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

2018/0203(COD) - 13/02/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 554 votes to 26, with 9 abstentions, a 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.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows.

Regulation's objective

This Regulation seeks to improve the efficacy and speed of judicial proceedings by simplifying and streamlining the mechanisms for cooperation in the taking of evidence in cross-border proceedings, while at the same time helping to reduce delays and costs for individuals and businesses. In addition, greater legal certainty, coupled with simpler, streamlined and digitalised procedures can encourage individuals and businesses to engage in cross-border transactions.

Definition of the term 'court'

Parliament considered that the term 'court' shall be given a broad meaning so as to cover not only courts in the strict sense of the word, that exercise judicial functions, but also other bodies or authorities which are competent under national law to take evidence in accordance with this Regulation, such as enforcement authorities or notaries in certain Member States and in specific situations.

Transmission of requests and other communications

Requests and communications pursuant to the Regulation shall be transmitted through a decentralised IT system composed of national IT systems interconnected by a communication infrastructure and enabling the safe, secure and reliable cross-border exchange of information, including in real time, between the national IT systems, with due respect for fundamental rights and freedoms. The decentralised IT system shall be based on the e-CODEX system and shall be managed by eu-LISA. The Commission shall submit, as soon as possible, and in any event before the end of 2019, a proposal for a Regulation on cross-border communication in judicial proceedings (e-CODEX).

Direct taking of the evidence by means of remote communication technology

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, the court shall take evidence directly 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.

Where required by the national law of the requesting Member State, the use of videoconferencing or any other appropriate means of distance communication shall be subject to the consent of the person to be heard.

Hearings

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 any 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 any other appropriate distance communication technology.

Data protection

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 Union data protection law. Personal data which are not relevant for the handling of a specific case shall be immediately deleted.

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

Mutual recognition

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. That principle shall be without prejudice to determining, in accordance with national law, the level of quality and the value of evidence, regardless of its digital or non-digital nature.