



Ad-Hoc Query on organisation and management of legal assistance provided to foreigners in the EU Member States

Requested by PL EMN NCP on 15 December 2011

Compilation produced on 23 January 2012

Responses from Austria, Belgium, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, United Kingdom plus Norway (16 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' MemberState.

1. Background Information

Polish authorities have been working on establishing complex system of legal assistance available to foreigners. Although polish regulations provide for the foreigners' right to be assisted by diverse organizations committed to the rights and protection of foreigners, they don't specify this authorisation and don't impose obligation to provide foreigner with such an assistance on any public institution. As a result, free of charge counselling and legal advice is provided to foreigners, mainly to asylum-seekers and refugees, by specialized NGOs receiving EU funding.

Knowledge on practice used by other Member States would be useful.

1. Does your MemberState have an established system of legal assistance available to foreigners? If yes, is it part of general system aimed at providing legal aid to people with low-income or is it separate system?
2. If yes, what are the main elements and presumption of this system? Who and how coordinates it?
3. How did your MemberState implement art.15 and art.16 of the Directive 2005/85/EC and art. 13 point 3-4 of the Directive 2008/115/EC regulating access to legal advice?

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We would very much appreciate your responses by **23 December 2011**.

2. Responses¹

| | | Wider Dissemination? ² | <ol style="list-style-type: none"> Does your MemberState have an established system of legal assistance available to foreigners? If yes, is it part of general system aimed at providing legal aid to people with low-income or is it separate system? If yes, what are the main elements and presumption of this system? Who and how coordinates it? How did your MemberState implement art.15 and art.16 of the Directive 2005/85/EC and art. 13 point 3-4 of the Directive 2008/115/EC regulating access to legal advice? |
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|  | Austria | NO | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Belgium | Yes | <ol style="list-style-type: none"> In Belgium there is a general system of free legal assistance (pro bono) for all the litigants (not only for asylum seekers) whose income is below a certain minimum. There are also a number of categories assumed to be insolvent. Concerned persons do not have to present prove of income. Asylum seekers are one of those categories assumed to be without means. However this presumption of impecuniousness for asylum seekers has become disputable since the Act of 29 December 2010, adjusting the procedure at the Council for Alien Law Litigation. The asylum applicant has to address the <u>Office of Legal Assistance of the Judicial Arrondissement</u> of his place of residence. The applicant hereby has to submit evidence proving that he or she is an asylum applicant (e.g. Appendix 26). An asylum applicant may also directly contact an attorney, who then will ask the Office of Legal Assistance to appoint him as a pro-bono lawyer. The right to legal assistance and representation according to article 15 of the Directive 2005/85/EC has been transposed into national law by Article 35 of the Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals. In addition Article 33 of the Reception Act of January 12, 2007 states that the agency responsible for the reception of asylum seekers (Fedasil) has to ensure the free access to primary and secondary legal assistance of asylum seekers, as stipulated by the Articles 508 / 1 - 508/23 of the Judicial Code. In Belgium, the Article 15 of Directive 2005/85/EC is not applied in a restrictive way. (For instance Belgium did not restrict free legal assistance and/or representation only in those cases the appeal is likely to succeed). The Belgian asylum procedure is also in accordance with point 3 and 4 of Directive 2008/115/EC. The asylum applicant has thus the possibility to obtain legal advice, representation and is also provided with linguistic assistance during the interviews at the asylum board, as well as during the hearing at the appeal board. |

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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|  | Estonia | Yes | <ol style="list-style-type: none"> 1. Yes, it is part of a general system, which is aimed at providing legal assistance. 2. According to Act on State Legal Assistance, state legal assistance may be granted to a natural person, who due to his or her economical state is not in a position at time of need for legal assistance pay for professional legal service or is only able to do it partially. Granting of state legal assistance is decided on the basis of a person's application, which is presented to the court where the case is being discussed. 3. Act on Granting International Protection to Aliens foresees that legal assistance is provided on the basis provided for in the Act on State Legal Assistance (Articles 15 and 16 of Directive 2005/85/EC). Obligation to Leave and Prohibition on Entry Act foresees again that legal assistance is provided on the basis of the Act on State Legal Assistance, but if the Ministry of the Interior or the Police and Border Guard Board have signed an agreement with a legal person governed by private law for providing of free legal assistance, then the free legal assistance is provided in accordance with said agreement and the Act on State Legal Assistance shall not be applied. |
|  | Finland | Yes | <ol style="list-style-type: none"> 1. Ad. 1-2. Section 8 of the Aliens Act contains provisions on using attorneys and counsels. When an administrative matter is filed or handled, the person concerned may use a counsel. When an administrative matter is filed and handled, the person concerned may also use an attorney when it is not necessary to hear him or her in person or if his or her appearance in person is not necessary for investigating the matter or establishing his or her identity. When an appeal under the Aliens Act is filed or handled, the person concerned may use a counsel or attorney. Section 9 of the Act contains provisions on legal aid. Provisions on aliens' right to legal aid are laid down in the Legal Aid Act (257/2002). However, when an administrative matter is being handled, the counsel assigned to an alien may also be a person with legal training other than a public legal aid attorney. When handling a matter referred to in this Act, a court may grant legal aid to an alien without requiring a statement on the financial position of the applicant for legal aid. The counsel's fee is paid out of State funds as provided in the Legal Aid Act. Lawyers employed by Public Legal Aid Offices are called Public Legal Aid Attorneys. http://www.oikeus.fi/20621.htm The requirements for eligibility for the office of Public Legal Aid Attorney are a Master's degree in law and adequate experience of advocacy or adjudication. Most Public Legal Aid Attorneys hold the title of varatuomari, which means that they have completed a judicial traineeship at a District Court and obtained a judicial qualification. The Public Legal Aid Attorneys are appointed by the Minister of Justice. Public Legal Aid Attorneys are engaged in advocacy before courts of law; they are under the obligation to observe proper advocacy conduct in their activities. In this respect, they are subject to the disciplinary powers of the Finnish Bar Association. More than half the Public Legal Aid Attorneys in Finland are members of the Bar Association. The Public Legal Aid Attorneys are independent of any other actors in the performance of their commissions. Legal aid providers are appointed to permanent state office. Procedure takes place only if the previous officeholder retires, resigns or is on leave. They all work under the Public Aid Office in Finland. Other law firms and attorneys may also be appointed as legal aid providers. This is done on a-case-by -case basis. If an asylum applicant wishes to gain legal aid from other than public legal aid providers, one must apply for a permission to use other solicitor than a Public legal Aid Attorney from the Public Legal Aid Office. 2. The Finnish Aliens Act was amended due to the transposition of the Council Directive 2005/85/EC in 2009. The amendment entered into force on 1 July 2009. |

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| | | | <p>By the amendment, a new section 95a was introduced in the Aliens Act on the right to have information. According to this new section, persons applying for international protection are informed of asylum procedures and of their rights and responsibilities throughout the process. The police or border control authorities shall provide the applicant with that information upon receipt of the application for international protection. The same information may also be provided by the Finnish Immigration Service or the reception centre as soon as possible after the application has been submitted. The information is provided in the applicant's native language or in a language which, on reasonable grounds, he or she can be expected to understand.</p> <p>During the transposition process, it was concluded that the requirements of articles 15 and 16 of the Directive were already fulfilled by the national legislation. According to section 12 of the Administrative Procedure Act (434/2003) and section 8 of the Aliens Act, a person may use a counsel when an administrative matter is filed and handled. According to section 9 of the Aliens Act, provisions on aliens' right to legal aid are laid down in the Legal Aid Act (257/2002). In section 9, some further provisions define legal aid given in matters referred to in the Aliens Act:</p> <p>(2) However, when an administrative matter is being handled, the counsel assigned to an alien may also be a person with legal training other than a public legal aid attorney.</p> <p>(3) When handling a matter referred to in this Act, a court may grant legal aid to an alien without requiring a statement on the financial position of the applicant for legal aid. The counsel's fee is paid out of State funds as provided in the Legal Aid Act.</p> <p>According to section 9 of the Act on the Openness of Government Activities (621/1999), everyone shall have the right of access to an official document in the public domain. In addition, on the basis of section 11 of the Act, a petitioner, an appellant and any other person whose right, interest or obligation in a matter is concerned (a party) shall also have the right of access, to be granted by the authority which is considering or has considered the matter, to the contents of a document which is not in the public domain, if they may influence or may have influenced the consideration of his/her matter.</p> <p>Rights of a detained alien are laid down in the Act on the Treatment of Aliens Placed in Detention and on Detention Units (116/2002). For example, according to section 6 of the Act, he or she has a right to contact a legal or other counsel and according to section 7, he or she has a right to receive guests and use a phone.</p> |
|  | <p>France</p> | <p align="center">Yes</p> | <ol style="list-style-type: none"> 1. Yes. In France, there is an established system of legal assistance available to foreigners, which is part of general system aimed at providing legal aid to people with low-income. 2. Ad. 2-3. In France, a third country national habitually and lawfully residing in France is entitled to legal aid. Legal aid is also given without a residence requirement to foreign nationals who are in one of the following situations: minor, assisted witness, placed under formal examination, charged, accused, convicted, joined a civil action to a criminal prosecution, maintained in a waiting area, subject to a residence refusal or a removal order, or placed in detention. Before the National Court for Right of Asylum (CNDA), third country nationals just have to live in France to benefit from legal assistance. A foreigner may receive legal aid if the average of his/her combined resources for the preceding calendar year (excluding family allowances and certain welfare benefits) does not exceed a certain threshold set by statute each year. Third country nationals can send their application for legal assistance to the Legal Aid Bureau for the area where they live or where the court is. There is a single legal aid bureau in each Regional Court, which handles applications for legal aid for cases in that court itself and in other courts in its area: District Courts, Administrative Courts, Industrial Relations Tribunals, Court of |

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| | | | <p>Appeal and Administrative Court of Appeal. The exception from this single bureau rule is that there is a bureau attached to each of the following: Court of Cassation; <i>Conseil d'État</i> (which is the supreme administrative court); National Court for Right of Asylum (CNDA).</p> <p>To ensure the compliance of the domestic law with the requirements of the articles 15 and 16 of Council Directive 2005/85/EC of 1 December 2005, Law No. 2006-911 of 24 July 2006 has removed, from 1 December 2008, the condition of regular entry to France for the granting of legal aid by the National Court for Right of Asylum (CNDA). Therefore, all applicants for legal assistance can now claim it as their resources are insufficient. In addition, Law No. 2006-911 of 24 July 2006 has been modified by Law No. 2007-2010 of 19 February 2007 which assures the right of legal assistance to all third country nationals.maintained in a waiting area, subject to a residence refusal or a removal order, or placed in detention. Directive 2008/115/EC was transposed into national legislation by the Law No. 2011-672 of 16 June 2011 but no specific clause on legal assistance has been added.</p> |
|  | Hungary | Yes | <ol style="list-style-type: none"> Ad. 1-2. In Hungary, the Hungarian Helsinki Committee's attorneys and network of lawyers deal with free legal assistance for asylum seekers. This organization's - which is the partner of UNCHR- activities have funded by the European Refugee Fund. Those asylum seekers, who do not have sufficient resources, may request the assistance of the probation lawyers. This latter is coordinated by Ministry of Public Administration and Justice. Ad. 3. According to the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals Hungary shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid. According to the art. 15 and 16. the vulnerable asylum seekers may request the assistance of the probation lawyers in court. There is no legal assistance system for foreigners currently in Hungary in respect of the immigration field. The deadline for transposition of the Article 13. of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 was 24th December 2011. The legal aid system has not been transposed on time to the immigration laws. The negotiations of the amendments laws have started. |
|  | Italy | Yes | <ol style="list-style-type: none"> Ad. 1-3. Free legal aid is provided in Italy to people with no income in order to cover the counseling costs through national funds, with the exception of eventual justice costs (like for example the 300 euros fee envisaged for administrative regional courts appeals in case of negative decisions of first instance asylum application). The same treatment applies to non-nationals. Nevertheless, only in the case of expulsion measures, the foreigner who doesn't have a lawyer is always assisted by a lawyer appointed by the judge and covered by public funds, without verification of income. To the international protection applicant is always guaranteed at any stage of the procedure the possibility to contact UNHCR or any other organization competent in the field of asylum. In case of negative or controversial decision, the asylum applicant may request legal aid covered by the State but he/she must prove to have no income. Since the person concerned is international protection applicant, he/she does not need to submit certification issued by consular authorities in order to show the lack of economic means. In thi case a self-declaration is sufficient. |
|  | Latvia | Yes | <ol style="list-style-type: none"> Yes, there is system of legal assistance available to foreigners and it is a part of general system aimed at providing legal aid to people with low-income. |

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| | | | <ol style="list-style-type: none"> 2. According to State Ensured Legal Aid Law legal assistance is provided to foreigners (including a refugee and a person who has been granted the alternative status in the Republic of Latvia), who live in Latvia and have permanent residence permit, asylum seekers (during appeal procedure) and illegal migrants, who are subjects of return procedure (during appeal procedure). The Legal Aid Administration, which is under supervision of Ministry of Justice, is responsible for the provision of legal aid. The State shall ensure legal consultations and the drawing up of procedural documents: 1) for the protection of the infringed or contested rights of a person or his or her interests protected by the law in a civil legal dispute; 2) in order to prepare an application or a claim to the court or a settlement document, if a person is involved in a dispute of legal nature, in which legal proceedings are possible. For detailed information: http://www.jpa.gov.lv/par-mums-eng 3. The provisions of Article 15 and 16 of the Directive 2005/85/EC are implemented in the State Ensured Legal Aid Law. The provisions of Article 13 of the Directive 2008/115/EC are implemented in the Immigration Law and State Ensured Legal Aid Law and they are coming into force on the 23th December of 2011. |
|  | <p>Lithuania</p> | <p align="center">Yes</p> | <ol style="list-style-type: none"> 1. Yes. Foreigners who reside legally in Lithuania fall under a general scheme of state guaranteed legal aid. Foreigners whose status in Lithuania is irregular or not clear receive legal aid according to special rules. 2. The policy of the state guaranteed legal aid is conducted by the Ministry of Justice. The legal aid has two degrees: <ul style="list-style-type: none"> • Legal aid of the first degree consists of legal counselling, advice, helping to draft documents and letters to state institutions. This help is organised by municipalities. The legal aid of the first degree is provided by municipalities or other organisations (of students of law, lawyers) contracted by municipalities. This help is provided to citizens of Lithuania or other EU Member States, foreigners residing legally in Lithuania or other EU Member States or foreigners who have the right to legal aid according to international agreements. The legal aid can be refused if the person has already applied for legal counselling concerning the same subject or in some other cases when the application is unfounded. • Legal aid of the second degree consists of the help of a lawyer in courts – in preparing procedural documents, legal representation in courts during the proceedings, as well as during the post-proceeding phase (execution of courts' decisions). This help is organised by Services of state guaranteed legal aid. These services are established by the Ministry of Justice. The help is provided to citizens of Lithuania or other EU Member States, foreigners residing legally in Lithuania or other EU Member States, who do not have sufficient resources to defend themselves. However in some cases (such as various criminal cases, cases of minor children who defend themselves, etc.) the legal aid of second degree is provided regardless of the income of the person. 3. In Lithuania all asylum seekers have the right to legal aid during the examination of their applications. Legal aid is also guaranteed to those foreigners whose status of refugee or temporary protection was withdrawn. The Migration Department under the Ministry of Interior is responsible for providing this legal aid. On a regular basis, the Migration Department concludes contracts with various organisations (previously it was the Red Cross, now it is an Ltd company) which undertake to provide legal aid of the first and the second degree. Unaccompanied minors or apprehended illegal migrants have also the right to legal aid. The provision of this legal aid is organised by the police and State Border Guard Service under the Ministry of the Interior. |

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|  | <p>Luxembourg</p> | <p align="center">Yes</p> | <ol style="list-style-type: none"> 1. In Luxembourg legal aid is guaranteed to ensure access to justice for all persons with limited financial resources (article 1 (1), (2), (3) and (4) of the Grand-ducal regulation of 18 September 1995 on Legal Aid modified by Grand-ducal regulation of 29 October 2004). The system allows that these persons are entitled to free assistance from a lawyer. Legal aid may be awarded for judicial or extra-judicial and contentious or non-contentious cases. However, foreigners are only entitled to legal aid if they fulfill the following conditions: : <ul style="list-style-type: none"> • if they are in possession of a valid residence permit for Luxembourg and they fulfill the legal requirements mentioned above; • if they are involved in a procedure concerning international protection (Law of 5 May 2006, Law of Asylum), access to the territory, residency, deportation (Law of 29 August 2008 on free movement of persons and immigration) or extradition (Law of 20 June 2001 on extradition). Legal aid for foreigners is part of the general system aimed to provide legal aid to low income people. 2. According to article 1 (1) of the Grand-ducal regulation of 18 September 1995, it can be considered beneficiary of legal aid any person that benefits of the guarantee minimum income as defined by the Law modified of 29 April 1999, as well as any person that without benefiting of the guarantee minimum income, its financial situation will allow them to be entitled to it (article 1 (2)). Other people that are entitled to it are people residing in another member state that without being in the two situations above mentioned, their family financial situation can be considered insufficient to face legal expenses in a civil or commercial trial in Luxembourg based on the difference of the cost of living between their country of residence and Luxembourg (article 1 (4)). For benefiting of legal aid the person must fill a questionnaire that is available at the Social Aid Central Service and send it to the President of the Bar (Bâtonnier de l'Ordre des Avocats) that is territorially competent (Diekirch or Luxembourg). The president of the Bar will decide if the request is approved or not. If it is refused the person has the right to appeal the decision (article 4). It is important to mention that the person can choose freely the lawyer. The lawyer will be paid on an hourly basis according to a fixed-fee (87,01 € per hour for Lawyers and 57,94 € for trainee lawyers³). 3. Art.15 and art.16 of the Directive 2005/85/EC where implemented by article 7 (1), (3) and article 9 of the Law of 5 May 2006 allowing the international protection applicant to be assisted from the beginning of a lawyer of his/her choice paid and during all the procedure. Article 13 (3) and (4) of the Directive 2008/115/EC was implemented by article 122 (3) of the Law of 29 August 2008 allowing the third country national to be assisted by a lawyer during all the procedure. |
|  | <p>Netherlands</p> | <p align="center">Yes</p> | <ol style="list-style-type: none"> 1. Ad.1-2. The Netherlands do indeed have a system of legal assistance for foreigners, which mainly is part of our general legal aid system. Under the European Convention on Human Rights and the Constitution of the Netherlands, each citizen of the Netherlands has the right to access courts, apply for legal advice and representation and, if means do not suffice, receive state-financed legal aid. Since 1994 legal aid has been regulated under the Legal Aid Act. The Legal Aid Board, residing under the competence of the Ministry of Security and Justice, is charged with the organization and administration of legal aid. This includes matching the availability of legal experts with the demand of legal aid, as well as the supervision and quality control of the actual services provided. The Dutch legal aid system itself is for the benefit of the people who have a legal conflict, but don't possess the means to solve that problem themselves. In general, the costs of legal aid are partly covered by a fee from the client himself, based upon a means and merits test. However, sometimes clients are exempted from individual fees. In the Netherlands private lawyers are providing legal aid asylum seekers after arrival and during the asylum procedure. In |

³ That is without VAT. Ordre des Avocats de Luxembourg, 10 June 2011

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| | | | <p>general this legal aid is free of charge. For other immigrants (for example people applying for work permits, permits to stay in the Netherlands, visa, family reunion) the general rules for granting legal aid apply and they will have to pay a contribution if legal aid by a lawyer or mediator is needed.</p> <p>Lawyers participating in the legal aid scheme must deliver good quality. It is the responsibility of the Legal Aid Board to ensure that every lawyer who participates in the scheme meets the criteria. Only bar members can be registered with the Legal Aid Board. To participate in the scheme, sometimes additional terms apply. For example, lawyers who represent asylum seekers or immigrants must have undergone special training.</p> <p>2. Ad.3.The legislation as described above already existed before both Directives were finalized. Therefore, it was not necessary to adjust the Dutch law in order to implement these provisions.</p> |
|  | Poland | Yes | <p>1. Ad. 1-2. No. Polish authorities have been working on establishing complex system of legal assistance available to foreigners.</p> <p>2. Asylum-seeker may contact a representative of the United Nations High Commissioner for Refugees as well as any organization committed to the right and protection of refugees, as well as entities providing legal assistance. This provision applies also to asylum-seekers placed in the detention centres. As regards Directive 2008/115/EC, Polish authorities are still working on a draft law which would implement it.</p> |
|  | Slovak Republic | Yes | <p>1. There is no complex system of legal assistance available to foreigners in the Slovak Republic. Only Centre for Legal Aid as an organisation financed by the state budget and operating in several Slovak towns provides free legal aid and assistance through its employees, lawyers and mediators to low-income people including asylum-seekers. Since 1 January 2012 it is dealing also with second instance of the administrative expulsion of the foreigners. The Centre was established under the Act No 327/2005 on the provision of legal aid to persons in material need (hereinafter “the Legal Aid Act”) as amended. Apart from the Centre, foreigners are provided with legal aid and assistance by NGOs and international organizations from EU funded projects.</p> <p>2. N/a.</p> <p>3. The Article 15 and 16 of the Directive 2005/85/EC is implemented as follows:</p> <ul style="list-style-type: none"> ▪ An asylum seeker has right to be in contact with UNHCR and NGOs operating in the Slovak Republic in the area of counselling and supporting asylum seekers during the whole asylum procedure. ▪ An asylum-seeker, his/her legal representative and guardian can be represented by a lawyer or other representative of his/her choice; the representative must be a natural person with full capacity to undertake legal actions or the Centre for Legal Aid. In each proceeding the asylum seeker may have one representative only. ▪ An asylum seeker is qualified for free legal aid through Centre for Legal Aid under the following conditions: <ul style="list-style-type: none"> a) he/she have made a request for asylum legal aid b) he/she does not have a legal representative in the proceeding in which he/she claims legal aid c) The Ministry of Interior of the Slovak Republic issued: <ul style="list-style-type: none"> - a negative decision on his/her application for asylum - a decision revoking asylum application as assumably irrelevant - a decision revoking asylum application as inadmissible - a decision on termination of asylum proceeding because the decision has been already issued and the facts of the case has not significantly changed |

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| | | | <p>d) he/she is in material need – This is examined by the Centre for Legal Aid only if the asylum seeker has been approved residence in the Slovak Republic immediately before issuing the above mentioned decisions.</p> <p>The Article 13 point 3-4 of the Directive 2008/115/EC is implemented in the Article 77 of the new Act No. 404/2011 Coll. on the Stay of Aliens, sections 3, 7, 8 as follows:</p> <ul style="list-style-type: none"> ▪ (3) Upon request a police department shall provide an alien with a translated reason for administrative expulsion, reason for entry ban, duty to leave the country, entry ban period and instruction regarding the possibility of appeal in the language which s/he understands or in the language about which we can reasonably assume that s/he understands. ▪ (7) An alien against whom administrative expulsion proceedings are carried out can be represented by a lawyer or other representative of his/her choice; the representative must be a natural person with full capacity to undertake legal actions, unless provided otherwise in the section 8. In each proceeding the alien may have one representative only. ▪ (8) A third country national shall be entitled to obtain legal representation within the extent and under the conditions stated in the Article 3 of the Legal Aid Act, Act No. 586/2003 Coll. on Advocacy and Act No. 455/1991 Coll. on Self-Employment. |
|  | Slovenia | Yes | <ol style="list-style-type: none"> 1. Ad. 1-2. Yes. Slovenia has established system of legal assistance available for foreigners. Legal assistance available for foreigners is part of a general system aimed at providing legal aid to people with low income. 2. Free legal aid is regulated by the Free Legal Aid Act. The purpose of the free legal aid is to extend the right to the judicial protection according to the principle of equality, considering the social situation of the person who, without detriment to their livelihood and the livelihood of the family, could not exercise this right. Legal aid is carried out by lawyers who are registered under the Attorneys Act in the directory of lawyers and law firms and by notaries for matters which are performed under the Notary Act. The beneficiaries of the free legal aid are persons whose average monthly income per family member does not exceed 2 times the basic amount of the minimum income. The implementation of Free Legal Act is under the competence of the Ministry of Justice |
|  | United Kingdom | Yes | <ol style="list-style-type: none"> 1. Yes. 2. In response to both (1 and 2) questions: “Legal aid on a question of ‘English Law’ is available to anyone who satisfies the means and merits tests for any area of law that is within scope of the Legal Aid scheme. Parliament decides which areas of law are within the scope of legal aid. The Legal Services Commission (LSC) administers the legal aid system in England and Wales through a provision of contracting with solicitors firms and Not For Profit agencies. The enabling legislation is The Access to Justice Act 1999. The LSC is a non-departmental public body sponsored by the Ministry of Justice (MoJ). Legal aid funding is designed to help those who can least afford to pay to obtain legal advice, assistance and representation when necessary. It ensures access to justice. There is no nationality or residence qualification for receiving either civil or criminal legal aid. But legal aid for representation in criminal or civil proceedings is available only for proceedings in England and Wales. It is for the courts to determine whether it is appropriate for proceedings to take place in this jurisdiction, taking into account the location of the events giving rise to the proceedings. In criminal proceedings legally aided representation for cases before the magistrates court is subject to the interests of justice test and a financial eligibility test. In the Crown Court, it is subject to the interests of justice test. In civil cases, including asylum, deportation and removal appeals, Legal Aid is available to appellants who have passed the statutory means and merits tests whether they are appealing from within the UK or outside. The tests are set out in the Legal Services Commission’s Funding |

EMN Ad-Hoc Query: on organisation and management of legal assistance provided to foreigners in the EU Member States

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| | | | <p>Code, which are approved by Parliament. Legal Aid funding may be obtained to provide foreign nationals, immigrants and asylum seekers with initial advice and assistance with their application and representation before the Asylum and Immigration Tribunal (AIT), and advice on appealing to higher courts – providing that at each stage that the relevant means and merits tests are met and that Specialist Legal Advice is required, specialist legal advice usually requires an element of diagnosis and for instance would not be met for simple form filling”.</p> <p>3. The UK is not bound by the Directive 2008/115/EC and therefore has not be transposed in law. In regard to art. 15 (of 2005/85/EC) it was transposed into the Immigration Rules, 333B. No changes to UK law was required to implement art. 16.</p> |
|  | <p>Norway</p> | <p align="center">Yes</p> | <p>1. Yes we have two systems. One according to the Immigration act and one according to Free legal advice act.</p> <p>2. We refer to The Norwegian Immigration Act section 92: <i>Section 92 Legal aid In cases concerning rejection, expulsion and revocation of a permit or revocation of a residence document, see section 120, foreign nationals shall have a right to free legal advice without means testing. However, this shall not apply in expulsion cases pursuant to sections 66 (b) and (c); 67, first paragraph (a), (b) and (c) and 68, first paragraph (a) and (b).</i> <i>A foreign national who applies for a residence permit under section 28, or invokes protection against expulsion under section 73, shall have a right to free legal advice without means testing in the event of a negative administrative decision made by the Directorate of Immigration. However, this shall not apply where the foreign national appeals against only having been granted a residence permit under section 38. In the case of applications from unaccompanied asylum-seeking minors and cases which may bear on foreign policy considerations, fundamental national interests or where exclusion under section 31 may be the outcome, free legal advice shall also be given without means testing where a case is handled by the Directorate of Immigration. The King may by regulations make further provisions in respect of exceptions from the right to free legal advice under the first sentence, and supplementary provisions to the first sentence, including the right to free legal advice without means testing at first instance.</i> <i>In cases as mentioned in section 76 fourth paragraph, foreign nationals shall have the right to free legal advice without means testing. In cases as mentioned in section 79 second paragraph, foreign nationals shall have the right to free conduct of the case. The court shall appoint legal counsel when hearing a petition for remand in custody under section 106. The same shall apply where the court hears a petition for seizure or an order under section 104, second paragraph, and section 105, second paragraph, unless appointing legal counsel would entail particular inconvenience or waste of time, or the court has no misgivings about not appointing counsel. If the foreign national already has an advocate at public expense, the advocate shall normally be appointed. Such appointment shall be dispensed with when the court so decides.</i> <i>The court shall on its own initiative and without means testing make funds available for free conduct of the case when counsel is appointed pursuant to the fourth paragraph.</i> <i>In cases where free conduct of the case or free legal advice is provided without means testing, full or partial recovery of the public authorities' outlay in connection with the legal aid may be requested provided the foreign national has the necessary financial capacity. The King may by regulations make further provisions</i></p> <p>3. We are not member of the EU and have not implemented this Directive in The Norwegian act. The Norwegian state has implemented this directive in the Norwegian Immigration act. § 92, see above. An evaluation of this legal assistance system to the asylum seeker has been commissioned. It is to evaluate the free lawyer’s services arrangement to the foreign nationals in</p> |

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| | | | rejection cases when applying for protection. The main purpose of the evaluation is to analyze and assess the quality of the legal aid offered to the asylum seekers in rejection cases, as well as the organization of the free lawyer's services arrangement. |
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