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**TRANSNATIONAL CIVIL PROCEDURE -  
FORMULATION OF REGIONAL RULES  
ELI – UNIDROIT Rules of Transnational Civil  
Procedure  
Steering Committee and Working Groups  
Joint Meeting  
Rome, 27-28 November 2014**

UNIDROIT/ELI 2014  
Study LXXVIA – Doc. 3  
Original : English

**WORKING GROUP ON SERVICE**

**First Report November 2014**



**Working Group on Service  
Report – ELI/UNIDROIT Meeting  
European Principles on Civil Procedure**

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# Themes

- Project scope
- Substantive issues
  - Table/working chart
  - Selected issues in more detail
- Project method
- Progression of project

# Project Scope

- All civil proceedings (including e.g. family matters)
  - Discussion on b2b / b2c cases
  - Distinctions between different types of addressees
- Left arbitration aside
- Left extra-judicial documents outside
- Focus so far on cross-border context
- Initial focus on documents instituting the proceedings
- Develop model rules with comments and explanations

# Issues

Issue	PTCP/RTCP	Service Regulation	Other Regulations	CJEU	International / Domestic	Is PTCP a "Good Basis"?	Additions/ Amendments
Language/ Translation						✓✓✓	Art. 5.2 PTCP accepted as the basis for further deliberations
Scope of Documents						✓✓	Art. 5.1 PTCP (compromise between conflicting systems of notice and fact pleading), a slightly revised approach may be suitable in Europe
Information Provided						✓	Art. 5.1 PTCP seems to be too broad (RTCP additional details), Art. 17 of EEO to be used as a basis for further discussions
Safeguards						✓	The approach in Art. 19 SR is almost identical to the Hague Service Convention (Art. 15.3.2 PTCP same ethos) - a good working compromise?

# Issues

Issue	PTCP/RTCP	Service Regulation	Other Regulations	CJEU	International / Domestic	Is PTCP a “Good Basis”?	Additions/ Amendments
Interaction with Pendency						No mention	Art. 9 SR as basis (based on the existence of different systems in the MS) , we may have to develop a harmonized solution
Responsibility						No mention (comment)	<i>Acquis</i> no specific mention, varies greatly in the MS, more detailed discussion at a later state
Methods						No specific rules (“effective / efficace”)	Use <i>acquis</i> and domestic rules as basis, basic issues discussed: (i) Hierarchy (ii) Personal service (iii) Substitute service (iv) Public/fictional service Preliminary agreement: personal service in first place, substitute service with proof of receipt in second place and as a matter of last resort fictional service if the address of the defendant is unknown. On this basis a harmonized system could potentially be developed.

# Translation

- The main differences between Art. 5.2. PTCP and the European *acquis* derive from Art. 8 (1) lit. a of the Service Regulation (SR)
  - The SR allows service without translation and enables plaintiffs to wait and see whether the defendant will refuse to accept the documents, which shifts the risks to a considerable extent to the defendant
  - In applying Art. 8 it is unclear when the addressee “understands” a language and how that fact can be proved, in particular, there are no criteria for legal entities
- Thus, there are two different approaches which can be summarized as follows: the PTCP take an objective approach whereas the SR prefers a subjective one



# Translation cont.

- The PTCP on balance appears to provide a better solution than the SR, Art. 5.2. PTCP has hence been accepted as the basis for further deliberations
- Although the languages mentioned therein do not in all cases guarantee that the addressee really understands the documents, they constitute an acceptable presumption:
  - The place of habitual residence and the principle place of business refer to a factual link between the addressee and the place of service
- It was discussed whether an additional element of flexibility could be introduced to the main rule, *inter alia*:
  - Whether nationality (natural persons) or another language “common to the parties” should likewise be allowed

# Scope

- Art. 5.1 PTCP must be understood against the background that the PTCP had to harmonize the conflicting systems of notice pleading in the US and fact pleading in Europe, therefore, a different and slightly revised approach may be suitable in Europe
- Question whether it might be useful to follow *C-14/07 Weiss*
  - The term “cause of action” is, however, far from being clear and that there are different approaches in the MS with respect to the question of how detailed complaints filed have to be
  - Therefore, “specification of the relief” as in the PTCP may actually be better than “relief” and “allegations of the complaint” better than “cause of action”

# Safeguards

- A well-established safeguard is the approach taken by Art. 19 SR which is almost identical to the one taken by the Hague Service Convention (PTCP same ethos)
- Art. 19 SR would appear to be a good working compromise
  - It should not be taken for granted that this “compromise” is the best solution, need to explore whether problems have arisen in practice
  - Look at how the Hague Service Convention has worked and the declarations in this respect
  - Question whether the period provided (one year) is suitable or whether another period more suitable

# Methods

- Art. 5.1 PTCP should probably be interpreted to mean that the PTCP do not require personal service on the defendant in all cases, but also allow substituted service as long as it is “reasonably likely to be effective”
- The PTCP do not provide any further details on the method
- A hierarchy for the methods of service might be useful
  - Difficult to accept in more flexible systems?
  - Personal service - first choice (proves clearly that the documents have reached the addressee)
    - Questions regarding service by registered mail
    - Questions regarding service by electronic means

# Methods cont.

- Substitute service
  - Need better comparative basis
  - Details will be difficult to pin down
- Public or fictional service
  - What does "address unknown" mean in practice
  - To what extent allow

# Project Method

- Comparative
- Compare PTCIP/RTCP and the current EU *acquis*
  - CJEU case law and the reports on the application of the EU *acquis*
- Consider and compare with the Hague Service Convention and other international projects (Storme)
- Compare with the national rules on service of documents
- Need more input on national systems
- Basic questionnaire, groups members and other colleagues identified
- National case law and list of problems arising in the application of the *acquis* (as well as other international situations)
- Important to understand practical context
  - E.g. what does “registered mail” mean, or how do electronic options work

# Progress

- Update working chart (November)
- National summaries (November)
- Collect case law and list of problems in the application of the *acquis* (by next meeting)
- Next meeting end of January/beginning of February