Access to justice, cross-border disputes: legal aid, financial aspects of civil proceedings

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The Commission presents a report on its assessment of the application of the Directive 2003/8/EC on access to justice in cross border disputes by establishing minimum common rules relating to legal aid. The report covers the period of 30 April 2004 to 31 December 2010.

Transposition: all Member States bound by the Directive have transposed the right to legal aid in cross border cases in civil and commercial matters, although it can be observed that not all provisions of the Directive have been perfectly implemented. These difficulties are explained principally by the fact that the provisions of the Directive are sometimes different from national provisions concerning legal aid.

Practical application: during the period 2004-2009 the number of persons benefitting from cross border legal aid has increased only to a limited extent. According to the data available, the total number of cross-border legal aid applications processed by any Member State only twice reached 10029. A Eurobarometer report shows that awareness of cross-border legal aid in civil and commercial matters amounts to 12% in respondents in the EU27. The report also states that the situation may also be explained by the lack of knowledge of the instrument among legal professionals, and the restricted scope of the Directive, which is limited to civil and commercial matters. The report also observes that differences in interpretation were noted as regards:

- the definition of the scope of the Directive, i.e. civil and commercial cases;
- the conditions for the grant of legal aid: differences in the cost of living between Member States were taken into consideration by the Directive but there are no objective criteria specifying the way in which these differences should be taken into account;
- costs covered by the Directive: arrangements for the choice and designation of a legal advisor differ significantly between Member States.

Points of reflection

Economic criteria to benefit from legal aid: the report notes that there are cases where the claimant obtains from the court of his domicile a confirmation that under national rules he would be eligible for legal aid but the competent court deprives him of it. Two solutions could be considered:

- taking into account the difference in the cost of living between Member States, the eligibility and the amount of legal aid could be calculated on the basis of a common and objective criteria or on the basis of the criteria applied in the usual place of residence of the person applying for legal aid, or
- harmonisation of the economic level or mutual recognition of thresholds.

Costs not covered currently: the report observes that since travelling costs lie outside the scope of the Directive, an applicant may be deprived of legal aid, even if he is entitled to it in his Member State of residence.

Facilitation of relationship between legal professionals and beneficiaries: this could be through measures such as: (i) the designation of a professional who speaks the language of the beneficiary, (ii) the assistance of a translator, or even the designation of a second professional from the State of the legal aid recipient, who would serve as a link and, for example, conduct correspondence with the legal professional based in another State.

Clarity as to the whereabouts of the competent authority: it appears to be advisable to designate a single receiving and transmitting authority in each Member State in order to facilitate the implementation of the Directive. This is particularly important in the situation when the legal aid application is submitted directly to the competent authority of the Member State in which the court is sitting or where the decision is to be enforced. As the Directive does not regulate the issue of what happens if the application is submitted to the incorrect receiving agency, discrepancies in such situation may arise.

Scrutiny of the same application by two authorities with two possibly different results: the Directive provides two ways of submitting the application for legal aid, and the report notes that this may create confusion as it is possible that the receiving authority may reject the application although the transmitting authority would consider it as founded, or vice versa. **Conclusions:** the Commission notes the insufficient knowledge about the provisions of the Directive among citizens, legal professionals and national legal boards, and encourages efficient and active promotion of the Directive through providing the general public and professionals with information on the various systems of legal aid under the Directive, and will step up its own efforts in this regard.

Further to the points of reflection, the Commission will take into account the reactions to this Report in its considerations for actions, as appropriate.

Lastly, as regards the **legal aid policy with third countries**, the Commission will consider the accession of the EU to the 1980 Hague Convention on Access to Justice, particularly as the EU is a member of the Hague Conference. Such a step could be desirable as it would enable the uniform application of the Convention through the Union and could attract the accession of other states.