

# Procedure file

Basic information		
INI - Own-initiative procedure	<a href="#">2008/2180(INI)</a>	Procedure completed
Cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters		
Subject 7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs		26/02/2008
		PSE <a href="#">MEDINA ORTEGA Manuel</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>	BARROT Jacques	

Key events			
05/12/2007	Non-legislative basic document published	<a href="#">COM(2007)0769</a>	Summary
04/09/2008	Committee referral announced in Parliament		
12/02/2009	Vote in committee		Summary
17/02/2009	Committee report tabled for plenary	<a href="#">A6-0058/2009</a>	
09/03/2009	Debate in Parliament		
10/03/2009	Results of vote in Parliament		
10/03/2009	Decision by Parliament	<a href="#">T6-0089/2009</a>	Summary
10/03/2009	End of procedure in Parliament		

Technical information	
Procedure reference	2008/2180(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative

Legal basis	Rules of Procedure EP 54-p4; Rules of Procedure EP 54
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/63760

## Documentation gateway

Non-legislative basic document	<a href="#">COM(2007)0769</a>	05/12/2007	EC	Summary
Committee draft report	<a href="#">PE415.047</a>	09/12/2008	EP	
Amendments tabled in committee	<a href="#">PE418.325</a>	22/01/2009	EP	
Committee report tabled for plenary, single reading	<a href="#">A6-0058/2009</a>	17/02/2009	EP	
Text adopted by Parliament, single reading	<a href="#">T6-0089/2009</a>	10/03/2009	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2009)3244</a>	06/10/2009	EC	

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

**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.

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

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The Committee on Legal Affairs adopted an own initiative report drafted by Manuel MEDINA ORTEGA (PES, ES) on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. It noted that Regulation (EC) No 1206/2001 has not been enforced as effectively as it might have been. Further action is therefore needed in order to improve cooperation between the Member States' courts for the purposes of taking evidence and enhancing the efficiency of the regulation.

The committee concurs with the Commission that greater efforts should be made by Member States to bring the Regulation sufficiently to the attention of judges and practitioners in the Member States in order to encourage direct court-to-court contacts. The direct taking of evidence provided for in the Regulation has shown its potential to accelerate the taking of evidence, without causing any particular problems.

Members consider that it is essential to bear in mind that the central bodies provided for in the Regulation still have an important role to play in overseeing the work of the courts. The European Judicial Network can help to solve problems which have not been resolved by the central bodies and recourse to those bodies could be reduced if requesting courts were made more aware of the Regulation. They take the view that the assistance provided by the central bodies may be critical for small local courts faced with a problem relating to the taking of evidence in a cross-border context for the first time.

Recalling that only a few Member States currently have facilities for video-conferencing, the committee advocates the extensive use of information technology and video-conferencing, coupled with a secure system for sending and receiving e-mails, which should become in due course the ordinary means of transmitting requests for the taking of evidence. Some Member States mention problems in connection with the compatibility of video links, and this should be taken up under the European e-Justice strategy.

Members also refer to the Commission's finding that modern means of communication are 'still used rather rarely', and urge Member States to put more resources into installing modern communications facilities in the courts and training judges to use them. The Commission is asked to produce specific proposals aimed at improving the current state of affairs. The committee takes the view that the appropriate degree of EU assistance and financial support should be provided as soon as possible.

It notes with considerable concern the Commission's finding that the 90-day time-limit for complying with requests for the taking of evidence, as laid down in the Regulation, is exceeded in a 'significant number of cases' and that 'in some cases even more than 6 months are required'. It calls on the Commission to submit specific proposals on measures to remedy this problem, one option to consider being a complaints body or contact point within the European Judicial Network.

Lastly, the report criticises the fact that, by concluding that the taking of evidence has been improved in every respect as a result of Regulation (EC) No 1206/2001, the Commission report presents an inaccurate picture of the situation. Accordingly, it calls on the Commission to provide practical support, inter alia, in the context of the e-Justice strategy, and make greater efforts in order to realise the true potential of the Regulation for improving the operation of civil justice for citizens, businesses, practitioners and judges.

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

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The European Parliament adopted by 646 votes to 18, with 9 abstentions, a resolution on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. This resolution is in response to the Commission's report on the application of Council Regulation (EC) No 1206/2001.

The Parliament condemns the late submission of the Commission report (5 December 2007 instead of 1 January 2007) and considers that Regulation (EC) No 1206/2001 has not been enforced as effectively as it might have been. It believes that further action is needed in order to improve cooperation between the Member States' courts for the purposes of taking evidence and enhancing the efficiency of the Regulation.

Raising awareness of the Regulation: the resolution concurs with the Commission that greater efforts should be made by Member States to bring the Regulation sufficiently to the attention of judges and practitioners in the Member States in order to encourage direct court-to-court contacts. It stresses that the direct taking of evidence provided for in the Regulation has shown its potential to simplify and accelerate the taking of evidence, without causing any particular problems.

European Judicial Network: MEPs consider that it is essential to bear in mind that the central bodies provided for in the Regulation still have an important role to play in overseeing the work of the courts which have responsibility for dealing with requests under the Regulation and in resolving problems when they arise. The European Judicial Network can help to solve problems which have not been resolved by the central bodies and recourse to those bodies could be reduced if requesting courts were made more aware of the Regulation. MEPs take the view that the assistance provided by the central bodies may be critical for small local courts faced with a problem relating to the taking of evidence in a cross-border context for the first time.

Using new technologies: the resolution advocates the extensive use of information technology and video-conferencing, coupled with a secure system for sending and receiving e-mails, which should become in due course the ordinary means of transmitting requests for the taking of evidence. Some Member States mention problems in connection with the compatibility of video links, and this should be taken up under the European e-Justice strategy.

Financial assistance: MEPs urge Member States to put more resources into installing modern communications facilities in the courts and training judges to use them. The Commission is asked to produce specific proposals aimed at improving the current state of affairs. They take the view that the appropriate degree of EU assistance and financial support should be provided as soon as possible. Moreover, efforts should be made to assist courts in meeting the translation and interpreting demands posed by the taking of evidence across borders.

Time-limit for complying with requests for the taking of evidence: the resolution notes with considerable concern the Commission's finding that the 90-day time-limit for complying with requests for the taking of evidence, as laid down in the Regulation, is exceeded in a 'significant number of cases' and that 'in some cases even more than 6 months are required'. It calls on the Commission to submit specific proposals on measures to remedy this problem, one option to consider being a complaints body or contact point within the European Judicial Network.

Realising the true potential of the Regulation: Lastly, MEPs criticise the fact that, by concluding that the taking of evidence has been improved in every respect as a result of Regulation (EC) No 1206/2001, the Commission report presents an inaccurate picture of the situation. Accordingly, they call on the Commission to provide practical support and make greater efforts in order to realise the true potential of the Regulation for improving the operation of civil justice for citizens, businesses, practitioners and judges.