Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast)

REGULATION (EU) 2020/1783 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Regulation (EC) No 1206/2001[(3)] has been amended before. Since further substantial amendments are to be made, that Regulation should be recast in the interests of clarity.

(2) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is ensured. To establish such an area, the Union is to adopt, among other measures, measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.

(3) For the purposes of the proper functioning of the internal market and the development of an area of civil justice in the Union, it is necessary to further improve and expedite cooperation between the courts of the different Member States in relation to the taking of evidence. This Regulation seeks to improve the effectiveness and speed of judicial proceedings by simplifying and streamlining the mechanisms for cooperation in the taking of evidence in cross-border proceedings, while at the same time helping to reduce delays and costs for individuals and businesses. Providing greater legal certainty and simpler, streamlined and digitalised procedures will encourage individuals and businesses to engage in cross-border transactions, thereby boosting trade within the Union and thus the functioning of the internal market.

(4) This Regulation lays down rules on cooperation between the courts of the different Member States in relation to the taking of evidence in civil or commercial matters.

(5) For the purposes of this Regulation, the term 'court' should also be understood to mean authorities that exercise judicial functions, that act pursuant to a delegation of power by a judicial authority or that act under the control of a judicial authority, and that are competent under national law to take evidence for the purposes of judicial proceedings in civil or commercial matters. This includes in particular authorities that qualify as courts under other Union legal acts, such as Council Regulation (EU) 2019/1111[(4)] and Regulations (EU) No 1215/2012[(5)] and (EU) No 650/2012[(6)] of the European Parliament and of the Council.

(6) To ensure the utmost clarity and legal certainty, the request for the taking of evidence should be transmitted on a form completed in the language of the Member State of the requested court or in another language accepted by that Member State. For the same reasons, forms should also be used as much as possible for further communication between the relevant courts.

(7) In order to ensure speedy transmission of requests and communications between Member States for the purposes of taking of evidence, any appropriate modern communications technology should be used. Therefore, as a rule, all communication and exchange of documents should be carried out through a secure and reliable decentralised IT system comprising national IT systems that are interconnected and technically interoperable, for example, and without prejudice to further technological progress, based on e-CODEX. Accordingly, a decentralised IT system should be established for data exchanges under this Regulation. The decentralised nature of that IT system would enable data exchanges exclusively between one Member State and another, without any of the Union institutions being involved in those exchanges.

(8) Without prejudice to possible future technological progress, the secure decentralised IT system and its components should not be understood to necessarily constitute a qualified electronic registered delivery service as defined by Regulation (EU) No 910/2014 of the European Parliament and of the Council[(7)].

(9) The Commission should be responsible for the creation, maintenance and future development of reference implementation software which Member States should be able to use instead of a national IT system, in accordance with the principles of data protection by design and by default. The Commission should design, develop and maintain the reference implementation software in compliance with the data protection requirements and principles laid down in Regulations (EU) 2018/1725[(8)] and (EU) 2016/679[(9)] of the European Parliament and of the Council, in particular the principles of data protection by design and by default. The reference implementation software should also include appropriate technical measures and enable the organisational measures necessary for ensuring a level of security and interoperability which is appropriate for the exchange of information in the context of the taking of evidence.

(10) In relation to the components of the decentralised IT system which are under the responsibility of the Union, the managing entity should have sufficient resources in order to ensure the proper functioning of that system.

(11) The competent authority or authorities under national law should be responsible as controllers within the meaning of Regulation (EU) 2016/679 in relation to the processing of personal data that they carry out under this Regulation for the transmission of requests and other communications between Member States.

(12) Transmission through the decentralised IT system could become impossible due to a disruption of the system or the nature of the evidence, for example when transmitting DNA or blood samples. Other means of communication could be more appropriate also in exceptional circumstances, which could include situations in which converting voluminous documentation into electronic form would impose a disproportionate administrative burden on the competent authorities or whereby the original document is needed in paper format to assess its authenticity. Where the decentralised IT system is not used, transmission should be carried out by the most appropriate alternative means. Such alternative means should entail, inter alia, transmission being performed as swiftly as possible and in a secure manner by other secure electronic means or by postal service.

(13) In order to enhance electronic cross-border transmission of documents through the decentralised IT system, such documents should not be denied legal effect and should not be considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form. However, that principle should be without prejudice to the assessment of the legal effects or the admissibility of such documents as evidence in accordance with national law. It should also be without prejudice to national law regarding the conversion of documents.

(14) This Regulation should be without prejudice to the ability of authorities to exchange information under systems established under other Union instruments, such as Regulation (EU) 2019/1111 or Council Regulation (EC) No 4/2009[(10)], even where that information has evidentiary value, thus leaving the choice of the most appropriate method to the requesting authority.

(15) Requests for the taking of evidence should be executed expeditiously. If it is not possible for a request to be executed within 90 days of its receipt by the requested court, the requested court should inform the requesting court accordingly, stating the reasons which prevent it from executing the request swiftly.

(16) To ensure that this Regulation is effective, the circumstances in which it is possible to refuse to execute a request for the taking of evidence should be confined to strictly limited exceptional situations.

(17) The requested court should execute a request for the taking of evidence in accordance with its national law.

(18) The parties to the proceedings and their representatives, if any, should be able to be present at the taking of evidence, if that is provided for by the law of the Member State of the requesting court, in order to be able to follow the proceedings in a comparable

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/1783 of the European Parliament and of the Council. (See end of Document for details)*

way as if evidence were taken in the Member State of the requesting court. They should also have the right to request to participate in the taking of evidence in order to have a more active role in the taking of evidence. However, the conditions under which they may participate should be determined by the requested court in accordance with its national law.

(19) The representatives of the requesting court should be able to be present at the taking of evidence, if that is compatible with the law of the Member State of the requesting court, in order to be in a better position to evaluate the evidence. They should also have the right to request to participate in the taking of evidence, under the conditions laid down by the requested court in accordance with its national law, in order to have a more active role in the taking of evidence.

(20) In order to facilitate the taking of evidence, it should be possible for a court of a Member State, in accordance with its national law, to take evidence directly in another Member State, if the request for direct taking of evidence is accepted by the latter, and under the conditions determined by the central body or competent authority of the requested Member State.

(21) Modern communications technology, for example videoconferencing, which is an important means of simplifying and accelerating the taking of evidence, is currently not used to its full potential. Where evidence is to be taken by examining a person such as a witness, a party to the proceedings or an expert present in another Member State, the requesting court should take that evidence directly using videoconferencing or other distance communications technology, where that technology is available to the court and the court considers the use of such technology to be appropriate with regard to the specific circumstances of the case and the fair conduct of the proceedings. Videoconferencing could also be used to hear a child as provided for in Regulation (EU) 2019/1111. However, where the central body or competent authority of the requested Member State deems certain conditions to be necessary, direct taking of evidence should be done under those conditions in accordance with the law of that Member State. The central body or competent authority of the requested Member State should be able to refuse the direct taking of evidence wholly or partially, if such direct taking of evidence would be contrary to fundamental principles of the law of that Member State.

(22) Where evidence is to be taken by examining a person using videoconferencing or other distance communications technology, the requesting court, upon its request, should be provided with assistance in finding an interpreter, including in finding a certified interpreter where specifically requested.

(23) The court seised of the proceedings should provide the parties and their legal representatives with instructions as to the procedure for presenting documents or other material when the examinations are conducted using videoconferencing or other appropriate distance communications technology.

(24) In order to facilitate the taking of evidence by diplomatic agents or consular officers, such persons should be able to, in the territory of another Member State and within the area in which they are accredited, take evidence without the need for a prior request, by hearing, without the use of coercive measures, nationals of the Member State which

they represent, in the context of proceedings pending in the courts of the Member State which they represent. However, it should be left to the discretion of the Member State whether its diplomatic agents or consular officers have the power to take evidence as part of their functions.

(25) The taking of evidence by diplomatic agents or consular officers should take place at the premises of the diplomatic mission or consulate except in exceptional circumstances. Such circumstances could include the fact that the person to be heard is unable to come to the premises because of a serious illness.

(26) The execution of a request for evidence to be taken in accordance with this Regulation should not give rise to a claim for reimbursement of taxes or costs. Nevertheless, if the requested court requires reimbursement, the fees paid to experts and interpreters, as well as the costs occasioned by execution in accordance with a special procedure provided for by national law or by the use of distance communications technology, should not be borne by that court. In such a case, the requesting court should take the necessary measures to ensure reimbursement without delay. Where the opinion of an expert is required, the requested court should be able, before executing the request, to ask the requesting court for an adequate deposit or advance towards the costs.

(27) In order to update the forms in Annex I to this Regulation or to make technical changes to those forms, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to that Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(11)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(28) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(12)].

(29) This Regulation should prevail over the provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States that have the same scope of application as this Regulation. This Regulation does not preclude Member States from maintaining or concluding agreements or arrangements to further facilitate cooperation in the taking of evidence, provided that those agreements or arrangements are compatible with this Regulation.

(30) It is essential that effective means of obtaining, preserving and presenting evidence are available and that rights of defence are respected and confidential information is protected. In this context, it is important to encourage the use of modern technology.