(i.e. the electronic act itself and all attachments) consists of an encrypted S-MIME envelope, which must be attached to the PEC message.

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

In Italy, the AgID supervise PEC providers to ensure compliance with the rules, especially on the security side.

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

In Italy, measures to ensure the efficiency of electronic service are assured by AgID - "Agency for Digital Italy", the highest authority for ICT in Italy, which also supervises providers to ensure compliance with the rules, especially on the security side.

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

If electronic service is not possible for a reason non attributable to the addressee (e.g. an interruption of Internet access), it is also necessary, in the light of the principle of the reasonable duration of the process, to ask for the renewal of the notification within a reasonably short time, estimated to be half of the short term for filing an appeal. By renewing the notification, the effects of the original notification could be ensured as effective[175].

54. **What are the costs of electronic service?**

It is possible to purchase a PEC account - also online - from one of the providers authorised by DigiitPA, the national body for the digitalization of public administration[176].

The costs for purchasing a PEC are those established by each individual provider authorized to issue it. On average, depending on the services offered, the price may vary from EUR 5

[175] Cass., 20 May, 2019, No. 13532; Cass., 21 March 2018, No. 8029; Cass. s.u., 20 December 2021, No. 40758.

[176] The list of operators can be found at www.digitpa.gov.it/pec_elenco_ gestori. To purchase the account, simply click on the name of the operator and follow the instructions.

to 50 per year. On the other hand, the communication of the PEC address to the Commercial Register is exempt from secretarial fees and stamp duty.

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

Italy implemented the General Data Protection Regulation (GDPR)[177] by amending the Personal Data Protection Code, containing provisions for the adaptation of the National Legislation to the General Data Protection Regulation ('the Code')[178] and repealing the sections directly conflicting with the GDPR. Supervision of the Code is entrusted to the Italian Data Protection Authority (Garante) which, among other things, deals with data subject complaints, provides specific data protection measures for data controllers and processors, and adopts guidelines to assist organizations comply with the GDPR.

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 changes introduced by the new EU Regulation on servings have the potential to significantly improve the notification procedure mediated by national agencies in Italy. By replacing the traditional paper medium, this system has the potential to reduce cross-border document transmission times and eliminate the risks that can arise during postal delivery (e.g. loss of documents, etc.) at all stages of the procedure, including the transmission of the numerous standard forms that mark the course of the procedure[179]. Moreover, the use of e-CODEX platform can facilitate coordination with national rules[180], as its operation relies on the existing legal, technological and organisational basis and the interoperability of domestic e-justice systems[181], fostering mutual understanding and the establishment of governance

[177] EU Regulation, 27 April 2016, n. 679, O.J.,
[178] Legislative Decree, 30 June 2003, No. 196, as amended by the Law n. 205/2021, available at https://www.altalex.com/documents/codici-altalex/2014/02/10/codice-della-privacy
[179] R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures*, cit.
[180] O. HANSETH, K. LYYTINEN, *Design Theory for Dynamic Complexity in Information Infrastructures: The Case of Building Internet*, *Journal of Information Technology* 2010, 25, p. 4; M. VELICOGNA, G. LUPO, E. A.ONTANU, *Simplifying access to justice in cross-border litigation, the national practices and the limits of the EU procedures. The example of the service of documents in the order for payment claims. Paper presented at EGPA Annual Conference, PSG XVIII: Justice and Court Administration*, 2015, Toulouse, available at **https://ssrn.com/abstract=3224271**
[181] M. VELICOGNA, G. LUPO, E. A.ONTANU, *Simplifying access to justice in cross-border litigation,*cit.

mechanisms[182]. Service of documents is part of every single judicial case and it indirectly impacts in the daily life of individuals and businesses. Both the good administration of justice and the protection of the rights of parties are highly dependent from the swift and safe running of the transmission procedure[183]

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.**

e-CODEX (e-Justice Communication via On-line Data Exchange) is a decentralised and interoperable IT system, created in 2010 to enable the digital exchange of case data in cross-border legal proceedings, which currently operates among 21 member States[184], third States[185] and professional associations[186].

It is a technological innovation that is expected to radically change the way the judiciary works in cross-border procedures, as it provides for the dematerialisation of judicial proceedings and communication between judicial authorities[187]. Based on Regulation (EU) 2022/850, e-CODEX will provide the technical solution for the justice sector to connect the ICT systems of the competent national authorities, such as the judiciary or other organisations. Through its decentralised infrastructure, e-CODEX allows the electronic exchange of any content transmissible in electronic format, "such as text or sound, visual or audio-visual recordings, in the form of either structured or unstructured data, files or metadata"[188]. The e-CODEX system deployed by each Member State consists of two main

[182] M. VELICOGNA, E. STEIGENGA, *Can Complexity Theory Help Understanding Tomorrow E-Justice?* , 2016, available at **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2914362**
[183] R. AMATO, *Exploring the Legal Requirements for Cross- Border Judicial Cooperation*, cit., p. 37.
[184] Austria, Belgium, Czech Republic, Croatia, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Spain, Hungary
[185] Norway, United Kingdom, Turkey, and Jersey Island.
[186] The Council of Bars and Law Societies of Europe (CCBE), and The Council of the Notariats of the European Union (CNUE).

[187] At present, the cross-border electronic exchange of data in the field of judicial cooperation in civil and criminal matters by means of the e-CODEX systemis governed by Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the electronic cross-border exchange of data in the field of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726.
[188] See Recital 9, Regulation (EU) 2022/850.

software components: *(a)* a gateway for the secure exchange of messages with other gateways; and *(b)* a connector that provides many functionalities, including connecting the national gateway to the national application, verifying electronic signatures via a security library, ensuring that messages and attachments cannot be manipulated between the sending and receiving connectors, semantic interoperability of exchanged messages and proof of delivery.

This infrastructure was developed by a broad consortium of Ministries of Justice of Member States, with the support of EU funds, between 2010 and 2016 and is now managed by a consortium of Member States and other organisations, financed by an EU grant[189]. However, due to the importance of the e-CODEX system for cross-border exchanges within the framework of judicial cooperation in the Union, it is now established by means of an EU legal framework that provides rules for its operation and development and ensures the protection of fundamental rights as laid down in the EU Charter of Fundamental Rights.

As far as the Service Regulation is concerned, in practice, once all technical measures have been taken to make this ICT system operational, transmitting agencies should be able to use their usual national application interface (if one exist) or software provided by the European Commission (a reference implementation) to send the documents to be notified to receiving agencies via the e-CODEX system. The specific standard form of the request — containing information on the nature of the documents and the recipient's own notification — will be filled in electronically in one of the official languages of the requested State or in a language accepted by that State. The receiving agency, for its part, will send an automatic acknowledgement of receipt to the transmitting agency via the same system, using the electronic version of the forms available in the annex to the Regulation, before notifying the addressee. It goes without saying that relying on e-CODEX means that all documents passing between transmitting and receiving agencies will be able to be signed electronically and will not be deprived of legal effect or considered inadmissible simply because they are in electronic format.

The changes introduced by the new Services Regulation have the potential to significantly improve the notification procedure mediated by national agencies. By replacing the tradi-

[189] M. VELICOGNA, *Coming to Terms with Complexity Overload in Transborder e-Justice: The e-CODEX Platform in the circulation of agency in E-Justice,* Dordrecht, Springer, 2014, pp. 309 – 330; M. VELICOGNA, *e-CODEX and the Italian Piloting Experience,* IRSIG-CNR Working Paper, 2015.

tional paper medium, this system has the potential to reduce cross-border document transmission times and eliminate the risks that can arise during postal delivery (e.g. loss of documents, etc.) at all stages of the procedure, including the transmission of the numerous standard forms that mark the course of the procedure. Moreover, as emerged in the experience of European Order for Payment and Small Claim procedures, the use of e-CODEX platform can facilitate the coordination with national rules, as its operation relies on the existing legal, technological and organisational basis and the interoperability of domestic e-justice systems, fostering mutual understanding and the establishment of governance mechanisms.

To fully understand the potential benefits of this digitalisation process, however, it is necessary to better explore the impact the new digital procedure will have on the day-to-day work of national transmitting and receiving agencies, which — as a result of the reform of the Services Regulation and the establishment of e-CODEX as a mandatory means of service — become the custodians of the entire decentralised electronic transmission system between the Member States[190]. In this respect, the first issue to be addressed is undoubtedly the adaptability of national agencies to work in a fully digital environment. The complete digitalisation of the service procedure, in order to be effective and lead to tangible results, requires the fulfilment of conditions regarding both the ICT hardware and software available in the offices and the specific digital know-how, which cannot be taken for granted.

As far as Italy is concerned, for example, a recent research paper highlights that despite full support for the computerisation process of the system — which is believed to have a very positive impact in terms of speed and certainty — the reference scenario is not well suited to accommodate the change. Notably, UNEP staff points out that, at the moment, the available resources are by no means adequate to support a rapid adaptation to the digitalisation of the cross-border procedure and that a significant investment in IT equipment would be required[191]. In addition, the urgent need for intensive training in the use of ICT tools, in which the staff of Italian agencies is currently severely lacking, is unanimously pointed out. Overall, issues related to the training of practitioners are consistently reported

[190] R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures*, cit.

[191] It should be noted that to date there is not even a proper case management system, as the one currently in use at each UNEP (Gestione Servizi UNEP—GSU web) does not cover procedures that fall under the scope of the Service Regulation. These procedures are managed through separate electronic registration systems (in many cases, only an excel file), which do not allow for keeping a scanned copy of documents or for keeping proper statistics (e.g., incoming and outgoing flows).

as crucial, not only with regard to IT skills. The results of the survey revealed, in fact, the need for nationally organised courses on the contents of the Regulation, as only a very small percentage of UNEP staff claim to be familiar with EU legislation. Furthermore, the upgrading of language skills should also be regarded as essential, since, at present, practitioners do not consider their proficiency level sufficient to conduct an increasingly intensive dialogue with foreign authorities. These are far from secondary aspects, today more so than in the past, because they are real enabling factors, in the absence of which the changes brought about by the renewed Service Regulation could go unheeded. Training issues, in particular, play an essential role in the smooth running of the procedure and in terms of the proper enforcement of the safeguards provided by the legislation.

In this regards, it is also necessary to remember the European Judicial Network in civil and commercial matters established by the Decision of the European Parliament and of the Council No. 2001/470/EC of 28 May 2001, entered into force on 1 December 2002, and amended with the decision of the European Parliament and of the Council No. 568/2009/EC of 18 June 2009: it is a flexible and non-bureaucratic structure, which operates on an informal basis and aims to facilitate and improve civil judicial cooperation by facilitating the knowledge and practical application of EU instruments by judicial bodies in cross-border disputes.

The Judicial Network, which has also been operating in Italy for several years, is made up of contact points designated by the Member States, central bodies and central authorities envisaged by European regulatory acts, international instruments to which the Member States participate or rules of domestic law in the sphere of judicial cooperation in civil and commercial matters, liaison magistrates with responsibilities in the field of judicial cooperation in civil and commercial matters, any other judicial or administrative authority competent for judicial cooperation in civil and commercial matters whose membership of the network is deemed appropriate by the respective Member State. It also involves the professional associations representing at national level, in the Member States, operators of justice who contribute directly to the application of international instruments on judicial cooperation in civil and commercial matters. The Judicial Network also operates in Italy and is located in the Department of Justice Affairs of the Ministry of Justice. Long sensitive to digitization issues, it makes use of the recently created Aldricus Web portal, where information and materials of interest converge (regulations, internal, international and supra-

national jurisprudence, links to sites of interest). This portal was set up as part of the European project Ejnita-building bridges and is developed by a consortium made up of the Ministry of Justice, the National Council of Notaries, the High School of Magistrates, the University of Ferrara and the University Catholic Church of the Sacred Heart of Milan. The Portal collects regulations and other documentation on judicial cooperation in civil matters, as well as a blog with reports on current affairs, especially jurisprudential, in the sector. It aspires to become the point of reference for all legal operators (magistrates, notaries, lawyers, registrars and more) working in this field: a dematerialized place which acts as a bridge between different institutions and operators, as recalled by the motto of the project - "building bridges" - which indicates precisely the desire to facilitate the exchange of information and the sharing of good practices. The project ended up in January 2022, but the partners have recently drawn up a Memorandum of Understanding to maintain mutual collaboration and to exploit and implement this important digital tool to support the Network's contact points and operators in the field of judicial cooperation in civil and commercial matters.

PROBLEMS RESULTING OUT OF CROSS-BORDER SERVICE

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

In Italy, the competent agencies for receiving and transmitting documents within the cross-border service are the *Uffici Notificazione Esecuzioni e Protesti* (Notification, Enforcement and Protest Office), better known as UNEP.

The Notification, Enforcement and Protest Offices operate within the Italian Courts of First Instance and Appeal, but have organisational, administrative and budgetary autonomy. They are specialised offices responsible for serving acts and executing orders at the request of private parties and judicial authorities in civil and criminal matters.

Notably, in the context of civil proceedings they must ensure the service of judicial and extra-judicial documents within the domestic and international jurisdictions, thus including the service of documents to be notified abroad pursuant to the Service Regulation. All UNEPs have been designated Transmission Agencies for Italy and are therefore responsible for forwarding

the documents to be served abroad. They have a widespread presence throughout the national territory. According to the official Ministry of Justice data, there are currently 142 UNEPs in operation (113 UNEPs at the Courts of First Instance and 29 at the Courts of Appeal). The staff — recruited through a public competition held by the Ministry of Justice — is divided into three professional profiles: (a) judicial officials (*funzionario giudiziario*), (b) bailiffs (*ufficiale giudiziario*), and (c) judicial operators/assistants. A recent study has highlighted some national issues about cross-border services in Italy: the organisational structure (including the human and instrumental resources available to all the UNEPs) does not seem to be equipped to deal effectively with the European service system designed by the Service Regulation. On the one hand, UNEP staff seem to lack certain so-called 'soft' skills, which are nevertheless essential for the efficient and effective functioning of the procedure; on the other hand, they are poorly trained on the relevant European legislation they are called upon to apply.

As an example, the Bailiffs Survey gives an account of a low to medium IT skilled staff, which is considered to be able to use the basic equipment typically made available in public administrations, such as computers, scanners, fax machines, Internet connection, and institutional e-mail addresses (created and made available to UNEP staff only in 2014). At the same time, the situation seems to be more challenging in terms of language skills. According to the data collected, UNEP staff are not sufficiently equipped to properly carry out tasks involving constant contact with foreign jurisdictions and actors. Foreign language speakers seem to be a limited group. Among the respondents, only 10% declared to have an excellent knowledge of at least one foreign language (French being the most widely known) [192].

Finally we may outline that in Italy, the hardest knot to unpick is legal and organisational complexity. The establishment of a secure system for electronic transmissions is mainly hindered by legal and practical problems resulting from the existence of different regulative layers (e.g. European, national, local). Thus, the main challenges for electronic platforms for collaboration to be operational shall be complying with all those legal layers and supporting the exchange of legally valid communications[193].

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

[192] R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures*, cit.
[193] R. AMATO, *Exploring the Legal Requirements for Cross- Border Judicial Cooperation*, cit., p. 44.

The different methods of service in Italy highlight the need to improve the simplification of the judicial cooperation in civil matters developed by the European Union and funded on the use of information and communication technologies in the administration of justice. This project was launched in June 2007 and led to a European e-Justice Strategy. The e-Justice tools include: the European e-Justice portal[194], which aims to facilitate citizens' and enterprises' access to justice in Europe, better use of videoconferencing during judicial proceedings; innovative translation tools such as machine translation, dynamic online forms; and a European database of legal translators and interpreters.

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 electronic service could improve the national service by replacing the traditional way of service, reducing the time needed to transmit documents across borders and eliminating the risks that can arise during postal delivery (e.g., loss of documents, etc.) at all stages of the procedure, including the transmission of the numerous standard forms that mark the course of the procedure[195]. Moreover the use of e-CODEX platform can facilitate coordination with national rules[196], as its operation relies on the existing legal, technological and organisational basis and on the interoperability of domestic e-justice systems[197], fostering mutual understanding and the establishment of governance mechanisms[198].

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.**

[194] https://e-justice.europa.eu/home.do?action=home

[195] R. AMATO, M. VELICOGNA, *Cross- Border Document Service Procedures*, cit.

[196] O. HANSETH, K. LYYTINEN, *Design Theory for Dynamic Complexity in Information Infrastructures: The Case of Building Internet*, *Journal of Information Technology* 2010, 25, p. 4; M. VELICOGNA, G. LUPO, E. A.ONTANU, *Simplifying access to justice in cross-border litigation, the national practices and the limits of the EU procedures. The example of the service of documents in the order for payment claims. Paper presented at EGPA Annual Conference, PSG XVIII: Justice and Court Administration*, 2015, Toulouse, available at **https://ssrn.com/abstract=3224271**

[197] M. VELICOGNA, G. LUPO, E. A.ONTANU, *Simplifying access to justice in cross-border litigation,*cit.

[198] M. VELICOGNA, E. STEIGENGA, *Can Complexity Theory Help Understanding Tomorrow E-Justice? ,* 2016, available at **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2914362**

1- Tribunal of Taranto, order of 15 September 2009, in *Iusexplorer*.

Following the filing of a valid opposition to a European order for payment in accordance with Article 125 of the Provisions Implementing the Italian Civil Procedure Code, applied by analogy, the court must schedule a hearing for a first appearance and order the defendant in the opposition to serve the submission seeking the resumption of the proceedings on the opponent in accordance with the time limit provided for under Article 163-bis of the Italian Civil Procedure Code, as well as the requirements laid down by Article 163 of the Italian Civil Procedure Code.

2 - Civ. Cass., sec. 5, ord. 25 January 2010, no. 1366, at www.foroeuropeo.it/aree-sezioni/cassazione-massime-materie/1203-notificazione/20607-procedimento-civile-notificazione-a-mezzo-posta-corte-di-cassazione-sez-sez-5-ordinanza-interlocutoria-n-1366-del-25-01-2010

If the parcel has been delivered to a person other than the addressee, without, moreover, the certificate of dispatch to the addressee of the registered letter provided for by Law No. 890 of 1982, Art. 7, paragraph 6 (...) it must be held that such an omission does not constitute a mere irregularity, but a vice of the postal agent's activity which, without prejudice to the effects of the delivery of the deed to the judicial officer, results in the nullity of the notification to the addressee (...)".

3. - Tribunal of Piacenza, order of 18 September 2010, in *Pluris*.

Following the filing of a statement of opposition to a European order for payment pursuant to Articles 16 and 17 of Regulation (EC) No 1896/2006, the proceedings must continue according to the ordinary rules by the issue of an order setting a date for the case to be considered before the court, with service by the creditor (i.e. the defendant in the opposition), through counsel, of

a defence submission that complies with the requirements laid down by Article 163 of the Italian Civil Procedure Code on the debtor/opponent in order to enable the debtor/opponent in turn to supplement the arguments submitted in its defence pursuant to Article 167 of the Italian Civil Procedure Code, entering an appearance within the time limit provided for under Article 166 of the Italian Civil Procedure Code.

4. - Tribunal of Milan, order of 28 October 2010, in *Int'l Lis*, 2011, p. 91 with a commentary by D'Alessandro.

Following an opposition to a European order for payment, the court must not set time limits for the parties but may, if the case is deemed to be urgent, schedule a hearing by halving the time limits for entering an appearance in accordance with Article 163-bis(1) of the Italian Civil Procedure Code, requiring the creditor to serve the summons, as the transfer to ordinary civil proceedings must occur at the instigation of the creditor.

5. - Tribunal of Milan, order of 18 July 2011, in *Foro it.*, 2012, I, p. 275 WITH A COMMENTARY BY A. MONDINI.

An opposition to a European order for payment will be deemed to have been submitted on time if it is filed with, or even only sent to, the competent judge within the time limit provided for under Article 16(2) of Regulation (EC) No 1896/2006, and there is no need for it to be served in accordance with Article 645 of the Italian Civil Procedure Code.

In the event that an opposition to a European payment order is filed in good time, the creditor seeking to enforce its rights must act in accordance with the rules of ordinary civil procedure pursuant to Article 17(1) of Regulation (EC) No 1896/2006; therefore, once it has become aware of the opposition and the date scheduled by the court to hear the case, it must serve notice on the defendant (i.e. on the debtor/opponent) of a document that complies with the requirements laid down by Article 163-bis of the Italian Civil Procedure Code in order to enable the latter to present arguments in its defence pursuant to Articles 166 and 167 of the Italian Civil Procedure Code.

6. - Civ. Cass., sec. II, 19 December 2011, no. 27520 available at www.sentenze.laleggeper-tutti.it/sentenza/cassazione-civile-n-27520-del-19-12-2011

   The service of the writ of summons, in so far as its purpose is to bring the claim to the attention of the party against whom it is proposed, constitutes an indispensable condition of the proceedings. In case of omission of the fulfilment foreseen by law for public notice, pursuant to Art. 150 CPC, the Court of Appeal may declare the non-existence of the notification.

7. - Tribunal of Verona, order of 26 May 2012, in *Int'l Lis*, 2012, p. 153 with a commentary by Porcelli.

In accordance with recital no. 24 and Article 17 of Regulation (EC) No 1896/2006, the procedure for establishing (and ordering) the payment of the debt actioned according to the European payment order procedure must be deemed to be technically pending already at the time the application provided for under Article 7 of Regulation (EC) No 1896/2006 is filed.

After receiving the opposition to the European order for payment, which is submitted directly to it, the court must, acting *ex officio*:

1. Arrange through the court registry for the debtor's opposition to be served on the creditor;
2. Set a mandatory time limit for the claimant/creditor (in view of the prohibition on subsequent *mutatio libelli* established under Article 183(5) of the Italian Civil Procedure Code) to supplement the *thema decidendum* and the facts averred, although not for the submission of documents, which is subject to the time limit provided for under Article 183(6) no. 2 of the Italian Civil Procedure Code;
3. Schedule a hearing pursuant to Article 183 of the Italian Civil Procedure Code in accordance with the time limits for appearing laid down by Article 163-bis of the Italian Civil Procedure Code;

4. Grant the defendant the right to file a statement of defence pursuant to Article 167 of the Italian Civil Procedure Code, with a requirement to enter an appearance – where appropriate, acting through counsel if defence in person is not permitted – at least twenty days prior to the hearing referred to in point 2), subject to the intimation pursuant to Article 163(3), no. 7 of the Italian Civil Procedure Code that the late entry of an appearance will result in the forfeitures provided for under Article 167 of the Italian Civil Procedure Code .

In this case, the claimant has already set out detailed arguments in its defence within a detailed "statement of defence" filed after the opposition was served, and it was thus manifestly superfluous (and would also run contrary to the principle of the reasonable length of trials) to set a time limit for making a supplementary filing in accordance with point 2) above.

8. – Tribunal of Forlì, order of 18 June 2013, in *Pluris.*

Once it has received an opposition to a European order for payment pursuant to Article 16 of Regulation (EC) 1896/2006, the court must, acting *ex officio*; arrange through the court registry for the debtor's opposition to be served on the creditor; set a mandatory time limit for the claimant/creditor to supplement the *thema decidendum* and the facts averred; schedule a hearing pursuant to Article 183 of the Italian Civil Procedure Code in accordance with the time limits for appearing laid down by Article 163-bis of the Italian Civil Procedure Code; and grant the defendant the right to file a statement of defence pursuant to Article 167 of the Italian Civil Procedure Code, with a requirement to enter an appearance, acting through counsel if defence in person is not permitted, at least twenty days prior to the hearing scheduled and subject to the intimation pursuant to Article 163(3), no. 7 of the Italian Civil Procedure Code that the late entry of an appearance will result in the forfeitures provided for under Articles 167 and 38 of the Italian Civil Procedure Code.

9. - Tribunal of Milan, 30 May 2016, at https://www.uantwerpen.be/en/projects/ic2be/

The Court of Milan quashed the original decision. According to the Court, outside the areas covered by Art. 19 of the ESCP Regulation, the ESCP is governed by Italian rules of civil

procedure; under the domestic rules, the claimant bears the burden to prove its claim even if the defendant did not appear before the court. Since, according to Italian civil procedure, the defendant's inactivity is never equated with an acceptance of the plaintiff's claim, a Justice of Peace judging pursuant to Art. 7(3) of the ESCP Regulation cannot rule in favour of the plaintiff merely because the defendant is absent, but is nevertheless obliged to examine the merit of the case

10. - Civ. Cassation, sec. II, 29 November 2016, No. 24253, available at https://www.dirittoe-giustizia.it/#/documentDetail/9185817.

Article 650 CPC allows opposition to the injunction, even after the expiry of the term set for opposition, where the respondent demonstrates proves that he or she did not have timely knowledge of the order due to irregularities in the service or to unforeseeable circumstances and force majeure.

11. - Tribunal of Prato, judgment of 01 December 2016, in *Pluris*

An objection seeking the annulment of the proceedings pursuant to Article 307(3) of the Italian Civil Procedure Code on the grounds that the claimant served the statement of claim without complying with the time limit set by the court following the filing of the opposition to the European order for payment pursuant to Article 17 of Regulation (EC) No 1896/2006 is unfounded. In this case, no legislation allows the courts to set a mandatory time limit for the party seeking a payment order for supplementing the statement of claim in response to an opposition by the party on which the European order for payment was served. The defendant may, at most, assert the failure to comply with Article 163-*bis* of the Italian Civil Procedure Code and ask that the hearing be deferred.

12. – Tribunal of Rovereto, order of 8 June 2016, in *Iusexplorer*.

Following an opposition to a European order for payment submitted according to the applicable procedures, the court must set a mandatory time limit for the resumption of the proceedings by a submission that fulfils all of the prerequisites applicable to a statement of claim as provided for under Article 163 of the Italian Civil Procedure Code, which will be served on the opposing party in accordance with the time limits for entering an appearance laid down by Article 163 of the Italian Civil Procedure Code, and the court must also order that, following the resumption of the proceedings by the claimant, the case is entered into the general register of civil proceedings, subject to the attendant tax obligations.

13. – Brescia, Justice of Peace, 24 November 2017, No. 1848, available at www.ilcaso.it

As regards the service by means of PEC, Article 3 bis, par. 4, of Law 53/94, provides that the PEC must contain the indication, in the subject line, "*Notificazione ai sensi della legge n. 53/1994*" – "*Notification pursuant to Law No. 53/1994*". In the event of non-compliance with this requirement, the notification is null and void and may be remedied according to the provisions of Art. 156, par. 3 CPC

14. Cass. Civ., Section VI-II, 11 September 2018, n. 22000 at www.italgiure.giustizia.it

In the event of notification of an administrative violation assessment report to a person residing in another Member State of the European Union, the validity of the procedure referred to in Article 14 of Reg. 1393/2007 which allows States to use the postal service does not may be

conditioned by the application of additional methods established by national laws for notification by post.

15. - Civ. Cass., s.u. 28 September 2018, No. 23620, www.altalex.com/massimario/cassazione-civile/2018/23620/procedimento-civile-notificazione-al-procuratore-notificazione-della-sentenza-a-mezzo-pec

As regards the service by means of PEC, Article 3 bis, par. 4, of Law 53/94, provides that the PEC must contain the indication, in the subject line, "*Notificazione ai sensi della legge n. 53/1994*" – "*Notification pursuant to Law No. 53/1994*". In the event of non-compliance with this requirement, the notification is merely irregular.

16. – Civ. Cass., Sec. III, 8 November 2018, n. 28509 at www.italgiure.giustizia.it

In the event of service of a deed in a Member State of the European Union, the notifier has the burden of proving the translation of the document pursuant to Art. 8 of the Reg. 1393/2007, either into a language understood by the recipient or into the official language of the State of destination. This evidence can also be provided through the certification of the Italian bailiff, but this declaration can be subdued by proof to the contrary, since it relates to a notification that is completed abroad.

17. - Milan Justice of Peace, 11 February 2019, judgment headnote.

The European Small Claims Procedure provided for under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 is applicable to a claim seeking the issue of an order for payment for an amount equivalent to the cost incurred to purchase items of clothing, in addition to compensation for the inconvenience suffered, as a result of the loss of luggage by a Spanish airliner; "considering also the documentary status of the proceedings",

the case file was served on the defendant (pursuant to Article 5(2) of regulation EC No 861/2007) and the court proceeded to issue a decision.

18 - Cass. Civ., Sect. 3, 15 November 2019, n. 29716, at www.italgiure.giustizia.it

In the event of service of a judicial document in another Member State of the European Union on the basis of the Service Regulation, the service is considered effected according to the information contained in the certificate provided for by in Art. 10 of the Regulation and drawn up according to the standard form (Annex I).

19. - Civ. Cass., lab sec., 24 June 2020, No. 12488; Civ. Cassation, sec.I, 24 September 2020, No. 20039, in N. Gargano, L. Sileni, G. Vitrani, *100 e più casi pratici di procedure telematiche,* Milano, 2021, p. 132.

If the "subject" of the mail does not correctly state "*notificazione ai sensi della l. n. 53 del 1994*" – "service pursuant to Law No. 53/1994", as provided for by Article 11 of Law 53/94, the service may be considered validly effected, since the right of defence is also guarantee through different means, such as the mention, in the subject line of the e-mail of "*notifica telematica*", instead of "*notificazione ai sensi della l. n. 53 del 1994*" – "service pursuant to Law 53/1994".

20. – Civ. Cass., s.u., 5 February 2021, No. 2866, Foro it

As to the service abroad of Italian administrative fines for violations of the "Codice della Strada", it is not possible to apply the procedure ruled by the Regulation 1393/2007, as they are excluded from the scope of application of this Regulation. In fact they are administrative acts connected with the exercise of the State's sanctioning power and therefore their service must be effected, pursuant to Art. 142 CPC, or according to the 1977 European Convention for service abroad.

21. – Civ. Cass., 23 June 2021, No. 17968, available at https://www.cfnews.it/media/1848/corte-di-cassazione-sezione-3-civile-23-giugno-2021-n-17968.pdf .

In case of service of an injunction, pursuant to Art.3bis of the law 53/1994, the erroneous deletion of the PEC message, which ended up in the junk mailbox, can't constitute a fortuitous event or force majeure capable of supporting the failure to file an objection in due time pursuant to Art. 650 CPC. It is part of the ordinary diligence of the person in charge of receiving electronic mail to also check the junk mail folder, since messages coming from safe and reliable senders and not containing any attachment prejudicial to the recipient can be automatically placed in that folder. Accordingly, the holder of the PEC account is obliged to carefully and constantly check all incoming e-mail, including that considered by the management software as "junk mail".

22. – Civ. Cass., 16 December 2021, no. 40467, in De Jure

The virtual service provided for in Article 142 CPC in the case of service abroad must be the *"extrema ratio",* if the addressee cannot be identified after a very careful and diligent research.

23. - App. Bari, 5 April 2022, n. 562, at www.judicium.it

In case of services pursuant to Art. 170 CPC, the notion of domicile must necessarily also include the digital domicile ruled by Art. 16 sexies Law Decree No. 179/2012. The service pursuant to Art. 143 CPC is considered null and void if the notifier has not previously attempted to reach the addressee at his/her digital domicile – notion necessarily included in the domicile pursuant to Art. 170 CPC.

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

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].