



European  
Commission

# Annual Activity Report 2021

Legal Service

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## THE DG IN BRIEF

The Legal Service is a Presidential Service under the direct authority of and reporting directly to the President of the Commission, Ursula von der Leyen.



The Legal Service has a dual role as legal adviser of the Commission and its representative before the Courts. It contributes to the development and implementation of all initiatives of the Commission and ensures that the provisions of the Treaties are correctly interpreted and applied, so that all Commission acts and proposals are in accordance with the law of the European Union.

Providing high quality and timely legal advice and defending the interests of the Commission and of the Union before the courts and tribunals, is the daily challenge for the Legal Service and its staff. Deadlines are often very short and, nevertheless, high quality legal expertise is expected at all times. The flat organisational structure of the Legal Service contributes to effective and efficient information flows and decision making, facilitating the fulfilment of its objectives.

The Legal Service is an internal and horizontal service which acts as an in-house legal counsel to Commission DGs and Services.

During the year, the Legal Service dealt with:

- 1.962 on-going cases before the Union Courts and 759 cases before national courts,
- replied to 17.318 consultations of which 10.536 were on legislative drafts,
- gave its opinion on 5.681 replies to parliamentary questions.

At the end of the year, the Legal Service had 445 staff members, of which 80% work in the 13 thematic teams and in the Public Procurement and Recoveries Unit and 16% work in the Quality of Legislation team. 4% work in administrative functions including HR, Finance and library.

The administrative spending in 2021 was EUR 3.7 million of which EUR 3.3 was paid for legal fees. The Public Procurement and Recoveries team recovered a total of Euro 2.3 million in 2021.

In May 2021, the Legal Service launched a process with a view to reforming and modernizing its structure, making for a better working environment.

Four working groups were created and dealt with: (1) Organization of the Legal Service, (2) Procedures and working methods, (3) Talent Management, (4) IT and information sharing. Through a call for expression of interest, to which more than 25% of the Legal Service staff replied, special attention was addressed to include in the discussions all members of the Legal Service, from all grades, ensuring that gender balance was respected.

The working groups delivered their final reports in December 2021 and since then, operational conclusions have been drawn.

## EXECUTIVE SUMMARY

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

### A. Key results and progress towards achieving the Commission's general objectives and DG's specific objectives (executive summary of section 1)

The European Union is a Union based on law. Without a clear and predictable legal framework for the Union, respected by all – Institutions, Member States, and private actors – the European Union cannot act successfully. It is in this context that the contribution of the Legal Service should be seen. In particular, the Legal Service assists the Commission in carrying out its function as the "Guardian of the Treaties".

Since its establishment, the Legal Service has been responsible for providing legal advice and for representing the Commission in court. Legal advice must be of the highest quality and be delivered in due time. The same is true for legal representation. To be able to respond to every eventuality, whatever legal field it may concern, the organisation is designed to adapt to all requirements and requests, sometimes at extremely short notice. The flat organisational structure allows information to be quickly disseminated and absorbed and enables the Legal Service to provide fast responses as required. Moreover, the Legal Service ensures that the Commission can be represented before the Union courts in all the official languages of the Union.



The Legal Service contributes to **General objective n° 7: A modern, high-performing and sustainable European Commission**. The timely and high quality legal advice and legal representation is expected to contribute to an increase in **Impact indicator 1: Image of the European Commission**. By the nature of its activities, through both its advisory role and its litigation role, the Legal Service contributes to all six priorities of the von der Leyen Commission. More information is presented in Annex 2.

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

The Legal Service is the lead service, within the Commission, for relations with all judicial bodies. It is also responsible for the negotiations concerning the accession of the European Union to the European Convention on Human Rights (ECHR). In this way, the Legal Service contributes to **General objective n° 6: A new push for Democracy**. The negotiations by the Legal Service are expected to contribute to an increase in **Impact indicator 8: Perceived independence of the national justice systems in the European Union**. More information is presented in Annex 2, section 1.5.

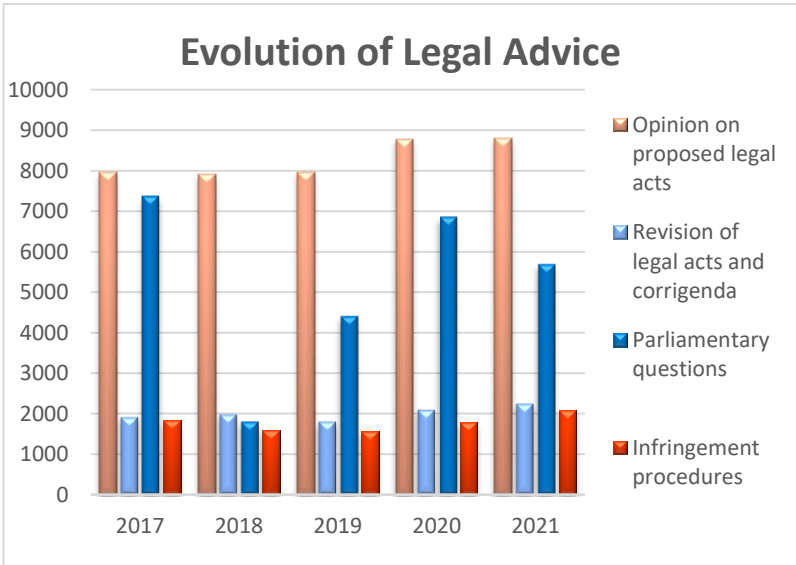
During 2021, the Legal Service contributed with its legal expertise to several key results of the Commission:

- Rule of law: The Legal Service gave advice on upholding the rule of law in infringement proceedings and in decisions on Union funding, and assisted in negotiating national reform and resilience plans that ensure the rule of law. The Legal Service represented the Commission in several Court cases where the rule of law was at stake, and successfully sought interim relief to ensure the respect of the rule of law by Member States.
- Primacy of EU law: The Legal Service advised on the legal possibilities for ensuring that Member States, including their supreme and constitutional courts, adhere to the principle of primacy of EU law. The Legal Service also represented the Commission in several Court cases where the primacy of EU law was at stake.
- “Twin Transitions”: The Legal Service assisted the services in preparing the numerous legislative proposals that implement the twin transitions (green and digital). In that context, a broad variety of legal challenges were addressed (WTO; own resources; distribution of competences between EU and national authorities; ...)
- Creation of the European Health Emergency Preparedness and Response Authority (HERA): The Legal Service assisted the services in the preparation of this new Commission department and of a proposal for a Council Regulation establishing a framework for future health emergencies.

**Figures in brief**

In 2021, the Legal Service:

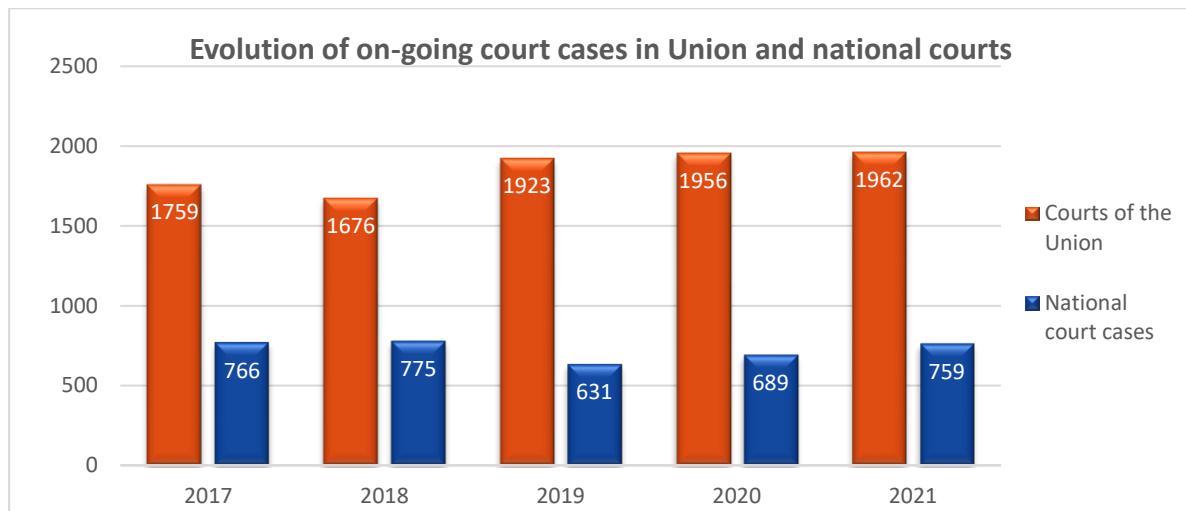
- gave its opinion on 10.536 proposed legal acts,
- undertook legal revision on 2.243 of legal acts,
- gave replies to 5.681 parliamentary questions,
- assisted the Commission in 2.088 on-going infringement procedures.



Graph 1: Evolution of Legal Advice (Sources: ARES, Decide, Sec Gen)

In 2021, the Legal Service defended the interest of the European Commission:

- in 1.962 on-going cases at the Courts of the Union,
- by assisting the European Court of Justice and the EFTA Court in 612 preliminary rulings,
- in 759 on-going national court cases,
- and it recovered EUR 2.3 million of debts to the benefit of the Commission.

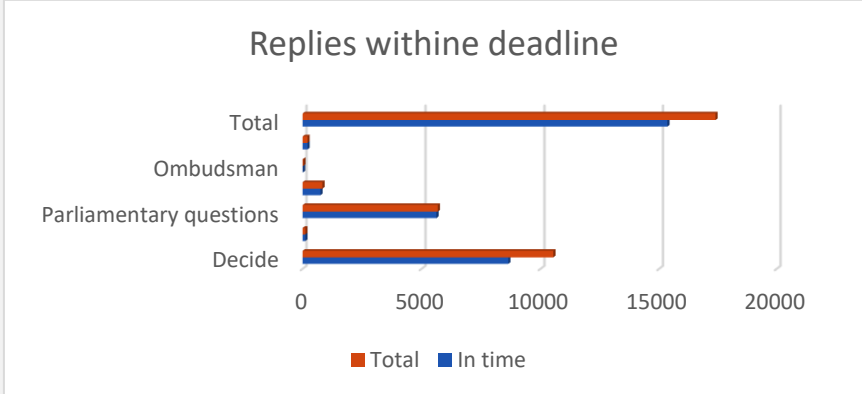
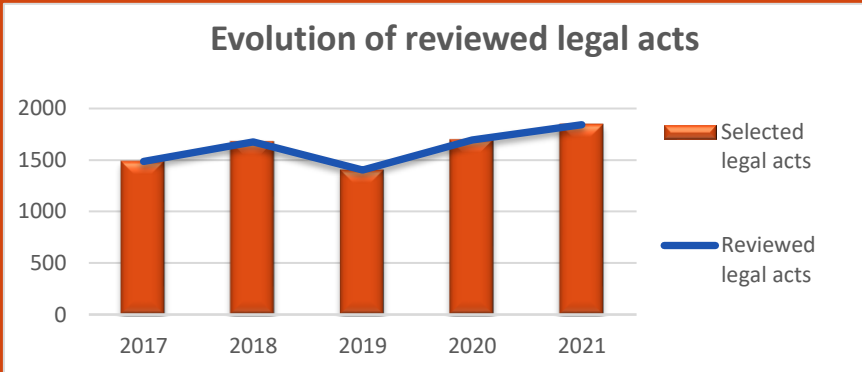


Graph 2: Evolution of on-going court cases (Sources: Base Contentieux and NAT databases)

The Covid-19 pandemic has continued to impact on the work of the Legal Service and its staff which has been kept informed on a regular basis of the rules in place and safety measures to adopt. The outbreak of the Covid-19 pandemic has generally made the work of the lawyers in the Legal Service more challenging, in particular attending Court hearings in Luxembourg. An annual increase of 17% of registered legal proposals has been dealt with. The staff of the Legal Service has been able to adapt to the challenges of the new working environment and continued to deliver high quality and timely legal advice and legal representation.

Five rounds of negotiations on the accession of the European Union to the European Convention for Human Rights (ECHR) took place in 2021. The EU's accession to the ECHR is a legal requirement under the Lisbon Treaty and is expected to strengthen the protection of fundamental rights in Europe.

## A. Key Performance Indicators (KPIs)

<p><b>KPI 1:</b></p> <p><b>Attendance by the Director General of the Legal Service in Commission and Heads of Cabinet meetings</b></p>	<p><b>Attendance by the DG in Commission and Heads of Cabinet meetings</b></p> <ul style="list-style-type: none"> <li>• The Director General or Deputy Director General of the Legal Service attended all Commission meetings</li> <li>• The Director General or the Deputy Director General of the Legal Service attended all Heads of Cabinet meetings</li> </ul>																		
<p><b>KPI 2:</b></p> <p><b>Average reply rate to Consultations</b></p>	<p><b>Average reply rate in 2021 was 88%</b></p>  <table border="1"> <caption>Replies within deadline</caption> <thead> <tr> <th>Category</th> <th>Total</th> <th>In time</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>~17,500</td> <td>~15,500</td> </tr> <tr> <td>Ombudsman</td> <td>~1,000</td> <td>~500</td> </tr> <tr> <td>Parliamentary questions</td> <td>~6,000</td> <td>~5,500</td> </tr> <tr> <td>Decide</td> <td>~10,500</td> <td>~9,000</td> </tr> </tbody> </table>	Category	Total	In time	Total	~17,500	~15,500	Ombudsman	~1,000	~500	Parliamentary questions	~6,000	~5,500	Decide	~10,500	~9,000			
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<p><b>KPI 3:</b></p> <p><b>100% of selected draft legal proposals have undergone a review to ensure a high linguistic quality</b></p>	<p><b>Selected and reviewed legal acts by the Quality of Legislation team</b></p>  <table border="1"> <caption>Evolution of reviewed legal acts</caption> <thead> <tr> <th>Year</th> <th>Selected legal acts</th> <th>Reviewed legal acts</th> </tr> </thead> <tbody> <tr> <td>2017</td> <td>~1,450</td> <td>~1,450</td> </tr> <tr> <td>2018</td> <td>~1,650</td> <td>~1,650</td> </tr> <tr> <td>2019</td> <td>~1,400</td> <td>~1,400</td> </tr> <tr> <td>2020</td> <td>~1,650</td> <td>~1,650</td> </tr> <tr> <td>2021</td> <td>~1,850</td> <td>~1,850</td> </tr> </tbody> </table>	Year	Selected legal acts	Reviewed legal acts	2017	~1,450	~1,450	2018	~1,650	~1,650	2019	~1,400	~1,400	2020	~1,650	~1,650	2021	~1,850	~1,850
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<p><b>KPI 4:</b></p> <p><b>Ensuring the interest of the European Commission by attendance at all Court hearings</b></p>	<p><b>Presence of the Legal Service staff at court hearings</b></p> <ul style="list-style-type: none"> <li>• Legal Service was represented in 100% of Union Court hearings</li> <li>• Legal Service was represented in 100% of national court hearings</li> <li>• 100% of court documents filed within deadline <sup>(2)</sup></li> </ul>																		

<sup>(2)</sup> Exceptionally in 2021 there was one single incident. Appropriate follow-up measures were immediately taken.

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

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

In line with the Commission's Internal Control Framework the Legal Service has assessed its internal control systems during the reporting year and has concluded that it is effective and the components and principles are present and functioning as intended. Further details can be found in section 2.1.3.

In addition, the Legal Service has systematically examined the available control results and indicators, as well as the observations and recommendations issued by the internal auditor and the European Court of Auditors. These elements have been assessed to determine their impact on management's assurance about the achievement of the control objectives. Further details can be found in section 2.1.

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

## **C. Provision of information to the President**

In the context of the regular meetings during the year between the Director-General of the Legal Service and the President of the Commission on management matters, the main elements of this report and assurance declaration, have been brought to the attention of President von der Leyen.



# 1. KEY RESULTS and progress towards achieving the Commission's general objectives and DG's specific objectives

## 1.1. Legal Advice

In its advisory function, the Legal Service ensures that all Commission acts and initiatives are in accordance with the law and correspond to the highest requirements of legal certainty and clarity. By doing so, it ensures that Commission objectives are achieved in a sustainable manner, and litigation risks are reduced.

The Legal Service assists the President of the European Commission, the Commission, its DGs and Services in all areas of the Commission's activities:

- preparing legal proposals,
- drafting legislation,
- conducting international negotiations,
- fulfilling its role as the guardian of the Treaties,
- adopting implementing and delegated acts



The Legal Service has very extensive horizontal duties as provider of legal advice to the Commission. The task contributes to the **General objective n° 7: A modern, high-performing and sustainable European Commission.**

### 1.1.1. Formal and informal legal advice

To enable the Legal Service to perform its mission effectively, it must be consulted in advance on all documents having legal implications to be put before the Commission. Its advice may lead to a reduction in the number of court cases brought against the Commission; hence, it contributes to efficiency gains throughout the Commission.

### 1.1.2. Consultations in ARES and Decide

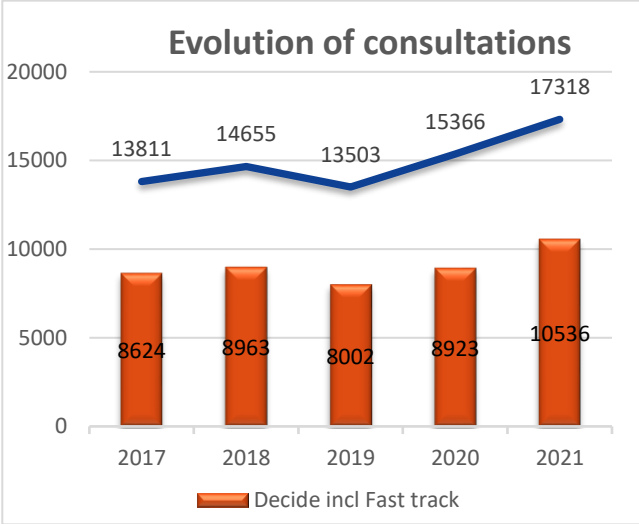
The Legal Service intervenes throughout the process in the preparation of legal acts, both formally and informally.

17.318 consultations were registered and sent to the Legal Service through the document registration system ARES in 2021 of which 10.536 were also registered in Decide, the system in which all legislative proposals for adoption by the Commission are registered. The Legal Service is required to issue its opinion on all legislative proposals.

The total number of consultations and legislative proposals increased in 2021. The number of ARES consultations increased by 13% compared to 2020 and. *Decide* consultations increased by 18%. The Legal Service has managed the increased number of consultations

through efficient mobilisation of internal resources, swift internal decision-making procedures and a high sense of commitment from its staff. The lawyers in the relevant teams have managed to provide timely and thorough legal assessment in a reactive manner, despite the often very tight deadlines the high legal complexity and the sensitivity of the issues at hand. More information on the attribution of the documents registered in ARES can be found in Annex 2, section 1.1, graph A.

The Legal Service is also consulted by DGs, Services and Cabinets on legal questions on a more informal and direct basis including "exploratory" discussions, often by a simple mail, or assists the Services in the formulation of replies to citizens and interested parties. For example, the Legal Service regularly assists the Spokesperson's Service in giving replies to journalists as regards court cases and other legal matters, or DG Communication in replies to citizens who have addressed a question on European law to the 'Europe Direct Contact Centre'.



Graph 3: Evolution of Consultations (Sources: ARES and Decide)

Receiving timely and high-quality legal advice is of utmost importance to all Commission DGs and Services. In 2021, the Legal Service replied within deadline to 88% of all consultations. This was slightly below the target rate of 92% which can be explained by the 18% increase in *Decide* consultations. More information is presented in Annex 2, section 1.1, table 1.

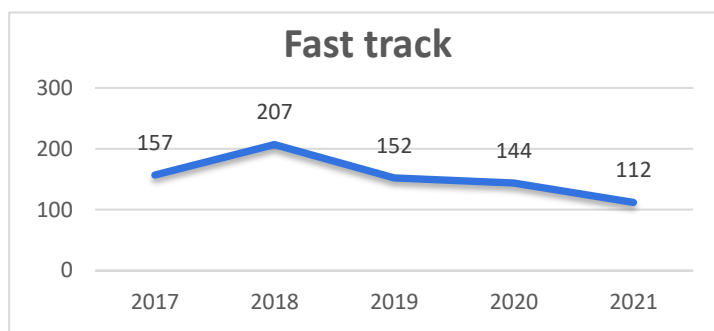
**Specific objective 1:**  
**Legal proposals for adoption by the Council and the Parliament are transparent and high quality to ensure full benefit of rules to EU citizens**

**Result indicator:**  
**Legal advice is timely and of high quality**

- The Director General of the Legal Service attended all Commission and Heads of Cabinet meetings
- During 2021, the Legal Service replied within deadline to
- 88% average reply rate to all consultations
  - 82% of *Decide* consultations
  - 100% of Fast track consultations
  - 90% of Petition consultations
  - 99% of Parliamentary questions
  - 55% of consultations on replies to questions from the Ombudsman
  - and for requests for Access to documents, 100% of replies within initial or extended deadlines

### 1.1.3. Fast track

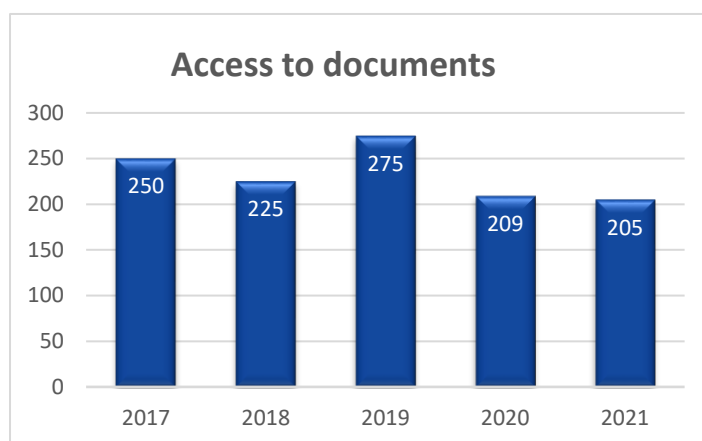
Every year, there are some legal texts that need urgent approval, the so-called Fast track consultations. These consultations put particular strain on the Legal Service as the reply is required within 24 or 48 hours, and sometimes these consultations can contain hundreds of pages. There were 112 fast track consultations in 2021.



Graph 4: Evolution of Fast track consultations (Source: ARES)

### 1.1.4. Access to documents

The Legal Service is responsible for the handling of documents of which it is the author or which originate from court proceedings. This includes legal opinions and submissions before the EU, national and international courts and arbitration bodies, including those submitted by other parties<sup>(3)</sup>. In 2021, the InfoDoc team dealt with 205 initial requests for access to approximately 477 documents. More information is presented in Annex 2, section 1.1, table 1.



Graph 5: Evolution of Access to documents (Source: ARES)

The Institutional team is consulted on all the decisions taken by the Secretary General on behalf of the College at the confirmatory level of the administrative procedure. In 2021, the Legal Service gave its opinion on 243 draft confirmatory decisions. This is an area that also generates litigation. In 2021, 22 new cases for annulment were brought against Commission confirmatory decisions. In the same period, the European Courts delivered 11 rulings in cases concerning access to Commission documents. Three of them led to the annulment or partial annulment of the Commission's confirmatory decision. Furthermore, two applicants lodged an appeal before the Court of Justice.

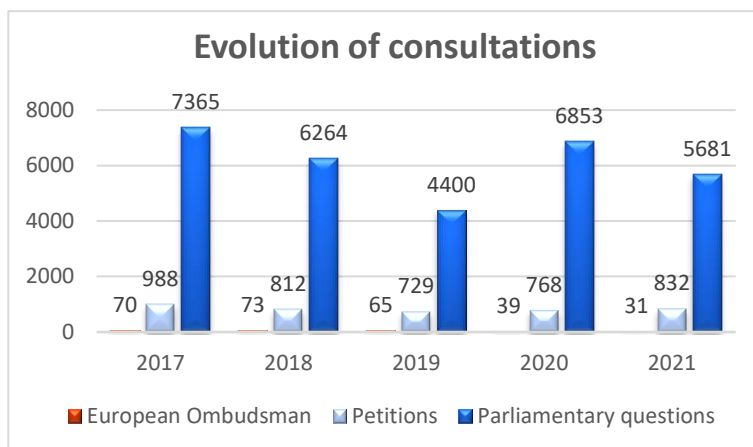
Any citizen or resident of the European Union, and any company, organisation or association with its headquarters in a Member State, may submit a petition to the European Parliament, either individually or jointly, on a subject which falls within the European Union's sphere of activities and concerns them directly.

<sup>(3)</sup> By the judgement of case C-213/15P on 18 July 2017, the Court confirmed that the Commission cannot refuse access to written submissions of the Member States and third parties held by it, on the sole ground that they are documents relating to court proceedings of which it is not the author.

### 1.1.5. Other consultations

The European Parliament asks the Commission for information/preliminary investigation on **petitions** which allege a lack of compliance with particular EU legislation on the part of a Member State or an Institution. The SG attributes it to the competent lead service. The Legal Service is consulted on all replies to petitions in its role as internal legal adviser.

The Legal Service is consulted on all replies to **parliamentary questions**. In 2021, the Legal Service received 5.681 parliamentary questions on which it was asked to give a legal opinion. The Legal Service was lead service for replying to 6 questions and co-responsible for the other parliamentary questions.



Graph 6: Evolution of replies (Source: Sec Gen)

The Commission is the main institution concerned by the complaints handled by the **European Ombudsman** by dealing with, on average, more than half of all complaints. When consulted on draft Commission replies to the Ombudsman, the Legal Service has to ensure not only that the law is respected, but also that there is a coherent approach across the Commission as regards the acceptance of the Ombudsman's recommendations and suggestions for improving Commission procedures. 31 complaints were transmitted to the Legal Service for its opinion in 2021. More information is presented in Annex 2, section 1.1, table 1.

### 1.1.6. Human resources in Legal Advice

Approximately half of the working time in the legal teams is spent on legal advice while for the Quality of Legislation team, most of their time is spent on giving legal advice. The Legal Coordination function supports the Director-General in ensuring the coherence of legal advice including in the weekly meetings of the Commission and of the Heads of Cabinet. In total, approximately 56% of staff resources are spent on providing legal advice of which 16% work in the Quality of Legislation team.

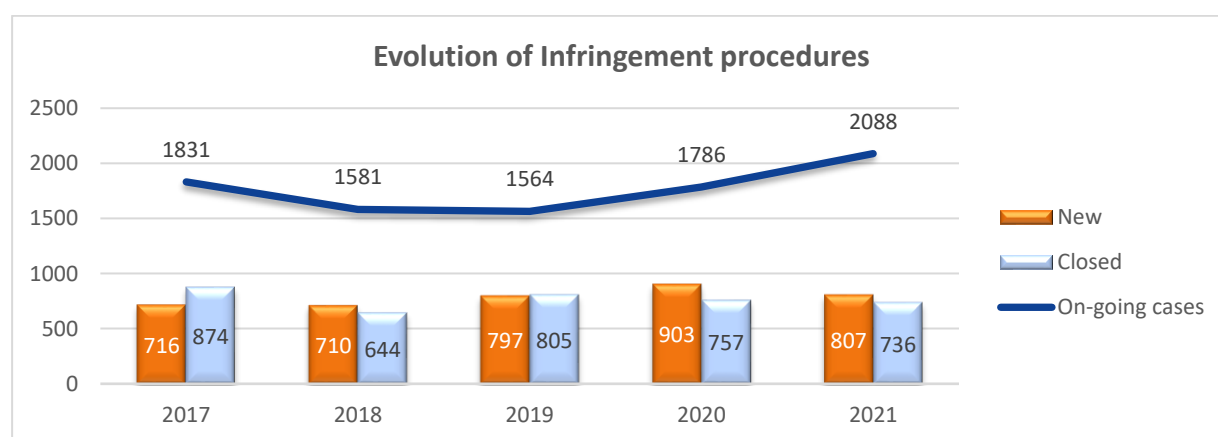
## 1.2. Infringement procedures

The Commission attaches high priority to the application and implementation of Union law <sup>(4)</sup>. The Legal Service assists the Commission in its role as the "Guardian of the Treaties" by ensuring that the *acquis communautaire*, i.e., Union legislation, is implemented by Member States within the set deadlines, that the EU Treaties and Union legislation is correctly applied, and that Court judgments are implemented correctly and on time.

Furthermore, the Legal Service assists the Commission, its DGs and Services in ensuring that the infringement procedures are conducted efficiently and effectively. The Legal Service gives its opinion on all cases in which a decision is submitted for adoption by the College and assists the Secretariat-General in the infringement decision adoption process.

The Legal Service, with the support of its Infringement coordination team, is responsible for this task through providing advice at every stage of the pre-litigation procedure and defending the interests of the Union, by representing the Commission in infringement proceedings before the Court of Justice.

The Legal Service, with the Secretariat-General, organises annual infringement coherence exercises at the level of the case handlers and of the higher management to assess the performance of the Directorates-General in managing infringement procedures, and ensure coherence through sound legal reasoning and equal treatment of Member States in similar cases as well as identifying horizontal legal issues.



Graph 7: Evolution of Infringement procedures (Source: THEMIS database)

There were 807 new infringement procedures opened in 2021 and 736 were closed. At year end, there were 2088 ongoing infringement procedures, an increase of 17%. Providing timely advice on all these procedures required an additional effort from all Legal Service lawyers dealing with infringements. In addition, the rollout of a new Commission-wide tool for the management of infringement procedures in 2021, THEMIS/Infringements, called for further investment from the Legal Service.

(<sup>4</sup>) C(2016)8600 Communication from the Commission – EU law: Better results through better application.

During the year, 19 infringement cases were brought before the Court. More information about the infringement procedures, can be found in Annex 2, section 1.2, table 2 and graph B. In section 1.4 in this report, infringement procedures brought to the Court are further described.

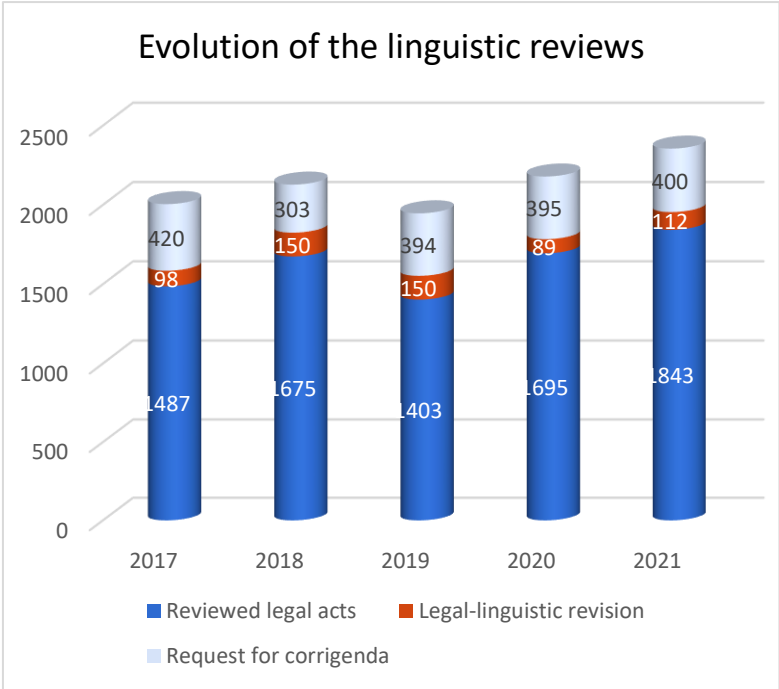
### 1.3. Quality of Legislation

The Quality of Legislation team contributes to the quality of legal acts by giving advice on their structure and drafting and to efficiency gains in the further steps of the legislative procedure by enabling more transparency, accuracy and legal consistency in the final drafts and draft proposals which are to be translated into all language versions. The legal-linguistic advice from the Quality of Legislation team contributes to the **General objective n° 7: A modern, high-performing and sustainable European Commission.**

#### 1.3.1. Revision of draft legal acts

The work of the Quality of Legislation team is both proactive and reactive. From all legal acts registered in *Decide*, the Quality of Legislation team will select acts for revision based on several parameters. Based on that selection, it will also choose certain texts for multilingual consistency reviews. The advice given by the Quality of Legislation team is of valuable to the operational Directorates-General as well as to horizontal services such as DG Translation. Well-drafted legal acts enable better and more accurate translation into all official languages of the Union and therefore enhance legal clarity and certainty.

The Covid-19 pandemic continued to have an impact in 2021 on the Quality of Legislation team. Focus was put on the core activities that required full attention due to the fact that more texts than in previous years had to be examined sometimes under very demanding conditions. The team managed to maintain a high-quality output. Other activities such as training were reduced or adapted to the conditions of the pandemic e.g., several colleagues gave training using IT solutions (Zoom/TEAMS). More information is presented in Annex 2, section 1.3, table 4.



Graph 8: Draft legal proposals and other legal text dealt with by the LEG team (Source: Decide and Jurrev)

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



First, the Quality of Legislation team intervenes during the *interservice* consultation, when the text is only available in one language (English or French). The team reviews the documents registered in *Decide* daily and selects legislative drafts based on several criteria.

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

Over the years, because of the quality of the advice given, the Quality of Legislation team has increasingly been involved in the conceptual phase of drafting acts, even before the official Inter-service consultation, that activity was also particularly intense in 2021.



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

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

### 1.3.2. Codification and Recast of legal acts

As the lead service, the Quality of Legislation team works together with the relevant Commission DGs and Services in codification i.e. a formal re-adoption of an act with all its applicable amendments incorporated.

In 2021, the Legal Service completed the preparation of four codified acts in all official languages as listed in '*Decide Planning*', four of which were submitted as proposals to the European Parliament and the Council. In addition, four other codification exercises were initiated with 'master copy' texts submitted for approval to the responsible DGs and a number of further codifications were prepared but put aside awaiting the amendment or repeal of the acts to be codified.

In addition, eleven new recast exercises (recast consists of the codification of an act and the inclusion of new amendments into the codified text) were carried out in 2021, leading to the submission of legislative proposals to the European Parliament and to the Council during the year.

### 1.3.3. Other aspects of legislative simplification and further activities

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

In 2021, the Quality of Legislation team continued, to the extent possible, to provide targeted training to Directorates-General and agencies on legislative drafting and participated in the inter-institutional training programme for lawyer-linguists and legal revisers.

The activity by the Quality of Legislation team has met its objective and has achieved, and even surpassed, the performance indicators and outputs in the reporting year.

<b>Specific objective 1:</b> <b>Legal proposals for adoption by the Council and the Parliament are transparent and high quality to ensure full benefit of rules to EU citizens</b>
<b>Result indicator:</b> <b>Legal advice is timely and of high quality</b>
<ul style="list-style-type: none"><li>• 100% of selected draft legal proposals underwent legal revision</li><li>• 4 acts identified in the Commission's Agenda planning underwent codification</li><li>• 112 legal revisions in two or more languages were undertaken</li><li>• 400 number of corrigenda were undertaken</li><li>• The digital tools for legislative drafting were further developed in 2021 (for further information, see section 2.2.2 Digital transformation and information management)</li></ul>

### 1.3.4. Human resources in Quality of Legislation

The Quality of Legislation team employs some 16% of the staff resources and is organised into three Units. The core work of the team contributes to the legal advice function of the Legal Service.

In addition, members of the team also act as linguistic agents in court cases thereby contributing significantly to the litigation function of the Legal Service, especially in languages that are not well represented in the thematic teams.

## 1.4. Legal Representation

The Legal Service has the exclusive task of defending the interests of the European Commission before:

- the Court of Justice and the General Court of the European Union,
- national courts, both in Member States and in third countries, in cases where the Union or the Commission are parties. A significant proportion of the cases in national courts concern forced recovery of debts (>80% in 2021),



- dispute settlement procedures under the World Trade Organisation Agreement (WTO) and other international agreements,
- the European Free Trade Association Court (EFTA Court),
- arbitration bodies.

The Director General of the Legal Service is empowered by the Commission to designate the agents (i.e. responsible lawyer) to represent our Institution before the courts. Defending the interests of the Commission contributes to General objective n° 7: A modern, high-performing and sustainable European Commission.

The Commission may:

- act as an applicant, for instance in the case of an infringement of EU law by a Member State, or to challenge an act taken by another institution,
- act as a defendant, as in the case of an action for annulment of one of its acts or in the case of a failure to act,
- intervene in actions brought against another Institution,
- the Commission also systematically intervenes as *amicus curiae* in all preliminary ruling procedures before the European Court of Justice.

<p><b>Specific objective 2:</b>  <b>Guarding the Treaties and defending the interests of the European Commission in courts, tribunals and other arbitration bodies to ensure the full benefit of the law for all EU citizens</b></p>
<p><b>Result Indicator 2.1:</b>  <b>Legal representation is timely and of high quality in order to defend the interests of the European Commission and EU citizens</b></p>
<ul style="list-style-type: none"> <li>• 100% of hearings at the Courts of the Union were attended by a Legal Service lawyer</li> <li>• Legal Service was represented by a national lawyer in 100% of national court hearings</li> <li>• 100% of documents were filed at the courts within set deadlines <sup>(5)</sup></li> </ul>

In order to ensure that a court case is dealt with correctly, it is of vital importance that all court deadlines are respected and that the Commission is represented at all court hearings. The Legal Service met these targets in 2021 despite the challenges of the Covid-19 pandemic.

#### 1.4.1. Defending the interests of the European Union

Defending the Commission is the unique responsibility of the Legal Service. Its staff has in-depth knowledge of Union law. Staff in the Legal Service often have previous experience as external lawyers or as lawyers in other Commission Services, in other Union institutions or

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<sup>(5)</sup> Exceptionally in 2021 there was one single incident. Appropriate follow-up measures were immediately taken.

in Member States' administrations. Members of the Legal Service have an in-depth expert knowledge of Union law and often participate in trainings on Union law as well as on the job training. The flat organisational structure of the Legal Service enables staff to take on a high level of responsibility, which is one of the key aspects believed to contribute to the high staff satisfaction index.

Many of the cases defended by the Legal Service in court concern large sums of money, important points of law for EU citizens or crucial points of institutional law. Losing these cases would have an important reputational impact for the Legal Service and for the Commission.

Coordination mechanisms are in place to ensure the consistency of the positions the Legal Service takes on behalf of the Commission. The Legal Service informs the President's



Cabinet of judgments in sensitive cases and contributes to the public communication on judgments by working together with the Spokesperson's Service for example by regularly revising draft 'lines to take'. The most significant judgments are mentioned in the annual report of the Commission.

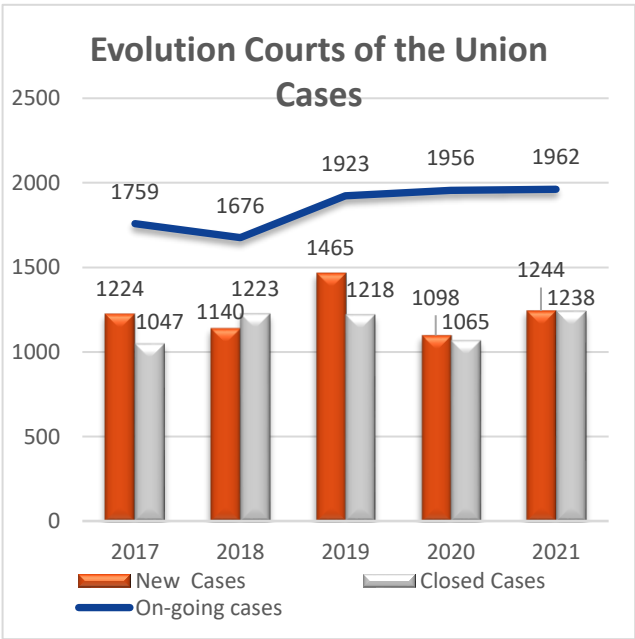
To meet the quality objective set for legal representation, the Legal Service has put in place several functions ensuring quality in its operations. The Legal Service pays close

attention to ensuring the coordination of positions taken in litigation.

**1.4.2. Cases in the Courts of the Union**

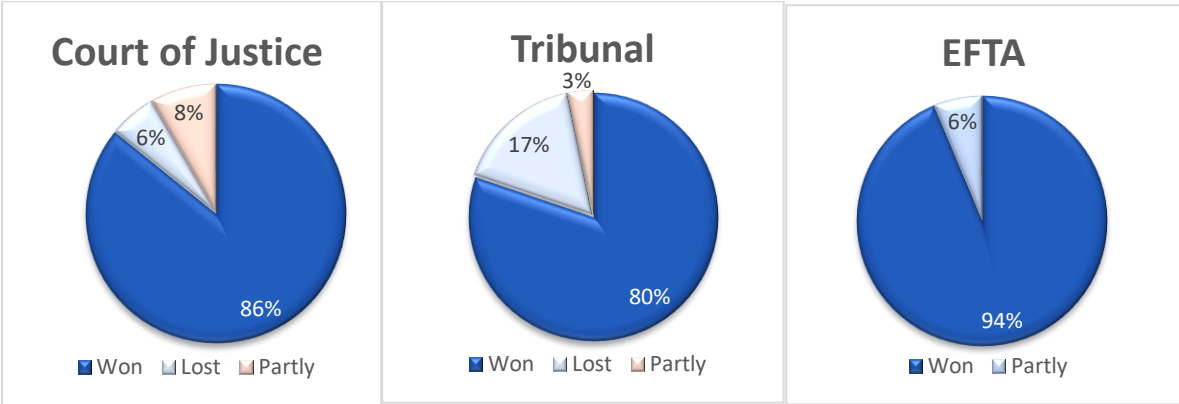
Most of the cases in which the Legal Service represents the interests of the European Commission and/or the Union take place before the Court of Justice and the General Court.

There were 1.244 new cases registered in 2021 in the Courts of the Union, which is close to the average compared to the past five years. The low number of new cases in 2020 was explained by the Covid-19 pandemic lockdown. There were 1.238 court cases closed in 2021 which is above the average of the past five years. The average duration of a court case is approximately two years. More information is presented in Annex 2, section 1.4, table 5 and graph C.



Graph 8: Evolution of Court of the Union cases (Source: Base Contentieux database)

The Commission was one of the parties in the 803 cases closed by the Courts of the Union and the EFTA Court in 2021. The outcome of these court decisions is presented on next page. The Legal Service won between 80% and 94% and was partly successful in between 3% and 8% of additional cases.

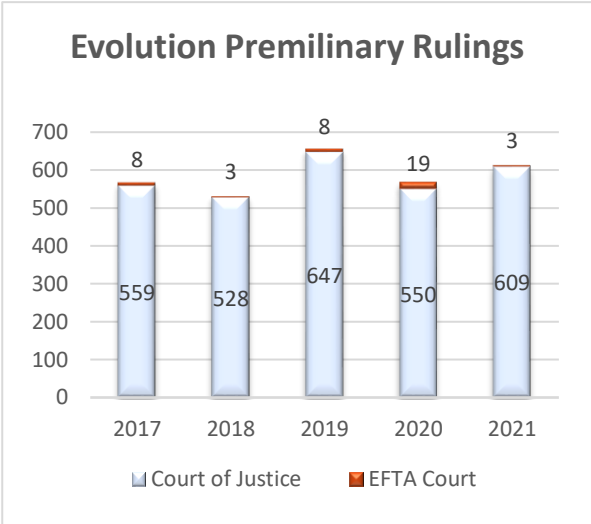


More information about court results can be found in Annex 2, section, table 6.

### 1.4.3. Preliminary rulings

Representation in proceedings for preliminary rulings of the Court of Justice continues to be an important task of the Legal Service. These are cases in which a national court asks the Court of Justice to rule on the interpretation or validity of Union law. The Legal Service is involved in all these cases and, when presenting the position of the Commission, the challenge is not necessarily to win the case, but to assist the Court as *amicus curiae* (friend of the court) in finding the correct interpretation and/or application of Union law, a role which is much appreciated by the Court. The Legal Service also continued to attend hearings in person throughout the pandemic which has been much valued by the Court.

In 2021, the Legal Service assisted the Court of Justice in 609 preliminary rulings and 3 rulings in the EFTA courts, which is above average over the past five years. The increase in preliminary ruling requests in 2021 is likely to be attributable to catch up from the previous Covid-19 lockdown which led to a slowdown of the courts' activities.



Graph 9: Evolution of preliminary rulings (Source: Base Contentieux database)

### 1.4.4. World Trade Organisation – WTO and Bilateral Trade Agreements

The Legal Service assists the Commission in representing the European Union in all trade negotiations. The Legal Service represents the European Union before WTO Panels and the

WTO Appellate Body. The Legal Service also deals with the cases arising under bilateral trade agreements to which the European Union is a party.

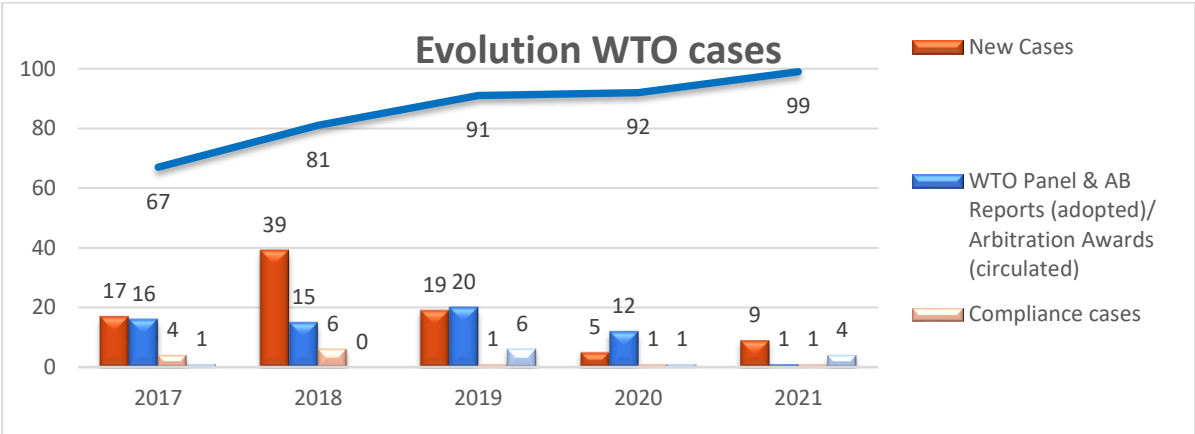
The EU includes a dispute settlement mechanism in all its trade agreements so that the EU and its trading partners can resolve disputes. The system allows for the rapid settlement of disputes and is modelled on the WTO dispute settlement system. It is specifically designed to deal with disputes arising out of the rules of the bilateral trade agreement.

In 2021, there were 9 new dispute settlement cases and a total of 99 ongoing in WTO in which the Legal Service defends the interests of the European Union.



The relatively high number of ongoing cases reflects the high number of offensive, defensive and third party cases concerning the US tariffs on steel and aluminium and the countermeasures taken by the EU and other WTO members as well as increasing litigation against China. A number of these cases are in the process of settlement negotiations and it is expected that such negotiations will be concluded during 2022.

Unless there is a mutually agreed solution, it is difficult to determine when a WTO dispute is officially considered as closed (settled by the parties). WTO dispute settlement cases continue after the litigation part (implementation, reasonable period of time, retaliation) and are often considered as “not settled” even if nothing has happened for a long time, including cases where only consultations have taken place.



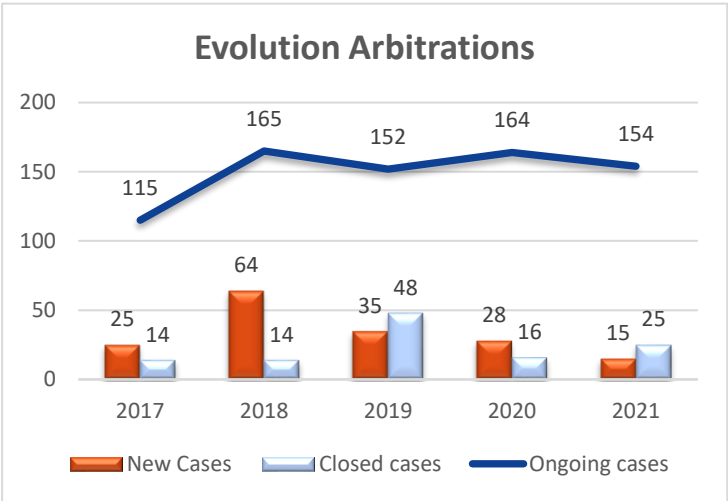
Graph 10: Evolution of WTO dispute settlements (Source: WTO, World Trade Law net and DG Trade)

The work of the Appellate Body is currently disrupted by the obstruction of appointments by the United States. Twenty-one panel reports have been appealed to an Appellate Body that has no members available to hear such appeals. Fifty-two WTO Members, including the European Union and its twenty-seven Member States, are participating in the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), based on Article 25 of the WTO Dispute Settlement Understanding, which allows for final resolution of disputes on appeal, on a reciprocal basis, following the same rules that would apply under the Appellate Body. It is

anticipated that the first appeal arbitrations under such arrangements will be initiated shortly. The European Union reserves the right, under its Enforcement Regulation (Regulation (EU) No 654/2014 of the European Parliament and of the Council), to adopt countermeasures against any WTO Member that refuses to permit final resolution of panel proceedings under the terms set out in the MPIA.

In 2021, the Legal Service dealt with three ongoing arbitration proceedings governed by the dispute settlement provisions of separate bilateral agreements (between the EU and Korea, the Southern African Customs Union and Ukraine respectively) and one new case against Algeria (pre-litigation phase).

### 1.4.5. Arbitration proceedings



The Legal Service ensures that the interests of the European Commission are presented and argued in arbitration proceedings. There were 15 new arbitration cases in 2021 and 25 cases were closed.

At the end of the year, there were 154 ongoing cases. The average number of arbitration proceedings for the past five years is 150.

Graph 11: Evolution of Arbitration proceedings (Source: *Base Contentieux* database)

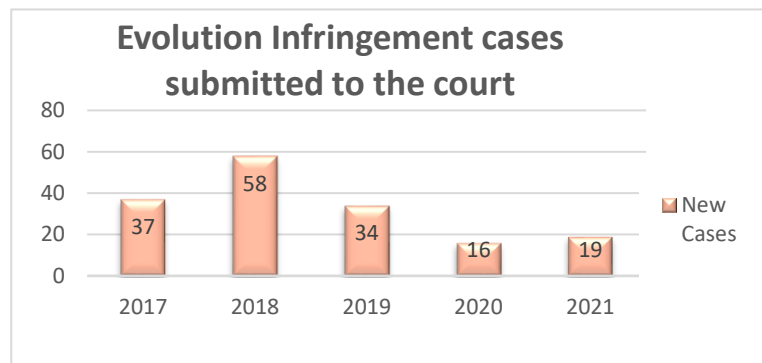
### 1.4.6. National court cases

The Legal Service also represents the Commission before national courts. For most of such cases, a nationally registered lawyer must represent the Legal Service and consequently: an external lawyer will be contracted. At year-end, there were 759 pending cases before national jurisdictions, which is slightly below the average for the past five year. 471 of these cases concerned recovery of debts, i.e. 62% of the litigation before national courts:

- the Commission intervened as a civil party in 5 new criminal cases,
- 63 new cases were brought before national jurisdictions in 2021, of which 51 (80%) concerned recovery of debts,
- 39 claims in the frame of liquidation/bankruptcy proceedings were still open,
- a total amount of 41 million € in unpaid debts was transmitted to the Public Procurement and Recovery Unit in 2021 for legal action with the purpose of recovering these amounts,
- 2.3 million € were recovered by the Unit in 2021. At year-end 927 recovery orders for a total amount of 214 million € were still open.

### 1.4.7. Infringement proceedings

Only a very small proportion of infringement procedures result in a court proceeding; the vast majority of the breaches identified by the Commission are resolved through dialogue with the Member States. In 2021, 19 cases were brought before the Court. Information is also presented in Annex 2, section 1.4, table 3.



Graph13: Evolution of infringement cases submitted to the court (Source: THEMIS and Base Contentieux database)

### Noteworthy judgements pronounced by the Court of Justice in 2021

- The failure by Hungary, the UK and Germany to respect the limit values for air quality set by the Ambient Air Quality Directive (2008/50/EC) and to adopt air quality management plans that allow to keep the periods of exceedance as short as possible (cases C-637/18, C-664/18, C-635/18),
- The Court found that Spain failed to fulfil its obligations under the Water Framework Directive by not taking into account the illegal abstraction of water intended for urban supply when estimating the groundwater abstraction of the Doñana region. Moreover, Spain did not take appropriate measures to avoid disruption of protected habitats caused by this abstraction, thereby breaching the Habitats Directive (case C-559/19, judgement of 24 June 2021),
- Interim measures adopted by the Vice-President of the Court of Justice against Poland (C-121/21 R), ordering the immediate cessation of lignite mining activities at the Turów mine (21 May 2021) and the payment of financial penalties for each day of non-compliance with the interim measures (20 September 2021),
- Interim measures adopted by the Vice-President of the Court of Justice against Poland (C-204/21 R), ordering the immediate suspension of the provisions of national law concerning the functioning of the Disciplinary Chamber (14 July 2021) and the payment of financial penalties for each day of continued non-compliance with the Order of 14 July 2021 (27 October 2021),
- The Court (C-791/19, judgment of 15 July 2021) held that the new disciplinary regime for judges applicable to judges of the Polish Supreme Court and of the ordinary Courts is in breach of EU law (Article 19(1) TEU and Article 267 TFEU),
- The Court held that Hungary infringed EU law by criminalising the actions of persons who provide assistance to asylum applicants in its territory, where it can be proved beyond all reasonable doubt that those persons know that the application would be rejected (C-821/19, judgment of 16 November 2021).



### 1.4.8. Human and financial resources for legal representation

Almost 40% of staff working time is spent on legal representation. All lawyers in legal teams are expected to undertake representation of the Commission in court cases and several staff members in the Quality of Legislation team will also represent the Commission in court cases.

The administrative budget in the Legal Service is for litigation expenditure, 2.5 million € in 2021, mainly for contracted external law firms and other legal expertise, mostly in national court cases and in arbitrations. It also includes the payments imposed by the courts on lost cases, 0.8 million € in 2021, in which the Legal Service compensates the opposing party for its legal costs. More information can be found in section 2.1.1.

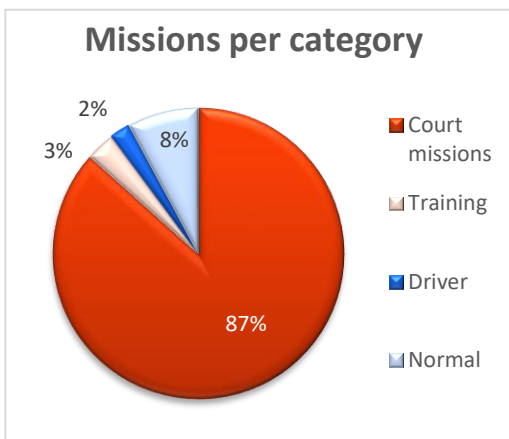


Chart 4: Missions per category (Source: MIPS)

On behalf of the Legal Service, the PMO paid a total amount of 0.2 million € for missions in 2021, presented in chart 4 of which: 87% of mission were for traveling to court hearings, mainly in Luxembourg, 3% of missions for training, and 10% of missions, mainly to assist in international negotiations, speaking at conferences and attendance by the Director General in the Parliamentary sessions in Strasbourg. Most of the missions undertaken in 2021 were by train. The CO<sub>2</sub> impact has been calculated as 17.200 kg for 2021.

### 1.5. Negotiations on accession to the European Convention on Human Rights

Accession of the European Union to the European Convention on Human Rights has been an objective of the EU for many years and would be an important milestone in the protection of human rights and fundamental freedoms across Europe. Accession to the European Convention on Human Rights (ECHR) contributes to **General objective n° 6: A new push for European democracy.**



The Legal Service is responsible for negotiating, on behalf of the European Union, accession to the European Convention on Human Rights (ECHR).

In 2013, negotiators for each of the 47 Member States of the Council of Europe and for the European Union reached an agreement on the EU's accession to the ECHR. However, in its Opinion 2/13 of 18 December 2014, the Court of Justice of the EU held that the draft agreement of 2013 was incompatible with the EU Treaties. Therefore, the agreement would

have to be amended based on the issues raised in the Opinion in order to make accession possible for the EU. In September 2020, negotiations on the accession of the EU to the ECHR were relaunched.

Within the Legal Service, the INST (Institution) team leads the negotiations for accession to the ECHR, in association with the JLS and RELEX teams. Opinion 2/13 of the Court of Justice serves as the Legal Service’s guide in the negotiations. EU accession can only be achieved by addressing the concerns of the Court of Justice fully. The successful conclusion of the negotiations on the required amendments to the draft Accession Agreement will depend on the political attitude of the main Council of Europe states outside the Union.

The Commission conducts the negotiations in consultation with the FREMP <sup>(6)</sup> Working Group of the Council and in coordination with the EU Member States’ delegates in the 47+1 Group. The European Parliament is being kept fully informed of the negotiations. Between negotiating sessions, the EU negotiator provides technical briefings to the LIBE <sup>(7)</sup> and AFCO <sup>(8)</sup> Coordinators on the state of play of the negotiations.

<b>Specific objective 2: Negotiations on the accession for the European Union to the European convention on Human Rights (ECHR)</b>
<b>Result Indicator 2.1: Progress in the negotiations on the accession to the European Convention on Human Rights (ECHR)</b>
<ul style="list-style-type: none"><li>• 5 rounds of negotiations have been held in 2021 which have been reported on to the European Parliament and the Council.</li></ul>

Five rounds of negotiations have been held in 2021 which have been reported on to the European Parliament and the Council, and the results of which are recorded in Meeting Reports of the 47+1 Group, which are publicly available on the website of the Council of Europe. In 2021, the Group has made good progress on two of the four baskets that are under negotiation, namely basket 1 (co-respondent mechanism) and on basket 3 (mutual trust). Information is also presented in Annex 2, section 1.5.

### 1.5.1. Human and financial resources for the negotiations to accede to the ECHR

The resources employed in the Legal Service to undertake this task is less than one full time post with a minor expenditure on missions.

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<sup>(6)</sup> FREMP: Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons  
<sup>(7)</sup> LIBE: Civil Liberties, Justice and Home Affairs  
<sup>(8)</sup> AFCO: Constitutional Affairs



## **2. MODERN AND EFFICIENT ADMINISTRATION AND INTERNAL CONTROL**

### **2.1. Financial management and internal control**

Assurance is provided on the basis of an objective examination of evidence of the effectiveness of risk management, control and governance processes.

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

- the reports from AOSDs,
- the contribution by the Head of Unit in charge of Risk Management and Internal Control, including the results of internal control monitoring at DG level,
- the reports on recorded non-compliance events and any cases of ‘confirmation of instructions’ (Art 92.3 FR),
- the limited conclusion of the Internal Auditor on the state of internal control, and the observations and recommendations reported by the Internal Audit Service (IAS),
- The observations and the recommendations reported by the European Court of Auditors (ECA).

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

This section covers the control results and other relevant elements that support management’s assurance. It is structured into 2.1.1 Control results, 2.1.2 Audit observations and recommendations, 2.1.3 Effectiveness of internal control systems, and resulting in 2.1.4 Conclusions on the assurance.

#### **2.1.1. Control results**

This section reports and assesses the elements identified by management which support the assurance on the achievement of the internal control objectives (ICO)<sup>(9)</sup>.The DG’s

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<sup>(9)</sup> 1) Effectiveness, efficiency and economy of operations; 2) reliability of reporting; 3) safeguarding of assets and information; 4) prevention, detection, correction and follow-up of fraud and irregularities; and 5) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments (FR Art 36.2). The 2nd and/or 3rd Internal Control Objective(s) (ICO) only when applicable, given the DG’s activities.

assurance building and materiality criteria are outlined in AAR Annex 5. The AAR Annex 6 outlines the main risks together with the control processes to mitigate them and the indicators used to measure the performance of the relevant control systems.

The Legal Service uses internal control processes to ensure the adequate management of the risks relating to the legality and regularity of the underlying transactions for which it is responsible, taking into account the nature of the payments, revenues, provisions and contingent liabilities concerned. The control system is designed to prevent, detect and correct errors, irregularities and fraud by ex-ante and ex post controls covering all types of financial operations and procurement.

**Total payments (3.7 m€)**

The Legal Service annual administrative budget is for contracted legal expertise and for payments to opposing parties for their legal costs. In 2021, total payments amounted to 3.7 million €. The breakdown of payments is presented in chart 5. More information on paid amounts can be found in Annex 12.

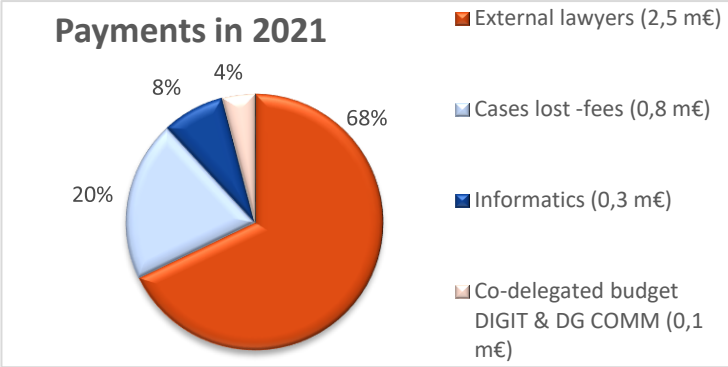


Chart 5: Split of payments in 2021 (Source: ABAC)

**Fees for external lawyers and other legal expertise (2.5 m€)**

External lawyers are contracted for national courts cases for which only a qualified national lawyer can plead, and for other court cases when expert knowledge is required or a particular language skill is needed. The Legal Service concludes contracts for legal services in the sense of point 11.1.h of Annex I, section 2, to the Financial Regulation based on a negotiated procedure with minimum one candidate. In 2021, 2.5 million € was paid to external lawyers and legal experts.

**Payments to opposing party for their legal costs (0.8 m€)**

The court can decide that the Commission must compensate the opposing party for their legal costs, in part or in full. Such expenditure does not arise from a contractual obligation. In 2021, payments to opposing parties for their legal costs amounted to 0.8 million €.

**IT expenditure (0.3 m€) and Co-delegated budget lines (0.1 m€)**

The Legal Service paid 0.3 million € on contracts for external staff to assist in IT development, investment and maintenance via the framework contract provided by DIGIT. There are two co-delegated budget lines, with DG Communication and DIGIT at a total of 0.1 million €.

## Recovery Orders, Revenue (0.2 m€)

Certain court decisions will allow the Legal Service to recover expenditure for legal fees and missions from the opposing parties. In 2021, recovery orders were issued for a total amount of 0.2 million € and the Legal Service received payments on outstanding recovery orders for an amount of 0.1 million €. At year-end, unpaid recovery orders amounted to 0.5 million €. Provisions for doubtful recovery orders are recorded at Commission level. The Legal Service follows the Commission dunning procedure for recovery orders for legal entities and physical persons. Almost 45% of outstanding recovery orders are recovered by salary or pension deductions. Remaining unpaid recovery orders are transmitted to the Legal Service team responsible for forced recoveries for legal action. The Legal Service does not consider that these outstanding amounts have any impact on the positive conclusion concerning the effectiveness of controls.

## Provisions (3.7 m€) and Contingent liabilities (5.5 m€)

At year-end, a provision for costs compensation for opposing parties is established, partly recorded as a provision and partly as contingent liabilities. In 2021, the cost compensation to opposing parties is 3.7 million € and the contingent liability is 5.5 million €.

**Overview table 1 (amounts in EUR million)**

<b>Risk-type / Activities</b>	<b>Procurement (e.g. minor or major values)</b>	<b>Cross-delegations to other DGs (other AOxDs)<sup>10</sup></b>	<b>Total Expenditure</b>	<b>NEI, e.g. Revenues, Assets, OBS ((in)tangible or financial assets &amp; liabilities)</b>
<b>Legal Advice and Litigation</b>	2.5	n/a	2.5	n/a
<b>Cost compensation to opposing parties</b>	0.8	n/a	0.8	n/a
<b>Quality of Legislation</b>	n/a	n/a		n/a
<b>Negotiation ECHR</b>	n/a	n/a		n/a
<b>Informatics expenditure</b>	0.3	n/a	0.3	n/a
<b>Other expenditure</b>	0.1	n/a	0.1	n/a
<b>Provisions for cost compensation to opposing parties</b>	n/a	n/a	n/a	3.7
<b>Contingent liability</b>	n/a	n/a	n/a	5.5
<b>Totals (coverage)</b>	<b>3.7</b>	<b>n/a</b>	<b>3.7</b>	<b>8.2</b>
<b>Links to AAR Annex 3</b>	<b>Overall total (m EUR); see Table 2 – payments made</b>		<b>Overall total (m EUR)</b>	<b>Table 4 – assets</b>

<sup>(10)</sup> AOxDs : Authorising officer by Cross-Delegation, NEI :Non-Expenditure Item(s), OBS : Off-Balance Sheet

The Legal Service mainly has administrative expenditure. Procurement of legal expertise represents 90% of total expenditure. The operational budget is <5% of total expenditure.

In line with the Financial Regulation, the Legal Service's assessment for the new reporting requirement is as follows:

- There are no cases of "confirmation of instructions" (new FR art 92.3)
- There are no such cases of financing not linked to costs (new FR art 125.3)
- There are no financial Framework Partnerships >4 years (new FR art 130.4)
- There are no such cases of flat-rates >7% for indirect costs (new FR art 181.6)
- There are no such cases of "Derogations from the principle of non-retroactivity of grants pursuant to Article 193 FR" (new Financial Regulation Article 193.2)

## **1. Effectiveness of controls**

### **a) Legality and regularity of the transactions**

The Legal Service uses internal control processes to ensure sound management of risks relating to the legality and regularity of the underlying transactions it is responsible, taking into account the nature of the payments concerned.

#### **Legal fees for external lawyers (68% of total paid amount)**

The Legal Service's control strategy for its procurement procedure for legal expertise is based on ex-ante controls.

All invoices undergo ex-ante controls by the Financial Cellule, The agent in charge of the court case give his/her "*conform aux faites*". The AOSD play an important role by reviewing all contracts before final approval.

All AOSDs perform ex-post controls before issuing their declaration of assurance and the Internal Control Officer (ICO) carries out ex-post controls by analytical desktop reviews and a review of the transaction sample checks performed by the financial cell. During the past 7 years, there have been two incorrect payments for a total amount of 5.500 € discovered ex-post. The amounts discovered have been recovered.

All non-compliance events in the contracting and payment procedures are reported to the Internal Control Officer (ICO). They are analysed and assessed and reported on to the Director General. In 2021, the non-compliance rate was 2,9%. The majority of non-compliance events are deviations from the contracting procedure where the contracted legal experts start to work before the contract is signed or works on legal tasks not foreseen in the contract. In the latter, detailed analyses are undertaken to ascertain the legal and operational justifications of the tasks undertaken by the external legal expert. The increase in non-compliance events arises from several litigations on the Covid-vaccine deliveries, which required very fast interventions from the Legal Service. In all confirmed

non-compliance events, no serious breaches were stated, the expenditures were justified, both operationally and financially.

On the basis of the available information, the Legal Service has reasonable assurance that it has effective controls in the contracting procedure and that there are no significant errors in legal expenditure.

#### **Payments to opposing parties for their legal costs (22% of total paid amount)**

The Legal Service's control strategy for this expenditure is based on ex-ante controls, which give an important role to the thematic teams and the Financial Cellule. The Financial Cellule, the Internal Control Officer (ICO) and the Head of Unit Human Resources Business Correspondent Information technology Finance (HoU HRIF) also carry out controls.

In the legal teams, all claims are reviewed and assessed, and often negotiated with the lawyer representing the opposing party, to come to an agreement. If an agreement cannot be reached, it is referred to the court for a decision determining a reasonable amount the Legal Service should pay the opposing party to cover their legal costs.

At year-end, all legal teams are requested to ensure full registration of closed cases and their potential financial consequences. The legal teams can be asked to provide additional information by the Financial Cellule to ensure completeness of the information.

On the basis of the available information, the Legal Service has reasonable assurance that it has effective controls in the procedure for payments to opposing parties for their legal costs and that there are no significant errors.

#### **Other expenditure**

##### *IT expenditure (7% of total paid amount)*

The Legal Service paid 0.3 million€ for external staff to assist in IT development, investments and maintenance via the framework contract provided by DIGIT.

##### *Co-delegated budget lines (3% of total paid amount)*

There were two co-delegated budget lines in 2021, one with DIGIT and one with DG Communication at a total amount of 0.1 million €.

##### *Mission expenditure (paid by PMO)*

In 2021, the Legal Service's mission expenditure of 0.2 million € was paid by the PMO.

On the basis of the available information, the Legal Service has reasonable assurance that it has effective controls for its IT expenditure, in its co-delegated budget lines and in mission expenditure.

#### **Provisions and contingent liabilities**

At year-end, a provision for costs compensation for opposing parties is established, partly recorded as a provision and partly as contingent liabilities. It is the largest item in the balance sheet. The split of total identified cost compensation claims to opposing parties to

provisions and contingent liabilities is based on historical figures and followed up on by continuous comparisons of the provisions compared to the actual payments.

Based on the available information, the Legal Service has reasonable assurance that it has effective controls for its provisions and contingent liabilities and that there are no significant errors in these items.

### Estimated risk at payment, estimated future corrections and risk at closure

The Legal Service's relevant expenditure, its estimated overall risk at payment, estimated future corrections and risk at closure are set out in Table 2: Estimated risk at payment and at closure.

The estimated overall risk at payment for 2021 expenditure amounts to 0.2 million €, representing 0.5% of the DG's total relevant expenditure for 2021. This is the AOD's best, conservative estimate of the amount of relevant expenditure during the year not in conformity with the contractual and regulatory provisions applicable at the time the payment was made.

This expenditure will subsequently be subject to ex-post controls and a proportion of the underlying errors will be detected and corrected in subsequent years. The conservatively estimated future corrections for 2021 expenditure amount to zero million €.

The difference between those two amounts results in the estimated overall risk at closure of 0.2 million €, representing 0.5% of the DG's total relevant expenditure for 2021. There is no change due to the stable environment of the Legal Service.

For an overview at Commission level, the DGs' estimated overall risk at payment, estimated future corrections and risk at closure are consolidated in the AMPR.

**Table 2: Estimated risk at payment and at closure (amounts in EUR million).**

Legal Service	Relevant expenditure	Estimated risk (error rate %) at payment		Estimated future corrections and deductions		Estimated risk (error rate %) at closure	
		(1)	(2)	(3)	(4)	(5)	(6)
	m EUR	m EUR	%	m EUR	%	m EUR	%
Legal Advice, Litigation	3.3 m€	0.2 m€	0.5	0 m€	0	0.2 m€	0.5
Informatics expenditure	0.3 m€	0 m€	0.5	0 m€	0	0 m€	0.5
Other expenditure	0.1 m€	0 m€	0.5	0 m€	0	0 m€	0.5
<b>DG total</b>	<b>m 3.7 EUR</b>	<b>m 0.2 EUR</b>	<b>0.5%</b>	<b>m 0 EUR</b>	<b>%</b>	<b>M 0.2 EUR</b>	<b>0.5%</b>

The full detailed version of the table is provided in Annex 9.

b) Fraud prevention, detection and correction

Since 2013, based on the methodology provided by OLAF, the Legal Service has developed its own anti-fraud strategy. It is updated every three years. It was last updated on February 7, 2020. Its implementation is being monitored and reported to the management biannually. All necessary actions have been implemented.

The Legal Service also contributed to the Commission anti-fraud strategy and followed up 100% of OLAF’s *financial* recommendations.

The results achieved during the year thanks to the anti-fraud measures in place can be summarised as follows; full implementation of the anti-fraud action plan for the Legal Service, 90% ethics confirmation by Legal Service staff and no reported incidents of external fraud attempts or fraudulent actions by Legal Service staff in 2021.

The internal control systems in place effectively mitigate the risk for fraud.

On the basis of the available information, the Legal Service has reasonable assurance that the anti-fraud measures in place are efficient.

The risk of fraud is minimised through the application of effective anti-fraud measures and the implementation of the Commission Anti-Fraud Strategy (CAFS) aimed at the prevention, detection and correction of fraud which is confirmed by reaching the following targets in 2021:

**Outputs in 2021**

- Since July 2021, the deputy DG post is vacant and therefore only one meeting was held with the working group for Ethics and Handling of Sensitive information in 2021
- 90% of all Legal Service Staff had confirmed their ethics awareness by the end of 2021
- All legal teams have dedicated one team meeting to present the Legal Service Anti-Fraud strategy, the Legal Service Ethics Guide and the IDOC report
- Legal Service has contributed by giving advice to OLAF in the implementation of Action 57 of the CAFS in 2021

**2. Efficiency of controls**

There is no programme spending in the Legal Service, hence there are no indicators for time-to-inform and time-to-grant. The previous indicator of average payment duration (14 days in 2020) was replaced by a new indicator of payments-on-time. In 2021 payment on time was 99%, which is above the Commission score.

Timely Payments	SJ Score	EC Score
<p>0% 25% 50% 75% 100%</p> <p>99%</p> <p>EC (98%)</p>	<b>99%</b>	<b>98%</b>

The implemented financial and internal control procedures in the Legal Service have proven to be efficient and the fact that no material errors have been identified in the past few years, no new initiatives have been identified. Based on the available information, the Legal Service has reasonable assurance that it has efficient controls in the payment procedure.

**3. Economy of controls**

The Legal Service quantifies the costs of the resources and inputs required for carrying out the controls described in Annex 7 and estimates, is so far as possible, their benefits in terms of the number of errors and irregularities prevented, detected and corrected by these controls.

The ex-ante controls in place in 2021 for detecting and correcting errors are considered to have allowed for an identification of an amount of 1.4 million € which represents a reduction in the compensation claims from opposing parties. The ex-post controls did not reveal any errors and hence no financial corrections were applied. For more details see Annex 7.

The number of staff involved in the financial circuit is limited. All commitments and payments follow the same procedures. The controls implemented in the centralised financial circuit complies with the baseline requirements of the Financial Regulation.

The Legal Service complies with baseline criteria in its financial circuit. Total cost of controls for 2021 is calculated to be 0.2 million €, or 8,9% of total expenditure, which is below target. A significant number of contracts signed in the Legal Service are for amounts of less than 15.000 € and the average payment amount was 5.700 € in 2021. Consequently, the cost of controls in relation to total payments appears to be relatively high. More information about the calculation of total cost of controls is presented in Annex 7, Table B.

**The authorising officer by delegation has reasonable assurance that resources have been used in accordance with the principles of sound financial management and that cost-effective controls are in place which give the necessary guarantees concerning the legality and regularity of underlying transactions which is confirmed by reaching the following targets in 2021:**

**Outputs in 2021**

- The risk at payment was <2% of relevant expenditure
- The estimated risk at closure was <0.5% of relevant expenditure
- 99% of total due payments made in time
- Overall estimated costs of controls were 8,9% of funds managed.



#### **4. Conclusions on the cost-effectiveness of controls**

Based on the most relevant key indicators and control results, the Legal Service has assessed the effectiveness, efficiency and economy of its control system and on the cost-effectiveness of the controls for which it is responsible.

The following have been taken into account and have contributed to keep the error rates at very low levels and therefore give sufficient assurance of sound financial management, hence additional controls are considered neither to be efficient nor to be effective:

- the organisational structure in place,
- the financial circuit implemented,
- that the implementation and performance of controls are in line with the baseline requirements,
- a stable control environment in the Legal Service over several years,
- the total amounts paid of 2.5 million € for contracted legal expertise, 0.8 million € paid to opposing parties to compensate for their legal fees and 0.3 million € for IT expenditure,
- no identified fraud attempts in 2021 and
- no erroneous payments in 2021.

The controls system put in place in the Legal Service is therefore considered to be cost-effective.

#### **2.1.2. Audit observations and recommendations**

This section sets out the observations, opinions and conclusions reported by auditors – including the limited conclusion of the Internal Auditor on the state of internal control. Summaries of the management measures taken in response to the audit recommendations are also included, together with an assessment of the likely material impact of the findings on the achievement of the internal control objectives, and therefore on management's assurance.

There were no audits undertaken in 2021 by the European Court of Auditors and there are no outstanding audit recommendations from the ECA.

There were no audits undertaken in 2021 by the Internal Audit Service and there are no outstanding audit recommendations from the IAS.

The IAS' basis for their conclusions has been the work undertaken in 2018-2021, namely:

Audit on Data Protection in 2020 (SG, DIGIT, LS, HR, JRC),

It is concluded by the IAS that the internal control systems in place for the audited processes are effective.

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

The Commission has adopted an Internal Control Framework based on international good practice, to ensure the achievement of its policy and management objectives. Compliance with the internal control framework is a compulsory requirement.

The Legal Service uses the organisational structure and the internal control systems suited to achieving its policy and internal control objectives in accordance with the internal control principles and has due regard to the risks associated with the environment in which it operates.

Management in the Legal Service has assessed its internal control system during the reporting year and has concluded that it is effective and the components and principles are present and functioning as intended.

The methodology established in the Legal Service and, which has proved to be efficient for its organisation, includes:

- a yearly risk assessment exercise with Senior Managers to assess a number of internal control principles, including risk management, ethics and fraud through a questionnaire and followed by an in-depth interview with the Head of Unit for RMIC and the ICO
- regular exchange on potential internal control weaknesses or control failures recorded during the year between the Financial Cellule, the Risk Management Head of Unit and the Internal Control Officer,
- monitoring of audits and issued audit recommendations,
- results of the corporate indicators reported in the AAR Annex 4.

However,

- the analysis of identified non-compliances has shown an increase compared to previous years and the set target. Management has taken action to decrease the number of non-compliances.

The Legal Service has assessed its internal control systems during the reporting year and has concluded that while there were some minor deficiencies, they have now been addressed.

#### 2.1.4. Conclusions on the assurance

By the sub-conclusions already reached (in Sections 2.1.1, 2.1.2 and 2.1.3), it can be concluded that the assurance does not need to be qualified and there is no need for reservations.

The information reported in Section 2.1 stems from the results of management and auditor monitoring contained in the reports listed. These reports result from a systematic analysis of the evidence available. This approach provides sufficient guarantees as to the completeness and reliability of the information reported and results in a comprehensive coverage of the budget delegated to the Director-General of the Legal Service.

The main objective of the Legal Service is to provide timely and high-quality legal advice and representation. To meet these objectives, the Legal Service has put in place a flat organisation, internal policies, procedures and controls, including weekly management meetings and team meetings in which operational information is exchanged as well as relevant financial and other administrative information.

The intrinsic risk for administrative expenditure managed by the Legal Service including procurement is relatively low because of the limited budget as well as the centralised and direct mode of budget implementation. The risks are effectively mitigated by means of controls put in place.

Further assurance is obtained by the risk management process put in place, and the very limited number and significance of non-compliance events and internal control weaknesses reported in 2021. Management has obtained satisfactory evidence that the internal control system in its entirety is implemented effectively in the Legal Service.

The reported financial figures present a true and fair view and it is considered that; resources are used for the intended purpose; the administrative procedures contribute to sound financial management and they ensure that legality and regularity is respected, and no significant information is omitted. The other internal control objectives (safeguarding of assets and information, and the prevention, detection and correction of fraud and irregularities) are applied to both expenditure and revenue operations.

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

## 2.1.5. Declaration of Assurance

### **Declaration of Assurance**

I, the undersigned,

Director-General of the Legal Service

In my capacity as authorising officer by delegation

Declare that the information contained in this report gives a true and fair view <sup>(11)</sup>.

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

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

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

Brussels at 30 March 2022

*Electronic signature in ARES*

Daniel CALLEJA-CRESPO

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<sup>(11)</sup> True and fair in this context means a reliable, complete and correct view on the state of affairs in the DG/Executive Agency.

## 2.2. Modern and efficient administration – other aspects

### 2.2.1. Reform of the Legal Service – an ambitious program of reform

In 2021, the Legal Service put in place an ambitious Reform strategy involving a thorough evaluation of its internal organisation, human resources, procedures, talent management and IT. The Reform process has received full support of all colleagues and 20% of Legal Service staff are actively involved in one of the four working groups established for this reform work.

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*Group 1: Organisation of the Legal Service*  
*Group 2: Working methods and processes*  
*Group 3: Talent management*  
*Group 4: IT and knowledge management*

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The purpose of the reform has been to modernise the functioning and structure of the Legal Service and aims at improving its overall efficiency mainly on two fronts: its working methods and procedures (including the administrative procedures, collaboration between the teams, talent management, recruitment etc.) and its working environment (including well-being, IT tools, Knowledge Management, internal communication etc.).

A common working environment accessible to all members of the Legal Service (via TEAMS) was created to follow the discussions (in a fully transparent way), interact with others and participate in an inclusive manner to this wide exercise.

The recommendations stemming from these groups were agreed by senior management and will be implemented in 2022.

### 2.2.2. Human resource management

There are five Units in the Legal Service and there were no movements among the Heads of Units in 2021. During 2021, deputy Head of Units have been designated to all Units following selection interviews.

In 2021, more than 55 full time equivalents (FTEs) were recruited or transferred in/within the Legal Service. One Deputy Director-General; 4 Principal Legal Advisers, 2 Legal Advisors, 1 Senior Expert and 1 Senior Assistant as well as the designated of the deputy Heads of Unit.

At year end, the Unit HR IF BC <sup>(12)</sup> consisted of 8 staff members in HR and Finance, and 7 staff members in IT. The Information and document management team (InfoDoc) consisted of 18 staff members.

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<sup>(12)</sup> Human Resources, Informatics, Finance, Business Correspondent, Internal Control and Risk Management

The Covid-19 pandemic has continued to impact the Legal Service with increased workload for many colleagues. The HR team works actively to provide support to staff members where needed and inform the Legal Service staff accordingly.

*76% STAFF SATISFACTION  
IN THE LEGAL SERVICE*

The Legal Service staff satisfaction rate in the 2021 staff survey was 76%, which is an increase of 3% since the previous survey in 2018.

Since the introduction of teleworking at the beginning of the Covid-19 pandemic, the Legal Service has put in place new communication channels, an online summary of the weekly senior management meeting is provided by one of the Directors and is also recorded and published on My SJ. Furthermore, the Director General has addressed all Legal Service staff on several occasions on various subjects through online presentations and video recorded messages.

### 2.2.3. Digital transformation and information management

#### **IT**

In line with the corporate data governance policy, which requires a clean separation of data, business logic and user experience components, a new version of the information system ULM (Unified Litigation Management) for the follow-up of litigation proceedings in front of the European Court of Justice and international jurisdictions is now in production. It includes specialised modules for dispute settlements at the World Trade Organisation (WTO) and the follow-up of national litigation.

In addition, the migrated version of the system for the follow-up of recovery orders sent by DG BUDG to the Legal Service (RECO) is now on the cusp of being rolled out based on the same principles.

For all the litigation modules under the ULM umbrella, a data consolidation project has been identified and is planned for 2022 in line with the ECDS principles. It will explore all the potential data synergies between the litigation domains as well as possibilities offered by corporate services such as master data or linked data repositories. It will also consolidate the front-end part of ULM by making more business relevant data available to the business users through the ULM dashboard.

The migration of SOLON, the knowledge management toolset at the Legal Service, is ongoing with a target release date at the end of 2021. This will be the occasion for a major functional update and simplification once done. In 2022, a major data consolidation project is planned in order to better align the taxonomy used with corporate vocabularies such as the EuroVoc.

All Legal Service IT systems use as much as possible corporate documents and data through the cross-sector platform SOA or linked data connectors. They also benefit whenever possible of the reusable software solutions provided at Corporate Level (such as

eu Login, HRS, CNS, eUI..) taking stock of the Dual pillar approach guidelines. Governance of data with a local scope is generally embedded with Information Systems governance. The corresponding roles and responsibilities will be further formalised in compliance with the corporate data governance and policies.

The Legal Service enforces a strict IT security management which is aligned with the corporate policies, while being proportionate to the departmental and mostly internal scope of its IT systems. The approach is risk centred with analysis being embedded in security plans, which are systemically reviewed and approved by the business owners during the projects steering committees. The standards applied are based on decision 2017/46, while the risk analysis will be progressively moved to ITSRM methodology formalism.

In the context of the ISA<sup>2</sup> program, the Legal Service is putting at the disposal of Member States and other institutions the *Ref2Link* toolset, which detects and enriches legal references (especially in the context of EU law) in any document; based on European standards such as the European Law Identifier. The Legal Service is also adapting the offer of *Ref2Link* so that its components may be put to efficient use by other DGs and services in full integration with DIGIT's Digital Workspace in the Commission. The tool has been significantly enhanced in 2021 with the connection to the Corporate Publication Office linked data repository, improving both user experience and detection accuracy. This interoperability boost will be pursued in 2022 with new connections to linked open data e.g. for national law and through the opportunities brought by the on boarding in the Digital Europe Program.



**The Legal Service is using innovative, trusted digital solutions for better policy-shaping, information management and administrative processes to forge a truly digitally transformed, user-focused and data-driven Commission:**

**Outputs in 2021**

- All teams are using the new front-end modules (Base Contentieux, Board, Templates of Unified Litigation Management)
- 85% of recommendations for Ref2Link to allow for a wider availability of the system within the Commission were implemented
- M365 roll out will allow for editing of Sensitive, Non-classified documents. The availability of this depends on a couple of technical enablers still to be sorted out at corporate level. In the meantime, a pilot solution based on a former SharePoint version is used in the competition team.

**InfoDoc**

In order to increase awareness and knowledge of the rules on the protection of personal data, all the new members of the Legal Service received the SG's Guide to Data Protection and the SG's Guide to Document Management and Access to Documents in both digital and paper form. All lawyers were invited to attend training sessions on data protection

organised in five cycles throughout the year. Furthermore, all lawyers are expected to follow the case law of the Court of Justice on the subject and to be fully conversant with it.

**The Legal Service is using innovative, trusted digital solutions for better policy-shaping, information management and administrative processes to forge a truly digitally transformed, user-focused and data-driven Commission:**

#### Outputs in 2021

- 30% of all Legal Service lawyers had undertaken an online EU training or participated in an advanced seminar on the Data Protection rules which is below the 50% target. Efforts will be made to increase participation in Data Protection training in 2022.

### 2.2.4. Sound environmental management

In order to support the Greening of the Commission, the Legal Service has established an internal working group to promote monthly actions which will all contribute to the Commission objectives as set out in the EMAS Global action plan. The calendar to the left presents the schedule proposed for 2022.



Due to the Covid measures taken during 2021, the bottle top collection has been put on hold. Staff have, to some extent, continued to collect bottle tops and they will hopefully be picked up during 2022.

**The Legal Service takes full account of its environmental impact in all its actions and actively promotes measures to reduce the related day-to-day impact of the administration and its work:**

#### Outputs in 2021

- A Legal Service EMAS group has been established
- A Legal Service EMAS activity calendar with monthly actions is included in the 2022 Management Plan
- The Legal Service EMAS correspondent gave a presentation on Cooking with Leftovers in an on-line event organised by DG HR.
- The Covid-19 pandemic has put a hold on the bottle top collections in BERL

### 2.2.5. Examples of initiatives to improve economy and efficiency of non-financial activities in the Legal Service

Several of the developments described in section 2.2.3 above are improvements in economy and efficiency of non-financial activities. The work of the Informatics team has contributed to improvements in the reporting functions in the Legal Service data bases used for management of court cases. Further developments include improving the monitoring of deadlines, the extraction of information for information sharing, etc.