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

2002/0020(CNS) - 18/01/2002 - Legislative proposal

PURPOSE: To establish common minimum standards for access to justice in cross-border disputes relating to legal aid and other financial aspects of civil proceedings. CONTENT: The legal basis for this proposed Directive is Article 61 (c) of the Treaty on European Union which seeks to guarantee an appropriate level of legal aid throughout the Union. Impetus to establish specific provisions stems from the the 1999 Tampere European Council. Due to the Protocol on Denmark attached to the TEU the Directive will not apply to Denmark. The United Kingdom and Ireland may decide whether or not to apply the provisions of the Directive. The main purpose of the Directive is to set common minimum standards to ensure that parties to litigation have effective access to justice throughout the European Union. The scope of the provisions will concern civil matters, irrespective of the type of court in which the cases will be heard. The proposal covers all disputes in civil and commercial matters, including employment and consumer law, even if they are heard by another type of court, for example an administrative court. Administrative disputes are not however covered by this Directive since no provision for such disputes is foreseen under Article 61 (c) of the TEU. In terms of what the rights to legal aid would be, the proposal seeks to ensure that nobody should be prevented from asserting their rights in the court through a lack of financial means. The proposal provides that those eligible for legal aid would have access to: 1) The free assistance of a lawyer. 2) Exemption from or assistance with court costs. Those held responsible for payment of legal aid would be the Member State in which the forum is held. Those Member States responsible for forum costs would reimburse cross-border costs entailed by the cross-border dispute. A further feature of the Directive is the principle of non-discrimination. The proposal aims to avoid all discrimination between Union citizens on the basis of their place of residents. This principle of non-discrimination would thus also apply to people who are habitually and lawfully resident in a Member State, including stateless persons, refugees and asylum-seekers. Other features of the Directive include; inter alia: - Continuity of legal aid. In cases where an aid recipients wins their case, legal aid should be extended to cover the costs of having the judgement enforced. On the other hand, where a legal aid recipient decides to appeal against a judgement, the Member State may decide to reject his/her application based on whether there are good grounds for appeal. - Introduction and transmission of legal aid applications. The proposal outlines an eight-day time-limit for transmitting applications and establishing a standard form. - Notifications to the Commission. Member States are expected to notify to the Commission a list of sending and receiving authorities and the list of languages in which they accept that legal aid applications may be transmitted to them. - Emergency Procedure. To allow for cases where an applicant is unable to obtain legal aid soon enough. - Conditions relating to financial resources. Member States are allowed to establish their own thresholds. Nevertheless it must always be possible for legal aid applicants to prove that withoutthe aid they would be unable to assert their rights. - Conditions linked to the substance of disputes. This provision would enable Member State to reject aid applications for unrealistic or hopeless cases. - Application to legal persons. This provision has been introduced to help small non-profit making organisations apply for legal aid - such as consumer organisations. - Reimbursement of court costs and lawyers' fees. - Information. Information on national legislation and on this Directive should be published on the site of the "European Judicial Network".