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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	13295/20 and 13895/1/20 REV 1
Subject:	Financial Penalties - Service of decisions - Information provided by Member States

By note 13295/20, the Presidency invited Member States to provide written information on the way in which decisions, which contain a financial sanction or penalty, are served in their legal orders.

Two questions were asked:

1. What methods of service exist under your national (criminal) law?

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

The replies by Member States to these questions were compiled in 13895/20 + REV 1.

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At the COPEN (VTC) meeting on 17 December 2020, the Member States provided oral answers to questions 3 and 4 in doc. 13295/20, which read as follows:

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

4. In your experience, what are the best practices in this context?

Following requests by delegations, it was decided to include written replies to questions 3 and 4 in the compilation of replies, and to make it a new, public document.

In this light, delegations will find attached in Annex V a revised compilation of the replies provided by the Member States to the four questions set out in 13295/20.

Annexes I-IV contain tables / summaries of the answers provided by the Member States.[1]

Delegations that have comments/suggestions regarding this document, are kindly invited to contact the General Secretariat of the Council: jai.criminal.justice@consilium.europa.eu

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[1] NB: The tables may contain errors, as it was sometimes difficult to classify the answers.

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ANNEX I

Question 1: Methods used by Member States for service of decisions

	Post (ordinary or not specified)	Registered post with acknow-ledgment of receipt	Fax or phone	Bailiff	Court / PPO / court guards / delivery service	Police	In person	Service on authorised represent-tative (e.g.lawyer)	Data-box / e-mail	Publi-cation	Availa-bility service
Austria		X									
Belgium				X							
Bulgaria											
Croatia	X						X	X			
Cyprus											
Czechia	X	X			X	X	X		X		
Denmark				X					X		
Estonia		X					X		X		
Finland	X	X			X				X		
France		X		X			X				
Germany	X	X						X		X	
Greece	X		X			X					
Ireland											
Italy					X		X				
Hungary		X			X		X		X	X	
Latvia		X					X				
Lithuania	X						X		X		
Luxembourg											
Malta											
Netherlands	X	X				X	X		X		
Poland		X				X	X				
Portugal		X									
Romania	X		X			X		X		X	
Slovakia	X				X	X	X	X	X		
Slovenia		X						X	X		
Spain							X				
Sweden		X		X					X		X

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ANNEX II

Question 2: Methods used by Member States for intra-EU cross-border service of decisions

	Post (ordinary or not specified)	Registered post with acknow-ledgment of receipt	Bailiff	MLA request Art.5 2000 Convention
Austria				**X**
Belgium		**X**	**X**	**X**
Bulgaria				
Croatia		**X**		
Cyprus				
Czechia		**X**		**X**
Denmark				
Estonia				**X**
Finland		**X**		
France		**X**		
Germany		**X**		
Greece	**X**			
Ireland				
Italy				**X**
Hungary		**X**		
Latvia				**X**
Lithuania				**X**
Luxembourg				
Malta				
Netherlands	**X**	**X**		
Poland		**X**		
Portugal				**X**
Romania				**X**
Slovakia	**X**			
Slovenia		**X**		**X**
Spain		**X**		**X**
Sweden		**X**		

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Question 3: any problems in cross-border cases, for example as regards proof of service?

Various Member States indicated that have not reported any problems regarding the service of decisions in cross-border cases.

The reported problems that were reported include the following:

- some Member States indicated that they experience problems (as executing States) with decisions that are served by issuing Member States **by ordinary mail**, without acknowledgment of receipt;

- similarly, a Member State that serves decisions in such way (as issuing State) expressed concerns that the executing Member States automatically assume that the relevant decisions have not effectively reached the person concerned;

- one Member State put forward that it experiences problems when serving a decision on **'authorised representatives'**, although this issue has been addressed by the CJEU in its case law;

- some Member States reported **practical problems**, e.g. that the postal services do not deliver - or do not deliver timely - the acknowledgments of receipt, or about the readability of the handwritten pieces of information on the international return receipt.

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Question 4: best practices

The suggested 'best practices' (and recommendations) include the following:

as regards the service of decisions, in particular in cross-border situations:

- always use a method of service of decisions with a **written proof of service**, showing that the defendant did personally receive the decision;

- introduce a **standardized system of acknowledgments of receipt**, including an ***electronic* acknowledgment of receipt system**, for the entire European Union. The creation of regulations similar to those in civil proceedings could be considered as well;

- serve decisions **in person** (see CJEU judgment of 24th May 2016 C-108/16 PPU Pawel Dworzecki) in a **language the person understands** (see CJEU judgment of 12th October 2017 C-278/16 Frank Sleutjes), meaning that the decision is served
    - directly by post – by registered mail (the proof of service is required) or
    - on the basis of an MLA request;

- similarly, it is recommended to serve the decision **in person by competent authorities** (police);

- judicial authorities should be encouraged to request **the support of police cooperation** in order to identify the real location of a person abroad, especially requesting the introduction of an alert according to article 34 of Council Decision 2007/533/JHA;

- the best way to avoid problems is to serve through the requested judicial authorities on the basis of **conventions or bilateral agreements**;

- it is suggested not to apply a **presumption or fiction of service** of the decision on the person concerned;

- in order to tackle problems with the readability of the handwritten pieces of information on international return receipts, more use should be made of a format containing, as much as possible, boxes to be ticked off;

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- **direct contact** is recommended: if there is any doubt with regard to the final and enforceable character of the decision, the competent executing authority should be encouraged to contact the issuing authority;

- if direct contact is not possible, invoke the help of **EJN or Eurojust**;

- special attention should be given to **in absentia decisions/judgements** in order to ensure the regularity of the service of the decisions/judgements, especially as regard the proof that the service has been done in person in view of the enforceable character of the decision;

- proceeding to the **service of documents via MLA request** could constitute a good practice and avoid some practical difficulties, especially with regard to in absentia cases or/and when the residence of the concerned person is not known or uncertain. If the service of documents is proceeded under MLA request, the competent public prosecutor is sure that the decision was handed to the convicted person in person and that the time limits set in order for the decision/judgement to become final has started counting;

- the beneficial aspects of **different initiatives on European level**, such as Intra-European project "Mutual recognition in Europe Through Intervision Studies' (METIS) which contributes to raising awareness about legal practices in other Member States and exchanging best practices among the different competent authorities. A global view on the rules in other Member States and on the good practices could be beneficial to ensure faster and more efficient handling of requests;

- further **digitalisation** in processing of financial penalties as well as further discussions among Member States on the topic of the service of documents via secure electronic means.

<u>as regards the implementation of FD 2005/214/JHA on financial penalties:</u>

- to **complete the certificate** related to financial penalties **in as much detail as possible**, especially section H with regard to the final and enforceable character of the judicial decision;

- **enclose a copy of the proof of service** to the certificate under FD 2005/214/JHA, since this could make the recognition procedure more efficient and faster.

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ANNEX V

Compilation of contributions by Member States

Contents

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AUSTRIA

1. What methods of service exist under your national (criminal) law?

The decision containing also an information on the available legal remedies is sent to the person concerned by postal service. It has to be handed over to the addressee in person who has to sign a certificate of receipt and indicate the date on which the service took place. In case the person concerned cannot be reached, the document is be deposited at the post office and a notification to that effect is left in the person's mail box, informing him or her of that fact, the time limit for picking up the document as well as the fact that the document has to be picked up by the addressee in person who has to show an official document in order to verify his/her identity and to sign and date a certificate of receipt.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

Article 5 of the Convention on Mutual Assistance in Criminal Matters between the MS of the EU which has not been replaced by the Directive on the European Investigation Order applies. Contrary of what seems to be implied in the present note, the AT delegation sees no reason why that provision should not apply in the cases in question.

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BELGIUM

1. What methods of service exist under your national (criminal) law?

Service of judicial decisions are to be done via formal notification of the convicted person by bailiff ('signification par exploit d'huissier de justice').

When judicial decisions are serviced, they are accompanied by a document containing information on how to oppose or appeal a decision.

On the other hand, a payment order ('un ordre de paiement' used for example in case of some fines for traffic-related offenses) imposed by the public prosecutor is sent to the person concerned by registered mail. If he/she does not object within thirty days after the sending of the payment order, the financial penalty is enforceable.

When it comes to cross-border cases, the Crossborder project (initiated in 2017 as a result of the implementation of Directives 2011/82/EU and 2015/413/EU) represents a useful tool in order to further digitalize the processing of financial penalties. In Belgium, all certificates 'financial penalties' received from other EU-countries are now introduced into Crossborder. In the course of 2021, all certificates will be dealt with following the Crossborder process. Consequently, financial penalties sent to Belgium will be centralized at the level of the Federal Public Service Justice, digitalized and introduced in the case management system of the public prosecution office (MACH).

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

Service of judicial decisions in these cases varies from one district to another. Some use registered mail directly sent by the public prosecutor to the person concerned with acknowledgment of receipt. Other use bailiffs ('huissiers de justice') to do such transmission via registered mail.

Where the residence is not known or uncertain, service of documents is done via MLA request based on Art. 5 of the 2000 MLA Convention. Through the MLA request, the Belgian judicial authorities ask the foreign authority to service the judicial decision in person to the convicted person. By doing so, the competent public prosecutor is sure that the decision in absentia was handed in person to the convicted person and that the time limits for the judgment to become final start counting.

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3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

When Belgium is an issuing State, the service is done via registered mail directly sent by the public prosecutor to the person concerned with acknowledgment of receipt, or via registered mail. The second situation could lead to some challenges in some cases in which it could be difficult to establish whether or not a decision is final and enforceable, especially in the absence of acknowledgement of receipt.

The Belgian courts consider the service of a decision in absentia to be regular if the decision is directly sent by a judicial authority to the residence of the recipient abroad via registered mail with acknowledgment of receipt.

4. In your experience, what are the best practices in this context?

- One of the good practices is to complete the certificate related to financial penalties in as much detail as possible, especially section H with regard to the final and enforceable character of the judicial decision.

- If there is any doubt with regard to the final and enforceable character of the decision, the competent executing authority should be encouraged to contact the issuing authority.

- A special attention should be given to in absentia decisions/judgements in order to ensure the regularity of the service of the decisions/judgements, especially in regard to the proof that the service has been done in person in view of the enforceable character of the decision.

- Proceeding to the service of documents via MLA request could constitute a good practice and avoid some practical difficulties, especially with regard to in absentia cases or/and when the residence of the concerned person is not known or uncertain. If the service of documents is proceeded under MLA request, the competent public prosecutor is sure that the decision was handed to the convicted person in person and that the time limits set in order for the decision/judgement to become final has started counting.

- Belgium also underlines the beneficial aspects of different initiatives on European level, such as Intra-European project “Mutual recognition in Europe Through Intervision Studies’ (METIS) which contributes to raising awareness about legal practices in other Member States and exchanging good practices among the different competent authorities. A global view on the rules in other Member States and on the good practices could be beneficial to ensure faster and more efficient handling of requests.

- Another good practice could be further digitization in processing of financial penalties as well as further discussions among Member States on the topic of the service of documents via secure electronic means

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CROATIA

1. What methods of service exist under your national (criminal) law?

The decision imposing a fine and a summons for questioning are usually served to defendants by post. It is also possible to make service directly in the body that made the decision or is conducting the proceedings, in which case the defendant will sign confirmation of service.

At the request of the defendant, the decision imposing a fine and the summons for questioning may be served only to the defendant's defence counsel (lawyer) or another person designated by him (the legal guardian for receiving the letter). In that case, service to the defence counsel or legal guardian is considered service to the defendant.

If the decision imposing a fine or summons for questioning cannot be served on the defendant because he did not report the change of address to the court or there are circumstances which indicate that he clearly avoids receiving the decision or summons (according to the case law – it is presumed that the defendant avoids receipt if he is aware that proceedings are being conducted against him and, also, service by post is returned with an indication that the defendant was notified twice of taking service at the post office but he did not take it), the court will post the decision or summons on the court notice board and with the lapse of the eighth day, the delivery is considered duly performed.

The decision imposing a fine and the summons for the first examination shall be served:

- to the defendant natural person - to the address of his residence or another address he reported to the court, workplace or any other place where he is likely to be found;

- to the defendant legal entity and/or another related entity - to the address of the seat, i.e. to the address reported to the court or to any other place where it is probable the person authorized for receiving a letter will be found

The decision on fine or summons for questioning are personally served to the defendant natural person by handing it over directly to him. If he refuses the service, the deliverer will note the reason for refusal, date and time, and leave the decision/summons at the door.

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If the defendant is not found where the service is to be made, the deliverer will leave a written notice to the defendant to be at the specified time and date in his apartment or workplace. The notice will be given to one of the adult members of the defendant's household, to a neighbour or a person employed in the same place.

If, after that, the deliverer does not find the defendant, he will leave a decision imposing a fine or a summons for questioning to an adult household member who is obliged to receive it, to a neighbour (if he agrees), to a person authorized to receive mail at the workplace (obliged to receive) or to a person who is employed in the same place (if he agrees).

The decision on the fine or summons for examination will be served to the defendant legal entity by handing it over to the person authorized to receive the letter.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

Defendants (natural or legal persons) who have their permanent or temporary residence or seat in another EU Member State are usually served with a decision imposing a fine or summons for questioning by post with a return receipt.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

Regular methods of service available under our national law does not involve specific problems, and so far, we did not have information that other Member states would have some issues with our methods of service.

4. In your experience, what are the best practices in this context?

We believe that the most convenient and secure way is an existing written proof of service, that contains a clear signature of the defendant or some other information stating that a defendant did personally receive the decision. We are of the opinion that it would be very useful that such proof is sent every time.

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CZECHIA

1. What methods of service exist under your national (criminal) law?

In general

The method of service of procedural documents is determined by the judicial authority that issued the document (in proceedings before the court by the chairman of the chamber or a single judge/prosecutor), nevertheless, the order of the different methods of service specified in the CCP must be respected.

Primarily the judicial authority serves the document itself in the following order:

a) during the act of criminal proceedings - If the document is delivered during the act, the protocol shall state that: the service of document was effected, who performed the service, what document was served and how the identity of the addressee or the person who received the document addressed to him was established, and at the same time the person who received the document addressed to him shall attach his signature to this information in the record of the act.

b) Sent to the data box[2] and,

c) If the above is not possible, like in the case of a court or public prosecutor's office,

- by the court/PPO delivery officer, or
- court guards officer
- by post.

It is up to the competent judicial authority to choose whether to deliver through the court / PPO´s delivery officer, the judicial guard body or by post.

[2] A state-guaranteed electronic communication tool that replaces paper letters. It serves mainly for communication with public authorities. Authorities are obliged to use the data box in communication with anyone who has a data box set up.
The data box can be used to communicate with any authority. It works similarly to an e-mail box, except that the owner of the mailbox is an officially authenticated person. Simply put, the data box replaces the signature.
Data boxes have been introduced to facilitate and speed up communication between authorities and businesses, increase the chances of successful delivery of messages (up to 99% probability of delivery is stated for data boxes compared to 45% for registered letters), save on paper communication costs, brought the possibility of retrospective proof of delivery of the document (electronic documents have the same legal effect as a paper letter with a round stamp and in the case of saving a message, its content can be proved at any time). The data box can be set up by anyone (even non-business natural persons, including foreigners), but it is mandatory for some of these entities (it is set up automatically; these entities do not have to apply – for examples defense lawyers).

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Only if the delivery by any of these methods is not successful, the competent judicial authority may also deliver procedural documents through the municipal authority. This is an exception to the standard delivery method. This method of delivery can be practical if the delivery of the document into person´s own hands with the exclusion of the possibility of alternative delivery fails, where it is a small municipality.

The last possible method of delivery is through the competent police authority. This is only a subsidiary method of service, ie. if the document cannot be served in another way. The impossibility of delivery may result from the nature of the case, eg. when the document needs to be delivered during non-working hours within a short period of time. Furthermore, it applies especially in cases explicitly stated by law, ie. when a person has to be brought before the judicial authority, in case of unsuccessful delivery into person´s own hands with the exclusion of the possibility of alternative delivery or in case of risk of frustrated proceedings (especially the main trial and public hearing). In practice, service through police authorities is used mainly when the addressee avoids service of the document and therefore service by the law enforcement authority itself (by the court/PPO´s delivery officer or court guard officer), by the municipal authority or by post has not been successful. In such cases, it is usually necessary to trace the whereabouts of the person to be delivered and perform the related actions for which the Police is best equipped.

In cases stipulated by special regulations, service is made through the Ministry of Justice or another designated body (service to foreign countries and service intended to persons enjoying privileges and immunities under international law).

Delivery into person´s own hands

A special case of service is the delivery into person´s own hands. Delivery into person´s own hands shall be made as a general rule with a receipt of the acknowledgement, or by post – in this case the document is sent as a registered mail (the document can only be handed over to the addressee, another member of the household cannot take it over) .

The following documents are delivered into persons own hands

- an indictment to the accused person, the proposal for approval of the agreement on guilt and punishment, the proposal for punishment and summons,
- a copy of decision to the persons entitled to lodge an appeal (remedy) against the decision (*ie. classically a criminal order or judgment imposing a penalty*)
- another document if the chairman of the chamber, the public prosecutor or the police authority so decide (for important reasons)

If the addressee of a document to be delivered into person´s own hands has not been found, the document shall be deposited and the addressee shall be informed in an appropriate manner where he can obtain it (*the document is lodged in the district court or in the PPO´s office, at the post office, in the town hall or with the competent authority of the police*).

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Fiction of delivery - If the addressee does not collect the document within ten days of deposit, the last day of this period is considered to be the day of service, even if the addressee did not know about the deposit, under the condition that

- o the addressee is staying at the place of service, or
- o the addressee designates the address as an address for service.

If the above conditions are not met, the effects of the fiction of delivery shall not apply.

In the event of lapse of this period, the delivering authority shall serve the document in the private mailboxes used by the addressee, unless the sender excludes this possibility. If there are no such mailboxes, the document is returned to the sender and a notice is posted on the official notice board.

Fiction of delivery does not apply in case of

a) a service of a resolution on initiation of criminal prosecution, an indictment, a motion for punishment, a petition for approving an agreement on the guilt and punishment, a judgment or a criminal order, summons to the trial or a public session to the accused person, or
b) a service of another document, if the presiding judge, public prosecutor, or the police authority who ordered the service should it so decide.

As follows from the above mentioned, final decisions imposing a financial penalty to a natural or legal person are always delivered into person´s own hands of the person to whom the decision is directed and the fiction of service does not apply here.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

In cases where the parties concerned have their place of residence or seat in another EU Member State, procedural documents are sent

- primarily directly by post - an international receipt of the acknowledgement is required
- by means of an MLA request addressed directly to the competent judicial authorities of another MS, provided that:
  - direct service was unsuccessful or impossible to use at all (address of the person to whom the document is addressed is not known or is not certain);
  - according to the CZ procedural requirement, a document proving the delivery of the document to the addressee other than that which can be obtained by post is required (eg it is necessary to deliver the procedural document into the person's own hands);
  - the document cannot be delivered by post (eg the person refuses to accept the mail, international receipt of the acknowledgement are not returned);
  - the court/prosecutor has legitimate reasons to believe that service by post would be ineffective or inappropriate (eg there are reasonable doubts that a addressee will not accept the service of the document by post).

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In accordance with the requirement of the case-law of the CJEU, in particular in accordance with point 39 of the decision C – 671/18, according to which:" *Ensuring actual and effective receipt of decisions, that is to say their notification to the person concerned, and sufficient time to bring an appeal against such decisions and prepare that appeal is a requirement that is necessary to ensure respect for the right to effective judicial protection",* final decisions imposing a financial penalty to a natural or legal person having their place of residence or seat in another EU Member State have to be always delivered into person own´s hands of the person against whom the decision is directed (and the fiction of service does not apply here)

- directly by post - an international receipt of the acknowledgement is required (*so the court therefore has a proof that the decision has been served, as a signed receipt of the acknowledgement will be returned to it*) or

- by means of an MLA request addressed directly to the competent judicial authorities of another MS, provided *(in this case, therefore, the court also has proof that the decision has been served in this case, the court therefore also has proof that the decision has been served, as it will be informed of the service by the executing authority).*

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

The methods of service under the Czech Code of Criminal Procedure do not involve any specific problems in cross border cases.

CZ as requesting state

- The decision imposing a financial penalty has to be served on the person concerned in person, i. e. we need to get the proof of service (the person has to really receive the decision). **Presumption or fiction of service does not apply in this case.**

- If the proof of service cannot be obtained when sending the decision by post, the judicial authority has to send the MLA request asking for the service of the decision on the person concerned in a way enabling to obtain the **proof of service**.

This is **a standard procedure** regulated by Article 5 of the 2000 EU MLA Convention and by the European Convention on Mutual Assistance in Criminal Matters of 1959.

CZ as requested state

- We have not noticed any problems as requested state relating to the execution of other EU Member States requests for service of procedural documents.

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Nevertheless, CZ judicial authorities sometimes face problems related to the service of decisions imposing financial penalty in the recognition and execution proceedings on the basis of FD 2005/214/JHA. Problems occur in particular in relation to those EU Member States which **apply the presumption or fiction of service** (although the decision is regarded as served on the person concerned in accordance with their national law, they are unable to prove that this was indeed the case, i. e. that the person really received the decision).

4. In your experience, what are the best practices in this context?

We believe that the recognition and execution proceedings taken in executing state on the basis of FD 2005/214/JHA should not be the first moment when the person concerned receives the information about a decision of other EU Member State imposing him / her a financial penalty.

EU Member State issuing a certificate under FD 2005/214/JHA has

- to guarantee the rights of defence in the proceedings leading to a financial penalty and to ensure actual and effective receipt of a decision imposing a financial penalty by the person concerned (as requested by CJEU judgment of 5th December 2019 C-671/18 CJIB, paragraph 39) and

- to prove that the decision was served on the person concerned (as required by CJEU judgment of 5th December 2019 C-671/18 CJIB, paragraphs 44 and 45).

In our view, the best practices, when sending a decision imposing a financial penalty to other EU Member State for execution under FD 2005/214/JHA, are:

a) to have the decision imposing the financial penalty **served on the person concerned in person** (in a way defined in CJEU judgment of 24th May 2016 C-108/16 PPU Pawel Dworzecki) **in a language he/she understands** (as requested in CJEU judgment of 12th October 2017 C-278/16 Frank Sleutjes), which means that the decision was served on the person concerned
   - directly by post – by registered mail (the proof of service is required) or
   - on the basis of an MLA request;

b) to **enclose a copy of the proof of service** to the certificate under FD 2005/214/JHA – of course, this is not a requirement set by FD 2005/214/JHA, but it could be considered as a best practice – because it will then make the recognition procedure more efficient and faster;

c) **not to apply a presumption or fiction of service of the decision** on the person concerned.

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DENMARK

1. What methods of service exist under your national (criminal) law?

According to Danish law and procedure, service of documents can be conducted personally or digitally. Personally service of documents is done by a bailiff either by physical hand-over of the said document from the bailiff to the person concerned, or to a person of the household of the said person, or by phone, in which case, the bailiff reads out loud the content of the said document to the person concerned.

Digitally service of documents can be done via a Danish national secure electronic platform, "E-boks", which makes it possible for persons holding a Danish national security number or companies located in Denmark to communicate securely with the Danish authorities. When the document is received in the persons inbox in "E-boks", the document is considered served. Furthermore, in some situations, service of documents can be done by the said letter being send by ordinary postal mail to the registered address of the person concerned.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

Concerning financial penalties the Danish Prosecution Service has no general experience in service to parties having their place of residence or seat in another EU Member state. Please note, that in general service of documents is being handled by the Danish Courts.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

Referring to the answer given to question 2, it is not possible to foresee, whether the methods of service available under Danish national law involve specific problems in cross-border cases.

4. In your experience, what are the best practices in this context?

In the processing of requests from other EU Member States on the recognition of financial penalties, cf. the Framework Decision, it is the experience of the Office of the Director of Public Prosecutions, that when service of a decision rendered in written proceedings has been conducted by the simple forwarding of the decision to the person by postal mail, this often gives rise to objections by the person concerned to not having received the said decision. In that context a method of service of the said decision including a proof of service gives rise to less objection to a request for recognition. However, in cases of requests stating that the person concerned was, in accordance with the law of the issuing State, informed personally or via a representative competent according to national law of his right to contest the case and of time limits of such a legal remedy, and it emerges from the copy of the decision, that it has been sent to the correct address of the person concerned, the requirements of article 7 (2)(g) is considered fulfilled (i.e: the said ground for non-recognition is considered not-applicable).

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ESTONIA

1. What methods of service exist under your national (criminal) law?

Service of documents is regulated in the Code of Criminal Procedure of Estonia. The service may be done by phone and/or by e-mail and/or by other means of communication. Written documents are served personally against signed receipt in the court premises, against signed receipt by post service or by e-mail. The relevant provisions in the Code of Criminal Procedure are as follows:

§ 164. Regular procedure for service of summonses
(1) A person shall be summoned to an investigative body, Prosecutor's Office or court by a summons communicated by telephone or other means of communication.
[RT I, 19.03.2015, 1 - entry into force 29.03.2015]
(2) If there is reason to believe that a person absconds appearance at a body conducting proceedings or a person has expressed a wish to receive a written summons, the person shall be summoned to an investigative body, Prosecutor's Office or court by a written summons.
(3) The notices read by an official of an investigative body, prosecutor or court to the persons present are deemed to be equal to summonses served against signature within the meaning of subsection 165 (2) of this Code if a corresponding notation is made in the report.
(4) A summons shall be communicated to or served on a person in sufficient time for the appearance.
(5) Summonses may be served on any day and at any time.
[RT I 2004, 46, 329 - entry into force 01.07.2004]

§ 165. Rules for service of written summonses
(1) A written summons may be served against signed receipt on a notice, as a postal item delivered against signed receipt or by electronic means.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
(2) A written summons shall be served on an adult or minor of at least fourteen years of age against signed receipt on a notice. The written summons addressed to a person who is less than fourteen years of age or suffers from a mental disorder shall be served on his or her parent or any other legal representative or guardian against signed receipt on a notice. If a summons cannot be served on the person summoned, the summons shall be served against signed receipt on a notice on an adult family member living together with the summoned or shall be sent to the place of employment or educational institution of the summoned for forwarding to him or her.
(3) A summons sent by post is deemed to be received by the person on the date indicated in the notice of delivery of the postal service provider.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

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(4) A summons may be served on participants in proceedings by electronic mail at the electronic mail addresses disclosed by the participants in proceedings to a body conducting the proceedings or by the employer of a participant in proceedings or published on a personal website. The summons served by electronic mail shall include a notation stating the obligation to confirm the receipt of the summons electronically. In the case no confirmation of receipt of the summons is received within three working days as of serving the summons at the electronic mail address ascertained by the body conducting the proceedings, the summons shall be served as a postal item served against signature or shall be served on the person summoned against signature.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
(4^1) If a summons is made accessible through the E-File system, the person summoned shall be notified of the existence of the summons at his or her electronic mail address indicated in a procedural document or published on the Internet. The notice shall include a reference to the digital summons in the E-File system and the term for accessing thereof which is three days as of the moment of sending the summons. A summons shall not be accompanied by digital signature if the sender and the time of sending thereof can be identified through the E-File system. A summons made accessible through the E-File system is deemed delivered if the recipient opens it in the information system or confirms the receipt thereof in the information system without opening the document and in the case this is done by another person to whom access to the documents in the information system is enabled by the recipient. If the summons is not accessed through the E-File system within three days as of the date of sending thereof, the summons shall be sent as a postal item served against signature or it shall be served on the person summoned against signature.
[RT I, 22.03.2013, 9 - entry into force 01.04.2013]
(5) Notices concerning the serving of a summons against signature, notices of delivery issued by postal service providers, the printouts of electronic mails concerning the issue of the summons and the printouts of electronic mails confirming the receipt of the summons shall be included in the criminal file. The fact of the receipt of a summons through the E-File system shall be registered in the E-File system and no printout shall be included in the criminal file.
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
(6) The minister responsible for the area may, by regulation, establish more specific requirements for electronic delivery of procedural documents in judicial proceedings through the E-File system.
[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

The most secure way for service is the formal way using the help of the competent authority for service. By this way the written confirmation of service is granted.

In Estonia, the competent authority to execute the request of foreign state in delivery of documents is the court. The courts serve the documents personally against signed receipt in the court premises.

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3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

According to the Estonian courts the problem in executing the request for service of documents of the foreign state is that the addressees are very often abroad. It might happen that the addressee is working abroad for a long period and for example might not be coming home for half a year. The court might get a contact with the addressee by phone or by e-mail, but get the signed proof of service is not possible.

If the addressee is in Estonia, the service will be done in the court premises and the written confirmation of service will be sent to the requesting authority.

4. In your experience, what are the best practices in this context?

Estonia receives quite often the requests from Austria under the Framework Decision 2005/214/JHA for recognition of financial penalties and among the documents is the proof of service of documents issued by the Estonian court.

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FINLAND

1. What methods of service exist under your national (criminal) law?

Regarding the service of a summons to the defendant in a criminal case according to **chapter 11** (*Service of notices in proceedings*) of the *Code of Judicial Procedure* (4/1734) the methods of service are the following.

According to **section 3** (*Manners of service*) when the court or the public prosecutor sees to the service of a notice, service shall be carried out by sending the document to the party 1) by sign-for-delivery post; 2) by letter, if it may be assumed that the addressee receives notice of the document and returns the certificate of service before the deadline; 3) electronic message as provided in section 18 of the Act on Electronic Services in Government Activities (13/2003).

According to **section 4** if it has not been possible to serve a notice or it can be deemed apparent that it shall not be possible to serve the notice as provided in section 3, or if there is another special reason for this, a process server shall serve the notice personally.

According to **section 11** subsection 1 of the *Act on the imposition of a fine for criminal offences* (754/2010) a fine requirement, a fine order and a penalty requirement shall be served on the suspect as provided for in chapter 11 of the Code of Judicial Procedure for the service of a summons in criminal matters.

Notwithstanding the provisions of subsection 1, a fine order with appendices may be sent to the offender by post to the address indicated by the offender or indicated in the transport register in the case of a traffic offence committed by a power-driven vehicle and the identity of the offender has been immediately established.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

There are no statistics available, but a summons in a criminal case is firstly tried to be served by letter or by sign-for-delivery post according to the above mentioned chapter 11 section 3 of the Code of Judicial Procedure.

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FRANCE

(translation provided by the General Secretariat)

1. What methods of service exist under your national (criminal) law ?

The guidelines for the service of decisions in criminal matters under French law can be described as follows:

If the ruling is a judgment after trial (the person was present at the judgment, or was represented by a lawyer with a written power of representation), the decision does not have to be served. The appeal period starts from the date of delivery of the decision.

If the ruling is not a judgment after trial (in absentia, repeated default or default) (the person was not present or represented at the judgment), the decision must be served, since only such service can trigger the appeal procedure and enable the decision to become definitive, which is a precondition for any request for mutual recognition based on Council Framework Decision 2005/214/JHA of 24 February 2005:

- *If the convicted person resides in France:* service is normally effected by a bailiff (Article 550 of the French Code of Criminal Procedure (CCP)). If the person is in custody, the decision may also be served by the head of the prison; if the person is on the premises of a criminal court, the decision may also be served by a clerk or a judge. In both cases, the service thus effected is equivalent to personal service (Article 555-1 of the Code of Criminal Procedure).

Any method of service is permitted (in person, at home, at the bailiff's office or at a public prosecutor's office). However, if the decision has imposed a sentence of imprisonment (Article 498-1 of the CCP) or if it is a decision by default (Article 492 of the CCP), the appeal period does not begin until the date on which the person concerned actually has knowledge of the decision (personal service or service at home or at the bailiff's office with a signed acknowledgement of receipt).

- *If the convicted person resides in another Member State of the European Union:* the provisions of Article 5 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, of 29 May 2000, and of Article 52 of the Convention implementing the Schengen Agreement, which set out the rules for sending and serving procedural documents, apply.

The decision will first be ***served on the public prosecutor*** by a bailiff. If the decision has imposed a sentence of imprisonment or if it is a decision by default, it must then be ***served on the person concerned***: either by registered letter with acknowledgement of receipt if the address is known, or through the competent foreign authorities, either directly or through the Office for International Mutual Assistance in Criminal Matters within the Directorate for Criminal Matters and Pardons of the Ministry of Justice.

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Penal orders:

- ***If the convicted person resides in France:*** penal orders are served on the person concerned by registered letter with acknowledgement of receipt or by a representative of the public prosecutor (second paragraph of Article 495-3 of the Code of Criminal Procedure).

- ***If the convicted person resides in another Member State of the European Union:*** penal orders are served on the person concerned by registered letter with acknowledgement of receipt. If the address of the person concerned is not known, or is uncertain, or if the penal order cannot be delivered by post, assistance may be sought from the competent foreign authorities (see reference above to Article 5 of the Convention of 29 May 2000 and Article 52 of the Convention implementing the Schengen Agreement).

Flat-rate traffic fines:

- ***For French offenders:*** if the offender has not paid the original fine, he or she is sent a notice of an increased flat-rate fine by registered letter to the address given on the vehicle's registration certificate. The appeal period runs from the date of dispatch of that notice, with no need for proof of its receipt by the offender (registered letter without acknowledgement of receipt) (Article 530 of the Code of Criminal Procedure).

- ***For foreign offenders:*** in practice, and *extra legem*, the notice of the increased flat-rate fine is sent to the address on the vehicle's registration certificate by registered letter with acknowledgement of receipt in order to ensure that the offender has been notified and will no longer be entitled to appeal upon expiry of the three-month period laid down by French law in which to do so.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State ?

The answer to this question is given above (see in particular the practice of registered letter with acknowledgement of receipt for flat-rate traffic fines).

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service ?

The penalty enforcement services refer to the difficulties they sometimes encounter in verifying whether the French party was aware of the foreign decision in respect of which mutual recognition is sought under Framework Decision 2005/214/JHA (in the case of an incoming request for mutual recognition).

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4. In your experience, what are the best practices in this context ?

If using the postal service means that the signed acknowledgement of receipt – and hence the proof of receipt of the letter by the person concerned – cannot be returned, then the French judicial authorities will have to ask the competent foreign authorities, either directly or through the Office for International Mutual Assistance in Criminal Matters, to serve the decision themselves. Proof that the judgment has indeed become final is, after all, a prerequisite for a request for mutual recognition on the basis of Framework Decision 2005/214/JHA.

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GERMANY

1. What methods of service exist under your national (criminal) law?

1. Service under criminal procedure law

In German criminal procedure law, the rules on service are set down in sections 35 ff. and section 145a of the Code of Criminal Procedure (*Strafprozessordnung* – StPO). As a general principle, section 37 (1) StPO refers to the provisions of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) with regard to the procedure for service. Sections 166 to 194 ZPO are therefore applicable insofar as the provisions are relevant to the criminal proceedings in question and no special rules intervene.

All decisions taken in the absence of the person concerned must be served in accordance with section 35 (2) StPO or – if this does not start time running in respect of a time limit – communicated informally in writing (usually by simple letter). There are various ways for service to be effected:

a) Postal delivery

Service is effected on the person concerned by tasking a judicial employee or more usually a postal operator with performing service, section 168 (1) sentence 2 ZPO.

If the person concerned cannot be located in person so that the delivery cannot be handed over to them (section 177 ZPO), substituted service may be effected.

This can be done, for example, by handing over the delivery to an adult family member or an adult flatmate at the residential address. If the address is a business address or the address of a legal entity, the delivery may be handed over to persons employed there, the head of the institution or their authorised representatives (section 178 (1) sentence 1 ZPO). Substituted service may also be effected by placement in the letterbox, section 180 ZPO.

Delivery by a postal operator is the most common way to serve documents in domestic criminal proceedings in Germany, and the most commonly used variant within this type of service is placement in the letterbox. For domestic cases in Germany, service by registered mail with receipt of delivery pursuant to section 175 ZPO is rare.

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b) Service by publication

In exceptional cases, service by publication in accordance with section 40 StPO may also be considered. This requires a court order and is usually implemented by posting a notification on the court's bulletin board or by publishing the notification in an electronic information system (section 186 ZPO in conjunction with section 40 StPO). However, service may only be effected by publication if all reasonable attempts have already been made to locate the whereabouts of the person concerned and to effect service in the normal manner.

c) Service on authorised representatives

Service of documents may be effected not only on the person concerned but also on a person they have authorised to represent them. This primarily applies to lawyers (section 145a (1) StPO) or other persons authorised (either in accordance with section 132 StPO or by power of attorney) to accept service on behalf of the person concerned. Lawyers may accept service in simplified form (e.g. by simple letter, electronic lawyer mailbox or fax) on condition that they return a confirmation of receipt (section 174 ZPO).

d) Special rules for serving documents abroad

Service abroad (section 183 ZPO) is normally possible using registered mail with receipt of delivery, provided that international agreements permit documents to be sent directly by post. This covers almost all EU countries as well as Norway, Iceland, Switzerland and Liechtenstein.

Service abroad via registered mail with receipt of delivery is effective upon handing over the registered letter to the person concerned, their spouse, a postal proxy (i.e. a person authorised to act on their behalf in postal matters) or a substitute recipient who is permitted to receive the delivery under the law of the country in question. Pursuant to section 183 (5) sentence 1 ZPO, the receipt of delivery – which is retained on file and must indicate when and to whom the delivery was handed over – is sufficient proof.

If service cannot be effected in this way, it must be effected by way of mutual legal assistance or by the German diplomatic or consular mission responsible, section 183 (3) ZPO

2. Service under the law on administrative offences

In the case of administrative offences (such as road traffic offences), the administrative authorities are also responsible for serving the decisions. Depending on whether it is a federal or *Land* (state) authority, the applicable law is either the Act on Service Effected by Administrative Authorities (*Verwaltungszustellungsgesetz* – VwZG) pursuant to section 51 of the Regulatory Offences Act (*Gesetz über Ordnungswidrigkeiten* – OWiG), or the relevant *Land* legislation on service effected by administrative authorities. Under these laws, similar regulations apply as described above.

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In particular, service abroad is again normally effected using registered mail with receipt of delivery, provided that international law allows for the service of documents to be effected directly by post (compare for example section 9 VwZG and section 9 of the North Rhine-Westphalia Act on Service (*Landeszustellungsgesetz* – LZG NRW)). Otherwise, it is possible – upon request by the authority – for service to be effected by the foreign state's authorities or by the diplomatic or consular mission responsible.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

As already stated in response to Question 1, the most common method for cross-border service within the EU is by registered mail with receipt of delivery.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

The methods available under German Law present rather practical than legal issues in cross-border cases. I.e. if the address used was incorrect, the receipt was not filled out correctly or illegibly, the receipt was signed by a person other than the person concerned or if the postal service in the other Member State does not offer the signed receipt as a service at all.

Although there have been three ECJ judgments (C-216/14 – Covaci; C-124/16, C-188/16 und C-213/16 – Tranca and Others; C-615/18) dealing with the compatibility of the service on authorised representatives with EU law, the issue still seems to be considered problematic in some Member States.

4. In your experience, what are the best practices in this context?

Receiving an acknowledgment of receipt after the delivery of the decision is a good practice in order to verify if and when the person concerned was in fact provided with the decision (ECJ judgment of 5 May 2019 (C-671/18)). For the issuing State it might be helpful to know who has delivered the decision and who has received the decision (the person concerned, husband/wife, a member of the household or an authorized agent). The employee of the postal service should receive clear instructions as to whom he is allow to hand over the decision if the person concerned is not at home.

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GREECE

1. What methods of service exist under your national (criminal) law?

Pursuant to Article 155 of the Code of Criminal Procedure: 1. Service shall be effected by the delivery of the document in the hands of the party concerned by a criminal or judicial bailiff or, if they do not exist, by a public authority body (police) and in accordance with Article 160 of the Code of Criminal Procedure.

Article 160: When a document is to be served to a person detained in prison or other place designated for detention or in case of extreme urgency, to any other person, the document may also be transmitted by fax or other appropriate means. Proof of this service may be transmitted to the person who ordered the service in the same way.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

The method of service that is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State is postal services as it is considered to be the safest.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

In the case of cross-border cases between EU Member States, judicial documents are served expeditiously between judicial authorities in accordance with the provisions of the Schengen Agreement and the European Convention on Judicial Assistance in criminal matters of 1959.

No difficulties / problems have been encountered in this process, in particular regarding the timely sending of proof of service

4. In your experience, what are the best practices in this context?

Good practices in the field of service have not emerged.

As mentioned in the previous reply, the way of communication between judicial authorities, either by post or by electronic means, is considered sufficiently satisfactory and does not create difficulties / problems in cooperation between them.

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HUNGARY

1. What methods of service exist under your national (criminal) law?

I. Criminal Proceedings

Chapter XXII of Act CX of 2017 on criminal proceedings (from now on: CPC) establishes the rules of service during criminal proceedings. According to sections 130 and 131 of the CPC,

The court shall serve a case document on an addressee

- by mail,
- by electronic means using the official contact details or, contact details for secure electronic communication, as defined in the Act on electronic administration,
- in person,
- by public notice, or
- through a process server of the court, prosecution service, or investigating authority.

The addressee may collect a case document addressed to him at the premises of the sender after verifying his identity. If the addressee is in custody, case documents shall be served on him through the commander of the institution enforcing custody. If the addressee is a soldier, case documents may also be served on him through his military superior.

Service by mail

According to Decree No. 12/2018 (VI. 12.) of the Minister of Justice, in case of service by mail, the conclusive decision shall be sent with acknowledgement of receipt delivered to the addressee in person.

Section 321 of the CPC states that a case document shall be considered to be properly served if the addressee receives it. A case document shall also be considered to be properly served if the addressee refuses to receive the case document, or if service failed because the case document is marked and returned as “nem kereste” (“unclaimed”) as the addressee did not receive the case document (from now on: presumed service). (From 1 January 2021, it shall be constituted as presumed service, if service failed because the case document is marked and returned as “címzett ismeretlen” ("addressee unknown”) from the address for service, the actual place of residence and home address of the addressee, this rule, however, shall not be applied to service to the defendant.)

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Suppose the document to be served is a conclusive decision, and the court established the onset of the legal effects of presumed service. In that case, it shall notify the addressee thereof via standard mail within eight days and, at the same time, it shall attach the case documents regarding which it established the onset of the legal effects of presumed service. If the addressee notified the court of his electronic mail address, then the notice shall also be sent to the provided address of the addressee regarding the onset of the legal effects of presumed service. Due to these rules, the addressee can learn about the content of the conclusive decision even if presumed service is established.

It must be highlighted that according to section 133 of the CPC, the addressee or a representative or defence counsel of the addressee may file a complaint with the court, the proceeding of which involved the service of the document even if the document is deemed served based on presumed service or considered served without applying presumed service. If the court upholds the complaint, the legal effects of presumed service are invalid, and the service, the measures already taken, and other procedural actions shall be repeated to the extent necessary.

Service by public notice

According to section 135 of the CPC, the court may only serve its case documents by public notice on a defendant whose whereabouts are unknown. The case documents shall be considered served on the fifteenth day after the public notice had been posted according to the CPC.

Nonetheless, Chapter CI of the CPC says that if the place of residence of the defendant becomes known during a procedure against an absent defendant, but after the final and binding, conclusive decision had been passed, a motion for retrial may be submitted to the benefit of the defendant.

Agents for service

In cases specified in the CPC, the defence counsel may act as an agent for service for the benefit of the defendant. The agent for service shall be responsible for receiving case documents that are to be served on the principal and produced during the proceedings, and for transmitting such documents to the principal.

If the defendant has an agent for service, the court shall send its case documents through the agent for service. A case document addressed to the defendant and served on his agent for service properly shall be deemed served on the defendant on the fifteenth day after service.

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Special provisions regarding the service of a punishment order taken during written proceedings.

According to the rules of Chapter C of the CPC, the rules of the CPC as detailed above shall apply to the service of a punishment order provided that the court shall hold a preparatory session and shall continue its proceeding in line with the general rules if the service of the punishment order on the accused had failed. In case of a punishment order, the rules of presumed service and service by public notice shall not apply. The punishment order shall be served on the defendant in person or by mail to the defendant only.

II. Infraction Proceedings

According to section 89 (1) of Act II of 2012 on infractions, infraction proceeding and the infraction registry system (from now on: Act on Infractions), handing over (service) of official documents of the infraction authority or the court to the person concerned can take place in person, by mail, under special rules on serving official documents, through legal assistance in matters of infractions, by a public notice or by electronic means.

According to section 89 (2), legal effect is only attached to proper service. Service shall be considered to be done properly if it is verified by an acknowledgement signed by the person entitled to sign it under law, or by minutes or by a copy of a decision thereon. Service shall also be considered to be done properly if the addressee refuses to sign the minutes or the copy of the decision and the infraction authority or the court records this fact on the document.

Section 89 (3) provides the rules on presumed service, according to which, the document shall be considered served on the fifth day after the attempt of service if service failed because the addressee did not receive the document despite the notice from the postal service or refused to receive the document.

According to the provisions above, the Hungarian regulation defines the cases when a decision can be considered served since this is important for the protection of rights of the addressees.

Service can only take place by electronic means if the person concerned has official contact information or contact information for secure communication as provided by Act CCXXII of 2015 on the general rules of electronic administration and trust services.

Service can take place by public notice if the person subject to the proceedings or the perpetrator resides at an unknown place. The public notice shall be posted to the bulletin board of the infraction authority, which has sent it and to the bulletin board of the local government of the last known place of residence or domicile, if any, for fifteen days. The official documents shall be considered served on the fifteenth day after the public notice had been posted at the proceeding infraction authority or court. [section 89 (5)-(6)].

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2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

I. Criminal Proceedings

According to Act CLXXX of 2012 on cooperation with the Member States of the European Union in criminal matters, official documents shall be served on addressees residing in another Member State of the European Union directly by mail with acknowledgement of receipt. Official documents may be sent through procedural legal assistance in order to be served only under exceptional circumstances and in cases specified by law.

Hungary is preparing an amendment to the provisions on service to an addressee residing in another Member State of the European Union due to the difficulties experienced in connection with serving a mail with acknowledgement abroad. According to the amendment, from 1 January 2021, it would be possible to verify the fact of proper service based on the feedback of the addressee, or by contacting the proceeding authority or in any other credible manner if the proper service of the official document sent by mail with acknowledgement cannot be established.

II. Infraction Proceedings

The rules of service as provided in the Act on Infractions shall also apply if the domicile or residence of the person concerned is in another Member State of the European Union. The most common method of delivery is to send the documents directly by mail with acknowledgement of receipt. Regarding presumed service, the rules mentioned under question 1 concerning infractions apply.

When the address of the addressee is unknown or unclear, and service by mail is not possible, or the infringement authority believes that service of the document by mail would be inappropriate or ineffective, section 25 (1) of Act XXXVI of 2007 on legal assistance in matters of infractions allows the infringement authority to submit a request for legal assistance to serve the files of the infringement proceedings. In this case, the decision on the substance, together with the certified translation, must be sent for transmission to the Prosecutor General's Office, which will initiate the service of the document through the designated authority having competence based on the addressee's place of residence.

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3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

4. In your experience, what are the best practices in this context?

I. Criminal Proceedings

The fact that the Member States have different postal service rules causes significant difficulties in delivering documents to be served by post with acknowledgement of receipt (e.g. final decisions). The postal service providers do not undertake to get a signature on the receipt from the addressee in every Member State, which often makes it challenging to determine whether the document had been delivered to an authorised person. This is particularly difficult in the case of decisions which can only be served on the addressee (e.g. a punishment order imposing a fine and passed in a written procedure).

It is also a problem that the acknowledgement of receipt is not always returned to the court, making it impossible to establish proper service.

Considering the above, as it has been indicated earlier in connection with Question 2, Hungary has amended the rules on service on the person residing in other Member States of the EU that has become effective on 1 January 2021. This means that even if the fact of proper service of official documents to be served with acknowledgement of receipt cannot be verified based on the receipt, the fact that the addressee has received the document to be served may also be verified based on the addressee's feedback, contacting the proceeding authority or in another credible way (e.g. by telephone, from the addressee's officially known email address, etc.).

II. Infraction Proceedings

Based on the experience of the Police, the different rules of the Member States on service result in problems when the decision is served by mail without acknowledgement of receipt. In this case, if the execution of the imposed fine is taken over, the designated central authority of the executing Member State under the Framework Decision is not able to verify whether the person concerned actually received the decision imposing the fine or whether he had the opportunity to get to know its content and, where appropriate, to exercise his right of appeal.

The rules on service in the Member States do not provide for different time limits for service domestically or abroad; the legal consequences of service are the same. Due to the lack of language skills and the longer duration of delivery by mail to another Member State, exercising the right of appeal is difficult. In many cases, the issuing State indicates the place or street names incorrectly during addressing, which makes it difficult for the postal service to identify the address.

In the case of service of decisions by mail, each Member State should forward it by registered letter with acknowledgement of receipt or a document or other methods ensuring equivalent guarantees, thus ensuring that the rights of the addressee are not infringed.

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ITALY

1. What methods of service exist under your national (criminal) law?

In the Italian legal system, the criminal financial penalties - imposed for committing a crime - can be rendered through either an ordinary trial or one of the special criminal proceedings provided for by the law (shortened judgement, immediate judgement, plea bargaining or proceedings by criminal decree).

With the only exception of the proceedings by criminal decree (penal order), as a general rule, these proceedings are public (only the ordinary trial and the immediate trial) or, anyway, adversarial procedures, ending up with an hearing during which a final decision taken by the Judge, who also reads it out before the Public Prosecutor and the accused person and/or his/her lawyer. The Judge gives also a statement about the reasons on which his/her decision is based, in the same hearing (orally) or, anyway, depositing it (in a written form) at the Registry within the time provided by the law. Therefore, no service of the decision on anyone is prescribed by the law.

Conversely, when it comes to the said proceedings by penal order - which can be used only when the Public Prosecutor deems that only a financial penalty has to be imposed, also by commutation of a prison sentence - it must be highlighted that the decision is taken by the judge upon the request of the Public Prosecutor, with no prior involvement of the accused person and his/her lawyer. In this case, the decision must be served on the accused and the lawyer; in addition, it must be revoked, if it cannot be served on the accused as he/she is not found anywhere. However, after the service of the penal order, the accused person (also with the intervention of his/her lawyer) may submit a statement with which he/she presses his/her opposition to the decision, calling for an ordinary trial or one of the other mentioned special proceedings to be held.

2. Which method of Service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

The method of Service most frequently chosen is the one provided for by Article 5 of the EU Mutual Assistance Convention (2000). However, if an EU Member State which is not one of the Parties to the said Convention is involved - say, Croatia - the CoE Convention on mutual legal assistance in criminal matters (Article 7) applies.

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3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

With regard to the service of the relevant documents via post (registered letter) in cross-border cases, it is possible to stress that, due to the difficulties which can often be experienced as regards the readability of the handwritten pieces of information on the international return receipt (advise of delivery), some issues concerning proof of service may arise in the relevant proceedings.

4. In your experience, what are the best practices in this context?

In order to tackle the mentioned difficulties and to avoid the possible failures to produce proof of service, we suggest, with regard to return receipts, a major use of a format containing, as much as possible, boxes to be ticked off.

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LATVIA

1. What methods of service exist under your national (criminal) law?

When it comes to procedure of recognition and enforcement of financial recovery in administrative offences, the procedure is regulated in the Law on Administrative Liability (Chapters 37 and 38).

1. If the ruling with regard to financial recovery has been made in a Member State, but has to be enforced in Latvia, according to Article 282 Paragraph 4 of the Law on Administrative Liability, a judge of a district (city) court shall, within 20 working days in a written procedure, examine a request of a European Union Member State for the enforcement of the ruling on financial recovery which has been made in the relevant Member State and shall, upon assessment of the conditions and reasons for refusal, take one of the following decisions:

a) to consent to recognise the ruling and enforce the financial recovery applied in the European Union Member State;

b) to refuse to recognise the ruling and enforce the financial recovery applied in the European Union Member State.

The latter mentioned decisions cannot be appealed and a judge shall inform a person punished in a European Union Member State and a competent institution of the relevant Member State of the decision (in both cases, i.e., whether it is a decision of consent or refusal).

2. Meanwhile, in the case of the decision made in Latvia, but enforcement of a penalty has to be done in a European Union Member State, if materials are sent regarding enforcement of a penalty in a European Union Member State and consent of such Member State has been received to recognise the ruling and enforce the penalty determined in Latvia, an institution shall inform a punished person thereof. The Law on Administrative Liability does not give any details on methods of service when it comes to informing a punished person.

According to the Criminal Procedure Law service of documents has been executed by the courts of Latvia by handling documents to the person directly in the court rooms. Court also can execute request by sending documents to the person of that registered letter by the post office.

Article 5 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, states that each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post. In the court of first instance, criminal cases are heard orally in the presence of the accused, except in the cases specified in Section 464 and 465 of the Criminal Procedure Law. In accordance with Section 321.1 Paragraph one of the Criminal Procedure Law the day of availability of a court judgment or decision by which the proceedings are completed shall be the day on which the judgment or decision, or the translation of the judgment or decision may be received at the court chancellery.

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The Criminal Procedure Law does not require the court judgment to be sent to the persons involved in the proceedings. The person is notified of the day on which the judgment or decision may be received at the court chancellery at the time of the announcement of the judgment during a court hearing or by sending a notification indicating the date on which the judgment or decision may be received at the court chancellery.

An exception to the above procedure is provided in Section 321 Paragraph three of the Criminal Procedure Law that states that a copy of a court judgment or decision by which proceedings are completed shall, not later than on the next day after preparation of the full text thereof, be sent to an accused, who is being held under arrest, house arrest or in a social correctional educational institution. However, Section 321 Paragraph four of the Criminal Procedure Law states that in the cases determined by law, upon notifying a person of the ruling made, a copy thereof or a notification of the ruling made may be sent to the postal or electronic address indicated by the person for the receipt of consignments. We note that the Criminal Procedure Law does not provide for special procedure of the service of judgments if the person is in another Member State.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

The competent authorities by sending the requests of service of documents uses the legal instruments foreseen in the European Convention on Mutual Assistance in Criminal Matters and Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union of the 29th of May 2000.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

The problem that we have noticed is that in many cases we don’t receive notifications about the service of documents from the post services. That`s why we are not able to identify whether documents have been delivered or not.

4. In your experience, what are the best practices in this context?

The best way to execute the requests of the service of documents directly to the person by using competent institutions (like Police).

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LITHUANIA

1. What methods of service exist under your national (criminal) law?

In most of the cases a sentenced person is aware of the fine imposed since as a rule his presence in the criminal proceedings is obligatory pursuant to the Code of Criminal Procedure of the Republic of Lithuania. Just after a judgment is pronounced, a copy of a judgement is served upon the sentenced person personally, approved by his signature.

Where the sentenced person did not participate at the pronouncement of the judgment or did not accept it after the pronouncement, a copy of the judgment must be served or sent to the sentenced person not later than within five days from the date of pronouncement of the judgment. Ordinary post and e-mail are used by the competent courts in such cases.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

Where the court has information that a person concerned resides or has seat in another Member State, the documents are served in accordance with the rules set in the 2000 MLA Convention.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

There are no specific methods of service for cross-border cases foreseen by the national law. Methods of service available under the national law have not created any systematic problems in cross-border cases.

4. In your experience, what are the best practices in this context?

Lithuania has not faced any major or systematic problems in this context.

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MALTA

1. What methods of service exist under your national (criminal) law?

Regulation 5 of Subsidiary Legislation 9.14 requires a decision to be transmitted with the certificate containing the information prescribed therein, by any means capable of producing a written record under conditions permitting the ascertainment of its authenticity.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

In cases where Malta is the issuing state, the decision is transmitted from the Office of the Attorney General to the competent authority in the other Member State via track express shipment. Documents are provided to the executing authority in original or duly authenticated form.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

Service of documents in cross-border cases is done via tracked couriers, especially because the documents include originals or authenticated copies. When delivered to the competent authority abroad, the courier will obtain the signature of someone within that authority to signify that the documents have been duly delivered together with all other details relating to delivery such as date and time. Apart from this, communication is usually established by the competent authority in the receiving Member State as a confirmation of receipt, once service has been completed. This process has not created any problems so far.

4. In your experience, what are the best practices in this context?

In practice, the subsidiary legislation which transposed this FD into Maltese Law (S.L.9.14) has, so far, served us well and we have not encountered problems with its application.

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NETHERLANDS

1. What methods of service exist under your national (criminal) law?

The NL Code of Criminal Procedure Formal regulates three types of servicing:

(i) Formal servicing of documents, the formal decision is handed over in person by a police officer, who is required to make a formal statement under oath of his actions. This type of servicing is usually reserved for formal indictments;

(ii) Transmission of a document by ordinary or registered mail, or by certified electronic means;

(iii) Oral notice, usually by a police officer, followed by a written notice.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

The NL Code of Criminal Procedure makes no distinction between places of residence or seat in or outside the Netherlands or any other country. Nor does the implementing act of Framework Decision 2005/214/JHA.

Servicing by ordinary or registered mail is the usual method service for financial penalties, either to addresses in the Netherlands, or in anv other Member State.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

Administrative traffic fines ('Wahv'): regarding this kind of financial penalty we do get asked for proof of service. We then send a letter explaining our way of serving the financial penalty. However, even after this explanation the court in the other EU Member State does not always accept our way of service, even though the law of the issuing State determines the applicable rules for the issuance of fines.

Often refusals – sent after prior consultation or without prior consultation - do not show specific circumstances on which a competent authority may refuse to accept a fine. Hence, the impression is created that, due to the fact that we only use regular mail to send this type of decision and that this differs from how the requested State sends this type of decision, they automatically assume that our decision have not effectively reached the person concerned.

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4. In your experience, what are the best practices in this context?

None of the ways in which you serve a financial penalty is air tight. In the Dutch written procedure it could be the case that the person concerned did not receive the financial penalty. However, this is also possible if the decision was sent with proof of delivery (for instance when the house number is incorrect, the decision can be delivered but not to the correct person).

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POLAND

1. What methods of service exist under your national (criminal) law?

According to the Polish criminal procedure, a certified copy of the decision on financial penalties along with the instruction on the available legal remedies is delivered to the participants in the proceedings in person with a return receipt, unless they were present at its announcement. The recipient confirms receipt with his legible signature containing the name and surname on the return receipt. The deliverer confirms the method of delivery on the receipt with his signature.

The Polish provisions of the criminal procedure define three methods of service: via the postal operator, by an employee of the sending authority and by the Police. It should be noted that the third method of service has not been treated by the legislator on an equal footing with the other two methods. Service by the Police may take place only if necessary.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

According to the Polish criminal procedure, such decisions are usually delivered to participants of proceedings who have their permanent or temporary residence or seat in another Member State by post with a return receipt.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

According to the information available to the Ministry of Justice, courts in Poland responsible for enforcing financial decisions have not reported any problems so far, including problems regarding a proof of service. However, it should be emphasized that, in the opinion of the Ministry of Justice, wider consultations and further direct questions to the courts are needed in this matter, since the number of cases containing such decisions is growing every year.

On the other hand, one of the problems noticed by the courts in Poland is the long waiting time for both the delivery and the receipt of the confirmation of receipt of delivery, which is essential for the further course of the proceedings.

4. In your experience, what are the best practices in this context?

A good, common solution for the entire European Union could be the introduction of a standardized acknowledgment of receipt system, including an electronic acknowledgment of receipt system, which would significantly speed up the entire procedure. The creation of regulations similar to those in civil proceedings could be considered as well.

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PORTUGAL

1. What methods of service exist under your national (criminal) law?

Financial penalties are imposed either by Criminal Courts (whey they are a criminal penalty such as a fine) or by administrative authorities (in such case decisions may be appealed to a Criminal Court). In both cases, by application of article 113 of the Portuguese Criminal Procedure Code, decisions will be served by the postal service, with a certificate of receipt that must be signed by the addressee. In all cases, the possibility of appeal as well as the time limit to present it must be expressly mentioned.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

Portuguese authorities consider that article 5 of the Convention on Mutual Legal Assistance between the MS of the EU applies; therefore, when a party concerned has his place of residence in another MS, documents to be served, such as a decision that imposes a financial penalty, are sent by post (an international Post Protocol is mentioned in order to have a certificate of receipt) or, in the case when of the situations mentioned in a) or c) of nº2 of article 5 occurs, a request for notification with personal contact, as previewed by that specific section of article 5 nº2, is usually the mean to obtain the service of a document to someone living abroad.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

The above-mentioned Protocol will, in principle, provide for the proof of service to be obtained and sent back to the requesting authority. When it doesn't work, article 5 nº2 of the 2000 Convention applies. There is however some resistance to engage resources to obtain a personal serving of documents in administrative cases.

4. In your experience, what are the best practices in this context?

(Nothing to add)

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ROMANIA

1. What methods of service exist under your national (criminal) law?

According to **art.257** of the Romanian Criminal Procedure Code the summoning a person before the criminal investigation body or a court of law shall be performed by written summons. Summoning can also be performed via telephonic or telegraphic note, with a report of the fact being written.

Communication of summons and all process acts shall be performed ex officio via procedural agents of the judicial bodies or via any other of their employees, via the local police, via the postal service or a parcel service.

The persons stipulated at par. (2) shall complete the summons procedure and communicate proof of completion before the summons deadline established by the judicial body.

In the case stipulated at Art. 80[3], victims and civil parties can be summoned via the legal representative or a publication of nationwide circulation.

The summons can also be sent via e-mail or any other system of electronic messaging, if the summoned person agrees.

An underage person younger than 16 shall be summoned, via their parents or legal guardian, except for the case this is not possible.

The judicial body can also communicate orally the date of the next hearing to the person present before them, and inform them of the consequences of failure to report back. During the criminal investigation, the fact that the party was informed of the hearing date shall be logged in a report, which shall be signed by the person thus summoned.

Summons letters and process acts shall be sent in a sealed envelope, which shall bear the mention “For the Judiciary. Priority service.”

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[3] ART. 80 Appointment of a representative of victims
#M2
(1) In situations where there is a large number of victims, who do not have contrary interests, these may appoint a person to represent their interests within criminal proceedings. If the victims did not appoint a joint representative, for the proper conducting of criminal proceedings, the prosecutor or the court may appoint, through an order, or through a reasoned court resolution, a court appointed counsel to represent their interests. Such court resolution or order shall be communicated to the victims, who have to inform the prosecutor or the court, within 3 days after receipt of such communication, that they refuse to be represented by such counsel appointed by the court. All procedural acts communicated to the representative or of which such representative took knowledge are presumed to be known by the represented persons.
#B
(2) A representative of victims shall make use of all rights afforded them by law.

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ART. 258
Contents of the summons
(1) A summons shall be individual and contain the following:
a) name of the judicial body or court of law that issues the summons, their address, date of issuance and case number;
b) surname and name of the summoned person, in what capacity they are summoned and what is the object of the case;
c) address of the summoned person;
d) hour, day, month and year, location they must report at, and an invitation that the summoned person report on the date and at the location that are indicated;
e) a mention that the summoned party has the right to have a counsel present alongside them on the required date;
f) if the situation requires it, the mention that under Art. 90 or Art. 93 par. (4) having a defender is mandatory and, in case the party does not retain a counsel, who can accompany them to the established hearing, a public defender shall be appointed for them;
g) mention that the summoned party is entitled, so as to exercise their right to defense, read the case file as deposited with the Court or prosecutor's office archives;
h) consequences of failure to report before the judicial body.
(2) The summons sent to the suspect or defendant must include the charges against them, with name and description of the offense, and a warning that in case of failure to report before the judicial body they can be brought in by bench warrant.
(3) The summons shall be signed by the person issuing it.

ART. 259 - Location of summons
(1) The suspect, defendant, parties in the trial as well as other individuals shall be summoned at the address where they live; if that is unknown, then at the address of their employment, via the human resources service of that employer.
(2) The suspect or defendant is under an obligation to announce a change in the address where they live, within 3 days, to the judicial body. The suspect or defendant shall be informed of that obligation during their hearing, as well as of the consequences of failure to comply with that obligation.
(3) The suspect or defendant who, in a statement given during the criminal process, has indicated an address for summons other than that where they live shall be summoned at the location they indicate.
(4) The suspect or defendant can be summoned at the office of their retained counsel, if they failed to report after the first summons was legally served.
(5) If neither the address where the suspect or defendant lives, nor the address of their place of employment are known, a notice shall be posted at the head office of the judicial body that must contain:
a) year, month, day and hour when made;
b) surname and name of the person who posted the notice, and their position;
c) surname, name and domicile or, as the case may be, residence or head office of the summoned party;

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d) number of the case in relation to which the summons is made, and name of the judicial body on whose docket the case is;
e) mention that the notice refers to the procedural act of the summons;
f) mention of the time frame, established by the judicial body that issued the summons, within which the target of the summons must report to the judicial body so as to have the summons communicated to them;
g) mention that in case the target of the summons fails to report to the judicial body within the required time frame at lett. f) so as to receive communication of the summons, the summons shall be deemed as communicated at the completion of that time frame;
h) signature of the person who posted the notice.
(6) Persons with a medical condition or, as the case may be, persons admitted to hospitals, medical or social assistance facilities shall be summoned via those facilities' administration.
(7) Persons deprived of their freedom shall be summoned at their place of detention, via its administration.
(7^1) The military shall be summoned at the base they are stationed at, via its commander.
(8) Persons who are members on the crew of a maritime or river boat, on march, shall be summoned at the harbor master where their ship is registered.
(9) If the suspect or defendant lives abroad, for their first hearing the summons shall comply with the stipulations of international criminal law applicable to the relation with the requested state. In the absence of such stipulation or in case the applicable international law allows it, the summons shall be sent by registered mail. In that case the recipient's signature on delivery of the registered letter or the refusal to take delivery of said letter shall be deemed proof of completion of the summons procedure. For their first hearing, the suspect or defendant shall be informed in the summons that they have the right to indicate a mailing address on the territory of Romania, an e-mail address or an electronic messaging address where they wish to receive all communication concerning the trial. In case they fail to comply, the communications shall be sent to them via registered letter again, and the receipt for that letter from the Romanian postal service, listing the documents being mailed, shall serve as proof of completion of the procedure.
(10) The staff of diplomatic missions, consular offices and Romanian citizens assigned to work with international organizations, family members living with them, for as long as they are abroad, as well as Romanian citizens located abroad on work assignments, including family members who accompany them, shall be summoned via the entities that sent them abroad.
(11) In setting the reporting time frame for the suspect or defendant who is located abroad consideration shall be given to applicable international law in the relation with the state on whose territory the suspect or defendant is located, and in the absence of such rules consideration shall be given to the need that the summons be received 30 days before the date of reporting before the judicial body at the latest.
(12) Public entities, authorities and other legal entities shall be sent the summons at their head office and, in case of failure to identify a head office, the stipulations of par. (5) shall apply accordingly.
(13) A summons sent via e-mail or a system of electronic messaging shall be sent to the electronic address or coordinates indicated to the judicial body for that purpose by the summoned person or by their representative.

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ART. 260
Serving the summons
(1) The summons shall be served in person to the summoned person, wherever they are found, and they shall sign for having received it.
(2) If the summoned person refuses to receive the summons, the person in charge of serving the summons shall post a notice on the recipient's door, and shall write a report about the circumstances. The notice shall comprise:
a) year, month, day and hour when the notice was posted;
b) surname and name of the person who posted the notice and their position;
c)surname, name and domicile or, as the case may be, residence or head office of the summoned;
d) number of the case the notice is about, and the name of the judicial body that has the case on docket, as well as their head office address;
e) mention that the notice is about the procedure act of the summons;
f) mention of the time frame, established by the judicial body that issued the summons, within which the summoned person has a right to report to the judicial body and have the summons communicated to them;
g) mention that, in case the summoned person fails to report to the judicial body within the time frame stipulated at lett. f), the summons shall be considered as communicated at the end of that time frame;
h) signature of the person who posted the notice.
(2^1) If the summoned person, when receiving the summons, refuses to sign for having received it or is unable to, the person in charge of serving the summons shall put that down in their report.
(3) In case the registered letter with a summons to a suspect or defendant living abroad cannot be handed to them, and also in case the law of the state of the recipient does not allow summons send by mail, the summons shall be posted at the head office of the prosecutor's office or court, as the case may be.
(4) The summons can also be sent via the jurisdictional bodies of the foreign state, if:
a) the address of the summoned person is unknown or inaccurate;
b) it was not possible to send the summons by land mail;
c) sending the summons by land mail was ineffective or inappropriate.
(5) When the summons is sent as under Art. 259 par. (6) - (8), the entities described therein are under an obligation to hand the summons to the summoned person without delay and obtain evidence of it, by certifying the person's signature or showing the reason why it was not possible to obtain their signature. The evidence shall be handed to the procedural agent and the latter shall submit it to the criminal investigation body or court of law that issued the summons.
(6) A summons addressed to a public entity or authority or another legal entity shall be filed at the registration office or to the employee in charge of receiving correspondence. The stipulations of par. (2) shall apply accordingly.
(7) When the summons is sent as under Art. 257 par. (5), the person sending the summons shall write a report about it.

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ART. 261
Serving the summons to other persons
(1) If the summoned person is not at home, the procedural agent shall hand the summons to the spouse, a relative or any other person that lives with them or that habitually handles their correspondence. The summons cannot be handed to a juvenile under the age of 14 or a person lacking mental competence.
(2) If the summoned person lives in a building of several apartments or in a hotel, in the absence of persons described at par. (1) the summons shall be handed to the building's administrator, doorkeeper or person who habitually replaces them.
(3) The receiver of the summons shall sign a proof of reception, and the procedural agent, attesting their identity and signature, shall write a report. If proof of reception is denied or cannot be provided, the agent shall post the summons on that dwelling's door and write a report about it.
(4) In the absence of persons described at par. (1) and (2), the agent shall make inquiries as to when the summoned person can be found so as to hand them the summons. When the summoned person cannot be found, the agent shall post a notice on the recipient's door, which shall comprise:
a) year, month, day and hour when the notice was handed or, as the case may be, posted;
b) surname and name of the person who posted the notice, and their position;
c) surname, name and domicile or, as the case may be, residence or head office of the summoned party;
d) number of the case in relation to which the summons is made, and name of the judicial body on whose docket the case is, indicating the address of their head office;
e) mention that the notice refers to the procedural act of the summons;
f) mention of the time frame, established by the judicial body that issued the summons, within which the target of the summons must report to the judicial body so as to have the summons communicated to them;
g) mention that in case the target of the summons fails to report to the judicial body within the required time frame at lett. f) so as to receive communication of the summons, the summons shall be deemed as communicated at the completion of that time frame;
h) signature of the person who posted the notice.
(5) If the summoned person lives in a building of several apartments or in a hotel, if the summons does not mention the number of the apartment or room the person lives in, the agent shall investigate in order to find it. If their investigations are fruitless the agent shall post the summons on the main door to the building, write a report about it and describe the circumstances that made it impossible to hand the summons.

ART. 261^1
Impossibility to communicate the summons
When communicating the summons cannot be performed, because the building does not exist, is uninhabited, or the recipient no longer lives in that building, or when the communication cannot be performed for other similar reasons, the agent shall write a report about it, describe the situation they found and submit it to the judicial body that issued the summons.

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ART. 262
Proof of reception and the report on handing the summons
(1) Proof of reception of the summons must include the case number, name of the criminal investigation body or court of law that issued the summons, the surname, first name and capacity of the summoned person, as well as the date they are summoned for. It must also include the date the summons was served, the surname, first name, capacity and signature of the person serving the summons, certification of the identity and signature of the person served, and the latter's capacity.
(2) Every time a report is written concerning the serving, posting or transmitting a summons electronically, such report shall appropriately include the mentions stipulated at par. (1). In the situation where the summons is performed using e-mail or any other electronic messaging system, appended to the report shall be, if possible, evidence of the sending.

ART. 263
Incidents in serving summons
(1) During trial, irregularities in the summons procedure shall only be considered if the person who is missing at the date of summons raises such irregularity at the next hearing where they are present or legally summoned, with stipulations concerning the penalty of nullification applying accordingly.
(2) Except for the situation where the defendant's presence is mandatory, an irregularity in the summons procedure of a party can be raised by the prosecutor, by the other parties or ex officio only at the date where it occurred.

ART. 264
Communication of other procedural acts
(1) **Communicating other procedural acts shall be performed as under the stipulations in this Chapter.**
(2) In the case of persons deprived of freedom, communication of other procedural acts shall be performed by fax or any means of electronic communication available at the detention facility.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

In case where the parties concerned have their place of residence or seat in another EU Member State, the method of service most frequently used is **the direct contact** between the judicial authority and the person concerned as stipulated in art.5 of the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959 as supplemented by the Convention of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

In cases where there is information that the person concerned is in detention on the territory of another MS, the method of service used is via judicial authorities.

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3. **Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?**

We would like to begin with a few brief explanations:

If the suspect or defendant lives abroad, for their first hearing the summons shall comply with the stipulations of international criminal law applicable to the relation with the requested state.

In the absence of such stipulation or in case the applicable international law allows it, the summons shall be sent by registered mail. In that case the recipient's signature on delivery of the registered letter or the refusal to take delivery of said letter shall be deemed proof of completion of the summons procedure.

For their first hearing, the suspect or defendant shall be informed in the summons that they have the right to indicate a mailing address on the territory of Romania, an e-mail address or an electronic messaging address where they wish to receive all communication concerning the trial. In case they fail to comply, the communications shall be sent to them via registered letter again, and the receipt for that letter from the Romanian postal service, listing the documents being mailed, shall serve as proof of completion of the procedure.

To answer your question, considering that criminal procedure allows for the summons to be posted - at the door of the building or at the court (when all reasonable investigations did not result in the identification of the summoned person), some MS considered that this method of service is not sufficient in order to ensure a proper communication.

4. **In your experience, what are the best practices in this context?**

The best practice is favouring direct contact as much as possible.

Furthermore, judicial authorities should be encouraged to request the support of police cooperation in order to identify the real location of a person abroad, especially requesting the introduction of an alert according to article 34 of Council Decision 2007/533/JHA. The purpose of this alert category is to find out the place of residence or domicile of persons sought to assist with criminal judicial procedures.

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SLOVAKIA

1. What methods of service exist under your national (criminal) law?

The methods of service in the criminal proceeding are stipulated in the Articles 65 -68 of the Code of Criminal Proceeding (301/2005 Coll).

If the document was not served during an action of the criminal proceedings, it is usually served by the post office.

If necessary, particularly in the case of an ordered summons, unsuccessful attempts to serve a consignment into the own hands of the addressee in another manner or if there is a danger that the proceedings could be obstructed due to delays in service, the Police Force, or the Municipality may be requested for the serving.

The law enforcement authorities and court may even serve the documentation to the accused, defence counsel, the victim and their proxy, reporter, legal representatives, party to an action and their proxy, and to penitentiary and custody institutions by electronic means signed by the advanced electronic signature.

Served into own hands is using for the cases of:

a) the indictment and summons for the accused,

b) a copy of a decision to persons entitled to submit an appeal against the decision,

c) any other document, if the judge, public prosecutor, the police officer, probation and mediation officer, high court clerk, court secretary or assistant prosecutor ordered it for important reasons.

If the addressee refuses to accept the documents, it shall be noted on the delivery note together with the date and reason for the refusal, and the documents shall be returned.

If the judge, public prosecutor, or the police officer, the probation and mediation officer, high court clerk, court secretary or assistant prosecutor who sent the document admits that the acceptance of the document was unreasonably refused, the document is considered delivered on the date when the acceptance was refused; the addressee must be advised about such consequences by the deliverer.

Documents that are intended for authorities or legal entities shall be delivered to the employees authorised to accept the documents for the authorities or legal entities. If there are no such employees, the documents that are intended into own hands shall be served to those who are authorised to act on behalf of the authority or the legal entity, and all other documents to any other employee who accepts the documents.

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2. **Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?**

With reference to the practice we can examine in the files of the mutual recognition on the financial penalties according to the Framework Decision 2005/214/JHA we observed, that in the most number of cases the serving of financial penalty is made by the post office. However, some member states use the instrument of legal assistance to deliver the documents regarding the financial penalty. In those cases the service of documents is executing by the competent District Prosecutor's Office (Article 538 para 2). This option is mainly used in the cases when delivering by post is not successful.

However we have to state that we can evaluate the situation mostly from the view of executing state as we receive more requests for the recognition of financial penalties than we send.

3. **Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?**

When acting as an executing state, we register such a problem in relation to requests for mutual legal assistance regarding road traffic offences, where the issuing authority often of an administrative nature requires to collect details of the ownership of suspected vehicle with licence registered in the Slovak Republic. The competent authority for executing this MLA request - prosecution service tends to return such requests with explanation that this kind of requests are not considered as mutual legal assistance in criminal matters but should be handled by the police as the police assistance. We also want to highlight the fact, that such requests are mainly addressed by police or administrative departments of the issuing member states.

Besides of aforementioned problem, we did not recognize any specific problem regarding methods of service of documents in cross-border cases in relation to FD 2005/214/JHA on financial penalties.

4. **In your experience, what are the best practices in this context?**

When dealing with service of documents in cross-border cases the best practises is communication of those problems with relevant authorities in other member states or using the tools available such as EJN or Eurojust.

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SLOVENIA

1. What methods of service exist under your national (criminal) law?

Given that fines are imposed in two types of proceedings, the rules of service also differ.

In the case of criminal offenses, the rules of service are laid down in the Criminal Procedure Act. Article 120 stipulates what must be personally served to the accused, and among that are all decisions that can be challenged in the set deadlines. The rules are clear and there is no substitute service. When the defendant is represented by a counsel, the appellate deadline is calculated from the moment both are served. Service is executed by the post or by well-defined alternatives (e.g. secure electronic mailbox). A signed certificate of service by the server and the addressee serves as a proof of service.

When it comes to the issue of minor offences proceedings, the rules of service are laid down in the General Administrative Procedure Act. Documents are served by post, an authorized person or electronically (if the addressee consents and has a secure electronic mailbox). Service shall be deemed to have been effected on the day on which the addressee receives the document. If the addressee is not at the address, document notification is left in the mailbox or in the secure electronic mailbox. The notice shows where the document is located, and that the addressee is obliged to pick it up within 15 days. If the document is not received within 15 days, service shall be deemed to have been effected on the date of expiry of this period. After the expiry of this period, the server shall leave the before mentioned document in the home or exposed drawer of the addressee. If the customer does not have a mailbox or it is useless, the server returns the shipment to the sender. The written communication must contain a notice of the consequences of such service.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

If the person has a place of residence or its registered office in another EU Member State and needs to be served the document, the document is often sent directly. It is a service by post with a return receipt, signed by the addressee proving that he has accepted the document. Another way, which is often chosen, is to ask the competent judicial authorities of another Member State to effect the service. The EJN Atlas is of great help to us in these cases.

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3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

According to national rules, service must be effected in a clear manner which reflects that the consignee/offender has received the consignment. There must be proof of this. The specialized court dealing with international legal assistance in the field of misdemeanours has thus pointed out that there are problems in this regard.

Service of foreign decisions imposing fines on offenders is not served in the prescribed manner.

It happens that the decision is not translated into the language understood by the offender and thus he/she does not have the opportunity to actively use the legal remedy. It happens that foreign authorities send shipments to addresses where the addressee does not live, but it is supposed to be a proper service.

Such conclusions lead to difficulties that courts must then face in recognizing a foreign decision.

If written communication is not sufficient, an oral hearing is necessary to clarify all the circumstances, where the offender can explain his claims.

Such rules also apply to the procedures for imposing a fine, so that the service of documents is certainly essential.

4. In your experience, what are the best practices in this context?

As already mentioned, the best way to avoid problems is to serve through the requested judicial authorities on the basis of conventions or bilateral agreements.

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SPAIN

1. **What methods of service exist under your national (criminal) law?**

   Criminal judgments imposing a sentence are enforceable when they are final.

   Once the sentence has been passed, it has to be served in person on the convicted person (or the person they have appointed in the file to receive notification on their behalf), and also notified to the procurator (art 160 Criminal Proceedings Act).

   From the day this personal service is made, the convicted person has ten days to file a written appeal before the sentencing court, which forwards it to the higher court. Depending on the sentencing court, the higher court is different (namely, appeals of cases tried by the Investigating judges or Criminal judges are revised by the Provincial Court; appeals on cases tried by the Provincial Court are revised by the Higher Court of Justice; and appeals of cases of this Court are revised by the Supreme Court). Once the appeal is solved by the higher court, the file returns to the lower court, which passes an order declaring that the judgment is final and can be enforced. Only in this phase of proceedings, the certificate of financial penalties can be issued.

   If the convicted person is not found when serving the judgment, this circumstance will be included in the file, and in this case the notification to the procurator will be enough.

   Service of criminal judgments by electronic means is compulsory in the case of legal practitioners using a certified program, but not for the convicted persons since it is not possible to ascertain if they have received the judgement in person.

2. **Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?**

   There is not any legal particularity relating to non-residents in Spain. Rules are the same as residents in Spain. In this case, the court will serve the sentence to the convicted persons using any method that proves the judgment has been effectively received by them (it can be either by registered letter with acknowledgment of receipt to the domicile they have indicated in the criminal file, either using the criminal cooperation instruments). If serving the sentence is not possible this way, notification to their Procurator will be sufficient.

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3. **Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?**

   There are no specific problems in cross-border cases because, as explained, the court will serve the sentence to the convicted persons using any method that proves that they received the judgment (it can be, either by registered letter with acknowledgment of receipt to the domicile they have indicated in the criminal file, or using the criminal cooperation instruments). In addition, since in the Spanish Legal System it is compulsory (except for misdemeanour offences) to stand before the Court with a Procurator (or legal practitioner), hired by the offender or on duty if offender has no means to afford them, there are no problems regarding the proof of service. If the convicted person is not found when serving the judgment, this circumstance will be included in the file, and in that case the notification to his/her Procurator (or defence counsel) will suffice.

4. **In your experience, what are the best practices in this context?**

   The role of the Procurator and the service done by electronic means.

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SWEDEN

1. What methods of service exist under your national (criminal) law?

A police officer or a prosecutor can in some cases issue an order to pay a financial penalty to a person. If the person approves the order, it is considered a final judgment. The service should not be an issue in this case since the person explicitly approved the order to pay the financial penalty. If the order is not approved the prosecutor will have to bring it before the court in order to obtain a judgement, in the same way as in cases where no order was issued. The court will then serve the summons and other documents to the defendant. The Court cannot render a judgement if the defendant is not duly served the summons. Thus, the defendant will be aware of the proceedings against him or her and will have the possibility to defend him or herself during a hearing or, if the defendant agrees, during a written proceeding. The judgement will then be pronounced at the hearing and/or sent to the defendant, but it will not be served by the court.

The following methods of service exist under Swedish law in criminal cases according to the Service act, (delgivningslagen [2010:1932]), the service regulation (delgivningsförordningen [2011:154]) and the Code of Judicial Procedure, (rättegångsbalken).

a) Ordinary service

Ordinary service can be used in all cases. It means that the summons and other documents to be served are sent or submitted to the defendant, who must confirm that he or she received them. The documents are usually sent by post or e-mail to the defendant who can confirm the reception in writing or orally. The defendant is considered to have been served on the day that the documents were received.

b) Service by a bailiff

If the ordinary service fails, service can be effected through a bailiff. A bailiff can be, for example, a police officer or an authorized service company, but also other persons listed in the Service Act. The summons and other documents to be served is handed over to the defendant personally by the bailiff. The defendant is considered to have been served when the documents have been given to him or her by the bailiff or if the defendant refuses to take the documents, when the bailiff attempted to hand over the documents.

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c) Simplified service

Simplified service means that the summons and other documents to be served in a criminal case are sent to the defendant and then the next working day a control message is sent with information that the summons and documents were sent. The summons and documents are sent to the defendant's last known address. The defendant is considered to have been served when two weeks have elapsed since the documents were initially sent, if the control message has been sent in the prescribed manner and if it does not appear unlikely in view of the circumstances that the documents arrived within this time.

Simplified service can only be used to initiate a criminal proceeding if the defendant was personally informed, by for example a police officer or a prosecutor, that simplified service could be used by the court and the simplified service is effected within ten weeks after the information was given to the defendant.

d) Availability service

This method of service is currently being tried out in criminal proceedings according to a special Service act that is applicable until the end of the year 2022 (Lag [2018:160] om försök med tillgänglighetsdelgivning i brottmål).

Summons and other documents in criminal cases may be served on the defendant by keeping them available at court. Availability service can only be used to initiate a criminal proceeding if the defendant was personally informed, by for example a police officer or a prosecutor, that availability service would be used and the period of time during which the documents would be available at court. The defendant is considered to have been served when the documents were available at court at the specified time.

2. Which method of service is chosen most frequently in cases where the parties concerned have their place of residence or seat in another EU Member State?

We have not been able to produce any statistics on this question. However, if the parties concerned have their place of residence in another EU Member State, the courts would most likely choose the ordinary service.

3. Do the methods of service available under your national law involve specific problems in cross-border cases, for example as regards proof of service?

Sweden has not experienced any particular problems in cross-border cases regarding Swedish methods of service.

4. In your experience, what are the best practices in this context?

(nothing to be added)

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