



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	German delegation
to :	Committee on Civil Law Matters
Subject :	Committee on Civil Law Matters

– Proposal (in outline) for an EU instrument (regulation) to improve cooperation between Member States' courts in the taking of evidence

I. Initial situation

Efforts should be made within the EU to regulate international civil-law cooperation as comprehensively and uniformly as possible for all Member States. Use of differing channels for mutual judicial assistance in civil matters is inefficient, confusing for practitioners and also incomprehensible in an increasingly integrated Europe. Diversity in channels of communication should therefore be countered above all by having requests for mutual assistance in future dealt with on a uniform multilateral or Community-law basis. In revising the multilateral Hague Conventions, too, care was taken not to lose the previous uniform channel for requests for service and for other mutual assistance, under the single Convention on mutual assistance, as a result of the division of the Convention.

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Close cooperation in the taking of evidence is of particular importance for swift disposal of civil litigation within the European judicial area. Like service of summonses or judgments, the taking of evidence comes within the customary sphere of judicial cooperation and hence of mutual assistance; both are expressly included together in Article 65(a) of the EC Treaty. Only about two thirds of the Member States are Contracting States under the Hague Convention of 18 March 1970 on the taking of evidence.

Cooperation between Member States on judicial assistance should be made as simple and direct as possible. A lead could be given here by the Convention of 26 May 1997 on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters ("the EU Convention on service"). This makes provision for uniform, decentralised channels, i.e. direct contact between courts in the Member States, which serves to expedite proceedings.

II. Main features of an EU instrument

1. Scope: requests for the taking of evidence or any other judicial step in a civil or commercial case.
2. Decentralised, direct dealings between the requesting court (hearing proceedings) and the court or authority addressed (providing assistance), as in the EU Convention on service, without involving a Member State's central authorities (a central authority could, however, be designated as the one to be approached in the event of difficulties in dealing with any individual case).
3. Information required to be given in an application.
4. No formalities.
5. Rules on use of languages, as in the EU Convention on service.
6. Procedure for carrying out a request in accordance with the law of the Member State addressed, but with the possibility of agreeing on arrangements, where only observance of procedural requirements under the law of the requesting Member State can ensure that proceedings are properly disposed of.
7. Notification to the parties and entitlement of members of the requesting court to be present at the taking of evidence without any special authorisation.
8. Requirement of speed.

9. No general reservations as regards carrying out requests (if need be, an exhaustive list of universally accepted impediments).
 10. No reimbursement by the requesting court of fees and costs incurred by the court addressed; rules on reimbursement of expenses for the use of experts and interpreters or for any special method of taking evidence (in response to the requesting court's wishes).
 11. Relationship with other conventions and agreements.
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