









# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation <a href="#">2018/0203(COD)</a>	Awaiting Parliament 2nd reading
Cooperation between the courts: taking of evidence in civil or commercial matters Amending Regulation (EC) No 1206/2001 <a href="#">2000/0823(CNS)</a>	
Subject 7.40.02 Judicial cooperation in civil and commercial matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 <a href="#">Legal Affairs</a>	 <a href="#">RADEV Emil</a> Shadow rapporteur	24/07/2019
Council of the European Union	Former committee responsible	 <a href="#">ROBERTI Franco</a>  <a href="#">SCHREINEMACHER Liesje</a>  <a href="#">LAGODINSKY Sergey</a>  <a href="#">ŻŁOTOWSKI Kosma</a>	
	 Legal Affairs	PPE <a href="#">RADEV Emil</a>	24/09/2018
	Commission DG <a href="#">Justice and Consumers</a>	Commissioner TIMMERMANS Frans	
European Economic and Social Committee			

Key events			
31/05/2018	Legislative proposal published	<a href="#">COM(2018)0378</a>	Summary
10/09/2018	Committee referral announced in Parliament, 1st reading/single reading		
10/12/2018	Vote in committee, 1st reading/single reading		
19/12/2018	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A8-0477/2018</a>	Summary
13/02/2019	Results of vote in Parliament		

13/02/2019	Decision by Parliament, 1st reading/single reading	<a href="#">T8-0103/2019</a>	Summary
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 72)		
10/09/2020	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations		
06/11/2020	Council position published	<a href="#">09889/2/2020</a>	
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	<a href="#">A9-0225/2020</a>	

### Technical information

Procedure reference	2018/0203(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EC) No 1206/2001 <a href="#">2000/0823(CNS)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 081-p3-a1
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a>
Stage reached in procedure	Awaiting Parliament 2nd reading
Committee dossier	JURI/9/02016

### Documentation gateway

Legislative proposal	<a href="#">COM(2018)0378</a>	31/05/2018	EC	Summary
Document attached to the procedure	<a href="#">SWD(2018)0284</a>	31/05/2018	EC	
Document attached to the procedure	<a href="#">SWD(2018)0285</a>	31/05/2018	EC	
Committee draft report	<a href="#">PE628.500</a>	03/10/2018	EP	
Economic and Social Committee: opinion, report	<a href="#">CES3992/2018</a>	17/10/2018	ESC	
Amendments tabled in committee	<a href="#">PE629.633</a>	30/10/2018	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A8-0477/2018</a>	19/12/2018	EP	Summary
Text adopted by Parliament, 1st reading/single reading	<a href="#">T8-0103/2019</a>	13/02/2019	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2019)354</a>	16/04/2019	EC	
Document attached to the procedure	<a href="#">N9-0020/2020</a>	13/09/2019	EDPS	

	<a href="#">OJ C 370 31.10.2019, p. 0024-0027</a>			
Council statement on its position	<a href="#">04443/2020</a>	04/11/2020	CSL	
Committee draft report	<a href="#">PE660.171</a>	05/11/2020	EP	
Commission communication on Council's position	<a href="#">COM(2020)0695</a>	05/11/2020	EC	
Council position	<a href="#">09889/2020</a>	06/11/2020	CSL	
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A9-0225/2020</a>	18/11/2020	EP	
Draft final act	00046/2020/LEX	25/11/2020	CSL	

<a href="#">Additional information</a>	
Research document	<a href="#">Briefing</a>

## 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.

## 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 Parliaments 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.

## 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 Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows.

### Regulations 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.