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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
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Subject: Report from the Commission to the European Parliament, the Council and the  
European Economic and Social Committee on the application of 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

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Delegations will find attached Commission document COM(2012) 71 final.

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**on the application of 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**

{SWD(2012) 20 final}

# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## on the application of 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

### 1. INTRODUCTION

In a genuine European area of justice, individuals and businesses should not be discouraged from exercising their rights by the complexity of legal and administrative systems. All citizens should be able to approach the courts and authorities of any Member State as easily as they would those of their home country. Access to justice should not be precluded by the costs inherent in the cross-border dimension of a dispute in civil and commercial matters.

The European Council called on the Council and the Commission already in 1999<sup>1</sup> to establish minimum standards to ensure an adequate level of legal aid in cross-border civil cases throughout the Union. On the proposal of the Commission issued on 18 January 2002<sup>2</sup> the Council adopted Directive 2003/8/EC<sup>3</sup> ('the Directive') to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes on 27 January 2003.<sup>4</sup> The Directive entered into application on 30 November 2004<sup>5</sup>.

The Stockholm Programme<sup>6</sup> called for an evaluation of the effectiveness of the legal instruments adopted at Union level. After 5 years of the application of the Directive, the Commission decided to launch its evaluation<sup>7</sup>.

The Commission launched a study<sup>8</sup> in 2010 in order to be provided with input to assess in detail the transposition and the application of the Directive. The study provides for a legal

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<sup>1</sup> Tampere European Council of 15 and 16 October 1999 - Presidency Conclusions.

<sup>2</sup> Proposal for a Council Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings (2002/C 103 E/29), COM(2002) 13 final — 2002/0020(CNS).

<sup>3</sup> Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, OJ L 26, 31.1.2003, p. 41–47. Corrigendum on the reference number of the Directive for "2003/8/EC", OJ L 32, 7.2.2003, p. 15.

<sup>4</sup> It is to be underlined that the Directive applies only to legal aid in cross-border civil and commercial disputes. In particular, it does not cover domestic disputes and neither criminal nor administrative cases.

<sup>5</sup> With the exception of Article 3(2)(a), for which the deadline for transposition into national law was 30 May 2006.

<sup>6</sup> The Stockholm Programme — An Open And Secure Europe Serving And Protecting Citizens, 2010/C 115/01, 4.05.2010.

<sup>7</sup> Commission Decision on Annual Work Programme 2010 under Civil Justice Programme, C(2009)10659.

<sup>8</sup> DBB Law, Study on the application of Council Directive 2003/8/EC of 27 January 2003 on legal aid and on the legal compliance of the national transposition, final report June 2011.

analysis and an empirical part based on a survey conducted among the different groups of stakeholders from all Member States.<sup>9</sup>

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<sup>10</sup>. Although the Directive is applicable in relation to various European procedures, such as the European Small Claims procedure<sup>11</sup>, and supports their application, this report does not include specific information on the use of the Directive in the context of the European procedures due to a very short period of time between entry into application and the data collection carried out for this report by the above-mentioned study.

## 2. MAIN ELEMENTS OF THE DIRECTIVE

Article 1 of the Directive states that the purpose of the Directive is to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid in such disputes. The Directive 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. As pointed out in recital 5 to the Directive, access to justice is a generally recognised right which is also enshrined in Article 47 of the Charter of Fundamental Rights of the European Union<sup>12</sup>.

The Directive provides that any citizen who is party to a civil or commercial dispute in a Member State other than that in which he has his habitual residence is entitled to legal aid on the same terms as a citizen resident in that State.

‘Legal aid’ within the meaning of Article 3 of the Directive covers the following services:

- pre-litigation advice;
- legal assistance;
- representation in court;
- exemption from, or assistance with, the cost of proceedings, including costs related to the cross-border nature of the dispute; and

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<sup>9</sup> There were in total 545 respondents consisting of legal aid boards (53), statistical bodies (13), bailiffs (43), judges (60), barristers (237), citizens seeking justice (102) and others (37).

<sup>10</sup> This period was also targeted by the survey

<sup>11</sup> Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007

<sup>12</sup> Charter of Fundamental Rights of the European Union, 2000/C 364/01, 18.12.2000

- the fees to persons mandated by the court to perform acts during the proceedings.

Furthermore, the Directive regulates the following issues:

- The obligation to grant legal aid to persons who are partially or totally unable to meet the costs of proceedings (Article 5);
- The possibility for the Member States' competent authorities to reject legal aid applications for actions which appear to be manifestly unfounded (Article 6);
- The categories of expenses that should be covered by legal aid, such as interpretation, translation of the documents required by the court or by the competent authority or travel costs (Article 7);
- The categories of expenses that should be covered by the Member State of domicile or habitual residence (Article 8);
- The principle of continuity of legal aid (Article 9);
- The principle of the application of legal aid to extrajudicial procedures (Article 10);
- The principle of the application of legal aid for the enforcement of authentic instruments (Article 11);
- The designation and empowerment of the Member States national authorities to grant or refuse legal aid (Article 12 in conjunction with Article 14) and
- The application procedure (Article 13 in conjunction with Article 15).

Article 21(1) of the Directive requires Member States to '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 3(2)(a) where the transposition of this Directive into national law shall take place no later than 30 May 2006'.

### **3. TRANSPOSITION OF THE DIRECTIVE AND ITS APPLICATION**

#### **3.1. In general**

Before the Directive came into force, legal aid in cross-border civil law matters was guaranteed only in certain Member States by application of international agreements or their national internal law. There were two categories of agreements: bilateral and multilateral<sup>13</sup>, yet both had only a restricted scope. The adoption and transposition of the Directive brought, in general, clarity and uniformity among the Member States.

By the end of the reporting period, a cross-border legal aid system for civil cases that effectively benefits persons who are domiciled in other Member States has been introduced in

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<sup>13</sup> I.e. The Hague Convention of 25 October 1980 on International Access to Justice and European Agreement on the Transmission of Applications for Legal Aid, Strasbourg, 27.I.1977.

all the Member States<sup>14</sup> on the basis of the Directive. National legislation transposing the Directive is presented in the Commission Staff Working Paper<sup>15</sup> accompanying this report.

Although the interpretation of individual provisions of the Directive may differ between the Member States, there has been hardly any litigation or complaints in relation to the transposition. The only judgment delivered by the European Court of Justice related to the Directive dates from 22 December 2010<sup>16</sup>.

### **3.2. The conditions for the grant of legal aid**

#### *3.2.1. The unanimously acknowledged principle of legal aid for persons who lack sufficient resources*

The provisions of Article 5.1, which state that legal aid must be granted to persons whose resources do not enable them to bear the costs of proceedings referred to in the Directive, have been transposed in all Member States. The same applies to Article 5.2, which provides that the resources of such persons must be assessed in the light of objective criteria.

Furthermore, the Directive acknowledges the possibility that there may be significant differences in the standards of living in individual Member States, and has provided that, where thresholds are defined, those thresholds may be set aside if the applicant proves that there is a difference in the cost of living in the two Member States concerned. This provision has been transposed by all except one Member State<sup>17</sup>.

#### *3.2.2. The transposition of the "importance" of the dispute for the applicant*

The Directive allows Member States to opt for a system under which the applications may be refused for actions which appear to be manifestly unfounded<sup>18</sup>. This opportunity exists in many national legal aid systems, and has been selected by the majority of the Member States, who thus arm themselves against the possibility of frivolous applications.

However, Article 6.3 provides that when the decision on merits of an application is to be taken, Member States are obliged to take into account "the importance of the individual case to the applicant". It seems that the concept of "the importance of the individual case to the applicant" is a concept that lends itself to different interpretations in the Member States. It is in fact difficult to determine whether this "importance" has financial connotations or should be looked at from the moral perspective or perhaps relates to some other criteria, for example, an application that relates to human rights and fundamental freedoms.

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<sup>14</sup> Denmark is not covered by the scope of the Directive.

<sup>15</sup> Commission Staff Working Paper [ADD NUMBER]

<sup>16</sup> Judgment of the European Court of Justice of 22 December 2010, in Case C-279/09, DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland.

<sup>17</sup> Slovakia has not transposed fully this provision.

<sup>18</sup> Article 6.1

## **4. PROCEEDINGS RELATING TO THE DIRECTIVE**

### **4.1. Litigation procedures**

The implementation of the principle of civil legal aid poses very few difficulties for the Member States in case of litigation procedures. However, the situation is somewhat different in relation to extrajudicial procedures and the enforcement of judgments and authentic instruments.

### **4.2. Extrajudicial procedures**

As regards extrajudicial procedures, Article 10 of the Directive states that judicial aid must cover the costs of such procedures if they are required by the law or if the parties are ordered by the court to have recourse to them. The concept of extrajudicial procedures differs among Member States and the interpretation of Article 10 may occasionally give rise to difficulties and ununiform application. At times, extrajudicial procedures ordered by the court<sup>19</sup> or required by the law<sup>20</sup> are not eligible for legal aid in some Member States.

### **4.3. The enforcement of court decisions and authentic instruments**

Articles 9 and 11 of the Directive concern the enforcement of both judgments and authentic instruments.

Article 9.2 states that the recipient of legal aid in the Member State where the court is sitting must receive the legal aid provided for by the law of the Member State where recognition or enforcement is sought. Although the interpretation concerning the determination whether the grant of such aid is automatic or whether the recipient must make an application in the Member State of enforcement is not uniform among the Member States, it should be underlined that the majority of the Member States has transposed well this provision<sup>21</sup>.

Article 11 stipulates that legal aid shall be granted for the enforcement of authentic instruments in another Member State. Although the majority of the Member States has transposed this provision<sup>22</sup>, two issues can be identified on which there are some questions in practice: Firstly, the concept of an authentic instrument does not exist in all Member States, and secondly, Article 11 does not specify which Member State is required to bear these costs, although it is logical that Articles 7 and 8 on the share of costs between the Member State in which the court is sitting and the Member States of habitual residence of legal aid applicant applies analogically.

## **5. THE COSTS COVERED BY LEGAL AID UNDER THE DIRECTIVE**

The Directive lists a number of costs that the Member States must cover in connection with cross-border legal aid in civil and commercial matters.

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<sup>19</sup> With exception of Ireland, Estonia, Cyprus, Hungary, Finland and the UK.

<sup>20</sup> With exception of Ireland, Estonia, Cyprus, Hungary, Austria, Finland and the UK.

<sup>21</sup> With the exception of Ireland, Estonia, Lithuania, Romania, Slovenia and Finland.

<sup>22</sup> Ireland, Greece, Estonia, Cyprus, Hungary and Slovakia have deficiencies in transposing this provision.

### **5.1. The costs related to assistance, representation, interpretation and translation**

The principle of granting legal aid in connection with judicial proceedings is widespread amongst the national legal aid schemes.

As a result, the provisions of the Directive stating that legal aid must cover the costs relating to the assistance of a lawyer or representation by a lawyer, and relating to interpretation and translation, have been transposed in all Member States<sup>23</sup>.

### **5.2. Travel costs**

Article 7(c) of the Directive states that legal aid must cover travel costs where the physical presence of the recipient is required in court by the law or by the court of the Member State where the court is sitting. This provision has been transposed by the majority of the Member States<sup>24</sup>. The Commission stresses that the requirement to cover these costs is a fundamental feature of the Directive, since travel costs are, of necessity, costs incurred in connection with a cross-border dispute. In addition, the Directive limits the financial impact on Member States, because it restricts this obligation to proceedings for which the physical presence of the persons concerned is required.

### **5.3. The assistance of a local lawyer before the application of legal aid has been received in the Member State where the court is sitting**

Article 8 states that the Member State of the habitual residence must bear the costs associated with the assistance of a local lawyer for the applicant until the application for legal aid has been received in the Member State where the court is sitting.

A coherent implementation of this provision poses some challenges. On the one hand, it is for the court of habitual residence to appoint a lawyer. On the other hand, only certain costs, these related to the local lawyer and the translation of documents are covered by Article 8, but the travel expenses for the hearing before the competent court to establish whether or not legal aid should be granted are not covered under the Directive. In addition it is not clear whether the assessment of the claim before appointing the local lawyer could be done, and, from this perspective, whether the applicant must fulfil the conditions for legal aid in the Member State of domicile<sup>25</sup>.

## **6. OBSERVATIONS ON THE PRACTICAL APPLICATION OF THE DIRECTIVE**

### **6.1. General**

During the period 2004-2009 the number of persons benefitting from cross border legal aid has increased only to a limited extent. The Eurobarometer No. 351<sup>26</sup> shows that the awareness

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<sup>23</sup> Article 3.2 (b) and Article 7 (a) and (b).

<sup>24</sup> Belgium, Bulgaria, Ireland, Slovenia and the United Kingdom have some deficiencies in the transposition.

<sup>25</sup> Despite of possible uncertainties in interpretation of Article 8(a), it may be concluded that the Czech Republic, Romania and Slovakia have deficiencies in the implementation of this provision.

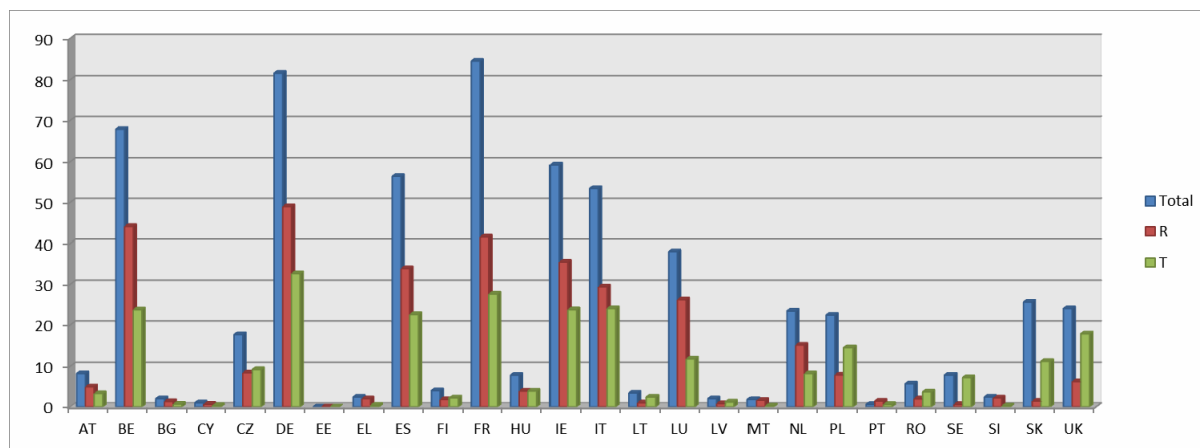
<sup>26</sup> Special Eurobarometer 351: Civil Justice, October 2010  
[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_351\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_351_en.pdf)



of cross-border legal aid in civil and commercial matters amounts to 12% of respondents in the EU<sup>27</sup>.

The situation may be explained by the lack of knowledge of the instrument also among legal professionals. The low number of requests may also be explained by the scope of application of the Directive and its limitation to civil and commercial matters<sup>28</sup>.

According to the data available, the total number of cross-border legal aid applications processed by any Member State only twice reached 100<sup>29</sup>.



Key: Average number of applications per Member States, between 2005 and 2009, where R refers to the applications received in the Member State and T refers to the applications transmitted to another Member State<sup>30</sup>.

- Total
- Received
- Transmitted

## 6.2. Scope of application

Although the principle of cross-border legal aid itself has been well established in all Member States, some practical complications have come to light. Differences in interpretation were noted as regards the definition of the scope of the Directive, i.e. civil and commercial cases. In addition it was observed that the definition of a cross border dispute<sup>31</sup> does not cover a number of situations that would seem have cross-border aspects<sup>32</sup>.

<sup>27</sup> The awareness of cross-border legal aid is highest among the Slovenian and Dutch respondents, with 28% having heard of it. Conversely, the awareness is lowest among respondents from Portugal (7%), Ireland (8%), Germany (8%) and Poland (8%).

<sup>28</sup> The Report does not include observations on the practical application of the Directive in relations to the claims brought under the European small claims procedure as the Regulation entered in application only in 2009.

<sup>29</sup> In France in 2006 and 2008.

<sup>30</sup> The number of the transmitting request does not have to correspond to the number of the receiving requests due to the possibility to submit the request directly to the competent authority of the Member State in which the court is sitting.

<sup>31</sup> In Article 2 of the Directive.

<sup>32</sup> For example in relation to the costs of having a bailiff summon a person residing in another Member State before a national jurisdiction.

### **6.3. The designation of professionals**

The modalities for the designation of the lawyers handling cases of legal aid differ from one Member State to another. Claimants have, at occasions, encountered difficulties in getting an assigned legal counsel capable of understanding not only the language but also the legal system of the beneficiary of legal aid.

### **6.4. Conditions for the grant of legal aid**

The differences in the cost of living between Member States were taken into consideration by the Directive<sup>33</sup> but there are no objective criteria specifying the way in which these differences should be taken into account. In addition, the documents supplied by an applicant who is domiciled in another Member State in support of his economic situation may be difficult to assess by the State that is to provide legal aid.

### **6.5. Costs covered by the Directive**

As regards the question of the coverage by legal aid of the costs of representation or legal advice provided by a lawyer, it can be reported that arrangements for the choice and designation of such an advisor differ significantly between Member States. The professionals in many Member States indicate lengthy payment terms and the very low fee level. However, this situation is not specific to the Directive and relates equally to the national legal aid system for domestic cases.

## **7. INFORMATION OBLIGATIONS FOR MEMBER STATES**

Article 18 of the Directive provides that the competent national 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 in civil and commercial matters<sup>34</sup>.

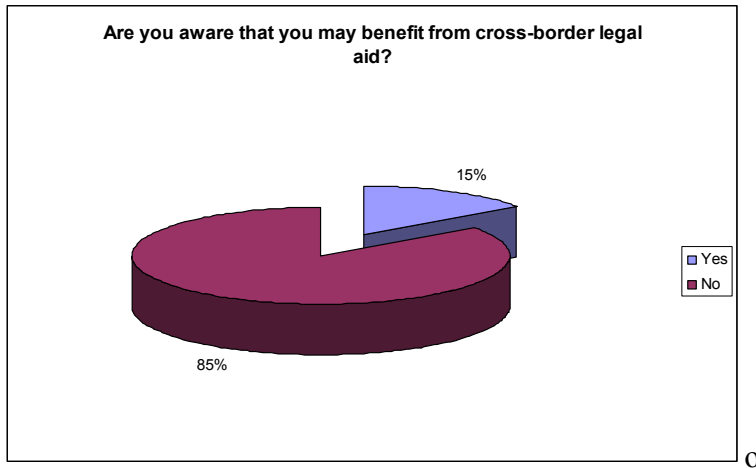
The Commission observes the insufficient knowledge about the dispositions of the Directive among citizens, legal professionals and national legal boards, as evidenced by the survey:

Citizens seeking justice: Only 15% of citizens are aware of the Directive.

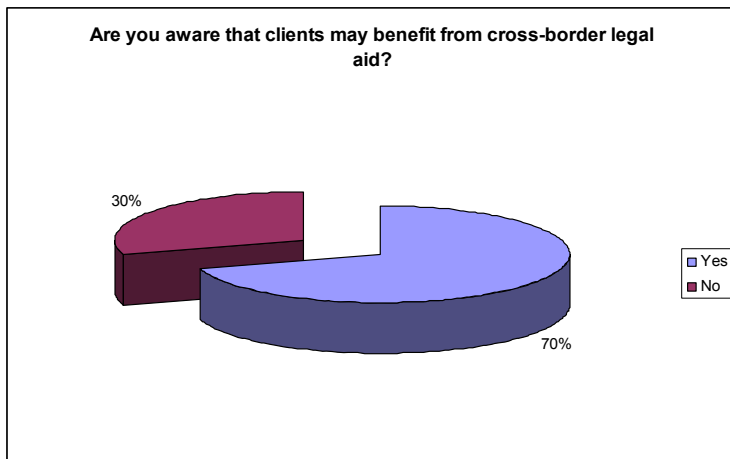
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<sup>33</sup> Article 5

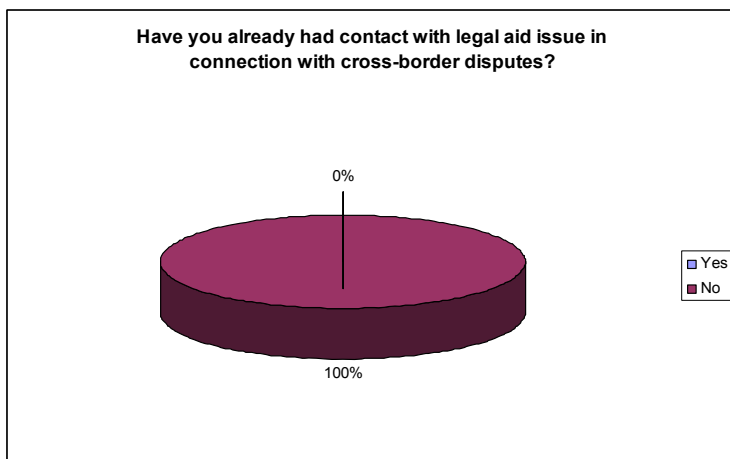
<sup>34</sup> See Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, 2001/470/EC, Official Journal L 174 , 27/06/2001 and European Parliament and the Council Decision of 18 June 2009 amending Council Decision 2001/470/EC establishing a European Judicial network in civil and commercial matters, 568/2009/EC, Official Journal L 168/35, 30/6/2009, [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_ec\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_ec_en.htm)



Barristers are better informed of the right to cross-border legal aid in civil and commercial matters and, in fact favour its extension to relationships with third countries: 30 % of barristers know about the Directive's advantages.



Bailiffs are distinguished by the fact that no-one questioned had had recourse to the Directive.



The Commission concludes that the Member States must undertake additional efforts to comply with Article 18 i.e. provide the general public and professionals with information on the various systems of legal aid in civil and commercial matters as required by the Directive.

## **8. THE CONTRIBUTION OF THE COMMISSION TO THE IMPLEMENTATION OF THE DIRECTIVE**

While the Member States remain the primary responsible for the correct transposition and application of the Directive, the Commission has contributed to its implementation in the reporting period as follows:

The Commission established the Committee under Article 17 of the Directive and adopted in 2004 and 2005 two decisions required under Article 16, a Decision establishing a form for legal aid applications and respectively a Decision establishing a form for the transmission of legal aid applications.<sup>35</sup>

The forms provided for in the Decisions are available electronically in the website "European Judicial Atlas in Civil Matters"<sup>36</sup> since 2006, and will be available in the European e-Justice Portal<sup>37</sup> in dynamic form soon. The information on competent authorities under Article 14 has been published in the Atlas. In addition, information on legal aid in civil matters in the EU is available on the website of the European Judicial network in civil and commercial matters since 2007.

During the reporting period, the Commission has held two meetings of the European Judicial Network in civil and commercial matters on the subject of the implementation of the Directive. The Commission has also twice conducted Eurobarometers to find out the level of awareness of the legal aid rules.

Finally, the Commission has carried out a full conformity check of the national transposing measures of all Member States, finalised in 2010.

## **9. RELATIONSHIPS BETWEEN THE EUROPEAN UNION MEMBER STATES AND THIRD COUNTRIES IN THE AREA OF CIVIL LEGAL AID**

Relationships between Member States and third countries as regards the legal aid are based on international conventions and internal law, and differ from one Member States to another. The Convention for the Protection of Human Rights and Fundamental Freedoms<sup>38</sup> does not lay down specific rules in relation to civil legal aid, and the 1977 European Agreement on the transmission of applications for legal aid<sup>39</sup> concerns only the procedures related to the cross-border legal aid. The 1980 Hague Convention on Access to justice<sup>40</sup> only concerns certain Member States<sup>41</sup> and third countries<sup>42</sup>. The Directive takes the precedence over the European

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<sup>35</sup> Commission Decision 2004/844/EC 9 November 2004 establishing a form for legal aid applications under Council Directive 2003/8/EC and Commission Decision 2005/630/EC of 26 August 2005 establishing a form for the transmission of legal aid applications under Council Directive 2003/8/EC.

<sup>36</sup> [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/la\\_information\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/la_information_en.htm)

<sup>37</sup> <https://e-justice.europa.eu/home.do?action>

<sup>38</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.11.1950

<sup>39</sup> Signed in Strasbourg on 27 January 1977 and amended by an additional protocol signed in Moscow in 2011.

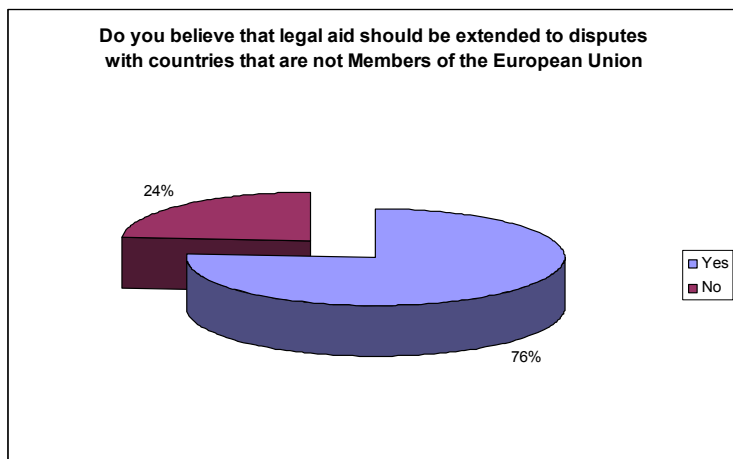
<sup>40</sup> Convention of 25 October 1980 on International Access to Justice,  
[http://www.hcch.net/index\\_en.php?act=conventions.text&cid=91](http://www.hcch.net/index_en.php?act=conventions.text&cid=91)

<sup>41</sup> Bulgaria, Spain, The Czech Republic, Estonia, France, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Finland, Sweden.

<sup>42</sup> Albania, Belarus, Bosnia and Herzegovina, Croatia, Montenegro, Morocco, Serbia, Switzerland, The Former Yugoslav Republic of Macedonia.

Agreement and the Hague Convention on Access to Justice in cases between the Member States pursuant to Article 20.

The accession of the European Union to the Hague Convention on Access to Justice<sup>43</sup> would enable the uniform application of the Convention through the Union and could attract the accession of other states. It would also follow the policy commitment of promoting the Hague instruments taken by the EU when it became member of the Hague Conference on Private International Law in 2007. This may be important, as, according to the survey, over three quarters of the respondents favour the extension of civil legal aid beyond EU borders.



## 10. POINTS OF REFLECTION AS REGARDS THE POSSIBLE IMPROVEMENTS OF THE DIRECTIVE

On the basis of the assessment of the application of the Directive by the Member States and the difficulties that have been encountered so far, some points of reflection may be put forward in relation to the improvements to be considered in the future.

### 10.1.1. *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:

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.

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<sup>43</sup> In practice, this would be done through a Council Decision authorizing the Member States to accede in the interest in the EU, since the Convention does not contain a REIO-clause.

### *10.1.2. 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. This situation may arise particularly in the situation where the applicant resides in the Member State with much higher costs of living than the Member State of the competent court. In addition, it has to be underlined that although such a situation goes indeed beyond the scope of the Directive, there are cases in which the applicant gets a confirmation from the court of his residence that he would be eligible for legal aid in its jurisdiction but has to cover his travel expenses to the hearing before the competent court. If he had no financial resources to cover the trip he could be effectively deprived of legal aid<sup>44</sup>.

### *10.1.3. 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.

### *10.1.4. 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.

### *10.1.5. Scrutiny of the same application by two authorities with two possibly different results*

The Directive, in Article 13, 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<sup>45</sup>. 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.

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<sup>44</sup> See Petition 1667/2009.

<sup>45</sup> Or where the decision is to be enforced

## 11. CONCLUSIONS

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.

It has to be 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.

The Commission considers that the implementation of the Directive can be improved firstly on the basis of current provisions. 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<sup>46</sup>. 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.

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<sup>46</sup> Accession by the European Community to Conventions of The Hague Conference on Private International Law, 15226/08, JUSTCIV 235, 6.11.2008