



Council of the European Union
General Secretariat

Legal Service
The Director-General

2018 ANNUAL ACTIVITY REPORT OF THE AUTHORISING OFFICER BY DELEGATION

March
2019

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 2018, 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.

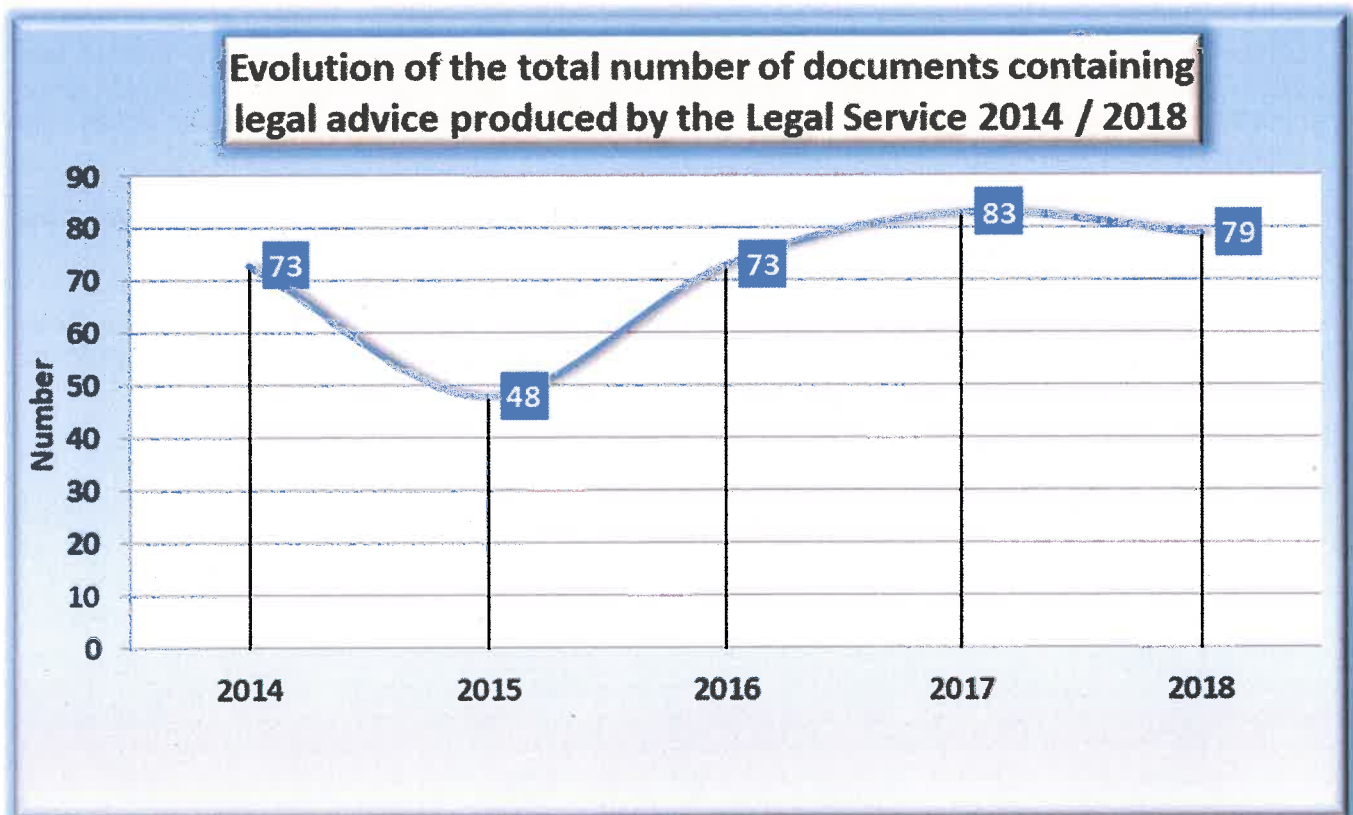
For this purpose, the CLS continued to

Provide Legal Advice

- 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;
- to assist the Presidency and the General Secretariat, including during trilogues, preparatory meetings, briefings and technical meetings
- to assist with the drafting of provisions and texts to be adopted by the Council, to contribute to improve the quality of drafting and to participate in drafting exercises
- contribute to identifying legally correct and politically acceptable solutions;
- ensure compliance with the applicable procedural rules at all levels.

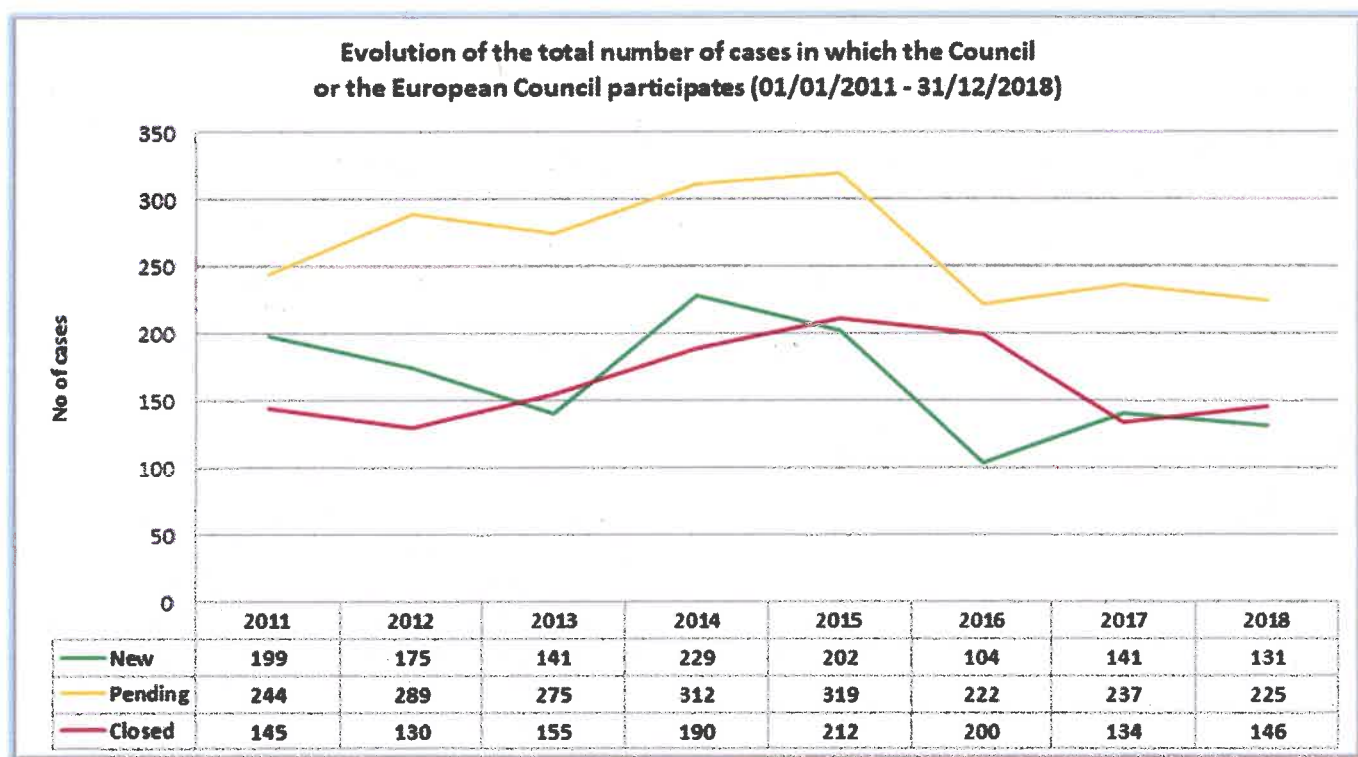
The nature of the CLS work requires its members to provide sound legal advice and contribute to the deliberations on specific files in all areas of activity of the EU. An important part of CLS is to anticipate and solve legal issues at an early stage and provide oral and written advice whenever needed. The CLS contribution is not always easy to quantify since most of the advice is given informally and orally in the course of the discussions on 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 2018, Directorates 1 to 6 and the Coordination Unit issued 79 such contributions and opinions.



Represent the European Council and the Council in proceedings before the Court of Justice

The workload of Directorates 1 to 6 relating to litigation remained extremely heavy. In 2018, 146 court cases were closed, 225 were pending and 131 new court cases arrived. A significant number of court cases relate to restrictive measures, 72 were pending at the end of 2018. It should be noted that the litigation work is very demanding with strict and frequent deadlines. Regarding the 146 court cases closed in 2018, the Court deadlines were always respected. The representation in court hearings was also fully assured by the legal advisers acting as agents in cases before the courts of the EU. The CLS only seeks the assistance of external lawyers, in respect of certain categories of cases, which represent a small proportion of the overall workload (see below "Legal Service as Authorising Officer").



Quality of legislation

In 2018, JUR 7 undertook the multilingual legal-linguistic finalisation of approximately 19 450 pages of legislative text. The number of requests for finalization ('mise au point') - with a total of 720 - represented an increase of 17% in relation with the previous year, . The number of files under the ordinary legislative procedure was also increased by 35% from 69 in 2017 to 93 in 2018.

JUR 7 staff organised and chaired 44 meetings of the Working Party of Legal/Linguistic Experts which represented an increase of 19% in relation with the previous year. As part of the 'quality team' formed with the legal adviser, lawyer-linguists advised on the legal drafting quality of 121 legislative texts already during the negotiation phase, whilst 83 files were concluded.

Specialisation of lawyer-linguists in different legislative domains for this drafting quality adviser role was deepened by a series of contacts with policy 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 JUR 7 on the language of negotiation prior to the translation by the Commission and adoption by College becomes the standard way of technical procedure, saving considerable time and resources in pre-adoption finalisation. This was the case in particular for the 2 Japan Agreements (FTA and SPA) and for the 2 Singapore Agreements (FTA and IPA). 2018 was also the year of the consolidation of the joint planning forecast that JUR 7 draws up together with Commission and EEAS services allowing both services to better plan and be in a better position to serve our stakeholders. The integration of the Treaties and Agreements Office into JUR 7 was also concluded in 2018 with a reorganisation of this service which is now head by an administrator.

In the course of 2018, JUR 7 received around 456 new requests for post-adoption corrigenda (rectificatifs) and was successfully processing them according to an "in-and-out" principle, thus preventing accumulation of backlog.

Act as "service traitant"

The CLS accomplished secretariat functions as "service traitant" to the following bodies:

Body	Number of meetings	Comments
COJUR	4	+ support to Presidency at two EU-US informal dialogue meetings in Strasbourg & New Work
COJUR ICC	4	
COMAR	10	
Court of Justice	3	The Working Party on Court of Justice examined a proposal for an amendment of Protocol on the Statute of the Court of Justice of the European Union, on which an agreement was reached between the European Parliament, the Council, the Court of Justice and the Commission in December 2018.
Friends of Presidency (RPS Adaptation)	5	The FoP has examined the two RPS Adaptation proposals (2016/0400 COD and 2016/0399 COD), on which a general approach was reached in the Council in 2018.
WP on Codification	0	It dealt with five different legislative proposals without organising meetings, given the fact that those legislative files did not raise major problems, neither from a political nor from a legal point of view and therefore, it has been possible to reach an agreement among the delegations through an informal written procedure.
Panel provided for in Article 255 TFEU	10	The Panel is responsible for giving an opinion on candidates' suitability to perform the duties of judges and advocates-general. It issued 24 opinions in 2018.
Negotiations on delineation criteria (no WP but service traitant)	6	The Legal Service is service traitant for the negotiations on delineation criteria foreseen in par. 27 of the IIA on BLM. There is no WP corresponding to it but it was necessary to hold meetings with the legal advisers on this file.

Provide legal support on administrative issues

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).

Subject	Overview of handling of files	Comments
Transparency, access to documents requests and document management	<u>Access to documents</u>: legal advice on issues related to requests for public access to Council documents; legal revision of all confirmatory replies drafted by DG COMM (21 in 2018)¹; drafting of 6 replies to confirmatory applications regarding CLS documents²; handling of 116 initial requests concerning 202 CLS documents³, including 7 requests under MoU with a 5-day deadline; legal revision of initial requests concerning no-LS documents upon consultation from other services; work on improvements to Council practice and internal procedures in the area of access to documents; <u>Broader policy issues (legislative transparency and document management)</u> : The CLS has been actively involved on the Legislative Transparency discussions also conducted at COREPER and Antici+1 level. In close cooperation with DGSMART and DGCOMM, it has also provided advice in the context of the work on a new policy on document management, filing and registration.	¹ 3 of those confirmatory replies were dealt with by the 1st deadline, 15 within the second deadline, 3 replies were given after the 2nd deadline. ² 2 of those confirmatory replies were dealt with by the 1st deadline and 4 by the 2nd deadline. ³ 27 of those requests (23.3%) were dealt with by the first deadline (15 working days or 5 days for MoUs), while 80 (68.9%) were dealt with by the second deadline. 9 replies (7.8%) were made after the second deadline. Delays were in general due to heavy workload, lack of resources in JUR 4, complex issues, consultations of other parties, late receipt of requests, holiday periods
European Ombudsman requests	Complaints to the EO concerning alleged instances of maladministration by the Council and legal revision or drafting of the opinion submitted to the Ombudsman. The LS handled 15 inquiries: 10 complaint-based (3 still ongoing, 7 closed where the no maladministration was found or settled by the Council), 1 own-initiative inquiry (closed) and 4 strategic inquiries.	The profile of the Ombudsman cases against the Council has increased, with several cases having a considerable systemic or institutional importance (SI on the transparency of legislative discussions in the Council preparatory bodies, complaint on public information on meetings of PEC with interested representatives).
Article 90 complaints	The LS was consulted on 34 Art. 90 complaints; most of those complaints required in-depth analysis.	
Protocol on Privileges and Immunities (PPI) and other administrative matters	Advice on the application of the PPI and on various administrative matters (internal audits, Council impact assessment capability, data protection, security of information, budgetary matters, etc).	

Contracts and buildings	Settlement with Belgian authorities regarding the sale of the Europa building and adjacent plots of lands. Advice on contractual issues (intellectual property clauses, amendments, liquidated damages, etc). Advice on Belgian law issues (insurance law, security at work, criminal law aspects, etc). Handling of two national court cases, one in the field of labour law where the Belgian Labour Court ruled in favour of the Council.	
Procurement procedures	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. Revision of 24 large-scale procurement procedures. Legal advice to DG ORG PCU and authorising departments on the application of the Financial Regulation.	

Support to the functioning of the LS

The **Coordination 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 summits: 18 meetings (including informal HSoG);
- Coreper II (including 26 Coreper II Art. 50): 78 sessions, plus Antici meetings and briefings for Coreper II;
- meetings of the Directors of the Legal Service: 12 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 195.0) for staff missions.

One important task of the unit is to assist CLS members in their tasks by providing information of interest and by carrying out research activities. In 2018, 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 (115 posts in 2018). In this context, it also sent 700 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 603 searches, including external doctrine, case law, legislation and Legal Service internal doctrine. Finally, the Legal Library registered 606 book loans.

The unit worked on the improvement of CLS IT tools and databases. In 2018, the CLS has defined its needs and included it in the CLS input for IT initiatives sent to SMART.

As regards training of the CLS members, on January 2018, the unit organised the joint seminar of the legal services of the European Parliament, the Council and the Commission with a high participation from the 3 institutions (approximately 100 people). In October, the CLS organised its annual seminar on recent case law of the Court of Justice with four external speakers. The seminar was attended by approximately 150 people including participants from GSC political DGs, the European Parliament, the Commission, the

EEAS and the European Central Bank for which a limited number of places was kept. In addition, the unit organised 7 lunchtime conferences / information sessions on various subjects¹.

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

In 2018, the Internal Audit carried out an audit on the Legal Service assessing organisational procedures and risk management of processes. In particular, it examined the coordination with the other DGs; document management; the compliance of the AWP and AAR with the Financial Regulation, the risk assessment exercise and the litigation process. The CLS accepted the eight recommendations and set up an action plan to implement the recommendations. At the end of 2018, 5 recommendations were implemented, 2 are ongoing and 1 will be implemented in 2019.

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 opposing parties pursuant to judgments of the Court of Justice of the EU (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 damages, interest and compensation to be borne by the Council or by the opposing party (item 223620) and
- impact assessment of the Council's substantial amendments to Commission legislative proposals (item 223630).

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 2018, the Council was assisted by external lawyers in six trade defence cases. In one of these cases the Council acted as a respondent in an appeal brought by the opposing party. The other cases are three requests for a preliminary ruling and two anti-dumping cases where the Council acts as intervening party.

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 2018, the Council was assisted by external lawyers in two new administrative files and two new cases before Belgian courts.

All invoices issued to the Legal Service by external lawyers in 2018 were paid on time.

¹ On 29 January: Research in the Curia; 27 February: Report on the Establishment of European Union Positions in the field of External Relations; 15 March: The Legal Service goes digital; 20 March: Change and how to survive it: A roadmap for humans; 17 April: Short titles in Coreper and Council agendas; 10 July: Vade Mecum on External Relations and 25 September: Comment optimiser vos recherches dans Curia.

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 2018, the Legal Service recovered the costs it had incurred in 17 cases, totalling EUR 33 736,93. This amount is significantly lower than in previous years. Whereas the number of cases remains more or less unchanged, the average collected amount has dropped. 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 pay 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 2018, the Legal Service settled 16 claims for legal costs totalling EUR 422 352,49, which is distinctly higher than the 10-year average of EUR 354 000.

There were no cases where the Council was condemned to pay damages, interest and compensation in 2018. As regards impact assessments, framework contracts referring to different policy areas were concluded at the beginning of 2018. So far, those framework contracts have not been used.

Volume dealt with

Number of direct purchase orders issued in 2018	9
Number of invoices received in 2018	23
Number of credit notes received in 2018	4
Number of funds commitments issued in 2018	15
Number of payment requests issued in 2018	19
Number of acceptance requests issued in 2018	39
Number of payments received in 2018	17

B) HUMAN RESOURCES ALLOCATED FOR THE INTENDED PURPOSE

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

The Legal Service disposed of the following human resources on 31 December 2018:

	Permanent staff	Temporary staff	Others	Total
Administrators	144,45	4		148,45
Assistants	97,60	2		99,60
Secretaries	12	6		18
Subtotal	254,05	12		266,05
Contractual agents		15		15
National experts		1		1
Subtotal		16		16
Total	254,05	28		282,05

Table includes staff in place on 31 December 2018, expressed as full-time equivalents (FTEs)
Source: Staffing Office

Directorates 1 to 6 and Coordination Unit

In 2018, one director in the Legal Service retired which resulted in the appointment of a new director.

Following the analysis of the staff situation, the Administration allocated six new statutory posts of legal advisers (4 in 2018 and 2 in 2019). In 2018, the selection procedures for the new 4 legal advisers posts were carried out. Following the selection procedures, 3 legal advisers occupied permanent posts and, due to an unsuccessful recruitment procedure, 1 temporary agent occupied the remaining post. The recruitment procedures have shown the difficulty for the LS to find qualified lawyers².

In addition, the following recruitments were carried out : 1 legal adviser following an internal mobility, 1 END and 1 political assistant. Also, pursuant to Article 7(1) of the Staff Regulations, the practice of internal mobility applied in the LS enabled 5 legal advisers to move to another Directorate. Finally, due to the high workload, 1 contractual agent (CA) was recruited for the full year and two other CA were recruited for shorter periods.

Directorate 7 (DQL)

In 2018, JUR 7 dealt with numerous recruitments : 6 lawyers-linguist (LL) posts and 13 posts for ASTs/AST-SCs. Also, due to statutory absences, 6 contract agents were recruited (3 FG IV and 3 FG II). Due to unsuccessful publications, 1 temporary agents occupy a LL post, 2 temporary agents occupy AST posts and 3 temporary agents occupy SC posts. After having used all the recruitment possibilities, 1 LL post and 2 SC posts remain vacant.

Recruitment procedures for JUR 7 proved to be difficult for both AD and ASTs - AST/SCs. Despite the assistance of DG ORG, an important number of vacant posts could not be covered properly because of lack of candidates or appropriate EPSO lists.

Moreover, in 2018 JUR 7 was facing a new phenomenon in several cases: after launching the selection, and internal publication as well as republication on 3 levels, the selected candidates declined the offer and the procedure had to be restarted with TA's. This procedure proved to be difficult as well (due to short duration of the offered contract compared to the competing institutions, lack of tested candidates for the specific language, etc.).

C) FINANCIAL RESOURCES ALLOCATED FOR THE INTENDED PURPOSE

Table 1: Overview of the implementation of the budget 2018³

Fund centre	Initial budget 2018	Final budget 2018	Commitments 2018	Outturn rate on final budget (%)	Carry-over to 2019
Nr + label	1	2	3	3/2	Commitments-payments
Title 2	1 000 000	1 000 000	323 973,63	32	150 917,72
Chapter 22	1 000 000	1 000 000	323 973,63	32	150 917,72
Article 223	1 000 000	1 000 000	323 973,63	32	150 917,72
Item 2236	1 000 000	1 000 000	323 973,63	32	150 917,72

² Note from Mr Legal to the Secretary-General dated 16 May 2018 on 'Recruitment at the Council Legal Service'.

³ Legal expenses and costs, damages and compensations, impact assessments.

The budget not having been fully used in previous years, the Legal Service requested a 2018 budget which was 20 % lower than the one for 2017 and before (EUR 1 million instead of EUR 1,25 million). These EUR 1 000 000 were to cover not only the usual tasks of legal assistance and payment of costs, but also impact assessments of the Council's substantial amendments to Commission legislative proposals.

Appropriations committed account for 32 % of final appropriations. The reason for this low outturn rate is the high assigned revenue of 2017 which allowed to use around EUR 273 000 first before the actual budget was used.

EUR 173 055,91, i.e. 53 % of the actual commitments, was paid in 2018, the rest, EUR 150 917,72, was carried over to 2019. As the duration of court cases is usually longer than a year, a carry-over is normal for the financial activities of the Council Legal Service.

Table 2: Overview of the implementation during 2018 of appropriations carried over from 2017

Fund centre	Carry-over from budget 2017	Payments 2018 on carry-over from 2017	Outturn rate (%)	Cancelled appropriations
Nr + label	1	2	2/1	1-2
Title 2	247 378,53	131 277,29	53	116 101,24
Chapter 22	247 378,53	131 277,29	53	116 101,24
Article 223	247 378,53	131 277,29	53	116 101,24
Item 2236	247 378,53	131 277,29	53	116 101,24

An amount of EUR 116 101,24 carried over from 2017 had to be cancelled. This amount is distinctly higher than in previous years. The main reason for the cancellations is the length of court proceedings in combination with the limited duration of a budgetary commitment (whereas the budgetary commitment expires on the 31 December of year n+1 of the year of commitment, a considerable number of court cases are not terminated by a judgment in that time-span). For measures taken to address the problem, see III. A), last paragraph.

III. FUNCTIONING OF THE INTERNAL CONTROL SYSTEM

A) EFFICIENCY AND EFFECTIVENESS OF THE INTERNAL CONTROL SYSTEMS

The internal control framework (ICF) for the General Secretariat of the Council was revised in 2018. Goal of the ICF remained to provide reasonable assurance of achievement of objectives. The revised ICF took effect on 1 November 2018 by a decision of the Secretary-General. Both, the old and the revised ICF, have been based on the internal control framework guidance by COSO (see www.coso.org) that provides an internationally accepted standard in this field. Also, the 2018 internal audit on the Legal Service applied the COSO standards and methodology. The present annual activity report will mostly use the new ICF terminology.

The Legal Service adheres to the five components, 17 principles and 33 principles set out in the ICF and contributes, together with other services, to the effective and efficient functioning of the framework.

The efficiency and effectiveness of the internal control systems are assured by

- the demonstration of commitment to integrity and ethical values by management,
- an appropriate organisational structure, communication channels and reporting lines,
- a centralised financial circuit,
- the planning of work and the assessment of the achievement of objectives,
- the identification, assessment and analysis of risks (see III. C),
- the recruitment, professional development and mobility of staff,
- the appropriate authority and responsibilities in the pursuit of objectives,
- the accountability of individuals by means of delegation of authority and segregation of duties,
- regular staff meetings (at the level of the directorate-general and of each directorate/unit) as well as weekly debriefs of legal advisers by the management, monthly meetings for assistants, an internal website, regular information by email.

Two specific rules are put in place in the Legal Service. The first one is about the budgetary treatment of judgments ordering the Council to bear legal costs or pay damages. It exists since 2005 and was 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 appropriations, a procedure was agreed with the Budget Management Unit of the Finance Directorate, 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).

A second specific rule concerning budgetary treatment of legal assistance contracts in trade defence cases was 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 EU, 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 % (the assumed value of the written procedure) of the contract value is committed. The remaining 20 % are not committed until the date of the oral hearing is known. This has 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 the internal control framework and having due regard to the risks associated with the environment in which it operates.

The financial circuit is a centralised system of initiation, verification and authorisation. Two full-time equivalents deal 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 service, the budget, the numbers and amount of transactions as well as 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. Reports of the internal auditor, the European Court of Auditors or opinions of the Audit Committee make no mention of misuse of funds nor irregularities. This can be taken as an indicator that internal control is functioning at a satisfactory level.

As regards the benefits of controls, it is difficult to make a comprehensive quantification, given the nature of the Legal Service's financial operations. Benefits of controls in non-financial terms cover better value for money, efficiency gains, system improvements, compliance with regulatory provisions and stakeholder satisfaction.

C) RISKS ASSOCIATED TO THE OPERATIONS

Due to the nature of its role, the Legal Service has no control over its workload. Its workload depends on the priorities of the legislator, on the European Commission and on the priorities set by the presidencies. Similarly, in litigation the workload depends on the number of cases pending before the CJEU, which has limited predictability.

The main risk associated with legal advice is that the Legal Service could be unable to perform its tasks to the required standard of 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. As follow-up of the 2018 audit on the Legal Service, a contact point for all generic requests from the General Secretariat of the Council has been defined. 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 order to find suitable candidates in a reasonable time for a temporary replacement of legal advisers.

The main risk associated with the Legal Service as case-handler before court 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. As recommended in the 2018 audit, internal deadlines (e. g. for translation or for information of the Member States) will also be taken care of electronically in the future.

The main financial risks which the Legal Service faces 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 mitigated by measures such as forward planning, 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. At the beginning of 2018, a working methodology on how to calculate the values of provisions and contingent liabilities for such claims has been agreed between the Accounting Unit of the Finance Directorate and the Legal Service.

All risks associated with the tasks of the Legal Service are set out in a risk register. As an outcome of the audit on the Legal Service, the action plans to mitigate risks are described in a way that they include the deadline and the "owner" of the actions. Also risks associated with the Legal Service advice on the compliance of high-value contracts and on the coordination of requests for access to Council documents have been put in the register.

IV. CONCLUSIONS ON ASSURANCE

The Authorizing Officer by Delegation is of the opinion that the principles and components of the internal control framework are present and functioning. Residual risks related 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 which facilitates the control and monitoring of operations, 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 ASSURANCE

I, the undersigned,

Director-General of the Legal Service,

in my capacity as authorising officer by delegation,

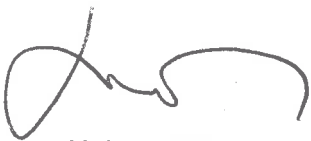
declare that the information contained in this report gives a true and fair view.

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, 21 March 2019



Hubert LEGAL

Director-General

