



Council of the European Union  
General Secretariat

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### WORKING PAPER

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#### **WORKING DOCUMENT**

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From:	Presidency
To:	Delegations

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Subject:	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 – Preparation of the second technical meeting and the second trialogue with the European Parliament
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In preparation of the JHA Counsellors meeting on 2 March 2020 delegations will find attached Presidency suggestions for certain recitals and Articles following the first technical meeting with the European Parliament on the above proposal and in preparation of the second technical meeting on 5 March as well as the second trialogue on 10 March 2020 with the European Parliament.

1. On 20 February the representatives of the Council, the European Parliament and the Commission discussed at a technical meeting the proposal on the Taking of evidence. The Presidency's interventions were based on the Council's general approach (GA) and the discussions that took place at the JHA Counsellors meeting of 11 February 2020.
2. The meeting was primarily devoted to clarify the positions of the two institutions. It was decided to put the Articles on the choice of delegated or implementing acts on hold for the time being. The EP promised to come back on a number of issues, as indicated in the fourth column in WK 2176/2020.
3. The Commission was tasked to assist the legislators with explanations on:
  - Article 6(2) (row 41) on the compatibility of the "qualified" trust services as suggested by EP with the decentralized IT system,
  - Article 20b (rows 93-99) on the technical specifications of the decentralized IT system.
4. In preparation of the next technical meeting, on 5 March 2020 and the second trilogue on 10 March 2020, the Presidency would like to hear delegations' views, in particular, on the issues as suggested in this document. All suggestions can be also found in the fourth column in WK 2176/2020.
5. The EP insisted on having a reference to e-CODEX as an example of an existing solution in the text. The Presidency accepted to ask for delegations' flexibility to insert a reference to the e-CODEX as an example of an existing solution in recital 3 (row 12).

The Presidency suggests the following wording:

'Therefore, as a rule, all communication and exchanges of documents should be carried out through a secure decentralised IT system composed of national IT systems **and preferably based on an (existing) interoperable solution such as e-CODEX.**'

*The Presidency invites delegations to consider whether they can accept the above-mentioned proposal.*

The wording should be identical in the proposal on the Service of documents.

6. The EP raised different issues about the definition of the 'decentralised IT system', in Article 1(3) (b) (row 37) and suggested to delete **'communication infrastructure'**.

*Could delegations accept to delete these two words, as indicated in the fourth column?*

The wording should be identical in the proposal on the Service of documents.

7. On Article 6(4) (row 44) the tentative solution found consisted in maintaining the text of the general approach as to deleting the reference to **'unforeseen and exceptional'** disruption, but for the Council to consider adding **'swiftest appropriate means'**, as indicated in the fourth column.

*Could delegations consider adding 'swiftest appropriate means', as indicated in the fourth column?*

8. On Article 17a (1) (row 55), a tentative solution was found for the Council to accept the EP wording in the end of the paragraph, which in substance is the same, only drafted in a more open manner:

1. Where evidence is to be taken by hearing a person domiciled present in another Member State as witness, party or expert and the court does not requests the competent court of another Member State to take evidence directly in accordance with Article 17 1(1)(a), the requesting court shall take evidence directly in accordance with Article 17 via videoconference or other 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.**

*Could delegations accept the above-mentioned compromise solution?*

9. As regards the EP suggestion in Article 17b (row 66), the Presidency suggested in a spirit of compromise to accept the EP suggestion to add **'at the premises of the diplomatic mission or consulate'**, as indicated in the fourth column. In addition, the EP agreed not to insist on adding the last part of its amendment (the EP promised to come back with opinion on the last part of its amendment).

*Could delegations accept the addition of the wording suggested by the EP 'at the premises of the diplomatic mission or consulate'?*

10. As regards Article 17b, it was agreed to ask the jurist-linguists of the two institutions to agree on the terminology of 'diplomatic staff' or 'diplomatic officers' by checking the terminology in Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations and Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters.

11. The Commission opposed that the Member States provides it with data only 'if available' (Article 22a(3) (row 118)). The Presidency agreed to test whether a distinction could be made between the automatic collection and provision and the 'manual' collection and provision to the Commission, so that 'if available' only applies to 'manual' provision of data to the Commission. The text should therefore read as follows:

'(4) The national back-end system or the reference implementation shall programmatically collect the data referred to in paragraph 3(a, b and d) and automatically transmit them to the Commission on a regular basis.'

*Could delegations accept the proposal for Article 22(a) paragraph 4?*

12. The final tentative solution found at the technical meeting concerned Article 23 (1) (row 121) adding the EP text in the end of the paragraph, as indicated in the fourth column in WK 2176/2020 (the time frame remains open).

The text should read as follows: '...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 Economic and Social Committee, **accompanied, where appropriate, by a legislative proposal.**'

*Could delegations accept the addition of the EP text in the end of the paragraph?*

13. The EP could accept:

row 42 ('or' instead of 'and')

row 45

row 54

row 80 - Council text in the end of the Article

14. Delegations are reminded that the question of the entry into application of the Regulation needs to be addressed and resolved. Both the EP and the Commission oppose the long transposition period suggested by the Council in the GA.

*The Presidency invites delegations to consider the possibility of reducing the transposition period and if so with how much.*

15. The Presidency invites delegations to comment on any other issue pertaining to the provisions in the four-column table set out in WK 2176/2020 which they deem important with a view to the technical meeting and the second trialogue with the European Parliament.