



2018/0203(COD)

3.10.2018

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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
(COM(2018)0378 – C8-0242/2018 – 2018/0203(COD))

Committee on Legal Affairs

Rapporteur: Emil Radev

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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 (C8-0243/2018);
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A8-0000/2018),
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.

Amendment 1

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2 a) 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.

Or. en

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) In order to ensure speedy transmission of requests and communications, all appropriate means of modern communication technology should be used. Therefore, as a rule, all communication and exchanges of documents should be carried out through a decentralised IT system composed of national IT systems.

Amendment

(3) In order to ensure 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.

Or. en

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

(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.

Amendment

(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 because of its digital nature.

Or. en

Amendment 4

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Modern communications technology, in particular videoconferencing which is an important 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* available to the respective courts, ***where it deems the use of such technology appropriate*** on account of the specific circumstances of the case.

Amendment

(6) Modern communications technology, in particular videoconferencing which is an important 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 ***or via any other appropriate distance communication technology*** available to the respective courts, ***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 technology should be technology-neutral and cater for future communication solutions.***

Or. en

Amendment 5

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) In order to facilitate the taking of evidence by diplomatic ***officers*** or consular agents, such persons may, in the territory of another Member State ***and within the area*** where they ***exercise their functions***, take evidence without the need for a prior request by hearing nationals of the Member State which they represent ***without compulsion in the context of*** proceedings pending in the courts of the Member State which they represent.

Amendment

(7) In order to facilitate the taking of evidence by diplomatic ***staff*** or consular agents, such persons may, in the territory of another Member State where they ***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 ***for*** proceedings pending in the courts of the Member State which they represent, ***provided that there***

is voluntary cooperation of the person to be heard.

Or. en

Amendment 6

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EC) No 1206/2001

Article 1 – paragraph 4

Text proposed by the Commission

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* evidence according to this Regulation.;

Amendment

4. In this Regulation, the term ‘court’ shall mean any authority in a Member State which is competent *under the laws of that Member State to take* evidence according to this Regulation.;

Or. en

Amendment 7

Proposal for a regulation

Article 1 – paragraph 1 – point 2

Regulation (EC) No 1206/2001

Article 6 – paragraph 1

Text proposed by the Commission

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 enabling the secure and reliable cross-border exchange of information between the national IT systems.

Amendment

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 enabling the *safe*, secure and reliable cross-border exchange of information, *including in real time*, between the national IT systems.

Or. en

Amendment 8

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EC) No 1206/2001

Article 17a – title

Text proposed by the Commission

Direct taking of evidence by
videoconference

Amendment

Direct taking of evidence by *distance
communication technology*

Or. en

Amendment 9

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EC) No 1206/2001

Article 17a – paragraph 1

Text proposed by the Commission

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, if available to the respective courts, where it deems the use of such technology appropriate* on account of the specific circumstances of the case.

Amendment

1. 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, *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.*

Or. en

Amendment 10

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EC) No 1206/2001

Article 17a – paragraph 2

Text proposed by the Commission

2. Where a request for direct taking of evidence via videoconference 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.

Amendment

2. Where a request for direct taking of evidence via videoconference *or via 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.

Or. en

Amendment 11

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EC) No 1206/2001

Article 17a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Any electronic system for the taking of evidence shall ensure that professional secrecy and legal professional privilege are protected.

Or. en

Amendment 12

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EC) No 1206/2001

Article 17a – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) if necessary, at the request of the requesting court, the person to be heard or the judge in 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* interpreter. ;

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 *a qualified* interpreter. ;

Or. en

Amendment 13

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EC) No 1206/2001

Article 17a – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. 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 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 other appropriate distance communication technology.

Or. en

Amendment 14

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EC) No 1206/2001

Article 17b – title

Text proposed by the Commission

Amendment

Taking of evidence by diplomatic *officers* or consular agents

Taking of evidence by diplomatic *staff* or consular agents

Amendment 15**Proposal for a regulation****Article 1 – paragraph 1 – point 5**

Regulation (EC) No 1206/2001

Article 17b – paragraph 1

Text proposed by the Commission

Diplomatic *officers* or consular agents of a Member State may, in the territory of another Member State *and within the area* where they *exercise their functions*, take evidence 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* proceedings pending in the courts of *the Member* State which they represent.’;

Amendment

Diplomatic *staff* or consular agents of a Member State may, in the territory of another Member State where they *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 *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.*’;

Or. en

Amendment 16**Proposal for a regulation****Article 1 – paragraph 1 – point 6**

Regulation (EC) No 1206/2001

Article 18a – paragraph 1

Text proposed by the Commission

Digital evidence taken in a Member State in accordance with its law shall not be *denied* the *quality* of evidence in other Member States solely *due to its* digital nature. ;

Amendment

The digital *nature of* evidence taken in a Member State in accordance with its law shall not be *used as a reason to deny* the quality of evidence in other Member States. *The question of whether the evidence is digital or non-digital in nature shall not be a factor in determining the quality and value of such evidence.* ’;

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 6 a (new)

Regulation (EC) No 1206/2001

Section 6 a (new) – Article 18b (new)

Text proposed by the Commission

Amendment

(6 a) 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 (EC) No 45/2001. Personal data which are not relevant for the handling of a specific case shall be immediately deleted.

Or. en

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EC) No 1206/2001

Article 20 – paragraph 2

Text proposed by the Commission

Amendment

2. The power to adopt delegated acts referred to in Article 19(2) shall be conferred on the Commission for ***an indeterminate*** period of ***time from*** ... [date

2. The power to adopt delegated acts referred to in Article 19(2) shall be conferred on the Commission for ***a*** period of ***5 years from***... [date of entry into force

of entry into force of this Regulation].

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.*

Or. en

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EC) No 1206/2001

Article 20 – paragraph 6

Text proposed by the Commission

6. A delegated act adopted pursuant to 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* 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.

Amendment

6. A delegated act adopted pursuant to 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 *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.

Or. en

EXPLANATORY STATEMENT

Context of the proposal

Among the EU's tasks is that of developing a European area of justice in civil matters based on the principles of mutual trust and the mutual recognition of judgments. The area of justice requires judicial cooperation across borders. For this purpose, and to facilitate the proper functioning of the internal market, the EU has adopted legislation on the cross-border service of judicial documents and on cooperation in the taking of evidence. These instruments are crucial in the regulation of judicial assistance in civil and commercial matters between the Member States. Their common purpose is to provide an efficient framework for cross-border judicial cooperation. They have replaced the earlier international, more cumbersome system of the Hague Conventions between the Member States.

Smooth cooperation between courts is also necessary for the proper functioning of the internal market. In 2018, approximately 3.4 million civil and commercial court proceedings in the EU have cross-border implications. In many such proceedings, there is a need to obtain evidence from another Member State; the Regulation on the taking of evidence provides tools that facilitate access to that evidence.

Council Regulation (EC) No 1206/2001 establishes an EU-wide system for the direct and rapid transmission of requests for the taking and execution of evidence between courts and lays down precise rules as to the form and content of such requests. In particular, it has improved on the relevant Hague Convention by putting in place a modern and efficient system of direct dealings between courts (transmission of requests and re-transmission of evidence taken). It also allows for the direct taking of evidence by courts in other Member States.

Rapporteur's opinion

The Rapporteur considers that the Commission Proposal is both timely and a good response to the REFIT exercise. It is important that Member States' courts are given the opportunity to make use of modern technology for the purpose of better and faster access to justice. This is not possible without the necessary adaptation of the rules governing taking of evidence, especially in cross-border cases. The current regulation only provides measures additional to those available in national law of the Member States. Therefore, if the Member States' courts should be able to take full advantage of the new distance communication technology, the amended regulation may need to be complemented with a review of the rules applicable also on the national level in the Member States.

A number of further clarifications ought to be made in the Commission Proposal. As regards the definition of court, it should be clarified that it is a rule for the mutual recognition of rules in the Member States of which entities is competent to take evidence.

Furthermore, the regulation ought to be technology neutral. For this purpose, the concept of distance communication technology ought to be used instead of videoconference only. It ought also to be clarified that any such distance communication technology used, should ensure the application of professional secrecy and legal professional privilege.

As regards the proposed rule to allow taking of evidence by diplomatic staff, it would be prudent to align it with the 1961 Vienna convention on diplomatic relations. Such personnel ought only to be able to take evidence in the Member State where they are accredited and at the premises of the diplomatic mission or consulate of its country.

The rapporteur believes that during taking of evidence the person to be heard, the parties and their lawyers are duly informed about all the conditions for participation in videoconference or other distance communication technology, as well as the procedure to be followed in presenting evidence.

In the field of the fast development of the communication technologies, the Rapporteur believes that processing and protection of personal data is very important.