



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.12.2007
COM(2007) 769 final

**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**

1. BACKGROUND

This Report from the Commission has been prepared in accordance with Article 23 of 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.¹

Before 2001 there was no binding instrument between all Member States concerning the taking of evidence. In 2001 the Council of the European Union adopted Regulation (EC) No 1206/2001 on the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters which lays down procedural rules to make it easier to take evidence in another Member State. Since 1 January 2004, the Regulation is applicable throughout the Union with the exception of Denmark. Between the Member States concerned, it replaces the Hague Convention of 1970. The Regulation and all information relevant for its application are available in the European Judicial Atlas in Civil Matters:

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

Since the entry into force of the Regulation, the Commission has discussed the application of the Regulation at different occasions in the context of the European Judicial Network in Civil and Commercial Matters. In consultation with the network, the Commission has also drawn up a Practice Guide for the application of the Regulation. Furthermore, the Commission has requested a study on the application of the Regulation.

1.1. Meetings of the European Judicial Network in Civil Matters

The application of the Regulation has been discussed at different meetings of the European Judicial Network in Civil Matters.

At the occasion of the annual meetings of all members of the network on 13-14 December 2004 and on 11 December 2006, sessions were devoted to discussions of the experiences with the application of the Regulation. The main issues raised were:

- Practical problems (e.g. requests were in certain cases still sent to the central bodies, in the forms the languages of the requesting state was sometimes used, other problems of communication between the requesting and the requested courts).
- The scope of application of the Regulation, in particular the notions of "civil and commercial matters" and of "evidence" (especially problems that have occurred with respect to taking DNA and blood samples in particular in the context of paternity tests).
- The use of modern communication technology in the context of the taking of evidence. In particular, there were complaints about the fact that in many Member States the technical means for videoconferences were not available yet.

¹ OJ L 174, 27.6.01, p. 1.

On 21 April 2005, the network discussed a draft for the Practice Guide which was drawn up by the Commission Services in consultation with the network. The guide seeks to give guidance to parties, judges, lawyers and central bodies and provide a better understanding of the Regulation. It is available at:

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

At the end of 2006 and the beginning of 2007, the Commission disseminated 50.000 copies of the practice guide to Member States. All courts involved in the application of the Regulation should have received a copy of this guide.

1.2. Study on the Application of Regulation (EC) 1206/2001

As stated above, in order to prepare this report the Commission has requested a study on the application of the Regulation which has been prepared by a contractor. The study is available at:

http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm

The main objective of the Study was to obtain an empirical analysis of the application of the Regulation, in particular concerning 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 is based on a survey which was carried out by the contractor from November 2006 to January 2007 is based on 424 out of 544 answers to a questionnaire concerning the application of several articles of the Regulation. The questionnaire was answered by administrations of Member States, judges, attorneys and other persons involved in the application of the Regulation.

2. THE APPLICATION OF REGULATION (EC) 1206/2001

This section focuses on the question whether the application of the Regulation has simplified and accelerated cooperation between courts in the taking of evidence, and on the practical application of several provisions of the Regulation.

2.1. Time required for the execution of requests

The study indicates that most requests for the taking of evidence are executed within 90 days as provided for by Article 10(1) of the Regulation (see Annex I). According to the respondents to the questionnaire, this is faster than before the entry into force of the Regulation. However, there is also a significant number of cases in which the 90 days time limit is exceeded. In some cases even more than 6 months are required. Moreover, the amount of time required for the execution of requests varies to a significant extent between Member States. It is particularly noteworthy that in many of the Member States that joined the European Union in 2004 requests are generally executed within 90 days, whereas the time required in the some of the other Member States tends to be longer.

2.2. Central bodies

It seems that generally speaking central bodies are effective in carrying out the duties conferred on them by the Regulation (see Annex II). However, effectiveness seems to vary significantly between Member States.

The study also indicates that central bodies sometimes have to seek solutions to different kinds of difficulties which have arisen in respect of a request, as provided for by Article 3(1) b) of the Regulation.²

Despite the fact that the Regulation provides that the transmission of requests for the performance of taking of evidence is to be made directly between Member States' courts, and that consequently central bodies should forward requests to the competent court only "in exceptional cases", the study indicates that central bodies "sometimes" or even "often" forward requests to the competent court. It can therefore be concluded that in the current period of adaptation which is still ongoing, the Regulation is not known well enough, and that all efforts should be made to make it better known among courts in the European Union.

2.3. Forms

The study indicates that the use of the standard forms has generally not caused any problems (see Annex III). The introduction of the forms is considered as very positively and as a main reason for simplifying and accelerating the taking of evidence. However, there is insufficient training among legal practitioners involved in filling in the forms which leads to problems in the use of the forms. It seems in particular that sometimes the forms are not filled in completely and that information essential for executing a request is missing.

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 videoconference, 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. The importance of the further

² However, the comments made in the questionnaire do not give much information about the kind of problems central bodies had to deal with.

³ The courts in which videoconference is currently available are indicated in the manual in the European Judicial Atlas in Civil Matters. At the moment, videoconference is available in all courts in the Netherlands and in Portugal, and in certain courts in Austria, Cyprus, Estonia, Finland, Germany, Ireland, Slovenia, Sweden and the United Kingdom.

promotion of E-Justice has also been stressed by the Council which at its meeting of 12 and 13 June 2007 requested the continuation of work on E-Justice "with a view to creating at European level a technical platform", as well as by the European Council which concluded at its meeting of 21 and 22 June 2007 that "the Council should also further promote electronic communication on legal matters («E-Justice»)".

2.5. Transmission of requests

It seems from the study (see Annex V) that requests and communications are usually transmitted by the "swiftest possible means" (Article 6 of the Regulation).⁴

2.6. Direct court-to court contacts

In contrast to the 1970 Hague Convention on the taking of evidence, the Regulation provides – as one of the most important innovations compared with the Hague Convention - that the transmission of requests for the performance of taking of evidence is to be made directly between Member States' courts.

The study indicates that requesting and requested courts (Article 2) are generally effective in fulfilling their tasks under the Regulation. This varies, however, between Member States.

The direct transmission of requests between courts does not seem to have caused any specific problems. In indicated above (under 2.2.), in the current period of adaptation there are still many cases in which due to a lack of knowledge of the Regulation, direct court-to-court contacts are not used, and the taking of evidence is delayed since central bodies are asked to forward requests to the competent court.

2.7. Direct taking of evidence (Article 17)

Another important feature of the Regulation is the possibility of the direct taking of evidence by the requesting court in another Member State.

The study indicates that the direct taking of evidence provided for in Article 17 of the Regulation is still used very little. However, in those cases where it has been used, it has simplified and accelerated the taking of evidence, generally without causing any particular problems (see Annex VII).

2.8. Application of Article 18 (costs)

It follows from the study that Article 18 of the Regulation has generally not caused any particular problems (see Annex VIII). The study indicates, however, that the differences between national laws concerning the reimbursement of fees paid to experts are sometimes perceived as negatively.

⁴ Please note in this respect that all Member States accept requests by post, most (all except Poland and Spain) also fax. Email is accepted only in 13 Member States (Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Malta, Portugal, Slovenia and Slovakia).

2.9. Problems of interpretation

The study indicates that the Regulation has not caused major problems of interpretation. There are, however, indications that the notions of “civil or commercial matters”, “evidence” and “court” are not always clear and that sometimes more guidance as to their precise content is considered desirable (see Annex IX).

It seems that in particular the fact that the concept of "evidence" is not defined in the Regulation has created difficulties. This has led to significantly diverging interpretations of what is considered as "evidence" in the sense of the Regulation, in particular with respect to taking DNA and blood samples and expertises on family or child welfare. Whilst respecting the fact that the ultimate responsibility for interpreting the notion of "evidence" lies with the European Court of Justice,⁵ the Commission is of the view that this 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.

2.10. Reference to national law

The fact that the Regulation makes several references to national laws is not regarded as very problematic. According to the study it is, however, sometimes felt that there should be gradual harmonisation of national laws (see Annex X).

2.11. Compatibility with the 1970 Hague Convention

There are no problems of compatibility between the Regulation and other instruments such as the 1970 Hague Convention on the Taking of Evidence (see Annex XI).

2.12. Simplification and acceleration of the taking of evidence

The Regulation has simplified and accelerated the taking of evidence (see Annex XII). The extent to which this has occurred varies, however, to a significant extent between Member States.

3. CONCLUSIONS

The Commission draws the following conclusions concerning the application of Regulation 1206/2001 since its entry into force in 2004:

The application of the Regulation has generally improved, simplified and accelerated the cooperation between the courts on the taking of evidence in civil or commercial matters. The Regulation has achieved its two main objectives, namely firstly to simplify the

⁵ Please note in this context that a question concerning the interpretation of the Regulation is currently pending at the European Court of Justice. In C-175/06 (Tedesco/Fittings Srl), the court which made the reference asks whether a request for obtaining a description of goods under Articles 128 and 130 of the Italian Code of Industrial and Intellectual Property is one of the forms of the taking of evidence prescribed by Council Regulation (EC) No 1206/2001.

cooperation between Member States and secondly to accelerate the performance of the taking of evidence, to a relatively satisfactory extent. Simplification has been brought about mainly by the introduction of direct court-to-court transmission (although requests are still sometimes or even often sent to central bodies), and by the introduction of standard forms. As far as acceleration is concerned, it can be concluded that most requests for the taking of evidence are executed faster than before the entry into force of the Regulation and within 90 days as foreseen by the Regulation.

Consequently, modifications of the Regulation are not required, but its functioning should be improved. In particular in the current period of adaptation which is still ongoing, there are certain aspects concerning the application of the Regulation which should be improved:

First of all, it follows from various findings that – despite the discussions held in the European Judicial Network in Civil Matters and the availability of the practice guide in all Member States - the Regulation is not enough known yet among legal practitioners. This leads to unnecessary delays and problems.

Therefore, the work accomplished in the context of the European Judicial Network in Civil and Commercial Matters should be better exploited in the Member States, and in particular it should be ensured that the practice guide is disseminated widely among legal practitioners by any means.

It seems that the extent to which the taking of evidence has been simplified and accelerated varies significantly between Member States. This becomes particularly evident with respect to the time required for the taking of evidence since in some Member States the time frame of 90 days is often not complied with. But also the effectiveness of central bodies and the availability of modern communications technology, in particular videoconference varies significantly between Member States.

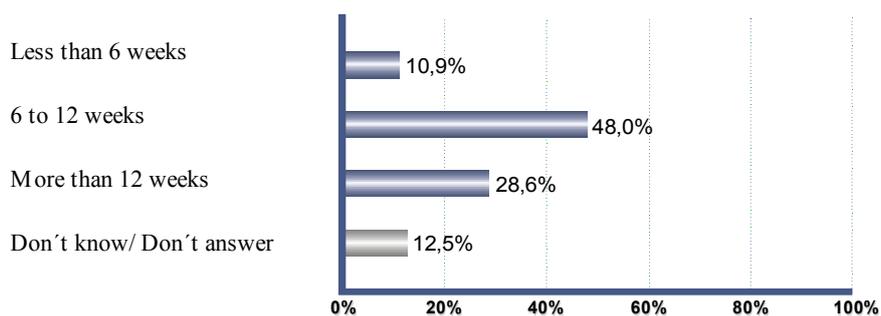
Finally, it must be concluded that not only the potential of communications technology is by no means used to a full extent yet, but also the possibility of direct taking evidence, an important innovation of the Regulation, is still used rather rarely.

Therefore, the Commission

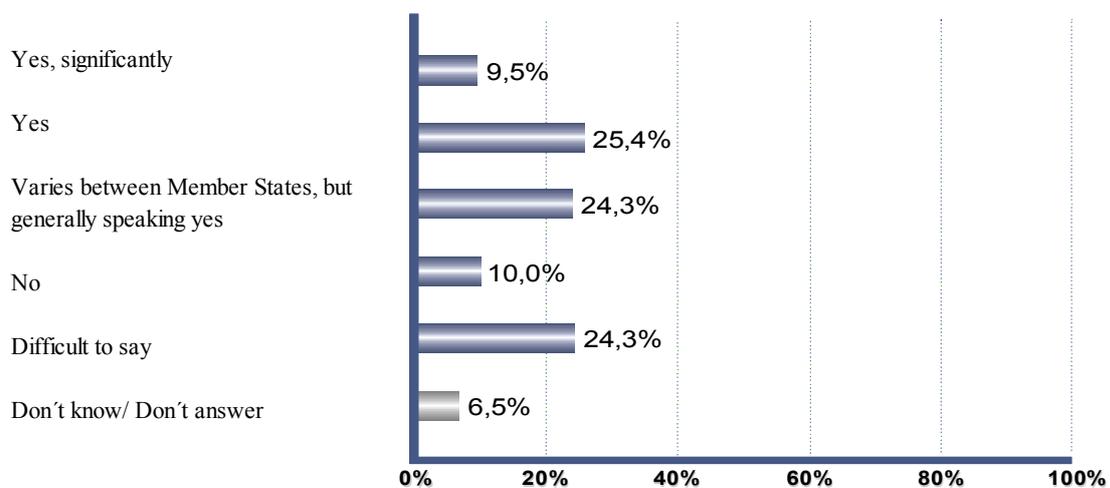
- encourages all further efforts – in particular beyond the dissemination of the practice guide - to enhance the level of familiarity with the Regulation among legal practitioners in the European Union.
- is of the view that measures should be taken by Member States to ensure that the 90 day time frame for the execution of requests is complied with.
- is of the view that the modern communications technology, in particular videoconferencing which is an important means to simplify and accelerate the taking of evidence, is by far not used yet to its possible extent, and encourages Member States to take measures to introduce the necessary means in their courts and tribunals to perform videoconferences in the context of the taking of evidence. The importance of the further promotion of E-Justice has also been stressed by the Council (at its meeting of 12 and 13 June 2007) and by the European Council (at its meeting of 21 and 22 June 2007).

Annex I: Time required for the execution of requests

From your experience, the average time required for the execution of requests is:

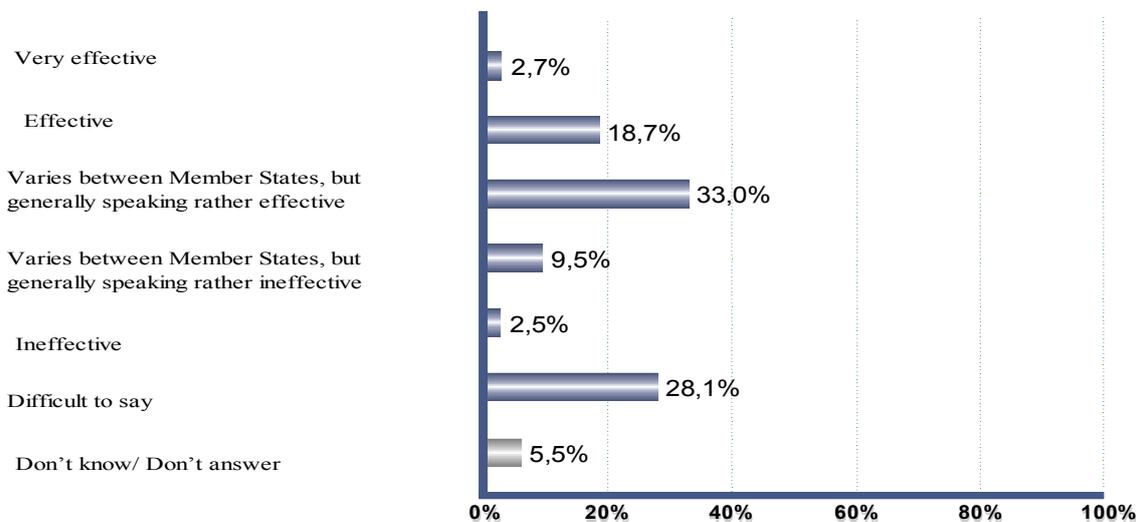


Is this faster than before the Regulation entered into force?

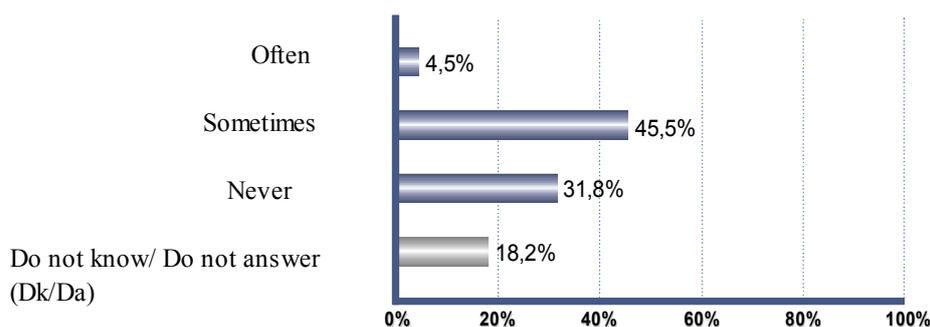


Annex II: Central bodies

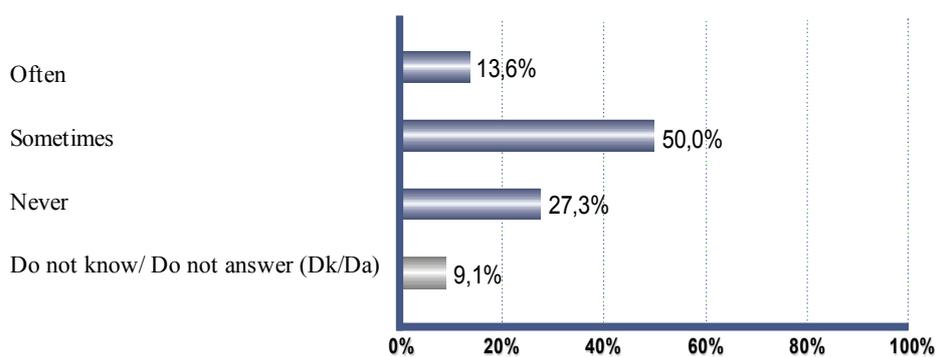
How effective are the central bodies in supplying information to courts and seeking solutions to any difficulties which may arise in respect of a request?



How often have central bodies had to seek solutions to difficulties which have arisen in respect of a request?

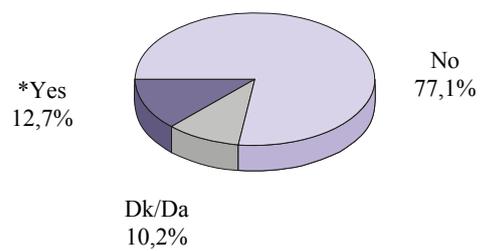


From your experience, how frequently have central bodies forwarded a request to the competent court at the request of a requesting court?



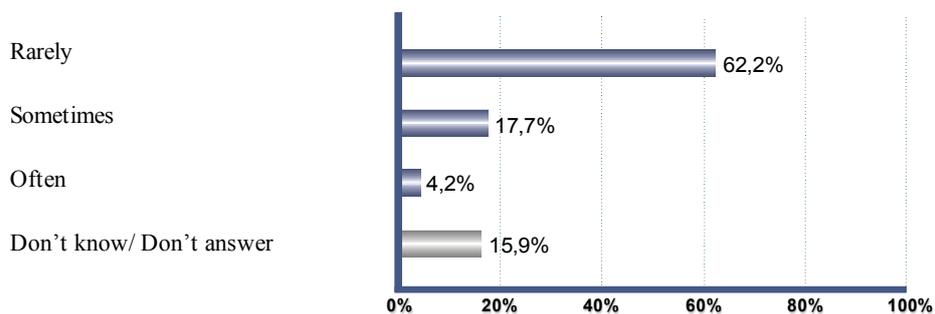
Annex III: Forms

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

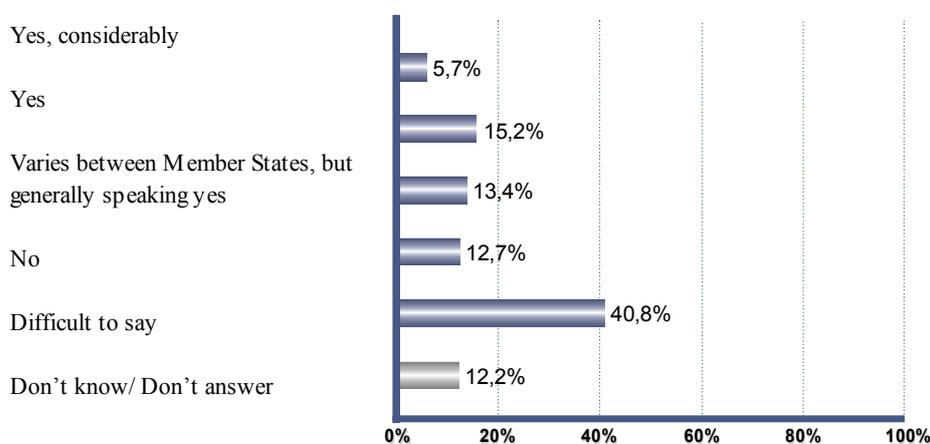


Annex IV: Communications technology

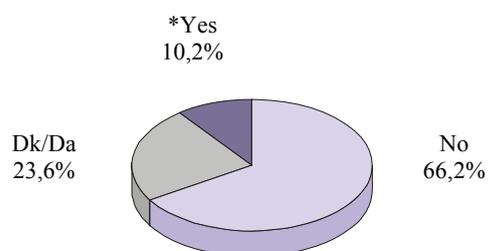
How frequently is communications technology used for taking evidence? In which types of requests?



In practice has the use of communications technology simplified and accelerated the taking of evidence in other Member States?

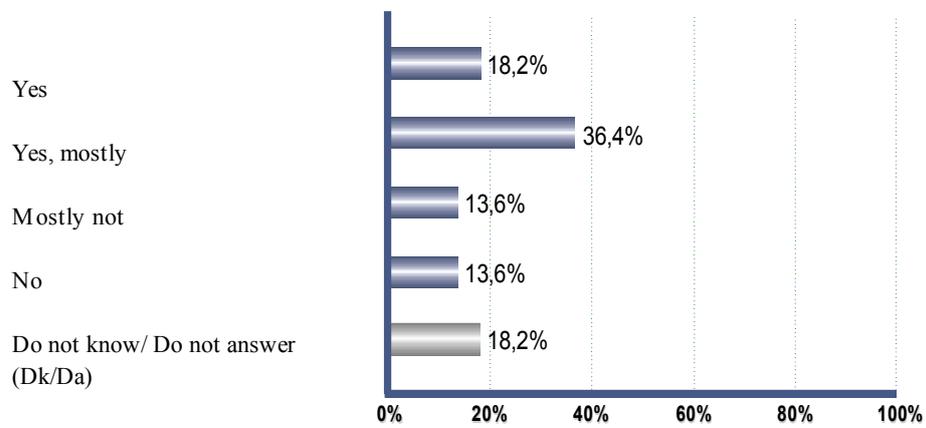


Has the use of communications technology caused any problems? If so, which?



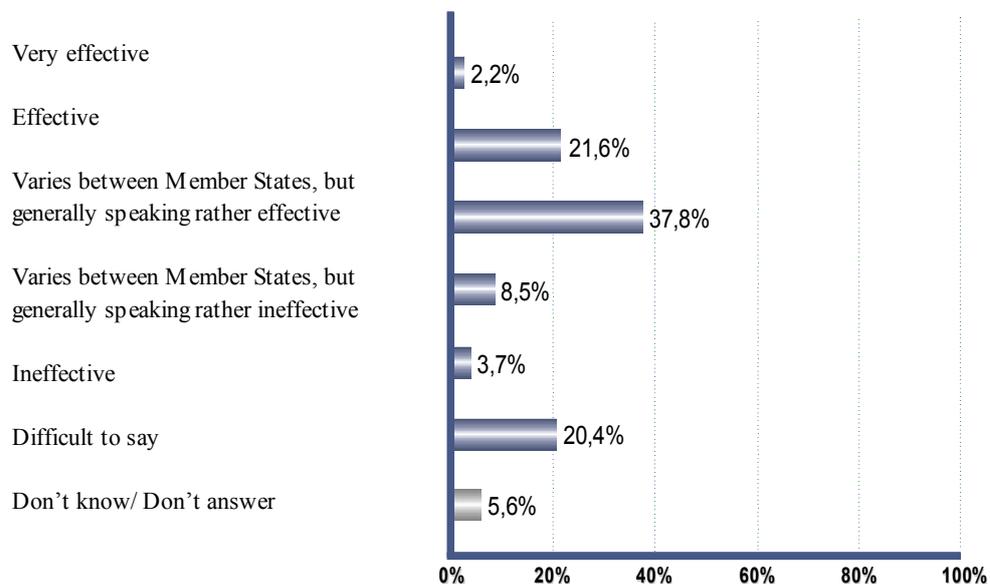
Annex V: Transmission of requests

Are the requests and communications addressed to your Member State pursuant to this Regulation transmitted by the "swiftest possible means" (Article 6 of the Regulation) which your Member State accepts?

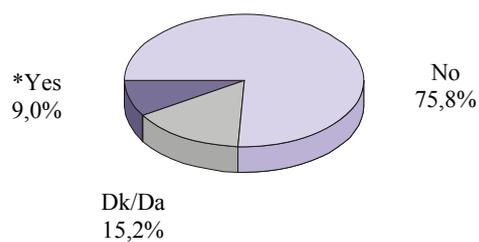


Annex VI: Direct court-to court transmission

How effective are the requesting and requested courts (Article 2) in fulfilling their tasks under the Regulation?

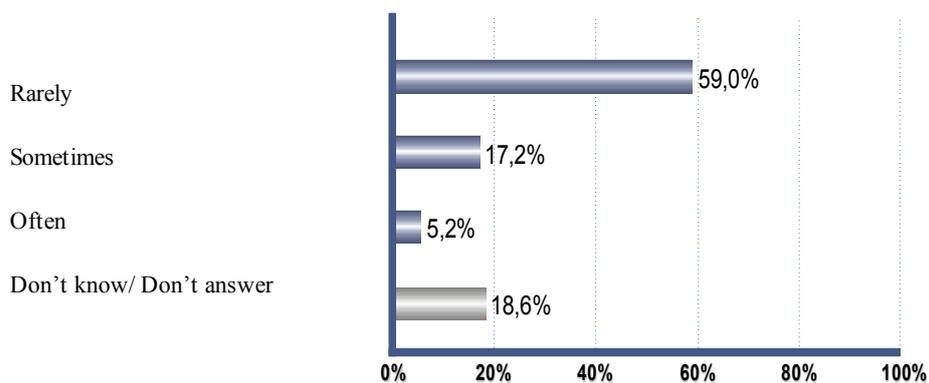


Has the introduction of direct court-to-court contacts caused specific problems?

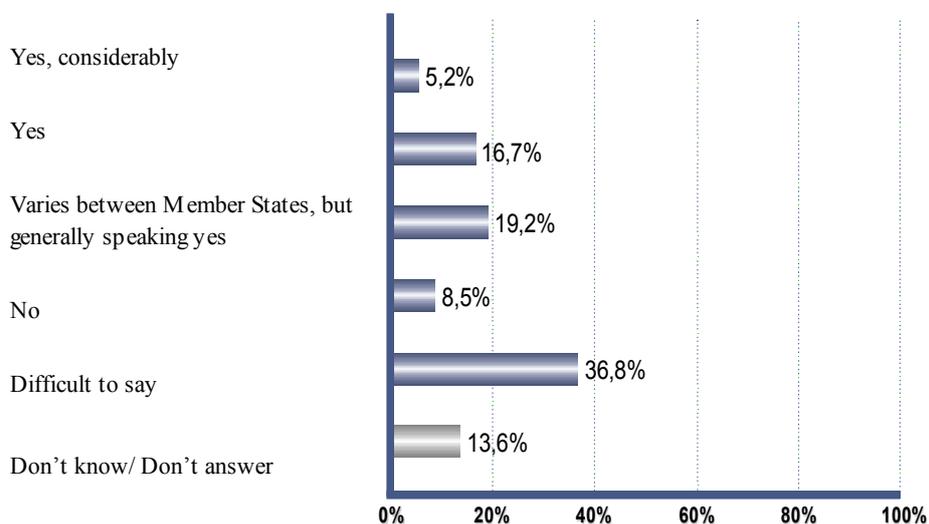


Annex VII: Direct taking of evidence

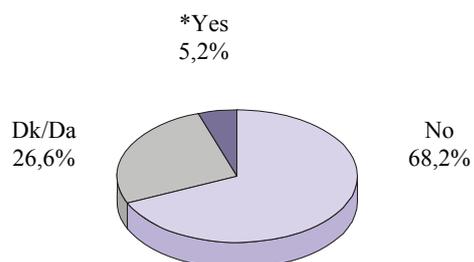
How frequently is the direct taking evidence used?



In practice, has the introduction of this method of taking evidence simplified and accelerated the taking of evidence in other Member States?

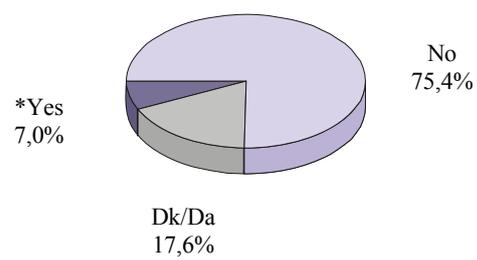


Has the application of Article 17 caused any problems? If so, which?



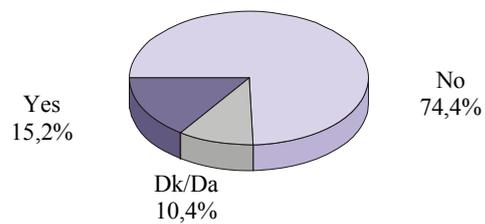
Annex VIII: Application of Article 18

Has the practical application of Article 18 (costs) caused any problems? If so, which?



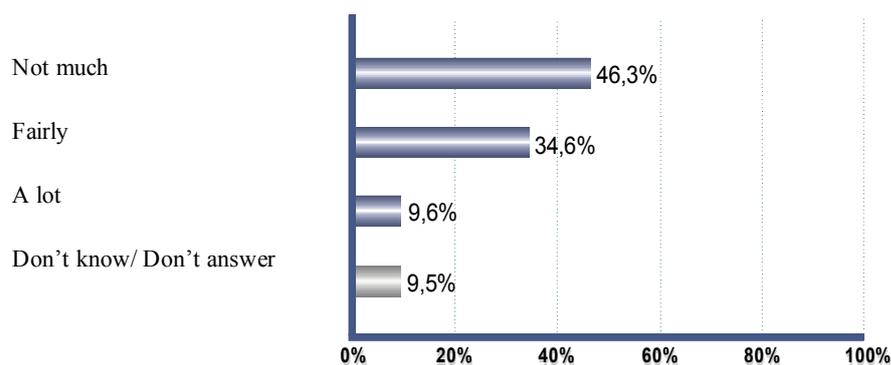
Annex IX: Problems of interpretation

Have there been problems of interpretation of the Regulation, in particular concerning its scope and the concept of "evidence"? Has this led to a refusal to execute requests (Article 14)?

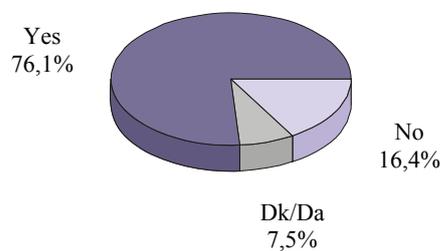


Annex X: Reference to national law

Do you find it problematic that the Regulation often refers to the national laws of Member States?

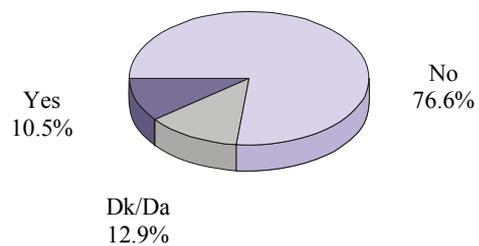


Do you consider the harmonisation of the procedural laws of the Member States on the issue of the taking of evidence desirable?



Annex XI: Compatibility with the 1970 Hague Convention

Have you found problems of compatibility between the Regulation and other instruments such as the 1970 Hague Convention on the Taking of Evidence?



Annex XII: Simplification and acceleration of the taking of evidence

From your experience, has the application of Regulation 1206/2001 simplified and accelerated cooperation between courts as regards the taking of evidence?

