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*Setting the scene:
Brussels Ia in the context of
European civil procedure*

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*brief overview of the interplay of
the existing Regulations*



Co-funded by the Justice Programme 2014-2020 of the European Union.

- 1) Regulation No 1215/2012 of 12 December 2012 **on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)** = THE BRUSSELS Ia REGULATION
- 2) Regulation No 1896/2006 of 12 December 2006 creating **European order for payment procedure**
- 3) Regulation No 861/2007 of 11 July 2007 establishing a **European Small Claims Procedure**
- 4) Regulation No 805/2004 of 21 April 2004 creating a **European Enforcement Order for uncontested claims**
- 5) Regulation No 655/2014 of 15 May 2014 establishing a **European Account Preservation Order procedure**
- 6) Regulation No 1393/2007 of 13 November 2007 **on the service of judicial and extrajudicial documents**
- 7) Regulation No 1206/2001 of 28 May 2001 **on the taking of evidence**

Regulation No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating European order for payment procedure

The purpose of this Regulation is:

- to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims;
- to permit the free circulation of European orders for payment throughout the Member States which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

This Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law.

For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.

This Regulation is in force in all EU countries without Denmark.

Regulation No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating European order for payment procedure

This Regulation applies to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal.

This Regulation shall not apply to:

- rights in property arising out of a matrimonial relationship, wills and succession;
- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings
- social security;
- claims arising from non-contractual obligations, unless:
 - ❖ they have been the subject of an agreement between the parties or there has been an admission of debt
 - ❖ they relate to liquidated debts arising from joint ownership of property.

Regulation No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating European order for payment procedure

Application for a European order for payment



Examination of the application



Issue of a European order for payment

the defendant has 2 options: either to pay the amount indicated in the order to the claimant; or to oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on him



Opposition to the European order for payment

If a statement of opposition is entered within 30 days, the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure.

Regulation No 1896/2006 (European payment order)
&
Regulation 1215/2012 (Brussels Ia)

For the purposes of Regulation 1896/2006, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised. Domicile shall be determined in accordance with the Brussels Ia Regulation.

For the purposes of Regulation 1896/2006, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular the Brussels Ia Regulation.

However, if the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled, within the meaning of the Brussels Ia Regulation, shall have jurisdiction.

Regulation No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating European order for payment procedure

Useful Internet pages:

European Judicial Atlas in Civil Matters:

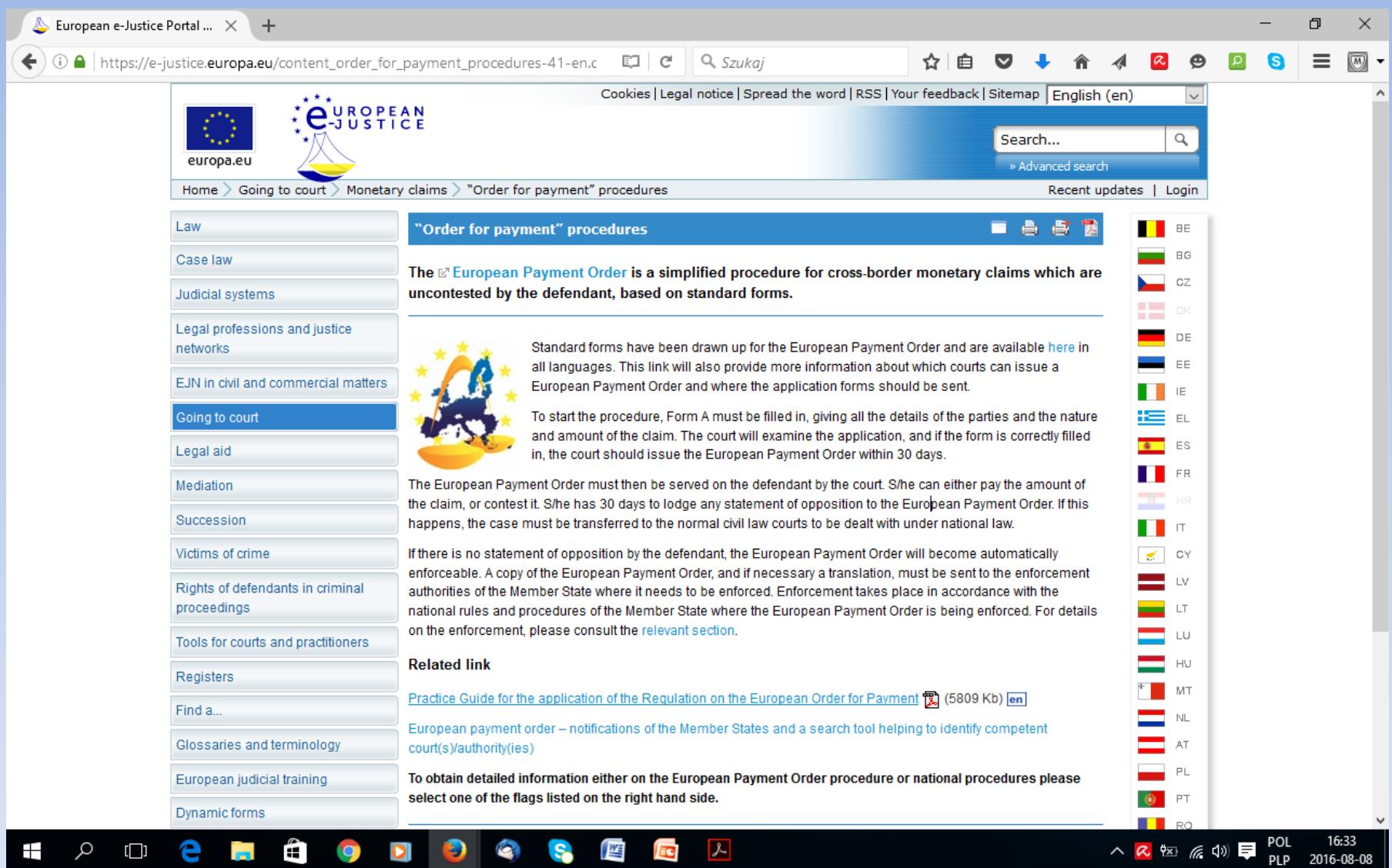
http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm

European E-Justice:

https://e-justice.europa.eu/content_european_payment_order-353-en.do

Practice Guide for the application of the Regulation on the European Order for Payment:

https://e-justice.europa.eu/content_order_for_payment_procedures-41-en.do



REGULATION (EC) No 861/2007 OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL of 11 July 2007 establishing a European Small
Claims Procedure

- This Regulation intends to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs.
- The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States.
- This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed **EUR 2 000** at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements.
- The European Small Claims Procedure shall be a written procedure (the court shall hold an oral hearing if it considers this to be necessary).

EUROPEAN SMALL CLAIMS PROCEDURE

Matters excluded from the scope of application:

- a) the status or legal capacity of natural persons;
- b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;
- c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- d) social security;
- e) arbitration;
- f) employment law;
- g) tenancies of immovable property, with the exception of actions on monetary claims; or
- h) violations of privacy and of rights relating to personality, including defamation

REGULATION (EC) No 861/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 establishing a European Small Claims Procedure

- ❑ For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.
- ❑ Domicile shall be determined in accordance with the Brussels Ia Regulation.
- ❑ The relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.
- ❑ This Regulation is in force in all EU countries without Denmark.

EUROPEAN SMALL CLAIMS PROCEDURE

Filling in standard claim form and lodging it with the court with jurisdiction.



A copy of the claim form together with the answer form, shall be served by the court on the defendant within 14 days of receiving the claim form.



The defendant shall submit his response within 30 days.



Within 14 days of receipt of the response from the defendant, the court or tribunal shall dispatch a copy thereof to the claimant.



Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down in Article 5(3) or (6), the court or tribunal shall give a judgment, or:

- a) demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days
- b) take additional evidence, if necessary
- c) summon the parties to an oral hearing to be held within 30 days

EUROPEAN SMALL CLAIMS PROCEDURE

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.

- The court or tribunal shall not require the parties to make any legal assessment of the claim.
- If necessary, the court or tribunal shall inform the parties about procedural questions.
- Whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties.
- The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required.
- The unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

REGULATION (EC) No 861/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 establishing a European Small Claims Procedure

Useful Internet pages:

European Judicial Atlas in Civil Matters:

http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_information_en.htm

European E-Justice:

https://e-justice.europa.eu/content_european_payment_order-353-en.do

There are available:

- **A Guide for Users to the European Small Claims Procedure**
- **Practice Guide for the Application of the European Small Claims Procedure**
- **Small claims – notifications of the Member States and a search tool helping to identify competent court(s)/authority(ies)**

Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims

- The purpose of this Regulation is to create a European Enforcement Order for uncontested claims to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement.
- This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal.
- This Regulation is in force in all EU countries without Denmark.

This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims.

A claim shall be regarded as uncontested if:

- the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
- the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or
- the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
- the debtor has expressly agreed to it in an authentic instrument.

Requirements for certification as a European Enforcement Order:

- the judgment must be enforceable in the Member State of origin;
- the judgment must not conflict with the rules on jurisdiction as laid down in the Brussels Ia Regulation;
- the court proceedings in the Member State of origin must meet the minimum procedural standards as laid down in this Regulation:
 - ✓ the document instituting the proceedings or an equivalent document must have been served on the debtor by one of the determined methods
 - ✓ the debtor was provided with due information about the claim
 - ✓ the debtor was provided with due information about the procedural steps necessary to contest the claim

Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims

- A judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.
- A judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement.
- Subject to the provisions of this Regulation, the enforcement procedures shall be governed by the law of the Member State of enforcement.

REGULATION (EU) No 655/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

For the purposes of this Regulation, a cross-border case is one in which the bank account or accounts to be preserved by the Preservation Order are maintained in a Member State other than:

- a) the Member State of the court seised of the application for the Preservation Order;
- b) the Member State in which the creditor is domiciled

This Regulation is in force in all EU countries without the United Kingdom and Denmark.

REGULATION (EU) No 655/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

The Preservation Order shall be available to the creditor in the following situations:

- a) before the creditor initiates proceedings in a Member State against the debtor on the substance of the matter, or at any stage during such proceedings up until the issuing of the judgment or the approval or conclusion of a court settlement
- b) after the creditor has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim

Conditions for issuing a Preservation Order:

The creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for a protective measure in the form of a Preservation Order because there is a real risk that, without such a measure, the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult

Where the creditor has not yet obtained in a Member State a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor's claim, the creditor shall also submit sufficient evidence to satisfy the court that he is likely to succeed on the substance of his claim against the debtor.

Where the creditor has applied for a Preservation Order before initiating proceedings on the substance of the matter, he shall initiate such proceedings and provide proof of such initiation to the court with which the application for the Preservation Order was lodged within 30 days of the date on which he lodged the application or within 14 days of the date of the issue of the Order, whichever date is the later.

REGULATION (EU) No 655/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

The debtor shall not be notified of the application for a Preservation Order or be heard prior to the issuing of the Order.

Before issuing a Preservation Order in a case where the creditor has not yet obtained a judgment, court settlement or authentic instrument, **the court shall require the creditor to provide security** for an amount sufficient to prevent abuse of the procedure provided for by this Regulation and to ensure compensation for any damage suffered by the debtor as a result of the Order to the extent that the creditor is liable for such damage.

The creditor may request the court with which the application for the Preservation Order is lodged to request that the information authority of the Member State of enforcement obtain the information necessary to allow the bank or banks and the debtor's account or accounts to be identified.

REGULATION (EU) No 655/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

The creditor shall have the right to appeal against any decision of the court rejecting, wholly or in part, his application for a Preservation Order. Such an appeal shall be lodged within 30 days of the date on which the decision was brought to the notice of the creditor.

A Preservation Order issued in a Member State in accordance with this Regulation shall be recognised in the other Member States without any special procedure being required and shall be enforceable in the other Member States without the need for a declaration of enforceability.

Subject to the provisions of this Regulation, the Preservation Order shall be enforced in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State of enforcement.

REGULATION (EU) No 655/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

A bank to which a Preservation Order is addressed shall implement it without delay following receipt of the Order or, where the law of the Member State of enforcement so provides, of a corresponding instruction to implement the Order.

To implement the Preservation Order, the bank shall preserve the amount specified in the Order either:

- a) by ensuring that that amount is not transferred or withdrawn from the account or accounts indicated in the Order; or
- b) where national law so provides, by transferring that amount to an account dedicated for preservation purposes.

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

transmitting agencies – public officers, authorities or other persons competent for the **transmission** of judicial or extrajudicial documents to be served in another Member State.

receiving agencies – public officers, authorities or other persons competent for the **receipt** of judicial or extrajudicial documents from another Member State.

Information communicated by Member States is available at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_en_1393.pdf

Transmission of documents

- Judicial documents shall be transmitted directly and as soon as possible between the transmitting and receiving agencies
- The document to be transmitted shall be accompanied by a request drawn up using the standard form set out in Annex I.
- The documents and all papers that are transmitted shall be exempted from legalisation or any equivalent formality.
- The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.

Receipt of documents by receiving agency

- On receipt of a document, a receiving agency shall, as soon as possible and in any event within seven days of receipt, send a receipt to the transmitting agency by the swiftest possible means of transmission using the standard form set out in Annex I.
- Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency by the swiftest possible means in order to secure the missing information or documents.
- If the request for service is manifestly outside the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return using the standard form set out in Annex I.

Service of documents

- The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.
- The receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt.
- If it has not been possible to effect service within one month of receipt, the receiving agency shall:
 - a) immediately inform the transmitting agency by means of the certificate in the standard form set out in Annex I, and
 - b) continue to take all necessary steps to effect the service of the document, unless indicated otherwise by the transmitting agency, where service seems to be possible within a reasonable period of time.

Refusal to accept a document

The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:

- a) a language which the addressee understands; or
- b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

Certificate of service and copy of the document served

- When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form set out in Annex I and addressed to the transmitting agency, together with, where Article 4(5) applies, a copy of the document served.
- The certificate shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept.

Costs of service

- The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the Member State addressed.
- However, the applicant shall pay or reimburse the costs occasioned by:
 - a) recourse to a judicial officer or to a person competent under the law of the Member State addressed;
 - b) the use of a particular method of service.
- Costs occasioned by recourse to a judicial officer or to a person competent under the law of the Member State addressed shall correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. Member States shall communicate such fixed fees to the Commission.

Other means of transmission and service of judicial documents

- Transmission by consular or diplomatic channels**

The use of consular or diplomatic channels to forward judicial documents, to receiving agencies of another Member State.

- Service by diplomatic or consular agents**

Any Member State may make it known, that it is opposed to such service within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.

- Service by postal services**

Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.

- Direct service**

Any person interested in a judicial proceeding may effect service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

Useful Internet pages:

European Judicial Atlas in Civil Matters:

http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm

Manual of receiving agencies:

[http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_docs_en.htm
#Manual](http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_docs_en.htm#Manual)

Information communicated by Member States:

http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_en_1393.pdf

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

- This Regulation applies in civil and commercial matters.
- This Regulation is in force in all EU countries without Denmark.
- Denmark is Contracting State of the Hague Convention on the taking evidence abroad in civil and commercial matters concluded on 18 March 1970 together with the other EU Member States. However between these Member States, the Regulation replaces the Hague Convention of 1970.
- The Regulation provides in Article 21 (1) that it prevails over other provisions contained in bilateral or multilateral agreements concluded by the Member States and especially over the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, in relations between the Member States party thereto.

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

Two ways of taking evidence in another member State:

- the court of one Member State requests the competent court of another Member State to take evidence
- the court of one Member State take sevidence directly in another Member State, having received the permission of the latter

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

Direct transmission between the courts

The ‘requesting court’ transmits the request to take evidence directly to the ‘requesting court’.

the ‘**requesting court**’ - the court before which the proceedings are commenced or contemplated

the ‘**requested court**’ - the court competent for the performance of taking of evidence

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

Central body:

- supplies information to the courts
- seeks solutions to any difficulties which may arise in respect of a request
- forwards, in exceptional cases, at the request of a requesting court, a request to the competent court

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

The direct transmission of the request:

- shall be made using the form defined by the Regulation
- shall contain some detailed information (Article 4.1. of the Regulation)
- shall be drawn up in the official language of the requested Member State or in another language which the requested Member State has indicated it can accept

The request and all documents accompanying the request shall be exempted from authentication or any equivalent formality.

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

After the receipt of the request 3 scenarios are possible:

1. The acknowledgement of the receipt (7 days – **form B**)
2. The acknowledgement of the receipt with the note indicating that the request does not comply with the conditions laid down in Articles 5 and 6 (7 days – **form B**)
3. The request to send the missing information (necessary pursuant to Article 4), which should be indicated as precisely as possible (30 days – **form C**)

The requested court shall execute the request **without delay** and, at the latest, within **90 days** of receipt of the request.

Taking of evidence by the requested court

the interplay of the *legis fori processualis*
and the *lex contractus* or *lex delictii*

Article 18 of the Rome I Regulation (No 593/2008 of 17 June 2008):

Burden of proof

1. The law governing a contractual obligation under this Regulation shall apply to the extent that, in matters of contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 11 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

Taking of evidence by the requested court

the interplay of the *legis fori processualis*
and the *lex contractus* or *lex delictii*

Article 22 of the Rome II Regulation (No 864/2007 of 17 June 2008):

Burden of proof

1. The law governing a non-contractual obligation under this Regulation shall apply to the extent that, in matters of noncontractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. Acts intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 21 under which that act is formally valid, provided that such mode of proof can be administered by the forum.

Taking of evidence by the requested court

the interplay of the *legis fori processualis*
and the *lex contractus* or *lex delictii*

The *lex fori processualis* of the requested court:

The requested court shall execute the request in accordance with the law of its Member State.

The *lex fori processualis* of the requesting court:

The requesting court may call for the request to be executed in accordance with a special procedure provided for by **the law of its Member State**, using form A in the Annex. The requested court shall comply with such a requirement unless this procedure is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties.

The requesting court may ask the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference.

Taking of evidence by the requested court

**the interplay of the *legis fori processualis*
and the *lex contractus* or *lex delictii***

Performance with the presence and participation of the parties

If it is provided for 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 performance of the taking of evidence by the requested court.

If the participation of the parties and, if any, their representatives, is requested at the performance of the taking of evidence, the requested court shall determine the conditions under which they may participate.

The requested court may on his own motion ask the parties and, if any their representatives, to be present at or to participate in the performance of the taking of evidence if that possibility is provided for by the law of its Member State.

Taking of evidence by the requested court

**the interplay of the *legis fori processualis*
and the *lex contractus* or *lex delictii***

Performance with the presence and participation of representatives of the requesting court

If it is compatible with the law of the Member State of the requesting court, representatives of the requesting court have the right to be present in the performance of the taking of evidence by the requested court.

The term ‘representative’ shall include members of the judicial personnel designated by the requesting court, in accordance with the law of its Member State. The requesting court may also designate, in accordance with the law of its Member State, any other person, such as an expert.

The requested court shall notify the requesting court, of the time when, and the place where, the proceedings will take place.

Direct taking of evidence by the requesting court

Where a court requests to take evidence directly in another Member State, it shall submit a request to the central body or the competent authority referred to in Article 3(3) in that State, using form I in the Annex.

Direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures.

Within 30 days of receiving the request, the central body or the competent authority of the requested Member State shall inform the requesting court if the request is accepted and, if necessary, under what conditions according to the law of its Member State such performance is to be carried out, using form J.

In particular, the central body or the competent authority may assign a court of its Member State to take part in the performance of the taking of evidence in order to ensure the proper application of the Article 17 of the Regulation and the conditions that have been set out.

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

Costs (Article 17)

The execution of the 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 costs occasioned by the application of a special procedure provided for by the law of the Member State of the requesting court

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.

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

Useful Internet pages:

European Judicial Atlas in Civil Matters:

http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm

Practice Guide for the application of the Regulation on the Taking of Evidence:

http://ec.europa.eu/civiljustice/evidence/evidence_ec_guide_en.pdf

European E-Justice:

https://e-justice.europa.eu/content_taking_of_evidence_forms-160-en.do

European Commission - J... X +

ec.europa.eu/justice_home/judicialatlascivil/html/te_information_en.htm

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Important legal notice

English (en)

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Communications of the Member States

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INFORMATION

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 seeks to improve, simplify and accelerate cooperation between courts in the taking of evidence.

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.

The Regulation provides for two ways of taking of evidence between Member States: direct transmission of requests between the courts and the direct taking of evidence by the requesting court.

The Requesting Court is the court before which the proceedings are commenced or contemplated. The Requested Court is the competent court of another Member State for the performance of the taking of evidence. The Central Body is responsible for supplying information and seeking solutions to any difficulties which may arise in respect of a request.

The Regulation provides for ten forms.

The ATLAS provides you with information concerning the application of the Regulation and a user-friendly tool for filling in the forms.

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