

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

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**PURPOSE:** to present a report from the Commission on the application of the Council Regulation (EC) 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.

**BACKGROUND:** this report has been prepared in accordance with Article 23 of Council Regulation (EC) 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.

To recall, before 2001 there was no binding instrument between all Member States concerning the taking of evidence. In 2001 the Council of the European Union adopted Regulation (EC) No 1206/2001 on the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters which lays down procedural rules to make it easier to take evidence in another Member State . Since 1 January 2004, the Regulation is applicable throughout the Union with the exception of Denmark. Between the Member States concerned, it replaces the Hague Convention of 1970.

**CONTENT:** the report draws the following conclusions concerning the application of Regulation 1206 /2001 since its entry into force in 2004:

The application of the Regulation has generally improved, simplified and accelerated the cooperation between the courts on the taking of evidence in civil or commercial matters. The Regulation has achieved its two main objectives, namely firstly to simplify the cooperation between Member States and secondly to accelerate the performance of the taking of evidence, to a relatively satisfactory extent.

**Simplification** has been brought about mainly by 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. As far as **acceleration** is concerned, it can be concluded that most requests for the taking of evidence are executed faster than before the entry into force of the Regulation and within 90 days as foreseen by the Regulation.

As regards the application of **Article 18 (costs)**, this has generally not caused any particular problems. The study indicates, however, that the differences between national laws concerning the reimbursement of fees paid to experts are sometimes perceived as negatively.

Consequently, modifications of the Regulation are not required, but its functioning should be improved. In particular in the current period of adaptation which is still ongoing, there are certain aspects concerning the application of the Regulation which should 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 Regulation is not fully recognised among legal practitioners. This leads 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 by any means.

The effectiveness of **central bodies** and the availability of modern communications technology, in particular videoconference varies significantly between Member States. Finally, it must be concluded that not only the potential of **communications technology** is by no means used to a full extent yet, but also the possibility of direct taking evidence, an important innovation of the Regulation, is still used rather rarely.

Therefore, the Commission:

- encourages all further efforts – in particular beyond the dissemination of the practice guide - to enhance the level of familiarity with the Regulation among legal practitioners in the European Union;
- is of the view that measures should be taken by Member States to ensure that the 90 day time frame for the execution of requests is complied with;
- is of the view that the modern communications technology, in particular videoconferencing which is an important means to simplify and accelerate the taking of evidence, is by far not used yet to its possible extent, and encourages Member States to take measures to introduce the necessary means in their courts and tribunals to perform videoconferences in the context of the taking of evidence. The importance of the further promotion of E-Justice has also been stressed by the Council and the European Council in June 2007.