



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

## **Draft from the UIHJ (May 2009) of a directive of the European Parliament and of the Council on a harmonized document initiating proceedings in civil and commercial matters**

**Important notice: This document was initiated, prepared and drafted by the International union of judicial officers and is therefore not binding for the Community.**

Having regard to the Treaty establishing the European Community, and in particular its article 61, point c), its article 65, point a), first and third indents and items c), its article 67, paragraph 5, second indent, and its article 95,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty;

Whereas:

- (1) On 3 December 1998, the Council adopted an Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice<sup>1</sup> (the Vienna Action Plan).
- (2) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area. To establish such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market. The European Council also approved the principle of the mutual recognition of the court decision as the cornerstone of the creation of a genuine legal area.
- (3) The proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

---

<sup>1</sup> OJ C 19 of 23.1.1999, p.1



- (4) The Council, by an Act dated 26 May 1997<sup>2</sup>, drew up a Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters and recommended it for adoption by the Member States in accordance with their respective constitutional rules. That Convention has not entered into force.
- (5) To ensure the continuity of the results obtained within the framework of the conclusions of this convention, on May 29th, 2000, the Council adopted Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters<sup>3</sup>. The main content of that Regulation is based on the Convention.
- (6) On 13 November 2007, the European Parliament and the Council adopted Regulation (EC) n°1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, repealing regulation (EC) No 1348/2000 of the Council<sup>4</sup>.
- (7) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States are essential.
- (8) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the Treaty, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by Conventions on the Accession of the New Member States to that Convention<sup>5</sup>. On 16 September 1988 Member States and EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which is a parallel Convention to the 1968 Brussels Convention. Work has been undertaken for the revision of those Conventions, and the Council has approved the content of the revised texts. These conventions were the subject of work of revision and the Council gave its assent on the contents of the revised text.
- (9) To ensure the continuity of the results achieved in that revision, on 22 December 2000, the Council adopted Regulation (EC) n°44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>6</sup>.
- (10) On 30 November 2000, the Council adopted a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters<sup>7</sup>. This

---

<sup>2</sup> OJ C 261 of 27.8.1997, p. 1.

<sup>3</sup> OJ L 160 of 30.6.2000, p. 37.

<sup>4</sup> OJ L 324 of 10.12.2007, p. 79.

<sup>5</sup> OJ L 299 of 31.12.1972, p.32.

<sup>6</sup> OJ L 12 of 16.1.2001, p. 1.

<sup>7</sup> OJ C 12 of 15.1.2001, p. 1.



programme includes in its first stage the abolition of exequatur, that is to say, the creation of a European Enforcement Order for uncontested claims.

- (11) In its Tampere conclusions, the European Council considered that access to enforcement in a Member State other than that in which the judgment has been given should be accelerated and simplified by dispensing with any intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. A judgment that has been certified as a European Enforcement Order by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought.
- (12) Pursuing this objective, on 21 April 2004, the European Parliament and the Council adopted Regulation (EC) n°805/2004 creating a European Enforcement Order for uncontested claims<sup>8</sup>.
- (13) The European Council meeting in Tampere on 15 and 16 October 1999 invited the Council and the Commission to prepare new legislation on issues that are instrumental to smooth judicial cooperation and to enhanced access to law and specifically made reference, in that context, to orders for money payment.
- (14) On 30 November 2000, the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters. The programme envisages the possibility of a specific, uniform or harmonised procedure laid down within the Community to obtain a judicial decision in specific areas including that of uncontested claims. This was taken forward by the Hague Programme, adopted by the European Council on 5 November 2004<sup>9</sup>, which called for work to be actively pursued on the European order for payment.
- (15) The swift and efficient recovery of outstanding debts over which no legal controversy exists is of paramount importance for economic operators in the European Union, as late payments constitute a major reason for insolvency threatening the survival of businesses, particularly small and medium-sized enterprises, and resulting in numerous job losses.
- (16) For this purpose, on 12 December 2006, the European Parliament and the Council adopted regulation (EC) n°1896/2006 creating a European order for payment procedure<sup>10</sup>.
- (17) The European Council meeting in Tampere on 15 and 16 October 1999 also invited the Council and the Commission to establish common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims.
- (18) The program adopted on 30 November 2000 also refers to simplifying and speeding up the settlement of cross-border litigation on small claims. This was taken forward by the Hague Programme, adopted by the European Council on 5 November 2004, which called for work on small claims to be actively pursued.

---

<sup>8</sup> OJ L 143 of 30.4.2004, p. 15.

<sup>9</sup> OJ C 53 of 3.3.2005, p. 1.

<sup>10</sup> OJ L 399 of 30.12.2007, p. 1.



- (19) For this purpose, on 11 July 2007, the European Parliament and the Council adopted payment (EC) n°861/2007 establishing a European Small Claims Procedure<sup>11</sup>.
- (20) The document initiating proceedings constitutes the basis of any legal procedure. It seals, for this reason, the whole of the claims of the applicant towards his adversary on which the seized judge will have the obligation to rule under penalty of denial of justice. It materializes in such manner the cradle of the object of the litigation and participates in the respect of the principle of contradictory just as of the rights of defence. This document thus represents the centrepiece of any legal action as a vector of information as well for the parties as sometimes, for the judge, according to the conditions of its handing-over. It makes it possible to inform the defendant in an effective way the legal and factual elements on which the applicant intends to base his action.
- (21) The document initiating proceedings is not only today the pillar of the legal phase in a strict sense. It became the genuine "keystone" of a whole of Community instruments of derived law which has covered for a few years the legal process until the execution. It is consequently necessary to assess the scope of this document taking into consideration its influence in the field of enforcement.
- (22) The manner of introducing proceedings into a transnational concept remains very vague within the Community texts. Indeed, the formula employed "*document initiating proceedings or equivalent*" remains very evasive, and is prejudicial to the authority of the European Enforcement Order. Certain national legislations which use a dedicated standard document initiating proceedings emphasize on the information of the defendant in the document. Other Member States resort to different forms of procedure where information is conveyed only *post ante*, sometimes even after the court hearing. The consequence of this great disparity in the forms of initiating procedures is common sense: all the judgments do not take on the same guarantees with regard to the defendants. This situation drove the introduction of two modes which are different in the manner of conceiving the delivery of the certificate of a European Enforcement Order, in particular through its articles 16 and 17.
- (23) To avoid the disadvantages of a similar scattering, securing the modes of introducing documents initiating proceedings appears all the more necessary as intermediate measurements of control in the Member State of enforcement have now disappeared. This security must take the form of a harmonization of the document initiating proceedings in the European Union.
- (24) The use of a harmonized and secured document initiating proceedings has a triple effect. Initially it protects the rights of the defendant by organizing the optimal conditions to enable him to be informed of the lawsuit, to prepare his defence, to be present at the court hearing or to be represented there, and to measure the consequences of a defect of representation. In a second place, it protects the interests of the applicant by limiting the possibilities of contesting the default judgment. Lastly, it contributes to reduce the backlog of litigations related to the exercise of an appeal against default judgments.

---

<sup>11</sup> OJ L 199 of 31.7.2007, p.1.



- (25) As regards the object of the harmonization of the document initiating proceedings, it is necessary to distinguish the question of the harmonization of the contents of the document initiating proceedings and that of the harmonization of its methods of service.
- (26) Concerning the contents of the document initiating proceedings, in a general way, the provisions appearing in the various European instruments currently into force appear sufficiently protective of the rights of defence. These provisions relate to the uniform Community procedures or are presented like the minimal standards of procedure defined in the Regulation creating a European Enforcement Order for uncontested claims.<sup>12</sup>
- (27) The situation is somewhat different as regards methods of service of the document initiating proceedings, i.e. the means making it possible to inform the defendants of the action taken against them. The modes of service are very varied in the national legislations of the Member States<sup>13</sup>. This heterogeneity of the systems of modes of initiating proceedings goes against the need for transparency and for accessibility of all to the legal rules of the game which constitutes one of the reasons for a bringing together.
- (28) The personal service carried out by a judicial officer or qualified person according to the law of the Member State offers unquestionable advantages on the notification carried out by other modes in terms of legal security both for citizens and judges. It makes it possible to give an unquestionable date to the document and to guarantee the mentions it contains, it makes it possible to usefully inform the defendant at the time of the handing over about the contents of the documents, it is carried out according to strict rules and it engages the responsibility of its author, subjected to a professional insurance covering his civil liability.
- (29) When it is served by a judicial officer or a qualified person according to the law of the Member State, the document initiating proceedings gives the judge the possibility of appreciating the conditions under which the defendant had to appear as well as the information which were provided to him.
- (30) From the whole of the studies carried out<sup>14</sup> it appears that the personal service entrusted to a judicial officer or to a qualified person according to the law of the Member State constitutes the most effective mode of service. It is suitable to equip the European document initiating proceedings with a maximum degree of security through this mode of service.
- (31) The applicant should pay or refund the expenses caused by the intervention of the person in charge of the service. These expenses must be fixed in advance by each Member State and must respect the principles of proportionality and non-discrimination.
- (32) The efficient functioning of justice orders to reduce to the maximum the differences existing in the modes of introducing proceedings in the Member States.

---

<sup>12</sup> Articles 16 and 17 of (EC) Regulation n°805/2004.

<sup>13</sup> Articles 13 to 15 of (EC) Regulation n°805/2004.

<sup>14</sup> Mainstrat et Lex Fori reports ordered by the European Commission, the works of the UIHJ



- (33) It is important to include in the material scope of application of this directive the essence of the civil and commercial matter, except for certain matters, such as bankruptcies, judicial arrangements, compositions and analogous proceedings, social security and arbitration.
- (34) It matters that the data transmitted under the terms of the present directive profit from a suitable mode of protection. The matter concerns the scope of application of the directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>15</sup>, and of the directive 2002/58/EC of the European Parliament and the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (directive on privacy and electronic communications)<sup>16</sup>.
- (35) Since the objectives of this directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

## HAVE ADOPTED THIS DIRECTIVE

### CHAPTER I

#### General provisions

##### *Article 1*

##### **Subject matter**

This directive establishes the general provisions making it possible to simplify, facilitate and harmonize the introduction of court proceedings in the Member States by creating a harmonized document initiating proceedings served to the defendants by a judicial officer or a qualified person according to the law of each Member State, physically or by any other secured means.

##### *Article 2*

##### **Scope of application**

1. This directive applies in civil and commercial matter and whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or

---

<sup>15</sup> OJ L 281 of 23.11.1995, p. 31. Directive modified by (EC) Regulation no 1882/2003 (OJ L 284 of 31.10.2003, p. 1).

<sup>16</sup> OJ L 201 of 31.7.2002, p. 37. Directive modified by the directive 2006/24/EC (OJ L 105 of 13.4.2006, p. 54).



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii").

2. This directive shall not apply to:

a) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

b) social security;

c) arbitration.

### *Article 3* **Definitions**

For the purposes of this directive, the following definitions shall apply:

1. "Document initiating proceedings": document by which a person takes the initiative of a lawsuit or an appeal in one of the Member States;
2. "Applicant": a person who takes the initiative to have the document initiating proceedings served;
3. "Defendant": a person who is the subject of the service of the document initiating proceedings;
4. "Service": formality by which the competent agent makes the document initiating proceedings available of the defendant;
5. "Agent in charge of the service": judicial officer or other qualified according to the law of the Member State charged to serve the document initiating proceedings and who has the capacity to give it an unquestionable date, to check the legality of the contents and to authenticate the mentions relative to its service to the defendant;
6. "Decision": any decision returned by a jurisdiction of a Member State, whatever the given denomination, such as judgment, ordinance, order, ruling or warrants, as well as the fixing by a court clerk or equivalent of the expenses of the lawsuit;
7. "Jurisdiction": any authority of a Member State having vocation to judge the litigation which is submitted to it;
8. "Justice auxiliary": professional entitled to represent the parties in front of the jurisdictions when this representation is compulsory.



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

## **CHAPTER II**

### **Contents of the document initiating proceedings**

#### *Article 4*

#### **General provision**

To be valid, the document initiating proceedings must contain the elements appearing in the present chapter.

#### *Article 5*

#### **Number of copies**

1. The document initiating proceedings is established in triplicate: one is kept for ten years by the agent in charge of the service, one is given to the applicant, and one is served to the defendant.
2. The document initiating proceedings must indicate the number of pages used for its drafting.

#### *Article 6*

#### **Date**

The document initiating proceedings must indicate in apparent characters the date on which it is served to the defendant, as well as the time of service, except in the case mentioned in Article 22.

#### *Article 7*

#### **Elements relating to the applicant**

1. If the applicant is an individual, the document initiating proceedings must indicate his/her name, first names, date and place of birth, nationality, profession and address.
2. If the applicant is a legal person, the document initiating proceedings must indicate its form, its denomination, its head office and the body which represents it legally.
3. When the legal representation of the applicant is compulsory, the document initiating proceedings must indicate the coordinates of the justice auxiliary or person in charge of this representation.





Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

#### *Article 8*

##### **Elements relating to the defendant**

1. If the defendant is an individual, the document initiating proceedings must indicate his/her name and his/her address or equivalent and, if these elements were made available to the applicant, his/her first names, date and place of birth, nationality and profession.
2. If the defendant is a legal person, the document initiating proceedings must indicate its denomination or the name under which it is known, its head office and, if these elements were made available to the applicant, its form and the body which represents it legally.

#### *Article 9*

##### **Elements relating to the agent in charge of the service**

The agent in charge of the service must indicate in apparent characters in the document initiating proceedings his/her name, first names, position, address and signature, and when appropriate the coordinates of the company within which he/she exerts his/her functions, and any useful information (telephone, fax, email address, Internet site,...).

#### *Article 10*

##### **Elements concerning the jurisdiction before which the demand is lodged**

The document initiating proceedings must indicate the name and the address of the jurisdiction before which the demand is lodged, as well as the date, the hour and the place of hearing insofar as these elements are known.

#### *Article 11*

##### **Elements relating to the representation of the defendant at the court hearing**

1. When the representation by a justice auxiliary is compulsory at the court hearing, the document initiating proceedings must indicate that the defendant is held to be represented by this auxiliary of justice, as well as the possible time in which this representation must intervene.
2. When the representation by a justice auxiliary is not compulsory, the document initiating proceedings must indicate the identity and the name and address of the persons or organizations able to represent or assist the defendant.
3. The document initiating proceedings must indicate in very apparent characters that if the defendant does appear at the court hearing or is not duly represented a decision may be given against him/her on the only elements provided by the applicant, and then that an enforcement procedure may be carried out against him/her including court fees and enforcement fees.



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

#### *Article 12*

##### **Elements relating to the claim**

1. The document initiating proceedings must indicate the object of the claim in fact and in law, as well as the indication of the elements on which the claim is based on, including for example the amount of the debt, in particular in principal, interests, contractual penalties and costs.
2. When interests are required, the document initiating proceedings must indicate their rate and the period for which they are owed, except when legal interests are automatically added to the principal under the legal terms of the State of for.
3. The document initiating proceedings must indicate that to the knowledge of the applicant, the information given are exact and that he/she recognizes that any intentional false claim is likely to involve the sanctions envisaged by the law of the State of for.
4. The document initiating proceedings must indicate the requirements of procedure to be respected to challenge the claim, including the times to dispute it in writing.

#### *Article 13*

##### **Elements relating to the possibility for the defendant to benefit from legal aid**

When the defendant is a natural person, the document initiating proceedings must indicate that if his/her resources are insufficient, he/she can profit from legal aid, as well as how he/she can benefit from it. The Member States take the appropriate measures to give such access to them.

### **CHAPTER III**

#### **Service of the document initiating proceedings**

#### *Article 14*

##### **The agent in charge of the service**

On pain of nullity, the document initiating proceedings is made available to the defendant by the agent in charge of the service. The States have to indicate who the agents in charge of the service in accordance with provisions mentioned in Article 4.5 are, and to determine their competence "*ratione loci*".



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

*Article 15*

**Date of the document initiating proceedings**

The date of the document initiating proceedings is, with regards to provisions of Article 9 of Regulation (EC) n°1393/2007 and Article 20.6 of this directive, that of the day of service to the defendant, to his domicile or residence, or, when the defendant has no known residence or domicile nor work place, that of the establishment of the official report mentioned in Article 22.

*Article 16*

**Time of service**

With regards to Article 20.6, the Member States determine the hours and days during which the documents initiating proceedings can be served and envisage the derogative conditions whenever necessary, with the permission of a judge.

*Article 17*

**Service to the defendant**

1. With regards to Article 20.6, the document must be served to the defendant.
2. The document addressed to a legal person is served to the defendant when handed to any authorized person for this purpose.

*Article 18*

**Service to another person**

1. If the service to the defendant proves to be impossible, the document can be handed either at the domicile, or, in the absence of known domicile, at the residence of the defendant.
2. The agent in charge of the service must report in the document the diligences which he achieved to carry out the service to the defendant and the circumstances characterizing the impossibility of such a service.
3. The document can be handed to any person present at the domicile or equivalent of the defendant.
4. The document can be handed only provided that the person accepts it and declares his/her name, first names and quality.
5. The agent in charge of the service must leave, in all cases, at the domicile or the residence of the defendant, a dated notice informing him of the handing of the document and mentioning its nature, the name of the applicant as well as the indications relating to the person to whom the document was handed.



*Article 19*

**Impossibility of handing the document**

1. If nobody can or wants to receive the document and if, from the checks made by the agent in charge of the service, which will be reported in the document of service, it appears that the address of defendant is real, the service is handed at the domicile or residence. In this case, the agent in charge of the service leaves at the domicile or equivalent a notice similar to that mentioned in the last subparagraph of the preceding article. This notice mentions, moreover, that the document must be withdrawn as soon as possible near the agent in charge of the service, against acknowledgement of receipt, by the defendant or any trustee.
2. The document is kept by the agent in charge of the service for three months. At the end of this period, he is discharged from it.
3. The agent in charge of the service can, at the request of the defendant, transmit the copy of the document to another agent in charge of the service where he/she will be able to withdraw it under the same conditions.

*Article 20*

**Place of service**

1. The service is made at the place where the defendant lives if he/she is a natural person.
2. When the document is served to the defendant, the service is valid wherever it is handed.
3. The service is also validly made at the chosen or legal address as admitted or imposed by the law.
4. The service to a legal person of private or public law or equivalent is made at the place of its establishment.
5. In the absence of such a place, it is to the person of one of its authorized members.
6. When the recipient of the document expressly agreed to receive documents of legal nature to an electronic address which he/she communicated for this purpose and within the framework of the lawsuit to be introduced, the agent in charge of the service can serve the document by addressing by electronic mail at the aforementioned address a copy of the document initiating proceedings with a request of acknowledgment of delivery according to a secured protocol. The Member States take the appropriate measures to ensure the installation and the effectiveness of this secured protocol. For the applicant, the date of the document initiating proceedings is that to which the request is carried out. For the defendant, the date of the document initiating proceedings is that to which the acknowledgment of delivery was transmitted.



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

#### *Article 21*

#### **Search for information**

The Member States ensure that public administrations, social security organizations, postal services and all useful organizations, communicate as soon as possible to the agents in charge of the service all the information in their possession in order to discover the domicile or equivalent of the defendant, without being able to oppose them their professional secrecy.

#### *Article 22*

#### **Defendant without a known address**

1. When the defendant has neither a known residence or equivalent nor work place, the agent in charge of the service draws up a report where he precisely states the circumstances that prevented the service of the document to the defendant.
2. The same day or, at the latest the first next working day, under pain of nullity, the agent in charge of the service sends to the defendant, to the last known domicile or equivalent, by registered letter with acknowledgement of receipt, a copy of the official document including a copy of the document object of the service.
3. The very same day, the agent in charge of the service informs the defendant of this formality by a simple letter.
4. The provisions of this article apply to the service of a document concerning a legal person which does not have any more a known establishment at the place indicated as the head office or equivalent by the company and trade register or equivalent.

#### *Article 23*

#### **Information to the defendant and parties**

1. At the time of the handing, except in the case envisaged in Article 20.6, the agent in charge of the service has to give the defendant all verbal information relating to the document initiating proceedings, in particular as regards the date and place of the court hearing, the possibility of representation before the court, the consequences of the absence of appearance or representation, or the possibility of obtaining legal aid.
2. The agent in charge of the service is also held to answer in writing to the defendant with any request that this one would address to him in writing in the eight days of the service and relating to the mentions mentioned in the paragraph above.
3. The agent in charge of the service has to give to the defendant, as well as to the parties concerned with the document initiating proceedings who will request it and at their expenses, a copy of the document during the ten years of its conservation.



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

*Article 24*

**Drafting of the official report of service**

1. The document initiating proceedings intended for the defendant must specify the name, first name and quality of the person to whom it was left.
2. After service, the agent in charge of the service must indicate in the document mentioned in Article 6.1 the formalities and diligences relating to the provisions of this chapter, with the indication of their dates.

*Article 25*

**Cost of the document**

The document initiating proceedings must include the detailed mention of its cost.

*Article 26*

**Expenses of service**

The applicant is held to pay or refund the expenses caused by the intervention of the agent in charge of the service. The Member States take care to fix the amount of these expenses while ensuring to respect the principles of proportionality and non-discrimination.

**CHAPTER IV**

**Effects of the document initiating proceedings**

*Article 27*

**Validity of the document initiating proceedings**

1. The document initiating proceedings cannot be declared null for legal flaw if nullity is not expressly envisaged by law, except in the event of non-observance of a substantial formality or of public order.
2. Nullity can be pronounced only when the requiring litigant proves the grievance caused by the irregularity, even when relating to a substantial formality or public order.

*Article 28*

**Referral of the case to the jurisdiction**

The case is referred to the jurisdiction by the handing of a copy of the document initiating proceedings.



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

*Article 29*

**Interruption of the prescription**

1. The service of the document initiating proceedings stops the prescription as well as deadlines to act.
2. The interruption of the prescription or of deadlines to act is as non-existent if the document initiating proceedings is declared null, if the applicant retracts the case or in case of dismissal for lack of prosecution, or if the court was not referred to as mentioned in Article 28.

*Article 30*

**Pendency of case**

When requests having the same object and the same cause are lodged before two different jurisdictions, the date on which the first document initiating proceedings was served prevails to determine which jurisdiction is referred to in first. When the competence of the first jurisdiction is established, the jurisdiction referred to in the second place has to part with it in favour of the other one, with regards to the application of Community texts into force.

**CHAPTER V**

**Final provisions**

*Article 31*

**Relations with internal procedural law**

Any procedural question not expressly settled by the present directive is ruled by internal law.

*Article 32*

**Relations to other provisions of Community legislation**

The provisions of this directive relating to the service of the document initiating proceedings apply notwithstanding those appearing in other Community documents. These documents include in particular:

- a) Regulation (EC) n°44/2001
- b) Regulation (EC) n°805/2004
- c) Regulation (EC) n°1896/2006
- d) Regulation (EC) n°861/2007



Draft from the UIHJ of a European directive creating a harmonized document initiating proceedings in civil and commercial matters  
"Legal Europe: 10 years after Tampere"  
International symposium of Sibiu (Romania), May 13rd to 15th 2009

e) Regulation (EC) n°1393/2007

*Article 33*  
**Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before...

They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 34*  
**Entry into effect**

This Directive shall enter into force on the day following that of its publication in the Official Journal of the European Union.

*Article 35*  
**Addressees**

This directive is addressed to the Member States.

Done at...