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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

{SEC(2018) 271 final} - {SWD(2018) 284 final} - {SWD(2018) 285 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Among the EU's tasks is that of developing a European area of justice in civil matters based on the principles of mutual trust and the mutual recognition of judgments. The area of justice requires judicial cooperation across borders. For this purpose, and to facilitate the proper functioning of the internal market, the EU has adopted legislation on the cross-border service of judicial documents[1] and on cooperation in the taking of evidence[2]. These instruments are crucial in the regulation of judicial assistance in civil and commercial matters between the Member States. Their common purpose is to provide an efficient framework for cross-border judicial cooperation. They have replaced the earlier international, more cumbersome system of the Hague Conventions[3] between the Member States[4].

This legislation on judicial cooperation has a real impact on the everyday lives of EU citizens, be it as private individuals or business operators. It is applied in judicial proceedings with cross-border implications, where its proper functioning is indispensable to ensuring access to justice and fair trials. The efficiency of the framework of international judicial assistance has a direct impact on how the citizens involved in such cross-border disputes perceive the functioning of the judiciary and the rule of law in the Member States.

Smooth cooperation between courts is also necessary for the proper functioning of the internal market. In 2018, approximately 3.4 million civil and commercial court proceedings in the EU have cross-border implications[5]. 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.

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 is an important instrument for European judicial cooperation, given that it is often crucial to present sufficient evidence to the court to prove a claim. The Regulation establishes an EU-wide system for the direct and rapid transmission of requests for the taking and execution of evidence between courts and lays down precise rules as to the form and content of such requests. In particular, it has

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1 Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

2 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 (OJ L 174, 27.6.2001, p. 1).

3 Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters;
Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters.

4 The Regulations apply to all EU Member States except Denmark. Denmark has concluded a parallel agreement on 19 October 2005 with the European Community on the service of judicial and extrajudicial documents in civil or commercial matters, which extends the provisions of the Regulation on service of documents and its implementing measures to Denmark. The agreement entered into force on 1 July 2007 (See OJ L 300 of 17.11.2005, p. 55; OJ L 120, 5.5.2006, p. 23). There is no parallel agreement concerning the taking of evidence.

5 These figures reflect estimates from Deloitte's economic study supporting the impact assessment. The estimates are based on data from Eurostat, the Council of Europe European Commission for the efficiency of justice (CEPEJ) and the European Commission, and information gathered in the course of the interviews. The study was contracted to Deloitte under contract no. JUST/2017/JCOO/FW/CIVI/0087 (2017/07). The final report is not yet published.

improved on the relevant Hague Convention by putting in place a modern and efficient system of direct dealings between courts (transmission of requests and re-transmission of evidence taken) and replacing the cumbersome system whereby requests were transmitted from the court in Member State A to the central body in Member State A, then to the central body in Member State B and finally to the court in Member State B (and *vice versa* on the way back). It also allows for the direct taking of evidence by courts in other Member States.

In 2017, to support relevant, comprehensive and up-to-date analysis and conclusions on the practical operation of the Regulation (complementing findings from other evaluation exercises[6]), the Commission undertook a regulatory fitness (REFIT) evaluation, in line with the better regulation guidelines, to assess the operation of the instrument in relation to the five key mandatory evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value.

The findings of the REFIT evaluation report were used as a basis for the problem definition in the impact assessment accompanying the present proposal. According to the report, 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. 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 aims 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. It will achieve this by adapting Regulation (EC) No 1206/2001 to technical developments, exploiting the advantages of digitalisation and ensuring that more use is made of videoconferencing. The initiative increases legal certainty and thereby helps to avoid delays and undue costs for citizens, businesses and public administrations and addresses shortcomings in the protection of parties' procedural rights.

- **Consistency with existing policy provisions in the policy area**

This initiative is closely linked to the initiative concerning service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), as governed by Regulation (EC) No 1393/2007.

The proposal is consistent with existing Union instruments in the area of civil judicial cooperation. Regulation (EC) No 1206/2001 is without prejudice to the possible exchange of information between authorities under systems established by the Brussels IIa[7] and Maintenance Regulations[8], even where that information has evidentiary value, so the requesting authority is free to choose the most suitable method.

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6 See footnote 5.

7 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).

8 Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).

- **Consistency with other Union policies**

The proposed Regulation is part of the EU framework on judicial cooperation in civil and commercial matters and contributes to the EU's objective of establishing an area of freedom, security and justice, as defined in Article 3(2) of the Treaty on European Union (TEU) and Article 67 of the Treaty on the Functioning of the European Union (TFEU). In this context, the EU is to develop judicial cooperation in civil and commercial matters with cross-border implications based on the principle of mutual recognition of judgments and decisions, as stipulated in Article 81 TFEU. The Regulation also contributes to the EU's objective of establishing an internal market (Article 26 TFEU).

The EU justice agenda for 2020 stresses that, in order to enhance mutual trust between Member States' justice systems, the need to reinforce civil procedural rights should be examined, for example as regards the taking of evidence[9]. The aim of improving the framework of judicial cooperation within the EU is also in line with the objectives set out by the Commission in the digital single market strategy[10]: in the context of e-government, the strategy expresses the need for more action to modernise public (including judicial) administration, achieve cross-border interoperability and facilitate easy interaction with citizens.

Accordingly, the Commission undertook in its work programme for 2018 to prepare a proposal revising the Regulation on the taking of evidence[11].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of the proposal is Article 81 TFEU (judicial cooperation in civil matters having cross-border implications). Point (d) in Article 81(2) grants the EU the power to adopt measures aimed at ensuring cooperation in the taking of evidence.

- **Subsidiarity (for non-exclusive competence)**

The problems to be tackled by the initiative arise in cross-border judicial proceedings (which by definition are beyond the reach of national legal systems) and stem either from insufficient cooperation between the courts of the Member States or from insufficient interoperability and coherence between domestic systems and legal environments. Rules in the area of private international law are laid down in regulations, because that is the only way to ensure the desired uniformity. While in principle nothing prevents Member States from digitalising the way they communicate, past experience and projections of what will happen without EU action show that progress would be very slow and that, even where Member States take action, interoperability cannot be ensured without a framework under EU law. The objective of the proposal can therefore not be sufficiently achieved by the Member States themselves and can be achieved only at Union level.

[9] *The EU justice agenda for 2020: strengthening trust, mobility and growth within the Union* (COM(2014) 144 final), p. 8.

[10] COM(2015) 192 final, 6.5.2015, p. 16.

[11] *Commission work programme 2018: an agenda for a more united, stronger and more democratic Europe* (COM(2017) 650 final, 24.10.2017), Annex II, points 10 and 11.

The EU added value lies in further improving the efficiency and speed of judicial procedures, by simplifying and accelerating cooperation mechanisms with regard to the taking of evidence and thus improving the administration of justice in cases with cross-border implications.

- **Proportionality**

The proposal complies with the principle of proportionality, because it is strictly limited to what is necessary to achieve its objectives. It does not interfere with the divergent national arrangements for the taking of evidence.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations/fitness checks of existing legislation**

The results of the *ex post* evaluation of Regulation (EC) No 1206/2001, which accompanies the impact assessment, can be summarised as follows:

Overall, the Regulation has made a contribution to achieving its general, specific and operational objectives. The introduction of common methods for taking evidence has been welcomed by practitioners. The introduction of standard forms and communication channels has facilitated communication. The Regulation has improved the efficiency of legal proceedings — both as compared with the Hague Convention and over time between 2001 and 2017. It thus contributes to an area of freedom, security and justice, and the smooth functioning of the internal market. It increases mutual trust between courts and helps to reduce the burden for citizens and businesses engaged in cross-border proceedings.

A number of obstacles have been identified that indicate that there is room for improvement. These obstacles relate overwhelmingly to delays and costs for businesses and citizens caused by failure to exploit the potential of modern technologies for speedier communication and the direct taking of evidence. The most striking examples are failure to use electronic communication in exchanges between Member States' courts and authorities, which are still predominantly paper-based, and the marginal use of electronic communication, in particular videoconferencing, for the direct taking of evidence. The Regulation does not currently require the uptake of modern technologies in the judiciary; the fact that this depends entirely on Member States' individual efforts and the overall move towards digitalisation has led to very slow progress, in absolute terms and also in comparison with the use of modern technologies in domestic settings.

- **Stakeholder consultations**

The Commission conducted an extensive consultation of stakeholders. A single public consultation from 8 December 2017 to 2 March 2018 addressed both Regulation (EC) No 1393/2007 and Regulation (EC) No 1206/2001. A total of 131 contributions were received (particularly from Poland, followed by Germany, Hungary and Greece). Two dedicated meetings of the European Judicial Network addressed practical problems and possible improvements of both Regulations. Dedicated meetings were held with Member States' governmental experts. A workshop was held for selected stakeholders with a particular interest in issues relating to cross-border legal proceedings. The results of these consultations were generally positive and revealed a need for action.

In addition, the Commission maintained a regular dialogue with stakeholders and Member States via the Council's expert group on the e-service of documents and e-communications, which meets four to six times a year.

- **Collection and use of expertise**

An expert group on the modernisation of judicial cooperation in civil and commercial matters held six meetings between January and April 2018. A 2016 study by a consortium led by the University of Maribor delivered a comparative analysis of the law of evidence in 26 Member States[12].

- **Impact assessment**

This proposal is supported by the impact assessment in the accompanying staff working document SWD(2018) 285.

A range of options was considered, from non-legislative action to legislative action with various levels of ambition.

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';
- communicating the importance of the uniform standards provided by the Regulation (streamlined procedures, equal standard of protection of the right of the parties involved);
- best practices for competent courts, to help them apply the procedures properly and without delay; and
- raising courts' and legal professionals' awareness of the availability of the direct channel of taking evidence under the Regulation.

The Regulatory Scrutiny Board reviewed the draft impact assessment at its meeting of 3 May 2018 and delivered a positive opinion with comments on 7 May 2018. The recommendations of the Board were taken into account. In particular, the revised version of the report explains better the relationship between the two initiatives concerning judicial cooperation (service of documents and taking of evidence), the wider context and the reasons why the Regulation represents a significant step forward compared to the Hague Convention on the Taking of Evidence. Furthermore, the major problems and the baseline are better identified and explained and the sections on subsidiarity and EU added value were improved. Moreover, the conclusions of the evaluation regarding the effectiveness were further developed and the

[12] http://www.acj.si/en/presentation-evidence

assessment of the policy options focusses on the main issues (electronic communication and the use of video-conferencing).

- **Regulatory fitness and simplification**

The initiative is included in the Commission's 2018 work programme under REFIT initiatives in the area of justice and fundamental rights based on mutual trust[13].

Through the REFIT platform, stakeholders recommended that the Commission explore the scope for expediting the taking of evidence in other Member States.

The policy package is expected to generate benefits for citizens and businesses involved in cross-border proceedings. Enhanced legal certainty and faster, less costly proceedings would help to encourage citizens and businesses to engage in cross-border transactions and would thus stimulate cross-border business and enhance the functioning of the internal market. For Member States, electronic transmission and videoconferencing would generate some costs, but these are one-off, while the benefits are ongoing and generate cost savings (e.g. it costs less to hear a witness by videoconference than in person). Also, the costs relating specifically to this Regulation will be mitigated by increased digitalisation of the judiciary in general. Overall, the benefits would clearly outweigh the costs. Businesses would benefit from improvements as parties to judicial proceedings. Other effects would be relatively neutral.

The Regulation will also provide for the mutual recognition of digital evidence. This will not only reduce the burden for citizens and business in proceedings, but also limit the instances where electronic evidence is rejected.

- **Fundamental rights**

In line with the EU justice agenda for 2020, the proposal addresses the need to reinforce civil procedural rights, in order to enhance mutual trust between Member States' justice systems.

The introduction of electronic means of communication and the greater use of videoconferencing are expected to improve citizens' and businesses' access to justice.

The proposed digitalisation measures take into account the requirements of data protection and privacy: the system to be introduced for electronic exchanges between the designated courts should feature a fully reliable and secure technical solution that ensures the integrity and privacy of the transmitted data. A pre-defined set of users of the system (only Member States' courts and judicial authorities) gives an additional guarantee that personal data will be handled appropriately. Furthermore, the system should introduce a decentralised structure, enabling communication directly between its end-points and thus reducing risk by minimising the number of data processors.

Important external factors with regard to the protection of personal data in the context of the proposed policy package are:

– the General Data Protection Regulation (GDPR)[14], applied as of May 2018, which should increase awareness and prompt action to ensure the security and integrity of databases, and swift reactions to breaches of privacy in the judiciary; and

[13] *Commission work programme 2018: an agenda for a more united, stronger and more democratic Europe* (COM(2017) 650 final, 24.10.2017), Annex II, point 10, p. 4.

– persistent threats to cybersecurity in the public sector. Attempted attacks on public IT infrastructure are expected to proliferate and to affect the judiciary in the Member States; their impact may be exacerbated by the growing interconnectedness of IT systems (nationally and at EU level).

Implementation plans and monitoring, evaluation and reporting arrangements

In line with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016[15], where the three institutions confirmed that evaluations of existing legislation and policy should provide the basis for impact assessments of options for further action, the Regulation will be evaluated and the Commission will submit a report to the European Parliament, the Council and the European Economic and Social Committee at the latest five years after application date. The evaluation will assess the effects of the Regulation on the ground based on indicators and a detailed analysis of the degree to which the Regulation can be deemed relevant, effective, efficient, provides enough EU added value and is coherent with other EU policies. The evaluation will include lessons learnt to identify any lacks/problems or any potential to further improve the impact of the Regulation. Member States will provide the Commission with the information necessary for the preparation of the report.

4. BUDGETARY IMPLICATIONS

The proposal will not impose significant costs on national administrations, but rather lead to savings. National authorities are expected to benefit from more efficient legal proceedings and reduced administrative burdens and labour costs.

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 Justice programme (2018 budget: EUR 45.95 million) supports enforcement and remedy capacities in Member States in the field of civil justice and its future funding priorities focus on these elements, which are also relevant for the current initiative. The CEF has a much larger budget (EUR 130.33 million in 2018) and offers financial support for IT projects that facilitate cross-border interaction between public administrations, businesses and citizens. It is already used widely to fund digitalisation and e-justice work in the field of civil justice, including the European e-justice portal and public documents integration in national e-government systems and the Business Registers Interconnection System (BRIS). 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.

[14] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

[15] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1–14.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Sound arrangements will be put in place for the monitoring of the Regulation, including a comprehensive set of qualitative and quantitative indicators, and a clear and structured reporting and monitoring process. This is important for ensuring that the amendments are implemented efficiently in the Member States and verifying whether the Regulation is successful in achieving its objectives.

- **Detailed explanation of the specific provisions of the proposal**

Article 1(4)

Currently, the term 'court' is not defined and this has led to diverging interpretations among Member States. Some take it as referring only to traditional tribunals, while others also execute requests from other judicial authorities (e.g. notaries public) if they are empowered under their national laws to perform tasks of taking of evidence. These uncertainties should be eliminated by a definition of the concept of 'court'.

Article 6

This amendment introduces the mandatory electronic transmission, as a rule, of requests and communications pursuant to the Regulation (paragraph 1). 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 (paragraph 4).

Articles 17 and 17a

The purpose of the proposed amendments is to ensure a more appropriate, more frequent and faster use of direct taking of evidence in accordance with Article 17 via videoconference, where available to the courts in question and appropriate in the light of the specific circumstances of the case.

Article 17b

The purpose of this new Article is to 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.

Article 18a

This new Article is to 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.

Articles 19 and 20

These amendments bring the Regulation into line with Article 290 TFEU.

Article 22a

This provision sets out that the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

Article 23

This provision sets out that the Commission shall carry out an evaluation of this Regulation in line with the Commission's better regulation Guidelines and pursuant to paragraph 22 and 23 of the Interinstitutional Agreement of 13 April 2016, and present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

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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 AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In the interests of the proper functioning of the internal market, it is necessary to further improve and expedite cooperation between courts in the taking of evidence.

(2) Council Regulation (EC) No 1206/2001[2] lays down rules on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

(3) In order to ensure speedy transmission of requests and communications, all appropriate means of modern communication technology should be used. Therefore, as a rule, all communication and exchanges of documents should be carried out through a decentralised IT system composed of national IT systems.

(4) 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 only because of its digital nature.

(5) Regulation (EC) No 1206/2001 should be without prejudice to the possibility for authorities to exchange information under systems established by other Union instruments, such as Council Regulation (EC) No 2201/2003[3] or Council Regulation (EC) No 4/2009[4], even where that information has evidentiary value, thus leaving the choice of the most suitable method to the requesting authority.

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1 OJ C , , p. .

2 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 (OJ L 174, 27.6.2001, p. 1).

3 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).

4 Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).

(6) Modern communications technology, in particular videoconferencing which is an important means to simplify and accelerate the taking of evidence, is currently not used to its full potential. Where evidence is to be taken by hearing a person domiciled in another Member State as witness, party or expert, the court should take that evidence directly via videoconference, if available to the respective courts, where it deems the use of such technology appropriate on account of the specific circumstances of the case.

(7) In order to facilitate the taking of evidence by diplomatic officers or consular agents, such persons may, in the territory of another Member State and within 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 the Member State which they represent.

(8) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can rather, by reason of the creation of a legal framework ensuring the speedy transmission of requests and communications concerning the performance of taking of evidence, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(9) In accordance with Article 3 and Article 4a(1) of protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the [United Kingdom] [and] [Ireland] [have/has notified their/its wish to take part in the adoption and application of the present Regulation] [are/is not taking part in the adoption of this Regulation and is not bound by it or subject to its application].

(10) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(11) In order to update the standard forms in the Annexes or to make technical changes to those forms, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making*. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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*Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1.

(12) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the Commission should evaluate this Regulation on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Regulation and the need for any further action.

(13) Regulation (EC) No 1206/2001 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1206/2001 is amended as follows:

(1) In Article 1, the following paragraph 4 is added:

´4. In this Regulation, the term ´court´ shall mean any judicial authority in a Member State which is competent for the performance of taking of evidence according to this Regulation.´;

(2) Article 6 is replaced by the following:

´Article 6
Transmission of requests and other communications

1. Requests and communications pursuant to this Regulation shall be transmitted through a decentralised IT system composed of national IT systems interconnected by a communication infrastructure enabling the secure and reliable cross-border exchange of information between the national IT systems.

2. The general legal framework for the use of trust services set out in Council Regulation (EU) No 910/2014[5] shall apply to the requests and communications transmitted through the decentralised IT system referred to in paragraph 1.

3. Where requests and communications referred to in paragraph 1 require or feature a seal or handwritten signature, ´qualified electronic seals´ and ´qualified electronic signatures´ as defined in Regulation (EU) No 910/2014 of the European Parliament and of the Council may be used instead.

4. If transmission in accordance with paragraph 1 is not possible due to an unforeseen and exceptional disruption of the decentralised IT system or where such transmission is not possible in other exceptional cases, transmission shall be carried out by the swiftest possible means, which the requested Member State has indicated it can accept.

(3) Article 17 is amended as follows:

(a) paragraph 2 is deleted;

(b) in paragraph 4, the third subparagraph is replaced by the following:

[5] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

´Where within 30 days of sending the request, the requesting court has not received information as to whether the request has been accepted, the request shall be considered to have been accepted.´;

(4) the following Article 17a is inserted:

´Article 17a

Direct taking of evidence by videoconference

1. 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 in accordance with Article 1(1)(a), the court shall take evidence directly in accordance with Article 17 via videoconference, if available to the respective courts, where it deems the use of such technology appropriate on account of the specific circumstances of the case.

2. Where a request for direct taking of evidence via videoconference is made, the hearing shall be held in the premises of a court. The requesting court and the central body or the competent authority referred to in Article 3(3) or the court on whose premises the hearing is to be held shall agree on the practical arrangements for the videoconference.

3. Where evidence is taken by videoconference:

(a) the central body or the competent authority referred to in Article 3(3) in the requested Member State may assign a court to take part in the performance of the taking of evidence in order to ensure respect for the fundamental principles of the law of the requested Member State;

(b) if necessary, at the request of the requesting court, the person to be heard or the judge in the requested Member State participating in the hearing, the central body or the competent authority referred to in Article 3(3) shall ensure that the person to be heard or the judge are assisted by an interpreter.´;

(5) the following Article 17b is inserted:

´Article 17b

Taking of evidence by diplomatic officers or consular agents

Diplomatic officers or consular agents of a Member State may, in the territory of another Member State and within the area where they exercise their functions, take evidence without the need for a prior request pursuant to Article 17(1), by hearing nationals of the Member State which they represent without compulsion in the context of proceedings pending in the courts of the Member State which they represent.´;

(6) the following Section 6 is inserted after Article 18:

´Section 6

Mutual recognition

Article 18a

Digital evidence taken in a Member State in accordance with its law shall not be denied the quality of evidence in other Member States solely due to its digital nature.´;

(7) in Article 19, paragraph 2 is replaced by the following:

´2. The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend the Annexes to update the standard forms or to make technical changes to those forms.´;

(8) Article 20 is replaced by the following:

´Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 19(2) shall be conferred on the Commission for an indeterminate period of time from … [*date of entry into force of this Regulation*].

3. The delegation of power referred to in Article 19(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[6].

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

[6] OJ L 123, 12.5.2016, p. 1.

(9) A delegated act adopted pursuant to Article 19(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.´

(10) The following Article 22a is inserted:

´Article 22a

Monitoring

1. By [*two years after the date of application*] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

2. The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.

3. Member States shall provide the Commission with the data and other evidence necessary for the monitoring.´

(11) Article 23 is replaced by the following:

´Article 23

Evaluation

1. No sooner than [*five 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 to the European Parliament, the Council and the European Economic and Social Committee.

2. Member States shall provide the Commission with the information necessary for the preparation of that report.´

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from […].

However, point 2 of Article 1 shall apply from … [*24 months after the entry into force*].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*