



TEXTS ADOPTED

P8_TA(2019)0103

Cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters *I**

European Parliament legislative resolution of 13 February 2019 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 (COM(2018)0378 – C8-0242/2018 – 2018/0203(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0378),
 - having regard to Article 294(2) and Article 81 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0242/2018);
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 17 October 2018¹
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A8-0477/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P8_TC1-COD(2018)0203

Position of the European Parliament adopted at first reading on 13 February 2019 with a view to the adoption of Regulation (EU) .../... of the European Parliament and of the Council

¹ OJ C 62, 15.2.2019, p. 56.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

² OJ C 62, 15.2.2019, p. 56.

³ Position of the European Parliament of 13 February 2019.

Whereas:

- (1) In the interests of the proper functioning of the internal market *and the development of a European area of civil justice governed by the principle of mutual trust and mutual recognition of judgments*, it is necessary to further improve and expedite cooperation between courts in *the Member States in relation to* the taking of evidence. [Am. 1]
- (2) Council Regulation (EC) No 1206/2001⁴ lays down rules on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.
- (2a) *For the purposes of this Regulation, the term ‘court’ should be given a broad meaning so as to cover not only courts in the strict sense of the word, that exercise judicial functions, but also other bodies or authorities which are competent under national law to take evidence in accordance with this Regulation, such as enforcement authorities or notaries in certain Member States and in specific situations.* [Am. 2]
- (2b) *It is essential that effective means of obtaining, preserving and presenting evidence are available, and that due regard is given to the rights of defence and the need for protection of confidential information. In this context, it is important to encourage the use of modern technology.* [Am. 3]

⁴ 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 (OJ L 174, 27.6.2001, p. 1).

(3) In order to ***effectively*** ensure ***direct and*** speedy transmission of requests and communications, all appropriate means of modern communication technology should be used, ***and in that regard the constant development of such technology should be taken into account***. Therefore, as a rule, all communication and exchanges of documents should be carried out through a decentralised IT system composed of national IT systems.

[Am. 4]

(3a) ***The decentralised IT system should be based on the e-CODEX system and should be managed by eu-LISA. Adequate resources should be made available to eu-LISA so that such a system can be introduced and kept operational, as well as to provide technical support in the event of problems in the operation of the system. The Commission should submit, as soon as possible, and in any event before the end of 2019, a proposal for a Regulation on cross-border communication in judicial proceedings (e-CODEX).*** [Am. 5]

(4) In order to ensure mutual recognition of digital evidence such evidence taken in a Member State in accordance with its law should not be denied recognition as evidence in other Member States ~~only~~ because of its digital nature. ***That principle should be without prejudice to determining, in accordance with national law, the level of quality and the value of evidence, regardless of its digital or non-digital nature.*** [Am. 6]

- (5) Regulation (EC) No 1206/2001 should be without prejudice to the possibility for authorities to exchange information under systems established by other Union instruments, such as Council Regulation (EC) No 2201/2003⁵ or Council Regulation (EC) No 4/2009⁶, even where that information has evidentiary value, thus leaving the choice of the most suitable method to the requesting authority.
- (5a) The procedures for taking, preserving and presenting evidence should ensure that the procedural rights of the parties, as well as the protection, integrity and confidentiality of personal data and privacy, are protected in accordance with Union law. [Am. 7]***

⁵ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).

⁶ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).

- (6) Modern communications technology, in particular videoconferencing which is an important ***and direct*** means to simplify and accelerate the taking of evidence, is currently not used to its full potential. Where evidence is to be taken by hearing a person domiciled in another Member State as witness, party or expert, the court should take that evidence directly via videoconference, ~~if~~ ***or via any other appropriate distance communication technology*** available to the respective courts, ~~where it deems the use of such technology appropriate~~ ***unless***, on account of the specific circumstances of the case, ***the use of such technology is deemed inappropriate for the fair conduct of the proceedings. The rules on the use of such means of communication should be technology-neutral and cater for future communication solutions. Where required by the national law of the Member State concerned, the use of such technology should be subject to the consent of the person to be heard.*** [Am. 8]
- (7) In order to facilitate the taking of evidence by diplomatic ~~officers~~ ***staff*** or consular agents, such persons may, in the territory of another Member State ~~and within the area where they exercise their functions~~ ***are accredited***, take evidence ***at the premises of their diplomatic mission or consulate*** without the need for a prior request by hearing nationals of the Member State which they represent ~~without compulsion in the context of~~ ***for*** proceedings pending in the courts of the Member State which they represent, ***provided that the person to be heard voluntarily cooperates in the taking of evidence.*** [Am. 9]

- (7a) *It is important to ensure that this Regulation is applied in compliance with Union data protection law and that it respects the protection of privacy as enshrined in the Charter of Fundamental Rights of the European Union. It is also important to ensure that any processing of the personal data of natural persons under this Regulation is undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁷ and Directive 2002/58/EC of the European Parliament and of the Council⁸. Personal data under this Regulation should be processed only for the specific purposes set out in this Regulation. [Am. 10]*
- (8) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can rather, by reason of the creation of a *simplified* legal framework ensuring the *direct, effective and* speedy transmission of requests and communications concerning the performance of taking of evidence, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. [Am. 11]

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁸ Directive 2002/58/EC of the European Parliament and of 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) (OJ L 201, 31.7.2002, p. 37).

- (8a) ***This Regulation seeks to improve the efficacy and speed of judicial proceedings by simplifying and streamlining the mechanisms for cooperation in the taking of evidence in cross-border proceedings, while at the same time helping to reduce delays and costs for individuals and businesses. In addition, greater legal certainty, coupled with simpler, streamlined and digitalised procedures can encourage individuals and businesses to engage in cross-border transactions, thereby boosting trade within the Union and hence the functioning of the internal market. [Am. 12]***
- (9) In accordance with Article 3 and Article 4a(1) of protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the [United Kingdom] [and] [Ireland] [have/has notified their/its wish to take part in the adoption and application of the present Regulation] [are/is not taking part in the adoption of this Regulation and is not bound by it or subject to its application].
- (10) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

- (11) *In order to define the detailed arrangements for the functioning of the decentralised IT system and in order to establish the minimum technical standards and requirements for the use of videoconference, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. Such delegated acts should guarantee an effective, reliable and smooth transmission of the relevant information through the decentralised IT system, and should ensure that the videoconferencing session guarantees high quality communication and real time interaction. Furthermore,* in order to update the standard forms in the Annexes or to make technical changes to those forms, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- [Am. 13]**

⁹ OJ L 123, 12.5.2016, p. 1.

(12) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the Commission should evaluate this Regulation on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Regulation and the need for any further action.

(13) Regulation (EC) No 1206/2001 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1206/2001 is amended as follows:

(1) In Article 1, the following paragraph 4 is added:

“4. In this Regulation, the term ‘court’ shall mean any ~~judicial~~ authority in a Member State which is competent ~~for the performance of taking of~~ ***under the laws of that Member State to take*** evidence according to this Regulation.”; [Am. 14]

(2) Article 6 is replaced by the following:

“Article 6

Transmission of requests and other communications

1. Requests and communications pursuant to this Regulation shall be transmitted through a decentralised IT system composed of national IT systems interconnected by a communication infrastructure ***and*** enabling the ***safe***, secure and reliable cross-border exchange of information, ***including in real time***, between the national IT systems, ***with due respect for fundamental rights and freedoms. That decentralised IT system shall be based on e-CODEX.*** [Am. 15]

2. The general legal framework for the use of **qualified** trust services set out in Council Regulation (EU) No 910/2014 of the European Parliament and of the Council ¹⁰ shall apply to the requests and communications transmitted through the decentralised IT system referred to in paragraph 1. **[Am. 16]**
3. Where requests and communications referred to in paragraph 1 require or feature a seal or handwritten signature, 'qualified electronic seals' and 'qualified electronic signatures' as defined in Regulation (EU) No 910/2014 may be used instead, ***provided that it is fully ensured that the persons involved have obtained knowledge of such documents in sufficient time and in a lawful manner.*** **[Am. 17]**
- 3a. ***The Commission is empowered to adopt delegated acts in accordance with Article 20 to supplement this Regulation by establishing the detailed arrangements for the functioning of the decentralised IT system. When exercising that power, the Commission shall ensure that the system guarantees an effective, reliable and smooth exchange of the relevant information, as well as a high level of security in the transmission and the protection of privacy and personal data in line with Regulation (EU) 2016/679 and Directive 2002/58/EC.*** **[Am. 18]**

¹⁰ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

4. If transmission in accordance with paragraph 1 is not possible due to an unforeseen and exceptional disruption of the decentralised IT system or where such transmission is not possible in other exceptional cases, transmission shall be carried out by the swiftest possible means, ~~which~~ **that** the requested Member State has indicated it ~~can~~ **accept to be acceptable.**; [Am. 19]

(3) Article 17 is amended as follows:

- (a) paragraph 2 is deleted;
- (b) in paragraph 4, the third subparagraph is replaced by the following:

“Where within 30 days of sending the request, the requesting court has not received information as to whether the request has been accepted, the request shall be considered to have been accepted.”;

(4) the following Article 17a is inserted:

“Article 17a

Direct taking of evidence by ~~videoconference~~ *distance communication technology*

[Am. 20]

1. Where evidence is to be taken by hearing a person domiciled in another Member State as witness, party or expert and the court does not request the competent court of another Member State to take evidence in accordance with Article 1(1)(a), the court shall take evidence directly in accordance with Article 17 via videoconference *or via any other appropriate distance communication technology*, if available to the respective courts, ~~where it deems the use of such technology appropriate~~ *unless*, on account of the specific circumstances of the case, *the use of such technology is deemed inappropriate for the fair conduct of the proceedings.* [Am. 21]

1a. Where required by the national law of the requesting Member State, the use of videoconference or any other appropriate distance communication technology shall be subject to the consent of the person to be heard. [Am. 22]

2. Where a request for direct taking of evidence via videoconference *or via any other appropriate distance communication technology* is made, the hearing shall be held in the premises of a court. The requesting court and the central body or the competent authority referred to in Article 3(3) or the court on whose premises the hearing is to be held shall agree on the practical arrangements for the videoconference. *Those arrangements shall be in line with the minimum technical standards and requirements for the use of videoconference that are defined in accordance with paragraph 3a.* [Am. 23]
- 2a. *Any electronic system for the taking of evidence shall ensure that professional secrecy and legal professional privilege are protected.* [Am. 24]
3. Where evidence is taken by videoconference *or any other available communications technology*: [Am. 25]
 - (a) the central body or the competent authority referred to in Article 3(3) in the requested Member State may assign a court to take part in the performance of the taking of evidence in order to ensure respect for the fundamental principles of the law of the requested Member State;
 - (b) if necessary, at the request of the requesting court, the person to be heard or the judge in the requested Member State participating in the hearing, the central body or the competent authority referred to in Article 3(3) shall ensure that the person to be heard or the judge are assisted by ~~an~~ *a qualified* interpreter.
[Am. 26]

3a. *The Commission is empowered to adopt delegated acts in accordance with Article 20 supplementing this Regulation by establishing the minimum standards and requirements for the use of videoconference.*

When exercising that power, the Commission shall ensure that the videoconferencing session guarantees high quality communication and real time interaction. The Commission shall also ensure, with regard to the transmission of the information, a high level of security and the protection of privacy and of personal data in line with Regulation (EU) 2016/679 and Directive 2002/58/EC.

[Am. 27]

3b. *The court shall 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. The parties and their legal representatives shall be provided, by the relevant court, with instructions as to the procedure for presenting documents or other material during the hearing via videoconference or via any other appropriate distance communication technology.*; [Am. 28]

(5) the following Article 17b is inserted:

“Article 17b

Taking of evidence by diplomatic ~~officers~~ **staff** or consular agents [Am. 29]

Diplomatic ~~officers~~ **staff** or consular agents of a Member State may, in the territory of another Member State ~~and within the area where they exercise their functions~~ **are accredited**, take evidence **at the premises of the diplomatic mission or consulate** without the need for a prior request pursuant to Article 17(1), by hearing nationals of the Member State which they represent ~~without compulsion in the context of~~ **for** proceedings pending in the courts of the Member State which they represent. **Such taking of evidence may only take place with the voluntary cooperation of the person to be heard. The taking of evidence shall be performed under the supervision of the requesting court, in accordance with its national law.**”; [Am. 30]

(6) the following Section 6 is inserted after Article 18:

“Section 6

Mutual recognition

Article 18a

The digital nature of evidence taken in a Member State in accordance with its law shall not be ~~denied~~ **used as a reason to deny** the quality of evidence in other Member States solely due to its digital nature. **The question of whether the evidence is digital or non-digital in nature shall not be a factor in determining the level of quality and the value of such evidence.**”; [Am. 31]

(6a) the following Section 6a is inserted after Article 18:

“Section 6a

Processing of personal data

Article 18b

Any processing of personal data carried out pursuant to this Regulation, including the exchange or transmission of personal data by the competent authorities, shall be in conformity with Regulation (EU) 2016/679. Any exchange or transmission of information by competent authorities at Union level shall be undertaken in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council * . Personal data which are not relevant for the handling of a specific case shall be immediately deleted. [Am. 32]

* Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).”;

(7) in Article 19, paragraph 2 is replaced by the following:

“2. The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend the Annexes to update the standard forms or to make technical changes to those forms.”;

(8) Article 20 is replaced by the following:

“Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to *in Article 6(3a), in Article 17a(3a) and in Article 19(2)* shall be conferred on the Commission for ~~an indeterminate~~ *a period of time from five years from ...* [date of entry into force of this Regulation]. *The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.* [Am. 33]
3. The delegation of power referred to *in Article 6(3a), Article 17a(3a) and in Article 19(2)* may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. [Am. 34]

4. Before adopting a delegated act, the Commission shall 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.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to *Article 6(3a), Article 17a(3a) or* Article 19(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of ~~two~~ *three* 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 have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.”; [**Am. 35**]

(9) The following Article 22a is inserted:

“Article 22a

Monitoring

1. By ... [~~two years~~ **one year** after the date of application **entry into force**] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation. [**Am. 36**]
2. The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.
3. Member States shall provide the Commission with the data and other evidence necessary for the monitoring.”

(10) Article 23 is replaced by the following:

“Article 23

Evaluation

1. No ~~sooner~~ *later* than ... [~~five~~ *four* years after the date of application of this Regulation], the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee, *accompanied, where appropriate, by a legislative proposal.* [Am. 37]
2. Member States shall provide the Commission with the information necessary for the preparation of that report.”.

Article 2

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

It shall apply from [...].

However, point 2 of Article 1 shall apply from ... [24 months after the entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament

The President

For the Council

The President