

# European Parliament: Resolution on Cooperation in the Taking of Evidence in Civil or Commercial Matters

The **European Parliament's Resolution** of 10 March 2009 on **cooperation between the courts of the Member States in the taking of evidence** in civil or commercial matters (2008/2180(INI)) has been published (see the Parliament's website).

The resolution constitutes the Parliament's response to the Commission's report on the application of the 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 (COM(2007)0769).

The Commission's report on the application of Regulation (EC) No. 1206/2001 had been prepared on the basis of Art. 23 Regulation (EC) No. 1206/2001 stating that no later than 1 January 2007, and every five years later, the Commission shall present a report on the application of the Regulation.

## **In its report, 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 (at its meeting of 12 and 13 June 2007) and by the European Council (at its meeting of 21 and 22 June 2007)*

In the **Parliament's resolution**, the delayed submission of the Commission's report on 5 December 2007 is the first but not the only point of criticism brought forward by the Parliament. The resolution rather points out several issues which are regarded as problematic with regard to the functioning of the Regulation:

The Parliament

- 1. Condemns the late submission of the above-mentioned Commission report, which, according to Article 23 of Regulation (EC) No 1206/2001, should have been submitted by 1 January 2007 but in fact was not submitted until 5 December 2007;*
- 2. 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, since the direct taking of evidence provided for in Article 17 of the Regulation has shown its potential to simplify and accelerate the taking of evidence, without causing any particular problems;*
- 3. Considers 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; points out that the European Judicial Network can help to solve problems which have not been resolved by the central bodies and that recourse to those bodies could be reduced if requesting courts were made more aware of the Regulation; takes 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;*
- 4. 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; notes that, in their responses to a questionnaire sent out by the Hague Conference, some Member States mention problems in connection with the compatibility of video links, and considers that*

*this should be taken up under the European e-Justice strategy;*

*5. Considers that the fact that in many Member States facilities for video-conferencing are not yet available, together with the Commission's finding that modern means of communication are "still used rather rarely", confirms the wisdom of the plans for the European e-Justice strategy recently recommended by Parliament's Legal Affairs Committee; urges Member States to put more resources into installing modern communications facilities in the courts and training judges to use them, and calls on the Commission to produce specific proposals aimed at improving the current state of affairs; takes the view that the appropriate degree of EU assistance and financial support should be provided as soon as possible;*

*6. Takes the view that efforts should be made in the context of the e-Justice strategy to assist courts in meeting the translation and interpreting demands posed by the taking of evidence across borders in an enlarged European Union;*

*7. 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 Article 10(1) of the Regulation, is exceeded in a "significant number of cases" and that "in some cases even more than 6 months are required"; calls on the Commission to submit specific proposals as quickly as possible on measures to remedy this problem, one option to consider being a complaints body or contact point within the European Judicial Network;*

*8. 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; calls on the Commission, therefore, to provide practical support, inter alia in the context of the e-Justice strategy, and to make greater efforts to realise the true potential of the Regulation for improving the operation of civil justice for citizens, businesses, practitioners and judges;*

*9. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.*

**Many thanks to Prof. Burkhard Hess (University of Heidelberg) for the tip-off.**