



**ELI**  
EUROPEAN  
LAW  
INSTITUTE



**TRANSNATIONAL CIVIL PROCEDURE -  
FORMULATION OF REGIONAL RULES  
ELI – UNIDROIT Rules of Transnational  
Civil Procedure  
Steering Committee and Co-Reporters –  
Joint Meeting  
Rome, 21-22 April 2016**

UNIDROIT 2016  
Study LXXVIA - SC IV – Doc. 4  
English only

**ELI/UNIDROIT WORKING GROUP: SERVICE OF DOCUMENTS  
4<sup>th</sup> Progress Report - April 2016**

Members of the Working Group

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Meetings of the Working Group: Konstanz (Oct. 2014), Uppsala (Feb. 2015), Paris (July 2015), Padua (Sept. 2015), Athens (April 2016)

**Progress since Trier conference, November 2015**

The Working Group (except E. Jeuland) met in Athens on April 1, 2016, for its 5<sup>th</sup> workshop. The meeting had two objectives:

- 1) To meet with and receive in-puT on the Draft Rules from a representative of the International Union of Judicial Officers (UIHJ – Union Internationale des huissiers de justice); and
- 2) Internal discussion on remaining issues.

**I. Meeting with a representative of UIHJ**

At the beginning of the 5<sup>th</sup> meeting the Working Group had a two hour session with Ms. Andrieux, President of UIHJ. We had sent Ms. Andrieux our Draft Rules in advance (the version that was presented publically at ERA in Trier in November 2015). In correspondence in advance we had emphasised to Ms. Andrieux that we wanted to receive the perspective and in-puT of the Union. She had prepared a set of comments and issues that she wanted to address on behalf of the Union. We discussed both the general approach taken in the Draft Rules and some of the specific rules in more detail. In general Ms. Andrieux expressed appreciation of the Draft Rules and approval on behalf of UIHJ. She emphasized though that service by professional judicial officers provides a higher guarantee of success and also of full information of the addressee. She did not recommend any changes to the Draft Rules.

Ms. Andrieux further provided us information on some comparative materials compiled by UIHJ on service of documents and promised to send us a written note of the issues discussed.

## 2. Internal discussion of the Working Group

The Working Group addressed the following issues of the Draft Rules:

- Scope and structure of the draft
  - Draft Rules should apply to domestic and cross-border service of documents - Part 3 provides special rules for cross-border service;
  - Nature of model rules and need of Member States to co-operate in cases of cross-border service of documents; particularly access to national electronic information systems – which may vary considerably – should be provided, either directly to foreign courts/parties or indirectly via a national authority/actor with access to the system;
  - The obligation to co-operate should not be part of the Rules as imposing a legal obligation on the Member States requires action taken by the EU legislature, even if the Draft Rules were to be used as a source of inspiration for and adopted by domestic legislatures of the Member States in the future. The Working Group therefore decided to mention this practically important issue in the preamble of the Draft Rules.
- Scope of obligation under Rule 1 to serve “documents instituting the proceedings”
  - The Working Group discussed the obligation to effect formal service with respect to documents amending the original claim during the proceedings, e.g. in relation to a counter-claim, a third-party notice or an interpleading. Rule 1 was revised accordingly (see amended version of the Draft Rules attached). Details cannot be stipulated in Rule 1 as they very much depend on the national rules on the application of and consequences of third party notices and interpleaders. However, whenever a party’s or third party’s right to be heard with respect to a possibly binding court decision is at stake, formal service should be mandatory.
- Responsibility for service of documents in case of cross-border service
- Methods of service:
  - Receipt automatically generated by electronic information systems (need for a time-frame to react for addressee);
  - Service on legal persons (harmonization of Rules 8 and 9);
  - Rule 11: deposition of documents in a secure mailbox or deposition of documents at a post office without the need of a second attempt to meet the addressee in person (the first option was deleted, the second one now requires for effecting service that the addressee has actually collected the documents; see Draft Rules attached);
  - Rule 12: Obligation of attorneys to provide an electronic address for service during the proceedings; the text was also amended with respect to “other legal counsels” as parties may be represented in some Member States not only by a lawyer who is a member of the bar; the Working Group also added a general obligation of parties and attorneys (legal counsels) to notify the court of any change of residence, of place of business or of their postal or electronic address;
  - Rule 13: flexibility of Member States to use modern solutions for trying to reach the addressee and give notice on “service by publication”; the Working Group decided that the very broad wording of Rule 13 already allows the use of text messages, announcement on Facebook or other social media where appropriate.
- Comments: The comments can be shortened but the Working Group decided to keep them for the time-being; harmonization with the scope and length of comments of other Working Groups can be made at a later stage, comparative information may be useful for the further development.

# European Rules on Civil Procedure

## Working Group on Service of Documents

**4th Progress Report**

**Co-reporters: Astrid Stadler & Eva Storskrubb**

**April 2016**

## Progress Made since November 2015

- Meetings of the Working Group:

Konstanz (Oct. 2014), Uppsala (Feb. 2015), Paris (June 2015), Padova (Sept. 2015), Athens (April 2016)

### Athens Meeting:

- (1) Dialog on Draft Rules with UIHJ (Union Internationales des huissiers de justice) –
  - Two hour session with Ms. Andrieux (president of UIHJ)
  - Discussion of approach taken by the WG and rules
  - Great consent to draft, no changes recommended
- (2) Internal discussion of some remaining issues on scope, structure and methods of service

# Application in Cross-border Settings

- Approach of the Working Group
  - „classical“ system: **national rules** on service of documents for domestic cases & **European Service Regulation & Hague Service Convention**
  - Draft Rules: Same service system regardless of whether the service is a cross-border one or not (Part 1 and 2 of Draft Rules)
  - However, need to regulate some matters separately for the cross-border level: language
    - translation requirements, time periods for defendant to react [Rule 3] => Part 3 of Draft Rules
  - Even if Draft Rules were adopted in all MS: need to co-operate with respect to access to service provides and electronic platform

# Scope and Structure for Draft Rules

- Scope & structure of the Draft  
⇒ no major changes made

## Preamble

- General scope of rules (domestic & cross-border cases)
- Obligation for MS to co-operate; access to service providers and national electronic information systems (where applicable) – direct access for courts/parties or indirect via national authority/court

Part 1: Due service and right to be heard

Part 2: Responsibility for and methods of service

Part 3: Service of documents in cross-border cases

# Structure of Draft Rules

## **Preamble**

### **Part 1: Due service and right to be heard**

Rule 1 - Requirement of service and minimum content

Rule 2 - Due information about the procedural steps necessary to contest the claim

Rule 3 - Defendant not entering an appearance

### **Part 2: Responsibility for and methods of service**

#### **A. General provisions**

Rule 4 - Responsibility

Rule 5 – Applicability of rules

Rule 6 - Priority of methods guaranteeing receipt

#### **B. Methods of service**

Rule 7 - Service guaranteeing receipt

Rule 8 – Service on legal persons by physical delivery

Rule 9 – Service on representatives

Rule 10- Refusal of acceptance

Rule 11 - Alternative methods of service

Rule 12 - Service of documents during proceedings

Rule 13 - Service in case of unknown address or failure of other methods of service

Rule 14 - Cure of non-compliance

### **Part 3: Service of documents in cross-border cases**

#### **A. In the European Union**

Rule 15 - Language requirements

Rule 16 - Defendant not entering an appearance

#### **B. Outside the European Union**

Rule 17 – Relationship to the Hague Service Convention

# Maximum- Minimum Rules ?

- Many rules quite detailed => maximum harmonization if adopted by MS
- Rules which provide framework, but leave details to be provided by national legislature

(1) Rule 1: information to be given to the defendant in documents instituting the proceedings

- names & addresses of parties
- facts & grounds relied on
- relief sought

≈ „Weiss“ decision ECJ

Member States:

- details of pleadings
- need to list means of evidence
- legal arguments
- service of attachments to claim

(2) Rule 4: responsibility for service => either courts or parties

(3) Rule 5 „applicability“: requirement to serve documents formally

- documents referred to in Rule 1, court decisions
- „any other documents required to be served“ => decision of Member States



## Maximum- Minimum Rules ?

- (4) Rule 7 (a) & (b)

- Service by physical delivery

- MS may give responsibility to court officers, bailiffs, post officers or any other competent person

- Service by electronic means

- => „designated electronic information system using appropriately high standards“

- => no details provided, room for further technical developments

MS may opt for

- normal e-mail if considered safe
- use of special electronic platform with restricted access

- (5) Rule 13

Publication of service on electronic platform/register or by any other appropriate means

MS may use different means of publication, such as text messages, Facebook or other social media

# Scope of Rule 1

## **Rule 1 Requirement of service and minimum content**

*The documents instituting the proceedings **or any other procedural documents amending the relief sought or seeking new relief** should be served on parties other than the claimant by means described in Rules 7-11 and 13-14. ~~The~~ Such documents ~~instituting the proceedings~~ should as a minimum include the names and addresses of the parties, the facts and grounds relied on and the relief sought.*

- Formal service required whenever a party's or third party's right to be heard with respect to a possibly binding court decision is at stake
- Amendments of the original claim, counter-claims, documents on third-party notice or interpleader ....
- Application of Rule 1 to other documents according to national law (Rule 5)

## Methods of Service – Rule 8 & 9

- **WG:** harmonization of Rules 8 & 9 necessary
- **Service on legal entities, companies, ...**
  - Rule 8: service on statutory representative (depending on national company law etc.) at business premises (including definition)
- **Service on representatives in general, Rule 9**
  - Service on any representative of a natural or legal person who presents a power of attorney issued by the addressee (not restricted to lawyers, attorneys ...)
  - Service on legal representatives if minors or persons who lack legal capacity are parties to the proceedings
- **Service of documents during proceedings, Rule 12:**
  - Service on attorney or legal counsel
  - Service from attorney-to-attorney
  - Obligation for attorneys and legal counsels to provide electronic address and to notify any change during proceedings (same obligation for parties!)

## Methods of Service: Rule 11

- Alternative methods of service (applicable if no service on the addressee with proof of receipt by the addressee is possible)

*Rule 11:*

*... (a) and (b) [service at addressee's home address on persons living in the same household or on employees]*

~~*(c) Deposit of the documents in the addressee's secure mailbox*~~

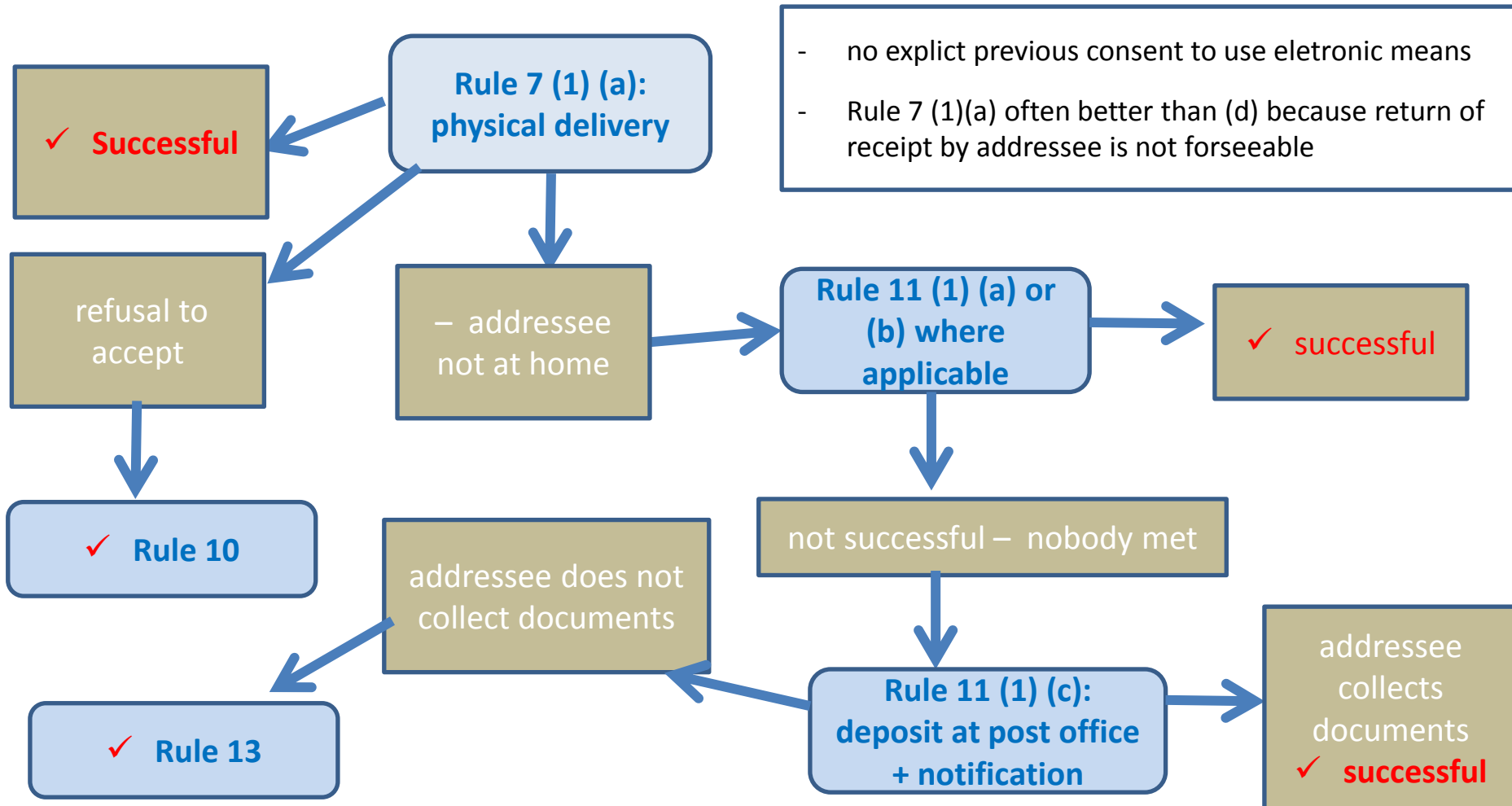
*(d) Deposit of the documents at a post office or with competent authorities and the placing in the addressee's secure mailbox of a written notification of that deposit. .... [details on notification] ..*

***New: service is effected only when documents collected by addressee.***

=> where addressee does not collect documents within time specified in notification, service can be effected according to Rule 13 („service by publication“)

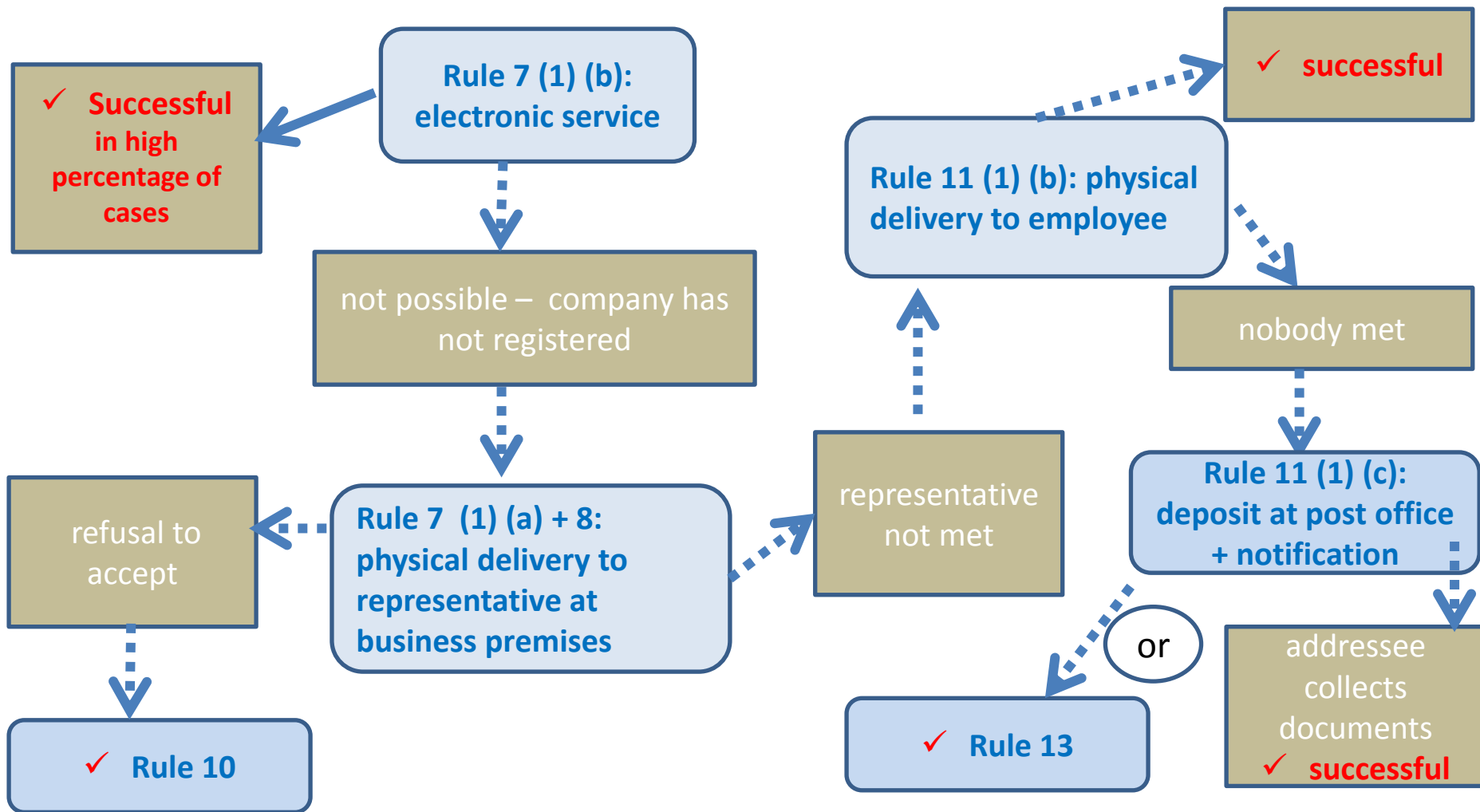
# Examples

- Service on defendant = **natural person** – document instituting the proceedings
  - Domestic case (defendant's postal address in forum state)



# Examples

- Service on defendant = **company** – document instituting the proceedings
  - Domestic case (defendant's postal address in forum state)



# What's Next?

Rules to be coordinated with other working groups

- Rule 3: „Defendant not entering an appearance“
  - court must check correct service of documents instituting the proceedings
  - requirements for a judgment by default
  - requirements for appeal against judgment by default
  - availability of provisional measures
- Rule 4: Responsibility for service
  - Court/parties: Working group on lis pendens => requirements for lis pendens effect can be either the filing of a claim with the court or e service of the claim documents on defendant
- input from Rome meeting 21-22 April
- French version of the Draft rules to be finalized
- German version?