

PRACTICAL GUIDANCE

for Advocates before the Court of Justice
in Preliminary Reference Cases

2012

This practical guidance is addressed principally to those appearing for the first time in the Court of Justice of the EU. 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 preliminary reference procedure. The Court of Justice has new procedural rules which entered into force on 1 November 2012 and are available on the Court of Justice Procedure page: http://curia.europa.eu/jcms/jcms/Jo2_7031/

On the same page, see in particular also:

- *Notes for the Guidance of Counsel*
- *Advice to Counsel*
- *Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings*

Note that written pleadings can be filed on-line using the e-Curia system.

This guidance addresses three areas:

1 *Written pleadings*

2 *Oral pleadings*

3 *Practical issues*



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Written Pleadings in Preliminary Reference Cases

General

- Keep pleadings as short as reasonably possible
- Do not repeat material which is already in the judgment or order of the referring court (the Court has this in translation already)
- If your client has the same interest as other parties pleading before the Court (including Member States), discuss in advance who is going to focus on which points
- Before starting, consider writing out your opponent's main points in order to focus your own arguments
- It is vital to note that extensions of the deadline of two months and 10 days cannot be granted – late pleadings are returned
- Bear in mind that an oral hearing may not be granted and therefore the written pleading may be the sole opportunity to influence the result of the case

Drafting style

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

Structure

- Consider starting with a brief summary to focus the mind of the Court on the key issues
- Avoid long introductions and do not rehearse the questions of the referring court or the order for reference at great length throughout the document
- Restrict any statement of facts to what is strictly necessary for the resolution of the questions of EU law before the Court, bearing in mind that judgments are usually brief on the facts of the case

- Be aware that the Court will rely on the statement of facts and law as contained in the referring court's judgment unless clearly challenged by one of the parties
- In general, it is advisable to address each question from the national court in the order in which it is asked: however, should you suggest that the questions be reformulated or answered in a different order, do so clearly
- Conclude your written pleadings with proposed answers to the questions which the Court can use in the operative part of the judgment

Content

- Written pleadings generally have more impact on the Court than oral pleadings
- Focus on the good points
- Remember that there is only one round of written pleadings with any reply points being exclusively for the oral hearing if there is one
- So far as possible, anticipate the issues likely to arise at the oral hearing
- A concise statement of the national legal framework can be important and should be prepared in a style that is easily comprehensible to lawyers from other legal traditions and which could be slotted into the judgment
- Where the procedural context is relevant (*e.g.* Brussels Regulation cases) and is not apparent from the order for reference, describe it precisely
- If not clear from the order for reference, summarise the facts underlying the decision to refer
- Note that Annexes are not translated into the Court's working language (French) – make clear in the pleading why the Judge should request sight of them
- Avoid repetition
- Suggest rephrasing the questions referred only where you consider it absolutely necessary

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Oral Pleadings

Generally

- Respond promptly to the Registry's letter enquiring about an oral hearing, giving reasons why one is necessary. The new procedural rules include a power to refuse a hearing. Take real care to justify the need for a hearing
- Once allotted a time for the main pleading (normally 15 mins in 3 judge chamber and 20 mins in 5 judge chamber) this time limit will be strictly adhered to unless an extension is granted in advance on written application to the Registry
- Contact the Registry by e-mail or telephone to ask which parties are attending the oral hearing (and to obtain their advocates' contact details if needed)
- Confer, if possible, with parties with the same interest to agree which party is to focus on which argument
- If the Court requests the parties to deal with particular issues, consider whether it is necessary to focus exclusively on these issues
- If possible, send a summary of your pleading (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. In any event, bring a paper copy with you for the interpreters at the hearing or, if you lend your notes for photocopying, paginate them first.
- 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
- Do not forget to bring the robes you normally wear when appearing before the referring Court

What to expect

- Find your Courtroom and the Salon des Avocats allocated to it where you can deposit any luggage you may have and put on your Court 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 a spare copy (otherwise, they will ask to photocopy your notes)
- Immediately before the hearing commences, the Registrar or his representative will invite the advocates who are pleading to meet the Judges – a frequently asked question is whether you are going to need all of the time that has been allotted. On occasion the President or Advocate General will ask the advocates to address certain issues or to deal with a specific question
- The order of pleadings is the main pleadings, followed by 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 parties before the referring court, the originating Member State of reference and then other Member States in alphabetical order and finally the European Institutions (usually the European Commission)
- Questions may or may not arise from the Court or the Advocate General – you must be prepared to answer questions both on the facts and on the law (in particular on the applicable national law)
- Ensure that associates who may be able to assist with questions are seated in such position as to be able to assist the speaker in responding to questions
- 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



The pleading itself

- Focus on the members of the court - and in particular the reporting judge, the President of Chamber and the Advocate General (indicated on a sheet of paper attached to the lectern)
- Speak from the lectern at all times (including questions) and prepare your papers, earpiece etc accordingly
- Speak into the microphone (otherwise the interpreters cannot hear you!) and adjust it for height
- Reading out a written speech runs the risk that you speak too quickly, fail to keep the attention of the Court & lack flexibility to deal with the points made by others
- Ideally speak freely, with your head up, using a normal conversational style & speed
- Do not feel bound to follow any speaking notes given to the interpreters which is simply a general guide
- Cut your speaking points down in length, rather than trying to speak very fast in order to get through the material in the time available
- Shorter sentences without subordinate clauses work better than longer ones
- Speak particularly clearly when giving numbers and references
- Avoid literary flourishes, jokes and idiomatic speech - they translate poorly

Content

- Open 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 Court should adopt your position, and if needed respond to points made by others in their written observations
- Focus on the 2 or 3 most important points whilst showing that you are ready to deal with all other points
- The Court's task is to provide an interpretation of EU law that can be applied in all Member States – the focus must therefore be on the law and not on the facts of the particular case
- 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

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Practical Issues

Advance preparations

- The Court is on the Kirchberg Plateau in Luxembourg. See map at: http://curia.europa.eu/jcms/jcms/Jo2_7021/
- The entrance to the Court for advocates is in the Rue du Fort Niedergruenewald
- There are several hotels within 5 minutes walk of the Court, which may also permit a reconnaissance visit the afternoon before
- Kirchberg is close to Luxembourg Airport – direct buses from the airport stop outside the Philharmonie, which is 3 minutes walk from the Court entrance
- From the town centre, buses will likewise take you to the Philharmonie, see www.vdl.lu
- Luxembourg City's roads - including the motorway to and from the airport - suffer bad congestion at peak times, 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 a lawyer (e.g. using CCBE card available from all national Bars) & 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 courtroom (*salle d'audience*) in which your case is scheduled and where it is
- Outside security, turn left into a broad corridor (*la Galerie*) and after 30m, turn right up wide stairs past Rodin sculpture
- At top of the stairs you are in the *Salle des Pas Perdus*. On the left is the *la Grande Salle d'audience*. The last office in the corridor immediately to the right hand side is the advocates' robing room/Salon des Avocats.
- Lockers are available for personal items and three computers are available with printers - one has a connection to the internet

- Do not count on being able to make photocopies at the Court
- There is an alternative robing room on level 6 – coming out of the lift, it is on the right across the hall

Arriving in the Court Room

- Cases before the *Grande Chambre* will be in the *Grande Salle d'Audience*
- Otherwise the court room is likely to be on one of the floors above the *Salle des Pas Perdus* (though there are also two court rooms at the bottom of Tower A)
- 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/advisors 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 *référéndaires* who assist the judges and the Court Clerk (*huissier*)
- With multiple parties, it will be necessary to use sequentially the podium and the microphone from which to speak
- Check out your interpretation earphone and verify that it is on the correct channel - for channel numbers, check the number on the window 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