2021

Notes for the guidance of Counsel in written and oral proceedings before the EFTA Court

Postal address:
EFTA Court
1, rue du Fort Thüngen
L-1499 Luxembourg
Tel.: 352 42 10 81
Fax: 352 43 43 89
Email: eftacourt@eftacourt.int
Website: www.eftacourt.int

Introduction

The procedure before the EFTA Court may be unfamiliar to many lawyers since it differs from the procedures before their national courts.

The language of the EFTA Court is English. Accordingly, all decisions and the reports for the hearing are written in English. In advisory opinion procedures, the report for the hearing and the judgment are translated into the language of the requesting national court. Both language versions are authentic.

The operation of the Court is governed by several international instruments. Article 108(2) of the EEA Agreement prescribes the establishment of the Court and describes its main functions. However, the instrument formally establishing the Court is the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"). Protocol 5 to that Agreement contains the Statute of the Court. On the basis of the SCA, the Court's Rules of Procedure ("RoP") were adopted by the Court and approved by the EFTA States.

The procedures of the Court are, generally, modelled on the corresponding procedures of the Court of Justice of the European Union (the "ECJ") and the General Court, also seated in Luxembourg. The Court consists of three judges nominated by the EFTA States and always sits as a full court.

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A. General points

1. The various types and stages of the Court's proceedings

There are two main kinds of proceedings before the Court:

(1) direct actions
(2) advisory opinions

Direct actions are initiated by an application lodged directly with the Court by an EFTA State, the EFTA Surveillance Authority or a natural or legal person (see Articles 31, 32, 36 and 37 SCA). Requests for an *advisory opinion* are submitted to the Court by a national court or tribunal for the interpretation of EEA law, as part of a case pending before that national court or tribunal (see Article 34 SCA).

Proceedings before the Court consist of two parts, a written part and an oral part (Article 18 Statute). The *written procedure* consists of the communication to the parties of applications, defences and observations, and of replies, if any, as well as all supporting papers and documents. The *oral procedure* consists of an oral hearing before the Court, where lawyers and agents present their oral arguments.

The Registrar must notify the Governments of the EFTA States, the EFTA Surveillance Authority, the Union (EU Member States) and the European Commission of any case pending before the Court (Article 20 Statute). These parties are entitled to submit written observations to the Court and participate in the oral procedure. In practice, the EFTA Surveillance Authority and the European Commission participate in all substantive proceedings before the Court.

2. Representation of the parties

a. Direct actions

Article 17 of the Statute requires that parties must be represented by Counsel. The EFTA States, the EFTA Surveillance Authority, Member States of the European Union and the European Commission (generally referred to as "governments and institutions", defined as "interested persons" in Article 1(f) RoP) are represented by their agents, while other parties must be represented by a lawyer authorised to practise before a Court of an EFTA and EU State.

The requirement that parties must be represented by Counsel does not apply to applications for legal aid (see A.4), and, in certain circumstances, in advisory opinion proceedings (see Article 91(3) RoP).

Lawyers must produce a certificate stating that they are authorised to practise before a court of a Contracting Party to the EEA Agreement. A copy of the lawyer's identity card is accepted for this purpose, although a translation into English may be required if the original document is not in English. Counsel must, moreover, provide the Court with a document, usually in the form of a power of attorney, certifying that Counsel is duly authorised to represent the party concerned (Article 100 RoP). These documents must be submitted in English or accompanied by a translation into English.

b. Advisory opinion procedure

The representation requirement differs slightly in advisory opinion proceedings. Any person entitled to represent a party in the proceedings before the national court may be allowed to do so before the Court. Consequently, if the rules of procedure applicable to proceedings before the national court do not require the parties to be represented by Counsel, they are entitled to represent themselves (Article 91(3) RoP).

In advisory opinion cases, the power of attorney requirement is dispensed with in relation to the parties to the case, as it is assumed that the national court has verified and accepted Counsel. However, should additional Counsel be engaged specifically for the proceedings before the Court, a power of attorney is required.

3. Use of languages

The official language of the Court is English. This means that (i) the working language of the Court is English and (ii) English is the language of each and every case. English will therefore apply to the whole procedure including deliberations, minutes and decisions of the Court (Article 29(1) RoP).

English must be used in the written and the oral part of the procedure, unless otherwise provided (Article 29(2) RoP). All supporting documents must be submitted in English or accompanied by a translation into English. The Court may decide otherwise or allow a translation to be confined to an extract (Article 29(3) and (4) RoP).

In *direct action* cases, the Court may upon request, if deemed necessary, allow a party or intervener to address and be addressed by the Court in an official language of an EFTA State or of the European Union in the oral part of the procedure. This exemption does not apply to the written part of the procedure. Furthermore, a request to this effect must be submitted at least *three weeks in advance* of the oral hearing (Article 29(5) RoP), but preferably much earlier. This does not apply to interested persons as defined in Article 1(1)(f) RoP.

In *advisory opinion* proceedings, national courts are entitled to submit requests for an advisory opinion and supporting documents in their own language. The Court is responsible for the translation of the request into English (Article 30(1) RoP). The parties to the dispute before the national court may also submit their written observations in the language of the case before that court (Article 30(2) RoP). In advisory opinion cases, the Report for the Hearing, prepared by the Judge-Rapporteur, is prepared in English and the language of the referring national court (Article 30(3) RoP).

Parties to the main proceedings are entitled to address and be addressed by the Court in the language of the main proceedings upon condition that they inform the Court at least *three weeks prior* to the hearing, but preferably much earlier, that they wish to make use of that possibility (Article 30(4) RoP). All other parties must, as a rule, address and be addressed by the Court in English. Accordingly, the EFTA States, the EU States, the EFTA Surveillance Authority and the Commission must make oral submissions in English.

In practice, those appearing before the Court generally prefer to use English, even those who are entitled to use a different language. By using English, interpretation is

avoided which contributes to fluid and spontaneous proceedings. Moreover, any advantage gained from Counsel using their native language is mostly lost in the interpretation. A well-prepared oral presentation in English is therefore usually recommended (for oral submissions, see further C.4).

Judgments in advisory opinion proceedings are given in English as well as the language of the national proceedings. Both language versions are authentic.

4. Costs and legal aid

a. Costs

Proceedings before the Court are free of charge i.e. as a rule, no charges or fees of any kind are payable to the Court. The costs referred to in Articles 120 to 128 RoP are restricted to "recoverable" costs, i.e. the remuneration of parties' agents, advisers and lawyers, including their travel and subsistence expenses, and the expenses of witnesses and experts (Article 126 RoP).

In *direct action* cases, the unsuccessful party is ordered to pay the costs, meaning that it bears its own costs and those of the other parties. Governments and institutions, which have submitted written observations, bear their own costs. The Court may, depending on the circumstances of the case, order that the parties bear their own costs wholly or in part or even award costs against the successful party. For costs to be awarded, the successful party must have included a request to that effect as one of the orders sought. If no such request is made, the parties bear their own costs (Article 121 RoP).

In *advisory opinion* cases, the costs of the parties to the main proceedings are a matter for the national court (Article 96 RoP). Thus, in its judgment in advisory opinion proceedings, the EFTA Court simply refers the decision on this matter to the national court that requested the advisory opinion. It follows that governments and institutions submitting written or oral observations before the Court that are not parties to the national proceedings will bear their own costs.

b. Legal aid

Article 49(1) RoP provides for the possibility of legal aid. A party may, at any time, apply to the Court for legal aid if it is "wholly or in part unable to meet the costs of the proceedings". The right to make such an application is not conditional upon the nature of the action or procedure. In order to establish lack of means, the party concerned must provide the Court with all relevant information, in particular a certificate from a competent authority to that effect.

When legal aid is applied for before the commencement of proceedings, the party concerned must give a brief description of the subject-matter of the application in order to enable the Court to assess whether or not the application is manifestly unfounded. The party does not need to be represented by Counsel at the stage of applying for legal aid.

The granting of legal aid does not exclude the recipient from being ordered to pay the costs in the case.

B. Written procedure

1. The purpose of the written procedure

Regardless of the nature of the proceedings (direct action or advisory opinion), the purpose of the written procedure is always the same, i.e. to put before the Court an exhaustive account of the pleas and arguments of the parties and the forms of order sought. It is stressed that the written phase of the proceedings is the *principal part of the proceedings* before the Court. The oral hearing is essentially to supplement the written pleadings, not to substitute for them.

In direct actions, the entire procedure before the Court, including the written phase, is governed by the principle whereby new pleas may not be raised in the course of the proceedings, with the sole exception of those based on matters of law or fact which come to light in the course of the procedure (Article 110 RoP).

2. The conduct of the written procedure

The course of the *written procedure* varies according to the nature of the proceedings.

In *direct actions*, each party may submit two sets of written pleadings: The applicant submits the application and may submit a reply, whilst the defendant may submit a defence to the application and a rejoinder to the applicant's reply (Articles 101 to 109 RoP).

The EFTA and EU States, the EFTA Surveillance Authority, and the European Commission may, within a mandatory period of two months starting from the notification of the case, submit written observations (Article 20 Statute). In advisory opinion proceedings, this also applies to the parties to the main proceedings (Article 90(1) RP).

In either type of case, the Court may require further written information or statements from the parties.

3. Lodging of pleadings

All pleadings must be sent to the Registry of the Court in order to be registered in accordance with Article 54 RoP. The original must be signed by Counsel for the party concerned. All documents relied on must be annexed to the relevant pleading, which must be accompanied by a list of annexes.

It is recommended to lodge pleadings using the Court's electronic case handling system, e-EFTACourt, as it is the securest and most efficient way to submit documents. Accounts are created by visiting https://eftacourt.int/e-eftacourt/ and filling in the necessary information. Those who have registered online will receive a form by email, which must be printed, signed, and sent to the Registry of the Court, along with a copy of a valid identification document, by post to:

EFTA Court
- Registry -

1, rue du Fort Thüngen
L-1499 Luxembourg

Any questions relating to the registration process should be directed to the Court's registry by email (registry@eftacourt.int).

Pleadings may also be filed with the Registry by email (registry@eftacourt.int) or by fax (+352 43 43 89). In this case, a signed physical original of the pleading, accompanied by all supporting documents, must be lodged at the Registry no later than 10 days thereafter (Article 54(7) RoP).

The physical original of any pleadings and all the annexes to it must be lodged together with five certified copies for the Court and, in direct actions, for the purposes of notification (see B.5), a copy for every other party to the proceedings.

It is recommended that physical originals be sent to the Court via courier, or another form of express registered post. If the originals are not received within 10 days, the Court considers the pleadings not to have been lodged on the date of submission by fax or email.

4. Length of pleadings

The maximum number of pages for each pleading is as follows:

- 50 pages for the application and defence;
- 25 pages for the reply and the rejoinder;
- 20 pages for an objection of inadmissibility and observations thereon;
- 20 pages for a statement in intervention and 15 pages for observations thereon;
- 50 pages for written observations submitted under Article 20 of the Statute.

Pages must be written in a font no smaller than Times New Roman size 12, or equivalent, with normal margins.

Authorisation to exceed those maximum lengths will be given only in cases involving particularly complex legal or factual issues.

5. Notification

a. The addressees

In *direct actions*, the parties concerned are notified of *inter alia* the following: applications, defences, replies, rejoinders, applications for interim measures, applications for leave to intervene, and written observations.

Requests for an *advisory opinion* by national courts are communicated to the parties to the proceedings before the national court, to the EFTA and EU States, the EFTA Surveillance Authority and the European Commission (Article 37 RoP). Written observations lodged in advisory opinion proceedings are communicated to all those entitled to submit observations under Article 20 of the Statute.

In all cases, the Report for the Hearing, with an invitation to the oral hearing, and the Court's order or judgment are sent to the parties in the main proceedings, to all EFTA and EU States, the EFTA Surveillance Authority, and the European Commission.

b. Methods of service

The Court serves documents electronically when possible, and those participating in cases before the Court are requested to submit an email address for service, as well as a physical address. Where a recipient has not accepted service via e-EFTA Court, procedural documents initiating deadlines are served via registered mail, following the standard service by email.

6. Procedural time-limits

Procedural time-limits are calculated in accordance with Articles 39 to 43 RoP.

a. Serving of documents

Time-limits are calculated from, but not including, the day of service (Article 39(1)(a) RoP).

b. Extension of time-limits

Any time-limit prescribed pursuant to the RoP may be extended (Article 42(1) RoP). However, this does *not apply* to any time-limit pursuant to the SCA or the Statute, in particular the time-limit for initiating proceedings (Articles 36 and 37 SCA) and for the lodging of written observations (Article 20 Statute). The time limit for the lodging of a defence may in exceptional circumstances be extended by the President on a reasoned application by the defendant (Article 107(3) RoP). A substantiated application must be made within a reasonable time before the prescribed period expires.

The President decides on all applications for extensions.

7. Direct actions

a. Originating applications in direct actions

An *application* must conform to the requirements of Articles 100 and 101 RoP. Article 101(1) RoP is strictly applied. Failure to observe these provisions and other mandatory conditions may render the application formally inadmissible.

If the documents referred to in Articles 100, 101(2) and 103 RoP are not lodged the Registrar will prescribe a reasonable time-limit within which the party concerned is to produce them. If the applicant fails to put the application in order or to produce the required documents within the time prescribed, the Court must decide whether the non-compliance with these conditions renders the application formally inadmissible (Article 105 RoP).

An application must place before the Court all matters of fact and law which justify the commencement of proceedings. At the same time, an application defines the

scope of the proceedings. In principle, it is not permitted to raise new issues or add to the forms of order sought in the course of the proceedings (see B.1).

b. Summary of pleas and arguments

It is desirable that all pleadings contain a summary of no more than two pages setting out the pleas and arguments put forward. The summary ensures that the pleas and arguments relied on are clearly identified. The summary of an application in direct action cases may also be helpful for the preparation of the text that is published in the *Official Journal of the European Union* and the EEA Supplement to the *Official Journal of the European Union*.

8. Other documents submitted in direct actions

a. Defence

The substantive conditions governing the *defence* are laid down in Article 107 RoP. Thus, the defendant must set out all matters of law and fact available to them when drafting the defence. Counsel must keep in mind the prohibition on putting forward new pleas in law, which applies to all stages of the proceedings unless fresh matters of fact or law come to light in the course of the proceedings. If a party does, on these grounds, put forward a new plea in law in the course of the proceedings, the other party may be given the opportunity to respond to that plea (Article 110 RoP).

b. Reply and rejoinder

The *reply* is intended as a response to the pleas and arguments raised in the defence. Unnecessary repetition of elements of the application should be avoided. Similarly, the purpose of the *rejoinder* is to provide for an opportunity to respond to pleas and arguments put forward in the reply.

Both replies and rejoinders are subject to the requirements of Article 108 RoP and may not, as a rule, contain new pleas in law. Lodging a reply or a rejoinder is optional and waiving the right to lodge these documents will generally speed up the written procedure. An extension of the time allowed for lodging replies and rejoinders is granted only in exceptional circumstances.

c. Summary of pleas and arguments

As for originating applications, it is desirable for all pleadings to be accompanied by a summary of no more than two pages setting out the pleas and arguments put forward.

9. Advisory opinions

In *advisory opinion* cases, proceedings before the Court are set in motion by receiving the national court's request setting out the question or questions on the interpretation of the EEA Agreement to which the Court's answer is sought (Article 34 SCA). The form of the request is governed by the rules of the national jurisdiction. The Court has drawn up a Note for Guidance on Requests by National Courts for Advisory Opinions.

10. Written observations in advisory opinion proceedings

After receiving a notification from the Registry of a request for an advisory opinion, the litigants before the national court, the EFTA and EU States, the EFTA Surveillance Authority and the European Commission may submit written observations within a period of two months (Article 20 Statute and Article 90(1) RoP). The notification will be accompanied by the original version of the request as well as a translation into English. The two-month time-limit for written observations cannot be extended, with the exception of reasons relating to *force majeure*.

The purpose of the written observations is to set out succinctly but completely the reasoning on which the answers to the questions put to the Court should be based. It is important to bring to the attention of the Court the factual circumstances of the case before the national court and the relevant provisions of national law where these are relevant for the interpretation of EEA law. The observations should also propose the answers that the Court should give to the questions asked.

The participants in advisory opinion proceedings are not entitled to reply in writing to the written observations submitted by others. The Court may, if it deems it necessary, request further clarification or information from the parties but, otherwise, any response to the written observations of other parties must be made orally during the oral procedure. For that purpose, the written observations are communicated to all those invited to participate in the oral hearing, once the written procedure is completed and the necessary translations have been made.

The submission of written observations is strongly recommended since the time allowed for oral argument at the hearing is strictly limited. However, any party or government or institution, including those who have not submitted written observations, retains the right to participate in the oral hearing and present arguments, in particular responses to the written arguments of others.

The Court has decided that all written observations lodged in advisory opinion cases registered from 1 January 2021 will be published on the Court's website as soon as the judgment in the case has been delivered. Those who submit observations that include confidential and sensitive information, which should not be made public, are invited also to submit a non-confidential version.

11. Expedited procedure

Exceptionally, following a request from the referring national court, or one of the main parties in direct action cases, the President may decide – after hearing the other party (direct action) and the Judge-Rapporteur – that a case is to be governed by the rules on expedited procedure. This decision is conditional upon a particular urgency of the case requiring the Court to give its ruling with the minimum of delay. The effects of an expedited procedure are certain derogations from the generally applicable provisions of the RoP, especially in relation to time-limits. The rules governing the expedited procedure can be found in Articles 98 and 99 RoP (advisory opinions) and Articles 116 to 119 RoP (direct actions).

In direct actions, an application for a case to be decided pursuant to an expedited procedure must be made by a separate document lodged at the same time as the application initiating the proceedings or the defence, as the case may be.

Under the expedited procedure, the oral procedure takes on a greater significance, as the written procedure is generally shorter.

12. Interim measures

a. Application for interim measures

Applications for interim measures may only be made in direct actions and only if they are made by a party to the proceedings pending before the Court and relate to those proceedings. The application for interim measures must be made in a separate document and must meet the conditions set out in Article 140 RoP. It may be presented at the same time as the application initiating the proceedings.

Since applications for interim measures are made as a matter of urgency, applicants are requested to set out succinctly the pleas in fact and law on which their motion is based. The application for interim measures should itself provide all the details needed to enable the President, or as the case may be, the Court, to decide whether the requested measure should be granted.

The application for interim measures will be served on the other party, and that party may be given a short period within which to submit written or oral observations. The President decides whether a hearing will be held and whether he will decide the matter or refer it to the full Court.

In cases of extreme urgency, the President may make an order immediately, that is to say, without awaiting written observations from the other party. In such cases, the order is provisional in that it does not bring the procedure on the interlocutory application to an end. The other party is then invited to submit written observations. The final stage is a (second) order concluding the interlocutory proceedings which confirms or amends the first (provisional) order.

b. Hearing of applications for interim measures

As a rule, before an order concerning interim measures is made, the views of the parties concerned are heard by the President. Such hearings may be less formal than the main hearing and even held in camera.

It must be borne in mind that such hearings are not intended to enable the parties to address the merits of the case. Moreover, the decision of the Court on an interim measure is without prejudice to its decision on the merits of the case (Article 142(4) RoP).

13. Intervention

Intervention is governed by Article 36 of the Statute and Articles 112 to 115 RoP. It only applies in direct actions (an intervener in the national proceedings would automatically be considered a party, not an intervener, to advisory opinion proceedings

before the Court). The forms of order sought in the application to intervene must be limited to supporting the arguments of one or other of the parties. Hence, the intervener must accept the case as it stands at the time of the intervention (Article 112 RoP).

The procedure for intervention consists of two parts:

(a) the application for leave to intervene;
(b) actual participation of the intervener in the proceedings.

a. Application for leave to intervene

A party wishing to intervene must submit an *application for leave to intervene*. That document must contain all the information needed to enable the President or, as the case may be, the Court, to make an order granting leave to intervene. Before the order is issued, the parties are invited to submit written observations and, in exceptional cases, oral observations, as to whether or not intervention should be allowed. At the same time, the parties may be asked to notify the Court whether they intend to exercise the right to confidentiality (Article 115(1) RoP).

b. Calculation of time limits for intervention

Applications in direct actions are published in the *Official Journal of the European Union* and its *EEA Supplement*. The time-limit for interventions is six weeks from the date of publication of the notice (Article 113(1) RoP). Consideration may be given to an application to intervene which is made after the expiry of this period but before the decision to open the oral procedure. In such cases, the intervener is permitted only to submit observations during the oral procedure (Article 113(2) RoP).

c. Participation of the intervener in the proceedings

Once leave to intervene has been granted, the intervener is invited to submit a *statement in intervention* within a certain time-limit. The statement in intervention may be followed by observations from the parties.

14. Practical advice

a. Drafting and layout of pleadings

The basic formal requirements for the lodging of pleadings are set out in Article 54 RoP. The basic substantive requirement for pleadings is for them to be clear, concise and complete. Repetition is to be avoided. The Court should be able, on a single reading, to apprehend the essential matters of fact and law.

Since pleadings are read by people from different cultural backgrounds and sometimes have to be translated into English, Counsel should use clear and articulate language and avoid any national or local jargon.

The structure of pleadings should be clear and logical, and they should be divided into separate parts with titles and paragraph numbers. In complex cases, in addition to the summary of the pleas in law and arguments, a table of contents may be useful.

b. Pattern of originating applications

Originating applications should set out:

– the details of the type of dispute involved and the kind of decision sought: action for annulment, application for interim measures, etc.;

– a brief account of the relevant facts;

– references to relevant provisions of the EEA Agreement and to secondary EEA legislation;

– all the pleas in law on which the application is based;

– the arguments in support of each plea in law; they must include relevant references to case law of the ECJ and the Court;

– the forms of order sought, based on the pleas in law and arguments.

It is desirable for the *defence* and similar documents to follow closely the structure of the reasoning set out in the pleadings to which they constitute a response.

It should also be noted that initial pleadings (application and defence) must indicate all evidence in support of each of the points of fact at issue. However, new evidence may be put forward in a reply or rejoinder (in contrast to the rule excluding new pleas in law), provided that adequate reasons are given to justify the delay (Article 111(1) RoP).

c. Pattern of written observations

Written observations in *advisory opinion proceedings* should set out:

– the relevant facts of the case and applicable national law;

– the relevant provisions of EEA law;

– legal arguments, including relevant references to case law of the ECJ and the Court;

– proposals for answers to be given by the Court to the questions submitted by the national court.

If a party accepts the facts of the case as set out in the request for an advisory opinion, a reference to the request will suffice.

d. Documents annexed to pleadings

Pursuant to Article 54(5) RoP, documents relied on by the parties must be annexed to the pleadings. Unless there are exceptional circumstances and the parties consent, the

Court will not take account of documents submitted outside the prescribed time-limits or produced at the hearing.

Only relevant documents, on which the parties base their arguments, must be annexed to the pleadings. Where documents are of some length, it is not only permissible but indeed desirable, for only an extract to be annexed to the pleading whereas a copy of the complete document should be lodged at the Registry.

Since annexes are not translated by the Court unless a Judge or the Registrar so requests, the relevance of every document must be clearly indicated in the body of the pleading to which it is annexed.

The Court does not accept notes on which oral argument is to be based for inclusion in the case-file.

Counsel may in all cases send unofficial translations of pleadings and annexes.

e. Citations

Counsel are requested, when citing a judgment of the Court, the ECJ, the General Court, or any other court, to give full details, including the names of the parties or, at least, the name of the applicant. In addition, when citing a passage from a judgment or from an opinion of an Advocate General of the ECJ, they are requested to specify the number of the paragraph (or point in the case of an Advocate General's opinion) in which the passage in question is to be found ("pin cite").

To facilitate its work, the Court suggests as an appropriate form of citation which is used in the judgments of the Court, the ECJ and the General Court, for example:

For the Court:
- Case number, names of the parties (option 1)
- Case number, date of the judgment, names of the parties (option 2).

For the ECJ: the judgment in *Commission* v *Portugal*, C-171/02, EU:C:2004:270.

For the General Court: the judgment in *CETM* v *Commission*, T-55/99, EU:T:2000:223.

C. Oral procedure

1. Preparation for the hearing

Once all pleadings have been lodged by the parties, the exact date for the hearing is decided by the President and communicated by the Registry to the parties.

In preparation for the hearing, the judges may send out questions to the parties and participants. They may also be asked to discuss in greater detail certain issues or to concentrate their pleadings on particular points of law.

The parties' replies to questions are given orally during the hearing unless otherwise decided.

During this part of the procedure, it is also possible that the Court may prescribe preparatory measures (Article 56(1) RoP).

a. Report for the Hearing

About three weeks before the hearing, the *Report for the Hearing* is sent to all participants in the proceedings. The Report is drawn up by the Judge-Rapporteur.

Where there is to be no oral procedure (see C.7), the Report for the Hearing may be replaced by a *Report of the Judge-Rapporteur*. Apart from the name, there is no difference between a Report for the Hearing and a Report of the Judge-Rapporteur.

After receiving the Report for the Hearing or, in certain cases, the Report of the Judge-Rapporteur, the parties are invited to check, where applicable, that the report adequately reflects their views as expressed in the pleadings. If Counsel find that this is not the case, they may inform the Registrar and propose any corrections or amendments that they consider necessary or appropriate. It must be emphasised, however, that the Report for the Hearing is, by its very nature, a report presented by the Judge-Rapporteur to the other Judges and that it is for him to decide whether it needs to be amended.

2. The purpose of the oral procedure

For both direct action and advisory opinion proceedings, the purpose of the oral procedure is:

– to answer the written and oral arguments put forward by the other parties;

– to recount, if necessary, by way of a highly condensed summary, the position taken by each party, with emphasis on the essential submissions in support of which written argument has been presented;

– to explain and expound on the more complex points and to highlight the most important points;

– to answer questions put forward by the Court.

In advisory opinion proceedings, the oral procedure enables Counsel to reply briefly to the main arguments set out in other written observations.

The oral procedure must, however, be seen as *supplementing the written procedure* and should not involve repetition of what has already been stated in writing.

3. Conduct of the oral procedure

Before the oral hearing commences, the President usually invites Counsel to a brief preparatory meeting in order to settle arrangements for the hearing. On this occasion, the Court may indicate matters it would like to see dealt with in the oral observations or questions it may ask.

As a rule, the hearing starts with the President declaring the sitting of the Court open and introducing the Court. The case is called by the Registrar and the Judge-Rapporteur is invited to introduce the case. Counsel will then be invited to present oral arguments, starting with the Counsel of the applicant, followed by Counsel for the defendant, then agents representing the governments and institutions. Similarly, in advisory opinion proceedings, the plaintiff before the national court will speak first, etc. The hearing generally concludes with brief closing arguments from those Counsel who wish to make them.

4. Constraints of language, etc.

Only Counsel representing the parties before the national court in advisory opinion proceedings are exempted from using English. Thus, all other Counsel appearing before the Court, including the agents of the EFTA and EU States, must use English in their written and oral submissions. In practice, however, Counsel for the parties in advisory opinion proceedings almost always use English in their oral submissions. By using English, simultaneous interpretation is avoided. This allows Counsel to address the Court directly and interact spontaneously with the Court by answering questions from the bench. This also prevents important arguments from possibly being lost in the interpretation.

Counsel should, in the interest of the party they represent, be attentive in order to ensure that what they say is fully understood by the Judges, who are not native speakers of English. It is preferable to speak in a clear and well-structured manner, using simple terms and short sentences, avoiding any local jargon or unusual expressions.

In cases where Counsel decide to follow a previously prepared text, special care should be taken in keeping sentences short as well as maintaining normal talking speed.

All oral submissions are recorded but the recording serves only for the internal purposes of the Court. Counsel should remember to turn on and speak directly into the microphone.

5. Time allowed for addressing the Court

As a general rule, the time allowed to each main party is normally limited to a *maximum of 30 minutes*. The time allowed to other participants is normally limited to a *maximum of 15 minutes*. This limitation applies only to oral argument and does not include the time taken to reply to questions put by the Judges. Counsel will be informed about their time allocation before the oral hearing.

Exceptions to the time rule may be allowed by the President should circumstances so warrant. For that purpose, an application must be sent to the Registrar, giving a detailed explanation and indicating the time considered necessary. In order to be considered, such applications should be sent to the Court immediately after the invitation to the oral hearing has been received.

When a party is represented by more than one Counsel, no more than two of them may present oral argument and their combined speaking time must not exceed the time limits indicated above. Answers to the questions put by the Judges and replies to the

observations of other Counsel may, however, be given by Counsel other than those who addressed the Court.

6. The need for oral submissions

It is for each Counsel to assess, in the light of the purpose of the oral procedure, whether an oral submission is really necessary or whether a simple reference to the written observations or pleadings suffices. If a party refrains from presenting oral argument, this will never be interpreted as constituting acquiescence in the arguments presented by another party.

7. Omission of the hearing

The Court may in some cases, with the express consent of the parties, decide to dispense with the oral part of the procedure (Article 70 RoP).

8. Practical advice

a. Postponement of the hearing

The Court grants requests for postponement only for compelling reasons.

b. Dress

Lawyers are required to appear before the Court in the robes they would use before their national court. Those appearing before the Court as agents are not required to wear robes but may choose to do so, at their own initiative. This rule does not apply to hearings concerning interim measures, at which neither Judges nor Counsel need to wear robes. As the Court does not have spare robes to lend, lawyers must bring their own robes to the hearings.

c. Addressing the Court

The normal manner of addressing the Court is “Mr President and Members of the Court” or “My Lords”. This may occasionally be shortened to “the Court”, as in “the Court will be aware that ...”.

d. The location of the oral hearing

It is not possible to hold all oral hearings at the Court’s premises at 1 rue du Fort Thüngen in Luxembourg (colloquially referred to as the “Hemicycle building”). Hearings may therefore be conducted at other locations in Luxembourg which are rented for these purposes. Hence, Counsel must note carefully the exact location of the hearing as stated in the invitation to the hearing.

At the Court’s premises in Luxembourg, Counsel may be required to produce an identity card or other means of identification at the entrance to the building.