

Procedure file

Basic information	
INI - Own-initiative procedure	2012/2101(INI)
Procedure completed	
Improving access to justice: legal aid in cross-border civil and commercial disputes	
Subject	
1.20.02 Social and economic rights	
4.60.06 Consumers' economic and legal interests	
7.40.02 Judicial cooperation in civil and commercial matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		30/05/2012
		PPE ZWIEFKA Tadeusz	
European Parliament	Committee for opinion	Rapporteur for opinion	Appointed
	IMCO Internal Market and Consumer Protection		10/10/2012
		PPE MAYER Hans-Peter	
	LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
European Commission	Commission DG	Commissioner	
	Justice and Consumers	REDING Viviane	

Key events			
23/02/2012	Non-legislative basic document published	COM(2012)0071	
24/05/2012	Committee referral announced in Parliament		
25/04/2013	Vote in committee		
30/04/2013	Committee report tabled for plenary	A7-0161/2013	Summary
10/06/2013	Debate in Parliament		
11/06/2013	Results of vote in Parliament		
11/06/2013	Decision by Parliament	T7-0240/2013	Summary
11/06/2013	End of procedure in Parliament		

Technical information	

Procedure reference	2012/2101(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 54
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/09608

Documentation gateway

Non-legislative basic document		COM(2012)0071	23/02/2012	EC	
Committee draft report		PE504.231	30/01/2013	EP	
Amendments tabled in committee		PE506.178	04/03/2013	EP	
Amendments tabled in committee		PE508.232	09/04/2013	EP	
Committee opinion	IMCO	PE504.091	12/04/2013	EP	
Committee report tabled for plenary, single reading		A7-0161/2013	30/04/2013	EP	Summary
Text adopted by Parliament, single reading		T7-0240/2013	11/06/2013	EP	Summary
Commission response to text adopted in plenary		SP(2013)626	15/11/2013	EC	

Improving access to justice: legal aid in cross-border civil and commercial disputes

PURPOSE: to present the evaluation, by the Commission, on the application of Directive 2003/8/EC to improve access to justice in cross border disputes.

BACKGROUND: [Directive 2003/8/EC](#) aims to improve access to justice in cross border disputes by establishing minimum common rules relating to legal aid for such disputes. It seeks to promote the application of legal aid in cross-border civil and commercial disputes for persons who lack sufficient resources and where aid is necessary to secure effective access to justice.

The Directive entered into application on 30 November 2004. After 5 years of the application of the Directive, the Commission decided to launch its evaluation. The Commission launched a study in 2010 in order to be provided with input to assess in detail the transposition and the application of the Directive. In addition, the application of the Directive was discussed with the European Judicial Network in civil and commercial matters in its meetings in 2006 and 2010. Furthermore, the Commission has accommodated letters, complaints and petitions concerning the Directive in its assessment.

This report presents the Commission assessment of the application of the Directive for the period of 30 April 2004 - 31 December 2010.

CONTENT: the report concludes that all the Member States which are 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 the application modalities of the Directive have been perfectly implemented. These difficulties are explained principally by the fact that the dispositions of the Directive are sometimes different from national provisions concerning legal aid and the lack of the ECJ case law did not yet add to the uniformity of application.

The report underlined, however, that there has been only one case before the European Court of Justice concerning cross-border legal aid which may prove that the practical application of the Directive is satisfactory.

Possible improvements: the Commission considers that the implementation of the Directive can be improved firstly on the basis of current provisions, notably as regards the following:

Economic criteria to benefit from legal aid: it appears that there is a need to have further clarification on the issue of economic criteria to grant legal aid. This is important as 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 he is deprived of it by the competent court.

From this perspective two solutions could be considered: (i) 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; (ii) harmonisation of the economic level or mutual recognition of thresholds.

Costs not covered currently: an interesting situation which is not covered by the Directive arises when travelling costs are to be incurred for the hearing before the judge who is to decide whether or not legal aid should be granted. Should the applicant have not sufficient financial resources to cover these expenses, he may be deprived of the possibility to obtain legal aid by the competent court.

Facilitation of relationship between legal professionals and beneficiaries: a second point to tackle could be the facilitation of relationships between professionals and beneficiaries in another Member State through measures such as: the designation of a professional who speaks the language of the beneficiary, 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 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 foresees two ways of submitting the application for legal aid: either to the competent authority of the Member State in which the applicant is domiciled or to the competent authority of the Member State in which the court is sitting. In addition, the Directive foresees the possibility to refuse to transmit the application if the transmitting authority decides that the application is unfounded or outside the scope of the Directive. Such a situation may potentially create confusion as it is possible that the receiving authority may reject the application although the transmitting authority would consider it as founded. It is also possible that the applicant, whose application was rejected by the transmitted authority, will resend the application to the receiving authority directly which would create unnecessary burden as the same application would have to be considered twice, most likely with the same negative result.

Increase awareness about the Directive: the Commission observes the insufficient knowledge about the dispositions of the Directive among citizens, legal professionals and national legal boards, as evidenced by the survey: only 15% of citizens are aware of the Directive and 30 % of barristers know about the Directive's advantages.

The main point of improvement for the Member States is an 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.

Furthermore, the Commission will step up its efforts to increase awareness about the provisions of this Directive. The Commission also will analyse the findings of the conformity checks and follow up them as appropriate.

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

Finally, as regards the legal aid policy with third countries, the Commission will consider the accession of the European Union to the 1980 Hague Convention on Access to Justice, particularly as the European Union 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.

Improving access to justice: legal aid in cross-border civil and commercial disputes

The Committee on Legal Affairs adopted the own-initiative report by Tadeusz ZWIEFKA (EPP, PL) on improving access to justice: legal aid in cross-border civil and commercial disputes.

Application of Directive 2003/8/EC: Members congratulate the Commission on the submission of its report on the application of Directive 2003/8/EC on improving access to justice in cross-border civil and commercial disputes. They note with satisfaction that all Member States have transposed the directive, even though the interpretation of the scope of the directive on certain points differs among the Member States. They regret that the Commission does not specifically address the European procedures to which the Legal Aid Directive is also applicable, such as the European Small Claims Procedure.

Public awareness: Members regret the fact that relatively few citizens and practitioners seem to be aware of the rights conferred by the directive. They call on the Commission and the Member States to : (i) take measures to increase awareness of the right to cross-border legal aid in civil and commercial matters; (ii) launch an effective information campaign in order to reach a large number of potential beneficiaries as well as legal practitioners.

Ensuring competent legal support: the report considers that databases of legal professionals with the sufficient linguistic and comparative law skills to act in cross-border legal aid cases should be established, thus ensuring that legal professionals are appointed who are able to act in such cases. They suggest that special training schemes to provide legal practitioners with cross-border competency would be desirable, with a focus on language courses and comparative law. The commission is urge to support specific training for lawyers providing legal aid.

Facilitating the operation of the directive for citizens: in this respect, the report makes the following recommendations:

- it would be advisable to designate a single authority with responsibility for cross-border legal aid and with a central office in each Member State for receiving and transmitting legal aid applications;
- applicants should be given the choice of applying for legal aid in their Member State of residence or in the Member State where the Court is sitting or the decision is being enforced. Under such arrangements, the authorities of each Member State would then be able to apply their own criteria when deciding on the application;
- any decision of the authorities of the Member State of residence granting legal aid, as evidenced by a common certificate, should also have effect in the Member State where the Court is sitting or the decision is being enforced;
- the costs covered by legal aid should also include the costs of, and associated with, any obligatory appearance before a judge or other authority assessing the application. Moreover, particular attention should be paid to the most vulnerable groups.

The Commission is invited to submit a proposal for an amendment of the directive along the above lines, with a view to establishing common higher standards for cross-border legal

aid.

International aspects of legal aid: the report calls on those Member States that have not yet signed and/or ratified the Hague Convention of 25 October 1980 on International Access to Justice to proceed to do so, as it improves citizens access to justice outside the European Union.

Improving access to justice: legal aid in cross-border civil and commercial disputes

The European Parliament adopted a resolution on improving access to justice: legal aid in cross-border civil and commercial disputes.

Parliament congratulates the Commission on the submission of its report on the application of Directive 2003/8/EC on improving access to justice in cross-border civil and commercial disputes. It notes that all Member States have transposed the directive, even though the interpretation of the scope of the directive on certain points differs among the Member States. It regrets that the Commission does not specifically address the European procedures to which the Legal Aid Directive is also applicable, such as the European Small Claims Procedure.

Public awareness: Members regret the fact that relatively few citizens and practitioners seem to be aware of the rights conferred by the directive. They call on the Commission and the Member States to:

take measures to increase awareness of the right to cross-border legal aid in civil and commercial matters;

launch an effective information campaign in order to reach a large number of potential beneficiaries as well as legal practitioners.

Parliament recommends that the Commission and Member States use a wide range of communication channels, including internet-based campaigns and interactive platforms such as the e-Justice Portal, as cost-effective ways to reach citizens.

Ensuring competent legal support: Parliament considers that databases of legal professionals with the sufficient linguistic and comparative law skills to act in cross-border legal aid cases should be established, thus ensuring that legal professionals are appointed who are able to act in such cases. It suggests that special training schemes to provide legal practitioners with cross-border competency would be desirable, with a focus on language courses and comparative law.

The Commission is called upon to provide funding where possible for Member States, to ensure consistent, high-level legal training on cross-border legal aid in civil and commercial matters.

Facilitating the operation of the directive for citizens: stressing the importance of ensuring that application procedures are simple, Parliament makes the following recommendations:

- it would be advisable to designate a single authority with responsibility for cross-border legal aid and with a central office in each Member State for receiving and transmitting legal aid applications;
- applicants should be given the choice of applying for legal aid in their Member State of residence or in the Member State where the Court is sitting or the decision is being enforced. Under such arrangements, the authorities of each Member State would then be able to apply their own criteria when deciding on the application;
- any decision of the authorities of the Member State of residence granting legal aid, as evidenced by a common certificate, should also have effect in the Member State where the Court is sitting or the decision is being enforced;
- the costs covered by legal aid should also include the costs of, and associated with, any obligatory appearance before a judge or other authority assessing the application. Moreover, particular attention should be paid to the most vulnerable groups.

The Commission is invited to submit a proposal for an amendment of the directive along the above lines, with a view to establishing common higher standards for cross-border legal aid.

Encouraging alternative forms of legal support: the resolution suggests:

- that national courts be connected by an early-warning system so that, when an application for assistance is made in one Member State, the other Member States are made aware of it;
- greater cooperation between the Commission, Member States and professional legal bodies and organisations such as European and national bars and law societies.

International aspects of legal aid: Parliament calls on those Member States that have not yet signed and/or ratified the Hague Convention of 25 October 1980 on International Access to Justice to proceed to do so, as it improves citizens access to justice outside the European Union.