Universidad del País Vasco
Euskal Herriko Unibertsitatea
The University of the Basque Country

STUDY ON THE APPLICATION OF ARTICLES 3(1)(C) AND 3, AND ARTICLES 17 AND 18 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

Customer: European Commission
Directorate General for Justice Unit A1 – Civil Justice Policy

Date: June 2012

Our Reference: FINAL_REPORT_1206_A

TABLE OF CONTENTS

1 ACKNOWLEDGEMENTS

We would like to express our gratitude for the support of those **Central Authorities, EJN members, transmitting and receiving agencies, and professionals across Europe (*huissiers*, court personnel, lawyers, judges, etc)** who have contributed to this study with their many and very valuable comments on their own experiences concerning the application of EC Regulation 1206/2001.

In particular, we could not have prepared this study without the feedback received from the experts who have contributed either with a view on national legislation or with an opinion on Regulation 1206/2001 and its application. Annexed to the present report the reader will find a list of professionals who participated.

2 EXECUTIVE SUMMARY

2.1.1 Context of the study

Based on a proposal by the German Federal Republic[1] and after favourable pronouncements by both the European Parliament on February 27th, 2001 and the Economic and Social Committee on February 28th, 2001[2], the European Council finally adopted, on May 28th, 2001, Regulation 1206/2001 on Cooperation between the courts of the member states in the taking of evidence on civil and commercial matters.

This Regulation is based on the above-mentioned Hague Convention of 1970, and is composed of a Preamble, 24 Articles and 1 annex including 10 forms (from A to J)

It is a self-executing rule, which needs no further legislative development by each member state.

The Regulation 1206/2001 establishes in Article 22 **the obligation** of member states communicate pieces of information.

Furthermore, in **Article 23** the Regulation stipulates, "*No later than 1 January 2007, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, paying special attention to the practical application of Article 3(1)(c) and 3, and Articles 17 and 18.*"

Given this contextual framework, the current study aims at an empirical analysis of the application of Council Regulation (EC) N.º 1206/2001, on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters; that is, it aims at an identification of all the significant circumstances that have occurred since its entry into force in all member states except Denmark. This study aims to provide a synthesis of the problems occurring during its application, as well as the identification of those member states where such problems might have occurred. In particular, of key relevance will be the question whether through application of the Regulation cooperation between courts in the taking of evidence has been improved, simplified and accelerated.

[1] OJ L 314, November, 3rd 2000

[2] Report to the European Parliament dated February 27th, 2001, on the German Federal Republic's proposal for the adoption of a Council's Regulation on cooperation between judicial bodies of the member states on the taking of evidence in civil and commercial matters (A-5073/2001)

This study was designed to reveal all such circumstances, and endeavours to point out proposals that introduce, where possible, adequate modifications, by way of **improvement in this important EU normative instrument.**

One of the sources for this study has been the statistical data provided by the Central Bodies of member states; another has been the feedback and opinions of **380 professionals**, coming from many judicial sectors across all relevant member states (lawyers, huissiers, solicitors, judges, public notaries, academics, etc). This feedback was collected by means of several surveys and input gathering activities carried out over five months, from September 2011 to January 2012.

This study is also based on 26 **country reports** (in all relevant member states) on the current rules on national taking of evidence practices in each member state. The aim of these reports was the identification of current national rules that govern evidentiary procedure in each member state, so as to establish, if possible, minimum standards for cross-border taking of evidence**.** These reports were drafted by our network of national correspondents in each member state.

Finally, this study is supported by the opinions of **60 experts** (mainly, members of the **EJN**, but also some from the official bodies concerned in certain states, and from academics) concerning the practical application of Regulation (EC) 1206/2001.

2.1.2 GENERAL CONCLUSIONS

1. Although there is still room for improvement, Regulation 1206 is of **regular application**, in terms of the number of requests, time necessary to answer/execute a request, and in terms of the effectiveness of courts and Central Bodies involved in their application.

2. Regarding the **direct taking of evidence, the number of requests under Article 17 is much lower than the general average**. Furthermore, most of the 380 professionals consulted state that this procedure is used rarely (71%). In any case, the low level of knowledge of foreign languages amongst judges (good enough to understand or complete a form, but not good enough for reception of evidence from witnesses or experts), and the limited use of videoconferencing (for technical reasons) may explain the preference for the traditional methods for reception of evidence abroad.

We now present our **SPECIFIC CONCLUSIONS** in this study, based on the information obtained by empirical analysis of data received from Central Bodies,

expert opinions from professionals consulted , country reports provided by our network of correspondents, and comparative analysis of national rules on the taking of evidence.

2.1.3 SPECIFIC CONCLUSIONS OF THE EMPIRICAL ANALYSIS

- **SPEED OF TRANSMISSION:** In general terms, the speed of transmission after the entry into force of Regulation 1206 is **faster** (a view shared by 64.9% of the interviewees), although differences between member states (hereafter referred as member states) are relevant and this conclusion needs to be qualified by member states. In any case, in order to extract a multi-year analysis, our conclusions focus on those member states that provided more detailed answers.

  The average amount of time required for the completion of requests exceeds the limit of 90 days established in Art. 10.1 in most states.

  Translations and problems relating to return of the certificate are the main difficulties that slow down service of documents.

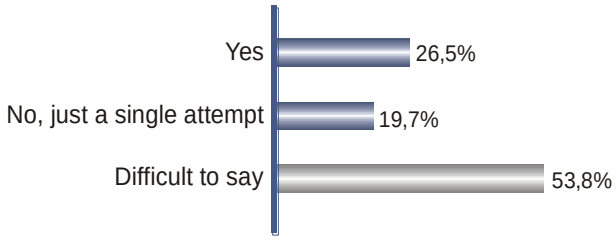
  It would be helpful if member states could reach an agreement on using a common language in communications between transmitting and receiving agencies, probably English (as the language commonly accepted by all member states, except Luxembourg). Also, it seems recommendable to foster the development of new programmes and training activities concerning the Regulation, especially in those member states which are less familiar with the tools introduced by the Regulation.

- **REQUESTING AND REQUESTED COURTS:** Requesting and requested courts have helped to streamline the system of taking of evidence. According to the Survey of professionals, these courts are **considered to be somewhat effective** in fulfilling their tasks under the Regulation, although this general opinion varies depending on the member state concerned:

  - According to 28% of the interviewees, language barriers between requesting and requested courts hinder the effectiveness of the Regulation.
  - The **introduction of direct court-to-court contacts has not caused any specific problems** (according to 89.7% of the professionals interviewed).

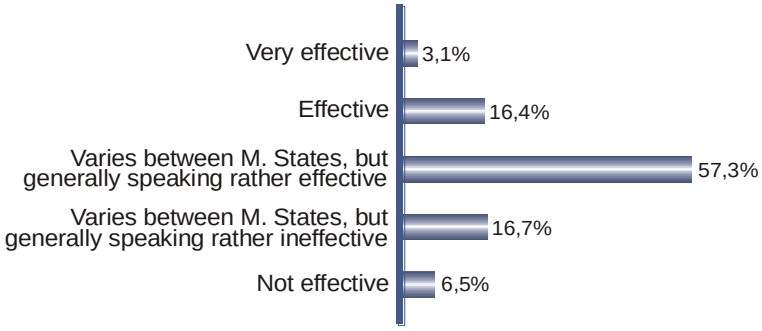
QUESTION 11: Has the introduction of direct court-to-court contacts caused specific problems? If so, which?

- There is no conclusive data to conclude that courts make more than one attempt to hear a witness, since the 53.8% of the professionals consulted state that it is difficult to provide any information.



In any case, it seems desirable to promote the use of electronic communication methods, as between requesting and requested courts, as well as the use of a single language of communication agreed upon by all member states.

- **CENTRAL BODIES:** According to the opinions of the professionals consulted, **the effectiveness of the Central bodies seems to be quite high** (only 23% consider that they are not effective or somewhat ineffective).



However, several arguments support the non-conclusive character of this statement: a) inconsistencies in the data provided by central legal authorities; b) eight member states have not provided any data at all, and most of the rest very scarce data; c) Some comments by EJN experts consulted lead to the conclusion that Central Bodies are not familiar with the Regulation; that there are major

differences across member states (some of them report less than ten requests per year, compared to others that report thousands per year).

In any case, designation of the Central Bodies should be followed by proper training programmes and procedures designed to ensure that theses bodies have the required knowledge of the Regulation and of the common language, where available, chosen by the member states.

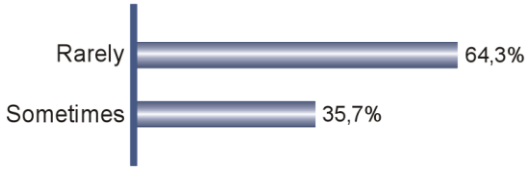
- **FORMS: There are no noticeable problems connected with of the use of standard forms**.

QUESTION 5: Has the practical use of relevant standard forms caused any problems? If so, which forms? Why?

Only 10.8% of the interviewees state that they found problems with forms; whereby these were mainly derived the fact that courts do not fill them out properly (leaving gaps and using their own language), that some items may give rise to mistakes (for example, Form A1 "Reference number of the requesting court) or an absence of reasons for refusal (for example, Form H: address wrong or unknown).

- **COMMUNICATION TECHNOLOGIES:** Although communication technologies could undoubtfully help to speed up the taking of evidence process, **they are not frequently used**.

QUESTION 7: How frequently is communications technology used in the performance of taking of evidence? In which types of requests?



Most limitations pertaining to this subject do not relate to differences between national legislation, but to the **absence of relevant technology**. This seems to be the principal cause, according to 60.1% of the interviewees.

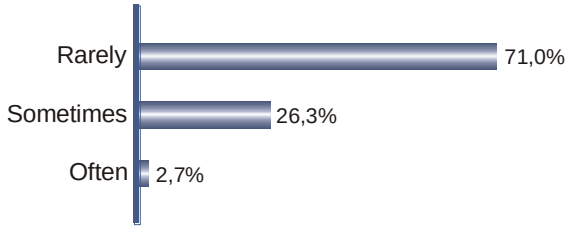
In any case, the use of new communication technologies is of **great importance as an alternative to physical presence**. It is simpler, more cost-effective and obviates the need for the presence of the parties and their representatives in the taking of evidence.

- **REFUSAL TO EXECUTE:** According to data received from Central Bodies, the main causes of refusal to implement a request are:
  - Wrong or incomplete information
  - Implementation of the request under the law of the requested court does not fall within the functions of the judiciary

  However, the previous statement is a very weak finding, since the very small amount of data received on this subject by Central Bodies prevents us to talk about rejection rates and to extract deeper conclusions. In the cases of U.K. and Greece, the rejection rate is 0%, compared with 20% in Hungary.

- **DIRECT TAKING OF EVIDENCE:** The direct taking of evidence is **used only rarely** and most direct taking of evidence has been performed by videoconference, and only for the purpose of obtaining witnesses' or experts' testimony.

QUESTION 12: How frequently is this method of taking evidence used? In which types of requests?



Reasons that may explain this situation are mainly:

- The **low level of foreign language competency** among judges (not good enough for taking evidence from witnesses or experts directly);
- The use of videoconferencing is also limited in several countries on **technical grounds**;
- **Judges are still not familiar with this method** of taking evidence.

The infrequent use of this method leads us to conclude that it has not helped to improve the taking of evidence process, nor it has supposed a relevant factor in the acceleration of the process.

2.1.4 SPECIFIC CONCLUSIONS -LEGAL ANALYSIS

- **DEFINITION OF PROOF:** Despite the existing differences between national laws on this issue, an autonomous definition of proof is not necessary. This is because the Advocate General (AG) has provided us with a broad interpretation of this concept; indeed, one that is broadly consistent with the purposes stated in the TEDESCO case, which applied the regulation to the greatest possible number of situations.

- **RECEPTION OF EVIDENCE METHODS:** There are no major differences between the methods used for reception of evidence permitted by the laws of member states. Accordingly, it would seem appropriate to maintain the open lists and the criterion of free assessment of evidence by the judge.

- **PUBLIC/PRIVATE DOCUMENTS:** The need for an independent definition of what amounts to a public document is determined by the higher status accorded to such documents by most legal systems in relation to other evidentiary methods (such as private documents). This problem has already been brought before the ECJ (European court of Justice) but not directly as evidence, but rather as part of an application to determine the enforceability of public documents **(**Case C-260/97, Unibank A/S vs Flemming G. Christensen) and also an application to determine which extrajudicial documents are included within the scope of application of Regulation (EC) nº 1206/2001 (Case C-14/08, Roda Golf & Beach Resort SL and the Opinions of the Advocate General).

  In view of this comparative law scenario, it would not appear to be too difficult to provide an independent concept of public document that is sufficiently broad so as not to pose problems in any legal system.

- **EXAMINATION OF THE PARTIES:** member states share a common concept of this evidentiary method. Differences arise as regards the probative value of the examination of the parties. In any case, since differences arise only at the level of probative value, they do not cause major problems for the uniform interpretation and application of the Regulation; and therefore, there is no reason to propose harmonisation or common procedural rules in this area. .

- **WITNESS TESTIMONY:** A general obligation to testify is imposed in all member states. Major differences arise in relation to the specific grounds on which a witness is not required to testify, together with any financial compensation payable for testimony. However, remission to the national rules does not seem problematic since practical problems have not been denounced.

- **ROLE OF THE JUDGE:** The initiative of the parties is in any case the general rule among the laws of member states. Differences on the role of the judge in the taking of evidence in member states have not given rise to major problems, and reference made by Article 10 of Regulation 1206/2001 to the national rules of the requested state avoids the need to implement uniform procedural rules governing the role of the judge or a specific order for the reception of evidence. It should also be noted that the survey of professionals showed that the application of this provision is not problematic.

- **VIDEOCONFERENCING AND TELECONFERENCING:** Regarding the effective use of videoconferencing and teleconferencing systems, most member states do not establish national legal rules regulating this area. This does not mean that there are specific prohibitions on the matter. In others, the limitations may arise from the absence of technical means at some courts. In short, only a small number of legal difficulties can be identified here; with the possible exceptions being the cases of Bulgaria (where the courts have no practice in using videoconferencing to take evidence in civil proceedings) and Hungary (where, although such methods are not expressly prohibited, certain procedural requirements seem hard to fulfill if the witness does not appear in person).

- **PRESENCE AT THE TAKING OF EVIDENCE:** All member states admit the parties or their representatives to be present at the taking of evidence. The use of new communication technologies is of great importance as an alternative to physical presence, as these are both simpler and more cost-effective.

- **EXPENSES:** Regarding the obligation to reimburse the relevant costs, it must be recalled that according to recitals 2, 7, 8, 10 and 11 in the preamble to Regulation No 1206/2001 the aim of the regulation is to make the taking of evidence in a cross-border context simple, effective and rapid. Under Articles 18.2 and 18.3 the cost of any assistance should be known in advance.

- **LIMITATIONS ON THE RECEPTION OF EVIDENCE:** member states all set similar limits to the taking of evidence. Differences are related to the consequences of these limits. Statistical data obtained from Central Bodies reveal that differences on national limits to the taking of evidence have not been taken the basis for refusal of a request. Therefore, according to the principle of proportionality (according to which intervention by the European Union should only take place as necessary) it seems that harmonization is not required in this field.

- **ELECTRONIC REQUESTS:** Electronic transmission between requesting and requested courts could help to speed up the process. Its permissibility cannot be denied based on the argument that there is a need to set the date of service or a need for authentication or consent. These issues are not relevant here because its

permissibility is restricted to communications between requesting and requested courts. Any communication with witnesses or other citizens is performed by the requested courts and is subject to their procedural law.

- **HARMONISATION:** According to the data obtained and the opinion of the EJN experts interviewed, the harmonisation of the twenty-seven national laws (with the distinctive features of the civil law, and common law countries) is by no means an easy endeavour, and it is not really necessary in order to achieve the goal of swift taking of evidence abroad. The problems detected in the practical application of the Regulation are not connected with differences between domestic laws in member states.

3 THE PROJECT

3.1 INTRODUCTION

3.1.1 Background

The creation of an area of freedom, security and justice at the European Union, where the free movement of people, goods, services, and capitals can be performed with full juridical guarantees, has always been a fundamental need since the beginning of the creation of the European Union, and a necessity for the achievement of the single market.

Despite its importance, cooperation in justice and home affairs has taken more time than expected. It was not until the application of the European Union Treaty of 1992, known as the Maastricht Treaty, where this dimension of judicial cooperation is finally rooted in the so-called “third pillar”.

On 26 May 1997, the Council adopted, on the basis of the EU Treaty, the Convention on the service in the EU Member States of judicial and extrajudicial documents in civil or commercial matters, together with a Protocol on the interpretation of the Convention by the Court of Justice (Official Journal C 261, 27.8.1997). The Council approved explanatory reports on the Convention and Protocol on 26 June 1997. Nevertheless, the Convention has not been ratified by the Member States.

The enter into force of the Amsterdam Treaty, in 1999 meant a great advance in this matter, as incorporating it to the “first pillar” within the new Title IV (art. 61), specifying that in order to progressively establish an area of freedom, security and justice, the Council would adopt measures in the field of judicial cooperation in civil matters having cross-border implications, in conformance with the art. 65, that is, measures with cross-border impact that would include among others the judicial cooperation for the taking of evidence in civil or commercial matters.

It is precisely in this normative context, and answering it, where the new Council Regulation 1206/2001, of 28th May 2001 (OJ L 174, June 27th 2001) is placed. This Regulation aims at contributing to the proper functioning of the internal market, by improving, simplifying and accelerating the cooperation between courts in the taking of evidence.

Some background of this Regulation 1206/2001 can be found at both The Hague Conventions of 1st March 1954 (on civil procedure) and 18th March 1970 (on taking of evidence in foreign countries, within civil or commercial matters)

-The Hague Convention of 1st March 1954 on civil procedure:

It relies on diplomatic and consular institutions for the taking of evidence in another countries, always through the so-called "Rogatory Letter" (request made by a court in one country to that of another country). Nevertheless, two countries could agree (through bilateral agreements) on direct contact between their courts in order to issue the request. The way the receiver proceeded was usually following his own country's legislation, but, exceptionally, he might follow a different procedure if this was not against his own internal legislation (art. 7).

Proceeding with the "Rogatory Letter" could only be rejected under strict causes listed on the Convention. Among the most relevant was that, according to the required country, the task to be carried out was not a competence of the judiciary.

Proceeding with the "Rogatory Letter" did not entitle the required country for the reimbursement of any taxes or expenses of any kind. It had only the right to claim for the expenses incurred in case of compensations paid to witnesses or experts, so as expenses caused by the intervention of a civil servant in case of voluntarily non-appearance of a witness, or in case of special procedures followed.

-The Hague Convention of 18th March 1970 on taking of evidence abroad in civil or commercial matters

This Convention amended the procedure ruled by the former one, trying to improve and solve the deficiencies detected (art. 19). Thus, it replaced art. 8 to 26 of the former 1954 Convention for those countries, which had signed the new one.

The new Convention created two new different procedures: on one side, it establishes the taking of evidence by a foreign judicial authority through a "Rogatory Letter" addressed to a Central Body designated by each country. On the other side, it allows the diplomatic servants, consular agents, or "commissaries" to directly proceed for taking of evidence (art. 15-17)

The 1970 Convention is only applicable to taking of evidence within judicial procedures. Arbitration is expressly excluded. The "Rogatory Letter" must be written in English or French, although those addressed to own courts could remain in their own official language. Again, the receiver proceeds following his own country's legislation (art. 9) but, exceptionally, he might follow a different procedure if this was not against his own internal legislation or impossible to fulfil.

Proceeding with the "Rogatory Letter" could only be rejected by the required country in case that, according to its rules, the task to be carried out was not a competence of the judiciary, or might be detrimental to the country's sovereignty and/or security.

3.1.2 Adoption of the Regulation 1206/2001 ("the Regulation")

Based on a proposal made by the German Federal Republic[3] and after favourable pronouncements by both the European Parliament on February 27th, 2001 and the Economic and Social Committee on February 28th, 2001[4], the European Council finally adopted, on May 28th, 2001, the Regulation 1206/2001 on Cooperation between the Courts of the Member States in the taking of evidence on civil and commercial matters.

The Regulation is based on the above-mentioned Hague Convention of 1970, and it is composed of a Preamble, 24 articles and 1 annex including 10 forms (from A to J).

It is a self-executing rule, which needs no further legislative development by each Member State.

-Regulation's come into force and effective application

According to art. 24 of the Regulation, it entered into force on July, 1st 2001, but its effective application has happened only after January 1st 2004 (except for its art. 14: "Refusal to execute", art. 19: "Implementing rules", art. 21 "Relationship with existing or future agreements or arrangements between Member States", and art. 22 "Communication to the Commission").
The gap between the Regulation's entering into force and its effective application was, among others, due to the necessary adaptation by each Member State of its own judicial corpses in order to be able to adapt them to the new Regulation and make real easy and smooth the contacts between civil and commercial courts of different Member States.
Aiming at this, by 1 July 2003 each Member State had to communicate to the Commission the list of competent courts, within the meaning of the Regulation, and the names and addresses of its central bodies, which has already been done [5].

-Relation with other future Agreements among Member States

Article 21 of the Regulation establishes that it shall prevail over other provisions contained in bilateral or multi-lateral agreements or arrangements concluded by the Member States, and in particular, the Hague Conventions of 1 March 1954, on civil procedure, and 18 March 1970, on the taking of evidence abroad in civil or commercial matters (on the contrary, these will prevail in case of relations of a Member State with third States if both have signed the Conventions)

[3] OJ L 314, November, 3rd 2000
[4] Report to the European Parliament dated February 27th, 2001, on the German Federal Republic's proposal for the adoption of a Council's Regulation on cooperation among judicial bodies of the Member States to taking evidence in civil and commercial matters (A-5073/2001)
[5] Information now available on European Judicial Atlas website: http://europa.eu.int/comm/justice_home/judicialatlascivil/html/index_en.htm

Member States shall, however, be entitled to maintain or conclude agreements or arrangements between two or more of them to further facilitate the taking of evidence, provided that they are compatible with the Regulation.

3.1.3 Scope of the Regulation

-Territorial scope

The Regulation is binding upon all the Member States, except for Denmark whose relations with other member States on this matter shall remain framed on the Hague Convention of 1970 (as a consequence of articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community). On the other hand, the Regulation applies only to cross-border cases, excluding domestic ones. It not even applies to private taking of evidence from abroad for its utilisation on the main procedure, which does not represent a true case of international cooperation and, thus, remains ruled by the internal judicial law of the Member States

-Substantive scope

The regulation shall apply in civil or commercial matters where the Court of a Member State, in accordance with the provision of the law of that State, requests the competent Court of another Member State to take evidence, or to take evidence directly in another Member State.

There are three main conditions for the Regulation to become applicable:

1) Civil or commercial matters:

This is an autonomous concept which should be interpreted in the light of the objectives of the Regulation, and in particular, in accordance with art 65 EC Treaty. It must be clearly excluded from its scope the taking of evidence in court cases where States or Public Administrations are acting as public bodies. Anyway, there are some border-cases where it is difficult to say whether they belong to public or private law. The European Court of Justice has, at different occasions, given interpretations of it[6].

The Hague Convention of 1970 also refers to civil or commercial matters within its Art. 1. Precisely, this point was discussed at the Special Commission held in 1989 to analyse the application of the Convention, concluding that it should be interpreted

[6] 14. October 1976 29/76, LTU v. Eurocontrol, in ECR 1541; 16.December 1980 814/79 Ruffer, ECR, 3807; 21 April 1993, C-172/91 Sontag, ECR, I-1963; 14.November 2002, C-271/00, Steenbergen v. Baten

extensively (thus allowing bankruptcy law, insurance law and labour law to be included within "civil and commercial matters", but not the tax law).

It is remarkable that some matters excluded from Council Regulation 44/2001[7] do fall within the scope of Regulation 1206/2001, as those related to legal capacity of natural persons, patrimonial rights arising out of a matrimonial relationship, wills and succession.

Anyway it would be recommendable if the Commission could rise attention on this matter in order to better delimitate and concrete the scope of "civil and commercial matter" via new redaction of art. 1, or the adoption of further additional legislation on it (which could be extended to the rest of similar European regulations on judicial cooperation)

Concerning definition and interpretation of concepts in the Regulation, it is possible to find some guidelines on the "Practical Guide for the application of the Regulation on the taking of evidence" [8]

The concept of "evidence" is not defined in the Regulation, but it should include all kind of legal acts proposed in order to submit to the court case any information which could prove the truthfulness of the allegations made by parties in relation with the facts discussed. It includes, for instance, hearing of witnesses of fact, of the parties, of experts, the production of documents, verifications, establishments of facts, expertise on family or child welfare. On the contrary, judicial presumptions should not be included, since they do not refer to factual acts, but only to an intellectual process of the Judge or Court in charge of the main case

2) <u>By the court of a Member State</u>

Again there is not a definition of court within the Regulation. It should, however, be given a broad interpretation, thus including all authorities in the Member States with jurisdiction in the matters falling within the scope of the Regulation. The concept of court does not cover arbitral tribunals.

According to the precedents by ECJ on "standing" [9], they also fall under the scope of the Regulation, not only courts and tribunals, but also other institutions whenever

[7] Council Regulation 44/2001 of 22 December 2000 on jurisdiction and recognition and enforcement of judgements and commercial matters

[8] http://europa.eu.int./civilejustice

[9] 30 de junio de 1966, *G. Basen-Göbels v. Management of the Beambtenfonds voor het Mijnbedrijf,* causa 61/65. 6 de octubre de 1981, C. *Borrelmeulen v. Huisarts Registratie Comissie*, causa 246/80; 11 de junio de 1987, *Pretore di Salò v. Personas desconocidas*, causa 14/86; 30 de marzo de 1993, *Pierre Corbiau v. Administration des Contributions*, causa 24/92; 27 de abril de 1994, *Municipality of Almelo and others v. NV Energiebedrijf Ijsselmij*, causa 393/92; 12 de diciembre de 1996, *Criminal proceedings against X,* causas reunidas 74/95 y 129/95; 17 de septiembre de 1997, *Dorscha Consult Ingenieurgesellschaft mbH v. Bundesbaugesellschaft Berlin mbH,* causa 54/96; 16 de octubre de 1997, *Maria Antonella Garofalo, Giovanni Pagano, Rosa Bruna Vitale, Francesca Nuccio, Giacomo Cangialosi, Giacoma D'Amico, Giulia Lombardo, Emanuela Giovenco, Caterina Lo Gaglio; Daniela Guerrera and Cesare Di Marco, v. Ministero della Sanità and Unitàsanitarialocale (USL) núm. 58 di Palermo*,

they have been created according to law, carry out their tasks permanently and independently, pronounce binding decisions based on law, follow the principle of contradiction, and their jurisdiction is obligatory.

The requesting courts could be any competent judicial body, as it has been explained. However, the requested performing courts shall be only those judges or magistrates expressly selected to do so by each State. Therefore, art. 2.2 requests to each Member State to draw up a list of the courts competent to taking evidence within the scope of the Regulation. The list shall also indicate the territorial and, where appropriate, the special jurisdiction of those courts.

It is also to mention the creation, on January 1st, 2001, of the European Judicial Network on civil and commercial matters [10], simultaneously to the adoption of the Regulation This Network intends to speed up and smooth the cooperation among courts of Member States in civil and commercial matters (and therefore on taking of evidences too). It creates an updated information system both for the member states and for the individuals (art. 3). Following the Network, a European Judicial Atlas has been prepared, and this is being of a great help in order to identify the competent institutions and bodies regarding the Regulation 1206/2001, so as their territorial and jurisdictional competences, and their contact details.

3) To obtain evidence

The Regulation is applicable for both the taking of evidence which is intended for use in judicial proceedings already commenced and those to be taken before the actual filing of the proceedings in which evidence is to be used, for instance if there is a need to take evidence which would not be available later.

Nothing seems to be against the application of the Regulation to voluntary jurisdiction proceedings.

3.1.4 Brief analysis of the methods for the taking of evidence at the Regulation

The Regulation provides for two methods of taking of evidence,

causas reunidas 69/96 a 79/96; 4 de noviembre de 1997, *Parfums Christian Dior SA and Parfums Christian Dior BV v. Evora BV*, causa 337/95.

[10] Council Regulation of May 28th, 2001 (OJ L 174, 27 June 2001)

1. the taking of evidence by the requested court, following a request transmitted directly from the requesting court to the requested court

2. the direct taking of evidence by the requesting court

-Both methods keep some common aspects:

- The request shall be made using Form A or I, and shall include the following details:

  - the requesting and, where appropriate, the requested court
  - the names and addresses of the parties to the proceedings, and their representatives, if any
  - the nature and subject matter of the case and a brief statement of the facts
  - a description of the taking of evidence to be performed
  - where the request is for the examination of a person: the name(s) and address(ees) of the person to be examined; the questions to be put for the person(s) or a statement of the facts about which he is (they are) to be examined; where appropriate, a reference to a right to refuse to testify under the law of the member state of the requesting court; any requirement that the examination is to be carried out under oath or affirmation of lieu thereof, and any special form to be used; where appropriate, any other information that the requesting court deems necessary
  - where the request is for any other forms of taking of evidence, the documents or other objects to be inspected
  - where appropriate, any request related to the taking of the evidence under the law of the requiring court, the presence and participation of the parties, and/or the presence and participation of representatives of the requesting court

- Language:

  According to art. 5 of the Regulation, the request and any further correspondence have to be drawn up in the official language of the requested member state or, if there are several official languages in that member state, in the official language or one of the official languages of the place where the requested taking of evidence is to be performed, or in another language which the requested member state has indicated it accepts. Documents which the requesting court deems it necessary to enclose for the execution of the request shall be accompanied by a translation into the language in which the request was written. Each member state shall indicate the official language or languages of the institution of the European Community, other than its own, which is or are acceptable to it for completion of the forms.

- Transmission means:

  According to the regulation (art. 6) all requests and communications have to be transmitted by the swiftest possible means, which the requested member state has

indicated it can accept. Therefore, the transmission may be carried out by any appropriate means, provided that the document received accurately reflects the content of the document forwarded and that all information in it is legible. It is up to debate whether communications via fax and/or email might be accepted, provided they fulfil the requirements of accuracy and fidelity, since they are really the swiftest means.

- Receipt of requests:

  The requested court shall send an acknowledgement of receipt to the requesting court (using Form B) within seven days of receipt of the request. In case a request does not fall within the jurisdiction of the court to which it was transmitted, this court shall forward the request t the competent court of its member state and shall inform the requesting court thereof (using Form A). If the request does not contain all of the necessary information, the requested court shall inform the requesting court thereof, without delay and, at the latest, within 30 days of receipt of the request (using Form C). Then, the deadline for taking the evidence shall commence only after reception of the completed request by requested court. Finally, if the taking of evidence needed a deposit or advance, the requested court shall inform the requesting court thereof without delay (at the latest within 30 days of receipt of the request)

  1.Request by the requesting court to the competent court

  Under this method, the courts of the member states will directly communicate among themselves, without any intermediate parties which could complicate and delay the taking of evidence. The requesting court will directly submit the request to taking of evidence to the requested court.

a) Execution of the request:

   The requested court shall execute without delay and, at the latest, within 90 days of receipt of the request. In case the request cannot be executed in due time, the requested court shall communicate it to the requesting court (using Form G) indicating the reasons for the delay.

   In general, the requested court executes the request in accordance with its own law (art. 10.2). It may, however, execute the request pursuant to a special procedure provided for by the law of the member state of the requesting court, if the latter so asks in accordance with paragraph 13 of Form A. Only in case the procedure is incompatible with the law of the member state of the requested court, or by reason of major practical difficulties, could the requested court refuse to comply with such a requirement.

b) Refusal of execution of a request:

The execution of a request related to the hearing of a person shall be refused when the person concerned claims the right to refuse to give evidence or the prohibition from giving evidence invoking the law of the member state of the requested court or the law of the member state of the requesting court.

There are also some other miscellaneous grounds for refusal, but since the Regulation aims at facilitating the taking of evidence in cross-border cases, they are strictly limited (art. 14.2). The effectiveness of those established grounds and eventual extension to some other cases should be considered. Anyway, refusal based on causes of art. 14.2 shall be reported within 60 days to the requesting court (using Form H)

c) Procedure after the execution of the request

When the requested court has executed the request, it sends the documents establishing the execution without delay to the requesting court and, where appropriate, returns the documents received from the requesting court. The documents shall be accompanied by a confirmation of execution using Form H.

Nothing is established on the translation of the execution of the request to the language of the member state of the requesting court

The execution of a request shall not give rise to a claim for any reimbursement of taxes or costs. Nevertheless, if the requested court so requires, the requesting court shall ensure the reimbursement without delay of the fees paid to experts and interpreters and the cost occasioned by the application of an special procedure provided for by the law of the member state of the requesting court or the utilisation of communications technology at the performance of the taking of evidence, in particular the using of videoconferences and teleconferences.

2. Direct taking of evidence by the requesting court

This method is established by the Regulation as an alternative way to the previously described, thus allowing the court of a member state to take evidence directly in another member state.

This method speeds up the procedure of taking of evidence in cross-border cases, but it has some inconveniences due to the lacking of coercive measures from the requesting court, making it necessary to perform it always on a voluntary basis (art. 17.2). Consequently, where the direct taking of evidence involves the hearing of a person, the requesting court shall inform that person that the performance shall take place on a voluntary basis.

a) Requirements of the request

Request for direct taking of evidence will be submitted by requesting court (using Form I) to the Central Body or to the competent authority previously designated by each member state (art. 3.3 and 17.1). This could create, in the practice, some confusion due to the multiplicity of competent authorities to receive the request in these cases. It is recommended to precise more concretely which are the competent authorities in this case.

b) Competent persons for taking of evidence

According to art. 17.3 the taking of evidence shall be performed by a member of a judicial personnel or by any other person, such an expert, who will be designated in accordance with the law of the member state of the requesting court. But it must be taken into account that, in case of judicial presence for the taking of evidence is also required, and the judge of requesting court does not accept to travel to the foreign country, it will be again needed to request cooperation from the requested court.º

c) Reception of the request

Within 30 days of reception of the request by Central Body or competent authority, it shall inform the requesting court whether the request has been accepted or not, and if necessary, under what conditions according to its law such performance is to be carried out (using Form J)

d) Refusal of the request

The Central Body or the Competent Authority of the requested State may refuse the direct taking of evidence only if the request does not contain all of the necessary information pursuant to art. 4 (Form A); or the request does not fall within the scope of the Regulation; or the direct taking of evidence requested is contrary to fundamental principles of law in its member state (which are not defined within the Regulation)

Anyway, in case the direct taking of evidence was refused, it always remains open the access to first method (direct request from requesting court to requested one in order this to taking of evidence)

3.1.5 Purpose of the Regulation

The Regulation aims at ruling an effective system for taking of evidence by the courts of the member states in cross-border cases. Thus, it is framed within the need of

creating an area of freedom, security and justice at the European Union, where the free movement of people, goods, services, and capitals can be performed with full juridical guarantees.

More in detail, the Regulation intends to avoid that juridical borders within the European Union might become an obstacle in cross-border cases, by creating an homogenous procedural system which allows a citizen from a member state to have access to the evidence, no matter where it has to be taken (as long as it is within the European Union)

The underlying juridical principle is that any citizen of a member state can access to the same judicial protection, regardless the state where his/her case is to be tried. The scenario should be, then, the same as if the taking of evidence had been done in his/her own state

The system established by the Regulation, has to ensure an effective taking of evidence within the whole European Union area, in order to consolidate the judicial warrantees which allow the citizens to receive an effective judicial protection. Thus, the effective judicial protection becomes the main validity scale of the Regulation, and so, our main evaluation criteria.

In order to achieve a full judicial protection when taking of evidence, the Regulation establishes a free assistance, except for participation of experts and/or interpreters, or in cases when an special procedure or technology is to be used at the required court [11]

Always aiming at ensuring the effective judicial protection, the Regulation lies on four principles: simplicity, clarity, juridical security and quickness. They have to be particularly analyzed in order to find out if the Regulation fulfils its objectives and how far.

-Simplicity, clarity and juridical security:

Trying to ensure a simple, clear and smooth procedure, the Regulation creates a system of Standard Forms to be compulsory used, and includes an Annex with all the Forms to be used within the procedure. This also contributes highly to improving the juridical security of it.

Likewise, in line with the pursued clarity and juridical security, the Regulation creates a Central Body responsible for assisting the courts and facilitating them the proper functioning of the procedure (art. 3). Also leading to the same principles, the Regulation requires (art. 4.3) that, together with the request for taking of evidence, all

[11] Chapter VII, Section VI

additional documents needed for it shall be enclosed and duly translated (precaution that was not foreseen in the Hague Conventions). Precautions to solve any inaccuracy or defect in the request (art. 8) can be also framed within the same principles.

Simplicity and smoothness aimed by the Regulation can also be observed in the possibility of a direct contact between requesting and requested courts from different member states. One of the main objectives of the Regulation is to ensure a smooth and permanent communication between the courts, despite belonging to different member states, so that they are properly informed at any moment. Pursuant to it, it is also permitted the presence of representatives from the requesting court in the taking of evidence carried out at the requested court. In this case, it is of a great importance the use of new communication technologies, as an alternative way to the physical presence, being smoother and more cost-effective than that. The real using of the new communication technologies within the Regulation's procedures is still to be assessed in order to maximize it in the future.

-Quickness and celerity

The Regulation proposes a smooth method of cooperation between courts in order to simplify and accelerate the taking of evidence (Whereas 2º of the Preamble). The efficiency of judicial procedures in civil or commercial matters requires that the transmission and execution of requests for the performance of taking of evidence is to be made directly and by the most rapid means possible between member states' courts.

Accordingly, the Regulation intends all the procedure of taking of evidence not to last longer than 90 days, which is really quite an ambitious goal. Finally, the effective fulfilment of that deadline will depend upon the real performance and compromise of the judicial bodies of the member states. In case the deadline is exceeded, the requested court shall inform the requesting court about the obstacles, which have made the procedure delayed.

Within that overall deadline of 90 days, each act and communication of the process has its own concrete deadline established by the Regulation. In spite of this, delays have not practical consequences, and thus, they could become rather usual in the real application of the Regulation

Also to help the procedure being real fast, the Regulation requires the requested court to return back the documents received by the requesting court at the soonest. Where the execution of the request does not fall within the jurisdiction of the court to which it was transmitted, the latter shall forward the request to the competent court of its member state and shall inform the requesting court thereof.

Also aiming to proceed in a smooth and fast way, the request and all documents accompanying the request shall be exempted from authentication or any equivalent formality, same as established by Regulation 1393/2007 (art. 4.4) and Regulation 44/2001 (art 56), which obviously eases the procedure.

Regarding the means of transmission of documents between courts, there is no concrete stipulation in the Regulation, thus leaving to the member states the freedom to establish the list of means they may consider appropriate, always ensuring that the content of the document is accurate and in accordance with the original issued, and that it is fully legible. Most of the member states are using post or courier, but the use of new technologies might be further explored in order to speed up the procedure.

For example, when merely a Form is to be sent, the use of electronic mail could be particularly appropriate. To ensure and warranty the authenticity of the messages, the electronic signature with cryptographic password could be used. Another option could be to set up a European certifying service provider, specifically for the jurisdictional bodies of the member states. But Directive 1999/93/CE on a community framework for electronic signatures [12], establishes that certificates issued by a national certification service provider duly accredited are valid within all European Union (art. 4). Applied this to the communications between courts or judicial bodies means that it will be enough with an electronic signature duly certified by a national certification service provider. Contact points or other members within the European Judicial Network could offer an additional control to those courts willing to check the authenticity of a request.

On the other hand, when additional documentation should be enclosed to a Form, it could be more convenient to send it physically by post or courier. But even in those cases, the request could be sent in advance by fax or electronic mail, in order to make the requested court aware and ready by the time the documents arrive and the evidence has to be taken.

It is to remark that audiovisual files can also be sent by electronic mail, which could be really useful for the requested court to proceed to taking of evidence, or even for the requesting court in order to view the audiovisual records of a taking of evidence requested.

All the advantages from using new communication technology are pointed out in art. 10.4 of the Regulation, which allows the requesting court to ask the requested court to use communication technology at the performance of the taking of evidence, in particular by using videoconference and teleconference.

[12] Directive of the Parliament and the Council 1999/93/CE of 13th December 1999 (OJ L 13th and 19th January 2000)

Concerning the language to be used for the communications, art. 5 of the Regulation establishes that the request and the rest of communications required for the taking of evidence shall be drawn up in the official language of the member state of the requested court. For the sake of the effectiveness and celerity, no translation is required (as in the Hague Conventions of 1954 and 1970) but just the requesting court shall fulfil the form in the foreign language of the requested court. It is noticeable that only the contents of the Form shall be drawn up in foreign language, not the Form itself. This could lead in the practice to a bilingual scheme (form and contents), which should not create major problems to the requested court since it could easily compare the headings at the foreign language form and those at its own language one.

Additionally, each member state shall indicate the official language or languages of the institution of the European Community other than its own which is (or are) acceptable to it for completion of the forms. Some doubts remain on the interpretation of this article, whether it is compulsory or not. They will have to be clarified in an eventual future amendment of the Regulation, making it clearly compulsory. The extension of the European Union to other member states and the subsequent multiplicity of different languages within it make it a must.

Dealing with one single language commonly accepted as the official one for the communications between courts for taking of evidence, could speed up the procedure and save translation costs, which, at the end of the day, are charged to the citizens.

3.2 SCOPE

The Regulation 1206/2001 establishes in its article 22 **the obligation** of Member States to communicate several information. Based on this premise, such information has been published and is periodically updated[13]:

- The consolidated version of the Manual: PDF File 129,436 KB) **(Updated 28.01.2011).**
- Using videoconference - A practical guide (PDF File 114,283 KB).

Furthermore, in **article 23** the Regulation establishes that "*No later than 1 January 2007, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the*

[13] http://ec.europa.eu/justice_home/judicialatlascivil/html/te_documents_en.htm

application of this Regulation, paying special attention to the practical application of Article 3(1)(c) and 3, and Articles 17 and 18."

In this contextual framework, the current Study aims at performing an empirical analysis of application of the Regulation, as we did in 2006-2007 on our previous Study on the application of Council Regulation (EC) N.º 1206/2001, on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. That is, to find out and notify all the circumstances that have occurred in recent years, and the applicability in all Member States, except Denmark.

The Study aims to lead to a synthesis reflecting the problems occurred during its application, as well as the elicitation of those Member States where such problems could have occurred. In particular, of key relevance will be the question whether through the application of the Regulation the cooperation between courts in the taking of evidence has been improved, simplified and accelerated.

The Study tries to reveal all such circumstances, trying to point out proposals that can introduce, if possible, adequate modifications, addressed to an **improvement of this important EU normative instrument.**

3.3 TEAM

For this project, **MainStrat** has counted with the expertise of core legal specialists from the **University of the Basque Country, the University of Deusto and the University of Navarra.**

In particular, **Professors Mr. Juan José Alvarez,** and **Mr. José Luis Iriarte**, as well as doctors **Ms. Marta Casado and Mr. Juan Velazquez** acted as legal assessors in this study.

This study relied on their valuable expertise for the guidance across all project phases, and most importantly, their assessment of the analysis of data gathered, interviews' outcome, and other results.

Furthermore, we counted with the extremely valuable help of a **network of expert contributors** covering all applicable Member States. The list of these experts is included at the Annexes.

3.4 COUNTRY REPORTS

One of the sources for our study has been the drafting of individual Country Reports, made by experts from our Network of Correspondents, covering all applicable Member States. Such Country Reports are included at the Annexes.

3.5 STATISTICAL DATA FROM CENTRAL BODIES

Another source for the Study has been the statistical and estimative data requested to Central Bodies of all applicable Member States. Most have delivered any kind of answer, although, due to the very de-centralising nature of the Regulation, where Central Bodies have less awareness or control about direct interactions between courts, the data provided by most Central Bodies is very limited.

3.6 SURVEYS

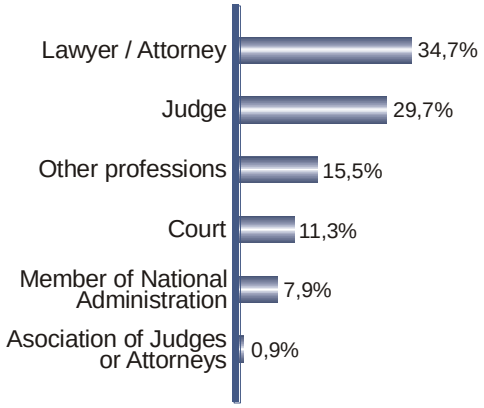
Another of the areas of the Study had the objective of gathering the opinions of both key national experts, as well as general professionals involved in the application of the Regulation. Opinions were gathered by means of two separate questionnaires addressed to different profiles: our expert survey, addressed to European key experts, including many of the EJN (European Judicial Network), and our professionals' survey (also called general survey) globally addressed to different law professionals, such as judges, attorneys, lawyers, court personnel, members of national administrations, and other various professions such as *huissiers de justice, bailiffs, procuradores*, etc.

Concerning the expert survey, e-mail invitations were sent to all EJN members plus other experts, and **60 answers were received.**

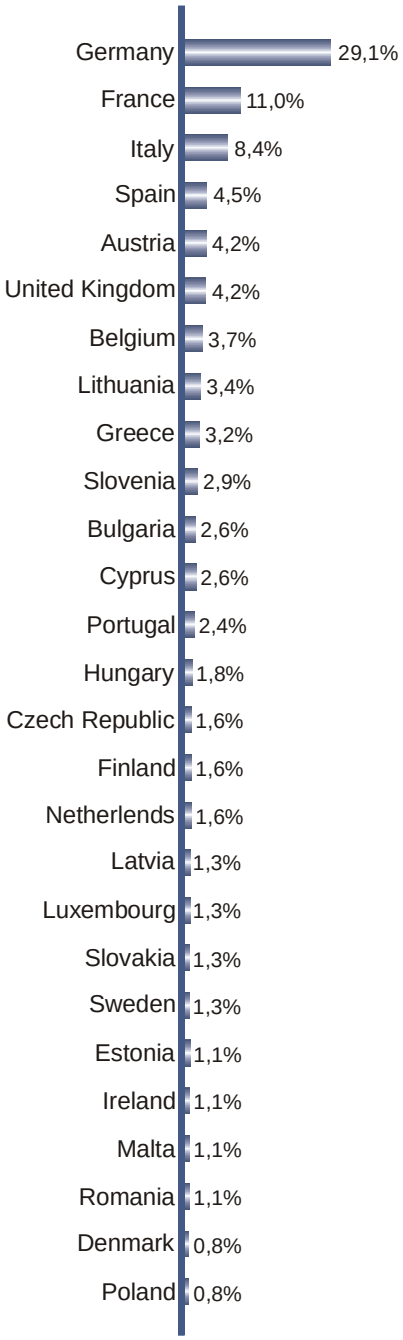
In the case of the professional survey, an invitation to participate was sent to **13.375 professionals** across Europe: central entities of all Member States, transmitting/receiving agencies, interested bodies such as European and National professional associations and legal professions involved in the application of the Regulation. The Survey was carried out over more than one month. For the purpose of this report **380 valid answers received were used for our analysis**..

The distributions of the survey responses by profession and Member State are as follows:

Profile of the participant by Profession (n=380)



Participant by Member State (n=380)



4 EMPIRICAL ANALYSIS

4.1 Statistical data concerning the requests (Article 1(1)(a) and (b) of the Regulation)

Firstly, it should be noted that although all member states where the Regulation applies answered our request for statistical data, which was sent to their Central Bodies, eight states answered that they couldn't supply any data at all on the application of the Regulation. Then, of the other eighteen states, only fifteen provided figures concerning requests.

Secondly, after analysing the figures received, we found extreme differences in the figures provided by these fourteen states. For example, for requests sent, the figures vary from about a dozen requests per year (for the majority of states), to hundreds (Portugal, Germany, Romania). The full set of data received, per state and per year (eleven states provided with data on transmitted requests), is presented below:

Q1. Please indicate the average number of requests to take evidence (approximate global figure) transmitted from your country to other member states in accordance with Article 4 of the Regulation	Cases under Regulation 1206	2006	2007	2008	2009	2010	Total (12 states)
Belgium							
Bulgaria	1 in 2007, 2 in 2008, 13 in 2009, 14 in 2010		1	2	13	14	**30**
Czech Republic							
Germany	670 in 2010					670	**670**
Estonia	1 in 2009, 1 in 2010				1	1	**2**
Greece	0 in all years	0	0	0	0	0	**0**
Spain							
France							
Ireland	1 in 2009, 1 in 2010				1	1	**2**
Italy							
Cyprus	N/A, for all years						
Latvia	29 in 2006, 13 in 2007, 24 in 2008, 9 in 2009, 38 in 2010	29	13	24	9	38	**113**

Lithuania							
Luxembourg							
Hungary	2006-2010: total number 62	12	12	12	12	12	**62**
Malta	2 in 2006, 1 in 2008, 3 in 2009, 4 in 2010	2	0	1	3	4	**10**
Netherlands							
Austria							
Poland							
Portugal	66 in 2006, 146 in 2007, 116 in 2008, 9 in 2009, 2 in 2010	66	146	116	9	2	**339**
Romania	742 in 2007, 515 in 2008, 328 in 2009, 280 in 2010		742	515	328	280	**1865**
Slovenia	40 in 2006, 30 in 2007, 40 in 2008, 54 in 2009, 56 in 2010	40	30	40	54	56	**220**
Slovakia							
Finland							
Sweden							
UK- England&Wales	19 in 2006, 14 in 2007, 9 in 2008, 34 in 2009, 12 in 2010	19	14	9	34	12	**88**
UK- Northern Ireland							
		2006	2007	2008	2009	2010	TOTAL
	Total data per year (12 states)	**168**	**958**	**719**	**464**	**1090**	**3401**
	Estimation (26 states)	**364**	**2076**	**1558**	**1005**	**2362**	**8039**

Legend:

<- A grey cell for country names means that the given country did not submit any information

A grey cell in data fields means that although the country submitted information, it did not complete that cell -->

Then, if we look at the figures for requests received, the differences become even greater, going from less than ten, for many states, to thousands (Czech Republic). The full set of data received, per state and per year (fourteen states supplied data on requests received), is presented below:

Q2. Please indicate the average number of requests to take evidence (approximate global figure) transmitted from other member states to your country in accordance with Article 4 of the Regulation	Cases under Regulation 1206	2006	2007	2008	2009	2010	Total (15 states)
Belgium							

Bulgaria	3 in 2007, 11 in 2008, 26 in 2009, 46 in 2010		3	11	26	46	**86**
Czech Republic	2342 in 2008, 2472 in 2009, 2628 in 2010			2342	2472	2628	**7442**
Germany	1796 in 2010					1796	**1796**
Estonia	3 in 2008, 2 in 2009, 3 in 2010			3	2	3	**8**
Greece	0 in all years	0	0	0	0	0	**0**
Spain							
France							
Ireland	26 in 2006, 52 in 2007, 67 in 2008, 74 in 2009, 32 in 2010	26	52	67	74	32	**251**
Italy							
Cyprus	1 in 2007, 5 in 2008, 5 in 2009, 6 in 2010		1	5	5	6	**17**
Latvia	23 in 2006, 7 in 2007, 3 in 2009, 8 in 2010	23	7	0	3	8	**41**
Lithuania							
Luxembourg							
Hungary	2006-2010: total number 172	34	34	34	34	34	**170**
Malta	3 in 2008, 1 in 2009, 1 in 2010			3	1	1	**5**
Netherlands							
Austria							
Poland							
Portugal	0 in all years	0	0	0	0	0	**0**
Romania	45 in 2007, 89 in 2008, 77 in 2009, 126 in 2010		45	89	77	126	**337**
Slovenia	130 in 2006, 44 in 2007, 113 in 2008, 155 in 2009, 121 in 2010	180	44	113	155	121	**563**
Slovakia							
Finland							
Sweden							
UK- England&Wales	347 in 2006, 332 in 2007, 334 in 2008, 440 in 2009, 397 in 2010	347	332	334	440	397	**1850**
UK- Northern Ireland	11 in 2006, 3 in 2007, 7 in 2008, 11 in 2009, 6 in 2010	**11**	**3**	**7**	**11**	**6**	**38**
		2006	**2007**	**2008**	**2009**	**2010**	**TOTAL**
	Total data per year (15 states)	**571**	**521**	**3008**	**3300**	**5204**	**12604**
	Estimate (26 states)	**990**	**903**	**5214**	**5720**	**9020**	**21847**

Hence, it is difficult to derive any conclusions if we only focus on individual member states. Also, a comparison of the total number of requests sent (3.401) with the total number of the requests received in these countries (12.604) should be subjected to very careful analysis.

However, if we focus on the **trends** of these figures, from a consolidated point

of view, some conclusions can be obtained.

For example, if we analyse the consolidated transmitted requests, and extrapolate for those states that did not provide any data (see next page), we can see that requests to take evidence have a tendency[25] to **increase**, especially in 2010. This growing tendency is also applicable to most states individually.

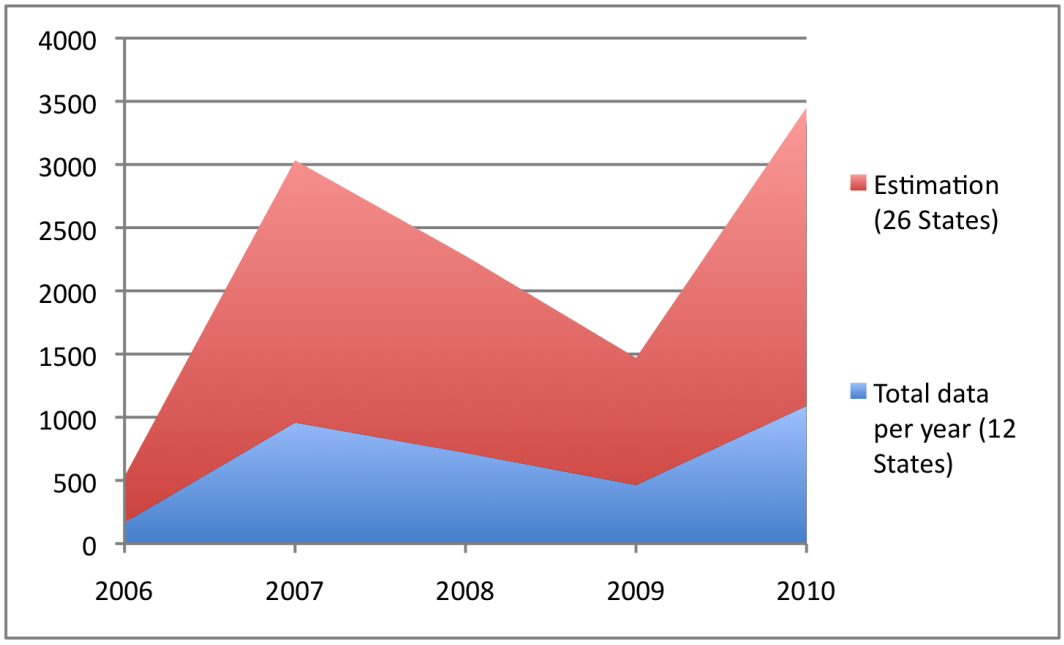


Figure: Number of requests transmitted

Similarly, if we analyse the consolidated requests received, and extrapolate for those states that did not provide any data (see below), we can see that requests to take evidence have a greater tendency[26] to **increase**, especially in 2009 and 2010. This growing tendency is also applicable to many states individually.

[25] Since only 12 member states provided information on this subject, we have extrapolated the amounts per year to the global of 26 applicable member states (red graph).

[26] Since only 12 member states provided information on this subject, we have extrapolated the amounts per year to the global of 26 applicable member states (red graph).

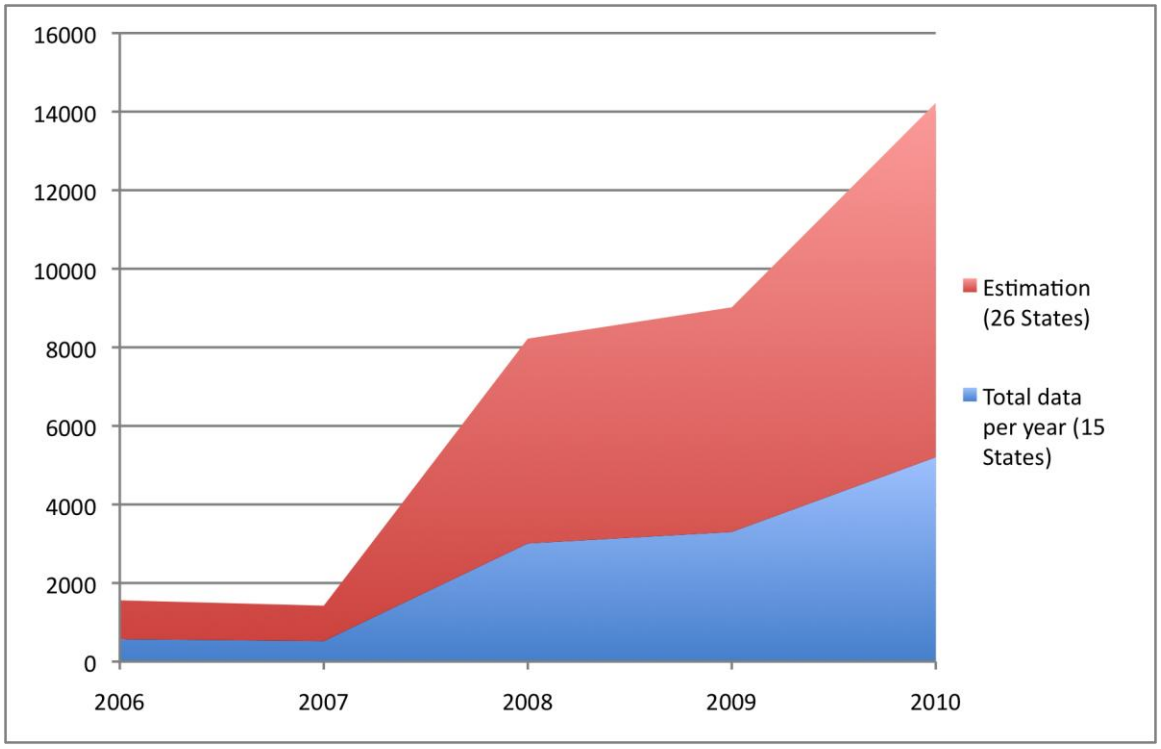


Figure: Number of requests received

Hence, the **increase in requests**, in addition to the fact that there were more than twelve thousand requests sent to 15 member states over the last five years (some **twenty two thousand requests**, if we extrapolate to the other states) lead us to conclude that Regulation 1206/2001 is regularly applied in this context.

However, in view of the above-remark and the answers received, it should not be forgotten that the courts of some countries are gaining greater experience with the application of the Regulation than others.

One consequence of this fact is that a remarkable gap has opened up between member states: some countries' courts are regularly receiving requests and applying the Regulation - which is the best way of getting to know this rule- while other courts are not so used to dealing with this cooperation mechanism. It is difficult to see a reason for these differences.

In the case of states that did not supply any data on this Regulation, a greater effort should be requested by the European Commission, so that this information can be obtained;, while the same recommendation applies to states that did not provide any figures on the numbers of requests. It is hard to believe that eight states are unable

to say anything about the application of the Regulation in their courts and, as for the rest, only fifteen provided figures in response to our request.

As regards the states that offered foreign data, more though research should be done (involving on-site visits to all Central Bodies). Thus, if cross-border relations should theoretically lead to a growth of the need for judicial cooperation (especially in the field of the taking of evidence), even if the proportion between sent and received request would not be quite the same in every country, the differences we have found at the data received are difficult to explain.

4.1.1 Amount of time required for the completion of requests

4.1.1.1 Average figures received

The average figures received vary so much across member states, that it is difficult to compare them, or extract any useful conclusion.

Q3. Could you please indicate the average number of days required for the completion of requests?	when your state is the receiving member state	when your state is the transmitting member state
Belgium		
Bulgaria	48	57
Czech Republic		
Germany		
Estonia		
Greece		
Spain		
France		
Ireland	56	
Italy		
Cyprus	30-60 DAYS	N/A
Latvia	30-90	30-240
Lithuania		
Luxembourg		
Hungary	1-8 months	1-6 months
Malta	200-275 in all years, except 2007 (N/A).	240-300 in all years, except 2007 (0)
Netherlands		
Austria		
Poland		
Portugal	139	190
Romania	3-4 months	5-6 months
Slovenia	60	
Slovakia		

Finland		
Sweden		
UK- England&Wales	154	
UK- Northern Ireland		

Figures by year and for each other member state

Q11. Could you please indicate the average number of days required for the completion of requests?	Belgium	Bulgaria	Czech Republi	Germany	Estonia	Greece	Spain	France	Ireland	Italy	Cyprus	Latvia
Belgium												
Bulgaria	Transmitting: 30 in 2008		Receiving: 60 in 2009. Transmitting: 23 in 2007, 38 in 2008, 7 in 2009, 50 in 2010	Receiving: 105 in 2010. Transmitting: 30 in 2007, 45 in 2008, 47 in 2009, 41 in 2010			Receiving: 120 in 2007. Transmitting: 30 in 2009, 81 in 2010			Receiving: 35 in 2009	Receiving: 150 in 2008	
Czech Republic												
Germany												
Estonia												
Greece												
Spain												
France												
Ireland												
Italy												
Cyprus											Receiving in 2010: 30-45 days	
Latvia												
Lithuania												
Luxembourg												
Hungary												
Malta												
Netherlands												
Austria												
Poland												
Portugal	Receiving: 459 in 2006, 559 in 2007, 402 in 2008, 3 in 2010. Transmitting: 6 in 2008, 168 in 2009	Receiving: 711 in 2008	Receiving: 345 in 2008	Receiving: 555 in 2006, 426 in 2007, 365 in 2008, 97 in 2009 0 in 2010. Transmitting: 68 in 2007, 82 in 2008, 84 in 2009, 82 in 2010	0 in all years	Receiving: 1102 in 2006, 283 in 2007, 0 later	Receiving:680 in 2006, 668 in 2007, 646 in 2008, 156 in 2009, 1 in 2010. Transmitting: 84 in 2006, 293 in 2007, 95 in 2008, 26 in 2009, 86 in 2010	Receiving: 361 in 2006, 335 in 2007, 462 in 2008, 54 in 2009, 1 in 2010	Receiving: 947 in 2006, 482 in 2007, 0 in 2008&9, 2 in 2010	Receiving: 495 in 2006, 464 in 2007, 610 in 2008, 1 in 2009, 0 in 2010. Transmitting: 1307 in 2007, 0 in other years	Receiving: 115 in 2006, 346 in 2007, 0 in other years	Receiving: 48 in 2006. Transmitting: 505 in 2007, 98 in 2008, 0 in other years
Romania												
Slovenia												
Slovakia												
Finland												
Sweden												
UK- England&Wales			Transmitting: 44 in 2008, 54 in 2009, 169 in 2010	Transmitting: 68 in 2008, 128 in 2009, 80 in 2010	Transmitting: 22 in 2009	Transmitting: 71 in 2009, 184 in 2010	Transmitting: 88 in 2008, 51 in 2009, 205 in 2010			Transmitting: 46 in 2008, 52 in 2009, 109 in 2010		Transmitting: 7 in 2008, 31 in 2009, 97 in 2010
UK- Northern Ireland												

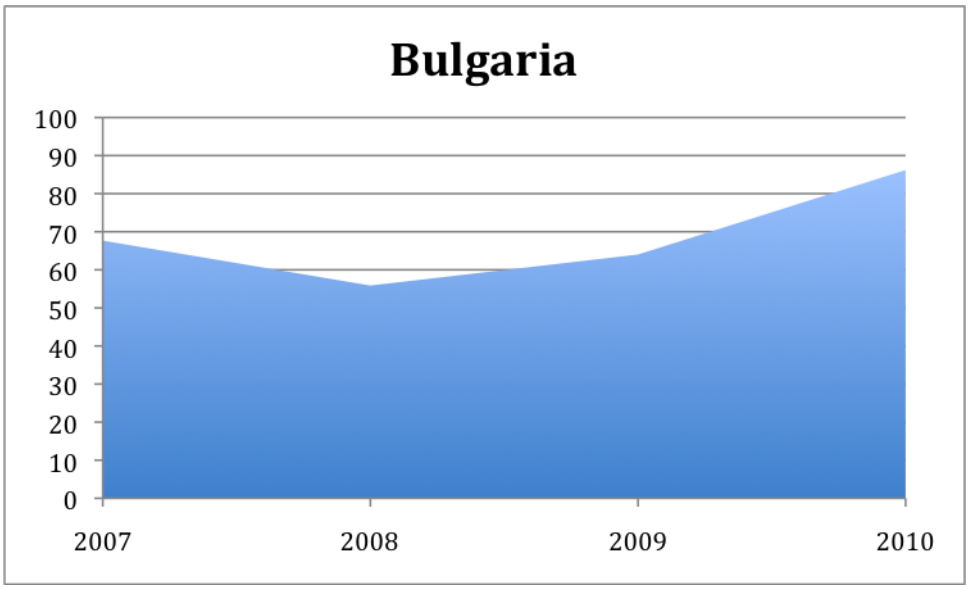
In this table the reader can also see that there are strong differences across member states. Also, many states have not provided with data on this aspect of the application of the Regulation.

Each cell represents the data submitted by the Central Body of the state shown in the FAR LEFT column regarding the number of requests received from and sent to, each of the states shown in the TOP ROW.

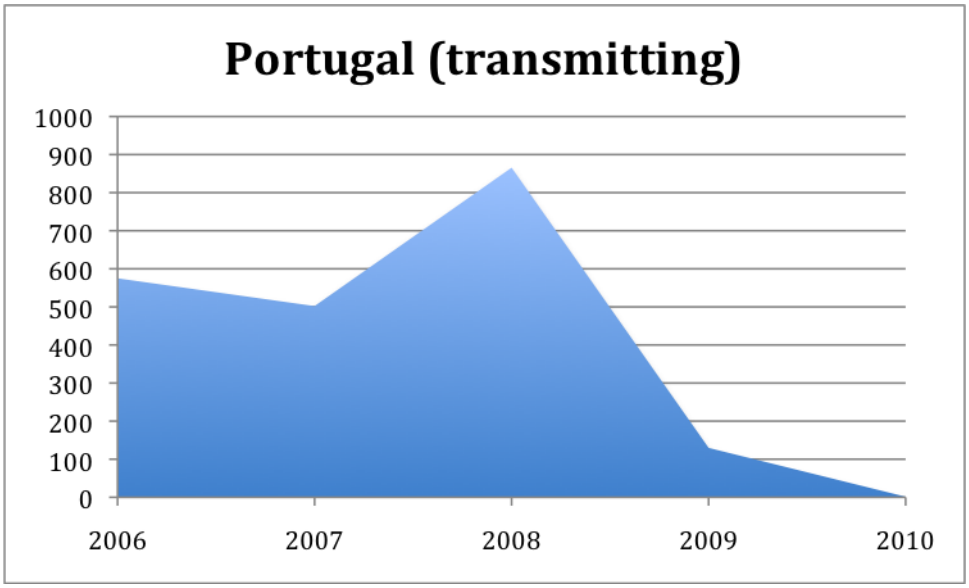
For example, Bulgaria received 105 requests from Germany in 2010, and transmitted 41 to Germany, in the same period.

Q11. Could you please indicate the average number of days required for the completion of requests?	Lithuania	Luxembourg	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	Sweden	United Kingdo
Belgium														
Bulgaria						Receiving: 90 in 2010. Transmitting: 30 in 2007, 88 in 2008, 78 in 2009, 80 in 2010	Transmitting: 30 in 2008, 33 in 2009, 55 in 2010	Transmitting: 10 in 2008, 38 in 2009	Receiving: 180 in 2009. Transmitting: 50 in 2010		Transmitting: 45 in 2009			Receiving: 30 in 2009
Czech Republic														
Germany														
Estonia														
Greece														
Spain														
France														
Ireland														
Italy														
Cyprus														
Latvia							Receiving in 2010: 60-180 days							Receiving in 2009 and 2010: 90-180 days
Lithuania														
Luxembourg														
Hungary														
Malta				Receiving: 200-275 in all years, except 2007 (N/A). Transmitting: 240-300 in all years, except 2007 (0)										
Netherlands														
Austria														
Poland														
Portugal	Transmitting: 1 in 2010	Receiving: 262 in 2006, 168 in 2007, 123 in 2008, 1 in 2009, 1 in 2010	Receiving: 697 in 2007, 1326 in 2008, 0 in other years	0 in all years	Receiving: 683 in 2006, 739 in 2007, 4665 in 2008, 1 in 2009, 0 in 2010. Transmitting: 1180 in 2008	Receiving: 55 in 2006, 522 in 2007, 467 in 2008, 0 in 2009&10. Transmitting: 48 in 2007, 7 in 2009	Receiving: 22 in 2007, 1128 in 2008, 0 in 2009&10. Transmitting: 184 in 2006, 86 in 2007, 0 in other years		Receiving: 535 in 2007, 486 in 2008. Transmitting: 1125 in 2007, 1 in 2009, 337 in 2010	Transmitting: 1 in 2008	0 in all years	Receiving: 253 in 2006, 58 in 2007, 171 in 2008, 0 other years	Receiving: 2082 in 2006, 1676 in 2007, 1319 in 2008, 0 other years. Transmitting: 59 in 2007, 31 in 2008, 648 in 2009, 0 in 2010	Receiving: 529 in 2006, 556 in 2007, 623 in 2008, 340 in 2009, 1 in 2010. Transmitting: 16 in 2008
Romania														
Slovenia						Transmitting: 60 in 2006				Receiving: 22 in 2006, 10 in 2007, 22 in 2008, 22 in 2009, 33 in 2010. Transmitting: 5 in 2006, 3 in 2007, 11 in 2008, 5 in 2009, 4 in 2010				
Slovakia														
Finland														
Sweden														
UK- England&Wales	Transmitting: 19 in 2008, 85 in 2009,		Transmitting: 151 in 2010	Transmitting: 93 in 2009		Transmitting: 84 in 2008, 120 in 2009, 168 in 2010	Transmitting: 138 in 2008, 65 in 2009, 154 in 2010	Transmitting: 66 in 2008, 62 in 2009, 155 in 2010	Transmitting: 98 in 2008, 14 in 2009, 28 in 2010	Transmitting: 37 in 2008, 304 in 2009	Transmitting: 11 in 2008, 48 in 2009, 165 in 2010		Transmitting: 108 in 2009	
UK- Northern Ireland														

In order to arrive at a multi-year analysis, we have focused on the three member states that provided more detailed answers on this subject: Bulgaria, Portugal, and the UK. Graphical annual averages are presented below:

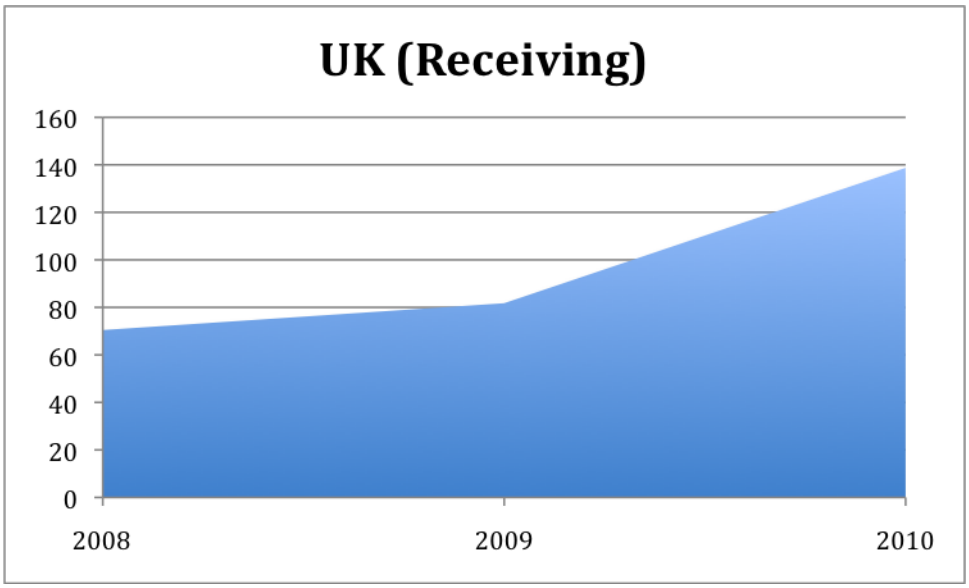


For Bulgaria, we have averaged the number of days both when Bulgaria is the receiving or the transmitting state. The total number of days decreases in 2008, and by 2010 exceeds the value of 2007.



For Portugal, we have averaged the number of days for requests being Portugal the transmitting state (since there was very scarce data for the receiving situation). The total number of days increases in 2008, and by 2010 reaches 1.5 days. This graphic behaves in a manner exactly opposite to the

one for Bulgaria.



For the UK (England&Wales), we have averaged the number of days for requests being UK the receiving state (since there was very scarce data for the transmitting situation). The total average number of days increases in 2009 and 2010.

Hence, it is difficult to extrapolate solid conclusions here. In any case, we see that the average amount of time required for the completion of requests exceeds the limit of 90 days established in Art. 10.1, for several states.

Therefore, an effort should be asked to reduce the time of answering. We note that in the opinion of the experts consulted the effectiveness of the requesting and requested courts in fulfilling their tasks under the Regulation has quite considerable room for improvement (see Q9 of the professional survey).

4.2 Requesting and requested courts (Article 2)

If the effectiveness of the requesting and requested courts were to fall to a low level, could be a problem as regards the application of Regulation 1206: this is because these courts form the cornerstone of the system set up by the Regulation.

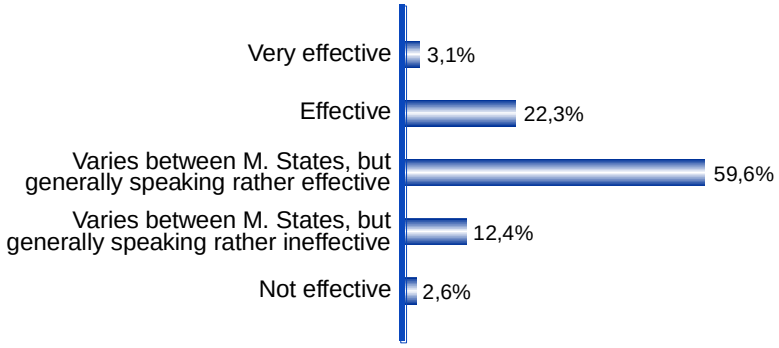
Not only should states or Central bodies have a high level of confidence in the solutions proposed by the Regulation but the interacting courts also should be able to trust each other. It is understandable that the courts of different countries might experience communication difficulties owing to their varying foreign language capacities; or even owing to electronic infrastructure differences among member states. On the other hand, loss of trust in the system's effectiveness makes it unsustainable in the long run.

Requests should be properly completed within a reasonable time. This means that courts should make every effort to carry out the reception of evidence requested and give punctual and accurate information about the action taken.

The effectiveness of the requesting and requested courts in fulfilling their tasks under Regulation is considered to be **somewhat effective** by the professionals consulted (380 professionals – mainly lawyers, judges, court personnel, and personnel from national administrations across Europe-). Neither the EJN experts consulted, nor any of the national experts within our own network stated the contrary in any of their reports.

Only 15% of the consulted professionals consider that central bodies are ineffective or somewhat ineffective, while 85% consider that it is effective, very effective, or somewhat effective.

QUESTION 3: How effective are central bodies in supplying information to courts and seeking solutions to any difficulties which may arise in respect of a request?



The 15% who do not agree mainly cite the following reasons:

- Low level of knowledge of foreign languages by the courts;
- Lack of information about the Regulation (judges are unfamiliar with it);
- Poorly organised communications (sometimes it is difficult for a lawyer or a judge to know the precise name, telephone number or e-mail address of a person responsible).

These three simple reasons may degrade the effectiveness of any Regulation, the implementation of which relies on judicial cooperation.

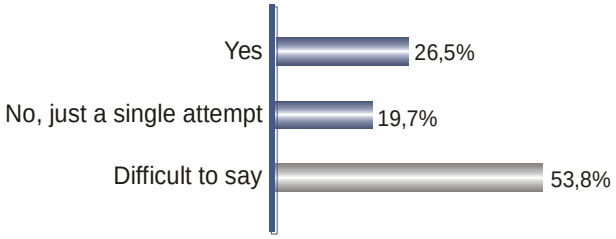
The varying levels of foreign language knowledge in courts could be interpreted as an expression of national cultural differences. However, it may be useful to suggest to those recruiting judges and court staff in member states that they take into account candidates' foreign language skills when filling these positions.

Furthermore the Regulation should be just as familiar to courts, lawyers and court personnel as their own national rules of procedure. Lack of information is unacceptable where a rule currently in force is concerned. It may well be helpful for national authorities to organise compulsory seminars and training for judges and court personnel in order to close this information gap, thereby reinforcing other Commission initiatives in this area.

The **introduction of direct court-to-court contacts has not caused specific problems**. Only 10.3% of the interviewees do not agree with this statement and, once again, their disagreement is backed up by the aforementioned reasons.

QUESTION 11: Has the introduction of direct court-to-court contacts caused specific problems? If so, which?

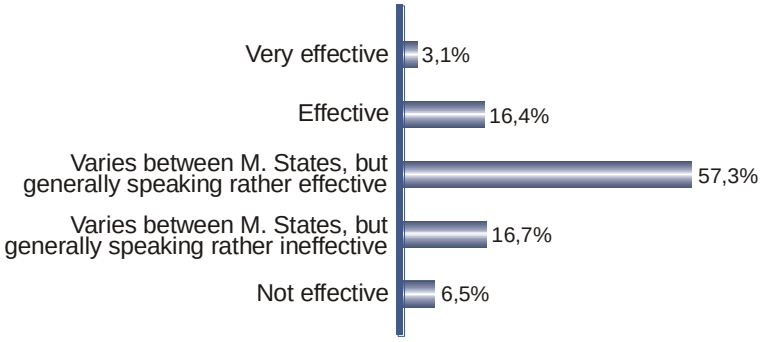
Finally, no conclusive data suggests that in general courts will make more than a single attempt to hear a witness. Although 26.5% of the interviewees think this is the case, 53.8% consider it difficult to tell. Whatever the truth, this statistic is important, insofar as it demonstrates the level of trust in the judicial system. Essentially, it is crucial for all legal personnel to believe that judges are prepared to make every effort to accomplish the taking of evidence.



4.3 Central bodies (Article 3)

We see major differences in the data emanating from Central Bodies, both in relation to the figures they supply and the fact that many states have not provided any data at all on this aspect of the Regulation's implementation (as demonstrated by the statistics shown under 4.1 above)

According to the results derived from the professionals consulted, the **effectiveness of central bodies seems to be fairly high** (only 24.2% of the interviewees consider that they are not effective or only somewhat ineffective).



However, this result should be treated with some caution. As stated previously, the data provided by Central bodies inconsistent in places, and not all Central Bodies were willing to provide us with the data requested. At the same time, some comments made by the EJN experts consulted questioned the effectiveness of the authorities involved in applying the Regulation. They pointed out that the lack of effectiveness could be related to a lack of training in the application of Regulation 1206 or with a lack of knowledge about it in general. In this sense, it should be noted that major differences do exist across states; with some states reporting less than ten requests per year, and others hundreds and even thousands per year.

Anyway, as we mentioned at 4.2 above, trust is an important factor when it comes to any improvement in the Regulation's implementation. For this reason, Central Bodies should be trustworthier and their effectiveness should not be capable of being brought into question; especially in cases where any criticism is based on lack of training on application of the Regulation or on lack of knowledge in general.

In any case, it is undeniable that Regulation 1206/2001 is being applied on a regular basis: this conclusion is supported by the fact that there were over 12,000 requests sent by only 14 states in the course of the last five years, and that the rate of requests actually accelerated in both 2009 and 2010.

4.4 Forms

There are **no major problems** associated with the use of forms, as the reader will see below. The standard forms were commonly understood and filled out without difficulty.

QUESTION 5: Has the practical application of the forms caused any problems? If so, which forms? Why?

However, the 10.8% of interviewees who consider that the practical use of the forms has caused problems, state the following common reasons:

- courts do not fill in the forms properly, either leaving gaps or using their own phraseology;
- There are some items that can lead to mistakes (e.g. Form A. 1. Reference number of the requesting court; Form A 12.3 Other taking of evidence; Form A. 14. …);
- Some items can be difficult for courts to understand, especially as they include a lot of repetitions (especially Form I and Form E);
- A field for reasons of refusal could be added at Form H (e.g.: false address or unknown person). CAN'T UNDERSTAND THIS SENTENCE

Moreover, the **language used has not caused any major problems**.

QUESTION 6: Has the language regime caused any problems? If so, on which forms? Why?

Only 8.5% of the interviewees report problems, which are mainly related to the cost of translations and the low quality of those translations. In any case, there are still cases in which forms are submitted in the language of the requesting court.

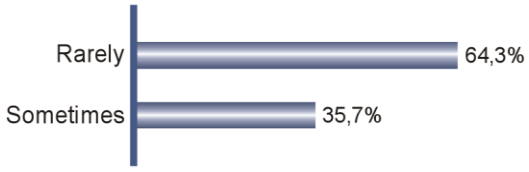
One problem, not strictly relating to the use of standard forms, is the translation of documents sent by requesting courts, which need to be read by the interested party before evidence can be taken . This problem may arise in particular in cases involving legal aid. Here too, we come up against the issue of foreign language knowledge–or at least, at varying levels of foreign language knowledge- and the cost of translation.

4.5 Use of communications technology

The Regulation has not improved the use of communications technology in any meaningful way. courts will make use of such technology, provided they have the requisite technical equipment at their disposal. In any case, bottlenecks in this area do not relate to differences in national legislation but to the **absence of technical equipment** in the courts of some member states, and to the cost of its installation and use. In fact, regarding the lack of legal barriers, we can say that at several states there are no national legal rules concerning point; however, this does not necessarily mean that the taking of evidence could not be performed through communications technology.

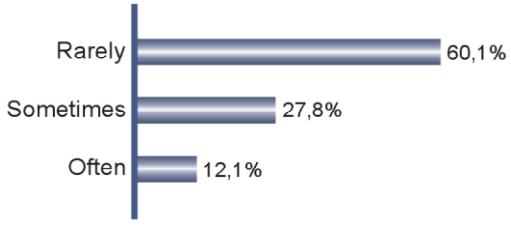
Communications technology is rarely used for the taking of evidence. In general, courts will only resort to video conferencing for witness or expert testimony when these persons are a great distance away from the court.

QUESTION 7: How frequently is communications technology used for the taking of evidence? If so, with which types of request is it used?



Requested courts do not normally ban the use of communications technology for evidentiary reception purposes, according to 87.9% of the professionals consulted.

QUESTION 8: How frequently do requested courts refuse to make use of communications technology for the taking of evidence?



Apart from a lack of communications equipment, no major problems of

implementation arise in this area.

Regarding the electronic transmission, it seems that as the transmission of documents under the Taking of Evidence Regulation is carried out between competent authorities, there is no reason why both requests and the dispatch of the requested evidence cannot be accomplished electronically. The use of e-mail can only help to speed up this process. Problems regarding the service of documents such as dates, authentication and consent are not relevant here. Any communication with witnesses and other citizens is performed by the requested member state in compliance with its own procedural rules. These are entirely domestic matters, to which problems surrounding cross-border service do not apply, and are irrelevant in any case.

We can conclude that, despite serious efforts being undertaken by the Commission to spread the use of new communication technologies (for example, seminars on European e-Justice are organised for the Presidency of the Council every year) and despite their broad potential in the field of justice, national courts are not making full use of these opportunities.

A major gap could open up between countries if a common strategy is not implemented and developed within a short period, so as to disseminate the use of videoconferencing within the scope of the European e-Justice Action Plan. Such a gap could jeopardise not only the proper implementation of the Regulation, but also the provisions of the Stockholm Programme.

We hope that the future plans to improve the use of videoconferencing that seem to be ongoing (according to the e-justice portal) will bring about regular use of videoconferencing and other communication technologies.

4.6 Performance with the presence and participation of representatives of the parties or of the requesting court

The Regulation (Art. 11) refers to national legislation of member states on this subject.

Differences in national procedural rules relating to permitted participation by the parties or their representatives in the taking of evidence may lead

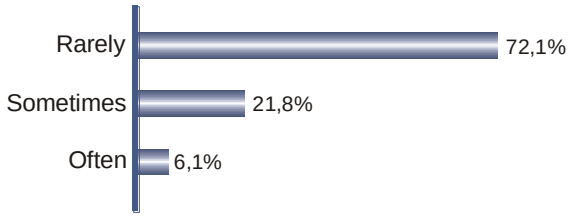
to problems as regards exercise of the right to effective judicial protection (Therefore, problems may also arise with enforcement of a foreign resolution, which may have been obtained the parties having been permitted to participate in the taking of evidence whenever a member state does not allow this option). However, all member states permit the parties or their representatives to be present at the taking of evidence. Hence, harmonisation is not necessary in this area, even if the conditions governing participation may be different across member states.

Again, the use of new communication technologies is of great importance as an alternative to physical presence; being simpler, more cost-effective and facilitating the presence of the parties and their representatives.

4.7 Refusal to execute

The execution of a request **is rarely refused** on the grounds of the data protection, according to the opinion of 72.1% of the professionals consulted.

QUESTION 10: How frequently is the execution of a request refused on grounds of data protection?



The main causes of refusal to implement a request are: wrong or incomplete information, and if implementation of the request does not fall within the functions of the judiciary under the law of the requested court.

4.7.1 Data from Central Bodies

We considered it useful to add to our study any figures available from Central Bodies on the numbers of requests rejected. However, owing to the very small number of data received, only very sketchy findings can be made.

The answers gathered appear in the following table. Here, the left column shows the number of requests for the reception of evidence, as received by each of the states and also the number of rejections to such requests. For example, Bulgaria received two requests in 2007, and did not reject any; while it received ten requests in 2009, and rejected two of them.

Q5. Please indicate the proportion of requests and rejections cross-border requests thereof by the requested court; i.e. under Section 3 of the Regulation	**Number of requests for taking of evidence by the requested court**	**Number of rejections for taking of evidence by the requested court**
Belgium		
Bulgaria	2 in 2007, 3 in 2008, 10 in 2009, 27 in 2010	2 in 2009, 5 in 2010
Czech Republic		
Germany		
Estonia		
Greece	0 in all years	0 in all years
Spain		
France		
Ireland		22 in 2007, 11 in 2008, 6 in 2009, 38 in 2010
Italy		
Cyprus		
Latvia		
Lithuania		
Luxembourg		
Hungary	2006-2010: total number 147	2006-2010: total number 27
Malta		
Netherlands		
Austria		
Poland		
Portugal	6 in 2006, 27 in 2007, 19 in 2008, 22 in 2009, 10 in 2010	
Romania		
Slovenia	9 in 2006, 7 in 2007, 2 in 2008, 7 in 2009, 9 in 2010	

Slovakia		
Finland		
Sweden		
UK- England&Wales	198 in 2008, 337 in 2009, 257 in 2010	75 in 2008, 71 in 2009, 75 in 2010
UK- Northern Ireland	100%. All years	0. All years

We have also provided a graphical representation of data from states where percentage rates can be calculated (see graphic below). Again, results are not conclusive.

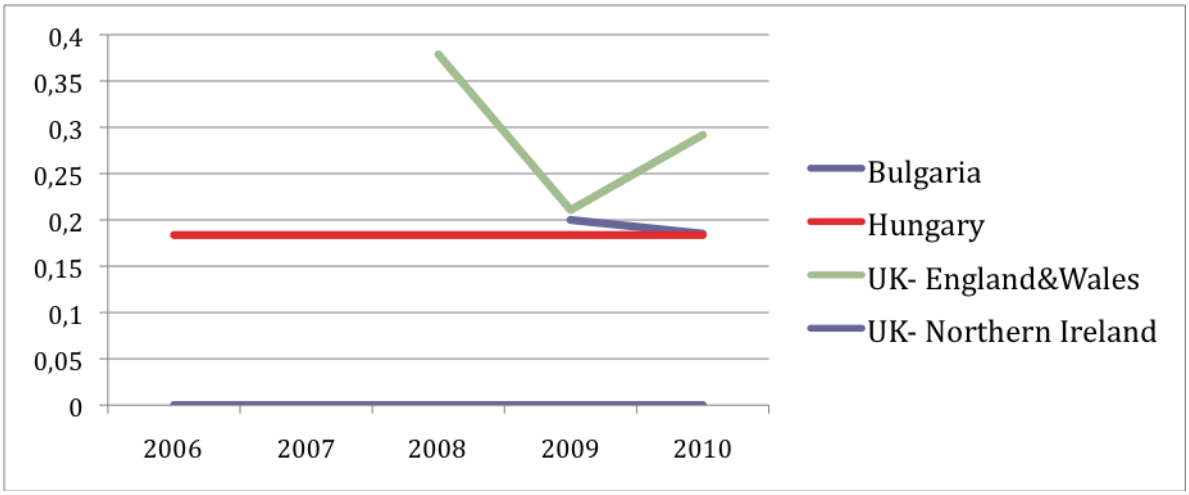


Figure: Percentages of rejections vs requests, for 2006-2010, in selected states

Finally, we also presented the following question to Central Bodies, most of which did not answer it; hence, the results obtained are extremely unclear.

Q4. Please indicate the proportion of rejections for cross-border requests for the taking of evidence as compared to domestic requests	**Number of rejections for cross-border requests**	**Number of rejections for domestic demands**
Belgium		
Bulgaria	1 in 2007, 2 in 2009, 13 in 2010	1 in 2007, 2 in 2009, 6 in 2010
Czech Republic		
Germany		
Estonia		
Greece	0 in all years	0 in all years

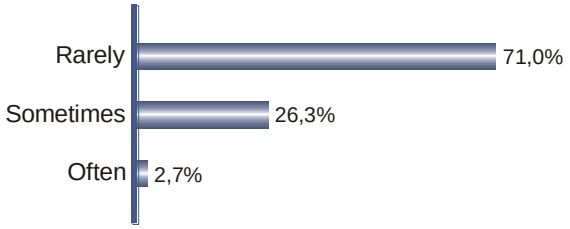
Spain		
France		
Ireland		
Italy		
Cyprus		
Latvia		
Lithuania		
Luxembourg		
Hungary		
Malta	0 in all years	
Netherlands		
Austria		
Poland		
Portugal		
Romania		
Slovenia	18 in 2006, 7 in 2007, 9 in 2008, 17 in 2009, 22 in 2010	
Slovakia		
Finland		
Sweden		
UK- England&Wales		
UK- Northern Ireland	None. All years	None. All years

Legend: the middle column contains the number of rejections for cross-border requests issued by the country in the left-hand column for each year. The right-hand column contains the number of rejections for domestic demands issued by the country in the left-hand column for each year

4.8 Direct taking of evidence by the requesting court (Article 17)

- The direct taking of evidence is **rarely used**, according to 71% of the professionals consulted. The number of requests for the direct taking of evidence, under Article 17, is much lower than the other types of requests we analysed above. Most direct taking of evidence is accomplished by videoconference for the purpose of obtaining witness or expert testimony.

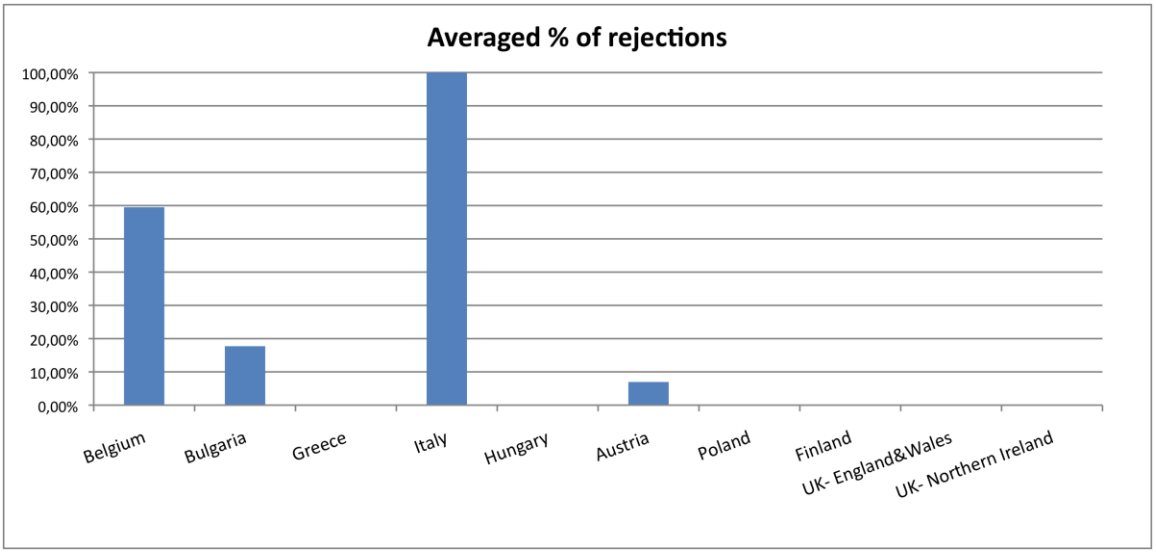
QUESTION 12: How frequently is this method of taking evidence used? In what types of requests?



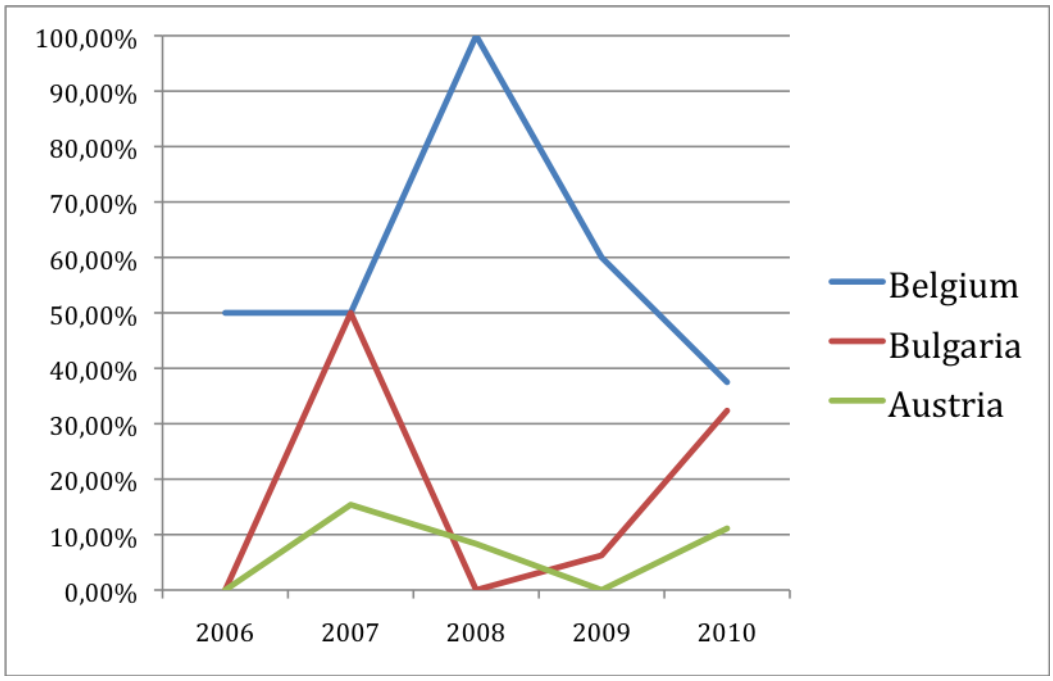
- The low level of use of this method for the taking of evidence leads us to conclude that it has not so far helped to improve the taking or evidence, nor it has amounted to a relevant factor in the simplification or acceleration of these processes.
- The reasons behind this situation are mainly the low level of knowledge of foreign languages among judges, which is probably sufficient to understand and fill in a form, but not sufficient for taking evidence from witnesses or experts. The use of videoconferencing is also limited in several countries for technical reasons. Furthermore, judges are not used to it and they still prefer traditional methods, such as asking the requested court to take the evidence.
- On a positive note, the ratio of requests to rejections is fairly low (apart from in Italy, which, amazingly, has a 100% of rejection rate, Belgium with 59% and Bulgaria with 18%).

4.8.1 Data from Central Bodies

If we analyse the average values for each country across the five years under analysis, we find that in general the rejection rate is low for all member states, except Italy and Belgium.



We now analyze the three states displaying the most multi-year fluctuations: Belgium, Bulgaria and Austria. As the reader can see from the graph below, their behaviour is quite different. Hence, no conclusions can be obtained here.



The full data received, per state and per year, is presented below:

Q6. Please indicate the proportion of requests and rejections for cross-border requests for taking of evidence directly, that is, under Section 4 of the Regulation	**Number of requests for taking of evidence directly**	**Number of rejections for taking of evidence directly**	2006	2007	2008	2009	2010	Total (14 states)
Belgium	2 in 2006, 2 in 2007, 4 in 2008, 5 in 2009, 8 in 2010	1 in 2006, 1 in 2007, 4 in 2008, 3 in 2009, 3 in 2010	50.00%	50.00%	100.00%	60.00%	37.50%	59.50%
Bulgaria	2 in 2007, 3 in 2008, 16 in 2009, 34 in 2010	1 in 2007, 1 in 2009, 11 in 2010	0	50.00%	0	6.25%	32.35%	17.72%
Czech Republic								
Germany								
Estonia	3 in 2008, 2 in 2009, 3 in 2010							
Greece	1 in 2006, 1 in 2008, 2 in 2009, 2 in 2010	0 in all years	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Spain								
France								
Ireland		2 in 2010						
Italy	3 in 2009, 13 in 2010	3 in 2009, 13 in 2010	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Cyprus								
Latvia								
Lithuania								
Luxembourg								
Hungary	2006-2010: total number 15	2006-2010: total number 0	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
Malta								
Netherlands								
Austria	3 in 2006, 13 in 2007, 12 in 2008, 14 in 2009, 18 in 2010	2 in 2007, 1 in 2008, 2 in 2010	0,00%	15,38%	8,33%	0,00%	11,11%	6,97%
Poland	3 in 2008, 2 in 2009, 5 in 2010	0 in all years	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
Portugal	0 in all years							
Romania								
Slovenia	1 in 2010							
Slovakia								
Finland	3 in 2006, 11 in 2007, 6 in 2008, 17 in 2009, 14 in 2010	0 in all years	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Sweden								

UK-England&Wales	22 in 2010	0 in 2010					0.00%	0.00%
UK- Northern Ireland	100%. All years	0. All years	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Table legend:	The amount, for each year, of requests to take evidence directly, received by the country in the left column.	The amount, for each year, of rejections to take evidence directly, issued by the country in the left column.	Percentage requests/rejections, for each year (ratio of the two columns at the left)					Average percentage across the analysed period

As the reader can see in the table above, the direct taking of evidence is rarely used in cross-border requests.

Full data set - interactions by every member state

Q14. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence directly, that is, under Section 4 of the Regulation	Belgium	Bulgaria	Czech Republi	Germany	Estonia	Greece	Spain	France	Ireland	Italy	Cyprus	Latvia	Lithuan	Luxembou	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	Sweden	UK
Belgium	Requests:2 in 2006, 2 in 2007, 4 in 2008, 5 in 2009, 8 in 2010. Rejections:1 in 2006,1 in 2007, 4 in 2008, 3 in 2009, 3 in 2010																									
Bulgaria				Requests: 20 in 2010. Rejections: 5 in 2010														Requests: 1 in 2009			Requests: 2 in 2009					
Czech Republic																										
Germany																										
Estonia																										
Greece																								Requests: 1 in 2006	Requests: 1 in 2008, 2 in 2009, 2 in 2010	
Spain																										
France																										
Ireland																										
Italy				Requests: 1 in 2010. Rejections: 1 in 2010			Requests: 1 in 2010. Rejections: 1 in 2010											Requests: 1 in 2010. Rejections: 1 in 2010	Requests: 1 in 2010. Rejections: 1 in 2010		Requests: 4 in 2010. Rejections: 4 in 2010		Requests: 1 in 2010. Rejections: 1 in 2010		Requests: 3 in 2009, 4 in 2010. Rejections: 3 in 2009, 4 in 2010	
Cyprus																										
Latvia																										
Lithuania																										
Luxembourg																										
Hungary																										
Malta																0 all years										
Netherlands																										
Austria			Requests: 2 in 2007, 2 in 2008, 1 in 2010. Rejections: 1 in 2008	Requests: 2 in 2006, 5 in 2007, 5 in 2008, 6 in 2009, 8 in 2010. Rejections: 2 in 2007						Requests: 1 in 2010							Requests: 3 in 2007, 3 in 2008, 2 in 2009, 4 in 2010. Rejections: 1 in 2010		Requests: 1 in 2010. Rejections: 1 in 2010				Requests: 1 in 2009, 1 in 2010		Requests: 1 in 2006, 3 in 2007, 2 in 2008, 4 in 2009, 2 in 2010	
Poland							Requests: 2 in 2010													Requests: 2 in 2010					Requests: 2 in 2008, 1 in 2009	
Portugal	Requests: 1 in 2008	Requests: 0 in all years	Requests: 0 in all years	Requests: 5 in 2006, 23 in 2007, 8 in 2009	Requests: 0 in all years	Requests: 0 in all years	Requests: 37 in 2006, 50 in 2007, 48 in 2008, 4 in 2009, 1 in 2010	Requests: 11 in 2006, 43 in 2007, 31 in 2008, 4 in 2009, 0 in 2010	Requests: 2 in 2007	Requests: 5 in 2007, 3 in 2008	Requests: 0 in all years	Requests: 0 in all years	Requests : 0 in all years	Requests: 2 in 2007, 3 in 2008	Requests: 0 in all years	Request s: 0 in all years	Requests: 3 in 2006, 5 in 2007, 2 in 2008	Requests: 0 in all years	Requests: 0 in all years		Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 10 in 2006, 16 in 2007, 20 in 2008, 1 in 2009, 1 in 2010
Romania																										
Slovenia																										
Slovakia																										
Finland	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 1 in 2010. Rejections: 0	Requests: 1 in 2010. Rejections: 1	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests : 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Request s: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	NA	Requests: 3 in 2006, 11 in 2007, 6 in 2008, 17 in 2009, 12 in 2010. Rejections:0	Requests: 0 in all years
Sweden																										
UK- England&Wales																										
UK- Northern Ireland																										Requests: 100%. Rejections: 0. For all years.

Table: each cell shows the number of requests/rejections for cross-border requests for the direct taking of evidence, made/received by the state in the left column, towards each of the states in the top columns

4.9 Costs (Article 18)

- A distinction should be made between the concept of "taxes and costs" used by Article 18.1 and the concept of procedural expenses. "Taxes and costs" are zero, except for fees payable to experts and interpreters. However, when a special procedural form is requested, the remaining procedural expenses must be paid.

- According to the results yielded by our country reports (drafted by our Network of national correspondents), within the European Union different legal systems coexist regarding the distribution of these expenses. There is a uniform rule in all member states, according to which the party that looses the case has to cover the expenses generated: experts, payment of witnesses, reports...

- The scope of this concept differs across member states, and it seems difficult to divine a common thread in this regard.

- Potential improvements in the costs system might be:

  1. The cost of assistance under Article 18.2 should be known in advance: minimum and maximum levels could be set, between which the requested court's deposit would have to be fixed.

  2. Clear information about international bank codes (IBAN and BIC code) and VAT identification numbers should be available on the Commission's web pages, making it easier and faster to transfer the required sum for the service.

5 LEGAL ANALYSIS

5.1 DEFINITION OF PROOF

5.1.1 National definitions of proof

The concept of evidence is not defined by Regulation 1206/2001, as is pointed out in the *Practice Guide for the Application of the Regulation on the Taking of Evidence.*

In order to be able to determine the material scope of the Regulation as accurately as possible, it must therefore be defined. The importance of such a definition resides in the diversity of member states' national laws, which often adopt different approaches to the meaning of the word "evidence".

Considering the various national rules of procedure involving some concept of evidence, it is possible to distinguish those member states whose laws define the concept of evidence from those that do not. The former (which are considerably fewer in number than the latter) include Slovenia[27], Estonia[28], Latvia[29] and Lithuania[30].

Other member states have no legal definition of evidence, although they all make use of criteria from which the concept may be deduced: Some of them

[27] In the Civil Procedure Act (Official Journal of RS, no. 73/2007 – third official consolidated text and later changes) under Articles 212 to 263. Some specific acts in certain areas of law (*lex specialis,* for example *the Heritage Act, the Non-Litigious Procedure Act*) stipulate a number of additional or different rules on the taking of evidence, and thus makeg *the Civil Procedure Act lex generalis.*
Proof is defined as all methods of cognizing conclusive (decisive) facts. The process of taking evidence therefore extends to all facts relevant to the decision at hand (Article 213, paragraph 1 of *the Civil Procedure Act*). Any decision regarding which proposed evidence should be introduced, with aim of determining conclusive facts, is at the discretion of the presiding judge (Article 213, paragraph 2 of *the Civil Procedure Act*). Further, legal theory makes a distinction between*three different categories of proof in this area:*

-Main proof (probatio): is proof used to prove theparties' assertion of conclusive facts; hence it is proofthat all elements or legal facts of a state of affairs (actual situation) on which the use of a particular substantive rule depends apply;
-Proof to the contrary (refutatio): the main function of this is to challenge facts proved by main proof. This will be successful only if the probative value of the proof to the contrary is equal or greater than the probative value of the main proof
- Proof of conflict: this proof challenges certain legal assumptions or alleged conclusions *(tesis)* .

[28] Subsection 1 of section 229 of the Code of Civil Procedure: "Evidence in a civil matter is any information which is in a procedural form provided by law and on the basis of which the court, pursuant to the procedure provided by law, ascertains the existence or lack of facts on which the claims and objections of the parties are based and other facts relevant to the just adjudication of the matter."

[29] Section 92 of the Civil Procedure Law of Latvia prescribes that "[e]vidence is information on the basis of which a court determines the existence of non-existence of such facts that are significant in the adjudicating of the matter".

[30] Part 1 of Article 177 of the Code of Civil Procedure of the Republic of Lithuania: "Evidence in a civil case is any factual data, in accordance with which, the court ascertains that there are circumstances justifying the requirements or replications of the parties, and other factors, which
are important for solving the case."

define the subject of evidence (Luxembourg[31], Poland[32], Portugal[33]); while others publish a list (incomplete) of the most relevant evidentiary methods (Germany, Bulgaria, Czech Republic, Slovakia[34], France, Ireland) from which the concept of evidence can also be deduced[35]. In the remaining member states, it can be stated that a definition of evidence can be inferred by case law on a case-by-case basis; this is subject, however, to the final criteria that are to be applied for the taking of evidence during proceedings[36] and any presumptions affecting the burden of proof[37].

Member state	**Definition of proof**
Belgium	Only methods of taking evidence are referred to
Bulgaria	Only methods of taking evidence are referred to
Czech Republic	Only methods of taking evidence are referred to
Germany	Only methods of taking evidence are referred to
Estonia	Yes
Greece	No
Spain	No
France	Only methods of taking evidence are referred to
Ireland	Only methods of taking evidence are referred to
Italy	No
Cyprus	No
Latvia	Yes

[31] Under Section 4 "Proof", and more specifically under Article 58 NCPC, "each party must prove legally all facts capable of substantiating its assertions".

[32] Art. 227-234 of the Polish Code of Civil Procedure contains regulations governing proof. Art. 227 describes what can be the subject to proof: "The subject matter of evidence shall be facts significant to the decision in the case."

[33] According to the Art. 341. º of the Portuguese Civil Code (C.C.) proof is used to demonstrate the reality of the facts. The notion of facts relevant to this definition results from the Art. 513.º of the Portuguese Civil Procedure Code (C.P.C.), which concerns the object of proof and mentions that the object of proof are the facts relevant to the exam and decision of the cause that are controverting or needed of proof.

[34] By way of example only, we cite Art. 125 Code of Civil Procedure („CPC") – Act. Nr. 99/1963 Coll. as amended: "Means of proof are any means that enable the facts to be established, in particular examination of witnesses, expert opinions, reports and statements of bodies and legal persons, documents, inspection and examination of the parties. Where the method of examination of evidence is not prescribed, it shall be determined by the court".

[35] They will be analysed in the following section.

[36] In the case of Cyprus, for example, The Evidence Law Cap 9, as amended by Law No 42/1978, Law No 86/1986, Law No 54(I)/1994, Law No. 94(I)/1994, Law No. 32(I)/2004 and Law No. 108(I) of 2006, ("Evidence Law") does not specifically prescribe a definition of the term evidence, although any type of evidence that is accepted pursuant to the provisions of the Evidence Law and the rules of evidence that were applicable in England on 5 November 1914 are accepted.
In the case of Austria (Art. 272 of the Rules of Civil Procedure-) the principle of free assessment of evidence is enacted.

[37] In Finland there is no exact definition of "proof". The claimant is simply under a duty to "prove" his case "in full". In practice, the level of proof required depends on the case at hand and on such factors as the rules governing the burden of proof.
In Belgian law there is no legal definition of proof. There are rules concerning the burden of proof (e.g. Art. 1315 Civil Code and Art. 870 Code of Civil Procedure) and rules on the probative value of the different of evidentiary methods, however (e.g. Arts. 1317-1369 Civil, Art. 25 Commercial Code, …)

Lithuania	Yes
Luxembourg	Only the object of the proof
Hungary	No
Malta	No
Netherlands	No
Austria	No
Poland	Only the object of the proof
Portugal	Only the object of the proof
Romania	No
Slovenia	Yes
Slovakia	Only methods of taking evidence are referred to
Finland	No
Sweden	No.
UK- England&Wales	No
UK- Northern Ireland	No
UK- Scotland	NA

5.1.2 Practical application

Regarding the opinion of the experts interviewed, the concept of proof has raised no major problems. However, two cases brought before the European court of Justice of the European Union (ECJ) should be pointed out. In both of them the scope of the concept of evidence was discussed, and both the ECJ and the AG tried to demarcate boundaries between the concept of proof and other related terms:

1. *Evidence and precautionary measures:* Case C-104/03, St. Paul Dairy Industries NV vs Unibel Exser BVBA, was issued before Regulation 1206/2001 came into effect. However, the preliminary question in this case posed the problem of the difference between precautionary measures and evidence itself. This is a problem area, especially if one takes into account that certain national laws, as is case in Spain, stipulate the use of figures (such as measures for the guarantee of evidence of Article 297 of the Rules on Civil Procedure) that are similar to both concepts and not clearly differentiated. The difference is important because, resorting to the solution provided by Article 31 of Regulation 44/2001 may bring certain benefits in terms of effectiveness, convenience and speed in comparison to application of Regulation 1206/2001.
This notwithstanding, the ECJ did not consider (unlike the AG) the procedure provided in Article 186 WBRA (Dutch rules of procedure), which consists in submitting an individual to questioning before a court in order to assess the appropriateness

of bringing court action, as a precautionary measure. It is not yet known, therefore, whether or not we should, at present, consider the said procedure to be evidence under the current Regulation - 1206/2001.

The opinion of the Advocate General cleared up certain general criteria, of very practical future effect, such as that "*the court receiving the request must execute the request in accordance with its own law or, unless such a procedure is incompatible with that law, in accordance with any special procedure in force in the member state of the requesting court*"[38].

2. *Evidence and measures for the preservation and obtaining of evidence:* The concept of evidence or taking evidence, as it is known, appeared again in the Case C-175/06, Alessandro Tedesco vs Tomasoni Fittings Srl and RWO Marine Equipment Ltd. The AG offers an initial general criterion, stating that **"***Regulation No 1206/2001 is intended to contribute to the proper functioning of the internal market by improving, notably by simplifying and accelerating, the cooperation between courts in the taking of evidence, in particular the simplification and acceleration thereof, as evidenced by the second recital in the preamble thereto.* ***That aim is facilitated if the simplified mechanism for judicial assistance provided for by Regulation No 1206/2001 is applied to as many judicial measures for obtaining information as possible. Therefore, the concept of taking evidence should not be interpreted too strictly***"[39].

According to this broad interpretation, the AG concluded that **"***Measures for the preservation and obtaining of evidence such as an order for the description of goods in accordance with Articles 128 and 130 of the Italian Codice della Proprietà Industriale constitute measures for the taking of evidence which, in accordance with Article 1 of 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, fall within the scope of application thereof and which at the request of the court of one member state a court of another member state must execute, unless grounds for refusal exist."*

It also tackles a more specific problem, i.e. inclusion or exclusion within the practical scope of Regulation 1206/2001 as per the

[38] In 60.
[39] In 43.

court responsible for taking evidence based on Article 14.2 b). As shown, "*under the common law, obtaining evidence is not a task for the court or judicial agencies. Rather, the parties themselves must obtain the evidence. Whilst the supervising solicitor who, under section 7 of the Civil Procedure Act 1997, serves and performs a search order, is an officer of the court, he is not, however, a court agent*"[40].

The criterion suggested by the AG coincides with that of the Swedish and Finnish governments and with the Commission itself when it states that *"[…] a distinction must be drawn between ordering a measure for evidence to be taken and the performance thereof. Execution of a request to obtain evidence cannot be refused simply on the basis that performance of certain forms of taking evidence does not fall within the scope of judicial activities. The decisive factor, however, is that courts are entitled to order the requested measures. Section 7 of the Civil Procedure Act 1997, taken together with Part 25 of the Civil Procedure Rules, appears, in principle, to grant English courts the appropriate powers*"[41].

Cases waiting for a decision by the ECJ include Case C-332/11 and Case C-170/11. In both of them it would not be surprising if the limits to the concept of evidence are again considered, taking into account the preliminary questions raised by the Hof van Cassatie of Belgium**[42]** and the Hoge Raad der Nederlanden, respectively**[43]**.

In any case, in the Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of the Council Regulation (EC) 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence

[40] In 101.
[41] In 102.
[42] Must Articles 1 and 17 of Council Regulation (EC) No 1206/2001 [1] of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters, in the light, inter alia, of European legislation concerning the recognition and enforcement of judgments in civil or commercial matters, and of the principle expressed in Article 33(1) [2] that a judgment given in a member state is to be recognised in the other member states without any special procedure being required, be interpreted as meaning that the court which orders an investigation by a judicial expert whose task is to be carried out partly in the territory of the member state to which the court belongs, but partly also in another member state, must, for the direct performance of the latter part of the task, make use only and therefore exclusively of the method created by Regulation No 1206/2001 as referred to in Article 17 thereof, or as meaning that the judicial expert assigned by that country may also be charged with an investigation which is to be partly carried out in another member state of the European Union, outside the provisions of Regulation No 1206/2001?
[43] Must the EC Evidence Regulation, [1] in particular Article 1(1) thereof, be interpreted as meaning that a judge wishing to hear a witness who resides in another member state must always, for that form of the taking of evidence, use the methods put in place by the EC Evidence Regulation, or does he have the power to use the methods provided by his own national procedural law such as summoning the witness to appear before him?

in civil or commercial matters[44] the Commission stated that **"***the Commission is of the view that t**his concept should be interpreted autonomously and that in order to achieve the objectives of the Regulation, the scope of application of the Regulation should not be limited unnecessarily by a too narrow interpretation**. On this question, the exchange of views and experiences in the framework of the European Judicial Network in Civil Matters should continue*"[45]. Opinion that coincides with the conclusion of the AG in the case Tedesco, together with the wide majority of the experts interviewed.

5.1.3 Proposals

- As far as the concept of "evidence" is concerned, an initial conclusion is that, although there have been problems of interpretation, these have never led to a refusal to carry out a request for taking evidence under the Regulation.

- Despite the differences mentioned between the national laws on the matter, the importance of having an independent concept of evidence may be relative. This is so as long as the interpretation provided by the ECJ is applied or, more specifically, that of its AG with regard to the interpretation of the concept of evidence in a broad sense and in accordance with the purposes given in *Tedesco case* for applying the Regulation to the highest possible number of situations.

- It is more significant to bring together other issues, such as the assessment of evidence by the courts, determination of the burden of proof (whether it is imposed on the claimant or the respondent and the cases in which it would be determined by operation of law) or the detailed features of the different evidentiary methods allowed by the laws and the judicial practice of the different member states.

[44] COM/2007/0769 final.
[45] In 2.9. Problems of interpretation.

5.2 TAKING OF EVIDENCE - METHODS

5.2.1 National methods

The rules of Civil Procedure of the member states include open lists and a principle of free assessment of evidence by the judge. There are various legal systems that establish a hierarchy of methods for taking evidence or, at least, a preference for certain methods over others[46]. In general, there are no major differences between the methods allowed by the different member states. It is uncontroversial to state that the most widely used methods for taking evidence are common to every national legal system (examination of the parties, public documents, private documents, expert testimony, witness testimony).

Country	Open list of methods for taking evidence
Belgium	Yes
Bulgaria	Yes
Czech Republic	Yes
Germany	Yes
Estonia	Yes
Greece	Yes
Spain	Yes
France	Yes
Ireland	Yes
Italy	Yes
Cyprus	Yes
Latvia	No
Lithuania	Yes
Luxembourg	Yes
Hungary	Yes
Malta	Yes
Netherlands	Yes
Austria	Yes
Poland	Yes
Portugal	Yes
Romania	Yes
Slovenia	Yes
Slovakia	Yes
Finland	Yes
Sweden	Yes
UK- England&Wales	Yes
UK- Northern Ireland	Yes
UK- Scotland	NA

[46] At most MS legislations, a full probatory value is given to documents issued by a public authority.

Accordingly, and since it is the general rule, **it would be appropriate to retain these open lists and the criteria of free assessment of evidence by the judge.**

Differences arise if the hierarchy of different evidentiary methods and the need for a specific method are analysed. It should be concluded that most member states have in fact instituted a rule of free assessment, although with nuances that vary from state to state:

a) In Bulgaria, an exception is made for the official documents. According to Art. 179 Rules of Civil Procedure (CPC) an official document issued in the correct form by an official within the scope of his official duties and in conformity with the correct procedure constitutes evidence of the statements made before the official and of any steps performed by and before him or her. Officially authenticated duplicate copies or extracts from official documents have the same evidential value as originals.

b) Belgian Civil Law imposes an explicit hierarchy of evidentiary reception methods:

- Evidentiary methods that allow for no rebuttal: a confession during the proceedings (Art. 1356 Civil Code) or a "proceedings-decisive" oath, which can also be imposed on one of the parties (Art. 1358 Civil Code);
- Evidentiary methods that supply full proof between the parties: authentic instruments (Arts. 1317-1321 Civil Code) or private instruments (Art. 1322 Civil Code), legal presumptions (Arts. 1350-1353 Civil Code) and the confession of a party (outside the proceedings – Art. 1354 Civil Code);
- Proof the probative value of which can be assessed by the court: other private documents, witness testimony, other presumptions

With regard to contractual obligations, "written proof" is required for all obligations exceeding the sum of 375 EUR (Art. 1341 Civil Code). Witness testimony or presumptions are only allowed when there is a document drafted by the person against whom the existence of the obligation is invoked (Art. 1347 Civil Code) or when there is evidence that is was impossible for this person to draft a document (Art. 1348 Civil Code).

Other (non-contractual) obligations can be proven by all evidentiary methods, including any reproduction of words, sounds and images.

In Commercial Law (cases between or against merchants) there is no hierarchy of evidentiary methods: all are allowed on an equal footing. Special mention should be made of Art. 25 Commercial Code, which states that a contract of sale can be proven by an accepted invoice.

b) Under Estonian law, there is no hierarchy of different types of evidence. However, in practice some types tend to be more valuable than others: for example, documents and physical evidence may be considered more convincing than witness statements or hearing the parties under oath.

c) Art. 1341 of the French Civil Code stipulates that an instrument drawn up before public officers (notaries) or under private signature must be executed in all matters exceeding a sum or value fixed by decree. No proof by witness is allowed against or beyond the contents of instruments (Article 1341). On the contrary, any kind of evidence can be used to prove a fact or an instrument which does not exceed a particular sum or value fixed by decree. Exceptions exist concerning the necessity to adduce documentary evidence whenever an obligation exceeds a particular sum or value fixed by decree:

- Where there exists a commencement of proof in writing (Article 1347 Civil Code);
- Where the obligation arises in quasi-contract or from an intentional or unintentional wrong (Article 1348 Civil Code),
- Where one of the parties either did not have the material or moral opportunity to obtain written proof of a legal transaction, or has lost the instrument which served as written proof owing to a chance event or force majeure (Article 1348 Civil Code).
- Where a party or a depositary has not kept the original instrument and presents a copy which is a reproduction that is not only faithful but also enduring (Article 1348 Civil Code);
- With regard to traders, commercial instruments may be proven by any method unless the law specifies otherwise (Article L. 110-3 Commercial Code).

d) In the Dutch Procedural Civil Code, only privately executed instruments and notarially executed instruments supply

incontrovertible proof to the judge (Article 151par. 1 CCP). To provide proof to the contrary is always allowed, unless the law decides otherwise (Article 151 par. 2 CCP).

e) Under Irish law, there is no specifically consolidated provision outlining accepted forms of evidence. However, the Superior and Lower court rules are clear that the primary means of adducing evidence is by oral evidence in court. (Order 39 Rule 1 Rules of the Superior courts, Order 23 Rule 1 Rules of the Circuit court).

f) Latvian Law is an exception to the principle of free assessment of evidentiary methods. The court admits only such evidence as is stipulated by law, in particular, in Chapter 17 of the Civil Procedure Law, which prescribes that evidentiary methods consist of: explanations by the parties and third persons, testimony of witnesses, documentary evidence, real evidence, examination of expert witnesses and opinions of authorities. There is no hierarchy of evidentiary methods.

g) In the case of Spain, evidentiary methods are regulated in Article 299.3 of the Rules of Civil Procedure in an open format; whereby any other methods that provide certainty of the relevant facts in the proceedings are accepted.

h) Under the Polish Code of Civil Procedure (KPC) the principal rule is that the assessment is free. However, in the following situation, the judge is nevertheless still bound by law:

- The findings of a final and valid convicting judgement in criminal proceedings regarding an offence committed are binding on the court in a civil case (Art. 11 KPC);
- The presumptions established by law (legal presumptions) are binding on the court; these may, however, be rebutted whenever the law has not excluded this possibility (Art. 234 KPC);
- Official documents, drawn up in the prescribed form by the competent public authorities within the scope of their normal activities constitutes proof of anything officially certified therein (Art. 244 KPC);
- A private document constitutes proof that the person who signed has made the statement contained in the document (Art. 245 KPC).

i) The Portuguese Civil Procedure Code (Art. 655.2 CPC) states that facts can be proved by any evidentiary method type of evidentiary method, but there are some facts that must necessarily be proved by document. If so, the court cannot dispense with the special formalities required by law in order to prove a particular fact (Art. 655.º, 2 C.P.C.). This happens when the document is an *ad substantiam* formality (e.g. contracts of sale of immovable must be formalised under public deed or authenticated private document – Art. 875.º cc) or an *ad probationem* formality, if applicable. In the first case, proof of the agreement must be supplied by the document required by law or by a document with a greater probative value. In the latter case, the document mentioned in the legal rule need only be replaced by one of the other two evidentiary methods: express judicial admission or an extrajudicial confession made in a document with equal or greater probative value (Art. 364.º, n.º 2 C.C.). According to Art. 655.º, 1 C.P.C., the court is free to assess the proof required according to a careful judge's analysis of each fact. But there are exceptions to this principle. Some evidentiary methods (public documents – Art. 371.º C.C., judicial confession – Art. 358.º C.C. and rebuttable presumptions – Art. 350.º, 2 C.C.) supply full proof. Other (more rare) evidentiary methods (irrefutable presumptions of law) supply irrefutable proof of relevant facts. However, agreements regarding proof are admitted, provided they were created within the scope of any available and subject to any limits imposed by public policy and by the fair equilibrium principle of the party's position in the forensic process– Art. 345.º C.C.

As is evident from the observations submitted by the member states, different views exist in the various national legal systems as to the requirements that apply to the taking of evidence and the role played by courts in this area.

5.2.2 Practical application

Until now, the ECJ has adopted no position on methods for taking evidence; despite this, there have been sporadic references to the subject, as in Case C-283/09, Artur Weryński vs Mediatel 4B spółka z o.o. (48.“ Under Article 1(1) of Regulation No 1206/2001, the facts of the main proceedings fall within scope of that regulation where the court of a member state requests the competent court of another member state to take evidence. The examination of a witness is expressly mentioned as the subject of a request in Article 4(1)(e) of

the regulation"), on a matter that was not particularly controversial. Nowadays, in preliminary questions Case C-332/11 (Prorail NV v Xpedys NV and Others) and Case C-170/11 (Maurice Robert Josse Marie Ghislain Lippens and Others v Hendrikus Cornelis Kortekaas and Others), pose the problem of those evidentiary methods that are accepted and those that are prohibited.

The potential problems affecting the practical application of these considerations were considered in the *Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of the Council Regulation (EC) 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*, which refers to methods for taking evidence, as included in the Regulation; and as of the date of this study, these remain unresolved This is the case with respect to the taking of DNA and blood samples and expert reports on family or child welfare. In all cases, however, the Commission considers that this concept should be interpreted autonomously and that, in order to achieve all objectives of the Regulation, the practical scope of the Regulation should not be limited unnecessarily through too narrow an interpretation. We consider that this open interpretation should be adopted generally with regard to evidence in matters that involve substantial differences between the member states.

5.2.3 Proposals

- In general, there are no major differences between the evidentiary reception methods permitted in the legal systems of the member states. It is uncontroversial to state that the most widely used evidentiary reception methods are common to every national legal system (examination of the parties, public documents, private documents, expert testimony, witness testimony).

- Accordingly, it would seem appropriate to retain both open lists and the free assessment of evidence by the judge.

5.3 PUBLIC/PRIVATE DOCUMENT

5.3.1 Definitions of public/private documents

Most member states' legal systems expressly provide definitions of what is a public document while, in others, a definition can be inferred from the general laws on evidence[47]. Private documents are mainly defined as the opposite of public documents; and, as such, they are free to adopt any particular form. This would suggest that unifying them would not appear to

[47] **Belgium** (Art. 1317 Civil Code): "L'acte authentique est celui qui a été reçu par officiers publics ayant le droit d'instrumenter dans le lieu où l'acte a été rédigé, et avec les solennités requises".

Bulgaria (Art. 179 Civil Procedure Code): "[…]an official document, issued by an official within the official responsibilities thereof in the established form and according to the established procedure, shall constitute evidence of the statements made before the said official and of the steps performed by and before the said official".

Czech Republic and **Slovakia** (Art. 134 Civil Procedure Code): "[…] public documents are documents issued by courts and other state authorities within their competence and documents declared as public by law".

Slovenia (Art. 224.1 Civil Procedure Act): "[…]is a document in written or electronic form, issued in prescribed formation by state authority/local authority/other organisation or individual person by exercise of public authority, entrusted to him by law, within the scope of its competence".

Spain (Art. 317 Rules of Civil Procedure): this includes an open list of public documents in relation to the offical who has produced them (clerks of the court, notaries public, brokers, property and companies registrars, public officers legally authorised to attest as part of their functions).

Netherlands (Art. 156. 2 Code of Civil Procedure): "Authentic instruments are signed instruments in due form and with authority drawn up by officials, who by or under the law are charged to evidence in this way observations or operations witnessed by them. As authentic instruments are also considered those acts of which the drawing up is reserved to officials, but of which use drawing up in some cases is commissioned by law to others than those officials".

Hungary (section 195.1 Code of Civil Procedure): "[a] private document [with full probative value] shall – until proven otherwise – have full probative value verifying that the issuer has in fact made or accepted the statement it contains, or undertakes to consider himself bound by such statement".

Latvia (section 1 par. 21 of the Archives of Law): "[…] public record is a document created or received as a result of activity of an institution"

Lithuania (Art. 197 par. 2 of the Code of Civil Procedure): "Documents issued by state and local authorities or approved by other state authorized persons within their sphere of competence and in accordance with the relevant requirements of the form of document, have greater probative value."

Malta (Art. 627 and 629 Code of Organisation and Civil Procedure): Art. 627 of the Code of Organization and Civil Code:
"(a) the acts of the Government of Malta, signed by the Minister or by the head of the department from which they emanate, or in his absence, by the deputy, assistant, or other officer next in rank, authorized to sign such acts;
(b) the registers of any department of the Government of Malta;
(c) all public acts signed by the competent authorities, and contained in the Government Gazette;
(d) the acts of the Government of Malta printed under the authority of the Government and duly published;
(e) the acts and registers of the courts of justice and of the ecclesiastical courts, in Malta;
(f) the certificates issued from the Public Registry Office and the Land Registry;
(g) the sea-protest made under the authority of the Civil court, First Hall;
(h) certain documents mentioned in the Merchant Shipping Act (Chapter 234 of the Laws of Malta)"
Art. 629 of the Code of Organization and Civil Code:
"(a) the acts and registers of any establishment, or public body, authorized or recognized by law or by the Government;
(b) the parochial acts and registers relative to births, marriages and deaths, and the dispositions made according to law in the presence of a parish priest;
(c) the acts and registers of notaries public in Malta;
(d) the books of traders kept according to law, only with regard to any agreement or other transaction of a commercial nature;
(e) the books of public brokers kept according to law, with regard to anything which may have taken place between contracting parties in commercial matters;
(f) certain other documents mentioned in the Merchant Shipping Act."

Romania (Art. 1171 Civil Code): "The authentic act can be fully trusted by any person in terms of its subject and clauses".
Portugal (Art. 363.º, n.º 2 C.C.): "Public documents are all those rendered, according to the legal formalities, by the public authorities within the limits of their competency or, within the scope of activity, by the notary or other public officer endowed with public faith.".

be either easy or even desirable. They are accepted as evidentiary methods in the legal systems of all member states.

Generally speaking, the value awarded to the said documents by the legal systems of the member states is greater. In fact, the normal rule is that public documents provide full evidence of their content, while any room for free assessment by judges is, in general, more restricted than with other evidentiary reception methods. This is expressly provided in Art. 1319 of the Belgian Civil Code (authentic instrument); Art. 179 of the Bulgarian Civil Procedure Code; Art. 134 of the Czech Civil Procedure Code; sec. 415.par. 1 of the German Code of Civil Procedure; cap. 12 of the Greek Code of Civil Procedure; Art. 319 of the Spanish Ley de Enjuiciamiento Civil; Art. 1317 of the French Civil Code; Art. 2700 of the Italian Civil Code; Art.192.2 of the Lithuanian Code of Civil Procedure; Art. 1319 of the Luxembourg Civil Code; Art. 195.1 of the Hungarian Civil Code;Art. 627 and 629 of the Maltese Code of Organisation and Civil Procedure; Art. 151. 1 and 157.1 of the Netherlands Civil Code of Procedure; Art. 310.1 of the Austrian Civil Code of Procedure (ZPO); Art. 244 of the Polish Code of Civil Procedure; Art. 371 of the Portuguese Civil Code; Art. 1173.1 of the Romanian Civil Code; Art. 224.1 of the Slovenian Civil Procedure Act; Art. 134 of the Slovakian Code of Civil Procedure; sec. 9 of the United Kingdom Civil Evidence Act of 1995.

Only in the cases of Latvia (sec 97 of the Rules of Civil Procedure), Estonia (section 272.1 of the Code of Civil Procedure) and Sweden (chapter 38, sec. 8 of the Swedish Code of Judicial Procedure) does the rule seem to be less conclusive with regard to the strength of public documents as evidence, when compared to private documents or other evidentiary methods.

Country	**Is the probative value of public documents greater than all other evidentiary methods?**
Belgium	Yes
Bulgaria	Yes
Czech Republic	Yes
Germany	Yes
Estonia	Slightly greater. Subsection 1 of Section 272 Code of Civil Procedure.
Greece	Yes
Spain	Yes
France	Yes
Ireland	Yes
Italy	Yes
Cyprus	Yes
Latvia	No, in all cases of a predetermined nature. Sec. 97 Civil Procedure Law.
Lithuania	Yes
Luxembourg	Yes

Hungary	Yes
Malta	Yes
Netherlands	Yes
Austria	Yes
Poland	Yes
Portugal	Yes
Romania	Yes
Slovenia	Yes
Slovakia	Yes
Finland	Yes
Sweden	Cannot be deduced from the Swedish Code of Judicial Procedure. Chapter 38.
UK- England&Wales	It depends upon individual facts and cases
UK- Northern Ireland	Yes
UK- Scotland	Yes

5.3.2 Access to public registers

Related to the conditions for accessing the public registries in which the public documents are held, and despite the wide variety of registries, access is not limited to the individuals affected by the aforementioned documents. However, a small fee is usually required, depending on each registry (Spain, Ireland, Czech Republic, Cyprus, Lithuania, Luxembourg, Slovakia, Hungary, Portugal and Romania, etc.).

5.3.3 Proposals

- The need for an independent definition of the concept of public document is a function of the higher status accorded to it by most legal systems in comparison with other evidentiary methods (such as private documents). Furthermore, the value of a public document as evidence does not appear to pose too many conflicts in member states, except for the aforementioned three states (Estonia, Latvia and Sweden).

- This concept has already been brought to the ECJ but not as evidence; but rather, in a bid to determine the enforceability of public documents **(**Case C-260/97, Unibank A/S vs Flemming G. Christensen) or to determine the extrajudicial documents included within the scope of application of Regulation (EC) nº 1348/2000 (Case C-14/08, Roda Golf & Beach Resort SL and the Opinions of the Advocate General).

- In view of this scenario of comparative law, it would not appear to be too difficult to provide an independent concept of public

document that is sufficiently broad so as not to pose problems in any legal system.

5.4 EXAMINATION OF THE PARTIES

5.4.1 Probative value of the examination of the parties in national Laws

Firstly, we can separate out a group of member states' legal systems where the probative value of this evidence is binding, to some degree, on the court.

Country	What is the probative value of statements made by the plaintiff and the defendant?
Belgium	Binding for the court
Bulgaria	Free weighing of evidence if the statement represent an admission of fact
Czech Republic	Free weighing of evidence
Germany	Free weighing of evidence
Estonia	Free weighing of evidence
Greece	Free weighing of evidence
Spain	Binding for the court
France	Binding for the court
Ireland	Free weighing of evidence
Italy	Free weighing of evidence
Cyprus	Free weighing of evidence
Latvia	Free weighing of evidence
Lithuania	Free weighing of evidence
Luxembourg	Binding for the court
Hungary	Free weighing of evidence
Malta	Free weighing of evidence
Netherlands	Free weighing of evidence
Austria	Free weighing of evidence
Poland	Free weighing of evidence
Portugal	Binding for the court
Romania	Free weighing of evidence
Slovenia	Free weighing of evidence
Slovakia	Free weighing of evidence
Finland	Free weighing of evidence
Sweden	Free weighing of evidence
UK- England&Wales	Free weighing of evidence
UK- Northern Ireland	Free weighing of evidence
UK- Scotland	NA

A) **Binding for the court**

Both in **Belgium** and in **France**, declarations of the parties in court have a strong probative value. Both the Belgian and French civil code (arts. 1354-1356 distinguish between admission (aveu de la partie) and judicial oath (oath, arts. 1357-1369).

In **Luxembourg**, the probative value of a witness' statement (Article 400 New Luxembourg Civil Procedure Code, NCPC) made by the plaintiff or by the defendant will be considered as being the truth unless it is proved that the person making the statement is lying. Good faith is presumed (Article 2268 NCPC).

In the case of **Spain**, the Civil Procedure Law (Articles 301-316 CPL) grants the initiative, in the case of examination of the parties, to the litigants (Article 301 CPL), who may request that the other litigant be examined, provided that the trial involves a dispute or conflict of interests between the two litigants. Something admitted by one of the parties, whether applicant or defendant, to the detriment of his own interests shall in principle constitute evidence in court, without prejudice to the fact that the court must look at it in the context of the other evidence. However, something that has been admitted to the benefit of the declarant himself shall not constitute evidence, without prejudice to the fact that such declarations in his favour may be accepted because they are supported in the proceedings by other evidence (Article 316 CPL).

The **Portuguese** Civil Code (Article 352) takes a similar approach to this point. It considers that the plaintiff and defendant's statements are judicially relevant when they contain a recognition of facts unfavorable to their originator, provided however that recognition is favorable to the opposite party (confession)[48].

In the case of the **Romanian** Civil Code (Article 1206), judicial confession can also only be used fully against the person who gave it. In any case, its assessment is left to the discretion of the court, just like other common types of evidence.

The case of **Bulgaria** is specific and in general a free weighing of evidence concerning statements on admission of fact is required. According to the Bulgarian Civil Procedure Code (CPC), there is a distinction between admission of facts and admission of a claim. With regard to the admission of facts, Article 175 CPC states that "[*a]n admission of a fact, made by a party or by a representative thereof, shall be evaluated by the court considering all circumstances of the case*" without establishing whether the admission is detrimental or beneficial to the declarant. Where relevant, this declaration is requested automatically by the court (Article 176 CPC). The

[48] "A judicial confession can be declared invalid in the general legal terms, even after the *res iudicata.*
The recognition of unfavorable facts that cannot be valued as confession is a probative element submitted to the court's free evaluation "(Art. 361.º Civil Code).

admission of a claim is binding for the court (Art. 237 CPC). Where the respondent admits the claim, the court, acting on a motion by the plaintiff, will terminate the trial and render judgment in accordance with the admission. The reasoning of the judgment must state that the said judgment is based on the admission of the claim[49].

B) **Free weighing of evidence:**

In all other member states, we can see that the principle of free evaluation of this type of evidence holds sway.

The examination of parties is regulated in the **Czech Republic** by Article 131 of Civil Procedure Code. Examination of the parties is understood as a subsidiary evidentiary method (because of conditions which can be attached to it), although once it has been ordered and carried out, it is weighed like all other evidence (except public documents). The court decides freely (applying the principle of discretionary weighing of evidence) whether the examination was credible and truthful[50].

The same free assessment by judges can be found in the **German** Code of Civil Procedure (ZPO), sec. 453, 286. Hence, it is within the discretion of the court, taking all the "pros and cons" into account, whether evidence was sufficient or not.

In the **Italian** Code of Civil Procedure (CPC) (Art. 232) also, this method of evidence is considered, and it is stipulated that it constitutes full evidence against the person making the statement. In all cases, it is subject to the general principle of free assessment by the court (Article 116 CPC).

Under the **Estonian** Code of Civil Procedure, there are no legal provisions regarding the probative value of examination of the parties. This issue is defined by court practice. Anyway, the probative value of any statements made by the plaintiff and the defendant has the lowest status of all, especially if other evidence contradicts their arguments.

In the **Greek** Code of Civil Procedure (arts. 415-420), examination of the parties is weighed freely by the court, even if they testify on oath, in contrast to party oath. Failure of the summoned party either to appear without good cause in order to give sworn or unsworn evidence, or to testify, or to answer interrogatories, or, finally, any difference between unsworn and subsequent sworn evidence are also subject to free evaluation by the court.

[49] See p. 270, Ivanova, Ruja, Punev, Blagovest, Chernev, Silvy, Comments on the new Civil Procedure Code, Publishing House "Trud I pravo", S., 2008, the title of the book in Bulgarian Иванова, Ружа, Пунев, Благовест, Чернев, Силви, Коментар на новия ГПК, ИК „Труд и право", С., 2008, с. 270.

[50] It is the same in the Slovakia legal system.

Regarding the **Latvian** Code of Civil Procedure (sec. 104), any examination of the parties is weighed freely by courts *("explanations by parties and third persons which include information about facts on which their claims or objections are based, shall be admitted as evidence, if corroborated by other evidence verified and assessed at a court sitting. If one party admits the facts on which the claims or objections of the other party are based, a court may find such facts to be proven, if the court is not in doubt that the admission was not made due to the effects of fraud, violence, threat or error, or in order to conceal the truth"*). We can state the same according to the **Lithuanian** Art. 186 par. 4 of the Code of Civil Procedure.

Under **Hungarian** law, party declarations normally have no evidentiary value, even though the court, due to the 'free evidence' system, may find a declaration of one of the parties more convincing than a declaration by the other. If the parties agree on the existence of certain facts, the court may regard these facts as proved. Likewise, the court may also regard certain facts as proved, if one of the parties asserts a fact and the opposing party does not refuse this allegation notwithstanding the court's call. According to Section 163(2) of the Hungarian Code of Civil Procedure, "[*b]ased on the opposing party's admission, on the corresponding submissions of both parties, or on the circumstance that notwithstanding the court's call [Subsection (2) of Section 141] the opposing party did not dispute the other party's submission, the court shall recognize such facts as true, if there is no doubt as to their authenticity*."

In the **Dutch** legal system the assessment of evidence is also up to the court in the case of examination of the parties (Art. 152.2 Code of Civil Procedure). The same conclusion was reached by both the (Art. 371-383) **Austrian** Code of Civil Procedure (ZPO) and the **Polish** Code of Civil Procedure (Art. 299), which accords it subsidiary value.

In the **Swedish** system, there are no rules specifying the respective weight of particular items of evidence. The principle of the admissibility of evidence applies and therefore the probative value of a statement by a party must be decided case by case. A statement given under oath, however, normally should have a higher probative value than a statement not given under oath. And if a party in a dispositive case admits a certain fact, that admission constitutes full proof against him (Swedish Code of Judicial Procedure Chapter 35, Section 3).

According to the Civil Evidence Act 1995 in **England and Wales**, the examination of the parties is equal in value to any other evidence. Such statements can be admitted as hearsay evidence if the maker cannot be called. The evidence is given whatever weight the court decides on[51]. The

[51] Admissibility of hearsay evidence.
(1)In civil proceedings evidence shall not be excluded on the ground that it is hearsay.
(2)In this Act—

situation is the same under the Civil Evidence (**Northern Ireland**) Act 1997, which specifies a number of questions that must be considered by the judge in estimating the weight (if any) of evidence[52].

In the **Slovenian** legal system, examination of the parties is embodied in Articles 257 till 263 of the Civil Procedure Act. The court will, when examination is suggested by the parties, generally examine both sides (the plaintiff and the defendant). However, if the court assesses that one of the parties is not acquainted with disputed facts or if examination of one party is not possible, the court may decide that only the other party is examined. Additionally, the court will also examine just one party if the other party does not want to testify or if it does not respond to the summons of the court (Article 258 of *the Civil Procedure Act*). This is the case because in the Slovenian legal system coercive measures to compel the party to respond to the court's summons to the examination hearing are prohibited.

In **Malta's** legal system, full probative value is given to examination of the parties, which is regulated in the same way as witness testimony (Article 565 of the Maltese Code of Organisation and Civil Procedure), although it is always subject to a high standard of assessment by the court.

5.4.2 Proposals

- Member states should share a common definition of this evidentiary method.

- Differences arise as regards the actual probative value of examination of the parties. A distinction could be made between those member states with free weighing of this evidentiary procedure (the broad majority) and those member states where an examination of the parties is binding on the court (Belgium, Bulgaria, France, Luxembourg, Spain, Portugal and Romania). In

(a)"hearsay" means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated; and
(b)references to hearsay include hearsay of whatever degree.
(3)Nothing in this Act affects the admissibility of evidence admissible apart from this section.
(4)The provisions of sections 2 to 6 (safeguards and supplementary provisions relating to hearsay evidence) do not apply in relation to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

[52] (3) Regard may also be had, in particular, to the following—(a)whether it would have been reasonable and practicable for the party by whom the evidence is adduced to have produced the maker of the original statement as a witness;
(b)whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
(c)whether the evidence involves multiple hearsay;
(d)whether any person involved had any motive to conceal or misrepresent matters;
(e)whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
(f)whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

this latter group, the cases in which the examination of the parties is permitted even if it is to the benefit of the party making the declaration (Belgium, France and Luxembourg) should be distinguished from those where it is only permitted if it is detrimental to the declarant (Bulgaria, Spain, Portugal and Romania).

- In any case, since differences arise simply in relation to the probative value of this evidentiary method and since, therefore, they do not cause any major problems for the uniform interpretation and application of the Regulation, no harmonisation or common procedural rules seem advisable in this area.

5.5 WITNESS TESTIMONY

5.5.1 Giving evidence as a witness in response to a court summons

There is a general and common obligation in all member states to provide witness testimony. This is expressly laid down in the legislation of the broad majority of the member states, which sets out various specific grounds as the only reasons permitted for not giving evidence. On this latter issue, however, important differences arise.

In view of the results of this comparative review, we conclude that the obligation to testify as a witness in response to a court summons is the same in all the member states consulted. The grounds for not serving as a witness may be divided into two: those applicable to specific proceedings, and those applicable to all trials. Here, action could be taken so as devise a single minimum set of grounds, since many legally established grounds are common to all member states.

a) Under the **Belgian** Code of Civil Procedure (CPC) (Art. 929), a witness can refuse to testify for legitimate reasons (e.g. professional secrecy) in a particular trial. Art. 931 CPC says that, in general, a minor under fifteen cannot be questioned under oath. Any statements he or she makes can only be used as information. In cases that concern him or her, a minor who has the capacity of discernment can be questioned by the judge or by any person designated by the judge. The decision to hear the minor must follow from the minor's own request or an order of the court. In the latter case, the minor may refuse to be questioned. Relatives in a descending line cannot be questioned when their relatives in an ascending line have opposite interests in the case. Witnesses

who do not appear in court, refuse to take the oath or refuse to testify can be condemned to pay a civil fine of 2.50 € up to 250 € (Art. 926 CPC). Information from relatives in a descending line can only be used in such a case when the relative in a descending line was the victim of a crime.

b) The **Bulgarian** Civil Procedure Code (CPC) (Art. 166) stipulates that no one has the right to refuse to testify except *"the attorneys-in-fact of the parties to the same case and the persons who were mediators in the same dispute; the lineal relatives to the parties, the siblings and the affines in the first degree of affinity, the spouse and the former spouse, as well as the de facto cohabitee with a party. The persons who, by the answers thereof, would incur or inflict on the persons referred to in Item 2 of Paragraph (1) any immediate damage, defamation or criminal prosecution, may not refuse to testify but may refuse to give an answer to a particular question, stating the reasons for this; The witnesses in the case may not be attorneys-in-fact of the parties to the same case".*

   If a witness summoned to appear in court fails to appear without reasonable excuse, the court shall impose a fine thereon and shall decree that the attendance of the said witness during the next succeeding hearing be compelled. If a witness refuses to testify without reasonable excuse, the court shall impose a fine thereon (Art. 85, Para. 1 and 2). According to Art. 167 any witness who refuses to give testimony or to answer particular questions, shall be obligated to state the reasons for this in writing and to attest the said reasons before the hearing whereat the said witness is to be examined, or orally before the court (Para. 1). Any witness, who has failed to comply with the obligation thereof under Article 163 herein and has so delayed the proving:

   - Shall reimburse the parties for the costs incurred as a result of non-compliance with the said obligation;
   - Shall forfeit the entitlement to claim remuneration (Para.2).

c) There are no general limitations under the **Czech** Civil Procedure Code (and the same rule applies in Slovakia). The only exception is where the testimony may place the witness or person at risk of criminal prosecution. The court decides on the legitimacy of the refusal to testify. Appeal is not permissible against the court judgment. If, even despite the judgment of the court, the witness refuses to testify, the court may use procedural measures pursuant to Art. 53 CPC, that is imposition of a procedural fine of up to 2000 EUR.

d) Under the **Cyprus** Evidence Law, s. 13, all persons are competent witnesses and able to testify in civil proceedings, unless prevented by age, mental incapacity or other similar cause from knowing that such witness must testify truthfully or comprehend the questions posed during such witness' testimony. Special rules apply for spouses pursuant to s. 14 of the Evidence Law. Any other person can be compelled by a subpoena to testify. If anyone refuses to testify he is in contempt of court and liable to sanction.

e) According to sec. 383-385 of the **German** Code of Civil Procedure (ZPO) witnesses are obliged to testify, except the following (sec. 383, 384): persons with regard to family ties; priests with regard to pastoral care (unless released, sec. 385); the media with regard to source protection; persons to be sworn to secrecy by office or legislation (unless released, sec. 385); the answer may expose the witness or his family to danger of economic loss or prosecution; the witness would disclose a business secret.
The witness who is obliged to testify but refuses to do so can be compelled (sec. 390), but not detained for more than six months (sec. 390 para. 2, sec. 913).

f) As the **Estonian** Code of Civil Procedure establish (sec. 254), a person summoned as a witness is required to appear in court and give truthful testimony before the court with regard to the facts known to him or her. Therefore, the witnesses are generally obliged by law to testify unless certain circumstances stipulated by the law occur. If the court has summoned a witness, then he or she is required to appear in court and give truthful testimony before the court with regard the facts known to him or her.
The right of a witness to refuse to give testimony is stated in section 257 of the CCP. If you are one of the following persons, you can refuse to testify (basically most of the relatives can refuse): the descendant and ascendant of the plaintiff or defendant; a sister, stepsister, brother or stepbrother of the plaintiff or defendant, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the plaintiff or defendant; a step or foster parent or a step or foster child of the plaintiff or defendant; an adoptive parent or an adopted child of the plaintiff or defendant; the spouse of or a person permanently living together with the plaintiff or defendant, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended.

Subsection 258 of CCP stipulates a duty to testify. According to this provision, the persons previously mentioned cannot refuse to give testimony concerning the following matters: the performance and content of a transaction which he or she was invited to

witness; the birth or death of a family member; a fact related to a proprietary relationship which arises from a relationship under family law; an action related to the disputed legal relationship which the witness himself or herself performed as the legal predecessor or representative of a party.

According to section 266 of the CCP, if a witness fails to appear in court upon a summons without good reason, the court may impose a fine or compelled attendance on the witness. If a witness refuses to give testimony or sign a caution without good reason, the court may impose a fine or detention up to fourteen days on the witness. The witness shall be released immediately if the witness gives the testimony or the signature on being cautioned, or if the hearing of the matter has ended or the need for the witness to be heard has ceased to apply.

g) The **Greek** Code of Civil Procedure (arts. 393-414, 601.2, 614.1) rules this subject. All persons are in principle compellable witnesses. Professionals enjoy the privilege of refusing to give evidence for all facts that come to their attention during their professional activities, even if they are not obliged to keep them secret. Relatives of one of the parties may, to a certain extent, claim the privilege not to testify. There is also a privilege against self-incrimination; witnesses may refuse to give evidence about facts which could found a criminal charge against them or their relatives, or which harm their dignity. Witnesses are also not obliged to testify about facts which convey a professional or artistic secret. Children over 14 are competent witnesses, while if they are below 14 their competence depends entirely on the existence of special reasons (as determined by the court) that make their testimony indispensable. In matrimonial disputes or in disputes concerning the relations between parents and children, the children of the parties are always incompetent witnesses.

   If that person is unwilling to testify without good reason, he will be ordered to pay the costs caused by his absence as well as, at the discretion of the judge, a monetary fine.

h) In the case of **Spain**, Article 292 of the Civil Procedure Law (CPL) stipulates that witnesses are obliged to testify, may be fined if they do not do so and, if they persist in their refusal, may have action taken against them for the offence of contempt of court (Article 292 CPL). If a witness again does not attend after having received a subsequent summons, the Civil court may send a copy of the said proceedings to the Criminal court so that a case may be initiated for the alleged offence of contempt of court.

   Witnesses may only refuse to give testimony concerning those

questions regarding which they have an obligation of professional secrecy or questions which are classified material of a confidential nature. In such cases the court shall decide whether the witness shall be released from making such a deposition. If this is the case, the official nature of the confidential document must be verified (Article 371 CPL).

People who are of permanent unsound mind or unable to use the sense that is required for the statement in question may not testify. With regard to minors, those aged under 14 may not testify unless the court considers that they possess sufficient judgment to testify truthfully on a specific matter (Article. 361 CPL).

i) According to Article 206 of the **French** Code of Civil Procedure, any person summoned to testify will be bound to do so. Persons who present a legitimate excuse may be exempted from testifying. Parents or relatives in direct line of one of the parties or of his spouse or even divorced, may refuse to testify. Defaulting witnesses and persons who, without any legitimate excuse, refuse to testify or to swear in may be sentenced to pay a civil fine of 3000 Euros. Any person may be heard as a witness, except those who lack the legal capacity to testify in court. Lack of legal capacity to testify may be the result of a sentence. A family link between the parties and the witness may also be an obstacle. Descendants may never be heard on grievances raised by spouses in support of a petition for divorce or judicial separation. Special rules concern persons under 18. Special rules concern persons who cannot disclose a professional secret.

j) In the **Irish** legal system, competent witnesses are required to testify. Under Order 39 Rule 4 of the Rules of the Superior courts: "*The court may, in any cause or matter where it shall appear necessary, make any order for the examination upon oath before the court, or any officer of the court, or any other person, and at any place, of any witness, and may allow the deposition of such witness to be adduced in evidence on such terms (if any) as the court may direct*". Witnesses cannot generally refuse to testify. Persons refusing to testify may be summarily held in contempt of court and punished at the discretion of the presiding judge. So, under Order 39 Rule 7 of the Superior court Rules: "Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of court, and may be dealt with accordingly".

Incompetent witnesses. A competent witness is a person capable of understanding the nature and implications of the oath and also capable of giving intelligible testimony. There are other categories

of persons who are competent but not compellable to testify: a judge in respect of matters of which he or she became aware relating to, and as a result of, the performance of, his or her judicial functions; bankers in respect of the production or proof of the contents of bankers' books [Section 6 of the Bankers' Books Evidence Act 1879 (as amended by section 131 of the Central Bank Act 1989 (No.16 of 1989)]; Diplomats.

k) According to Art. 249 of the **Italian** Code of Civil Procedure (CCP), witnesses may only abstain in those cases specified by the Code of Criminal Procedure, particularly in case of professional privilege, office's privilege, and state's privilege. Moreover, pursuant to Article 200 of the Italian Code of Criminal Procedure, also lawyers can abstain from testifying on the facts which were reported to them by their clients. If the witness appears before the judge and refuses to take the oath [Article 251 CCP] or to testify [see Article 253 CCP] without any justified reason [see Article 249 CCP], or where there are grounds to believe that he did not tell the truth or that was reticent, the investigating judge denounces him to the public prosecutor and sends to the latter a copy of the minutes recording the testimony (Article 256).

   Under Art. 246 Italian Code of Civil Procedure, persons having any interest in the action which might justify their participation in the same proceedings may not testify.

l) **Latvian** Civil Procedure Law (CPL) makes a difference between persons who may not be witnesses (sec. 106) and persons who may refuse to testify (sec.107). According to Section 106 CPL the following persons may not be summoned or examined as witnesses: ministers – regarding facts, which have come within their knowledge through hearing confessions, and persons whose position or profession does not permit them to disclose certain information entrusted to them – regarding such information; minors – regarding facts that testify against their parents, grandparents, brothers or sisters; persons whose physical or mental deficiencies render them incapable of appropriate assessment of facts relevant to the matter; and children under the age of seven.

   Under Section 107, the following persons may refuse to testify: relatives in a direct line and of the first or second degree in a collateral line, spouses, affinity relatives of the first degree, and family members of parties; guardians and trustees of parties, and persons under guardianship or trusteeship of the parties; and persons involved in litigation in another matter against one of the parties.

For refusal to testify for reasons which the court has found unjustified, and for intentionally providing false testimony, a witness is liable under the Criminal Law (Section 109. Liability of Witnesses).

m) Following Art. 191 of the **Lithuanian** Code of Civil Procedure (Rights and duties of a witness) a person summoned as a witness must appear before a court and give fair evidence. A person summoned as a witness is liable under the law for non-fulfilment of a witness's duties. A court can punish a witness for baseless refusal to give evidence with a fine of up to 289 €. However, a witness can refuse to testify in cases where witness evidence would constitute evidence against him or herself, family members or close relatives. According to Art. 189 par. 2 of the Code of Civil Procedure, certain persons cannot be testify as witnesses: representatives in civil and administrative proceedings or defence counsel in criminal proceedings on facts learned by them in performance of their duties as a representative or defence counsel; persons who are unable to understand relevant circumstances or give fair evidence due to physical or mental defects; clergy about circumstances obtained by them in the confessional; the medical profession about circumstances constituting their professional secrets; a mediator in conciliatory mediation in civil disputes – on facts learned by them during the conciliatory mediation and other persons defined by laws.

n) Art. 407 of the New **Luxembourg** Civil Procedure Code (NCPC), at the request of any party, a witness can always refuse to testify. However, if the judge orders a witness to testify, a witness can only refuse if he has a "legitimate" reason. A witness who refuses to testify or a witness who fails to testify without legitimate reason can be condemned by the judge to pay a fine of 50 to 2,500 € (Art. 407 NCPC). A witness who fails to testify can be summoned to appear in court at his own expense.

Those who cannot testify are:

- A person who is prohibited from testifying, [i.e.: a person who has received a criminal sentence with limitation of civil and political rights (Articles 7, 11, 12, 13, 14 and 24 of the Luxembourg Criminal Instruction Code); a minor; a person without legal capacity]. However, the persons who are considered as being unable to testify can still be heard by the court, but without taking an oath.
- Descendants can never testify/give evidence on a divorce or a separation proceedings launched by spouses.
- A company director on behalf of the company.

o) Section 170 of the **Hungarian** Code of Civil Procedure (CCP) deals with the cases where the witness can refuse to testify. Section 169 deals with the cases where a person cannot testify. According to Section 170 of the Hungarian Code of Civil Procedure, giving testimony may be refused: by any close relative of the parties referred to in Subsection (2) of Section 13; any person whose testimony would implicate himself or his close relative referred to in Subsection (2) of Section 13 in the commission of a crime, to the extent covered by that subject; by attorneys, doctors and other persons bound to confidentiality stemming from their profession, if their testimony would entail their having to breach the obligation of confidentiality, except if the concerned party granted an exemption from this obligation; mediators and experts involved in mediation proceedings pertaining to the litigation on hand; persons bound to keep business secrets in respect of the subjects if their testimony would entail their having to breach the obligation of confidentiality.

   Section 169 of the Hungarian Code of Civil Procedure deals with situations where a person cannot testify: any person who cannot be expected to provide correct testimony due to some physical or mental disability may not be summoned to testify; the witness, unless exempted from the obligation of confidentiality, shall not be questioned in respect of any subject that is treated as classified information; the obligation of confidentiality shall remain in force after the termination of the underlying relationship; the authority or body vested with competence to grant exemption from the obligation of confidentiality with respect to certain cases shall be decreed by the Government; the subject for which the exemption is requested shall be indicated in the request for exemption; the testimony of a witness obtained in violation of this Section shall be inadmissible.

   If a person unlawfully refuses to testify, the court may apply coercive measures and punishment. If the witness does not appear notwithstanding the summons (or appears but leaves without permission), the court makes him/her liable for the costs caused and imposes a financial penalty on him/her. The court may issue a bench warrant (for compulsory attendance); in which case, the police has to arrest the witness and bring him/her before the court (Art. 185.1 CCP).

p) Art. 587 of the **Maltese** Code of Organisation and Civil Procedure (COCP) provides that the witness must answer any question which the court may allow to be put to him; and the court can compel him to do so by committing him to detention until such time as he has sworn an oath and answered. A witness cannot be

compelled to answer any question, the answer to which may subject him to a criminal prosecution (Art. 589 COCP). Moreover, it is at the discretion of the court to determine, in each case, whether a witness is not bound to answer a particular question because it might incriminate him or because the disclosure of relevant facts would be against public policy (Art. 590 COCP). Also, a witness may not be compelled to disclose any communication made to him/her by his/her spouse during the marriage, nor may he/she be compelled to answer any question tending to incriminate his/her spouse (Art. 566 COCP).

q) In the **Dutch** Code of Civil Procedure (CCP) only some types of witnesses may refuse to testify: a husband or wife, or registered partner and relatives up to the second degree of the husband etc...., may refuse except when that person is operating as a formal party f.i. as guardian; professional privilege not to give evidence, such as a doctor, lawyer, notary and clergyman; if the witness or his close relatives would be exposed to criminal prosecution (Article 165 par. 2 and 3 CCP).

There are several sanctions for a witness who refuses to attend or to testify: he can be brought before the court by the police (Article 172 CCP), temporarily detained if he refuses to comply with a judicial order (imprisonment, Article 173 par. 2 CCP). In addition, criminal sanctions such as fines or imprisonment are available.

r) According to the P**olish** Code of Civil Procedure-CCP- (Art. 261) no one, except spouses of the parties, their ascendants, descendants, siblings and kinsmen (in-laws) of the same line and degree and persons connected by adoption may refuse to testify as a witness. The right to refuse to testify endures after a marriage or adoption is terminated, although refusal to testify is not acceptable in cases regarding origin/parentage rights, except in divorce cases. A witness may refuse to answer a question, if such testimony could expose him or his above-mentioned relatives to criminal ;liability, dishonour or serious, direct pecuniary damage or if such testimony would be connected with infringement of a significant professional secret. A clergyman may refuse to testify about facts learnt during confession. A court will fine a witness for unjustified non-attendance. It will summon him again, and at the next non-attendance will fine him again. It also has the power to order the witness to be brought before the court for trial (which also applies to a witness who has departed without the court's permission) (Art. 274 CCP). A fine up to 5 000 zlotys (1.137 € aprox.)may be ordered if a person was summoned to attend as a witness and that this person was aware of the summons (Supreme court resolution dated 28th of May 1982, I KZ 154/82).

Certain persons cannot be witnesses: 1) a person unable to perceive or to communicate his observations, 2) military personnel and civil servants not excused from keeping secret classified information with a restricted or confidential classification if such testimony would breach such a duty 3) a legal representative of a party and a person who may be heard as a party acting as an official body of a legal entity with the capacity to be a party in civil cases 4) certain joint participants in the proceedings 5) a mediator in relation to facts learnt in connection with mediation, unless excused from maintaining such confidentiality (Art. 259-260 CCP).

s) According to Art. 519 of the **Portuguese** Civil Procedure Code, everyone, including some who is not a party, must collaborate in the discovery of truth, answer the questions made by the court, submit to the necessary inspections, supply anything ordered and perform any other actions ordered by the court. Witnesses can refuse to testify in the civil procedures when the parties are their ascendants, descendants, adopter, adopted, father-in-law, and mother-in-law, spouses, ex - spouses or cohabitant in union under conditions similar to those of spouses (Art. 618.º, 1 CPC) and they must be informed by the judge that they have this right (Art. 618.º, 2 CPC). However, even these categories of witnesses cannot refuse to testify in civil procedures aimed to verify the birth or death of children (son/daughter).

   Those who are under professional, official or state secrecy must excuse testifying about the facts subject to confidentiality (618.º, 3 CPC). In this case, the court must apply the criminal procedural rules to any legal excuse and to any waiver of secrecy invoked. According to Art. 519.º, 2 CPC, all those who refuse to cooperate will be sentenced to a fine and subjected to any reasonable coercive methods. Only those who are not parties to the judicial process, who have the physical and mental ability to testify on the facts that are the subject of proof and who are not prohibited by mental disorder can testify as witnesses. It is the duty of the judge to check the natural ability of persons listed as witnesses, in order to assess the acceptability and credibility of their testimony (Art. 616.º CPC).

t) Under the **Romanian** Code of Civil Procedure (CCP), a witness is obliged by law to testify under pain of a judicial fine (Art.108 ind.1 par.2 subpar.a) CCP). According to Article 191 of the Code of Civil Procedure, the following persons are excused from serving as witnesses: cult members, doctors, midwives, pharmacists, lawyers, notaries public and any other workers that by law are obliged to keep secret the facts entrusted to them in the exercise

of their duties; **civil servants and former civil servants on secret facts of which they had knowledge in their professional capacity**; those who by their answers would expose themselves or any of the persons listed in Article 189 under sections 1 and 2 to a criminal punishment or public scorn." According to Art. 108 paragraph 2 subparagraph a) of the Code of Civil Procedure, "Unless otherwise provided by the law, the court, [...] shall sanction [...] with judicial fine from 30 lei to 500 lei (7-115 € aprox.): a) legally summoned witness's failure to appear or his/her refusal to testify if he/she appears in court, except if he/she is a minor". According to Article 189 of the Code of Civil Procedure," the following cannot be heard as witnesses: 1.-relatives and in-laws up to the third degree inclusively; spouse, even if separated; persons subject to penal incapacity and those declared by law unable to testify; those convicted for perjury or false testimony. 2.-The parties may agree, expressly or tacitly, to be heard as witnesses also the persons provided under paragraph 1 subparagraphs 1 and 2."

u) Under **Slovenian** law, a person summoned to court as a witness is obliged to testify, unless otherwise determined by law (Article 229 paragraph 1 of the Civil Procedure Act). The law imposes on witnesses three types of duties: 1.) duty to respond to the invitation of the court, 2.) duty to testify; and 3.) duty to tell the truth. As a witness individual incapable to testify on the facts, which are being proved, cannot be examined (Article 229 paragraph 2 of the Civil Procedure Act), as well as an individual, that would, if he testified, breach the duty of protection of official or military secret, cannot be examined until such time as the competent authority releases him from the duty of preservation (Article 230 of the Civil Procedure Act).

Further on, the Slovenian legal system also regulates so called privileged witnesses (Article 231 of the Civil Procedure Act). These witnesses may refuse to testify. The privilege extends to the following persons: 1) a legal representative of the party regarding the facts, that party declared to him as her representative; 2) a religious confessor on the facts the party declared to him as a confessor; 3) an advocate, medical expert or any other person, performing a profession, where a duty of secrecy concerning facts declared to them applies. Hence, these persons can refuse to testify if they acquired knowledge of certain conclusive facts within the scope of their professional duties and when any duty of professional secrecy is applicable. The later need not to be prescribed by legislation but stipulated in a code of professional ethics. The privileged witness rule is not absolute, however, and will not apply if disclosure of certain facts in necessary for the protection of public benefit or the benefit of

someone else, if this benefit is greater than professional secrecy (Article 232 of the Civil Procedure Act).

When there are no grounds for refusal to testify, a witness not responding to the court's summons may be brought to court by force at his or her own expense; or else a fine of up to 1.300 EUR can be imposed on the witness by the court. If a witness responds to the court summons but refuses to testify, the court may impose a fine of up to 1.300 EUR; if the witness still refuses to testify, up to one month's detention may be ordered or until such time as the witness testifies, whichever is sooner. At the request of one party, the court may also order that such a witness reimburses the court for any costs so caused.

v) According to Swedish Code of Judicial Procedure (RB), in principle, anyone who is not a party is obliged to testify (RB Chapter 36, Section 1). A close relative to a party is not obliged to testify. This includes a person who is or was married to the party; a person who is in an ascending or descending relationship with the party; a person who is a brother or sister of the party or a brother- or sister in-law and a person who is or has been married to a brother or sister to a party or is related in a similar way to the party (RB Chapter 36, Section 3).

A person who is obliged to testify may decline to comment on a certain fact if a statement would mean that the witness was thereby forced to reveal that he or a person related to him as stated in Section 3, had committed a criminal or dishonorable act. Nor does a witness need to reveal trade secrets and may decline to comment on any fact relating to an individual's personal circumstances referred to in Chapter 35, Section 11 the Swedish official Secrets Act (RB Chapter 36, Section 6). The monarch and foreign diplomats who have diplomatic immunity are not obliged to testify.

A person who shall be heard as witness shall be summoned, under penalty of a fine, to appear before the court (RB Chapter 36, Section 7). If a witness who has been summoned to attend pursuant to Chapter 36, Section 7 fails to do so, the court must either order a new default fine, provided that the case is scheduled for a return date, or else must order that the witness be detained and then brought before the court at once or on the scheduled day (RB Chapter 36, Section 20).

If a witness, without a valid excuse, refuses to take an oath, to testify, to answer a question or to obey an order pursuant to RB Chapter 36, Section 8, the court must order the witness to

perform his duty under penalty of fine, and, if he persists in his refusal, under penalty of detention (RB Chapter 36, Section 21).

Parties who may not be heard as witnesses (RB Chapter 36, Section 1). Persons who have a duty of confidentiality outside the court are not allowed to testify in certain circumstances. This includes for example advocates, defense counsel, physicians and clergymen (see RB Chapter 36, Section 5). These persons are obliged to testify but may not be asked questions concerning matters, which fall within their duty of confidentiality.

w) In **UK and Wales**, all persons are in principle compellable as witnesses, with limited exceptions such as the privilege against self-incrimination. Witnesses can refuse to answer questions on privileged matters or matters that might incriminate them. Those who lack capacity to the requisite degree – e.g. because of age or mental ability – may not testify on oath; although unsworn evidence may still carry some weight.

5.5.2 Payments to witnesses for participation[53]

All member state legal systems make provision for compensation payable for appearance as a witness before a court. In some cases, specific amounts are specified in terms of kilometres and number of days, and in others the cost of travel is reimbursed. Cyprus differs in that various amounts are specified, depending on the occupation of the witness.

5.5.3 Preliminary lists of questions for witnesses

In the vast majority of member states' legal systems, examination of witnesses is not agreed in advance, nor is there any obligation to deliver any list of questions to the court, except for Belgium, France, Italy, the Netherlands, Poland and Portugal:

a) In Belgium, the judgment ordering the interrogation of witnesses, must determine the facts on which the witnesses may be heard (Art. 917 CPC). A list of witnesses should be handed to the court 15 days before the hearing of the witnesses (Art. 922 CPC).

[53] This short paragraph is included because of the judgment of the court (First Chamber) of 17 February 2011. Artur Weryński v Mediatel 4B spółka z o.o.. case C-283/09.: "Articles 14 and 18 of 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 must be interpreted as meaning that a requesting court is not obliged to pay an advance to the requested court for the expenses of a witness or to reimburse the expenses paid to the witness examined".

b) In the case of France, the judge is the only person who leads the interrogation (arts. 204-221 Civil Code of Procedure). The judge, if he deems it proper, ask the questions that the parties have submitted to him after the examination of the witness (Art. 214 CCP).

c) According to the Italian Code of Civil Procedure (Art. 244), the questions posed to witnesses must be framed separately and specifically indicate the persons which should be examined and the facts about which they should testify.

d) According to the Polish Code of Civil Procedure (CCP), a party referring to oral evidence is obliged to set out precisely the facts that have to be stated by the testimonies of relevant witnesses and to identify witnesses so as to make calling them possible (Art. 258 of CCP). Also, according to Art. 236 of CCP, a court is obliged to formulate by means of a court decree on the taking of evidence a particular proposition to be proved – which means facts to be stated by prescribed evidentiary reception methods. A thesis to be proved formulated by a party in application regarding taking evidence can be treated as its base. The parties are obliged to indicate proofs for the facts they derive legal consequences from to be stated (Art. 232 of CCP).

e) Finally, as the Portuguese Civil Procedure Code states, the witness testimony is not free – the questioning of witnesses respects to the facts contained in a list of questions (called "base instrutória"-list of the disputed facts) previously prepared by the court with the parties cooperation (in the preliminary hearing – Art. 508.º-A, d) C.P.C.) or just by the court (when there is not preliminary hearing – arts. 508.º B, 1, 510.º e 511-º C.P.C.). When there is not "base instrutória" the questioning of witnesses is connected to the facts previously adduced by the parties in their articulated pieces or carried by the judge to the process. The parties ask the witnesses about the facts they invoked or contested, but each party cannot hear more than five witnesses for each fact (this does not include any witnesses who claim to know nothing) – Art. 633.º C.P.C. (that limit is reduced to three witnesses in the "sumário" process – Art. 789.º C.P.C.).

Country	Legal obligation to act as a witness /sanction for not attending	Specific grounds for not being a witness	Compensation for witness	A previous list of questions has to be elaborated and be given to the court?
Belgium	Yes/yes	yes	yes	no
Bulgaria	Yes/yes	yes	yes	no
Czech Republic	Yes/yes	yes	yes	no
Germany	Yes/yes	yes	yes	no
Estonia	Yes/yes	yes	yes	no
Greece	Yes/yes	yes	yes	no
Spain	Yes/yes	yes	yes	no
France	Yes/yes	yes	yes	yes
Ireland	Yes/yes	yes	yes	no
Italy	Yes/yes	yes	yes	yes
Cyprus	Yes/yes	yes	yes	no
Latvia	Yes/yes	yes	yes	no
Lithuania	Yes/yes	yes	yes	no
Luxembourg	Yes/yes	yes	yes	no
Hungary	Yes/yes	yes	yes	no
Malta	Yes/yes	yes	No legal provisions	no
Netherlands	Yes/yes	yes	yes	no
Austria	Yes/yes	na	yes	no
Poland	Yes/yes	yes	yes	yes
Portugal	Yes/yes	yes	yes	yes
Romania	Yes/yes	yes	yes	no
Eslovenia	Yes/yes	yes	yes	no
Slovakia	Yes/yes	yes	yes	no
Finland	Yes/yes	na	yes	No
Sweden	Yes/yes	yes	yes	no
UK- England&Wales	Yes/yes	yes	yes	no
UK- Northern Ireland	Yes/yes	yes	yes	no
UK- Scotland	yes	na	yes	Na

5.5.4 Proposals

- A general duty to testify should be imposed in all member states.
- Major differences arise when referring to the specific grounds on which the witness is not required to testify, together with the financial compensation payable. However, reference to national rules does not seem problematic, since no problems of implementation have been reported in this area.
- Despite the major differences, harmonisation of rules affecting the grounds to be excused from testifying is not recommended, since

such rules are derived from constitutional sources and have an impact beyond the civil and commercial fields alone.

5.6 THE ROLE OF THE JUDGE

5.6.1 Significant differences arise in the respective roles of judges in the taking of evidence. Should the judge have control of this process or must it always take place on the application of one of the parties?

In relation to this issue, there is a difference between those legal systems where the courts, in general, have the power to take evidence, and those in which the initiative of the parties prevails. The initiative of the parties is the general rule in all member states´ legal systems.

We include Belgium, the Czech Republic, France, Ireland, Luxembourg, Portugal, Romania and Slovakia in the first group above:

a) According to the Belgian Code of Civil Procedure (CPC) the judge can order any type of examination he or she deems appropriate. Thus, the court can order the disclosure of relevant, non-privileged and reasonably identified evidence in the possession or control of another party or, if necessary and on just terms, of a non-party (Art. 871 and 877 CPC). The court may order the testimony of a witness (Art. 916 CPC), the expert examination (Art. 962-991bis CPC) or the personal appearance of a party in order to be heard by the court (Art. 992 CPC). Finally, the court can order an investigation *in situ* (Art. 1007 CPC).

b) In Czech civil procedure, it is necessary to distinguish between contentious and non-contentious proceedings. So-called *non-contentious proceedings* (the aim of which is not to settle a dispute, but to settle relations for the future, e.g. judicial care for minors, inheritance proceeding, commercial register applications) are based on the investigating principle. Because in these proceedings there is a public interest in the decision, the court can investigate facts and take evidence of its own motion. In *contentious proceedings* (the aim of which is to settle a dispute), the principle to try/hear is applied in civil procedure. In these proceedings the court can take only evidence proposed by the parties, of its own motion the court can take evidence only if necessary during the proceedings and if this evidence arises from the court file (e.g. it is testimony of a witness about whom the party spoke but whose evidence was not introduced directly. And furthermore in case law it has been interpreted that the need to

take evidence without it being led by a party is possible only if the court needs to find out a specific fact because it has to apply a binding legal rule (rule which cannot be modified by will of parties). The questions described are regulated in Article 120 of the Civil Procedure Code[54].

c) Under the French Code of Civil Procedure (arts. 9-11), the judge can take evidence of his own motion. This means that the factual circumstances upon which resolution of the dispute depends may, at the request of the parties or *sua sponte*, be subjected to any legally permissible investigation.

d) Following rules of the Superior courts (Order 39 Rule 1) of Ireland, a judge has a broader and inherent discretion to direct a question to a witness but care must be taken by a judge not to interfere with the examination of witnesses.

e) Under the New Luxembourg Civil Procedure Code (Articles 379 and following), the judge can either order an investigation at the request of a party or take evidence of his own motion.

f) Under Art. 265 of the Portuguese Civil Procedure Code (PCPC), the judge may, of his own motion, conduct or order all reasonable investigations in order to ascertain the truth and arrive at a fair composition of the dispute on the facts known to him or her. This general principle is also mentioned in some specific rules, namely arts. 579 and 612.1 CPC, which concern expert testimony and judicial examination, respectively.

g) Under Romanian procedural rules, given its active role, the court is required to seek itself the evidence it deems necessary for fair settlement of the case. Article 129 paragraph (5) of the Code of Civil Procedure provides in this regard that "Judges have a duty to insist, by all legal means, to prevent any mistake on finding the truth in the respective case, based on establishing the facts and correctly applying the law, with the purpose to deliver a legally grounded ruling. If the proposed evidence is not enough to fully clarify the process, the court shall order the parties to complete the evidence. Also, the judge, ex officio, may inform the parties on need to bring other evidence, which the judge can order even if the parties are against."

Within the second group of member states´ legal systems a distinction may be drawn concerning those where the court's own initiative in the taking of evidence is, for the most part, confined to public interest grounds or family law cases. This is the case with the Estonian procedural rules.

[54] te same rule is in force for Slovakia.

According to subsection 3 of section 230 of the Code of Civil Procedure, the court may take evidence of its own initiative in a matrimonial matter, filiation matter, a dispute related to the interests of a child and in simplified proceedings (i.e. a monetary claim not exceeding number of2000 EUR).

According to the Spanish Civil Procedure Law (CPL), the evidential initiative in civil proceedings is at the application of the parties. Nonetheless, the court has the power to invite the parties to request evidence that it considers to have been neglected by them, although it is ultimately for the parties to decide whether or not to adduce such evidence. The court may also intervene on its own initiative regarding the evidence presented at the request of a party. For example, the judge may directly ask a witness or one of the parties; similarly, the judge may, on his own initiative, agree to let evidence into proceedings where public policy is at issue: for example, in the case of proceedings in which the rights of minors or incapacitated individuals are at stake. Another exception of a different kind is laid down by Article 435.2 (Final proceedings): "Exceptionally, the court may, on an ex officio basis or at the request of a party, agree upon the taking of new evidence concerning relevant facts that have been alleged in a timely fashion if the evidence taken beforehand has not been helpful as a result of circumstances that have ceased to exist; this is independent of the will of the parties and the care taken by them and lasts as long as there are solid reasons to believe that the new procedures will provide certainty regarding such facts. In such a case, those circumstances and reasons shall be set forth in detail in the court order agreeing to such final proceedings being conducted".

According to Latvian procedural rules, the judge can take evidence of his own motion in the cases referred to in section 111 of the Civil Procedure Law (Procedures for Submitting Documentary Evidence): "(4) If a true copy of or an extract from documentary evidence has been submitted to a court, the court is entitled to require, pursuant to the substantiated request of participants in the matter or upon its own initiative, that the original be submitted if that is necessary for the determining of facts in the matter". Also in cases referred in section 239 (Preparation of Dissolution of Marriage Matters for Adjudication and Adjudication Thereof): "(1) In matters regarding dissolution or annulment of marriage the court on its own initiative shall require evidence, especially for deciding such issues which affect the interests of a child".

5.6.2 Order

There is a group of member states whose legal systems lay down an order to be followed, and other more flexible member states where there are no specific rules on this point. Those in the first group are Spain, Ireland, Cyprus, Netherlands, Finland, Sweden, UK (England and Wales and Northern Ireland) and Portugal.

Within the group of countries where there are no statutory provisions nor any rules that may be inferred from case law regarding the order to follow in conducting the taking of evidence in the trial, we highlight some where there is a higher level of discretion on the part of the judges in directing trials. The legal systems we would place within this category are Belgium (Art. 875 Judicial Code), Bulgaria (Art. 157 Civil Procedure Code), Czech Republic and Slovakia (Chap. II Code of Civil Procedure), France (Art. 10 Code of Civil Procedure), Hungary (sec. 3(5) of the Code of Civil Procedure), Poland (Art. 236 Code of Civil Procedure), Romania (Art. 168.2 Code of Civil Procedure).

Country	**Can the judge take evidence of his own motion as a general rule?**	**Is there an order to follow in conducting the taking of evidence in trial?**
Belgium	Yes	No
Bulgaria	No	No
Czech Republic	Yes, but only in non contentious proceedings	No
Germany	No	No
Estonia	No	No
Greece	No	No
Spain	No	Yes
France	Yes	No
Ireland	Yes	Yes, in practice
Italy	No	No
Cyprus	No	Yes, in practice
Latvia	No	No
Lithuania	No	No
Luxembourg	Yes	No
Hungary	No	No
Malta	No	No
Netherlands	No	Yes
Austria	No	No
Poland	No	No
Portugal	Yes	Yes
Romania	Yes	No
Eslovenia	No	No
Slovakia	Yes, but only in contentious proceedings	No
Finland	No	Yes
Sweden	No	Yes.
UK-England&Wales	NA	Yes
UK- Northern Ireland	No	Yes
UK- Scotland	NA	NA

5.6.3 Proposals

- Differences regarding the role of the judge in the taking of evidence among member states have not given rise to major problems.

- Reference made by Article 10 of Regulation 1206/2001 to national rules of the requested state avoids the need to implement uniform procedural rules related to the role of the judge or to a specific order in the process of taking of evidence, mainly taking into account that the general survey results show that the application of this provision is not problematic.

5.7 VIDEOCONFERENCE AND TELECONFERENCE

The use of videoconferencing and teleconferencing is one of the main current concerns, as shown by the Report of the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of the Council Regulation (EC) 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 final)[55]; by the E-Justice European Parliament resolution of 18 December 2008 with recommendations to the Commission on e-Justice (2008/2125(INI)) - ANNEX (OJ C 045 E)[56] and by the Multi-Annual Programme 2010-2014 regarding the area of freedom, security and justice (Stockholm Programme) European Parliament resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm Programme (OJ C 285 E)[57].

[55] "2.4. Communications technology
The study indicates that the use of communications technology provided for in Articles 10(4) and 17 (4) of the Regulation has in practice simplified and accelerated the taking of evidence in other member states, but that it is still used rather rarely. In cases where communications technology, in particular videoconferencing, has been used, this has generally not caused any problems (see Annex IV).
These findings show that on the one hand the taking of evidence is simplified significantly by the use of communications technology, but that on the other hand unfortunately the potential lying in the use of communications technology is currently used still little since the technology necessary is available only to a limited extent.[3] In the future, significant efforts should be made by the member states to increase the use of communications technology, in particular videoconference[…]".

[56] "Detailed recommendations on the content of the proposal requested
[…]3. Action on civil procedure
The Commission and the Council should report to the European Parliament on the reform and harmonisation of procedural law and the law of evidence in cross-border cases and cases before the court of Justice, having regard to developments in the field of information technology. The aim should be simpler, cheaper and faster civil proceedings in cross-border cases".

[57] "E-justice: a facility for citizens, practitioners and the judiciary.
107. Calls for a greater effort to promote and develop e-justice at Community level, in the interests of access to justice for citizens and business, and considers that:
-[…]

Regarding the effective application of videoconference or teleconference systems at national level, several member states do not have national legal rules on this matter. This does not necessarily mean that evidence may not be taken using these methods or that express prohibitions prevent this possibility.

In other member states, restrictions are connected with the absence of technical facilities in some courts, rather than with y express statutory prohibition.

In other member states the legal basis for the use of videoconference or teleconference systems has been regulated directly – at least for cross-border requests – in Regulation 1206/2001, without any express mention of teleconferencing and videoconferencing in national laws of member states.

Among member states where there are rules that expressly authorise this method for taking evidence, the following should be mentioned: Germany, Estonia, Greece, Spain, Cyprus, Lithuania, Malta, Poland, Portugal, Slovenia and the UK (England, Wales, Northern Ireland):

a) According to the German Code of Civil Procedure (Zivilprozessordnung – ZPO) it is within the discretion of the court whether the witness may answer a questionnaire in writing (sec. 377 para. 3) or – in consensus with the parties – whether the evidence may be submitted by videoconferencing (sec. 128a para. 2), or by phone or by e-mail or any other means (sec. 284).

b) In the Estonia case, there is no general rule for taking evidence by videoconference or teleconference as it depends on the type of the evidence. Namely the hearing of a witness, hearing of participants in proceeding under oath and hearing persons with specific expertise with the aim of proving a fact or event, which requires specific expertise in order to be correctly interpreted, can be performed by videoconference or teleconference. Section 350 of the Code of Civil Procedure (CCP) states rules for the hearing of witnesses. In this case, a court will organise a session in the form of a procedural conference such that a witness, who stays at another place at the time of the court session may be heard in real time at such place.

c) According to a very recent amendment of the Greek Code of Civil Procedure (Art. 270. 7 and 8) by law 3994/2011, the court,

- the existing body of Community law in the field of civil law, in particular procedural law, should be made more compatible with the use of information technology, especially as regards the European payment order and the small claims procedure, the Civil Evidence Regulation (1) and alternative dispute resolution, and action should be taken in the areas of electronic acts and transparency of debtors' assets; the aim should be to bring about simpler, cheaper and faster civil proceedings in cross-border cases;
-[…]"

following a request of the parties or *propio motu* may decide that the parties and their attorneys must be present at a different venue and carry out any relevant procedural steps there. The relevant discussion is transmitted by sound and images to the courtroom and in the place where the parties and their attorneys are present. In the same manner the court may decide about the examination of witnesses, experts or parties. Such examination is considered as taking place before the court and has the same probative effect as examination in the courtroom. However, these new provisions will become into force only after a relevant presidential decree has been issued and such a decree has not appeared to this day.

d) In the Spanish legal system, according to Art. 229.3 of the Law on the Judiciary, legal proceedings must be predominantly oral, especially in criminal matters, without prejudice to the documentation of the proceedings. These proceedings may take place via videoconference or another similar system that allows the two-way, simultaneous transmission of images and sound, as well as visual, auditory and verbal interaction between two persons or groups of persons who are in different geographical locations. It must be possible at all times for each party to question and counter the other party's evidence, guaranteeing the right to a fair trial, whenever the judge or the court so agrees. In these cases, the clerk of the court or tribunal which agreed to the measure must, from their own location, verify the identity of the persons appearing in the videoconference on the basis of the prior submission or immediate production of official documents, personal acquaintance or other suitable procedural methods.

e) According to an amendment to the Cyprus Evidence Act in 2010, the taking of evidence by teleconference is enabled provided that the witness is outside the Republic and the taking of his evidence is in the public interest. The court might impose any conditions it deems necessary. The direct taking of evidence by technical means takes place pursuant to Art. 692 of the Latvia Civil Procedure Law.

f) In Lithuania, the taking of evidence by videoconference or teleconference will be allowed from the 1st of March 2013 (respective amendments and supplements of the Code of Civil Procedure will come into force). According to Art. 622 and 622B of Chap. 12 of the Maltese Code of Organisation and Civil Procedure the court can allow the recording on tape or video of evidence required from a witness who resides outside of Malta.

g) In Poland, evidence can be taken by videoconference. This subject is governed by Art. 235.2 and 3 of the Code of Civil

Procedure and the Decree of the Minister for Justice of 24 February 2010 on the technical equipment and resources that enable evidence to be taken remotely in civil proceedings.

h) According to the Portuguese *Civil Procedure Code (CPC),* witnesses can be heard by teleconferencing in the court of the county where they live when they do not live in the court's county of the lawsuit, when they live abroad or (in the case of the autonomous regions of Madeira and the Azores) when they do not live in the island where the court is located (Art. 623 CPC), if they are not presented by the parties. But if the court in which the proceedings are taking place is located in Lisbon or Oporto metropolitan areas, witnesses do not testify by videoconferencing if they live in those areas. However, when the witnesses' displacement to the court is impossible or hardly difficult, the judge can determine (if the parties agree and when that is compatible with the nature of the facts to investigate or clarify) that witnesses provide essential information for satisfactory resolution of the dispute by telephone or by some other direct method of communication with the court (Art. 639.b CPC). It is also provided that the parties can be examined by teleconference if they live outside the judicial circuit or outside the island (in the case of the autonomous regions of the Azores and Madeira) and that experts from public institutions, laboratories or services may be heard by teleconference from their workplace (arts. 5562 and 588 CPC respectively).

I) In Slovenia, video or telephone conferences are allowed under rules of procedure. In accordance with Article 114a of *the* Civil Procedure Act the court may, with the consent of both parties, allow that parties and their representative, are at the time of hearing situated on different places wherefrom they can perform procedural acts; the voice, audio or visual transmission shall, of course, be ensured. The same applies also in case of expert examination, examination of the parties and witness testimony.

J) In UK (England and Wales), guidance on the use of videoconferencing is available in Annex 3 to the Practice Direction to part 32 of the Civil Procedure Rules.

k) In Northern Ireland, it is possible evidence to be taken by videoconference either with the participation of a court in another member state or directly by a court of that member state. The procedures for obtaining evidence are found in Order 38 of the court of Judicature Rules (The rules of the Supreme court (Northern Ireland) (Amendment No.2) 2005).

To summarise, no significant legal difficulties have been identified (apart from technology-related ones, depending on the different regions of each member state) except, perhaps, in the case of Bulgaria and Hungary:

a) In Bulgaria, the Code of Civil Procedure, which is the basic legislation governing procedure in civil cases, makes no express provision for the taking evidence by videoconference. Bulgarian courts therefore have no practice of using videoconferencing to take evidence in civil proceedings. Nevertheless, since the Code of Criminal Procedure makes appeal courts responsible for carrying out requests from foreign judicial authorities to examine individuals by videoconference in criminal proceedings, all courts of appeal in Bulgaria will soon be equipped with the necessary technical facilities. This will be done under the 'Administrative Capacity' Operational Programme project entitled 'Introduction of coordination and cooperation mechanisms in and between judicial bodies for cases of particular public interest'. The fact that the appeal courts will soon be equipped with the necessary videoconferencing technology opens up the possibility of using the same equipment in civil cases, although national procedural rules will also have to be stipulated in the Code of Civil Procedure.

b) The Hungarian Code of Civil Procedure does not contain provisions addressing the issue specifically. Although such methods are not expressly excluded, certain procedural requirements appear to fulfill if the witness does not appear in person before the court (identification of the witness, warnings etc.). It is to be noted that the court seized of the proceedings may request another court to accomplish the interrogation of the witness (see Sections 171(2) and 202 of the Hungarian Code of Civil Procedure). In this case, the witness appears before the requested court, and the requested court acts against the witness (i.e. identification, interrogation, drafting the minutes, etc.).

Country	**In your member states taking evidence by videoconference or teleconference expressly permitted?**
Belgium	No (there is no prohibition)
Bulgaria	No
Czech Republic	No, (allowed in a new draft CPC amendment)
Germany	Yes
Estonia	Yes
Greece	Yes
Spain	Yes
France	No (there is no prohibition)

Ireland	No (there is no prohibition)
Italy	No (there is no prohibition)
Cyprus	Yes
Latvia	Yes
Lithuania	Yes, from 1st march 2013
Luxembourg	No (there is no prohibition)
Hungary	No
Malta	Yes
Netherlands	No (there is no prohibition)
Austria	No (there is no prohibition)
Poland	Yes
Portugal	Yes
Romania	No (there is no prohibition)
Eslovenia	Yes
Slovakia	No (there is no prohibition)
Finland	No (there is no prohibition)
Sweden	No (there is no prohibition)
UK- England&Wales	Yes
UK- Northern Ireland	Yes
UK- Scotland	No (there is no prohibition)

5.8 PRESENCE OF THE PARTIES AT THE TAKING OF EVIDENCE

5.8.1 General Outline

Under Article 11, if provided by the law of the member state of the requesting court, the parties and, if any, their representatives, have the right to be present at the actual taking of evidence in the requested court. In this case, the requesting court shall, in its request, inform the requested court that the parties and, if any, will be present and, where appropriate, that their participation is requested using form A, as shown in the Annex.

At the same time, the requested court may ask the parties or their representatives to be present at or participate in the taking of evidence if that possibility is stipulated by its own national law.

This provision is supported by the adversarial principle that governs civil proceedings in most member state. Under this principle, either the parties or their representatives must be given the opportunity to be present when evidence is led. Therefore, all witnesses and experts are examined in the presence of both parties; and all documents are read in the presence of both parties in the court. Additionally, both parties or/and their representatives may participate at the judicial examination. Due to the same principle the parties are also allowed to ask questions of witnesses and experts, present their views and submit their comments on the conduct of evidence reception to the court.

5.8.2 Exceptions to the general rule

The presence of the parties and their representatives is admitted in most member states, although in Ireland and Malta it is not just an option but also a duty.

MEMBER STATE	PRESENCE PERMITTED	PRESENCE PROHIBITED	PRESENCE COMPULSORY	NO RULES
Belgium	**X**			
Bulgaria	**X**			
Czech Republic	**X**		**X**	
Germany	**X**			
Estonia				**X**
Greece	**X**			
Spain	**X**			
France	**X**			

Ireland			**X**	
Italy	**X**			
Cyprus	**X**			
Latvia	**X**			
Lithuania	**X**			
Luxembourg	**X**			
Hungary	***X***			
Malta	**X**			
Netherlands	**X**			
Austria				
Poland	**X**			
Portugal	**X**			
Romania	**X**			
Eslovenia	**X**			
Slovakia	**X**			
Finland				
Sweden	**X**			
UK-England&Wales	**X**			
UK- Northern Ireland	**X**			
UK- Scotland	**X**			

5.8.3 National legal conditions to be observed in the participation of the parties:

If the participation of the parties and, their representatives, if any, is requested for the actual taking of evidence, the requested court must set, in accordance with its internal law, the conditions under which they may participate.

It seems clear that the use of new communications technology is of great importance as an alternative to physical presence, being simpler and more cost-effective. The actual use of new communication technologies within the Regulation's procedures remains to be evaluated, so as to optimize its future role. Barriers to the presence of the parties and their representatives are not necessarily legal in nature (differences between legal systems) but rather, technological in origin: in fact, sheer distance may persuade parties or their representatives to be present at the taking of evidence.

Belgium:	Parties may be present during the examination of experts, judicial examination, witness testimony or the examination, confession or oath of one of the parties.

	Public or private documents invoked by one of the parties as proof of certain facts/obligations, must be handed over to the other party before the court hearing. If not, they cannot be accepted as proof. One of the basic rules concerning the taking of evidence deals with its adversarial character.. Therefore, the parties have a right to be present at the hearing of a witness (although the parties are not actually required to be present); nevertheless, they are not allowed to interrupt or question the witness. Only the judge may question the witness. The parties may direct questions through the judge. Similarly, the parties must be summoned not only to the first meeting held in an expert investigation but to all subsequent meetings also, unless they have exempted the expert from this obligation. The expert must hear arguments by both sides before delivering his or her opinion. However, for reasons of privacy or business secrecy, the presence of the parties may be restricted.
Czech Republic:	The taking of evidence is conducted at an oral hearing, to which the parties must be summoned. For it to be effective, the taking of evidence may be conducted by the requested court or otherwise than in an oral hearing; but either way, the parties and their representatives must be informed about it, unless they have expressed a desire not to be present.
Estonia:	*Here too, there is no general rule governing the ability of the parties to be present at the taking of evidence. It is specific to the type of evidence. However, according to subsection 5 of section 288 of the CCP, evidence taken and reports of procedural steps performed outside a court session must be made public in a court session and communicated to both experts and witnesses as necessary. Thereafter, the participants in the proceeding may give statements with regard to such evidence.* *Hearing of a witness and of participants in proceedings under oath: There is no regulation regarding the possibility of being present in taking this type of evidence. However, as those hearings commonly need to happen at the court hearing and the parties have the right to be present at the court hearing, they also are permitted to be present at the taking of this type of evidence.* *However, according to subsection 2 of section 260 of the CCP, the court may remove a participant in the proceedings from the courtroom while a witness is being heard, if the judge has reason to believe that a witness is afraid or has some other reason not to tell the truth in the presence of that participant or if that participant taints the testimony of a witness by interference or in any other manner. After the return of such a participant to the proceedings, the testimony of the witness must be read to the participant, who then has the right to question the witness.* *Documentary and physical evidence: Documents and physical evidence may be submitted to a court if it has prohibited the use of videoconferencing or teleconferencing. Nor is it permitted to conduct an inspection by videoconferencing or teleconferencing.* *Inspection: The details of an inspection is regulated in section 291 of the CCP. Either the parties or their representatives are permitted to be present at the inspection. The participants in the proceedings are informed that organising an inspection is being arranged, but their absence will not prevent it from taking place. Any participants taking part in an inspection may draw the court's attention to circumstances relevant to the completeness of the inspection and to the matter being heard.* *Expert opinion: If the presence of the participants is both feasible and necessary for performance of an expert assessment, the court must say so in its ruling on the matter. In such a case, the absence of the participants will not prevent it from taking place, provided the expert finds that he or she is able to provide an opinion without their presence.*
France:	Anyone who represents or assists a party before a court that has ordered a preparatory inquiry

	may pursue the latter irrespective of the place, make remarks or lodge relevant any request, even in the absence of the party.
Ireland:	The examination must take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses are then subjected to cross-examination and re-examination.
Cyprus:	The parties are able to attend the hearings before the court, which are open to the public unless the court orders otherwise.
Lithuania:	Generally, the parties and their representatives have the right to be present during hearings of a witness and of participants . If neither documentary nor real evidence can be brought to the court, then in response to a petition by a participant, the court must decide on inspection and examination of the evidence wherever it is located.
Netherlands:	The Parties and their representatives (lawyers) are present and after testimony is complete, may ask questions of the witness, although the judge has the power to forbid special questions (Article 179 par. 2 CCP). Either of his own motion or at the request of a party, the judge may arrange for witnesses to confront either each other or one of the parties.
Poland:	Lack of presence of the parties does not prevent the taking of evidence, unless the presence of any of them proves to be necessary (Art. 237 of CCP). Also, every party has the right to demand that the trial be conducted in his absence (Art. 209 of CCP).
Portugal:	The Art. 517.º CPC establishes the adversarial hearing principle, according to which, unless otherwise stated, the evidence will not be accepted or produced without a contradictory hearing of the opposing party. As regards the evidence produced at trial, the parties will be notified (when they are not in default) of all actions pertaining to the preparation and production of evidence, and are permitted to intervene in such actions in accordance with the law; whereby, as regards the evidence to be led, the opposite party has the right to contest its admission or probative value.
Romania:	The parties or their representatives have the opportunity to be present at the taking of evidence, and thus to exercise fully their right to self-defence. Thus, according to Article 85 of the Code of Civil Procedure, *"The judge can not decide on an application until the citation or appearance of the parties, unless otherwise provided by law."* Similarly, under Article 208 of the same Code, *"(1) If for the expertise an on-site activity is needed, such cannot be made until after summoning the parties by registered mail, with proof of receipt, showing the days and hours when activity begins and continues. Proof of receipt will be attached to the expert's report.* *(2) The parties are requited to give to the expert any clarifications concerning the subject of the activity. "* If taking of evidence is to take place in another locality, Article 169 paragraph 3 of the Code of Civil Procedure provides that it "*shall be performed, through delegation, by a court of the same level or even of a lower level, if in the respective locality there is no court of the same level. If the type of evidence permits and the parties agree, the court taking the evidence can be exempted from summoning the parties*."
Slovenia:	All witnesses and experts are examined in the presence of both parties. All documents are read in the presence of both parties in court. Additionally, both parties or/and their representatives may participate in the judicial examination. Under the same principle the parties are also permitted to ask questions of both witnesses and experts, present their views and submit their comments to the court on the actual conduct of the evidence.
Slovakia:	*Evidence is heard (examined/realized) at a hearing, parties are therefore present at the hearing.* ***§ 122 CPC**:* ***(1)** The court shall hear evidence at an oral hearing.* ***(2)** When appropriate, the court may ask another court to hear evidence, or it may be heard by the presiding judge outside of a hearing on the basis of authority vested upon him by the panel. The parties have the right to be present at the examination of admissibility of evidence. The results must be always announced at a hearing.*

	(3) *Panels may always decide that admitted evidence be supplemented or repeated before the panel."* ***§ 123 CPC****: "The parties have the right to give comments on any adduced or admitted evidence."*
Sweden:	The parties and their representatives may be present during the taking of evidence at the main hearing. If there is reason to believe that a witness in presence of a party would not tell the truth openly through fear or any other cause, the court may decide that the party need not be present during the examination. The same applies where one party prevents a witness from testifying by interrupting him (see Chapter 36, Section 18). Whenever testimony is delivered in the absence of a party, that party must, if possible, be able to follow the testimony by means of sound transmission or sound and image transmission.

5.8.4 Proposals

- All member states admit the parties or their representatives to the actual taking of evidence.
- Differences in national procedural rules relating to the presence of the parties or their representatives at the taking of evidence may lead to problems regarding the right to effective judicial protection whenever a member state does not permit such presence.
- The use of new communications technology is of great importance as an alternative to physical presence, as it is both simpler and more cost-effective.

5.9 EXPENSES

5.9.1 General Outline

Costs for assistance rendered by the member states addressed are free of charge. This is the general rule established by Article 18 of Regulation 1206, aiming to facilitate European citizens the access to justice under equal conditions. However, in cases of opinion evidence and those involving the participation of interpreters, or in cases in which a special procedural form is used or a type of technology unsual for the requested court is used, reimbursement of relevant costs should be ensured.

Article 18

1. The execution of the request, in accordance with Article 10, shall not give rise to a claim for any reimbursement of taxes or costs.

2. Nevertheless, if the requested court so requires, the requesting court shall ensure the reimbursement, without delay, of:

- the fees paid to experts and interpreters, and
- the costs occasioned by the application of Article 10(3) and(4).

The duty for the parties to bear these fees or costs shall be governed by the law of the member state of the requesting court.

3. Where the opinion of an expert is required, the requested court may, before executing the request, ask the requesting court for an adequate deposit or advance towards the costs requested. In all other cases, a deposit or advance shall not be a condition for the execution of a request.

The deposit or advance shall be made by the parties if that is provided for by the law of the member state of the requesting court.

5.9.2 Differences between "taxes or costs" and procedural expenses

Regulation 1206/2001 distinguishes between "taxes or costs", except for fees to be paid to experts and interpreters, or when a special procedural form is requested, and the remaining procedural expenses.

A preliminary ruling was submitted to the ECJ[58]. This preliminary question is closely connected with the fact that whether the requesting court is obliged to pay the requested court an advance for witness expenses and, therefore, whether the requested court is entitled to refuse to proceed with

[58] Judgment of the ECJ of 17 February 2011, Artur Weryński v. Mediatel 4B spółka z o.o., Case C-283/09.

the examination of a witness until the requesting court had paid that advance. Article 18.1 of Regulation No 1206/2001 provides that the execution of a request to take evidence shall not give rise to a claim for any reimbursement of taxes or costs. It is therefore decisive whether witness expenses may be classified as taxes or costs within the meaning of that provision.

As is known, Article 14 of Regulation No 1206/2001 sets out the grounds for refusal of a request, and paragraph 2 concerns the case in which payment of a deposit or advance asked for in accordance with Article 18.3 has not been made by the requesting court (Under Article 18.3, the requested court may, before executing the request, require an advance for an expert's costs; although Article 18.3 does not provide that an advance for examining a witness may be required).

In any case, the ECJ stated that the concept of costs must be defined autonomously under European Union law and does not depend on any classification under national law. If the question of costs were to be made dependent on the national definition of that concept, this would run counter to the spirit and purpose of Regulation No 1206/2001; which was in fact intended to enable requests for the taking of evidence to be implemented quickly and simply.

As regards the terms used in Article 18(1) of the regulation, 'taxes' should be understood as meaning sums received by the court for carrying out its functions; whereas 'costs' are to be understood as the sums paid by the court to third parties in the course of proceedings, particularly to experts or witnesses.

As the Advocate General noted in Point 54 of her Opinion, such an interpretation is supported by systemic argument. If Article 18.1 of Regulation No 1206/2001 concerned only institutional costs it would not then be necessary to stipulate in Article 18.2, as exception to the prohibition laid down in Article 18.1, reimbursement of experts' costs. Since experts' costs cannot be classified as institutional costs they are excluded from that prohibition ab initio.

It follows that expenses paid to a witness examined by the requested court are deemed to be costs within the meaning of Article 18.1 of Regulation No 1206/2001.

In those circumstances, the answer to the question referred is that Articles 14 and 18 of Regulation No 1206/2001 must be interpreted as meaning that a requesting court is not obliged to pay an advance to the requested court for the expenses of a witness or to reimburse the expenses paid to witnesses examined.

National procedural rules: legal expenses, nature and provision of funds:

Different from the concept of "taxes and costs" used by Article 18.1, is the concept of procedural expenses. Within the European Union different legal regimes coexist regarding the distribution of these expenses. There is a uniform rule in all member states according to which the party who looses pays the costs created: experts, payment of witnesses, reports...

MEMBER STATE	LOSER PAYS	DEPOSIT
Belgium	X	X
Bulgaria	X	X
Cyprus	X	NA
Germany	x	NA
Estonia	X	NA
Greece	X	NA
Spain	X	
France	X	NA
Ireland		X
Italy	X	NA
Latvia	X	NA
Lithuania	X	X
Luxembourg	X	X
Hungary	X	X
Malta	X	X
Netherlands	X	NA
Poland	X	X
Portugal	X	NA
Romania	X	X
Slovenia	X	X
Slovakia	X	X
Sweden	X	NA
UK-England&Wales	X	NA
UK- Northern Ireland	X	NA

However the scope of this concept, concepts included, limits and other aspects closely connected with this issue, differ across member states and it seems difficult to reach an agreement on those areas. For example, in *Germany*, the costs created by taking evidence are included in the definition of legal costs and must be paid by the losing party (sec. 91), albeit with two exceptions: (1) If the claimant is legal successor and has not

proven the legal succession before, the expenses grounded on this argument are to be paid by the claimant (sec. 94). (2) The court may impose any costs derived from suit or legal defence on whoever is the winning party (sec. 96).

In *Greece*, in exceptional circumstances (e.g. blood tests if the party claims that he cannot afford them), costs will be met by the other party. The court may then decide who will recover their costs from the other party.

In *Latvia*, amounts of costs which must be paid to witnesses and experts, or amounts necessary to pay the costs of examination of witnesses or conducting of inspections on-site, of the service, issue and translation of court summonses and other court documents, of publication of notices in newspapers and of security for a claim, shall be paid, prior to the adjudicating of a matter, by the party who made the relevant request. The party in whose favour a judgment is made will be awarded all of its court costs, to be recovered from the opposite party. Where a claim has been satisfied in part only, the recovery of any further sums will be awarded to the plaintiff in proportion to the claims accepted by the court. The defendant, in contrast, will be reimbursed in proportion to the claims dismissed in the action. State fees for ancillary claims, applications regarding renewal of court proceedings and adjudicating the matter *de novo* where default judgment has been rendered are not refunded. If a plaintiff discontinues an action, he or she must reimburse the court costs incurred by the defendant. In this case, the defendant will not reimburse the court costs paid by the plaintiff. However, if a plaintiff withdraws his or her claims because they were met voluntarily by the defendant, the court will, in response to the plaintiff's request, order those of his court costs to be paid by the plaintiff to be recovered. If an action is left unadjudicated, the court will, at the request of the defendant, award recovery of court costs to the defendant. This does not apply, however, where the court leaves the claim only partly adjudicated and does not issue a European order for payment as provided in Article 10, paragraph 2 of the Regulation of the European Parliament and of Council No. 1896/2006

In Lithuania, expenses incurred during the taking of evidence are deemed to be legal (litigation) costs. Such costs consist of the following: costs related to witnesses, experts, interpreters and translators (including necessary travel expenses*),* costs related to obtaining documentary and physical evidence, costs related to inspection etc. Such costs are usually paid by the party that made the relevant request.
However, the party in whose favour a judgment is made has the right to recover legal expenses from the opposing party. Where a claim has been satisfied in part only, recovery of relevant sums will be awarded to the plaintiff in proportion to the extent of the claim accepted by the court; whereas the defendant will be reimbursed in proportion to the relevant section of the dismissed claim.

In *Luxembourg*, at the request of the counterparty, the losing party may be ordered to pay an amount corresponding to the legal costs created by the litigation (Article 240 NCPC).

In *Portugal*, according to the Art. 447.º C.P.C. the definition of legal expenses covers court fees, charges and expenses of the parties. Court fees are owed by each party and are set according to the value and complexity of the case under the court rules governing costs. Charges are defined as all the expenses that correspond to formal actions required by the parties or ordered by the presiding judge. The expenses of a party comprise what each party may have spent on the action and is entitled to be compensated for under the costs rules if the other party loses.
The expenses generated by the taking of evidence are a type of charges. Except as provided for at the law regulating the access to law, each party pays the charges to which it has given rise. The charges are the responsibility of the party who requested the act, or if ordered by the judge independently, they are the responsibility of the party that benefits from them. When all the parties have the same interest in the proceedings or completion of the expense, take advantage of the same care or expense or when it is not possible to determine who is the interested party, the charge is shared equally between the parties. All charges are exclusively borne by the applicant, regardless of maturity or the result of any costs adjudication, if the requested taking of evidence is clearly unnecessary and dilatory. However, the application of any costs order always depends on the judge (Art. 447.º-C C.P.C. and Art. 16.º, n.º 1, c), d),) and i) R.C.P.-procedural costs regulation). The action's, incident's or appeals' extinction decision condemns in costs the party who caused the judicial action or, if there isn't a prevailing party, who took advantage of the process. It is understood that the loosing party is the one who caused the judicial action and it is condemned in costs in proportion to the decay (Art. 446.º C.P.C.).

5.9.3 Proposals

- As regards the obligation to reimburse those costs, it must be recalled that according to recitals 2, 7, 8, 10 and 11 in the preamble to Regulation No 1206/2001 the aim of the regulation is to make the taking of evidence in a cross-border context simple, effective and rapid. The taking, by a court of one member state, of evidence in another member state must not extend the duration of proceedings in a national court.

- Under Articles 18.2 and 18.3 the cost of assistance should be known in advance.

5.10 SPECIAL RULES

5.10.1 Introduction

According to recital no. 11 of Regulation 1206 *"the possibility of refusing to execute the request for the performance of taking of evidence should be confined to strictly limited exceptional situations"*. This is a restrictive criterion that enacts an intention to guarantee optimum efficiency of the regime set up in the regulation, which reduces the legal uncertainty traditionally seen in this area.

Article 14.2 lists a series of cases in which the requested authority may refuse to cooperate:

a) SCOPE: a request for assistance must be refused definitively if it does not fall within the scope of Article 1 of the Regulation, or if it does not comply with the general and territorial limits laid down in the Regulation, as discussed above.

b) PROHIBITED BY THE LAWS OF THE REQUESTING STATE: The request may also be refused when it is not permitted by the laws of the requesting state since in Article 1.1 of Regulation 1206, it shall apply *"where the court, in accordance with the provisions of the law of that state, requests…"*. These grounds for refusal are not very effective at all, since they imply knowledge of the law of the requesting state on the part of the requested court, as well as a breach of the principle of reciprocal trust that should underlie intra Community cooperation.

c) LAW AND ORDER: Violation of law and order or of the fundamental values of the member states in the field of judicial competence of the requested court is considered improbable in intra-Community relations. Unquestionably, member states must share a series of common legal/political values and principles as a pre-condition for membership of the EU.

At the same time, the reasons behind any refusal to allow the direct taking of evidence by the requesting court are as follows, according to Article 17.5:

1. The request does not fall within the scope of the Regulation
2. The request does not contain all the information required
3. The direct taking of evidence requested is contrary to fundamental principles of law in the member state where evidence is to be taken.

If the request for the direct taking of evidence is not accepted by the requested state, the first procedure could always be used and direct communication between the courts established.

Both fundamental principles and the law of member state as regards refusal of a request to take evidence stress that special attention must be paid to any implementation differences between the internal rules of the member states when referring to the limits of the taking of evidence.

5.10.2 Comparative approach

By way of summary, the main limits governing the taking of evidence may be classified as follows:

a) For reasons of physical integrity: a person may not be forced to undergo a blood test or other examination affecting physical integrity
b) For reasons of personal dignity: evidence should be taken in such a way as not to harm the personal dignity of the subject
c) For reasons of legal capacity: minors and disabled persons
d) For reasons pertaining to professional codes (of practice ?)

Belgium:	Under a general principle of law, all coercive force affecting the physical integrity of a person is prohibited For this reason, a person may not be forced to undergo a blood test or other examination affecting their physical integrity. However, if a person refuses to be examined without any legitimate reason, this fact may serve as the basis for an evidentiary presumption. A person may also refuse to give evidence for reasons of privacy, or business or professional secrecy. Minor children under the age of fifteen may not be examined under oath, but their statements may be used as mere items of information. Children may not be heard as witnesses in cases where their parents have interests that confict with theirs (Art. 931 JudC.). Information from relatives in the descending line may only be used in such a case if the relative in the descending line was the victim of a crime.
Bulgaria:	A person may be certified solely with their consent. Certification must be performed in such a way as not to harm the personal dignity of the person certified. To this end, the judge need not attend the certification in person and may delegate performance of the certification to appropriate expert witnesses. Refusal by a person to be certified must be evaluated in accordance with Article 161 (Art. 206). Art. 161 stipulates: Considering the circumstances of the case, the court may regard as proven the facts in respect of which a party has created impediments to the taking of admitted evidence. The only relevant piece of legislation governing medical proof is Regulation No. 38 of 20 August 2010, drafted to the "medical genetics" medical standard, although there is generally a lack of legal regulation in this area.
Czech Republic:	***§ 127 (4) CPC**: "(3) The presiding judge may order a party or other individual to be at the disposal of the expert, submit relevant things, make relevant statements, undergo medical examination and/or blood test, do something or suffer something done, where this is necessary for preparing the expert opinion."*
Germany:	If a party requests a person to be examined by a court or an expert, and if the person refuses to be examined, there are two options: (1) If the person to be examined is the opponent and if the examination is "just and reasonable", it is at the discretion of the court whether the claimant's assertion should be regarded as true or not (sec. 371 para. 3). (2) If the person is a third party, the court could order that the person should be examined (sec. 371 para. 2, sec. 144 para. 1), although the person may refuse to be examined if the examination is not "just and reasonable" (sec. 144 para. 2).
Greece:	If in the absence of special health reasons a party refuses to submit to medical examinations

	requested by a court as proof of paternity or maternity, the allegations of the other party will be considered as proven (Art. 615 CCP).
France:	A number of important principles are protected and a person concerned may invoke them to justify refusal to submit to the taking of evidence. For example, a genetic investigation is permitted in the context of inquiries or investigations for judicial proceedings although the consent of the person must have first been obtained expressly (Art. 16-10 Civil Code). Nobody may be forced to produce documents pertaining to intimate details of private life.
Ireland:	Legal advice and litigation privilege: A client may refuse to disclose any communications with their lawyer made for the purpose of giving or receiving legal advice or in relation to preparations for litigation. Without prejudice privilege: Communications made in furtherance of settlement are also subject to privilege on the policy justification that encouraging litigants to settle their differences is inherently desirable.
Luxembourg:	Persons to be subject to the taking of evidence are free to refuse except in certain situations (e.g. proceedings challenging the authenticity of a document). However, the judge can order the witness to pay a fine as described in point I.7.
Hungary:	Duties of witnesses encompass three obligations: the obligation to appear before the court, the obligation to testify and the obligation to produce the documents in the witness's possession (i.e. to hand them over). The witness has no general obligation to submit to medical examinations or blood tests. Nonetheless, special provisions apply to lineage or paternity actions: here, any of the interested parties may be required to undergo a blood-test or other medical examination; if the person refuses, the same sanctions are applied as against persons who refuse to testify (see questions I.7.); although this does not apply to cases of compulsory attendance. Section 300 of the Hungarian Code of Civil Procedure provides as follows: "(1) If the court has ordered a blood test and other medical (physiological) examination required for establishing paternity, any of the interested parties might be compelled to tolerate the conduct of such tests and examinations. If the court has ordered the mother's husband to submit to the said examinations, or any witness who is alleged to have engaged in sexual intercourse with the mother at the time of conception, this person shall have the legal status of a party as of the time of delivery of the court's ruling. (2) If the interested party fails to appear at the designated expert (doctor) for the examination or blood test, or refuses to cooperate in carrying out the examination or blood test, the sanctions specified in Section 185 shall be applied, with the exception that such person may not be taken into custody. The same provision applies regarding the legal representative of a minor child if he fails to present the child for the examination or blood test, or if he refuses to allow the examination or blood test to be carried out. (3) If the blood test conducted with the purpose of supporting the establishment of paternity of a person who has the legal status of a party under Subsection (1), the plaintiff may request this party to join the action as a defendant, even if the court has no jurisdiction concerning the new defendant. The court may, at the same time, release the original defendant, and shall order the plaintiff to bear the related costs, subject to the exception set out in Subsection (2) of Section 80."
Malta:	Where necessary (*e.g.* in medical examinations), measures are taken to protect the privacy of the person.
Netherlands:	In affiliation proceedings a party may be requested to cooperate in a blood test. If he refuses this might be used against him. If the man denies affiliation he has to cooperate in a BLOOD TEST. In procedures claiming compensation in a HIV-infection-case The supposed assailant is requested to cooperate in a blood test, refusal may be used against him.
Poland:	Certain evidentiary reception methods (inspection of a person, examination of a blood group) can be only applied with consent of the person concerned (Art. 298, Art. 306 of CCP).

Portugal:	Art. 519.º, n.º 2 C.P.C. lists cases of refusal to cooperate that will be permitted. Under this rule, a refusal is legitimate if obedience would others mean violation of physical or moral integrity of individuals, interference with private or family life, interference in the home, correspondence or telecommunications or violation of professional, public officials or state secrecy. If a person refuses to submit to the taking of evidence other than in the case of the above legal exceptions, they would be fined and punished as reasonable. Moreover, if the person is a party to the proceedings, a court will fully appreciate the impact of the refusal for evidentiary purposes, and it may order the burden of proof to be reversed under the rules contained in Art. 344.º, n. 2 C.C..
Romania:	It is worth mentioning that, under certain conditions, refusal of a person to submit to the taking of evidence constitutes an offence. Thus, for example, pursuant to Article 87 of Government Emergency Ordinance no.195/2002 concerning traffic on public roads, *"Refusal, resistance or escape of a tram or vehicle driver or of an instructor, in the process of instruction, or of an examiner of a competent authority, during examination of skills for obtaining driving licence, to be subject to biological samples collection or breath testing, in order to establish the presence of alcohol or drug products or medicines with similar effects, shall be punished with imprisonment from 2 to 7 years."*
Slovakia:	***§ 127 (3) CPC**: "(3) The presiding judge may order a party or other individual to be at the disposal of the expert, submit relevant things, make relevant statements, undergo medical examination and/or blood test, do something or suffer something done, where this is necessary for preparing the expert opinion." Further regulation laid down in the Code on Criminal Procedure (§ 155, Act Nr. 301/2005 Coll.).*
Sweden:	The Swedish Constitution prescribes that in their relations with public institutions every person will be protected from any physical violation and will also be protected from body searches and other invasions of privacy (see Chapter 2. Art. 6). These rights may only be reduced by specific legislation (see Chapter 2. Art 20).
UK-England&Wales:	The taking of samples is not compulsory without specific provisions to the contrary., although in some circumstances an inference may be drawn from a refusal to comply with a request for such evidence.
UK- Northern Ireland:	Ordinarily, bodily samples may not be taken without the person's consent. However, the court may draw an inference if a person fails to comply with a direction to supply, for example, a blood sample in a paternity application.

5.10.3 Proposals

- As shown above, member states all set similar types of limits to the taking of evidence. Any differences such as there relate to the consequences of those limits. Hence, for example, what are the legal consequences of refusal of a blood test in affiliation proceedings? These *may vary from a paternity a presumption* of paternity to none at all..

- As regards the power to set minimum standard procedural rules, this is restricted to those cases in which divergences between the approaches of member states impedes their mutual cooperation and, thus, threatens the objectives of freedom, security and justice; whereby this may call for the harmonisation of national legislation, administrative regulations or practices.

- Statistical data obtained from Central Bodies reveal that differences in national limits to the taking of evidence have not been used to

justify refusal of a request. Therefore, under the principle of proportionality (according to which any intervention by the European Union should be strictly limited as necessary) it would appear that harmonisation is not required in this field.

5.11 ELECTRONIC SERVICE

5.11.1 Introduction

According to recitals 2, 7, 8, 10 and 11 in the preamble to Regulation No 1206/2001 the aim of the regulation is to make the taking of evidence in a cross-border context simple, effective and rapid. The taking, by a court of one member state, of evidence in another member state must not lead to the lengthening of national proceedings. Electronic transmission is not a method of service specified by Regulation 1206/2001. However, Article 65 of the European Treaty states that measures aiming to improve and simplify the system for cross-border service of judicial and extrajudicial documents come within the area of judicial cooperation in civil matters with cross-border implications.

It is precisely this need to **strengthen judicial cooperation**, together with the need to **adapt to new technologies**, as well as the **efficiency** in the transmission of documents that justifies an analysis of the possibility of introducing electronic transmission as a way of providing official service of documents.

In this sense, electronic service as between requesting and requested courts provides a speedy and inexpensive alternative to the use of process servers. The effective use of technology can do much to reduce the expense and delay associated with long distance litigation. But, despite these undeniable advantages, any recommendation in support of amendments to legislation in this area needs to take due account of the rights of citizens and the economic and social environment of each member state; otherwise, such reform might harm any progress made in this field to date.

In the next few paragraphs, the current permissibility of electronic transmission in each member state is analysed, as are the major problems found regarding its future possible use.

5.11.2 Practical implementation

1. Different technological conditions of member states

The practical implementation of any system for service of documents presupposes that member states have the necessary technical equipment to carry it out. However, human, material and technological resources differ from one country to another. In this sense, it is not possible to assert

generally that the administration of justice is computerized right across Europe. Even within each member state, there are differences between territories, to the extent that the use of the e-mail as a means of communication is not widespread even between courts in the same country.

Perhaps due to these differences, member states have not specified the general use of electronic communications in their national legislation:

MEMBER STATE	ADMISSION
Austria	Solely by way of certified electronic mail
Belgium	**x**
Bulgaria	**x**
Cyprus	**x**
Czech Republic	**x**
Denmark	Relevant provisions have been adopted but are not yet in force
Finland	**x**
France	**x**
Germany	**x**
Greece	**x**
Hungary	National rules on valid electronic service of documents but poor technical conditions
Ireland	**x**
Italy	In cases concerning companies and financial intermediaries, including banks and credit institutions, service can always be made by fax or e-mail, but complying with the legislation on the signing and transmission of computerized documents transmitted electronically
Latvia	**x**
Lithuania	Admitted from January 2013
Luxembourg	**x**
Malta	**x**
Netherlands	x (Electronic service of documents is under discussion at present).
Poland	**x**
Portugal	**x**
Romania	**x**
Slovakia	**x**
Slovenia	**x**
Spain	**x**
Sweden	**x**
United Kingdom	**x**

This **lack of uniformity** about the permissibility of electronic communications, as well as differences in the conditions required for its use at national level makes the implementation of this method at European level **difficult.**

2. Requirements for the implementation of the electronic transmission

Implementation of the electronic service of documents seems to be subject to a number of prior requirements in the internal legislation of the member states:

a) Notice of consent

A party must give consent in a specific proceeding to receive documents at an electronic address for legal service, doing so by formal notice of that address.

b) Electronic Legal Service Address

This address may be either an account at an electronic legal service provider or an e-mail address.

c) Proof of Service

Where service is carried out electronically, it must be ensured that proof of service is such as to confirm that the document came to the attention of the intended recipient. For this purpose, it would be necessary to determine that the document was received at the receiving party's electronic legal service address. If paper-based, proof of service depends on the detailed ;method of service. Proof of service of an electronic document can rely on the e-mail system itself. An e-mail system can automatically log whenever a party has submitted a document for service and when it was opened. Courts or parties wanting to know whether and when service occurred can simply check the e-mail service system logs. In this sense, this may also be proved by:

- An e-mail delivery or "read" receipt;
- Confirmation from an e-mail provider that the document was delivered by way of legal service to the party's account at that e-mail provider;
- Verbal confirmation of receipt by the addressee;
- Written confirmation by e-mail of receipt from the recipient;
- Other methods ensuring that the document(s) has come to the attention of the intended recipient.

e) Date and Time of Service

For personal service or use of a delivery vendor, service is complete when the document is delivered to the party. If the document is posted, it is deemed to have been served at the time of posting. Use of the time of posting, as opposed to the time of delivery, is based on the presumed reliability of the postal system. With e-mail service, completion of service would be possible at the time of actual delivery to the recipient. However, because of the virtually instantaneous delivery and availability of the document, and the independence and relative reliability of the e-mail system used, service could be deemed to have taken place at the time of submission of the document to the e-mail system. In any case, the use of this approach is complicated if non-participants must be served by traditional methods.

5.11.3 Proposals

- Any action in this area first requires modernization of the institutions, bodies and persons involved in the service of documents at European level.
- Electronic transmission between requesting and requested courts could help to speed up the process. Its use cannot be denied by virtue of the need of set the date of service or the need for authentication or consent. These issues are not relevant here because the use of electronic service would be restricted to communications between the requesting and requested court. Any communication with witnesses or other citizens would be performed by the requested courts under their procedural rules.

5.12 HARMONISATION

5.12.1 General Outline

The Stockholm Programme stressed the need to assess, in the course of upcoming reviews of existing regulations, the need to establish common minimum standards or standard rules of civil procedure for the cross-border enforcement of judgments and decisions on matters such as the taking of evidence. It seems necessary to eliminate the weakness, which would arise from the application of very different preconditions at the 27 member states of the EU.

While the rules regarding international taking of evidence were characterized for a long time as a sovereign act, these interests in state sovereignty play a minor role in judicial cooperation between member states of the European Union. The interest of the parties in a rapid, safe procedure is of central importance, and proper functioning of the European judicial system is built on the principle of mutual recognition. This can only be achieved with mutual trust between judges, legal professionals and citizens. Mutual trust requires minimum standards and greater understanding of different legal traditions and methods.

However, and taking into account this context, statistical data provided by Central Bodies have revealed that there are no major defects in Regulation 1206 and that reference to national rules and traditions is not the source of problems in this area. This assessment is also shared by most of the experts and members of the EJN interviewed.

In any case, the Protocol on the application of the principles of subsidiary and proportionality, appended to the 1997 Treaty of Amsterdam, emphasized that the principle of subsidiarity (enshrined in Article five of the Treaty of the European Union), which requires action from European Community institutions only in cases where action at national level is unable to accomplish the objectives sought, is a dynamic concept. Only where the divergences between the approaches of member states to certain issues impedes their mutual cooperation and, thus, jeopardizes the objectives of freedom, security and justice, would the harmonisation of national legislation, administrative regulations or practices be called for. In addition, in accordance with the principle of proportionality, intervention by the European Union should be limited to what is strictly necessary. Any decision taken to establish a common minimum standard for procedural rules must be interpreted in the light of both these principles.

5.12.2 Proposals

- According to the data obtained and the opinion of the EJN experts interviewed, harmonisation of 27 national laws (given the differing features of the civil law and common law countries) is not an easy endeavour, and is in any case not really necessary to achieve the goal of the swift taking of evidence abroad, since the problems identified in practical application of the regulation do not relate to differences between the domestic laws of member states.

- Moreover, in most countries procedural legislation is connected with substantive civil and commercial law; whereby no harmonization has taken place owing to the irreconcilable differences between legal systems. (Instead, only quasi-harmonization has taken place based on conflict of law rules).

6 EFFORTS TO ENCOURAGE DIRECT COURT-TO-COURT CONTACTS

We also requested Central Bodies to inform us about any efforts made by member states to bring the Regulation sufficiently to the attention of judges and practitioners, so as to encourage direct court-to-court contacts.

Our e-mail containing this request was sent on 24 January to all 27 member states (including Denmark, where the regulation does not apply), and gave a deadline of 15 February for replies. However, we were in fact prepared to receive replies up to10 March.

We received answers from 17 member states. 10 member states did not answer our request (including Denmark, where the Regulation does not apply, so it is the only state from which we expected not to receive an answer).

Our analysis of the answers received is that **in general terms the efforts reported by Member States are not sufficient for encouraging court-to-court contacts,** up to the target levels the Regulation seeks:

- Most training activity is not related to Regulation 1206/2001, but to general judicial cooperation in civil matters.

- Except in the case of Germany, training activity specifically related to Regulation 1206/2001 does not have a practical dimension, but is restricted to providing legal personnel with general leaflets, circulars or simply the text of the Regulation. This means that training activity has more to do with a summary or general overview of the Regulation than with a specialised explanation of it.

- Except for Germany, there is no specific training in or explanation of direct court-to-court contacts.

In any case, there seems to be a direct relationship between knowledge of the Regulation and effectiveness and increasing frequency of its use, as shown by the empirical analysis conducted in the case of Germany. This confirms our general recommendation that, instead of pursuing an amendment of the Regulation, or introducing common minimum procedural rules, efforts should be focused on the promotion and knowledge of all solutions and alternatives provided by Regulation 1206/2001 in the cross-border taking of evidence.

In the next few pages, we present the answers we received.

MEMBER STATE	Question: "Which efforts have been made by your member state 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?"
	ANSWER
BELGIUM	No answer was received
BULGARIA	In accordance with your e-mail we made inquiry to the National Institute of Justice who is the public institution established in Bulgaria for training of cadres in the justice system. We have received the next information: The seminars organised in relation with Regulation 1206/2001 are a part of the currant education of the magistrates. This topic is seen in the annually held seminars on the theme "Judicial cooperation in civil matters in the EU". The first seminar on the subject was organised in 2004 and it trained 31 participants, of which 25 judges and 6 representatives of the Ministry of justice. Until now in the organization of seminars on this subject partners of the National Institute of justice were German Foundation for international legal cooperation (IRZ), European Institute of public administration in Luxembourg and Dutch Helsinki Committee. In the period 2004-2012 in the National Institute of Justice have conducted 22 seminars relating to judicial cooperation in civil matters in the EU and the examination of Regulation 1206/2001. Two of them are specialised seminar for judges-coordinators in European law, as are trained in total 65 judges-coordinators. Two seminars were organised for the trainers on European law, as they have taken part 39 participants (37 judges and 2 representatives of the Ministry of Justice). Of the total 22 events is organised and a round table entitled "Issues of judicial cooperation in civil and commercial matters in the EU", which is organised in the framework of the MATRA project jointly with the Dutch Helsinki Committee. Throughout the entire period 2004-2012 in seminars relating to the application of Regulation 1206/2001, have been trained in 537 participants (524 judges and 13 representatives of the Ministry of justice). Best regards, Biliana Beliakova. State Expert Directorate "International legal cooperation and European Matters". Ministry of Justice of Republic of Bulgaria

CYPRUS	With reference to the question posed below, kindly note that the Regulation has been brought to the attention of the judiciary through a circular disseminated by the Chief Registrar of the Supreme Court to the Registrars of the inferior courts. This is the usual mechanism employed in relation to all EU Regulations. Copies of the Regulation have been forwarded to all Judges. Kind Regards Yioulika Hadjiprodromou. Legal Officer. Ministry of Justice and Public Order
CZECH REPUBLIC	With regard to your question I would like to inform you that the Ministry of Justice of the Czech Republic regularly organizes seminars for judges and other practitioners concerning the Regulation No. 1206/2001. Furthermore, we discuss and solve problems with relation to this regulation with judges on regular basis (such as phone, email). We provide judges and practitioners with leaflets from the Commission and also with the link to Atlas. Finally, I would like to ask you whether you are still interested in answers to your previous questionnaire - Expert opinion form? Some questions are quite complex so it takes quite a lot of time to deal with this questionnaire. Best regards Jana Novotná. mezinárodní odbor civilní. Ministerstvo spravedlnosti ČR
DENMARK	No answer was received
FINLAND	The Finnish Ministry of Justice has organised training sessions for court personnel and other interested audiences on international judicial cooperation. The Ministry of justice has a website directed to general public, as well as a specialised intranet-site to court personnel on international civil justice matters. The personnel working in the international unit of the Ministry of Justice give practical advice to courts and lawyers on procedural questions related to the application of the various EU instruments and other matters related to civil justice. Please do not hesitate to contact me, should any further questions arise. Yours sincerely, Maija Leppä Hallitussihteeri/Regeringssekreterare/Legal Adviser Oikeusministeriö, kansainvälinen yksikkö Justitieministeriet, internationella enheten Ministry of Justice, International Affairs

GERMANY	Direct court-to-court contacts with regard to the Evidence Regulation in Germany are promoted by the following measures: 1. Lawyers One major component of the legal education and training of lawyers consists of cooperation in civil matters within the EU. The Evidence Regulation is taught in detail as an important feature of that area. Direct contacts between courts are recommended because they are possible in Germany and require from the state and the parties less manpower and money. There are many lawbooks and commentaries in Germany explaining the different mehtods for the cross-border taking of evidence. Legal training in EU civil law later continues as lawyers have a professional duty to prove further professional legal training. Mostly the professional organisations of lawyers and attorneys (f.e. der Deutsche Anwaltsverein) provide seminars and conferences dealing with the application of the Evidence Regulation and its favorite, direct contacts between courts. 2. Judges and Judicial Administration Judges as lawyers and attorneys recieve in depth education of the EU cooperation in civil matters during their professional legal formation. They become familiar with the Evidence Regulation and different ways of taking evidence abroad. There is also special additional training for those judges who are involved in legal assistance in civil matters. Direct contacts between courts are certainly emphasized whenever the Evidence Regulation is discussed. Further training is provided by organisations at both federal and Länder level. The Bundeamt für Justiz und and the Deutsche Richterakademie for instance offer seminars and conferences for judges and court officers to become more familar with the application of the Evidence Regulation. The next seminar for example will start in the end of May 2012 in Wustrau. There the Evidence Regulation will be presented and discussed by a practioner who has personal experience in its application.Regulation. The same applies to judicial administration. The few people dealing with the Evidence Regulation are well trained and have to prove, that they continue professional education. They once a year share their experiences with the EU civil matters cooperation. Cases and general problems are discussed during the "Zivilrechtshilfe-Referententagung". Videoconferencing and direct contacts were issues on the Mai 2011 Meeting. 3. Public It is difficult for state authorities to create general awarenes of this regulation. Nevertheless they always try their best. In 2010 the Evidence Regulation was the main topic of the European Day of Civil Justice in Passau Germany. Spectators were able to follow a mock videoconference between a court in Germany and in one in the Czech Republic, hearing different witnesses directly .

	Despite best efforts to confirm the knowledge of the Evidence Regulation already accumulated by legal practicioners, a lot more has to be done especially so as to better promote direct contacts between courts in the cross-border taking of evidence. Best regards Thomas Klippstein

GREECE	Further to your additional question and as a contact point of the European Judicial Network for Civil and Commercial Matters for Greece, I would like to point out that usually the Greek members of the EJN carry out one or two daily events (open seminars & workshops) during almost every year about the role of EJN and the european legal instruments.Consequently, judges and legal practitioners become more familiar and aware of the European Regulation (EC) 1206/2001 for taking of evidence. At last, relevant leaflets and the practical guide issued by the E. Commission is distributed throuthough the country by our Central Authority. Kind regards, Theofilos Tsagris. Section of Internation Judicial Cooperation in Civil Cases & Central Authority for E. Regulation (EC) 1206/2001 Hellenic Ministry of Justice, Transparency & Human Rights
HUNGARY	No answer was received
IRELAND	In reply to your email of 24th January 2012 regarding Regulation EC 1206/2001, this Regulation is in force since 2001 and members of the judiciary are fully aware of the process and procedures involved. When new judges are appointed the office dealing with them on the first occasion they deal with an application will brief them, if required, on the process. Each court office has a copy of the Compendium of Community Legislation on Judicial Cooperation in Civil and Commercial Matters for use by court staff and the judiciary. Regards Mary O'Mara. Deputy Chief Clerk. Dublin Metropolitan District Court
LATVIA	Regarding your request of 24/01/2012 to tm.kanceleja@tm.gov.lv, the Ministry of Justice herby informs about the following. The national contact points within the framework of European Judicial Network co-operate with local judicial authorities to seek solutions to difficulties arising on the basis of the judicial co-operation, to inform about the activities of the EJN and to seek for assistance to judges on issues regarding application of the European Union's Law instruments. As well we have appointed 21 national judges and other appropriate judicial authorities, legal associations in order to exercise the functions of EJN and to facilitate the communication between the judges and other corresponding authorities of EU. At the same time the members from Ministry are reading the lectures for judges and judge's assistants, legal practitioners, about successful judicial cooperation, especially about the application of the Regulations No.1393/2007 and No.1206/2001. The Ministry disseminated in 2011 brochures of Citizens' guide to cross-border civil litigation in the European Union, as well an additionally - Compendium of Community Legislation on Judicial Cooperation in Civil and Commercial Matters to local judicial authorities. Kind regads, Ms Inga Kasicka. Legal adviser. Department of Judicial Cooperation. Division of courts Cooperation. Ministry of Justice of the Republic of Latvia

NETHERLANDS	No answer was received
ROMANIA	No answer was received
SLOVAKIA	In reply to your question below here are some of the measures taken in Slovakia: The Regulation and its application has become part of the curriculum of different level training for future judges, court clerks and sitting judges organised by the Judicial Academy (the training facility for judiciary in Slovakia). The website of the Ministry of Justice contains information on all the relevant EU legal instruments for judicial cooperation, including this regulation. The practical handbook prepared by the Commission was made available to all the judges and court clerks. The members of the national Judicial Network were given information on the regulation and a presentation on the utility of the Judicial Atlas and E-Portal for the application of the Regulation with a view to transmit this information to their colleagues in their respective courts. In addition, the Ministry of Justice provides information, on a case by case basis, to the courts anytime they seek its advice on how to proceed in matters of taking of evidence within the EU. With best regards JUDr. Miloš Haťapka. Director. International and European Private Law Division. Ministry of Justice of the Slovak Republic
SLOVENIA	No answer was received
SPAIN	No answer was received
SWEDEN	Thank you for the additional question regarding the Regulation on the taking of evidence. In Sweden the Regulation is mentioned at some courses (international family law) provided for judges by the National courts' Administration. The Regulation is also meant to be part of a coming course for judges on European Law. Best regards, Charlotte Kugelberg. Deputy Director. Swedish Ministry of Justice. Division for Procedural Law and court Issues

UK	Thank you for your e-mail. On behalf of all the UK jurisdictions I have the following answer: When the Regulation came into force court rules were developed by the judiciary in each of the UK's jurisdictions. As judicial training is a matter for judges in the United Kingdom they decided whether, and to what extent, judges required training on the Regulation. In England and Wales, for example, the judge with the leading responsibility for taking of evidence requests addressed a conference of judges about the Regulation and asked the contact point of the European Judicial Network in civil and commercial matters to attend. Lawyers and other practitioners would have been aware of the procedure when the court rules were amended to take account of the Regulation. In addition the joint office of the Law Societies of the UK issue regular updates to practitioners on new EU legislation. With best wishes. Eral Knight Head of Civil Justice Team | International Directorate | Ministry of Justice 6th Floor
ESTONIA	The courts are trained in this matter from time to time (in 2012 there will be 4 training sessions), the Regulation has been implemented in our law and the Ministry of Justice has prepared a practical guide on the matter, which is available to judges and court officials in the court intranet. Best regards, Haldi Mäesalu. EJN Contact point in Estonia. Adviser. International Judicial Co-Operation Unit. Ministry of Justice of Estonia

AUSTRIA	May I inform you of the following Austrian activities in the matter: Prior to the start of the application of the taking of evidence Regulation the ministry of justice (which is the central body according to Article 3 of the Regulation) published a comprehensive and in-depth information letter ("Einführungserlass") for judges and other court staff in charge of civil and commercial matters. The letter was distributed nationwide on 17th December 2003 and provided on some 20 pages an analytical explanation of the Regulation and its practical implications and – of course not legally binding - advice on its application in everday´s court practice. Concomitantly seminars and trainings about the application of the Regulation (including the videoconference matter) were organised by the ministry of justice on a nationwide basis. These events are offered until today and will be held also in the future. They last one day each time and there are averagely four terms each year. The coaching-staff consists of an experienced judge of first instance and an also very adept official of the ministry of justice who is member of the department which, inter alia, performs the function of central body according to Article 3 of the Regulation. The seminars are very welcome by the practitioners and therefore well-attended. In addition, in May and November 2011 two seminars on European Civil Procedure Law were held by officers of the ministry of justice. The central body receives some 100 requests per year about the Regulation and its best application in concrete cases by courts all over Austria. On these occasions comprehensive advice is provided which contributes considerably to the better knowledge of the legal instrument. The Austrian Contact Points of the European Judicial Network in Civil and Commercial Matters lecture on the application of European instruments on judicial cooperation in civil matters before courts and sometimes also before advocates. In many of these lectures which are given some five times a year thematic priority is attributed to the evidence Regulation. Last but not least the numerous (some 20 events per year) trainings on foreign languages (predominantly English) offered to court staff must be mentioned. As a matter of course language skills proof very helpful when in comes to the practical application of instruments on judicial cooperation with other member states of the Union. Dear Mr. Rodriguez, I do hope this information will prove useful for the ongoing study. If there are any questions or uncertainties feel free to contact me again. Best regards Christian Rauscher. Ministry of Justice, Vienna

FRANCE	Cher Monsieur, En réponse à la question de la Commission, je vous indique que la France s'efforce d'assurer la connaissance du règlement CE 1206/2001 par les juges et praticiens en développant : - les actions d'information notamment par la diffusion du guide pratique sous forme de plaquettes et via le réseau judiciaire européen en matière civile et commerciale, - les actions de formation sur le droit communautaire et l'obtention de preuves notamment lors de la formation initiale des magistrats et dans le cadre de leur formation continue, ces sessions étant parfois ouvertes aux autres praticiens. Bien à vous, Clémentine BLANC. Chef du bureau de l'entraide civile et commerciale internationale. Direction des affaires civiles et du sceau. Ministère de la justice et des libertés
ITALY	Regarding the efforts made by Italy, this Office, as Central Authority, has undertaken different initiatives. In addition to information material we have sent to our judicial authorities, we have direct telephone contacts with practitioners and judges who deal with the Regulation and need our support. This office also organizes every year a training course for the personnel of the Ministry of Justice and of the appeal courts encouraging a better knowledge of the Regulation. The director of the Office, Mrs. Albano, has recently held a training report for the judges at the court of appeal of Naples regarding the application of the Regulation. We hope this information is helpful for your study Regards, Ufficio 2. Dg Civile
LITHUANIA	
LUXEMBOURG	The Regulation EC 1206/2011 has been published in a code called “Coopération judiciaire en matière civile et commerciale au sein de l’Union Européenne” : this code has been distributed for free to all judges in Luxembourg. Furthermore, this code has been published on an internet page of the Luxembourgish Government : www.legilux.public.lu and can therefore be read and downloaded for free by judges, practitioners and even the ordinary people. Best regards. Serge Wagner
MALTA	No answer was received

PORTUGAL	Concerning to the final question from the Commission, "what efforts have been made by your member state 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?", we have the honour to forward you our response: In an initial phase - which the Central Authority of Portugal (Direção-Geral da Administração da Justiça [Directorate-General of Administration of Justice]) has considered to be a period for adaptation - whenever the requests, made under the Council Regulation (EC) No. 1206/2001 of 28 May 2001, were sent to the Central Authority by initiative of the Portuguese requesting court, although improperly, they were still forwarded by the Central Authority to the competent requested court/entity. In a second phase, the requests sent to the Central Authority, by the initiative of the Portuguese requesting court, were returned, with an informative and formative communication, so that the judges and court officers would be aware that, for future requests, the sending must be done directly to the requested court/entity, without the support of the Central Authority. In spite of the informative and formative communications which the Central Authority of Portugal will continue sending as soon as necessary, it was scheduled for the year 2012 a plan for disclosure, within several national courts, of good practices on the application of the Regulations for which Direção-Geral da Administração da Justiça [Directorate-General of Administration of Justice] is Central Authority. Sincerely yours, PAULO GONÇALVES Técnico Superior. Direção-Geral da Administração da Justiça
POLAND	No answer was received

7 SYNTHESIS REPORT

7.1 SUMMARY

- Although there is still room for improvement, Regulation 1206 is in **regular use**, as measured by numbers of requests and also in terms of time spent in performance of requests; and, finally, in terms of the effectiveness of the courts and Central Bodies involved.

  According to the information sent by the Central Bodies of member states we can see how figures of requests to take evidence have increased year on year, especially in 2009 and 2010. However, the potential inconsistency of the data obtained should be pointed out, because the number of requests sent from twelve countries (3.401) does not match the number of the requests received by those countries (12.604). It should be noted that only twelve member states have answered the first question (requests sent from your country) and fifteen member states have answered the second (requests received on your country). Hence, since the figures do not match exactly, we can present three possible explanations: a) the fifteen member states that have provided data on received requests would be for some reason higher receivers than senders of requests; b) we accept that Czech Republic, Cyprus and UK-Northern Ireland, all together, have sent almost nine thousand requests; c) some Central Bodies have not sent the right information.

  Anyway, undeniable facts lead us to affirm that Regulation 1206/2001 is in regular use: for example, more than 12,000 requests were received for 15 member states over the last five years, with numbers increasing at an accelerating rate in 2009 and 2010.

- Regarding the **direct taking of evidence, the number of requests under Article 17 is much lower than the general average**. Furthermore, most of the 380 professionals consulted state that this method is rarely used (71%). In any case, the low level of knowledge of foreign languages among judges is enough to understand or fill in a form but not to take evidence from witnesses or experts or limited use of videoconferencing for technical reasons, which may explain the preference for the traditional methods of taking of evidence abroad.

- The **average amount of time required for the completion of requests exceeds the limit of 90 days** established in Art. 10.1 in several member states. An effort to reduce the time to answer should be requested. It should also be noted that, in the opinion of EJN experts, the effectiveness of the requesting and requested courts in fulfilling their tasks under the Regulation has major scope for improvement (see Q9 of the professionals'

survey).

- **Technical limitations impeding the widespread use of videoconferencing have been identified** in a number of member states. National laws contain no prohibitions of the use of videoconferencing or teleconferencing.

- Regarding specific national legal regimes governing the taking of evidence, no major differences have been found:

  a) There are no major differences on the legal concept of proof. Rather than harmonisation of this concept it would be useful to keep a broad sense of the term evidence. The general rule is that there is a varied list of methods for taking evidence and discretionary assessment by judges is always permitted.

  b) The definition of a public document is very similar across member states and its probative value is higher than other evidentiary reception methods (In some ways, Latvia may be the only exception there).

  c) We can also find differences in the probative value of statements made by the plaintiff and the defendant. In they are submitted to a free evidentiary assessment, but when this method for taking of evidence is requested by a foreign court there are no problems in implementing it

  d) All member states enact a legal obligation to act as a witness and a corresponding sanction for not attending at court. They also accept similar valid reasons for not acting as a witness and all of them give the right to a compensation for acting as a witness. Only a few differences are found regarding the need for a preliminary list of questions in the interrogation of witnesses. In most member states, the examination of witnesses is not agreed upon in advance, nor there is any obligation to deliver a list of questions to the court (except in the cases of France, Italy, Netherlands, Poland and Portugal). Anyway, if a court in a member state makes a request to take testimony from a witness based in one of those countries where a list must first be delivered, this requirement does not seem to be an essential pre-condition.

  e) Related to the role of the judge, in some member states judges can take evidence of their own motion as a general rule; in others they cannot. In most of the countries there is no a specific order to follow and the judge decides which evidence will be taken. In any case, these differences are not critically important in the cross-border taking of evidence.

  f) The presence of the parties at the actual taking of evidence is not regarded as a problem by the various sets of national rules. Their presence is permitted under all of them, and is even compulsory in the Irish and Malta legal systems; although this

is an area where videoconferencing could be often used. However, as stated, technical conditions for videoconferencing are not always adequate.

g) There is a uniform rule in all member states according to which the party who loses pays the costs created (experts, witness, reports…) although the scope of this concept differs between member states. Harmonisation is not a recommended option here, owing to different prosperity levels among member states and different domestic rules with effects extending beyond civil and commercial law. It would seem helpful to know in advance the cost of any assistance under Article 18.2 and 18.3.

7.2 EMPIRICAL ANALYSIS - SPECIFIC CONCLUSIONS

- **SPEED OF TRANSMISSION:** In general terms, the speed of transmission after the entry into force of Regulation 1206 is **faster** (a view shared by 64.9% of the interviewees), although differences between member states are of some relevance here and this conclusion must be qualified for a number of countries. In any case, in order to obtain a multi-year analysis, our conclusions have focused on the member states that provided more detailed answers.

  The average amount of time required for the completion of requests exceeds the limit of 90 days stipulated in Art. 10.1 in most states.

  Translation and problems dealing with the return of the certificate are the main difficulties that slow down the service of documents.

  It would be helpful if member states could reach agreement on using a common language in communications between transmitting and receiving agencies, such as English (the language commonly accepted by all member states, except Luxembourg). Also, it seems advisable to promote the development of new programmes and training activities concerning the Regulation, especially in those member states less familiar with the facilities introduced by the Regulation.

- **REQUESTING AND REQUESTED COURTS:** Requesting and requested courts have helped to streamline the system of taking evidence. According to the Professional Survey, these courts are **considered to be somewhat effective** in fulfilling their tasks under the Regulation, although this general opinion varies depending on the member state concerned.

  The reasons given by those 15% of professionals who answered that requesting and requested courts are not effective relate to a lack of familiarity with the Regulation of some

local authorities, and this lack of familiarity is especially pronounced in some member states (a conclusion shared by one third of the respondents). Once again, according to 28% of the interviewees, language barriers between the requesting and requested courts hinder the effectiveness of the Regulation.

The **introduction of direct court-court-to court contacts has not caused any specific problems** (89.7% of the professionals interviewed express this view).

There is no conclusive data to conclude that courts make more than one attempt to hear a witness, since the 53.8% of the professionals consulted state that it is difficult to say.

In any case, it seems advisable to promote the use of electronic methods of transmission and communication between requesting and requested courts, as well as the use of a single language of communication agreed upon by all member states.

- **Central BODIES:** The functions of central bodies are without doubt a key cornerstone of the Regulation: helping the transmitting and receiving agencies, seeking solutions to difficulties arising with service of documents and, in exceptional cases, making an application to the competent body.

  According to the results of the professionals consulted, **the effectiveness of the central bodies seems to be somewhat high** (only the 23% consider that they are not effective or somewhat ineffective). However, several arguments support the non-conclusive character of this statement: a) the inconsistencies of the data provided by central bodies; b) seven member states have not provided any data at all, while most of the others provided only very scarce and limited data; c) Some comments of the EJN experts consulted lead to the conclusion that Central Bodies are not familiar with the Regulation; and that there are major differences between member states (some of them report less than ten requests per year, while others report thousands per year).

  In any case, designation of the Central Bodies should be followed by proper training programmes and procedures to ensure that these bodies have the required knowledge of both the Regulation and the common language that would, if possible, be chosen by member states.

- **FORMS: There are no significant problems derived from the use of standard forms**. Only 10.8% of the interviewees state that they found problems with them, mainly related to the fact that courts do not fill them in properly (leaving gaps and using their own language); that some items may lead to mistakes (for example, Form A1 “Number of reference of the requesting court) or relating to the lack of reasons for refusal (for example, Form H: address wrong or unknown).

  Closely connected with forms, **the languages used seem not to have caused any problems**. Only the 8.5% of the professionals reported problems, mainly related to the cost of translations and the quality of translation.

- **COMMUNICATIONS TECHNOLOGY:** Although communications technology could undoubtedly help to speed up the taking of evidence process, **it is not used frequently**. Only 35.7% of the 380 professionals consulted consider that it is used **sometimes**, especially for the taking of witnesses or experts' testimony when those are based far away from the court. None of them (0%) considers that they are used often. The rest consider that they are only used rarely.

  Most limitations on this subject are not related to differences between national legislation, but to the **absence of technical equipment.** This is the reason given by 60.1% of the interviewees.

  In any case, the use of new communications technology is of **great importance as an alternative to physical presence.** It is simpler, more cost-effective and facilitates the presence of the parties and their representatives in the taking of evidence.

- **REFUSAL TO EXECUTE:** According to the conclusions reached by the professional survey, implementation of **a request is rarely refused on grounds of data protection**, as stated by 72.1% of the professionals consulted.

  According to data received from Central Bodies, the main causes of refusal to perform a request are:

  - Wrong or incomplete information
  - The performance of the request under the law of the requested court does not fall within the functions of the judiciary

  However, the previous statement is a very weak finding, since the very scarce data received on this subject by Central Bodies prevents us from talking about rejection rates and obtaining deeper conclusions. In the case of U.K. and Greece, the percentage of rejection is 0%, faced to the 20% of Hungary.

- **DIRECT TAKING OF EVIDENCE:** Direct taking of evidence is **used rarely** and most direct taking of evidence has been performed by videoconference, and only for obtaining witnesses' or experts' testimony. The infrequent use of this method leads us to conclude that it has not helped to improve the taking of evidence nor it has amounted to a relevant factor in possible increases in its use.

  Reasons that may explain this situation are mainly:

  - The **low level of knowledge of foreign languages** among judges (not good enough for taking evidence from witnesses or experts directly);
  - The use of videoconferencing is also limited on **technical grounds** in several countries;
  - **Judges are still not familiar with this method** of taking evidence.

As a positive conclusion in this area, the ratio of requests for direct taking of evidence to rejections is quite low, except in Italy (100%) and Belgium (80%).

7.3 SPECIFIC CONCLUSIONS OF LEGAL ANALYSIS

- **DEFINITION OF PROOF:** Despite the existing differences between national laws on the issue, an autonomous definition of proof is not indispensable, since the Advocate General has provided us with a wide interpretation of this concept, broadly consistent with the purposes stated at the TEDESCO case, applying the regulation to the greatest number of possible situations.

- **METHODS FOR TAKING EVIDENCE:** There are no major differences between methods for taking evidence permitted by the laws of member states. Such methods are common to all national systems (examination of the parties, public documents, private documents, expert testimony and witness testimony). In general, there are no major differences between them and there is no controversy in stating that the most widely used methods are common to every national legal system (examination of the parties, public documents, private documents, expert testimony and witness testimony).

  Accordingly, it would seem appropriate to maintain the open lists and the criteria of free assessment of evidence by the judge.

- **PUBLIC/PRIVATE DOCUMENTS:** The need of for independent definition of the concept of public document is determined by the higher status accorded to it by most legal systems in relation to other evidentiary methods (such as private documents). Furthermore, the value of a public document as evidence does not appear to pose too many conflicts for member states, except in the cases of Estonia, Latvia and Sweden.

  This definition has already been introduced into the ECJ but not as evidence; but rather, in order to determine the enforceability of public documents **(**Case C-260/97, Unibank A/S vs Flemming G. Christensen) or to determine the extrajudicial documents included in the scope of application of Regulation (EC) nº 1206/2001 (Case C-14/08, Roda Golf & Beach Resort SL and the opinions of the Advocate General).

  In view of this scenario of comparative law, it would not appear to be too difficult to provide an independent definition of public document that is sufficiently broad so as not to pose problems in any legal system.

- **EXAMINATION OF THE PARTIES:** member states share a common definition of this evidentiary method. Differences arise as regards the probative value of examination of the parties. A distinction could be made between those member states permitting free assessment of this evidentiary method (the vast majority) and those member states where examination of the parties is binding on the court (Belgium, Bulgaria, France, Luxembourg, Spain, Portugal and Romania). In this latter group, the situations where examination of the parties is permitted, even if for the benefit of the party making the declaration (Belgium, France and Luxembourg), should be distinguished from those where it is only permitted if detrimental to the declaring party (Bulgaria, Spain, Portugal and Romania).

  In any case, differences arise only as regards the probative value of this type evidence and, therefore, these do not cause major problems for the uniform interpretation and application of the Regulation. Hence, harmonisation or common procedural rules in this field do not appear advisable.

- **WITNESS TESTIMONY:** A general obligation to testify is imposed in all member states. Major differences arise when referring to the specific grounds on which the witness is not bound to testify, together with the financial compensation payable for the testimony. However, reference to national rules does not seem problematic since no practical problems have been identified.

  Despite the major differences, harmonization of rules regarding the grounds for not testifying does not seem advisable, since they are rooted in constitutional sources and have an effect beyond civil and commercial law.

    - **ROLE OF THE JUDGE:** The initiative of the parties is in any case the general rule among the laws of member states. Differences on the role of the judge in the taking of evidence in member states have not given rise to major problems, and reference made by Article 10 of Regulation 1206/2001 to the national rules of the requested state avoids the need to implement uniform procedural rules governing the role of the judge or a specific order for the reception of evidence. It should also be noted that the survey of professionals showed that the application of this provision is not problematic.

    - **VIDEOCONFERENCING AND TELECONFERENCING:** Regarding the effective use of videoconferencing and teleconferencing systems, most member states do not establish national legal rules regulating this area. This does not mean that there are specific prohibitions on the matter. In others, the limitations may arise from the absence of technical means at some courts. In short, only a small number of legal difficulties can be identified here; with the possible exceptions being the cases of Bulgaria (where the courts have no practice in using videoconferencing to take evidence in civil proceedings) and Hungary (where, although such methods are not expressly prohibited, certain

procedural requirements seem hard to fulfill if the witness does not appear in person).

- **PRESENCE AT THE TAKING OF EVIDENCE:** All member states admit the parties or their representatives to be present at the taking of evidence. The use of new communication technologies is of great importance as an alternative to physical presence, as these are both simpler and more cost-effective.

- **EXPENSES:** Regarding the obligation to reimburse relevant costs, it must be recalled that according to recitals 2, 7, 8, 10 and 11 in the preamble to Regulation No 1206/2001 the aim of the regulation is to make the taking of evidence in a cross-border context simple, effective and rapid. Under Articles 18.2 and 18.3 the cost of any assistance should be known in advance.

- **LIMITATIONS ON THE RECEPTION OF EVIDENCE:** member states all set similar limits to the taking of evidence. Differences are related to the consequences of these limits. Statistical data obtained from Central Bodies reveal that differences on national limits to the taking of evidence have not been taken the basis for refusal of a request. Therefore, according to the principle of proportionality (according to which intervention by the European Union should only take place as necessary) it seems that harmonization is not required in this field.

- **ELECTRONIC REQUESTS:** Electronic transmission between requesting and requested courts could help to speed up the process. Its permissibility cannot be denied based on the argument that there is a need to set the date of service or a need for authentication or consent. These issues are not relevant here because its permissibility is restricted to communications between requesting and requested courts. Any communication with witnesses or other citizens is performed by the requested courts and is subject to their procedural law.

- **HARMONISATION:** According to the data obtained and the opinion of the EJN experts interviewed, the harmonisation of the twenty-seven national laws (with the distinctive features of the civil law, and common law countries) is by no means an easy endeavour, and it is not really necessary in order to achieve the goal of swift taking of evidence abroad. The problems detected in the practical application of the Regulation are not connected with differences between domestic laws in member states.

8 RECOMMENDATIONS

- Although there is still room for improvement, Regulation 1206 is in regular use, in terms of the number of requests, time necessary to answer/execute a request, and in terms of the effectiveness of courts and Central Bodies involved in their application.

- The language of the standard forms does not pose major problems. However, it would facilitate cross-border interactions to improve judges' knowledge of a common language (i.e.: English). This innovation would do much to improve court-to-court-contacts.

- Regulation 1206/2001 is a rule familiar to national courts. However, judges have no profound knowledge of the full extent of its features. The low number of cases of direct taking of evidence is a good illustration of this fact. This issue bears an obvious close relation to the lack of use of videoconferencing, due to poor technical equipment and, perhaps also, to a certain level of mistrust.

- Differences in national rules on the taking of evidence are not an obstacle to the development of all the possibilities of the Regulation. There are strong similarities in areas such as methods for taking evidence; the definition of public document; the obligation for witnesses to testify and the causes of any exceptions; the initiative of the parties being a general rule; no express prohibition on the use of videoconferencing or teleconferencing; the permitted presence of the parties at the taking of evidence and limits to the taking of evidence. Among the differences we can mention here are the role of the judge, the presence of the parties at the taking of evidence (Presence is compulsory only in Ireland and Malta.) and the limits on electronic service of documents.

- Rather than initiating a long process of complete harmonisation, a more profitable approach would be to reduce the technological gap between member states; to require a knowledge of English as a pre-condition for becoming a judge and to make a concerted pedagogical effort to disseminate the features of the Regulation among legal personnel. This contention is supported by the vast majority of the sixty (mostly from EJN) experts consulted. In our opinion, these measures will boost use of the Regulation and will improve court effectiveness in this area.

9 STUDY METHODOLOGY

9.1 Brief Methodology

In order to measure the application of the Regulation, the team based its input collection strategy on four sources, namely:

I. Our network of selected **European experts** drafted a brief report on **current national rules** that govern the taking of evidence at each Member State as well as on the **practical application** of the Regulation.

- *Note: The Country Reports received from the Experts can be found in the Annexes of the present report.*

II. We executed a specific **survey among selected experts, mainly coming from EJN** members, as key experts at each State.

III. We executed a **large-scale EU survey among professionals** involved in the application of the Regulation.

IV. We asked **Central Bodies** about detailed statistical information on the practical application of the Regulation.

The analysis of all the stated input, in the light of the knowledge of the nature, context, history, and objectives of the Regulation, yielded the findings presented in this report.

The next sections offer a view on the last two channels described, as being the public ones.

9.2 Professionals' Survey

9.2.1 Objectives

The main objective of this survey was to assess, in an objective and unbiased way, the **practical application the Regulation** across the Member States.

Another important objective of this survey was to obtain **suggestions** and **proposals** for improvement, as well as an idea of the **major obstacles or problems** that the new Regulation has to overcome to become more operative. This feedback has been provided via the free text (narrative comments) fields that were included in the questionnaire form.

9.2.2 Approach taken

The selection criteria for the participants in the survey **were individualized for each Member State**, as each of them have different judicial structures and a different distribution of spheres of competence. This criterion included **not only judicial servants**, but also those that, although not directly belonging to the Justice Administrations of each Member State, **do cooperate with them**, as well as law professionals that due to their specific specialization **are involved in the application of the Regulation**.

The main starting point was determined by data contained in the **Manual** and the **Consolidated version of the Communications**. These documents provided us with **highly relevant information** from the very outset:

- Transmitting Agencies by Member State (Consolidated version of the Communications)
- Receiving Agencies (Manual)

Another selection criterion used was to find the professionals in each Member State using as many available channels a possible: European Judicial Network, University Networks, professional associations, internet searches according to their experience in relation to Regulation 1206/2001 and their availability to provide us with their valuable opinion.

In this way we prepared a selection of people to interview that was not only representative, but also complete, since not only liberal professionals such as

attorneys and ***Huissiers de Justice*** are included, but also public servants belonging to national administrations, from **officials through people** such as **secretaries** to **judges** and academicians.

9.2.2.1 Groups of Professionals

It was decided to break down the various legal professionals using the following segmentation:

1. Member of National Administration
2. Judge
3. Lawyer / Attorney
4. *Association of Judges or Attorneys*
5. Court clerk
6. Others

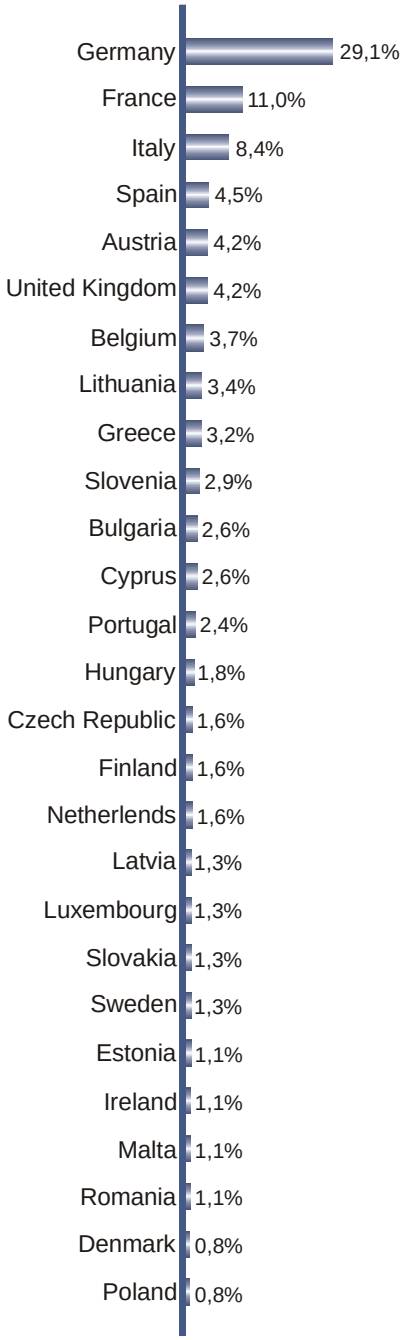
9.2.2.2 Targets for the Survey

Finally, the selection of respondents had to be representative. Consequently, the Member States and the professions involved in the application of the Regulation had to be covered adequately and proportionally and, in order to do so, we set the following targets for the survey:

» **Geographical criteria**: we had to obtain **a minimum of 300 survey answers** covering of all 27 Member States**.**

Note: the target mentioned above was achieved (380 valid answers in total).

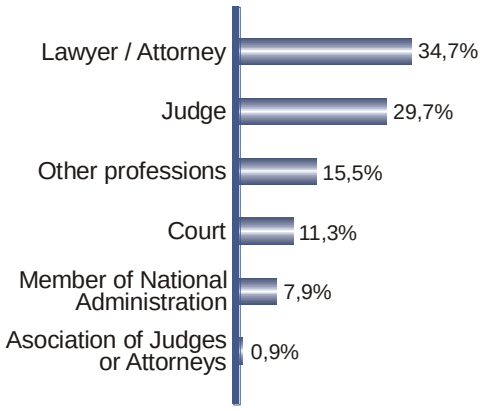
Profile of the participant by country



» **Qualitative criteria**: We also considered that all professions involved in the application of the Regulation had to be addressed, and therefore several targets were set: a minimum of 150 for persons involved in the taking of evidence and other services mentioned at the Regulation, a minimum of 50 interviews for administrations of the member states, and a minimum of 50 interviews from judges and attorneys.

Note: the targets mentioned above were achieved. Concerning interviews with members of administrations of the member states, we obtained 30 interviews at this general survey, plus the contributions at the experts' survey (60).

Profile of the participant by Organisation



9.2.2.3 Information gathering procedure

The following procedure was followed:

1. Creation of an on-line **Questionnaire** addressing mainly the aspects of the application of the Regulation directly relevant to our Study. Available for on-line completion in **six languages**, at www.opinion.eu.com/study_1206/Index.php . Also an introductory letter from EC DG Justice was hanged at the main page.
2. **Sending invitations** to the entire sample, in six languages (customized sending for each language area of the EU)
3. **Sending a reminder, and monitoring its overall completion**.

4. **Reception and consolidation of data.** This step was carried out without applying any corrective factor depending on the country or profession. All answers received have contributed to the final result having the same influence or weight on the final result.

   Due to the fact that the initial response turned out to be considerably smaller than that expected, an e-mail reminder had to be implemented in order to reach the target levels. Finally, the participation turned to be active although very irregular across Member States.

9.2.3 General Survey form

STUDY ON THE TAKING OF EVIDENCE (EC 1206/2001)

Name:
Title:
E-mail

Profession:* - Please choose a profile -
Country:* - Please choose a country -
(*) Please note that these two fields are mandatory

GENERAL QUESTIONS

Speed

1. From your experience, is the taking of evidence abroad faster than before the entry into force of the Regulation?

- ◯ Yes, significantly
- ◯ Yes
- ◯ Varies between Member States, but generally speaking yes
- ◯ No
- ◯ Difficult to say

2. Does the requested Court make repeated efforts to hear a person?

- ◯ Yes
- ◯ No, just a single attempt
- ◯ Difficult to say

Central Bodies

3. How effective are the central bodies in supplying information to courts and seeking solutions to any difficulties which may arise in respect of a request?

- ◯ Very effective
- ◯ Effective
- ◯ Varies between Member States, but generally speaking rather effective
- ◯ Varies between Member States, but generally speaking rather ineffective
- ◯ Not effective

Scope

4. Have there been problems of interpretation of the Regulation, in particular concerning its scope and the concept of 'evidence'? If so, which problems?

- ◯ Yes
- ◯ No

Please comment:

Forms

5. Has the practical application of the forms caused any problems? If so, which forms? Why?

- ◯ Yes
- ◯ No

Please comment:

6. Has the language regime caused any problems? If so, which forms? Why?

- ◯ Yes
- ◯ No

Please comment:

Communications Technology

The Regulation encourages the use of communications technology. The requesting court may ask the requested court to use communications technology in the performance of taking of evidence, in particular by using

7. How frequently is communications technology used in the performance of taking of evidence? In which types of requests?	◯ Rarely ◯ Sometimes ◯ Often
Please comment:	
8. How frequently do requested Courts refuse to use communications technology in the performance of taking of evidence?	◯ Rarely ◯ Sometimes ◯ Often

QUESTIONS ON THE TAKING OF EVIDENCE THROUGH THE REQUESTED COURTS

Requesting and Requested Courts

9. How effective are the requesting and requested courts in fulfilling their tasks under the Regulation?	◯ Very effective ◯ Effective ◯ Varies between Member States, but generally speaking rather effective ◯ Varies between Member States, but generally speaking rather ineffective ◯ Not effective
10. How frequently is the execution of a request refused on grounds of the data protection argument?	◯ Rarely ◯ Sometimes ◯ Often
11. Has the introduction of direct court-to-court contacts caused specific problems? If so, which?	◯ Yes ◯ No
Please comment:	

QUESTIONS ON THE DIRECT TAKING OF EVIDENCE

Direct Taking of Evidence

In contrast to international instruments on the taking of evidence like the 1970 Hague Convention, the Regulation (Article 17) goes beyond the traditional concept of judicial cooperation by providing for the possibility of a court to take evidence directly in another Member State.

12. How frequently is this method of taking evidence used? In which types of requests?	◯ Rarely ◯ Sometimes ◯ Often
Please comment:	

OTHER COMMENTS

13. Do you consider the harmonisation of the procedural laws of the Member States on the issue of the taking of evidence desirable?	◯ Yes ◯ No
14. Please feel free to give further explanations or make proposals.	

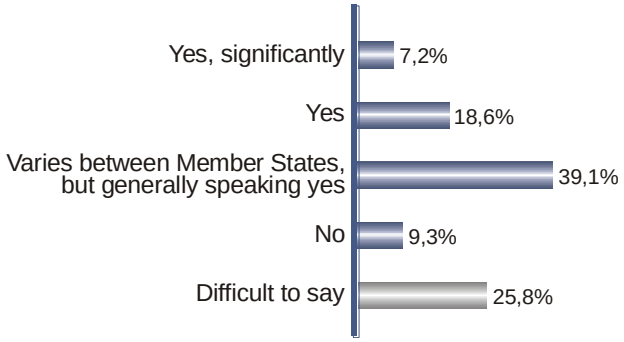
Note: this survey form can be consulted on-line at www.opinion.eu.com/study_1206/Index.php, available in six languages (English, French, German, Italian, Greek, and Spanish), in order to make it easier for the participants to answer our questions.

9.2.4 Results of the general survey

This section shows the statistical results obtained through the Global Survey.

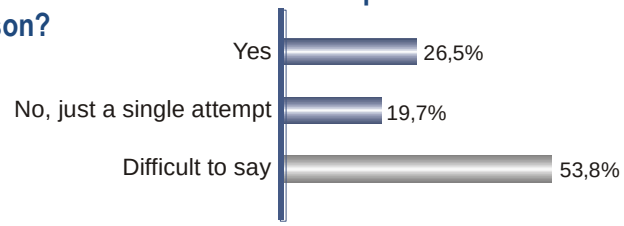
9.2.4.1 General Questions: Speed

QUESTION 1: From your experience, is the taking of evidence abroad faster than before the entry into force of the Regulation?



The majority of professionals (64,9%) have a favourable opinion on the speed being now faster than before the entry into force of the Regulation. However, a relevant proportion (25,8%) does not have a clear positioning on this subject.

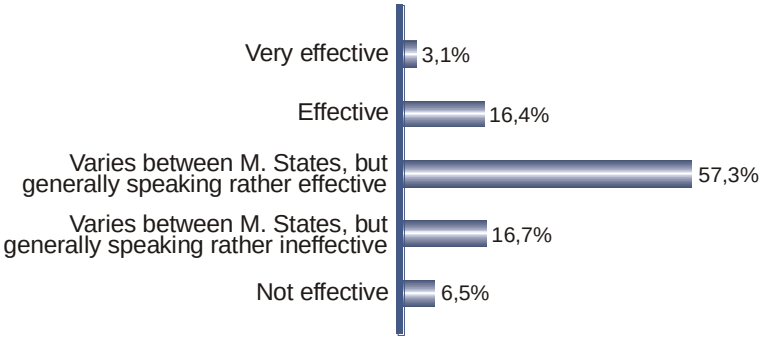
QUESTION 2: Does the requested Court make repeated efforts to hear a person?



It seems that this point is not clear for most professionals. Over half of them cannot say if it courts make repeated efforts to hear a person, probably due either to simple lack of information on this subject, or because it varies across Member State or even Courts at any given Member State.

9.2.4.2 General Questions: Central Bodies

QUESTION 3: How effective are the central bodies in supplying information to courts and seeking solutions to any difficulties which may arise in respect of a request?



The majority of professionals (80,8%) have a favourable opinion on the effectiveness of Central Bodies.

9.2.4.3 General Questions: Scope

QUESTION 4: Have there been problems of interpretation of the Regulation, in particular concerning its scope and the concept of 'evidence'? If so, which problems?

The vast majority of professionals (86,6%) have not found relevant problems of interpretation of the Regulation.

9.2.4.3.1 Narrative comments

The full set of narrative comments to the question *"Which problems*" can be found in its original version below.

Q4.1.- Which problems?

- Are the rules of the Regulation compulsory or can a court still apply the rules of its national code of procedure when ordering f.ex. an expertise to be performed abroad. This question has been raised before the Belgian Cour de Cassation, and has been ref
- Aucune signification faite donc pas de retour d´acte
- Beweisaufnahme durch einen Sachverständigen gemäß Art. 17 Abs. 3
- Ce n´est pas vraiment un problème, mais j´ai dû refuser une demande car elle n´aurait pas été accueillie en droit belge.
- Concernant l´exécution directe d´acte d´instruction dans un autre Etat membre.
- Certain Etat ne fournissent aucune aide concrète. Or il est impossible, sinon extrèmenent fastidieux pour un Etat membre d´organise seul un interrogatoire par vidéoconférence d
- Depending on the structure of the motives of each particular court; each participating party signs declarations in foreign courts while Bularian courts decision is general, with explanatory motives.
- Die in einem hiesigen Verfahren notwendige Anforderung einer polizeilichen
- Ermittlingsakte war nicht möglich.
- Die Verordnung musste bisher hier nicht angewendet werden
- Difficile conciliare il regolamento con la normativa processuale italiana
- E.g. if it is evidence place of residence of the defendant.
- En algunos asuntos se plantea la posibilidad de utilizar el Reglamento para averiguar el domicilio o los bienes de una persona.
- En la falta de un criterio unico en su aplicacion
- En ocasiones se ha utilizado para intentar averiguar el domicilio de la persona a notificar o a demandar: Existen dudas de que ello sea posible.
- Establishment of the whereabouts of a party to the proceedings. Some states consider it "evidence" for the purposes of the regulation, others do not. In view also of the recent decision of ECJ in the Linder case, it would be useful if the regulation cover
- I have no experience of this matter
- Im Hinblick auf den Anwendungsbereich und den Beweisbegriff sind eher geringe

- Probleme aufgetreten. Darüber hinaus konnten folgende Probleme verzeichnet werden: 1. im Bereich von Ersuchen zur Aufenthaltsermittlung (Adressauskunft) 2. verfahrensrechtlich i
- Inadequate translations into english
- Just to give an example, a national court doubted that an order for the description of goods was a measure for the preservation of evidence
- Keine Erfahrungen
- L´application dépend du statut l´ibéral ou non des personnes chargés d´appliquer le réglement.
- La ambigüedad es importante dadas las diferencias procesales aún existentes en los estados miembros. pese a ello no nos hemos encontrado con dificultades destacando en el caso espñaol la introducción de las pruebas en el proceso laboral
- La notion de constat dressé par un officier linistériel n´existe pas dans tous les pays de l´union ce qui est regrettable
- Legal issue - not for administrators to comment on
- Les moyens de preuves sont disparates dans les différents pays. Seule la France avec le constat d´huissier de justice permet un mode de preuve sécurisé (que ce soit dans le monde matériel ou immatériel). Il a valeur authentique. Cet exemple devrait être s
- Nach Art. 1 Abs. 1 des Haager Beweisaufnahmeübereinkommens vom 18.03.1970 (HBÜ) erstreckt sich die Rechtshilfe nach diesem Überein-kommen auch auf
- Rechtshilfeersuchen die auf eine „andere gerichtliche Handlungen“ gerichtet sind. In Art. 1 Verordnung (EG)
- Nie verwendet (kein Anwendungsfall)
- No he encontrado problemas al resecto en mi caso particular
- Non conoscenza da parte dei magistrati delle relative norme
- None that we have been made aware of.
- Not to my knowledge.
- Österr. Zivilgerichte, soweit sie in Sozialrechtssachen entscheiden, können mitunter mit ihrem Rechhilfeersuchen im Ausland auf Widerstand stoßen, weil es sich nach der autonomen Auslegung des Anwendungsbereiches der VO um keine "Zivilsache" handeln könnt
- Pas à ma connaissance
- Points of view vary, whether locating parties is considered "evidence"
- Por la diferente concepcion del documento, en particular el documento publico
- Portugal: Bis auf das benutzte Formular war keinerlei Sinn des Ersuchens erkennbar.

- Der Beweisbegriff war nicht klar bzw. überhaupt nicht definiert. Der Vorgang wurde dem hiesigen Justizministerium vorgelegt.
- Possono insorgere difficoltà in relazione alle differenze procedurali previste dalle normativa dei Paese interessati, con riferimento all´articolazione delle prove orali.
- Requesting Courts asking court to make enquiries for them othern than examination of a witness
- Some problemd araised by interpretation of Part Seven of the Civil Procedure Code, especially Chapter Fifty Six " Cooperation within the EU in proceedings in civil matters. The explanations by parties, the judicial admission of a fact and the admission of
- Sozialrechtssachen vor den Gerichten umfasst??
- Sulle prove tramite posta elettronica certificata
- The most common question: is the Regulation 1206/2001 applicable for the requests to find someone´s whereabouts?
- There is sometmise problem wheather the finding of whereabouts can be assumed as an evidence in accordance with this regulation.
- Type of evidence covered by the Regulation, if only testimonial or if of other kind.
- Consequences for not respecting the type of taking of evidence defined in the Regulation
- Unklar ob Verordnung auch für andere gerichtliche Hanldungen als
- Beweisaufnahmen anwendbar ist .
- We are not aware of any problems
- We have not encountered such problems in our experience.
- Zu Nr. 3: keine Erfahrung

9.2.4.4 General Questions: Forms

QUESTION 5: Has the practical application of the forms caused any problems? If so, which forms? Why?

The vast majority of professionals (89,2%) have not found relevant problems concerning the forms.

9.2.4.4.1 Narrative comments

The full set of narrative comments to the question *"Which forms? Why?"* can be found in its original version below.

Q5.1.- Which forms? Why?

- A veces es difícil la localización del órganos requerido en el Atlas judicial. Sería aconsejable una continuada actualización y una mejora de los motores o formas de búsqueda
- Bei eingehenden Ersuchen fehlt häufig die Übersetzung der Formulare, und nicht selten werden Ersuchen ohne die Verwendung der Formulare gestellt. Probleme bestehen häufig bei Ersuchen, die Punkt 12.3 "andere Beweisaufnahme" betreffen. Entweder wird diese
- Car certaines autorités centrales ne les utilisent pas correctement (en rajoutant notamment des imprimés qui ne figurent pas à la directive et en répondant dans la langue du pays!) De plus: pour les imprimés types: il est souvent fait le minimum (et moins
- Cumplimentar datos como "número de referencia del estado requerido" resulta equívoco en ocasiones y puede inducir a error.
- Derniere date pour la remise est souvent pas respecte; les autorites ne sont pas toujours pressé pour la remise dans le delai imposé pour la signification et se contentent de retourner les pieces sans rien faire, une fois que le delai est dépasse par leur
- Die formulare mussten bisher hier nicht verwendet werden
- Die vorgesehenen Formblätter werden nicht verwendet.
- Difficoltà tecniche nel compilarli
- Ein Formular bzgl. Sachstandserinnerung fehlt.
- Einige Länder wie z.B. Italien verlangen auch die Übersetzung des Formulars und nicht nur der Einträge im Formular in die Landessprache
- Falta de comprensión de su contenido, sobre todo en solicitud de obtención de prueba directa o en solicitudes de procedimientos especiales

- Fehlende oder schwer verständliche Übersetzungen
- Form A not being completed fully
- Formblatt A Ziffer 14: Bei Abgabe an zuständiges Gericht wird Formblatt A an zuständiges Gericht gesandt. Kopie muss für die Benachrichtigung der ersuchenden Stelle gefertigt werden.
- Formblatt J enthält – anders als Formblatt A – keine Möglichkeit, die er-suchende
- Behörde über die Weitergabe des Antrags auf Genehmigung einer unmittelbaren
- Beweisaufnahme zu unterrichten, wenn dieser Antrag bei einer unzuständigen Stelle eingeht. Formbl
- Forms are not always properly filled in
- Formulare werden in Einzelfällen durch das ersuchte Gericht nicht verwendet.
- I have no experience of this matter
- Im Fomblatt H sollte ein zusätzlicher Punkt aufgenommen werden und zwar: Das
- Ersuchen konnte nicht erledigt werden, weil... Es kam vor, dass die zu vernehmende Person nicht zu ermitteln war (z.B. falsche Anschrift, Person unbekannt etc.). Für einen solche
- En the last year no problems
- Keine Erfahrungen
- Latvian govermental authorities do not accept English, they ask documents' translation in their own language
- Le formulaire de transmission plus précicement en ce qui concerne le délai qui y est parfois indiqué
- Les formulaires sont encombrés d'une part importantes de renseignements inutiles qui sont la conséquence de leur application à tous les pays de la communauté européennes; de ce fait ils manquent totalement de clarté, de lisibilité et de précision.
- Les modalités de signification ne sont pas toujours comprises par le requérant. Il faudrait prévoir une signification par PV 659 pour les personnes disparues, actuellement aucune signification n'est possible.
- Lo mismo punto anterior
- Lots of repetition, 1 form would suffice and people could delete out the parts that are not needed
- Nie verwendet
- Non sono stati recepiti dall'amministrazione della giustizia
- None that we have been made aware of.
- Not known so far
- Not to my knowledge.
- Problémes d'interprétations.
- Several times the forms, received from the requesting foreign court, were mixed up (between taking of evidence and direct taking of evidence).
- so far experience only with the hearing of witnesses
- Some courts have difficulties to fill the form A, bacause of a lack of experience.
- Sometimes foreign courts do not send proper forms, e.g. ask for "normal" evidence, but use a form for direct taking of evidence. It is confusing. Sometimes the requested court does not use the form acknowledging the receipt of the request.

- The facts of the decision have to be interpreted. It is not immediately clear which party has lost the case and on what grounds.
- They are practical to follow.
- Unkenntnis der Verordnung und der entsprechenden Formulare und der Möglichkeiten der Beweisaufnahme über die Zeugenverhörung hinaus, namentlich bei Einholung von Informationen von öffentlichen oder privaten Körperschaften
- We are not aware of any problems
- Welche Teile gelten als ausgefüllt/angewandt und welche nicht

QUESTION 6: Has the language regime caused any problems? If so, which forms? Why?

The vast majority of professionals (91,5%) have not found relevant problems with the language regime.

9.2.4.4.2 Narrative comments

The full set of narrative comments to the question *"Which forms? Why?*" can be found in its original version below.

Q6.1.- Which forms? Why?

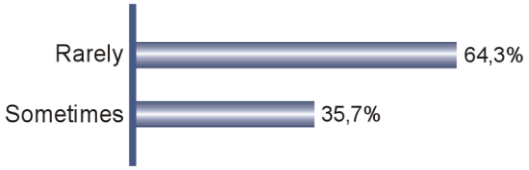
- All documents in Slovenia for example have to be translated into the Slovenian language by a sworn interpreter. The performance of taking of evidence, in particular by using videoconference and teleconference are not (or cannot) taken into cosideration if
- Bad translation to Swedish
- Certaines entités requérantes demande une traduction en anglais des courriers et formulaires
- Como órgano requerido, al admitirse el idioma portugués obliga a traducir en el órgano requerido, lo que ocasiona problemas de coordinación interna con la administración encargada de la gestión de la administración de justicia y un sobrecoste que en época
- Cout de la traduction
- Fehlende Übersetzungen
- I have no experience of this matter

- I have not information about language problems caused.
- Idem ci-dessus. Le problème ne vient pas tant de la qualité des imprimés: mais de la qualité des agents ou autorités centrales qui les utilisent (pour certains très mal!)
- In German forms
- Keine Erfahrungen
- La cuestión más delicada es determinar el alcance de la obligación de traducir los documentos acompañados a la prueba, para su entrega al interesado, y los mecanismos para requerir o no a la parte interesada su traducción, a resultas de que puedan ser rec
- La falta de traduccion previa al presentarse la prueba por el solicitante
- La realización de las traducciones de los documentos, en especial en los casos de justicia gratuita.
- La traduzione deve essere fatta da uno specialista
- Latvian govermental authorities do not accept English, they ask documents' translation in their own language
- Le formulaire f1bis (droit de refuser l'acte)
- Mitgliedstaaten verlangen nicht nur die Übersetzung der Einfügungen in
- Formblätter und der Anlagen, sondern die Verwendung des Formblattes in der entsprechenden Sprache.
- Nie verwendet (kein Anwendungsfall)
- None that we have been made aware of.
- Not to my knowledge.
- On occasion, requests are sent without translations
- Parfois, la tradcution fait défaut
- Pas d'avis précis
- Pas spécifiquement un formulaire mais en cas de difficulté de mise en oeuvre celle-ci se double d'une difficulté de communiquer
- Problémes de traductions.
- Requesting Court not completing in an acceptable language
- Requests for evidence often received in language of member state without translation.
- Siehe oben
- Since English is one of Malta's official languages we have not faced language problems.
- The requested court might not dispose of the language capacity indicated, misundertandings caused by the differences in the legal language, texts are sometimes not translated by lawyers and this may entail confusing texts in the target language
- There have been problems, if the request is not translated into the national language or at least English or German
- Traduction qui manque
- Unklar, ob die vorgedruckten Teile der Formulare in jeder Sprache verwendet werden können.
- Voir réponse précédente
- We are not aware of any problems

9.2.4.5 General Questions: Communications Technology

The Regulation encourages the use of communications technology. The requesting court may ask the requested court to use communications technology in the performance of taking of evidence, in particular by using videoconference and teleconference (Article 10 (4)). Also in the context of direct taking of evidence, the central body or the competent authority shall encourage the use of communications technology (Article 17 (4)).

QUESTION 7: How frequently is communications technology used in the performance of taking of evidence? In which types of requests?



Communications technology seems not very frequently used in performance of the taking of evidence. It is to be noted that **no one** answered "often": the third option given at the survey form.

Narrative comments

Q7.1.- In which types of requests?

- All communication goes through the central body
- Anzi, solo nel processo penale è stata utilizzata la videconferenza, mai nel civile
- Assignation & signification de jugement
- Assignation en divorce etc
- Bearing witnesses, experts
- Bei der Einvernahme von Zeugen wird die Beweisaufnahme manchmal im Wege der Videokonferenz durchgeführt.
- Bei Vernehmung von Zeugen
- Beim Arbeitsgericht Siegburg ist der Einsatz der Kommunikationstechnologie bislang nicht relevant gewesen, es kommen fast keine Beweisaufnahmen im
- Ausland vor.

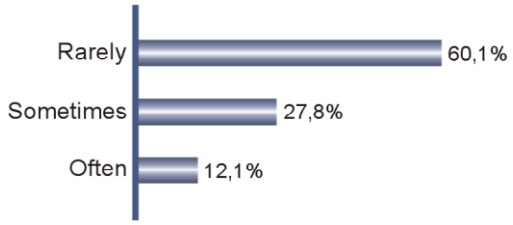
- Bisher gar nicht
- Bisher in den hier gegebenen fünf (!) Fällen nicht ein einziges Mal angewandt, weil auch nicht erforderlich
- Bisher kein Einsatz von Kommunikationstechnologie bei Beweisaufnahme
- Bisher noch nie
- Comments from Lithuanian side as from requesting side. There are not necessary technology for that, so there is no possibility for parties to ask Lithuanian court to use this opportunity for interviewing another party or witness resideng in another EU MS.
- Communications technology (e.g., videoconference) is used mostly in witness testimonies.
- Communications technology is used mainly in the examination of witnesses.
- Communications technology is used when requested provided all the required information is provided
- Constat sur internet, constat de contrefaçon sur internet
- Courts do not even have the technology for this!
- Cuestión de tiempo
- Deve esere risolto il problema delle spese necessarie all'assunzione delle prove . Chi deve anticiparle? Allo stato non vi è una normativa che disciplini questa casistica ad es. nel caso del ricorso a tecnologie non disponibili dall'amministrazione chi pa
- Die tatsächliche Quantität kann von hier nicht geschätzt werden. Im Jahr 2010 gingen hier 23 und im Jahr 2011 insgesamt 25 Anträge auf Genehmigung einer unmittelbaren Beweisaufnahme per Video- oder Telefonkonferenz ein.
- Die Zahl der Verfahren wird zunehmen, nachdem in den Strafsachen jetzt die Verwendung "alltäglich" wird
- Direct taking of evidence: the form asking for approval of direct taking of evidence was went to us by email.
- Einvernahme im Ausland wohnhafter Zeugen und Parteien
- Erfahrungen mit der Kommunikationstechnologie liegen nicht vor
- Especially in criminal cases when the the accused is in jail and it is logistically easier to hear the client through the communication technology
- Especialmente para oir testigos o peritos
- Exigencia por muchos estados del envío por correo
- Form I
- Generalmente en trámite de audiencia a personas que no pueden desplazarse a los Juzgados, o resulta muy complicada la intervencion de alguna autoridad.
- Greece has very recently passsed amendments of the Code of Civil Procedure and there are still certain procedures needed before such methods of taking of evidence are practiced.
- Hearing of a wittness or an expert.
- Hearing of wintnesses.
- I have no knowledge of this.
- I haven't had any instances where this has been done

- Im Landgerichtsbezirk Stuttgart kam es zu 8 Beweisaufnahmen unter Einsatz einer Videokonferenz. Insgesamt gab es 102 gestellte Beweisaufnahmeersuchen (sog. eingehende Ersuchen). Es handelt sich dabei um Ersuchen nach 10 Abs. 4 der VO 1201
- Immer bei Ersuchen um direkte Beweisaufnahme (Vernehmung per Telefon oder Videokonferenz)
- In civil law cases, requesting courts prefer printed and signed communications from requested courts. internal rules of procedural law and difficulties in managing heavy workload may prevent judges from using communication technology during the hearings.
- In der Regel wird das Verfahren nicht eingesetzt
- Internet email
- Interrogatorios
- Ist hier bisher nicht vorgekommen.
- Keine Erfahrung
- Keine Erfahrungen
- Keine geeigneten Fälle
- Keine Technologie verwendet
- Kommunikationstechnologie wurde bisher noch nie eingesetzt oder verlangt, dass diese eingesetzt wird
- La France à introduit le RPVA qui rend obligatoire l'accomplissement de certains actes de procédure par voie électronique
- Les introductions s'effectuent par le correspondant du pays de destination
- Les technologies ne sont pas toujours bien maîtrisées. De plus, l'équipement des juridictions pose également problème.
- Mainly for the hearing of witnesses
- Never had practice
- Nie verwendet (kein Anwendungsfall)
- No such case took place in my practice so far
- Non concernés
- Only one question in the beginning.
- Pas d'expérience
- Se utiliza en la práctica de interrogatorios
- Siehe oben
- Taking evidence fom children / protected witnesses
- Teleconference (one time)
- They are all recorded by digital means inorder to be transcribed
- Vernehmung von Zeugen
- Video conference is sometimes used
- Video link evidence is admitted only rarely as it is rarely requested by the parties.

- Videoconferencing and teleconferencing have both been used to aid Family Court proceedings
- Videokonferenzschaltung bei der Vernehmung von Zeugen und Sachverständigen

- Viele Institutionen verfügen noch nicht über moderne kommunikationstechnologie
- voir ci avant question 4. A noter que certains pays, tels l'allemagne sont disposés à coopérer utilement dans ce domaine, de sorte que dans ces cas là, la disposition apporte une réelle plus value.
- Von der hessischen Arbeitsgerichtsbarkeit wurden bisher keine Ersuchen mittels der in Art. 10 (4) vorgesehenen Möglichkeiten erledigt.
- Von hier aus wurde bislang ín keinem Ersuchen um Erledigung unter Einsatz von Kommunikationstechnologien gebeten. Sollte ein derartiges Ersuchen an uns gerichtet werden, könnte diesem nicht entsprochen werden, da die technischen Möglichkeiten hier nicht b
- Vor allem bei Ersuchen um unmittelbare Beweisaufnahme (Zeugenvernehmung)
- We do not have direct knowledge of this point.
- We dont ask and are not asked
- Witness examinations
- Zeugen- oder Parteivernehmung
- Zeugenvernahme
- Zeugenvernehmung
- Zeugenvernehmungen über Videokonferenz

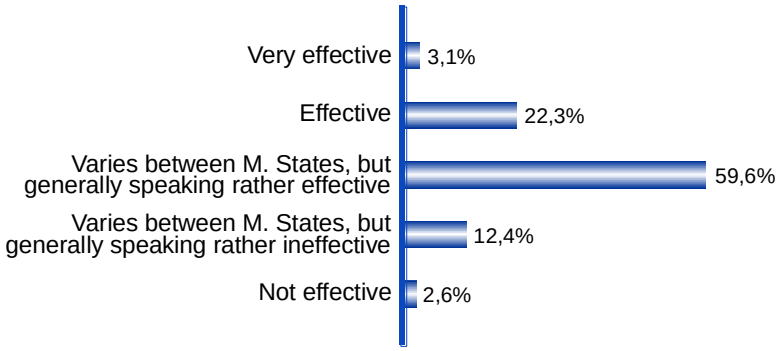
QUESTION 8: How frequently do requested Courts refuse to use communications technology in the performance of taking of evidence?



Again, communications technology seems not very frequently used by requested courts.

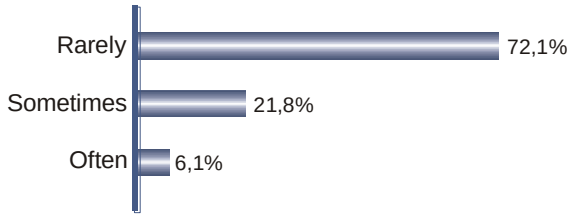
9.2.4.6 Questions on the taking of evidence through the requested courts: Requesting and Requested Courts

QUESTION 9: How effective are the requesting and requested courts in fulfilling their tasks under the Regulation?



Requesting and requested courts are perceived as **rather effective. 85%** of interviewees consider them either rather effective, effective, or very effective.

QUESTION 10: How frequently is the execution of a request refused on grounds of the data protection argument?



Refusals concerning data protection **do not seem to take place often**, as stated by **72,1%** of the professionals consulted.

QUESTION 11: Has the introduction of direct court-to-court contacts caused specific problems? If so, which?

The introduction of direct court-to-court contacts does not seem to have caused specific problems, as stated by 89,7% of the professionals consulted.

Narrative comments

Q11.1.- Which problems?

- 9. and 10. The court has no experience on these matters.
- Collision of laws have caused issues on delivering the court order (request of data or securing the application)
- Compétences insufisantes de certaines juridictions.
- court-to-court communications is not allowed in Latvia
- Courts jurisdiction boundaries can be problematic, its hard to find a comprehensive map of countries split into appropriate jurisdictions
- Courts send requests but are afraid to be in direct contact by email in order to organised e.g. video conference
- Cultures et spécificités judiciaires propres à chaque pays

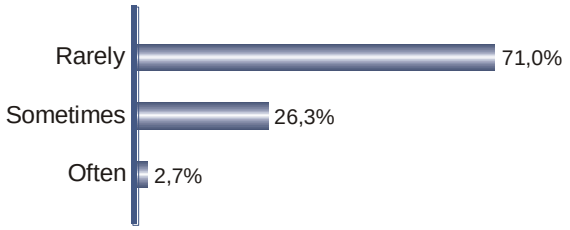
- Der direkte Kontakt ist der effizienteste Weg. Die Zentralstelle ist bei Problemen ein guter erster Ansrechpartner.
- Difficult to answer to the quostions 9-11 properly, since we, as central body, do not receive very detailed feedback from our courts on the functioning of the foreign courts.
- Difficulté de communication liée à la langue
- Direct court-to-court contacts became the rule in the EU area of freedom, security and justice.
- Ein ersuchtes Gericht laut Altlas der EG-Kommission in Frankreich existiert unter der angegebenen Anschrift nicht mehr. Sendungen an dieses Gericht kamen mit erheblicher Zeitverzögerung wieder beim ersuchenden Gericht in den Posteingang.
- Die eingeschaltet
- Erreichbarkeit schwierig
- Ersuchen werden in der Regel von den ersuchten Gerichten nur dann bearbeitet, wenn nicht nur die im Formblatt A in deutscher Sprache vorgenommenen Eintragungen, sondern das gesamte Formblatt A in der Sprache des ersuchten Landes abgefasst ist.
- Es liegen keine Erfahrungswerte vor
- Etant huissier de justice, je pense que nous ne sommes pas concernés par ces questions
- Falta de rigor en su peticion
- Finding the relevant contact persons takes time because sometimes misdirected.
- I have no knowledge of this.
- I problemi sorgono dalla diversa disciplina applicata al caso concreto in Paesi diversi, che possono comportare la nullità.
- In Latvia all request should be sent via central authority - the Ministry of Justice
- Keine Erfahrungen
- Keine Erfahrungen
- l'autorite ne serait pas compétent; plutot probleme pour l'espagne et la suisse
- Lack of sufficiant good language communication.
- Language problems. Differences of law systems and order of execusion of requests.
- Lorsqu'une adresse mail est indiquée, je prends un contact direct par ce moyen. JAMAIS personne ne m'a répondu.
- Manque de traduction
- My court is till now only a requested court. We receive about twelve requests a year from al over Europe. The term "rarely" is not good. we have no questions and so no refusals.
- None that we have been made aware of.
- Not enough information on these matters so far
- Not to my knowledge.
- Pas de réponse
- Problème concernant une demande introduite sur base de l'article 17 en France.

- Problèmes de communication et d'identification de l'interlocuteur
- See 5 and 6 above
- Sprache
- Sprachprobleme, insbes. in romanischen Ländern mangels Englischkenntnissen
- Sprachschwierigkeiten in Verfahrens- und Beweismittelfragen. Unterschiedliche Bewerrtung der Beweise.
- The Central authority has no longer an overview/knowledge of requests, thus cannot check or correct improperly prepared request. Very often the CA is asked to intervene in communication between the requesting and requested court when there is lack of prop
- This way of contacts takes long time.
- We are not aware of any problems
- Zu 10 können keine Angaben gemacht werden
- Zu Nr. 10: keine Erfahrung

9.2.4.7 Questions on the direct taking of evidence

In contrast to international instruments on the taking of evidence like the 1970 Hague Convention, the Regulation (Article 17) goes beyond the traditional concept of judicial cooperation by providing for the possibility of a court to take evidence directly in another Member State.

QUESTION 12: How frequently is this method of taking evidence used? In which types of requests?



The vast majority of professionals (71%) states that this method **is rarely used**.

Narrative comments

Q12.1.- In which types of requests?

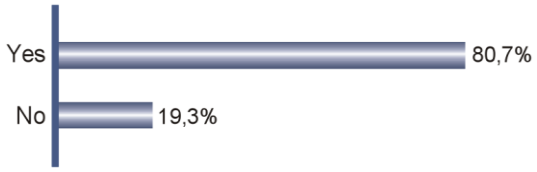
- Augenscheinseinnahme durch Sachverständige
- Bei den geringen Streitwerten für die die Amtsgerichte zuständig sind, wäre dies unwirtschaftlich.
- Beweisaufnahme im Wege der Videokonferenz
- Bisher nie!!
- Bisher noch nie
- Bisher wurde kein Gebrauch davon gemacht
- Bislang wurde davon noch kein Gebrauch gemacht
- Civil procedure - corporate litigation
- Criminal cases
- Didn't happen till now
- Die direkte Beweisaufnahme ist mit erhöhten Vorschusskosten für die Parteien verbunden. Durch den Einsatz der Kommunikationstechnologie werden die Beweisaufnahmekosten geringer gehalten.

- Die tatsächliche Quantität kann von hier nicht geschätzt werden. Im Jahr 2010 gingen hier 23 und im Jahr 2011 insgesamt 25 Anträge auf Genehmigung einer unmittelbaren Beweisaufnahme per Video- oder Telefonkonferenz ein.
- Die unmittelbare Beweisaufnahme - durch Videokonferenz - ist der häufigste Weg und hat "alte klassische" Rechtshilfeersuchen zur Einvernahme von Zeugen oder anderen Auskunftspersonen fast gänzlich beseitigt.
- Die unmittelbare Beweisaufrnahme ist selten und hängt von der Verständigung, insbs. von den Verfahrens- und Sprachkenntnisse ab.
- Difficult to say.
- Domestic maintenance issues mainly
- Entsprechende Ersuchen sind bislang nur für Beweisaufnahmen durch Sachverständigengutachten bei im Ausland befindlichen Gegenständen gestellt worden.
- Ersuchen nach Urkunden
- Et c'est bien dommage!
- Etant huissier de justice, je pense que nous ne sommes pas concernés par ces questions
- Hard to say, not enough experience yet.
- Has not been used in this jurisdiction at all as far as i am aware - no 'never' available as an option
- Have not had any yet
- Hearing of wintnesses; investigation of the place of accident.
- I do not know any cases of this method being used.
- I have no knowledge of this.
- I usually have to do it myself and translate the documents. Main issues concern
- Family Law (divorces)
- IP europeenne
- Ist hier bisher nicht vorgekommen.
- It is a very innovative procedure which contradicts the traditional principle of territoriality and therefore it takes time to become usual
- Jamais eu de cas
- Kein Gebrauch dieser Methode
- Keine Erfahrungen
- Keine Erfahrungen
- La falta de medidas coercitivas por el Juzgado para obtener directamente la prueba en otro estado miembro, la voluntariedad de la realización de tales diligencias por los interesados, y problemas para la autorización de los gastos que ello pueda implicar,
- Mostly in cases where a wittness is heard by telephone.
- Never
- Nie verwendet (kein Anwendungsfall)

- Noch nie vorgekommen
- Non mi risulta mai avvenuto
- On request of the applicant.
- Once a witness is domiciled in another MS, the regulation provides the adequate tool in this respect
- Sachverständigenentsendung
- Sachverständigengutachten für Bauprojekte im Ausland
- Sans l'aide et la coopération de l'Etat membre dans lequel la mesure doit être exécutée, on voit mal comment une juridiction d'un autre Etat membre peut organiser une vidéoconférence par exemple dans une ville d'un autre Etat membre. (comment trouver un l
- Sentiments d'inutilités.
- Telephone conferences
- The court has not taken any evidence in such a case.
- Threre is no data that such method was used at all.
- Tipo penali
- Über Videokonferenz
- Unmittelbare Vernehmung von Zeugen mit Video
- Usually hearing of witnesses (phone or video conference)
- Vernehmung von Zeugen
- Von der hessischen Arbeitsgerichtsbarkeit wurden bisher keine Ersuchen mittels der in Art. 17 (4) vorgesehenen Möglichkeiten erledigt.
- Von dieser Methode wurde hier noch nie Gebrauch gemacht
- We do not have direct knowledge of this point.
- We have not experienced this method of taking evidence yet.
- We have not had experience of this method of taking evidence.
- Z.B. Zeugen und Parteieneinvernahme per Videokonferenz in Deutschland
- Zuständige Behörde für Bayern ist der Präsident des Oberlandesgerichts München, nicht das befragte Gericht.

9.2.4.8 Other comments

QUESTION 13: Do you consider the harmonisation of the procedural laws of the Member States on the issue of the taking of evidence desirable?



The vast majority of professionals (80,7%) consider that the **harmonisation is desirable. However, as stated in other sections above of this Report, one thing is desire of field professionals and a different one is feasibility, or the outcome *versus* implementation complexity ratio.**

QUESTION 14: Please feel free to give further explanations or make proposals.

Narrative comments

- A very general comment concerning Greece: There is not yet adequate information on the application of the Regulation, therefore there can be no answers to some of the questions.
- Although I practice in the civil courts regularly in my experience little use is made of this Regulation in Ireland but hopefully this Questionnaire will be of assistance in developing the relevant laws.
- Bisognerebbe introdurre un Testo Unico Europeo su valore, onere e modalità di assunzione delle prove che valga all'interno di ciascuno Stato e nei rapporti processuali tra Stati dversi
- C'est bien dommage, puisque notre opinion n'est pas exacte. Les notaires ne participent pas si directement dans le pricessus de travail des organismes centraux. Donc, les reponses ne sont pas tres informatives. C'est le Ministere de la Justice et les Cour
- Codificazione europea
- Dado que se trata de un instrumentos normativo de tramitación directa entre órganos transmisores y receptores, la Autoridad Central no tiene datos suficientes para poder contestar todo el formulario. No obstante, nos consta que el mismo ha sido contestado
- Debe mejorar notablemente la calidad de los distintos instrumentos en materia procesal, procurando alcanzar textos que no se revisen con excesiva frecuencia.
- Die Harmonisierung des Verfahrensrechtes , Gesellschaftsrechtes und Insolvenzrechtes in Bulgarien ist zwar zu bemerken, die Richter im Obersten Gericht selbst kennen und benutzen nicht die Regelungen und Gerichtspraxis der anderen Mitgliedslaender.
- Efforts should be made to make more information available about the rules on taking of evidence in the Member States and to make national judges more familiar with the legal solutions and concepts of other Member States.

- Eine Harmonisierung ist wünschenswert, einheitliche Vorganben wirken auch vereinfachend im hinblick auf sprachliche Probleme. Driengend erforderlich ist Fortbildung um Vorurteile und Bedenken abzuauen. Ziel sollte ein einheitliches europäisches Recht sein
- Einheitliche Bewertung der Beweismittel in Europa, keine unterschiedliche Gewichtung des Zeugenbeweises und/0der sonstiger Beweismittel.
- en las vbideoconferencias es necesaria una buena coordinación tanto en lo que se refiere a la hora en que deba practicarse (tener en cuenta la diferencia horaria) comno en la confirmación de su práctica, dado que a veces se prepara toda la infraestructura
- En qualité d'huissier de justice français chargé de la sinification des assignations et significations je déconseille à mes ckients le recours à l'art 1393 dans tous les pays de l'union et notamment au royaume uni et allemagne ces pays ultra protecteur du Etant huissier de justice, je pense que nous ne sommes pas concernés par ces questions
- Haria falta mas coordinacion entre los estados miembros en esta materia...conferencias, foros, etc
- Hay que crear un órgano coordinador entre los órganos jurisdiccionales como interlocutor, para evitar descoordinación.
- Hier liegen keinerlei praktische Erfahrungen mit der Problematik vor.
- I am not a practising lawyer so have not been able to answer any of the other questions. Your survey omits a "don't know" response
- I have no experience of requesting information from other Member States but have had one or two requests. These happen infrequently and so it is hard to determine the effects of the regulations and what their benefits will be to Member States.
- I understand the solutions provided by EC Reg 1206/2001 are slowly becoming appreciated by users in all member states and that the potential of it is still to be fully exploited.
- Ich habe bisher noch keine Beweisaufnahme im Ausland veranlasst bzw. veranlassen müssen. Auch im Kollegenkreis ist mir kein Fall bekannt.
- In the last few years the regulation works well. I see no necessity to harmonise the rules on taking evidence.
- Indeed, if the procedure is similar, the requesting Court knows exactly what and how to ask for from the requested Court.
- internationale und nationale Schulungen könnten noch intensiviert werden
- It is already difficult for parties in a lawsuit to understand and follow procedural laws of their own country. It is all the more difficult to follow procedural laws of other Member states. The harmonisation of procedural laws is therefore desirable as i
- It is desirable only for taking of evidence where witnesses are in other Member States
- Keine Angaben mangels Erfahrung
- L'europe ce n'est pas les USA. chaque pays a connu des évolutions hsitoriques différentes d'un pays à l'autre De ce fait, chaque pays a sa cuture, son histoire, sa mentalité propre. Il faut continuer à préviliger des accords de simplification de formulair
- Le procedure di assunzione delle prove dovrebbero essere armonizzate. Non solo: interi settori procedurali dovrebbero essere disciplinati in modo uniforme da Regolamenti comunitari. Faccio un esempio: l'ingiunzione europea di pagamento dovrebbe essere dis
- Mir ist weder die erwähnte Verordnung noch das damit verbundene Verfahren noch die Existenz von "Zentralstellen" überhaupt bekant. Eine Beweisaufnahme durch ein ersuchtes Gericht im EG-Ausland ist in meiner 20jährigen Praxis noch nie vorgekommen. Sämtlich

- Necesidad de reforzar el deber de colaboración del órgano requerido de cara a averiguaciones de domicilio cuando ello es necesario
- Nous souhaiterions un Droit Européen se rapprochant davantage du Droit Latin qui correspond mieux a nos pays par opposiion au droit anglo saxon/ américian. Merci d'y penser !
- Respecto a esta última pregunta : en época de crisis económica e institucional, más Europa , más armonización y reglas de juego comunes que hagan percibir al ciudadano que litigar en "casa" es idéntico a litigar con componente transnacional
- Sometimes difficulties arise due to different manner how evidence is taken in the Member States (e.g. Slovak court requests documentary evidence, but the requested court can accomodate such request only by hearing a representative of the authority which s
- Soweit keine Antwort angekreuzt ist, können keine Angaben gemacht werden. Die Zentralstelle wird nur bei Problemen und in den Fällen der unmittelbaren Beweisaufnahme beteiligt.
- Telephone hearings are rarely used
- The provisions of the Regulation are very useful and we should continue closer or/and direct cooperation among courts
- The questionnaire was completed by the Central authority for this regulation. The answers reflect our position.
- To some extent.
- Toutefois la signification par parquet était beaucoup plus simple et efficace
- Un code de procédure civile et d'exécution Européen (au moins sur les bases minimum) est inévitable et on ne peut plus souhaitable à court terme si l'on veut un minimum d'harmonisation. Dans le cas contraire: les difficultés s'accumuleront.
- Viel wichtiger als die Harmonisierung des Verfahrensrecht wäre aber eine weitergehende Harmonisierung der materiellen Vorschriften (zB gemeinsames Zivilrecht)
- Zu Ziff. 8. und 10.: Zu diesen Fragen liegen hier keine Erfahrungen vor.

9.3 STATISTICAL DATA CONCERNING THE TAKING OF EVIDENCE

The **e-mailings and phone calls** were the main means used for the collection of the **statistical data concerning the taking of evidence**. This information was sought by means of the questionnaire shown at section 5.3.3 that was addressed to the Central Bodies of all Member States.

The starting point to initialize the contact was the information provided in the Consolidated version of the communications of the Member States.

All Central Bodies have provided some kind of answer at the time this report is drafted, except for Gibraltar (it was impossible to reach them).

Eight countries stated that they don't have any data to provide. For the countries that have indeed sent some data, for most cases the data delivered is very limited, due mainly to the very de-centralizing nature of Regulation 1206/2001. All received comments, explanations and clarifications have been included.

9.3.1 Objectives

The main objective was to perform a quantitative analysis, covering the period 2006-2010, and for interactions from each of the 26 Member States where the Regulation applies (i.e.: except Denmark) to every other EU State, on a very extense and detailed spectrum of information, namely:

a) Number of requests by the requesting court to

(i) the competent court of another Member State to take evidence

(ii) take evidence directly in another Member State

The number of requests was presented by the requesting Member State per year and by the receiving Member State by year. This was categorised by the type of request (i) and (ii). The total number of requests by year for each type was also requested

b) Amount of time required for the completion of requests

Our detailed questionnaire also included figures for types of requests and rejections, as well as data divided by each reason for the rejection (however, this last part, identifying the reasons for rejections, was not filled by nearly any State).

Overall, the information requested was very specific, deep and detailed. In most cases, the Central authorities could not provide for many of this information, and therefore, they have been requested to provide as much as it was available, as well as to use estimative figures where factual ones were not available.

9.3.2 Approach taken

Gathering information:

The information was sought from the Central Bodies of each Member State as per the consolidated version of the Communications from Member States.

Information gathering procedure:

1. Creation of a **Data sheet** in Excel format relating to the stated aspects to measure about the application of the Regulation, allowing Central Bodies to supply the requested data. Such data is of a **quantitative and temporal nature**.
2. Translating this questionnaire into German, since Germany would not answer otherwise.
3. **Sending of Questionnaire** (s) to Central Bodies and administrations of the Member States via E-mail.
4. **Monitoring its completion**. This was done via e-mail and telephone reminders and conversations, along a period of over four months.
5. **Reception and consolidation of data.**

9.3.3 Survey Form

Due to the complexity of the data and the information requested to the Central Bodies, the questionnaire was developed in Excel with the purpose of facilitating the filling in by different persons and moments. It was divided in two independent blocks aiming to allow separate delivery of the information, and had an introductory explanatory text.

9.3.3.1 Global figures

Please introduce your best approximation. Please remember to indicate 0 in case it is not applicable and to leave the field empty in case you do not have

GLOBAL REQUESTS		
Q1. Please indicate the average number of requests to take evidence (approximate global figure) **transmitted from your country to other Member States** in accordance with Article 4 of the Regulation (available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R1206:EN:HTML)		**Cases under Regulation 1206**
2006		
2007		
2008		
2009		
2010		
Q2. Please indicate the average number of requests to take evidence (approximate global figure) **transmitted from other Member States to your country** in accordance with Article 4 of the Regulation (available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R1206:EN:HTML)		**Cases under Regulation 1206**
2006		
2007		
2008		
2009		
2010		
Q3. Could you please indicate the average **number of days** required for the completion of requests?	when your State is the receiving Member State	when your State is the transmitting Member State

REQUESTS REJECTED		
Q4. Please indicate the proportion of rejections for cross border demands for taking of evidence in comparison with domestic demands		
	Number of rejections for cross border demands	**Number of rejections for domestic demands**
2006		
2007		
2008		
2009		
2010		
Q5. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence **by the requested court,** that is, under Section 3 of the Regulation (available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R1206:EN:HTML)		
	Number of requests for taking of evidence by the requested court	**Number of rejections for taking of evidence by the requested court**

Please introduce your best approximation. Please remember to indicate 0 in case it is not applicable and to leave the field empty in case you do not have that information.

	Number of requests for taking of evidence by the requested court	Number of rejections for taking of evidence by the requested court
2006		
2007		
2008		
2009		
2010		

Q6. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence **directly,** that is, under Section 4 of the Regulation (available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R1206:EN:HTML)

	Number of requests for taking of evidence directly	Number of rejections for taking of evidence directly
2006		
2007		
2008		
2009		
2010		

OPTIONAL DATA (IF AVAILABLE)

Q7. Could you please provide the approximate number of requests that have been rejected **by your country** because of any of the following causes?

REASON FOR THE REJECTION	Wrong or incomplete information	The person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence under the law of the Member State of the requested court;	The person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence under the law of the Member State of the requesting court	Lack of deposit or advance	The execution of the request under the law of the Member State of the requested court does not fall within the functions of the judiciary
2006					
2007					
2008					
2009					
2010					

Q8. Could you please provide the approximate number of requests that have been rejected **by the requested country** because of any of the following causes?

REASON FOR THE REJECTION ->	Wrong or incomplete information	The person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence, (a) under the law of the Member State of the requested court; or	The person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence under the law of the Member State of the requesting court	Lack of deposit or advance	The execution of the request under the law of the Member State of the requested court does not fall within the functions of the judiciary
2006					
2007					
2008					

Instructions | Global figures | By Member State

9.3.3.2 By Member State

Please introduce your best approximation.	Belgium		Bulgaria		Czech Republic		
Q9. Average number of requests to take evidence **transmitted from your country** to other Member States in accordance with Article 4 of the Regulation, per year	No. of cases when Belgium is the receiving Member State	No. of cases when Belgium is the transmitting Member State	No. of cases when Bulgaria is the receiving Member State	No. of cases when Bulgaria is the transmitting Member State	No. of cases when Czech Republic is the receiving Member State	No. of cases when Czech Republic is the transmitting Member State	No. c German
Regulation available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R1206:EN:HTML							
2006							
2007							
2008							
2009							
2010							
Q10. Average number of requests to take evidence **received by your country** from other Member States in accordance with Article 4 of the Regulation, per year	When Belgium is the receiving Member State	When Belgium is the transmitting Member State	When Bulgaria is the receiving Member State	When Bulgaria is the transmitting Member State	When Czech Republic is the receiving Member	When Czech Republic is the transmitting Member	When receivin
2006							
2007							
2008							
2009							
2010							
Q11. Could you please indicate the average number of days required for the completion of requests?	When Belgium is the receiving Member State	When Belgium is the transmitting Member State	When Bulgaria is the receiving Member State	When Bulgaria is the transmitting Member State	When Czech Republic is the receiving Member	When Czech Republic is the transmitting Member	When receivin
2006							
2007							
2008							
2009							
2010							
Q12. Could you please indicate the approximate number of rejections for cross border demands for taking of evidence?	No. of cases		No. of cases		No. of cases		
2006							
2007							
2008							
2009							
2010							
Q13. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence by the requested court, that is, under Section 3 of the Regulation	Number of requests for taking of evidence by the requested court	Number of rejections for taking of evidence by the requested court	Number of requests for taking of evidence by the requested court	Number of rejections for taking of evidence by the requested court	Number of requests for taking of evidence by the requested court	Number of rejections for taking of evidence by the requested court	Numbe taking o req
2006							
2007							
2008							
2009							
2010							
Q14. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence directly, that is, under Section 4 of the Regulation	Number of requests for taking of evidence directly	Number of rejections for taking of evidence directly	Number of requests for taking of evidence directly	Number of rejections for taking of evidence directly	Number of requests for taking of evidence directly	Number of rejections for taking of evidence directly	Numbe taking of
2006							
2007							
2008							
2009							
2010							

Instructions | Global figures | By Member State

In the image above, the reader can see the detailed questions, to be answered for each other Member State. The data sheet, hence, continues on the right side, completing the names of all applicable Member States.

9.3.4 Not all Member States provided with data

The final outcome of our request to Central Bodies is:

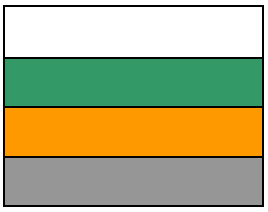
- **All** 26 applicable Member States **have answered** our request, in one way or another.
- **18 States** have delivered the filled questionnaire, although the provided data for many States is very scarce, or at least partial.
- **8 States** answered that they don't have these data, and hence cannot deliver.
- Concerning Gibraltar (UK jurisdiction), it has been impossible to find valid contact data. The one at the Manual is incorrect, and other efforts have been useless.

The next table summarizes the status of every MS.

MEMBER STATE	ANSWER RECEIVED	COMMENTS
BELGIUM	Yes	Delivers some data on Nov 8th
BULGARIA	Yes	Delivered Nov 17th
CYPRUS	Yes	Delivers on Nov 24th
CZECH REPUBLIC	Yes	Delivers on Nov 24th
DENMARK	Yes	They say that have no data, since the Regulation does not apply
FINLAND	Yes	Delivers on January
GERMANY	Yes	Says on 23 Sept that they will not answer, due to the short deadline given (they have to forward our request to all their 16 Länder), and the language (EN). We extend the deadline, and send a DE version of the excel form. They deliver by the end of the year.
GREECE	Yes	Delivered 23rd Nov
HUNGARY	Yes	They deliver on the 29th November
IRELAND	Yes	They deliver on Dec 30th

LATVIA	Yes	Delivers nearly everything on Oct 3rd
NETHERLANDS	Yes	Acknowledges reception of email, on Oct 24th. State will deliver by the end of November. There are many delays, and finally in Jan 2012 KBVG says they are not the Central Body, and hence have no data. On Jan 16th the Ministry of justice also says they have no data.
ROMANIA	Yes	Delivered Nov 28th
SLOVAKIA	Yes	They say on Oct 3rd that they don´t collect or have any such data
SLOVENIA	Yes	They deliver on February 23rd, 2012
SPAIN	Yes	Acknowledges reception of email, on Oct 6th. On the 21st Dec they confirm they will answer soon. Finally, in January they say the don´t have such data
SWEDEN	Yes	The person does not handle this issues. Has forwarded it internally to Mr Per Hedvall, Director, in charge of the Central Authority, to make sure they answer. On the 29th, they state they don´t have such information
UK-England & Wales	Yes	Asks for a clarification, which we answer on Oct 4th. Finally sends some data
UK-NORTHERN IRELAND	Yes	They say in Oct that "This is currently being considered". Later, after the remind on Nov 21st, a new person contacts us (Ms Maria Kane), asking to receive again the questionnaire, and answers on the same day.
UK-Scotland	Yes	Acknowledges reception of email, on Oct 6th, and say they are already working on it. On the 28th they say they don´t have such data.
ESTONIA	Yes	Delivers some data on Nov 7th
UK-Gibraltar	No	Invalid emails aggib@gibnynex.gi, convent@gibnet.gi. Found new emails and sent again on Oct 27th, and also in November
AUSTRIA	Yes	Invalid email at the Manual. Sent to new address on 7 Oct. Reminder on 14th Oct. Acknowledges reception of emails, on Oct 14th. States on 29th that they don´t have much data, but will send it asap. They send some data by the end of the year.
FRANCE	Yes	They answer on Nov 2nd that they don´t have such data
ITALY	Yes	Sends a little bit, and says will ask their courts (12th Oct). No further info is received, but two official letters stating their lack of info on this subject.
LITHUANIA	Yes	Invalid email at the Manual. Sent to new address on the 10th Oct. Reminder on the 14th. Speak with her on the 27th, and the situation seems to de-block, but on Jan 2nd, 2012, they say they don´t have such data
LUXEMBOURG	Yes	Acknowledges reception of the email, and then states on the 21st that they don´t have such data
MALTA	Yes	Delivered Dec 28th
PORTUGAL	Yes	Delivered Nov 18th
POLAND	Yes	Delivered Dec 23rd

Colour codes:



Have not delivered any answer

We have received their filled excel file

No acknowledgement of receipt - no confirmed contact working on it

They say they will not deliver, or don´t have such data

9.3.4.1 Textual answers and comments received from Central Bodies

As stated, **8 Member States (MS)** answered that they don´t have these data, and hence cannot deliver. We here present their answers, as well as some relevant comments provided by States that do have send us some statistical data:

BELGIUM

We have only information about the demands for taking of evidence directly (section 4). For questions concerning section 3 (article 4), please ask the judicial authorities

---

DENMARK

Dear Oscar Rodriguez
By e-mail of 23rd September you have approached the Danish Ministry of Justice regarding a study on the application of EC Regulation 1206/2001 on the cooperation between the courts of the member states in the taking of evidence in civil or commercial matters.

The Regulation applies between all Member States of the European Union with the exception of Denmark. Between Denmark and the other Member States the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 1970 applies.

Therefore The Danish Ministry of Justice has no input regarding your request.

Best regards
Christian Sivert Brogaard
The Danish Ministry of Justice
Civil Law Division

HUNGARY

Dear recipient,

I am sorry that these answers come delayed. Please find below and enclosed the Finnish answers to the questionnaire of the Study on the application of Regulation EC No 1206/2001.

Requests based on article 4 and section 3: Based on the information received, the requests of taking of evidence based on the regulation are not filed/registered with a separate or specific number/file in Finnish courts. Hence, there are no easily-accessible statistics of the incoming and outgoing requests based on the regulation. For this reason, we are sorry for not being able to provide data of the article 4 requests.

As far as we in the Central Body have information, we have not been informed of any requests that would have been ejected by the Finnish courts, as regards section 3 requests.

Requests based on article 17 received by the Finnish CB: There are statistics on the incoming requests based on article 17 of the regulation. They mainly come from Sweden, but there are some other countries as well. Those requests are handled by the CB normally in 1-3 days. There have been no rejections during the years 2006-2010. This information has been filled in the questionnaire.

Please do not hesitate to contact me, should you have any further questions. Best regards and wishing a good holiday season,

Maija Leppä
Hallitussihteeri/Regeringssekreterare/Legal Adviser

Oikeusministeriö, kansainvälinen yksikkö
Justitieministeriet, internationella enheten
Ministry of Justice, International Affairs

NETHERLANDS

Dear Mr. Rodriquez,

I have to inform you that we don't have statistics (and also not starting from the year 2006) with respect to the information that your organization is collected. For this reason I am not able to respond to your request.

Best regards,

dr. Pim Albers
senior policy advisor and national contact point EJN in civil matters
Ministry of Security and Justice

Dear Mr Rodriguez,

I (we) sincerely apologize, as you already have mentioned, for the misunderstanding about to fill out the excel file.

We tried as best as we could to provide the information about this subject, but we are not de Central Body for the EC Regulation 1206/2001. We do not have the specific information you have requested this time. For this it is best to contact Mr. P. Albers, senior policy advisor and national (Dutch) contact point EJN in civil matters.

With kind regards,

Royal Professional Organisation of Judicial Officers. Jeroen Rijsdijk

---

SLOVAKIA

Dear Mr Rodriguez,

thank you for your email and the attached questionnaire to the Central Authority under the Taking of Evidence Regulation.

Unfortunately, we are not in the position to fill in any data in the questiannaire as we have no information either on the number of the incoming or outgoing requests or any other information on the functioning of the Regulation.

One of the advantages of the Regulation is the direct way of communication between courts, but this also means that the Central Authority is „out of the picture" as regards the application of the Regulation.

Moreover, Slovak courts do not collect statistical data on the incoming or outdoing requests under the Regulation (or reasons for refusal, etc), consequently we cannot gather data from them either.

Under the circumstances I do not find it reasonable to fill in the questionnaire just to put everywhere „no information available".

With best regards

JUDr. Miloš Haťapka
Director
International and European Private Law Division
Ministerstty of Justice of the Slovak Republic

SPAIN

Estimado Sr. Rodríguez:

Lamentamos no haber podido enviarle el cuestionario cumplimentado. A pesar de haber realizado las gestiones pertinentes, no hemos podido obtener datos fiables al cien por cien para poder rellenar el cuestionario, los datos que pudiéramos facilitarles no coinciden ni de manera aproximada con el volumen de solicitudes que realmente se trabaja en España.

Actualmente no disponemos de los medios estadísticos e informáticos suficientes para poder proporcionarle la información solicitada, no obstante, he de indicarle que se está trabajando en ello a fin de que, en futuras consultas, podamos enviarles la información que nos piden.

Atentamente,

Laura Fernández Domínguez
Jefe de Servicio de Auxilio Judicial Civil
Contac Point EJN
Ministerio de Justicia

SWEDEN

Contact Details:
Erik Tiberg
Legal Adviser
Ministry of Justice, Division for Procedural Law and Court Issues

We have consulted with the Central authority in Sweden and the Swedish National Courts Administration regarding requested statistical data on the application of the regulation. We regret to inform you that the requested data is not available.

SCOTLAND (UK)

Dear Oscar,

My apologies for not meeting your deadline.

As, unfortunately, neither our courts nor our central authority keep identifiable records of applications made under this Regulation I am unable to complete your questionnaire.

Ian Nicol | EU & International Strategy Team | Legal System Division | The Scottish Government |

ESTONIA
Since I am from the central authority, we have only very little information about direct taking of evidence (under art 17). Requests for taking of evidence under article 10 move in courts and we do not have any info on them. Thus I send You the questionnaire with information about the art 17 requests.

AUSTRIA
Dear Mr. Rodriguez,
please find attached to this e-mail the questionnaire on the application of the European Regulation on taking of evidence as filled in by Austrian. Unfortunately due to the now decentralized processing of requests for taking of evidence we do not have much of the statistical data required.

Best regards,

Vienna, 02. Dezember 2011
On behalf of the Minister:
Dr. Christian Rauscher

FRANCE
Cher Monsieur,

L'autorité centrale désignée pour la France dans le cadre de la mise en oeuvre du règlement CE 1206/2001 n'est pas en mesure de renseigner le questionnaire soumis dès lors que les statistiques demandées concernent les transmissions directes de demandes d'obtention de preuves entre les juridictions des Etats membres et que l'autorité centrale française ne saurait procéder pas à la collecte de ces chiffres auprès des 164 tribunaux de grande instance.

En PJ vous trouverez néanmoins votre tableau renseigné avec les coordonnées du BECCI.

Bien cordialement,

Clémentine BLANC, Chef du bureau de l'entraide civile et commerciale internationale

Head of the french central authority
Ministère de la justice - Direction des affaires civiles et du sceau -
Bureau de l'entraide civile et commerciale internationale

LITHUANIA
Dear Oscar Rodriguez,

Please accept my apologies for the delay and misunderstandings. I hope that my answers to the questionnaire which was disseminated in word format is actual too. Recently I have also been asked to complete one more online questionnaire regarding the application of the Regulation 1206/2001. Since they all were on the same topic I have probably missed this one in excel format, requesting detailed statistics.

I regret to say that we are not able to provide the accurate statistics on received or transmitted requests for taking of evidence since the Ministry of Justice is a Central Authority for the functions listed in Article 3 of the Regulation. Lithuania has designated all district courts of regions and cities of general competence which deal with civil and commercial matters as competent receiving or transmitting agencies according to Regulation (EC) No 1206/2001. Hereby they receive the requests directly from the requesting foreign authorities. The same method applies when the Lithuanian courts submit their requests for taking of evidence to other Member States. For this reason the courts may possess more detailed statistics, since they receive/ transmit the requests directly.

From our point of view, there is no evident problems applying Regulation 1206/2001. We, as Central body, have counted several cases, when foreign transmitting authorities forward their requests for the taking of evidence to the Ministry of Justice, as Central Body, instead of transmitting directly to the competent local court. This usually happens because of unknown addresses or when the foreign court fails to indicate the competent court in Lithuania for the execution of the request. We have had some cases with Poland when they transmitted us the wrong forms (mixed up the forms of requests for taking of evidence and requests for direct taking of evidence), therefore we have returned the requests for clarification.

Best regards,

Gintarė Janikūnaitė (Ms)
Chief specialist
International Law Department
Ministry of Justice
Republic of Lithuania

LUXEMBOURG

Dear Mr. Rodriguez,

I refer to your email addressed to Mr. Franz Scherer regarding the questionnaire on EC Regulation 1206/2001. Unfortunately, I am not able to answer your questionnaire as Luxembourg has no statistics regarding the incoming and outgoing requests between the courts of the Member States in the taking of evidence in civil or commercial matters.

This is mainly due to the fact that the Regulation provides for the direct transmission of requests between the courts of the member states.

Therefore, the Luxembourg Central Authority is not asked to intervene in the transmission of the requests, inasmuch as the European Judicial Atlas in civil matters provides for all the information needed concerning the application of the Regulation and a user-friendly tool for filling in the forms.

Yours sincerely,

Malou Theis
Avocat Général
PARQUET GENERAL
Cité Judiciaire
L-2010 Luxembourg

POLAND

Dear Colleague,

Please find enclosed Polish answers to the questionnaire on Regulation 1206/2001 (taking of evidence).

Please be informed that in Poland courts are requesting and requested authorities. Polish courts do not run statistics in respect to service of documents on the grounds of EC Regulation 1206/2001. Having that in mind Poland is unable to provide accurate statistics in this regard.

Kind regards,

Kamila Maleszewska
Ministry of Justice
Judicial Cooperation and European Law Department.
EJN contact point

9.3.5 Consolidated data received

This section summarizes the answers that MainStrat has received concerning this statistical data study.

Results are offered as provided. In many cases, as shown in the comments at the previous section by the authorities fulfilling the excel file, no data is available, or only partial one (grey cells at the excel tables refer to lack of data).

9.3.5.1 Q1

Q1. Please indicate the average number of requests to take evidence (approximate global figure) transmitted from your country to other Member States in accordance with Article 4 of the Regulation	Cases under Regulation 1206	2006	2007	2008	2009	2010	Total (12 States)
Belgium							
Bulgaria	1 in 2007, 2 in 2008, 13 in 2009, 14 in 2010		1	2	13	14	**30**
Czech Republic							
Germany	670 in 2010					670	**670**
Estonia	1 in 2009, 1 in 2010				1	1	**2**
Greece	0 in all years	0	0	0	0	0	**0**
Spain							
France							
Ireland	1 in 2009, 1 in 2010				1	1	**2**
Italy							
Cyprus	N/A, for all years						
Latvia	29 in 2006, 13 in 2007, 24 in 2008, 9 in 2009, 38 in 2010	29	13	24	9	38	**113**
Lithuania							
Luxembourg							
Hungary	2006-2010: total number 62	12	12	12	12	12	**62**
Malta	2 in 2006, 1 in 2008, 3 in 2009, 4 in 2010	2	0	1	3	4	**10**
Netherlands							
Austria							

Poland							
Portugal	66 in 2006, 146 in 2007, 116 in 2008, 9 in 2009, 2 in 2010	66	146	116	9	2	**339**
Romania	742 in 2007, 515 in 2008, 328 in 2009, 280 in 2010		742	515	328	280	**1865**
Slovenia	40 in 2006, 30 in 2007, 40 in 2008, 54 in 2009, 56 in 2010	40	30	40	54	56	**220**
Slovakia							
Finland							
Sweden							
UK- England&Wales	19 in 2006, 14 in 2007, 9 in 2008, 34 in 2009, 12 in 2010	19	14	9	34	12	**88**
UK- Northern Ireland							
		2006	2007	2008	2009	2010	
	Total data per year (12 States)	**168**	**958**	**719**	**464**	**1090**	**3401**
	Estimation (26 States)	**364**	**2076**	**1558**	**1005**	**2362**	**8039**

Legend:

<- A grey cell for country names means that the given country did not submit any information

A grey cell at data fields means that although the country submitted information, it did not complete that cell -->

9.3.5.2 Q2

Q2. Please indicate the average number of requests to take evidence (approximate global figure) transmitted from other Member States to your country in accordance with Article 4 of the Regulation	Cases under Regulation 1206	2006	2007	2008	2009	2010	Total (15 States)
Belgium							
Bulgaria	3 in 2007, 11 in 2008, 26 in 2009, 46 in 2010		3	11	26	46	**86**
Czech Republic	2342 in 2008, 2472 in 2009, 2628 in 2010			2342	2472	2628	**7442**
Germany	1796 in 2010					1796	**1796**
Estonia	3 in 2008, 2 in 2009, 3 in 2010			3	2	3	**8**
Greece	0 in all years	0	0	0	0	0	**0**
Spain							
France							
Ireland	26 in 2006, 52 in 2007, 67 in 2008, 74 in 2009, 32 in 2010	26	52	67	74	32	**251**
Italy							

Cyprus	1 in 2007, 5 in 2008, 5 in 2009, 6 in 2010		1	5	5	6	**17**
Latvia	23 in 2006, 7 in 2007, 3 in 2009, 8 in 2010	23	7	0	3	8	**41**
Lithuania							
Luxembourg							
Hungary	2006-2010: total number 172	34	34	34	34	34	**170**
Malta	3 in 2008, 1 in 2009, 1 in 2010			3	1	1	**5**
Netherlands							
Austria							
Poland							
Portugal	0 in all years	0	0	0	0	0	**0**
Romania	45 in 2007, 89 in 2008, 77 in 2009, 126 in 2010		45	89	77	126	**337**
Slovenia	130 in 2006, 44 in 2007, 113 in 2008, 155 in 2009, 121 in 2010	130	44	113	155	121	**563**
Slovakia							
Finland							
Sweden							
UK- England&Wales	347 in 2006, 332 in 2007, 334 in 2008, 440 in 2009, 397 in 2010	347	332	334	440	397	**1850**
UK- Northern Ireland	11 in 2006, 3 in 2007, 7 in 2008, 11 in 2009, 6 in 2010	**11**	**3**	**7**	**11**	**6**	**38**
		2006	2007	2008	2009	2010	TOTAL
	Total data per year (15 States)	**571**	**521**	**3008**	**3300**	**5204**	**12604**
	Estimation (26 States)	**990**	**903**	**5214**	**5720**	**9020**	**21847**

Legend:

	<- A grey cell for country names means that the given country did not submit any information
A grey cell at data fields means that although the country submitted information, it did not complete that cell -->	

9.3.5.3 Q3

Q3. Could you please indicate the average number of days required for the completion of requests?	when your State is the receiving Member State	when your State is the transmitting Member State
Belgium		
Bulgaria	48	57
Czech Republic		
Germany		
Estonia		

Greece		
Spain		
France		
Ireland	56	
Italy		
Cyprus	30-60 DAYS	N/A
Latvia	30-90	30-240
Lithuania		
Luxembourg		
Hungary	1-8 months	1-6 months
Malta	200-275 in all years, except 2007 (N/A).	240-300 in all years, except 2007 (0)
Netherlands		
Austria		
Poland		
Portugal	139	190
Romania	3-4 months	5-6 months
Slovenia	60	
Slovakia		
Finland		
Sweden		
UK- England&Wales	154	
UK- Northern Ireland		

9.3.5.4 Q4

Q4. Please indicate the proportion of rejections for cross border demands for taking of evidence in comparison with domestic demands	**Number of rejections for cross border demands**	**Number of rejections for domestic demands**
Belgium		
Bulgaria	1 in 2007, 2 in 2009, 13 in 2010	1 in 2007, 2 in 2009, 6 in 2010
Czech Republic		
Germany		
Estonia		
Greece	0 in all years	0 in all years
Spain		
France		
Ireland		
Italy		
Cyprus		

Latvia		
Lithuania		
Luxembourg		
Hungary		
Malta	0 in all years	
Netherlands		
Austria		
Poland		
Portugal		
Romania		
Slovenia	18 in 2006, 7 in 2007, 9 in 2008, 17 in 2009, 22 in 2010	
Slovakia		
Finland		
Sweden		
UK- England&Wales		
UK- Northern Ireland	None. All years	None. All years

9.3.5.5 Q5

Q5. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence by the requested court, that is, under Section 3 of the Regulation	**Number of requests for taking of evidence by the requested court**	**Number of rejections for taking of evidence by the requested court**
Belgium		
Bulgaria	2 in 2007, 3 in 2008, 10 in 2009, 27 in 2010	2 in 2009, 5 in 2010
Czech Republic		
Germany		
Estonia		
Greece	0 in all years	0 in all years
Spain		
France		
Ireland		22 in 2007, 11 in 2008, 6 in 2009, 38 in 2010
Italy		
Cyprus		
Latvia		

Lithuania		
Luxembourg		
Hungary	2006-2010: total number 147	2006-2010: total number 27
Malta		
Netherlands		
Austria		
Poland		
Portugal	6 in 2006, 27 in 2007, 19 in 2008, 22 in 2009, 10 in 2010	
Romania		
Slovenia	9 in 2006, 7 in 2007, 2 in 2008, 7 in 2009, 9 in 2010	
Slovakia		
Finland		
Sweden		
UK- England&Wales	198 in 2008, 337 in 2009, 257 in 2010	75 in 2008, 71 in 2009, 75 in 2010
UK- Northern Ireland	100%. All years	0. All years

9.3.5.6 Q6

Q6. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence directly, that is, under Section 4 of the Regulation	**Number of requests for taking of evidence directly**	**Number of rejections for taking of evidence directly**
Belgium	2 in 2006, 2 in 2007, 4 in 2008, 5 in 2009, 8 in 2010	1 in 2006, 1 in 2007, 4 in 2008, 3 in 2009, 3 in 2010
Bulgaria	2 in 2007, 3 in 2008, 16 in 2009, 34 in 2010	1 in 2007, 1 in 2009, 11 in 2010
Czech Republic		
Germany		
Estonia	3 in 2008, 2 in 2009, 3 in 2010	

Greece	1 in 2006, 1 in 2008, 2 in 2009, 2 in 2010	0 in all years
Spain		
France		
Ireland		2 in 2010
Italy	3 in 2009, 13 in 2010	3 in 2009, 13 in 2010
Cyprus		
Latvia		
Lithuania		
Luxembourg		
Hungary	2006-2010: total number 15	2006-2010: total number 0
Malta		
Netherlands		
Austria	3 in 2006, 13 in 2007, 12 in 2008, 14 in 2009, 18 in 2010	2 in 2007, 1 in 2008, 2 in 2010
Poland	3 in 2008, 2 in 2009, 5 in 2010	0 in all years
Portugal	0 in all years	
Romania		
Slovenia	1 in 2010	
Slovakia		
Finland	3 in 2006, 11 in 2007, 6 in 2008, 17 in 2009, 14 in 2010	0 in all years
Sweden		
UK- England&Wales	22 in 2010	0 in 2010
UK- Northern Ireland	100%. All years	0. All years

9.3.5.7 Q7

Q7. Could you please provide the approximate number of requests that have been rejected by your country because of any of the following causes?	Wrong or incomplete information	The person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence under the law of the Member State of the requested court;	The person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence under the law of the Member State of the requesting court	Lack of deposit or advance	The execution of the request under the law of the Member State of the requested court does not fall within the functions of the judiciary
Belgium	1 in 2006, 1 in 2007, 4 in 2008, 3 in 2009, 3 in 2010				
Bulgaria	3 in 2009, 12 in 2010				
Czech Republic					
Germany					
Estonia					
Greece					
Spain					
France					
Ireland	22 in 2007, 11 in 2008, 6 in 2009, 40 in 2010				
Italy					
Cyprus					
Latvia					

Lithuania					
Luxembourg					
Hungary					
Malta					
Netherlands					
Austria					2 in 2007, 1 in 2008, 2 in 2010
Poland					
Portugal					
Romania					
Slovenia	2 in 2006, 1 in 2007, 1 in 2008, 1 in 2009, 3 in 2010				
Slovakia					
Finland					
Sweden					
UK- England&Wales					
UK- Northern Ireland					

Legend:

<- A grey cell for country names means that the given country did not submit any information

A grey cell at data fields means that although the country submitted information, it did not complete that cell -->

9.3.5.8 Q8

Q8. Could you please provide the approximate number of requests that have been rejected by the requested country because of any of the following causes?	Wrong or incomplete information	The person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence under the law of the Member State of the requested court;	The person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence under the law of the Member State of the requesting court	Lack of deposit or advance	The execution of the request under the law of the Member State of the requested court does not fall within the functions of the judiciary
Belgium					
Bulgaria	2 in 2010	1 in 2010			
Czech Republic					
Germany					
Estonia					
Greece					
Spain					
France					
Ireland					
Italy					
Cyprus					
Latvia					
Lithuania					
Luxembourg					
Hungary					
Malta					
Netherlands					
Austria					
Poland					
Portugal					
Romania					
Slovenia					
Slovakia					
Finland					
Sweden					
UK- England&Wales					
UK- Northern Ireland					

9.3.5.9 Q9

Q9. Average number of requests to take evidence transmitted from your country to other Member States in accordance with Article 4 of the Regulation	Belgium	Bulgaria	Czech Republic	Germany	Estonia	Greece	Spain	France	Ireland	Italy	Cyprus	Latvia	Lithuania	Luxembourg	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	Sweden	United Kingdom
Belgium																										
Bulgaria			Receiving: 2 in 2009 and 1 in 2010	Receiving: 1 in 2008 and 5 in 2010		Receiving: 1 in 2009 and 2 in 2010	Receiving: 2 in 2007			Receiving: 1 in 2009 and 2 in 2010	Receiving: 1 in 2008							Receiving: 1 in 2010	Receiving: 1 in 2010		Receiving: 2 in 2009					Receiving: 1 in 2009
Czech Republic																										
Germany	Receiving: 35 in 2010	Receiving: 4 in 2010	Receiving: 14 in 2010	Transmitting: 670 in 2010	Receiving: 1 in 2010	Receiving: 29 in 2010	Receiving: 42 in 2010	Receiving: 52 in 2010	Receiving: 3 in 2010	Receiving: 63 in 2010	Receiving: 3 in 2010	Receiving: 1 in 2010	Receiving: 10 in 2010	Receiving: 10 in 2010	Receiving: 17 in 2010	Receiving: 0 in 2010	Receiving: 85 in 2010	Receiving: 107 in 2010	Receiving: 114 in 2010	Receiving: 13 in 2010	Receiving: 16 in 2010	Receiving: 4 in 2010	Receiving: 4 in 2010	Receiving: 5 in 2010	Receiving: 14 in 2010	Receiving: 44 in 2010
Estonia																	Receiving: 1 in 2010								Receiving: 1 in 2009	
Greece																										
Spain																										
France																										
Ireland					Transmitting: 3 in 2007				Transmitting: 1 in 2009, 1 in 2010																	Receiving: 1 in 2009, 1 in 2010
Italy																										
Cyprus																										
Latvia			Receiving: 1 in 2009	Receiving: 2 in 2006, 4 in 2008, 1 in 2009, 4 in 2010	Receiving: 1 in 2007, 1 in 2009		Receiving: 1 in 2008, 1 in 2010	Receiving: 3 in 2006, 1 in 2007	Receiving: 3 in 2006, 4 in 2007, 3 in 2008, 4 in 2010	Receiving: 1 in 2006, 1 in 2007	Receiving: 1 in 2006, 2 in 2010		Receiving: 2 in 2006, 2 in 2007				Receiving: 2 in 2006, 1 in 2009	Receiving: 1 in 2006, 1 in 2007, 1 in 2010	Receiving: 1 in 2006, 2 in 2007, 1 in 2009, 3 in 2010	Receiving: 1 in 2007			Receiving: 1 in 2008	Receiving: 1 in 2006, 2 in 2010	Receiving: 2 in 2008, 2 in 2010	Receiving: 4 in 2006, 8 in 2008, 2 in 2009, 14 in 2010
Lithuania																										
Luxembourg																										
Hungary																										
Malta																Transmitting: 2 in 2006, 1 in 2008, 3 in 2009, 4 in 2010										
Netherlands																										
Austria																										
Poland																										
Portugal	Receiving: 1 in 2010	0 in 2010	0 in 2010	Transmitting: 1 in 2010	0 in 2010	0 in 2010	Receiving: 3 in 2010. Transmitting: 6 in 2010	Receiving: 8 in 2010	Receiving: 1 in 2010	0 in 2010	0 in 2010	0 in 2010	Transmitting: 1 in 2010	Receiving: 2 in 2010	0 in 2010	0 in 2010	0 in 2010	0 in 2010	0 in 2010	0 in 2010	Transmitting: 2 in 2010	0 in 2010	0 in 2010	0 in 2010	0 in 2010	Receiving: 3 in 2010
Romania	Receiving: 12 in 2009, 12 in 2010. Transmitting: 1 in 2009	Receiving: 1 in 2009. Transmitting: 2 in 2010	Receiving: 2 in 2007, 1 in 2008. Transmitting: 1 in 2008, 3 in 2010	Receiving: 22 in 2007, 23 in 2008, 37 in 2009, 22 in 2010. Transmitting: 10 in 2007, 29 in 2008, 26 in 2009, 30 in 2010		Receiving: 7 in 2007, 9 in 2008, 13 in 2009, 20 in 2010. Transmitting: 3 in 2008, 4 in 2009, 5 in 2010	Receiving: 21 in 2007, 20 in 2008, 98 in 2009, 170 in 2010. Transmitting: 2 in 2007, 7 in 2008, 9 in 2009, 15 in 2010	Receiving: 4 in 2007, 5 in 2008, 16 in 2009, 16 in 2010. Transmitting: 2 in 2008, 2 in 2009, 3 in 2010	Receiving: 1 in 2007, 3 in 2008, 10 in 2009, 10 in 2010. Transmitting: 1 in 2010	Receiving: 202 in 2007, 245 in 2008, 269 in 2009, 432 in 2010. Transmitting: 3 in 2007, 9 in 2008, 26 in 2009, 24 in 2010	Receiving: 2 in 2007, 9 in 2009, 3 in 2010. Transmitting: 1 in 2008	Receiving: 2 in 2009, 1 in 2010. Transmitting: 1 in 2008		Receiving: 2 in 2010	Receiving: 2 in 2007, 2 in 2008, 2 in 2009, 1 in 2010. Transmitting: 2 in 2007, 8 in 2008, 4 in 2009, 13 in 2010		Receiving: 1 in 2008, 1 in 2009, 2 in 2010. Transmitting: 2 in 2010	Receiving: 4 in 2007, 5 in 2008, 7 in 2009, 10 in 2010. Transmitting: 7 in 2007, 8 in 2008, 17 in 2009, 35 in 2010	Transmitting: 1 in 2008, 1 in 2010	Receiving: 4 in 2007, 4 in 2008, 9 in 2009, 12 in 2010. Transmitting: 1 in 2008, 4 in 2009, 9 in 2010		Transmitting: 1 in 2008	Transmitting: 1 in 2009, 1 in 2010	Transmitting: 1 in 2010	Receiving: 1 in 2010	Receiving: 9 in 2007, 10 in 2008, 30 in 2009, 27 in 2010. Transmitting: 2 in 2010
Slovenia																						Receiving: 20 in 2006, 15 in 2007, 20 in 2008, 27 in 2009, 27 in 2010. transmitting: 20 in 2006, 15 in 2007, 20 in 2008, 27 in 2009, 29 in 2010					
Slovakia																										
Finland																										
Sweden																										
UK- England&Wales	Receiving: 4 in 2006, 1 in 2007, 3 in 2009	Receiving: 0 in all years	Receiving: 1 in 2009, 1 in 2010	Receiving: 11 in 2006, 5 in 2007, 1 in 2008, 3 in 2009, 2 in 2010	Receiving: 0 in all years	Receiving: 2 in 2007	Receiving: 1 in 2006, 3 in 2007, 2 in 2008, 10 in 2009, 2 in 2010	Receiving: 1 in 2007, 2 in 2008, 3 in 2009, 5 in 2010	Receiving: 1 in 2007, 1 in 2009	Receiving: 1 in 2008, 1 in 2009	Receiving: 0 in all years	Receiving: 1 in 2010	Receiving: 0 in all years	Receiving: 1 in 2009	Receiving: 1 in 2009	Receiving: 1 in 2009	Receiving: 3 in 2006, 1 in 2008	Receiving: 1 in 2006, 1 in 2009	Receiving: 1 in 2009, 1 in 2010	Receiving: 1 in 2007, 1 in 2008, 1 in 2009	Receiving: 1 in 2008, 1 in 2009	Receiving: 0 in all years	Receiving: 1 in 2009	Receiving: 1 in 2009	Receiving:2 in 2009, 1 in 2010	
UK- Northern Ireland																										Transmitting: 0 during 2007-2010

9.3.5.10 Q10

Q10. Average number of requests to take evidence received by your country from other Member States in accordance with Article 4 of the Regulation	Belgium	Bulgaria	Czech Republic	Germany	Estonia	Greece	Spain	France	Ireland	Italy	Cyprus	Latvia	Lithuania	Luxembourg	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	Sweden	United Kingdom
Belgium																										
Bulgaria	Transmitting: 1 in 2008		Transmitting: 1 in 2007, 1 in 2008, 4 in 2009, 2 in 2010	Transmitting: 1 in 2008, 13 in 2009, 32 in 2010			Transmitting: 2 in 2010, 2			Transmitting: 2 in 2008, 1 in 2010	Receiving: 1 in 2008							Transmitting: 1 in 2007, 3 in 2008, 4 in 2009, 6 in 2010	Transmitting: 2 in 2008, 4 in 2009, 3 in 2010	Transmitting: 1 in 2008, 1 in 2009	Transmitting: 2 in 2009, 1 in 2010		Transmitting: 2 in 2009			
Czech Republic			Receiving: 2342 in 2008, 2472 in 2009, 2628 in 2010																							
Germany	Transmitting: 26 in 2010	Transmitting: 3 in 2010	Transmitting: 109 in 2010	Receiving: 1796 in 2010	Transmitting: 0 in 2010	Transmitting: 5 in 2010	Transmitting: 72 in 2010	Transmitting: 11 in 2010	Transmitting: 1 in 2010	Transmitting: 138 in 2010	Transmitting: 0 in 2010	Transmitting: 5 in 2010	Transmitting: 4 in 2010	Transmitting: 5 in 2010	Transmitting: 35 in 2010	Transmitting: 0 in 2010	Transmitting: 89 in 2010	Transmitting: 711 in 2010	Transmitting: 368 in 2010	Transmitting: 118 in 2010	Transmitting: 39 in 2010	Transmitting: 10 in 2010	Transmitting: 31 in 2010	Transmitting: 0 in 2010	Transmitting: 9 in 2010	Transmitting: 7 in 2010
Estonia				Transmitting: 1 in 2010															Transmitting: 1 in 2009							
Greece																										
Spain																										
France																										
Ireland							Transmitting: 4 in 2006, 4 in 2007, 5 in 2008, 10 in 2009, 4 in 2010	Transmitting: 1 in 2008	Receiving: 26 in 2006, 52 in 2007, 67 in 2008, 74 in 2009, 32 in 2010	Transmitting: 1 in 2007, 2 in 2008, 1 in 2009, 1 in 2010		Transmitting: 3 in 2006, 7 in 2007, 6 in 2008, 1 in 2010	Transmitting: 2 in 2006, 4 in 2007, 1 in 2008, 4 in 2009, 1 in 2010		Transmitting: 1 in 2007		Transmitting: 1 in 2007, 1 in 2008	Transmitting: 1 in 2006, 2 in 2008, 1 in 2009, 2 in 2010	Transmitting: 2 in 2006, 8 in 2007, 10 in 2008, 23 in 2009, 10 in 2010	Transmitting: 5 in 2006, 9 in 2007, 5 in 2008, 5 in 2009, 3 in 2010	Transmitting: 4 in 2008, 7 in 2009, 6 in 2010		Transmitting: 5 in 2007, 15 in 2008, 11 in 2009, 2 in 2010	Transmitting: 1 in 2008		Transmitting: 1 in 2006, 2 in 2008, 1 in 209
Italy																										
Cyprus											Receiving: 1 in 2007, 5 in 2008, 5 in 2009, 6 in 2010															
Latvia				Receiving: 5 in 2006, 1 in 2009, 1 in 2010	Receiving: 1 in 2006, 1 in 2007								Receiving:9 in 2006, 1 in 2007, 1 in 2010					Receiving:8 in 2006, 2 in 2007, 1 in 2009, 2 in 2010	Receiving:1 in 2009, 1 in 2010					Receiving: 1 in 2010	Receiving: 1 in 2007	Receiving: 2 in 2007
Lithuania																										
Luxembourg																										
Hungary																										
Malta																Receiving: 3 in 2008, 1 in 2009, 1 in 2010										
Netherlands																										
Austria																										
Poland																										
Portugal																				Receiving: 10 in 2010						
Romania																										
Slovenia																		Transmitting: 1 in 2006				Receiving: 64 in 2006, 22 in 2007, 55 in 2008, 88 in 2009, 55 in 2010, Transmitting: 66 in 2006, 22 in 2007, 58 in 2008, 67 in 2009, 66 in 2010				
Slovakia																										
Finland																										
Sweden																										
UK- England&Wales	Transmitting: 1 in 2006, 2 in 2007, 1 in 2008, 2 in 2010	Transmitting: 1 in 2006,, 1 in 2009	Transmitting: 21 in 2006, 25 in 2007, 16 in 2008, 36 in 2009, 20 in 2010	Transmitting: 36 in 2006, 35 in 2007, 28 in 2008, 25 in 2009, 21 in 2010	Transmitting: 1 in 2006, 1 in 2007, 1 in 2008, 1 in 2009	Transmitting: 1 in 2009, 1 in 2010	Transmitting: 35 in 2006, 38 in 2007, 21 in 2008, 37 in 2009, 19 in 2010	Transmitting: 3 in 2006, 8 in 2007, 5 in 2008, 5 in 2009, 4 in 2010	Transmitting: 1 in 2010	Transmitting: 6 in 2006, 5 in 2007, 7 in 2008, 6 in 2009, 5 in 2010	Transmitting: 2 in 2010	Transmitting: 6 in 2006, 8 in 2007, 8 in 2008, 6 in 2009, 14 in 2010	Transmitting: 9 in 2006, 4 in 2007, 4 in 2008, 5 in 2009, 6 in 2010	Transmitting: 1 in 2008	Transmitting: 3 in 2006, 1 in 2007, 2 in 2008, 8 in 2009, 6 in 2010	Transmitting: 1 in 2007, 2 in 2009	Transmitting: 2 in 2007	Transmitting: 27 in 2006, 11 in 2007, 13 in 2008, 24 in 2009, 13 in 2010	Transmitting: 37 in 2006, 35 in 2007, 60 in 2008, 71 in 2009, 70 in 2010	Transmitting: 128 in 2006, 121 in 2007, 125 in 2008, 125 in 2009, 119 in 2010	Transmitting: 6 in 2006, 6 in 2007, 8 in 2008, 32 in 2009, 31 in 2010	Transmitting: 2 in 2006, 1 in 2007, 3 in 2008, 5 in 2009, 3 in 2010	Transmitting: 21 in 2006, 15 in 2007, 14 in 2008, 27 in 2009, 36 in 2010	Transmitting: 2 in 2006	Transmitting: 11 in 2006, 14 in 2007, 17 in 2008, 23 in 2009, 24 in 2010	
UK- Northern Ireland																										Receiving: 11 in 2006, 3 in 2007, 7 in 2008, 11 in 2009, 6 in 2010

9.3.5.11 Q11

Q11. Could you please indicate the average number of days required for the completion of requests?	Belgium	Bulgaria	Czech Republi	Germany	Estonia	Greece	Spain	France	Ireland	Italy	Cyprus	Latvia	Lithuania	Luxembourg	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	Sweden	United Kingdo
Belgium																										
Bulgaria	Transmitting: 30 in 2008		Receiving: 60 in 2009. Transmitting: 23 in 2007, 38 in 2008, 7 in 2009, 50 in 2010	Receiving: 105 in 2010. Transmitting: 30 in 2007, 45 in 2008, 47 in 2009, 41 in 2010			Receiving: 120 in 2007. Transmitting: 30 in 2009, 81 in 2010			Receiving: 35 in 2009	Receiving: 150 in 2008							Receiving: 90 in 2010. Transmitting: 30 in 2007, 88 in 2008, 78 in 2009, 80 in 2010	Transmitting: 30 in 2008, 33 in 2009, 55 in 2010	Transmitting: 10 in 2008, 38 in 2009	Receiving: 180 in 2009. Transmitting: 50 in 2010		Transmitting: 45 in 2009			Receiving: 30 in 2009
Czech Republic																										
Germany																										
Estonia																										
Greece																										
Spain																										
France																										
Ireland																										
Italy																										
Cyprus											Receiving in 2010: 30-45 days															
Latvia																			Receiving in 2010: 60-180 days							Receiving in 2009 and 2010: 90-180 days
Lithuania																										
Luxembourg																										
Hungary																										
Malta																Receiving: 200-275 in all years, except 2007 (N/A). Transmitting: 240-300 in all years, except 2007 (0)										
Netherlands																										
Austria																										
Poland																										
Portugal	Receiving: 459 in 2006, 559 in 2007, 402 in 2008, 3 in 2010. Transmitting: 6 in 2008, 168 in 2009	Receiving: 711 in 2008	Receiving: 345 in 2008	Receiving: 555 in 2006, 426 in 2007, 365 in 2008, 97 in 2009 0 in 2010. Transmitting: 68 in 2007, 82 in 2008, 84 in 2009, 82 in 2010	0 in all years	Receiving: 1102 in 2006, 283 in 2007, 0 later	Receiving:680 in 2006, 668 in 2007, 646 in 2008, 156 in 2009, 1 in 2010. Transmitting: 84 in 2006, 293 in 2007, 85 in 2008, 26 in 2009, 86 in 2010	Receiving: 361 in 2006, 335 in 2007, 462 in 2008, 54 in 2009, 1 in 2010	Receiving: 947 in 2006, 482 in 2007, 0 in 2008&9, 2 in 2010	Receiving: 495 in 2006, 464 in 2007, 610 in 2008, 1 in 2009, 0 in 2010. Transmitting: 1307 in 2007, 0 in other years	Receiving: 115 in 2006, 346 in 2007, 0 in other years	Receiving: 48 in 2006. Transmitting: 505 in 2007, 98 in 2008, 0 in other years	Transmitting: 1 in 2010	Receiving: 262 in 2006, 168 in 2007, 123 in 2008, 1 in 2009, 1 in 2010	Receiving: 697 in 2007, 1326 in 2008, 0 in other years	0 in all years	Receiving: 683 in 2006, 739 in 2007, 4665 in 2008, 1 in 2009, 0 in 2010. Transmitting: 1180 in 2008	Receiving: 55 in 2006, 522 in 2007, 467 in 2008, 0 in 2009&10. Transmitting: 48 in 2007, 7 in 2009	Receiving: 22 in 2007, 1128 in 2008, 0 in 2009&10. Transmitting: 184 in 2006, 86 in 2007, 0 in other years		Receiving: 535 in 2007, 486 in 2008. Transmitting: 1125 in 2007, 1 in 2009, 337 in 2010	Transmitting: 1 in 2008	0 in all years	Receiving: 253 in 2006, 58 in 2007, 171 in 2008, 0 other years	Receiving: 2082 in 2006, 1676 in 2007, 1319 in 2008, 0 other years. Transmitting: 59 in 2007, 31 in 2008, 648 in 2009, 0 in 2010	Receiving: 529 in 2006, 556 in 2007, 623 in 2008, 340 in 2009, 1 in 2010. Transmitting: 16 in 2008
Romania																										
Slovenia																		Transmitting: 60 in 2006				Receiving: 22 in 2006, 10 in 2007, 22 in 2008, 22 in 2009, 33 in 2010. Transmitting: 5 in 2006, 3 in 2007, 11 in 2008, 5 in 2009, 4 in 2010				
Slovakia																										
Finland																										
Sweden																										
UK- England&Wales			Transmitting: 44 in 2008, 54 in 2009, 169 in 2010	Transmitting: 68 in 2008, 128 in 2009, 80 in 2010	Transmitting: 22 in 2009	Transmitting: 71 in 2009, 184 in 2010	Transmitting: 88 in 2008, 51 in 2009, 205 in 2010			Transmitting: 46 in 2008, 52 in 2009, 109 in 2010		Transmitting: 7 in 2008, 31 in 2009, 97 in 2010	Transmitting: 19 in 2008, 85 in 2009,		Transmitting: 151 in 2010	Transmitting: 93 in 2009		Transmitting: 84 in 2008, 120 in 2009, 168 in 2010	Transmitting: 138 in 2008, 65 in 2009, 154 in 2010	Transmitting: 66 in 2008, 62 in 2009, 155 in 2010	Transmitting: 98 in 2008, 14 in 2009, 28 in 2010	Transmitting: 37 in 2008, 304 in 2009	Transmitting: 11 in 2008, 48 in 2009, 165 in 2010		Transmitting: 108 in 2009	
UK- Northern Ireland																										

9.3.5.12 Q12

Q12. Could you please indicate the approximate number of rejections for cross border demands for taking of evidence?	Belgium	Bulgaria	Czech Republic	Germany	Estonia	Greece	Spain	France	Ireland	Italy	Cyprus	Latvia	Lithuania	Luxembourg	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	Sweden	United Kingdom
Belgium																										
Bulgaria			1 in 2007, 1 in 2009	1 in 2009, 9 in 2010			2 in 2010																			
Czech Republic																										
Germany																										
Estonia																										
Greece																										
Spain																										
France																										
Ireland																										
Italy																										
Cyprus																										
Latvia																										
Lithuania																										
Luxembourg																										
Hungary																										
Malta																0 in all years										
Netherlands																										
Austria																										
Poland																										
Portugal																										
Romania																										
Slovenia																						18 in 2006, 7 in 2007, 9 in 2008, 17 in 2009, 22 in 2010				
Slovakia																										
Finland																										
Sweden																										
UK- England&Wales																										
UK- Northern Ireland																										None, for all years

9.3.5.13 Q13

Q13. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence by the requested court, that is, under Section 3 of the Regulation	Belgium	Bulgaria	Czech Republic	Germany	Estonia	Greece	Spain	France	Ireland	Italy	Cyprus	Latvia	Lithuania	Luxembourg	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	Sweden	United Kingdom
Belgium																										
Bulgaria			Requests: 1 in 2007, 3 in 2009, 1 in 2010. Rejections: 1 in 2007, 1 in 2009	Requests: 8 in 2009, 26 in 2010. Rejections: 1 in 2009, 7 in 2010			Requests: 1 in 2007, 2 in 2010. Rejections: 2 in 2010				Requests: 1 in 2008							Requests: 1 in 2008, 1 in 2009, 1 in 2010	Requests: 1 in 2009, 1 in 2010	Requests: 1 in 2009	Requests: 1 in 2010		Requests: 1 in 2009			
Czech Republic																										
Germany																										
Estonia																										
Greece																										
Spain																										
France																										
Ireland																										
Italy																										
Cyprus																										
Latvia																										
Lithuania																										
Luxembourg																										
Hungary																										
Malta																Requests: 3 in 2008, 1 in 2009, 1 in 2010. Rejections: 0										
Netherlands																										
Austria																										
Poland																										
Portugal	Requests: 33 in 2006, 29 in 2007, 12 in 2008, 0 in 2009, 1 in 2010	Requests: 1 in 2008	Requests: 2 in 2007	Requests: 134 in 2006, 147 in 2007, 81 in 2008, 2 in 2009, 0 in 2010	Requests: 0 in all years	Requests: 2 in 2006, 2 in 2007	Requests: 142 in 2006, 139 in 2007, 83 in 2008, 1 in 2009, 2 in 2010	Requests: 311 in 2006, 340 in 2007, 206 in 2008, 5 in 2009, 8 in 2010	Requests: 6 in 2006, 8 in 2007, 1 in 2010	Requests: 46 in 2006, 45 in 2007, 30 in 2008, 1 in 2009, 0 in 2010	Requests: 1 in 2006, 1 in 2007, 0 in other years	Requests: 1 in 2006, 0 in other years	Requests: 0 in all years	Requests: 49 in 2006, 63 in 2007, 26 in 2008, 1 in 2009, 2 in 2010	Requests: 2 in 2007, 1 in 2008	Requests: 0 in all years	Requests: 26 in 2006, 27 in 2007, 13 in 2008, 1 in 2009, 0 in 2010	Requests: 2 in 2006, 8 in 2007, 3 in 2008, 0 in other years	Requests: 1 in 2007, 1 in 2008		Requests: 3 in 2007, 5 in 2008, 0 in other years	Requests: 5 in 2010, 0 the rest of years. Rejections: 3 in 2010, 0 the rest	Requests: 0 in all years	Requests: 1 in 2006, 1 in 2007, 1 in 2008	Requests: 1 in 2006, 2 in 2007, 1 in 2008	Requests: 173 in 2006, 145 in 2007, 77 in 2008, 7 in 2009, 2 in 2010
Romania																										
Slovenia																										
Slovakia																										
Finland																										
Sweden																										
UK- England&Wales																										
UK- Northern Ireland																										Requests: 100%. Rejections: 0. For all years.

9.3.5.14 Q14

Q14. Please indicate the proportion of requests and rejections for cross border demands for taking of evidence directly, that is, under Section 4 of the Regulation	Belgium	Bulgaria	Czech Republic	Germany	Estonia	Greece	Spain	France	Ireland	Italy	Cyprus	Latvia	Lithuania	Luxembourg	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	Sweden	United Kingdom
Belgium	Requests:2 in 2006, 2 in 2007, 4 in 2008, 5 in 2009, 8 in 2010. Rejections:1 in 2006,1 in 2007, 4 in 2008, 3 in 2009, 3 in 2010																									
Bulgaria				Requests: 20 in 2010. Rejections: 5 in 2010														Requests: 1 in 2009			Requests: 2 in 2009					
Czech Republic																										
Germany																										
Estonia																										
Greece																								Requests: 1 in 2006	Requests: 1 in 2008, 2 in 2009, 2 in 2010	
Spain																										
France																										
Ireland																										
Italy				Requests: 1 in 2010. Rejections: 1 in 2010			Requests: 1 in 2010. Rejections: 1 in 2010											Requests: 1 in 2010. Rejections : 1 in 2010	Requests: 1 in 2010. Rejections : 1 in 2010		Requests: 4 in 2010. Rejections: 4 in 2010		Requests: 1 in 2010. Rejections: 1 in 2010		Requests: 3 in 2009, 4 in 2010. Rejections: 3 in 2009, 4 in 2010	
Cyprus																										
Latvia																										
Lithuania																										
Luxembourg																										
Hungary																										
Malta																0 all years										
Netherlands																										
Austria			Requests: 2 in 2007, 2 in 2008, 1 in 2010. Rejections: 1 in 2008	Requests: 2 in 2006, 5 in 2007, 5 in 2008, 6 in 2009, 8 in 2010. Rejections: 2 in 2007						Requests: 1 in 2010							Requests: 3 in 2007, 3 in 2008, 2 in 2009, 4 in 2010. Rejections: 1 in 2010		Requests: 1 in 2010. Rejections : 1 in 2010				Requests: 1 in 2009, 1 in 2010		Requests: 1 in 2006, 3 in 2007, 2 in 2008, 4 in 2009, 2 in 2010	
Poland							Requests: 2 in 2010													Requests: 2 in 2010					Requests: 2 in 2008, 1 in 2009	
Portugal	Requests: 1 in 2008	Requests: 0 in all years	Requests: 0 in all years	Requests: 5 in 2006, 23 in 2007, 8 in 2009	Requests: 0 in all years	Requests: 0 in all years	Requests: 37 in 2006, 50 in 2007, 48 in 2008, 4 in 2009, 1 in 2010	Requests: 11 in 2006, 43 in 2007, 31 in 2008, 4 in 2009, 0 in 2010	Requests: 2 in 2007	Requests: 5 in 2007, 3 in 2008	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 2 in 2007, 3 in 2008	Requests: 0 in all years	Requests: 0 in all years	Requests: 3 in 2006, 5 in 2007, 2 in 2008	Requests: 0 in all years	Requests: 0 in all years		Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 10 in 2006, 16 in 2007, 20 in 2008, 1 in 2009, 1 in 2010
Romania																										
Slovenia																						Requests: 21 in 2006, 7 in 2007, 9 in 2008, 6 in 2009, 33 in 2010. Rejections: 5 in 2006, 1 in 2009, 2 in 2010				
Slovakia																										
Finland	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 1 in 2010. Rejections: 0	Requests: 1 in 2010. Rejections: 1	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Request s: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	Requests: 0 in all years	NA	Requests: 3 in 2006, 11 in 2007, 6 in 2008, 17 in 2009, 12 in 2010. Rejections:0	Requests: 0 in all years
Sweden																										
UK- England&Wales																										
UK- Northern Ireland																										Requests: 100%. Rejections: 0. For all years.

- END OF THE DOCUMENT -