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44. Stresses that ADR and ODR mechanisms cannot substitute a collective redress mechanism; calls, therefore, on the Commission to explore measures that would lead to the creation of a Union-wide coherent collective redress mechanism in the field of consumer protection which would be applicable to cross-border cases; stresses that uncoordinated initiatives within the Union could lead to fragmentation; emphasises that, in order to ensure the efficiency of collective redress and avoid potential abuses, the Union approach to collective redress should include representative action only in the case of entities duly recognised at national level (public authorities such as ombudsmen, or consumer organisations); insists on the need to build the Union approach to collective redress on the opt-in principle;

45. Emphasises the need to ensure the accessibility of goods and services in the Union, covering areas such as the built environment, transport and ICT; urges the Commission to propose a 'Union Accessibility Act' that will be far-reaching in its ambitions;

46. Draws attention to the fact that the forthcoming Multiannual Financial Framework for 2014-2020 will have to allow the European Consumer Agenda to benefit from sufficiently ambitious funding;

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47. Instructs its President to forward this resolution to the Council, the Commission, and the governments and parliaments of the Member States.

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## **Legal aid in cross-border civil and commercial disputes**

**European Parliament resolution of 11 June 2013 on improving access to justice: legal aid in cross-border civil and commercial disputes (2012/2101(INI))**

(2016/C 065/02)

*The European Parliament,*

- having regard to Council Directive 2003/8/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 <sup>(1)</sup>,
- having regard to the Report of 23 February 2012 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 (COM(2012)0071),
- having regard to Article 47 of the Charter of Fundamental Rights of the European Union,
- having regard to the Hague Convention of 25 October 1980 on International Access to Justice,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on the Internal Market and Consumer Protection (A7-0161/2013),

A. whereas Article 47(3) of the Charter of Fundamental Rights of the European Union provides that '[l]egal 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';

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<sup>(1)</sup> OJ L 26, 31.1.2003, p. 41.

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- B. whereas Council Directive 2003/8/EC contains provisions ensuring that citizens involved in cross-border disputes have access to justice;
- C. whereas the main provision of that directive ensures that legal aid may not be refused on the sole grounds that a dispute is cross-border in nature, and each Member State thus keeps its own legal aid system, but must open it to persons from other Member States;
- D. whereas the directive goes on to lay down conditions for the granting of cross-border legal aid, relating in particular to financial resources, the substance of the dispute, and the cross-border nature of the dispute;
- E. whereas legal aid must be granted only to persons whose financial resources do not allow them to access justice without such aid;
- F. whereas those resources are assessed on the basis of the guidelines in force in the Member State in which the court is sitting, and fixed thresholds are in place in several Member States;
- G. whereas those thresholds differ considerably from Member State to Member State, and a citizen who is considered in need of legal aid in one Member State may not be considered in need of legal aid in another, and whereas Article 5(4) of the directive goes some way towards recognising this problem;
- H. whereas, in order to address these discrepancies, it should be considered whether a citizen should also be allowed to apply for legal aid in his or her Member State of residence and have the application decided upon by the authorities of that Member State;
- I. whereas, in order to facilitate matters both for the citizen and for the authorities which apply the directive, citizens should be given the choice, in the case of cross-border requests for legal aid, to have the request decided upon either in their Member State of residence or in the Member State in which the court is sitting or the decision is to be enforced;
- J. whereas, if such a choice were given, Member State authorities would be able to apply their own criteria, rather than having to forward the request or refer to the conditions and guidelines of other Member States;
- K. whereas citizens whose entitlement to legal aid has been recognised in their Member State of residence could be provided with a certificate to that effect, which would be honoured by the authorities of the Member State in which the court was sitting or the decision was to be enforced;
- L. whereas cross-border legal aid under the directive also covers the additional costs inherent in cross-border cases, such as interpretation, translation and travel costs;
- M. whereas information on legal aid for citizens must be provided in one of the EU's languages so as to ensure that they have been informed of their legal aid options in a language they understand;
- N. whereas the Hague Convention of 25 October 1980 on International Access to Justice contains similar provisions at international level, but is only applied by 17 of the 27 Member States;
- O. whereas the remaining Member States should therefore be encouraged to sign or ratify the Convention;

***Application of Directive 2003/8/EC***

1. Congratulates the Commission on the submission of its report on the application of Directive 2003/8/EC;
2. Regrets that the Commission does not specifically address the European procedures to which the Legal Aid Directive is also applicable, such as the European Small Claims Procedure, despite the fact that application of the directive to the above-mentioned procedure during the period from 1 January 2009 to 31 December 2010 could certainly have been examined;

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3. Notes with satisfaction that all Member States have transposed the directive; notes, however, that the interpretation of the scope of the directive on certain points differs among the Member States;

4. Points out that, in a further report, the number and subject areas of cases should be included, broken down by country, in order to obtain a more detailed and more accurate overview of how the instrument is being used;

***Increasing awareness of the right to cross-border legal aid***

5. Regrets the fact that relatively few citizens and practitioners seem to be aware of the rights conferred by the directive;

6. Calls on the Commission and the Member States to take measures to increase awareness of the right to cross-border legal aid in civil and commercial matters, and thus to enhance citizens' free movement;

7. Recognises the good work done by the EU's e-Justice Portal, the EU Judicial Network as well as the e-CODEX (e-Justice Communication via Online Data Exchange), in particular with the availability on the EU e-Justice Portal of the legal aid forms provided for in Council Directive 2003/8/EC; calls, however, for increased clarity and easy access to these legal aid forms and national legal aid forms on all these platforms, including clear and practical information on how best to apply for legal aid in the different Member States in cross-border civil and commercial disputes;

8. Calls, furthermore, on the Commission and the Member States to launch an effective information campaign in order to reach a large number of potential beneficiaries as well as legal practitioners;

9. Considers also that other European procedures, such as the European Small Claims Procedure and the European Order for Payment Procedure, are not well known and will not achieve a high profile if the current information policy continues to be pursued;

10. Points out that new technologies and communication tools could be used to enable access to information on legal aid; recommends, therefore, that the Commission and Member States use a wide range of communication channels, including internet-based campaigns and interactive platforms such as the e-Justice Portal, as cost-effective ways to reach citizens;

11. Points out that, in order to ensure the continuity of initiated proceedings, the temporary and permanent storability of the forms necessary for legal aid need to be improved, as do the forms for other procedures, in particular the Small Claims and European Payment procedures, ensuring, among other things, that they are equally visible in all languages, including on the website of the European Judicial Atlas in Civil Matters and on the European e-Justice Portal; calls on the Commission to take immediate measures to that effect;

***Ensuring competent legal support***

12. Considers that databases of legal professionals with the sufficient linguistic and comparative law skills to act in cross-border legal aid cases should be established, thus ensuring that legal professionals are appointed who are able to act in such cases; whilst recognising existing cross-border legal databases such as the Find-a-Lawyer platform as examples of good practice in this field, calls for such tools to be developed further with a view to being integrated into a database of legal professionals on the e-Justice Portal;

13. Suggests that special training schemes to provide legal practitioners with cross-border competency would be desirable, with a focus on language courses and comparative law; urges the Commission to cooperate with the Member States in supporting specific training for lawyers providing legal aid;

14. Recognises that legal support and training have cost implications for Member States and that, in the current economic climate, funding for these may be limited in many Member States; calls, therefore, on the Commission to provide funding where possible for Member States, to ensure consistent, high-level legal training on cross-border legal aid in civil and commercial matters;

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***Facilitating the operation of the directive for citizens***

15. Stresses the importance of ensuring that application procedures are simple, so that citizens are always able to apply for legal aid without the help of a legal practitioner; advocates automatically informing citizens embarking on such procedures of the existence of the e-Justice Portal, with a view to ensuring that they are better informed;
16. Considers it advisable to designate, in line with existing national legal aid systems, a single authority with responsibility for cross-border legal aid and with a central office in each Member State for receiving and transmitting legal aid applications;
17. Takes the view that in order to establish the economic criteria for granting legal aid, more consideration needs to be given to the differing cost of living in the various Member States, and that the way in which these differences should be taken into account needs to be specified;
18. Suggests that applicants should be given the choice of applying for legal aid in their Member State of residence or in the Member State where the Court is sitting or the decision is being enforced; notes that, under such arrangements, the authorities of each Member State would then be able to apply their own criteria when deciding on the application;
19. Proposes that any decision of the authorities of the Member State of residence granting legal aid, as evidenced by a common certificate, should also have effect in the Member State where the Court is sitting or the decision is being enforced;
20. Recommends that the costs covered by legal aid should also include the costs of, and associated with, any obligatory appearance before a judge or other authority assessing the application;
21. Calls on the Commission and the Member States to pay particular attention to the most vulnerable groups in order to ensure that their needs are taken into account;
22. Invites the Commission to submit a proposal for amendment of the directive along the above lines, with a view to establishing common higher standards for cross-border legal aid;

***Encouraging alternative forms of legal support***

23. Encourages the Member States to establish more efficient systems for cooperation between public bodies and non-governmental organisations so as to make legal aid and legal advice more accessible for citizens;
24. Calls for national courts to be connected by an early-warning system so that, when an application for assistance is made in one Member State, the other Member States are made aware of it;
25. Suggests also greater cooperation between the Commission, Member States and professional legal bodies and organisations such as European and national bars and law societies;
26. Welcomes the numerous initiatives that have proved to be good examples of best practice in the field of free legal advice, including *pro bono* agencies and legal clinics;
27. Encourages the Member States to ensure the availability of, and facilitate access to, pre-litigation legal aid, including advice on the use of alternative methods of dispute resolution, which often prove to be more cost-effective and less time-consuming than litigation;

***International aspects of legal aid***

28. Calls on those Member States that have not yet signed and/or ratified the Hague Convention of 25 October 1980 on International Access to Justice to proceed to do so, as it improves citizens' access to justice outside the European Union;

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29. Instructs its President to forward this resolution to the Council, the Commission and the Member States.