



Council of the European Union
General Secretariat
Legal Service
The Director-General

2019 ANNUAL ACTIVITY REPORT OF THE AUTHORISING OFFICER BY DELEGATION

April
2020

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 2019, 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.

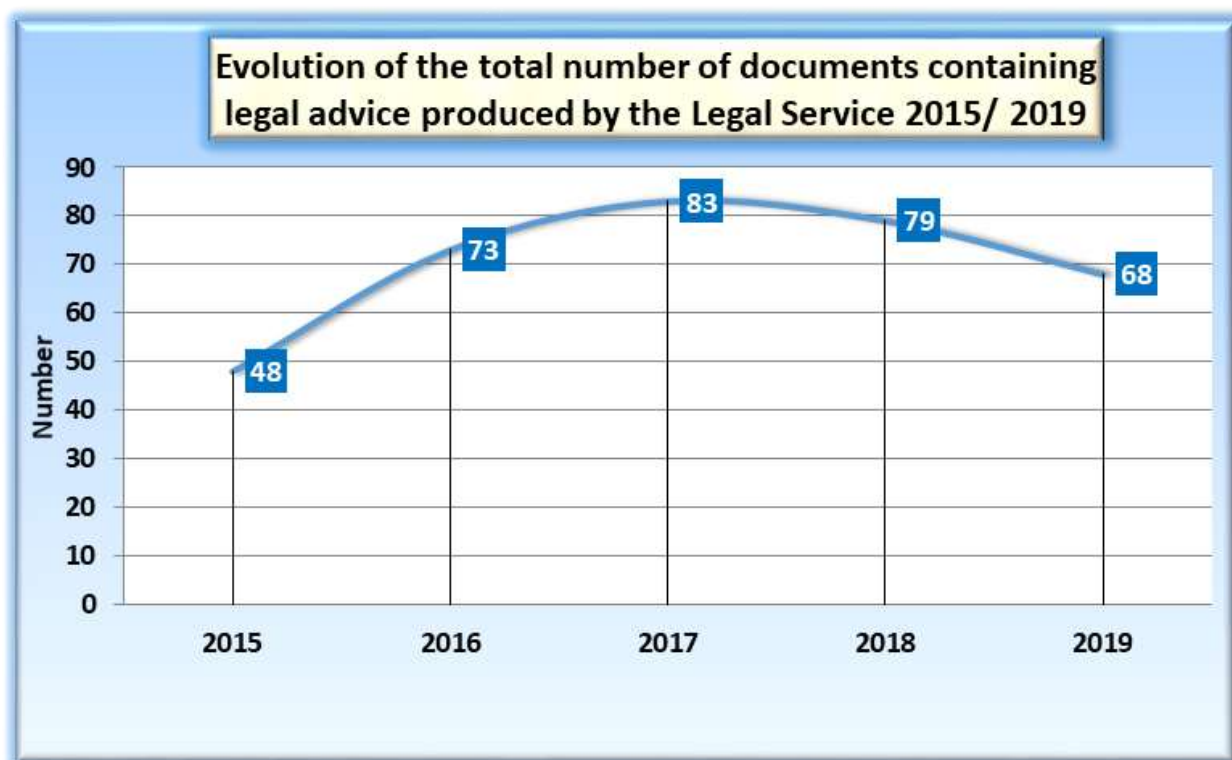
For this purpose, the CLS continued to

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

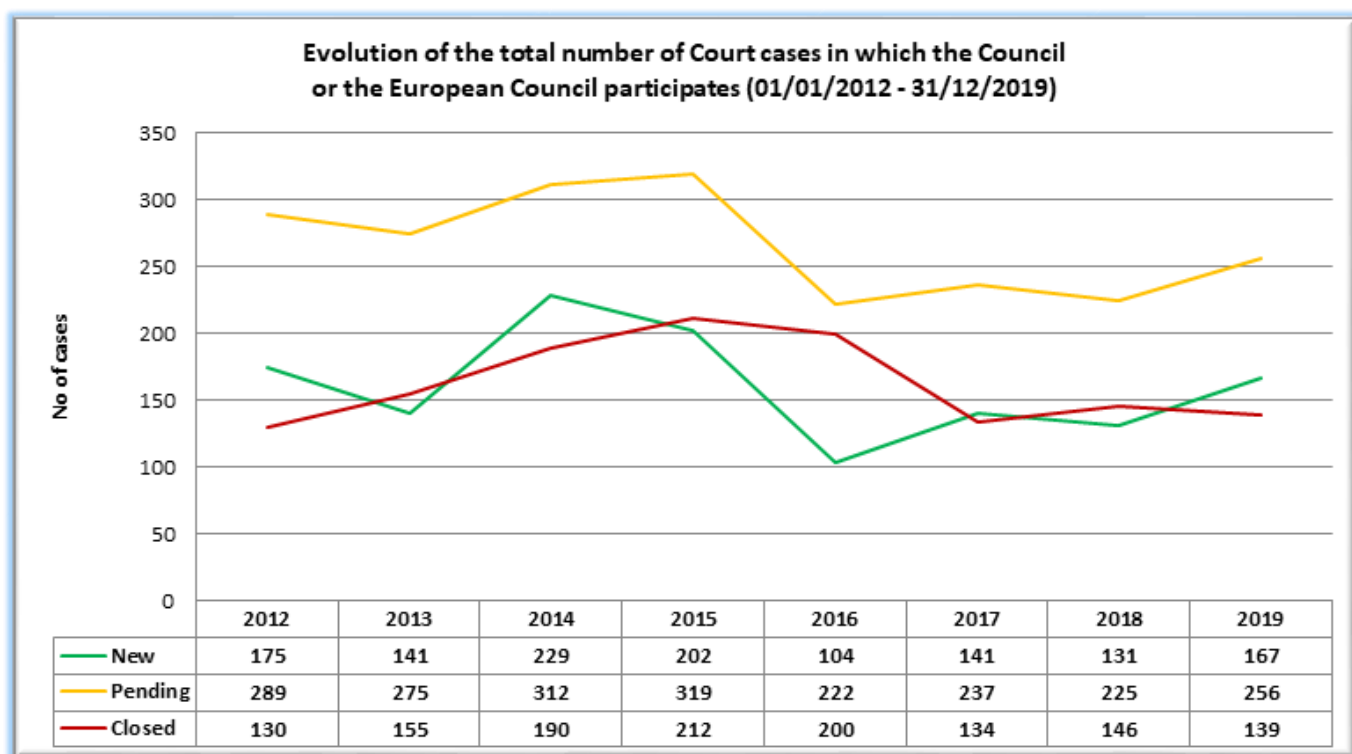
The nature of the CLS work requires its members to provide sound legal advice and contribute to the deliberations on specific files in all areas of activity of the EU. An important part of CLS is to anticipate and solve legal issues at an early stage and provide, in complete impartiality, oral and written 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 2019, Directorates 1 to 6 and the Coordination Unit issued 68 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 2019, 139 Court cases were closed, 256 were pending and 167 new Court cases arrived. A significant number of Court cases relate to restrictive measures, 89 were pending at the end of 2019. It should be noted that the litigation work is very demanding with strict and frequent deadlines. Regarding the 139 Court cases closed in 2019, 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").



Check the Quality of legislation

In 2019, JUR 7 undertook the multilingual legal-linguistic finalisation of approximately 21 806 pages of legislative text, which is a significant increase compared to the total number of pages of 19 450 in 2018. The difference is mainly due to the higher number of files in the sphere of ordinary legislative procedure linked to the end of the legislative term: a year-to-year increase from 93 to 99 files.

JUR 7 staff organised and chaired 65 meetings of the Working Party of Legal/Linguistic Experts which represented an increase of 47 % 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 143 legislative texts already during the negotiation phase, whilst 86 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 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 Vietnam FTA, as well as for the agreements with the Kyrgyz Republic, Mercosur and Mexico.

In the course of 2019, JUR 7 received 546 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 recently established practice of 'packaging' together requests relating to large and/or politically sensitive legal acts also helped to organize, in a predictable manner once or twice a year, the rectification workflow for such files as Medical Devices, CRR/CRD and Data Protection.

Act as "service traitant"

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

Body	Number of meetings	Comments
COJUR	4	Furthermore, the CLS provided support to Presidency at two EU-US informal dialogue meetings in Strasbourg and New Work
COJUR ICC	4	Support the PCY in the preparation and adoption of 1) Statement on behalf of the EU and its Member States in the General Debate, 2) Elements for Intervention on behalf of the EU and its Member States for the Plenary session on Cooperation, and 3) Elements for Intervention on behalf of the EU and its Member States for the Plenary session on "Review of the Court", all presented in the 18th Session of the Assembly of States Parties to the Rome Statute of the ICC
COMAR	9	
Court of Justice	2	At its meetings on 08/02/19 and on 20/09/19, the Working Party on Court of Justice examined two sets of draft amendments to the Rules of Procedure of the Court of Justice of the European Union, which were both approved by the Council in accordance with the sixth paragraph of Article 253 TFEU
Friends of Presidency (Regulatory Procedure with Scrutiny (RPS) Adaptation)	3	The FoP continued its work on the RPS Adaptation proposal 2016/0400 COD. The EP and the Council agreed to split the proposal into two packages and reached a political agreement in February 2019 on the 1st package of acts to be aligned. This 1st package was adopted by the Council on 14 June 2019 and was published in the OJ (L Series) on 25 July 2019.
WP on Codification	0	In 2019 no new legislative proposals were submitted by the European Commission. The finalisation of two legislative proposals submitted in 2018 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	7 (of which 4 in 2 days)	The Panel is responsible for giving an opinion on candidates' suitability to perform the duties of judges and advocates-general. It issued 28 opinions in 2019.
Conference of the Representatives of the Member States for the appointment of members of the Court of Justice	5	Secretariat of the Conference of the Representatives of the Member States for the appointment of Judges of the General Court and Judges and Advocates General of the Court of Justice.

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, European Ombudsman requests and procedures related to access to documents).

Subject	Overview of handling 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 (29 in 2019)¹; drafting of 11 replies to confirmatory applications regarding CLS documents²; drafting of replies to 102 initial requests³, including several requests under MoU with a 5-day deadline; legal revision of initial requests concerning no-CLS 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 DG SMART and DG COMM, it has also provided advice in the context of the work on a new policy on document management, filing and registration.	¹ 19 of those confirmatory replies were dealt with by the 1st deadline, 7 within the second deadline, 3 replies were given after the 2nd deadline. ² 7 of those confirmatory replies were dealt with by the 1st deadline, 2 by the 2nd deadline and 2 after the 2nd deadline. ³ 44 of those requests (43% compared to 23.3% in 2018) were dealt with by the first deadline (15 working days or 5 days for MoUs), while 56 (54% compared to 68.9% in 2018) were dealt with by the second deadline. 2 replies (2% compared to 7.8% in 2018) were made after the second deadline. Year 2019 was characterized by an increase in confirmatory applications (40 in 2019 compared to 28 in 2018). There has been also an improvement in the deadlines of reply. Delays were in general due to heavy workload, lack of resources, requests dealing with complex issues or concerning an important number of documents, consultations of other parties, late receipt of requests or draft replies, holiday periods.

European Ombudsman requests	Handling of complaints to the Ombudsman concerning alleged instances of maladministration as well as of strategic inquiries and own initiative inquiries launched by the Ombudsman as regards the activity of the Council and the European Council, including the managing of inspection meetings and legal revision or drafting of the opinion submitted to the Ombudsman. In 2019, the CLS handled 16 inquiries (which were either introduced in 2019 or previously but were still ongoing or have been closed in 2019) : 10 complaint-based, 1 own-initiative inquiry and 5 strategic inquiries. No case closed in 2019 led to a finding of maladministration.	Several cases have a considerable systemic or institutional importance (complaint on public information on meetings of PEC with interested representatives, complaint on sponsorship of the Presidencies of the Council by private companies, strategic inquiry on transparency of Brexit negotiations, own-initiative inquiry on transparency of the bodies involved in preparing Eurogroup meetings etc.).
Article 90 complaints	The Legal Service was consulted on 26 such complaints in total.	
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	Preparation of the notarial deed with Belgian authorities regarding the sale of the Europa building and adjacent plots of lands. Advice on contractual issues (intellectual property clauses, amendments, termination, liquidated damages, etc.). Advice on Belgian law issues (security at work, criminal law, etc.). Handling of one national court case in the field of insurance law, including an action before the Belgian Cour de cassation.	
Procurement procedures	Revision of approx. 35 large-scale procurement procedures. Legal advice to DG ORG PCU and authorising departments on the application of the Financial Regulation and the Athena Financial rules. Revision of procurement management decisions and internal guidance. Revision of internal guidance on the management of the Council's budget.	

Support to the functioning of the CLS

The **Director General Office**¹ 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 Office contributed to the preparation of the following meetings² attended by the Director General :

- European Council and summits: 12 meetings (including informal HSoG);
- Coreper II (including 20 Coreper II Art. 50): 63 sessions, plus Antici meetings and briefings for Coreper II;
- meetings of the Directors of the Legal Service: 11 meetings;
- weekly meetings of the Legal Service: 42 meetings.

In addition to the assistance provided regarding internal decision-making procedures, the DG Office 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 190 000) for staff missions.

In 2019, the CLS Research Service and Legal Library carried out +/- 600 searches/requests including external doctrine, case law, legislation, and internal doctrine for the members of the Legal Service (or other persons from the GSC). It published also a weekly newsletter, JUR News (45 issues) , with the legal news of the service and targeting a few judgements of the coming week, and a monthly newsletter covering judicial events during the previous month (judgments, new cases, etc.) in court cases of interest for the Council. The Legal library registered about 558 loans and sent also +/- 587 alerts (e.g. tables of contents, new books, new articles, new papers). Our entity also manages the collaborative site, Lex Forum, on which 66 posts were published in 2019, as well as the Domus pages of the Legal Service. It takes also care of the minutes of the weekly meetings of the Legal Service.

The DG Office coordinates the work on Knowledge and Information Management. In this context, the CLS has representatives in several fora related to Knowledge and Information Management, both at the SCG level (IKM Management Board, IKM Users Forum) and interinstitutional level (Groupe interinstitutionnel Lex (GIL) and sub-group Methodology (GIL GM)).

In 2019, the DG Office managed a regular and structured dialogue with SMART on the ongoing CLS Knowledge and Information Management projects (JuriBase, AJUR, WIKIJUR and Themis). The work on the improvement of the existing databases and the development of new knowledge and information management tools required a large number of meetings with SMART, CLS internal meetings and investment of the CLS business managers in order to define the high level requirements for each project. This work will continue during 2020.

As regards training of the CLS members, the DG office organised 6 lunchtime conferences / information sessions on various subjects³.

The DG office 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.

¹ Until 30.9.2019 Coordination Unit.

² The complete figures on all meetings can be found in the AAR of ORG.

³ On 21 February: follow-up discussion on the staff survey; 1 July: Opinion 1/17 (CETA) : implications for ISDS/ICS/MIC and other forms of third-party dispute settlement involving the EU; 2 July: Litigation - the restrictive measures cases; 12 September: ULM (Unified Litigation Management) du Service juridique de la Commission; 22 November: Recent developments in the Economic and monetary union: the euro area budget and the new ESM Treaty and 12 December: Procédures et stratégies - pratique du contentieux devant le Tribunal et la Cour de 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, notably in the areas of administrative, property and labour law (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);
- 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 2019, the Council concluded six new contracts with external lawyers in trade defence cases. Three of these cases were requests for a preliminary ruling. In one other case the Council acted as defendant and in one additional case as intervening party. Finally, one contract was concluded in order to ensure continued assistance in ongoing anti-dumping cases by an external lawyer who changed law firm.

The Council also occasionally needs external legal advice and assistance on questions related to administrative issues, public procurement or contractual obligations governed by national law, and in litigation before Member States' courts. In 2019, the Council was assisted by external lawyers in three new administrative files and one new case before a UK court.

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 2019, the Legal Service recovered the costs it had incurred in 12 cases, totalling EUR 3 495,38, which is a very low amount compared to the 5-year average of EUR 184 000. 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 2019, the Legal Service settled 20 claims for legal costs totalling EUR 424 164,39, which is slightly less than the 5-year average of EUR 443 000.

There were no claims for damages in 2019, and no impact assessment due to substantial amendments of Commission legislative proposals was carried through.

18 of the 19 invoices received in 2019 were processed in time (95 %).

Volume dealt with

Number of direct purchase orders issued in 2019	10
Number of invoices received in 2019	19
Number of credit notes received in 2019	15
Number of funds commitments issued in 2019	15
Number of payment requests issued in 2019	20
Number of acceptance requests issued in 2019	24
Number of payments received in 2019	12

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 the Office of the Director General.

The number of staff members in the Legal Service on 31 December 2019 was as follows:

	Permanent staff	Temporary staff	Others	Total
Administrators	155,45	3		158,45
Assistants	96,4	3		99,4
Secretaries	12,9	7		19,9
Subtotal	264,75	13	0	277,75
Contractual agents		11		11
National experts		1		1
Subtotal	0	12		12
Total	264,75	25	0	289,75

Table includes staff in place on 31 December 2019, expressed as full-time equivalents (FTEs)
Source: Staffing Office

Directorates 1 to 6 and Coordination Unit

On 30 June 2019, the Director-General of the Legal Service retired and the new Director-General took up her functions on 1 July 2019. She was previously the Director of Directorate Justice and Home Affairs and until 31 December 2019 also continued to carry out that function.

The Coordination Unit (CU) attached to the Director-General was transformed on 1 November 2019 into the Office of the Director-General with the replacement of the post of Head of Unit by a post of Legal Adviser assisting the Director-General. In addition, the Office of the DG regrouped all the horizontal tasks of the CLS and two AST posts related to Finances and the Greffe, previously in Directorate 4, were transferred to the Office of the DG.

In 2019, the CU/Office of the DG dealt with 14 recruitments for Directorates 1 to 6: 7 posts of legal advisers, 1 post AST for the Research team, 3 posts SC and 3 contract agents FGIIV for the pool of legal advisers. Due to unsuccessful recruitment procedures, 3 posts (2 AD and 1 SC) are occupied by temporary agents. Also, due to statutory absences, 2 contract agents from the mobile team provided secretariat support to Directorates 1-6.

The recruitment procedures have shown the serious difficulty for the CLS to find qualified lawyers⁴. At the request of the CLS, an EPSO competition for lawyers has been launched in 2019. In cooperation with ORG, the CLS has worked on its organisation and preparation with the aim to publish it in the Spring of 2020 and get the results before the Summer of 2021. The CLS was also a strong supporter of, in the meantime, organising in 2019 an internal competition to be able to recruit qualified lawyers, notably from among experienced contractual agents.

Directorate 7 (DQL)

In 2018, JUR 7 dealt with numerous recruitments: 8 posts for lawyer-linguists (LL) and 16 posts for ASTs/AST-SCs. Also, due to statutory absences, 5 contract agents were recruited (1 FG IV and 4 FG II/III). An interim agent was also recruited. Due to unsuccessful publications, 2 temporary agents occupy AST posts and 4 temporary agents occupy SC posts. After having used all the recruitment possibilities, 1 LL post still remains vacant.

Recruitment procedures for JUR 7 proved to be difficult for LL (when there is no EPSO list available) and for both ASTs and AST/SCs. Despite the assistance of DG ORG, an important number of vacant posts could not be filled permanently because of lack of candidates or appropriate EPSO lists.

Moreover, in 2019 JUR 7 was facing a new phenomenon in several cases: after launching the selection, an internal publication as well as republication on 3 levels, there were no candidates; Normally in this case we have the choice for contractual or temporary staff. However even at this level the lack of candidates was astonishing.

This situation, if prolonged in time, could be risky for the accomplishment of the JUR 7 mission. For teams with only 2 assistant posts, a lack of 50% of the workforce, for more than few months can have a serious impact on yield and wellbeing of the staff.

C) FINANCIAL RESOURCES ALLOCATED FOR THE INTENDED PURPOSE

Table 1: Overview of the implementation of the budget 2019

					1 - Initial Budget 2019	2 - Final Budget 2019	3 - Commit- ments 2019	4 = 3/2 - (%)	5 - Carry-over to 2020 Commitments- payments
Fund	Funds Centre	Commit- ment item			EUR	EUR	EUR	%	EUR
1	SJ	Legal Service	2236	Legal expenses and costs, damages and compensations, Impact Assessment	500.000,00	750.000,00	632.720,74	84	230.211,65
1	SJ	Legal Service	Article 223	Miscellaneous expenses	500.000,00	750.000,00	632.720,74	84	230.211,65
1	SJ	Legal Service	Chapter 22	Operating expenditure	500.000,00	750.000,00	632.720,74	84	230.211,65
1	SJ	Legal Service	Title 2	Buildings, equipment and operating expenditure	500.000,00	750.000,00	632.720,74	84	230.211,65

⁴ Note from Mr Legal to the Secretary-General dated 16 May 2018 on 'Recruitment at the Council Legal Service'.

1	SJ	Legal Service	EX-PENSE	EXPENSE	500.000,00	750.000,00	632.720,74	84	230.211,65
1	SJ	Legal Service	COUNCIL	Council Legal Reporting	500.000,00	750.000,00	632.720,74	84	230.211,65
Overall Result					500.000,00	750.000,00	632.720,74	84	230.211,65

The initial 2019 budget granted to the Legal Service was only half of its 2018 budget (EUR 500 000 compared to EUR 1 000 000). In September a budget reinforcement of EUR 250 000 had to be requested. That amount has become available in November 2019.

Appropriations committed account for 84 % of the total appropriations in the final budget. A major part of the 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 such cases is difficultly to predict, and usually court cases last longer than the duration of the corresponding commitment (due to the principle of annuality enshrined in the Financial Regulation), which explains the outturn rate.

Table 2: Overview of the implementation during 2019 of appropriations carried over from 2018

					1 - Carry-over from budget 2018	2 - Payment 2019 on carry-over 2018	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, Impact Assessment	150.917,72	123.989,95	82	26.927,77
4	SJ	Legal Service	Article 223	Miscellaneous expenses	150.917,72	123.989,95	82	26.927,77
4	SJ	Legal Service	Chapter 22	Operating expenditure	150.917,72	123.989,95	82	26.927,77
4	SJ	Legal Service	Title 2	Buildings, equipment and operating expenditure	150.917,72	123.989,95	82	26.927,77
4	SJ	Legal Service	EXPENSE	EXPENSE	150.917,72	123.989,95	82	26.927,77
4	SJ	Legal Service	COUNCIL	Council Legal Reporting	150.917,72	123.989,95	82	26.927,77
Overall Result					150.917,72	123.989,95	82	26.927,77

EUR 26 927,77 of the funds carried over from 2018 had to be cancelled. The percentage of cancelled appropriations is not higher than the average of previous years. One 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 31 December of the year n + 1, a considerable number of court cases is still pending after that time-span). Another reason is that an external lawyer changed law firm and the Legal Service decided to switch to the new law firm, too, which meant that funds initially committed to contracts with the former law firm expired.

III. FUNCTIONING OF THE INTERNAL CONTROL SYSTEM

The internal control framework for the General Secretariat of the Council consists of five components (integrity and ethical values, risk assessment, control activities, information and communication, monitoring activities), further divided into 17 principles, to which the Legal Service adheres and contributes.

A set of rules on procurement and budgetary matters, lastly updated in December 2018, has been put in place by the Secretary General and the Finance Directorate 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 and management meetings (at director-general/director level and at the level of each organisational entity) as well as at weekly debriefs of legal advisers by the director-general/the directors and at regular meetings for assistants/secretaries. Since 2016 the Legal Service's activities are monitored by workload indicators.

A) EFFICIENCY AND EFFECTIVENESS OF THE INTERNAL CONTROL SYSTEMS

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 tasks, segregation of duties and regular staff training.

Specific rules concerning the financial management related to judgments ordering the Council to bear legal costs or pay damages exist since 2005 and were 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 funds, a procedure was therefore agreed with the Budget Management Unit of the Finance Directorate, which allows commitments of the budget at the moment an agreement is reached with the opposing party about the exact amount to be paid (and not as soon as the court delivers its 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 length of proceedings before the Court of Justice of the European Union. In fact, commitment appropriations are cancelled at the end of year $n + 1$ and will then have to be re-committed at the beginning of year $n + 2$. To avoid a substantial loss of appropriations, only 80 % of the contract value is committed, since experience has shown that this is more or less 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 (five persons) 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 given the very small part of the budget for which it is responsible (less than 0,15 % of the Council budget). Costs of control would mostly liaise to human resources and IT, buildings, safety and security, organisation of meetings etc.

Reports of the Internal Auditor as well as reports from the European Court of Auditors and 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 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. 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 requests for payment of the opposing parties.

Benefits of controls in non-financial terms cover better value for money, efficiency gains, system improvements and compliance with regulatory provisions.

C) RISKS ASSOCIATED TO THE OPERATIONS

Due to its role, the Legal Service has no control over its workload for its workload, which 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, suboptimal electronic knowledge sharing tools 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 re-allocation of human resources within the Legal Service. In order to apply these actions, the Legal Service staff was reinforced with eight legal advisers (6 in 2019 and 2 in 2018) and two assistants SC in 2019. In addition to that, a pool of contractual agents created in October 2016 allows to find suitable candidates in a reasonable time for a temporary replacement of legal advisers. Enhanced information and knowledge sharing tools for legal advice, litigation and filing/archiving have been analysed in 2019 and will be developed or purchased soon. A knowledge-sharing tool named WikiJUR has been implemented already.

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 of 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, negotiations with the opposing party or requests for taxation of costs in case of excessive claims 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 Finance Directorate, in collaboration with the Legal Service, has established a 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 December 2019.

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 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 judgment 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, 14 April 2020

Thérèse BLANCHET

[Signed]

Director-General