

Costs in the EU Courts

Key Statutes and Authorities

- Rules of Procedure of the Court of Justice
- Treaty on the Functioning of the European Union (TFEU)

Introduction

This Note is an overview of the procedure for claiming costs in proceedings in the EU Courts, and the procedural differences to the CPR.

Unless stated otherwise, references to “art.” relates to Articles of the Rules of Procedure, not Articles of the TFEU.

Background

The Court of Justice of the European Union (CJEU) has its own procedure rules. These only apply to aspects of the case that are directly in front of the CJEU, not aspects that occur before or after its involvement.

These Rules cover first-instance hearings in both the General Court and the European Court of Justice (ECJ), and appeals to the ECJ.

What types of cases are there?

There are two types of first-instance actions:

- Direct Actions (*art. 258-266 TFEU*)
- References for Preliminary Rulings (*art. 267 TFEU*)

There are slight differences in the costs procedure in the two types of actions.

The ECJ also handles appeals from the General Court. Different procedural rules also apply to this type of case.

What is a Direct Action? (*art. 258-266 TFEU*)

This is where proceedings are taken directly by an EU Member State or EU body, e.g. EU Commission, against another Member State or EU body for alleged breaches of their obligations under the TFEU.

What is a Reference for a Preliminary Ruling? (*art. 267 TFEU*)

This is where a Court in an EU Member State seeks the CJEU’s guidance on issues of EU law that have occurred in a set of proceedings.

What is an Appeal in the ECJ? (*art. 256 TFEU*)

This is where a ruling of the General Court is appealed to the ECJ.

Basis of Assessment

There is no equivalent to Standard Basis or Indemnity Basis, but the parties’ conduct will be taken into account.

Either party can dispute an award for costs in a Direct Action. If this happens, the CJEU will hold a hearing at which both sides and the Advocate General will attend (*art. 145*).

Preliminary Rulings (*art. 102*)

The CJEU does not make costs orders in Preliminary Rulings. Instead, it is up to the referring Court to decide this issue, after the case has been transferred back.

Direct Actions

In Direct Actions, the CJEU will decide a party’s costs liability (*art. 137*), and will take into account the parties’ conduct (*art. 139*).

The unsuccessful party will be ordered to pay costs, as long as a party has sought them. If

there is more than one unsuccessful party, the Court will apportion costs between them.

Unlike under the CPR, if a successful party wins some heads of claim but loses others, the CJEU will simply make no order as to costs (*art. 138*).

If a party discontinues they will pay the other parties' costs (*art. 141*).

If a case settled before trial, the CJEU will determine costs (*art. 142*).

A party could be ordered to pay the CJEU's own costs if it causes avoidable costs to be incurred, or seeks "excessive" copying or translations (*art. 143*).

Appeals in the ECJ (*art. 184*)

The rules relating to Direct Actions will apply, with some minor amendments.

Where a Member State or EU body wins an appeal to the ECJ and did not intervene in the General Court, unsuccessful parties may be awarded their costs of the appeal.

Where anyone else appeals after not intervening at first-instance, they will not be liable for costs unless they take part in the appeal.

Legal aid

Legal Aid is available in both Preliminary Rulings (*art. 115*) and Direct Actions (*art. 185*).

However, you need to apply directly to the CJEU with supporting evidence and they will make a decision.

Legal Aid can be withdrawn should circumstances change (*art. 118* and *art. 189*).

Experts and witnesses (*art. 73*)

The costs of experts and witnesses who attend a CJEU hearing are specifically allowed, unlike under the CPR where they will be subject to assessment. Witnesses are also able to claim for loss of earnings.

If witnesses or experts do attend, the parties can be ordered to lodge security for their costs.

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Disclaimer:

This guidance note should not be considered formal legal advice or legal opinion and should not be relied upon. Appropriate legal advice should be sought before entering into any legal proceedings.
