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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document 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

Delegations will find attached document SWD(2018) 284 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

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

{COM(2018) 378 final} - {SEC(2018) 271 final} - {SWD(2018) 285 final}

Executive Summary

Impact assessment on a

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

A. Need for action

Why? What is the problem being addressed?

The Regulation establishes an EU-wide system for direct and rapid transmission and execution of requests to take evidence between courts in civil and commercial matters. It also sets precise criteria for the form and content of such requests. In particular, the Regulation replaced the cumbersome system used by the Member States under a Hague Convention with a modern system of direct dealings between courts (sending requests and sending back the evidence taken). Currently, some 3.4 million civil and commercial court proceedings every year have cross-border implications. In many of these cases, the taking of evidence is highly important for the proper administration of justice.

At present, contacts between the bodies designated by the Regulation are still almost exclusively paper-based, with adverse impacts on cost and effectiveness. In addition, videoconferencing is rarely used to hear people in another Member State. This initiative addresses the need to update the legislation and use modern technology in cross-border evidence-taking. At the same time, it tackles some gaps in the Regulation shown by the evaluation of its operation. Those gaps lead to three main category of problems:

- delays and costs for citizens, businesses, and Member States;
- shortcomings in the protection of procedural rights; and
- legal complexity and uncertainty.

The third point includes the ambiguity of some undefined basic terms under the Regulation and the lack of clarity arising from the optional nature of the Regulation, which sits alongside national law.

The stakeholders affected are citizens and businesses, as parties to legal proceedings, Member States' public and judicial authorities and legal professionals (in particular judges and lawyers).

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), governed by Regulation (EC) No 1393/2007. The two initiatives are closely intertwined with the overall Commission priority of digitalisation and e-justice and follow the lead of parallel work in the field of criminal justice (e-Evidence) in order to create a level playing field in the areas of criminal and civil justice alike. They build upon and benefit from existing EU outputs and legal standards such as e-CODEX and the eIDAS Regulation.

What is this initiative expected to achieve?

The policy objective of this initiative is to improve the smooth functioning of the area of freedom, security and justice, and of the internal market. This is to be done by increasing the efficiency and speed of judicial procedures and ensuring proper administration of justice in cases with cross-border implications. In particular, the initiative will achieve this objective by adapting the law to technical developments and taking advantage of digitalisation and videoconferencing. The initiative will increase legal certainty by clarifying: (1) certain basic concepts and (2) the relationship between the Regulation and national law. This will help to prevent delays and undue costs for citizens, businesses and public administrations and address shortcomings in the protection of parties' procedural rights.

What is the value added of action at the EU level?

The initiative has clear added value at EU level, since it will improve the efficiency and speed of judicial procedures by simplifying and accelerating the cooperation mechanisms for evidence-taking. This will improve the administration of justice in cases with cross-border implications. By its very nature, cooperation between Member States on cross-border taking of evidence cannot be efficiently regulated at the level of Member States

individually.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

A range of options, from non-legislative action to different levels of ambition of legislative action have been considered.

The preferred option is a policy package including a number of measures:

- having CEF eDelivery (e-CODEX) as the default channel for electronic communication and document exchange;
- promoting modern means of taking evidence (e.g. videoconferencing, telephone-conferencing and other means of remote communication) as the default approach if a person needs to be heard from another Member State, but building in appropriate flexibility (via possible exceptions, *inter alia* depending on the availability of equipment at the court) 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;
- increasing legal certainty by including in the Regulation additional means of cross-border evidence-taking now often used outside its scope, including the taking of evidence via diplomatic officers or consular agents;
- tackling divergent interpretations of the term 'court' by replacing it with a general definition of 'judicial authority';
- communicating the importance of the uniform standards provided by the Regulation (streamlined procedures, equal standard of protection of the rights of the parties involved);
- best practices for the competent courts, to help them to apply the procedures properly and without delay; and
- making court and other legal professionals more aware of the direct channel for taking evidence under the Regulation.

Who supports which option?

Stakeholders were asked about their involvement in cross-border judicial proceedings and their preferences. 73 % had been involved in cross-border judicial proceedings, while some 20 % had so far applied Regulation (EC) 1206/2001. In particular, 65 % of respondents to the public consultation either strongly supported or tended to support using modern means of taking evidence such as videoconferencing (instead of being summoned in person to a foreign court) . Most agreed that videoconferencing is the trend in cross-border proceedings, so European standards should be drafted to ensure that the hearing experience is as true to life as possible. Support for digitalisation was particularly strong: there was practically a consensus that electronic communication should become the default between authorities/agencies involved in cross-border judicial cooperation in civil matters, with 61 % of respondents agreeing and 39 % tending to agree. There was also broad support for widening the definition of 'court'.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The preferred policy package would increase efficiency and legal certainty and reduce delays and costs for stakeholders involved in cases in which evidence is taken across borders. More specifically, use of electronic communication and videoconferencing for the mechanisms under the Regulation would make them more efficient. The investment in technical infrastructure and processes is expected to make legal proceedings more efficient and to cut costs. A number of clarifications and additions would increase legal certainty (e.g. defining additional channels for taking evidence, and clarifying the concepts of 'court' and 'taking of evidence'), as would new awareness-raising and guidance material. The efficiency of cross-border judicial proceedings would improve, reducing the burden on citizens and businesses. The clarifications, additional guidance and awareness-raising would help to reduce delays. The measure would improve access to justice and the protection of the parties' rights, partly by reducing delays and partly because it is expected to increase the number of cases in which the Regulation is applied. In general, citizens and businesses are expected to benefit from the package, particularly in the form of non-monetary benefits such as increased access to justice, freedom of choice

(choosing the means of taking evidence across borders that best suits them), and the reduced stress of legal proceedings.

What are the costs of the preferred option (if any, otherwise main ones)?

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 thus increase cross-border business and enhance the functioning of the internal market. For Member States, e-CODEX 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 the 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.

How will businesses, SMEs and micro-enterprises be affected?

The preferred policy package would bring benefits for businesses involved in cross-border legal proceedings, with enhanced legal certainty as regards the proper functioning of cross-border proceedings, and faster and less costly proceedings. For businesses involved in types of business relevant to the taking of evidence, revenue may shift between business types: IT consulting service providers, internet and telecom providers stand to benefit, while there could be less need for postal communication if it is replaced by electronic communication. The overall economic impact on service providers is, however, expected to remain neutral, as the negative and positive impacts on different types of businesses are expected to be of the same size, but there will be efficiency gains in the proceedings themselves.

Will there be significant impacts on national budgets and administrations?

The proposed package will not impose significant costs on national administrations and, simultaneously, there would also be savings. Member States' public authorities are expected to benefit from reduced costs in relation to postal services and administrative tasks, time saving due to more efficient legal proceedings and decreasing administrative burdens and labour costs. The introduction of e-CODEX and organisation of videoconferencing and other long-distance communication would bring some costs, but would also reduce the costs with regard to postal services in the future. Moreover, some costs would be shared by the European Commission and the Member States, e.g. through co-financing.

Will there be other significant impacts?

The proposed package would have a positive impact on judicial cooperation and enhance mutual trust between Member States. Through e-justice, it would provide knowledge of the relevant methods and costs to ensure fast and effective procedures in cross-border evidence-taking. It would improve legal certainty and access to justice by improving the parties' procedural rights. Moreover, it would serve the need to modernise public administration (including the courts), achieve cross-border interoperability and facilitate easier interaction with citizens in line with the digital single market strategy and e-government strategy.

D. Follow up

When will the policy be reviewed?

The impact of the proposed initiative will be evaluated in a report drafted by the Commission 5 years after the entry into force of the amended instrument.