



EUROPEAN COMMISSION

DG COMPETITION

NOTICE TO eLENIENCY USERS

Subject: Guidance for the preparation and uploading of supporting documents in eLeniency

Disclaimer:

This guidance does not create any new legal rights or obligations, nor alter the legal rights and obligations which arise from the Treaty on the functioning of the European Union (TFEU), secondary EU law and the case-law of the Court of Justice of the European Union. This notice also does not alter the Commission's interpretative notices and established decisional practice.

It is strongly recommended to follow the guidance set out in this notice. However, if you are unwilling or unable to fully comply with all or parts of this guidance, this will NOT be taken into consideration by the Commission when assessing your undertaking's cooperation under the Leniency Notice or outside the scope of leniency.

NB: It is also recommended to follow this guidance for the submission of supporting documents to statements or submissions made in the context of leniency, settlement or non-cartel cooperation but that are not transmitted through eLeniency.

1. Types of documents that you may submit as supporting documents

- (1) Two main types of document may be submitted as supporting material to a statement or submission made using the eLeniency system: contemporaneous documents and non-contemporaneous documents.
- (2) Contemporaneous documents are original, pre-existing documents created at the time when the facts or events which are the subject of the statement or submission were ongoing. Contemporaneous documents generally relate to evidence of the facts or events which are the subject of the statement or submission.
- (3) Non-contemporaneous documents are documents created after the period of the facts or events to which the statement or submission relates. Non-contemporaneous documents generally consist in descriptions or explanations of the facts or events or of contemporaneous documents.

- (4) The distinction between non-contemporaneous and contemporaneous documents is relevant in particular when it comes to granting access to the file to the parties concerned. Access to non-contemporaneous documents will in principle only be granted by allowing the parties concerned to consult these documents at the premises of the Commission, whereas access to contemporaneous documents may be granted by making available to those parties a DVD-ROM containing electronic copies of those documents.
- (5) NB: Please do not (re-)submit as supporting documents copies of documents that may have been taken by the Commission during inspections at your undertaking's premises, if any, or any other documents which you know to be in the Commission's possession (except to provide versions that are more complete, more up to date or of a better quality than the copies already in the Commission's possession).

2. References to supporting documents in your statement or submission

- (6) In your statement or submission, it is recommended to refer to non-contemporaneous supporting documents as 'Annexes'¹ and to contemporaneous supporting documents as 'Exhibits'².
- (7) In your statement or submission, please include all references to annexes and exhibits in the body of the text (i.e. not as footnotes) and preferably format them as underlined text in order to facilitate their visual identification.
- (8) For all statements or submissions, please always submit as a separate annex – in principle as Annex 001 – a list of all the annexes and exhibits that are submitted as supporting documents to that particular statement or submission.
- (9) Annexes should preferably be drafted in one of the languages used for the proceedings.

3. Specific indications regarding the layout and formatting of non-contemporaneous supporting documents

- (10) Non-contemporaneous supporting documents (annexes) should be prepared as PDF documents on A4 page size and should contain continuous page numbering on all pages. The font size used in the body of the document should be at least 10 points and all paragraphs should be continuously numbered.

4. Language requirements

- (11) In the case of statements or submissions made in the context of a leniency application (i.e. an application for immunity from fines or for a reduction of

¹ In French: '*annexes*'; in German: '*Anhänge*'.

² In French: '*pièces*'; in German: '*Beweisstücke*'.

finances), you may submit supporting documents in any of the 24 official languages of the European Union³.

- (12) In the case of submissions made in the context of a settlement or non-cartel cooperation, additional specific language requirements may apply which limit the languages in which submissions may be made (please consult the DG Competition case team).
- (13) If exhibits exist in their original form only in a language that is not an EU official language, please submit, at the same time as the original exhibits, working translations⁴ of each such exhibit in a language used for the proceedings. Please submit such translations as part of the same batch of supporting documents, as separate accompanying sub-exhibits in addition to the exhibits in their original language. Please do not combine originals and translations into one file. Please see also point (18) regarding the naming of files consisting in translations of supporting documents.

5. Numbering of annexes and exhibits and file naming conventions

- (14) To facilitate the processing of supporting documents, please number all annexes and exhibits according to the order of the appearance of their reference in your statement or submission. Please apply a system of uniform, continuous numbering to all annexes and exhibits, using three digits and including leading zeros where relevant (e.g. Annex 001, Annex 010, Exhibit 050, Exhibit 100).
- (15) If several annexes or exhibits relate to a same matter (i.e. they constitute separate elements supporting a same indication or fact), please apply a system of nested continuous sub-numbering, using three digits and including leading zeros where relevant (e.g. Exhibit 001-001..., Exhibit 001-002..., etc.).
- (16) For exhibits, please add this numbering as a prefix to the original filename (e.g. for the original file named 'Prices of competitors.msg' this would be 'Exhibit-001-004-Prices of competitors.msg').
- (17) File names should reflect the system of continuous numbering applied to the naming of annexes and exhibits (e.g. Annex-001-010-List of meetings.pdf, Exhibit-042-003-Market shares.msg). The numbering of annexes should be independent from the numbering of exhibits, but each set of numbering for annexes and for exhibits should be continuous in its own respect.
- (18) In the case of translations (see points (11)-(13)), please keep the original file name but add the suffix '-TR' at the end of the filename (e.g. Exhibit-002-001-Prix des concurrents.msg' and 'Exhibit-002-002-Prix des concurrents-TR.msg').

³ i.e. Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish.

⁴ A working translation is a non-official translation (i.e. not a certified or sworn translation) prepared solely for the purposes of facilitating the understanding of the original supporting document.

- (19) If you are submitting supporting documents to statements or submissions that follow-on from previous statements or submissions or that supplement these, please do not restart numbering at 001 but continue from the last number in the previous statement or submission.

6. File formats

- (20) Non-contemporaneous documents (annexes) should preferably be submitted as PDF files. All newly-created electronic files should be an accurate and complete electronic copy of the original document, should not be password-protected and should be in non-restricted and machine-searchable format⁵.
- (21) If spreadsheet or database functionalities are required, it is recommended to submit such annexes in file formats supported by Microsoft Excel and Microsoft Access or equivalent free and open-source software.
- (22) Contemporaneous documents (exhibits) should preferably be submitted in their original, native format and content (i.e. their original file type as exported from the source information system), with the original metadata intact⁶. Emails should preferably be submitted as individual .msg or .eml files (or equivalent) and not as email containers (e.g. .pst files for Microsoft Outlook or .nsf files for Lotus Notes).
- (23) Please do not submit documents exported from a document review platform, document management software or e-discovery software, but only documents in their original form. The only exception to this is the processing aimed at selecting certain items that are stored in a container file (e.g. emails).
- (24) When multiple export formats are available for exporting from the information system, it is preferable to use the one that contains more metadata. It is important that the format and the encoding of the documents are not altered in any way. Optical character recognition (OCR) or any other type of post-processing should be avoided. When applicable, please ensure that any attachments to these documents are also included in the submission. If the file format of a document does not include its attachments in an embedded form, please verify that the attachments can be linked back to the original document.
- (25) If you wish to submit voluminous documents that originate from online chat platforms or instant messaging apps (e.g. WhatsApp, Messenger, Skype, etc.), please contact the leniency telephone hotline or the DG Competition case team first to discuss the best format for submitting such documents.
- (26) Exhibits consisting of hard copy or paper documents (e.g. documents that exist only in paper format such as tickets, invoices, bills or receipts or handwritten or hand-annotated documents) should be scanned and submitted as non-restricted and machine-searchable PDF documents. At the time of submission, they should

⁵ Non-restricted means that no special electronic security settings are activated. It should be possible to perform optical character recognition (OCR), to use machine search tools on the document, to print it and to cut-and-paste from that document.

⁶ Metadata is data that provides information about one or more aspects of the data, such as the means of creation of the data, the time and date of creation, the creator or author of the data.

be accompanied, if relevant, by a typed transcript in the original language(s) of the document⁷ and, if relevant, a working translation of the transcript in a language used for the proceedings (each submitted as separate sub-exhibits). Although such transcripts or translations are, as such, not contemporaneous documents, they should nevertheless be submitted as exhibits as they serve to enable to better read or understand the underlying original contemporaneous document rather than to describe or explain it.

- (27) For audio or video files, please also provide a typed transcript in the original language(s) of the document. If relevant, submit a working translation of the transcript in any language of the proceedings (each submitted as a separate sub-exhibit).
- (28) Before uploading any supporting documents in eLeniency, please ensure that all files have been scanned using anti-virus software and that they do not contain any malware, viruses or other malicious software.

7. Specific restrictions regarding the uploading of certain types of files

- (29) Please do not submit any encrypted documents or containers, password-protected documents, executable files, archives (e.g. zip files or other types of file container) or documents containing macros. They are not supported by the eLeniency system and will be automatically rejected by the system.

8. File sizes

- (30) You may upload up to 1 450 separate files per statement or submission, with a total maximum size of 4.95 GB.
- (31) Each individual file must not exceed 100 MB. If you wish to submit individual files larger than 100 MB, this needs to be discussed beforehand with the DG Competition case team.

⁷ For example, providing transcripts of hard copy or paper documents originating from third parties not related to the matter of the proceedings may not necessarily be relevant (e.g. it would not necessarily be relevant to provide transcripts of tickets, invoices, bills or receipts), except for any possible handwritten annotations.