



EUROPEAN COMMISSION

LEGAL SERVICE

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GUIDE TO THE LITIGATION WORK OF THE LEGAL SERVICE

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INTRODUCTION

The Legal Service has exclusive power to represent the Commission before courts and quasi-judicial bodies, under the mandate conferred upon it¹.

In performing this essential task, the members of the Legal Service are required to show the highest level of professionalism and legal expertise, while complying with the relevant rules of the Staff Regulations and ethical standards. In addition to the immediate goal of defending the Commission's interests in each particular case involving legal issues and often very important economic interests, in a deeper sense this task puts on the line the very reputation of the Commission as an institution working in the overall interests of the EU. The Director-General of the Legal Service has to account to the College of Commissioners and the President for the performance of this task, in particular as regards all cases in which policy considerations may lead the Commission to use the available leeway in the interpretation of EU law in one way rather than another.

Accordingly, instructions have been issued and practices established over time to guide and direct the actions of the members of the Legal Service when dealing with the courts. This guide aims to update, adapt and consolidate those instructions and practices in a single document so as to make them easier to access, to increase awareness of them and to ensure that they are systematically applied by all members of the Legal Service. Infringement proceedings, to the extent that they form part of litigation, are covered by the general instructions contained in this guide. However, it gives no instructions relating specifically to infringements².

Compliance with these rules helps to ensure that, in carrying out activities relating to litigation, the members of the Legal Service attain the quality level required of them and follow a fully coordinated approach, in order to allow subsequently the Director-General of the Legal Service to reassure the Commission and its President that this task is being performed in line with the institution's expectations.

I. The Commission's involvement in a case

A. Initiation of a case by the Commission/intervention by the Commission in a pending case

Any legal action brought or request for an opinion made by the Commission, as well as any intervention before the courts of the EU, its Member States or third countries, or before arbitration tribunals, must be covered by a decision of the College of Commissioners³, whether the case concerns initial proceedings or an appeal. Such a decision is also required for the submission of counterclaims in cases in which the

¹ See [COM\(59\)PV 67](#), item XXV of 15 July 1959: *The Legal Service alone is qualified to act on behalf of the Commission in court proceedings. This power extends to all cases where the Commission is involved in any capacity, whether as applicant or defendant, in a legal case brought before the Court of Justice of the European Communities, an international court or any administrative or judicial tribunal of a Member State, an associated country or a non-member country. It also extends to all cases in which the Commission must be represented in any capacity before a court of arbitration. [unofficial English translation]*

² Nor are the specifics of litigation before the bodies of the WTO covered by this guide.

³ An exception to this rule is an intervention at the request of national courts under the cooperation established between them and the Commission by Article 15 of [Regulation \(EC\) No 1/2003](#) and Article 29 of [Regulation \(EU\) 2015/1589](#).

Commission is respondent. The same applies where the Commission acts as civil party in criminal proceedings.

Given that this procedure consists of several stages (inter-service consultation, adoption sometimes in all three working languages) and that the Commission's submission must generally be filed by a fixed deadline, it should be determined at the earliest possible stage whether the proposal should be made for the Commission to take part in or initiate any given litigation.

When formulating a proposal to bring legal action, to request an opinion or to intervene before a court, the Legal Service members concerned or their head of team first need to request the agreement of the Director-General. In the case of an action for annulment or an appeal, the request should be submitted, wherever possible, within three weeks of the event triggering the deadline for the Commission. If this period does not allow clarification of whether the action in question is desirable, the Director-General should in any event be informed that a request may be submitted at a later date, giving details. In the case of an intervention before the EU Courts, the deadline of six weeks for the submission of the request is triggered by the publication of a reference to the action in the OJ. However, as the Commission is often notified of actions before such publication, consideration should be given at the earliest possible stage to the possibility of intervening.

Before receiving the agreement of the Director-General, members of the Legal Service should not commit their hierarchy, vis-à-vis other Commission departments, as regards the course to follow. This applies particularly to requests for opinions, the submission of which often requires a number of considerations to be weighed one against the other. Informal prior sounding of the services concerned may none the less be carried out and may in fact be very useful.

The President's cabinet needs to authorise the launch of any inter-service consultation on a draft act which the Commission is to adopt in oral or written procedure or by empowerment. To this end, the Legal Service members concerned shall prepare a brief background note (generally no longer than one or two pages) summarising the case and the reasons for taking legal action in non-technical language. That note contains a very brief summary of the case in one or two sentences as well as sections on the background, our proposal and the political sensitivity. The clarity of the note is important, and abbreviations, technical jargon and literal quotes from legal texts need to be avoided. The emphasis should be on the explanation of the policy context and the policy reasons for the proposed action⁴. For sensitive cases, instead of such a background note, a note from the Director-General to the President's Head of Cabinet should be prepared.

Once the Director-General has agreed, the Assistants send the background note to the President's cabinet for information. The note then needs to be uploaded as quickly as possible in Decide "Consultation", together with the draft act, and will thus form the basis to seek the agreement of the President's cabinet with the launch of the inter-service consultation, which will be given in Decide.

⁴ A template for such a background note, which may be drafted in English or French, may be found in **Annex I** to this Guide.

However, for decisions on litigation for which the power has been sub-delegated to the Director-General of the Legal Service (see Annex II), neither the prior consultation of the Director-General nor that of the President's cabinet are required, unless the case is deemed sensitive. The inter-service consultation on the draft decision may in those cases immediately be started in Decide "Consultation".

After the inter-service consultation, the decision-making procedure needs to be launched. For that purpose, the background note is to be completed by sections 4 and 5, section 4 indicating the agreement of the cabinets and the position of services concerned. That version of the note should be uploaded in Decide "Decision" together with the draft act.

As regards the choice of the decision-making procedure, it should be noted in this connection that the Commission has empowered its President - either alone or in agreement with the relevant Commissioner(s), depending on the case - to adopt various categories of decision initiated by the Legal Service⁵. In turn, the President has sub-delegated to the Director-General of the Legal Service the power to take some of these decisions⁶. Any other decision that does not fall into the category of the above-mentioned acts is to be adopted by the College of Commissioners in accordance with standard procedure, i.e. by written or oral procedure⁷. The background note referred to above must be included in the e-grefte file, in so far as the President takes part in the decision-making process.

Where a Directorate-General has asked to refer a matter to the Court of Justice (bringing of an action for annulment, submission of a request for an opinion, lodging of an appeal, etc.), the head of the competent team should inform the Director-General of this request and the team's position on it as soon as possible.

B. Handling of cases notified to the Commission

1) Assignment of cases

a) Cases before the Court of Justice of the EU⁸

Applications or references for a preliminary ruling are sent to the Commission by the Court of Justice via e-Curia⁹. They are received by the Litigation Registry in the Information and Documentation Group, which allocates them to the relevant team, or teams where cases involve different subject-matters¹⁰.

The head of the team appointed as the 'lead' team should quickly make sure that the allocation is correct and, where applicable, propose that the Litigation

⁵ Decision of 12 October 1977 ([SEC\(1977\)3503](#), PV 446), as last amended by the Decision of 13 March 2007 ([SEC\(2007\)337](#), PV 1780).

⁶ Commission Decision of 25 July 2008 ([C\(2008\)4012](#)).

⁷ The various categories of decisions to be taken by the Commission are listed in **Annex II**. The administrative procedure for adopting/submitting decisions is carried out using the [Decide](#) tool.

⁸ References to the Court of Justice in this document also apply, where relevant, to the General Court and the Civil Service Tribunal. Moreover, cases before the EFTA Court can largely (with the exception of communication via e-Curia) be dealt with in the same manner as those before the Court of Justice.

⁹ Urgent procedures, however, arrive by e-mail into the SJ PPU (Legal Service urgent procedures) mailbox.

¹⁰ For technical and statistical reasons, there is always a 'lead' team named in the Litigation Database, even where the action is multi-disciplinary in nature. The other competent teams are grouped together and notified in ARES via the assignment of the procedural document.

Registry reallocate the case to another team or associate another team. Where the issue of allocation is not resolved consensually within two working days of the application being received, it needs to be submitted to the Deputy Director-General for decision.

b) Cases before national courts

i) Cases in which the Commission is summoned

Applications or other documents initiating litigation served on the Commission as defendant and received by a team should immediately be sent to the 'mail' unit within the Legal Service, which allocates them to the MAREC (Procurement and Recoveries) unit. The MAREC unit in turn creates the case in SJ-NAT, together with the agent appointment form, and allocates the case to the competent team¹¹.

Where a national court contacts the Commission to seek its intervention or views in a pending case to which it is not a party, a distinction should be made between requests relating to factual elements and those concerning the interpretation of EU law. The Commission's approach should be guided, on the one hand, by sincere cooperation with Member States' institutions and, on the other, by the consideration that the value of the reference for a preliminary ruling must be fully preserved. It follows that, where requests for factual clarification are concerned, it is incumbent on the Commission to produce documents to the national court and authorise its officials to give evidence in the national proceedings¹². The national court must be given all factual information at the Commission's disposal, such as any pending Commission proposals, the position of the other institutions on them, the outcome of consultations held or the relevant case-law of the Court of Justice or of other national courts. On the other hand, where requests for an interpretation of EU law are concerned, the Commission only accedes to them in cases in which it has actual decision-making power, such as those pertaining to the law on competition or State aid¹³. Moreover, by virtue of its exclusive power to represent the Commission before the courts, it is the Legal Service that responds to the national court in question, except where purely factual information is required which other Commission departments are better placed to provide.

ii) Cases in which the Commission is applicant:

The agent prepares and ensures the adoption of the Commission decision authorising the initiation of legal proceedings before the national court, and completes and sends to the MAREC unit for registration¹⁴, the agent appointment form, the Commission decision, the draft contract, the supporting documents and, where applicable, a draft power of attorney.

2) Appointment of agents

The agent appointment form is drawn up by the Litigation Registry in cases before the Court of Justice of the EU, or by the MAREC unit in cases before national courts,

¹¹ <https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/Contentieux/Pages/Contentieux-national.aspx>

¹² Order of the Court of Justice in Case [C-2/88](#) IMM, *Zwartveld and Others*, EU:C:1990:315, paragraph 22.

¹³ See footnote 3 above.

¹⁴ <https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/Contentieux/Pages/Contentieux-national.aspx>

and sent with the application to the head of the designated team. It is up to the head(s) of team concerned to propose agents, who are then appointed by the Director-General under the power delegated to him to that end.

As a rule, two or three agents are appointed, one of whom needs to have a very good command of the language of the case. If none of the agents has a perfect command of the language of the case, the quality of the Commission's documents should be ensured by consulting mother-tongue colleagues, particularly in litigation between the Commission and another institution or a Member State. In cases where it is justified - for example, where they involve different teams or subject matters or are particularly complex - more than three agents may be appointed. The appointment of just one agent may occur only exceptionally and is permitted only if the agent responsible for the given subject-matter has a perfect command of the procedural language, has significant experience within the Legal Service and occupies a post of legal advisor or senior expert. In any event, at least one of the appointed agents should in principle have served within the Legal Service for at least two years. Heads of team are responsible for assessing whether a requirement of experience within the team should be established. Where an inexperienced agent is appointed, the head of team ensures that his or her co-agent or another member of the team acts as mentor. A seconded national expert may represent the Commission in legal proceedings only as co-agent with an official¹⁵.

3) Appointment of an outside lawyer

Recourse to the services of an outside lawyer is possible in various scenarios, such as where a specific legal competence or capacity not available within the Legal Service is needed to deal with the case in hand; where an agent with a perfect command of the procedural language of the case in hand is not available within the Legal Service; for particularly complex cases from a factual point of view, or for repetitive cases with no major legal implications; or where there is a temporary work overload within a team. However, especially in cases before the EU Courts, agents assisted by an outside lawyer are required to supervise the lawyer's work appropriately, for example by having the content of his or her draft submissions checked by a mother-tongue legal reviser.

In national cases, the appointment of an outside lawyer is usually required. Their work needs nevertheless to be adequately supervised.

a) Rules for awarding and signing contracts with lawyers

Under point 11.1.h) of Annex 1 to the Financial Regulation, contracts for legal representation by a lawyer in arbitration, conciliation or judicial proceedings or for legal advice given by a lawyer in preparation for the proceedings referred to above (or where there is a high probability that the matter to which the advice relates will become the subject of such proceedings) can be awarded through a negotiated procedure without prior publication of a contract notice, whatever the estimated value of the contract.

It should be pointed out that contract negotiations, including those relating to fees, must be documented in a paper trail (exchanges of letters or emails) and that

¹⁵ See Article 6(3) of Commission Decision [C\(2008\)6866](#) (final) of 12 November 2008, laying down rules on the secondment of national experts and national experts in professional training.

any services for which the fees exceed the amount of €1 000 must be laid down in a contract¹⁶.

The agent appointment form¹⁷ is the document that formalises the main steps of the procurement procedure. That document allows the agents and the authorising officer¹⁸ to indicate how the exclusion and selection criteria have been verified, to explain the reasons for the award of the contract and to document the evaluation and the award. For contracts above 15.000 EUR, the contractor needs to sign a declaration on his/her honour prior to the award of the contract¹⁹. The declaration is valid one year and is kept by the financial unit.

It should also be pointed out that a legal person and a bank account must be validated in the central accounting system before the contract is signed.

One of the template contracts provided on the special contracts intranet page must be used. These templates are revised regularly. Please make sure to refer to the latest version.

The addition of clauses not provided for in the template contracts and the repetition of clauses included in the general conditions of these templates should generally be avoided. Any exceptions to this rule have to be authorised by the Deputy Director-General.

b) Ethical rules

When choosing a lawyer, please bear in mind the rules on conflict of interest. See the *Guide on Ethics for Legal Service Staff*²⁰. Care should also be taken to ensure a sufficiently diverse selection of lawyers.

Recourse to members of the Legal Service who are on leave on personal grounds or to former members of the Legal Service as outside lawyers is not prohibited per se, but the issue of whether there may be a conflict of interest or a problem for the Commission's image has to be assessed case-by-case.

c) Remuneration of outside lawyers

The intranet page dealing with contracts²¹ also includes information on the fee scales that may be agreed.

¹⁶ See also [the information pages on the intranet](https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Contrats.aspx)<https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Contrats.aspx>

¹⁷ <https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Formulaires-.aspx>

¹⁸ As regards the relevant subdelegations, see the page "ordonnateurs"

<https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Les-ordonnateurs-du-SJ.aspx>

¹⁹ Model of declaration on honour <https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Formulaires-.aspx>

²⁰ [Ares\(2018\)4060188](https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Formulaires-.aspx)

²¹ <https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Contrats.aspx>

4) Powers of attorney

a) Powers of attorney for cases before the Court of Justice of the EU²²

Powers of attorney are drawn up by multilingual revision assistants within the Quality of Legislation team, according to the following procedure:

i) without an outside lawyer

The original of the agent appointment form, initialled by the agents and signed by the heads of team of all agents, is sent by the assistant of the head of the team appointed as lead team, in paper format, to the following address: SJ POUVOIR, BERL 04/72. All emails concerning forms and powers of attorney must be sent to the SJ POUVOIR mailbox. The agent appointment form should reach the assistants in charge within one week of the case being notified.

For direct actions and appeals, powers of attorney are drawn up on the basis of (the first page of) the application or appeal (with an ARES record number) and indicate the number of the Commission decision (C(20..)xxxx in VISTA) taken to refer the matter to the Court of Justice or to launch an appeal. The agent appointment form will be drawn up, at the agent's request, on the basis of the Commission decision.

For interventions, the agent appointment form accompanies the notified case, which is sent to the team in charge of the matter. In the event of a decision to intervene, the duly completed form is returned to the team responsible for powers of attorney.

ii) with an outside lawyer

A paper file containing the agent appointment form and two copies of the contract is to be circulated to obtain the agreement of the Director-General. Once the DG has signed or initialled it, the assistants concerned start to draw up the power of attorney. The paper file is then passed on to the financial unit before being returned to the relevant team²³.

Powers of attorney are signed electronically by the Director-General via e-signature. The document containing the agent appointment decision and the powers of attorney is entered in the electronic file for the case at hand. This finalised document is assigned to the agents in ARES. Their assistant(s) can download the appropriate power of attorney in order to file it in e-Curia and mentioning the sending of the authority when registering the court procedural document in ARES.

b) Powers of attorney for cases before national courts

The agent prepares the file for the agreement of the Director-General, containing: the agent appointment form, duly completed (court hearing the action, parties, subject matter of the litigation, sums at stake, internal and external assignments, confidentiality of the case) + two copies of the draft contract with the outside legal

²² https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/gestion_documentaire/gestion_docs/edm-contentieux/Pages/greffe_contentieux.aspx

²³ Circulation of the file: https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Documents/contrats/2.5%20Circuits_SJ_2013.ppt

counsel, including the general terms and conditions + supporting documents (summons to the Commission to appear before the national court or Commission decision authorising the launching of the case before the court, any file notes or correspondence with the lawyer demonstrating negotiations of fees). If a power of attorney is required in a particular format, the agent attaches the power of attorney template provided by the lawyer.

5) Involvement of other teams

The agents and the head(s) of the team(s) responsible for a case should ensure that any other teams which might have a say in the case are involved in good time in drafting the written and oral submissions²⁴.

A list of references for a preliminary ruling notified to the Commission, with a transcription of the questions put by the national courts, is sent to heads of team every week to keep them informed and allow them to raise the possibility of involving a particular team in a given case.

II. How cases before the Court of Justice of the EU unfold

1) Determining the line to take and drafting submissions

As soon as a case has been assigned to an agent within a team to work on the substance of the case, he or she asks the competent Commission departments for their observations with a view to drafting a submission. S/he should also seek the views of other departments whose field of activity will clearly be affected by the resolution of the litigation in question. In the case of a reference for a preliminary ruling, this request - which can be made via ARES at the appropriate hierarchical level - is accompanied by all language versions of the referral decision that may be useful for the details of the case to be understood.

In the case of direct actions, the request is accompanied by the application and its annexes (or relevant extracts where the annexes are voluminous). Moreover, it may prove necessary to attach a summary of the application in English or French, if readily available, or a machine translation. If a full translation of the application is required, the department being consulted is responsible for requesting one from DGT. The request also triggers a deadline by which the consulted departments are asked to respond, which should be suited to the circumstances of the case and should not in principle exceed three weeks. The agents need to make sure that the departments submit their contributions by this deadline.

The same procedure, with adapted deadlines, is followed for the preparation of other written submissions that have to be sent to the Court of Justice.

Where possible, agents should strive to take the observations of the consulted departments into account in their submissions. Where a difference of opinion arises, appropriate contacts should be established between agents and their counterparts and,

²⁴ Without seeking to be exhaustive, one might mention the following cases where this need arises: involvement of the INST team for any issues surrounding interpretation of the Charter and rules of procedure and for issues with institutional implications; mutual consultations between the JLS and SOC teams in cases dealing with the free movement of persons; between the SOC and FPE teams, regarding issues of social rights and protection standards for officials/employees; between the BUDG and AGRI teams for the Funds; between the AGRI and MIME teams for the environment and fisheries.

where applicable, between the head of team and his or her counterparts in the relevant DGs in order to reconcile the differing positions. If necessary, the matter should be brought to the attention of the Deputy Director-General with a view to finding a mutually satisfactory solution. In sensitive cases (see 2 below), apart from the opinion of the DGs, it may be necessary to seek also the views of the cabinets concerned.

Heads of team should ensure that new cases are systematically presented by agents at weekly team meetings, at the latest four weeks before the deadline for filing the (first) submission.

Sensitive cases, in addition to being flagged up (see 2 below), can be mentioned at the weekly senior management meeting; the Director-General decides whether or not to inform the President's cabinet of certain of these cases and of the line of action proposed for them.

Heads of team should ensure the quality of the texts produced, especially in important cases in which agents do not write in their mother tongue, such as inter-institutional cases. Proofreading by mother-tongue colleagues, including among the legal revisers, can help achieve this goal.

When drafting submissions, agents should follow the rules set out in the rules of procedure of the competent courts and in the practical instructions to the parties²⁵. They should also use appropriate language, showing the necessary deference to the court and respect for the other parties to the case.

The Court anonymises preliminary references involving natural persons. The drafting of observations and any other documents concerning such cases is to take that anonymisation into account, also in cases in which the agents know personal data of the persons in question.

Throughout the proceedings, agents should keep the departments concerned informed of the positions taken in the name of the Commission and of the way the case is proceeding. Written submissions and other procedural documents should be sent to them immediately after being filed, subject to compliance with confidentiality requirements in specific cases.

2) Flagging of sensitive cases

- a) Agents need to inform the heads of team concerned and senior management sufficiently in advance before stating a position in sensitive cases before the courts.
- b) In principle, cases raising new, complex or multi-sectoral legal issues, politically sensitive cases and those likely to attract media attention should be considered sensitive.

²⁵ <https://myintracomm.ec.europa.eu/dg/SJ/PressBibLegalResources/Institutions/cour-de-justice/Pages/statut-reglements-instructions.aspx>

- c) In any event, cases referred for a preliminary ruling with the following characteristics should be considered sensitive:
- i) cases which directly call into question the validity of a legislative act of the EU and cases which, although in a formal sense they only pose questions of interpretation, in practice indirectly affect the validity of such an act;
 - ii) cases raising important questions of interpretation of fundamental rights, except where such questions clearly play a secondary role;
 - iii) cases raising questions which relate to the institutional structure, including the judicial structure, of Member States;
 - iv) cases in which it is proposed to suggest that the Court of Justice change its case-law;
 - v) cases which, although not complex in a legal sense, could have significant financial consequences, whether for the budget of the EU, the tax authorities of one or more Member States or a given sector of the economy, including consequences for financial stability;
 - vi) cases which, although not complex in a legal sense, could have a significant social impact; or
 - vii) cases where there is a substantial and persistent difference of opinion between the consulted departments, or between those departments and the Legal Service, except where the line is to confirm a position already taken in a previous case.
- d) Direct actions with the following characteristics should also be deemed sensitive: actions brought by another institution against the Commission, and actions brought by a Member State against the Commission, except for certain categories of litigation in which this is usual, such as clearance of accounts, State aid, etc.; for these latter categories, cases should be flagged based on their legal, political or financial significance.
- e) Flagging of a pending case at a later stage: agents and heads of team are required to flag all ongoing cases which have not previously been flagged and whose sensitive or important character only becomes clear during the course of proceedings. These include the following:
- all cases in which a change to the Commission's position is envisaged or in which substantial additions to the written submissions appear necessary;
 - all cases (reference for a preliminary ruling or otherwise) which the Court refers to the Grand Chamber;
 - all cases referred for a preliminary ruling in which the Court puts a sensitive legal question to the Commission for the hearing;
 - cases (reference for a preliminary ruling or otherwise) involving at least five Member States which do not all hold the same point of view as the Commission;

- direct actions in which the Council and/or Parliament intervene in support of the Commission or, on the contrary, of the party calling into question the legality of the Commission's action;

- cases to which the Commission is not a party, but takes a position at the request of the Court.

Cases should be flagged at the latest one week after notification of the hearing. The form should include any questions put by the Commission to the Court.

- f) The flagging of a case has several objectives. Firstly, it aims to ensure the greatest possible consistency in the positions taken before the courts, allowing them to be discussed collectively where appropriate. Secondly, it allows a decision to be made whether to bring a case to the attention of policy makers. Thirdly, it ensures that information is circulated within the Service.
- g) Responsibility for flagging cases, in line with the above criteria, falls to agents and their heads of team. The Deputy Director-General may ask for additional cases to be flagged. The effective and consistent implementation of the obligation to flag cases and the line to take in flagged cases are discussed in bi-monthly coordination meetings between senior management and the teams.
- h) Cases are flagged by sending a completed 'green form' to the 'SJ Affaires signalées' mailbox²⁶. That form is to be drafted in the clearest possible way, referring to applicable provisions and explaining synthetically, but completely, the legal reasoning proposed.
- i) The form contains two boxes that only apply to cases referred for a preliminary ruling, which are to be used to enter the questions put by the referring court and the suggested line to take in reply.
- j) The duly completed form should be submitted, as regards new cases, sufficiently in advance to allow for a discussion in one of the bi-monthly coordination meetings and the possible information of the President's cabinet of the proposed line. The time given to the President's cabinet to react should in principle not be less than two weeks.
- k) Where the President's cabinet is to be informed of the proposed line, it is also necessary to seek the views of the other members of the College concerned by the subject-matter.
- l) Where flagging proves necessary during the course of proceedings, it should be done as soon as possible.
- m) The green form is recorded and added to the case file in the Litigation Database and thus becomes accessible to all members of the Service.
- n) In addition, heads of team should, as soon as possible and without waiting for the green form to be sent, draw senior management's attention to particularly

²⁶ <https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/Contentieux/Documents/fiche-verte-affaires-signalées.doc>

important cases which are likely to require an immediate response, in particular vis-à-vis the President and Commissioners.

3) Grand Chamber

The Commission asks for a case to be handled by the Grand Chamber only in very exceptional circumstances. Such a request requires the agreement of the Deputy Director-General.

4) Requests for suspension of application/interim measures, expedited procedure or priority treatment

Requests for the suspension of application or interim measures (Articles 278 and 279 TFEU) require a Commission decision, like the initiation of a case (see section A). That decision will usually be part of the act in which it is decided to initiate the main case.

The Commission asks for a case to be subjected to an expedited procedure or heard as a priority only in very exceptional circumstances. Such requests require the approval of the Deputy Director-General. Where an expedited procedure is requested in conjunction with the initiation of a case, it is recommended to include that request in the Commission decision.

5) Pleas of inadmissibility

The Commission should only raise a plea of inadmissibility before the Union courts where it is fully convinced of the inadmissibility of the entire case and where the questions of admissibility are not linked to those of substance.

Where the Commission contests an order of the General Court declaring an application admissible, it must lodge an appeal against that order within two months of its notification (and therefore without waiting for the decision on the substance). Given that the appeal does not have suspensory effect, and in order to avoid parallel proceedings as much as possible, it seems appropriate for the Commission to lodge a request for a stay of the case before the General Court until the Court of Justice has decided on the appeal²⁷.

6) Letters to the Union courts not requiring a reply

Some letters sent by the Union courts do not necessarily require an express reply on our part. Unless there are particular reasons, for instance that the submission from the other party contains statements to which it may be useful to reply, the Commission does not respond to letters from the Court of Justice and the General Court notifying the Commission of

- 1) the end of the written procedure with a request to the parties to indicate whether they request a hearing (Article 76(1) of the Rules of Procedure of the Court of Justice, Article 106(1) of the Rules of Procedure of the General Court),

²⁷ Article 69(b) of the Rules of Procedure of the General Court

- 2) an application to intervene (in a direct action or an appeal) with a request to the parties to identify confidential or secret items or documents (Article 131(1) and (2) of the Rules of Procedure of the Court of Justice, Article 144(2) of the Rules of Procedure of the General Court),
- 3) a request or proposal to join cases (in a direct action or an appeal) with an invitation to the parties to submit observations (Article 54(2) of the Rules of Procedure of the Court of Justice, Article 68(2) of the Rules of Procedure of the General Court),

unless the Commission in fact requests a hearing, objects to an intervention or joinder or argues that certain items or documents are confidential.

By contrast, the Commission will continue to reply to all other requests of which it is notified by the Court of Justice and the General Court and on which the parties are "heard" by virtue of the Rules of Procedure.

7) Recording of documents in the Litigation Database

Whereas the main procedural documents are clearly identified²⁸, a case may include other documents and/or exchanges of information that belong to the file and have to be added to it. In all circumstances, the observations of the DG(s) have to be included in the file. Records of e-mails containing other significant exchanges with the DG(s) may also need to be included. The translations of procedural documents received from the Court of Justice or carried out by the Commission's departments should also be recorded. With effect from 2015, the files for all new cases handled by the Litigation Database are stored only electronically.

8) Deadlines

a) Meeting deadlines

Compliance with submission deadlines is checked automatically by the EU Courts and constitutes an important professional obligation on the part of members of the Legal Service²⁹. The agents assigned to each case are solely responsible for ensuring compliance with this obligation³⁰.

- i) The date used to calculate the deadline is the date on which the document triggering the deadline is received in the e-Curia application. When it is recorded, the agents responsible for the case are notified of the deadline recorded by the Litigation Registry. They should immediately check the deadline and correct it if necessary.
- ii) An automated warning system alerts the agents and heads of team concerned by e-mail that the deadline is about to expire ten days before the expiry date (which may be the date entered in the database by the Litigation Registry or that corrected by the agent).

²⁸ https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/gestion_documentaire/gestion_docs/edm-contentieux/Pages/dossier_contentieux.aspx

²⁹ For details of how deadlines are calculated, see the annex to Note [ARES\(2011\)500682-01](#)

³⁰ Pursuant to Article 45 of the Statute of the Court of Justice, this does not apply in cases of unforeseeable circumstances or force majeure.

- iii) All written submissions should be sent to the registry of the relevant court at the latest the day before the expiry of the deadline, without waiting until the last day to avoid all risk of non-transmission. Where circumstances so require, agents may be authorised by their head of team, at their request, to file submissions on the day on which the deadline expires.
 - iv) If notification is not made via e-Curia, the necessary administrative procedures (copies, seals, etc.) must be carried out immediately after the submission has been sent by fax or e-mail, to ensure that the original and authenticated copies of the submission are filed as soon as possible and at the latest within five days of its being sent electronically³¹.
 - v) If, despite all the precautions taken, a deadline is missed in a particular case, the agents concerned have to report this immediately to their head(s) of team and to the Director-General.
 - vi) Finally, where the party opposing the Commission fails to meet the applicable deadlines, agents should report this to the competent court and invite it to draw the consequences.
- b) Extension of deadlines: Some procedural deadlines in cases before the Court of Justice can be extended. However, extensions are granted only in exceptional circumstances in response to a reasoned request for a reasonable extension, which must be proportionate to the circumstances underlying the request. Despite repeated attempts by the Legal Service to encourage a more flexible attitude, the Court is often very strict on deadline extensions³². Wherever possible, therefore, the necessary precautions should be taken to comply with the original deadlines set by the Court. The possibility of requesting an extension of the deadline should be used sparingly, limiting it to cases where it is truly justified.

9) Filing of written submissions and other written communications, use of e-Curia

The filing of procedural documents is prepared by agents' assistants and carried out by the agents, who take responsibility for it. As a rule, e-Curia, a software application developed by the Court of Justice, should be used³³. It is shared by the two courts that make up the Court of Justice to allow documents to be exchanged electronically between the registries of these courts and the representatives of the parties to the case, Member States and the EU institutions. Each agent and assistant must have an e-Curia account to be able to receive notifications via e-Curia and file procedural documents³⁴. As regards the General Court, the use of e-Curia is compulsory³⁵.

³¹ https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/gestion_documentaire/edm-contentieux/Pages/contentieux_old.aspx.

³² For example, a request submitted upon receipt of a procedural document triggering a deadline of one month plus 10 days, motivated by the fact that the case concerned more than one area of EU law and the Commission's observations needed to be coordinated between several departments, and by the extra days of leave granted to the agents at the end of the year, was rejected by the Court and the deadline was kept at 7 January. Similarly, the Court is often reluctant to extend deadlines that expire in July and August.

³³ The EFTA-Court has its own system for electronic lodging/notification, see <https://eftacourt.int/e-ftacourt/>.

³⁴ https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/gestion_documentaire/gestion_docs/edm-contentieux/Pages/e-Curia.aspx

The filing of a written submission in e-Curia is considered equivalent to the filing of the original. It must be validated electronically by an agent, but does not require a handwritten signature. It is therefore not useful to sign submissions by hand. Such a signature would in addition have to be removed from the document were access to it to be granted at a later stage in reply to a request for access to documents. Since filing a submission in e-Curia is not the same as sending a copy of the original by fax or other technical means, it must be done together with all supporting documents and annexes.

If e-Curia is unavailable for the purpose of a case before the General Court³⁵, the agents shall inform the Litigation Registry and the Assistants to the Director-General. They shall transmit a copy of the document to the Registry of the General Court by any appropriate means (lodging of a paper version or transmission by post, email or fax).

Furthermore, in order to prove the impossibility to lodge the document in e-Curia, the agents shall take additional measures to document that impossibility. For instance, the screen showing the message that e-Curia is unavailable could be printed or a picture could be taken of it. A copy of that proof should be annexed when the document in question is sent to the General Court. Both the document as sent and the proof of unavailability of e-Curia are to be registered in Ares and added to the electronic file of the case in question.

The transmission of a document by other means than e-Curia must be followed by the lodging of the document by e-Curia as soon as it is again technically possible to use that application.

As regards the Court of Justice, procedural documents can for the moment still be submitted by post. In this case, the date and time when a copy of the signed original, including the schedule of documents, is received at the Registry by fax is to be taken into account for the purposes of compliance with procedural deadlines, provided that the signed original of the document, accompanied by the annexes and copies, is filed with the Registry no later than ten days thereafter. The Court of Justice also accepts copies sent by e-mail. However, this method is inadvisable and can cause problems, especially with large files.

Still concerning the Court of Justice, where it is necessary to send an urgent document, in particular one that needs to be taken into account for the organisation of an imminent hearing, the following should be done, in addition to a transmission in e-Curia:

1) send the urgent document to the functional mailbox of the secretariat of the Court Registry (ECJ.Registry@curia.europa.eu), indicating “Urgent” in the subject field of the mail and adding a high degree of priority,

and

³⁵ Decision of the General Court of 11 July 2018, see [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1557766594564&uri=CELEX:32018D0925\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1557766594564&uri=CELEX:32018D0925(01)).

³⁶ For details of the procedure to be followed vis-à-vis the General Court, see Article 7 of the Decision of the General Court, above note 35.

2) call the language section concerned of the Registry to draw their attention to the urgent document.

10) Translations

All of the Commission's procedural documents in cases for which the procedural language is not French are translated by DGT. Requests are sent via the POETRY application³⁷ (user guide on the DGT site). Upon receipt of the translation and, where applicable, the linguistic revision done by the agent or by the legal revisers, the French version of the submission has to:

- be added in ARES as a translation under the same registration number as the written submission;
- be sent by email to the email address of the competent court, namely:
 - for the Court of Justice: Archives_greffe_cour@curia.europa.eu
 - for the General Court: Trad.archives@curia.europa.eu

The proof of sending the translation must also be registered in ARES and filed in the document file³⁸.

In those cases in which no deadline is fixed for the Commission's sending of the translation, it should nevertheless be ensured that it is sent as soon as possible. In preliminary references, the translation should be sent no later than eight weeks after the lodging of the written observations.

11) Production of confidential documents

The EU Courts can request the production of documents via measures of organisation or inquiry (Article 24 of the Statute of the Court of Justice).

The Commission is not bound to comply with a measure of organisation. However, it should be borne in mind that refusal to produce a document may mean that the court will be unable to settle the dispute in the manner desired by the Commission.

Where measures of organisation are instituted, apart from the possible refusal to produce a document, agents should examine the possibility of sending a redacted version of the documents requested or, if possible, of providing the court with the desired information by alternative means which do not disclose confidential data. If refusal is necessary, it must be carefully reasoned and, where applicable, accompanied by an invitation to the court to order, if necessary, the production of documents via a measure of inquiry.

As regards measures of inquiry (for more details, see Articles 103 and 104 of the Rules of Procedure of the General Court), the Commission as main party in a case before the General Court can cite legal and factual elements demonstrating the confidential nature, in relation to the other main party, of certain items of information or documents produced before the Court and liable to be relevant when it comes to

³⁷ Link to POETRY via "External tools" in My SJ or <http://www.cc.cec/translation/webpoetry/>

³⁸ Note dated 17 July 2015 to the assistants of the heads of teams "Implementing 3 recommendations of the IAS report on the 2014 Audit of the Management of Court cases in the Legal Service" ([Ares\(2015\)3025622](#))

ruling on the dispute. Where such a request is received, these items of information or documents are not communicated to the other party while their confidentiality is being examined.

12) Hearings

- a) Increasingly often, the Court of Justice - more so than the General Court – identifies the points that speakers at the hearing are invited to expand on. In this case, the initial pleadings should in principle be limited to those points, except when responding to key arguments from other participants that could not be addressed during the written procedure. In any event, the practice of repeating the arguments set out in the written documents should be avoided.

Where the Court of Justice puts questions to another party, it may be useful for the Commission also to provide information.

- b) Use of a language other than the procedural language at a hearing: The Court of Justice takes a relatively flexible approach to the possibility of an agent responsible for the subject matter of a case ("agent de fond") replying to a question from the Court in a language other than the language of the case. This option can prove useful in certain particularly technical cases and/or those which require specialist knowledge of a field of law or the background to the case. In these cases, an express request has to be included in the letter confirming the Commission's attendance at the hearing. That possibility should however not be used excessively and it should be ensured that the language agent is well prepared for the oral hearing and can reply himself or herself to those questions from the Court of Justice that could be predicted.
- c) Heads of team are responsible for ensuring that junior lawyers rapidly acquire experience before the Court of Justice, under the guidance of experienced colleagues.
- d) Interpretation: The work of the Court's interpreters is made easier when any documents the agent intends to use in his or her oral submissions are sent to them, wherever possible before midday of the day before the hearing. These documents should be sent to interpret@curia.europa.eu. This can prove important to ensure good interpreting from less common languages. If it is not done, the interpreters are grateful to receive, at the very least, even just before the hearing, a copy of the notes the lawyer intends to use.
- e) As regards the documentation of the case and the quality of the document file, consideration should be given to the question of deciding in which cases submission notes should be recorded. This should only be done when there is a particular reason for keeping these notes in the file, for example where the way in which the Commission refined its position at the hearing in comparison with its written submissions needs to be documented, or if the notes may prove useful for later cases. Given that access can be requested to these documents, they should specify that it is what is said at the hearing that prevails.
- f) Agents are encouraged to ask officials from the competent departments to attend the hearing wherever they deem this useful, for example in order to draw on their expertise in a specialised field. However, those experts are not authorised to speak at the hearing, except when contributing to the taking of evidence. Agents are

invited to report instances of a lack of cooperation on the part of the relevant departments to their heads of team and, where applicable, to the Deputy Director-General, who may decide to take the necessary measures at the appropriate level.

- g) As a rule, the Commission does not request a hearing before the Court of Justice. Depending on the circumstances, however, it may have good reasons for making such a request, for example where it has not had the opportunity to state its position on key arguments put forward by another party. If a hearing is scheduled, the Commission always takes part. In exceptional cases where agents consider that the Commission should not be represented, they need to seek the agreement of the Deputy Director-General.
- h) Agents should report any incidents during a hearing to their head of team and, in important cases, to the Deputy Director-General.

13) Reopening of the oral stage

In very exceptional cases, the Commission may ask for the oral stage to be reopened where new elements arise which may be decisive for the outcome of the case, for example elements resulting from the conclusions of the Advocate General. Where agents consider this to be necessary and wish to submit a request for a reopening of the oral stage, and their head of team agrees, they need to contact the Deputy Director-General. At this stage of the proceedings, the Commission's agents must refrain from writing to the Court concerning the merits of the case, in any form other than that of a request for the oral stage to be reopened.

14) Amicable settlement

The Commission's agents must not immediately accept a proposal from the Court of Justice that a case be settled amicably. Acceptance of such a proposal calls for, at the very least, consultation with the relevant Commission departments and may, depending on the case, be tantamount to a withdrawal and/or to a release from a debt/acknowledgement of debt. In the latter case, it may be necessary to obtain the prior agreement of the authorising officer.

15) Relations with other parties/interveners

- a) Representatives of Member States

Dialogue with the representatives of Member States is to be welcomed especially in actions for annulment or references for a preliminary ruling concerning validity where the Member State supports the Commission. Other cases call for more prudence, although cooperation may be appropriate on a case-by-case basis where it serves the interests of the Commission.

Contact can be oral or involve the exchange of written analyses, but draft submissions must never be disclosed. The aim is not to negotiate the Commission's position, but to explain it in order to gain the Member State's support.

All Member States seeking such cooperation must be afforded equal treatment.

Contacts must be conducted with the agreement and under the supervision of the competent head of team, who informs the Deputy Director-General in sensitive cases.

b) Representatives of other institutions or agencies

In cases in which the Commission joins forces with other institutions, such as when they are working together to defend the legality of a contested act, even closer cooperation than that with the representatives of the Member States may be justified. Even though communication of draft submissions should not in principle be excluded, it is important to be aware of the risk of the Commission's defence of its interests being weakened if several institutions submit observations that are too similar. In cases before the EFTA Court, it can often be useful to contact staff at the ESA, given their familiarity with the specifics of EFTA law and the national law of EEA Member States that are not members of the EU. It is also advisable to cooperate with ESA staff where they intervene before the EU Courts and support the Commission's position.

c) Representatives of other parties

i) General

Although contact with the representatives of the other parties, such as the principal parties in cases referred for a preliminary ruling, is not categorically prohibited, it is important to take a reserved, prudent approach. In case of doubt, agents should consult their head of team or, if necessary, the Deputy Director-General.

ii) Ethics

The Commission's agents have to be vigilant in ascertaining whether the lawyers for the opposing party have complied with ethical rules and, more specifically, if they have any conflicts of interest, for example through having been involved at an earlier stage in drafting the contested act. The existence of such a conflict of interest has to be reported to the Deputy Director-General so that he or she may inform the competent authorities.

Heads of team should ensure that trainees within the Legal Service are sufficiently informed of the risks of this type of conflict of interest for their subsequent professional career.

III. After the decision of the Court of Justice of the EU or of the national court

1) Distribution of information and analysis

a) Analysis of the outcome in cases before the Court of Justice

Cases before the Court of Justice of the EU are closed in the Litigation Database once the judgment has been handed down. A few days after this, agents are invited to enter into the database their analysis of the outcome of the case, indicating whether the Commission's position was upheld in the main (yes, no, partially, not applicable). A 'comments' field allows a brief explanation to be entered. The proposed analysis will be validated by the head of team in an electronic workflow which also includes the addition of information relating to

costs and, in cases involving non-contractual liability, the amounts awarded by the court³⁹.

In each agent's time schedule, closed cases remain visible until the analysis of the outcome has been confirmed.

b) Outcome form in national cases

In national cases, the agent completes and signs the outcome form⁴⁰. Where applicable, the agent invites the external legal counsel to bill for his or her latest services. Once the form has been validated by the head of team and the SJ-NAT administrator, the case is closed in SJ-NAT.

c) Other means of disseminating information and analysing decisions

Agents should ensure that the departments concerned and their hierarchy are kept suitably informed. If a decision calls for particular observations, these are set out in a note of analysis which should be signed at the appropriate level. Judgments that are ground-breaking in scope or nature (procedurally or substantively) are raised at the Monday morning meeting.

Agents should specifically draw the attention of the DGs concerned to preliminary rulings in which the Court notes, indirectly, the existence of infringements of EU law. These rulings need to be monitored appropriately to ensure that the infringement in question is brought to an end.

d) External communication - Relations with the Spokesperson's Service

It is important to note that all communication with the media on pending cases is done exclusively through the Spokesperson's Service (SPP). Agents must refuse all requests for interviews or comment from journalists, whether on the sidelines of a hearing or at any other time, even off the record.

The decision to issue an external communication concerning a Court judgment - in the form of press material or a line to take (LTT) - rests with the SPP.

The SPP chooses the cases to be covered, basing its decision, in particular, on the weekly newsletter sent out by the Court.

Moreover, the Legal Service should draw the attention of the SPP and the President's cabinet to important forthcoming judgments (and, for the most important cases, to the opinions of Advocates-General). To this end, agents should contact the Assistants in charge of coordination, at the latest by the Wednesday of the week prior to the judgment being handed down. Where the SPP considers that more information should be provided by the Legal Service - on the facts and the Commission's position - before the judgment is handed down, it contacts the Assistants, who inform the agents of this request and of the deadline by which the information needs to be sent to the SPP.

³⁹ Technical sheet explaining this workflow:
https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/gestion_documentaire/gestion_docs/fiches_tech_niques/result_base_c.pdf

⁴⁰ Paper version. The template is available at:
<https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Formulaires-.aspx>

In cases identified by the SPP, the Legal Service asks the Court's information department to send the French version of the judgment by email. The judgment is then forwarded to the agents by email, generally within half an hour of the judgment being handed down.

A draft of the LTT, which has often already received the input of the other departments concerned, is sent to the Assistants, who forward it to the agents to be checked or added to. For cases which may be mentioned at the midday briefing, the LTT should be returned to the SPP especially quickly (by 11.30).

For cases of major political importance, agents must be sure to communicate the date of the judgment as soon as the Court communicates it, so as to allow for the early warning to the President's cabinet.

2) Recovery of costs

With regard to the process for determining the amount of costs arising from recourse to outside lawyers, it must be ensured that the bills presented by the latter - which the Commission may be called upon to produce before the courts in the event of an application for taxation of costs - give precise information on the services provided, including the hours actually worked and the related costs. In the case of fixed-price contracts, should the unsuccessful party contest the decision, and with a view to possible proceedings for the taxation of costs, our lawyers will be required to provide us with detailed information - including data based on estimates - corresponding to the fixed price paid. The template contract includes a paragraph setting out this obligation.

As for recoverable administrative costs, only actual mission expenses - for travel and accommodation – are to be counted in the costs being claimed, based on the expense claim form cleared by the PMO.

3) Waiver of debt

Only the Director-General can decide to waive a debt in excess of €200. On the other hand, heads of team are authorised to waive, for the cases handled by their team, the recovery or accounting entry of debts which do not exceed €200 and which are not recoverable otherwise (by offsetting), provided this does not harm the image of the EU. Such waivers need to be documented in writing and the original documents stored in the files of the financial unit. The recorded waiver note should be added to the case file.

4) Payment of costs in lost cases⁴¹

In these circumstances, the following steps are to be taken:

(1) identify the costs of the opposing party: the latter must submit all supporting documents and provide the necessary explanations. This may require several exchanges of letters;

⁴¹ Model letters: <https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/finances-et-contrats/Pages/Formulaires-.aspx>

(2) analyse these documents, selecting elements that may be used to establish the amount in line with Court of Justice precedents;

(3) enter into negotiations with the lawyer, should (as often happens) the bill presented be too high in relation to these criteria. All negotiations should be based on a preliminary assessment carried out by the agent, taking particular account of the number of hours and the hourly rate applied. To this end, it is customary, for the number of hours, to double the Commission agent's number of hours for complex and voluminous cases requiring lengthy preparatory work on the part of the lawyer.

Before proposing to the opposing party an amount based on the above criteria, it is necessary to obtain the agreement of the head of team if the maximum amount proposed does not exceed €30 000, and that of the Deputy Director-General if it exceeds this sum. The request for agreement addressed to the Deputy Director-General will be made in a note for his or her attention, sent in a paper file including in annex the correspondence with the lawyers and a copy of the judgment. The note has to set out the parameters of the assessment made and propose a suitable cost bracket. Negotiations cannot begin until written agreement to this bracket has been received. Agents have this written agreement recorded in ARES.

(4) if negotiations break down, and in the event of an application for taxation of costs, a detailed analysis has to be carried out based on the criteria established by Court of Justice case-law⁴². The setting of an amount proposed in the written submissions is submitted to the head of team and the Deputy Director-General for agreement. An application for taxation of costs is considered to be a continuation of the case at hand. Accordingly, neither a new decision of the College of Commissioners nor a new power of attorney is necessary if the agents remain the same.

5) Action following the annulment on appeal of a decision of the General Court

Under Article 217(1) of the Rules of Procedure of the General Court, in the case of a referral back to the General Court following the annulment on appeal of a decision of that Court, the General Court no longer invites the parties to the proceedings to lodge written submissions after the decision of the Court of Justice; consequently, if the parties wish to lodge written observations on the conclusions to be drawn from the decision, they must do so at their own initiative within two months of the service on them of the decision of the Court of Justice. This applies to the Commission, whether it is applicant, defendant or intervener in the case.

The attention of the members of the Legal Service, and in particular of heads of team, is drawn to the requirement to report to senior management any failure to comply with the instructions contained in this guide in specific cases, so that these cases can, where necessary, be duly noted in the Legal Service's annual activity report.

⁴² See note [Ares\(2015\)5035023](#).

ANNEX I



EUROPEAN COMMISSION

LEGAL SERVICE

Brussels,

BACKGROUND NOTE

Proposal to intervene/lodge an appeal... in case... concerning...

Summary of our proposal and its reasons in one or two sentences

1. Background

An explanation of the **background** of the case and of its context, in particular its **political context**.

The explanation should be **non-technical** and **avoid jargon, abbreviations and direct quotations of legal texts**.

2. Proposal to intervene/lodge an appeal...

The **essential reasons** for our proposal should be explained, again with the emphasis on the importance of our action in terms of **policy**.

3. Political sensitivity

An assessment of the potential political impact of our action or inaction.

[The following two sections are to be added after the inter-service consultation. The last section enables the President's cabinet to include their views in the same document to facilitate handling.]

4. Views of the competent cabinets and services

The proposal is fully backed by cabinet(s)... DGs ... have been consulted and indicated their agreement.

5. Comments from your Cabinet

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ANNEX II

Summary of the various categories of decisions to be taken before being able to act before the courts⁴³

1) Decisions to be taken by empowerment procedure by the President in agreement with the relevant Commissioner(s)

- to intervene in litigation pending before the Court of Justice in accordance with Article 40 of its Statute;
- to authorise agents to settle litigation before a ruling has been handed down by the Court of Justice, national court or arbitration body, and to discontinue proceedings in all cases where the litigation relates to an amount exceeding €25 000, except in cases involving a Member State or another institution;
- with regard to infringement proceedings, to authorise agents to withdraw the action before the Court of Justice in cases where the Member State has complied with EU law before the proceedings have ended.

2) Decisions to be taken by empowerment procedure by the President alone

- to bring an action before the courts of a third country, including by presenting a counterclaim or by acting as civil party in criminal proceedings, provided that it relates to litigation for non-performance or improper performance of a contract, and provided that no Member State is involved;
 - to appeal against a judgment of a national court, including that of a third country, or a decision or award of an arbitration body, provided that no Member State is involved;
 - to appeal against a judgment of the General Court in an action where it is competent by virtue of an arbitration clause ([Articles 272 TFEU](#) and 153 Euratom).

3) Decisions to be taken by subdelegation procedure by the Director-General of the Legal Service

- to bring actions before national courts or arbitration bodies in Member States, including by presenting a counterclaim or by acting as civil party in criminal proceedings, provided that no Member State is involved in the proceedings;
- to bring an action before the Court of Justice by virtue of an arbitration clause ([Articles 272 TFEU](#) and 153 Euratom), including by presenting a counterclaim, provided that no Member State is involved in the proceedings;
- to authorise agents to settle litigation before a ruling has been handed down by the Court of Justice, national court or arbitration body, and to discontinue proceedings in all cases where the litigation relates to an amount less than or

⁴³ The Decide tool must be used for the administrative aspects:
https://myintracomm.ec.europa.eu/dg/SJ/HowWeDoIt/Consultations/Pages/decide_sj.aspx

equal to €25 000, except in cases involving a Member State or another institution or in those relating to the non-contractual liability of the EU;

- to delegate to other institutions the powers necessary to acquire or dispose of immovable and movable property in the name and on behalf of the EU;
- to delegate to other institutions the right to act in the name of the EU before the courts of Member States or arbitration bodies.

4) Any other decision that does not fall into one of the above-mentioned categories is to be adopted by the College of Commissioners in accordance with standard procedure, namely by written or oral procedure.

These include the following cases:

- bringing an action based on Articles [263](#) and [265](#) TFEU;
- bringing an action based on Articles [258](#) and [260](#) TFEU;
- bringing any other action involving a Member State, including before national courts;
- bringing an action before a court of a third country in litigation unrelated to non-performance or improper performance of a contract;
- appealing against a judgment of the General Court (except in relation to an action by virtue of an arbitration clause; see point 2, third indent above) or of the CST;
- requesting an opinion of the Court of Justice in accordance with [Article 218\(11\) TFEU](#).

In case of doubt about the procedure applicable in a given case, the Institutions team should be consulted.