

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

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The draft Directive was subject to numerous amendments drafted by all the delegations. However, at the end of several COREPER meetings and other specialised committees, the delegations reached an agreement on the various questions remaining to be answered on the draft Directive. The Council was hoping for a quick adoption of this text. In addition, several compromise proposals were also proposed in order to reach an overall agreement on the main articles of the draft Directive. Among the questions examined, one notes in particular the list of exclusions from the scope of the Directive (Article 1), the definition of cross-border disputes (Article 1a), pre-litigation assistance (Article 3, paragraph 2) and the application of the principle of non-discrimination (Article 6). The Presidency compromise also concerns the conditions relating to the background to disputes. This amended text was not subject to a new examination by the European Parliament, the Council considered that it was not obliged, on a legal basis, to reconsult the Parliament on the final version of the text for the reason being that the Parliament had already been consulted on the version transmitted by COREPER at the beginning of September which reflected the state of the discussions within the Council at that moment. The European Parliament has contested the new text of the Council. Thus, in a letter addressed to the Council on November 27, 2002, Mr Pat Cox, President of the Parliament, made clear the Parliament's position on this issue and recalled in particular that on September 25, 2002, the Parliament agreed with the approach proposed by the Commission, namely to guarantee legal aid to all citizens and not only in cases of cross-border disputes, as proposed by the Council. However, it is this restrictive approach that the Council favours and it seems to be the one withheld for the forthcoming adoption of the text. The Parliament recalls in its letter that the entry into force of the Treaty of Nice shall imply a joint codecision right for the European Parliament and the Council on this issue. Accordingly, the Parliament asks the Council to suspend its debates in view of the adoption of this text in the wait of the entry into force of the Treaty of Nice to enable the Commission to propose a new text in which the adoption shall apply the codecision of the two institutions. Moreover, the European Parliament announces that in the event of the adoption of the text by the Council before the entry into force of the Treaty of Nice, the European Parliament reserves the right to defend its prerogatives by demanding a reconsultation on this text. For its part, the Council, informed of the contents of this letter, stated that it would not amend its point of view on the scope of the application of the Directive. The Council's arguments are based on the following elements: 1) at the time of the examination of the proposal, the Council, bearing in mind that Articles 61c) and 67 of the treaty constituted the legal base of this instrument, noted that its scope could only be limited to the cross-border questions. Indeed, Article 65 of the treaty provides that the Community takes measures in the field of legal co-operation in civil matters having a cross-border nature. Therefore, the constraints of the treaty prevent any extension of the scope of the directive; 2) aware of the fact that the issue of the scope of the Directive interested the Parliament, COREPER decided to send the last version of the text dated 5 September 2002, the version being the one that Plenary pronounced its position; 3) taking account of Parliament's position, the Council however considered that it was not in a position to amend its point of view on the issue of the scope of the Directive but decided to take into account a certain number of other points made by the Parliament in its opinion. Consequently, and considering the fact that the adoption of this Directive is of utmost importance for the Council, it states that it will not delay the adoption of this text, as the Parliament asks it, considering that it constitutes an important issue in the realisation of a European legal area.