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REPORT

on cooperation between the courts of the Member States in the taking of
evidence in civil or commercial matters
(2008/2180(INI))

Committee on Legal Affairs

Rapporteur: Manuel Medina Ortega

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
EXPLANATORY STATEMENT	6
RESULT OF FINAL VOTE IN COMMITTEE	7

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (2008/2180(INI))

The European Parliament,

- having regard to the Commission's report on the application of the 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(2007)0769),
 - having regard to Council Regulation (EC) No 1206/2001¹,
 - having regard to the ongoing work of the Hague Conference on the practical operation of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0058/2009),
- A. whereas Regulation (EC) No 1206/2001 has not been enforced as effectively as it might have been, and further action is therefore needed in order to improve cooperation between the Member States' courts for the purposes of taking evidence and enhancing the efficiency of the regulation,
- B. whereas Regulation (EC) No 1206/2001 sets out to improve, simplify and accelerate cooperation between courts on the taking of evidence in civil and commercial matters,
- C. whereas the Commission admittedly arranged for the distribution of a total of 50 000 copies of the practice guide to Member States in late 2006/early 2007, but this was done much too late, and other steps accordingly need to be taken in addition so as to enable those involved in proceedings, especially courts and practitioners, to be better informed about the Regulation,
- D. whereas the Commission finds nevertheless that the 90-day time-limit for complying with requests for the taking of evidence laid down in Article 10(1) of the Regulation is exceeded in a "significant number of cases" and that "in some cases even more than 6 months are required",
- E. whereas only a few Member States currently have facilities for video-conferencing, which is consequently not being sufficiently used; whereas, in addition, Member States are not doing enough to introduce modern communications technology, and nor is the

¹ OJ L 174, 27.6.2001, p. 1.

Commission proposing any specific remedies on that point,

1. Condemns the late submission of the above-mentioned Commission report, which, according to Article 23 of Regulation (EC) No 1206/2001, should have been submitted by 1 January 2007 but in fact was not submitted until 5 December 2007;
2. Concurs with the Commission that greater efforts should be made by Member States to bring the Regulation sufficiently to the attention of judges and practitioners in the Member States in order to encourage direct court-to-court contacts, since the direct taking of evidence provided for in Article 17 of the Regulation has shown its potential to simplify and accelerate the taking of evidence, without causing any particular problems;
3. Considers that it is essential to bear in mind that the central bodies provided for in the Regulation still have an important role to play in overseeing the work of the courts which have responsibility for dealing with requests under the Regulation and in resolving problems when they arise; points out that the European Judicial Network can help to solve problems which have not been resolved by the central bodies and that recourse to those bodies could be reduced if requesting courts were made more aware of the Regulation; takes the view that the assistance provided by the central bodies may be critical for small local courts faced with a problem relating to the taking of evidence in a cross-border context for the first time;
4. Advocates the extensive use of information technology and video-conferencing, coupled with a secure system for sending and receiving e-mails, which should become in due course the ordinary means of transmitting requests for the taking of evidence; notes that, in their responses to a questionnaire sent out by the Hague Conference, some Member States mention problems in connection with the compatibility of video links, and considers that this should be taken up under the European e-Justice strategy;
5. Considers that the fact that in many Member States facilities for video-conferencing are not yet available, together with the Commission's finding that modern means of communication are 'still used rather rarely', confirms the wisdom of the plans for the European e-Justice strategy recently recommended by Parliament's Legal Affairs Committee; urges Member States to put more resources into installing modern communications facilities in the courts and training judges to use them, and calls on the Commission to produce specific proposals aimed at improving the current state of affairs; takes the view that the appropriate degree of EU assistance and financial support should be provided as soon as possible;
6. Takes the view that efforts should be made in the context of the e-Justice strategy to assist courts in meeting the translation and interpreting demands posed by the taking of evidence across borders in an enlarged European Union;
7. Notes with considerable concern the Commission's finding that the 90-day time-limit for complying with requests for the taking of evidence, as laid down in Article 10(1) of the Regulation, is exceeded in a "significant number of cases" and that "in some cases even

more than 6 months are required”; calls on the Commission to submit specific proposals as quickly as possible on measures to remedy this problem, one option to consider being a complaints body or contact point within the European Judicial Network;

8. Criticises the fact that, by concluding that the taking of evidence has been improved in every respect as a result of Regulation (EC) No 1206/2001, the Commission report presents an inaccurate picture of the situation; calls on the Commission, therefore, to provide practical support, inter alia in the context of the e-Justice strategy, and make greater efforts in order to realise the true potential of the Regulation for improving the operation of civil justice for citizens, businesses, practitioners and judges;
9. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

It appears from the Commission's report on the application of Regulation No 1206/2001 that, in general terms, the Regulation has achieved its objectives of simplifying the taking of evidence in civil and commercial matters.

The rapporteur considers that, in order to promote efficiency and hence avoid any unnecessary waste of time and money, direct contacts between courts and full cooperation between them should be promoted. Nevertheless, he wishes to underscore the important role which the central bodies still have to play, while pointing to the assistance which the European Judicial Network may provide.

The rapporteur appreciates the Commission's efforts to raise awareness of the Regulation and considers that more still needs to be done by Member States in order to assist national courts to comply with the 90-day time-limit laid down in Article 10(1) of the Regulation. He considers that part of the answer may be more training for judges.

The rapporteur strongly believes that more use should be made of Information Technology, in particular secure e-mail communications and video conferencing. The Commission's report shows that courts in only 13 Member States accept e-mail requests and that two do not even accept requests by fax. Only courts in 11 Member States have video conferencing facilities. The rapporteur welcomes what is being done in this respect in the context of the e-Justice programme and draws attention to the recent report on e-justice drawn up by the Legal Affairs Committee.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.2.2009
Result of final vote	+: 19 -: 0 0: 0
Members present for the final vote	Alin Lucian Antochi, Marek Aleksander Czarnecki, Bert Doorn, Giuseppe Gargani, Klaus-Heiner Lehne, Alain Lipietz, Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sharon Bowles, Mogens Camre, Jean-Paul Gauzès, Kurt Lechner, Arlene McCarthy, Georgios Papastamkos, Jacques Toubon
Substitute(s) under Rule 178(2) present for the final vote	Michael Cashman, Helga Trüpel