



Council of the European Union
General Secretariat

Legal Service
The Director-General

2017 ANNUAL ACTIVITY REPORT OF THE AUTHORISING OFFICER BY DELEGATION

March
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For the attention of the Secretary-General of the Council

I. INTRODUCTION - MISSION STATEMENT

Legal Service mission statement

1. The Legal Service is the legal adviser to the Council and the European Council.
2. It assists the European Council, the Council and its preparatory bodies, the Presidency, and the General Secretariat, in order to ensure the legality and the drafting quality of legal acts. It contributes, by taking a creative approach where appropriate, to identifying legally correct and politically acceptable solutions, in cooperation with other Council departments. To that end, it gives opinions in complete impartiality – orally or in writing, at the request of the Council or on its own initiative – on any question of a legal nature.
3. The Legal Service also represents the European Council and the Council in proceedings before the courts of the European Union.
4. The Legal Service is responsible for checking the drafting quality of legal acts of the European Council and the Council and ensuring that they are legally and linguistically consistent in all of the Union's official languages.
5. The constant objective of the Legal Service is to provide timely contributions which are distinguished by their full respect for the law, their impartiality and their clarity.

II. PERFORMANCE OF DUTIES

A) PERFORMANCES/ACHIEVEMENTS

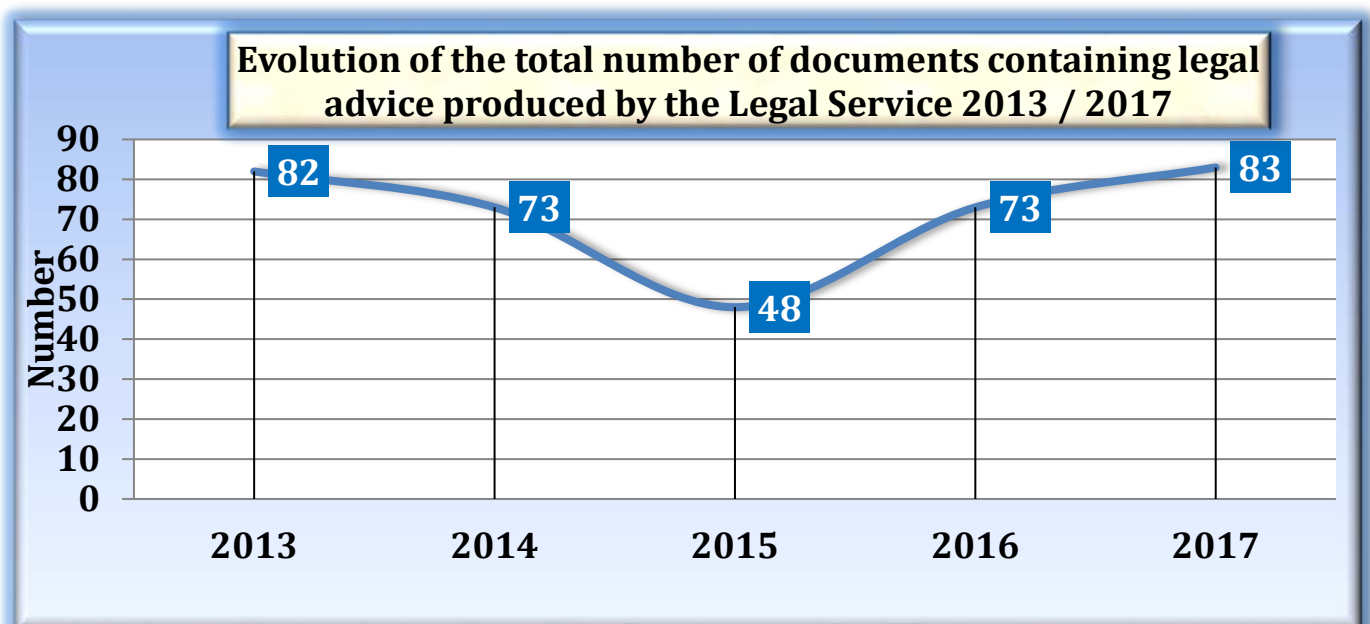
Main activities of the Legal Service

In 2017, the CLS continued to assist the European Council, the Council and its preparatory bodies, the Presidency, and the General Secretariat in order to ensure the legality and the drafting quality of legal acts in the course of legislative and non-legislative procedures. For this purpose, the CLS continued to

- provide oral and written legal advice to the European Council, the Council and its preparatory bodies;
- participate in the meetings of the European Council, the Council and its preparatory bodies;
- assist the Presidency and the General Secretariat, including during trilogues and technical meetings;
- contribute to identifying legally correct and politically acceptable solutions;
- assist with drafting (by offering suggestions for the drafting of provisions, improving the quality of drafting, or otherwise participating in drafting work);
- ensure compliance with the applicable procedural rules at all levels;
- ensure optimal quality and speed in the legal-linguistic finalisation of all legislative texts (including corrigendum procedures).

The nature of the CLS work requires its members to provide sound legal advice and contribute to the deliberations on specific files in all areas of activity of the EU. An important part of CLS is to anticipate and solve legal issues at an early stage and provide oral and written advice whenever needed. The CLS contribution is not always easy to quantify since most of the advice is given informally and orally in the course of the discussion process of a file.

On important legal questions, the CLS may provide written contributions and opinions in the form of a document distributed to delegations (on its own initiative or upon request from the body concerned). In 2017, Directorates 1 to 6 and the Coordination Unit issued 83 of such contributions and opinions.

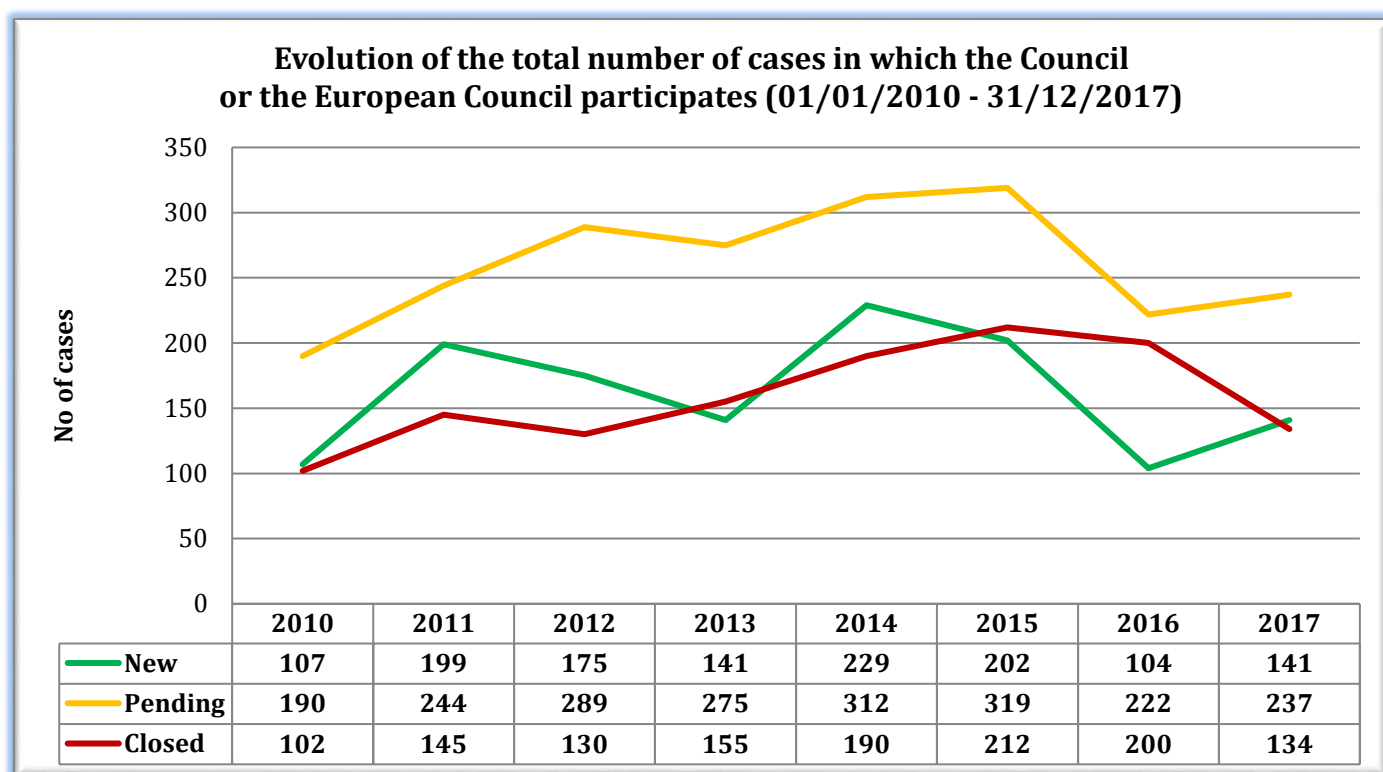


In addition, the CLS continued to provide legal support and assistance on administrative issues (i.e. public procurement, contracts, building projects, security, taxation, staff-related issues, personal data protection and procedures related to access to documents).

In addition, the CLS accomplished secretariat functions as "service traitant" to the following bodies: *COJUR*, *COJUR ICC*, *COMAR*, the Court of Justice, the Friends of the Presidency, the Codification working parties, and for the panel provided for in Article 255 TFEU¹ that is responsible for giving an opinion on candidates' suitability to perform the duties of judges and advocates-general.

Finally, the Legal Service represents the European Council and the Council in proceedings before the Court of Justice. Members of the CLS act as agents in cases before the courts of the EU. Only in a few exceptional cases, the CLS seeks the assistance of external lawyers (see below "Legal Service as Authorising Officer").

The workload related to litigation for the period from 2010 to 2017 is described in the below chart. With an increase of new cases amounting to 141, at the end of 2017 the LS had 237 active cases.



The core activities per directorate/unit are highlighted in the Annex

Within each of the Legal Service's directorates/units, the following activities should be highlighted.

Undoubtedly, in 2017 the CLS contribution on the discussions regarding the withdrawal negotiations with UK was an important component of its activities and required intensive work. The negotiations on the withdrawal agreement have been followed as an horizontal institutional issue by Directorate 4, together with the Coordination Unit, coordinating the inputs of all other Directorates. The CLS provided the Council Task Force on Article 50 with substantial and procedural legal analysis in all areas in the first phase of the negotiations and will continue to play a role of major importance during these negotiations in 2018.

¹ The panel provided for in Article 255 TFEU issues a separate annual activity report.

Directorate 1 'Competitiveness, Environment, Transport, Telecom, Energy'

Directorate 1 shares responsibilities in the area of internal market with Directorate 2 (see below). Most of the work of the legal advisers in these directorates involves providing legal assistance and advice on a large number of legislative and non-legislative files.

During 2016, the work carried out by the members of Directorate 1 mainly covered the following files:

Climate change: (a) Political agreements following intensive negotiations with the EP on the three main proposals to implement the Paris Agreement (ETS review, Effort Sharing Regulation and LULUCF); (b) Adoption of the ETS Aviation Regulation to allow for the implementation of a Global Market Based Measure for emission from aviation activities; (c) Council decision concluding the Kigali Amendment to the Montreal Protocol on ozone depleting substances; (d) Council decision on the conclusion of the Agreement with Switzerland on linking the ETS systems; (e) Adoption and preparation of several other Union positions and Council conclusions, including under the Paris Agreement and a number of international environmental agreements; (f) Approval of MoU with Iran on climate change.

Environment: (a) Political agreement of a Decision on environmental reporting; (b) Adoption of a new multi-annual Union position on Whaling; (c) First assessments on the procedure regarding the French proposal on the Global Pact for the Environment; (d) Conclusion of Waste/Circular economy Package: proposal amending 3 specific waste-stream directives (on end-of-life vehicles, batteries, and electrical and electronic equipment), proposal on landfill of waste, proposal on packaging and packaging waste and proposal amending the waste framework directive; (e) RoHS revision (Restriction of hazardous substances in electrical and electronic equipment) and (f) Aarhus MoP and follow-up to non-compliance case against the European Union.

Telecommunications & information society: (a) Agreement with the EP on Regulation on wholesale roaming, the 700 MHz band Decision and Wi-Fi 4EU; (b) Discussions on the European Electronic Communications Code and on the BEREC Regulation continued and (c) Discussions on the ePrivacy and Free-flow of data.

Transport: Adoption of : (a) Regulation on European Aviation Safety Agency; (b) Decision on conclusion of the Agreement between the United States of America and the European Community on cooperation in the regulation of civil aviation safety; (c) Decisions on signature and provisional application of Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union; (d) maritime passenger safety package (Directive on safety rules and standards for passenger ships, Directive on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service, Directive on the registration of persons sailing on board passenger ships operating to or from ports of the Member States); (e) Directive on the recognition of professional qualifications in inland navigation; (f) amendment on ITS Directive; (g) Council Decision establishing Union position to be taken in IMO; (h) Council Decision on the signing and provisional application of the Treaty establishing the Transport Community Treaty; (n) Integrated Maritime Policy: Council conclusions on Ocean governance and approval to negotiate ocean partnerships with third States (China).

Discussions on: (a) Directive on rail passengers' rights and obligations; (b) Regulation on safeguarding competition in air transport and (c) Mobility Package I (in total seven legislative proposals on market access in road transport, on social conditions in road transport (driving time, tachograph, posting of workers in road transport), on hired vehicles and on road tolls).

Other: First-reading agreement on Directive on professional qualifications of drivers for the carriage of goods or passengers and Conclusion of a Memorandum of Understanding on indicative maps of Eastern Partnership neighbouring countries.

Company Law: (a) Adoption of the Council General Approach on the Single Digital Gateway Regulation and (b) Adoption of the Directive (EU) 2017/828 of the EP and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholders engagement.

Consumer protection: (a) Adoption of the Regulation 2017/2394 of the EP and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004; (b) Adoption of the Regulation of the EP and of the Council

on addressing unjustified geo-blocking and other forms of discrimination the EP based on customers' nationality, place of residence or place of establishment within the internal market; (c) Adoption of the Negotiation Directives (Council decision) as regards the negotiation of UNTWO Convention on Tourism Ethics.

Industry/Internal Market/Better Regulation:

Technical Harmonisation of motor vehicles: (a) General approach and first-reading agreement on the Regulation on type approval of motor vehicles and (b) Council Decisions establishing Union position to be taken at UNECE WP 29.

Technical harmonisation (Fertilisers): (a) Adoption of the mandate for trilogues for the Fertilisers Regulation; (b) Proposal for a Single Market Information Tool; (c) General approach and discussions on the Directive of the EP and of the Council on the enforcement of Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System; (d) General approach and discussions on the Directive of the EP and of the Council on a proportionality test before adoption of new regulation of professions; (e) Discussions on the role of the Commission and Member States on the working methods for ensuring better regulation objectives, in particular in the field of the internal market (Better Regulation); (f) Directive of the EP and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market; (g) Council Conclusions on A Future EU Industrial Policy Strategy and (h) Council Conclusions on A Renewed EU Industrial Policy Strategy.

Energy: Adopted legislation: (a) Decision (EU) 2017/684 establishing an information exchange mechanism on intergovernmental agreements ('IGAs') between Member States and third countries; (b) Regulation on Energy Labelling; (c) Regulation (EU) 2017/1938 on security of gas supply ('SoS').

Agreed legislation: Directive amending Directive 2010/31 on the energy performance of buildings.

General Approaches: (a) Directive amending Directive 2012/27 on energy efficiency ; (b) Regulation on risk preparedness in the electricity sector; (c) Directive on common rules for the internal electricity market (recast); (d) Regulation on the internal market for electricity (recast); (e) Directive on renewable energy (recast); (f) Regulation on the Governance of the Energy Union.

Other proposals under discussion: (a) Regulation establishing an EU Agency for the Cooperation of Energy Regulators (ACER) (recast); (b) Council Decision on nomination of ACER Board Members; (c) Energy Community mandate on reciprocity; (d) Nord Stream 2 mandate and (e) Directive amending Directive 2009/73 concerning common rules for the internal market in natural gas.

Intellectual Property: (a) Adoption of two proposals (Regulation and Directive) on the implementation of the Marrakesh Treaty; (b) Conclusion of the Marrakesh Treaty; (c) Adoption of proposal on cross-border portability; (d) General approach on copyright review with regard to broadcasting transmissions; (e) Proposal on copyright review with regard to the Digital Single Market and (f) Adoption of Union positions at international meetings or within international organisations (in particular WIPO).

Customs Union: (a) Adoption of the proposals on customs duties, tariffs and suspensions; (b) Adoption of Council conclusions on customs funding and of the numerous Union positions at international meetings or within international organisations (in particular the WCO); (c) General approach on proposal on cash entering and leaving the Union; (d) Proposal on import of cultural goods and (d) Council Conclusions.

Postal services: Adoption of Regulation on cross-border parcel delivery

Research : (a) Adoption of the proposal on PRIMA; (b) Adoption of proposals on signing, provisional application and conclusion of agreements with Lebanon, Egypt, Jordan and Algeria; (c) proposals on research in the context of Euratom and (d) Council Conclusions on "From the Interim Evaluation of Horizon 2020 towards the ninth Framework Programme".

As far as **litigation** is concerned, Directorate 1 represented the Council in a number of important court cases. In particular, the favourable rulings on case C-102/16 should be flagged where it successfully defended the validity of certain provisions of Regulation (EC) No 561/2006 on driving times in road transport.

Other Court cases:

- Hearing in case C-5/16 concerning the validity of the Market Stability Reserve Decision, with implications for the legal basis of the EU ETS and Union's climate policy in general
- Written procedure in case C-128/17 concerning the validity of the Directive on National Emission Ceilings, involving arguments of lack of sincere cooperation during the Council's internal proceedings
- Written procedure in case C-152/17 (Public procurement)
- C-223/17 P - Appeal in case T-191/14 (Lubrizol)
- Case C-528/16 (Confédération paysanne) - written procedure and oral hearing concerning the validity of Directive 2001/18 on GMOs.
- Case T-560/17 (Fortischem) - written procedure concerning the validity of Regulation 2017/852 on mercury.

Directorate 2 'Employment, Social Affairs, Agriculture, Fisheries'

In 2017, the work of Directorate 2, as in the case of Directorate 1, consisted of providing legal assistance on a large number of legislative and other files. The following should be flagged in particular:

Employment and Social Affairs: (a) General approach on the revision of the Posting of Workers Directive followed by trilogues; (b) General approach on the European Accessibility Act; (c) Partial general approaches on different aspects of the revision of the Social Security Coordination Regime; (d) Adoption of first set of amendments to Directive 2004/37/EC relating to exposure to carcinogens or mutagens at work (first package) and a general approach reached on a second package; (e) Adoption of the social partners agreement on the amendments of 2014 to the Maritime Labour Convention; (f) Agreement on amendments to the European Funds in the social policy area through the Omnibus Regulation (related to revision of the financial regulation); (g) Approval and proclamation of the European Pillar of Social Rights and (h) Council conclusions in these policy areas and work on the employment and social affairs aspects of the European Semester.

Public Health: (a) Revision of Regulation 726/2004 (European Medicines Agency); part of "Animal Medicines Package" and linked to the VMP and the Medicated Feed proposals and (b) Council conclusions in this policy area.

Education, youth, sport, audiovisual, culture: (a) General approach on the revision of the Audiovisual Media Services directive, followed by trilogues; (b) Finalisation of the legislative Decision on a common framework for the provision of better services for skills and qualifications (Europass); (c) General approach on a Regulation laying down the legal framework of the European Solidarity Corps; (d) Mandate on amending the Creative Europe Programme with respect to the EU Youth Orchestra; (e) Adoption of two Council recommendations on: the European Qualifications Framework (EQF) for lifelong learning and on tracking graduates and (f) Council resolutions and conclusions in these policy areas.

Agriculture: (a) Trilogues and approval of final text in the Organic production and labelling of organic products file; (b) Mandate on Veterinary Medical Products (VMP) and Medicated Feed proposals; part of the "Animal Medicines Package"; (c) Adoption of a Regulation amending the four principal agricultural Regulations (split from the "Omnibus" Regulation); (d) Work on defining the Council's approach on a draft Regulation on spirit drinks; (e) Adoption of the Council decision concerning the status of the Union in the International Organisation for Vine and Wine (OIV); (f) Adoption of a Council decision on the determination of the Union position concerning quality standards for fruit and vegetables (UNECE) and (g) Preparation of Union positions in international fora (IPPC, OIV, OIE, ITPGRFA, etc.).

Fisheries: (a) Work on legislative files, including the adoption of the new External Fleet Regulation and of the Data Collection Framework Regulation and progress on a Multiannual Plan for the North Sea and on a new Technical Measures Regulation; (b) Several TAC and Quota Regulations (the main annual regulation, Baltic Sea, Black Sea, fishing opportunities under fisheries protocols, and amendments); (c) Union positions in international fora (mainly Regional Fisheries Management Organisations) and the subsequent implementation of decisions of these organisations; (d) Bilateral fisheries agreements / protocols (Council decisions authorising the opening of negotiations, signing, provisional application, conclusion and termination and preparation of consultations and meetings of joint bodies); (e) Multilateral

treaties (eg. coastal state consultations and the negotiation of an Agreement to prevent unregulated fisheries in the Central Arctic Ocean) and (f) Council implementing decisions on listing/de-listing of third countries in respect of illegal, unreported and unregulated fishing and advice on other issues, including international law of the sea (e.g. fishing for snow crab on the continental shelf around Svalbard) and competence questions (eg. in relation to CCAMLR).

Codex Alimentarius, FAO, OECD, UNECE: Preparation of a large number of Union + MS positions.

Other files: Elaboration of a Report on the establishment of European Union Positions in the field of External Relations, following Recommendation no 6 of the November 2016 report of the Ad Hoc Task Force on the Role of the General Secretariat in External Relations.

As far as **litigation** is concerned, the members of the directorate represented the Council in a number of important court cases. The following cases should be flagged in particular:

Judgments issued:

- Case C-128/15: the Court rejected Spain's action for annulment against the Council Regulation on the fishing opportunities for 2015-2016 for certain deep-sea fish stocks.
- Case T-153/16: the Court declared inadmissible an action for annulment brought by a fishermen's association against the principal fishing opportunities regulation for 2016.

Pending cases:

- C-626/15 and C-659/16, Commission v Council (Weddell Sea / CCAMLR; on marine protected areas in Antarctica. Written procedure finalised.
- C-611/17, Italy v Council (challenge to the amendment of the fishing opportunities Regulation as regards swordfish in the Mediterranean). Defence submitted in December 2017.
- C-426/16 (Liga van Moskeeën e.a.); Flemish slaughterhouses; hearing took place in September followed by the Advocate-General's Opinion in December 2017.
- C-151/17 (Swedish Match AB); ("snus"); written procedure finalized.
- C-220/17 (Planta Tabak); challenge to Tobacco Directive; written procedure finalized.
- C-288/17 (Fédération des fabricants de cigars e.a.); challenge to Tobacco Directive; written procedure finalized.
- C-616/17 (Blaise et al); (glyphosate); work on Council observations began in December 2017.
- T-298/17 (Adrian Iordachescu e.a. v EP, Council and Commission); challenge to Tobacco Directive; the Council's plea of inadmissibility was submitted in November 2017.

Directorate 3 'External Relations'

Directorate 3 is responsible for providing legal advice to some fifty working groups dealing with external relations including those relating to trade, sanctions, development, the common foreign and security policy (including common security and defence policy), international law and relations with third countries and international organisations. It provides legal advice to the Political and Security Committee and on matters relating to the Foreign Affairs Council. In addition the Directorate acts as the secretariat for the COJUR, COJUR ICC and COMAR working groups.

Examples of work carried out by members of the Directorate in 2017 included the provision of legal advice relating to:

CFSP & CSDP: the launch and establishment of Permanent Structured Cooperation (PESCO), establishment of MPCC, the mandate and operation of Operation Sophia, Capacity Building for Security and Development including amendments to the Instrument Contributing to Stability and Peace Regulation, the proposal for European Defence Industrial Development Programme Regulation, the establishment of a new action under Art. 28 TEU in Mopti, the new civilian CSDP mission in Iraq, the first Preparatory Committee for the 2020 Nuclear Non-proliferation Treaty Review Conference and the Conference of State Parties to the Arms Trade Treaty.

Trade: the analysis and follow-up on the ECJ's Opinion 2/15 (Singapore FTA), preparation of the Council's Observations in Case A-1/17 (ICS), proposals for a new Foreign Direct Investment screening Regulation, the new anti-dumping methodology Regulation, proposed negotiating directives for the EU/Turkey Modernised Customs Union agreement, negotiating directives for the future trade agreements with Australia and New Zealand, and negotiating directives for a Multilateral Investment Court.

Development: the European Sustainable Development Fund (ESDF) Regulation, the new European Consensus on Development, planning for 2020 partnership with the ACP countries, 2030 Sustainable Development Agenda, issues relating to the African Peace Facility

Relations with third countries and organisations: negotiating directives with Chile, opening of negotiations with the Kyrgyz Republic, the signing and provisional application of the CEPA with Armenia, provisional application of the Political Dialogue and Cooperation Agreement with Cuba, ratification of the Association Agreement with Ukraine, Conclusion of the Framework Agreements on Partnership and Cooperation Agreements with the Philippines and Mongolia and the preparation of summits including the Eastern Partnership summit.

Sanctions: Review or amendment of the sanctions regimes concerning Syria, Ukraine, Russia, North Korea, Iran, Tunisia and Egypt, the Congo, South Sudan, Guinea Bissau, as well as Common Position 2001/931/CFSP (terrorism).

As far as **litigation** is concerned, the Directorate continued to represent the Council in some 120 cases before the European Union, most notably those relating to sanctions, and on anti-dumping and legal and institutional issues relating to international agreements and external relations generally. Cases covered by the team during 2017 included the successful defence of challenges to the Ukraine, Syria, Tunisia, Russia and Iran sanctions regimes; litigation relating to Western Sahara; and litigation generated by CSDP missions.

As the Secretariat for COJUR, COJUR ICC and COMAR, the Directorate took forward proposals on the implementation of the Guidelines on International Humanitarian Law including the drafting of an annual report and provided support in the regular informal dialogue with the US on international law issues, in the preparation for the third and fourth sessions of the Preparatory Committee on the proposed Convention on Maritime Biological Diversity (BBNJ) as well as in preparing the EU position on the UNGA resolution on the Oceans and law of the sea.

In addition the Directorate took lead in negotiations with the European Parliament, Commission and EEAS under the Inter-institutional Agreement on Better Law-Making in relation to the provision of information on international agreements conducting negotiations at the technical level and supporting the Presidency at the political level and regularly briefing and consulting delegations. The Directorate was also responsible for the follow up to the judgment of the Court on non-binding international instruments negotiating and agreeing arrangements with the Commission, EEAS and Council as well as issuing new guidance to Directorates General. The Directorate also contributed to the analysis of legal issues relating to the UK's withdrawal from the EU notably in relation to international agreements, CFSP and trade issues.

Directorate 4 'Institutional Questions, Staff Regulations, Litigation'

The activities of Directorate 4 cover institutional questions, Staff Regulations issues, litigation and administrative questions. In addition, the directorate is the 'service traitant' for the Working Party on Codification, which is chaired by one of its members, and also for the Working Party "Friends of Presidency Comitology" and the Working Party "Court of Justice", both shared by the rotating Presidency.

Institutional questions

- **Interinstitutional Agreement on Better Law-Making:** Work in the implementation of the agreement, in particular concerning delegated acts and implementing acts, leading to on-going projects (including alignment with the Lisbon Treaty of a number of legal acts providing for the former regulatory procedure with scrutiny, preparation of a register of delegated acts, and preparation of an interinstitutional discussion on delineation criteria). In particular, (a) examination of the Commission proposal for a Regulation adapting a number of legal acts providing for the use of the regulatory

procedure with scrutiny to Articles 290 and 291 TFEU was completed at Working party level and (b) Council position for entering into interinstitutional negotiations on delineation criteria and the political and technical interinstitutional discussion started. Directorate 4 is service traitant on both files.

- **Reform of European Electoral Law**: assessment of the EP proposal for a reform of the EU electoral law required constant legal advice in GAG meetings, submission of draft compromise texts and assistance to the PCY, including in the drafting of the progress report to Coreper in December. The proposal for a transnational constituency for the election of the EP raised particularly complex legal problems that were the object of further research and analysis;
- Legal advice on the EP initiative concerning the **composition of the EP** and date of next EP elections;
- **European Parliament's right of inquiry**: following a mandate by the Presidency, work with representatives of the Legal Services of the Commission and the EP on suggestions for solving open legal questions posed by the draft Regulation on the European Parliament's right of inquiry.
- **Transparency Register**: Continuation of the work on a Proposal for an IIA on a Mandatory Transparency Register for lobbyist. A written LS opinion which was circulated in January 2017 and constant advice was provided in GAG. The group endorsed the LS suggestion of a new legal architecture (redrafting of the proposal in IIA + individual Council Decision + annexes). Adoption of the Council's mandate for inter-institutional negotiations in December.
- Legal advice in GAG WP and analysis of the proposal of the Commission amending the Regulation on **European political parties**;
- **Appointments** in institutions, bodies and agencies; **nomination** by the Council of 2 eminent persons for the Committee of independent persons foreseen by article 11 of the Regulation on European political parties;
- **Comitology Regulation**: initial legal analysis of the proposal amending Regulation (EU) No 182/2011 which was submitted to the Council in February.

Institutional questions (Council Impact Assessment): Setting up of a Council Impact Assessment capability, putting in place a pilot project and the procedure for triggering impact assessments for substantial Council amendments to Commission proposal, completion of a complex procurement procedure for concluding contracts with external consultants to this effect.

Institutional questions (GAF): Financial and anti-fraud issues: legal support to the Anti-Fraud working party (GAF). Legal advice on the discharge of the EU institutions and on matters related to the Council budget.

Court of Justice: Court of auditors' report on the Court of Justice : adoption of Council conclusions

Court of Justice (article 255 panel): the directorate acts as the secretariat of the panel provided for in Article 255 TFEU and is responsible for the Conferences of the Representatives of Governments of the Member States ('Intergovernmental conferences') who appoint the Judges and Advocates-Generals. The panel examined 9 nominations, including 7 nominations for the post of Judge or Advocate-General at the Court of Justice and 2 nominations for the post of Judge at the General Court. It organised 2 intergovernmental conferences to appoint a total of 2 Judges at the General Court.

Staff issues: legal advice to the administration on staff matters, in particular on complaints based on Article 90(2) of the Staff Regulations (the Legal Service was consulted on the draft replies to 27 such complaints registered in 2017).

Codification: the Legal Service is the 'service traitant' for codification, and a member of Directorate 4 chairs the Working Party on Codification. In 2017, the work included the finalisation of the horizontal codification of 6 directives in the field of company law, as well as the examination of other Commission proposals on codification. Furthermore, several recast proposals were examined by the Inter-institutional Consultative Working Group of the Legal Services, in which Directorate 4 represents the Council Legal Service.

Transparency, documents management and European Ombudsman

- **Transparency, access to documents:** legal advice on issues related to requests for public access to Council documents; legal revision of all confirmatory replies drafted by DGF (27 in 2017); drafting of 4 replies regarding confirmatory applications regarding LS documents; handling of 107 requests for access to documents concerning 175 Legal Service documents²; and work on improvements to Council practice and internal procedures in the area of access to documents;
- **Transparency and documents management:** (a) Setting up of a document and transparency policy for Brexit related docs; (b) Council Decision on Open Data: drafting and legal revision of the Council decision in cooperation with DGF; (c) Implementation, in close cooperation with DGF, of a new policy on documents management, filing and registration; (d) Joint Legislative Database: legal assistance to the internal and inter-institutional work for the establishment of the joint legislative database provided by the IIA on better law making; (e) Recast of Council Transparency Procedures, including Ombudsman procedures and internal LS procedures.
- **Transparency of legislative procedure:** In the framework of the Ombudsman inquiry on the transparency of trilogue and the NL initiative for an enhanced transparency of Council work, legal advice was provided and solutions proposed in a number of domains: publicity of mandates for trilogues; reform of LIMITE marking, reform of Council RoP
- **European Ombudsman:** complaints to the EO concerning alleged instances of maladministration by the Council and legal revision or drafting of the opinion submitted to the Ombudsman. In 2017, the directorate handled 12 ongoing inquiries (6 complaint-based, 2 own-initiative inquiries and 4 strategic inquiries). The profile of the Ombudsman cases against the Council has increased, with 5 of the new cases having a considerable systemic and institutional importance.

Legal support to GSC and SG administrative issues: On GSC procurement and contractual issues, handling of one major inter-institutional procurement case before the General Court of the EU (T-117/17), where the Court ruled in favour of the Council on the request for suspension. Revision of large-scale procurement procedures and legal advice to DGA4 PCU and authorising departments on the application of the Financial Regulation No 966/2012 and on contractual issues. Negotiation with Belgian authorities of the final price of the Europa building. Handling of the legal issues following the October incidents in the Europa building's kitchens. Disputes and litigation on Belgian law issues (labour law, insurance law, etc.)

Financial Admin Questions: Financial questions of the GSC: advice to DGA4 concerning each Decision of the Secretary-General having impact on the internal finances and administrative structure, including about the discharge of the Council.

Security: Council Security Committee: legal advice on the exchange of classified information with third states (international agreements and administrative arrangements) and with other EU institutions and bodies. Legal support on the revision of Council policies and guidelines on classified information.

Registry, Litigation and Finance: Registry/litigation: follow-up of 5499 notifications from the Court of Justice and the General Court in 2017; update of the database including all cases received by the Council, documents and deadlines related to cases in which the Council is a party. On 31 December 2017, there were 2107 cases still pending/ongoing (notified or not in 2017).

As far as **litigation** is concerned, the directorate represented the Council in a number of court cases related to transparency and to staff and civil service matters. In the area of staff matters and civil service litigation, eight cases directly involving the Council were decided by the General Court in 2017. On transparency matters, in 2017 has handled 5 ongoing court cases, three of which were decided during the year. Two more, including the case of systemic importance T-540/15 De Capitani still pending in December 2017. On institutional issues, it represented the Council on case T-561/14 (One of Us).

² 27 of those requests (25 %) were dealt with by the first deadline (15 working days), while 65 (62%) were dealt with by the second deadline. 14 replies (13%) were made after the second deadline, due to heavy workload and lack of resources in the Directorate.

Directorate 5 'Justice and Home Affairs'

2017, like the previous year, was very busy for Directorate 5. Its legal advisers helped in the finalisation of a number of files and provided legal support on important on-going legislative and other files. In addition to the Brexit file, of which the citizens chapter, as well as the transitional arrangements as regards on-going judicial civil and criminal proceedings and data protection issues required a lot of work, examples of the work carried out by the Directorate in the different areas include:

Judicial cooperation in civil matters: (a) Contracts for the supply of digital content; (b) Sale of Goods proposal (online and offline); (c) Insolvency Proposal; (d) Recast of the Brussels IIa Regulation (matrimonial and parental responsibility and child abduction); (e) Hague Judgements Convention; (f) Uncitral negotiations on insolvency and on settlement agreements.

Judicial cooperation in criminal matters: (a) European Public Prosecutor's Office (EPPO) (finalised in October 2017) and (b) Terrorism Directive (finalised in 2017).

Substantive Criminal law: (a) Protection of the Union's financial interests (PIF) (finalised in July 2017); (b) Money laundering and terrorism financing; (c) Non-cash fraud directive and (d) Cyber crime and Cyber diplomacy - toolbox -Adoption of conclusions.

Police cooperation: (a) Agreement Europol-DK (finalised in April 2017); (b) Revision of the guide on International Agreements on exchange of information; (c) Consequences of the Court Opinion in July 2017 on the EU-Canada PNR agreement.

Fundamental Rights: (a) Istanbul Convention (signature by the EU and Code of Conduct) and (b) New multi-annual work programme for the Fundamental Rights Agency.

Data Protection: (a) Replacement of Regulation 45/2001 on data protection by EU institutions and (b) On-going discussions on consequences of the data retention judgments.

Schengen: (a) Entry/Exit system (finalised end of 2017); (b) Visa suspension mechanism (finalised in 2017); (c) Visa liberalisation (Georgia and Ukraine) (finalised in 2017); (d) Uniform visa sticker (finalised in 2017); (e) Uniform format for residence permits (finalised in 2017); (f) Visa facilitation agreements; (g) Firearms Directive (finalised in 2017); (h) Replacement of the eu-LISA Agency Regulation; (i) Three SIS proposals; (j) Status agreements for European Border and Coast Guards; (k) Functioning of the Schengen evaluation procedure; (l) Article-29 reintroduction of internal border controls.

Asylum and migration: (a) Blue card Regulation; (b) Dublin IV Regulation; (c) Eurodac Regulation; (d) EASO Regulation; (e) Reception conditions Directive; (f) Asylum Qualification Regulation; (g) Asylum Procedures Regulation; (h) Resettlement Regulation.

IPCR: Drafting of the Council Decision on IPCR.

As far as **litigation** is concerned, Directorate 5 represented the Council and the European Council in a number of important Court cases. The following cases should be flagged:

- Case 1/15: EU-Canada PNR Agreement - Compatibility with the Treaties (closed in 2017);
- C-643/15 and C-647/15: SK and HU v. Council, actions for annulment of the second relocation decision (closed in 2017);
- C-391/16 and C-77/17: two on-going cases on the validity of the Qualification Directive;
- C-267/16: validity of the Firearms Directive (closed in 2017);
- C-482/17 R and C-482/17 : CZ v. Council and EP, ongoing action for annulment of the Firearms Directive;
- Cases C-208/17P, C-209/17P and C-210/17 T: NF, NG and NM v. European Council, appeals against the judgments in first instance in three actions for annulment of the "EU-Turkey statement".

Directorate 6 'Economic and Financial Affairs, Budget, Structural Funds'

Directorate 6 is responsible to provide advice to the Ecofin configuration of the Council and the Eurogroup and all its related preparatory instances, including the Economic and Financial Committee and the Eurogroup Working Group. In 2017, it provided legal assistance in the following main files:

Economic and Monetary Union: (a) the deepening of the EMU (including the Commission's EMU package for a Council Regulation on the establishment of the European Monetary Fund; for a Council Directive laying down provisions for strengthening fiscal responsibility; its communication on new budgetary instruments for the euro area; and its communication on a European Minister of Economy and Finance); (b) third programme of financial assistance for Greece; (c) the simplification of the Stability and Growth Pact; (d) the European Semester; (e) the application of the Excessive Deficit Procedure; (f) Council Implementing Decision imposing a fine on Austria for manipulation of debt data in Land Salzburg; and (g) the appointment of a new President of the Eurogroup.

Banking Union and financial Services: (a) banking union related questions: in particular the risk reduction legislative package (RRM) containing proposals amending the CRR, the CRD, the BRRD and the SRMR and including the finalisation of a political agreement on its IFRS 9 part as well as on the proposal on creditor hierarchy; the activities of the Single Resolution Mechanism and the agreement between the participating Member States on the allocation of credit lines to the Single Resolution Board; the establishment of a common backstop; the negotiations on the European Deposit Insurance Scheme; and the role of the Single Supervisory Mechanism in the context of non-performing loans; (b) reform of the European System of Financial Supervision; (c) Directive on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and Regulation on establishing a Union programme to support specific activities enhancing the involvement of consumers and other financial services end-users in Union policy making in the field of financial services; (d) Bilateral Agreement between the Union and the USA on prudential measures regarding insurance and reinsurance; (e) modification of the EMIR Regulation related to the supervision of EU and third country Central Counterparties (CCPs), the Regulation on the CCPs recovery and resolution and the ECB Recommendation for a EP/Council Decision amending Article 22 of the Statute of the ESCB and the ECB; (f) securitisation (capital markets union); (g) venture capital funds and social entrepreneurship funds (capital markets union); (h) amendment of the EMIR Regulation Regulatory Fitness and Performance (REFIT) proposal (capital markets union); (h) Pan-European Pension Product (insurance).

Budget : (a) annual budgetary negotiations, including adoption of the 2018 budget; (b) MFF midterm review; (c) annual discharge procedure for 2015 and on Council guidelines for budget for 2018; (d) proposal for amending the Financial Regulation; (e) discharge in respect of the Council (negotiations with the EP).

Structural and investment funds: (a) Regulation on the European Fund for Strategic Investments (EFSI); (b) macroeconomic financial assistance decisions (Georgia, Moldova, Jordan); (c) Structural Reform Support Programme; (c) omnibus proposal (amending the Common provisions Regulation and Structural Funds provisions); (d) amendment to the Common provisions regulation concerning financing in the aftermath of natural disasters; (e) several Council conclusions; (f) technical amendment to the Common Provisions Regulation concerning financial envelopes.

Direct taxation: (a) second Anti-Tax Avoidance Directive (ATAD 2), Directive on Dispute Resolution Mechanism (DRM), Directive on Administrative Cooperation (DAC6) and Directives on the Common (Consolidated) Company Tax Base (CCTB and CCCTB); (b) Digital Economy Council Conclusions.

Indirect taxation: (a) FTT enhanced cooperation; (b) VAT Directive and follow-up within the Council legislative negotiations (C-390/15, e-books); (c) VAT legislative proposals and implementing acts of the Council; (d) EU-Norway agreement on VAT cooperation; (e) rates for e-publications (VAT); (f) generalised reverse charge mechanism (VAT); (g) e-Commerce package (VAT); (h) various derogating measures based on Article 395 of the VAT Directive.

Code of Conduct (Business taxation): (a) list of non-cooperative jurisdictions; (b) monitoring process of the Member States harmful tax regimes.

Statistics: (a) IESS (integrated social statistics); (b) amendment to the Tercet Regulation; (c) integrated farm statistics; (d) European statistical programme; (e) business statistics.

As far as **litigation** is concerned, Members of Directorate 6 represented the Council in written and oral proceedings before the Court of Justice of the European Union brought by private parties against the Council, the European Council and the Eurogroup as regards:

- the Greek bail-out and Cypriot bail-in measures (Cases T-680/13 and T-786/14, T-38/14, T 495/14, T-496/14, T-531/14, T-405/14, T-350/14, T-413/14, T-765/14, T-379/16, T 868/16 and T-147/17);
- interchange fees charged by American Express (Cases C-304/16 and C-643/16);
- national derogations from the VAT-regime (C-305/16) and contributions to the Single Resolution Fund (T-466/16);
- the resolution of Banco Popular Español (Cases T-478/17, T-481/17, T-484/17, T-510/17, T-512/17, T-520/17, T-525/17, T-526/17, T-552/17, T-553/17, T-625/17, T-628/17, T 630/17, T-631/17, T-637/17, T-638/17, T-640/17, T-643/17, T-660/17, T-687/17, T 693/17, T-700/17, T-701/17, T-705/17).

In 2017, Directorate 6 welcomed more than 100 lawyers from the ECB and hosted a conference with speakers from the GSC. Several members of Directorate 6 participated at conferences as speakers on topics relevant to the Directorate's activities, including EMU reform, the future MFF and Brexit and a hearing before the European Affairs and Economic Affairs Committees of the French Senate.

Directorate 7 'Quality of Legislation' (DQL)

In 2017, DQL undertook the multilingual legal-linguistic finalisation of approximately 15 000 pages of legislative text. The number of requests for finalization ('mise au point') - with a total of 615 - remained at the level of the previous year, but with a higher number of files (69) under the ordinary legislative procedure than in 2016.

DQL staff organised and chaired 37 meetings of the Working Party of Legal/Linguistic Experts. As part of the 'quality team' formed with the legal adviser, lawyer-linguists advised on the legal drafting quality of 84 legislative texts already during the negotiation phase.

Specialisation of lawyer-linguists in different legislative domains for this drafting quality adviser role was deepened by a series of contacts with client DGs, and a set of specific training activities was organised on the initiative of the "quality coordinators" (colleagues who steer the specialised groups and regularly liaise with the policy DGs and the corresponding Directorate of the Council Legal Service).

As before, this advising activity extended also to the field of international agreements, where initial intervention by DQL on the language of negotiation prior to the translation by the Commission and adoption by College becomes more and more the standard way of technical procedure, saving considerable time in pre-adoption finalisation.

The integration of the Treaties and Agreements Office into DQL helped strengthen synergies in the way international agreements are handled within the GSC, as shown in the DQL input to the Legal Service contribution to the GSC vademecum on external relations and the joint planning forecast that DQL draws up together with Commission and EEAS services.

In the course of 2017, DQL received around 458 new requests for post-adoption corrigenda (rectificatifs) and was successfully processing them according to an "in-and-out" principle, thus preventing accumulation of backlog.

The 'Joint Handbook' for files under the ordinary legislative procedure, establishing a common set of precedents for the Commission, the European Parliament and the Council in all official languages, was signed by the three jurisconsultes and made publicly available. It is regularly updated by joint agreement between the three lawyer-linguist services.

DQL continued to actively participate in the GSC's contribution to inter-operability of document formats among the institutions which will help prevent resource-intensive and error-prone duplication of work. DQL contributed to discussions on the joint development projects on XML drafting solutions both with the Commission and the European Parliament, and remained active in the various fora of the Interinstitutional Formats Committee.

In line with the Secretary-General's Action Plan, DQL implemented the priority actions scheduled for 2017 under its internal multi-annual Quality Plan. Particular highlight was given to training and mentoring activities for staff, including DQL assistants' paralegal tasks focussed on giving optimal support to lawyer-linguists.

Coordination Unit

The unit assists the DG in ensuring that Legal Service opinions in the different areas of expertise are consistent and coordinated and help safeguard a high quality of work. With this aim, the unit has participated in and contributed to the preparation of the following meetings:

- European Council and informal high level meetings: 8 EC meetings and 4 Sherpa meetings;
- Coreper II (including 22 Coreper II Art. 50): 76 sessions, plus Antici meetings and briefings for Coreper II;
- meetings of the Directors of the Legal Service: 7 meetings;
- weekly meetings of the Legal Service: 41 meetings.

In addition to the assistance provided regarding internal decision-making procedures, the unit supports the management of the Legal Service in all matters pertaining to the planning and organisation of resources. In this context, it managed the budget (EUR 162 120,99) for staff missions.

One important part of the unit is to assist CLS members in their tasks by providing information of interest and by carrying out research activities. In 2017, the CLS Research Service and Legal Library continued to publish relevant information on its interactive website "Lex Forum", including the monthly newsletter covering judicial events during the previous month (judgments, new cases, etc.) in court cases of interest for the Council and news on issues of interest for the members of the Legal Service (103 posts in 2017). In this context, it also sent 550 alerts (e.g. tables of contents, books, articles, papers). Regarding research activities for the members of the Legal Service (or other persons from the GSC), the unit carried out 709 searches, including external doctrine, case law, legislation and Legal Service internal doctrine.

On 2017, the unit finalised the project of the creation of the Internet Legal Service Page (Domus Page) comprising a large number of information to GSC staff.

As regards training of the members of the Legal Service, the main event organised by the unit (in cooperation with DG A) was a seminar on recent case law of the Court of Justice with five external speakers, attended by approximately 100 people. Another event which required an important coordination was the organisation of the joint seminar of the legal services of the European Parliament, the Council and the Commission which took place on January 2018. In addition, the unit organised 3 lunchtime conferences related to recent case law or to adopted legislation and one lunch session on exchange of working practices in the CLS.

The unit regularly provided speakers for training for the presidencies and for 'newcomers' (newly arrived delegates of the Member States) and for Peer-to-peer sessions on Rules of Procedure, Voting in the Council and Court of Justice.

Legal Service as Authorising Officer

In its capacity as authorising service, the Legal Service is responsible for the management of

- contracts with external lawyers aimed at providing the necessary assistance to the Council before the Court of Justice of the European Union and before national courts, as well as on administrative files such as building permits or the execution of contracts with external companies (budget item 223610);
- claims for legal costs to be borne by the Council pursuant to judgments of the Court of Justice of the EU (item 223610);
- claims for legal costs to be borne by the opposing parties pursuant to judgments of the Court of Justice of the EU (item 223610) and
- claims for damages, interest and compensation to be borne by the Council or by the opposing party (item 223620).

As a rule, the Council is represented in proceedings before the Court of Justice and the General Court by members of the Legal Service acting as agents, without assistance from external lawyers. In such cases, in accordance with settled case-law, when the Council wins a case and the other party is ordered to bear the costs of the proceedings, the Council is essentially only able to recover the expenses for the mission to Luxembourg, where the Council agent represents the Council in the oral hearing. Therefore the recoverable costs in such cases are minimal.

However, in certain specific cases the Legal Service seeks the assistance of external lawyers, in particular in cases concerning anti-dumping measures and trade defence. Such cases require highly specialised knowledge and involve analysis of extremely detailed and voluminous documentation. In 2017, the Council was assisted by external lawyers in 7 trade defence cases. In four of these cases the Council acted as a respondent in appeals brought by the opposing parties. The other cases are one request for a preliminary ruling, one anti-dumping case where the Council acts as intervening party and one case where the external lawyer was only contracted to assist the Council in the oral hearing. In one additional case, the Council was assisted by an external law-firm in the defence of a public procurement litigation before the EU General Court.

The Council also occasionally needs outside legal advice and assistance on questions related to administrative issues, public procurement or contractual obligations governed by national law, and in litigation before Belgian national or regional courts. In 2017, the Council was assisted by external lawyers in three new administrative files and one new case before a Belgian court. The most important ongoing file is the legal assistance provided to the Council on the reception and on ad hoc questions related to the new EUROPA Building.

If the Council wins a court case in which it is assisted by an external lawyer, it can claim the full costs incurred for lawyers' fees and expenditure, subject to those costs being challenged by the other party as excessive. Ultimately, if there is a disagreement between the parties, the competent court fixes the recoverable costs by an order of taxation of costs. In 2017, the Legal Service recovered the costs it had incurred in 24 cases, totalling EUR 269 209,29. This is a high amount compared to the 10-year average of assigned revenue (EUR 210 000). On the other hand, it should be noted that in certain cases there may be practical difficulties in enforcing claims for recoverable costs, in particular where the other party has its domicile outside the EU. In such cases, the estimated enforcement costs need to be balanced against the amount of the claim.

When the Council loses a case before the court and is ordered to bear the costs, and in cases where there is an amicable settlement comprising an agreement on the costs, the Council must pay the recoverable costs incurred by the other party. In 2017, the Legal Service settled 10 claims for legal costs totalling EUR 452 493,20, which is distinctly higher than the 10-year average of EUR 364 000.

One claim for damages was settled in 2017 and resulted in a payment of EUR 52 608,00.

Also, an important procurement procedure (UCA-17/041) on Impact Assessments has been carried through. As a result, from 2018 on, the General Secretariat of the Council will have a capacity to get expert advice on the impact of substantial amendments to Commission legislative proposals, while keeping its role as an impartial broker.

Volume dealt with

Number of direct purchase orders issued in 2017	11
Number of invoices received in 2017	35
Number of credit notes received in 2017	2
Number of funds commitments issued in 2017	7
Number of payment requests issued in 2017	14
Number of acceptance requests issued in 2017	42
Number of payments received in 2017	24

B) HUMAN RESOURCES ALLOCATED FOR THE INTENDED PURPOSE

The CLS human resources are allocated between its seven Directorates (Directorate 1 'Competitiveness, Environment, Transport, Telecom, Energy', Directorate 2 'Employment, Social Affairs, Agriculture, Fisheries', Directorate 3 'External Relations', Directorate 4 'Institutional Questions, Staff Regulations, Litigation', Directorate 5 'Justice and Home Affairs', Directorate 6 'Economic and Financial Affairs, Budget, Structural Funds', Directorate 7 'Quality of Legislation') and one Coordination Unit.

The CLS has continued to use its resources in such a way as to be able to fulfil its mission in the best way, notably, its role of legal advisor of the European Council and the Council. In 2017, the CLS conducted a thorough analysis of its staff situation in the context of the MRTT (moving resources to tasks) exercise and following the feedback provided by the Presidency. The analysis demonstrated that the CLS was understaffed and that a structural staffing problem existed. As a result, the CLS requested 6 statutory posts³ of legal advisers to ensure the high quality, efficient and timely work and to grant its members the right work-life balance.

In addition, a contractual agent was recruited to complete the pool of contractual agents of legal advisers. The pool of contractual agents was created to address temporary staff needs in Directorates 1 to 6. The four legal advisers are attached to the Coordination Unit and deployed in the Directorates as required.

The Legal Service disposed of the following human resources on 31 December 2017:

	Permanent staff	Temporary staff	Others	Total
Administrators	144,1	1	1	146,1
Assistants	103,8	2,95		106,75
Secretaries	12,75	3		15,75
Subtotal	260,65	6,95	1	268,6
Contractual agents		17		17
National experts				0
Subtotal	0	17	0	17
Total	260,65	23,95	1	285,6

*Table includes staff in place on 31 December 2017, expressed as full-time equivalents (FTEs)
Source: Staffing Office*

³ Four posts will be granted in 2018 and 2 posts in 2019.

C) FINANCIAL RESOURCES ALLOCATED FOR THE INTENDED PURPOSE

Table 1: Overview of the implementation of the budget 2017

					1 - Initial Budget 2017	2 - Final Budget 2017	3 - Commit- ments 2017	4 = 3/2 - (%)	5 - Carry-over to 2018 Commitments- payments
Fund	Funds Centre		Commit- ment item		EUR	EUR	EUR	%	EUR
1	SJ	Legal Service	2236	Legal expenses and costs, damages and compensations	1.250.000,00	1.250.000,00	369.091,87	30	247.378,53
1	SJ	Legal Service	Article 223	Miscellaneous expenses	1.250.000,00	1.250.000,00	369.091,87	30	247.378,53
1	SJ	Legal Service	Chapter 22	Operating expenditure	1.250.000,00	1.250.000,00	369.091,87	30	247.378,53
1	SJ	Legal Service	Title 2	Buildings, equip- ment and operating expenditure	1.250.000,00	1.250.000,00	369.091,87	30	247.378,53
1	SJ	Legal Service	EX- PENSE	EXPENSE	1.250.000,00	1.250.000,00	369.091,87	30	247.378,53
1	SJ	Legal Service	COUN- CIL	Council Legal Reporting	1.250.000,00	1.250.000,00	369.091,87	30	247.378,53
Overall Result					1.250.000,00	1.250.000,00	369.091,87	30	247.378,53

The initial budget of EUR 1 250 000 remained unchanged compared to 2016. No further budget reinforcement had to be requested. Appropriations committed account for 30 % of final appropriations. The reason for this low outturn rate is the unusually high assigned revenue of 2016 which allowed in 2017 to use around EUR 435 000 first before the actual budget was used.

The underspending was reported and in October 2017 EUR 226 791.91 was made available for the general budget of the Council and the European Council.

EUR 121 713,34, i.e. 33 % of the actual commitments, was paid in 2017, the rest, EUR 247 378.53, was carried over to 2018. The major part of this budget serves to enter into commitments to pay for external lawyers assisting the Council's agents before the courts of the European Union. The number of cases is difficult to predict, and usually court cases last longer than the duration of the corresponding commitment due to the principle of annuality, which explains the outturn rate.

Table 2: Overview of the implementation during 2017 of appropriations carried over from 2016

					1 - Carry-over from budget 2016	2 - Payment 2017 on carry-over 2016	3 = 2/1 - Out turn rate (%)	4 = 1-2 - Cancelled appropriations
Fund	Funds Centre		Commitment item		EUR	EUR	%	EUR
4	SJ	Legal Service	2236	Legal expenses and costs, damages and compensations	227.536,33	194.032,12	85	33.504,21
4	SJ	Legal Service	Article 223	Miscellaneous expenses	227.536,33	194.032,12	85	33.504,21
4	SJ	Legal Service	Chapter 22	Operating expenditure	227.536,33	194.032,12	85	33.504,21
4	SJ	Legal Service	Title 2	Buildings, equipment and operating expenditure	227.536,33	194.032,12	85	33.504,21
4	SJ	Legal Service	EXPENSE	EXPENSE	227.536,33	194.032,12	85	33.504,21
4	SJ	Legal Service	COUNCIL	Council Legal Reporting	227.536,33	194.032,12	85	33.504,21
Overall Result					227.536,33	194.032,12	85	33.504,21

An amount of EUR 33 504.21 carried over from 2016 had to be cancelled. The percentage of cancelled appropriations is not higher than the average of previous years. The main reason for the cancellations is also the length of court proceedings in combination with the limited duration of a budgetary commitment.

III. FUNCTIONING OF THE INTERNAL CONTROL SYSTEM

A) EFFICIENCY AND EFFECTIVENESS OF THE INTERNAL CONTROL SYSTEMS

A set of rules on procurement and budgetary matters, lastly updated in December 2015, has been put in place by the Directorate of Finance of the General Secretariat of the Council. In addition to that, the Legal Service has a set of internal control standards and processes. They are written down in the annual work programme, the rules on budget implementation, the risk register and internal service instructions, or are directly built in the financial management system (SOS II).

Values, objectives and information for staff are communicated on the Legal Service's website (including through the publication of a task allocation list), at regular staff meetings (at the level of the directorate-general and of each directorate/unit) as well as at weekly debriefs of legal advisers by the director-general/the directors and at regular meetings for assistants.

The efficiency and effectiveness of the internal control systems are assured by an appropriate organisational structure, a centralised financial circuit, the planning of work and the assessment of achievements, risk management, mobility and recruitment of staff, staff evaluation, delegation of powers, segregation of duties and regular staff training.

Specific rules concerning the budgetary treatment of judgments ordering the Council to bear legal costs or pay damages have existed since 2005 and updated in June 2015. In many cases, the liquidation and payment of amounts the Council has to bear are subject to long negotiations, and sometimes the claimants never even request the amounts in question. In order to avoid the loss of previously committed budgets, a procedure was therefore agreed with the Budget Management Unit of the Directorate Finance, which allows commitments of the budget at the time when an agreement is reached with the opposing party about the exact amount to be paid (and not as soon as the court delivers judgment).

Furthermore, specific rules concerning the budgetary treatment of legal assistance contracts for trade defence cases were laid down in 2007. Experience of the management of budget line 223610 has shown that several commitments covering the fees of external lawyers expire at the end of each financial year, due to the duration of proceedings before the Court of Justice of the European Union, which means that commitment appropriations have to be cancelled at the end of year +1 and then re-committed at the beginning of year +2. To avoid a substantial loss of appropriations, only 80 % of the contract value is

committed, since experience has shown that this is the percentage of fees corresponding to the written procedure. The remaining 20 % are not committed until the date of the oral hearing is known. This had led to a considerable reduction in cancelled appropriations.

B) ASSESSMENT OF THE ESTIMATED COSTS AND BENEFITS OF CONTROLS

The Legal Service has in place an organisational structure in accordance with established standards and having due regard to the risks associated with the environment in which it operates.

The financial circuit of the Legal Service is a centralised system of initiation, verification and authorization. Two full-time equivalents are dealing with financial matters and cooperate closely with the Council agents and/or the desk officer who are in charge of the file and are acting as operational initiators for the cases and files for which they are responsible. This best reflects the size of the entity, the budget, the numbers and size of transactions as well the availability of human resources.

There is no exact estimation of the total costs of controls. However, the Legal Service's control measures are efficient and effective. Costs of control would mostly liaise to human resources and IT.

As regards the benefits of controls, it is difficult to make a comprehensive quantification, given the nature of the Legal Service's financial operations. However, one indicator for the efficiency of controls is the fact that the negotiations towards settlements of legal costs to be borne by the Council regularly lead to substantial savings compared to the initial request for payment of the opposing parties.

The benefits of controls in non-financial terms cover better value for money, efficiency gains and system improvements.

C) RISKS ASSOCIATED TO THE OPERATIONS

Due to the nature of its role, the Legal Service has no control over its workload for its workload depends on the priorities of the legislator, on the European Commission and, to some extent, on the priorities set by the presidencies. Similarly, in litigation the workload depends on the number of cases taken to court, which is unpredictable.

The main risk facing the Legal Service as a legal adviser is that it could be unable to perform its tasks with the required quality due to high workload, short deadlines or the fact that in some areas it is not consulted at all. This risk is minimised by the constant involvement of the members of the Legal Service at all levels and in all stages of the Council's deliberations and a practice of "lessons learned" in cases of non-consultation. Variations in workload are addressed either by ad-hoc measures or, if necessary, by restructuring of human resources within the Legal Service. In addition to that, a pool of contractual agents was created in October 2016 in order to find suitable candidates in a reasonable time for a temporary replacement of legal advisers.

The main risk facing the Legal Service as a case-handler before the courts is that a deadline is not met or that its defence is not of the required quality due to high workload or an oversight. This risk is minimised by a centralised system of follow-up of deadlines (managed by the Legal Service registry), the appointment of at least two members of the Legal Service as agents in each court case and, where necessary, the temporary assignment of additional human resources to handle peaks of workload on litigation in certain areas.

The main financial risks which the Legal Service has to face as regards the execution of its budget lines are the difficulty in finding suitable external lawyers at short notice and at a reasonable price, the high costs to be paid when cases are lost, difficulties in recovering costs due after cases have been won and very high claims for damages (especially in sanctions cases). These risks are systematically analysed and reduced by measures such as forward planning by means of improved IT tools, negotiations with the opposing party in case of excessive claims for costs and careful weighting up of enforcement costs in relation to the amount of the Council's claim. As regards a concrete risk of very high claims for damages in ongoing court cases, timely information is provided in order to ensure that sufficient budgetary provisions are made if necessary, and following a recommendation by the Internal Audit, the Legal Service, in collaboration with DGA4, is currently fine-tuning the methodology to calculate the values of provisions and contingent liabilities for such claims for damages in the annual accounts.

All risks associated with the Legal Service's tasks are set out in a risk register. This register is regularly updated, lastly in February 2017.

IV. CONCLUSIONS ON ASSURANCE

In conclusion, the Legal Service operates in an environment where the residual risks - linked to finance and non-finance matters - are sufficiently well managed.

Based on the elements and facts given above, on the strength of the validation of the financial system and on the positive report on the quality of the accounting data, it is justified to have a reasonable assurance on the legality and regularity of the underlying transactions.

V. DECLARATION OF ASSURANCE⁴

I, the undersigned, Hubert LEGAL

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 view⁵.

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 observations of the internal audit service and lessons learnt from the reports of the Court of Auditors 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.

Brussels,

[signed]

Hubert LEGAL

Director-General Legal Service

⁴ On the basis of the foregoing and analogy of declarations by aosd, the director-general established his/her own annual statement.

⁵ True and fair in this context means a reliable, complete and correct view on the state of affairs in the service.