

Please note that the translation is not an official version

Translation of letter from Dutch Permanent Representation to the European Commission Secretariat-General, dated 4.4.2005, cc/ DG JFS

Subject: Article 226 EC; Case 205/0187, Directive 2003/8/EC

In reply to your letter dated 4.2.2005 (SG-GREFFE(2005)D200554), the Dutch Government wishes to inform you in accordance with Article 21 of 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 (OJ L 26, p. 41) that the Directive is fully implemented by the Act of 19 February 2005 to adapt the Legal Aid Act 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 (Legal Aid Directive Implementation Act) (Stb. 90).

I attach a copy and a correlation table. The Dutch Government considers that the Directive is fully implemented by the Act and would be most grateful if the Commission would accordingly close Case 205/0187.

Complimentary close

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Act of 19 February 2005 to adapt the Legal Aid Act 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 (Legal Aid Directive Implementation Act)

We Beatrix, etc.,
Hereby enact as follows

Section I

The Legal Aid Act is amended as follows:

A

In Section 7 the full stop at the end of item d is replaced by a semi-colon and the following new item is added:

e. compensation for costs incurred by a litigant in a cross-border dispute to which Chapter IIIa applies.

B

The following new Chapter is inserted after Chapter III:

CHAPTER IIIa. LEGAL AID IN CROSS-BORDER DISPUTES IN THE EUROPEAN UNION

Section 23a

For the purposes of this Chapter, the following definitions shall apply:

a. Directive: 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;

b. Member State: Member State of the European Union except Denmark.

Part 1. Litigants residing in a Member State other than the Netherlands

Section 23b

1. This Part applies exclusively to the provision of legal aid to natural persons engaging in cross-border disputes in the field of civil or commercial law who are domiciled or habitually resident in another Member State.

2. A “cross-border dispute” means a dispute in which, on the day when the application for legal aid is filed in relation to proceedings in the Netherlands or the enforcement of the judgment in the Netherlands, the claimant is domiciled or habitually resident in another Member State.

3. To determine whether a claimant is domiciled or resident in the Netherlands, Dutch law shall apply. If the claimant is not domiciled or habitually resident in the Netherlands, the determination whether he is domiciled or habitually resident in another Member State shall be based on the law of that Member State.

Section 23c

1. Legal aid may be awarded, notwithstanding Section 12(2)(g), if the special factual or legal complexities of the case so require or for reasons of equality of parties.

2. Paragraph 1 shall apply by analogy where the board is ordered by the court to pay supplementary amounts.

3. Legal aid shall not be awarded where the claimant in the relevant dispute has actual access to other possibilities for covering legal aid and the costs to which Section 23e applies.

4. Section 33(1)(c) shall not apply.

Section 23d

Notwithstanding Sections 34 and 35, legal aid shall be awarded or costs to which Section 23e applies shall be reimbursed where the claimant shows that he is unable to bear legal costs on account of the difference between the cost of living in the Member State where he is domiciled or habitually resident and the Netherlands.

Section 23e

1. In addition to the costs that may be reimbursed under this Act, the board may reimburse the claimant for the costs listed below where they are directly related to the cross-border nature of the dispute and, while not being procedural costs, are incurred in the claimant’s interest and are charged to the claimant and are paid by the claimant:

a. costs of interpreters, if they are registered in the quality register at ’s-Hertogenbosch;

b. costs of translations by a sworn translator of documents required by the court or demanded by the board and supplied by the claimant;

c. travel costs where the physical presence of the persons concerned with the presentation of the applicant's case is required in court by the law or by the court of that Member State and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means, and

d. fifty per cent of the fees of persons appearing in the procedure by order of the court.

2. Wherever possible the board shall ensure that documents to which paragraph 1(b) applies are translated.

3. The amount of the reimbursement for travel costs to which paragraph 1(c) applies shall be determined in accordance with Section 25 of the Legal Aid Order 2000.

4. The amount of the reimbursement for fees for persons to whom paragraph 1(a), (b) and (d) applies shall be calculated in accordance with the Civil Proceedings (Charges) Act.

Section 23f

Save as otherwise provided in this Act, legal aid shall also be awarded in cross-border disputes:

- a. for the enforcement of the judgment in a case tried in the Netherlands;
- b. where the claimant is required by law or by court order to avail himself of an extra-judicial procedure;
- c. for the enforcement of an authentic deed in the Netherlands;.

Section 23g

- 1. The claimant must deposit his application for legal aid with the Legal Aid Board at The Hague.
- 2. The language or languages in which applications may be entertained shall be determined by Ministerial Order.

Section 23h

Where an application for the recognition, non-recognition or enforcement of a judgment given in a Member State other than the Netherlands is made in the Netherlands by a claimant who is domiciled or habitually resident in the Netherlands as provided in Section 23b(3) and whose principal action is being heard in a Member State other than the Netherlands, and the claimant has received legal aid on the basis of the Directive specified by Section 23i(1), Sections 23c to 23g shall apply by analogy.

Part 2. Claimants living in the Netherlands

Section 23i

- 1. Where the Directive applies, a claimant who, on the day when the application for legal aid is filed in relation to proceedings in the Netherlands or the enforcement of the judgment in the Netherlands, is domiciled or habitually resident in the Netherlands as provided by Section 23b(3), legal aid shall be awarded until the application for legal aid has been received in accordance with that Directive by the competent authorities of the Member State where the case is to be pursued.

2. Section 23b(3) shall apply.

3. In the cases referred to in paragraph 1, legal aid shall be withheld solely where the application is manifestly unfounded.

4. The award of legal aid under paragraph 1 shall cover solely the provision of legal aid for a consultation appointment as provided for by Section 19 or supplementary advice.

5. An application for legal aid in accordance with paragraph 1 shall be deposited with the Legal Aid Board at The Hague.

6. The Board referred to in paragraph 5 shall send the application, within fifteen days after the application and appended documents have been translated, to the competent authority in the Member State where the case is to be heard, unless legal aid is not awarded on the basis of paragraph 3. The Board shall arrange translation of the application and of the documents required to be appended as soon as may be after receiving the application. Translation costs shall be borne by the Board.

7. The claimant shall not be required to pay charges for the Board's proceedings under paragraph 6. If the competent authority in the Member State where the case is to be heard rejects the application for legal aid, the claimant shall be required to defray the Board's translation costs.

Section 23j

Where an application for the recognition, non-recognition or enforcement of a judgment given by a court in a Member State other than the Netherlands is made in the Netherlands by a claimant who is domiciled or habitually resident in the Netherlands as provided in Section 23b(3) and whose principal action is being heard in a Member State other than the Netherlands and the claimant has received legal aid on the basis of the Directive, Sections 23c to 23g shall apply by analogy.

Part 3. Relationship with other provisions

Section 23k

Where the Directive applies, Parts 1 and 2 of Chapter IIIa shall apply by way of derogation from other agreements between the Netherlands and the Member States and from the Convention of 25 October 1980 on International Access to Justice (Trb. 1989, 114).

SECTION II

This Act shall enter into force on the day following that of its publication in the Staatsblad.

The Hague, 19 February 2005

Correlation table

Directive	Statutory provision (Legal Aid Act unless otherwise specified)
Article 1(1)	Section 12 and Chapter IIIa
Article 1(2)	Sections 23b(1) and 23h
Article 1(3)	Sections 23b(4) and 23i(2)
Article 2(1)	Section 23b(2)
Article 2(2)	Section 23b(3)
Article 2(3)	Section 23b(2)
Article 3(1)	Sections 12(2)(d) and (e) and 23b(1)
Article 3(2)	Section 12 of the Legal Aid Order 2000
	Sections 1(1)(e) and 12
	Section 17 of the Civil Proceedings (Charges) Act
Article 3(3)	Section 23c
	Sections 12(2)(g) and sections 6 and 8 of the Legal Aid and Supplementary Payments Order
Article 3(4)	Section 35
Article 3(5)	Sections 31, 33(a) and (d) and 23c
Article 4	Article 1 of the Constitution
Article 5(1)	Section 12(1) in conjunction with section 1(1)(f)
Article 5(2)	Section 34
Article 5(3)	Sections 34 and 35
Article 5(4)	Section 23d
Article 5(5)	Sections 12(2)(f) and 23c(3)
Article 6(1)	Section 12(2)(a)
	Section 3 of the Legal Aid and Charges Order
Article 6(2)	Sections 1(b) and (c), 5 and 12 of the Legal Aid Order 2000
Article 6(3)	Section 12(2)(b), (d) and (e)
	Section 12(4) of the Legal Aid and Supplementary Payments Order
Article 7	Section 23e
Article 8	Section 23h
Article 9(1)	Section 23f
Article 9(2)	Section 23h
Article 9(3)	Section 1(1)(e)
	Section 1 of the Legal Aid Order 2000
Article 9(3)	Section 1(1)(e)
	Section 24, and section 1 of the Legal Aid Order 2000
Article 10	Section 23f
Article 11	Section 23f
Article 12	Sections 23g and 23i(5)
Article 13(1)	Sections 23g and 23i(5)
Article 13(2)	Sections 23g and 23i(5)
Article 13(3)	Section 23i(3)
Article 13(4)	Section 23i(6) and section 3.2 of the General Code of Administrative Law
Article 13(5)	-
Article 13(6)	Section 23i(7)
Article 14(1)	Sections 23g(1) and 23i(5)
Article 14(2) to (5)	-
Article 15(1)	-
Article 15(2)	Section 3.46 of the General Code of Administrative Law
Article 15(3) and (4)	Sections 4.5, 7.1 and 8.1 of the General Code of Administrative Law
Articles 16 to 19	-
Article 20	Section 23k
Articles 21 to 23	-