

# PRACTICAL GUIDANCE FOR ADVOCATES BEFORE THE GENERAL COURT IN DIRECT ACTIONS

This practical guidance is addressed principally to those appearing for the first time in the General Court or appear infrequently. It has been drafted by the Permanent Delegation to the Court of Justice of the Council of Bars and Law Societies of Europe (CCBE) in order to enhance the efficiency of the use of direct actions (e.g. annulment action or declaration for failure to act) by Advocates from the EU. These tips are designed to complement the Court's own guidance set out on the Court's website under the heading "Procedure" and in particular in the Notes for the Guidance of Counsel: [http://curia.europa.eu/jcms/upload/docs/application/pdf/2008-09/txt9\\_2008-09-25\\_17-37-52\\_275.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2008-09/txt9_2008-09-25_17-37-52_275.pdf).

The General Court's 1991 Rules of Procedure were amended several times, the last time in 2013. The consolidated edition of these Rules of Procedure and the other texts governing the procedure before the General Court are available online at the following address: [http://curia.europa.eu/jcms/jcms/Jo2\\_7040/](http://curia.europa.eu/jcms/jcms/Jo2_7040/).

This guidance addresses three topics:

1. **Written submissions in direct actions**
2. **Oral pleadings in direct actions**
3. **Practical issues in direct actions**

## 1. Written Submissions in Direct Actions

### General

- Keep written pleadings as short as reasonably possible, having regard to the page limits indicated by the General Court's Practice Directions (see below)
- Advocates who have created an 'e-curia' account (<https://curia.europa.eu/e-Curia/access-request-step1.faces>) can lodge and receive all their procedural documents via the 'e-curia' application – otherwise every written pleading can be submitted electronically (by fax or email) but the original documents dated and physically signed by the Advocate must always be lodged at the Registry within the next ten days
- The use of language other than the language of the case (which is that chosen by the applicant) may be granted to other parties, if requested, in limited circumstances, usually in intellectual property cases, and may be for the written or the oral phase of the proceedings or both
- The deadline of two months and ten days to reply cannot be extended – late pleadings are returned, making it possible for the defendant to be judged by default
- Bear in mind that an oral hearing is not automatically granted by the General Court and therefore the written pleading may be the sole opportunity to influence the outcome of the case
- The first round of written pleading may usually be supplemented by a reply from the applicant and by a rejoinder from the defendant – entirely new pleas not included in the application are not accepted, unless otherwise decided by the General Court



### Drafting style

- Keep the style simple so that it translates easily – punchy uncomplicated sentences are best – and avoid use of national legal jargon which may be difficult to translate correctly
- Consider asking a non-native speaker to read your text to check for likely ease of translation
- As far as possible, try to be precise and concise

### Structure

- Organize your written pleading clearly and logically – division into sections with clear headings and numbered of paragraph is recommended
- In addition to the summary of the facts and main arguments, a table of contents is necessary in complex cases
- Written pleadings are usually structured as follows: indication of the type of decision sought, summary of the relevant facts and/or procedure; presentation of the pleas in law; and formulation of the form of order sought

### Content

- The written pleadings are fundamental and will be carefully studied by the General Court. They define the case and it may be difficult to correct mistaken impressions at the oral hearing
- Depending on the circumstances of the cases, the indicative maximum number of pages set by the Practice Directions is 50 pages for the application and the defence and 25 pages for the reply and the rejoinder (but respectively 20 and 15 pages for intellectual property cases) though a margin of tolerance is specified and the Court may permit larger documents if good reasons are given
- Focus on the good points and avoid repetition
- Apply the new method of citing the case-law as explained at [http://curia.europa.eu/jcms/jcms/P\\_125997/](http://curia.europa.eu/jcms/jcms/P_125997/)
- Pleas and legal arguments may not be made in the Annexes (which in any case are not usually translated into the Court's working language (French) and will not be read by all members of the chamber hearing the case)



## 2. Oral Pleadings in Direct Actions

### Generally

- Prior to the oral pleading, the General Court may order measures of instruction and may invite the parties to focus on specific arguments
- It is important to respond promptly to the Registry's letter enquiring about an oral hearing, giving reasons why one is necessary
- Postponement of the hearing date is rarely granted by the General Court (unless it has scheduled two hearings for the same date involving the same advocates)
- Time allotted for the main pleadings (normally 15 mins in 3 Judge chambers and 20 mins in 5 Judge chambers) are strictly adhered to; extensions may be granted in advance on written application to the Registry
- In principle, the Court prefers only one advocate per party to plead orally, although permission for more than one speaker may be granted in advance on written application or even at the hearing
- Contact the Registry by e-mail or telephone to ask which parties are attending the oral hearing (and to obtain the Advocates' contact details if needed)
- If your client has the same interest as other parties (including Institutions or Member States), discuss in advance who is going particularly to focus on which points
- If the General Court requests the parties to deal with particular issues, consider whether it is necessary to focus exclusively on these issues
- If possible, send your speaking notes or at least a summary thereof (e.g. 3-4 pages with highlights/bullet points) – including references to any judgments from which you intend to quote – to the interpreters in advance at the following e-mail: [interpret@curia.europa.eu](mailto:interpret@curia.europa.eu). In the alternative, hand out a hard copy before the hearing (see below)
- If you intend to refer in your presentation to case-law that has not previously been cited in the written pleadings, bring copies to the hearing
- Advocates shall wear robes at the hearing (except in interim proceedings). Bring your own – however, robes are usually available for those who forgot in the Salon des Avocats

### What to expect

- Find your Courtroom and the Salon des Avocats allocated where you can leave any luggage you may have and put on your robes
- After arrival at the Courtroom, one of the interpreters is likely to ask for a copy of any speaking notes you have for your presentation – so bring spare copies (they are also used to making a photocopy of your notes)
- Immediately before the hearing commences, the Registrar will invite the Advocates who are pleading to meet the Judges in their deliberation room behind the courtroom - a frequently asked question is whether you are going to need all of the allocated

time - on occasion the President or the reporting Judge ask the Advocates to address certain issues

- The order of oral pleadings follows that of the main pleadings, with interveners following the party that they support, after which there will be questions from the Bench and an opportunity to reply to any of the issues raised in the course of the hearing
- The order of main pleadings is set by the President but usually consists of the applicant, followed by the possible interveners supporting its position, and the defendant, also followed by potential interveners
- Questions may or may not arise from the Court (either during your speech or afterward) – you must be prepared to answer questions both on the facts and on the law
- Ensure that your team is seated in such position as to be able to assist the speaker (e.g. in responding to the questions)
- Closing replies must be kept short and should be limited to points that arise from the oral pleadings - they can be dispensed with unless you really have something to say; however, the Commission often tries to introduce a new point by way of last word and you should be prepared to contest this

### The pleading itself

- Focus on the members of the General Court - in particular the reporting Judge and the President of chamber (indicated on a sheet of paper attached to the lectern)
- Stand at the lectern at all times when you speak (including in reply to questions) and prepare your papers, earpiece etc. accordingly
- Speak into the microphone (make sure it is switched on) - otherwise the interpreters cannot hear you! and adjust it for height
- Avoid reading out a written speech which runs the risk that you speak too quickly and that translation of your statements will be poor
- Do not feel bound to follow any speaking notes given to the interpreters which is simply a general guide
- Make sure you can deal with the points made by others during the hearing
- Ideally speak freely, with your head up, using a normal conversational style and speed
- Cut your speaking points down in length - shorter sentences without subordinate clauses work better than longer ones
- Speak particularly clearly and slowly when giving numbers and references
- Literary flourishes, jokes and idiomatic speech risk being misunderstood
- Do not interrupt the other party's submissions without the President's permission

### Content

- Open your speech with a brief statement of what you say the case is about
- Do not repeat your written arguments in detail – seek to convey the fundamental reason why the General Court should adopt your position
- Focus on the 2 or 3 most important points whilst showing that you are ready to deal with all other points
- Focus on any relevant developments in the case law since the date of filing of your last written pleading
- Avoid repetition of points made by others – if appropriate, simply adopt the previous speaker's points
- Comply promptly with requests from the Bench, including a request to stop speaking

### 3. Practical Issues

#### Advance preparations

- The Court's Judicial holidays lasts 3 weeks in winter and 2 months in summer
- The General Court is, like the Court of Justice, situated on the Kirchberg Plateau in Luxembourg. See map at: [http://curia.europa.eu/jcms/jcms/Jo2\\_7021](http://curia.europa.eu/jcms/jcms/Jo2_7021)
- The entrance to the Court for Advocates is on the Rue du Fort Niedergruenewald
- There are several hotels within 5 minutes' walk from the Court, and staying at one of those may facilitate a reconnaissance visit the day before
- Kirchberg is close to Luxembourg Airport - direct buses from the airport or the town centre stop outside the Philharmonie, which is 3 minutes' walk from the Court entrance, see <http://www.vdl.lu>
- Luxembourg City's roads - including the motorway to and from the airport - suffer bad congestion at peak times, in particular in the morning, so plan your arrival accordingly

#### Arriving at the Court

- Arrive in good time for the hearing and in any event no less than 45 minutes beforehand – security checks can be time consuming
- Bring passport for security checks, identify yourself as an Advocate (e.g. using CCBE card available from all national Bars) and go to the security official at the head of the security desk, marked "Avocats" (do not wait in the queue for visits!)
- Ask for the name or number of the courtroom (salle d'audience) in which your case is scheduled and ask for directions
- Outside security, turn left into a broad corridor (la Galerie) and after 30m, turn left again (the General's Court rooms are located on the Ground floor)
- Lockers are available for personal items in the Advocate's robing room (Salon des Avocats)
- Do not count on being able to make photocopies at the Court

#### Arriving in the Court Room

- Although seats for litigants and their Advocates are not specifically allocated, Institutions tend to sit on the left but Member States and parties can choose – those with similar interests would normally sit on the same side of the courtroom
- Normally, Advocates will sit at the desks in front of the Bench, while their clients sit on the front row of the seating immediately behind these desks
- Do not attempt to sit on the "sideways"-facing desks: these are for the Court Clerk and référendaires who assist the Judges
- When there are multiple parties, it is necessary to take it in turns to use the lectern and the microphone from which to speak which can be very inconvenient
- Check that your interpretation earphone works and verify that it is on the correct channel for your language of choice - for channel numbers, check the number on the windows of the booth
- The lectern can be adjusted to your height if necessary
- Power points are provided for laptops - switch off mobile phones
- There will often be a comfort break after approximately 2 hours if a hearing is less than 3/4 complete. If necessary, there will be a lunch break at 13.00, with the resumption of the hearing at 14.30 - plan your day accordingly
- You will be invited to switch off your mobile phone at the beginning of the hearing
- Wi-fi free high-speed broadband access is available in the courtroom. Once you have Wi-Fi switched on, look for the 'Guest' network. No password is requested

