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

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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 and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),
- A. whereas the law of evidence is a sensitive area for Member States and may on occasions even raise constitutional issues,
- 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, in general terms, the Regulation has achieved its objectives of simplifying cooperation through direct communication between courts and the use of standard forms,
- D. whereas the Commission has taken steps to ensure that the Regulation is better known to practitioners by arranging for the distribution of 50 000 copies of the practice guide in late 2006/early 2007,
- E. 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”,
- F. whereas in considerably more than half of the Member States facilities for video-conferencing are not yet available and the Commission notes that modern means of communication are “still used rather rarely”,
1. Endorses the Commission's view that no amendments need be made to the Regulation at

¹ OJ L 174, 27.6.2001, p. 1.

present in the light of its report;

2. Concur 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 considerably more than half of the 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", confirm the wisdom of the plans for the European e-Justice strategy recently recommended by Parliament's Legal Affairs Committee, and urges Member States to put more resources into installing modern communications facilities in the courts and training judges to use them;
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"; congratulates the newly acceded Member States on the fact that they are tending to satisfy this requirement and considers that the best way of ensuring that the 90-day time frame for the execution of requests is complied with is for national Justice Ministries to promote the distribution of the practice guide over and above the 50 000 copies distributed in late 2006/early 2007, together with the organisation of training and demonstrations of new technology, while closely monitoring the application of the Regulation in their jurisdictions and ensuring that assistance is provided to courts where necessary;

8. Calls on the Commission to provide practical support, inter alia in the context of the e-Justice strategy, for the efforts which it admits are necessary 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. This is no mean achievement having regard to the sensitive nature of the law of evidence and the considerable differences between the laws of the various Member States.

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.

For the present, the rapporteur sees no need for any amendment to be made to Regulation No 1206/2001.