Judicial cooperation: taking of evidence in civil and commercial matters. Initiative Germany

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This report has been prepared by the Commission in accordance with Article 23 of Council Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. As a reminder, this Regulation applies to all of the EU Member States except Denmark.

Since the Regulation entered into force, the Commission has held a number of meetings with the European Judicial Network in Civil and Commercial Matters. In consultation with this network, the Commission has drawn up a Practice Guide for the application of the Regulation. Furthermore, the Commission requested a study on the application of the Regulation, which was conducted by a contractor.

The main objective of the study was to obtain an empirical analysis of the Regulation's application. It examined, in particular, the question of whether court cooperation in taking evidence has improved, whether it has simplified procedures and whether this cooperation has accelerated procedures.

The study is based on a survey which was carried out by a contractor between November 2006 and January 2007. It is based on answers to a questionnaire, which was answered by Member States' administrations, judges, attorneys and those involved in the Regulation's application

Based on the findings of this study, the Commission has drawn the following conclusions:

- by and large, the Regulation has improved, simplified and accelerated cooperation between the courts regarding taking of evidence in civil or commercial matters;
- the Regulation has achieved its two main objectives, namely, to simplify Member States cooperation and to accelerate the performance of taking evidence;
- where simplification has been achieved, this is largely thanks to the introduction of direct court-to-court transmission (although requests are still sometimes or even often sent to central bodies), and by the introduction of standard forms; and
- on the matter of accelerated procedures, most requests for the taking of evidence are executed faster than before the entry into force of the Regulation and within the 90 days as foreseen by the Regulation.

As a result of these findings, the Commission finds no reason to modify the Regulation. Its functionality could, however, be improved.

First of all, it follows from various findings that - despite the discussions held in the European Judicial Network in Civil Matters and the availability of the practice guide in all Member States – the level of awareness of the Regulation is not high among legal practitioners, which can lead to unnecessary delays and problems.

Therefore, the work accomplished in the context of the European Judicial Network in Civil and Commercial Matters should be better exploited in the Member States, and, in particular, it should be ensured that the practice guide is disseminated widely among legal practitioners.

It seems that the extent to which the taking of evidence has been simplified and accelerated varies significantly between Member States. This becomes particularly evident with respect to the time required

for the taking of evidence since, in some Member States, the time frame of 90 days is often not complied with. In addition, the effectiveness of central bodies and the availability of modern communications technology, in particular video-conferencing, varies significantly between Member States.

On a final point, the report concludes that the possibility of taking evidence directly, (an important innovation of the Regulation), is used only rarely.

Therefore, the Commission concludes that :

- a wider dissemination of the Regulation amongst the legal profession should be encouraged;
- measures should be taken by Member States to ensure that the 90-day time frame for the execution of requests is complied with;
- Member States should make more use of electronic communication methods (such as video telephony) in order to accelerate and speed up proceedings.