

13. Costs and cost reimbursement

13.1. Application for costs

DG-L routinely requests the Court to order the applicants to bear the cost in line with the main request to dismiss the application.

Tip: If a case was launched by several applicants, the ECB should apply in its defence for joint and several liability of the applicants for all costs awarded to the ECB. An allocation of liability, in particular joint and several liability, simplifies the recovery process, but is usually not possible anymore at the stage of taxation.

13.2. Guidance on cost reimbursement

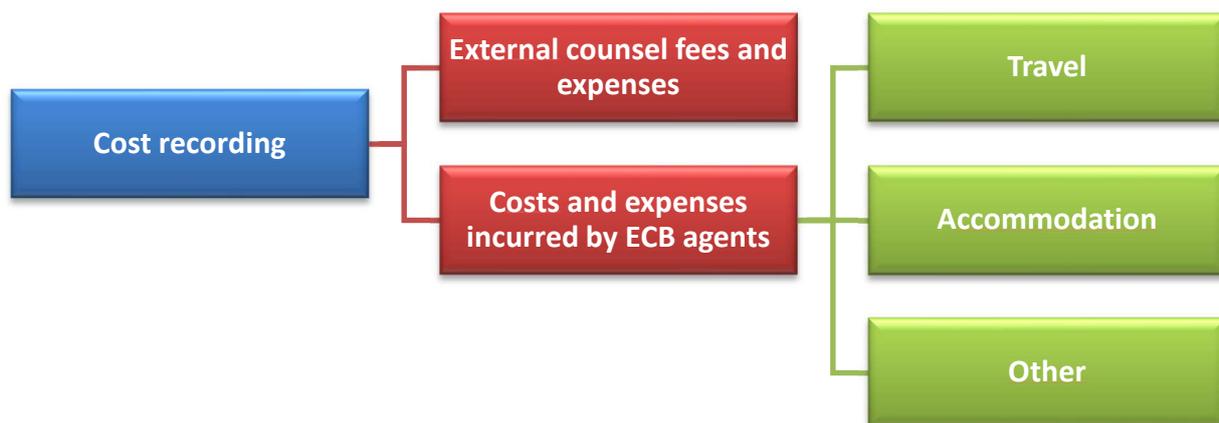
Following clear guidance from the Executive Board member to whom DG/L reports, all recoverable costs in cases won by the ECB, and in other cases where another party has to bear some of the cost, should be claimed from the relevant party or parties.

Based on the same guidance, the ECB should request a deposit or guarantee if the jurisdiction allows, when there is a risk that the applicant would not be able to cover the ECB's costs should they be unsuccessful. This is to curtail the potential abuse of procedure.

13.3. Cost recording

Bearing in mind the possibility to recover cost at a later stage, all costs incurred in a case should be properly recorded internally. This applies to external counsel fees and expenses as well as to the costs and expenses incurred by each ECB agent (e.g. cost for travel and accommodation in order to attend a hearing). The Legal Advice Team can assist the agents and help to ensure that all relevant invoices and documents are properly saved in Darwin.

ECB internal costs (e.g. salaries of legal counsel and assistants as well as translation, copy, printing, and filing costs) are not recoverable.



13.4. Cost recovery

Cost recovery should be commenced soon after a case has been concluded and when it is clear that no further stages are possible. For instance, in cases before the General Court it is advisable to wait for the lapse of the deadline to lodge an appeal.



Cost recovery includes, as a first step, a **notification** to the lawyers of the losing party requesting reimbursement. It should always include a deadline for payment, and all necessary evidence as attachments. There are two technical options for sending this notification:

- When the agents are reasonably certain that the applicant will pay the cost, the Legal Advice Team requests payment using an ISIS template ([Customer Invoice Request](#)). In case the language of the proceedings was a language other than English, a translation should be attached. The form is processed by the Legal Advice Team via ISIS, all the invoices, approvals, and justifications need to be attached to the ISIS form. Before the account is sent out, the HoD or HoS needs to approve the form with the accounts via ISIS only then it can be sent out to Accounting. The ECB's bank account details as standard formulation are automatically included in the form.
- When there is a fair chance that the applicant will not directly pay, it is advisable to first send a cover letter to the applicant's lawyer detailing the requested cost and expenses. The Legal

Advice Team will produce the letter, and inform Accounting accordingly. The CIR will then only be created once the payment is received on the ECB's account.

13.5. Cost taxation procedures

In the likely case that the losing party is unwilling to pay or is disputing the payment (i.e. usually after the exchange of the first letter, and one or two reminder letters), the second step of cost recovery is initiation of **cost taxation proceedings**¹ using the [template cost taxation application](#)².

The language of the application shall be the language of the decision to which it relates³.

There is no specific deadline for the introduction of the application, but **consolidated case-law** establishes that the claim for recovery of costs must be submitted to the party ordered to pay the costs within a **reasonable period**⁴, to be evaluated in the light of the relevance of the case for the interested party, of the complexity of the case, and of the behaviour of the parties. In practice taxation decisions are taken by the same division of the court that ruled on the main case⁵.

Applications for cost taxation must take into account the case law on recoverable expenses. ECB expenses are only debated in exceptional cases. Relevant jurisprudence concerns in particular the cost of external lawyers. In recent and settled case-law⁶, the Court of Justice has confirmed that EU Institutions, including the ECB, are free to resort to the assistance of an external lawyer in litigation⁷. Their remuneration is "indispensable expenses" incurred for the purposes of the procedure, without the institution being required to demonstrate that the intervention of that lawyer was objectively justified⁸.

In case T-79/13 DEP *Alessandro Accorinti and Others v ECB*, the General Court performed a detailed analysis on how to determine the amount of recoverable costs. It held that in the absence of any

¹ Art. 170 GC RoP, Dispute concerning the costs to be recovered; Article 145 CJ RoP. Article 170 GC RoP specifies that the request is made as an application (Articles 76 et seq. RoP-GC), whereas Article 145 CJ RoP doesn't provide any indications concerning the proceedings. The procedure concerning the application for taxation of costs does not provide that the order which concludes this proceeding ruling on the costs of that proceeding, **but in practice** the Court, in fixing the recoverable costs, takes into account all the circumstances of the case, up to the time of the pronouncement of the order for taxation of costs, including the indispensable expenses relating to the procedure of taxation of costs (see Order of the Court of 12 October 2012, Case C-254/09 P-DEP, *Zafra Marroquinos, SL v Calvin Klein Trademark Trust*, para. 22).

² This template still needs to be aligned with the template defence.

³ Art. 45(3)(b) GC RoP.

⁴ See Joined cases C-12/03 P-DEP and C-13/03 P-DEP, *Tetra Laval*, order 20 May 2010, para. 21.

⁵ Article 170 GC RoP (unlike Article 145 CJ RoP) does not provide for any indication concerning the composition of the Court.

⁶ Case T-79/13 DEP, *Alessandro Accorinti and Others v ECB*, Order of the General Court of 19 June 2018, EU:T:2018:365, para 16; Case T-368/15 DEP, *Alcimos Consulting v ECB*, Order of the General Court of the 12 January 2018, EU:T:2018:15; Case T-290/13 DEP, *CMBG Ltd v European Commission and ECB*, Order of the General Court of 21 September 2017, EU:T:2017:677; Case T-292/13 DEP, *Christos Evangelou and Yvonne Evangelou v European Commission and ECB*, Order of the General Court of 21 September 2017, EU:T:2017:678. This case law is based on Article 19 CJEU Statute, also applicable before the General Court by virtue of Article 53 of its Statute. It departs from earlier, more restrictive jurisprudence that required a double evaluation test for the recognition of costs incurred by an EU Institution, including the evidence of the essential necessity of the recourse to external lawyers (see, e.g., Case F-55/08 DEP, *Carlo De Nicola v European Investment Bank (EIB)*, Order of the Civil Service Tribunal (Full Court) of 27 September 2011, EU:F:2011:155).

⁷ The EU institutions are free, in so far as they intend to be represented or assisted before the Court, to decide to have recourse to the assistance of a lawyer or to appoint one of their officials as an agent, or a person who is not part of their staff. See Case C-208/11 P-DEP, *Internationaler Hilfsfonds v COM*, order of 16 May 2013, EU:C:2013:304, para. 14. The fact that an EU Institution has a large legal service has no bearing on the recoverability of the costs of remuneration by that institution of a lawyer who is not part of its staff.

⁸ Case T-79/13 DEP, *Alessandro Accorinti*, cit., para 14, and case-law reported.

provisions of EU law relating to lawyer fees or the necessary working time, the Court must freely assess the elements that characterize the dispute. In doing so it takes taking into account

- the subject matter and the nature of the dispute;
- its importance from the point of view of EU law and the difficulties presented by the case⁹;
- the affiliation and the number of agents or counsel involved¹⁰;
- the amount of work which the proceedings generated for the agents or counsel involved and the indispensable nature of the amount of work carried out and the hourly rates applied¹¹; and
- the economic interests which the dispute represented for the parties.

The third step of cost recovery is the **execution of a court order** in a cost recovery case. Methods of execution will depend on the location of the party which was ordered to pay the costs. Choosing the fastest and most cost efficient execution method may require advice of external counsel (for example, if there is no lawyer in DG/L from the country who could advise on this).

⁹ In this context, it is necessary to prove the novelty and the complex nature of the legal issues raised in the case, which should be above average.

¹⁰ According to Article 140(b) GC RoP, the following qualify as recoverable costs: “expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of *agents, advisers or lawyers*” (emphasis added). It is interesting to note that the English and German versions of the RoPs use the plural form (e.g. in German: “Aufwendungen der Parteien, die für das Verfahren notwendig waren, insbesondere Reise- und Aufenthaltskosten sowie die Vergütung der Bevollmächtigten, Beistände oder Anwälte”, whereas the Italian, French and Spanish versions refer to lawyer, agent or adviser in the singular form. The French and Spanish versions use the indeterminate form, referring expressly to the remuneration of “*un*” agent, adviser or lawyer. While each party is free to appoint more representatives for its own defence, in principle, according to the CJEU case-law, the assessment of the intervention of more agents or external lawyers is compatible with the discretion conferred on the judge of the Union in the context of a procedure for the taxation of costs (Case T-278/07 P-DEP, *Marcuccio v COM*, order of 28 May 2013, EU:T:2013:269, para 15. In order to recover the costs of a second lawyer or representative it has been considered necessary to demonstrate the recurrence of special circumstances, referring in particular to the nature of the dispute in question See, case T-186/11 DEP, *Schönberger v Parliament*, EU:T:2014:40, para. 29 and the case-law cited therein).

¹¹ In this respect, the manner in which the lawyers’ hourly rate is calculated and the necessity of each of the tasks must be explained in detail.