

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

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The Council has presented an amended version of the proposal for a directive on legal aid. The amendments take account of previous discussions in the Committee on Civil Law Matters. The main amendments relate to the following: - the proposal is extended to commercial as well as civil matters, whatever the nature of the court or tribunal; - there are two options for the definition of a cross-border dispute: 1) where one or more of the parties involved is domiciled or habitually resident in a different Member State than the Member State whose courts have jurisdiction or where the decision is to be enforced; 2) where the party applying for legal aid in the context of this Directive is domiciled or habitually resident in a different Member State than the Member State whose courts have jurisdiction or where the decision is to be enforced. In both cases, the Member State in which a party is domiciled will be determined in accordance with Articles 59 and 60 of council Regulation 44/2001/EC. Member States do not need to provide assistance or representation in the courts in proceedings designed to enable litigants to make their case in person, except where the court otherwise decides in order to ensure equality of parties; Member States may request that legal aid recipients pay reasonable contributions towards the costs of proceedings; -costs covered by legal aid include interpretation and translation of the relevant documents which are necessary for the resolution of the case, and travel costs where the physical presence of the person concerned in court is required by law or the court; -where the appeals against a decision refusing or cancelling legal aid are of an administrative nature, they will always be subject to judicial review; -the provisions on competent authorities are extended and clarified, as well as the provisions on introduction and transmission of application; -applications must be completed in the official language of the Member State addressed; -the conditions relating to the financial resources of the applicant are expanded. One amendment states that legal aid does not need to be granted to an applicant insofar as they enjoy, in the instant case, actual access to other mechanisms that cover the cost of proceedings referred to in Article 3 (2). Finally, a recipient who, in the Member State where the court is sitting, has benefited from complete or partial legal aid will be entitled, in a recognition or enforcement procedure in another Member State, to benefit from the most favourable legal aid provided by the law of that Member State.