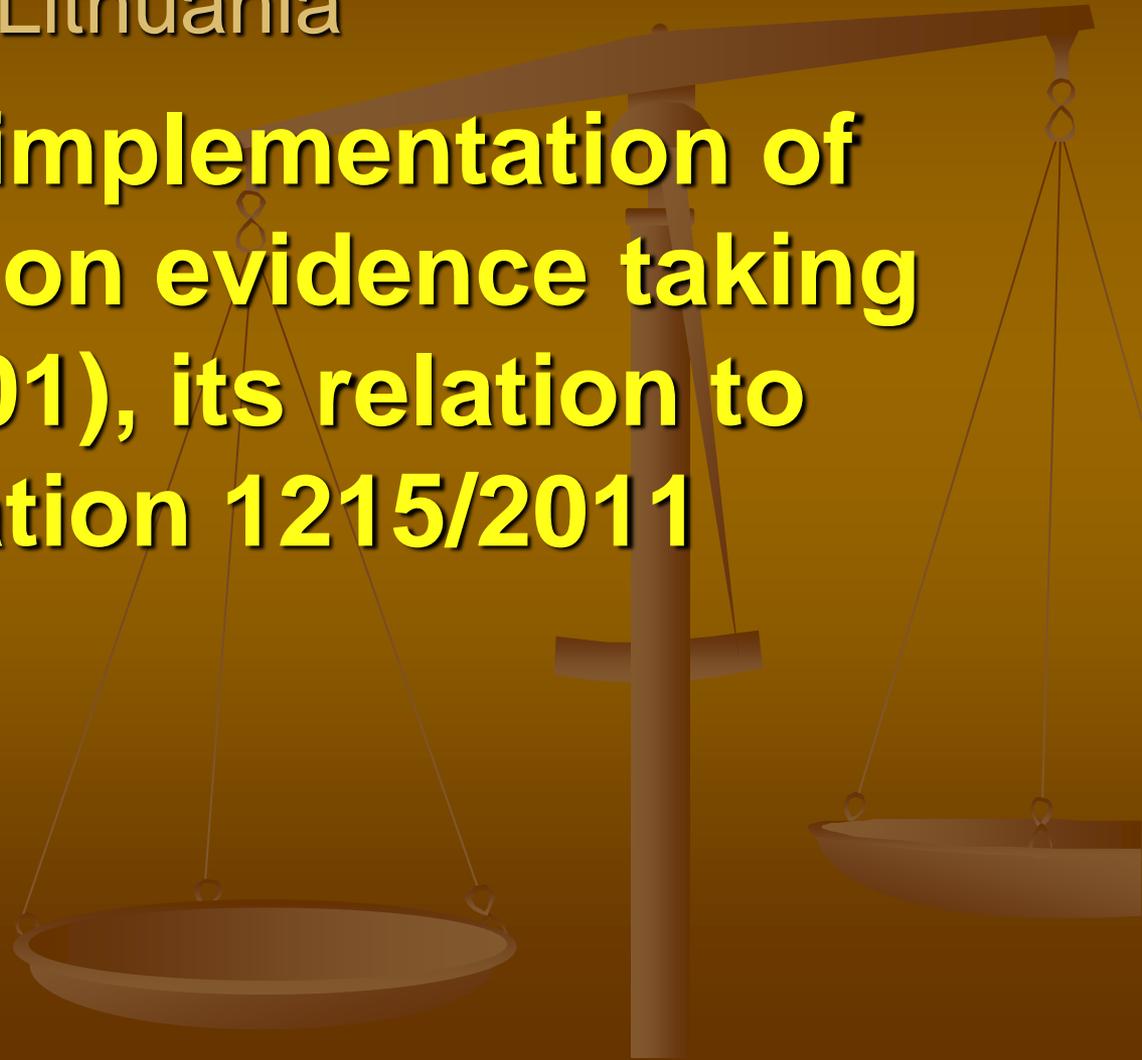


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**Issues of implementation of  
Regulation on evidence taking  
(1206/2001), its relation to  
Regulation 1215/2011**



# Effectiveness of Regulation

Is it possible to make appropriate conclusions about the Regulation **effectiveness** after its 10 years validity period?

*What about EUCJ case No. C-283/09, 17.02.2011???*

Or maybe it has turned out that existing system of *procedural* cooperation between the courts is not sufficient and we are going inevitably to unification of process norms of evidence and proof in EU (at the same time it certainly would facilitate cooperation between the state and taking of the evidence issues)?

Regulation 1206/2001 (applied from 1 January 2004)

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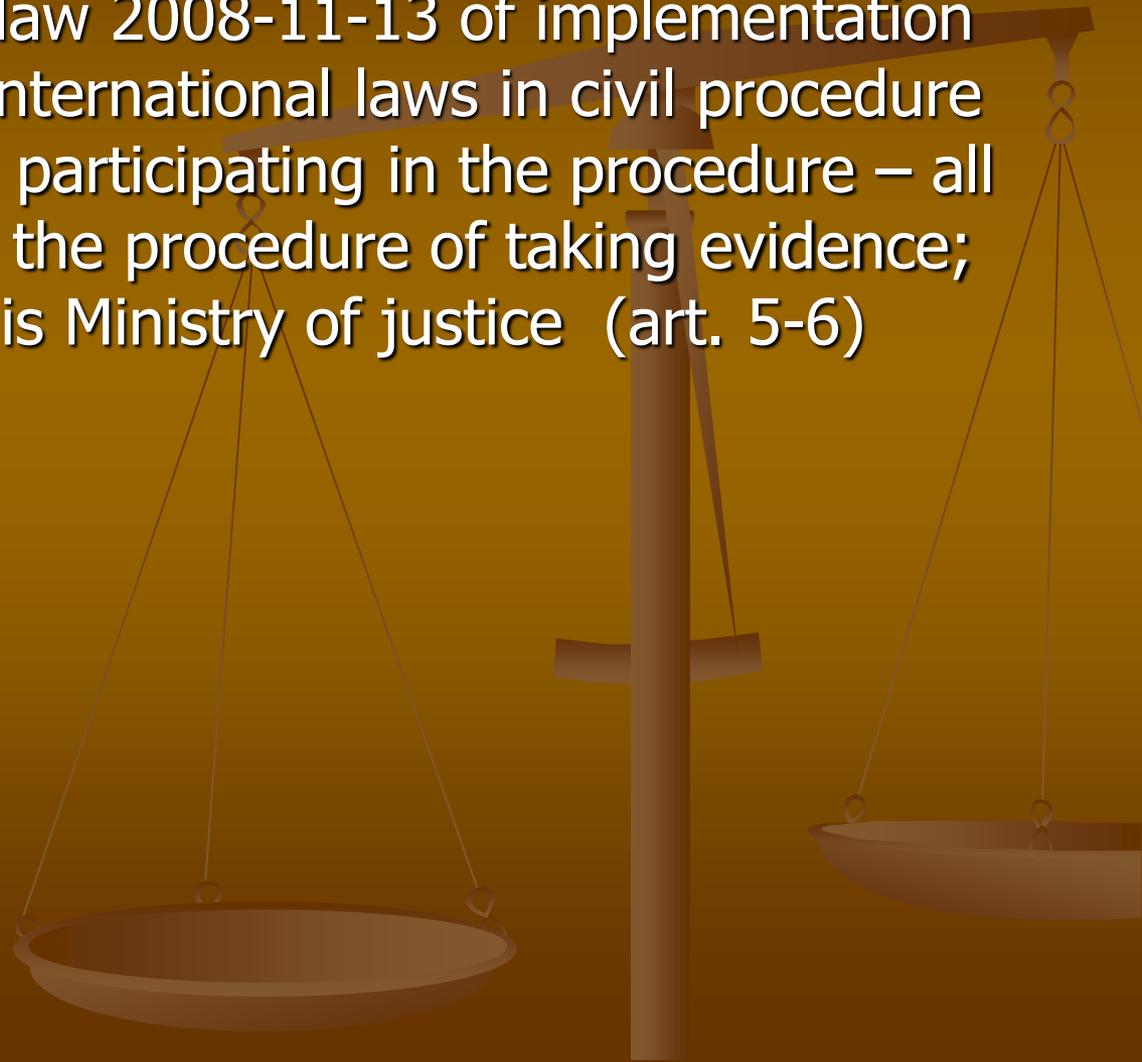
**Regulation 1215/2012 (valid also for Denmark) -  
shall apply to legal proceeding from 10 January 2015**

“The notion of provisional, including protective, measures *should not include* measures which are not of a protective nature, such as measures ordering the hearing of a witness. This should be without prejudice to the application of Regulation 1206/2001” (Regulation 1215/2012, item 25)

Under rules of Regulation 1215/2012 - National rules of jurisdiction may no longer be applied by Member States in relation to consumers and employees domiciled outside the EU (Article 18 and Article 21). Such uniform rules of jurisdiction will also apply in relation to parties domiciled outside the EU in situations where the courts of a Member State have exclusive jurisdiction under the Regulation or where such courts have had jurisdiction conferred on them by an agreement between the parties

# Implementation details

Republic of Lithuania law 2008-11-13 of implementation European Union and International laws in civil procedure establish only subjects participating in the procedure – all the courts (judges) in the procedure of taking evidence; central institution is Ministry of justice (art. 5-6)

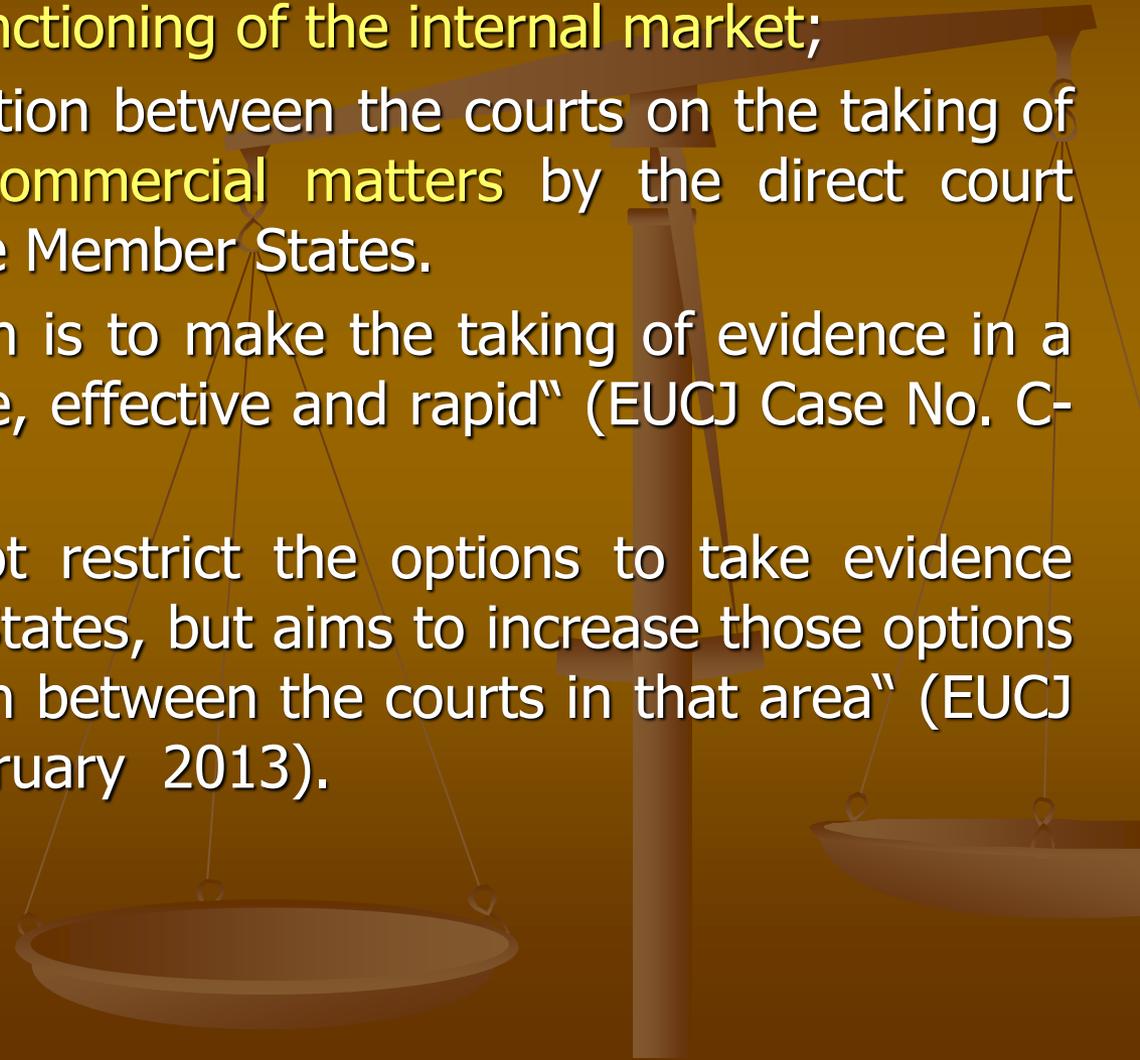


# THE PURPOSE OF THE REGULATION

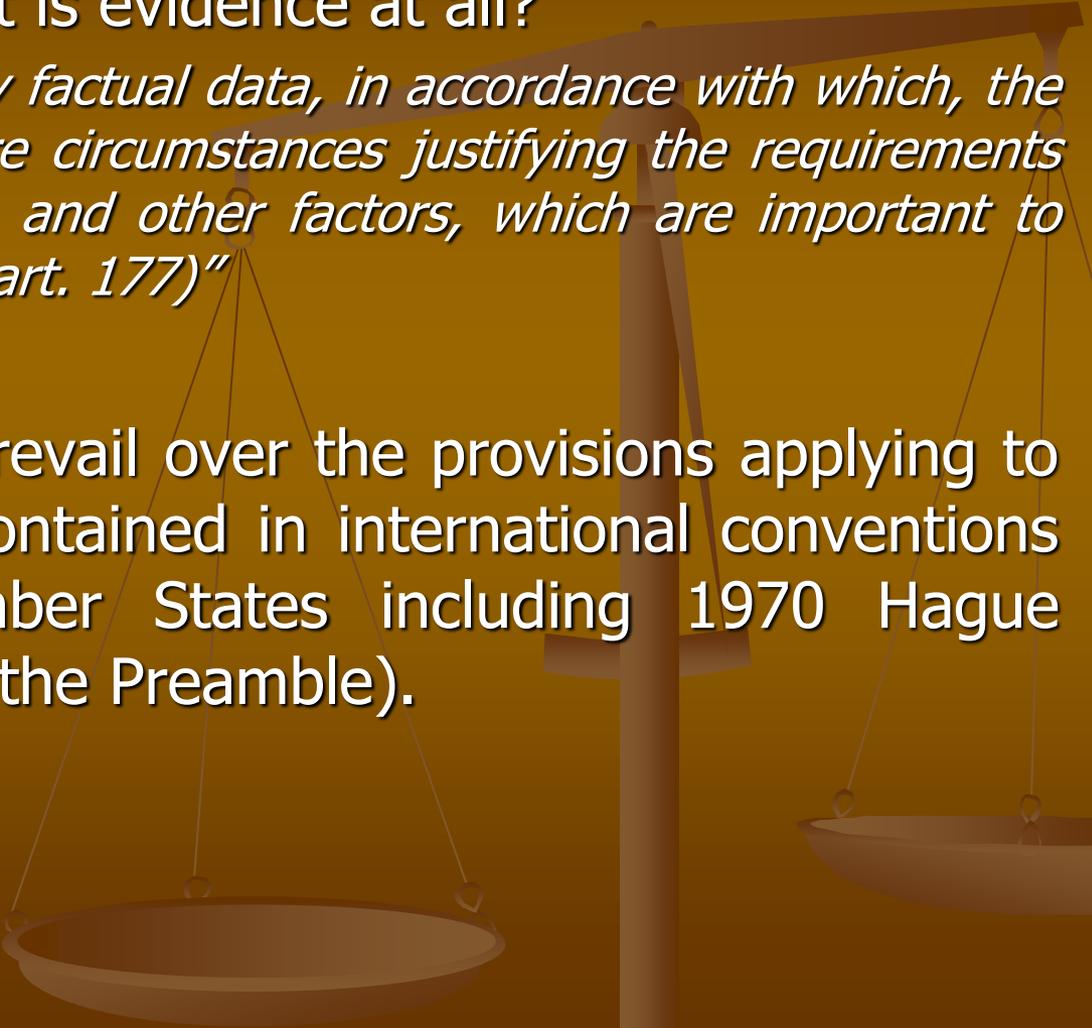
- To ensure the free movement of persons;
- To ensure the proper functioning of the internal market;
- To improve the cooperation between the courts on the taking of evidence in civil and commercial matters by the direct court cooperation between the Member States.

„ The aim of the regulation is to make the taking of evidence in a cross-border context simple, effective and rapid“ (EUCJ Case No. C-104/03, 28 April 2005).

„ That regulation does not restrict the options to take evidence situated in other Member States, but aims to increase those options by encouraging cooperation between the courts in that area“ (EUCJ Case No. C-332/11, 21 February 2013).



# LEGAL POWER OF THE REGULATION



Do we have to know what is evidence at all?

*“Evidence in a civil case is any factual data, in accordance with which, the court ascertains that there are circumstances justifying the requirements or replications of the parties, and other factors, which are important to solve the case (Lithuania CPC art. 177)”*

This Regulation should prevail over the provisions applying to its field of application, contained in international conventions concluded by the Member States including 1970 Hague Convention (Article 17 of the Preamble).

# THE SPATIAL AND TEMPORAL EFFECT OF THE REGULATION

The Regulation is valid for 27 of the 28 Members from the date of accession: **except of Denmark** who is ruled by The Hague Convention of the taking of evidence abroad in civil or commercial matters of 18 March 1970 (25 EU countries joined, except Austria, Belgium, Ireland)

The **Hague Convention** is international treaty which is applied alternative to EU states subscribes.

**Lithuania ratified the Convention 13 April 2000 by law of 13 April 2000, the law come into force on 31 May 2000.**

# THE SPATIAL EFFECT OF THE REGULATION(2)

The court directed the fact that the dispute is out from the family relationship does not mean that the court instead of the Parties has the burden of proof.

„The applicant did not formulate a clear and specific application: from which specific countries (The United Kingdom of Great Britain, Iceland or Norway) and from which institutions (the full name of the institutions), which specific evidence (data), for which period was requested to take. Moreover that the last residence of defendant is in Lithuania and going abroad is undeclared. Therefore the request for taking evidence was rejected by court“ (Panevezys District court, civil case Nb. 2A-345-544/2013, 09.05.2013).

# THE SCOPE OF THE REGULATION

This Regulation shall apply in ALL civil or commercial matters

(Note – A request shall not be made to obtain evidence which not intended for use in judicial proceedings, commenced or commenced – Clause 2 of the Article 1, when the court of Member State (*the "Requesting Court"*) apply to the competent court of other Member state (*the "Requested Court"*) seeking to obtain evidence or let take evidence in its territory.

„That regulation applies not only in substantive proceedings but also in proceedings for interim measures.“(EUCJ Case No. C-332/11, 21 February 2013)

# THE SUBJECT OF THE PROCEDURE

(REQUESTING COURT)



(REQUESTED COURT)

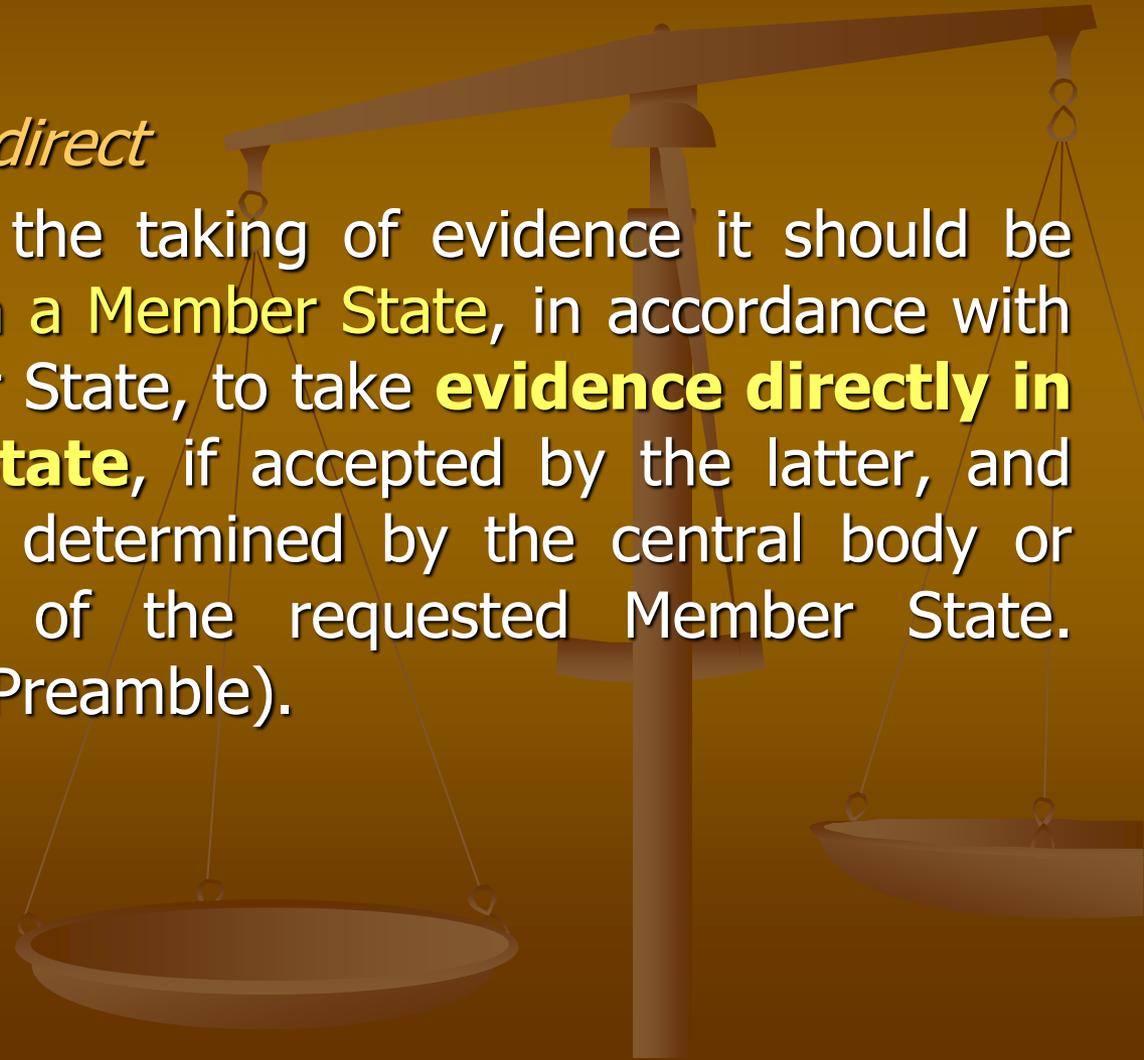
I. The individuals and their representatives could (active) participate in the process in the other Member State if:

- 1) That right is provided by the law of the Member State of requesting court;
- 2) The conditions of taking of evidence is set by the requesting court;

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

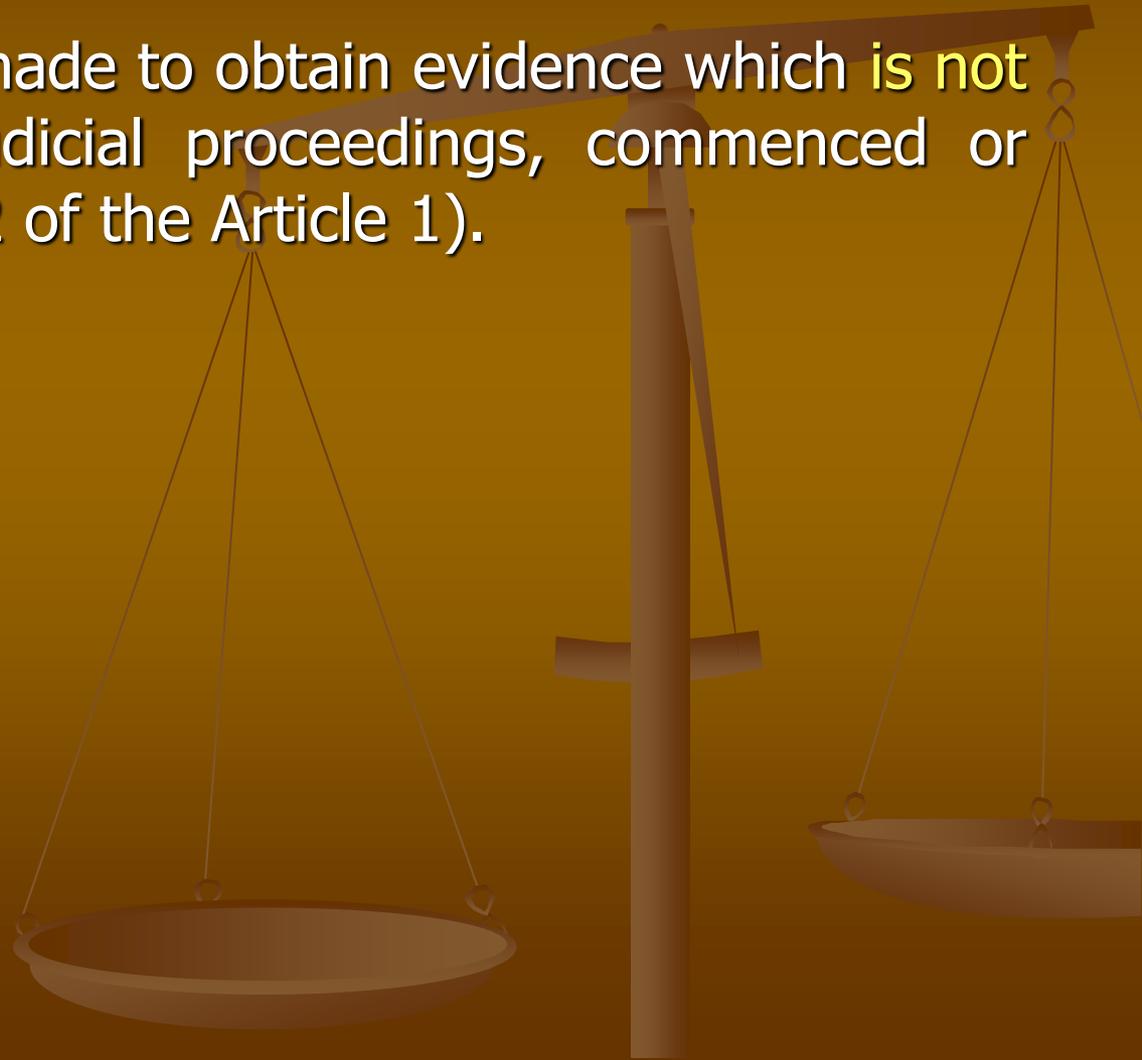
# THE METHODS OF THE TAKING OF EVIDENCE

- *The requested court*
- *The requesting court direct*
- In order to facilitate the taking of evidence it should be possible for a court in a Member State, in accordance with the law of its Member State, to take **evidence directly in another Member State**, if accepted by the latter, and under the conditions determined by the central body or competent authority of the requested Member State. (Paragraph 15 of the Preamble).



# Admissibility and relevance of evidence

A request shall not be made to obtain evidence which **is not intended for** use in judicial proceedings, commenced or contemplated. (Clause 2 of the Article 1).



# STAGES

- THE SUBMISSION OF THE REQUEST
- THE ACCEPT OF THE REQUEST
- THE EXECUTION OF THE REQUEST



# THE SUBMISSION OF THE REQUEST

- Language – the request and the annexes if the court deems necessary – the requested Member State or other its directed language (for example, Estonia acceptable language - only Estonian, Lithuania - Lithuanian, English, French).
- The form of the request – the annex A or form 1.
- Note: nature and subject matter of the case and a brief statement of the facts should be presented;  
The request and annexes should be legalized!
- The execution of requests for the performance of taking of evidence is to be made directly and by the most rapid means possible between Member States' courts. The types of means is directed by the requested court.

# THE ACCEPT OF THE REQUEST

## I. THE IS NO DRAWBACK – take

Within seven days of receipt of the request, the requested competent court shall send an acknowledgement of receipt to the requesting court using form B in the Annex.

## 2) THERE ARE DRAWBACKS

A. *Minor* – The requested court shall inform the requesting court about minor drawbacks using the same form B in the Annex. If there are text or language drawbacks, court shall enter a note to that.

B. *Other competent court* – Forward the request to the competent court of its Member State and shall inform the requesting court thereof using form A in the Annex.

## C. *Fundamental drawbacks (lack of data):*

- If there are drawbacks of the necessary information drawback shall inform thereof without delay and, at the latest, within 30 days of receipt of the request using form C in the Annex
- If a request cannot be executed because a deposit or advance is necessary (form C in the Annex and inform the requesting court how the deposit or advance should be made).

# THE EXECUTION OF THE REQUEST (1)

If the request is complete properly the requested court shall execute the request **immediately** but not later than within 90 days of receipt of the request (except the requesting court call for the request to be executed in accordance with a special procedure provided for by the law of its Member State).



## THE EXECUTION OF THE REQUEST (2)

The video conference can be used in accordance with Paragraph 10-12 of the Regulation when the court of the State in accordance with laws of its Member States, request the other competent court of the Member State to take evidence. The requested court shall execute the request in accordance with the law of its Member State.

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. The requested court shall comply with such a requirement *unless* this is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties.

When the residence place of examined person is not at the same Member State of the Court, the oral examination should be conducted in accordance with the rules specified in Regulation No. 1206/2001.

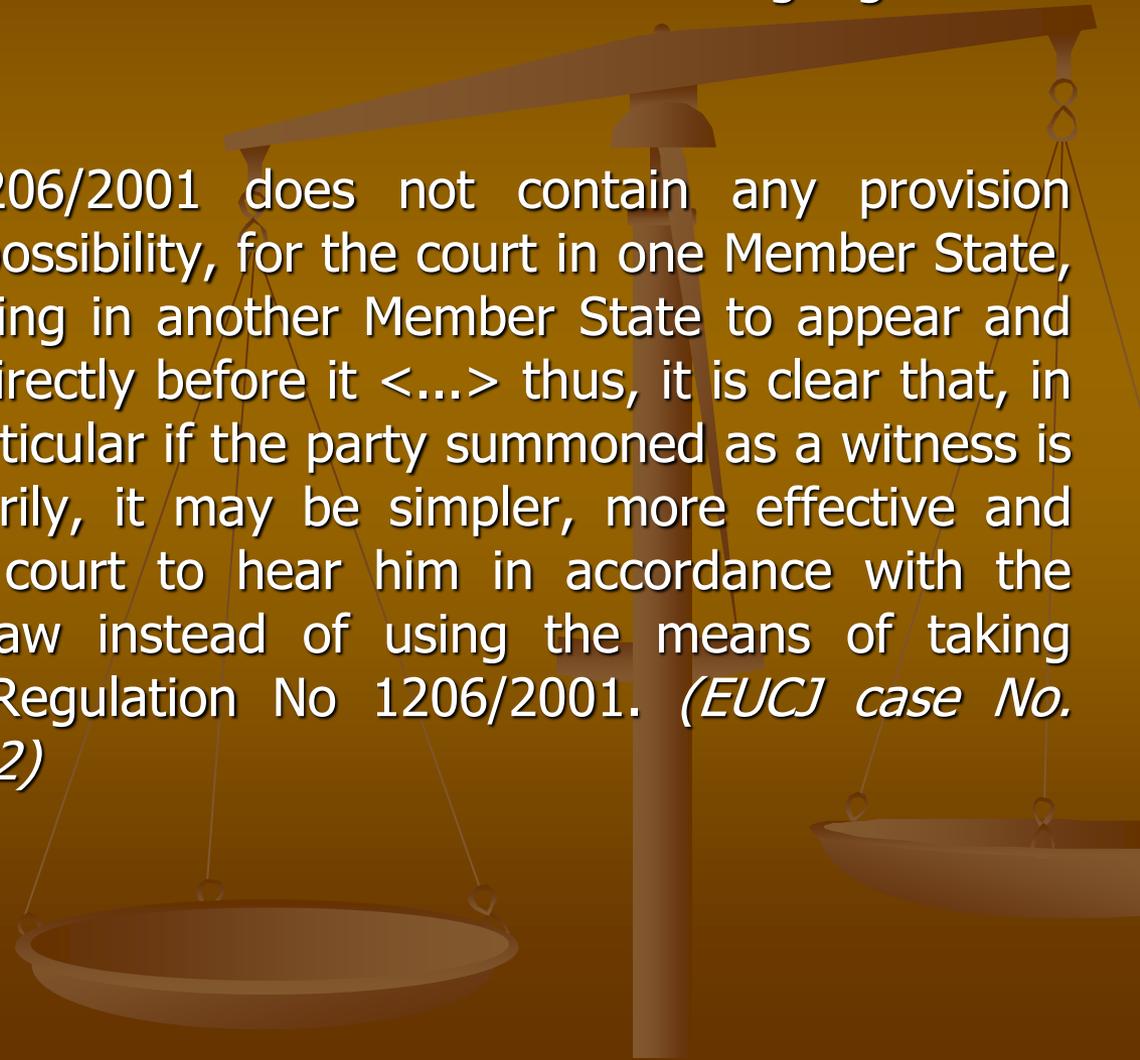
# THE EXECUTION OF THE REQUEST(3)

- Usually the person is examined in the official language of the requested Member State. If the person do not use this language, he should have a possibility of being assisted by an interpreter. Therefore in accordance with judge permission questions could be asked and answers could be provided not in the official language of the requested Member State.
- When a court requests to take evidence directly could be used the language of the requesting state but an interpreter may be participate.
- The taking of evidence shall be performed by a member of the judicial personnel or by any other person such as an expert, who will be designated, in accordance with the law of the Member State of the requesting court. 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 Regulation conditions that have been set out.
- „The Courts – is it used permission of the Member State for taking evidence?  
EUCJ – it is used to have prior permission of a central body”

# THE EXECUTION OF THE REQUEST (4)

„The witness requested to be examined by the of the Court of the Member State in which the witness resided on the official language of the Member State.

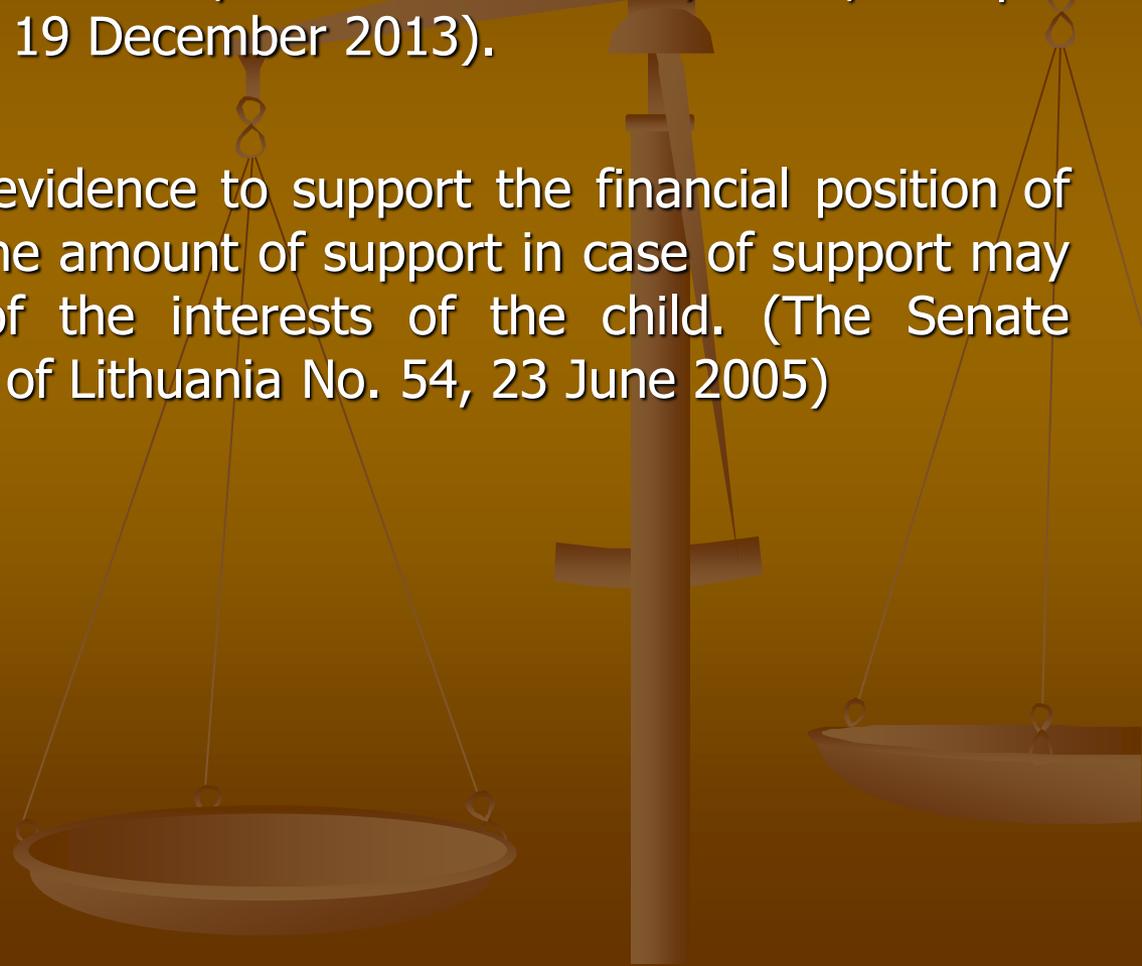
EUCJ – Regulation No 1206/2001 does not contain any provision governing or excluding the possibility, for the court in one Member State, of summoning a party residing in another Member State to appear and make a witness statement directly before it <...> thus, it is clear that, in certain circumstances, in particular if the party summoned as a witness is prepared to appear voluntarily, it may be simpler, more effective and quicker for the competent court to hear him in accordance with the provisions of its national law instead of using the means of taking evidence provided for by Regulation No 1206/2001. (*EUCJ case No. C-170/11 , 6 September 2012*)



# Legal power of the evidence and assessment of the evidence

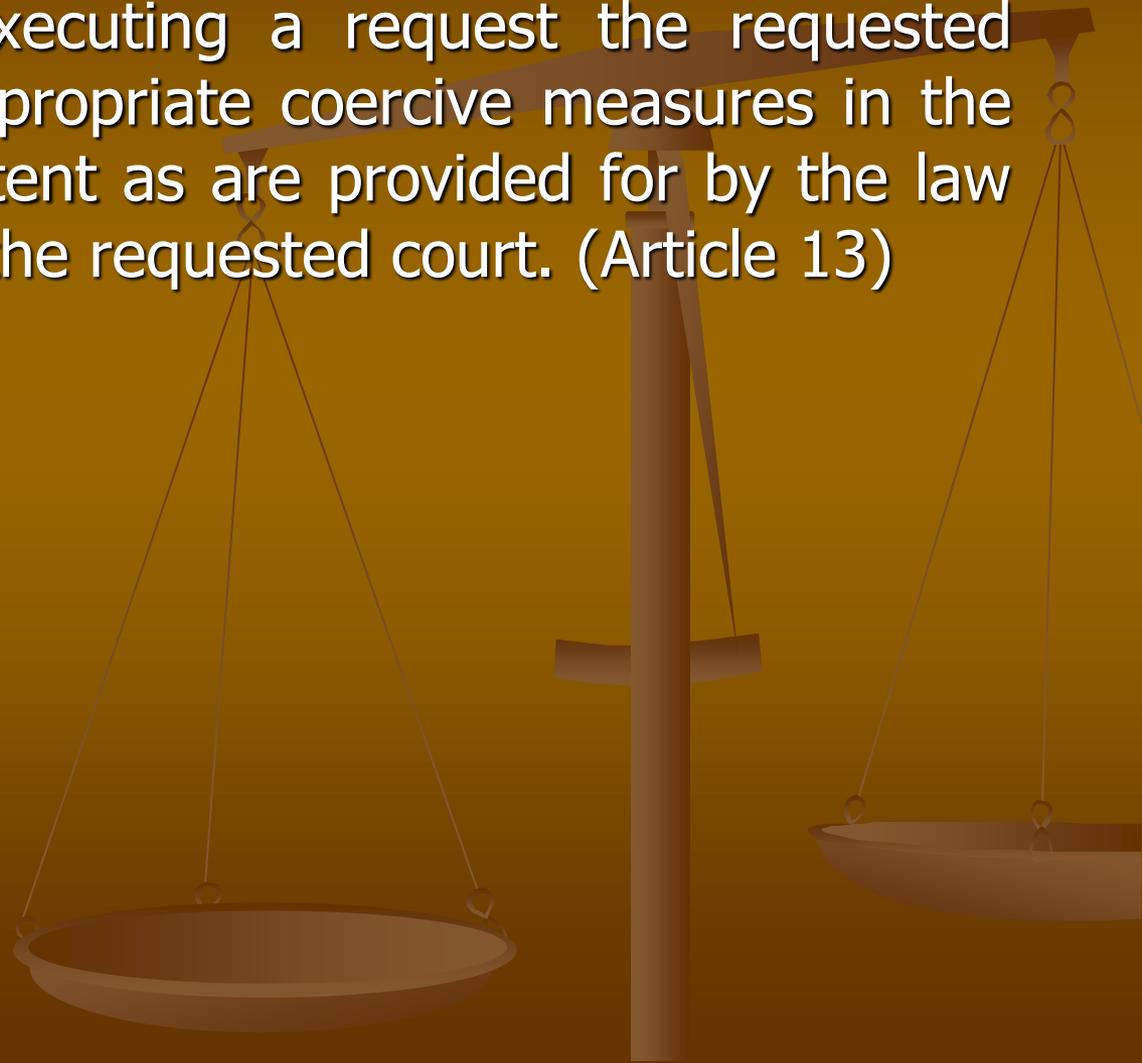
„ The act of foreign country expert should not be formed in accordance with the requirements of the contest and form of the requested Member State.” (Court of Appeal of Lithuania, Case No. 2A-1475/2013 , 30 April 2013, Case Nb. -2677/2013, 19 December 2013).

„If the court can not take evidence to support the financial position of the father all doubt about the amount of support in case of support may be assessed in in favor of the interests of the child. (The Senate resolution of Supreme court of Lithuania No. 54, 23 June 2005)



# Coercive measures

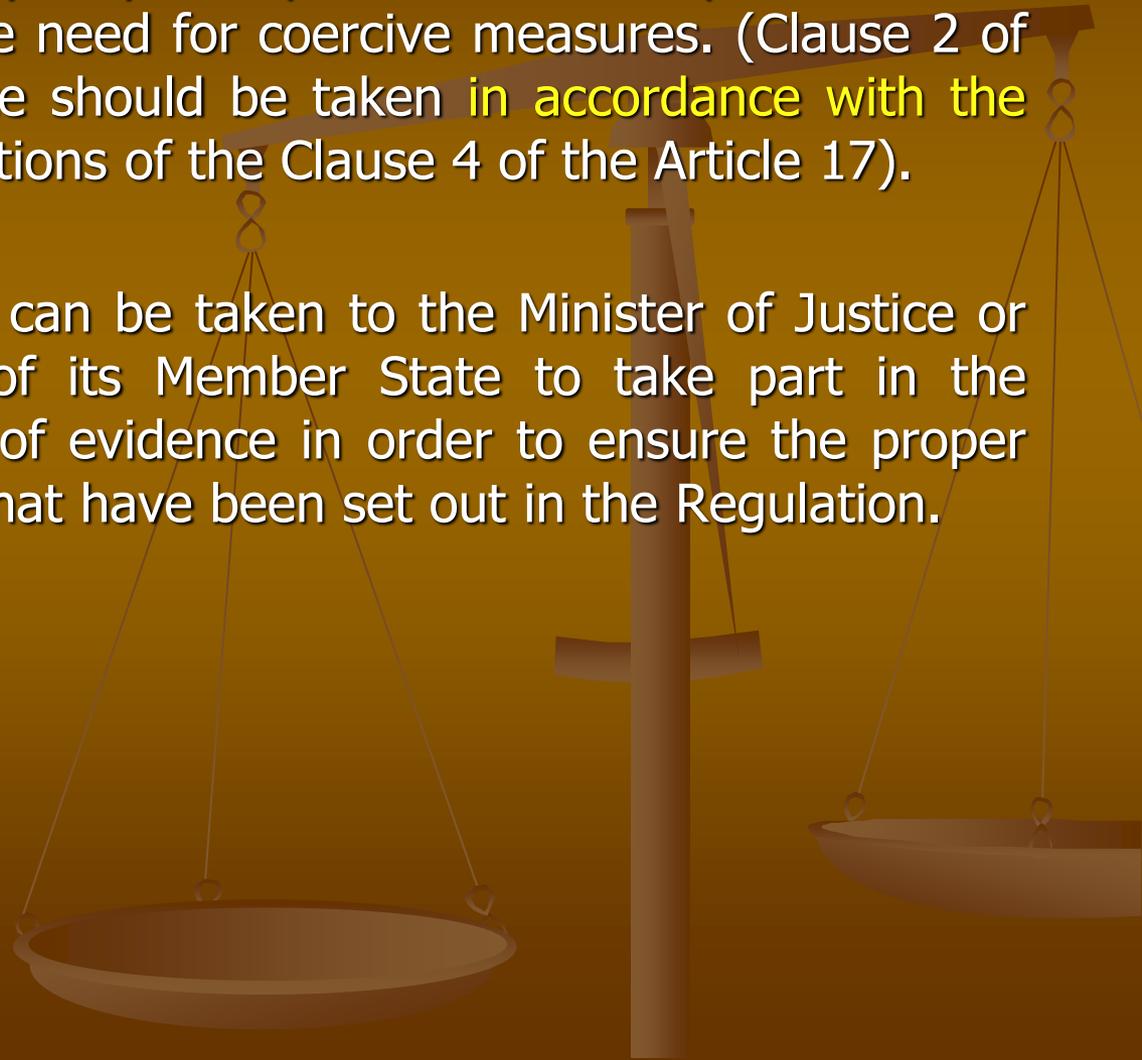
Where necessary, in executing a request the requested court shall apply the appropriate coercive measures in the instances and to the extent as are provided for by the law of the Member State of the requested court. (Article 13)



# Direct taking of evidence by the requesting court

Direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures. (Clause 2 of the Article 17). The evidence should be taken **in accordance with the requested state law** and positions of the Clause 4 of the Article 17).

The form I should be filled, can be taken to the Minister of Justice or may be assigned a court of its Member State to take part in the performance of the taking of evidence in order to ensure the proper execution of the conditions that have been set out in the Regulation.



# Refusal to execute

## General

- 1) The request does not fall within the scope of this Regulation;
- 2) The execution of the request does not fall within the functions of the judiciary;
- 3) The requesting court does not comply with the request of the requested court to correct the fundamental drawbacks of the request.

## Special

A request for the hearing of a person shall not be executed when the person concerned claims the right to refuse to give evidence because it is banned under the law of the Member State of the requested court or the requesting court confirmed that. However the execution may not be refused by the requested court solely on the ground that under the law of its Member State a court of that Member State has exclusive jurisdiction over the subject matter of the action or that the law of that Member State would not admit the right of action on it. (Clause 3 of the Article 14)

# Costs and compensation

„ Concept of costs must be defined autonomously under European Union law. Costs – sums paid by the court to third parties in the course of proceedings, in particular to experts or witnesses.

Taxes - sums received by the court for carrying out its functions.“ (EUCJ case No. C-283/09, 17.02.2011).

Costs and taxes are not reimbursable, *despite* if the requested court requires:

- 1) Immediately to pay fees to experts and interpreters (can be requested for deposit);
- 2) The major practical difficulties (including costs arising from the use of communications technology).

„The court of Ireland and Poland requested is the requested court may lift the requirement that the requesting court should cover witness expenses in advance?

**ESTT – The Article 14 of the Regulation No 1206/2001 sets out the grounds for refusal of a request and the list of the grounds is exhaustive,** thus the requested court was not entitle to require to cover witness expenses in advance (EUCJ case No. C-283/09, 17.02.2011).“

# INSTEAD OF CONCLUSIONS

„A person whose heart is more generous and  
minds are as sober as a judge put above others“

(Robert Green Ingersoll)

