

L.N. 342 of 2005

**EUROPEAN UNION ACT
(CAP. 460)**

**Code of Organization and Civil Procedure (Amendment) Order,
2005**

IN EXERCISE of the powers conferred upon him by article 4 of the European Union Act, the Prime Minister has, for the purposes specified in sub-article (2) of the said article, made the following Order:

Short title and commencement.

1. (1) The title of this Order is the Code of Organization and Civil Procedure (Amendment) Order, 2005, and the purpose thereof is the transposition into Maltese Law of the provisions of Directive 2002/8/EC of the Council of the European Union of the 27th January, 2003.

(2) This Order shall come into force on the 18th October, 2005.

Scope.

2. The scope of this Order is to implement the provisions of Directive 2002/8/EC to provide minimum common rules relating to legal aid granted to natural persons in cross-border disputes in civil and commercial matters, whatever the nature of the court or tribunal, excluding disputes relating to revenue, customs or administrative matters.

Adds new Title XA to Book Third of the Code of Organization and Civil Procedure.

3. Immediately after Title X of Book Third of the Code of Organization and Civil Procedure, there shall be added the following new Title and articles:-

“Title XA

OF LEGAL AID (CROSS-BORDER DISPUTES)

Interpretation.

928A. For the purposes of this Title:

“cross-border dispute” means a dispute where the party applying for legal aid in the context of the Directive is domiciled or is habitually resident, as determined by Article 59 of Council Regulation (EC) No. 44 of 2001, in a Member State other than Malta or where the decision is to be enforced;

“the Directive” means the provisions of Council Directive 2002/8/EC of the 27th January, 2003 to improve access to justice

in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes;

“Member State” means any State referred to in the definition “the Treaty” contained in article 2 (1) of the Act, excluding Denmark.

928B. (1) Legal aid shall be granted to the applicants involved in a cross-border dispute who are, partially or totally, unable to meet the costs of the proceedings as a result of their economic situation. Right to legal aid.

(2) Applicants who have received legal aid in a Member State other than Malta in respect of proceedings before a court in that other Member State shall be entitled to receive legal aid in Malta if recognition or enforcement of the judgement is sought in Malta.

(3) Legal aid applies to:

(a) pre-litigation advice with the aim of reaching a settlement prior to instituting legal proceedings;

(b) legal assistance and representation in court, even at the appeal stage, with or without the cost of proceedings of the recipient;

(c) the costs of the opposing party had the recipient lost the case and would be so obliged to pay such costs if he were domiciled or habitually resident in the Member State in which the court is sitting;

(d) the enforcement of authentic instruments in another Member State.

(e) extrajudicial procedures under the conditions defined in the Directive if there is a legal requirement for the parties to use them or if the parties to the dispute are ordered by the court to have recourse to them.

(4) Legal aid shall be granted or refused by the competent authority when the Court is sitting in Malta and by the competent authority of the Member State other than Malta when the Court is sitting outside Malta.

(5) Without prejudice to sub-article (4) of this article, legal aid applicants may not be prevented from legal aid if they prove that they are unable to pay the cost of the proceedings as a result of differences

in the cost of living between the Member State of domicile or habitual residence and of the forum.

Appointment of the competent authority.

928C. For the purposes of the Directive, the competent authority in Malta is the Advocate for Legal Aid as defined in sub-article (6) of article 911 of the Code.

Functions of the competent authority.

928D. It shall be the duty of the competent authority:

(a) to act as a receiving or transmitting authority for legal aid applications;

(b) to assist the applicant in ensuring that the application is accompanied by all the supporting documents known by such applicant to be required to enable the application to be determined;

(c) as a transmitting authority, to assist the applicant in providing the translation of the application and of the necessary supporting documents when the application is submitted to the authorities in another Member State;

(d) as a receiving authority, to assess the economic situation of a person in the light of the provisions of article 912 of the Code, including the amount of the resources of persons who are financially dependent on the applicant;

(e) to grant or refuse legal aid;

(f) to consider, when taking a decision on the merits of an application and without prejudice to paragraph (d) of this article, the importance of the individual case to the applicant, and may also take into account the nature of the case when the applicant is claiming damage to his or her reputation but has suffered no material or financial loss, or when the application concerns a claim arising directly out of the applicant's trade or self-employed profession;

(g) to keep the applicant informed with the processing of the application, and where the application is totally or partially rejected, to give reasons for the rejection;

(h) to decide whether recipients of legal aid must refund in whole or in part the assistance granted if their financial situation has substantially improved or if the decision to grant legal aid had been taken on the basis of inaccurate information given by the recipient and to collect any reimbursement so due.

928E. (1) Legal aid applications by persons who are domiciled or habitually resident in Malta may be submitted either: Procedure.

(a) to the competent authority in Malta hereinafter referred to as “the transmitting authority”; or

(b) to the competent authority of the Member State in which the court is sitting or where the decision is to be enforced, hereinafter referred to as “the receiving authority”.

(2) Legal aid applications shall be completed in accordance with such forms as may be prescribed by the Minister responsible for justice by Order in the Gazette.

(3) The competent authority in Malta may decide to refuse to transmit an application to the receiving authority of another Member State if it is manifestly:

(a) unfounded; or

(b) outside the scope of the Directive.

When an application for transmission is totally or partially rejected, the reasons for rejection shall be given, and the provisions of article 917 of the Code shall apply.

(4) Without prejudice to sub-article (3), when the competent authority in Malta receives a request for legal aid in relation to proceedings which are being heard before a court in a Member State other than Malta, it shall transmit the application to the competent receiving authority in the other Member State within fifteen days of the receipt of the application duly completed in one of the languages of the Member State of the competent receiving authority, and the supporting documents translated, where necessary, into one of those languages.

(5) Applicants for legal aid shall be fully informed of the processing of the application.

(6) Where the competent authority in Malta refuses to grant legal aid, it shall inform the applicant of the reasons for rejection, and the provisions of article 917 of the Code shall apply.

928F. (1) Legal aid granted by the competent authority in Malta when it is acting as a receiving authority shall cover the following costs: Costs.

(a) interpretation;

(b) translation of documents required by the court or by the competent authority and presented to the recipient, which are necessary for the resolution of the case;

(c) travel costs to be borne by the applicant where the physical presence of the persons concerned with the presentation of the applicant's case is required in court, and the court is satisfied that the persons concerned cannot be heard to the satisfaction of the court by any other means.

(2) Legal aid granted by the competent authority in Malta when it is acting as a transmitting authority shall cover the following costs:

(a) costs relating to the assistance of a local lawyer or another person entitled to give legal advice, incurred by the competent authority until the application for legal aid has been received in the Member State where the court is sitting;

(b) the translation of the application and of the necessary supporting documents when the application is submitted to the authorities of that Member State where the court is sitting.

Other costs.

928G. Costs related to the translation of the application and supporting documents incurred by the competent authority following an application for legal aid by a person domiciled or habitually resident in Malta shall be repaid to the competent authority if the application is rejected by the competent authority of the Member State other than Malta where the Court is sitting.

Miscellaneous.

928H. Documents transmitted by the competent authority shall be exempt from legislation or other similar formality.”.