



2019

Annual Activity Report

Legal Service

Foreword

In 2019, the Legal Service continued to support the Commission, DG's and Services by providing legal advice on all measures of legal relevance, and by representing the Commission in court. The Legal Service was also in particular closely involved in preparing for the entry into office of the von der Leyen Commission, and in the preparation of the first initiatives of the new Commission. The Legal Service was also closely involved with other high-priority files, such as the preparation for the withdrawal of the United Kingdom, and the Commission's work to protect the rule of law in Member States.

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THE DG IN BRIEF

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

Unlike most Commission services, the Legal Service is not in charge of a particular policy area or any programmes. Instead, the Legal Service contributes to the development and implementation of all initiatives of the Commission in its dual role as legal adviser and representative before the courts. The Legal is also responsible for the relations with judicial bodies, including the accession of the European Union to the European Convention of Human Rights (ECHR).

In 2019, the Legal Service defended the interests of the European Union and its citizens in more than 1.900 Union court cases and more than 600 cases before national courts, replied to some 13.500 consultations and to 4.400 parliamentary questions.

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

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

The Legal Service has 470 staff members, including 15 trainees, 11 seconded national experts and 29 staff with temporary contracts. The majority of the staff, (371 staff) are organized into 13 thematic teams responsible for defined legal areas. Another team is responsible for the quality of legislation (68 staff) divided in three Units. The Legal Service also has one Unit dealing with Contracts and Recoveries. On the administrative side, there is one group responsible for information support and one Unit responsible for Human Resources, Business Correspondent, Informatics and Finance.

Total payments for 2019 amounts to 4.0 million Euro, of which 3.6 million Euro were paid to external lawyers and opposing parties. 423 payments were made on contracts with external lawyers for an amount of 2.1 million Euro. 55 payments were made in 2019 to opposing parties to compensate them for their legal fees for an amount of 1.5 million Euro. 171 contracts and amendments were established in 2019. More detailed information on commitments and payments is presented in section 2.1.1.

In 2019, the work by the Procurement & Recoveries team resulted in a recovery of 15 million Euro to the European Commission.

EXECUTIVE SUMMARY

This Annual Activity Report is a management report from 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 Treaties¹.

a) Key results and progress towards the achievement of the Commission's general objectives and DG's specific objectives

Since its establishment, the Legal Service has been responsible for providing legal advice and for defending the Commission in Court. Legal advice must be of the highest quality and be delivered in due time; the same is true of legal representation. To be able to respond to every eventuality, whatever legal field it may be in, the organisation is designed to be able to adapt to all requirements and requests, sometimes at extremely short notice. The flat organisational structure allows information to be quickly disseminated and absorbed and enables the Legal Service to provide fast responses when 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 assists the Commission in carrying out its function as the "Guardian of the Treaties". The European Union is a Union based on law. Without a clear and predictable legal framework for the Union, respected by all - Institutions, Member States, and private actors - the Union cannot succeed. It is in this context that the contribution of the Legal Service should be seen.

The year 2019 was marked by the transition from the Juncker to the von der Leyen Commission. The Legal Service was closely involved with preparing the candidates for the new Commission, and putting in place the necessary rules for the functioning of the new Commission. It also advised on the powers of the outgoing Commission as a caretaker Commission and other transitional issues. The Legal Service also assisted the services with the preparation of the initiatives announced in the political agenda of the President.

Finally, the Legal Service was responsible for preparing the relaunch of the negotiations for the Union's accession to the European Convention for Human Rights, on the basis of negotiating directives approved by the Council in October 2019.

b) Key Performance Indicators (KPIs)

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

¹ Article 17(1) of the Treaty on European Union.

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

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

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

Source: Jurrev database and Agenda Planning.

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

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

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

The year 2019 was a year of transition (EP-elections, new Commission). As a consequence, the number of texts reviewed and pages revised decreased. The team continued to be involved in the preparations for the withdrawal of the United Kingdom from the European Union by revising Brexit notices in all official languages

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

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

Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2019)
KPI 2 Percentage of attendance at meetings of the Commission and of the Heads of Cabinets	100%	100%	100%

Source: Exception register and ARES

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

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

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

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

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

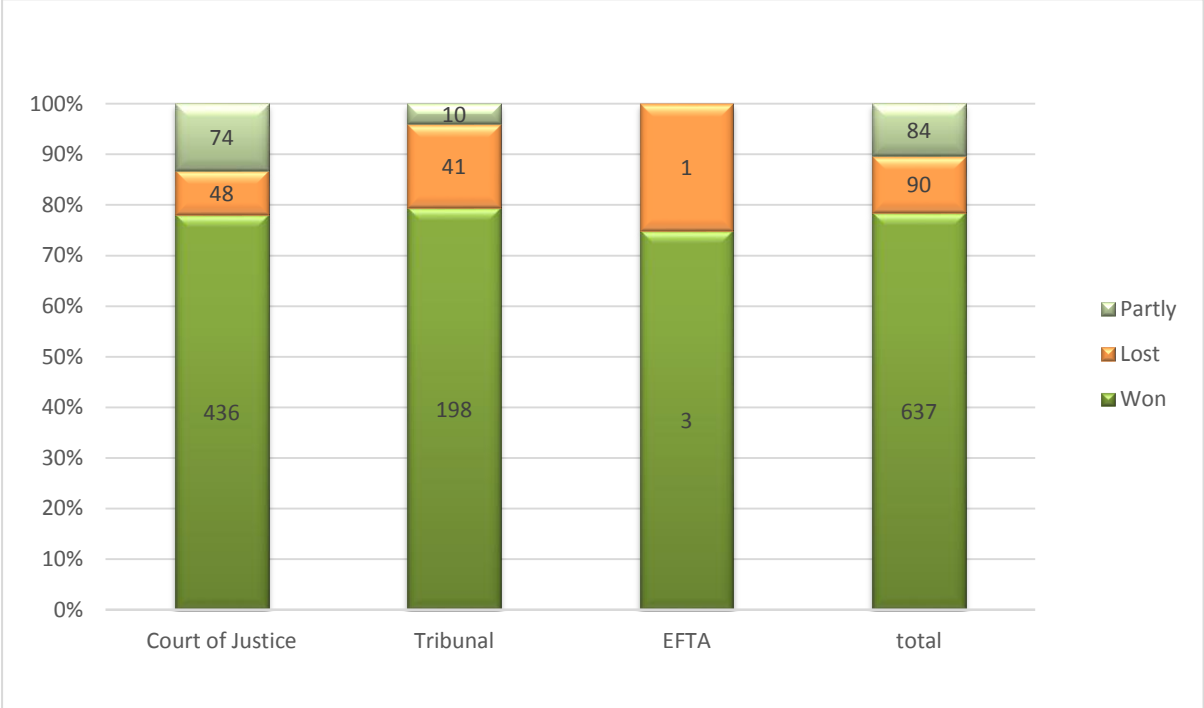
Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2019)
KPI 3 Percentage of attendance by appointed staff in court hearings	100%	100%	100%

Source: Exception register.

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

- the instances within the Court of Justice of the European Union – namely the Court of Justice, the General Court; the EFTA court;
- the Dispute settlement bodies within the World Trade Organisation (WTO) in Geneva;
- the national courts, both in the Member States and in third countries, in cases where the Union or the Commission are parties (e.g. forced recovery of debts represents 65% of national cases), and
- Arbitration tribunals.

In graph 1, the decisions taken in 2019 by the Court of Justice, the Tribunal and the European Free Trade Agreement (EFTA) Court are presented.



Graph 1: Court results 2019 (Source: Base Contentieux)

In total, the Commission was

- successful in 79% of cases,
- unsuccessful in 11% of cases
- 10% of cases were partly won.

KPI 4 - Percentage of replies to legal consultations within deadline

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

Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2018)
KPI 4 Percentage of replies to legal consultations within the set deadline	92 %	> 92 %	91 %

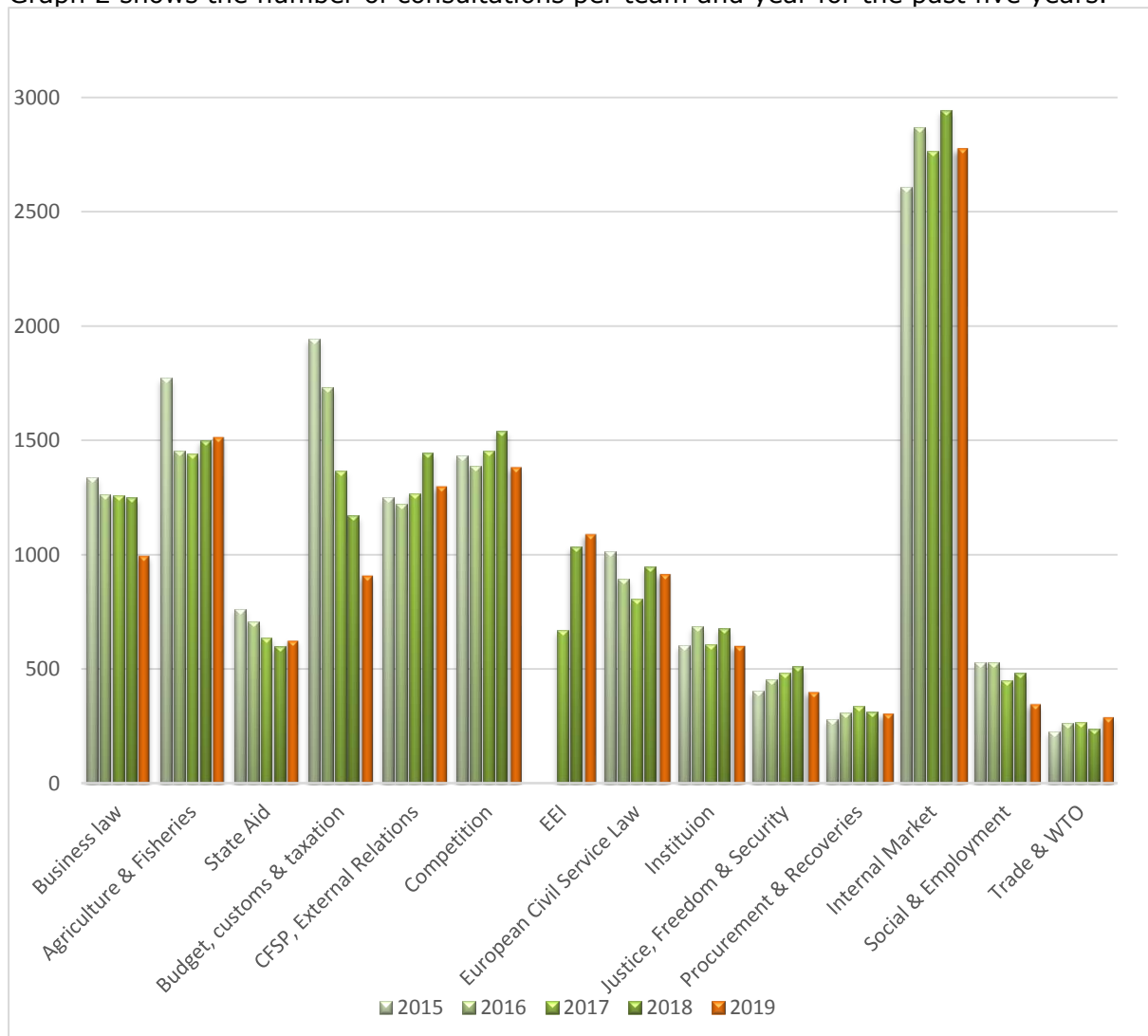
Source: ARES, SG report, NIF database and other databases.

The Legal Service's contribution to the process of drawing up new legislation must not only be of a high quality, it must also be delivered in due time, and often under conditions of urgency.

The number of fast-track consultations dropped in 2019 compared to 2018, mainly due to the European Parliament election held in May 2019. Nevertheless, the short time frame available for the Legal Service to give its advice on the fast-track consultations that were launched had an impact on the workload of staff. Thanks to the flexibility of the

Legal Service organisation and the commitment of its staff, it has maintained its high level of replies within the set deadlines.

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



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

KPI 5 – Estimated residual error rate

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

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

Result/Impact indicator	Baseline (2016)	Target	Latest known results as per Annual Activity Report (2019)
KPI 5 Estimated residual error rate	0.3 %	<1 %	0.3 %

Source: DG BUDG report.

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

In accordance with the governance arrangements of the European Commission, the 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.

To ensure the achievement of policy and management objectives, the Commission has adopted a set of internal control principles, based on international good practice. The financial regulation requires that the organisational structure and the internal control systems used to implement the budget be set up in accordance with these principles. 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. Please refer to AAR section 2.1.3 for further details.

In addition, the Legal Service has systematically examined the available control results and indicators, including those for supervising entities to which it has entrusted budget implementation tasks, 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. Please refer to Section 2.1 for further details.

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

d) Provision of information to the President

In the context of the regular meetings during the year between 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 and of her Cabinet.

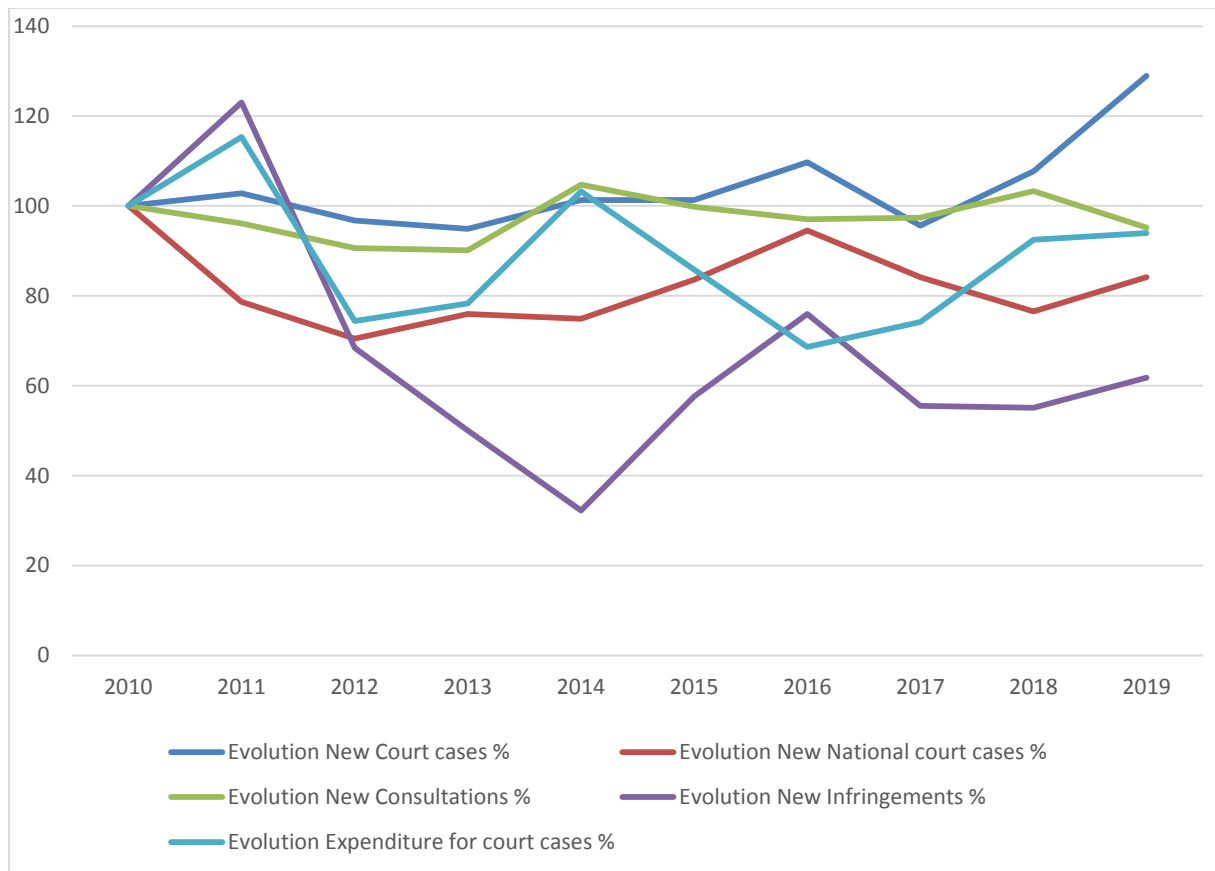
1. KEY RESULTS AND PROGRESS TOWARDS THE ACHIEVEMENT OF THE COMMISSION'S GENERAL OBJECTIVES AND DG'S SPECIFIC OBJECTIVES

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

The expertise of the Legal Service indirectly contributed to all the Commission's initiatives and to all of the general and administrative objectives established for the Commission for 2019. The Legal Service assists the Commission in carrying out its function as the "Guardian of the Treaties".

In 2019, the Legal Service continued to strive to meet the requirements of timeliness and high quality in the field of expertise in legal advice and legal representation, whenever its intervention was requested by the other Directorates-General and Services.

Graph 3 shows the evolution of the workload of the Legal Service over the last 10 years.



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

Over the 10-year period, the number of new court cases and consultations has been generally stable except for new court cases in the Union Courts, which has increased slightly. Costs for external legal expertise and costs paid to opposing parties for their legal fees have also remained stable.

1.1 Quality of Legislation

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

GENERAL OBJECTIVE:

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

Activities relating to the quality of legislation are grouped into a single team (SJ.DDG.K) employing some 14 % of the staff resources of the Service.

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

Chart 1 shows the staff resources involved in Quality of Legislation as a proportion of the Legal Service staff as a whole.

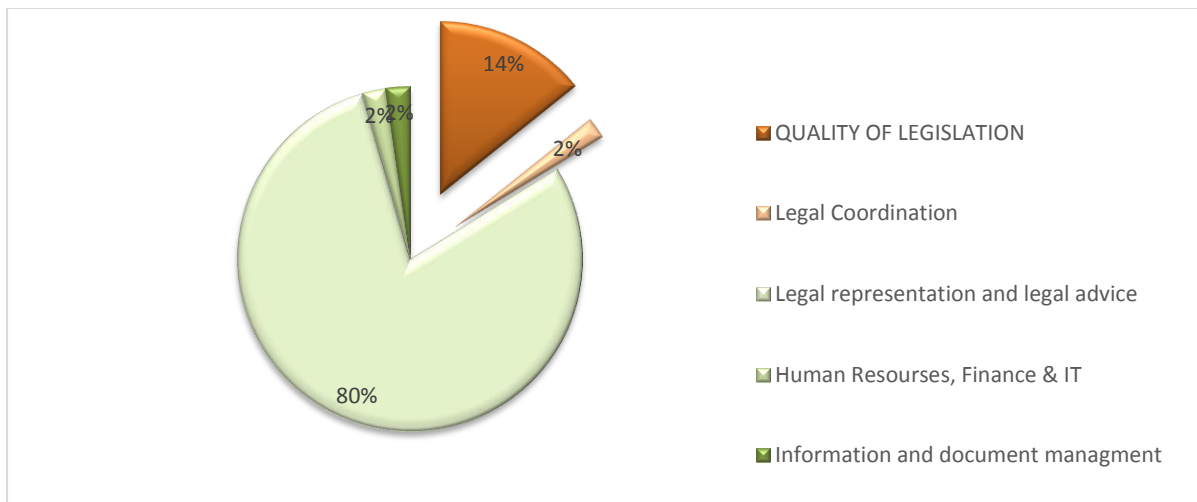


Chart 1: Number of staff in the various functions (Source: Sysper)

In 2019, as in previous years, the Quality of Legislation team selected legal acts intended for publication to be reviewed, and the corresponding consultations were replied to by the deadline. All four codification proposals listed in *Decide Planning* were prepared in a timely manner.

During this exceptional and particularly busy year, the overall number of pages reviewed and revised amounted to 38 000 pages, this is a decrease compared to the exceptional year 2018 with 61 000 pages (Brexit effect), but, still an increase compared to 2017 with some 32 000.

The Quality of Legislation team organised a seminar on "Legislative drafting in the era of artificial intelligence and digitisation" which attracted an audience of more than 400 participants representing many services of the Commission, the other Institutions, Member States and academia.

A – Revision of draft legal acts

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

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

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

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 Interservice consultation; that activity was also particularly intense in 2019.

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

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

In 2019, the team continued to participate in the preparedness efforts linked to the withdrawal of the United Kingdom by revising notices and related texts intended to inform citizens of the Union about the practical implications of the United Kingdom leaving the Union, in all official languages.

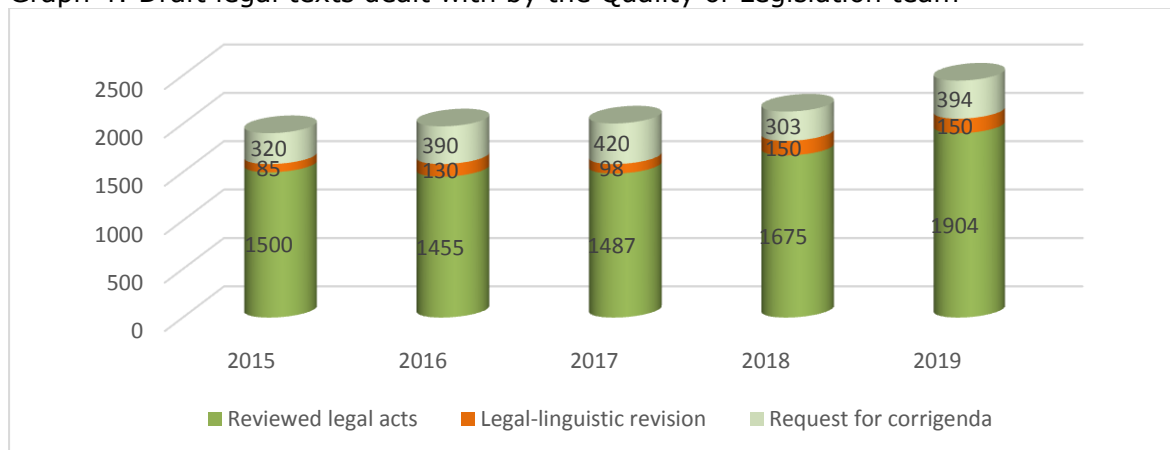
1904 legal texts
under-went legal revision
**The target of 100 % of
selected texts was
reached.**

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

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

**Number of reviewed
pages went from
from 61 000 in 2018
to 38 000 in 2019.**

Graph 4: Draft legal texts dealt with by the Quality of Legislation team



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

B – Codification and Recast of legal acts

In 2019, the Legal Service completed the preparation of three codified acts in all official languages as listed in “*Decide Planning*”. They were not submitted as proposals to the European Parliament and the Council for reasons essentially related to the reduced number of new legislative initiatives in the transition from the Juncker Commission to the von der Leyen Commission. In addition, eight other codification exercises were initiated with 'master copy' texts submitted for approval to the responsible DGs and a few further codifications were prepared but put aside awaiting the amendment or repeal of the acts to be codified.

Moreover, the Legal Service actively participated in the legislative procedures on the proposals submitted to the legislator in the previous years. This eventually led to the adoption and publication in the *Official Journal* in 2019 of two new codified legislative acts. In addition, one new recast exercise (recast consists of the codification of an act and the inclusion of new amendments into the codified text) was carried out in 2019, leading to the submission of a legislative proposal to the European Parliament and to the Council during that year.

The target of 100% of the legal acts listed in *Decide* planning to undergo codification/ recast was reached.

C - Other aspects of legislative simplification

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

In 2019, the Quality of Legislation team continued to provide targeted training to Directorates-General and agencies on legislative drafting and participated in the inter-institutional training programme for lawyer-linguists and legal revisers.

In addition, the Quality of Legislation team organised a seminar on “Legislative drafting in the era of artificial intelligence and digitisation” which attracted an audience of more than 400 participants representing many services of the Commission, the other Institutions, Member States and academia.

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

1.2 Legal Advice

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

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

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

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

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

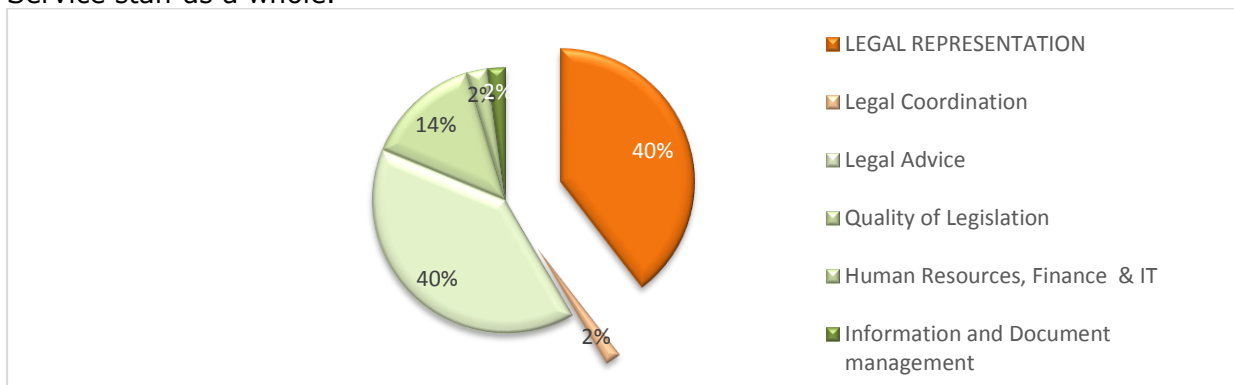


Chart 2: Number of staff in the various functions (Source: Sysper)

This activity is managed by the thematic teams of the Legal Service. The two main tasks for the thematic teams are legal advice and legal representation. 40% of total working time is devoted to legal advice. Given that the Director-General attends the weekly meetings of the Commission and of the Heads of Cabinet to assist and advise them, a significant part of the Legal Coordination function is also dedicated to legal advice.

As regards its advisory activity, the Legal Service accompanied the Commission's activity in an important number of very sensitive and legally very complex files. The Legal Service was in particular closely involved in preparing for the entry into office of the von der Leyen Commission, and in the preparation the first initiatives of the new Commission. The Legal Service was also closely involved with other high-priority files, such as the preparation for the withdrawal of the United Kingdom, and the Commission's work to protect the rule of law in Member States.

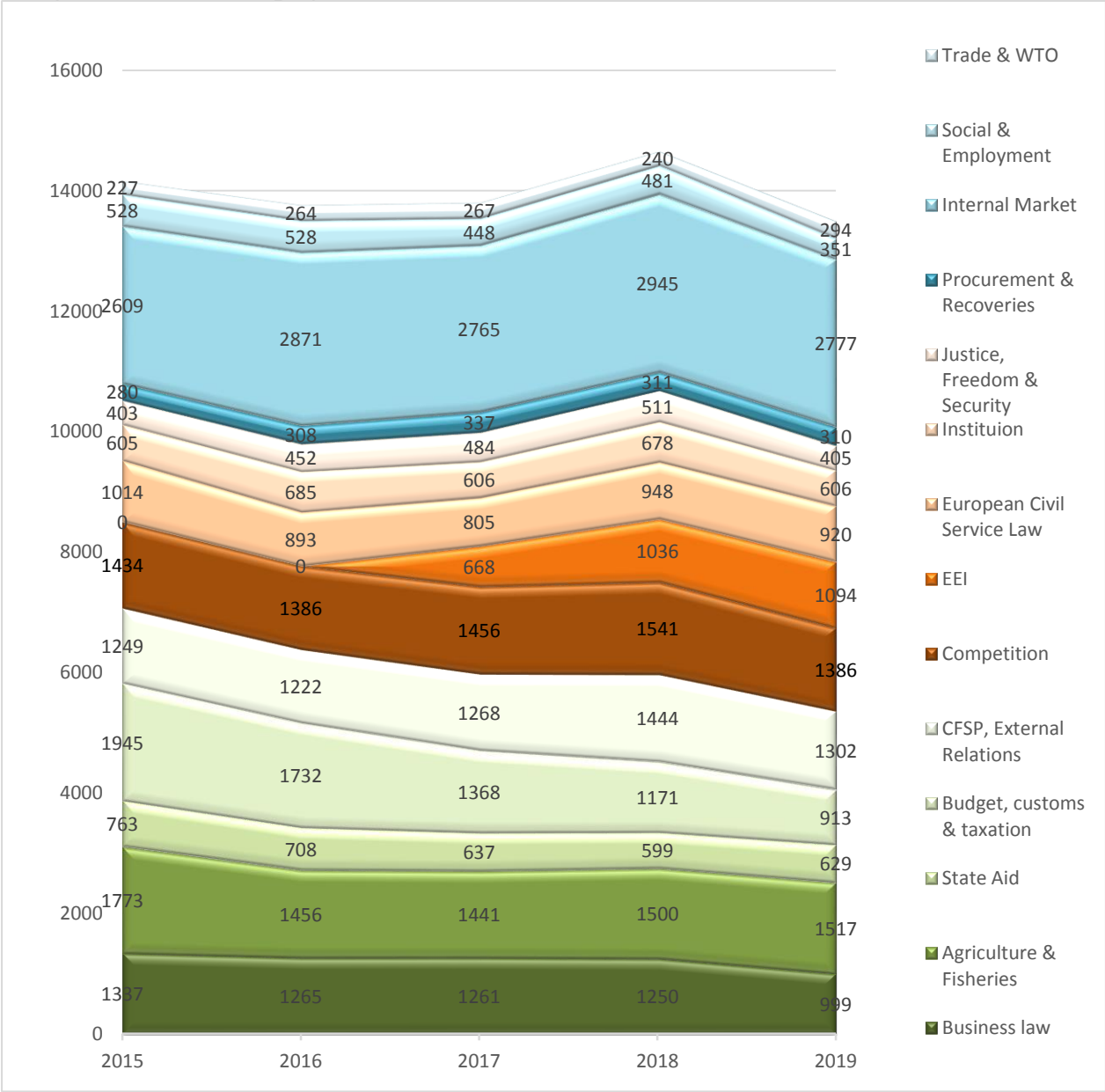
91 % of all consultations were replied to within the set deadlines. The target set at 92% was almost reached.

In 2019, the Legal Service replied to 13.503 consultations of which 8.002 were registered in *Decide*, the system in which all documents for adoption by the Commission are registered. The figures are stable in comparison with previous years.

91% of consultations were replied to in due time which is close to the target of 92%.

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

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



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

The number of consultations fluctuates around 14 000 per year. However, it varies in volume from team to team over the years. Annex 12 present additional information on the number of consultations.

Access to documents, Ombudsman and parliamentary questions

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

Over the past few years, there has been an increase in the volume of requested documents². The InfoDoc team deals with the initial request for access to documents. In 2019, the team dealt with 275 initial requests for access to approximately 635 documents.

The Legal Service, via its 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. The Legal Service gave its opinion on 267 draft confirmatory replies in 2019. This is an area that also generates litigation: in 2019, 13 new cases for annulment were brought against confirmatory replies; in the same period, the General Court delivered nine judgments in cases on access to documents concerning the Commission. There were five appeals before the Court of Justice; none of them led to the annulment of the judgement of the General Court.

Moreover, during the year, the Institutional team has also reviewed 65 requests from the Ombudsman, 729 petitions and 4400 parliamentary questions. For the majority of the parliamentary questions, the request is for a legal opinion. The Legal Service was responsible for replying to 13 questions and co-responsible for another 133 questions for the subject content of the reply. The decrease in parliamentary questions is mainly explained by the election of new members to the European Parliament in 2019.

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

In 2019, the Legal Service gave its advice on 13.503 consultations.

4.400 replies to parliamentary questions were given, 729 petitions and 65 requests from the Ombudsman were also answered in 2019.

² 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.

1.3 Legal Representation

In 2019, the Legal Service defended the interests of the Commission before:

- the two instances within the Court of Justice of the European Union namely the Court of Justice and the General Court;
- the EFTA court;
- the Dispute settlement bodies within the WTO in Geneva;
- National courts, both in the Member states and in third countries, in cases where the Union or the Commission were parties. A significant proportion of the cases in national courts concerned forced recovery of debts (65 % in 2019);
- Arbitration bodies.

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

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

In order to ensure that a court case is dealt with correctly, it is of vital importance that all court deadlines are respected and that the Commission is represented at all court hearings. The Legal Service met these targets in 2019.

This activity is managed by the thematic teams of the Legal Service. The two main tasks for the thematic teams are legal advice and legal representation. 40% of staff resources is devoted to legal representation. Legal representation includes litigation and infringements. Staff members in the thematic teams as well as the Quality of Legislation team defend the Commission in the courts, and ensure the representation of the Commission in all official languages of the Union.

Chart 3 shows the staff resources working on Legal Representation as a proportion of the Legal Service staff as a whole.

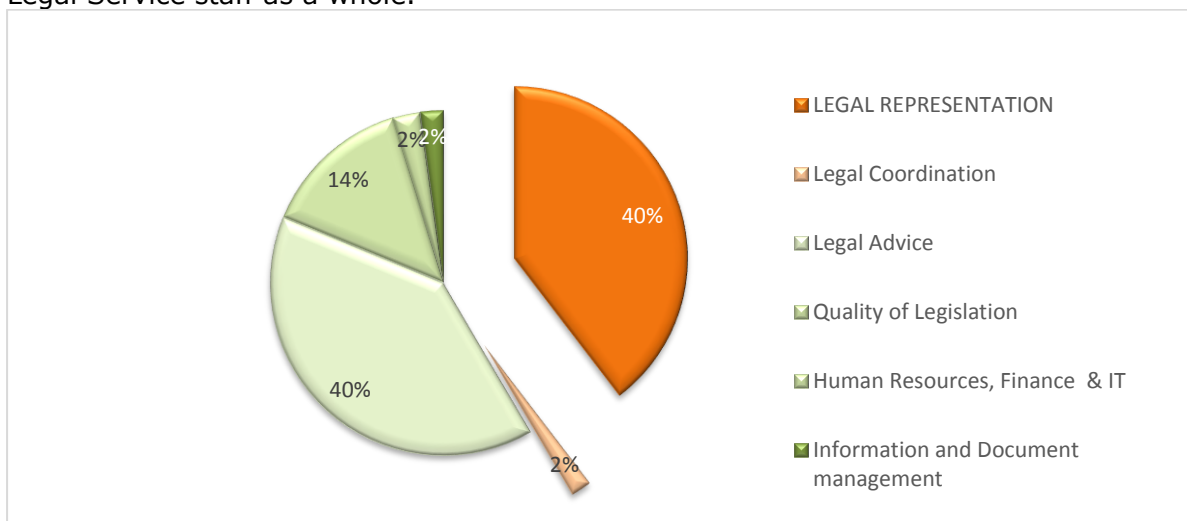


Chart 3: Number of staff in the various functions (Source: Sysper)

This activity accounts for the vast majority of the Legal Service's financial expenditure. In 2019, the Legal Service paid 3.6 million € for litigation, including fees to external law firms, costs imposed on the institution by the courts in lost cases and fees for other lawyers and legal experts assisting in national courts or on technical matters or particular areas of legal expertise.

The majority of mission expenditure in the Legal Service is for travel and hotel costs in relation to court hearings and amounts to 0.4 million €. Since 2018, payments for mission costs are executed and reported in the accounts of the PMO. Including mission costs, total costs for Legal Representation amount to 4.0 million € in 2019.

Chart 4 shows the breakdown of total costs for Legal Representation, including mission costs, which is paid by the PMO.

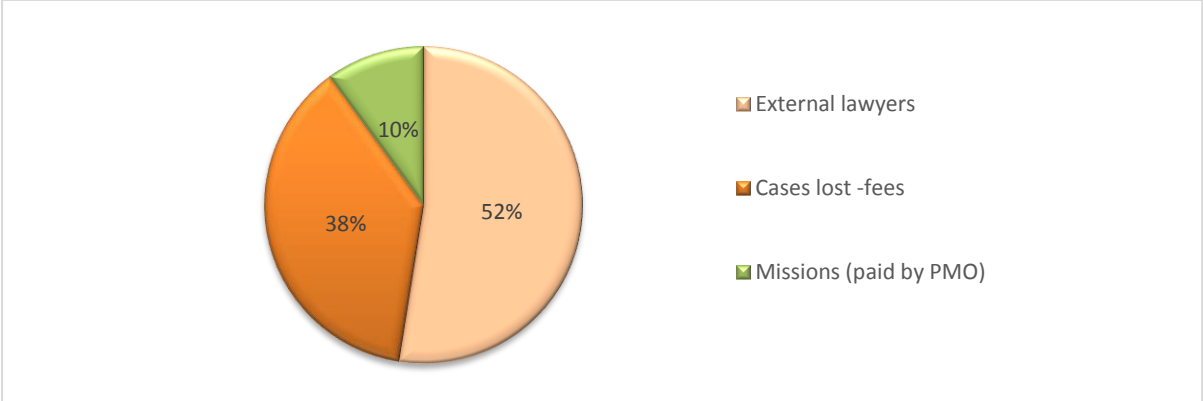


Chart 4: Breakdown of total costs for Legal Representation (Source: ABAC)

Representing and Defending the European Union

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

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

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

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

Some of the cases pleaded by the Legal Service concern large sums of money, important points of law for citizens or important points of institutional law. Losing these cases would have an important reputational impact for the Legal Service and for the Commission as a whole.

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

Number of cases managed by the Legal Service per year and per jurisdiction						
Jurisdiction	Cases ³	2015	2016	2017	2018	2019
Courts of the Union	New Cases	1183	1086	1224	1140	1465
	Closed Cases	1176	1186	1047	1223	1218
	On-going cases	1682	1 582	1 759	1 676	1923
National Courts	New Cases	153	173	154 ⁴	140 ⁵	154 ⁶
	On-going cases	772	882	766	775	631
WTO	New Cases	13	22	22	45	32
	On-going cases	62	64	67	81	91

Table 1: Court cases managed by the Legal Service in the Union Courts per year (Source: Base Contentieux)

The average number of ongoing court cases is around 1.650 for Union Courts and 765 for National courts. There is an increase in the number of ongoing cases in front of the WTO.

Court outcome

Of the 1063 cases closed by the Courts of the Union for 2019, 31% (i.e. 357 cases) (*non-applicable*) were discontinued proceedings and cases removed from the Court's register.

Table 2 shows the results of proceedings in the Union Courts in 2019.

Court decisions per jurisdiction and outcome for 2019					
Jurisdiction	Won	Lost	Partly	non applicable	Total Court Decisions
Court of Justice	439	47	74	180	740
General Court	197	42	10	65	314
EFTA	3	1	0	5	9
total	639	90	84	250	1063

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

Chart 5 presents the success rated in cases in which the Courts took a decision

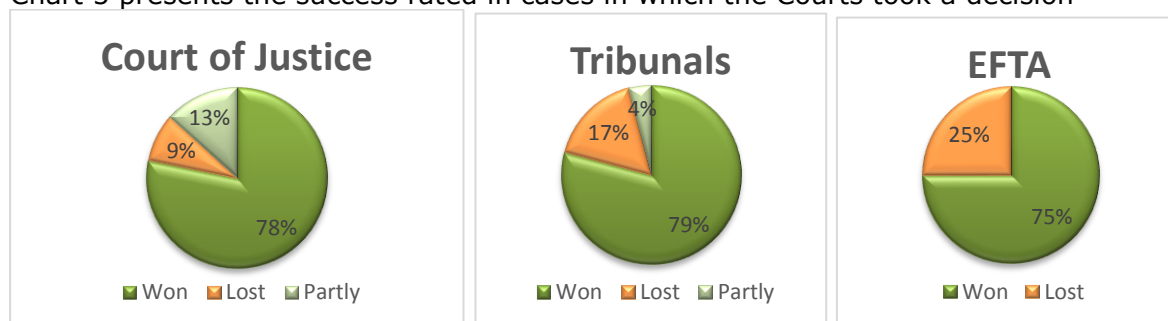


Chart 5: Results from the decisions taken by the Courts of the Union (Source: Base Contentieux).

³ Figures for On-going cases are indicative.

⁴ 94 cases brought before national jurisdictions and 60 non judicial cases (legal opinions, pre-litigation procedures,...)

⁵ 85 cases brought before national jurisdictions and 55 non judicial cases (legal opinions, pre-litigation procedures,...)

⁶ 83 cases brought before national jurisdictions and 71 non judicial cases (legal opinions, pre-litigation procedures,...)

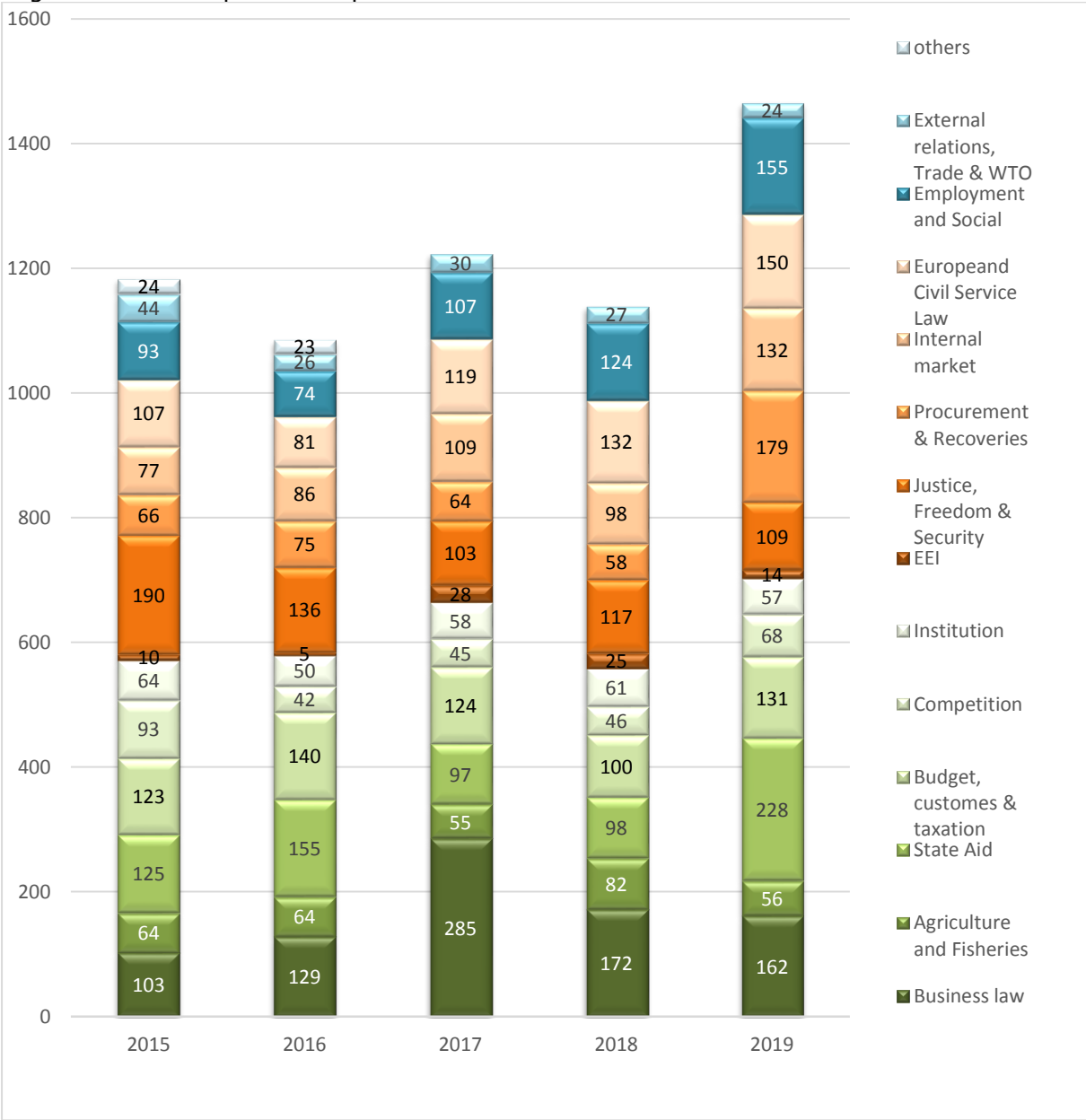
The results of cases closed in 2019 with a court decision shows that the Legal Service has won between 75 and 80% of cases and has been partly successful in some additional cases. The Legal Service lost in one case in the EFTA court, in 9% of Court of Justice cases and in 16% of Tribunal cases.

Courts of the European Union

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

Over the past five years the number of new court cases for the Legal Service has remained relatively stable at around 1.200 per annum. However, the annual variation between the thematic teams is more significant. The increase in 2019 is explained by additional cases in the State Aid and Procurement teams.

Graph 6 shows the number of new cases since 2015 in the Union courts managed by the Legal Service and presented per thematic teams.



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

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

In particular: Preliminary rulings

Representation in proceedings for preliminary rulings of the Court of Justice continue to be an important task of the Legal Service. These are cases in which a national court asks the Court of Justice to rule on the interpretation or validity of Union law. The Legal Service is involved in all these cases and, when presenting the position of the Commission, the challenge is not necessarily to win the case, but to assist the Court, as *amicus curiae*, in finding the correct interpretation of Union law, a role which is much appreciated by the Court of Justice.

In 2019, there were 655 requests for **preliminary rulings**, a significant increase compared to 2018 (531 requests), notified to the Commission by the Court of Justice (647) and the EFTA Court (8).

National courts

At year-end, there were 631 pending cases before national jurisdictions:

- 413 cases concerned recovery of debts, i.e. 65 % of national litigation;
- the Commission intervened as a civil party in 19 criminal cases;
- in 2019, 83 new cases were brought before national jurisdictions of which 59 (39%) concerned recovery of debts
- 21 claims in the frame of liquidation/bankruptcy proceedings were still open.

In 2019, a total amount of 27.1 million € in unpaid debts was transmitted to the Contracts and Recovery Unit for legal action with the purpose of recovering these amounts. In 2019, 15.0 million € were recovered by the Unit. At the end of the year 872 recovery orders for a total amount of 174.6 million € were still open.

Arbitration cases

There were 8 new arbitration cases in 2019 and 31 cases were closed during the year. At year end, there were 56 ongoing cases.

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

In 2019, the Legal Service defended 1.923 cases in the Union Courts, 631 cases in national courts and 91 cases in the WTO in Geneva.

The Legal Service recovered EUR 15 million of unpaid debts.

World Trade Organisation – WTO and Free Trade Agreements

The Legal Service assists the European Commission representing the European Union in all trade negotiations at the World Trade Organisation. The Legal Service also represents the European Union before WTO Panels and the WTO Appellate Body.

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

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 modeled 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 2019, the European Union launched the first three cases under the dispute settlement provisions of the Free Trade Agreements. The Legal Service is also responsible for the representation of the Union before the dispute settlement Panels set up by FTAs.

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

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

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

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

GENERAL OBJECTIVE:

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

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

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

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

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

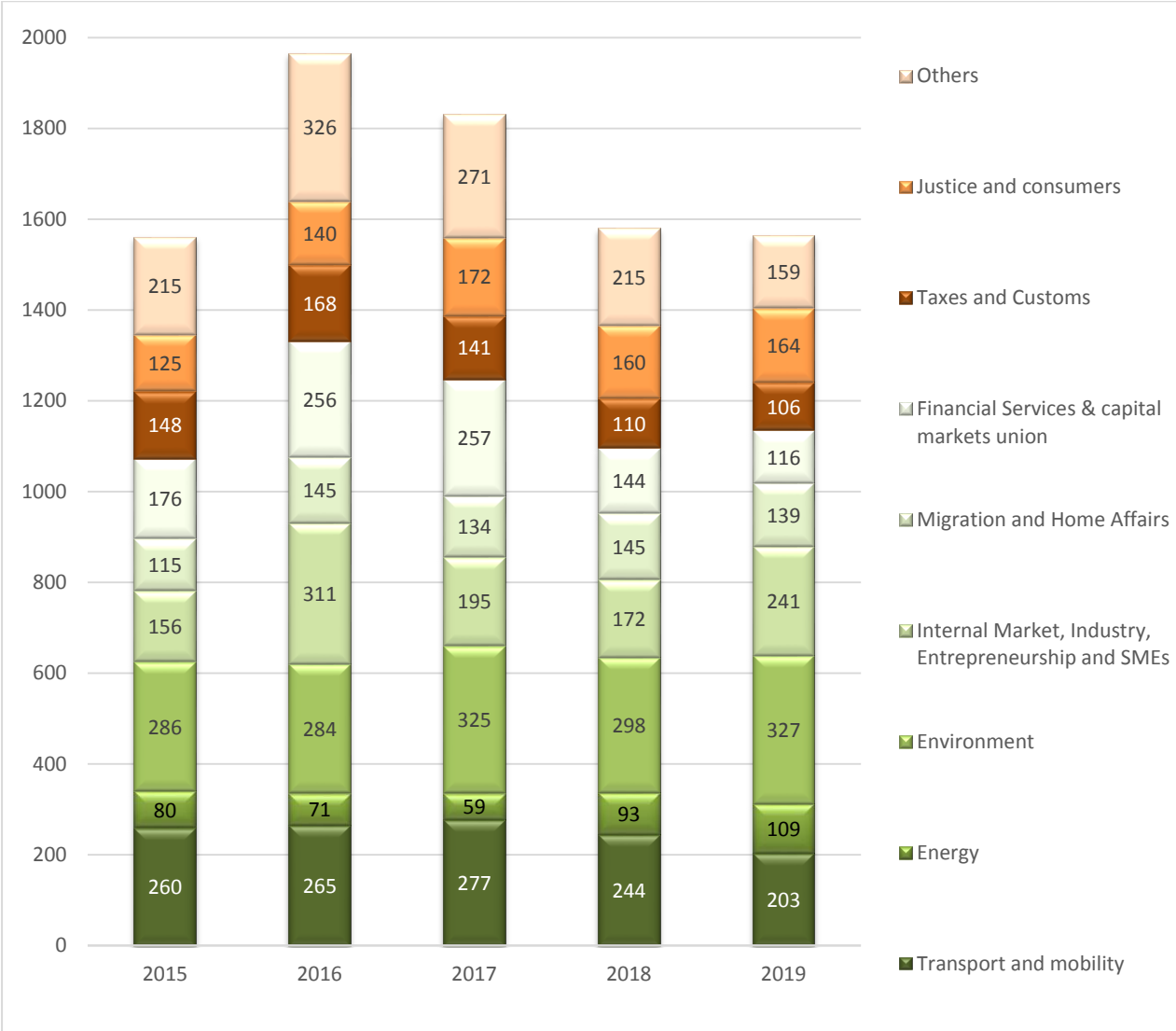
The Commission attaches high priority to the application and implementation of Union law⁷. Control of the legality of the various steps of the procedure in all individual cases submitted by the other Directorates-General will continue to be an important part of the work of the Legal Service. In this context, not only does the Legal Service give its opinion on all cases in which a decision is submitted for adoption by the College, but, with the Secretariat general, it also coordinates the monthly infringement decision adoption process.

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

The target of 90 % of replies to inter-service consultations on infringement cases included in a given decision cycle was reached within the established deadlines in 2019.

⁷ C(2016)8600.

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



Development of infringement procedures (Source: NIF)

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

There were 1564 ongoing infringement procedures in 2019 with 797 new procedures, 805 closed procedures and 34 cases brought before the Court.

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

The Legal Service will continue to monitor its internal benchmark of two months governing the timing of the submission of an application to the Court of Justice of the European Union after the Commission has adopted a decision to refer a case to the Court.

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

2. ORGANISATIONAL MANAGEMENT AND INTERNAL CONTROL

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

The first subsection reports the control results and other relevant information that supports management's assurance on the achievement of the financial management and internal control objectives⁸. It includes any additional information necessary to establish that the available evidence is reliable, complete and comprehensive. It covers all activities, programmes and management modes relevant to the Legal Service.

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

2.1 Financial management and internal control

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

This examination is carried out by management, who 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. These are:

- the reports from Authorising Officers by Sub-Delegations;
- the reports from Authorising Officers in other DGs managing budget appropriations in cross-delegation;
- the contribution by the Head of Unit in charge of Risk Management and Internal Control (RMIC), including the results of internal control monitoring at DG level;
- the reports on recorded exceptions, non-compliance events and any cases of 'confirmation of instructions' (Art 92.3 FR);
- the reports on ex-post supervision and/or audit results;
- 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 evidence available. This approach provides sufficient guarantees as to the completeness and reliability of the information reported and results in a complete coverage of the budget delegated to the Director-General of the Legal Service.

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

⁸ Art 36.2 FR: a) effectiveness, efficiency and economy of operations; b) reliability of reporting; c) safeguarding of assets and information; d) prevention, detection, correction and follow-up of fraud and irregularities; and e) adequate management of risks relating to the legality and regularity of underlying transactions

2.1.1 Control results

This section is for reporting and assessing the elements identified by management which support the assurance on the achievement of the internal control objectives⁹. The DG's assurance building and materiality criteria are outlined in AAR Annex 4. Annex 5 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 is not the lead service for any programmes. All expenditure of the Legal Service is administrative.

Total payments by the Legal Service (4.0 M€)

While the total budget commitment for the Legal Service in 2019 was 4.2 M€, total payments amounted to 4.0 M€. The breakdown of payments is presented in chart 6. More information on committed and paid amounts in 2019 can be found in Annex 12.

Chart 6 shows the breakdown of payments made by the Legal Service.

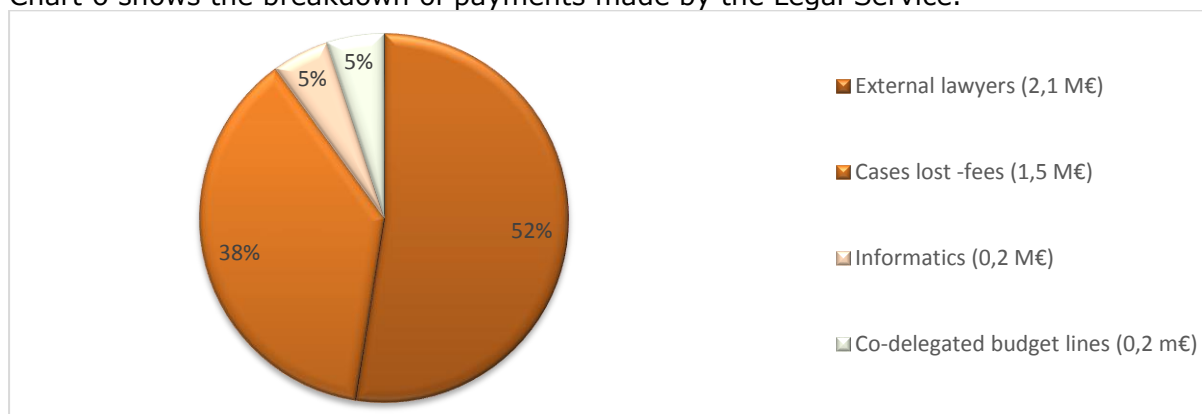


Chart 6: Payments of the Legal Service budget (Source: ABAC)

Fees for external lawyers and other legal expertise (2.1 M€)

The most common reason for contracting an external lawyer is for national courts where only a qualified national lawyer can plead. Sometimes 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 to the Financial Regulation on the basis of a negotiated procedure with minimum one candidate.

2.1 M€ was paid in 2019 to external lawyers and other legal experts. Amounts paid varied from <20 € to 142.000 € with an average of 5.000 € per payment. 171 contracts and amendments were signed. The total contract value amounts to 2.1 M€. Contracted amounts varied from 1.000 € to 230.000 €.

Payments to opposing party for their legal costs (1.5 M€)

In 2019, the courts ordered the Legal Service to pay the opposing parties for their legal

⁹ 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.*

costs resulting in an expenditure of 1.5 M€ with an average of 26.400 € per payment.

IT investments (0.2M€) and Co-delegated budget lines (0.2 M€)

The Legal Service paid 0.2 M€ on contracts for external staff to assist in IT development, investment and maintenance via the framework contract provided by DIGIT. The Legal Service has two co-delegated budget lines, with DG Comm and DIGIT, each of 0.1 M€.

Recovery Orders and Revenue (0.2 M€)

The Legal Service is able to recover some of its expenditure for legal fees and missions from opposing parties. The total recognised revenue and income consists of the current year recovery orders (0.2 M€) and recovery orders carried over (0.5 M€).

Table 3 shows the summary table for issued recovery orders in the 2019 accounts.

	<u>Current year</u>	<u>Carried over</u>	<u>Total recognised revenue</u>
Recovery Orders 2019	0.2 M€	0.5 M€	0.7 M€

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

Provisions and contingent liabilities

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

Table 4 shows the most significant balance sheet and off-balance sheet items.

	<u>Current provisions</u>	<u>Contingent liabilities</u>
Expenditure related to costs for court cases 2019	4.5 M€	6.7 M€

Table 4: Provisions and contingent liabilities, Annex 3, table 5 and 5bis.

1. Effectiveness = the control results and benefits

In order to be considered effective, controls are expected to meet the internal control objectives and for each of those control objectives result in benefits. These benefits should be explained and quantified wherever possible.

- **Legality and regularity of the transactions**

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 it is responsible for, taking into account the multiannual character of programmes and the nature of the payments concerned.

The **general control objective** for the Commission is to ensure that the residual error rate does not exceed 2% annually. For the financial residual error rate, the Legal has set its objective to 0.5%.

Legal fees for external lawyers (54 % of total payments)

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

All invoices are reviewed by the Financial Cellule before they are sent to the thematic teams for "*conforme aux faits*" and "*bon à payer*". Ex-ante controls of the legal services rendered are performed in the thematic teams. All AOSDs are requested to perform an ex-post control in connection with the issuance of their declaration of assurance. The number of non-compliance incidents in the contracting procedure was 2 %

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

There were no erroneous payments for contracted legal fees in 2019. During the past 7 years, one incorrect payment of 3.000 € has been discovered ex-post.

In 2018, three recovery orders for a total of 8.226 € were issued to offset incorrectly invoiced amounts by external law firms for arbitration and *hussiers*. The law firms had re-invoiced fees, which were reasonable and in agreement with the contracts. Later, the external law firms informed that their charges had been lowered, and consequently, the Legal Service was reimbursed the corresponding amounts. The initial invoice should not be considered erroneous and therefore, these recovery orders are excluded from the calculation of the theoretical error rate.

Assessment: The controls undertaken comply with baseline requirements and are considered to be efficient and effective. 100% of payments to contractors were controlled ex-ante by the Financial Cellule and the thematic teams and were approved at the appropriate level before payment. The average error rate for erroneous payments is 2%.

Payments to opposing parties for their legal costs (38 % of total payments)

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

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

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

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

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

Provision and contingent liabilities

Court decisions may require the Legal Service to pay the opposing party for their legal costs. The provision for cost payments to opposing parties for their legal costs is the largest item in the balance sheet (100% of total liabilities in 2019). The Legal Service control strategy for the provisions and contingent liabilities is by ex-ante controls by the Directors. The Financial Cellule, the internal control officer and the head of HR BC IF also carry out controls.

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

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

Estimated amount at risk at payment

In the context of the protection of the EU budget, the DGs' estimated overall risk at payment, estimated future corrections and risk at closure are consolidated at Commission level. Legal Service' data is shown in Table 6 and its accompanying notes below.

There were no erroneous payments made in 2019. Therefore, for legal fees, at a total of 2.1 M€, the conservatively estimated future correction for the 2019 expenditure is set to zero. This is the amount of errors that the Legal Service conservatively estimates to identify and correct from controls that it will implement in successive years.

Compensation to the opposing parties for their legal costs (1.5 M€ in 2019) is not a procured expenditure, it is decided by the court. In principle, no erroneous payments could occur, still the conservatively estimated future corrections for 2019 is set at 0,5%.

The Control objective is to ensure that the residual error rate does not exceed 2% per year (compare with annex 4).

The controls implemented in the procurement and payments of external legal expertise, complying with baseline requirements, have proved to be sufficient, effective and efficient over the years. Over the years, very few errors have occurred and the amounts erroneously paid are immaterial. Management therefore **concludes** that the implemented controls are effective.

The estimated overall risk at payment for 2019 expenditure is 0.02 M€ (i.e. 20.000 €). This is the AOD's best, conservative estimation of the amount of *relevant expenditure* during the year (4.0 M€) 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 successive years. The conservatively estimated future corrections for 2019 expenditure is zero €. The Legal Service most conservative estimate of the amount of errors identified and corrected by controls planned to be carried out in succeeding years is zero €.

Therefore, the estimated overall risk at closure for the 2019 expenditure remains at of 0.02 M€ (i.e. 20.000 €). Table 5 on next page presents details and the calculation of the estimated amount at risk at closure for 2019. The amount is consistent compared to previous years.

Table 5 - Estimated overall risk at closure

DG xxx	"payments made" (FY; m€)	<i>minus</i> new prefinancing [plus retentions made*] (in FY; m€)	<i>plus</i> cleared prefinancing [<i>minus</i> retentions released* and deductions of expenditure made by MS] (in FY; m€)	= "relevant expenditure" (for the FY; m€)	Average Error Rate (<i>weighted AER</i> ; %)	estimated overall risk at payment (FY; m€)	Average Recoveries and Corrections (<i>adjusted ARC</i> ; %)	estimated future corrections [and deductions] (for FY; m€)	estimated overall risk at closure (m€)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Programme, Budget Line(s), or other relevant level	as per AAR annex 3, table 2	as per ABAC DWH BO report on prefinancing	as per ABAC DWH BO report on prefinancing	= (2) -/+ (3) +/- (4)	Detected error rates, or equivalent estimates	= (5) x (6)	H-ARC (as per ABAC DWH BO report on corrective capacity), <u>but adjusted</u>	= (5) x (8)	= (7) - (9)
Legal fees	2.1 mEUR	n/a	n/a	2.1 mEUR	0.5 %	0.0105 mEUR	0 %	0	0.105 mEUR
Cost reimbursement to opposing parties	1.5 mEUR	n/a	n/a	1.5 mEUR	0.5 %	0.0075 mEUR	0 %	0	0.0075 mEUR
IT	0.2 mEUR	n/a	n/a	0.2 mEUR	0.5%	0.001 mEUR	0 %	0	0.001 mEUR
Co-delegated budgets	0.2 mEUR	n/a	n/a	0.2 mEUR	0.5%	0.001 mEUR	0 %	0	0.001 mEUR
Overall, total	4.0 mEUR	n/a	n/a	4.0 mEUR	0.5%	= 0.02mEUR; and 0.5 % of (5)	0 %	= 0 mEUR; and 0 % of (5)	= 0.02mEUR; and 0.5 % of (5)

- (2) Legal Service has no pre-financing. Payments made or equivalent, e.g. expenditure registered in the Commission's accounting system, accepted expenditure or cleared pre-financing. In any case, this means after the preventive (ex-ante) control measures have already been implemented earlier in the cycle. In all cases of Co-Delegations (Internal Rules Article 3), "payments made" are covered by the Delegated DGs. For Cross-SubDelegations (Internal Rules Article 12), they remain with the Delegating DGs.
- (6) In order to calculate the weighted Average Error Rate (AER) for the total relevant expenditure in the reporting year, the detected error rates have been used – or an equivalent. For low-risk types of expenditure, where there are indications that the equivalent error rate might be close to 'zero' (e.g. *administrative expenditure, operating subsidies to agencies*), it is nevertheless recommended that 0.5% be used as a conservative estimate.
- (8) Even though to some extent based on the 7 years historic Average of Recoveries and financial Corrections (ARC), which is the best available indication of the corrective capacity of the ex-post control systems implemented by the Legal Service over the past years, the AOD has adjusted this historic average for recovery orders issued for reimbursement of legal costs. These reimbursements arise from court decisions and are not erroneous payments. The amount has also been adjusted for credit notes received from contractors in cases of incorrect invoicing on their behalf.

- **Fraud prevention, detection and correction**

A new anti-fraud strategy for the Legal Service, based on the new Commission Anti-Fraud Strategy, was drafted in 2019 and adopted by management in February 2020. It replaces the previous anti-fraud strategy, last updated in 2016.

The implementation of the new anti-fraud strategy will be monitored once a year with reports to management. There are 7 actions to be implemented over the coming year(s). The indicators in Table 6 show that the anti-fraud strategy is an effective tool and that fraud awareness has increased for target population(s) and/or operations.

In the Legal Service, with its limited budget spending, management attention to fraud exposure focuses on sensitive information it encounters during daily operations and the risk of staff not acting in accordance with professional codes of conduct. These aspects are covered in the professional training of the staff of the Legal Service and through regular awareness raising activities on all levels, including annual reminders of fraud and fraudulent behaviour, annual confirmation on ethic awareness and biannual meetings by the working group for handling of sensitive information and ethics.

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

Table 6 shows the Anti-Fraud indicators

Anti-Fraud and Ethics indicators	<u>2018</u>	<u>2019</u>
% of staff which have confirmed their Ethics awareness	92%	85%
N° of cases at the Legal Service where fraud was found	none	none
Adoption and publication of a new Anti-Fraud Strategy (once the Commission Anti-Fraud Strategy has been adopted)	-	-
Implementation of Legal Service Anti-Fraud Strategy action plan	100%	100%
% Directors/HoU requested to raise awareness of the anti-fraud strategy	100%	100%

Table 6: Sources: Internal statistics and reports

No incidents of fraud in the Legal Service’s operational or administrative activities were detected during the past years. The contributing factors are considered to be the legal knowledge among Legal Service staff, the absence of policy and programme spending and the various controls implemented in the contracting procedure, as well as the yearly reminders and information to Legal Service staff regarding fraud and fraudulent behaviour.

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

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

In 2019, the Legal Service executed 478 payments for procured legal services and to opposing parties for their legal costs. The time-to-pay was at an average of 13 days in 2019, an improvement by one day compared to 2018. 97.9% of payments were made within 30 days. There were only 10 late payments in 2019.

Table 7 presents the Control efficiency indicators for payments

Control efficiency in payments in the Legal Service	2018	2019
Average payment delay	14 days	13 days
% of late payments	4.8%	2.1%
Issued Recovery Orders for erroneous payments	none	none
Late payment interest	1.414 €	0 €

Table 7: Control efficiency indicators for payments. Source: ABAC

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

3. Economy = the cost of controls

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

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

The two main categories of costs in the Legal Service are; for external legal expertise for which contracts are established, and, resulting from court decisions, payments to opposing parties to compensate them for their legal costs, i.e. there is no contract preceding these payments.

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

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

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

Total costs for controls is calculated at 0.3 M€, or 8.5 % of total expenditure. More information about the calculation of total cost of controls is presented in Annex 12.

4. **Conclusion 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 reached a **positive conclusion** on the cost-effectiveness of the controls for which it is responsible.

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

- the organisational structure in place,
- the financial circuit implemented,
- that the implementation and performance of controls are in line with the baseline requirements,
- the fact that the control environment in the Legal Service has remained stable over several years, and
- the total amounts paid (1.2 M € for contracted legal expertise, 1.5 M € paid to opposing parties for their legal fees and 0.2 m€ paid for IT investments and 0.2 m€ on co-delegated budgets).

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

2.1.2 Audit observations and recommendations

There were no audits undertaken in 2019 by the European Court of Auditors and there are no outstanding audit recommendations from the ECA.

The IAS has concluded that the internal control systems in place in the Legal Service for audited processes are effective. The IAS' basis for their conclusions has been the work undertaken during the period 2017-2019, namely

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

and taking into account that:

- Management has accepted all the recommendations issued in 2017-2019;
- Management has adopted action plans to implement all the accepted recommendations. The IAS considers that these action plans are adequate to address the residual risks identified by the auditors;
- The implementation of these action plans is monitored through reports by management and follow-up audits by the IAS.

It is therefore **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.

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

- A yearly meeting 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 RMIC (HR BC IF) team.
- A reporting form to register and analyse potential exceptions and non-compliances,
- Regular exchange on potential internal control weaknesses or control failures recorded during the year between the Financial Cellule and the Risk Management and Internal Control team.
- Monitoring of audits and issued audit recommendations.

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.

2.1.4 Conclusions on the assurance

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

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

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

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

Further assurance is obtained by the risk management process put in place, and the very limited number and significance of exceptions and internal control weaknesses reported in 2019. 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.

Overall Conclusion

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

2.1.5 Declaration of Assurance

DECLARATION OF ASSURANCE

I, the undersigned,

Director-General of the Legal Service

In my capacity as authorising officer by delegation for the administrative budget

Declare that the information contained in this report gives a true and fair view¹⁰.

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

This reasonable assurance is based on my own judgement and on the information at my disposal, such as the results of the self-assessment, ex-post controls, [the work of the Internal Audit Service - delete this if not applicable] [and the lessons learnt from the reports of the Court of Auditors - delete this if not applicable] for years prior to the year of this declaration.

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

Brussels, March 31, 2020

signed

Luis ROMERO REQUENA

¹⁰ True and fair in this context means a reliable, complete and correct view on the state of affairs in the Legal Service.

2.2 Other organisational management dimensions

2.2.1 Human resource management

The Legal Service has a small and streamlined administration.

Chart 7 presents the areas in which the Legal Service staff operates.

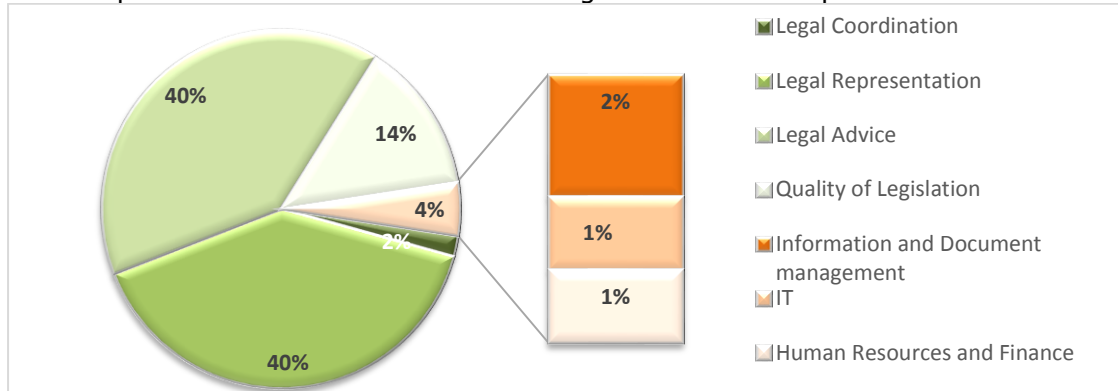


Chart 7: Staff employed in operational and administrative functions in the Legal Service (source: Sysper)

96% of all Legal Service staff, including senior management, work on legal issues. Remaining 4 % consist of ten staff members in information and document management (InfoDoc), six staff members in Human Resources and finance, and six staff members work on IT development.

During 2019, the following has been achieved:

- **Female management** During 2019, three out of five Head of Unit are female. Legal Service is therefore above target for female appointments to middle management for the period 2017-2020.
- **Management training for female lawyers.** The Legal Service organised two special training sessions for future female managers, one in French and one in English.
- **Lunch time conferences.** Legal Service management encourages and supports knowledge sharing. In 2019, there were 17 lunchtime conferences on various legal aspects offered to staff in the Legal Service. All these conferences were given by Legal Service staff and were highly appreciated.
- **Staff Satisfaction Survey.** The Commission global Staff Engagement Index was 69 % in the 2018 Staff Satisfaction Survey.

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

The Staff Engagement Index in the Legal Service has increased to 73% in the 2018 Staff Satisfaction survey.

During 2019, the Human Resource Unit has commenced with the Development Plan approved including several initiatives to address selected areas for improvement based on the results from the 2018 Staff Survey, including:

- ✓ Communication of the results to staff and to senior management,
- ✓ A complementary survey to all Legal Service staff was published in the last quarter of 2019 and the results will be processed at the beginning of 2020,
- ✓ AST staff with more than 4 years in their current post have been offered a career talk with the local representatives from DG HR (Unit AMC 5) and

2.2.2 Better regulation

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

2.2.3 Information management aspects

ELI (European Law Identifier) and ECLI (European Case Law Identifier) standards. These significant evolutions were presented at the ISA² conference SEMIC in November 2019 and the product was officially delivered in the context of ISA² on the JoinUp site in November 2019.

The Legal Service carried out an inventory of its data processing operations including those involved in the transmission of documents to the Court of Justice, the General Court, WTO panels, national courts and other jurisdictions both in the EU and outside.

To minimise data, measures have been taken to ensure that unnecessary personal data is expunged from pleadings sent to the Court and other jurisdictions as well as to ensure the respect of decisions taken by the Court to anonymise pleadings.

All responses to requests for public access to documents are now scrutinised by the Data Protection Coordinator to ensure that they comply with the requirements of Reg. 2018/1725.

The Legal Service's public Europa website was updated to make it compatible with Reg. 2018/1725 as regards consent to cookies.

Support and contributions by the informatics team

The IT sector has implemented new functions for the follow-up of court cases:

- ✓ Documents for flagged cases are now automatically handled in compliance with specific security settings under Ares, while the assisted registration of outgoing documents has been analysed and will be implemented in the course of 2020,
- ✓ In the context of the "ColdFusion Transformation Program" initiated by DIGIT for the migration of all information systems of the Commission from of the ColdFusion platform, the first system (front-end) of SJ has been migrated,

- ✓ FINSJ3 (financial and contractual management) is in production since June 2019 and paves the way for the migration of all the other systems of SJ,
- ✓ The construction of "ULM-NG" (Unified Litigation Management-Next Generation) is now well under way and
- ✓ Ref2Link (automated detection of legal references) was further extended with the support of established formats for legal references (ECLI & ELI, see below 2.2.3).

More information is presented in Annex 2.

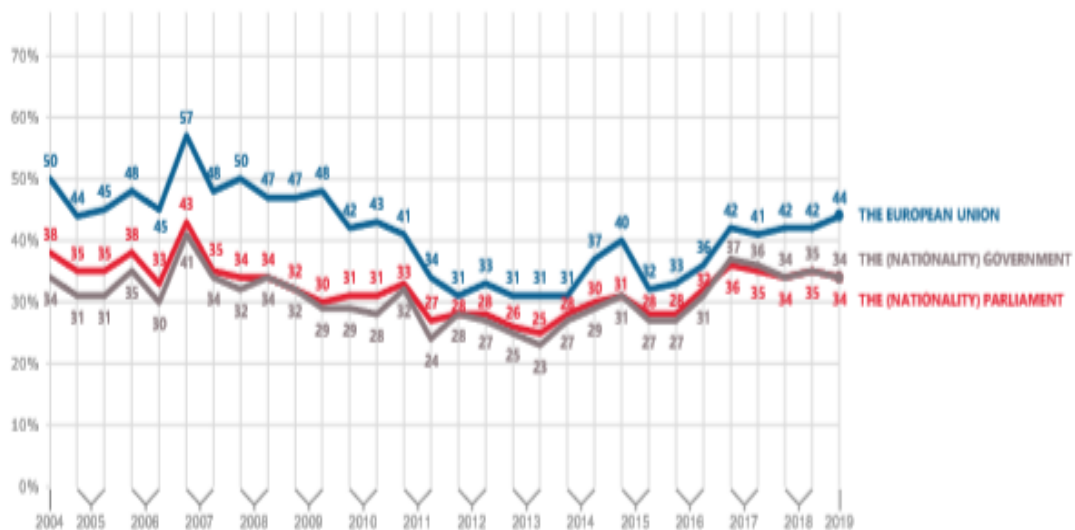
2.2.4 External communication activities

All external communication on behalf of the Legal Service is made by the Spokesperson of the Commission. The Legal Service notes that the trust in the European Union remains at 47%, as reported in the Standard Eurobarometer report¹¹.

According to the 2019 Standard Eurobarometer on public opinion in the European Union, the trust continues to increase and was is at 47 % by the end of 2019.

Graph 8 below presents the trust in the European Union and in national governments and parliaments.

QA6a I would like to ask you a question about how much trust you have in certain media and institutions. For each of the following media and institutions, please tell me if you tend to trust it or tend not to trust it.
(% - EU - TEND TO TRUST)



Graph 8: Trust in the European Union and in national governments and parliaments, online survey result (Source: Standard Eurobarometer report n° 91)

¹¹ [Standard Eurobarometer 91, June 2019](https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/standard/surveyky/2253)
(<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/standard/surveyky/2253>)