

## Practical tips on how to bring an action

Direct actions before the General Court | Nina Niejahr, 13 June 2023



# In 45' "*en direct*" to the General Court

**1** Basics & practicalities:  
How to bring a direct action

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Avoiding the pitfalls

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glory”!

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Q&A

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***"What you want"***  
**determines the**  
**direct action to bring**

**1**

# **Basics & practicalities: Bringing a direct action**

# *Sui generis* system of legal recourse

- ≠ national systems of the EU Member States
- **Note:**
  - Language of the case (one of 24) & language of the court
  - Own strict rules of procedure, including on evidence
  - Highly formalized
- Essentially written procedure, two exchanges of briefs
- Oral hearing relatively short - but can be decisive!
- Duration of proceedings at first instance varies - 2022 on average: 16.2 months (Cases closed by judgment took 20.4 months, with averages between 13.4 months for IP cases and 43.7 months in substantial and complex competition law cases)

# CURIA - Home - Court of Justice of the European Union (europa.eu)

To get started, go here:

- Texts governing the **procedure** before the General Court, notices in the OJEU, other useful information
  - Aide-mémoire application
  - Model application
  - Model summary of application
  - Interpretation Directorate's advice to counsel
  - etc.

- A word of caution:  
**Always** check & confirm against current versions of legal documents!  
They change frequently

The screenshot shows the CURIA website interface. At the top, there is a navigation bar with a 'Home' button, a 'Choose a language' button (circled in red), and a search bar. Below the navigation bar, there is a header section with the Court of Justice of the European Union logo and name. A dropdown menu is open, showing the 'General Court' option (circled in red). The main content area displays the 'General Court' page, with a sidebar on the left containing a list of links: 'Presentation', 'Members', 'Registry', 'Procedure' (circled in red), 'Data Protection', 'Statistics of judicial activity', 'From 20 to 2020', and '30 years of the General Court (1989-2019)'. The main content area shows the 'Procedure' page, with a breadcrumb trail 'General Court > Procedure' and a list of links under the heading 'Texts governing procedure'. The links include: 'Consolidated version of the Treaty on European Union (consolidated version)', 'Consolidated version of the Treaty on the Functioning of the European Union (consolidated version)', 'Statute of the Court of Justice of the European Union (1-5-2019)', 'Consolidated version of the Rules of Procedure of the General Court (1-4-2023)', 'Consolidated version of the Practice Rules for the Implementation of the Rules of Procedure of the General Court (1-4-2023)', 'Decision (EU) 2016/2387 of the General Court of 14 September 2016 concerning the security rules applicable to information or material produced in accordance with Article 105(1) or (2) of the Rules of Procedure', 'Decision of the General Court of 11 July 2018 on the lodging and service of procedural documents by means of e-Curia', and 'Conditions of Use of e-Curia (1-12-2018)'.

# Practicalities: need to know basics

- **Deadlines**
  - Calculate carefully! (Art. 58-61 RoP)
  - Only some may be extended on reasoned written request, but not for the application!
- **Obligation to be represented** (Art. 19 Statute, Art. 51 RoP)
- **Method of lodging and service: e-Curia** (Art. 56a-57 RoP, pts. 77-79, 89-91 PR)
  - Advantages: quick, no need for paper copies/signatures, ease of access in all languages (all named lawyers can submit and receive procedural documents, files must be pdf and uploaded separately)
  - Disadvantages: need to register in good time, familiarize yourself with the system & train assistants (who can also receive but not lodge), deemed service seven days from e-mail notification
  - Alternatives: None! (Only if use of e-Curia technically impossible)



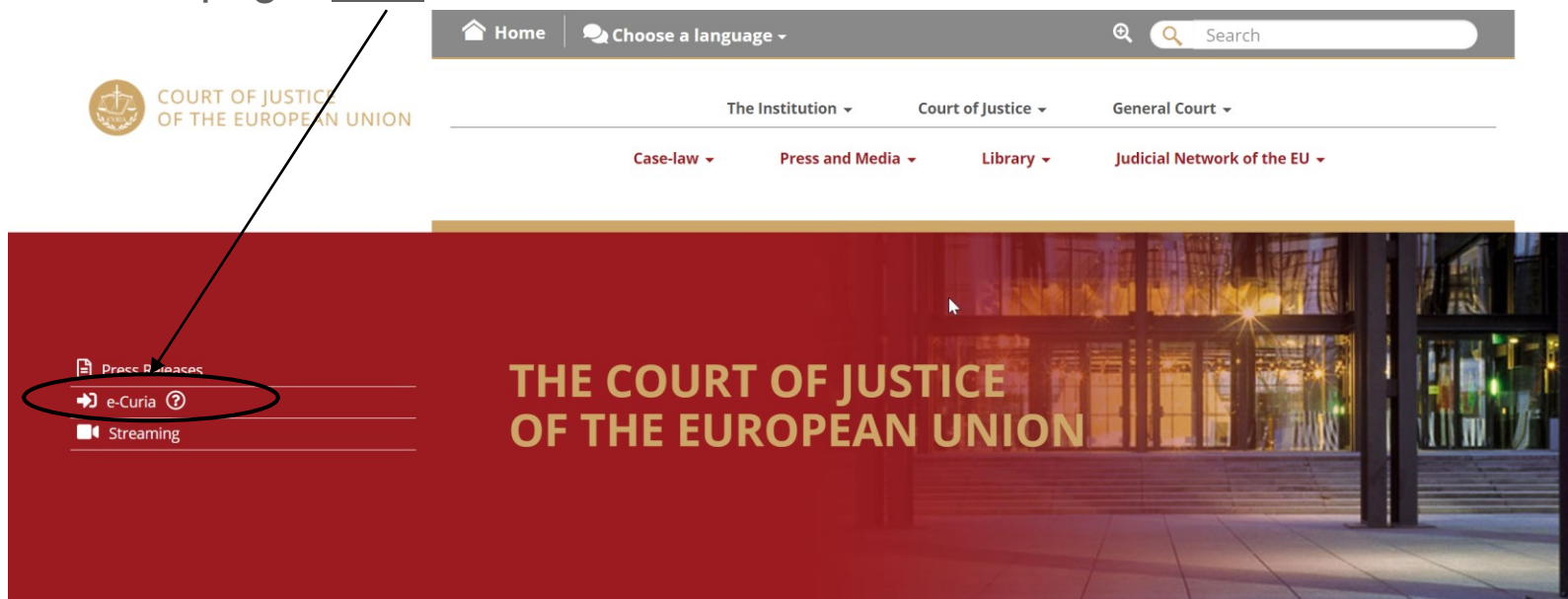
**Get an e-Curia account right away!**



# CURIA - Home - Court of Justice of the European Union

## How to get an e-Curia account

- On the homepage, click

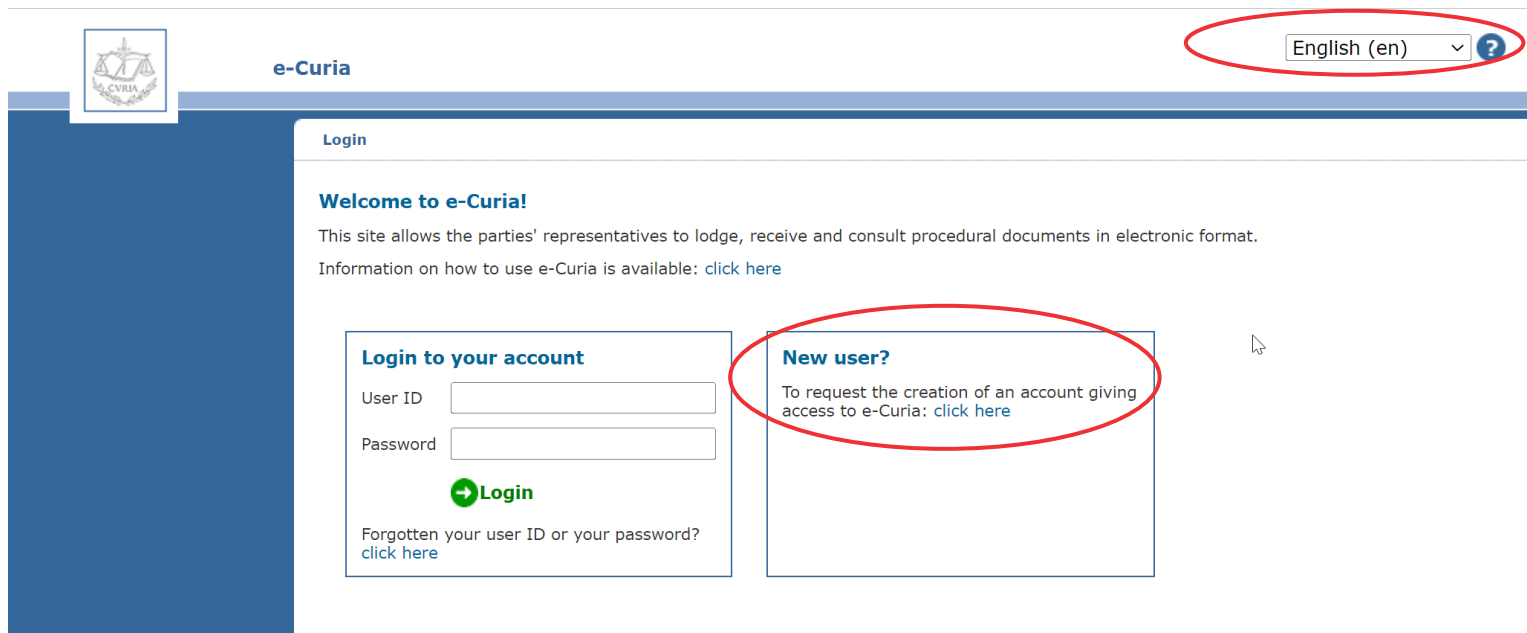




# <https://curia.europa.eu/e-Curia/login.faces>

## How to get an e-Curia account

- e-Curia user login screen:



The screenshot shows the e-Curia login interface. At the top left is the e-Curia logo. At the top right, there is a language dropdown menu set to 'English (en)' and a help icon, both circled in red. The main content area is titled 'Login' and includes a welcome message. Below this, there are two main sections: 'Login to your account' and 'New user?'. The 'New user?' section is circled in red. It contains a link to request account creation. The 'Login to your account' section has input fields for 'User ID' and 'Password', a 'Login' button with a green arrow, and a link for forgotten credentials.

**e-Curia**

English (en) ?

**Login**

**Welcome to e-Curia!**


This site allows the parties' representatives to lodge, receive and consult procedural documents in electronic format.

Information on how to use e-Curia is available: [click here](#)

**Login to your account**

User ID

Password

 **Login**

Forgotten your user ID or your password?  
[click here](#)

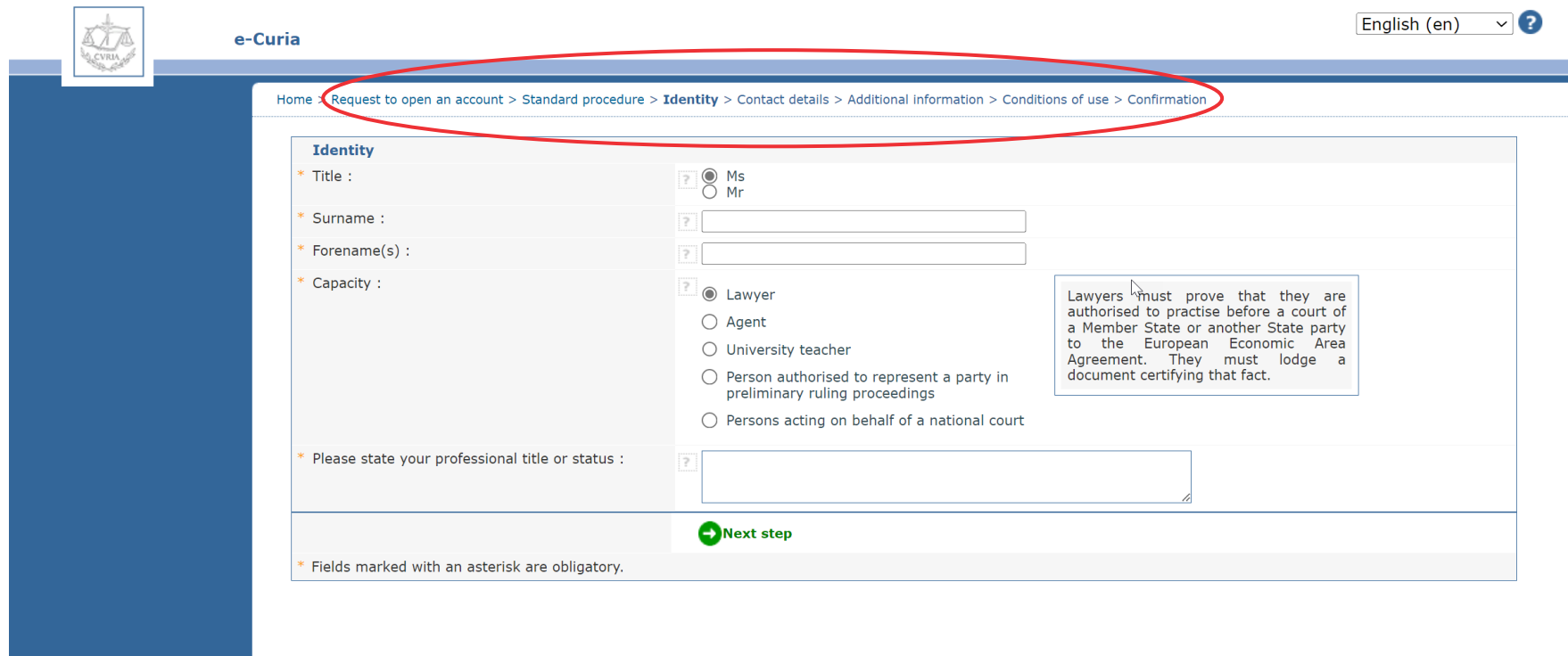
**New user?**


To request the creation of an account giving access to e-Curia: [click here](#)

<https://curia.europa.eu/e-Curia/access-request-step2.faces?dswid=25>

## How to get an e-Curia account

- e-Curia user account: easy to request, but takes a while to be processed



 e-Curia English (en) ?

Home > **Request to open an account > Standard procedure > Identity > Contact details > Additional information > Conditions of use > Confirmation**

**Identity**

\* Title : ☒ Ms ☐ Mr


\* Surname :

\* Forename(s) :

\* Capacity : ☒ Lawyer ☐ Agent ☐ University teacher ☐ Person authorised to represent a party in preliminary ruling proceedings ☐ Persons acting on behalf of a national court

\* Please state your professional title or status :

Lawyers must prove that they are authorised to practise before a court of a Member State or another State party to the European Economic Area Agreement. They must lodge a document certifying that fact.

 **Next step**

\* Fields marked with an asterisk are obligatory.

# e-Curia home screen view & functionalities

## Submitting and receiving procedural documents

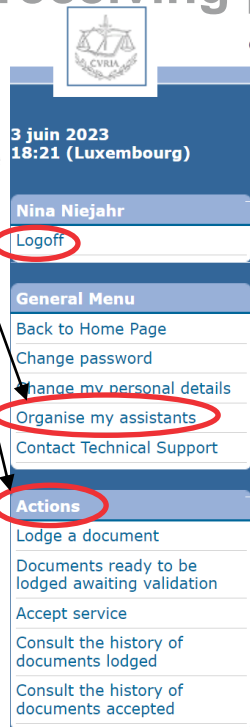
What you can do here:

- Give access to assistants
- Lodge a document/prepare document(s) for lodging
- Accept service
- Consult the history of documents lodged
- Consult the history of documents accepted

If a document is served on you (e.g., the defence in your first case):

- You will get an email and
- This message will show here :

*“Documents served on you are awaiting acceptance. To consult them **click here**”*



3 juin 2023  
18:21 (Luxembourg)

Nina Niejahr

Logoff

General Menu

Back to Home Page

Change password

Change my personal details

Organise my assistants

Contact Technical Support

Actions

Lodge a document

Documents ready to be lodged awaiting validation

Accept service

Consult the history of documents lodged

Consult the history of documents accepted

e-Curia

Home

In order to comply with current security standards, the e-Curia application is no longer compatible with the following browsers:

- Microsoft Internet Explorer (all versions)
- Microsoft Edge Legacy and Microsoft Edge configured in the IE mode
- Versions earlier than Mozilla Firefox 27 / Google Chrome 21 / Apple Safari 6

In order to be able to continue using e-Curia, you are therefore invited to use an up-to-date version of one the following browsers:

- Chromium and derivatives (Google Chrome, Microsoft Edge, Safari, Opera, Vivaldi etc.)
- Mozilla Firefox

### Welcome to e-Curia.

- If you wish to lodge a procedural document at the registry, click on **Lodge a document/Prepare documents for lodging**.
- If there are documents waiting for you to accept service of them, you will find them by clicking on **Accept service**.
- The history of documents served on you, in pending cases, is accessed by clicking on **Consult the history of documents accepted**.
- The history of lodgements which you have made, in pending cases, is accessed by clicking on **Consult the history of documents lodged**.

You can obtain help at any time by clicking on the  icon.

### Send us your comments!

Please do not hesitate to send us your suggestions, or to inform us of any problems encountered when using e-Curia. To do this please send an email to the following address: [ecuria@curia.europa.eu](mailto:ecuria@curia.europa.eu).

# Role of the registry

- Organizes written & prepares oral procedure
- Effects service of procedural documents (= e-Curia notifications)
- Ensures compliance with the very formalistic procedural requirements
  - Examples: page limitations, formatting, schedules and annexes, summary of pleas, PoA, register excerpts, etc. (pts. 105-130 PR)
  - Generally, failure to comply may hold up service but can be remedied (pts. 101-104 PR and Annex 2 PR)
  - Persistent failure to comply may lead to the inadmissibility of your appeal (see Art. 21 Statute, Art. 78(6) and 177(6) RoP, pt. 101 and Annex 1 PR)

# Basic procedural steps

- **Written procedure** (Art. 75-105 RoP)
  - Application, defence (max. 50 pages)
  - OJ notice, incl. summary of pleas
  - Reply, rejoinder (max. 25 pages)  
unless not necessary, but applicant can submit reasoned request
  - Maybe measures of inquiry and/or questions from the Court
  - Report for the hearing
  
- **Oral procedure** (Art. 106-115 RoP)  
on the Court's motion, on reasoned request, or not at all (Art. 106 RoP)
  - Applicant, defendant (15 minutes)
  - Questions & answers
  - Closing statements (2-5 minutes)

# Basic procedural steps

## ■ Judgment

- Operative part delivered in open court
- Full version online same day (& on e-Curia)
- **Note, the Court may decide cases by order instead of judgment**, typically after having heard the parties but without an oral hearing (Art. 126-132 RoP)

## ■ Appeal to the European Court of Justice

- Limited to points of law
- No suspensive effect
- Deadline: 2 months (plus 10 days on account of distance)

**2**

# **Written procedure – Avoiding the pitfalls**



# General tips – before you get started

1. Calculate deadline carefully
2. Plan timeline backwards from deadline, allow for slippage particularly in the run-up to the submission
3. Review procedural rules in detail
  - RoP, PR, consult guidance (aides mémoires, etc.)
  - Note all formal requirements (fonts, spacing, margins, para. & page numbering, annexes, etc.) and allocate responsibilities
4. Request from the client
  - Mandatory documentation (PoA, proof of existence in law)
  - Any supporting evidence
5. Expect all or the majority of your judges to
  - Have a different national legal background
  - Read only the French version of your submissions

# Application (Art. 76-78 RoP, pts. 112-122 PR)

- **Cover page**  
(applicant's & representative's information, defendant, subject matter)
- Table of contents
- Introduction, summary
- Facts, including relevant provisions of (national) law
- Legal arguments (page limit!)
  - Admissibility
  - **Grounds of appeal, pleas in law and arguments** including **all evidence, offers** of evidence, and requests for measures of organisation
- **Form of order sought**
- Date, signature (e-Curia proof of lodgement suffices)
- **Annexes** and schedule (challenged act = A.1, in language of the case)
- **Submit at the same time** but separately from the application:
  - **Mandatory procedural documents** (PoA, proof of existence in law of legal entity represented, etc.)
  - **Summary of pleas in law and main arguments** (max. 2 pages, see model on e-Curia)

# Legal grounds and arguments

- Infringement of the EU-Treaties or of any rule of law relating to their application (regulations, directives, etc.)
- Lack of competence
- Misuse of power
- Violation of essential procedural requirements
  - Institutional procedures
  - Procedural rights

**Note:** *ex officio* the Court may raise:

- Lack of competence and
- Violation of essential procedural requirements

# Practical tips

1. Be complete, include relevant context
  - All legal pleas, consider alternative pleas as well
  - All available evidence
2. Be concise, clear, compelling and structured (you will be translated!)
  - No arguments in footnotes (may be overlooked) or annexes (will be ignored) (Note: annexes are not translated! If key, provide convenience translations)
  - Get to the point quickly (page limitation!) and make it simple, avoid complex sentences, legal jargon, figures of speech, humor – this is, literally, easily lost in translation (and can lead to misunderstandings)
3. Avoid repetition
4. Consider the form of order you are seeking, set out in detail (include costs)
5. Address defence arguments in required detail and remember who has the “last word”
6. Allow sufficient time for submission on e-Curia!!!

**3**

**Get ready for your  
“15 minutes of glory”!**

# Preparation – as soon as you have the hearing date

- Reserve hotel rooms
- Communicate with registry
- Agree timeline with client
- Re-read substantive submissions and identify "lose-ends"
- Re-read key precedents again
- Any new legal developments (procedural & substantive)?
- Get **your gown** ready & prepare "mobile office" for Luxembourg
- Review guidance for hearings: **e-Curia!**
- Review report for the hearing, identify any incompleteness and inaccuracy
- **Prepare for tricky questions and closing statement**
- Identify and **focus** on key arguments
- Map out presentation and practice (keep to time: 15 min.(!) speak freely)

**4**

# **What to expect in Luxembourg – The oral hearing**



# On the day

- Get to the Court early – it is worth it!  
(clear security, register & get a floor map, find room)



All pictures  
courtesy of  
e-Curia

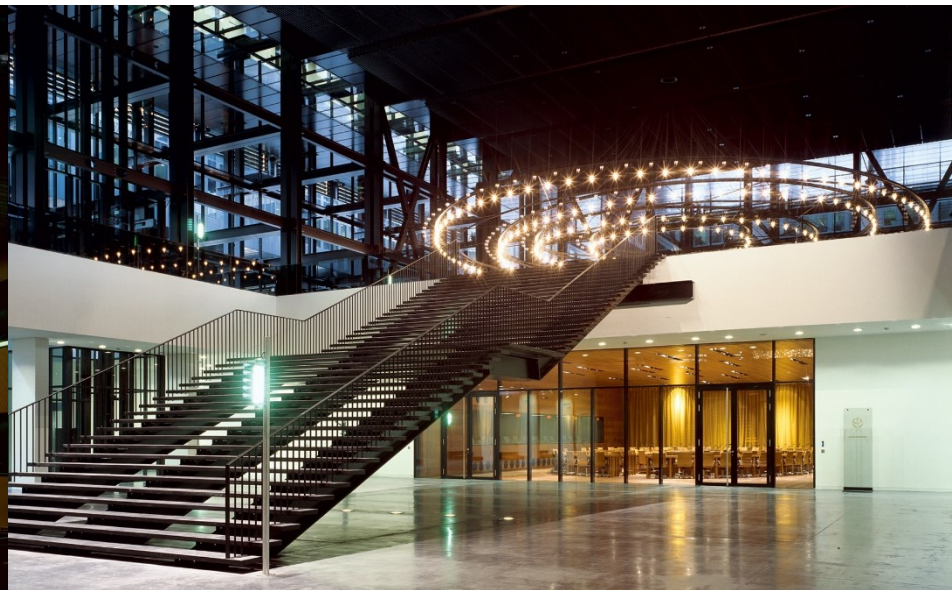
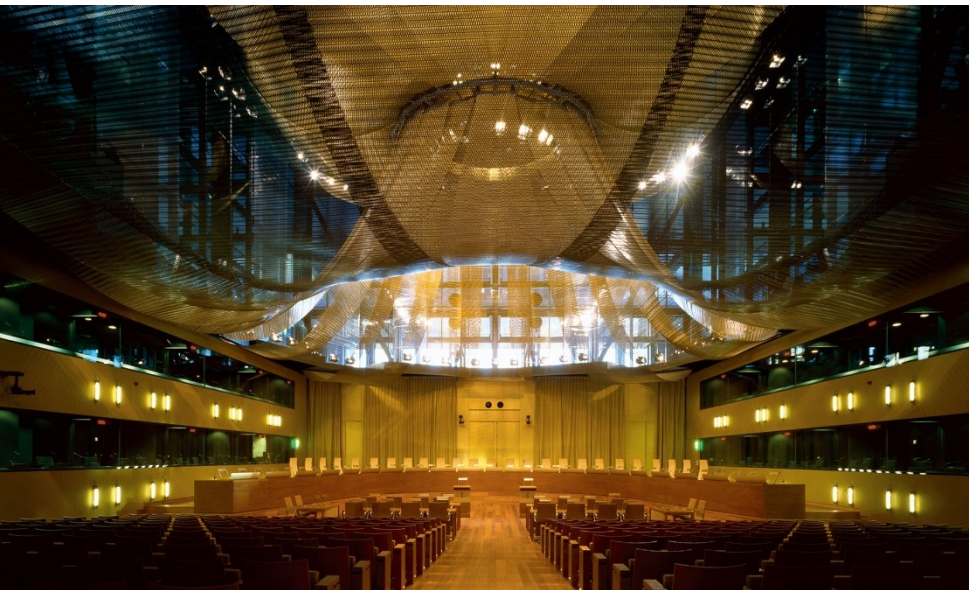
# On the day





# On the day

- If you have the luxury of time and your client with you (or “first timers”) take the time to show them around the impressive architecture ...



# On the day – once you have found your court room ...

- Settle & relax

(applicant sits on the right, greet the usher, interpreter and other parties' representatives, put on gown, adjust earpieces & stand, organize materials, switch of mobile, etc.,)



# On the day

- The usher will invite the representatives who plead to follow him to meet the judges
- [Close your gown], follow and greet the judges behind closed doors (judges may have questions to be addressed or other instructions)
- Return to your seat & wait for the Court to be announced
- All rise to receive the Court
- President opens oral hearing; first delivery of judgments and opinions if any
- Then you, the applicant, are called to the stand ...

## On the day

- You deliver your opening arguments (followed by interveners if any), then the defendant (followed by interveners) – typically uninterrupted
- **Questions from the bench** and parties' answers/comments on the spot (consult with colleagues / client as may be necessary)
- President invites brief closing statements (order = opening arguments)
- President closes the hearing
- All rise; the Court leaves for immediate deliberations

# Remember...

1. Get to the Court and the court room in good time (particularly if you client is also in attendance)
2. Calm down, address court (keep eye contact!)
3. "Judges are human, too!" Make it as interesting as possible
4. Speak slowly (**simultaneous interpretation!**) and only when you have the word (**microphone!**) – do not interrupt (**signal!**), you may or may not be able to react
5. Keep to time limits (you may be cut off!), avoid repetition
6. Judges ask questions to inform their deliberation and the judgment!  
They want to hear from you
7. Respond always, confer with colleagues / client if necessary, be brief and to the point & respectful of other parties' views
8. Judges go into deliberation straight after the hearing!



**5**

**After the hearing ...**

## After the hearing ...

- Manage your client's expectations!
- You wait, and wait, and wait some more until judgment (or the order)
  - Judgment binding from date of delivery (Art. 117, 118, 121(1) RoP)
  - Order, binding from date of service (Art. 119, 120, 121(2) RoP)
- Effect is declaratory, can be partial, *ex tunc* and *erga omnes* (exceptionally the Court may limit temporal effect)
- The institution whose act has been declared void (or whose failure to act has been declared to violate EU law) is required to take the necessary measures to comply with the judgment
- Outcome can be appealed to the European Court of Justice (Art. 56, 57 Statute) (2023 appeal rate: 26%)

# Costs (Art. 133-141 RoP)

- **General principle:** no procedural costs, parties pay their costs unless a request has been made for the Court to decide on costs
  - Where costs have been applied for by the successful party the losing party pays own costs and bears the cost of the litigation necessarily incurred by the successful party (Art. 134, 140(b) RoP)
  - But the Court can allocate costs particularly if there is more than one unsuccessful party or if parties have won on some and lost on other heads of claim (Note: no appeal lies on costs only)
  - Costs of interveners: (partly-)privileged interveners pay their own costs, others may be required to bear their own costs
- **Note: only notional cost recovery!**  
Manage your client's expectations ..., see the very restrictive taxation precedents of the EU Courts, e.g., T-213/17 DEP and C-657/15 P-DEP

# Appeal (Art. 56-61 Statute)

- To the European Court of Justice
- By any (partly-)unsuccessful party – including interveners!
- No suspensive effect
- **Deadline:** Two months (plus ten days on account of distance)
- On legal grounds only (no factual review):  
lack of competence, breach of procedure, infringement of EU law
- Only one round of written submissions
- Hearing at the discretion of the Court (less intense, limited to legal arguments)
- Advocate General
- In 2022, the average duration of appeal proceedings was 11.9 months



**Questions,  
anyone??!**



**Thank you!**



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