

**E-learning on Directive 2003/8 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**

**I. Objectives of the directive**

This directive was adopted in the wake of the European Commission's Green Paper on legal aid in civil matters and the problems encountered by cross-border litigants.

It aims to improve access to justice in cross-border civil cases, to promote the application of legal aid in cross-border disputes and to establish European rules on legal aid for people who cannot afford the legal costs involved in such disputes. In this way, it seeks to ensure that no one is denied effective access to justice because of low income or the cross-border nature of the dispute.

Geographical distance, language differences, lack of knowledge of the legal rules of the State of the court seized, the disparity of legal aid mechanisms, their criteria for assessing resources and the applicable scales, constitute obstacles to effective access to justice.

In cross-border disputes, in addition to the traditional legal costs, there are the costs of travel, translation, interpretation, international service of documents, obtaining legal advice in each Member State, and finally those relating to the cross-border enforcement of the decision.

The directive thus provides for minimum material rules to be respected and does not prevent each Member State from providing for even more favourable rules.

**II. Scope of the directive**

The Directive has been applicable since January 31, 2003 in all Member States, except Denmark, and to all cross-border litigation in civil and commercial matters. It does not extend to proceedings in tax, customs or administrative matters, nor to those brought before the criminal courts, which are governed by Directive 2016/1919.

It applies whenever the applicant for legal aid resides in a Member State other than the State of the court seized or in which the decision is to be enforced. It applies without discrimination to citizens of the European Union and to third-country nationals legally resident in one of the Member States.

In relations between Member States, the provisions of this Directive take precedence over the European Agreement on the transmission of applications for legal aid of 27 January 1977 and its additional protocol of 2001, as well as over the Hague Convention of 25 October 1980 on access to justice.

### **III. The principle of the right to legal aid**

In order to guarantee effective access to justice, the directive affirms the principle of a right to appropriate legal aid. This right is enshrined in Article 6 of the European Convention on Human Rights and in Article 47 of the Charter of Fundamental Rights of the European Union.

Legal aid must guarantee both pre-litigation advice with a view to reaching an amicable agreement or initiating legal proceedings, and legal assistance and representation in court in the event that the matter is brought before a judge. The benefit of this legal aid is also applicable to extra-judicial procedures when the law obliges the parties to resort to it or when the judge orders it.

### **IV. The scope of legal aid**

This assistance does not have to be total. Each Member State may ask the beneficiaries to make a reasonable contribution to the legal costs.

This assistance is granted to persons who are totally or partially unable to meet the costs of the proceedings. The economic situation of the person is evaluated by the Member State of the forum according to his income, his assets and his family situation.

Member States may establish thresholds on the basis of these criteria above which applicants are presumed to be able to meet all or part of the legal costs. Persons whose resources exceed these thresholds may, however, prove that they would be unable to meet the costs of the proceedings because of the difference in the cost of living between the Member State of their residence and the Member State of the forum.

### **V. Assistance adapted to the cross-border nature of the dispute**

Given the cross-border nature of the proceedings and the additional legal costs involved, this assistance must include the costs of interpretation, translation of documents required by the court and the travel costs of the applicant when his presence at the hearing is required by law of the judge seized or when he must be heard.

Legal aid provided by the Member State in which the applicant resides must cover the costs of a local lawyer and the translation of the application and the necessary supporting documents.

Finally, this aid is to continue to be granted to cover the costs incurred in obtaining the enforcement of the judgment in the Member State of the forum, or in the event of an appeal by or against the beneficiary. If the judgment is to be enforced in another Member State, the beneficiary will receive legal aid according to the law of the State of enforcement.

It is also granted for the execution of authentic instruments in another Member State.

## **VI. The procedure for applying for legal aid**

The application for legal aid may be submitted either to the authority of the Member State in which the applicant is domiciled or habitually resident (known as the transmitting authority), or to the authority of the Member State of the court seized, or to the authority of the State in which the decision is to be enforced (known as the receiving authority).

The sending authority shall assist the applicant in completing the application correctly and shall forward the application to the receiving authority within 15 days of its receipt. It may refuse to transmit the application for legal aid to the receiving authority if it is manifestly unfounded or outside the scope of the directive.

Legal aid shall be granted or refused by the Member State of the court seized. The receiving authority shall inform the applicant of the processing of the application and shall state the reasons for a total or partial refusal. A review or an appeal of the decision of rejection by the receiving authority is possible.

## **VII. Formalism and forms**

In the absence of a reverse authorization, the application and its related documents must be translated into one of the official languages of the Member State of the court seized. The documents transmitted are exempt from any legalization.

In order to facilitate the transmission of requests, two standard forms have been set up:

- The application form for legal aid in another Member State of the Union, created by Decision 2004/844/EC of 9 November 2004;
- The form for the transmission of the application for legal aid, created by Decision 2005/630/EC of 26 August 2005.

The forms, which can be filled out online, must be sent to the competent authority in the manner required by the latter.

The use of these forms, a tool used to facilitate the application of European directives and regulations, allows people involved in a cross-border dispute to benefit from substantial legal aid if their resources justify it.

The names and addresses of the competent authorities have been communicated by the Member States to the European Commission and can be found on the e-justice portal. Information on the legal aid system in the Member States is also available on the e-justice portal at the following address:

[https://e-justice.europa.eu/390/FR/legal\\_aid?clang=fr](https://e-justice.europa.eu/390/FR/legal_aid?clang=fr)

## **Practical example of application**

**Facts:** Let's imagine the following practical case: Mr. X, of Iranian nationality, who does not have any income and who usually resides in France, wishes to bring before the Portuguese judge a request for divorce against his wife, of Russian nationality, who has been residing for two years in Portugal with their children, and whose decision will have to be enforced in Belgium where they hold a real estate property to be liquidated

**Question:** **What must Mr. X do to benefit from legal aid in his cross-border dispute?**

**Answer:** As long as Mr. X is habitually resident in a Member State of the Union, and must obtain a decision in another Member State, he will be able to benefit from the provisions of this directive even if he and his wife are nationals of non-EU countries.

Mr. X will not be able to benefit from French legal aid since the judge he plans to seize is the Portuguese judge. He could only benefit from Portuguese and Belgian legal aid.

Mr. X will be able to **[complete the legal aid application](#)** and **[request for transmission of application forms online](#)** (available in the appendices).

He will not need to have the forms translated into Portuguese. Indeed, Portugal has indicated to the Commission that an application for legal aid made by a person residing in another Member State of the European Union in an action for which the Portuguese courts have jurisdiction may be drawn up in French or English.

He can send these forms to the French authority that sent them, whose address can be found on the e-justice portal: **Bureau de l'aide juridictionnelle, Service de l'accès au droit, Ministère de la Justice, 13 place Vendôme, 75042 Paris Cedex 1.**

It will have 15 days to transmit them to the receiving Portuguese authority, unless it considers that the request is manifestly unfounded.

It may also be sent directly to the Portuguese receiving authority: **Instituto de Saguranca Social, IP, Av. 5 de Outubro, nº175, 1069-451 Lisboa.**

Portugal has informed the Commission that this request can be made in person, by fax or by mail.

The Portuguese authority will acknowledge receipt of his request and will decide whether or not to grant legal aid to Mr. X.

If the legal aid is accepted by the Portuguese authority due to the lack of income, it will cover all the costs of the Portuguese proceedings, including the costs of translation, interpretation, service and representation.

Mr. X will also benefit from the legal aid provided by Belgian law for the costs related to the enforcement of the Portuguese decision in Belgium without having to make a new request in Belgium.