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**WORKING PAPER**

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**WORKING DOCUMENT**

From:	The Slovak delegation
To:	Working Party on Civil Law Matters (Service of documents/Taking of evidence)
Subject:	The Slovak suggestions on the Service of documents proposal and the Taking of evidence proposal

In preparation of the Working Party on Civil Law Matters (Service of documents/Taking of evidence) meeting on 7th and 8th November 2019, delegations will find attached the Slovak suggestions on the Service of documents proposal and the Taking of evidence proposal.

*Service of documents*

**Recital 2a**

„(2a) This Regulation should not apply **to the service of a document** on the party's authorised representative in the forum Member State, **but should apply to the service of the same document to the party abroad if such service is required under the law of the forum Member State irrespective of the service on the party's representative.**“

Justification:

The proposed recital 2a does not properly reflect Article 1(3) as it exempts the application of the Regulation in all proceedings where there is a representative appointed, whereas the Article itself exempts only application **to the service on the representative**. Thus the recital does not explain the situation, but rather makes the rule questionable. Our intention in proposing a recital on the provision was the exact opposite: to express that the exception is limited and does not prejudice whatever the national law requires for service. If service to the representative is not „sufficient“ and the national law requires a „parallel“ service to the party as well, such crossborder service should be done in application of the Regulation.

If the above proposal is not accepted/acceptable, we propose to rather delete the new recital 2a and leave the provision without a recital.

**new recital 2b**

**„Extrajudicial documents for the purposes of this Regulation should include both documents drawn up or certified by a public authority or official and private documents of which the formal transmission to an addressee residing abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law. They should not include documents issued by administrative authorities for the purpose of administrative proceedings.**

Justification

The recital is inspired by the case of of SDEU and the discussion during the last meeting of the Working Party.

## *Taking of evidence*

### **Recital 2a**

„(2a) For the purposes of this Regulation, the court would mean also other authorities which are competent to take evidence **cross-border** according to national law for the purposes of judicial proceedings in civil and commercial matters. The other authorities should cover, in particular, authorities competent **to proceed in civil and commercial matters** under other Union law **instruments**, such as Council Regulation (EU) No 111/2019.“

#### Justification

There is a difference if the other authorities are competent to take evidence domestically or cross-border. The competence to act under the Regulation should not be derived from the single fact that these authorities may take evidence domestically. Slovak law draws a strict distinction on this and therefore we would need this precision in the recital. For States which do not make such a distinction, this addition should not create difficulties.

The authorities under other EU instruments are not defined in those instruments as „competent to take evidence“. Their competence to do so derives from national law. A more suitable reference is therefore to authorities “dealing with matters/proceeding in matters” under the relevant EU instruments.

### **new recital 6a**

**„This Regulation should not prevent the Member State providing assistance to another Member State in direct taking of evidence from claiming eventual costs arising from such assistance.“**

#### Justification

As we explained in the recent meeting, Article 18 of the regulation does not prohibit claiming costs of assistance. But it may not be clear for practitioners from the text itself. This recital would make it clear.