

This translation is a summary and not an official version.

Summary

Letter from the Swedish Justice Ministry to the European Commission, dated 24 November 2004

Notification of national measures to fulfil Sweden's obligations in the EU

Legal instrument transposed:

Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26, 31 January 2003, p. 41, Celex 32003L0008, as amended by OJ L 32, 7 February 2003, p. 15, Celex 32003L0008R[01]).

I The legal instrument is transposed by the national provisions which follow: see the correlation table in Annex 1 and the legislative texts in Annexes 2 and 3. These provisions entered into force on 1 November 2004.

Sweden also meets its obligations under the Directive by means of the provisions in the Legal Aid Act (1996:1619) (Annex 4) and the Legal Aid Ordinance (1997:404) (Annex 5), and by Chapter 5, Sections 6 and 8, Chapter 33, Section 9, and Chapter 36, Section 24, of the Code of Judicial Procedures, (Annex 6), Sections 26, 50 and 52 of the Administrative Court Procedure Act (1971: 291) (Annex 7), Section 8 of the Administrative Procedures Act (1986:223) (Annex 8), and Section 48 of the Act (1996:242) on non-contentious matters (Annex 9).

The Justice Ministry is the transmitting and receiving body for the purposes of the law (see Section 11(a) of the Legal Aid Ordinance).

The Justice Ministry can accept applications for legal aid by post, courier or fax or, by special agreement in individual cases, by some other means. The application can be made in Swedish or English (see Sections 11(c) and (d) of the Legal Aid Ordinance).

II No further notifications regarding the legal instrument are planned.

III The Commission will be notified of any changes to the national provisions.

(signed) Magnus Medin

Any questions should be addressed to Charlotta Meyer-Seitz, Associate Judge of Appeal,
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Correlation table - new or amended provisions in Swedish legislation and corresponding provisions in the Legal Aid Directive

<i>Directive</i>	<i>Swedish legislation</i>
Article 1(2)	Sections 2 and 22(a) of the Legal Aid Act
Article 2	Section 22(a) of the Legal Aid Act
Article 4	Section 35 of the Legal Aid Ordinance
Article 5	Sections 22(b) and 22(c) of the Legal Aid Act
Article 8	Section 11(b) of the Legal Aid Ordinance
Article 9	Section 22(d) of the Legal Aid Act
Article 13	Section 11(b) of the Legal Aid Ordinance
Article 14	Sections 11(a), (c) and (d) of the Legal Aid Ordinance
Article 15	Section 39 of the Legal Aid Act

[Translator's note: Some of the legislation that follows is available on the Swedish Government web site, although the latest amendments are not always included.

e.g. Swedish Code of Judicial Procedure

<http://www.regeringen.se/content/1/c4/15/40/472970fc.pdf>

Administrative Court Procedure Act

<http://www.sweden.gov.se/content/1/c6/02/61/43/7d1cf048.pdf>

Administrative Procedure Act

<http://www.sweden.gov.se/content/1/c6/02/78/34/50cf2e59.pdf>

The Legal Aid Act, the Legal Aid Ordinance and the Act on Non-contentious Matters are not available in English.]

Act (SFS 2004:738) amending the Legal Aid Act (1996: 1619)

adopted on 7 Oct 2004.

In 2003 the Swedish Parliament decided:
to amend Sections 2 and 39 of the Legal Aid Act,
to introduce four new paragraphs, Sections 22(a) to 22(d),
and to introduce a new paragraph immediately before Section 22(a).

Section 2 This describes circumstances in which legal aid can be granted.

Section 9 contains provisions on the relationship between legal aid and legal expenses insurance. Sections 10 - 13 contain provisions on circumstances in which legal aid cannot be granted or where special reasons are required for legal aid. Sections 21 and 22 contain special provisions on legal aid for victims of sex crimes where the case is to be heard abroad. Sections 22(a) to 22(d) contain special provisions on legal aid in certain cross-border cases.

Special provisions on legal aid in certain cross-border disputes

Section 22(a) In a cross-border dispute on a civil or commercial matter a natural person shall be covered by the special provisions set out in sections 22(b) - 22(d).

A case shall be considered to be a cross-border dispute if it is to be heard in Sweden and, at the time the application for legal aid is made, the plaintiff is domiciled or habitually resident in another EU Member State.

In deciding a matter in which the plaintiff is domiciled in another Member State the law of that state shall apply.

Section 22(b) Notwithstanding the provisions of Section 6, plaintiffs whose financial resources exceed SEK 260 000 may be granted legal aid if they prove that:

1. they are partly or totally unable to meet their own legal costs, and
2. that their lack of resources is the result of differences in the cost of living between Sweden and the EU Member State in which they are domiciled or habitually resident.

Section 22(c) The second paragraph of Section 9 shall not apply.

(Section 9: Relationship between legal aid and legal expenses insurance

Legal aid shall not be granted if the applicant has legal expenses insurance or similar legal protection which covers the matter in hand.

If the applicant does not have legal protection within the meaning of the first paragraph but in view of his other insurance cover or his financial or personal circumstances he should have had such protection, legal aid may be granted only if there are special reasons connected with the nature of the case and its importance for the applicant.)

Section 22(d) If a person who has been granted legal aid in an EU Member State other than Sweden applies for enforcement in Sweden of an enforceable decision handed down in the other Member State, the provisions of the second paragraph of Section 19 shall apply.

(The second paragraph of Section 19 states: "A person who has been granted legal aid in a matter which led to an enforceable decision or in a case concerning enforcement is not required to pay enforcement fees under Section 2 of the Ordinance (1992: 1094) on enforcement service charges.")

Section 39 If an application for legal aid is totally or partially refused the decision must give the reason for the refusal.

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Annex 3

Ordinance (SFS 2004:739) amending the Legal Aid Ordinance (1997:404)

adopted on 7 October 2004

In 2003 the Swedish Parliament decided:
to amend Sections 1 and 35 of the Legal Aid Ordinance,
to introduce four new paragraphs, Sections 11(a) to 11(d),
and to introduce a new paragraph immediately before Section 11(a).

Section 1 This Ordinance contains provisions for applying the Legal Aid Act (1996:1619). In addition, Sections 11(a) and 11(d) contain specific provisions on requests for legal aid in certain cross-border disputes.

Special provisions on requests for legal aid in certain cross-border disputes

Section 11 (a) The Ministry of Justice is the transmitting and receiving authority within the meaning of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

Section 11 (b) The Ministry of Justice, in its capacity as transmitting authority, shall assist the applicant in:

1. ensuring that all the supporting documents known by it to be required for examining the application for legal aid are attached, and
2. where necessary, translating the application for legal aid and other documents referred to in 1 above.

The Ministry of Justice shall transmit an application for legal aid to the receiving authority in another EU Member State within 15 days of receiving a duly completed application.

The Ministry of Justice's assistance shall be free of charge.

Section 11 (c) If an application for legal aid has been transmitted to the Ministry of Justice in its capacity as receiving authority by some other means than by post, courier or fax, the Ministry is not required to forward the application. This shall not apply,

however, if an agreement has been reached in an individual case and the application has been made in accordance with what was agreed.

Section 11 (d) An application for legal aid which has been transmitted to the Ministry of Justice in its capacity as receiving authority must be forwarded only if the application and the accompanying documents are in Swedish or English.

Section 35 The following foreign nationals must enjoy equal treatment with Swedish citizens with respect to the right to legal aid under the Legal Aid Act (1996: 1619) under the following terms and conditions:

- citizens of Member States of the European Union,
 - persons who are domiciled or habitually resident in an EU Member State with the exception of Denmark,
- etc.

Swedish Code of Judicial Procedure (1942:740)

(translation taken from the Swedish Justice Ministry website)

Most recent amendment: SFS 2004:504

Relevant parts are: Chapter 5, Sections 6 and 8; Chapter 33, Section 9; Chapter 36, Section 24

Chapter 5: Right of Public Attendance and Maintenance of Order at Court Hearings

Section 6

If a party, a witness, or any other person who shall be heard by the court is incapable of understanding and speaking Swedish, an interpreter may be engaged to assist the court.

If a public interpreter for the language in question serves at the court, he shall be assigned. Otherwise, the court shall assign a suitable person to assist as interpreter in the case.

If the person to be heard has a serious hearing or speaking impediment, an interpreter may also be engaged to assist the court.

A person whose interest in the matter at issue, or whose relationship to any of the parties, could be considered to cast doubt on that person's reliability may not be engaged as an interpreter.

The government shall issue regulations concerning both the employment of public interpreters and the assignment of interpreters when the person to be heard has a serious hearing or speaking impediment. (SFS 1975:589)

Section 8

An interpreter is entitled to reasonable remuneration for work, loss of time and expenses incurred on the assignment. The tariff to be used in determining the remuneration shall be prescribed by the government or the authority designated by the government. The remuneration shall be paid from public funds. (SFS 1984:131)

Chapter 33: Pleadings and service

Section 9

If required, the court may provide for the translation of documents filed with or dispatched from the court.

The court shall be responsible for translating a document, or the most important parts of it, if the document is to be sent to a person who is living in another State in the European Economic Area and there is reason to believe that the person does not understand the language in which the document is written. The document must be translated into the language of the other State or, if the authority is aware that the person does not understand that language, into another language that the person does understand.

A person who has assisted the court in translation shall be entitled to a reasonable remuneration to be paid by the State.

Paragraphs 1 and 3 shall also apply to the transfer of Braille to ordinary writing or vice versa. (SFS 2000:564)

Chapter 36: Witnesses

Section 24

A witness is entitled to compensation as stated below.

The compensation of a witness invoked by a private party shall be paid by the party. However, if it is reasonable having regard to the party's economic circumstances, the court may order that the compensation shall be paid out of public funds. In cases amenable to out-of-court settlement and in prosecutions for offences that do not fall within the domain of public prosecution, the compensation of witnesses called by the court on its own motion shall be paid by the parties jointly and severally. In other cases, compensation to witnesses shall be paid out of public funds.

Compensation paid by a party shall include reimbursement of necessary costs for travel and maintenance and loss of time in an amount deemed reasonable by the court. Compensation paid out of public funds shall be determined by the court pursuant to regulations issued by the government. (SFS 1996:1624)

The Swedish Administrative Court Procedure Act (1971: 291)

(translation taken from the Swedish Justice Ministry website)

Most recent amendment: SFS 2001:27

Relevant parts are: Sections 26, 50 and 52

Section 26

A witness or expert is entitled to compensation from public funds for the expense of his attendance. The court may grant an advance of the compensation for costs of travel and subsistence. More detailed provisions on compensation and advances shall be issued by the Government.

If the witness or the expert has been called at the request of a private party and it transpires that the party did not have acceptable reasons for his request, the court may order the party to reimburse the Government for the compensation.

Section 50

If a party, witness or other person to be questioned before the court does not speak Swedish or if he has a serious hearing or speech impediment, the court shall, if necessary, engage an interpreter. The court may engage an interpreter in other cases when necessary.

The first paragraph shall also apply to issues concerning translation from Braille to ordinary writing and the reverse.

A person whose reliability may be deemed impaired owing to his position in relation to anyone bringing an action in the case or owing to another circumstance comparable therewith may not be engaged as an interpreter.

Section 52

A person who performs an assignment as an interpreter other than in service is entitled to reasonable compensation for work, time lost and disbursements required for the assignment.

The Government or the authority decided by the Government may decide on a tariff to be applied when determining compensation for interpreters for oral translation. Costs for interpreters shall be paid from public funds.

The Administrative Procedure Act (1986:223)

Most recent amendment: SFS 2003:1213

Relevant part: Section 8

Interpreter

Section 8

When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed.

Act (1996: 242) on Non-contentious Matters

Most recent amendment: SFS 2002: 383

Relevant part: Section 48

Interpretation and translation of documents

Section 48

Chapter 5, Sections 6 and 8, and Chapter 33, Section 9, of the Code of Judicial Procedure shall apply to interpretation and the translation of documents.

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Translator's note: In the addition to the points specifically mentioned by the author, the following provisions of the Legal Aid Act may be of relevance:

"Section 12: A person who is not a Swedish citizen and who either is or formerly was resident in Sweden may be granted legal aid only if the matter is to be heard in Sweden or there are special circumstances. If a matter is to be heard in another country, legal aid may be granted only if the applicant is domiciled in Sweden.

Provided that the arrangement is reciprocal, the government can order that a citizen of a given foreign State or a person who, without being a citizen of that the State, is resident there, shall be treated in the same way as a Swedish citizen in matters of legal aid."

"Section 22: Where legal aid has been granted in accordance with Section 21 the State shall pay for the legal counsel and any evidence or investigation necessary to safeguard the applicant's rights, as well as travel and subsistence expenses for the applicant or his or her representative, a carer or any other person whose services are required in connection with the applicant's appearance in court or before another body in the foreign country. However, these provisions shall apply only in so far as the costs are not covered by an insurance policy or met by the court or other authority in the foreign country."

The second paragraph of Section 24 states that if the applicant's financial base (i.e. annual income adjusted for various factors) changes significantly before the end of the proceedings an appropriate adjustment should be made. An adjustment should also be made if a mistake was made when the original decision was taken or if the decision was based on incorrect information.

