Basic information

2002/0020(CNS) CNS - Consultation procedure Directive	Procedure completed
Access to justice, cross-border disputes: legal aid, financial aspects of civil proceedings Amended by 2021/0395(COD) **Subject** 1.20.02 Social and economic rights 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	SANTINI Giacomo (PPE-DE)	28/01/2002

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	WALLIS Diana (ELDR)	26/02/2002

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2482	2003-01-27
Justice and Home Affairs (JHA)	2455	2002-10-14
Justice and Home Affairs (JHA)	2436	2002-06-13
Employment, Social Policy, Health and Consumer Affairs	2470	2002-12-02

European Commission

Commission DG	Commissioner
Justice and Consumers	

Key events

Date	Event	Reference	Summary
18/01/2002	Legislative proposal published	COM(2002)0013	Summary
07/02/2002	Committee referral announced in Parliament		

13/06/2002	Debate in Council		
12/09/2002	Vote in committee		Summary
12/09/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0312/2002	
23/09/2002	Debate in Parliament		
25/09/2002	Decision by Parliament	T5-0441/2002	Summary
02/12/2002	Debate in Council		
19/12/2002	Additional information		Summary
27/01/2003	Act adopted by Council after consultation of Parliament		
27/01/2003	End of procedure in Parliament		
31/01/2003	Final act published in Official Journal		

Technical information

Procedure reference	2002/0020(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amended by 2021/0395(COD)
Legal basis	EC Treaty (after Amsterdam) EC 061
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/15810

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0312/2002	12/09/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0441/2002 OJ C 273 14.11.2003, p. 0131-0184 E	25/09/2002	Summary

Council of the EU

Document type	Reference	Date	Summary
Supplementary legislative basic document	10856/2002	26/07/2002	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2002)0013	18/01/2002	Summary

	OJ C 103 30.04.2002, p. 0368 E		
Non-legislative basic document	COM(2012)0071	23/02/2012	Summary
Follow-up document	SWD(2012)0020	23/02/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0687/2002 OJ C 221 17.09.2002, p. 0064	29/05/2002	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2003/0008
OJ L 026 31.01.2003, p. 0041-0047 Summary

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

2002/0020(CNS) - 25/09/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Giacomo SANTINI (EPP-ED, IT) was approved by 436 votes to 90 votes with 15 abstentions. The Parliament adopted many amendments to broaden the scope of the Directive should cover, for instance, employment tribunals and pre-court legal advice. The Parliament proposes that the legal basis should be extended tin include Article 65(c). The idea being to include measures eliminating obstacles to the good functioning of civil proceedings. Parliament also includes a reference to point 32 in the Presidency conclusions of the Tampere European Council which called for minimum standards to be drawn up on the protection of crime victims and their right to compensation for damages, including legal costs. Parliament also stipulates that this Directive should apply to all disputes in civil and commercial matters, which include employment law and consumer protection law, and to civil compensation claims deriving from criminal acts, when they form part of civil proceedings. On the other hand, the Directive shall not extend to revenue, customs or administrative matters. The Parliament states that if legal aid is granted, it must cover the entire proceeding, including expenses incurred in having a judgement declared enforceable or enforced; the recipient should continue receiving this aid until the final conclusion of the proceedings, including any appeals he may be see fit to bring and any appeals brought against him. The costs covered shall include: - the payment of local lawyers' fees and any court fees in the forum Member State; - the costs of an interpreter; - the translation of relevant documents, - travel costs, either for attendance of parties or witnesses before a Court or for the purpose of face-to-face meetings between the client and forum lawyer, or between the parties and their lawyers, where such costs are properly justified and previously authorised by the granting authority and where the judge requires the physical presence of the persons concerned in court. The Parliament suggests that Member States shall provide that the winning party shall be entitled to reasonable and fair reimbursement from the losing party of all or part of the costs of the proceedings. Member States shall also provide that the losing party or parties in the case must meet all or part of the court costs. This requirement to meet costs may be made conditional on whether or not the losing party or parties are deemed to have acted recklessly. Lastly, it should be noted that with the Council's agreement, this Directive should not apply to Denmark.

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

2002/0020(CNS) - 14/10/2002

The Council reached a political agreement on a Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. The Council mandated the appropriate fora of the Council to resolve the remaining technical issues of the Directive, with a view to its adoption at a forthcoming meeting of the Council. The Directive shall apply, in cross-border disputes, to civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters. Legal aid is considered to be appropriate when it guarantees : a) pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings; b) legal assistance and representation in court, and exemption from, or assistance with, the cost of proceedings of the recipient, including the costs referred to in Article 5 and the fees to persons mandated by the court to perform acts during the proceedings. Member States shall grant legal aid to persons who are unable to meet the costs of proceedings as a result of their economic situation, in order to ensure their effective access to justice. Member States may provide that legal aid applications for actions which appear to be manifestly unfounded may be rejected by the competent authorities. If pre-litigation is offered, the benefit of further legal aid may be refused or cancelled on grounds related to the merits of the case insofar as access to justice is guaranteed. The United Kingdom and Ireland have given notice of their wish to take part in the adoption and the application of the Directive. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of the Directive and is not bound by it or subject to its application.

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".

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

2002/0020(CNS) - 27/01/2003 - Final act

PURPOSE : to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid in such disputes. COMMUNITY MEASURE : Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. CONTENT : the Council adopted the Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. This Directive seeks to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. Accordingly, all the persons involved in a civil or commercial dispute within the scope of this Directive must be able to assert their rights in the courts even if their personal financial situation makes it impossible for them to bear the costs of proceedings. Legal aid is regarded as appropriate when it allows the recipient effective access to justice under the conditions laid down in this Directive. Legal aid should cover pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings, legal assistance in bringing a case before a court and representation in court and assistance with or exemption from the cost of the proceedings. Concerning the continuity of legal aid, it shall continue to be granted totally or partially to recipients to cover expenses incurred in having judgement enforcement in the Member State where the court is sitting. Legal aid applications shall be completed in, and supporting document translated into the official language of the Member State of the competent authorities which corresponds to one of the languages of the Community institutions or another language which the Member States has indicated it can accept. The competent transmitting authority shall transmit the

application to the competent receiving authorities in the other Member State within 15 days of the receipt of the application duly completed in one of the languages mentioned above. To facilitate transmission, a standard form for legal aid applications and for the transmission of such applications shall be established. This standard form for the transmission of legal aid application shall be established at the latest by 30 May 2003. The standard form for legal aid application applications shall be established at the latest by 30 November 2004. The competent authorities shall cooperate to provide the general public and professional circles with information on the various systems of legal aid, in particular via the European Judicial Network, established in accordance with Decision 2001/470/EC. ENTRY INTO FORCE : 31 January 2003. TRANSPOSITION : Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 November 2004 with the exception of Article concerning pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings where the transposition of this Directive into national law shall take place no later than 30 May 2006. Theyshall forthwith inform the Commission thereof. TERRITORIAL APPLICATION : It should be noted that the United Kingdom and Ireland have given notice of their wish to take part in the adoption and the application of this Directive. Denmark is not taking part in the adoption of this Directive and it not bound by it or subject to its application.

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

2002/0020(CNS) - 26/07/2002 - Supplementary legislative basic document

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.

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

2002/0020(CNS) - 23/02/2012

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.