BRIEFING

EU Legislation in Progress

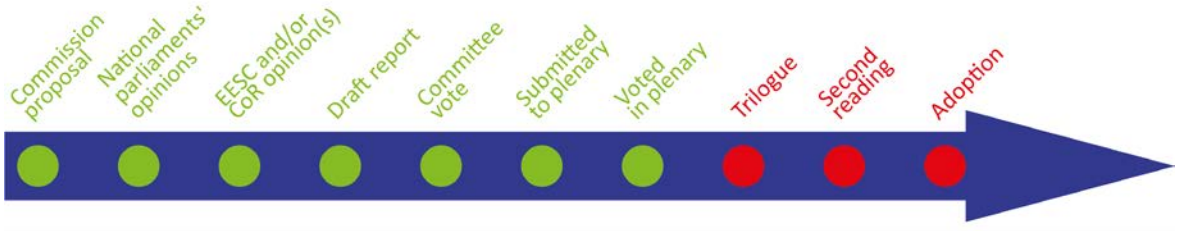
European Parliament

Revising the Taking of Evidence Regulation

OVERVIEW

On 31 May 2018, the Commission proposed a proposal for a new regulation on taking of evidence in civil proceedings. It takes stock of the existing regulation (from 2001), but provides for a number of changes to remove legal uncertainty and to promote electronic communications. Parliament adopted its legislative resolution on the proposal on 13 February 2019. The main points of Parliament's position include modifying the definition of the term 'court', to mean any authority in a Member State that is competent under the laws of that Member State to take evidence according to this regulation (i.e. not only judicial bodies). Parliament also considers that any decentralised information technology (IT) system for cross-border communication of evidence must be based on e-CODEX, and that the use of videoconferencing or any other appropriate distance communication technology should be subject to the consent of the person to be heard. Any electronic systems used to take evidence must also ensure that professional secrecy and legal professional privilege (lawyers' secrets) are duly protected. The discussion in Council is ongoing, thus trilogue negotiations on the proposal have not yet been able to commence.

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matter		
Committee responsible:	Legal Affairs (JURI)	COM(2018) 378, 31.5.2018
Rapporteur:	Emil Radev (EPP, Bulgaria)	2018/0203(COD)
Shadow rapporteurs:	Sergio Gaetano Cofferati (S&D, Italy) Angel Dzhambazki (ECR, Bulgaria) Kostas Chrysogonos (GUE/NGL, Greece)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Launch of trilogue negotiations	



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Introduction

Civil procedure is the body of law that regulates the way courts (and arbitration tribunals) proceed in civil cases, including claims arising from contracts, torts (delicts), property, succession, family law and company law. The proper functioning of civil procedure is therefore of paramount importance to people's everyday lives, and also for businesses. The taking of evidence is a crucial element of civil procedure: testimonies given by witnesses, expert opinions provided by experts, the examination of legally significant documents (contracts, wills) and the inspection of movable and immovable objects to which claims pertain are among the crucial sources of evidence on the basis of which civil courts are able to ascertain the facts of a case. Unless the parties agree on all the essential facts of the case, it is up to the court to decide, in an authoritative manner, what actually happened, e.g. who caused damage and to what degree, who did not perform a contract, or whether or not the house or car was defective at the time of sale. Without evidence, the court cannot ascertain the facts and is therefore unable to apply the law to a case.

According to available estimates,[1] as of 2018 as many as 3.4 million civil and commercial court proceedings in the EU had cross-border implications. Such cases often entail the need to take evidence in another Member State, for instance hearing a witness or inspecting an object. However, as civil procedure remains an area of national law, its proper functioning in cross-border situations – including in the crucial area of taking evidence – is hampered by differences between national laws and the mutual incompatibility of national procedures. The rules on hearing witnesses, ordering an expert opinion or examining documents or objects differ from country to country. As a result, litigants suffer from additional costs and legal uncertainty, and cases are often protracted.

However, under Article 81 of the Treaty on the Functioning of the European Union (TFEU), EU legislation can be used to help reduce costs and uncertainty while also speeding up civil proceedings, by promoting judicial cooperation in civil matters and ensuring the compatibility of national civil procedures, including in the area of taking evidence. This was first achieved by Regulation 1206/2001 (described below). This regulation was adopted before digital tools and processes became widespread in the judiciary. It now therefore needs to be updated in order to take account of technological developments, and digitalisation in particular, while at the same time boosting legal certainty and addressing shortcomings in the existing rules.[2]

Existing situation

Council Regulation No 1205/2001

Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters was intended to improve and simplify judicial cooperation among EU countries and to speed up the taking of evidence in legal proceedings in civil and commercial matters. The regulation entered into force on 1 July 2001, but has only been applicable since 1 January 2004. Denmark opted out.

The regulation applies in civil and commercial matters where the court of an EU country:

- asks the competent court of another EU country to obtain evidence;
- requests permission to gather evidence itself in another EU country.

The evidence requested should be intended for use in judicial proceedings that have either already begun or are under consideration.

EU countries are required to draw up a list of courts authorised to obtain evidence and indicate their territorial or special jurisdiction (such as a special court that might have powers to confiscate criminal assets). Requests are transmitted directly by the court before which the proceedings are taking place or are planned (the 'requesting court') to the court of the other EU country gathering evidence (the 'requested court').

Each Member State must designate a central authority responsible for supplying information to the courts; seeking solutions to any difficulties regarding transmission; and forwarding, in exceptional cases, a request to the competent court. The request must be lodged using the form specified in the regulation, which must contain certain details, such as the names and addresses of the parties to the proceedings, the nature and subject matter of the case, and a description of the evidence taking to be performed.

Requests must be drafted in the official language of the Member State of the requested court or in any other language that the country indicates it can accept. Requests are executed in accordance with the law of the requested Member State. The request must be executed within 90 days of receipt. The execution of a request may be refused only if:

- the request does not fall within the scope of the regulation (for instance if it is concerned with administrative or criminal proceedings, rather than civil ones);
- the execution of the request does not fall within the functions of the judiciary;
- the request is incomplete;
- a person of whom a hearing has been requested claims a right to refuse to give, or a prohibition from giving evidence;
- a party has not paid the deposit or advance relating to the cost of consulting an expert.

Where a request is refused, the requested court must notify the requesting court within 60 days of receipt of the request. If permitted by the law of the Member State of the requesting court, representatives of the court of that country are entitled to be present when the requested court undertakes the requested act. The parties and their representatives (if any) may also be present.

In 2007, the European Commission published a report on the application of the regulation. It concluded that certain measures still needed to be taken in order to improve its functioning. These concerned the need to improving the legal professions' level of knowledge of the regulation; ensure compliance with 90-day deadline for executing requests; and make greater use of technologies, specifically videoconferencing.

Case law of the Court of Justice

The regulation has been interpreted by the Court of Justice of the EU in only three cases.

- In Case C-283/09 *Weryński* (judgment of 17.2.2011) the Court ruled that a requesting court is not obliged to pay an advance to the requested court for the expenses of a witness or to reimburse the expenses paid to the witness examined.
- In Case C-170/11 *Lippens* (judgment of 6.9.2012) the Court ruled that the competent court of a Member State that wishes to hear as a witness a party residing in another Member State should have the option, in order to perform such a hearing, to summon the party and hear them in accordance with its own national law (the *lex fori*), rather than on the basis of the regulation.
- In Case C-332/11 *ProRail* (judgment of 21.2.2013) the Court ruled that the court of a Member State that wishes the task of taking evidence entrusted to an expert to be carried out in another Member State should not necessarily be required to use the method of taking evidence laid down by the regulation (i.e. it can also apply other rules, according to the rationale that the regulation does not restrict the options for taking evidence in other Member States, but aims to increase those options by encouraging cooperation between the courts in that area). The Court observed explicitly that sometimes 'it may be simpler, more effective and quicker for the court ordering such an investigation, to take such evidence without having recourse to the regulation'.

The Court's interpretations in *Lippens* and *ProRail* clearly emphasised the nature of the regulation as an optional instrument of civil procedure, designed to supplement national civil procedures rather than harmonise or replace them.[3]

Parliament's starting position

Resolution on taking of evidence (2009)

In 2009 the Parliament adopted a resolution on the taking of evidence in civil or commercial matters in response to the Commission's report on the application of the regulation. Parliament expressed the view that the regulation was underused and urged the Commission to 'make greater efforts to realise the true potential of the regulation for improving the operation of civil justice for citizens, businesses, practitioners and judges'. More specifically, it called for action to promote the training of judges in the Member States, in order to raise general awareness of the regulation. One cause for concern was the fact that the 90-day time limit was exceeded in many cases and Parliament asked the Commission to remedy this issue. Parliament explicitly called for 'the extensive use of information technology and videoconferencing, coupled with a secure system for sending and receiving e-mails'. Parliament even suggested that this 'become in due course the ordinary means of transmitting requests for the taking of evidence'. In this context Parliament called on the Member States to put adequate resources into communications facilities.

Resolution on the implementation of the Stockholm programme (2010)

In its subsequent 2010 resolution on civil law, commercial law, family law and private international law aspects of the action plan implementing the Stockholm programme, Parliament reiterated its position, calling upon the Commission to take action to improve cooperation between the Member States' judiciaries in the area of taking evidence. It, once again, drew attention to the need to raise judges' and lawyers' awareness of the regulation and to promote broader use of electronic communication.

Own-initiative resolution on common minimum standards of civil procedure (2017)

On 4 July 2017 the Parliament adopted an own-initiative resolution calling on the European Commission to put forward a proposal for a directive on common minimum standards of civil procedure. The annex to the resolution contains a ready-to-use text of a draft directive on common minimum standards of civil procedure. Parliament called upon the Commission to table that text as its legislative proposal on the basis of Article 81(2) TFEU. The draft proposal consists of 28 articles divided into three chapters – Chapter I: 'Subject matter, scope and definitions', Chapter II: 'Minimum standards for civil proceedings' and Chapter III: 'Final provisions'. Article 1 indicates that the aim of the directive would be to approximate civil procedure systems in order to ensure full respect for the right to a fair trial as enshrined in Article 47 of the Charter of Fundamental Rights and Article 6 of the European Convention on Human Rights. However, the directive would apply only to disputes having cross-border implications (Article 3). Issues specifically addressed in the proposal and of relevance to the current legislative file include:

- the fair conduct of proceedings;
- use of appropriate distance communication technology, such as videoconferencing or teleconferencing, when the parties cannot physically be present; and
- the principle of an adversarial process, in particular when deciding on the necessity of an oral hearing and on the means of obtaining evidence.

Preparation of the proposal

REFIT exercise

An evaluation of the regulation on taking of evidence was included in the Commission's 2018 work programme under REFIT initiatives in the area of justice and fundamental rights based on mutual trust.[4] In the framework of the REFIT Platform (composed of representatives of national administrations and the civil society),[5] stakeholders recommended that the Commission explore ways to reduce the time needed to take evidence in other EU Member States. It was also noted that a number of frequently used channels, such as taking evidence via consular agents or diplomatic officers, are not acknowledged by the regulation.

Expert group

The Commission appointed the Expert group on modernisation of judicial cooperation in civil and commercial matters (E03561). It was composed of 20 members, drawn mainly from academia and the judiciary, as well as from among law practitioners. Between January and April 2018 the group held a total of six meetings *in camera*.

Impact assessment

The proposal was accompanied by a 213-page impact assessment. The Commission identified a number of obstacles to the proper functioning of the regulation, including inadequate use of electronic communication in exchanges between the authorities and courts of Member States, which are still predominantly paper-based, and only marginal use of electronic communication in particular videoconferencing for the direct taking of evidence. It found that the level of digitalisation in the cross-border taking of evidence was lower than in domestic procedural settings.[6]

The changes the proposal would bring

Definition of a 'court'

The proposal introduces the definition of a 'court', defining it as 'any judicial authority in a Member State which is competent for the performance of taking of evidence according to this Regulation'. The Commission explains that under the existing rules this term 'is not defined and this has led to diverging interpretations among Member States. Some take it as referring only to traditional tribunals, while others also execute requests from other judicial authorities (e.g. notaries public) if they are empowered under their national laws to perform tasks of taking of evidence.[7] These uncertainties should be eliminated by a definition of the concept of "court"'.

Mandatory electronic transmission of requests and communications

A modified Article 6 would provide that 'requests and communications pursuant to' the regulation must be 'transmitted through a decentralised IT system composed of national IT systems interconnected by a communication infrastructure enabling the secure and reliable cross-border exchange of information between the national IT systems'. Whenever a seal or handwritten signature was required, a qualified electronic signature or qualified seal could be used, as defined in Regulation (EU) No 910/2014. In exceptional situations, other transmission methods, which the requested Member State had indicated it could accept, could be used. Electronic transmission would be mandatory.[8]

Direct evidence

Article 17 would be amended, and an Article 17a inserted, in order to 'ensure a more appropriate, more frequent and faster use of direct taking of evidence'.[9] More specifically, Article 17(2) would be

deleted. It currently states that 'direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures'.

The new Article 17a would be entirely devoted to 'direct taking of evidence by videoconference'. Article 17a(1) would state that where evidence is to be taken by hearing a person domiciled in another Member State as a witness, party or expert and the court does not ask the competent court of another Member State to take evidence, the court conducting the proceedings should take evidence itself directly via videoconference, if available and appropriate. Videoconferencing would take place on the premises of a court (Article 17a(2)).

Taking of evidence by diplomatic or consular personnel

A new Article 17b is to be introduced with the aim of facilitating the taking of evidence by diplomatic officers or consular agents. According to this Article, such persons may, on the territory of another Member State and in the area in which they exercise their functions, take evidence without the need for a prior request, hearing nationals of the Member State that they represent without compulsion in the context of proceedings pending in the courts of that Member State.

Law applicable to digital evidence

A new Article 18a is to be inserted in order to ensure that digital evidence taken in accordance with the law of the Member State where it was taken is not rejected as evidence in other Member States solely on account of its digital nature.

Delegated acts

A new Article 19(2) would empower the Commission to adopt delegated acts in order to amend the annexes to update the standard forms or to make technical changes to those forms. This power would be given to the Commission for an indefinite period (Article 20(2)). However, under Article 20(3) that power may be revoked at any time by the European Parliament or by the Council. Furthermore, according to Article 20(4), before adopting a delegated act, the Commission would be obliged to consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. Any delegated acts would have to be notified to the Parliament and Council (Article 20(5)). Consequently, a delegated act would enter into force only if no objection had been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council had both informed the Commission that they would not object.

Monitoring

A new Article 22a on monitoring would be inserted. According to that rule, by two years after the date of application of the modified regulation at the latest, the Commission would establish a detailed programme for monitoring the outputs, results and impacts of the regulation. That programme would set out the means by which and the intervals at which the data and other necessary evidence were to be collected. It would specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence. Member States would be obliged to provide the Commission with the data and other evidence necessary for monitoring.

Evaluation

The existing Article 23 would be replaced by a new text concerning evaluation. According to it, no sooner than five years after the date of application of the modified regulation, the Commission would be obliged to carry out an evaluation of its functioning and present a report on the main

findings to the European Parliament, the Council and the European Economic and Social Committee.

Advisory committees

The European Economic and Social Committee (EESC) adopted its opinion on the proposal in October 2018 (rapporteur: Bernardo Hernández Bataller, Diversity Europe – Group III, Spain). The Committee pointed out gaps in the proposal, for instance in situations where the requested court obstructs the procedure through undue delay or refuses to cooperate without giving good reasons. The EESC additionally warned that there are many situations in which the requested court 'can severely impair defendants' rights if it does not cooperate with due diligence, especially with regard to interim judicial protection, by resorting to reservations about national sovereignty, national security, public order, etc.'. The Committee also drew attention to the fact that undue delays may result from insufficient technical skills on the part of the requested courts or of inadequate technological infrastructure and argued that the proposal should include a provision requiring Member States to guarantee that their courts are digitally up-to-date and to ensure that their technological infrastructure is adequate. The EESC also pointed to the need to make the text of the proposal more specific. It criticised the proposed definition of the concept of a 'court' on account of the fact that it excludes private arbitration bodies, in particular those that deal with investment, consumer and commercial arbitration.

National parliaments

Contributions on the proposal were submitted by two national parliaments: the German Bundesrat and the Portuguese Assembleia de la Republica. The Portuguese deputies considered that the proposal would have a beneficial effect both for the area of freedom, security and justice and for the internal market. The German senators, meanwhile, considered that the two-year deadline for technological implementation of the digitalisation requirement was too short. More specifically, they argued that the creation of an operational and interconnected network would require much more time. Therefore, either the deadline should be prolonged or the Member States given more discretion as to the use of digital tools in taking of evidence. The Bundesrat was also critical of deleting Article 17(2) (which currently states that 'Direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures'). It pointed out that a foreign court did not have the power to use coercive measures on the territory of another Member State and needed support from local authorities e.g. to summon a witness.

Stakeholders' views

Public consultation

The Commission conducted a public consultation from 8 December 2017 to 2 March 2018 to address Regulation (EC) No 1206/2001 on taking of evidence jointly with Regulation (EC) No 1393/2007 on service of documents. A total of 131 contributions were received (mainly from Poland, followed by Germany, Hungary and Greece). The Commission has not published the responses to the public consultation, but only a purely quantitative summary of the results.[10] This means that it is not possible to tell what positions were taken by specific stakeholders, save for the Council of Bars and Law Societies of Europe (CCBE), which published its response online (see below). According to the Commission, the results of these consultations were 'generally positive and revealed a need for action'.[11]

Legal professions

In its response to the consultation, the Council of Bars and Law Societies of Europe (CCBE), which represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers, highlighted its support for the move towards electronic transmission of documents to be served or evidence, as this will enable the rapid management of judicial cooperation. Concerning videoconferencing, the CCBE drew attention to potential risks and drawbacks that must be considered in order not to undermine fundamental principles of a fair trial, making a number of detailed recommendations.

Cross-border taking of evidence in the event of Brexit

On 29 October 2018, the UK government published a draft legislative act that would put an end to the application of the Taking of Evidence Regulation in EU-UK relations should the United Kingdom decide to leave the EU. Under the proposal, entitled The Service of Documents and Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provisions) (EU Exit) Regulations 2018, Regulation No 1206/2001 would be revoked in the UK (Section 12), but would nonetheless continue to apply, with certain modifications, to requests received in the United Kingdom before exit day (Section 13).

Once Brexit takes place, cross-border taking of evidence in civil proceedings concerning the UK would have to be based on the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. All remaining EU Member States other than Austria, Belgium and Ireland are contracting states to that convention. The draft Brexit agreement published by the Commission on 14 November 2018 provides, in Article 68, that the Taking of Evidence Regulation would apply only until the end of the transition period (i.e. until 31.12.2020). The Bar Council of England and Wales has, for its part, put forward a proposal to make the Taking of Evidence Regulation applicable after Brexit without any limitations.

Legislative process

JURI report

Within Parliament the file was assigned to the Legal Affairs committee, with Emil Radev (EPP, Bulgaria) designated rapporteur. The JURI committee adopted its report on 10 December 2018. The committee recommended that the European Parliament's position should amend the Commission proposal with regard to six aspects:

- broader definition of the term 'court' to include non-judicial bodies;
- action to safeguard the procedural rights of parties, while also securing the protection, integrity and confidentiality of personal data and privacy;
- provision for the court to notify the person to be heard, the parties, including their respective legal representatives, of the date, time and place of, and the conditions for participation in, the hearing via videoconference or via any other appropriate distance communication technology;
- an assurance that the use of videoconferencing or any other appropriate distance communication technology be subject to the consent of the person to be heard;
- measures to ensure that any processing of personal data be in conformity with EU data protection law.

European Parliament legislative resolution

Parliament adopted its legislative resolution on the proposal on 13 February 2019 at first reading under the ordinary legislative procedure. The main points of the Parliament's position are as follows:

- the term 'court' will mean any authority in a Member State that is competent under the laws of that Member State to take evidence according to the regulation (i.e. not only judicial bodies, as in the Commission's proposal;
- a decentralised IT system for cross-border communication of evidence will be based on e-CODEX (this was not specified in the proposal);
- where required by the national law of the requesting Member State, the use of videoconferencing or any other appropriate distance communication technology will be

subject to the consent of the person to be heard (a condition absent from the Commission proposal);
- any electronic system for the taking of evidence must ensure that professional secrecy and legal professional privilege (clients' information known to lawyers) are protected (these issues were not addressed in the Commission proposal at all);
- the court will notify the person to be heard, the parties, including their respective legal representatives, of the date, time and place of, and the conditions for participation in, the hearing via videoconference or via any other appropriate distance communication technology (a specification not present in the Commission proposal);
- diplomats will be able to take evidence only with the voluntary cooperation of the person to be heard and this will take place under the supervision of the requesting court, in accordance with its national law (an additional protection of the fundamental rights of individuals, not present in the Commission proposal);
- the question of whether the evidence is digital or non-digital in nature will not be a factor in determining the level of quality and the value of such evidence (a specification, added to the Commission proposal, which already provided that evidence may not be rejected only because it is digital);
- a special rule on the processing of personal data is added (no such rule was envisaged by the Commission proposal);
- the Commission will be empowered to adopt delegated acts to lay down detailed arrangements for the functioning of the decentralised IT system and requirements for the use of videoconferencing (an expansion of the Commission's powers in comparison with the original proposal).

To sum up, the Parliament has added more clarity to the proposal, especially with regard to the definition of key concepts, and visibly enhanced the protection of the fundamental rights of individuals, especially with regard to giving consent to the use of a specific form of taking evidence as well as the protection of personal data.

Work in the Council

On 18 October 2018, Ireland decided to opt in to the adoption of the regulation. The UK has not made such a declaration, therefore it would not be bound by the regulation. Nor will Denmark.

Working party on civil law matters

Within Council, the proposal has been examined regularly at technical level by the working party on civil law matters (service of documents/taking of evidence). During the negotiations in the working party, one of the most sensitive issues has been digitalisation, and the following four aspects in particular:

- mandatory vs non-mandatory use of an IT system;
- whether a centralised or a decentralised IT system is preferable;
- whether to use an existing IT solution or establish a new one;
- the costs associated with the establishment and use of an IT system.

With regard to mandatory vs non-mandatory availability and use of an IT system, the positions of the delegations are split. With regard to the use of a centralised or a decentralised IT system, the majority of delegations prefer the decentralised approach. On creating a new IT solution or using an existing one, delegations are divided. It has also been pointed out that e-Codex is not yet implemented and used by all the Member States. Concerning costs, some delegations have suggested that the estimates made by the Commission (between €20 000 and €50 000 per Member State annually) could be overly optimistic.

Future policy debate

On 24 May 2019 the Council published a document in which the presidency summarised the on-going discussion, noting that the issue of digitalisation is a central one, and that making it optional could be a way of reaching a compromise. On the other hand, merely optional and non-mandatory digitalisation of taking of evidence could call into question the added value of the revision of the regulation. The presidency invited the Council to hold a policy debate on the proposal to address three key issues, namely:

- whether or not the digitalisation of judicial cooperation should be based on a secure, decentralised IT system comprising interconnected national IT systems;
- whether the introduction and use of such an IT system should be mandatory for the Member States, and if so, could other means of communication be allowed; and
- whether e-CODEX should be the software used for the decentralised IT system.

Further procedural steps

In Parliament's new term, trilogue negotiations could start once the Council reaches a position on the proposal. Nonetheless, provided the Council has not adopted its position, at the beginning of its mandate the new Commission has the right to withdraw legislative proposals made by its predecessors. The legal basis for that is the principle of political discontinuity provided for in Article 39(2) of the European Parliament-Commission Framework Agreement.[12] However, given the advanced stage that work has reached both in Parliament and in the Council, and the lack of any political controversy concerning the proposal, its withdrawal seems highly unlikely.

EP SUPPORTING ANALYSIS

Anglmayer I., Modernising judicial cooperation in civil and commercial matters: Implementation Appraisal, EPRS, European Parliament, May 2018.

OTHER SOURCES

Cooperation between the courts: taking of evidence in civil or commercial matters, Legislative Observatory (OEIL), European Parliament.

Commission, Proposal for a Regulation amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial, COM(2018) 378 final, 31 May 2018.

Draft report on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, Committee on Legal Affairs, European Parliament.

Commission Work Programme for 2018, COM(2017) 650 final, Annex II.

Regulatory Fitness and Performance Programme – Refit Scoreboard Summary, European Commission, October 2017.

ENDNOTES

1 Commission proposal for a regulation amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, COM(2018) 378 final, 2018/0203 (COD), p. 1 (referring to an external study and other data).

2 Commission proposal, op. cit., p. 2.

3 See R. Mańko, Europeanisation of civil procedure: Towards common minimum standards?, EPRS, European Parliament, 2015, p. 16.

4 Commission Staff Working Document – Impact assessment accompanying the proposal for a regulation amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, SWD(2018) 285 final, p. 43-44.

5 The REFIT Platform was set up by the May 2015 Better Regulation communication as an advisory body to the Commission in the area of regulation. It consists of a government group, with one seat per Member State and a stakeholder group with 18 members and a representative each from the European Social and Economic Committee and the Committee of the Regions.

6 Impact Assessment, op.cit., p. 57.

7 Commission proposal, op.cit., p. 8.

8 Ibid.

9 Ibid.

10 Impact Assessment, op.cit., pp. 49-57.

11 Commission proposal, op.cit., p. 4.

12 E.M. Poptcheva, The European Commission's right to withdraw a legislative proposal, EPRS, European Parliament, 2015, p. 2.

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