Cooperation between the courts: taking of evidence in civil or commercial matters

2018/0203(COD) - 31/05/2018 - Legislative proposal

PURPOSE: to improve the smooth functioning of the area of freedom, security and justice, and of the internal market, by increasing the efficiency and speed of the cross-border taking of evidence.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the area of justice requires judicial cooperation across borders. For this purpose, and to facilitate the proper functioning of the internal market, the EU adopted Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters and Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence. These instruments are crucial in the regulation of judicial assistance in civil and commercial matters between the Member States.

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.

In 2017, to support relevant, comprehensive and up-to-date analysis and conclusions on the practical operation of the Regulation, the Commission undertook a regulatory fitness (REFIT) evaluation.

The findings showed that contacts between the bodies designated by the Regulation are still almost **exclusively paper-based**, with adverse impacts on cost and effectiveness. Also, videoconferencing is rarely used to hear persons in another Member State.

The proposal therefore addresses the need for **modernisation, in particular digitalisation and the use of modern technology in the cross-border taking of evidence in civil or commercial matters**. It also addresses the following other problems highlighted by the evaluation: delays and costs for citizens, businesses and Member States, shortcomings in the protection of procedural rights and legal complexity and uncertainty.

The proposal is closely linked to the proposal amending the Regulation on cross-border service.

IMPACT ASSESSMENT: the preferred option is a policy package involving a **number of measures**:

- using electronic transmission as the default channel for electronic communication and document exchanges;
- promoting modern means of taking evidence such as videoconferencing if a person needs to be heard from another Member State and incentives (via the financing of national projects) for Member States to equip courts with videoconferencing facilities;
- removing legal barriers to the acceptance of electronic (digital) evidence;
- tackling divergent interpretations of the term ‘court’;
- raising courts’ and legal professionals’ awareness of the availability of the direct channel of taking evidence under the Regulation.

CONTENT: the proposal aims to **improve the efficiency and speed of obtaining cross-border evidence**. To this end, it adapts Regulation (EC) No 1206/2001 to technical developments, exploiting the advantages of digitisation and ensuring greater use of videoconferencing.

In concrete terms, the proposed amendments:

- define the term **'court'** to mean any judicial authority in a Member State which is competent for the performance of taking of evidence according to this Regulation;
- introduce the mandatory **electronic transmission**, as a rule, of requests and communications. In exceptional cases, i.e. where the system is interrupted or not suitable for the transmission in question (e.g. transmission of a DNA sample as evidence), other channels can still be used;
- ensure a more appropriate, more frequent and faster use of direct taking of evidence via **videoconference**, where available to the courts in question and appropriate in the light of the specific circumstances of the case;
- facilitate the taking of evidence by **diplomatic officers or consular agents**. The Article provides that such persons may, in the territory of another Member State and in 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 that Member State;
- ensure that **digital evidence** taken in accordance with the law of the Member State where it was taken is not rejected as evidence in other Member States solely due to its digital nature.

BUDGETARY IMPLICATIONS: the proposal will not impose significant costs on national administrations, but rather lead to **savings**. Costs relating to the development, implementation and maintenance of electronic communication and document exchanges, and to the acquisition, implementation and operation of professional, high-end videoconferencing equipment could be co-funded.

The main EU funding opportunities under the current financial programmes are the Justice programme and the Connecting Europe Facility (CEF). The Multiannual Financial Framework (MFF) package for the digital transformation priority, as unveiled on 2 May 2018, includes **EUR 3 billion** for a digital strand of the CEF, to finance digital connectivity infrastructure.