



# **2018**

# **Annual Activity Report**

**Legal Service**

*Foreword*

*In 2018, the Legal Service continued to support the Commission, DG's and Services in their work on regulatory measures and on court cases. The Legal Service was closely involved in the work on all the priorities of the Juncker Commission and particular attention was needed in the preparation of numerous legislative proposals in view of the next multiannual financial framework and of the withdrawal of the UK from the European Union.*

# Table of Contents

<b>THE LEGAL SERVICE IN BRIEF</b>	<b>4</b>
<b>EXECUTIVE SUMMARY</b>	<b>5</b>
A) KEY RESULTS AND PROGRESS TOWARDS THE ACHIEVEMENT OF GENERAL AND SPECIFIC OBJECTIVES OF THE DG .....	5
B) KEY PERFORMANCE INDICATORS (KPIs) .....	6
C) KEY CONCLUSIONS ON FINANCIAL MANAGEMENT AND INTERNAL CONTROL (EXECUTIVE SUMMARY OF SECTION 2.1) .....	10
D) PROVISION OF INFORMATION TO THE COMMISSIONER(S).....	10
<b>1. KEY RESULTS AND PROGRESS TOWARDS THE ACHIEVEMENT OF GENERAL AND SPECIFIC OBJECTIVES OF THE LEGAL SERVICE</b>	<b>11</b>
1.1 QUALITY OF LEGISLATION.....	14
1.2 LEGAL ADVICE .....	18
1.3 LEGAL REPRESENTATION .....	23
1.4 ENSURING THE FULL BENEFIT OF RULES FOR CITIZENS OF THE UNION .....	35
<b>2. ORGANISATIONAL MANAGEMENT AND INTERNAL CONTROL</b>	<b>38</b>
2.1 FINANCIAL MANAGEMENT AND INTERNAL CONTROL .....	38
2.1.1 CONTROL RESULTS.....	39
2.1.2 AUDIT OBSERVATIONS AND RECOMMENDATIONS .....	51
2.1.3 ASSESSMENT OF THE EFFECTIVENESS OF THE INTERNAL CONTROL SYSTEMS .....	52
2.1.4 CONCLUSIONS ON THE IMPACT AS REGARDS ASSURANCE .....	53
2.1.5 DECLARATION OF ASSURANCE.....	54
<b>DECLARATION OF ASSURANCE</b>	<b>55</b>
2.2 OTHER ORGANISATIONAL MANAGEMENT DIMENSIONS.....	56
2.2.1 HUMAN RESOURCE MANAGEMENT .....	56
2.2.2 BETTER REGULATION (ONLY FOR DGs MANAGING REGULATORY ACQUIS).....	57
2.2.3 INFORMATION MANAGEMENT ASPECTS.....	57
2.2.4 EXTERNAL COMMUNICATION ACTIVITIES .....	60

## THE LEGAL SERVICE IN BRIEF

The mission of the Legal Service is to ensure that the provisions of the Treaties are correctly interpreted and applied and that Commission acts and proposals are in accordance with the law of the European Union. For this purpose, it gives legal advice to the Commission and its Services, defends the interests of the Commission and of the Union before the courts and strives to assure the highest possible quality, coherence and development of Union law.

Unlike most Commission services, the Legal Service is not in charge of a particular policy area or any programmes, but contributes to the development and implementation of all initiatives of the Commission in its dual role as legal adviser and representative before the courts.

The only area in which, exceptionally, the Legal Service acts as lead service managing policy is that of the Union's relationship with judicial bodies, including the reform of the Union court system and the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, (ECHR).

The Legal Service is organised in a flat structure with few hierarchical levels, much like large law firms, and this structure has proved to be effective in allowing information to pass efficiently and effectively throughout the organisation.

Providing high quality and timely legal advice and representation before court is the daily challenge to the Legal Service and its staff. Deadlines are often very short and, nevertheless, high quality legal expertise is expected at all times.

The Legal Service has 457 staff members. The majority of the staff, (357 staff) are organized into 13 thematic teams responsible for defined legal areas. Another team is responsible for the quality of legislation (67 staff) divided in three Units. The Legal Service also has one Unit dealing with Contracts and Recoveries. On the administrative side, there is one group responsible for information support and one Unit responsible for Human Resources, Business Correspondent, Informatics and Finance.

The Legal Service is an internal service provider. The administrative budget is slightly above 4 million euro. More than 90% of the expenditure in 2018 was directly related to court cases. More detailed information on expenditure and payments is presented in section 2.1.1.

# EXECUTIVE SUMMARY

## a) Key results and progress towards the achievement of general and specific objectives of the DG

The Annual Activity Report is a management report of the Director-General of the Legal Service to the College of Commissioners. Annual Activity Reports are the main instrument of management accountability within the Commission and constitute the basis on which the College takes political responsibility for the decisions it takes as well as for the coordinating, executive and management functions it exercises, as laid down in the Treaties<sup>1</sup>.

Through its achievements in 2018, the Legal Service contributed indirectly to all 10 Priorities of the Juncker Commission and the 2018 Commission Work Program in line with the objectives in the Strategic Plan and the 2018 Management Plan of the Legal Service. The Legal Service assists the Commission in carrying out its function as the "Guardian of the Treaties". The European Union is a Union based on law. Without a clear and predictable legal framework for the Union, respected by all - Institutions, Member States, and private actors - the Union cannot succeed. It is in this context that the contribution of the Legal Service should be seen.

Since its establishment, the Legal Service has been responsible for providing legal advice and for defending the interests of the Commission. Legal advice must be of the highest quality and be delivered in due time; the same is true of legal representation. To be able to respond to every eventuality, whatever legal field it may be in, the organisation is designed to be able to adapt to all requirements and requests, sometimes at extremely short notice. The flat organisational structure allows information to quickly be disseminated and absorbed and enables the Legal Service to provide fast responses whenever required.

The main challenge in 2018 for the Legal Service was to be able to meet the expectations originating from changes in legislation, new political initiatives and priorities, changes in the world economy as well as other unexpected events, which have all had a significant impact on the type of legal expertise required from the Legal Service.

2018 was dominated by numerous high profile and sensitive files, in which the Legal Service was closely involved. Among these can be mentioned the efforts to address:

- the rule of law crisis in Poland, which has also led to several cases before the Court;
- the negotiations of the withdrawal agreement with the United Kingdom, for which the Legal Service gave advice on all negotiation documents, and actively participated in the negotiations;
- the preparation of the Union for the withdrawal of the United Kingdom in the event of absence of a withdrawal agreement, including the preparation of a number of legislative proposals and other acts;
- the preparation and follow-up of the legislative proposal for the Multiannual Financial Framework for 2020-2027;
- the ongoing challenges related to migration (in particular implementation of directive 2003/09, its recast 2013/33 and the ongoing revision) and security;
- and new initiatives and ongoing negotiations in the field of international trade, in particular negotiations with China and the USA.

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<sup>1</sup> Article 17(1) of the Treaty on European Union.

## b) Key Performance Indicators (KPIs)

In this section, the selected Key Performance Indicators are reported on. The other result indicators are reported on in Annex 2 and 12.

### **KPI 1 – Percentage of draft legal acts selected to undergo legal revision to ensure the quality of texts proposed for adoption.**

**Relevant horizontal/general objective 11:** To help the overall political objectives, the Commission will effectively and efficiently manage and safeguard assets and resources, and attract and develop the best talents.

Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2018)
<b>KPI 1 Percentage of draft legal acts selected to undergo legal revision to ensure the quality of texts proposed for adoption.</b>	100%	100%	100%

Source: Jurrev database and Agenda Planning.

The work of the Quality of Legislation team is of major significance for legal drafting in the Commission. The team revises all draft legislative proposals and a large selection of other draft legal acts, with a view to ensuring that they comply with the rules of legislative drafting and that they are clearly structured and correctly formulated. It provides advice on legislative drafting at an early stage, before and during interservice consultation.

Well-drafted legal acts ensure legal certainty, coherence and equal treatment for citizens of the Union. They are the basis for effective application of Union law. In addition, well-drafted texts contribute to efficiency gains throughout the Commission: in the preparation of draft legal acts and proposals by Directorates-General, during their translation by DG Translation and in the legislative procedure before the European Parliament and the Council.

There is a continuous flow of draft legal acts from the other Directorates-General and Services of the Commission, with some variations.

The year 2018 was the last complete year of the legislature and of the current Commission mandate; it was also the year in which the proposals for the upcoming MFF had to be submitted. In addition, the team was involved in the preparations of the withdrawal agreement with the United Kingdom. Consequently the number of pages revised doubled from some 32 000 to 61 000.

The number of reviewed legal drafts increased by 13 % and number of reviews in more than two languages increased by 53%. Furthermore, the Quality of Legislation team has also reviewed some 80 Notices and related texts intended to inform citizens of the Union about the practical implications of the United Kingdom leaving the Union, in all official languages.

## KPI 2 - Percentage of attendance at meetings of the Commission and of the Heads of Cabinets

**Relevant horizontal/general objective 11:** To help the overall political objectives, the Commission will effectively and efficiently manage and safeguard assets and resources, and attract and develop the best talents.

Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2018)
<b>KPI 2 Percentage of attendance at meetings of the Commission and of the Heads of Cabinets</b>	100%	100%	100%

Source: Exception register and ARES

The Directorates-General and other Commission Services seek legal expertise from the Legal Service when preparing draft legal acts. Legal advice is given throughout the preparatory phase (also called the exploratory phase) of a legal proposal and until it is formally sent for interservice consultation.

Legal advice is provided by all levels of the Legal Service to all levels of the Commission. At the same time, coordination mechanisms ensure the coherence and quality of legal advice at all times. The purpose of legal advice is to contribute to all activities of the Commission with legal implications, including notably the adoption of legislative proposals.

Staff of the Legal Service assist the Director-General in preparing his attendance at meetings of the Commission and of the Heads of Cabinets, at which he provides legal opinions on the subjects on the agenda.

## KPI 3 - Percentage of attendance by appointed staff in court hearings

**Relevant horizontal/general objective 11:** To help the overall political objectives, the Commission will effectively and efficiently manage and safeguard assets and resources, and attract and develop the best talents.

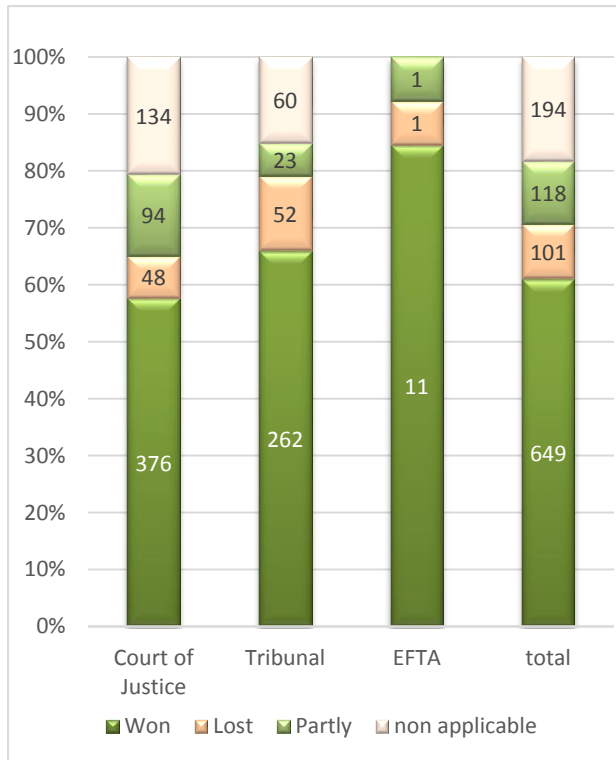
Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2018)
<b>KPI 3 Percentage of attendance by appointed staff in court hearings</b>	100%	100%	100%

Source: Exception register.

The Legal Service represents the Commission before all courts and dispute settlement bodies:

- the instances within the Court of Justice of the European Union – namely the Court of Justice, the General Court; the EFTA court;
- the Dispute settlement bodies within the World Trade Organisation (WTO) in Geneva;
- the national courts, both in the Member States and in third countries, in cases where the Union or the Commission are parties (e.g. forced recovery of debts represents 75% of national cases), and, finally,
- Arbitration tribunals.

Graph 1 shows court results before the Union Courts and the EFTA court in 2018.



In total, based on the decisions from Court of Justice, the Tribunal and the European Free Trade Agreement (EFTA) Court, the Legal Service was:

- successful in 61% of cases,
- unsuccessful in 10% of cases
- 11% of cases were partly won and
- the remaining 18% were discontinued proceedings or removed from the Court's register for various reasons.

The success rates show similar results in 2018 in comparison with previous year.

Graph 1: Court results 2018 (Source: Base Contentieux)

There was 531 **preliminary rulings** notified to the Commission by the Court of Justice (528) and the EFTA Court (3). Regarding preliminary rulings, the challenge is not necessarily to win the case, but rather to assist the Court in interpreting the law of the Union. Over the last few years, there has been an increase in references for preliminary rulings.

#### KPI 4 - Percentage of replies to legal consultations within deadline

**Relevant horizontal/general objective 11:** To help the overall political objectives, the Commission will effectively and efficiently manage and safeguard assets and resources, and attract and develop the best talents.

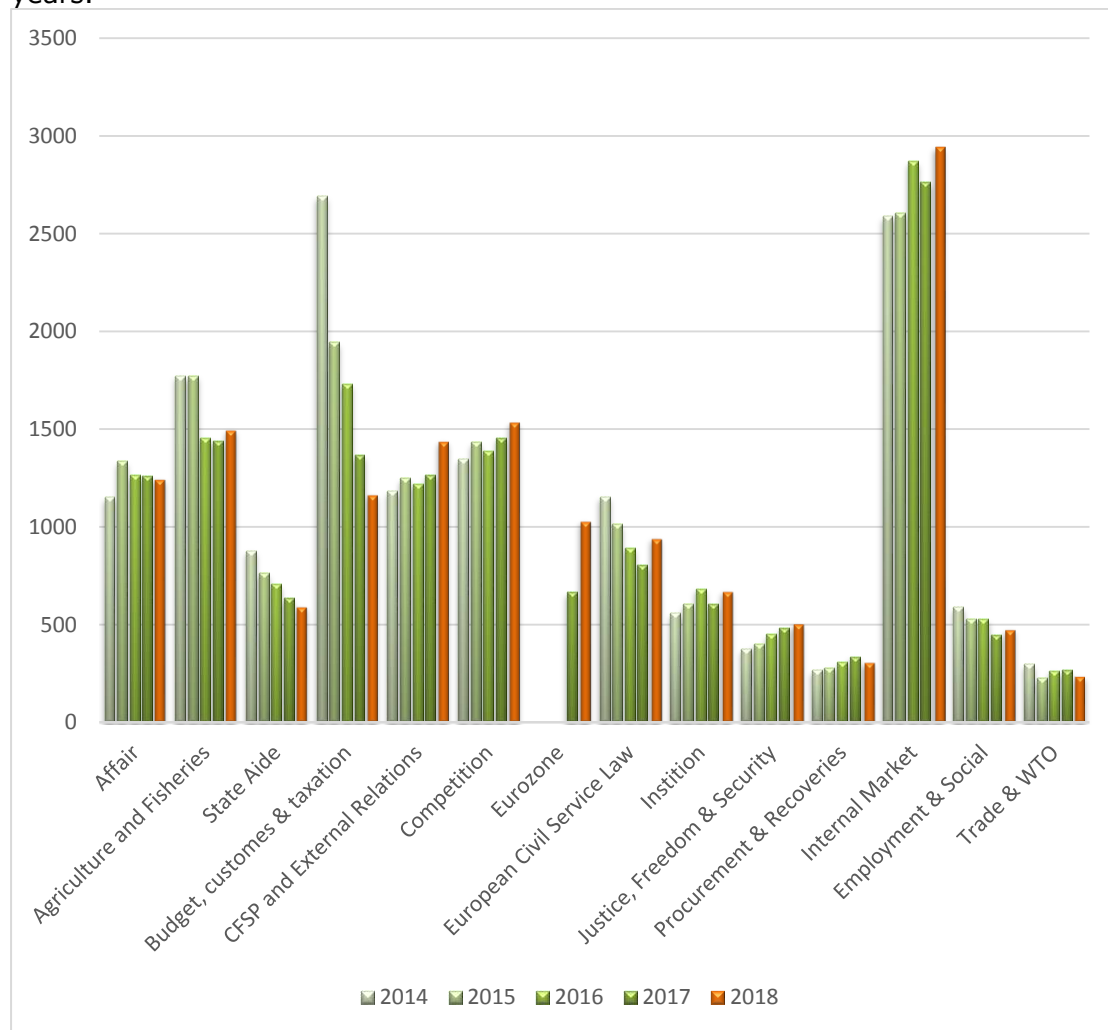
Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2018)
<b>KPI 4</b> Percentage of replies to legal consultations within the set deadline	92%	> 92%	93%

Source: ARES, SG report, NIF database and other databases.

The Legal Service's contribution to the process of drawing up new legislation must not only be of a high quality, it must also be delivered in due time to ensure efficiency gains throughout the process.

Over the last couple of years, there has been a move by the Commission resulting in an increased volume of so-called Fast-Track consultations. The short time frame available for the Legal Service to give its advice on the Fast-Track consultations has had an impact on the workload of staff. Thanks to the flexibility of the Legal Service organisation, it has maintained its high level of replies within the set deadlines.

Graph 2 shows the number of consultations per team and year for the past five years.



Graph 2: Total registered consultations per team and year (Source: Ares)

### KPI 5 – Estimated residual error rate

An effective and reliable internal control system giving the necessary guarantees concerning the legality and regularity of the underlying transactions is important to the Legal Service.

**Relevant horizontal/general objective 11:** To help the overall political objectives, the Commission will effectively and efficiently manage and safeguard assets and resources, and attract and develop the best talents.

Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2018)
<b>KPI 5 Estimated residual error rate</b>	0.03%	<1%	0.02%

Source: DG BUDG report.

## **c) Key conclusions on Financial management and Internal control (executive summary of section 2.1)**

In accordance with the governance arrangements of the European Commission, the staff of the Legal Service conducts its operations in compliance with the applicable laws and regulations, working in an open and transparent manner and meeting the expected high level of professional and ethical standards.

The Commission has adopted a set of internal control principles, based on international good practice, aimed to ensure the achievement of policy and operational objectives. The financial regulation requires that the organisational structure and the internal control systems used for the implementation of the budget are set up in accordance with these principles. The Legal Service has assessed the internal control systems during the reporting year and has concluded that the internal control principles are implemented and function as intended.

In addition, the Legal Service has systematically examined the available control results and indicators, including those aimed to supervise entities to which it has entrusted budget implementation tasks, as well as the observations and recommendations issued by internal auditors and the European Court of Auditors. These elements have been assessed to determine their impact on the management's assurance as regards the achievement of control objectives. More detailed information in internal control is described in Section 2.1.

In conclusion, management has reasonable assurance that, overall, suitable controls are in place and working as intended; risks are being appropriately monitored and mitigated; and necessary improvements and reinforcements are being implemented. The Director General, in his capacity as Authorising Officer by Delegation has signed the Declaration of Assurance.

## **d) Provision of information to the Commissioner(s)**

In the context of the regular meetings during the year between the DG and President Juncker on management matters, also the main elements of this report and assurance declaration have been brought to the attention of President Juncker.

# 1. KEY RESULTS AND PROGRESS TOWARDS THE ACHIEVEMENT OF GENERAL AND SPECIFIC OBJECTIVES OF THE LEGAL SERVICE

The European Union is a Union based on law. Without a clear and predictable legal framework for the Union, respected by all - Institutions, Member States, and private actors – the European Union cannot act successfully. It is in this context that the contribution of the Legal Service should be seen.

The expertise of the Legal Service indirectly contributed to all the Commission's initiatives and to all of the general and administrative objectives established for the Commission for 2018. The Legal Service assists the Commission in carrying out its function as the "Guardian of the Treaties".

In 2018, the Legal Service continued to strive to meet the requirements of timeliness and high quality in the field of expertise in legal advice and legal representation, whenever its intervention was requested by the other Directorates-General and Services.

The Legal Service has met the target set for legal representation by being present at 100% of court hearings. Furthermore, the Legal Service has met and even exceeded the target set by replying within deadlines to 93% of received consultations. It has also met the target for contributions to the legislative process by providing a linguistic review on 100% of selected legal drafts.

The most important resource in the Legal Service is the highly competent and motivated staff. Legal Service has no policy or program responsibilities and consequently only an administrative budget, which is close to 4 million €.

The Legal Service believes that the above mentioned aspects are important contributors to the overall level of trust in the European Commission by its citizens (see 2.2.4 External communication activities).

Chart 1 presents the areas in which the Legal Service staff operates.

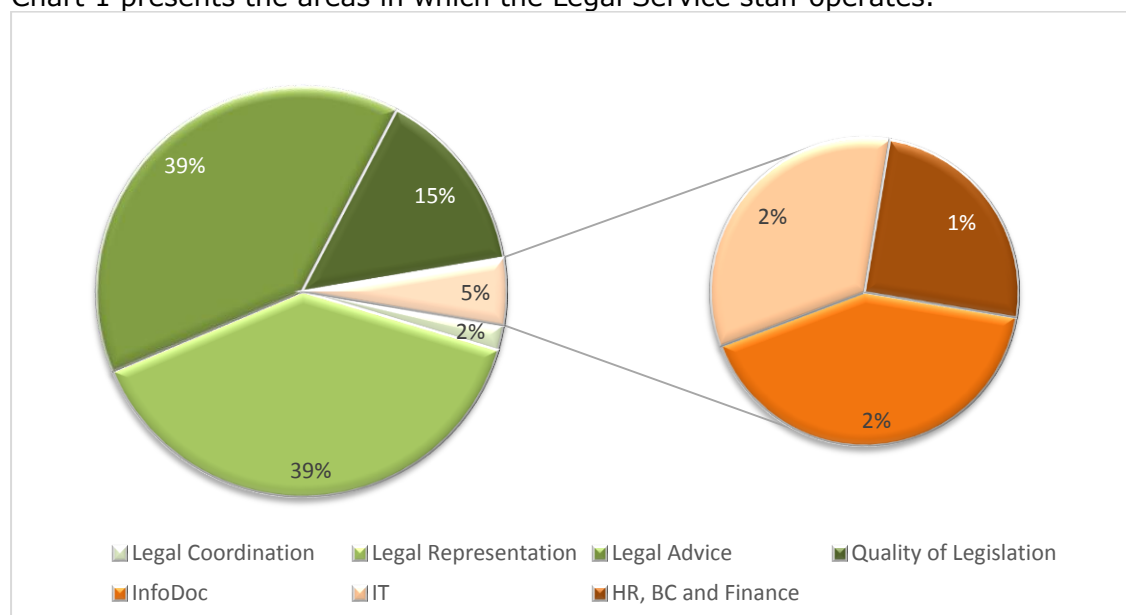


Chart 1: Staff employed in operational and administrative functions in the Legal Service (source: Sysper)

95 % of all Legal Service staff work in the legal operations. Remaining 5 % of staff consist of 10 staff members in information and document management (InfoDoc), 6 staff members in Human Resources and finance, and 8 staff members work with IT development.

### Legal Advice

In 2018, the Legal Service received 14665 consultations of which 8936 were registered in Decide, figures which are stable in comparison with previous years. The greatest number of consultations was handled by the team in charge of the Internal Market (energy, enterprise and environment), Competition and Agriculture and Fisheries, followed by the teams dealing with external relations, affair and budget, customs and taxation.

The team responsible for "Quality of legislation" reviewed 1675 texts from the perspective of legislative drafting, carried out 150 legal-linguistic revisions and 303 corrigenda texts. In total, some 61000 legal text pages were reviewed.

The Legal Service also dealt with 6264 parliamentary questions. The parliamentary questions come from all groups in the European Parliament and cover a large area of different questions. During 2018, 812 replies to petitions were examined and 73 requests from the European Ombudsman were dealt with.

In the light of the need for the Commission to act urgently in numerous situations throughout the year, the Legal Service was also called upon to make a contribution to a great number of informal requests and consultations.

### Legal Representation

As regards litigation, the number of cases in which the Commission participated before the Union Courts remained relatively stable.

In 2018, the Affair team continued to have received the highest number of new court cases followed by the Internal Market and Social teams.

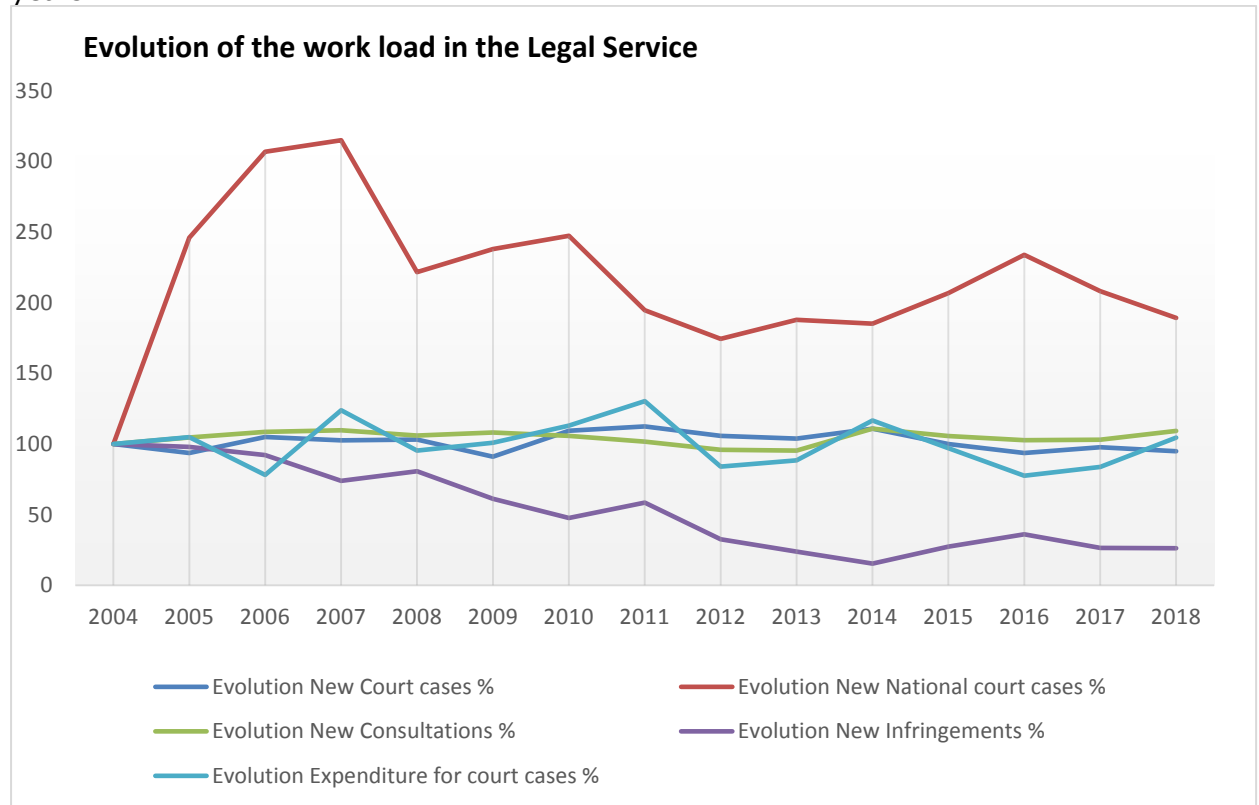
National litigation is essentially managed and coordinated by the Contracts and Recoveries unit. In 2018, the unit handled 140 new cases before national courts of which 61 cases concern forced recoveries. Unduly paid amounts are requested for payment by the European Commission dunning procedure mainly managed by DG Budget. The last part of the dunning procedure is managed by the Legal Service, the forced recovery, in which the Legal Service is responsible for recovering the sums owed to the Commission by all legal means.

In 2018, recovery orders for a total of 13.4 million € were transmitted to the Contracts and Recoveries Unit. During 2018, 104 recovery orders were closed and 4.4 million € were either recovered.

References for preliminary rulings continue to be an important task of the Legal Service. These are cases in which a national court asks the Court of Justice to rule on the interpretation or validity of Union law. The Legal Service is involved in all these cases and, when presenting the position of the Commission, assists the Court as an *amicus curiae* in finding the correct interpretation of Union law, a role which is much appreciated by the Court of Justice.

In order to enable it to meet all requests for legal advice and for legal representation, to proactively contribute to the legislative drafting process and to ensure that legal acts have been transposed correctly in all Member States, the Legal Service has established a flat organisational structure which allows information to be disseminated quickly, and absorbed in the organisation and which allows for fast responses whenever required.

Graph 3 shows the evolution of the workload of the Legal Service over the last 15 years.



Graph 3: Workload and staff evolution in the Legal Service (Source: NAT, BC, ABAC, NIF)

Over the 15-year period, there has been a stable evolution in the number of new court cases and consultations as well as the costs for external legal expertise and costs paid to opposing parties for their legal fees. Approximately 3/4 of staff work on legal advice and legal representation before the Union Courts.

The majority of national court cases are cases of forced recoveries. Some 15 years ago, a Unit specialised in dealing with forced recoveries was established. During the first 5 years, the Unit worked intensively to ensure that all forced recoveries were identified, registered and dealt with. Since then the evolution of new national court cases has stabilised.

Thanks to the implementation of new working methods regarding handling of complaints based infringements by the creation of the Chap registry, the Legal Service as well as other DGs and services have reduced the number of cases present in NIF (database for infringements) and hence, efficiency and effectiveness gains have been achieved.

## 1.1 Quality of Legislation

The "Quality of Legislation" core activity includes three separate aspects: review and multilingual revision of draft legislation, codification of legislation in force and other aspects of legislative simplification.

**GENERAL OBJECTIVE:**

PROVIDE QUALITATIVE AND TIMELY ADVICE TO ENSURE THAT THE HIGHEST STANDARDS OF QUALITY ARE MET IN LEGAL DRAFTS PROPOSED BY THE COMMISSION DGs AND SERVICES].

Activities relating to the quality of legislation are grouped into a single team (SJ.DDG.K) employing some 15 % of the staff resources of the Service.

The team is organised into three Units. Its work provides significant and appreciated input into the process for the preparation of legal acts with the aim to ensure that draft legal acts are of the highest possible quality, which contributes to the continuous work by other Directorates-General and services being as efficient and effective as possible. The advice given by the Quality of Legislation team is not only valuable to the operational Directorates-General, but also to horizontal services such as DG Translation.

The Quality of Legislation Team was previously organised into three groups. Following the conversion of those groups into Units in 2017, the respective Heads of Units were appointed on 1 August 2018.

Chart 2 shows the staff resources involved in Quality of Legislation as a proportion of the Legal Service staff as a whole.

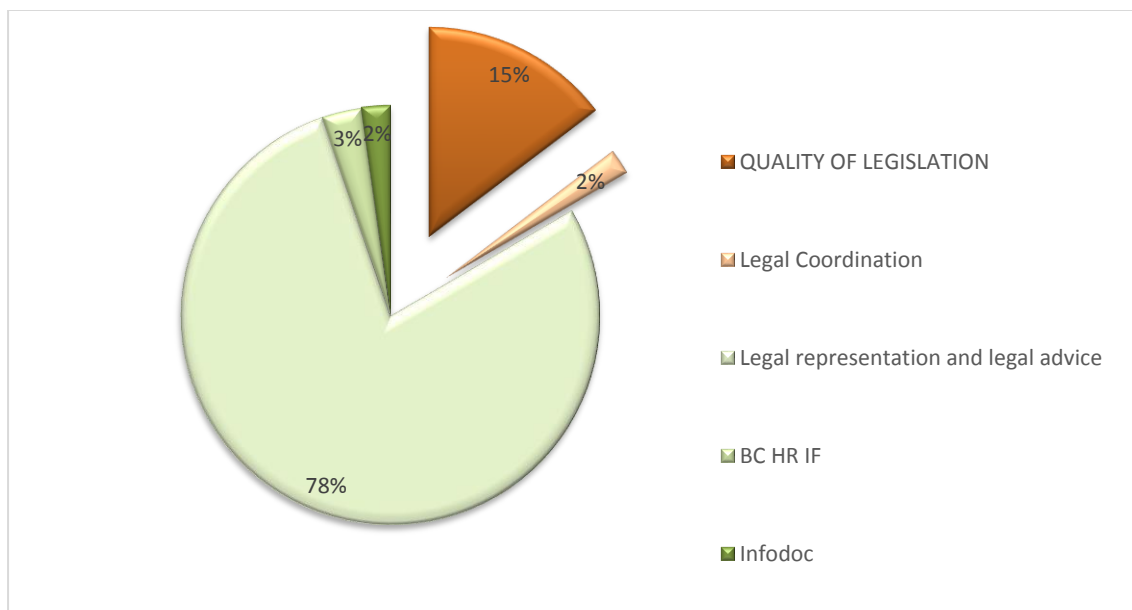


Chart 2: Number of staff in the various functions (Source: Sysper)

In 2018, as in previous years, the Quality of Legislation team selected legal acts intended for publication to be reviewed, and the corresponding consultations were replied to by the deadline. All four codification proposals listed in *Decide Planning* were prepared in a timely manner.

During this exceptional and particularly busy year, the overall number of pages reviewed and revised almost doubled from some 32000 in previous years to 61000 in 2018.

## A – Revision of draft legal acts

Revision of draft acts is carried out during two separate stages of the Commission decision-making procedure.

First, the Quality of Legislation team intervenes during the interservice consultation, when the text is only available in one language (English or French).

At this stage, the text is presented for the first time by the Directorate-General of origin to other relevant Services. The text can still be changed and reformulated completely, not only in respect of substance, but also in respect of form and structure through the application of the rules of legislative drafting. The intervention of the Quality of Legislation team concentrates on the latter aspect, in close cooperation with the authors and the other thematic teams of the Legal Service. Its contribution is crucial for ensuring that the structure and wording of legal acts respect the principle of legal certainty. It also means that the text received by DG Translation is as clear and unambiguous as possible, giving it the best chance of producing a high-quality version in the other official languages.

**1675 legal texts**  
under-went legal  
revision  
**The target of 100 %  
of selected texts was  
reached.**

**150 legal texts**  
were legally and  
linguistically revised in  
two or more official  
languages.  
**The target of 70 texts  
was exceeded.**

**303 legal texts**  
needed corrigenda.  
**The target of 340  
texts was not  
reached.**

**Number of reviewed  
pages increased  
from 32 000 in 2017  
to 61 000 in 2018.**

Over the years, because of the quality of the advice given, the Quality of Legislation team has increasingly been involved in the conceptual phase of drafting acts, even before the official Inter-service consultation; that activity was also particularly intense in 2018.

Second, just before adoption or approval by the Commission, when the text has been translated into 23 languages (or 24 when the Irish version is also needed) it may be revised in all official languages by the Quality of Legislation team. That multilingual revision has a twofold purpose:

- to verify the consistency of the linguistic versions from a legal point of view and
- to check that the text corresponds to the advice on legislative drafting given by the team during the interservice consultation.

In 2018, the team also participated in the preparedness efforts linked to the withdrawal agreement with the United Kingdom by revising some 80 Notices and related texts intended to inform citizens of the Union about the practical implications of the United Kingdom leaving the Union, in all official languages.

Due to the political circumstances (Multiannual Financial Framework proposals, which need to be adopted in time to allow a meaningful debate in the European Parliament before the end of the legislature and the withdrawal agreement with the United Kingdom) work was especially intense in 2018. The staff showed great commitment and dealt efficiently with the particularly high level of activity this year, notably in the exceptional number of fast-track files, which also included intensive exploratory work further upstream. The number of corrigenda remained almost stable even decreasing slightly in comparison with 2017.

Graph 4 presents the number of legal texts dealt with by the Quality of Legislation team during the last five years.



Graph 4: Number of draft legal texts dealt with by the Quality of Legislation team per year (Source: Jurrev)

## B – Codification and Recast of legal acts

In 2018, the Legal Service completed the preparation of four codified acts in all official languages as listed in “Decide Planning”. Three of those were sent as proposals to the legislator. The fourth has not yet been submitted to the European Parliament and the Council pending the outcome of a Court case. In addition, three other codification exercises were initiated with 'master copy' texts submitted for approval to the responsible DGs and a few further codifications were prepared but put aside awaiting the amendment or repeal of the acts to be codified.

**All codified legal acts listed in *Decide Planning* were finalised in 2018. The target of 100 % was reached.**

**Nine recasts of legal acts were carried out in 2018.**

Moreover, the Legal Service actively participated in the legislative procedures on the proposals submitted to the legislator in the previous years and in 2018. This eventually led to the adoption and publication in the *Official Journal* in 2018 of four new codified legislative acts and to the legal-linguistic finalisation of six codified texts. In addition, nine recast exercises (recast consists of the codification of an act and the inclusion of new

amendments into the codified text) were carried out in 2018, leading to the submission of six legislative proposals to the European Parliament and to the Council during that year.

### **C - Other aspects of legislative simplification**

The Quality of Legislation team continues to maintain a list of the active *acquis*, identifying those acts of Union law in force, which are still applicable.

As shown above, the activity by the Quality of Legislation team of Legal Service has met its objective and has achieved, and even surpassed the annual performance indicators and outputs in the reporting year.

In 2018 the Quality of Legislation team continued to provide targeted training to Directorates-General and agencies on legislative drafting and participated in the inter-institutional training programme for lawyer-linguists and legal revisers.

## 1.2 Legal Advice

The Legal Service is consulted and gives advice in all areas of the Commission's activities. Its advice can lead to a reduction in the number of court cases brought against the Commission; hence it contributes to efficiency gains throughout the Commission through its activities.

Beyond the "formal" consultations, registered as such in ARES and Decide, the Legal Service is constantly consulted by other Directorates-General on legal questions on a more informal and direct basis, often by a simple mail, or assists the services in the formulation of replies to citizens and interested parties (e.g. the Legal Service regularly assists DG Communication in replies to be given to citizens who have addressed a question on European law to the 'Europe Direct Contact Centre'). It is difficult to assess the volume of the consulting activity. It has grown over the years and is estimated to account for half of the working time of the lawyers in the teams. The Legal Service also actively assists and participates in international negotiations.

**GENERAL OBJECTIVE:**  
**PROVIDE QUALITATIVE AND TIMELY LEGAL ADVICE TO OTHER DGs.**

Legal advice is included in the ABB activity of Consultation, litigation and infringements.

Chart 3 shows the staff resources involved in legal advice as a proportion of the Legal Service staff as a whole.

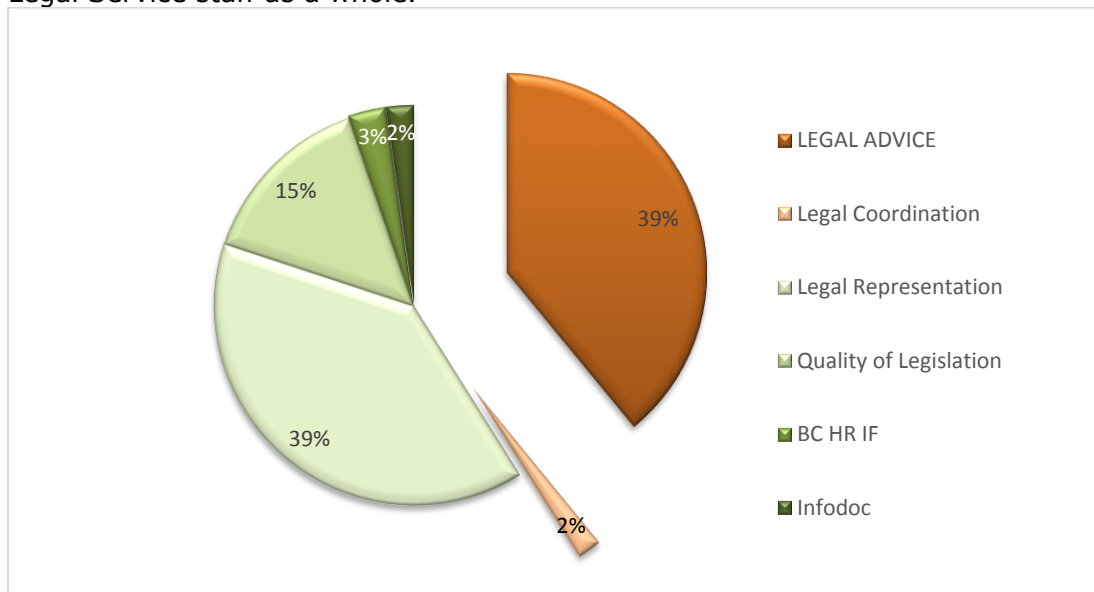


Chart 3: Number of staff in the various functions (Source: Sysper)

This activity is managed by the thematic teams of the Legal Service. 39% of working time of staff is devoted to legal advice. Given that the Director-General attends the weekly meetings of the Commission and of the Heads of Cabinet to assist and advise them, a significant part of the Legal Coordination is also dedicated to legal advice.

As regards its advisory activity, the Legal Service accompanied the Commission's activity in an important number of very sensitive and legally very complex files.

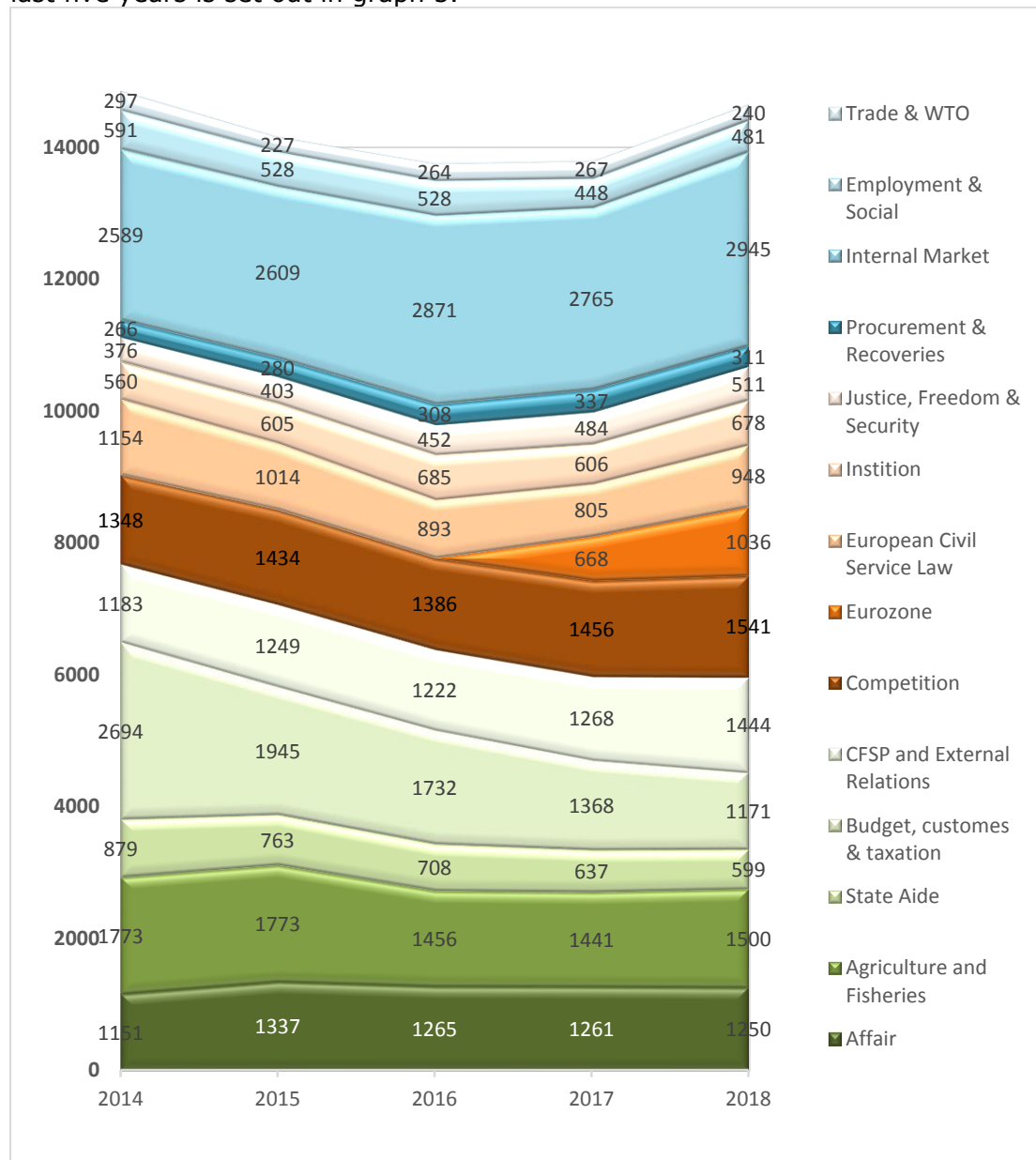
Legal advice only involves very insignificant financial expenditure.

The Legal Service reached its target to reply in due time to more than 93% of consultations. Given that the Legal Service staff contact their client DGs throughout the process of interservice consultation, the real time to reply is actually quicker.

The Legal Service has put in place several functions ensuring quality in its operations in order to meet the quality objective set for legal advice and legal representation. These have worked as intended and therefore contributed to the achievement of the quality aimed for.

In addition to interservice consultations, there are several other kinds of consultations, which also include "exploratory" discussions between the Legal Service and the other Directorates-General. The Legal Service intervenes throughout the process in the preparation of legal drafts. This kind of consultation also includes consultations in infringement cases (see section 1.4 Full benefits of rules to the European citizens).

The number of formal consultations dealt with by each thematic teams during the last five years is set out in graph 5.



Graph 5: Evolution of consultations per year and thematic teams (Source: Ares)

The number of consultations fluctuates around 14 000 per year. However, it varies in volume from team to team over the years.

The teams with the most significant number of consultations in 2018 were the Internal Market, Competition and Agriculture and Fisheries.

The Eurozone team became operational in the second half of 2017, which explains the decrease in the number of consultations followed by the European Civil Service Law, External relations and Institution teams.

The most significant drop in the number of consultations can be found in the Budget, Customs and taxation team resulting from the establishment of the Eurozone team.

**93 % of all consultations were replied to within the set deadlines. The target set at 92% was exceeded.**

Annex 12 contain additional information on the number of consultations.

### **Important consultations dealt with by the Legal Service in 2018:**

In May 2018, the **Commission proposed a new, modern and focused long-term budget**, geared to the political priorities and combining new instruments with modernised programmes to deliver efficiently on the European Union's priorities and to rise to new challenges. The Legal Service contributed significantly to the numerous proposals contained in this package, which included both the revenue and the expenditure side as well as a proposal for a regulation to protect the Union's budget when weaknesses in the rule of law impair – or threaten to impair – sound financial management or the financial interests of the Union.

The Legal Service continued to be very actively involved in the negotiations of an **agreement with the United Kingdom on its orderly withdrawal from the Union**. At the same time, in order to make the necessary adjustments in EU rules for any Brexit scenario and to prepare the Union for the possibility of a withdrawal of the United Kingdom without a withdrawal agreement, the Commission adopted a number of legislative proposals (concerning car type-approvals, the apportionment of tariff rate quotas, ship inspections, the realignment of the North Sea – Mediterranean Core Network Corridor, visa requirements for third country nationals energy efficiency, territorial cooperation on the island of Ireland, air and road transport, and a general export authorisation for dual use items). The Commission also adopted a series of delegated and implementing acts, in particular in the fields of financial services and climate policy. The Legal Service advised extensively on those proposals and acts and accompanied them as necessary throughout the legislative process. The Legal Service also contributed to the answers to a great number of other questions concerning the withdrawal of the United Kingdom without an agreement.

Due to the approaching end of the parliamentary term, a **great number of legislative proposals** were brought to conclusion in negotiations with the legislator. The Legal Service played an important role when scrutinising the positions the legislator intended to take and advised on legal issues that arose from those positions in order to allow the Commission to take a stand on them.

The Legal Service followed closely the **US measures on steel and aluminium** (25% and 10% increase in tariffs, respectively) taken in the framework of alleged national security investigations under Section 232, making important contributions to the EU's response. The EU considers that the US measures are of a protectionist nature, aiming at safeguarding domestic industries, and cannot be justified under the WTO security exceptions. The EU took a threefold action: (i) it initiated a WTO case against the US measures; (ii) it imposed re-balancing measures on certain US products (increase in tariffs, immediately targeting a list of US products worth 2.8 billion €); and (iii) it enacted its own steel safeguards measures (tariff-rate-quotas) in order to address possible distortive effects of the US measures.

The Legal Service has worked in close cooperation with DG TRADE to ensure that the **Economic Partnership Agreement with Japan**, the largest and most comprehensive free trade agreement so far negotiated with a third country, covered exclusively matters within the Union's competence and could be approved by the Union alone, without requiring subsequent ratification by the 28 Member States. This opened the way to a swift conclusion of the agreement by the Union and its entry into force already on 1 February 2019.

### Access to documents, Ombudsman and parliamentary questions

The Legal Service, like all Commission services, ensures the implementation of the concept of openness and transparency in the work of the institution on a daily basis in accordance with Article 15 TFEU. In the two stage administrative procedure provided for by Regulation (EC) No 1049/2001, the Legal Service responds at the initial level to requests for access to documents of its own service.

Over the past few years, there has been an increase in the volume of requested documents, which can be explained by the judgement of case C-2013/15P on 18 July 2017. The Court confirmed the judgment of the General Court holding that the Commission cannot refuse access to written submissions of the Member States held by it, on the sole ground that they are documents relating to court proceedings of which it is not the author.

The InfoDoc team deals with the initial level of requests for access to documents. In 2018, the team dealt with 225 initial requests for access to approximately 850 documents.

*In 2018, the Legal Service gave its advice on 14665 requests. 8936 of these were consultations on legal proposals.*

*6264 replies to parliamentary questions were given, 812 petitions and 73 requests from the Ombudsman were also answered in 2018.*

The Institution team of the Legal Service is consulted on all the decisions taken by the Secretary General on behalf of the College at the confirmatory level of the administrative procedure. The Institution team gave its opinion on 278 draft confirmatory replies in 2018. This is an area which also generates litigation: in 2018, eleven new cases for annulment were brought against confirmatory replies; in the same period, the General Court handed down 22 judgments in cases on access to documents concerning the Commission, of which 19 were dismissed.

Moreover, during the year, the Institution team has also reviewed 73 requests from the Ombudsman, 812 petitions and 6264 parliamentary questions. For the majority of the parliamentary questions, the request is for a legal opinion, only in 16 questions was the Legal Service responsible and in another 274 questions co-responsible for the subject content of the reply. The management of parliamentary questions is under the responsibility of the Secretariat General.

The decrease in parliamentary questions is explained by the European Parliament measures to limit the number of parliamentary questions. Rule 130(3) of the EP Rules of procedure which states that "each Member may submit a maximum of twenty questions over a rolling period of three months".

The Commission is by far the main institution concerned by the complaints handled by the European Ombudsman (on average more than half of all complaints). When consulted on draft Commission replies to the Ombudsman, the Legal Service has to ensure not only that the law is respected, but also that there is a coherent approach across the Commission as regards the acceptance of the Ombudsman's recommendations and suggestions for improving Commission procedures.

In 2018, the Ombudsman has conducted an investigation into, in particular, the language policy for public consultations by the Commission services, the handling of infringements complaints and the appointment of the new Secretary General. The Legal Service contributed actively to the Commission's response to these investigations.

## 1.3 Legal Representation

In 2018, the Legal Service represented the Commission before

- the two instances within the Court of Justice of the European Union namely the Court of Justice and the General Court;
- before the Dispute settlement bodies within the WTO in Geneva,
- the EFTA court; and finally,
- before the national courts, both in the Member states and in third countries, in cases where the Union or the Commission were parties. A significant proportion of the cases in national courts concerned forced recovery of debts (75 % in 2018).

**GENERAL OBJECTIVE:**  
**PROVIDE QUALITATIVE AND TIMELY REPRESENTATION IN ORDER TO DEFEND THE INTERESTS OF THE COMMISSION BEFORE COURTS AND TRIBUNALS.**

Litigation is included in the ABB activity of Consultation, litigation and infringements.

In order to ensure that a court case is dealt with correctly, it is of vital importance that 100% of all court deadlines are respected and that the Commission is represented at 100% of hearings.

The Legal Service was present to defend the interests of the Commission in all court hearings in cases where the Union or the Commission were parties during 2018.

This activity is managed by the thematic teams of the Legal Service. 39% of working time of staff is devoted to legal advice and a significant proportion of the legal coordination resources. Legal representation includes litigation and infringements. Staff members in the thematic teams as well as the Quality of Legislation team defend the Commission in the courts.

**The target of 100 % representation by the Legal Service in court hearings was reached.**

**The target of court documents filed within deadline of 100% was reached.**

Chart 4 shows the staff resources working on Legal Representation as a proportion of the Legal Service staff as a whole.

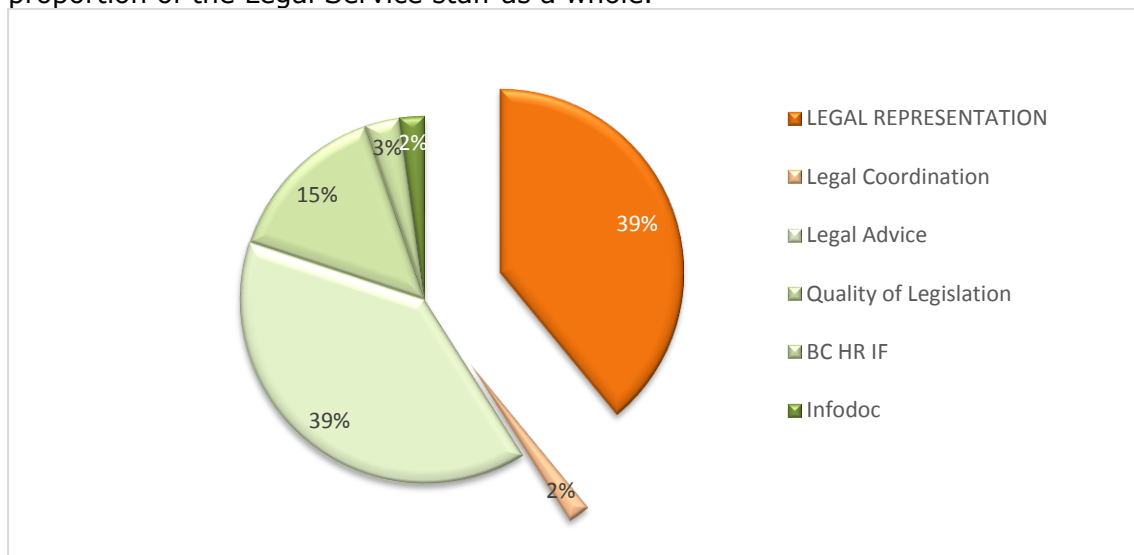


Chart 4: Number of staff in the various functions (Source: Sysper)

This activity accounts for the vast majority of the Legal Service's financial expenditure.

In 2018, the Legal Service paid 3.5 million € for litigation, including fees to external law firms, costs imposed on the institution by the courts in lost cases and fees for other lawyers and legal experts assisting in national courts or on technical or linguistic issues or particular areas of legal expertise.

Chart 5 shows the financial resources deployed in Legal Representation.

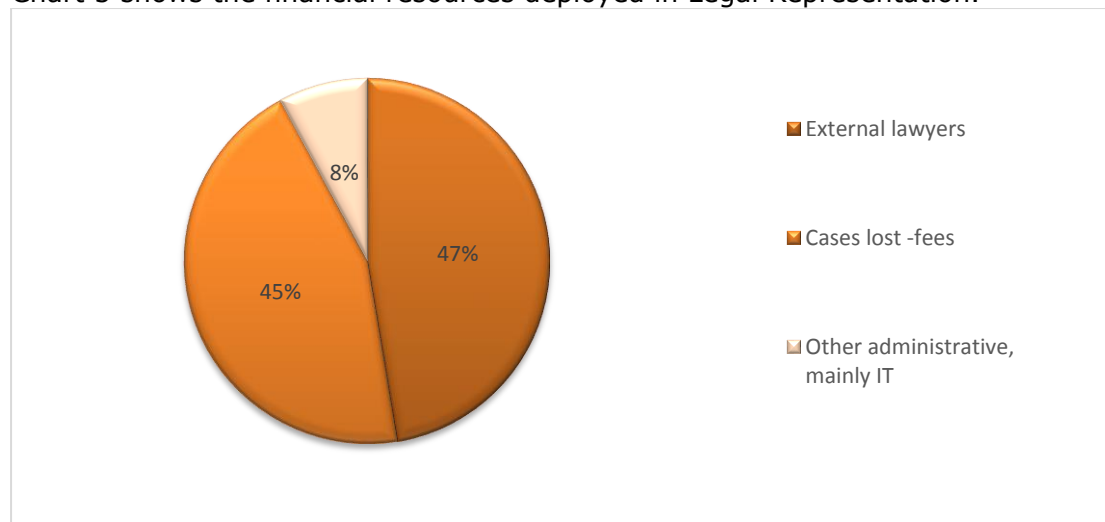


Chart 5: Deployment of financial resources in the Legal Service (Source: ABAC)

The mission expenditure for the Legal Service is mainly for travel and stay in relation to court hearings. In total, more than 90% of all costs in the Legal Service are directly related to court proceedings.

Other administrative expenditure is mainly for IT development and training, both of which indirectly serve all operational activities in the Legal Service.

### **Representing and Defending the European Union**

The Legal Service has put in place several layers of quality ensuring functions in its operations in order to meet the quality objective set for legal representation. In particular, the Legal Service in 2018 has intensified its efforts to ensure the coordination of positions taken in litigation. In particular, for politically sensitive cases the line which the Legal Service intends to take is presented in due time to the President's Cabinet and other cabinets involved.

Defending the Commission is the unique responsibility of the Legal Service. Its staff have in-depth knowledge of Union law. Staff in the Legal Service often have previous experience as external lawyers or as lawyers in other Commission services, in other institutions or in Member States' administrations with expert knowledge of particular areas of Union law, and participate in regular training on Union law as well as on the job training. The organisational structure of the Legal Service enables staff to take on a high level of responsibility, which is one of the key aspects believed to contribute to the high staff satisfaction index.

Some of the cases pleaded by the Legal Service concerned large sums of money important points of law for citizens or important points of institutional law. Losing these cases would have an important reputational impact for the Legal Service and for the Commission as a whole, constraining its field of activity and reducing its influence in the business and political arena.

Coordination mechanisms are in place to ensure the consistency of the positions the Legal Service takes on behalf of the Commission. The Legal Service informs the President's Cabinet of judgments in sensitive cases and contributes to the public communication on judgments by working together with the Spokesperson Service. The most significant judgments are mentioned in the annual report of the Commission.

Table 1 shows the evolution of court cases managed by the Legal Service since 2014.

Number of cases managed by the Legal Service per year and per jurisdiction						
Jurisdiction	Cases	2014	2015	2016	2017	2018
Courts of the Union	On-going cases *	1 798	1 768	1 482	1 769	1 673
	New Cases	1151	1039	973	1015	985
	Closed Cases	1147	1044	1082	923	1062
National Courts	On-going cases *	709	772	882	766	775
	New Cases	137	153	173	154	140
WTO	On-going cases *	63	62	64	67	81
	New Cases	15	13	22	22	45

Table 1: Evolution of number of court cases managed by the Legal Service in the Union Courts (Source: Base Contentieux), \* Figures for On-going cases are indicative.

The number of ongoing court cases is around 1.700 for Union Courts and just below 800 for National courts. An increase has been noticed for WTO.

### Court outcome

In 2018, out of the 913 decisions cases registered in the Court of Justice, the Legal Service won 58% and lost 7%. 14% of cases were partly won and the remaining 21% of cases (*non-applicable*) are mainly discontinued proceedings and cases removed from the Court's register for various reasons.

The outcomes in the General Court and EFTA show similar results for 2018 compared to previous years.

Table 2 shows the results of proceedings in the Union Courts in 2018.

Court decisions per jurisdiction and outcome for 2018					
Jurisdiction	Won	Lost	Partly	non applicable	Total Court Decisions
Court of Justice	376	48	94	134	652
General Court	262	52	23	60	397
EFTA	11	1	1	-	13
total	649	101	118	194	1062

Table 2 continues on next page

Table 2 shows the results of proceedings in the Union Courts in 2018.

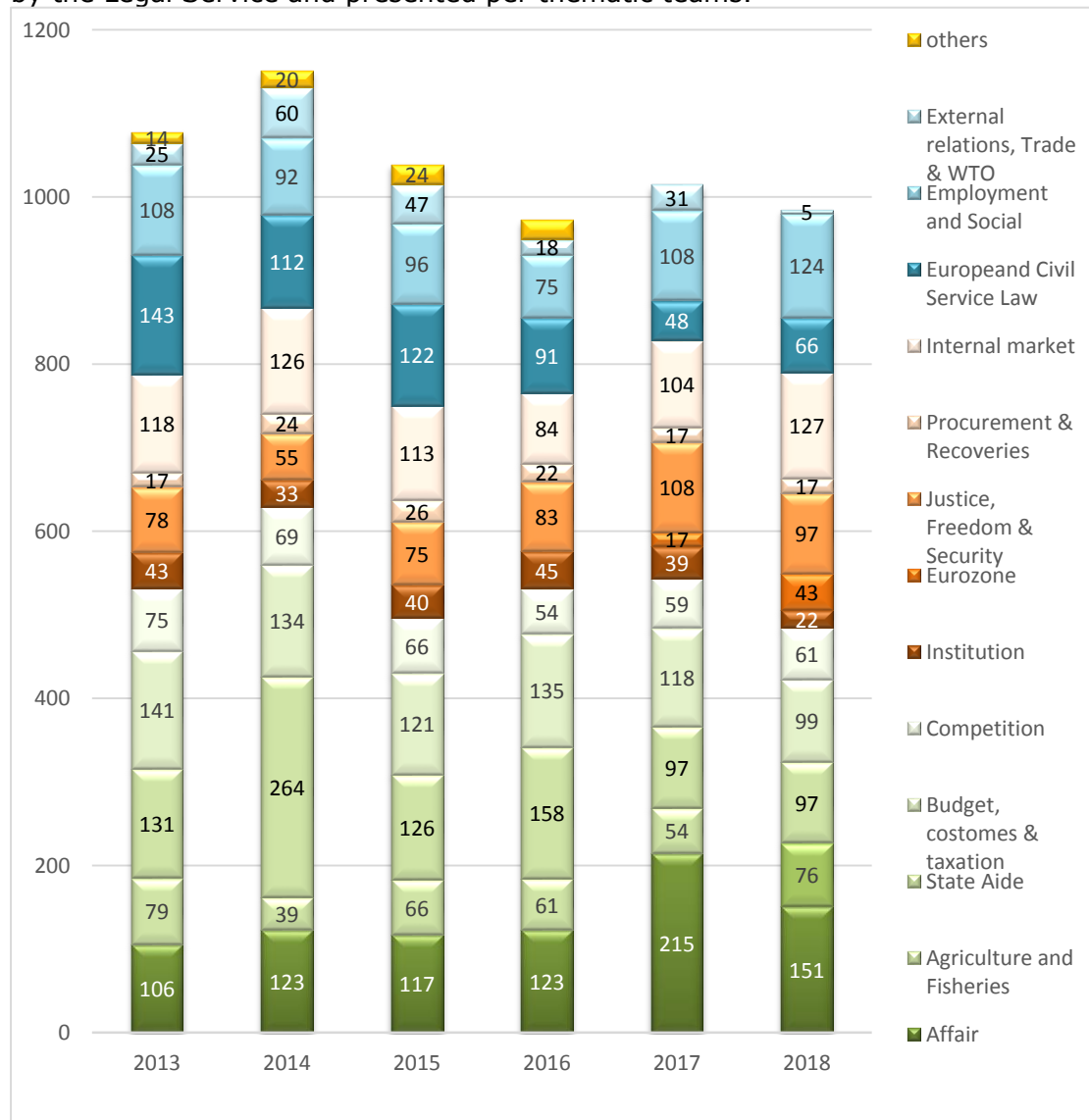
Outcome per jurisdiction in percentage of total cases for 2018					
Jurisdiction	Won	Lost	Partly	non applicable	Total Court Decisions
Court of Justice	58%	7%	14%	21%	61%
General Court	66%	13%	6%	15%	37%
EFTA	85%	8%	8%	0%	1%
average	61%	10%	11%	18%	100%

Table 2: Results of the proceedings before the Union Courts (in value and in %) (Source: Base Contentieux).

### Courts of the European Union

The majority of the court hearings in which the Legal Service represents the interests of the European Commission take place in the Court of Justice and the General Court.

Graph 6 shows the number of new cases since 2014 in the Union courts managed by the Legal Service and presented per thematic teams.



Graph 6: Number of new court cases in the Union courts: Source: Base Contentieux).

The number of new court cases for the Legal Service in total remains relatively stable and fluctuates around 1.100. However, the annual variation between the thematic teams is more significant.

The most significant increases in number of new cases in 2018 can be found in:

- the Agriculture and Fisheries team and is explained by an increase in preliminary rulings and a general increase in all domains
- the Eurozone team due to the Cypriot banking crisis which in turn has generated a number of largely similar actions for damages by depositors and shareholders of Cypriot banks against the institution
- the Internal Market team due to an increase of preliminary requests in the sectors of public procurement and environment.

The Affair team continues to have the highest number of new cases despite a drop from 215 cases in 2017, which was an exceptional year because of a large number of cases concerning the resolution of Banco Popular. Litigation in 2018 remains at historically high levels.

The high number of cases in the Employment and Social team arises from a better awareness by the citizens of their rights under EU law.

More information about new court cases can be found in Annex 12.

### **National courts**

At year-end, there were 775 pending cases before national jurisdictions:

- 580 cases concerned recovery of debts, i.e. 75 % of national litigation
- the Commission was being represented as a civil party in 36 criminal cases
- 140 new cases in 2018, out of which 61 (43%) concerned recovery of debts
- 14 claims in the frame of liquidation/bankruptcy proceedings were still open.

In 2018, a total amount of 13.4 million € in bad debts was transmitted to the Contracts and Recovery Unit for legal actions with the purpose of recovering these amounts. 13 % of these debts were recovered during the same year. In 2018, 4.4 million € were recovered.

At the end of the year 841 recovery orders for a total amount of 142.5 million € were still open.

*In 2018, the Legal Service defended 1673 cases in the Union Courts, 775 cases in national courts and 81 cases in the WTO in Geneva.*

*The Legal Service recovered or set off EUR 4.4 million of bad debts.*

## **World Trade Organisation – WTO**

The Legal Service assists the European Commission to represent the European Union in all trade negotiations at the World Trade Organisation. The Legal Service also represents the European Union before WTO Panels and the WTO Appellate Body (see Trade below).

The increase in the number of WTO cases is explained by the high number of offensive, defensive and third party cases in the context of the US tariffs on steel and aluminium and the countermeasures taken by the EU and other WTO members as well as by increasing litigation against China.

### **Arbitration cases**

There were 64 new arbitration cases in 2018 and 8 cases were closed during the year.

There is an increase in the number of newly instituted arbitration proceedings. Moreover, on 29 June 2018, the Commission decided to intervene in all proceedings between an investor from one Member State and another Member State before an arbitral tribunal established either on the basis of a provision in a bilateral investment treaty between those two Member States or by virtue of Article 26 of the Energy Charter Treaty.

### **Important cases decided by the Courts and in which the Commission participated include:**

#### **STATE AID**

Case C-233/16 and Joint Cases C-236/16 and C-237/16, *ANGED*, concerns the notion of selectivity and the admissibility of questions on the **legality of a tax under State aid rules**. These cases related to three regional taxes on retail establishments, which provided for exemptions or reductions for small (in terms of surface) retail establishments. The Court explained that the legality of the rules relating to the tax must be interpreted as a matter of EU law, hence the questions were admissible, despite the fact that the persons liable to pay the tax cannot avoid payment of that tax by pleading that the tax amounts to unlawful aid. On selective advantage, the Court found that the retail establishments with sales surface, respectively, under and above certain m<sup>2</sup> threshold were not in a comparable situation in light of the (fiscal, environmental and town planning) objectives of these taxes.

Case C-374/17, *A-Brauerei*, was a highly important judgment for the notion of selectivity. The Court found the measure *prima facie* selective, but justified by the nature and structure of the system (avoidance of double taxation, anti-abuse).

Case C-510/16, *Carrefour Hypermarchés SAS*, is relevant from the perspective of modifications to existing aid. The Court considered that an increase in the tax revenue which finances several approved **aid schemes**, compared to the forecasts notified to the Commission, constitutes a modification of existing aid, unless that increase remains below the 20% threshold laid down in the second sentence of Article 4 (1) of Regulation No 794/2004.

In Case C-438/16P, *Commission v France and IFP Énergies nouvelles*, the Commission partially won a case related to **unlimited State guarantee**. The judgment relates to the notion of advantage in case of an unlimited State guarantee given to a legal person governed by private law which operates under

the economic and financial supervision of the State.

In Cases C-622/16P, C-623/16, C-624/16P, *Scuola Elementare Maria Montessori Srl v Commission, Commission v Scuola Elementare Maria Montessori Srl and Commission v Pietro Ferracci*, the Court arguably enlarged the admissibility of the actions for **annulment against State aid decisions launched by third parties** and brings clarity in the interpretation of the concepts of absolute impossibility and economic activity.

## **AFFAIR**

In Joined Cases C-360/15 and C-31/16 *X and Visser* the Court provided important clarifications concerning the scope of the **Services Directive**, in line with the observations submitted by the Commission. First, it considered that retail trade in goods constitutes a service within the meaning of the Directive. Second, it ruled that the provisions of Chapter III of the Directive, on freedom of establishment of providers, must be interpreted as meaning that they also apply to situations where all the relevant elements are confined to a single Member State. Third, it decided that the Directive applies to rules concerning the development or use of land, town and country planning where the latter are addressed only to persons who are contemplating the development of certain economic activities in a specific geographical zone, and not to individuals acting in their private capacity.

One of the most important judgments of the year, both for its institutional significance and for its practical consequences, was C-284/16 *Achmea*. The Court followed the Commission's observations and ruled that Article 267 TFEU, providing for the preliminary reference procedure, and Article 344 TFEU, prohibiting recourse to **methods of dispute settlement** other than those provided for in the treaties, preclude provisions in an investment protection treaty concluded between Member States, under which an investor from one of those Member States may, in the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept. According to the Court, such provisions call into question not only the principle of mutual trust between the Member States but also the preservation of the particular nature of the law established by the Treaties, ensured by the preliminary ruling procedure. They are therefore not compatible with the principle of sincere cooperation between Member States and the Union and have an adverse effect on the autonomy of EU law. The Legal Service has played an active role in the Commission's endeavours to ensure the proper implementation of this judgment, culminating so far with the declarations signed by all Member States on 15 and 16 January 2019, announcing their intention to terminate all bilateral investment protection treaties concluded between them.

In Case C-320/16 **Uber France**, building upon a 2017 judgment in Case C-434/15 *Asociación Profesional Elite Taxi*, the Court ruled that a national provision laying down criminal penalties for the organisation of a system for putting customers in contact with persons carrying passengers by road for remuneration, without being authorised to do so, concerns a 'service in the field of transport' in so far as it applies to an intermediation service that is provided by means of a smartphone application and forms an integral part of an overall service the principal element of which is the transport service. Therefore, such a national provision is excluded from the scope of application of the prior notification procedure of rules on Information Society services.

In Case C-219/17 *Berlusconi and Fininvest* the Court of Justice examined for the first time the mechanisms and procedures established by the so-called SSM Regulation in the area of **banking supervision**. Concerning, in particular,

administrative procedures consisting of a preparatory stage before the national supervisors and of a final stage before the European Central Bank, it was decided that the European Courts' exclusive jurisdiction on acts adopted by EU institutions extends to the incidental assessment of the legality of decisions to initiate procedures, preparatory acts or non-binding proposals adopted by national authorities. The Court has thus safeguarded the integrity of these composite procedures and preserved the exclusive competence of the European Central Bank from unwarranted interference by national courts.

### **AGRICULTURE AND FISHERIES**

In Cases T-429/13 and T-451/13, *Bayer and Syngenta v Commission*, the General Court dismissed in their entirety the actions brought by Bayer and Syngenta in relation to the neonicotinoids clothianidin, thiamethoxam and imidacloprid, confirming the validity of the restrictions introduced at EU level in 2013 against those **insecticides** because of the risks those substances pose to bees. The Commission succeeded in demonstrating that, in view of the considerable strengthening of the requirements that there should be no unacceptable effects of the active substances on bees, the risks identified by European Food Safety Authority warranted the conclusion that the three substances in question no longer satisfied the approval criteria. Consideration of the arguments put forward by Bayer and Syngenta in that respect did not reveal any errors (such as manifest errors of assessment) or any misapplication of the precautionary principle or the principle of proportionality.

In Case C-426/16 *Liga van Moskeeën en Islamitsche Organisaties Provincie Antwerpen VZW and Others v Vlaams Gewest*, the Court of Justice confirmed that **ritual slaughter** without stunning may take place only in an approved slaughterhouse, thereby confirming the validity of the Regulation on the protection of animals at the time of killing. That obligation does not infringe freedom of religion as it is only intended to organise and manage the freedom to practise ritual slaughter, taking into account the fundamental rules on the protection of animal welfare and the health of consumers of meat.

### **COMPETITION**

In fifteen judgments in Cases T-419/14 *The Goldman Sachs Group Inc v Commission*, and others, the General Court entirely dismissed all the appeals brought against the Commission decision in *Power Cables*. The General Court confirmed that the Commission had correctly established the involvement of every undertaking in the infringement and rejected the applicants' arguments as to, amongst others, the gathering of evidence during inspections, the Commission's jurisdiction and the parental liability of an investor over its subsidiary.

Case C-179/16, *Hoffmann-La Roche*, concerned a preliminary reference by the Italian Council of State on the scope of the product market definition and the "by object" restriction of competition encompassed in Article 101 TFEU. In this case, the Grand Chamber of the ECJ confirmed, first, that in principle, medicinal **products that may be used for the same therapeutic indications** may belong to the same product market, regardless of whether they are being used on-label or off-label (i.e. for treatments different from those for which a marketing authorisation has been granted), provided that they are not illegally manufactured or sold.

Second, the ECJ found that an arrangement between two undertakings that market two competing medicinal products, which consists in the dissemination, in a context of scientific uncertainty, of misleading information on adverse reactions

resulting from the off-label use of one of those products with a view to reducing the competitive pressure it exerts on the other product, constitutes a restriction of competition “by object”. T

Case T-712/16, *Deutsche Lufthansa*, constitutes the first judgment regarding a Commission decision rejecting a waiver request from merger commitments. In this case, the Commission had rejected **Lufthansa’s request for a waiver** of certain long-term pricing commitments attached to the clearance of Lufthansa’s acquisition of Swiss in 2005. These commitments apply to the Zurich-Warsaw and the Zurich-Stockholm passenger air routes serviced through codeshare agreements between Lufthansa/Swiss and respectively LOT and SAS. In its judgment, the General Court upheld the Commission’s waiver rejection with regard to the Zurich-Warsaw route, but annulled it with regard to the Zurich-Stockholm route.

In Cases T-827/14, *Deutsche Telekom*, and T-851/14, *Slovak Telekom*, the General Court largely upheld the Commission’s conclusion that Slovak Telecom, the incumbent telecommunications operator in Slovakia and a subsidiary of Deutsche Telekom, had **abused its dominant position** by refusing to provide alternative operators with unbundled access to its local loop network and by engaging in margin squeeze practices in relation to this local loop network.

In 5 judgments in Joined Cases C-138/17P *EU v Gascogne Sack Deutschland and Gascogne*, and others, the ECJ, on appeal, set aside the General Court’s judgments by means of which **compensation had been awarded for material damage** suffered as a result of the General Court’s original breach of the obligation to adjudicate within a reasonable time. The ECJ considered that the General Court failed to establish that there was a sufficiently direct causal link between the breach of the obligation to adjudicate within a reasonable time and the damage claimed in this case, which consisted in the payment of bank guarantee charges during the period by which the reasonable time was exceeded. The ECJ held that when an undertaking lodges a security pending the outcome of an annulment action against a fining decision, the damage does not result from the fining decision itself, but from an undertaking’s own choice to lodge a security rather than to fulfil its repayment obligation immediately.

## **EUROZONE**

In 2018, the Commission’s Legal Service strongly supported the European Central Bank (ECB) in a landmark case before the European Court of Justice. Since 2015 the ECB has pursued a policy of massive bonds issuance, a so-called ‘quantitative easing’ policy, to address a risk of deflation in the euro area, which would have had adverse consequences for price stability. In this context, the validity of the decision of the ECB to establish a programme for **purchases on the secondary market of debt bonds of euro-area Member States** was challenged before Germany’s Federal Constitutional Court. The latter sent that question to the Court of Justice, which in December 2018 confirmed the validity of the ECB policy. The Court found that the programme stayed within the powers of the ECB and did not breach the Treaty’s ban on monetary financing by the ECB and national central banks of Member States. The position advocated by the Commission was upheld by the Court, as were the reasons it had developed in its submissions.

## **INSTITUTION**

Legal questions concerning the consequences of the withdrawal of the United Kingdom from the Union will doubtless generate in the future a lot of litigation, but already in 2018 the Court of justice had to deal with the withdrawal agreement with the United Kingdom. In a landmark judgement, in case C-

621/18, *Wightman*, on a preliminary reference from the Scottish Court of Session, the Court decided that Article 50 TEU, which establishes the right for any **Member State to withdraw from the Union** and the procedure to be followed in such a case, must be interpreted that where a Member State has notified its intention to withdraw from the Union, that state can, as long as it is still a Member State, unilaterally revoke that notification, provided it does so in an unequivocal and unconditional manner, in accordance with its constitutional requirements. By such a revocation of the notification of the intention to withdraw from the Union, the Member State concerned confirms its membership of the Union under terms that are unchanged.

### ***JUSTICE, FREEDOM AND SECURITY***

Wide-ranging reforms to the system of justice in Poland led the Commission to adopt, in December 2017, a reasoned proposal under Article 7(1) TEU, for the determination of the existence of a clear risk of a serious breach of the rule of law in Poland. The proposal, which raised concerns regarding the capacity of Poland's judiciary to continue to operate free from political influence, prompted doubts as to the continuing basis for trust in the administration of criminal justice in that Member State, and consequently, for continued **judicial cooperation in criminal matters**. In Case C-216/18, LM, a Polish national accused of narcotics offences sought to resist his surrender to Poland under the Framework Decision on the European Arrest Warrant (EAW), maintaining that in light of the systemic deficiencies identified in the reasoned proposal, his transfer would expose him to a real risk of a flagrant denial of justice. In a highly sensitive reference, the High Court of Ireland sought an urgent ruling from the Court of Justice on the impact of the failings identified on the execution of European arrest warrants to Poland. In particular the referring court inquired whether deficiencies of a systemic nature justified the suspension of EAWs to Poland without the requirement for a further specific assessment of the risk of a breach of fundamental rights in any individual case. In its judgment, the Grand Chamber of the Court adopted the position and reasoning advanced by the Commission. The Court ruled that where an executing judicial authority has material, such as the findings set out in the reasoned proposal, indicating the existence of a real risk of breach of the fundamental right to a fair trial guaranteed by Article 47(2) of the Charter, then in determining whether to order the transfer of an individual under the EAW Framework Decision, an executing judicial authority must determine, specifically and precisely, whether, having regard to the personal situation of the individual concerned, and the specific factual context of the case, there are substantial grounds for believing the surrender would expose him to the risk of such a breach of his fundamental rights.

### ***PROCUREMENT AND RECOVERIES***

In Case T-477/16, *Epsilon v Commission*, the applicant sought among others the annulment of its registration as an early detection case in the **Early Detection and Exclusion System** (EDES) database on the basis of article 263 TFEU. The applicant, relying in particular on the judgment *Planet v Commission* (T 320/09, EU:T:2015:223), argued that its claim was admissible in so far as the registration of early detection cases pursuant to the Financial Regulation are acts intended to produce legal effects. The General Court found that the registration of an early detection case in the EDES database merely makes it possible for authorising officers to verify that the rules of sound financial management have been observed and that the agreements have been properly performed, but does not result in an automatic measure or penalty. The registration does not therefore in itself produce any binding legal effects. Furthermore, the General Court ruled that the registration of an early detection case does not in itself constitute a final measure, in contrast to the registration of an exclusion, provided for in Article

106(1) of the (2012) Financial Regulation, the automatic consequence of which is that the entity is excluded from participating in any tendering procedures or calls for proposals. Any legal effects derive solely from the assessment made by the authorising officer once the verification has been carried out. Registration is therefore merely a measure *preparatory* to the decision of the authorising officer. Thus, only a decision that is the result of a verification constitutes an act that is open to challenge. The General Court therefore dismissed the action for annulment as inadmissible.

### **INTERNAL MARKET**

Case C-441/17 *Commission v. Poland*, concerned the Puszcza Białowieska' Natura 2000 site. The Białowieża forest is, one of the best preserved natural forests in Europe, characterised by large quantities of old trees, in particular trees a century old or more, and dead wood. On 17 April 2018, the Court found that Poland, by allowing active forest management operations and in particular the harvesting of trees in the forest, has breached both the **Habitats and birds directives**. A particularity of this case is that, while the judicial proceeding was ongoing, the Court issued an injunction to stop the contested measures, and, for the first time, backed this injunction with the possibility of a penalty in case of breach of the injunction. Poland complied with that Court injunction.

### **EMPLOYMENT AND SOCIAL**

In Case C-527/16, *Alpenrind*, the Court clarified that a posted worker is covered by the **social security system** of his place of work if he replaces another posted worker, even if those workers were not posted by the same employer. Further, it stated that, even in such a case of posting, a wrongly issued A1 certificate showing the affiliation of the worker to the social security system of the Member State of origin is binding, both on the social security institutions and the court of the Member State in which the work is carried out, so long as it has not been withdrawn or declared invalid by the Member State of origin.

In Cases C-414/18, *Egenbeger*, and C-68/17, *IR*, the Court stated that, under Directive 2000/78/EC establishing a general framework for **equal treatment in employment and occupation**, the right of autonomy of churches (and other organisations whose ethos is based on religion or belief), on the one hand, and, on the other hand, the right of workers, inter alia when they are being recruited or dismissed, not to be discriminated against on grounds of religion or belief must be the subject of a balancing exercise, in order to ensure a fair balance between them. Further, the decision of a church to impose certain criteria for recruitment or to subject its employees to a requirement to act in good faith and with loyalty to that ethos that differs according to the faith or lack of faith of such employees must be amenable to effective judicial review.

In Cases C-619/16, *Kreuziger*, and C-684/16, *Max-Planck-Gesellschaft*, the Court held that EU law precludes a worker from automatically **losing the days of paid annual leave** to which he was entitled under EU law and, consequently, his right to an allowance in lieu of the leave which is not taken, solely because he did not apply for leave before the employment relationship ended (or during the reference period). Those rights may lapse only if the employer actually gave the worker the opportunity, in particular through the provision of adequate information, to take the leave days at issue in good time, which the employer must prove he has done. The Court further stated that the above principles apply equally to employers which are public (such as the Land of Berlin) or private (such as Max-Planck-Gesellschaft). In fact, the right of every worker to periods of paid annual leave is not only enshrined in a directive, but also, as a fundamental right, in the Charter of Fundamental Rights of the European Union. That

fundamental right entails, by its very nature, a corresponding obligation on the employer, namely to grant such periods or an allowance in lieu of paid annual leave not taken at the end of the employment relationship. National provisions to the contrary must, where appropriate, be disregarded.

## **TRADE**

In December 2018, the Appellate Body of the WTO largely confirmed the findings of a previous WTO panel, established at the request of the EU, concerning a set of fiscal programs set up by Brazil to support its industry in the information and communication technology as well as automotive sectors (DS472). The WTO Appellate Body confirmed that these programs (which are an example of **Brazil import-substitution policy**) are WTO illegal as they provide advantages to domestic industries that discriminate against imported products. Some of these programs even imply the grant of prohibited subsidies, which must be withdrawn without delay. The Appellate Body's findings are final and Brazil now should remove the illegal aspects of these measures. The EU considered that those programs negatively affected a number of key EU industries, such as in the automotive and information technology sectors.

## 1.4 Ensuring the full benefit of rules for citizens of the Union

The Commission acts as the "Guardian of the Treaties" in its mission to ensure that Member States have fully transposed Union legislation and apply Union law correctly.

In order to ensure that Member States implement and apply the *acquis communautaire* correctly, the Legal Service assists the Commission and its Services in their contacts with Member States with a view to achieving compliance with Union law.

By ensuring that Member States have fully transposed Union legislation within the set deadlines, applied Union law correctly and implemented Court judgments correctly and in a timely manner, the Legal Service contributes to ensuring that the full benefits of those rules are granted to citizens.

**GENERAL OBJECTIVE:  
ENSURE THE FULL BENEFIT OF RULES FOR CITIZENS OF THE UNION  
BY ENSURING THAT THE MEMBER STATES HAVE FULLY TRANSPOSED  
UNION LEGISLATION AND APPLY UNION LAW CORRECTLY.**

Infringements are included in the ABB activity of Consultation, litigation and Infringements.

The Legal Service aims to reply in due time to 90% of infringement consultations received.

In order to ensure the Commission infringement procedure is followed efficiently and effectively, the Legal Service has a coordination team responsible for this task.

The Legal Service provides its advice at every stage in the formal infringement procedure and if needed, defends the interests of the Union, by representing the Commission before the Court of Justice; these procedures ultimately benefit the citizens of the Union.

**The target of 90 %  
of replies to inter-  
service consultations  
on infringement  
cases included in a  
given decision cycle  
was reached within  
the established  
deadlines in 2018**

The Commission attaches high priority to the application and implementation of Union law<sup>2</sup>. Control of the legality of the various steps of the procedure in all individual cases submitted by the other Directorates-General will continue to be an important part of the work of the Legal Service. In this context, not only does the Legal Service give its opinion on all cases in which a decision is submitted for adoption by the College, but, with the Secretariat general, it also coordinates the monthly infringement adoption process.

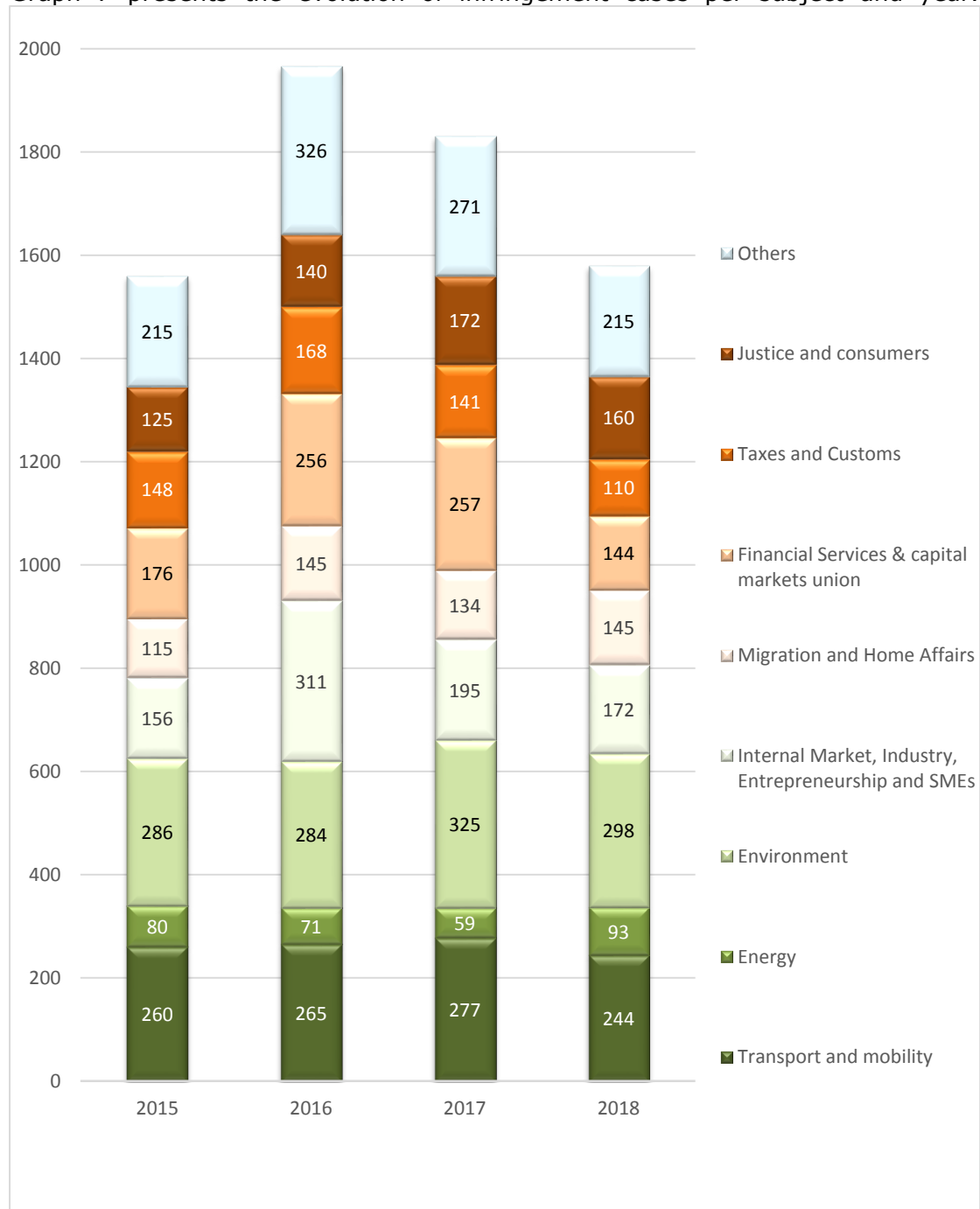
The Legal Service, with the Secretariat-General, has continued to organise the bi-annual infringement meetings at the level of the higher management to assess the performance of the Directorates-General in managing infringement procedures, and ensure coherence through sound legal reasoning and equality of treatment between Member States in similar cases as well as identifying

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<sup>2</sup> C(2016)8600.

horizontal legal issues.

Graph 7 presents the evolution of infringement cases per subject and year.

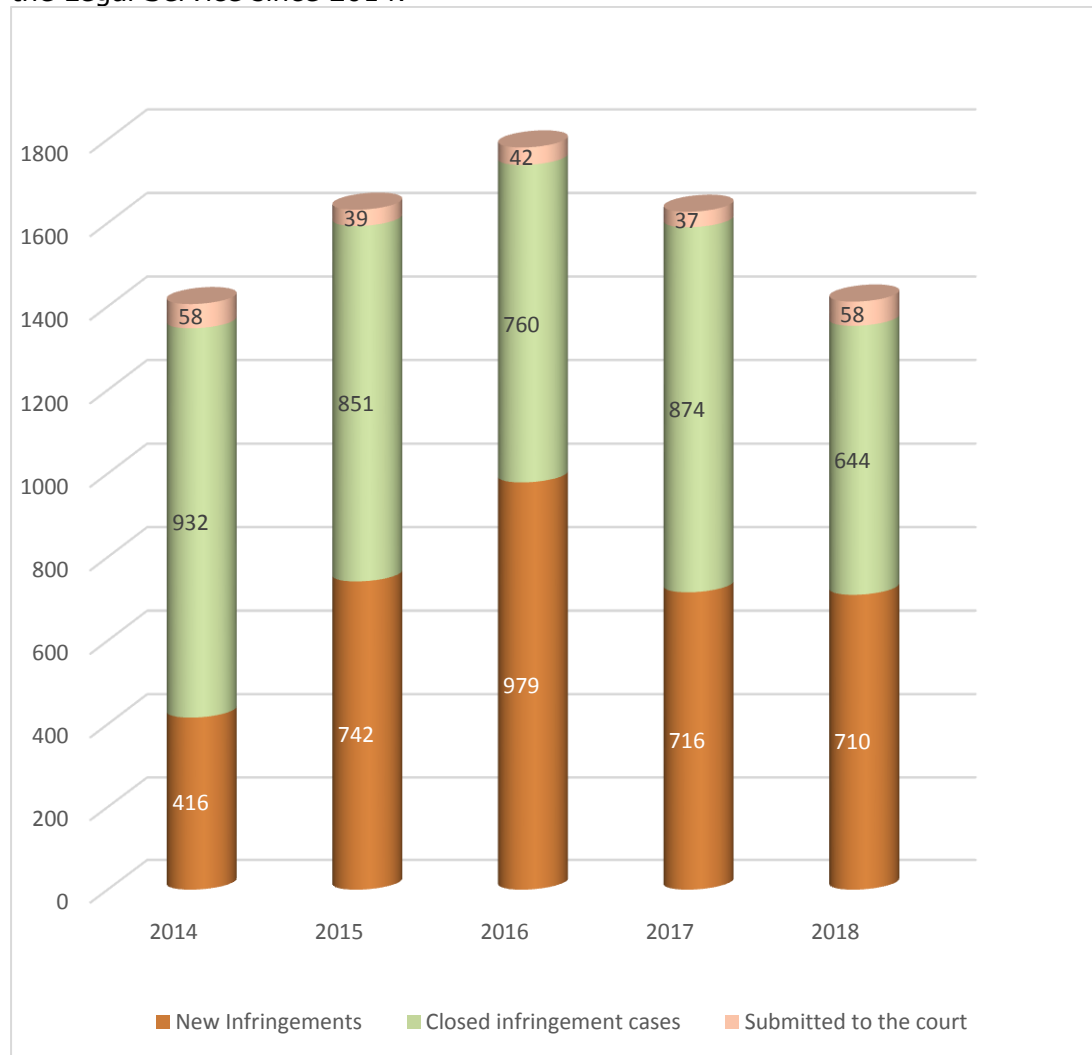


Graph 7: Development of infringement procedures (Source: NIF)

There is always a fluctuation of the number of infringement cases during the years. Over the past five years, the average number of infringements have been 590 new procedures.

There were 1581 ongoing infringement procedures in 2018 with 710 new procedures, 644 closed procedures and 58 cases brought before the Court.

Graph 8 presents the evolution of the number of infringement cases dealt with by the Legal Service since 2014.



Graph 8: Development of infringement procedures (Source: NIF)

The impact of the Legal Service in this area can be judged not only by the number of infringement procedures currently underway in the Commission, but also by those which are resolved without recourse to the Courts and those which are won (or lost) in Court, as the Legal Service is consulted on every single decision to be taken by the Commission.

The Legal Service will continue to monitor internal benchmarks to submit an application to the Court of Justice of the European Union after the Commission has adopted a decision to refer a case to the Court.

The Legal Service will continue to ensure specific coordination of the application of Article 260(3) TFEU to cases of non-transposition of directives adopted under a legislative procedure.

## 2. ORGANISATIONAL MANAGEMENT AND INTERNAL CONTROL

This section explains *how* the Legal Service delivered the achievements described in the previous section. It is divided into two subsections.

The first subsection reports the control results and all other relevant information that support management's assurance on the achievement of the financial management and internal control objectives<sup>3</sup>. It includes any additional information necessary to establish that the available evidence is reliable, complete and comprehensive, appropriately covering all activities, programmes and management modes relevant to the DG.

The second subsection deals with the other components of organisational management: human resources, better regulation principles, information management and external communication.

### 2.1 Financial management and internal control

Assurance is an objective examination of evidence for the purpose of providing an assessment of the effectiveness of risk management, control and governance processes.

This examination is carried out by management, who monitor the functioning of the internal control systems on a continuous basis, and by internal and external auditors. Its results are explicitly documented and reported to the Director-General. The reports produced are:

- the reports by AOSDs (authorising officers by sub delegation);
- the reports from Authorising Officers in other DGs managing budget appropriations in cross-delegation;
- the contribution by the Head of Unit in charge of Risk Management and Internal Control Coordinator, including the results of internal control monitoring at the DG level;
- the reports on recorded exceptions, non-compliance events and any cases of 'confirmation of instructions' (Art 92.3 FR);
- the reports of the ex-post supervision or audit;
- the limited conclusion of the Internal Auditor on the state of internal control, and the observations and recommendations reported by the Internal Audit Service (IAS);
- the observations and the recommendations reported by the European Court of Auditors (ECA).

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<sup>3</sup> Art 36.2 FR: a) effectiveness, efficiency and economy of operations; b) reliability of reporting; c) safeguarding of assets and information; d) prevention, detection, correction and follow-up of fraud and irregularities; and e) adequate management of risks relating to the legality and regularity of underlying transactions

These reports result from a systematic analysis of the evidence available. This approach provides sufficient guarantees as to the completeness and reliability of the information reported and results in a complete coverage of the budget delegated to the Director-General of the Legal Service.

This section reports the control results and other relevant elements that support management's assurance. It is structured into (a) Control results, (b) Audit observations and recommendations, (c) Effectiveness of the internal control system, and resulting in (d) Conclusions on the impact as regards assurance.

### 2.1.1 Control results

This section reports and assesses the elements identified by management that support the assurance on the achievement of the internal control objectives<sup>4</sup>. The Legal Service's assurance building and materiality criteria are outlined in the AAR Annex 4. Annex 5 outlines the main risks together with the control processes aimed to mitigate them and the indicators used to measure the performance of the relevant control systems.

The Legal Service is not the lead service for any policies or programmes; hence all expenditure of the Legal Service is administrative. Total payments in 2018 amounted to 3.8 million € mainly spent on contracts for external legal advice and expertise (47%) and on payments to opposing parties for their legal costs (45%).

The remaining 8 % of the administrative expenditure is mainly for IT investment.

Chart 4 shows the total administrative expenditure resulting from the Legal Service operations.

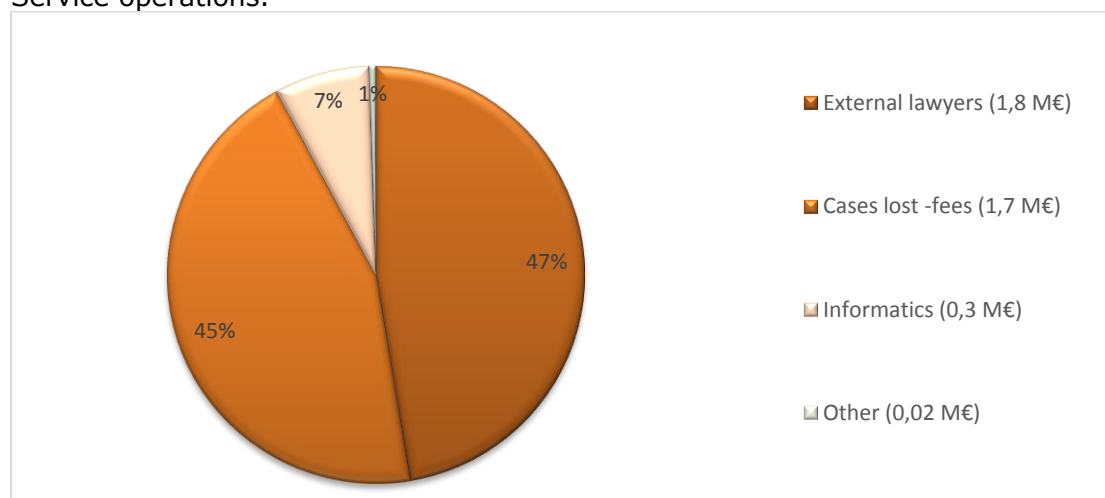


Chart 4: Deployment of financial resources in the Legal Service (Source: ABAC)

Mission expenditure for Legal Service staff amounts to 0.5 million € and is reported in the accounts of PMO. Training expenditure amounts to approximately 0.1 million € and reported in the accounts of DG HR.

The Legal Service has reported on the cross-sub-delegated budgets of 0.1 million € respectively to DG Communication and DIGIT.

<sup>4</sup> 1) Effectiveness, efficiency and economy of operations; 2) *reliability of reporting*; 3) *safeguarding of assets and information*; 4) prevention, detection, correction and follow-up of fraud and irregularities; and 5) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments (FR Art 36.2). *The 2<sup>nd</sup> and/or 3<sup>rd</sup> Internal Control Objective(s) (ICO) only when applicable, given the DG's activities.*

## Total payments by the Legal Service

Table 3 shows the amounts committed and paid in 2018:

<b>Activity</b>	<b>Commitments in 2018</b>	<b>Payments in 2018 (RAL 2017 included)</b>
Legal advice, litigation and infringements	3.4 M€	
External lawyers and experts		1.8 M€
Payments of opposing parties legal costs		1.7 M€
Administrative costs		
Other administrative expenses	0.3 M€	0.3 M€
Commitment in the Legal Service for Missions*	0.5 M€	-
<b>TOTAL for the Legal Service</b>	<b>4.2 M€</b>	<b>3.8 M€</b>
Payments made by the PMO for Missions*	-	0.5 M€
<b>TOTAL</b>	<b>4.2 M€</b>	<b>4.2 M€</b>

Table 3: Committed and paid amounts per activity in 2018, Annex 3, table 1 and 2 (Source: ABAC)

\*) Mission costs are paid by the PMO and reported on in their Annual Activity Report.

### Fees for external lawyers and other legal expertise

There are a number of situations in which the Legal Service needs to contract an external law firm or legal specialist. The most common situations are court cases in a national court where only a nationally recognised lawyer can plead. There are also situations where expert knowledge has to be acquired or, in some cases, a particular language skill is needed. The Legal Service applies article 164 § 4 of the RAP for low value procurement.

473 payments for a total amount of 1.8 million € were executed in 2018 to external lawyers and other legal expertise. Paid amounts varied from 34 € to 230.000 € with an average of 3.600 € per payment.

In 2018, 154 contracts and amendments were signed. The total contract value amounts to 1.2 million €. Contracted amounts varied from 1.000 € to 230.000 €.

### Payments to opposing party for their legal costs

The courts ordered the Legal Service in 2018 to pay the opposing parties for their legal costs resulting in a total amount of 1.7 million €. 47 payments were executed, i.e. an average of 35.400 € per payment.

### IT investments

The Legal Service has paid 0.3 million € on contracts for external staff to provide assistance in the IT developments, investments and maintenance via the framework contract provided by DIGIT.

### Mission

As from 2018, the mission expenditure payments are recorded and reported by the PMO in their Annual Activity Report. All missions in the Legal Service undergo an authorisation process with the purpose to ensure justification of them and to ensure they are in compliance with internal rules.

The majority of missions undertaken by Legal Service staff are for representation at the Court of Justice in Luxembourg, followed by missions for other legal matters. The missions to Luxembourg, for other legal matters and to the WTO represent 90% of all missions. 19 % of missions are staff giving external speeches, presentations and participates in conferences etc. with the aim to contribute to an increased knowledge about European Law.

The average cost for a mission to Luxembourg is 330 €, average costs for missions for other legal matters is 490 € and for WTO missions the average is 970 €. Missions for external speeches and presentations does not incur any mission charges.

Chart 5 presents the different kind of missions undertaken by staff in the Legal Service during 2018.

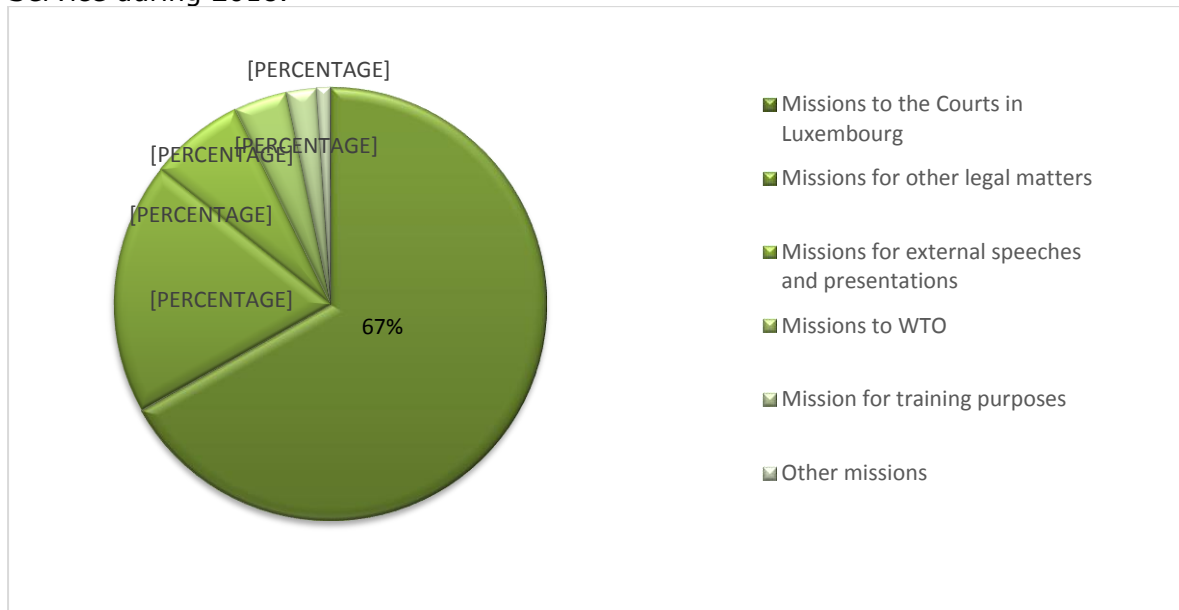


Chart 5: The different kind of missions undertaken. Source: MIPS

## Recovery Orders

The Legal Service is able to recover some of its expenditure for legal fees and missions from opposing parties. The total recognised revenue and income consists of the current year recovery orders (0.5 million €) and recovery orders carried over (0.6 million €).

Table 4 shows the summary table for issued recovery orders in the 2018 accounts.

	<b><u>Current year</u></b>	<b><u>Carried over</u></b>	<b><u>Total recognised revenue</u></b>
Recovery Orders 2018	0.5 M€	0.6 M€	1.1 M€

Table 4: Provisions and contingent liabilities, Annex 3, table 7.

## Provisions and contingent liabilities

At year-end, a provision for court costs for opposing parties is established. The amounts claimed initially are partly recorded as a provision and partly as a contingent liability.

Table 5 shows the most significant balance sheet and off-balance sheet items.

	<b><u>Current provisions</u></b> <b><u>2018</u></b>	<b><u>Contingent liabilities</u></b> <b><u>2018</u></b>
Expenditure related to costs for court cases	4.0 M€	6.0 M€

Table 5: Provisions and contingent liabilities, Annex 3, table 5 and 5bis.

### 1. Effectiveness = the control results and benefits

- **Legality and regularity of the transactions**

The Legal Service has set up internal control processes aimed to ensure adequate management of risks relating to the legality and regularity of underlying transactions, taking into account the nature of the payments concerned.

The **general control objective** for the Commission is to ensure that the residual error rate does not exceed 2% annually. The Legal Service has set its residual error rate to be below 2%.

#### Legal fees for external lawyers (47% of total expenditure)

The Legal Service's control strategy for its procurement procedure is based on ex-ante controls, in which Senior Management and the Financial Cellule play an important role. All contracts are reviewed by both before final approval.

All invoices are reviewed by the Financial Cellule before they are sent to the thematic teams for "*conforme aux faits*" and "*bon à payer*". Ex-ante controls of the legal services rendered are performed in the thematic teams.

Subsequent ex-post controls, both analytical reviews and random sampling, are carried out by the Internal Control Officer (ICO).

All AOSDs are requested to perform an ex-post control in connection with the issuance of their declaration of assurance.

During the past 7 years, there have been four payments, for a total value of 3.256 € (i.e. average of 465 € per year), identified as being incorrect by the ex-post control. There were no erroneous payments detected in 2018.

In 2018, three recovery orders were issued by the Legal Service for a total of 8.226 €. All three concerned charges from the external law firms (payment for arbitration and *hussiers*). During the authorising procedure in the Legal Service of the invoices, the charges were considered to be reasonable and in agreement with the contract conditions. In all three cases, the external law firm later informed the Legal Service that based on new information they had received, their charges had been lowered, hence, the Legal Service was entitled to reimbursement of a part of the initially fee.

The amounts were in accordance with the contract conditions, supported by invoices from the 'third parties' and represented very small parts of the total contract value. Therefore, these cannot be considered to be erroneous payments and hence, they are excluded from the calculation of the theoretical error rate.

The number of non-compliance incidents in the contracting procedure was <2 %

**Assessment:** The controls undertaken comply with baseline requirements and are considered to be efficient and effective. 100% of payments to contractors were controlled ex-ante by the Financial Cellule and the thematic teams and were approved at the appropriate level before payment. The average error rate for erroneous payments is below 1%.

### **Payments to opposing parties for their legal costs (45 % of total expenditure)**

In certain court cases, the courts decide that the Sommission must pay the opposing party for their legal costs, in part or in full. This is an expenditure which does not arise from a contractual obligation. The Legal Service's control strategy for this kind of expenditure is based on ex-ante controls, which give an important role to the thematic teams as well as the Financial Cellule. In the thematic teams, all such claims are reviewed and assessed, and often negotiated with the lawyer of the opposing party to come to an agreement. If an agreement cannot be reached, it is referred back to the court for a decision determining a reasonable amount the Legal Service should pay the opposing party to cover their legal costs.

To ensure completeness of these claims, the Legal Service' databases have been assigned with functions to register and report on closed court cases and if there are financial consequences to be expected.

At year-end, all thematic teams are requested to ensure registration in the databases of closed cases and their potential financial consequences. The Financial Cellule requests additional information from the thematic teams to ensure completeness of the information and to calculate the part to be recorded as a provision and the part to be recorded as a contingent liability.

A comparison of the provisions for payments to opposing parties with actual payments is carried out after actual payment for assessing the precision of the provision, and if needed, modifying the ratio between the provisions and the contingent liabilities.

**Assessment:** 100% of reimbursements to the opposing party for their legal costs underwent rigorous controls and were approved at the appropriate level before payment. The controls undertaken comply with baseline requirements and are considered to be efficient and effective.

### **Revenue**

For the court cases for which the Legal Service is entitled to recover its legal costs, consisting of external legal services and mission expenditure, the AOSD will initiate a recovery in accordance with the Commission procedures.

### **Provision and contingent liabilities**

Court decisions may require the Legal Service to pay the opposing party for their legal costs. The provision for cost payments to opposing parties for their legal costs is the largest item in the balance sheet (100% of total liabilities in 2018).

The Legal Service control strategy for the provisions and contingent liabilities is by ex-ante controls by the Directors. The Financial Cellule, the internal control officer and the head of HR BC IF also carry out controls.

**Assessment:** The controls undertaken comply with baseline requirements and are considered to be efficient and effective. The ex-ante and ex-post controls performed have not identified any significant errors in provision and contingent liabilities.

**Conclusion:** The control systems put in place in the Legal Service comply with baseline requirements. The results from the controls undertaken by the various actors in the Legal Service have not detected any material errors or systematic issues in the financial processes.

### Estimated amount at risk at payment

In the context of the protection of the EU budget, at the Commission's corporate level, the DGs' estimated overall amounts at risk and their estimated future corrections are consolidated.

For the Legal Service, the estimated overall amount at risk at payment<sup>5</sup> for the 2018 expenditure is 0.019 M€ (i.e. 19.000 €). This is the AOD's best, conservative estimation of the amount of *relevant expenditure*<sup>6</sup> during the year (3.8 M€) not in conformity with the applicable contractual and regulatory provisions at the time the payment is made<sup>7</sup>.

This expenditure will be subsequently subject to ex-post controls and a sizeable proportion of the underlying error will be detected and corrected in successive years.

The conservatively estimated future corrections<sup>8</sup> for the 2018 expenditure is set adjusted by 8.500 €<sup>9</sup>. This amount refers to cost compensation to opposing parties (1.7 M€) which does not incur any risks of erroneous payments.

For the other payments (Legal fees and Other administrative expenditure, at total of 2.1 M€) the conservatively estimated future correction for the 2018 expenditure is set to zero. This is the amount of errors that the Legal Service conservatively estimates to identify and correct from controls that it will implement in successive years.

The difference (19.000 € - 8.500 €) leads to the estimated overall amount at risk at closure for the 2018 expenditure of 0.0105 M€ (i.e. 10.500 €).

Table 6 on next page presents details and the calculation of the estimated amount at risk at closure for 2018. The amount is consistent compared with previous years.

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<sup>5</sup> In order to calculate the weighted average error rate (AER), the *detected or equivalent* error rates have been used; see note 6 to the table.

<sup>6</sup> "*relevant expenditure*" during the year; see note 5 to the table.

<sup>7</sup> "*payments made*" or *equivalent*; see note 2 to the table.

<sup>8</sup> Even though to some extent based on the 7 years historic Average of Recoveries and financial Corrections (ARC), which is the best available indication of the corrective capacity of the ex-post control systems implemented by the DG over the past years, the AOD *has adjusted the 2018 figure concerning the recovery orders issued for reimbursement of high cost paid to external lawyers which were found out to have been too high*.

<sup>9</sup> Total corrections during the past 7 years amounts to 3.256 €, i.e. an average of 465 € per year.

**Table 6 - Estimated overall amount at risk at closure**

<b>Legal Service</b>	"payments made" (FY; m€)	<i>minus</i> new prefinancing [ <i>plus</i> retentions made*] (in FY; m€)	<i>plus</i> cleared prefinancing [ <i>minus</i> retentions released* and deductions of expenditure made by MS] (in FY; m€)	<b>= "relevant expenditure" (for the FY; m€)</b>	Average Error Rate ( <i>weighted AER</i> ; %)	estimated overall amount at risk <i>at payment</i> (FY; m€)	Average Recoveries and Corrections ( <b><i>adjusted ARC</i></b> ; %)	estimated future corrections [and deductions] (for FY; m€)	<b>estimated overall amount at risk at closure (m€)</b>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Programme, Budget Line(s), or other relevant level	as per AAR annex 3, table 2	as per ABAC DWH BO report on prefinancing	as per ABAC DWH BO report on prefinancing	= (2) -/+ (3) +/- (4)	Detected error rates, or equivalent estimates	= (5) x (6)	H-ARC (as per ABAC DWH BO report on corrective capacity), <u>but adjusted</u>	= (5) x (8)	= (7) - (9)
Legal Fees	1.8 m €	n/a	n/a	1.8 m €	0.5%	0.009 m €	0%	0	0.009 m €
Cost reimbursement to opposing parties	1.7 m €	n/a	n/a	1.7 m €	0.5%	0.0085 m €	0.5%	0.0085 m €	0
Other administrative expenditure	0.3 m €	n/a	n/a	0.3 m €	0.5%	0.0015 m €	0%	0	0.0015 m€
Overall, total	3.8 m €	n/a	n/a	3.8 m €	0.5%	= 0.019 m €; and 0.5 % of (5)	0,2%	= 0.0085 m €; and 0.2% of (5)	= 0.0105m €; and 0.3% of (5)

**Notes to the table**

(2) Legal Service has no pre financing.

Payments made or equivalent, such as after the expenditure is registered in the Commission's accounting system, after the expenditure is accepted or after the pre-financing is cleared. In any case, this means after the preventive (ex-ante) control measures have already been implemented earlier in the cycle.

In all cases of Co-Delegations (Internal Rules Article 3), the "payments made" are covered by the Delegated DGs. In the case of Cross-Sub Delegations (Internal Rules Article 12), they remain with the Delegating DGs.

(3) In order to calculate the weighted Average Error Rate (AER) for the total relevant expenditure in the reporting year, the detected error rates have been used. For types of low-risk expenditure with indications that the equivalent error rate might be close to 'zero' (e.g. *administrative expenditure*), it is recommended to use 0.5% nevertheless as a conservative estimate. Cost reimbursement to opposing parties, due to its nature of expenditure, will not have error rate.

(5) Based on the 7 years historic Average of Recoveries and financial Corrections (ARC), which is the best available indication of the corrective capacity of the ex-post control systems implemented by the Legal Service over the past years adjusted for recovery orders issued for reimbursement of legal costs.

(9) Cost reimbursements are excluded from the calculation of estimated overall amount at risk at closure due to the specific nature of this expense.

- **Fraud prevention, detection and correction**

The Legal Service has developed and implemented its own anti-fraud strategy since 2014, based on the methodology provided by OLAF. It has been updated on the 9<sup>th</sup> of December 2016.

In December 2018, the new Commission Anti-Fraud Strategy was sent on interservice consultation. Once it is adopted, the Legal Service will update its anti-fraud strategy and a new action plan.

In the Legal Service, with its limited budget spending, management attention to fraud exposure is within the fields of the sensitive information it comes in contact with during daily operations and the risk of staff not acting in accordance with professional codes of conduct. These aspects are covered in the professional training of the staff of the Legal Service and through regular awareness raising activities on all levels, such as:

- Legal Service staff are reminded annually of various aspects relating to fraud and fraudulent behaviour.
- All staff are requested to annually confirm their ethics awareness.
- The working group for handling of sensitive information and ethics meets twice per year to ensure that the guidelines on these aspects are up to date and to assess any reported incident.

The Legal Service follows closely its main operational spending where legal fees are paid to external legal experts and its mission expenditure covering staff presenting court cases to the Union Courts.

Table 7 shows the Anti-Fraud indicators

<b>Anti-Fraud and Ethics indicators</b>	<b><u>2017</u></b>	<b><u>2018</u></b>
% of staff which have confirmed their Ethics awareness	77.5%	91.5%
N° of concluded frauds by OLAF	None	none
Adoption and publication of a new Anti-Fraud Strategy (once the Commission Anti-Fraud Strategy has been adopted)	-	-
Implementation of Legal Service Anti-Fraud Strategy action plan	100%	100%
% Directors/HoU requested to raise awareness of the anti-fraud strategy	100%	100%

Table 7: Sources: Internal statistics and reports

There have been no detected or determined incidents of fraud in the Legal Service operational or administrative activities during the past years. The contributing factors are considered to be the legal knowledge among a significant part of the Legal Service staff, the absence of policy and program spending and the various controls implemented in the contracting procedure and the yearly reminders and information to Legal Service staff regarding fraud and fraudulent behaviour.

Consequently, it is **concluded** that the Legal Service has implemented effective and efficient anti-fraud controls.

- **Other control objectives: safeguarding of assets and information, reliability of reporting**

The most significant balance sheet items in the Legal Service are the provision for legal costs and contingent liabilities for which the Legal Service has taken a conservative approach. The identification and assessment of the amounts to be provided for in the year-end accounts undergo supervisory and financial controls to ensure completeness and correctness. An ex-post analysis of the actual payments versus the year-end estimates is also performed in order to ascertain the estimates of the provision for future years.

Information regarding court cases as well as consultations is often of a sensitive nature. The Legal Service databases containing case information are restricted to Legal Service staff only and in particularly sensitive areas such as staff matters, State aid, mergers and competition cases, access to the information is even more restricted.

Several notes, manuals and guidelines have been issued and all Directors and Heads of Unit have been requested to make sure all staff are aware of these documents and that they are discussed among all staff. A working group meets twice a year to discuss further updates and further guidelines as well as to assess reported potential breaches. Management considers the actions taken to have been effective and efficient and that they have contributed to an enhanced awareness of ethical aspects and how to handle sensitive information in daily work by all staff in the Legal Service.

It is **concluded** that the Legal Service has implemented effective and efficient controls to ensure safeguarding of information. The controls are also considered to ensure a true and fair view of the financial situation of the Legal Service.

## **2. Efficiency = the Time-to-pay indicators and other efficiency indicators**

In 2018, the Legal Service executed 520 payments for procured legal fees and payments to opposing parties for their legal costs.

The time-to-pay was at an average of 14 days in 2018, just one day longer compared to 2017. The average payment delay for the Legal Service is lower than the Commission average time to pay, being 15 days. There was a slight increase in the number of late payments from 2017 to 2018. There were only three payments with a delay longer than 60 days, the average delay for the other late payments were 38 days.

Table 8 presents the Control efficiency indicators for payments

<b>Control efficiency in payments</b>	<b><u>Legal Service 2017</u></b>	<b><u>Legal Service 2018</u></b>	<b><u>Commission 2018</u></b>
Average payment delay	13 days	14 days	15 days
% of late payments	2.5%	4.8%	2%
Number of incorrect payments resulting in an issuance of a Recovery Order	none	none	
Late interest rate paid	15 €	1414 €	

Table 8: Control efficiency indicators for payments. Source: ABAC

It is **concluded** that the Legal Service has efficient controls in the payment procedure.

### **3. Economy = the cost of controls**

The Legal Service quantifies the costs of the resources and inputs required for carrying out the controls described in Annex 5 and estimates, is so far as possible, their benefits in terms of the number of errors and irregularities prevented, detected and corrected by these controls.

The Legal Service, with its flat organisational structure, has chosen a centralised financial circuit. The control environment has been stable over many years given that the mission for the Legal Service remains the same and that there is only administrative expenditure.

For 2018, central services in the European Commission have issued new guidelines on the estimation of cost of controls. Compared to previous year, the new model for estimation of cost of controls includes all work of staff in the financial cellule and has also taken the IT system used for financial management into account.

The two main categories of costs in the Legal Service are for external legal expertise and payments to opposing parties for their legal costs. For external legal expertise, contracts are established. Based on a court decision, the Legal Service may have to pay the opposing party for (part of) their legal costs. There is no contract preceding these payments.

Legal Service will only use external legal expertise in situations where they cannot undertake it themselves. Most contracts with external lawyers are for national court cases requiring a nationally recognised lawyer.

The average payment amounts and the average contract amounts in the Legal Service are quite low. Hence, the relative CE indicators look relatively high for controls at baseline requirement.

The number of staff involved in the financial circuit is limited and all commitments and payments follow the same procedures. The controls implemented in the centralised financial circuit complies with the baseline requirements of the Financial Regulation. A detailed split of the estimation of cost of controls is presented in table 9.

Total costs for controls is calculated at 302.000 €, 8.5 % of total expenditure.

The calculation of total cost of controls is presented in Table 9 on next page.

Table 9 presents the estimated cost of controls and effectiveness indicators.

<b>Overall cost-effectiveness indicator</b>	<b>Ex-ante</b>	<b>Ex-post</b>	<b>Total</b>
<b>Cost of controls for external legal fees (154 contracts and amendments in 2018 –(A)) (472 payments in 2018 –(B))</b>			
<i>Step 1: Costs of controls for Planning, needs assessment and contracting (A)</i>			
AD (<10%)	-		-
Contract External Staff	17.800,00 €		17.800,00 €
AST (50%+15%)	70.525,00 €		70.525,00 €
<i>Step 2: Cost of controls for Financial transactions (B)</i>			
AD (<10%)	-		-
Contract External Staff	17.800,00 €		17.800,00 €
AST (75%+15%)	97.650,00 €		97.650,00 €
<i>Step 3: Cost of Controls for Supervisory measures</i>			
AD (< 10%)	-	-	-
<b>Total cost of controls for legal fees (i)</b>	<b>203.775,00 €</b>		<b>203.775,00 €</b>
<b>Total payments of legal fees</b>			<b>1.881.189,29 €</b>
CE indicator for legal fees			10.8%
Cost of controls per contract (A)			573,54 €
Cost of control per payment (B)			244,60 €
Average payment amount (A)			3.800,00 €
Average contract amount (B)			34.600,00 €
<b>Cost of controls for payments to opposing parties for their legal fees (48 payments in 2018) OR</b>			
<i>Step 1: Cost of Controls for Needs assessment</i>			
AD (<10%)	-		-
AST (35%)	37.975,00 €		37.975,00 €
<i>Step 2: Cost of Controls for Financial transactions</i>			
AD (<10%)	-		-
AST (40%)	43.400,00 €		43.400,00 €
<i>Step 3: Cost of Controls for Supervisory measures</i>			
AD (<10%)	-	-	-
<b>Total cost of controls for payments to opposing parties for their legal fees (ii)</b>	<b>81.375,00 €</b>		<b>81.375,00 €</b>
<b>Total payments to opposing parties for their legal fees</b>			<b>1.661.442,28 €</b>
CE indicator for cost compensation			4.9%
Cost of control per <i>depens</i> payment			1.695,31 €
Average <i>depens</i> payment			34.613,38 €
<i>Cost of controls for internal control officer</i>			
AD (10%)	16.790,00 €		16.790,00 €
<b>Total cost for internal control officer (iii)</b>	<b>16.790,00 €</b>		<b>16.790,00 €</b>
<b>Total cost of controls (i+ii+iii)</b>			<b>301.940,00 €</b>
<b>Average cost of controls - total</b>			<b>8,5%</b>

Table 9: Control efficiency indicators for payments. Source: FIN-SJ

### **3 Conclusion on the cost-effectiveness of controls**

Upon concluding on the cost-effectiveness on controls, the following has been taken into account:

- the organisational structure and the level of the Legal Service expenditure,
- the financial circuit implemented,
- that the implementation and performance of controls are in line with the baseline requirements,
- the fact that the control environment in the Legal Service has remained stable over several years,
- the measures put in place, and in particular given the nature of the expenditure of which;
  - 1.8 million € was paid for contracted legal expertise there were no recovery orders issued for unduly paid amounts by the Legal Service in 2018,
  - 1.7 million € was paid to opposing parties for their legal costs,
  - 0.3 million € was paid mainly for IT investment and databases.

have contributed to keep the error rates at a very low levels and therefore gives sufficient assurance of sound financial management, hence additional controls are considered neither to be efficient nor to be effective.

Based on the most relevant key indicators and control results, the Legal Service has assessed the effectiveness, efficiency and economy of the control system and reached a **positive conclusion** on the cost-effectiveness of controls.

## 2.1.2 Audit observations and recommendations

This section reports and assesses the observations, opinions and conclusions reported by auditors in their reports as well as the limited conclusion of the Internal Auditor on the state of internal control, which could have a material impact on the achievement of the internal control objectives, and therefore on assurance, together with any management measures taken in response to the audit recommendations.

There were no audits of the operations of the Legal Service undertaken by the European Court of Auditors during 2018 and there are no outstanding audit recommendations from the ECA.

The IAS' basis for their conclusion on the state of internal control has been the work undertaken during the period 2016-2018, namely

- Audit on financial management (2016)
- Audit on management of recovery orders for competition fines (incl. guarantees for competition fines) and for recovery orders in the context of the Commission's 'corrective capacity' – Phase I (2017)

The IAS has also taken into account that:

- Management of the Legal Service has adopted action plans to implement all the accepted recommendations.
- The IAS considers that these action plans are adequate to address the residual risks identified by the auditors;
- The implementation of these action plans is monitored through reports by management and follow-up audits by the IAS;
- Management of the Legal Service has assessed a number of action plans as implemented which have not yet been followed up by the IAS.

At the end of 2018, there were no critical or very important outstanding recommendations from the IAS.

The Director General of the IAS has concluded that the internal control systems in place for the audited processes are effective.

It is therefore **concluded** that there are no weaknesses identified which may have a significant impact on the assurance, neither in quantitative, nor in qualitative terms.

### 2.1.3 Assessment of the effectiveness of the internal control systems

The Commission has adopted an Internal Control Framework based on international good practice, aimed to ensure the achievement of policy and operational objectives. In addition, as regards financial management, compliance with the internal control framework is a compulsory requirement.

The Legal Service has put in place the organisational structure and the internal control systems suited to the achievement of the policy and internal control objectives, in accordance with the standards and having due regard to the risks associated with the environment in which it operates.

Management assesses on a continuous basis the effectiveness of the internal control systems, in order to determine whether they work as intended and ensuring that any control weaknesses in the system are detected, analysed and considered for improvement. In addition, management performs specific assessments to ascertain whether the internal control systems and their components are present and functioning. The purpose of these management assessments is to provide reasonable assurance that the internal control principles adopted by the Commission are implemented and functioning in the DG, that the assessment findings are evaluated and that any deficiencies are communicated and corrected in a timely manner, with serious matters reported as appropriate.

Based on the methodology established in the *"Implementation Guide of the Internal Control Framework of the Commission"* the Legal Service has implemented a method, which has proved to be efficient for its organisation:

- Every year, senior managers assess a number of internal control principles, including risk management, ethics and fraud through a questionnaire and followed by an in-depth interview with the RMIC team.
- A reporting form to register and analyse potential exceptions and non-compliances,
- Regular exchange on potential internal control weaknesses or control failures recorded during the year between the Financial Cellule and the Risk Management and Internal Control team.
- Monitoring of audits and issued audit recommendations.

Based on the conclusions reported to management of the Legal Service, management **assesses** the internal control system to be the effective and that the components and principles are present and functioning as intended.

## 2.1.4 Conclusions on the impact as regards assurance

This section reviews the assessment of the elements reported above (in Sections 2.1.1, 0 and 2.1.3), the sub-conclusions above, and draws the overall conclusion supporting the declaration of assurance and whether it should be qualified with reservations.

The main objective of the Legal Service is to provide timely and good quality legal advice. The main resource needed to fulfil this objective is highly competent and motivated staff. Management focus is on the organisational structure and internal procedures including the important elements of supervision and monitoring. Throughout the years, management has invested in various awareness raising actions with the aim of ensuring compliance with good administrative behaviour and with the procedures related to court proceedings.

Internal rules have been established to ensure that deadlines for consultations as well as for court cases are respected at all times.

To ensure the quality aspects, management has established a flat organisation ensuring a regular flow of information bottom-up as well as top-down. Each court case and each consultation is distributed to the staff member competent to deal with it and supervised by more senior staff, if needed. Directors ensure that there is knowledge sharing within the teams in the weekly team meetings and central training is organised regularly to share knowledge throughout the Legal Service. Independently, there is a horizontal function with the purpose of ensuring coherence and quality. Certain consultations and court cases are selected for bilateral coaching and advice.

The intrinsic risk for administrative expenditure managed by the Legal Service including procurement is relatively low because of the limited budget as well as the centralised and direct mode of budget implementation. The risks are effectively mitigated by means of controls put in place. Recoveries and financial corrections over the past 7 years have amounted to less than 4.000 €.

Further assurance is obtained by the risk management process put in place, and the very limited number and significance of exceptions and internal control weaknesses reported in 2018. Management has obtained satisfactory evidence that the internal control system in its entirety is implemented effectively in the Legal Service.

### **Overall Conclusion**

In conclusion, management has reasonable assurance that, overall, suitable controls are in place and working as intended; risks are being appropriately monitored and mitigated; and necessary improvements and reinforcements are being implemented. The Director General, in his capacity as Authorising Officer by Delegation has signed the Declaration of Assurance.

## **2.1.5 Declaration of Assurance**

See next page

# DECLARATION OF ASSURANCE

I, the undersigned,

Director-General of the Legal Service

In my capacity as authorising officer by delegation,

declare that the information contained in this report gives a true and fair view<sup>10</sup>.

state that I have reasonable assurance that the resources assigned to the activities described in this report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

This reasonable assurance is based on my own judgement and on the information at my disposal, such as the results of the self-assessment, ex-post controls, the work of the Internal Audit Service for years prior to the year of this declaration.

Confirm that I am not aware of anything not reported here which could harm the interests of the institution or those of the Commission.

Brussels, March 29, 2019.

*signed*

Luis ROMERO REQUENA

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<sup>10</sup> True and fair in this context means a reliable, complete and correct view on the state of affairs in the DG/Executive Agency.

## 2.2 Other organisational management dimensions

### 2.2.1 Human resource management

The Legal Service has a very small and streamlined administration. There are fourteen staff working in the Unit SJ.01 (Human Resources, HR Business Correspondent, Informatics and Finance) of which eight in the informatics area.

During 2018, the following achievements have been reached:

#### ➤ **Female management**

The operations in the Quality of Legislation team, were previously organised into three sub-groups. Following the transformation of those groups into Units in 2017, the respective Heads of Units were appointed on 1 August 2018. The three heads of Units appointed were all female. By end of 2018, **female representation** in middle management in the Legal Service is at 60%.

**The Legal Service ratio is 60% female representation in middle management at end of 2018, which is above the Commission average.**

#### ➤ **Management training for female lawyers**

The Legal Service organised two special training sessions for future female managers, one, a follow up to the previous offer, and one for female staff who had not yet followed this specific training

#### ➤ **Lunch time conferences**

Legal Service management encourages and supports knowledge sharing. In 2018, there were 19 lunchtime conferences on various legal aspects offered to staff in the Legal Service. All these conferences were given by Legal Service staff and were highly appreciated.

#### ➤ **Staff Satisfaction Survey**

At the end of 2018, the biannually Staff Satisfaction Survey was launched and the results were communicated in the first quarter of 2019. Both mandatory objectives on staff wellbeing and staff engagement have increased since the previous survey.

**46% of Legal Service staff feels that the organisation cares about their wellbeing, an increase by 8% compared to 2016.**

**The Staff Engagement Index has increased to 73% in the 2018 Staff Satisfaction survey. The target for 2020 is to reach 75 %.**

The Legal Service continue its efforts to maintain and improve staff satisfaction as this ultimately contributes to the effective and efficient execution of the legal services it offers to the Commission DG's and services.

Further performance information is presented in Annex 2.

### ➤ **Support and contributions by the informatics team**

The informatics team have continued to develop the informatics systems to register and monitor court cases.

Despite an important change in the contractual framework for IT provision of services, the expenditure in the 2018 IT budget for the development and maintenance of information systems was committed to 99.9% for the administrative budget and the budget in support of the ISA<sup>2</sup> project Ref2Link.

The new version of the system for the follow-up of recovery orders, RECO, was put in production in January 2019. It interfaces with the web services of DG Budget's ABAC. In the field of litigation follow-up, ULM-Templates is now in production with a first set of documents and letters.

A new version of FINSJ, the system for the follow-up of contracts and legal costs, was built in 2018. It interfaces with the service oriented architecture of DG Budget and implements the migration to the reference front-end platform supported by DIGIT, eUI on Angular, in preparation for the replacement of the Coldfusion platform.

For further information, see 2.2.3 Information management aspects below.

## **2.2.2 Better regulation (only for DGs managing regulatory acquis)**

Through its advisory role, the Legal Service contributes significantly to the Better Regulation initiative despite the fact that it does not, in itself, manage the regulatory acquis. The Quality of Legislation team selects certain legal drafts for linguistic analysis. Their comments are sent together with the subject comments made by the thematic team(s).

## **2.2.3 Information management aspects**

The InfoDoc team consists of 20 staff members. Ten of the staff members provide operational support, mainly to the thematic teams and are therefore included under legal advice and representation, and the other ten staff members provide administrative support in the following areas:

- the Legal Service library;
- the development and maintenance of the information and documentation systems of the Legal Service: litigation databases, Unified Litigation Management Board<sup>11</sup>, Unified Litigation Management Templates<sup>12</sup>, Solon document management and knowledge management system<sup>13</sup>, Ref2Link<sup>14</sup>,
- document and legal research;
- management of access to document requests;
- management of the Legal Service websites on My IntraComm and Europa.

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<sup>11</sup> Dashboard system allowing the follow-up of litigation procedural calendars, deadlines and assignments by the staff of the Legal Service

<sup>12</sup> Templates for Court procedural documents in all official languages allowing the automatic generation of draft documents

<sup>13</sup> Specific Legal Service document management system including a targeted search engine and a legal knowledge management system

<sup>14</sup> Text mining tool that detects automatically legal references and allowing the automatic generation of hyperlinks (cf. [https://ec.europa.eu/isa2/solutions/ref2link\\_en](https://ec.europa.eu/isa2/solutions/ref2link_en))

- registration of incoming court documents and management of the litigation database (litigation registry)
- registration and assignment of incoming consultations to the concerned teams (consultations registry)
- Data Protection Coordination

Concerning the development of information and documentation systems, major achievements have been accomplished in two major projects: Ref2Link and Unified Litigation Management Templates.

## Ref2Link

The ongoing work of the IT team and the InfoDoc team to develop a system for text-mining has the potential to contribute to efficiency gains not only in the Legal Service, but also in other EU Institutions.

Ref2Link (for 'Reference to Link') is a text-mining tool developed by the Legal Service. It automatically detects a wide range of legal instruments and administrative references and generates subsequent hyperlinks. Beyond the automated production of links, Ref2Link can be used in any system using normalized references in any domain.

As the manual creation of web links is a tedious process, this tool allows huge productivity gains. It is also integrated directly in various information systems, which creates a high level of interoperability between all the referenced systems.



Ref2Link detection capacities have been extended in 2018 to all EU official languages and to support European Legislation Identifiers (ELI).

This tool provides added value not only for the Legal Service information systems, but also for other DGs and Services of the Commission and even for other EU institutions. In 2018, in addition to its integration to the Legal Service information systems and to My IntraComm, Ref2Link has been integrated to three external third party systems:

- DPMS, the Data Protection records Management System developed by the Commission's DPO;
- Leos Editing tool, the new collaborative legislative texts drafting system developed by the SG, aiming at replacing Legiswrite;
- Xenat, the European Parliament legislative texts drafting tool.

Ref2Link also joined the ISA<sup>2</sup> programme in 2018, as part of the "Legislation Interoperability Tools" action, along with Leos Editing tool. It was presented during the ISA<sup>2</sup> Conference in November 2018. Unified Litigation Management Templates

Unified Litigation Management Templates (“ULM Templates”) is a system allowing the automatic generation of templates for Court procedural documents in all official languages. It is integrated to the litigation database of the Legal Service (Base Contentieux) and to ULM Board (Unified Litigation Management Board). Data originating from required information systems (such as the litigation database or EUR-Lex) is automatically collected and inserted in the documents, according to the formal requirements provided by the jurisdictions.

ULM Templates allows important productivity gains as it generates “ready to use” draft documents, corresponding directly to the right procedural step and in the relevant proceeding language. The system also results in high quality and standardised litigation documents as it ensures that the documents produced by the Legal Service respect a set of standards regarding the presentation, layout and legal wording.

**15 templates for Court procedural documents were made available in all official languages in 2018**

In 2018, 15 templates have been made available in all official languages.

### **Data Protection Coordination**

Major steps that have been taken so far to ensure compliance with the new Regulation (EU) 2018/1725 and the Action Plan of 7 November 2018 (C(2018)7432) on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies:

- Awareness-raising among Legal Service staff
- Establishment of a complete inventory of all data processing operations
- Assessment of compliance with general principles (Art. 4 Reg. 2018/1725), in particular as regards lawfulness, data minimisation and storage limitation
- Appropriate information provided to the data subjects concerned through concise and intelligible privacy statements: for all the processing operations already covered by the former notifications, concise and intelligible privacy statements are available.
- Establishment, where necessary, of internal rules governing the restrictions of data subjects rights: the necessity of such restrictions requires further assessment (planned for Q1 2019)

**HAN files readable/accessible by all the teams in the Legal Service reached 61.55 %, which is well above the target at 55 %**

**99.95% of the HAN files were registered which was close to target set at 99.98 %**

## 2.2.4 External communication activities

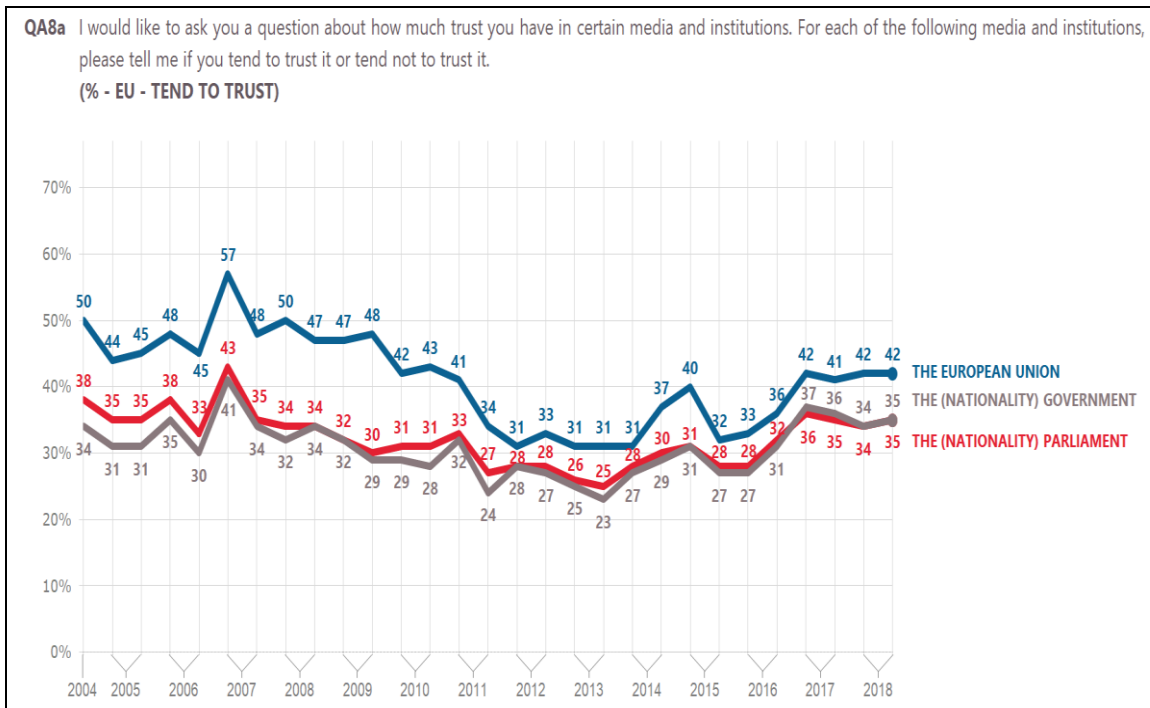
All external communication on behalf of the Legal Service is made by the Spokesperson of the Commission.

The Legal Service notes that the trust in the European Union remains at 43%, as reported in the Standard Eurobarometer report n° 90<sup>15</sup>:

*"More than four in ten Europeans trust the European Union (42%, unchanged since spring 2018, the highest level since autumn 2010); in comparison, more than a third trust their national government (35%, +1 percentage point) and their national parliament (35%, +1)"*.

**The Legal Service strives to increase the public's trust in the Commission by providing timely and high quality legal advice and legal representation. According to the 2018 Special Eurobarometer 461<sup>st</sup> report, the trust is at 42 %.**

Graph 19 below presents the trust in the European Union and in national governments and parliaments.



Graph 9: Trust in the European Union and in national governments and parliaments, online survey result (Source: Standard Eurobarometer report n° 90)

<sup>15</sup> [Standard Eurobarometer 90, Autumn 2018](http://ec.europa.eu/commfrontoffice/publicopinionmobile/index.cfm/Survey/getSurveyDetail/surveyKy/2215)  
(<http://ec.europa.eu/commfrontoffice/publicopinionmobile/index.cfm/Survey/getSurveyDetail/surveyKy/2215>)