Basic information

2018/0203(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Cooperation between the courts: taking of evidence in civil or commercial matters Amending Regulation (EC) No 1206/2001 2000/0823(CNS) **Subject** 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	RADEV Emil (EPP)	24/07/2019
	Shadow rapporteur ROBERTI Franco (S&D) SCHREINEMACHER Liesje (Renew) LAGODINSKY Sergey (Greens/EFA) ZŁOTOWSKI Kosma (ECR)	

Former committee responsible	Former rapporteur	Appointed
JURI Legal Affairs	RADEV Emil (PPE)	24/09/2018

Council of the European Union

European Commission

Commission DG	Commissioner
Justice and Consumers	TIMMERMANS Frans

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
		COM(2018)0378	Summary

31/05/2018	Legislative proposal published		
10/09/2018	Committee referral announced in Parliament, 1st reading		
10/12/2018	Vote in committee, 1st reading		
19/12/2018	Committee report tabled for plenary, 1st reading	A8-0477/2018	Summary
13/02/2019	Decision by Parliament, 1st reading	T8-0103/2019	Summary
13/02/2019	Results of vote in Parliament		
09/01/2020	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
13/01/2020	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 73)		
10/09/2020	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations		
06/11/2020	Council position published	09889/2/2020	
13/11/2020	Committee referral announced in Parliament, 2nd reading		
16/11/2020	Vote in committee, 2nd reading		
18/11/2020	Committee recommendation tabled for plenary, 2nd reading	A9-0225/2020	
23/11/2020	Decision by Parliament, 2nd reading	T9-0308/2020	Summary
23/11/2020	End of procedure in Parliament		
25/11/2020	Act approved by Council, 2nd reading		
25/11/2020	Final act signed		
02/12/2020	Final act published in Official Journal		

Technical information

Procedure reference	2018/0203(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 1206/2001 2000/0823(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 081-p3-a1
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	JURI/9/02016

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE628.500	03/10/2018	

Amendments tabled in committee		PE629.633	30/10/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0477/2018	19/12/2018	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0103/2019	13/02/2019	Summary
Committee draft report		PE660.171	05/11/2020	
Committee recommendation tabled for plenary, 2nd reading		A9-0225/2020	18/11/2020	
Text adopted by Parliament, 2nd reading		T9-0308/2020	23/11/2020	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	04443/2020	04/11/2020	
Council position	09889/2/2020	06/11/2020	
Draft final act	00046/2020/LEX	25/11/2020	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2018)0378	31/05/2018	Summary
Document attached to the procedure	SWD(2018)0284	31/05/2018	
Document attached to the procedure	SWD(2018)0285	31/05/2018	
Commission response to text adopted in plenary	SP(2019)354	16/04/2019	
Commission communication on Council's position	COM(2020)0695	05/11/2020	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	DE_BUNDESRAT	COM(2018)0378	25/09/2018	
Contribution	PT_PARLIAMENT	COM(2018)0378	15/10/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES3992/2018	17/10/2018	
EDPS	Document attached to the procedure	N9-0020/2020 OJ C 370 31.10.2019, p. 0024-0027	13/09/2019	

Additional information		
Source	**Document**	**Date**
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act
Regulation 2020/1783 OJ L 405 02.12.2020, p. 0001 Corrigendum to final act 32020R1783R(02) OJ OJ L 07.03.2024 Corrigendum to final act 32020R1783R(01) OJ L 000 26.10.2023, p. 0000

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

2018/0203(COD) - 23/11/2020 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution approving the Council's position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast).

The proposal for a revision of Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters aims at adapting the cooperation mechanisms and transmission workflows provided for in the existing Regulation to technical developments related to the digital transition and the use of information technology (IT).

In particular, the Commission proposal calls for the establishment of a decentralised IT system and its mandatory use for the exchange of requests and documents between Member States' authorities.

The revision proposal also aims at broadening and strengthening the direct taking of evidence cross-border.

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.

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.

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

2018/0203(COD) - 19/12/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Emil RADEV (EPP, BG) 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 committee recommended that the European Parliament’s position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Definition of the term ‘court’

For the purposes of this Regulation, 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.

Taking evidence

The procedures for taking, preserving and presenting evidence shall ensure that the procedural rights of the parties, as well as the protection, integrity and confidentiality of personal data and privacy, are protected in accordance with Union law.

Any electronic system for the taking of evidence shall ensure that professional secrecy and legal professional privilege are protected. The taking of evidence shall be performed under the supervision of the requesting court, in accordance with its national law.

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.

Distance communication

Members stressed that where required by the national law of the requesting Member State, the use of videoconference or any other appropriate distance communication technology shall be subject to the consent of the person to be heard.

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.

Evaluation

Members proposed that by one year after the date of entry into force at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation. No later than four years after the date of application of this Regulation, the Commission shall carry out an evaluation of this Regulation and present a report on the main findings, accompanied, where appropriate, by a legislative proposal.