

ASPECTS CONCERNING THE JUDICIARY COOPERATION OF THE EUROPEAN UNION MEMBER STATES IN CIVIL AND COMMERCIAL MATTERS

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For individuals and companies to be able to exercise their rights wherever they might be in the European Union, the incompatibilities between Member States will have to be removed. For example, at the Tampere European Council in October 1999, European Union leaders presented three priorities for action, mutual recognition of decisions judicial decisions and increased convergence in the field of civil law. Further more, the Council adopted a decision establishing a European judicial network in civil and commercial matters. These instruments aim to improve the judicial co-operation in practice. Since 1968, the European governments have agreed on common rules on jurisdiction and enforcement of judgements in civil and commercial areas. Going further, the Treaty of Amsterdam made judicial co-operation in civil matters a European Community policy linked to the free circulation of people.

1 THE COMMUNICATION OF JUDICIARY AND EXTRAJUDICIARY DOCUMENTS IN CIVIL AND COMMERCIAL MATTERS

Judicial cooperation of EU member states also entails ensuing equivalent trial related rights to all European nationals who are parties or participants in civil or commercial law suits tried in courts located in any of these states.

In relation to the communication of judiciary and extrajudiciary documents in civil and commercial matters the Regulations of the Council of the European Union no. 1348 of 29 May 2000 were adopted. This is a mandatory deed in all its elements and is directly applied in all member states in accordance with the Founding Treaty of the European Community.

In order to adopt the Regulations of the Council of the European Union in relation to the Founding Treaty of the European Community, art. 61 (c) and art. 67 par. (1) in particular took into consideration the following priorities:

The Union was founded with the objective of maintaining and developing as a space of freedom, security and justice, within which the free circulation of persons is ensured. For the stepwise achievement of such a space, the Community has to adopt, inter *alia*, measures concerning the judiciary cooperation in civil matters, required for an adequate functioning of the internal market.

The good functioning of the internal market requires an improved and accelerated conveying of judiciary and extrajudiciary documents in civil and commercial matters, for an adequate communication between the member states.

In accordance with the principles of subsidiarity and proportionality stated under art. 5 of the Treaty, the objectives of the Regulations, while not sufficiently achievable by the member states, can be consequently accomplished at Community level. The Regulations do not exceed the limits of aspects necessary for the achievement of these objectives.

The efficiency and celerity of judicial actions in civil matters entail the direct and rapid transmission of judicial and extrajudicial documents between the local authorities appointed by the member states. The member states, however, may appoint either a

transmitting and a receiving authority, or one authority fulfilling both functions for a five year period. This mandate is renewable every five years.

The celerity of transmission justifies the imposing of adequate means, while satisfying conditions related to the legibility and fidelity of the received document. The security of the transmission requires the conveyed document to be accompanied by a standard form to be filled in in the language of the location of communication or in another language accepted by the respective member state.

In order to ensure the efficiency of the Regulations, the option of rejecting the communication of the documents is restricted to exceptional situations.

The celerity of transmission justifies the communication of the documents within few days from receipt. If communication has not been completed within a month, the receiving authority is required to duly inform the sending authority. The expiry of this deadline does not involve the return of the request by the transmitting authority if it follows clearly that communication is achievable within a reasonable time interval.

In order to protect the interests of the recipient it is required for the communication too, to be made in the official language or in one of the official languages of the place of delivery, or in another language of the transmitting member state understood by the recipient.

Given the differences between the member states in relation the norms of procedure, the date effectively taken into consideration for communication varies from one member state to another. Under these circumstances and considering the difficulties that may appear the Regulations need to provide a system allowing the legislation of the receiving member state to establish the date of communication. Nevertheless, when the documents in question need to be communicated by a fixed deadline within a procedure to commence or already on docket in the transmitting member state, the date taken into consideration in relation to the petitioner is established by the law of the transmitting member state. A member state may, however, given justified cause, benefit from derogation from the above provisions for a transitory five year period.

Such derogations can be renewed by a member state at five year intervals, based on considerations related to its judicial system.

The Regulations prevails over the provisions of bilateral or multilateral agreements with the same field of applicability closed between member state, in particular over the Protocol appended to the Brussels Convention of 27 September 1968 and the Hague Convention of 15 November 1965 (*ratified by Romania by Law no. 124/2003 published in the Official Bulletin of Romania no. 265 of 16.04.2003*) concerning the relationships of member states that are parties of these instruments. This however does not impede the member states to maintain or to close agreements or conventions for the purpose of accelerating or simplifying the transmission of documents, provided these agreements and conventions are compatible with the Regulations in question.

Information transmitted in accordance with the provisions of the Regulations need to benefit from an adequate protective regime. This desideratum falls under the applicability of Directive 95/46/CE of the European Parliament and Council of 24 October 1995 concerning the protection of natural persons in relation to the processing of personal data, and concerning the free circulation of these data, as well as under the applicability of Directive 97/66/EC of the European Parliament and Council of 15 December 1997 concerning the processing of personal data and the protection of private life in telecommunications.

The required measures for the application of the Regulations are adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 concerning the establishing of the modalities for exercising the competences of application assigned to the Commission.

The measures include also the devising and updating of a manual via adequate modern means.

Three years, at the latest, after the coming into force of this Regulations, the Commission needs to examine the modality of its application and, if the case, will propose modifications.

The Regulations is applied in civil and commercial matters when a judiciary or extrajudiciary document has to be transmitted from one member state to another in view of communication. This is not applicable when the address of the recipient is not known.

The Regulations refer to the institution of “transmitting authority” and of “receiving authority” for the completion of summoning/subpoena and communication procedures on the territory of the European Union.

Each member state appoints civil servants, authorities or other persons, called “transmitting authorities”, competent to transmit judiciary or extrajudiciary documents to be communicated in another member state.

Each member state appoints civil servants, authorities or other persons, called “receiving authorities”, competent to receive judiciary or extrajudiciary documents to be communicated from another member state.

A member state may also appoint a transmitting and receiving authority to carry out both functions, the relevant information in relation to this authority being communicated to the Commission.

The member states inform the Commission on any subsequent modification of the conveyed data. Such informing is achieved by means of the “central responsible authority”.

Each member state appoints a “central responsible authority” for the completion of the following functions: providing information to the transmitting authority, identification of solutions to difficulties occurring in the transmission of documents to be communicated, and transmission – in exceptional cases and upon request from the transmitting authorities – of a request of communication to the competent receiving authority.

The judiciary documents are transmitted directly and as swiftly as possible between the appointed authorities.

The transmission of documents, requests, confirmations of receipt, evidence of delivery and of any other documents between the transmitting and the receiving authorities can be made by any adequate means, provided that the accordance and conformity of content of the received document with that of the transmitted document is ensured, and that all contained information are easily legible. The document to be transmitted needs to be accompanied by a request devised by means of the standard form. The form is filled in in the official language of the addressed member state, or, in the case of several official languages of the member state in question, in the official languages or in one of the official languages of the place of communication, or in another language indicated as acceptable by the respective member state.

Each member state indicates which official language or languages of the European Union, other than its own language, is acceptable for the form to be filled in.

All transmitted documents are exempt from the requirement of certification by apostille, as well as from any other equivalent formality. Should the transmitting authority require one copy of the document to be returned together with the evidence of communication, the document will be transmitted in two copies.

The transmitting authority who submits the document for communication in the petitioner's name will notified the petitioner that the recipient may refuse to accept it, if not devised in one of the indicated languages.

The petitioner will cover all expenditure related to translation prior to the transmission of the document, without affecting any subsequent decision of the court or the competent authority in relation to the responsibility for such expenditure.

Upon receipt of the document the receiving authority sends the transmitting authority a confirmation of receipt as soon as possible, but latest within 7 days from receipt, via the swiftest modality, using the appended form.

If the request of communication cannot be carried out based on the transmitted information or documents, the receiving authority contacts the transmitting authority by the swiftest means available in view of obtaining the missing information or documents.

The authority receiving a document for communication, for which it has not territorial competence for transmission will transmit this document as well as the request to the receiving authority endowed with territorial competence in the same member state, provided the request satisfies all conditions, and will further inform the transmitting authority correspondingly, using the appended standard form. The receiving authority endowed with territorial competence confirms receipt of the document to the transmitting authority.

The receiving authority communicates or orders communication of the document either in accordance with the legislation of the receiving member state or in accordance with a particular method required by the transmitting authority, provided such a method is not incompatible with the legislation of this member state.

The receiving authority informs the recipient of their right to reject the document if devised in another language than any of the following: the official language of the receiving member state, or, in the case of several official languages of the member state, in the official language or in one of the official languages of the place of communication, or in the language of the transmitting member state understood by the recipient.

In the case that the receiving authority is informed that the recipient refuses receipt of the deed, the receiving authority will inform the sending authority without delay using the evidence of communication, and will return the request and the documents to be translated.

When the communication formalities of the document have been completed, the evidence of communication is filled in using the appended standard form and is sent to the transmitting authority together with a copy of the communicated document. The evidence of communication is filled in in the official language or in one of the

official languages of the transmitting member state, indicated as acceptable. Each member state indicates which official language or languages of the European Union, other than its own are acceptable for the form to be filled in.

Each member state is free to communicate judicial documents directly by mail to persons residing in another member state. Any member state can specify the conditions for accepting the communication of judicial documents by mail.

In this sense art.114 ind.1 par.4 thesis Code of civil procedure provides that if the defendant resides abroad, they will be informed by the subpoena of their obligation of appointing an address of residence in Romania for all communication in relation to the law suit. Should this obligation not be carried out, communication will be made by registered mail, the evidence of delivery of the Romanian post listing the sent documents replacing the evidence of completed procedure.

The Regulations do not affect the possibility available to each person with an interest in a judiciary procedure to communicate the judiciary documents by means of civil servants, authorities or other competent persons from the receiving member state, while at the same time any member state may make its opposition public in relation to this means of communication of judicial documents on its territory.

Should the defendant not appear in court it will be verified if the document has been communicated in accordance with the provisions of the legislation of the receiving member state required to communicate the documents devised in this state addressed to persons from its territory, or if the document has been actually handed to the defendant or delivered at the defendant's residence by another method provided by the Regulations, and if, in both cases communication or delivery, respectively, have been completed in due time for the defendant to defend themselves.

Each member state is free to inform that the judges may rule even if no evidence of communication has been received, provided that the document has been transmitted by one of the methods stipulated in the Regulations, that for at least six months since the date of transmission of the deed, set by the judge for each case, no evidence of

communication has been received from the competent authorities of the receiving member state.

The Regulations include similar provisions for the communication of rulings/decisions to the defendant as well as of the term for appealing.

After 1 January 2007, at court level, the judges have tried to apply the Regulations in the lack of a special law for its enforcement, in view of the direct and mandatory character of this deed for the member states.

Further Law no. 44/2007 (*published in the Official Bulletin of Romania no. 174/13 March 2007*) was adopted, modifying Law no. 189/2003, chapter V, titled “Dispositions for judicial assistance between Romania and the EU member states” providing the following

“In applying Council (CE) Regulations no. 1348/2000 of 29 May 2000 concerning the notification of judiciary and extrajudiciary documents in civil and commercial matters in the member states, the communication procedure of judiciary and extrajudiciary documents is as follows:

a) the Romanian authorities communicate the judicial and extrajudicial documents directly the receiving authorities of the EU member states, while transmitting a copy of the request for communication to the Ministry of Justice, for record keeping;

b) The notaries, court executors and other authorities competent to communicate documents to other countries transmit the requests by the court of law within the district of which their professional seat is located, the provisions of art. a) being applicable correspondingly;

c) The Romanian authority receiving the request for communication of the judiciary and extrajudiciary documents from EU member states is the court of law within the district of which the recipient resides or the recipient’s seat is located. Upon returning of the documents the court of law informs by copy the Ministry of Justice, for record keeping.”

Thus the courts of law have so far fulfilled the role of “transmitting authority” in pending causes requiring summoning/subpoena procedures and/or communication in the members states, while the “receiving authority” function has been carried out via the Ministry of Justice, in accordance with the provisions of Law no. 189/2003, modified. Concerning the “receiving authority” it can be noted that the role of the judges has not been remarked so far, considering the case load of these courts.

Currently the issue of adopting a law project is has been raised, submitted by the Government for passing a law concerning several measures supporting the judicial cooperation with the EU member states. This law is designed to modify and complete Law no. 189/2003 (*published in the Official Bulletin of Romania no. 337/19 May 2003*), modified.

In accordance with the provisions of the new law project, art. I of Law no. 189/2003 is modified and completed as follows:

Article 33 will be followed by chapter V¹ titled: “Dispositions concerning judiciary assistance between Romanian and the EU member states” with the following content:

“Article no.33¹. Within judiciary assistance between Romania and the EU member states the provisions of Community legislation in the matter of communication of judiciary or extrajudiciary documents and in the matter of obtaining evidence (CE Regulations no. 1206/2001 of 28 May 2001 concerning the cooperation of the courts of law of member states for obtaining evidence in civil or commercial cases) prevail over any provision of international treaties closed between the member states, and in particular, over the Convention concerning the notification and communication abroad of judiciary and extrajudiciary documents in civil or commercial matters, of Hague, 15 November 1965, the Hague Convention of 1 March 1954 concerning civil procedure, as well as the Convention for obtaining evidence abroad in civil or commercial matters, of Hague, 18 March 1970.

Article no.33². In applying Council Regulations no. 1348/2000 of 29 may 2000 concerning the communication of judiciary and extrajudiciary documents in civil and

commercial matters, the procedure of communication of judiciary and extrajudiciary documents is carried out as follows:

a) In the member states of the European Union:

1) the Romanian courts of law communicate the judiciary and extrajudiciary documents directly to the receiving authorities of the EU member states, while transmitting a copy of the request for communication to the Appeal Court, for record keeping;

2) Should the adequate means for the direct communication of the documents not be available to the courts of law, transmission will be carried out via the appeal courts in the district of which these courts of law are seated;

3) The notaries, court executors and other authorities competent to communicate documents to other countries transmit the requests by the appeal courts within the district of which their professional seat is located.

b. from the EU member states:

1) The Romanian authorities receiving the request for communication of the judiciary and extrajudiciary documents from EU member states are the appeal courts;

2) The courts of law also receive judiciary and extrajudiciary documents directly from the foreign authorities, if the latter choose this means of transmission. Upon return of the documents the court of law informs by copy the Ministry of Justice, for record keeping.

Article no.33⁴. In the application of the provisions of art.33² a) and art.33³ a) of this law, in order to obtain information on the language to be used for filling in the forms, as well as on the language into which the documents appended to the forms are to be translated, languages accepted and notified to the European commission by the EU member states, the competent Romanian authorities will access the dedicated webpage of the European Commission and consult the contact points of the European Judiciary Network in civil and commercial matters.

Article no.33⁵ based on art. 3 paragraphs 1 of Council Regulations no. 1348/2000 of 29 May 2000 concerning the notification of judiciary and extrajudiciary documents in civil and commercial matters in the member states and based on art. 3 par. 1 of Council Regulations (CE) no. 1206/2001 of 28 May 2001 concerning the cooperation of the courts of law of member states for obtaining evidence in civil or commercial cases, the Ministry of Justice, as the central

Romanian authority has the following competences:

- a) Upon request of the European Commission carries out communication in relation to the information required in accordance with art. 23 of Council Regulations no. 1348/2000 of 29 May 2000 concerning the notification of judiciary and extrajudiciary documents in civil and commercial matters, as well as based on art. 22 of Council Regulations (CE) no. 1206/2001 of 28 May 2001 concerning the cooperation of the courts of law of member states for obtaining evidence in civil or commercial cases;
- b) Provides information to the Romanian and foreign authorities in matters of international judiciary assistance;
- c) identifies solutions to difficulties occurring in the execution of the requests of international judiciary assistance;
- d) Transmits, in exceptional cases, requests for international judiciary assistance.”

According to the law project, the “transmitting authority” will be the court of law carrying out the procedure, which is the court of law including on its docket the respective civil or commercial cause. Should the adequate means for the direct communication of the documents not be available to this court of law, the transmitting authority will be the appeal courts in the district of which this court of law is seated.

For extrajudiciary documents issued by notaries public, court executors and other authorities competent to communicate documents in other countries, the transmitting authority will be the appeal courts in the district of which their professional seat is located.

According to the law project, the “receiving authority” will be the appeal court, while the courts of law may directly receive judiciary and extrajudiciary documents from foreign judiciary authorities, if the latter choose this modality of transmission.

According to the law project, the “central responsible authority” will be the Ministry of Justice, fulfilling the competences stipulated in the Regulations and under art. 33 ind. 5 of the project.

We consider that the legislative authority has correctly decided for the “transmitting authority” to be the court of law trying the civil or commercial case in question, thus ensuring the celerity of the procedure.

In relation to the “receiving authority” this cannot be, by definition, but a “liaison” court for the transmitting authorities of the other member states, and in accordance to the internal legislation of some of these, the appeal court has been selected for this function (as for example is the case of Italy). The replacement of the court of law by the appeal court is a welcome proposal, considering the importance of the documents involved in this matter and the hierarchically superior position of this court.

Further, in regard of the “transmitting authorities”, considering the lesser number of appeal courts (a total of 15 in Romania) compared that of courts of law, the former ensure a better individualisation by the “liaison” authority from the transmitting member state.

In relation to the “central responsible authority” the obvious choice had to be the Ministry of Justice, including a specialised directorate for judiciary cooperation.

2. The obtaining of civil and commercial proofs The judiciary co-operation at the level of the European Union member states means ensuring some equivalent processual rights for the European citizens in the situation in which they are parts or participants in a civil or commercial law suit which is carried on in a court of law situated on one of these states' territory.

So far, at the level of the European Union there hasn't been achieved the purpose of achieving a uniform judicial procedure, namely the existence of some procedural codes, in terms of civil matters, at least, which should govern the similar carrying on of the civil and commercial suits, at the courts of law situated on the member states' territory.

As far as the judicial co-operation in terms of civil and commercial matter among the member states in view of achieving the proofs is concerned, the European Union Council Regulation 1206 from 28th of May 2001 has been passed. This is compelling in all its elements and it is applied directly in all member states in accordance with the European Community Treaty of Setting Up.

For passing the European Union Council Regulation concerning the European Community Treaty of Setting Up, especially the article 61 letter (c) and article 67 paragraph (1) took into account the following priorities:

The European Union established the purpose to maintain and develop a space for liberty, security and justice in which the free circulation of the persons is ensured. For the gradual setting up of this kind of space, the Community, apart from others, is passing measures, on judicial co-operation condition, in terms of civil matters needed for the good functioning of the internal market;

The good functioning of the internal market needs improving and especially the simplifying and speeding up of the co-operation among the member states as to obtaining proofs;

The European Council reaffirmed the necessity for drawing up new procedural right orders in the cross-border cases, especially as to obtaining proofs ;

This domain is subjected to article 65 from the Treaty;

Taking into account that the purposes of the present regulation cannot be enough achieved by the member states, they can be better achieved at a community level, as a result. The community can take measures , according to the subsidiary principle

stipulated by article 5 from the Treaty . According to the proportionality principle, stipulated by the same article from the Treaty, the present regulation won't excel what is necessary for fulfilling these objectives;

So far, there is no compelling judicial document in operation between all the member states as to achieving proofs .The Hague Convention in 18th of March 1970 concerning achieving proofs overseas in terms of civil and commercial matter is only applied among eleven member states of the European Union;

Given the fact that, in civil and commercial terms, for establishing a subordinate case in front of a court of law in a member state, it is frequently necessary for proceeding to obtain proofs in another member state, the action of the Community is not retrained to transmitting the judicial and extrajudicial documents in civil and commercial terms , which are subjected to the Council Regulation (CE) 1348/2000 from 29th of May 2000, concerning the communication of the judicial or extrajudicial documents in civil and commercial terms within the member states (4).That is why it is necessary for continuing the improving of the co-operation among the member states' courts as to achieving proofs;

For a judicial procedure in civil and commercial terms to be useful, the transmitting and fulfilling of the requests for achieving proofs must be performed directly and by means of ways between the member states' courts of law, as fast as possible;

The rapidity of transmitting the requests for getting proofs justifies the usage of all the adequate methods, observing certain conditions as to legibility and fidelity of the received document. For ensuring the judicial clarity and certainty to the greatest extent possible, the request for obtaining proofs must be transmitted by means of a form due to be filled in the official language of the member state's applicant court of law, or in another language accepted by this member state. For the same reasons, the forms must be used as much as possible for other communications between the concerned courts of law;

The request for obtaining proofs must be fulfilled rapidly. If it is not possible for the request to be achieved within 90 days from the moment the applicant court of law is

getting it, the latter is compelled to inform the applicant on the reasons hindering the rapidly fulfilling of the request;

For ensuring the efficiency of the present regulation, the possibility of refusing the fulfilling of a request for obtaining proofs must be limited to exceptional situations on purpose stipulated;

It is necessary for the applicant court to fulfil the request in accordance with the legislation of the member state to which the court belongs;

If it is the case, it is necessary for the parts and their representatives to be present at fulfilling the request for obtaining proofs, if this fact is stipulated in the legislation of the member state of the applicant court, for being able to follow the same procedure in the same conditions in which the request should have been performed in the member state of the applicant court. Also, the parts have the right to ask for participating in the fulfilling of the request; in this way they play a more active part within the procedure of obtaining proofs. Nevertheless, the conditions that must be fulfilled for participation must be established by the applicant court according to the legislation of its member state;

It is necessary for the representatives of the applicant court to be able to be present at the fulfilling of the request for obtaining proofs, if this fact is compatible with the legislation of the member state of the applicant court, for having a better opportunity for assessing the proofs. In the same time, it is necessary for these to have the right to ask for their participation, in the conditions set by the applicant court, according to the legislation of its member state, for playing a more active part within the procedure of obtaining proofs ;

For facilitating the obtaining of proofs, it is necessary for a member state's court, in conformity to the legislation of its member state, to be able to directly fulfil a request for obtaining proofs in another member state, in the situation in which this fact is accepted by the latter and on the conditions established by the central authority or the competent authority of the applicant member state;

The fulfilling of the request, according to the article 10, mustn't give rise to the restitution of some taxes or expenses. Nevertheless, if the applicant court asks for the restitution, fees paid to the experts and interpreters, as well as the expenses resulted from applying the article 10 paragraph (3) and (4) mustn't be paid by this court. In this case, the applicant court must take the necessary measures for ensuring the timely restitution of the expenses, in the case in which an approval of an expert is required, applicant court can, before performing the request, ask the applicant court for constituting a deposit or a corresponding advance payment;

The present regulation must prevail the orders which apply in this matter and which are comprised in the international conventions established among the member states. The regulation won't oppose to performing agreements or arrangements among the member states in view of the subsequent improving of the co-operation in terms of obtaining proofs;

The information conveyed altogether with the present regulation must be protected. As there are applied the European Parliament and Council Order 95/46/CE from 24th of October 1995 concerning the physical persons' protection as to the processing of personal data and the free transit of this data (5) and the European Parliament and Council Order 97/66/CE from 15th of December 1997 as to processing the personal data and the private life's protection in telecommunication field (6) , specific orders in the present document are not bound to be stipulated;

The measures necessary for applying the present regulation are passed according to the Council Decision 1999/468/CE from 28th of June 1997 (7), about establishing the ways of exercising the capacities of applying, conferred to the Committee;

For the good functioning of the present regulation, the Commission must examine its application for recommending the necessary amendment, if it is the case.

The regulation applies in civil and commercial terms, according to the legislative orders of the respective state, whenever a member state's court asks the competent court of another Member State for proceeding to obtaining proofs or obtaining them directly within another Member State.

Requests provided in art. 1 paragraph. (1) Letter. (a), called hereinafter “requests”, are sent by the law court in front of which the procedure is begun or will be begun, called hereinafter “the solicitor law court”, directly to the competent law court of another member state, called hereinafter “the solicited law court”, for obtaining proof.

Each member state elaborates a list of the competent law courts for obtaining proof according to the present regulation. The list also indicates, the territorial competency and if the case, special competency of these law courts.

Each member state designates a responsible central authority with: supplying information to the law courts; searching for solutions for the intervened difficulties regarding accomplishing a request; transmission, in exceptional cases, at the request of the soliciting law court, of a request to the competent law court.

The request is formulated using form A or, as the case may be, form I from annex of the Regulation. This one, together with all the annexed requested documents are absolved from any legalization or any equivalent formality.

The documents, which the law court considers necessary to annex for accomplishing the request, have to be accompanied by a translation into the language in which it was formulated.

The request and the formulated communications on the basis of the present Regulation will be elaborated in the official language of the solicited member state or, if there are more official languages in that member state, in the official language or in one of the official languages of that area in which the proof is to be obtained, or in any other language which the solicited member state indicated as accepted. Each member state indicated the official language or languages of the European Community institutions, others than their own, which is or which are accepted for the completion of the forms.

Request and communications done on the bases of the present regulation are transmitted through the fastest means, which the solicited member state indicated as

able to accept. Transmission can be done through any corresponding mean, with the condition that the received document reflects exactly the content of the transmitted document and that all information is legible.

In 7 days from the receipt of the request, the solicited competent law court sends the soliciting law court a confirmation of receipt, using form B from the Regulation's annex. In case the request doesn't fulfil the conditions stipulated in art. 5 and 6, the solicited law court mentions this on the confirmation of receipt.

In case the execution of a formulated request using form A from the annex, which fulfils the conditions stipulated in art. 5, it is not the competency of the law court to which it was sent, the latter sends the request to the competent law court of his member state and informs the soliciting law court about it, using a form A of the annex.

If a request can't be executed because it doesn't contain all the necessary information in conformity with art. 4, the solicited law court informs the soliciting law court about this without any delay, and in term of 30 days from the receipt of the request, using form C from the annex, asks it to send the missing information, indicating as precise as possible which those are.

If a request can't be executed because a deposit or advance money is necessary, according to art. 18 paragraph. (3), the solicited law court informs the soliciting law court, without delay, in term of maximum 30 days from the receipt of the request, using form C from the annex to the Regulation, informs about establishment methods of the deposit or the advance money payment. The solicited law court confirms the receipt of the deposit or the advance money without delay, in 10 day from the receipt of the deposit or the advance money, using form D.

The solicited law court accomplishes the request without delay and the latest in term of 90 days from the receipt of the request as it follows:

1. The solicited law court fulfils the request in accordance with the legislation of the member state;

2. The soliciting law court can request the solicitation to be accomplished according to a special stipulated in its own member state legislation using form A from the annex. The solicited law court conforms to this request with the condition that the procedure is not incompatible with the legislation of the solicited law court of the member state or from major practical difficulties point of view. If the solicited law court doesn't conform to the request because of any of these reasons, it will inform the soliciting law court using form E from the annex;
3. The soliciting law court can request from the solicited law court the use of modern communication techniques to obtain proof, especially by using videoconference or teleconference.

The solicited law court conforms to this request with the condition that this is not incompatible with the legislation of the solicited law court of the member state or from major practical difficulties point of view.

In case the solicited low court doesn't conform the request because of one of these reasons, it will inform the soliciting law court using form E from the annex of the Regulation.

If the mentioned technique means are not accessible to the soliciting law court or to the solicited law court, the courts can make them available on common agreement.

If the legislation of the soliciting law court of the member state stipulated that the parties, as the case may be, their representatives have the right to be present when the solicited law court fulfils the request of obtaining the proof, the procedure will be:

1. In its request, the soliciting law court informs the solicited law court about their presence and, if the case may be, of their representatives as well as if the case may be, about the fact that they are asked to participate, using form A from the annex. This information can be transmitted in any other appropriate moment;

2. If the participation of the parties is requested and if the case may be, of their representatives for accomplishing the request of obtaining proof, the solicited law court settles, in conformity with art. 10, the conditions in which they can participate;
3. The solicited law court informs the parties and if the case may be, their representatives, with regards to the hour and the place of procedure's evolution and if the case may be, with regards to the conditions in which they can participate using form F from the annex;
4. Paragraphs 1-4 doesn't bring prejudices to the possibilities of the solicited law courts to ask from the parties, if the case may be, their representatives to be present or to participate at the accomplishment of the request of obtaining the proof, if this possibility is provided in the legislation of its own member state.

If it is compatible with the legislation of the soliciting law court of the member state, its representatives have the right to be present at accomplishing the request of obtaining proof by the solicited law court.

The term "representatives" includes magistrates designated by the soliciting law court, in conformity with the legislation of the member state. The soliciting law court can as well designate in conformity with its own member state legislation, any other person, for example an expert.

In its request, the soliciting law court informs the solicited law court that its representatives will be present and if the case may be, that their participation is requested, using form A from the annex. This information can be supplied in any other appropriate moment.

If the participation of the representatives of the soliciting law court is requested to accomplish the request of obtaining the proof, the solicited law court settles, in conformity with art. 10, the conditions in which they can participate.

The solicited law court informs the soliciting law court, using form F from the annex, with regards to the hour and place of procedure's evolution and if the case may be, with regards to the conditions in which the representatives can participate.

If it is necessary, the solicited law court applies the corresponding constraint means for accomplishing the request in situations and ways in which these are stipulated by the legislation of the solicited law court of the member state for fulfilling a request made for the same reason by a national authority or one of the interested parties.

The audience request of a person is not accomplished when that certain person invokes the right to refuse to depose or the interdiction to depose, in the following situations:

- (a) On the basis of the legislation of the solicited law court of the member state
- (b) On the basis of the legislation of the soliciting law court of the member state, when this right is stipulated in the request or if the case may be, confirmed by the soliciting law court at the request of the solicited law court.

Besides the above, the accomplishment of a request can't be refused only if:

- (a) The request isn't included in the application domain of the present regulation according to art. 1 or
- (b) Accomplishment of the request in conformity with the legislation of the solicited law court of the member state is not included in the attributions of the judicial power or
- (c) The soliciting law court doesn't conform to the request of the solicited law court to fulfil the request in conformity with art. 8 in term of 30 days from the solicitation date or
- (d) Deposit or advance money is not constituted in conformity with art. 18 paragraph (3) in term of 60 days from the moment the solicited law court requested the constitution of such a deposit or advance money payment.
- (e) The solicited law court can't review accomplishment only because in conformity with its own member state's legislation another law court of its own member state has exclusive competency for that respective case or because its own member state's legislation doesn't allow bringing to trial for the object on which the request is based.

- (f) If it refuses to accomplish the request because of one of the presented reasons the solicited law court informs the soliciting law court with regards to this in term of 60 days from the receipt of the request by the solicited law court, using form H from the annex.

If the claimed court of law is not capable to fulfill the demand in 90 days time from receiving it, it informs the claiming court of law using form G from the annex, mentioning the motivation of the dealy and indicating the necessary term that the claimed court of law considers to be necessary for the fulfillment of the demand.

The claimed court of law sends without delay to the claiming court of law the documents that attest the fulfillment of the demand and, if necessary, returns the documents received from the claiming court of law. The documents are accompanied by a confirmation of the fulfillment using the H form from the annex.

When a court of law claims to obtain evidence directly in another member state, this one sends a demand to the central authority or to the competent authority from that state, as in 3 line (3) using the form I from the annex.

Directly obtaining evidence can be possible only if they are made voluntary, without the need of constraint measures.

When the obtaining of evidence implies also hearing of a person, the claiming court of law informs that person that the hearing is made with his agreement.

The procedure for obtaining the evidence is made by a magistrate or by another person, like an expert, assigned according to the legislation of the member state of the claiming court of law.

In term of 30 days from receiving the demand, the central authority or the competent authority of the claimed member state informs the claiming court of law if the demand is accepted or not and, if necessary, in which condition this will be fulfilled according to the legislation of its member state using the form J.

Especially, the central authority or the competent authority can assign a court of law from its own member state to participate to the fulfillment of the procedure for obtaining the evidence with the aim to have a good appliance of the present article and of the conditions that have been determined.

The central authority or the competent authority cannot decline the direct obtaining of evidence only if: the demand is not part of the application domain of the present regulation, according to article 1 or, the demand does not contain all the necessary information according to article 4 or, the direct administration of claimed evidence is against the fundamental principle of the legislation of its member state.

Fulfilling the demand, according to article 10, cannot determine the refund of taxes and expenses.

With all this, if the claimed court of law ask for it according the legislation of its own member state, the claiming court of law, under the reserve of the part to support the expenses according to the right of the member state, it ensures the refund without delay of the fees paid to the experts and interprets and the expenses resulted from article 10 line (3) and (4).

The obligation of the parts to support this fees or expenses is controlled by the legislation of the claiming court of law of the member state.

For the subject covered by its application domain, the present regulation is more important than other disposals contained in the bilateral and multilateral agreements made between member states and especially towards the Convention from Hague from 18 March 1954 regarding the civil procedure from the Hague Convention from 18 March 1970 regarding the obtaining of civil or commercial evidence in foreign countries, in relationship between member states that are part of this.

The present regulation does not restraints the member state to maintain or to make agreements between two or more member states in order to facilitate obtaining evidence, as long as they are compatible with the present regulation.

The regulation is valid from 1 July 2001 and will apply from 1 January 2004. This is compulsory in all its disposals and is directly applicable in the member states according to the European Community Treaty.

Law No. 189 from 13 May 2003 regarding the international civil and commercial judicial assistance has been modified through the Law No. 44/2007 after the integration of Romania in the European Union and through the order of the Justice Ministry No. 2888/2003 the Application Methodology of the prevision of Law No. 189/2003 modified was approved. In present on the role of the Romanian Parliament there is a law project for modifying and completing the Law No. 189/2003.