

# THE EFFICIENCY AND THE EFFECTIVENESS OF LEGAL AID SCHEMES IN THE AREAS OF CIVIL AND ADMINISTRATIVE LAW



Legal instruments

Guidelines  
and explanatory memorandum

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# THE EFFICIENCY AND THE EFFECTIVENESS OF LEGAL AID SCHEMES IN THE AREAS OF CIVIL AND ADMINISTRATIVE LAW

## **Guidelines**

adopted by the Committee of Ministers  
of the Council of Europe  
on 31 March 2021  
and explanatory memorandum

French edition:  
*Lignes directrices du Comité des  
Ministres du Conseil de l'Europe sur  
l'efficience et l'efficacité des systèmes  
d'assistance judiciaire dans les  
domaines du droit civil et du droit  
administratif et exposé des motifs*  
ISBN 978-92-871-9046-8

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Cover design and layout:  
Documents and Publications  
Production Department  
(SPDP), Council of Europe

Council of Europe  
F-67075 Strasbourg Cedex  
<http://book.coe.int>

ISBN 978-92-871-9047-5  
© Council of Europe, August 2021  
Printed at the Council of Europe

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# 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

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*(Adopted by the Committee of Ministers on 31 March 2021  
at the 1400th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between the member States, in particular by promoting the adoption of common rules in legal matters;

Recalling the right to a fair trial in determining an individual's civil rights and obligations as provided by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, the European Convention on Human Rights) and recognising the importance of legal aid schemes in giving access to justice, particularly for vulnerable people;

Recalling Committee of Ministers' Recommendation Rec(93)1 to member States on effective access to the law and to justice for the very poor, and, in particular, its invitation to the member States to promote legal advice services for 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;

Acknowledging the progress made by the member States in the provision of legal aid services to their citizens;

Recognising the importance of ensuring that legal aid schemes function as effectively and efficiently as possible and noting that in this respect there are

many examples of good practice in the member States which can be shared and built upon;

Conscious of the need to respect the diversity of the legal systems of the member States and the overall organisational framework of their legal aid schemes,

Adopts the following guidelines to serve as a practical framework for the member States to assist them in strengthening their legal aid schemes in the areas of civil and administrative law, particularly with respect to their effectiveness and their efficiency, and invites them to disseminate these guidelines widely to those responsible for the development and functioning of their legal aid schemes.

## Purpose and scope

1. The guidelines aim to provide generic solutions that can make national legal aid schemes in the areas of civil and administrative law more efficient and effective, without changing their overall organisational framework.

## Definitions

2. For the purpose of these guidelines:
- a. “lawyer” refers to a person qualified and authorised according to national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters;
  - b. “legal aid” refers to the provision of legal advice, assistance and/or representation by a legal aid provider either at no cost or subject to a financial contribution;
  - c. “legal representation” refers to representation by a legal aid provider, including in courts or proceedings before other State tribunals;
  - d. “legal advice” refers to the provision of information by a legal aid provider on a person’s legal rights and/or responsibilities and on the manner of and existing possibilities for solving a particular legal issue;
  - e. “legal assistance” refers to assistance by a legal aid provider, including, for example, assistance in drafting documents and court pleadings, support in mediation and help in navigating the rules and procedures of State administrative agencies;

- f. “legal aid provider” refers to any person (legal or natural, and whether professionally qualified in law or not) involved in the delivery of State-funded legal aid in the areas of civil and administrative law, whether it be provided on a full-time, part-time or case-by-case basis;
- k. “vulnerable person” means any person who, because of his or her specific situation or circumstances, requires specific care, attention or assistance.

## General principles

### *Access to justice*

3. An accessible, effective, sustainable and reliable legal aid scheme should be in place, allowing individuals to effectively exercise their right of access to justice.

### *Non-discrimination*

4. Legal aid should be available to every individual, regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin, property, citizenship or domicile, birth, education, social or other status. Specific protection and assistance may be granted to vulnerable people.

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

5. The use of early intervention mechanisms and techniques to help resolve legal disputes quickly and, as far as possible, at the source should be encouraged in order to alleviate financial demands on the legal aid scheme and, more generally, pressure on the legal system.

6. Consideration should be given to, in particular, the following mechanisms and techniques:

- making widely available, and easily accessible for everyone, information on law and the legal system and, in particular, on legal rights, obligations and remedies;
- providing the public with easy access to legal advice and assistance through integrated and/or holistic public services (for example, “one-stop shops”) in areas such as social policy, health, housing, employment and education;



- supporting access to information on legal rights, obligations and remedies through integrated and interactive information technology solutions.

## Quality assurance mechanisms in legal aid schemes

7. Mechanisms and measures should be in place to ensure the quality of legal aid schemes, both in terms of their general functioning and, more importantly, in terms of the legal services delivered by legal aid providers.

8. In designing mechanisms for legal aid delivery and possible changes to them, consideration should be given to the needs of and difficulties faced by potential users of the legal service; consulting users as to whether the legal aid scheme as designed meets their needs is likely to produce a more resilient and effective overall structure.

9. Consideration should be given, in particular, to the following mechanisms and measures, all of which should be implemented with full respect for the principles of professional independence (of all legal aid providers) and legal advice privilege:

- the use of clear, objective criteria for the appointment of legal aid providers;
- thorough and regular assessment of legal aid providers (whether governmental, not-for-profit or commercial) against clear criteria, including the quality of their management, policies, accreditation, electronic and paper-based case-management systems, customer-care standards, complaints procedures, in-service training programmes, adequacy of premises, and accessibility;
- continuous professional development on a regular basis for legal aid providers;
- the use of quality assurance clauses in public contracts between governmental bodies responsible for legal aid providers;
- requirements that legal aid providers adhere to ethical codes and other forms of ethical provisions;
- the use of quality assessment tools such as client satisfaction surveys and peer reviews by other legal aid providers, based on objective sets of criteria and/or rating systems, and carried out by either an independent body or by individuals (for example, fellow lawyers);

- establishing formal and impartial procedures that allow clients to complain about a legal aid provider;
- establishing formal and impartial procedures that allow for the replacement of a legal aid provider whose services are of unsatisfactory quality;
- establishing procedures for imposing disciplinary measures (including warnings, fines, withdrawal from a list of approved legal aid providers, removal of files and transfer to another legal aid provider) on a legal aid provider who fails to comply with quality standards.

## **Means and merits testing**

10. With a view to contributing to robust and financially sound legal aid schemes, procedures for testing an applicant's means and the likelihood of a successful outcome of the legal proceedings should be in place.

11. The member States which choose to make legal aid available to legal persons may take into account the financial situation of the legal person, and of natural persons with an interest in the legal person, when deciding whether legal aid should be granted or refused.

12. Potential applicants for legal aid should be informed of the eligibility criteria and the application procedure, which should be clear and easy to understand.

### ***Methods of measuring financial eligibility***

13. Member States should consider ensuring that financial eligibility for legal aid is measured (for example, by taking into account the applicant's gross income, disposable income and assets).

14. When an applicant is not eligible for legal aid but cannot afford to pay for the legal services of a private lawyer, member States should inform him or her about the available alternatives to legal aid (for example, the availability of pro bono legal services and legal clinics).

### ***Waiving of means testing***

15. Member States should consider allowing the waiving of means testing whenever justified.

### ***Verifying financial eligibility***

16. Member States should ease the bureaucratic burden imposed on applicants, in particular by reducing the number of documents they are required to provide in support of an application for legal aid.

Informing about the refusal or granting of legal aid

17. Whenever an application for legal aid is refused, member States should consider allowing applicants to challenge the refusal before a competent authority which should give reasons for its decision. Applicants should also be informed of the alternatives to legal aid and, in particular, about any available:

- free legal advice and representation (pro bono) provided by legal professionals, municipalities, non-governmental organisations, trade unions, etc;
- alternative dispute resolution mechanisms;
- legal insurance.

18. Whenever an application for legal aid is granted, member States should provide applicants with accessible information, in plain language, about the procedure to follow in order to benefit from legal aid and the extent to which legal costs will be covered by the State.

### ***Repayment of legal aid costs***

19. Member States should consider the possibility of revoking legal aid and of seeking repayment of legal aid costs by the recipient, where it is found to have been granted on the basis of false information provided by the applicant.

## **Organisation of legal aid schemes and availability of legal aid providers**

20. Without prejudice to the institutional independence of the national legal aid scheme and the existing legal framework governing its functioning, member States should consider taking the following measures:

- ensuring proper geographical distribution of legal aid providers, including in remote areas (for example, through the use of information technology tools, call services and videoconferencing);
- facilitating access to legal aid services for beneficiaries, particularly vulnerable people, who may experience difficulties in accessing them

(for example, through awareness-raising events for target groups, mobile teams, community law centres or pop-up advice centres);

- launching initiatives to increase the diversity of legal aid providers;
- allowing beneficiaries to freely choose a legal aid provider and/or to change the legal aid provider or request a second opinion (for example, when a client has a legitimate reason not to be satisfied with the quality of the legal aid provider’s work);
- setting up safeguards to ensure the professional independence of all legal aid providers;
- assigning legal aid cases to legal aid providers based on their competence and specialisation;
- taking into account possible conflicts of interest;
- sensitising potential legal aid providers to the importance of legal aid work to meet the needs of vulnerable people (for example, through legal clinics, community law centres or awareness-raising events).

21. Member States should have a mechanism in place that allocates cases to legal aid providers. Allocation of cases may be based on, for example, an alphabetical list and/or competence, specialisation and/or the workload of legal aid providers.

### ***Reimbursement procedure***

22. Member States should ensure an appropriate level of remuneration for legal aid providers and reimbursement of costs related to the provision of legal aid.

23. Member States should establish a procedure to reimburse legal aid providers. This procedure should be as simple as possible in order to encourage legal aid providers, particularly lawyers, to take on cases.

### ***Specialisation***

24. When allocating cases, member States should consider taking into account the specialisation of the legal aid provider.

### ***Conflict of interest***

25. Member States should establish mechanisms for avoiding conflict of interest when appointing legal aid providers and for appointing a new provider whenever such conflicts arise.

## Data collection

26. Member States should consider using tools to collect data on legal aid systems, which may include surveys, focus groups, complaints mechanisms, lawyer self-assessments and case-management systems.

27. Member States should consider ensuring that the collected data are of appropriate quality. The quality of the data may be assessed as to their relevance (coverage and content), accessibility and comparability (over time, by region or other criteria). Member States should comply with the applicable provisions on data protection, confidentiality and the obligations of professional confidentiality and legal professional privilege.

28. Member States should consider collecting data which may include the following:

- the annual budget spent on the legal aid system;
- the number of legal aid providers;
- the number of beneficiaries;
- the number of legal aid applications rejected;
- the number and type of cases.

### *Monitoring and analysis*

29. Member States should analyse the data collected in order to understand the legal needs of the population and how the latter interacts with legal aid services.

# 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”) does not explicitly guarantee a right to legal aid in civil proceedings, in its case law, the European Court of Human Rights (hereinafter the “Court”) has 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 court<sup>1</sup> or when the lack of such assistance would deprive a person of a fair hearing;<sup>2</sup> the Court has 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 them.<sup>3</sup>

The Court 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 applicant;<sup>4</sup> the complexity of the case;<sup>5</sup> the applicant’s capacity to represent him or herself effectively;<sup>6</sup> and the existence of a legislative requirement to be legally represented.<sup>7</sup>

The Court accepts that access to legal aid may be conditional on a litigant’s financial situation and his or her prospects of success in the proceedings.<sup>8</sup> However, the Court does not assess eligibility criteria for legal aid as such.

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1. *Airey v. Ireland*, Application No. 6289/73, judgment of 9 October 1979, paragraph 26.
  2. *McVicar v. the United Kingdom*, Application No. 46311/99, judgment of 7 May 2002, paragraph 48.
  3. *Kreuz v. Poland*, Application No. 28249/95, judgment of 19 June 2001, paragraphs 60-67.
  4. *Steel and Morris v. the United Kingdom*, Application No. 68416/01, judgment of 15 February 2005, paragraph 61.
  5. *Airey v. Ireland*, Application No. 6289/73, judgment of 9 October 1979, paragraph 24.
  6. *McVicar v. the United Kingdom*, Application No. 46311/99, judgment of 7 May 2002, paragraphs 48-64.
  7. *Gnahoré v. France*, Application No. 40031/98, judgment of 19 September 2000, paragraph 41.
  8. *Steel and Morris v. the United Kingdom*, Application No. 68416/01, judgment of 15 February 2005, paragraph 62.

Rather, it verifies whether the right of access to justice as a whole was ensured. This means that States enjoy broad discretion regarding the organisation of their legal aid systems, including the scope of such systems and the eligibility criteria.

Assigning a lawyer to represent a party does not in itself guarantee effective assistance.<sup>9</sup> On a number of occasions, the Court found that the quality of assistance should not be so low as to deprive an individual of practical and effective access to court.<sup>10</sup>

Article 6 of the European Convention on Human Rights does not guarantee the right to legal aid outside of judicial proceedings. However, the Committee of Ministers, in its 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 matters.<sup>11</sup> Recommendation No. R (93) 1 of the Committee of Ministers to member States 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 (NGOs) 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, Stefanie Lemke, a legal aid expert from Germany, and 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.

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9. *Siatkowska v. Poland*, Application No. 8932/05, judgment of 22 March 2007, paragraphs 110 and 116.

10. *Staroszczyk v. Poland*, Application No. 59519/00, judgment of 22 March 2007, paragraph 135.

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:

- the level of funding;
- the simplification of procedures;
- special procedures to deal with recurring issues (such as the use of standardised forms);
- the scope of services offered;
- the number of legal aid providers;
- allowing legal professionals other than lawyers (such as paralegals) to provide legal aid services;
- the 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;
- an appropriate organisation of remuneration of legal aid providers;
- the 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*

*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. Accessibility may be poor where certain groups eschew legal aid despite needing it and despite having adequate physical access to it. Where a free legal aid scheme positively welcomes vulnerable people who typically do not seek advice and encourages them to do so, that is likely to be a good indicator of an active rather than a 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, to advance equality of opportunity and to foster

good relations between different people when carrying out their activities. Robust data collection allows specific groups to be identified (for example, young people, women, people with mental health problems, older people) when legal aid services are being provided, which informs policy development and practice.

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

9. The 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 by post, especially to older adults or people with disabilities.

10. It is recommended that a holistic approach and information technology (IT) solutions be implemented when using early intervention mechanisms and techniques. Some examples of the holistic approach (for example, “one-stop shops” – 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 and should provide accurate information in an intelligible manner. It should be user-friendly, interactive and integrated with individualised 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, 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, local self-government bodies 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 cooperation 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 network of 1 340 legal access points, which allow everyone to access information on justice and the law, should be increased up to 2 000 by 2022. In Poland, since 2020, free mediation has been available at every free legal aid point in each poviast (district). The mediation meeting is conducted by a professional mediator. All assistance provided under the system of legal aid and 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", which helps 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 "trialogue". 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](http://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 problem and directs them to the legal aid system, including to an online tool that diagnoses if an individual is likely to qualify for funding, or to other sources of advice where relevant. In France, the website [www.service-public.fr](http://www.service-public.fr) and the portal [www.justice.fr](http://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 relevant information on legal aid and a 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 (although the name varies 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, hosted on the website of the Flemish Bar Association, which takes into account the issue concerned and the location. In Finland, the legal aid offices' chat service is accessible through a dedicated website on legal aid and 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 registration or any 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.

### **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 policy in the field of legal aid and develops proposals for 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 Finance, 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 Legal Aid Agency (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 of 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 completion by means of peer reviews by fellow lawyers, who 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-check" by a group of auditors, composed of Flemish and Walloon barristers, who review a certain number of completed assignments according to their field of specialisation. If the auditors disagree about a case, the president of the Flemish or Walloon legal aid office will take the final decision on it. In Ireland, authorised officers of the Legal Aid Board carry out file reviews of beneficiaries' case files. Ireland has also used satisfaction surveys. The Netherlands requires lawyers to participate once a year in either a peer review or an intercollegial 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 service's 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 that their legal aid and assistance will be of a 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 cases have their files reviewed on a regular basis. In

Luxembourg, Poland and Ukraine, a complaint against a 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 it is appropriate for the matter 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, as is the case 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 taxation. In Latvia, legal aid is not granted for resolving disputes through alternative dispute resolution mechanisms, for disputes concerning claims related to luxury items or for 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 a person's specific situation.

20. In Latvia, Sweden and the United Kingdom (England and Wales), legal aid will not be granted if the amount to be 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 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 choose 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 to be filled in by legal aid applicants on their personal and financial situation is available online. In Lithuania, the system of legal and legal aid information (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 choose 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 a 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 belonging 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 the minimum wage established by national legislation, and in Lithuania it is linked to the level of State-supported income. In the Netherlands, financial eligibility is tested by looking at the income and the financial resources of an applicant 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 or subsidies received from the State for healthcare are taken into account in the calculation of 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 cost 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 a private lawyer for legal services. As a result, many people are in fact denied access to justice. In such a situation, alternatives 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 interest.<sup>12</sup> In some member States, governments or professional organisations have developed a variety of strategies to fill such gaps. This includes calling for a more flexible financial threshold for applicants for legal aid or furthering an active pro bono legal culture to help those who cannot afford to pay for legal services. The Law Society and Bar Council in the United Kingdom (England and Wales) and the Paris Bar Association in France, for example, have an enduring tradition to meet unmet legal needs and to support or offer pro bono legal services.<sup>13</sup> In the Netherlands, some commercial parties provide transparent and fixed-price legal aid.

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12. See, for example, The Law Society of England and Wales, Introduction to pro bono, available at [www.lawsociety.org.uk/topics/pro-bono/introduction-to-pro-bono](http://www.lawsociety.org.uk/topics/pro-bono/introduction-to-pro-bono).

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



### ***Waiving of means testing***

26. In Denmark, France, Latvia, the Netherlands, Norway, Ukraine and the United Kingdom (England and Wales), means testing can be waived 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, or where there is a statutory appeal against detention under mental health and mental capacity law; on-the-day advice is available at Immigration Removal Centre advice surgeries and at courts as part of the Housing Possession Court Duty Scheme. The Director of Legal Aid Casework also has the discretion to waive the means test in individual cases, such as for advice on inquests and in 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 of Asylum. In Latvia, a person has a right to legal aid without a means test if they are recognised as having a low income or being in need, or if they suddenly find themselves in a situation and material condition that prevents them from ensuring the protection of their rights (due to a natural disaster, *force majeure* or other circumstance beyond their control). In Denmark and Norway, legal aid can in some cases be granted without means testing, for example in cases where the proceedings concern a matter of principle or a matter of public interest or can have significant impact on a person’s social or financial 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 damages and beneficiaries of social welfare.

### ***Verifying financial eligibility***

27. Currently, in some member States such as Latvia and Lithuania, applicants still have to provide a number of documents in paper form to support their legal aid application. To address this issue in Lithuania, the TEISIS system will be used by legal aid authorities to retrieve relevant data concerning an applicant’s 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 the Civil Legal Advice (CLA) service or asking

if they want to be called back. Once through to CLA, an operator will carry out a further assessment of the applicant's eligibility before referring them through to a specialist telephone advisor. If the applicant does not appear to be eligible for legal aid or the type of advice sought is not covered by the CLA then they will be directed to other legal service providers. In Spain, the website of the General Bar Association also offers a tool to calculate financial eligibility for legal aid.

### *Informing about the refusal or granting of legal aid*

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

### *Repayment of legal aid costs*

29. In a number of member States, beneficiaries can be asked to repay legal aid costs under certain circumstances, for example when they acquire money or property as a result of the 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 of the end of the proceedings for which legal aid was granted, a court may order the repayment of legal aid costs if this payment can be made without there being a negative impact on the "modest standard of living" of the legal aid beneficiary. In Belgium, the State can ask for reimbursement if a person who received legal aid did so on the basis of false statements or by fraud (such a person might also be prosecuted on the grounds of a criminal offence), or if a beneficiary has 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 legal aid providers, in the United Kingdom (England and Wales) the

LAA commissions services within defined geographical locations and by category of law. For each category, 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 area of law, based largely around the geographical boundaries of local government authorities. In contrast, there are only five procurement areas in the mental health area, in recognition of the fact that in this area providers are more likely to travel to clients in hospitals over a large geographical area than see clients in their office. In addition to face-to-face provision, the CLA specialist telephone service provides advice to eligible clients by e-mail, telephone or video link in family, debt, housing, discrimination and education matters. The telephone helpline is available during extended opening hours, including on Saturday morning. The LAA operates legal advice surgeries in all Immigration Removal Centres. 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 of his or her place of residence. In Bosnia and Herzegovina, Montenegro and Poland, the geographical distribution of offices providing free legal aid makes it available in all parts of the country. In some countries (Lithuania and Ukraine), legal aid is being provided by mobile teams in remote areas. In Ukraine, there is a well-developed network of legal aid offices covering big cities, small towns and remote villages. In addition, legal aid offices maintain a network of remote access points in prisons, 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. There are legal aid offices in around 160 locations, about half of which 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 offer legal advice, *inter alia* in areas where other legal aid providers are unavailable. In Switzerland, competent authorities provide free legal advice in the field of tenancy law and victim protection. In Spain, there are Legal Aid Commissions 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.

31. Member States use different methods to allocate cases between legal aid providers. In Austria, bar associations allocate cases to lawyers according to an alphabetical list after legal aid has been granted by a court. In Belgium, all barristers providing 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 in which 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 according to his or 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 their 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, TEISIS 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” – Information system of the Portuguese Bar Association), which takes into account the location and the respective area of law of each lawyer.

32. In some countries, legal aid providers receive a fixed number of cases per month: in Lithuania, 26 cases for lawyers who only take legal aid cases, while in Ukraine, up to 30 cases may be taken simultaneously. 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 of law. For example, providers bidding for work in the family law area 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 character: the public legal aid offices and the legal aid provided by private lawyers coexist 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 clients to select the provider from the list themselves. The Legal Aid Board only selects the provider in asylum cases and certain other limited instances. Where the case is retained in the law centre, it is for the manager of the law centre to

allocate the case as he or she sees 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 from whom they want to receive advice and assistance. 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 unless the proceedings 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 salary. 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 an application for reimbursement and provide supporting documents online via TEISIS. In Luxembourg, reimbursement is calculated by the bar association on the basis of the list of 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 provided for in 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 cantonal law. In Ukraine, the procedure for calculating reimbursement is complex and takes into account a wide range of factors, such as the number of court hearings attended, the number of procedural actions carried out, the number of procedural documents drafted and the outcome of the proceedings. Legal aid providers forfeit their right to reimbursement if they do not make a claim within 120 days of the date on which the right to reimbursement arises.

35. In the United Kingdom (England and Wales), every month, providers electronically submit their claims for payment for completed “controlled work” (relatively low-cost initial advice and assistance and some tribunal cases) to the LAA. These claims only contain general information on a case, which is accepted without further verification at that stage. The LAA subsequently carries out regular audits on a sample of claims submitted for payment and the cases with higher costs are assessed before they are remunerated in full. This can lead to the recovery of costs or other contractual penalties 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” usually 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 area of law. The LAA has much greater direct control over costs in these matters and sets a limit on the amount of money that a provider can spend on a case; above that amount, 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 providing 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 on how those services are to be delivered. For example, providers who are authorised to undertake family work will be required to meet the service specifications 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 the ideal number of 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 Walloon 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 using 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 lawyers 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 authorities (“starosta”). The Ministry of Justice also receives financial data on the overall cost of legal aid regarding judicial proceedings (preparatory and trial proceedings). In Ukraine, the Complex Informational Analytical System (CIAS) is maintained by the Coordination Centre for Legal Aid Provision 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 the 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) the subject matter of the case; b) the cost (solicitors, counsel, disbursements); c) client details (for example, age, gender, disabilities); and d) the 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 impact,

costs and benefits, and distributional effect of any proposed changes in legal aid policy. In the United Kingdom, the ministry publishes an Impact Assessment alongside any consultation exercise. A variety of work is carried out within the Ministry of Justice's Analytical Services Directorate 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, using focus groups, for example. This Directorate conducts, commissions and publishes a range of research in the justice field, either as part of a long-term strategic research plan or on an ad hoc basis where required.

42. In Ukraine, data collected by the 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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The guidelines on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law were adopted by the Committee of Ministers of the Council of Europe on 31 March 2021.

The guidelines take into account existing international, European and national standards relating to legal aid, and are built on the expertise of the European Committee on Legal Co-operation (CDCJ) in legal aid policy and practice. They are designed to serve as a practical guide to support the implementation of existing standards, without necessarily changing organisational frameworks in place, in order to strengthen national legal aid schemes in the areas of civil and administrative law.

The guidelines include generic solutions on issues such as early intervention with the help of legal aid systems (preliminary legal aid), quality assurance mechanisms in legal aid schemes, means and merits testing, organisation of legal aid system and availability of legal aid providers, and data collection. Further guidance is available in the accompanying explanatory memorandum of the guidelines.

Access to justice is a vital element in the democratic process and one of the basic principles of the rule of law. Access to legal aid – the provision of legal advice, assistance and/or representation at either no cost or subject to a financial contribution – is crucial to ensure access to justice.

This publication is aimed at decision-makers and practitioners working to develop and improve the functioning of legal aid schemes at national level. It also aims to support member States' efforts towards the implementation of the 2030 Agenda for Sustainable Development vision of a "just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met", and notably SDG 16.3's promises to ensure equal access to justice for all.

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ISBN 978-92-871-9047-5  
€8/US\$16

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