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DRAFT GUIDELINES OF THE COMMITTEE OF MINISTERS
OF THE COUNCIL OF EUROPE ON
THE EFFICIENCY AND THE EFFECTIVENESS OF LEGAL AID SCHEMES
IN THE AREAS OF CIVIL AND ADMINISTRATIVE LAW

EXPLANATORY MEMORANDUM

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Introduction

Although Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, the “European Convention on Human Rights” – hereinafter the “ECHR”) does not explicitly guarantee a right to legal aid in civil proceedings, in its case-law the European Court of Human Rights (hereinafter the “ECtHR”) established that state authorities should provide everyone within their jurisdiction with the assistance of a lawyer in civil cases when this proves indispensable for effective access to court¹ or when lack of such assistance would deprive a person of a fair hearing²: The ECtHR also held that the requirement to pay fees to a civil court should not hinder access to a court for applicants who are unable to pay them³.

The ECtHR has not identified specific areas of law or types of civil proceedings in which legal aid should mandatorily be provided. The decision on whether or not a state must provide legal aid should be taken in every individual case using the following criteria: the importance of what is at stake for the applicant⁴; the complexity of the case⁵; the applicant’s capacity to represent him or herself effectively⁶; the existence of a legislative requirement to be legally represented⁷.

The ECtHR accepts that access to legal aid may be conditional on a litigant’s financial situation and his or her prospects of success in the proceedings⁸. However, the ECtHR does not assess eligibility criteria for legal aid as such. Rather it verifies whether the right of access to justice as a whole was ensured. This means that states enjoy broad discretion regarding organisation of their legal aid systems, including the scope of such systems and eligibility criteria.

Assigning a lawyer to represent a party does not in itself guarantee effective assistance⁹. On a number of occasions, the ECtHR found that the quality of assistance should not be so low as to deprive an individual of the practical and effective access to court¹⁰.

Article 6 of the ECHR does not guarantee the right to legal aid outside of judicial proceedings. However, the Committee of Ministers (hereinafter “CM”) Resolution (78) 8 on legal aid and advice provides that the member States should ensure that persons in an economically weak position are able to obtain necessary legal advice on civil, commercial, administrative, social or fiscal matters¹¹. The CM Recommendation No. R (93) 1 on effective access to the law and to justice for the very poor invites the member States to promote legal advice services to the very poor by defraying the cost of legal advice through legal aid, by supporting advice centres in underprivileged areas and by enabling non-governmental organisations or voluntary organisations providing support to the very poor, to give legal assistance.

Working methods

1. The European Committee on Legal Co-operation (CDCJ) instructed the Drafting Group on Legal Aid Schemes (CDCJ-GT-SAJ2) to prepare guidelines on improving the effectiveness and the efficiency of legal aid schemes in the areas of civil law and administrative law. The Drafting Group was composed of 10 CDCJ members with expertise in legal aid policy and practice and was assisted by two consultants, Dr. Stefanie Lemke, a legal aid expert from Germany, and Mr John Eames, a legal aid expert from the United Kingdom. A number of observers were invited to participate in the work of the Drafting Group.

¹ *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32.

² *McVicar v. the United Kingdom*, no. 46311/99, § 48, ECHR 2002-III.

³ *Kreuz v. Poland*, no. 28249/95, §§ 60-67, ECHR 2001-VI.

⁴ *Steel and Morris v. the United Kingdom*, no. 68416/01, § 61, ECHR 2005-II.

⁵ *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32.

⁶ *McVicar v. the United Kingdom*, no. 46311/99, §§ 48-64, ECHR 2002-III.

⁷ *Gnahoré v. France*, no. 40031/98, § 41, ECHR 2000-IX.

⁸ *Steel and Morris v. the United Kingdom*, no. 68416/01, § 62, ECHR 2005-II.

⁹ *Siałkowska v. Poland*, no. 8932/05, §§ 110 and 116, 22 March 2007.

¹⁰ *Staroszczyk v. Poland*, no. 59519/00, § 135, 22 March 2007.

¹¹ Resolution (78) 8 of the Committee of Ministers of the Council of Europe on legal aid and advice, adopted on 2 March 1978.

Structure and content

2. The guidelines build on existing international, European and national standards. They are not only a declaration of principles but aspire to be a practical guide to the implementation and advancement of internationally agreed and binding standards.

3. The guidelines aim to provide generic solutions that can help national legal aid schemes function more efficiently and effectively, without changing their overall organisational framework. As a practical tool, the guidelines present good practices and propose practical solutions to address the existing inconsistencies and lacunae.

4. Identifying critical factors that have enabled a particular practice to work successfully in a given jurisdiction may help member States to introduce such good examples in their own jurisdictions and adapt them to their own needs and circumstances. Factors that may have a significant impact on implementing relevant practices already successfully functioning in other member States include:

- level of funding;
- simplification of procedures;
- special procedures to deal with recurring issues (such as the use of standardised forms);
- scope of services offered;
- number of legal aid providers;
- allowing other legal professions than lawyers to provide legal aid services (such as paralegals);
- provision of alternatives to legal aid (such as pro bono legal services and legal clinics);
- having clear and transparent criteria for selecting legal aid providers;
- appropriate organisation of remuneration of legal aid providers;
- existence of a mechanism to hold legal aid providers accountable for any misconduct.

Abbreviations

CIAS - *Complex Informational Analytical System (Ukraine)*
CLA - *Civil Legal Advice (United Kingdom)*
IT - *Information technology*
LAA - *Legal Aid Agency (United Kingdom)*
NGOs - *Non-governmental organisations*
SIAJ - *Legal Aid Information System (France)*
SinOA - *Information System of the Portuguese Bar Association*
TEISIS - *System of legal and legal aid information (Lithuania)*

General principles

Access to justice

5. Access to justice is a vital element in the democratic process and one of the basic principles of the rule of law. It is essential to liberty, fairness and dignity and should be guaranteed to all individuals irrespective of their financial situation. It guarantees an individual's ability to protect his or her rights in conformity with human rights standards.

6. Access to justice comprises the right to access to courts, the right to a fair and public hearing, the right to an independent and impartial court, the right to legal assistance, and the right to be advised, defended and represented by a lawyer of one's own choosing. It also covers the right to proceedings within a reasonable time, the right to represent oneself before a court, and the right to general application of the principles of efficiency and effectiveness to the delivery of justice.

7. Access to legal aid is crucial to ensure access to justice. Legal aid schemes should cover costs related to legal advice, assistance and representation.

Non-discrimination

8. Although physical accessibility to legal aid services is important, accessibility goes much further than that. It also encompasses equal treatment and anti-discriminatory practices. It may be poor where certain groups eschew legal aid despite needing it and despite having a decent physical access. Where a free legal aid scheme positively welcomes typically non-advice-seeking vulnerable people and encourages them to seek advice, that is likely to be a good indicator of an active rather than passive approach to accessibility. It also indicates a concern about equality. In the **United Kingdom (England and Wales)**, all public bodies must have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Robust data collection allows specific groups to be identified when legal aid services are being provided (for example, young people, women, people with mental health problems, older people) which informs policy development and practice.

Early intervention with the help of legal aid systems (preliminary legal aid)

9. Early intervention of easily accessible and timely legal advice and assistance can help to prevent legal problems from occurring or escalating. Use of early intervention mechanisms and techniques can increase understanding, awareness and accessibility of legal services. It can also help to avoid costly and time-consuming court proceedings. In **Poland**, information on legal aid (brochures and leaflets) is disseminated, especially to older adults or people with disabilities, by post.

10. It is recommended that a holistic approach and information technology (IT) solutions when using early intervention mechanisms and techniques be implemented. Some examples of the holistic approach (for example, "one-stop shops", that is a single location where different legal services are provided by different governmental bodies) can be found below. IT solutions may include creating a website that informs users about the kinds of support available to them and how they can apply for legal aid. Ideally, such information should be provided on a single website, particularly when there is more than one type of legal aid available in a member State. This website should help users to identify and resolve their legal issues. The website should provide accurate information in an intelligible manner. It should be user-friendly, interactive and integrated with individualized assistance, including face-to-face legal aid services. Member States are also encouraged to develop chatbots that could provide legal information. Chatbots could be used to explain to users how legal advice and assistance can be obtained and help them create their own legal documents. Legal information can also be disseminated by means of printed materials, call services, Skype, chatbots, online chat services and mobile teams.

11. Some member States report that they successfully provide legal information using holistic and integrated approaches, such as in the form of "one-stop shops". For example, in **Latvia**, bodies of local self-government provide individuals with various types of assistance, including legal aid services. A holistic approach also presupposes that different governmental and non-governmental bodies work in close co-operation to address legal problems at an early stage. For example, in **Croatia** and **Norway**, state authorities co-operate with NGOs in providing basic legal advice. In 2019, the **United Kingdom (England and Wales)** published its Legal Support Action Plan, which includes an aim to work collaboratively to pilot, test and evaluate the provision of holistic legal support hubs to more effectively support earlier resolution of a person's legal problems. **Ukraine** implemented a Civil Counsellors' Initiative in the framework of which legal advice is being provided through respected members of local communities, who disseminate legal information and refer persons with legal problems to the legal aid system. In **France**, the existing 1340 legal access points, that allow everyone to access information on justice and the law, should be increased up to

2000 by 2022. From 2020 in **Poland**, free mediation is available at every free legal aid point. The mediation meeting is conducted by a professional mediator. Free mediation is provided locally in each poviast (district), in determined point for this purpose (free legal aid point). The entire scope of assistance provided under the system of free legal aid and free civic counselling is completely free.

12. Many member States use various IT solutions to ensure access to legal information. One of the best examples of provision of legal information via a website is the *Rechtwijzer* (“conflict resolution guide” or “interactive platform to justice”), a legal advice website developed by the Dutch Legal Aid Board (**the Netherlands**). It is run by a joint committee with the support of a number of stakeholders, including the bar association. This website provides legal assistance by means of a “decision tree”, helping individuals to find solutions to their legal problems in an interactive manner. The website also refers users to an appropriate expert or organisation if necessary. An additional important feature of this website is an online platform which allows people to settle legal conflicts through negotiations with another party to the conflict with the involvement of an impartial third party in an online “dialogue”. In particular, this type of assistance is provided in divorce cases. **Ukraine** put in place Wikilegalaid, an open database where individuals can find legal information including on how to deal with the most widespread legal problems. In the **United Kingdom (England and Wales)**, individuals can access comprehensive information on a variety of potential legal issues on the government website (www.gov.uk), including the steps that may need to be taken to resolve the problem. This website also advises individuals where legal aid may be available to resolve their case and directs them towards the legal aid system, including to an online tool that diagnoses where an individual is likely to qualify for funding, or other sources of advice where relevant. In **France**, the website www.service-public.fr and the portal www.justice.fr include information on the organisation of justice, legal proceedings, offences and criminal sanctions which is thus available to everyone. In particular, people can find all the useful information on legal aid and simulator of eligibility for legal aid based on the calculation of the applicant's resources.

13. Some member States are developing chatbots. In **Belgium**, the Flemish bar association has launched a chatbot named Victor/Robin, etc. (depending on the region) in order to answer simple questions on the primary and secondary legal aid system. The chatbot uses questions to determine whether a person seeking legal aid is eligible for it. The chatbot provides information regarding the documents required to apply for legal aid, including where a person can seek further help. A person who is not eligible for initial free advice or pro bono assistance will be redirected to a lawyer module, which takes into account the issue concerned and location. This lawyer module is hosted on the website of the Flemish bar association. In **Finland** the legal aid offices chat service enables people to ask for legal advice easily and free of charge. Through this service legal aid providers and legal aid secretaries provide general legal information and information on legal aid. The chat service does not require any registration or disclosure of personal information and questions can be asked anonymously. It is not possible to receive advice on an individual case through the chat service. The chat service is accessible through the dedicated website on legal aid.

Quality assurance mechanisms in legal aid schemes

14. The examples set out below may serve as a source of inspiration for those member States who are seeking to improve their quality assurance mechanisms in legal aid schemes.

15. In a number of member States different actors co-operate in order to control the quality of legal aid services provided. For example, in **France, Latvia and Lithuania**, national legal aid authorities co-operate in this respect with courts and national bar associations. In **Lithuania**, the state-guaranteed Legal Aid Coordination Council analyses the policy in the field of legal aid and develops proposals on possible improvements. The Council consists of representatives of the Parliament, the Lithuanian Bar, the Lithuanian Lawyers' Society, the Lithuanian Association of Judges, the Ministry of Justice, the Ministry of Finances, the State Guaranteed Legal Aid Service, the Association of Municipalities and NGOs. In **Ukraine**, the National Bar Association co-operates with the Coordination Centre for Legal Aid Provision in monitoring the quality of legal aid services. As well as other quality measures, in the **United Kingdom (England and Wales)**, the LAA encourages external stakeholders to provide information on concerns about the quality of services and has established a number of links with organisations that can provide this information.

16. The quality of legal aid is assessed through surveys for beneficiaries and/or legal aid providers in **Finland, Latvia, Lithuania, and Ukraine**. In the **United Kingdom (England and Wales)**, all the contracts which the LAA concludes with legal aid providers contain provisions requiring providers to undertake periodic satisfaction surveys. In **Belgium**, the legal aid office checks each legal aid provider's work after its completion. This is done through peer-reviews by fellow lawyers. They assess whether the legal aid assignment has been carried out properly (quality control) or has not been carried out at all (effectiveness). Additionally, there is "a cross control" by a group of auditors. This group consists of Flemish and French barristers who review a certain number of completed assignments, depending on their field of specialisation. If the auditors disagree about a case, the president of the Flemish or French legal aid office will make the final decision on it. In **Ireland**, peer review is used by means of authorised offers from the Legal Aid Board who have solicitor experience to review solicitors' files. **Ireland** has used satisfaction surveys. **The Netherlands** requires lawyers once per year to participate in either a peer-review, or inter-collegial review. In **Portugal**, the Ministry of Justice carries out a comprehensive impact assessment in the framework of which a questionnaire is sent to legal aid beneficiaries to measure the quality of the legal aid services' delivery.

17. The **United Kingdom (England and Wales)** operates an independent peer review devised by Avrom Sherr, Richard Moorhead and Alan Paterson and developed by the Institute of Advanced Legal Studies. This allows the LAA to assess the standard of chosen legal aid providers as part of a risk-based approach to quality assurance. In both **England and Wales and Scotland** trained and experienced legal practitioners, recruited through an open procurement process, review, on an independent basis, a provider's random sample of case files. These files are then measured against an objective set of criteria. In **England and Wales** the way legal aid provider-organisations are run is seen as a valuable proxy indicator of how likely it is their legal aid and assistance will be of high standard, hence provider-organisations, quite apart from maintaining high quality individual case-files, also need to comply with specific organisational standards. In **Scotland**, every legal aid provider in civil or children's legal aid have their files reviewed on a regular basis. In **Luxembourg, Poland and Ukraine**, a complaint against legal aid provider's actions can be lodged with national bar associations. In **Latvia and Lithuania**, such a complaint can be lodged with the national legal aid authority or the national bar association. In **Latvia**, it is possible to appeal the national bar association's decision about a lawyer's poor performance. In **Austria and Germany**, the responsibility of the court of first instance for the decision on legal aid includes a complaint mechanism to the court of second instance. In **Finland and Norway**, a legal aid provider's misconduct may be reported to the disciplinary authorities.

18. In the **United Kingdom (England and Wales)**, the LAA can take informal action to discuss and address any issues with the legal aid provider and take more formal measures such as the imposition of specific contract sanctions. Contract sanctions include measures such as excluding particular individuals from undertaking contract work, suspending payments or the right to undertake certain work, and, ultimately, the termination of the contract.

Means and merits testing

19. Although some member States provide basic advice and assistance without means and merits testing, before providing legal representation at state expense, most member States assess whether the matter is appropriate to be supported by public legal aid funds (**Austria, Denmark, France, Germany, Latvia, Lithuania, Switzerland, and the United Kingdom**). This is usually done through a means and merits test which looks, for example, at the matter's reasonable prospects of success and the applicant's financial resources, such as in **Greece**. In addition, certain types of disputes are usually ineligible for legal aid. In **Latvia and Poland**, legal aid cannot be granted in matters related to commercial activities and tax matters. In **Latvia**, legal aid is not granted for resolving disputes through alternative dispute resolution mechanisms, disputes concerning claims related to luxury items or compensation for non-pecuniary damage. In **Sweden**, legal aid is not granted in cases related to simple matters, such as disputes concerning applications for legal title, mortgaging a property or drawing up documents such as a tax return, a will, a prenuptial agreement, an estate inventory or a deed of gift. In exceptional circumstances, legal aid will be granted in divorce cases. In **Lithuania**, legal aid is not granted, inter alia, in disputes related to commercial activities. However, exceptions to these rules may be applied on a case-by-case basis and taking into account the specific situation of a person.

20. In **Latvia, Sweden** and the **United Kingdom (England and Wales)**, legal aid will not be granted if the amount spent on legal aid is incommensurably high in comparison with the amount of the claim. In **France** and **Sweden**, individuals who have or ought to have had legal protection cover through insurance are not entitled to legal aid. In the **United Kingdom (England and Wales)**, the “cost-benefit test” for relevant monetary claims takes the form of a matrix that weighs up likely damages against likely costs, where the precise ratio required for legal aid to be granted varies according to the prospects of the success of the case.

21. Some member States, like **France**, choose to provide legal aid to individuals while others provide it both to natural persons and legal entities. It is also notable that some member States chose to provide legal aid in out-of-court dispute resolution mechanisms, while others restrict provision of legal aid to proceedings before bodies with adjudicative powers. The guidelines, in particular paragraph 11, do not impose on member states any obligation to introduce legal aid schemes that are available to legal persons.

22. In the **United Kingdom (England and Wales)**, individuals can check whether their case falls within the scope of legal aid by using an online tool which guides them through a series of simple questions. In some categories of law the tool will also allow individuals to check whether they qualify financially. **France** also offers a simulator of eligibility for legal aid, which takes into account the applicant’s resources.

23. In **Austria, Finland** and **Germany**, a declaration on personal and financial situation to be filled in by legal aid applicants is available online. In **Lithuania**, the system TEISIS is currently being developed. The system will consist of an online application form for legal aid and a tool for assessing one’s eligibility for legal aid.

Methods of measuring financial eligibility

24. Member States chose different ways to measure financial eligibility for legal aid. Usually it is calculated on the basis of the applicant’s gross income, disposable income and assets including immovable property (**Austria, Belgium, Croatia, Finland, Germany, Latvia, Lithuania, Spain, Sweden, Ukraine** and the **United Kingdom (England and Wales)**). Family size and spouse’s income are often also taken into account. In **Finland**, the amount of tax paid is deducted from the income on the basis of which financial eligibility is calculated. Deductions are likewise made for reasonable housing costs, day-care charges, maintenance support payments, and the scheduled payments in enforcement or debt adjustment proceedings. In addition, a certain deduction is made for each minor child that belongs to the applicant’s household. A similar system applies in the **United Kingdom (England and Wales)**. In **Ukraine**, the financial threshold is linked to the level of minimum wage established by national legislation and in **Lithuania**, to the level of state supported income. In **the Netherlands**, financial eligibility is tested by looking at the income and the financial resources that were available two years before his or her application. The information about a person’s income and his or her assets is provided by the tax authorities. This means that aspects such as immovable property, subsidies received from the state for healthcare are taken into account in the calculation of the disposable income and assets.

25. In some member States, for example **Iceland** and **Switzerland**, there is a gap between the financial threshold set by the state and the costs of paying for a lawyer privately. This may lead to a situation where applicants do not qualify for legal aid because they do not meet the means test, but they cannot afford to pay for a private lawyer to obtain the legal service. This situation leads to many people being in fact deprived of access to justice. In such a situation, alternative solutions to legal aid, such as pro bono legal services and legal clinics, may help to bridge the gap. It should be noted that pro bono legal services are not to be confused with “free legal aid”: pro bono work is legal advice or representation provided free of charge by legal professionals in the public interest¹². In some member States, governments or professional organisations have developed a variety of strategies to overcome such gaps. This includes calling for a more flexible financial threshold for applicants of legal aid or furthering an active pro bono legal culture to help

¹² See, for example, Law Society of England and Wales, Introduction to pro bono, available at <https://www.lawsociety.org.uk/support-services/practice-management/pro-bono/introduction-to-pro-bono/>.

those who cannot afford to pay for legal services. The Law Society and Bar Council of the **United Kingdom (England and Wales)** and the Paris Bar Association of **France**, for example, have an enduring tradition to meet the unmet legal needs and support or offer pro bono legal services¹³. In **the Netherlands**, some commercial parties provide transparent and fixed-price legal aid.

Waiving of means testing

26. In **Denmark, France, Latvia, the Netherlands, Norway, Ukraine** and the **United Kingdom (England and Wales)**, the waiving of means testing can be applied in certain cases. In the **United Kingdom (England and Wales)**, anyone in danger of eviction or having property repossessed can receive on-the-day emergency advice and advocacy regardless of their financial circumstances. The means test is also not applied in cases where children are being taken into care, there are statutory appeals against detention under mental health and mental capacity law, and there is on-the-day advice at Immigration Removal Centre Advice Surgeries and at courts as part of the Housing Possession Court Duty Scheme. There is another set of cases where the Director of Legal Aid Casework has the discretion to waive the means test in individual cases, such as for advice on inquests and domestic violence cases. In **France**, legal aid may be granted without a prior means test when a person (or his/her beneficiaries) is the victim of a particularly serious crime or, exceptionally, when a case is of a singularly worthy nature or with regard to the foreseeable burdens of the trial. Furthermore, legal aid is automatically granted when the proceedings concern a minor before the family court judge or when the proceedings are before the national court for asylum right. In **Latvia**, a person has a right to legal aid without means testing if he or she has the status of a low-income or needy person, or if they find themselves suddenly in a situation and material condition which prevents them from ensuring the protection of their rights (due to a natural disaster, force majeure or other circumstances beyond their control). In **Denmark** and **Norway**, legal aid can be in some cases granted without means testing, for example, in cases where proceedings concern a matter of principle or a matter of public interest or can have significant impact on a person's social or commercial situation. In **Croatia**, certain categories of persons are granted secondary legal aid irrespective of their financial situation, for example, children, victims of a criminal offence seeking compensation for damage and beneficiaries of social welfare.

Verifying financial eligibility

27. Currently in some member States, for example, in **Latvia** and **Lithuania**, applicants still have to provide number of documents in paper form to support their legal aid applications. To address this issue in **Lithuania**, the system TEISIS is currently being developed and will be used by legal aid authorities for retrieving relevant data concerning applicants' financial situation directly from different state-held information systems and registers. In the **United Kingdom (England and Wales)**, the LAA has an online tool that carries out an initial check on financial eligibility before inviting the applicant to contact CLA or asking if they want to be called back. Once through to CLA, an operator will carry out a further assessment of the applicant eligibility before referring them through to a specialist telephone advisor if eligible. If the applicant does not appear to be eligible for legal aid or the type of advice sought is not covered by CLA then they will be signposted to other sources of legal services. In **Spain**, the website of the General Bar Association also offers a tool to calculate the user's financial eligibility for legal aid.

Informing about the refusal or granting of legal aid

28. In some member States, when informing applicants about their ineligibility for legal aid, the authorities provide information about the availability of alternatives to legal aid. In **Poland** any natural person who cannot afford legal aid can use the free mediation service. This party must submit an appropriate declaration. This is a condition for maintaining the mediator's help. **Norway** introduced out-of-court dispute resolution mechanisms which make legal assistance unnecessary, such as conciliation boards. In the **United Kingdom (England and Wales)**, the government is also exploring the possibility to set up out-of-court dispute resolution mechanisms.

¹³ Lemke, Stefanie, *Human Rights Lawyering in Europa: Anwaltlicher Menschenrechtsschutz und der Zugang zum Recht in England und Wales, Frankreich und Deutschland* (Bonn: Deutscher Anwaltsverlag, 2020).

Repayment of legal aid costs

29. In a number of member States beneficiaries can be asked to repay legal aid costs under a number of circumstances, for example when they acquire money or property as a result of resolution of a dispute for which legal aid was granted (**Bosnia and Herzegovina, France, Latvia, Montenegro and the United Kingdom (England and Wales and Scotland)**). In **Austria**, within three years after the end of the proceedings for which legal aid was granted, a court may order repayment of legal aid costs if this payment can be made without a negative impact on the “modest standard of living” of the legal aid beneficiary. In **Belgium**, the state can ask for reimbursement if people received legal aid on the basis of false statements or by fraud (those people might also be prosecuted on the grounds of a criminal offence); or if people have seen an improvement in their financial situation. Similar arrangements apply in **France** and the **United Kingdom (England and Wales)**.

Organisation of legal aid system and availability of legal aid providers

30. In order to ensure that there is an appropriate geographical distribution of providers, in the **United Kingdom (England and Wales)** LAA commissions services within defined geographical locations and by category of law. For each category of law, the LAA then divides up England and Wales into a number of “Procurement Areas”. For example, there are currently 134 Procurement Areas in the housing category of law, based largely around the geographical boundaries for local government authorities. In contrast, there are only 5 Procurement Areas in Mental Health recognising that in this area providers are more likely to travel to clients in hospitals over a large geographical area rather than see them in their office. In addition to face-to-face provision, the CLA specialist telephone service provides advice by email, telephone or video link in family, debt, housing, discrimination and education matters to eligible clients. The telephone helpline is available over extended hours including on Saturday morning. The LAA operates legal advice surgeries in all Immigration Removal Centres (IRC). Detainees can receive up to 30 minutes of advice regardless of their financial situation. In **Lithuania**, primary legal aid is provided by municipalities, which means that everyone can receive legal aid within 20 kilometres from his or her place of residence. In **Bosnia and Herzegovina, Montenegro and Poland**, geographical distribution of offices providing free legal aid makes it available in all parts of the country. In some countries legal aid in remote areas is being provided by mobile teams (**Lithuania and Ukraine**). In **Ukraine**, a well-developed network of legal aid offices exists in the country, covering big cities, small towns and remote villages. In addition, legal aid offices maintain a network of remote access points in penitentiary institutions, remote towns and villages, Roma settlements and hospitals. In **Finland**, the network of legal aid offices covers the whole country. Finland has 23 public legal aid offices, which are located mainly in the vicinity of the district courts. The legal aid offices have around 160 locations, of which around half are service points. Applicants for legal aid may choose which legal aid office they wish to use. In **Norway**, authorities provide funding for non-profit organisations which provide legal advice, inter alia, in areas where other legal aid providers are unavailable. In **Switzerland**, competent authorities provide for free legal advice in the field of tenancy law and victim protection. In **Spain**, in each of the 50 provincial capitals, in each of the two autonomous cities, and on each island, where there are one or more judicial parties, there is a Free Legal Aid Commission.

31. Member States use different schemes of allocating cases between legal aid providers. In **Austria**, bar associations allocate cases to lawyers according to an alphabetical list after legal aid is granted by a court. In **Belgium**, all barristers delivering legal aid are specialised in a certain area of law (family law, commercial law, criminal law, social law, etc.). The legal aid office has access to a computer system where all legal aid providers are listed. It includes information about the region where the lawyers are based and their specialisation. The beneficiary can choose the lawyer, depending on his/her location. In **Ireland**, solicitors who join legal aid panels must meet certain criteria relating to training and/or experience; once admitted to the panel, it is assumed that they are competent to take on any case referable to that panel. In **Latvia**, cases are allocated to lawyers by the Legal Aid Administration, taking into account their competence, specialisation, workload, ability to provide legal aid in a specific matter, and location. In **Ukraine**, cases are allocated according to the duty schedule which is agreed between a centre for secondary legal aid provision and a lawyer. In some legal aid centres information on cases allocated to specific lawyers is made publicly available. In **Lithuania**, the system TEISIS, which is currently being developed, will automatically assign

lawyers to clients and clients will be able to track procedural actions taken by a lawyer in their case. In **Portugal**, cases are allocated on a ‘first in/first out basis’ through an electronic system called “SinOA” (“Sistema de Informação da Ordem dos Advogados”), which takes into account the location and the respective area of law.

32. In some countries legal aid providers receive a fixed number of cases per month: 26 cases in **Lithuania** for lawyers who only take legal aid cases and up to 30 cases simultaneously in **Ukraine**. In the last general procurement exercise for civil legal aid conducted by the **United Kingdom (England and Wales)** in 2018, the LAA required providers to bid for a certain “lot” of work in a particular category. For example, providers bidding for work in the family category of law could bid in the following lots in a Procurement Area: a) Lot 1: Up to 20 cases; b) Lot 2: 21 – 100 cases; c) Lot 3: 101 – 250 cases. If a provider met the minimum criteria for a lot, they were guaranteed that volume of work. In addition, the contract permits providers to increase their case allocations by 50% each year if there is underlying demand that needs to be met.

33. The **Finnish** and **Lithuanian** legal aid systems have a dual nature: the public legal aid offices and the legal aid provided by private lawyers co-exist and complement each other. In **Finland**, while the public legal aid offices provide legal services in all kinds of cases, private lawyers provide legal assistance only in court proceedings. Hence in a court case, a client may choose to use services provided by either a public legal aid provider or a private one. In **Ireland**, where a case is referred to a private sector legal aid provider, it is generally for the client to select the provider themselves from the list. The Board only selects the provider in asylum cases and limited other instances. Where the case is retained in the law centre it is for the manager of the law centre to allocate the case as thought fit – usually having regard to the workloads of the solicitors in the office. Beneficiaries are also allowed to change their solicitor in appropriate circumstances. In the **German** and **Norwegian** legal aid systems, legal aid beneficiaries can freely choose the lawyer they want to receive advice and assistance from. The lawyer is then compensated by the state in accordance with the public salary rate.

Reimbursement procedure

34. In **Austria**, private lawyers acting in the framework of the legal aid scheme are not paid with the exception of proceedings which result in exceptional expenses. Instead, the government pays a lump sum to the pension fund of the Bar Association; this lump sum is calculated on the basis of the costs of all legal aid cases handled by lawyers during a given year. In **Lithuania**, lawyers providing legal aid on a regular basis receive a fixed monthly remuneration. Other lawyers are paid for each case based on the established rate for certain procedural actions taking into account the complexity of the case. In the future, legal aid providers will be able to submit application for reimbursement and supporting documents online via an online electronic system TEISIS. In **Luxembourg**, the reimbursement is calculated by the bar association on the basis of the list of the services provided. A legal aid provider can request advance payment for the work. In **Montenegro**, legal aid providers are entitled to 50% of the fee envisaged by the Lawyer Tariffs and the reimbursement of necessary expenses linked to the provision of legal aid. In **Switzerland**, the level of remuneration is calculated by courts in accordance with the cantonal law. In **Ukraine**, the reimbursement calculation procedure is complex and takes into account a wide range of factors, such as the number of court hearings attended, number of procedural actions carried out, number of procedural documents drafted, and the outcome of the proceedings. The stage of proceedings and litigation results are also taken into account. Legal aid providers forfeit their right to reimbursement if they do not claim it within 120 days after the date when the right to reimbursement arises.

35. In the **United Kingdom (England and Wales)**, every month providers electronically submit their completed Controlled Work (relatively low-cost initial advice and assistance and some tribunal cases) “claims” for payment to the LAA. These claims only contain general information on a case which is accepted without further initial verification at that stage. The LAA subsequently carries out regular audits on a sample of cases submitted for payment and the higher cost cases are assessed before they are remunerated in full. This can lead to the recovery of costs or further contract sanctions for invalid claims. This risk-based approach is possible because providers are under contract with the LAA and there are robust quality assurance mechanisms in place. “Licensed Work” generally covers representation in court. Providers must generally apply to the LAA to be granted legal aid in a case. They are permitted to make the application if

they have a contract in the relevant category of law. The LAA has much more direct control over costs in these matters and will restrict the amount of money that a provider can spend on a case to a certain limit before they must revert back to the LAA for authorisation to continue. All Licensed Work is subject to assessment by the LAA or a court at the end of the case before it can be paid. It is, however, possible for providers to claim “Payments on Account” for work in progress. All cases are processed and paid through the LAA’s electronic case management system.

Specialisation

36. In **Belgium**, all barristers practising legal aid are specialised in a certain area of law (family law, commercial law, criminal law, social law, etc.). In the **United Kingdom (England and Wales)**, the LAA procures legal aid by category of law and the contracts that are awarded will have category-specific rules about how those services are to be delivered. For example, providers who are authorised to undertake family work will be required to meet the service specification for that area of law, including having a supervisor with specific accreditation in family law. In **France**, agreements signed between bar associations and presidents of courts aim to guarantee in-service training for lawyers who wish to provide legal aid on certain matters.

Conflict of interest

37. In the **United Kingdom (England and Wales)**, the procurement arrangements in each Procurement Area mean that problems arising from a conflict of interest should not occur in practice. This means that there will almost always be another relatively local provider available to take on a client’s case if the first provider that they approach is unable to assist because of a conflict of interest. This system allows the LAA to identify areas where there may be fewer than ideal providers and take remedial action to resolve the situation.

Data collection

38. In **Belgium, Latvia, Lithuania** and the **United Kingdom (England and Wales)** data are collected through standard forms and/or IT tools. Consequently, there is a high degree of consistency between the data.

39. In certain member States (**Bosnia and Herzegovina, France, Latvia, Lithuania, Luxembourg and Montenegro**), the Ministry of Justice collects data related to legal aid provision through national legal aid authorities, courts, or bar associations. In **Belgium**, the Flemish and French bar associations use a computer system to encode data relating to legal aid which include, for example, the number of assignments, categories of beneficiaries, number of legal aid providers, type of procedure, etc. In **Croatia**, the Ministry of Justice collects data about legal aid and for that purpose uses an information system which enables real-time monitoring of the number of applications submitted for secondary legal aid, the number of accepted or rejected applications, the remuneration of attorneys for each state administration office in the country and the number of primary legal aid cases dealt with by NGOs and legal clinics. In **Denmark**, the Department of Civil Affairs in the Ministry of Justice collects data through approved legal aid institutions. In **Poland**, data on preliminary legal aid are channelled to the Ministry of Justice by local state authority (“starosta”). The Ministry of Justice also receives financial data on overall legal aid cost regarding judicial proceedings (preparatory and trial proceedings). In **Ukraine**, the CIAS is maintained by the Coordination Centre for Legal Aid and is constantly updated by the regional and local centres for secondary legal aid. CIAS contains information on legal aid beneficiaries (name, gender, citizenship, taxpayer’s number, passport number), information on the current representative, if any, information about the type of the legal problem, information about a category the client belongs to, and information on appointment and replacement of a legal aid provider. In the **United Kingdom (England and Wales)**, through its various IT systems, the LAA collects a large amount of management information on the cases that it funds, including: a) subject matter of the case; b) cost (solicitors, counsel, disbursements); c) client details (for example, age, gender, disabilities); d) outcome. In **Finland** information concerning legal aid cases is collected through an electronic system “Romeo” which is used by legal aid offices, lawyers and courts.

40. In some countries, authorities make statistical information on legal aid publicly available. In **Latvia**, the statistical data are published every month while in the **United Kingdom (England and Wales)** the statistics are published every quarter of the financial year. Statistical information on the legal aid scheme, including its budget, is also publicly available in **Ukraine**.

Monitoring and analysis

41. In **France** and the **United Kingdom (England and Wales)**, the Ministry of Justice uses the available data, evidence and research to assess the impacts, costs and benefits, and distributional effects of any proposed changes in legal aid policy. The Ministry publishes an Impact Assessment (IA) alongside any consultation exercise. A variety of work is carried out within the Ministry of Justice's Analytical Services Team to understand the legal needs of the population and how the latter interacts with legal aid services. This includes cross-cutting research and more targeted work, such as focus groups. The department conducts, commissions and publishes a range of justice research, either as part of a long-term strategic research plan or on an ad hoc basis where required.

42. In **Ukraine**, data collected by CIAS are constantly analysed and the results of the analysis are used to produce educational materials and budget forecasts and requests.

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