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REPORT

on the Commission proposal for a Council directive on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings (COM(2002) 13 – C5-0049/2002 – 2002/0020(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Giacomo Santini

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 1 February 2002 the Council consulted Parliament, pursuant to Article 67(1) of the EC Treaty on the Commission proposal for a Council directive on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings (COM(2002) 13 – 2002/0020(CNS)).

At the sitting of 7 February 2002 the President of Parliament announced that he had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0049/2002).

At its meeting of 19 February 2002 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs decided to ask the Committee on Legal Affairs and the Internal Market for its opinion on the legal basis, pursuant to Rule 63(2) of the Rules of Procedure.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Giacomo Santini rapporteur at its meeting of 20 February 2002.

It considered the Commission proposal and the draft report at its meetings of 22 May 2002, 9 July 2002 and 12 September 2002.

At the last meeting it adopted the draft legislative resolution by 33 votes to 0, with 3 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans, vice-chairman; Giacomo Santini, vice-chairman and rapporteur; Niall Andrews, Roberta Angelilli, Alima Boumediene-Thiery, Marco Cappato (for Mario Borghezio), Michael Cashman, Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Daniel J. Hannan (for Mary Elizabeth Banotti pursuant to Rule 153(2) of the Rules of Procedure), Adeline Hazan, Anna Karamanou (for Carmen Cerdeira Morterero), Timothy Kirkhope, Eva Klant, Ole Krarup, Alain Krivine (for Ilka Schröder), Baroness Sarah Ludford, Domenico Mennitti (for The Lord Bethell), Bill Newton Dunn, Ria G.H.C. Oomen-Ruijten (for Thierry Cornillet pursuant to Rule 153(2) of the Rules of Procedure), Marcelino Oreja Arburúa (for Hartmut Nassauer pursuant to Rule 153(2) of the Rules of Procedure), Elena Ornella Paciotti, José Ribeiro e Castro, Martine Roure, Miet Smet (for Bernd Posselt), Patsy Sörensen, The Earl of Stockton (for Hubert Pirker), Joke Swiebel, Fodé Sylla, Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher and Olga Zrihen Zaari (for Walter Veltroni).

The opinion of the Committee on Legal Affairs and the Internal Market, and the opinion of that committee on the legal basis, are attached.

The report was tabled on 17 September 2002.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Commission proposal for a Council directive on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings (COM(2002) 13 – C5-0049/2002 – 2002/0020(CNS))

The European Parliament,

- having regard to the Commission proposal (COM(2002) 13¹),
 - having regard to Article 61(c) of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0049/2002),
 - having regard to the revised version of the Council directive (10856/2002 – C5-0423/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Legal Affairs and the Internal Market,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0312/2002),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 103E, 30.4.2002, p. 68.

Amendment 1
Recital 1

Having regard to the Treaty establishing the European Community, and in particular *Article 61(c)* thereof,

Having regard to the Treaty establishing the European Community, and in particular *Articles 61(c) and 65(c)* thereof,

Justification

The proposed legal basis ought to be extended.

Amendment 2
Recital (2)

(2) By Article 65(c) of the Treaty establishing the European Community, these measures are to include measures eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

deleted

Justification

Self-explanatory.

Amendment 3
Recital 3a (new)

The European Council meeting in Tampere also called for minimum standards to be drawn up on the protection of crime victims and their right to compensation for damages, including

*legal costs.*¹

¹ . *Presidency conclusion no 32.*

Justification

Amendment 4

Recital 6

(6) The Directive applies to all disputes in civil matters, which include ***commercial law***, employment law and consumer protection law.

(6) The Directive applies 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.***

Justification

This wording is more precise.

Amendment 5

Recital 13

If legal aid is granted, it must cover the entire proceeding, including expenses incurred in having a judgment declared enforceable or enforced; the recipient should continue receiving this aid ***if an appeal is brought against him.***

If legal aid is granted, it must cover the entire proceeding, including expenses incurred in having a judgment 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.***

Justification

In order to be effective, legal aid must cover all proceedings right up to the final decision of the courts. No distinction should be made between appeals brought by the beneficiary and those brought by other parties, since legal aid is based on the economic circumstances of the beneficiary, regardless of the success or failure of the action.

Amendment 6 Article 1, paragraph 1

The purpose of this Directive is 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.

The purpose of this Directive is to improve access to justice by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings.

Justification

It is important that the directive be broad in its scope, so that everyone is guaranteed access to justice. Those on minimum wages may not be deprived of this right because they have insufficient financial resources. This objective is consistent with the third paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

Amendment 7 Article 1, second paragraph

It shall apply to civil disputes of all types, irrespective of the type of court.

It shall apply to civil disputes of all types, irrespective of the type of court ***or tribunal.***

Justification

Some civil disputes in the United Kingdom are resolved before tribunals. A particular example relates to employment matters; these come before Employment Tribunals in the UK and appeals are heard by the Employment Appeals Tribunals. It is therefore necessary to clarify the directive in this way to ensure that tribunals are included where they determine civil disputes covered by the proposed legislation.

Amendment 8
Article 1, paragraph 3 (new)

Unless otherwise specified, 'Member States' shall in this Directive mean all Member States with the exception of Denmark.

Justification

Self-explanatory.

Amendment 9
Article 2, paragraph 1

"Legal aid" means ***all resources made available to persons to ensure their effective access to justice where their financial resources are inadequate to cover the costs of litigation, and includes at least the services of a lawyer and the costs of proceedings;***

"Legal aid" means ***the services of a lawyer and/or other person entitled by the law to represent parties in the courts, providing pre-litigation advice and representation in court, and exemption from, or assistance with, the cost of proceedings;***

Justification

Clarification.

Amendment 10
Article 2, paragraph 2

"Litigation in civil matters" means all litigation in ***matters of civil law, including commercial law***, employment law and consumer protection law;

"Litigation in civil matters" means all litigation in ***civil and commercial matters, including*** employment law and consumer protection law; ***this Directive shall not extend to revenue, customs or administrative matters;***

Justification

In order to clarify the scope of the Directive, use should be made of the terminology in Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I).

Amendment 11
Article 2, fourth paragraph

‘Costs of proceedings’ means the cost of the proceedings themselves and lawyers fees.

‘Costs of proceedings’ means the cost of the proceedings themselves and lawyers fees ***and the costs of others persons referred to in Article 2, first paragraph.***

Justification

Self-explanatory.

Amendment 12
Article 2, new paragraph after the last paragraph

“Costs of proceedings” means the costs of the proceedings themselves and lawyers’ fees.

“Costs of proceedings” means the costs of the proceedings themselves and lawyers’ fees;

"Eligible persons" means all natural and any such legal persons as set out in Article 15.

Justification

The definition of who is eligible for legal aid should clearly state natural as well as legal persons.

Amendment 13
Article 3, paragraph 1

All persons involved in a civil dispute, as either claimant or defendant, shall be entitled to receive appropriate legal aid if they do not have sufficient resources within the meaning of Article to enforce their rights by court action, without prejudice to Article 14.

Eligible persons and legal persons specified in Article 15 involved in a civil dispute, as either claimant or defendant, shall be entitled to receive appropriate legal aid if they do not have sufficient resources within the meaning of Article to enforce their rights by court action, without prejudice to Article 14.

Justification

The definition of eligible persons is given in Article 2 and conditions relating to financial resources in Article 13.

Amendment 14
Article 3, paragraph 2

Legal aid shall include the services of a lawyer and/or other person entitled by the law to represent parties in the courts, providing pre-litigation advice and representation in court, and exemption from, or assistance with, the cost of proceedings.

deleted

Justification

The definition of legal aid is given in Article 2(1) of the directive.

Amendment 15
Article 3, paragraph 1a (new)

All natural persons who have become victims of crime in a Member State other

than that in which they habitually reside shall be entitled, under the same conditions, to receive appropriate legal aid so as to obtain compensation for damages, including legal costs.

Justification

It is useful to include a reference in the Directive to the Conclusions of the Tampere European Council and to the Green Paper on compensating crime victims (COM(2001) 536). There is a close relationship between the Green Paper and this directive.

Amendment 16 Article 5, paragraph 2

Such costs shall include ***interpretation and translation and travel costs where the physical presence of the persons concerned in court is mandatory.***

Such costs 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.***

Justification

The definition of eligible costs related to the cross-border nature of the dispute needs to be clearer and should include more flexibility with regard to the attendance of the litigant or their witnesses before the forum Court as this will not always be mandatory in every legal system, but can often be critical to the outcome of the case. There should also be flexibility with prior authorisation to allow for meetings which would promote early settlement and thus cost saving.

Amendment 17 Article 5, paragraph 3

The Member State in which the legal aid applicant resides shall grant ***legal aid to cover costs incurred by the recipient in that state and, in particular, the cost of consulting a local lawyer.***

The Member State in which the legal aid applicant resides ***or habitually resides*** shall grant ***compensation in respect of the cost of legal aid.***

Justification

Consistent with Article 2(1) (new).

Amendment 18 Article 7, first paragraph

Legal aid shall continue to be granted to recipients to cover ***expenses incurred in having a judgment declared enforceable or enforced*** in the Member State of the forum, without prejudice to Article 3(3).

Legal aid shall continue to be granted to recipients to cover ***the costs of proceedings provided for in Articles 2 and 3 of this directive until proceedings in all courts have been completed, including the proceedings for any appeals they see fit to bring and any appeals brought against them, together with the procedures necessary to enforce the judgment*** in the Member State of the forum, without prejudice to Article 3(3).

Justification

See justification to the amendment to recital 13.

Amendment 19
Article 7, paragraph 3

Legal aid shall continue to be provided if an appeal is brought against the recipient. **Provision** shall be made for re-examination of the application **where the appeal is brought by the recipient.**

Legal aid shall continue to be provided **both if the recipient brings an appeal and** if an appeal is brought against the recipient. **In the latter case, provision** shall be made for re-examination of the application. **The Member States of the forum may review the conditions which gave rise to the granting of legal aid at the end of the proceedings in each court.**

Justification

This wording is more precise.

Amendment 20
Article 8, paragraph 3

Member States shall make provision for appeals against decisions rejecting legal aid applications.

Member States shall make provision for appeals against decisions rejecting legal aid applications, **at least where provision is made for appeals in the main proceedings.**

Justification

Legal aid must be linked to the main proceedings.

Amendment 21
Article 8a (new)

8 a For cross-border disputes, every Member State shall designate the national

authority (authorities) responsible for submitting applications for legal aid (applying authority) or for receiving applications (receiving authority).

The Member States shall forward to the Commission the name(s) and full address of the authorities referred to in the first paragraph, indicating:

(a) the means of communication at their disposal;

(b) their knowledge of languages. Member States shall specify the official languages of the European Union in which they will accept legal aid applications made by the relevant authorities of other Member States and related documents.

The lists shall be published in the Official Journal of the European Communities.

Justification

To facilitate applications in cross-border disputes, it would be useful to list the relevant authorities by Member State, indicating their address and specifying the language(s) in which applications may be accepted.

Amendment 22 Article 9, paragraph 1

Legal aid applicants who habitually reside in a Member State other than the one in which the dispute is heard may submit their application to the **authorities** of the Member State in which they habitually reside.

Legal aid applicants who habitually reside in a Member State other than the one in which the dispute is heard may submit their application to the **relevant authority (authorities)** of the Member State in which they habitually reside.

Justification

Self-explanatory.

Amendment 23
Article 9, second paragraph

The relevant authorities of the Member State of residence shall transmit the application to the relevant authorities in the Member State of the forum within eight days.

The relevant authorities of the Member State of residence shall ***ensure that the processing of applications is as transparent as possible and*** transmit the application to the relevant authorities in the Member State of the forum within ***ten*** days ***from the time at which the forum¹ is duly completed.***

¹ *standard form used in legal aid proceedings.*

Amendment 24
Article 9, fifth paragraph

The transmitting authorities may refuse to transmit an application if ***it is manifestly inadmissible, and in particular if the dispute is not in a civil matter.***

The transmitting authorities may refuse to transmit an application ***made by a relevant authority*** if:

(a) it relates to a manifestly inadmissible application;

(b) it falls outside the scope of this Directive.

In these cases, Article 8(2) and (3) shall apply mutatis mutandis. The reasons for rejection shall be given. Member States shall make provision for appeals against decisions rejecting legal aid applications.

Justification

Clarification.

Amendment 25
Article 9, paragraph 6

Legal aid applications transmitted in accordance with the procedure provided for by this Directive shall be written in the language of the receiving **authority** or in another language which it accepts.

Legal aid applications transmitted in accordance with the procedure provided for by this Directive shall be written in the **official** language of the receiving **Member State** or in another language which it accepts.

Justification

Clarification

Amendment 26
Article 9, paragraph 7

This Directive replaces the Strasbourg Agreement of 1977 on the Transmission of Legal Aid Applications in relations between Member States.

deleted - see Article 19a (new)

Justification

It is useful to place this provision at the end of the Directive.

Amendment 27
Article 10

Notifications to the Commission

deleted - see Article 8a

Member States shall provide the Commission with a list of authorities empowered to send and receive applications. This list shall be published in the Official Journal of the European Communities.

The Member States shall notify the Commission of the list of official languages of the European Union other than their own language or languages in which they accept that legal aid applications may be transmitted to the relevant authorities.

Justification

Amendment 28
Article 12

Member States shall ensure that legal aid applications made by applicants not residing in the Member State of the forum are examined *within a reasonable time before the case comes to trial.*

Member States shall ensure that legal aid applications made by applicants not residing in the Member State of the forum are examined *as quickly as possible. Provision may be made to suspend the proceedings until the legal aid application has been decided.*

Justification

In certain types of civil proceedings there is no actual trial. In addition, in many cases, proceedings and important decisions occur before the trial. It is therefore necessary for legal aid applications to be granted or refused at the earliest possible stage.

Amendment 29
Article 13, paragraph 1

Member States shall grant legal aid to **natural** persons involved in a dispute within their jurisdiction who are unable to meet the costs of proceedings as a result of their personal financial situation.

Member States shall grant legal aid to persons **as specified in Article 3, paragraphs 1 and 2** involved in a dispute within their jurisdiction who are unable to meet the costs of proceedings as a result of their personal financial situation, **in order to ensure that they have access to justice**.

Justification

Clarification

Amendment 30
Article 13, paragraph 3

Legal aid applicants who **do not meet the conditions set out above** shall be granted legal aid if they can prove that they are unable to pay the cost of the proceedings, in particular as a result of differences in the cost of living between the Member States of residence and of the forum.

Legal aid applicants **above this income threshold** shall be granted legal aid if they can prove that they are unable to pay the cost of the proceedings, in particular as a result of differences in the cost of living between the Member States of residence and of the forum.

Justification

Clarification

Amendment 31
Article 13, paragraph 4

Legal aid applicants shall be presumed able to bear the costs of proceedings if in the instant case they **enjoy actual access to a private mechanism involving** a no-win no-fee agreement with the lawyer and providing that court costs will be paid by a third party.

Legal aid applicants shall be presumed able to bear the costs of proceedings if in the instant case they **are entitled to secure payment of these costs through an insurance contract or other private instrument, such as** a no-win, no-fee agreement with the lawyer and providing

that court costs will be paid by a third party, ***as long as such agreements are not prohibited in the Member States of the applicant's residence or in the Member State of the forum.***

Justification

Clarification.

Amendment 32
Article 16

Legal aid shall be granted in cases where disputes are settled via extra-judicial procedures, if the law ***makes provision for*** such procedures or if the parties to the dispute are ordered by the court to have recourse to them.

Legal aid shall be granted in cases where disputes are settled via extra-judicial procedures, if the law ***encourages the use of*** such procedures or if the parties to the dispute are ordered by the court to have recourse to them.

Where legal aid is extended to extra-judicial procedures, such procedures should comply with the principles of Commission Recommendation 98/257/EC of 30 March 1998 concerning the principles applicable to the bodies responsible for the extra-judicial resolution of consumer disputes.

Justification

Whilst in principle legal aid should rightly be extended to extra-judicial procedures which have a growing role to play in the area of cross border disputes, such procedures to qualify should comply with the requirements of Commission Recommendation/s 98/257/EC of 30 March 1998 concerning the principles applicable to the bodies responsible.

Amendment 33
Article 16, new paragraph after the first paragraph

Where legal aid is extended to extra-judicial procedures, such procedures should comply with the principles of Commission Recommendation 98/257/EC

of 30 March 1998 concerning the principles applicable to the bodies responsible for the extra-judicial resolution of consumer disputes.

Justification

Whilst in principle legal aid should rightly be extended to extra-judicial procedures which have a growing role to play in the area of cross border disputes, such procedures to qualify should comply with the requirements of Commission Recommendation/s 98/257/EC of 30 March 1998 concerning the principles applicable to the bodies responsible for the extra-judicial resolution of consumer disputes.

Amendment 34
Article 17, paragraph 1

Member States shall provide that the winning party shall be entitled to fair reimbursement from the losing party of all or part of the costs of the proceedings.

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.***

Justification

Makes the wording more precise.

Amendment 35
Article 19

This Directive shall not prevent the Member States from making provision for more favourable arrangements for legal aid applicants.

This Directive shall not prevent the Member States from making provision for more favourable arrangements for legal aid applicants ***and recipients.***

Justification

Self-explanatory.

Amendment 36
Article 19a (new)

This Directive shall, in the relations between Member States, take precedence over bilateral and multilateral agreements concluded between Member States, including:

- Strasbourg Agreement of 1977 on the Transmission of Legal Aid Applications,

- the Hague Convention of 25 October 1980 on International Access to Justice.

Justification

It is useful to define the scope of this Directive by specifying the relationship between it and existing agreements.

EXPLANATORY STATEMENT

By letter of 1 February 2002, the Council consulted the Parliament on a Commission proposal for a Council Directive on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings¹. The Council submitted this proposal to Parliament pursuant to Article 67(1) of the EC Treaty. The principle set out in this proposal has generally been well received by the Member States, although reservations have been expressed as regards some sections of the proposal, in particular concerning the scope of the directive.

Institutional framework

With the entry into force of the Treaty of Amsterdam, the European Union set itself the goal of developing an area of freedom, security and justice, as specified in the fourth indent of Article 2 of the EU Treaty. This area is described in greater detail in Title VI of the EU Treaty and Title IV of Part Three of the EC Treaty. Article 61 of the EC Treaty stipulates that the Council, in order to establish progressively an area of freedom, security and justice, shall adopt measures in the field of judicial cooperation in civil matters, as provided for in Article 65. Article 65 of the EC Treaty stipulates that this includes measures to eliminate obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States. The objectives of an area of freedom, security and justice were confirmed and fleshed out respectively in the 1998 Vienna Action Plan and the conclusions of the Tampere European Council of 15 and 16 October 1999.

A genuine European legal space

It is clear from Conclusion 30 of the Presidency Conclusions of the Tampere European Council that a genuine European legal space may not result in citizens and businesses being prevented or discouraged from exercising their rights owing to the mutual incompatibility or complexity of Member States' legal and administrative systems. Access to justice should therefore be made easier. The Council was invited, on the basis of proposals by the Commission, to draw up minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union. In Conclusion 32 from Tampere, the Council is called upon to draw up minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs.

In order to translate Conclusion 30 into practice, the Commission published a Green Paper in December 2000 entitled 'Legal aid in civil matters - the problems confronting the cross-border litigant'². The Green Paper was designed to provide an overview of the problems that arise in the case of cross-order litigation as far as obtaining legal aid is concerned and to propose solutions to those problems.

¹ OJ 2002 C 103 E, 30.4.2002, p. 368.

² COM(2000) 51.

The Green Paper on legal aid

It is clear from this Green Paper that, as far as legal aid is concerned, each Member State has its own rules and that financial conditions and the personnel situation vary from one Member State to another. The Green Paper was well received by the Member States, and the majority of them agree that there is a need for Community action. Your rapporteur also takes the view that Community action is desirable.

On 28 September 2001, in order to translate Conclusion 32 from Tampere into practice, the Commission published another Green Paper, entitled 'Compensation to crime victims', which in a number of respects is closely related to the directive under consideration¹. This Green Paper concerns compensation by the State. The arrangements for compensation by the State may be seen as recognition of a civil right, within the meaning of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This proposal for a directive follows on from the Green Paper and the conclusions from Tampere. In particular, it is aimed at helping, in cross-border cases, to guarantee access to justice so as to obtain compensation, including four legal costs, in order to ensure protection of the victims of crime.

The proposal for a directive on improved access to justice

• The international framework

The goal this directive sets itself at the start is an ambitious one. It sets out to provide legal aid for persons who lack sufficient resources, where access to such aid is necessary to secure access to justice. In doing so, it is primarily aimed at ensuring an adequate level of legal aid in cross-order disputes. National legislative systems should be better coordinated with each other. The directive forms part of a broader international framework.

Mention must be made first of all of the ECHR, Article 6(1) of which stipulates that everyone is entitled to a fair and public hearing and that everyone charged with an offence has a right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

Another important document is the Convention on International Access to Justice, signed in The Hague on 25 October 1980. At present, this Convention has not yet been ratified by all Member States².

The Charter of the Fundamental Rights of the European Union is also important in this respect, and in particular the third paragraph of Article 47 thereof, which stipulates that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

The Charter was adopted by the Presidents of the European Parliament, the Council of the European Union and the Commission as a solemn political declaration at the Summit of

¹ COM (2001) 536.

² At present, nine Member States have ratified this Convention. See <http://hccp.net/e/status/stat29e.html>

European Heads of State and/or Government at Nice on 7 December 2000. It brings together in one text the civil, political, economic and social rights that had until then been laid down in various international, European or national sources.

- **the chosen legal basis**

The Commission is basing its proposal for a directive on Article 61(c) of the EC Treaty. Article 65 lays down that 'measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market shall include ... eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States'. The content of this provision of the Treaty appears to be very much in line with the objective of the directive under consideration.

- **the content of the directive**

Your rapporteur applauds the drawing-up of minimum common standards ensuring an adequate level of legal aid so as to guarantee access to justice for those who do not have sufficient financial means. Your rapporteur also warmly welcomes the Commission's choice of a directive as the instrument by which this objective is to be achieved, especially as the existing international instruments are not yet in force.

However, your rapporteur does have a number of comments to make regarding this proposal.

- he considers it to be of the utmost importance that the scope of directive be broadly defined. This means that it must be absolutely clear that the directive relates to the facilitation of **access to justice**, whether in a cross-border or an internal context. Moreover, this must apply without distinction to citizens of the European Union and third-country nationals resident in a Member State. Also, a person who has become a victim of crime in a Member State other than that in which he is habitually resident should be able to obtain appropriate legal aid in order to secure compensation for damages.

This is an important element in efforts to bring about an area of freedom, security and justice, of which the single judicial area is a part and to which the individual is central. It is also consistent with the Charter of Fundamental Rights of the European Union, which serves as an important source of inspiration. Various Advocates-General have referred to this text in their conclusions¹. The Court of First Instance has also referred to the Charter in recent case-law².

- Your rapporteur also considers it important that it be spelt out clearly what legal aid might consist of. This means both assistance by a lawyer or another person entitled by the law to represent parties in the courts and exemption from or reimbursement of the costs of the dispute.

Legal aid may be granted in respect of judicial proceedings but also in respect of extra-

¹ See Conclusions in cases C-340/99, TNT Traco SpA v. Poste Italiane SpA and others, 1 February 2001, ECR 2001, p. I-0410,9, C-122/99P and C-125/99P, D v. Council, 22 February 2001, ECR 2001, p. I-04319, C-270/99P, Z v. Parliament, 22 March 2001, and C-173/99, Broadcasting Entertainment, Cinematographic and Theatre Union (BECTU) v. Secretary of State for Trade and Industry, 8 February 2001, ECR 2001, p. I-04881.

² T-54/99, Max.mobil/Commission, 30 January 2002 - this concerned Articles 41(1) and Article 47 of the Charter, and Jégo-Quéré et Cie SA v. Commission, 3 May 2002.

judicial procedures. Your rapporteur considers this latter aspect to be particularly important, as Member States' judicial authorities are having to deal with more and more disputes, and this is increasing the length of proceedings. As a result, proceedings are often very costly. Mechanisms providing for alternative methods of resolving disputes (ADR) should therefore be encouraged.

10 September 2002

**OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL
MARKET**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the Commission 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
(COM(2002) 13 – C5-0049/2002 – 2002/0020(CNS))

Draftsman: Diana Wallis

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Diana Wallis draftsman at its meeting of 26 February 2002.

It considered the draft opinion at its meetings of 22 May 2002, 10 July 2002, 11 July 2002 and 10 September 2002.

At the /last meeting it adopted the following amendments unanimously.

By letter of 21 May 2002 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs asked the Committee on Legal Affairs and the Internal Market, pursuant to Rule 63 of the Rules of Procedure, to consider the legal basis proposed by the Commission for the proposal for a Council directive on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings (COM (2002) 13).

At its meeting of 10 September 2002, after hearing the opinion of the Legal Service and discussing the matter at its meeting of 11 July 2002, the Committee on Legal Affairs and the Internal Market unanimously adopted Amendment 1 by the Rapporteur whereby Article 65(c) of the EC Treaty is added to the legal basis proposed by the Commission.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, Ioannis Koukiadis and Bill Miller vice-chairmen; Diana Wallis, draftsman; Paolo Bartolozzi, Maria Berger, Ward Beysen, Michel J.M. Dary, Enrico Ferri, Francesco Fiori (for Rainer Wieland pursuant to Rule 153(2)), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, The Lord Inglewood, Hans Karlsson (for Carlos Candal), Pii-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Toine Manders, Hans-Peter Mayer, Arlene McCarthy, Manuel Medina Ortega, Pasqualina Napoletano (for François Zimeray pursuant to Rule 153(2)), Angelika Niebler, Anne-Marie Schaffner, Marianne L.P. Thyssen and Stefano Zappalà.

SHORT JUSTIFICATION

The Commission's proposal is to be welcomed as it is a natural consequence of the Tampere Conclusions and a very necessary part of ensuring the good functioning of the Internal Market by securing cross border access to justice.

It is clear that intervention at an EU level is needed given the failure of the Hague Conference on International Access to Justice 1980 to be ratified by many states. Given the wide disparities in the levels of legal aid available in Member States there will be concerns about the possible effects and cost of this proposal.

However, by linking the ambit of the proposal to the areas covered by the Brussels I Regulation there should be no doubt that this proposal is targeted at those areas of cross-border justice that are essential to and entirely bound up with the workings of the Internal Market. We cannot offer Europe's citizens the possibilities of the Internal Market and its four freedoms without equally ensuring access to justice in this area when things go wrong.

Therefore the universality of the Commission proposal should be left untouched, although it maybe that further attention will have to be given to the financial assessment criteria so as to establish more clearly the basic minimum standard. Indeed, it may be appropriate to reconsider the wording of the merits test or an extension of the review or reconsideration of the grant of legal aid, but this should not in any way detract from the general principle.

Anything other than a common minimum standard would be discriminatory and would offend against the European Parliament's stated position in The Charter of Fundamental Rights of the European Union, Article 47(3) which provides that legal aid is to be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. The proposed Directive offers the chance to put this into practice in relation to the Internal Market.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

| Text proposed by the Commission ¹ | Amendments by Parliament |
|---|---|
| Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof, | Amendment 1 first indent Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and 65(c) thereof, |

¹ OJ C 103, 30.04.2002, p. 368.

Justification

The parts of the proposal relating to cross-border access to legal aid would facilitate the good functioning of the internal market in the way it is wanted in article 65 TEC.

Amendment 2

Recital 6

The Directive applies to all disputes in civil matters, which include commercial law, employment law and consumer protection law.

The Directive applies to all disputes in civil matters, which include commercial law, employment law and consumer protection law, ***and to civil compensation claims deriving from criminal acts, when they form part of civil proceedings.***

Justification

The aim is to move forward along the lines laid down in the Tampere conclusions, without modifying the scope of the directive, which covers civil proceedings.

Amendment 3

Recital 13

If legal aid is granted, it must cover the entire proceeding, including expenses incurred in having a judgment declared enforceable or enforced; the recipient should continue receiving this aid ***if an appeal is brought against him.***

If legal aid is granted, it must cover the entire proceeding, including expenses incurred in having a judgment declared enforceable or enforced; the recipient should continue receiving this aid ***until the final conclusion of the proceedings, including any appeals he may be seen fit to bring and any appeals brought against him.***

Justification

In order to be effective, legal aid must cover all proceedings right up to the final decision of the courts. No distinction should be made between appeals brought by the beneficiary and those brought by other parties, since legal aid is based on the economic circumstances of the beneficiary, regardless of the success or failure of the action.

Amendment 4

Article 1, second paragraph

It shall apply to civil disputes of all types, irrespective of the type of court.

It shall apply to civil disputes of all types, irrespective of the type of court *or tribunal*.

Justification

Some civil disputes in the United Kingdom are resolved before tribunals. A particular example relates to employment matters; these come before Employment Tribunals in the UK and appeals are heard by the Employment Appeals Tribunals. It is therefore necessary to clarify the directive in this way to ensure that tribunals are included where they determine civil disputes covered by the proposed legislation.

Amendment 5

Article 2, new paragraph after the last paragraph

“Costs of proceedings” means the costs of the proceedings themselves and lawyers’ fees.

“Costs of proceedings” means the costs of the proceedings themselves and lawyers’ fees;

"Eligible persons" means all natural and any such legal persons as set out in Article 15.

Justification

The definition of who is eligible for legal aid should clearly state natural as well as legal persons.

Amendment 6

Article 2, fourth paragraph

‘Costs of proceedings’ means the cost of the proceedings themselves and lawyers fees.

‘Costs of proceedings’ means the cost of the proceedings themselves and lawyers fees ***and the costs of others persons referred to in Article 3, second paragraph.***

Justification

The need to be consistent with the provisions of Article 3.

Amendment 7
Article 3, first paragraph

All persons involved in a civil dispute, as either claimant or defendant, shall be entitled to receive appropriate legal aid if they do not have sufficient resources within the meaning of Article to enforce their rights by court action, without prejudice to Article 14.

All ***eligible*** persons involved in a civil dispute, as either claimant or defendant, shall be entitled to receive appropriate legal aid if they do not have sufficient resources within the meaning of Article ***13*** to enforce their rights by court action, without prejudice to Article 14.

Justification

The definition of eligible persons is given in Article 2 and conditions relating to financial resources in Article 13.

Amendment 8
Article 5, second paragraph

Such costs shall include interpretation and translation and travel costs where the physical presence of the persons concerned in court is mandatory.

Such costs shall include ***the payment of local lawyers' fees and any court fees in the forum Member State***; interpretation and translation; 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.***

Justification

The definition of eligible costs related to the cross-border nature of the dispute needs to be clearer and should include more flexibility with regard to the attendance of the litigant or their witnesses before the forum Court as this will not always be mandatory in every legal system, but can often be critical to the outcome of the case. There should also be flexibility with prior authorisation to allow for meetings which would promote early settlement and thus cost saving.

Amendment 9 Article 7, first paragraph

Legal aid shall continue to be granted to recipients to cover ***expenses incurred in having a judgment declared enforceable or enforced*** in the Member State of the forum, without prejudice to Article 3(3).

Legal aid shall continue to be granted to recipients to cover ***the costs of proceedings provided for in Articles 2 and 3 of this directive until proceedings in all courts have been completed, including the proceedings for any appeals they see fit to bring and any appeals brought against them, together with the procedures necessary to enforce the judgment*** in the Member State of the forum, without prejudice to Article 3(3).

Justification

See justification to the amendment to recital 13.

Amendment 10 Article 7, third paragraph

Legal aid shall continue to be provided if an appeal is brought against the recipient. Provision shall be made for re-examination of the application where the appeal is brought by the recipient.

The Member State of the forum may review the conditions which gave rise to the granting of legal aid at the end of the proceedings in each court.

Justification

See justification to the amendment to recital 13.

Amendment 11
Article 8, paragraph 3

Member States shall make provision for appeals against decisions rejecting legal aid applications.

Member States shall make provision for appeals against decisions rejecting legal aid applications, ***at least where provision is made for appeals in the main proceedings.***

Justification

Legal aid must be linked to the main proceedings.

Amendment 12
Article 9, second paragraph

The relevant authorities of the Member State of residence shall transmit the application to the relevant authorities in the Member State of the forum within eight days.

The relevant authorities of the Member State of residence shall ***ensure that the processing of applications is transparent and*** transmit the application to the relevant authorities in the Member State of the forum within eight days.

Justification

The introduction and transmission of legal aid applications should be subject to the same regime in respect of the standard of transparency, the reasons for rejection and the availability of appeal as is set down in Article 8 for the processing of applications in the forum state.

Amendment 13
Article 9, fifth paragraph

The transmitting authorities may refuse to transmit an application if it is manifestly inadmissible, and in particular if the

The transmitting authorities may refuse to transmit an application if it is manifestly inadmissible, and in particular if the

dispute is not in a civil matter.

dispute is not in a civil matter. ***The reasons for rejection shall be given. Member States shall make provision for appeals against decisions rejecting legal aid applications.***

Justification

See justification of amendment to article 9 second paragraph.

Amendment 14 Article 12

Member States shall ensure that legal aid applications made by applicants not residing in the Member State of the forum are examined ***within a reasonable time before the case comes to trial.***

Member States shall ensure that legal aid applications made by applicants not residing in the Member State of the forum are examined ***as quickly as possible. Provision may be made to suspend the proceedings until the legal aid application has been decided.***

Justification

In certain types of civil proceedings there is no actual trial. In addition, in many cases, proceedings and important decisions occur before the trial. It is therefore necessary for legal aid applications to be granted or refused at the earliest possible stage.

Amendment 15 Article 13, paragraph 4

Legal aid applicants shall be presumed able to bear the costs of proceedings if in the instant case they ***enjoy actual access to a private mechanism involving*** a no-win no-fee agreement with the lawyer and providing that court costs will be paid by a third party.

Legal aid applicants shall be presumed able to bear the costs of proceedings if in the instant case they ***are entitled to secure payment of these costs through an insurance contract or other private instrument, such as*** a no-win, no-fee agreement with the lawyer and providing that court costs will be paid by a third party, ***as long as such agreements are not prohibited in the Member States of the applicant's residence or in the Member***

State of the forum.

Justification

The aim is to take account of the existence of legal aid insurance and provide greater technical clarity.

Amendment 16

Article 16, new paragraph after the first paragraph

Where legal aid is extended to extra-judicial procedures, such procedures should comply with the principles of Commission Recommendation 98/257/EC of 30 March 1998 concerning the principles applicable to the bodies responsible for the extra-judicial resolution of consumer disputes.

Justification

Whilst in principle legal aid should rightly be extended to extra-judicial procedures which have a growing role to play in the area of cross border disputes, such procedures to qualify should comply with the requirements of Commission Recommendation/s 98/257/EC of 30 March 1998 concerning the principles applicable to the bodies responsible for the extra-judicial resolution of consumer disputes.

Amendment 17

Article 17, first paragraph

Member States shall provide that ***the winning party shall be entitled to fair reimbursement from the losing party of all or part of the costs of the proceedings.***

Member States shall 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.***

Justification

The provision should be made for cases where there is more than one losing party. The principle that the losing party should meet the costs should not be applied without exception, but the possibility should remain in certain cases for the ruling on costs to be made conditional on whether the party has acted recklessly.