

Annual Activity Report 2020

Legal Service

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THE DG IN BRIEF

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

The Legal Service has a dual role both 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, 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. The Legal Service strives to ensure the highest quality and coherence of Union law and defends the interests of the Commission and of the Union before the courts and tribunals.



On July 16, 2020, Daniel Calleja Crespo was appointed as the Director General of the Legal Service.

The Legal Service has a flat organisational structure. This structure enables effective and efficient information-flows and decision-making. Providing high quality and timely legal advice and representation before the courts 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. Out of the 432 staff members, 79% work in the 13 thematic teams and, in the Public Procurement and Recoveries Unit and legal support, 17% work in the Quality of Legislation team and 4% work in the HR, IT & Finance Unit.

The Legal Service is an internal service provider. Due to its special mission, it is responsible for relations with courts and judicial bodies. However, it is not the lead service for policy initiatives. In particular, it is responsible for negotiating on behalf of the European Union, the accession to the European Convention for Human Rights (ECHR).

In 2020, despite the COVID-19 pandemic and its challenges, the Legal Service succeeded in providing high quality legal advice within deadlines.



During the year, the Legal Service defended the interests of the European Union and its citizens in almost 1.956 on-going Union Court cases and 689 cases before national courts. It dealt with some 15.336 consultations and 6.853 parliamentary questions.

The administrative spending in 2020 was close to EUR 4 million of which EUR 3.5 was paid for legal fees. The Public Procurement and Recoveries team recovered a total of Euro 7 million in 2020.

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 Treaties¹.

A. Key results and progress towards the achievement of 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 of legal representation. To be able to respond to every eventuality, whatever legal field it may be in, 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 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 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.

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 for Human Rights (ECHR). In this way, the Legal Service contributes to **General objective n° 6: A new push for Democracy**. The negotiations by

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

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.

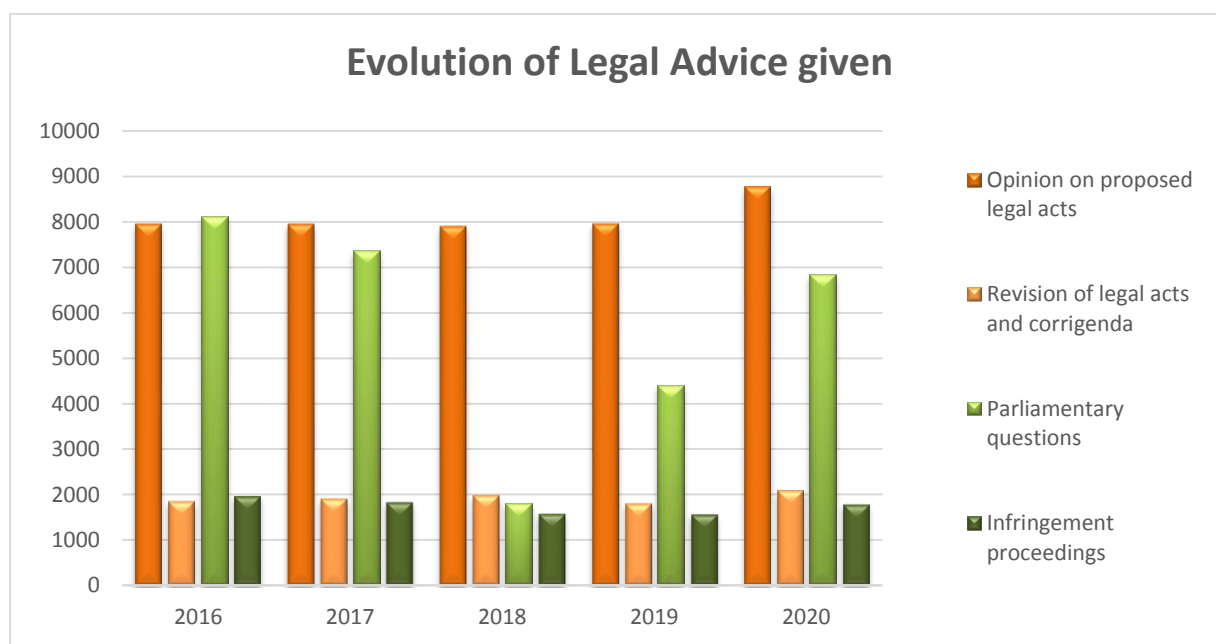
During 2020, the Legal Service contributed with its legal expertise to several key results of the Commission:

- in the negotiation, signature and provisional application of the Trade and Cooperation Agreement (TCA) with the United Kingdom (UK),
- in the adoption of the new Multiannual Financial Framework (MFF), including the European Recovery Instrument which involved a novel legal construction to allow large-scale borrowing of the Union and, a conditionality mechanism for the protection of the EU budget in case of breaches of the principles of the rule of law in the Member States
- in the negotiations on purchases and supplies of medical equipment as well as for the vaccines against SARS-Cov-2 on behalf of the Member States,
- in finding targeted solutions to applying or adapting the existing legal framework to the COVID-19 pandemic in all fields of EU law (transport, State aid, spending programmes etc.).
- in addressing rule of law challenges in several Member States in court proceedings, and contributing to the first annual rule of law report adopted by the Commission.

Figures in brief

In 2020, the Legal Service

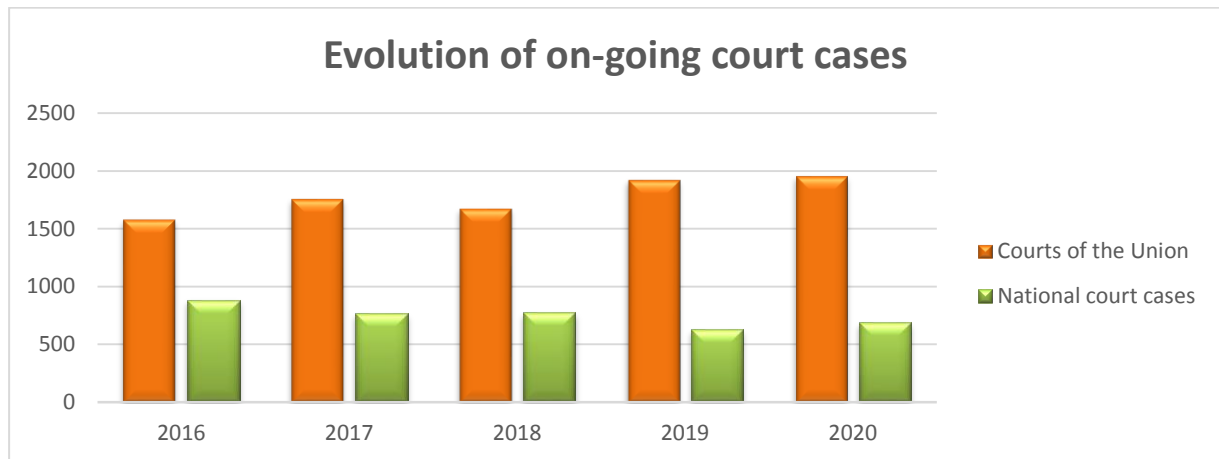
- gave its opinion on 8.923 proposed legal acts,
- undertook legal revision on 2.090 of legal acts
- gave replies to 6.853 parliamentary questions
- assisted the Commission in 1.786 on-going infringement procedures



Graph 1: evolution of legal advice (Source: *Decide, Jurrev, Sec Gen*)

The Legal Service defended the interest of the European Commission in

- 1.956 on-going cases at the Courts of the Union
- 689 on-going National court cases
- assisted the courts in 569 preliminary rulings
- recovered EUR 7 million of debts on behalf of the Commission DGs and Services



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

Since March 2020, Legal Service staff has largely been compelled to work from home due to the COVID-19 pandemic. Legal Service staff have 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.

Negotiations on the accession of the European Union to the European Convention for Human Rights resumed in 2020. 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.

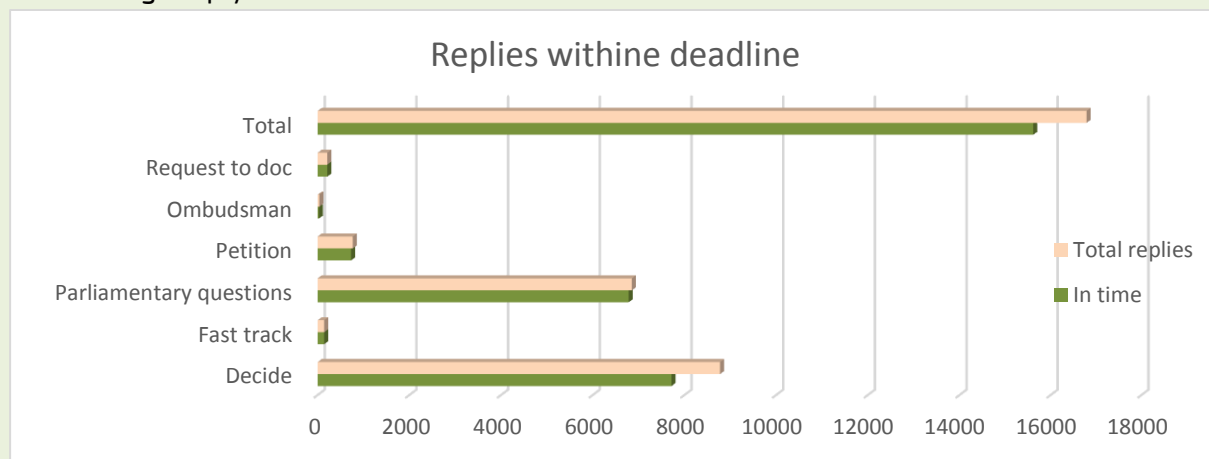
B. Key Performance Indicators (KPIs)

KPI 1: Attendance by the DG in Commission and Heads of Cabinet meetings

- § The Director General or the Deputy Director General of the Legal Service attended all Commission meetings
- § The Director General or the Deputy Director General of the Legal Service attended all Heads of Cabinet meetings

KPI 2: Average reply rate to Consultations

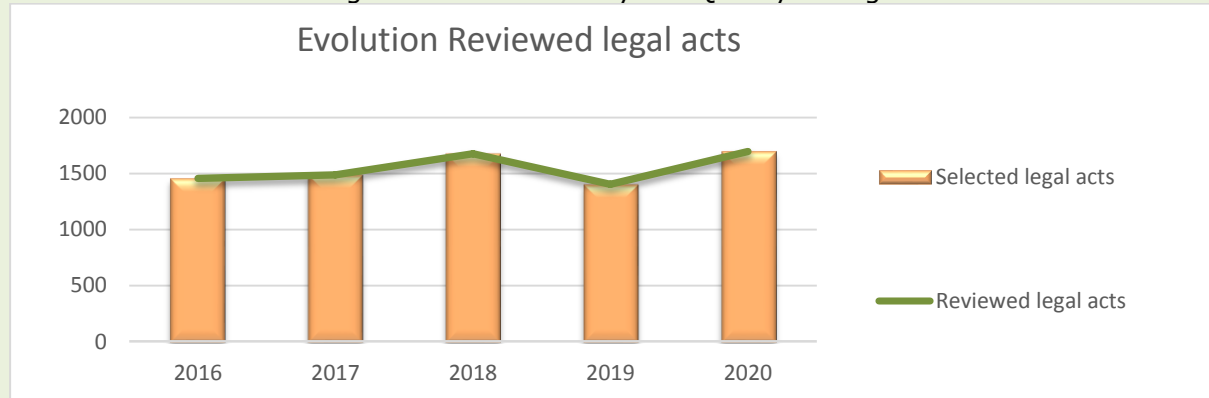
The average reply rate for 2020 was 93%.



Total consultations in 2020 per category and their respective replies within deadline

KPI 3: Selected draft proposals to undergo legal revision

Selected and reviewed legal acts dealt with by the Quality of Legislation team



KPI 4: Presence of Legal Service staff at court hearings in the Courts of the Union

- § All court documents filed within deadline
- § Legal Service pleaded in all Union Court hearings
- § Legal Service was represented in all national court hearings

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 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.

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 that 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; 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 DG and the President on management matters, the main elements of this report and assurance declaration have been brought to the attention of President von der Leyen.

E. Specific actions on COVID-19

In 2020, Europe was strongly impacted by the COVID-19 pandemic. The Commission has proposed a strong and coordinated response to the health crisis as well as to the impact on Europe's economy and society. COVID-19 has also posed challenges as regards performance, control, audit and assurance in relation to the 2020 EU budget. In an exercise coordinated at corporate level, all Commission services have promoted the consistent and rigorous protection of the EU budget ensuring that appropriate mitigating measures were put in place.

The Legal Service has contributed with its expertise during the negotiations with the pharmaceutical companies developing and producing vaccines against SARS-Cov-2, in particular, to ensure sufficient delivery to all Member States and at the most favourable cost.

The Legal Service has contributed to finding targeted solutions in applying or adapting the existing legal framework to the COVID-19 pandemic in all fields of EU law (transport, State aid, spending programmes etc.).

Despite certain suspensions and prolongations, proceedings before the European Court of Justice largely continued throughout 2020. Legal Service staff ensured the timely representation of the Commission, including physical presence at almost all hearings conducted by the Court. This required specific travel arrangements for staff pleading in court and respect of the COVID-19 measures applied in the European Courts during hearings including the wearing of masks while pleading. A small number of hearings were held virtually, particularly for the WTO and EFTA court.

The administrative expenditure in the Legal Service has only been marginally impacted by the COVID-19 pandemic. The financial and control procedures in place have been maintained and have functioned as intended.

1. Key results and progress towards the achievement of 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**. 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 can lead to a reduction in the number of court cases brought against the Commission; hence, it contributes to efficiency gains throughout the Commission.

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 1.1:

Reply rate to consultations to Commission DGs and Services

Achieved results:

The Legal Service average reply rate in 2020 for Legal advice was 93% which exceeded the target set.

Resources

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 57% of staff resources are spent on providing legal advice.

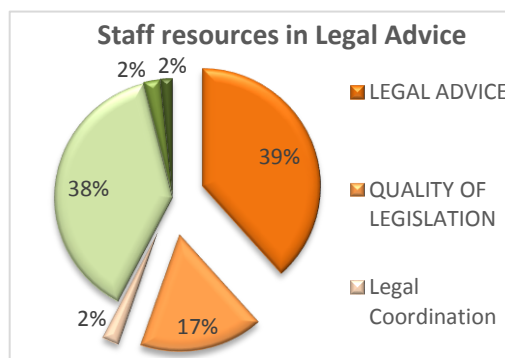
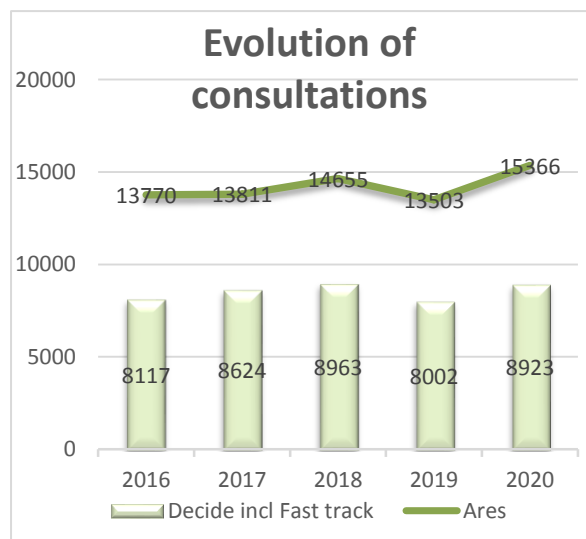


Chart 1: Legal Service staff in the various functions (Source: Sysper)

Consultations in ARES and Decide

In 2020, the Legal Service registered 15.336 documents in ARES, the document registration system, of which 8.923 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 Legal Service intervenes throughout the process in the preparation of legal acts. Beyond the consultations registered in ARES and *Decide*, the Legal Service is constantly consulted by other DGs and Services 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 (e.g. the Legal Service regularly assists the Spokesperson's Service in giving replies to journalists, or DG Communication in replies to citizens who have addressed a question on European law to the 'Europe Direct Contact Centre').

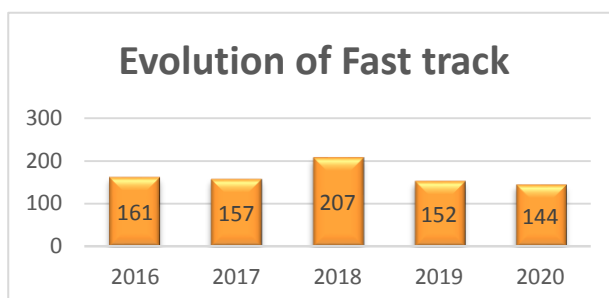


Graph 3: Evolution of registered documents in ARES and Decide (Source: ARES and *Decide*)

The total number of documents received as well as legislative proposals increased in 2020. Total documents in ARES increased by 14% compared to 2019. In 2020, all but one team had increased consultations and the State Aid team experienced a 100% increase. The number of *Decide* consultations increased by 10%. More information on the attribution of the documents registered in ARES can be found in Annex 2, section 1.1, graph A.

Fast track

Every year, there are some legal texts that need urgent approval, the so-called Fast track consultations. These consultations put particular constraint on the Legal Service as the reply is required within 48 hours, and sometimes these consultations can cover hundreds of pages. There were 144 fast track consultations in 2020.



Graph 4: Evolution of Fast track (Source: *Decide*)

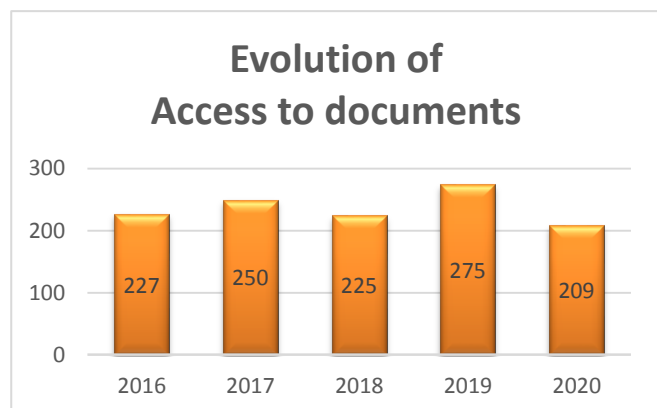
In 2020, there were also an increasing number of urgent consultations on highly urgent and sensitive matters conducted outside *Decide*, notably on measures responding to the COVID-19 pandemic, and as regards the proposals for the signature and provisional application of the agreements with the United Kingdom, which took place over the Christmas holidays.

Receiving timely and high quality legal advice is of utmost importance to all Commission DGs and Services. In 2020, the Legal Service replied within established deadlines on more than 93% of all consultations. More information is presented in Annex 2, section 1.1, table 1 and 2.

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.

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 Court of Justice, including those submitted by other parties². The volume of requested documents fluctuates around 240 per year. In 2020, the InfoDoc team dealt with 209 initial requests for access to approximately 524 documents. More information is presented in Annex 2, section 1.1, table 2.



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

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. In 2020, the Legal Service gave its opinion on 243 draft confirmatory decisions. This is an area that also generates litigation. In 2020, 6 new cases for annulment were brought against Commission confirmatory decisions. In the same period, the European Courts delivered 12 judgments 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.

Parliamentary questions, Petitions and Ombudsman requests

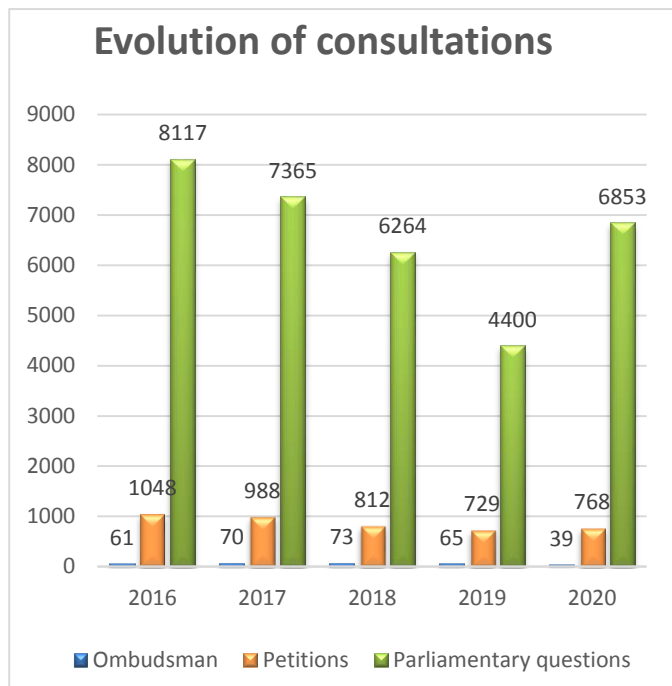
Any citizen or resident of the European Union, and any company, organisation or association with its headquarters in a Member State, may submit a petition to the European Parliament, either individually or jointly, on a subject which falls within the European Union's sphere of activities and concerns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

The Legal Service is consulted on all replies to parliamentary questions. In 2020, the Legal Service received 6.853 parliamentary questions on which it was asked to give a legal opinion. The Legal Service was lead service for replying to 10 questions and co-responsible for another 99 questions.

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 petitions in its role as legal adviser.

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.

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. 39 complaints were transmitted to the Legal Service for its opinion in 2020. More information is presented in Annex 2, section 1.1, table 2.



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

1.2 Quality of Legislation

The Quality of Legislation team contributes to the quality of legal acts by giving advice on their structure and drafting. The advice from the Quality of Legislation team contributes to efficiency gains in the further steps of the legislative procedure and therefore contributes to **General objective n° 7: A modern, high-performing and sustainable European Commission.**

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 1.2:

Contribution to ensure that draft legal proposals are of high linguistic quality when they are sent to the Council and European Parliament for adoption

Achieved results:

*All of the 2.090 legal acts selected,
of which 395 corrigenda, underwent review,*

*5 acts identified in the Commission agenda planning were codified,
89 acts, including certain corrigenda, were revised in several languages*

The contribution of the Quality of Legislation team in the legislative process has a positive impact on the work to be undertaken at the next stage and increases the efficiency by enabling more transparency, accuracy and legal consistency in the final drafts and draft proposals to be translated into all language versions. Well-drafted legal acts enable better and more accurate translation into all official languages of the Union and therefore enhance legal clarity and certainty.

Resources

The Quality of Legislation team employs some 17% 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.

The teams' work provides significant and appreciated input into the process for the



preparation of legal acts with the aim of ensuring that draft legal acts are of the highest possible quality, which contributes to helping other Directorates-General and Services to be 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.

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

Upon request, the Quality of Legislation team provides training to DGs to improve legislative drafting. In the framework of the digitalisation of work procedures, the Quality of Legislation team follows and contributes to the development of digital techniques and tools for the elaboration of legislation.

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). The team reviews on a daily basis the documents registered in *Decide* and selects legislative drafts based on several criteria.

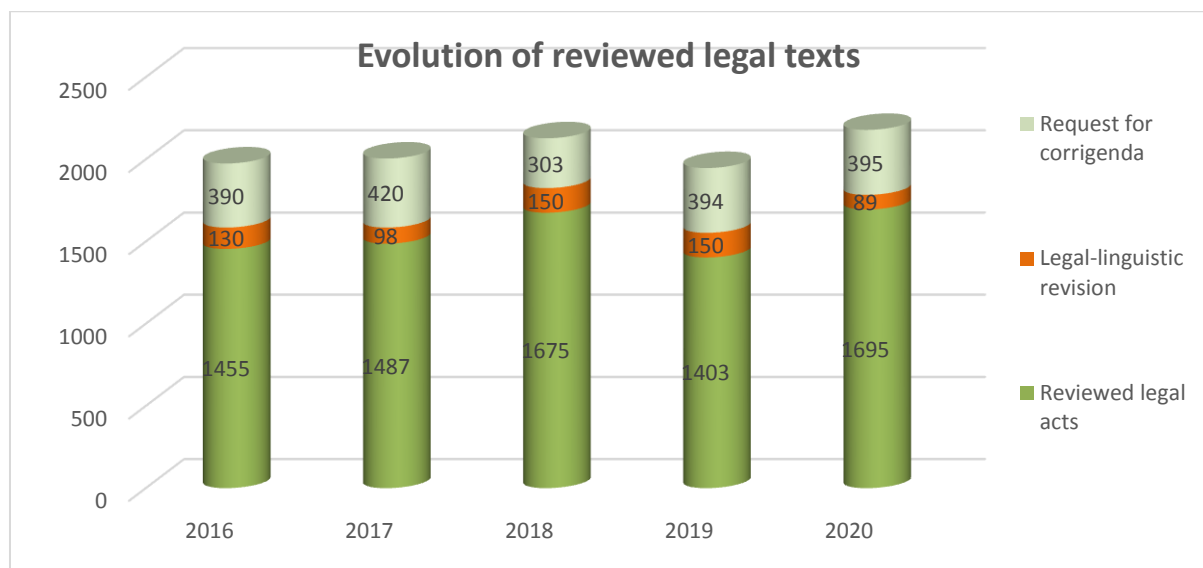
At this stage, the text is presented for the first time by the Directorate-General of origin to other relevant Services. The text can still be changed and reformulated completely, not only in respect of substance, but also in respect of form and structure through the application of the rules of legislative 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 2020.

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
- to check that the text corresponds to the advice on legislative drafting given by the team during the *interservice* consultation.

In 2020, 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.



Graph 7: Number of draft legal texts dealt with by the LEG team per year (Source: Jurrev)

In 2020, the pandemic also impacted 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 like training had to be reduced and can only be fully resumed once physical restrictions have come to an end. More information is presented in Annex 2, section 1.2, table 3.

Codification and Recast of legal acts

In 2020, the Legal Service completed the preparation of five 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, five 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, 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 2020, leading to the submission of a legislative proposal to the European Parliament and to the Council during the year.

Other aspects of legislative simplification and further activities of the team

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 2020, 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.

In addition, members of the team acted as linguistic agents in 26 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.

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.

In 2020, the Quality of Legislation team reviewed 1.695 legal texts, 395 corrigenda acts, finalised five codification acts, and undertook multilingual review of 89 texts while 41.000 pages in total underwent review.

1.3 Infringement procedures

The Legal Service assists the Commission in its role as the "Guardian of the Treaties" to ensure that full benefits of EU law are granted to all EU citizens. The Commission and its Services are assisted by the Legal Service to ensure that the *acquis communautaire*, i.e. Union legislation, is implemented by Member States within the set deadlines, that Union legislation is correctly applied, and that Court judgments are implemented on time and correctly.

In order to ensure that the Commission infringement procedures are conducted 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 defends the interests of the Union, by representing the Commission before the Court of Justice.

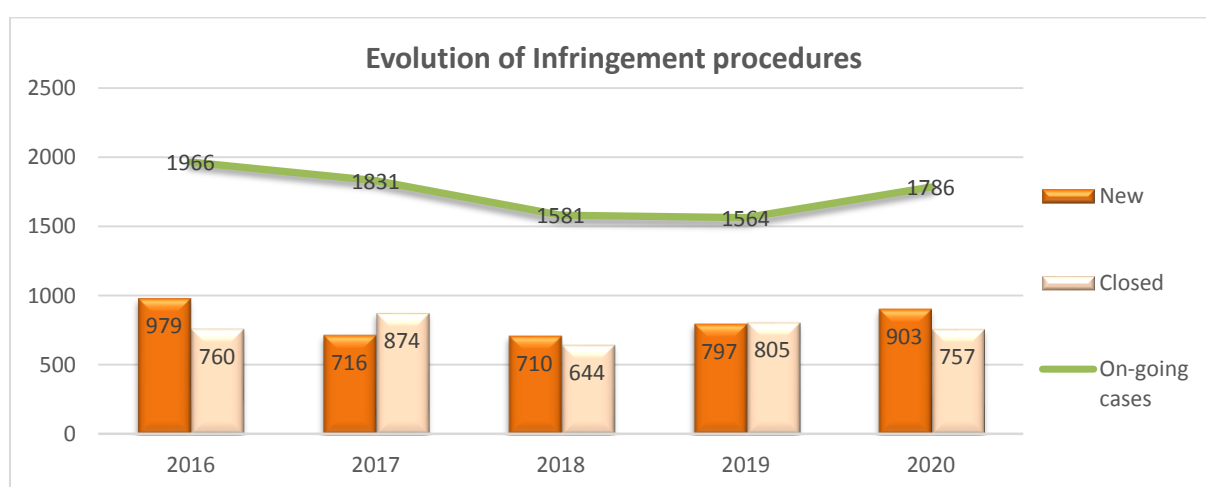
The Commission attaches high priority to the application and implementation of Union law³. Control of the legality and soundness of the various steps of the procedure in all individual infringement cases continues to be an important part of the work of the Legal Service. In this context, not only does the Legal Service give its opinion on all cases in which a decision

³ C(2016)8600 Communication from the Commission – EU law: Better results through better application.

is submitted for adoption by the College, but it also assists the Secretariat-General in the infringement decision adoption process.

The Legal Service, with the Secretariat-General, has continued to organise the annual infringement coherence exercise 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.

The number of ongoing infringement cases increased by 14% in 2020, to a total of 1.786 ongoing infringement procedures with 903 new procedures, 757 closed procedures and 16 cases brought before the Court. The average duration of an infringement procedure is approximately 2 years. More information about the infringement procedures can be found in Annex 2, table 4 and graph B. In section 1.4 in this report, infringement procedures brought to the Court is further described.



Graph 7: Evolution of number of infringement procedures (Source: NIF database)

In addition to following up on the numerous preliminary references regarding the independence of Member State courts (pending references from courts in Poland, Romania, Portugal and Malta), infringement procedures have been pursued in 2020 against Poland regarding the disciplinary regime of judges, including an interim measures case. Also, procedures have been launched against Hungary regarding compliance of national legislation with the EU asylum acquis (de facto detention of asylum seekers, access to the asylum procedure). In 2020, judgments of the Supreme Court of the United Kingdom and the Federal Constitutional Court of Germany have raised questions regarding the application of fundamental principles of EU law by the highest jurisdictions of the Member States concerned, in particular the principle of sincere cooperation, the primacy of Union law and the binding force of judgments of the Court of Justice. The Legal Service is the lead service for these highly sensitive cases. An infringement procedure has been launched against the United Kingdom. The consequences of the judgment of the German Constitutional Court are still under scrutiny.

In 2020, the Legal Service dealt with 1.786 on-going infringement procedures.

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 the 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 concerns forced recovery of debts (60% in 2020)
- dispute settlement procedures under the WTO Agreement and other international agreements
- the EFTA court
- Arbitration bodies



The Director General of the Legal Service is empowered by the Commission to designate the agents (i.e. responsible lawyers) 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 defendant, as in the case of an action for annulment of one of its decisions;
- act as plaintiff, for instance in the case of an infringement of EU law by a Member State;
- act as plaintiff against or 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.

Specific objective 2:

Guarding the Treaties and defending the interests of the European Commission in courts, tribunals and other arbitration bodies to ensure full benefit of law for all EU citizens

Result indicator 2.1:

Legal representation is timely and of high quality in order to defend the interests the European Commission and the EU citizens

Achievements:

100% of documents were filed at the courts within the set deadlines

100% of all hearings at the Courts of the Union were attended by a Legal Service lawyer

Legal Service was represented by a national lawyer in 100% of all national court hearings

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 2020 despite the challenges of the COVID-19 pandemic.

Resources

Approximately 40% of staff resources are estimated to be devoted to legal representation. Staff members in the thematic teams as well as the LEG team defend the Commission in courts, and ensure the representation of the Commission in all official languages of the Union.

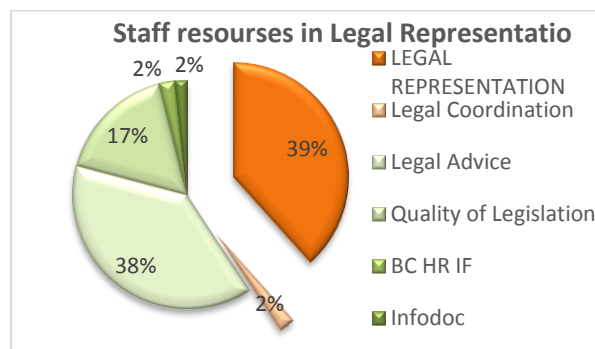


Chart 3: Number of staff in the various functions (Source: Sysper)

Financial expenditure for Legal Representation

Legal representation accounts for the vast majority of the Legal Service's financial expenditure. In 2020, the Legal Service paid EUR 3.5 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 in 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 EUR 0.2 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 amounted to EUR 3.7 million in 2020.

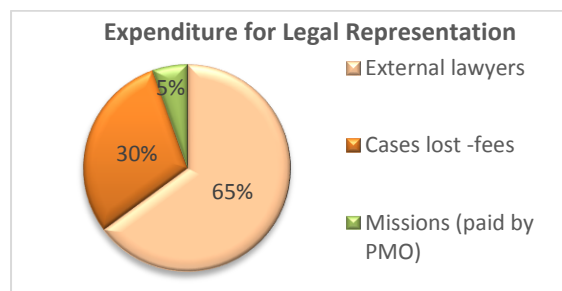


Chart 4: Breakdown of total costs for Legal Representation (Source: ABAC)

Representing and defending the European Union

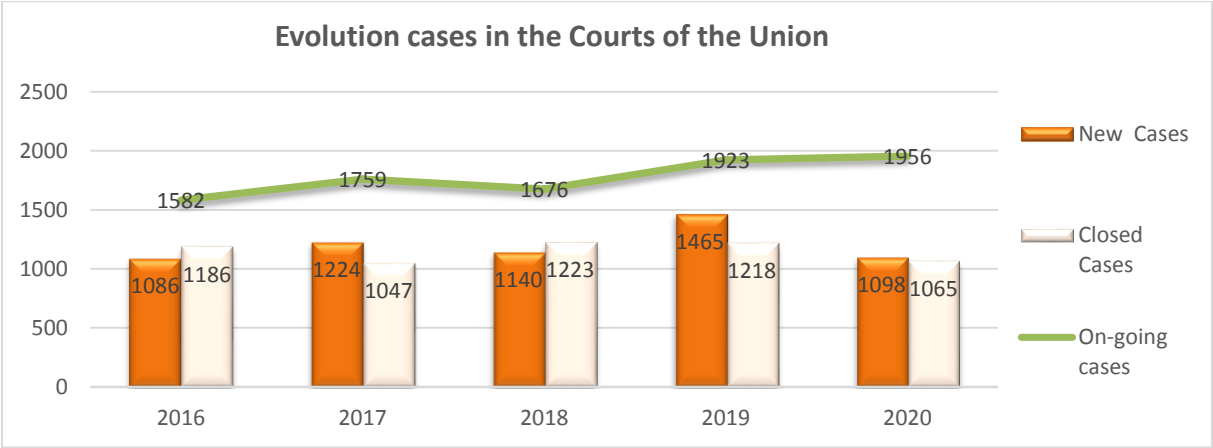
To meet the quality objective set for legal representation, the Legal Service has put in place several functions ensuring quality in its operations. The Legal Service pays close attention to ensuring the coordination of positions taken in litigation. In particular, for politically sensitive cases the 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 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.

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.

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. The most significant judgments are mentioned in the annual report of the Commission.



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

The average duration of a court case is approximately 2 years. There were 1.098 new cases registered in 2020. The drop of 25% in new cases filed with the Union Courts in 2020 is at least partially a result of the lock-down actions taken by Member States linked to the COVID-19 pandemic. The 11 % decreased in the number of closed court cases in 2020 (to 1.065) is also explained by the slowdown of activities due to the pandemic. More information is presented in Annex 2, section 1.4, table 4 and graph C.

Outcome for Courts of the European Union and EFTA

Of the 1.065 cases closed by the Courts of the Union in 2020, the Commission intervened in 894 of them. Of these, 207 cases were closed or removed from the Court's register. The outcome of the remaining 687 cases is presented in Chart 5.

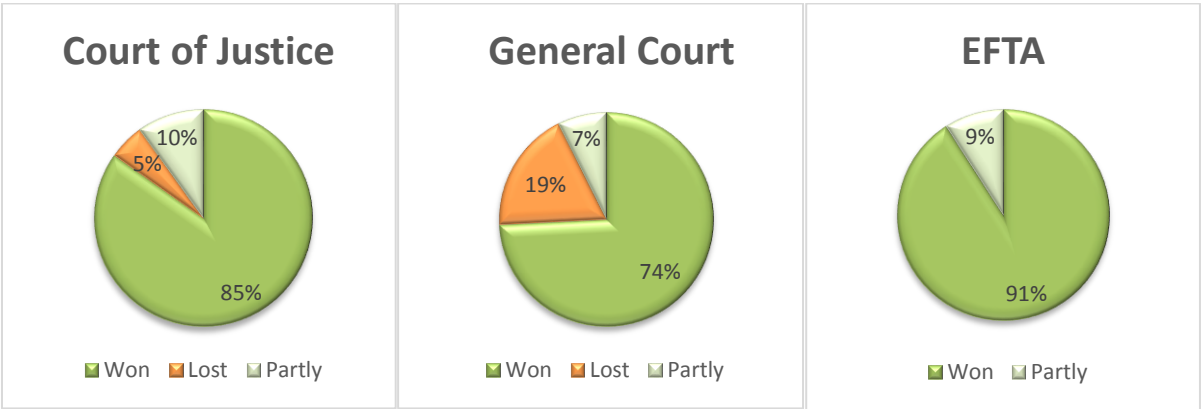


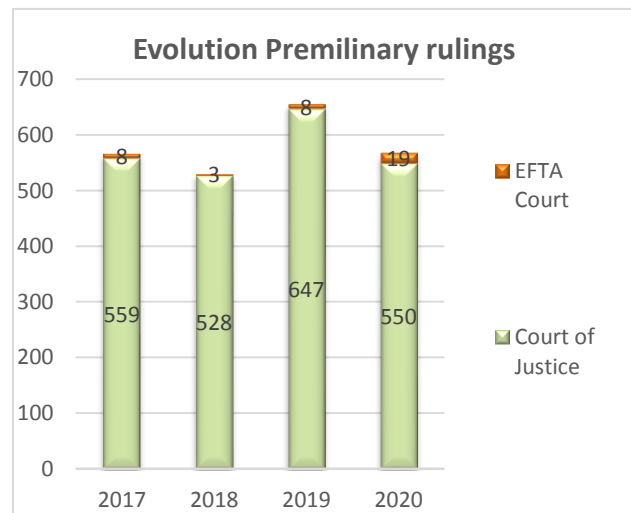
Chart 5: Results from the decisions taken by the Courts of the Union (Source: Base Contentieux).

The results of cases closed in 2020 with a court decision shows that the Legal Service has won between 74 and 91% of cases and has been partly successful in some additional cases. The Legal Service lost no case in the EFTA court, 5% of Court of Justice cases and 19% of General Court cases.

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. More information about court results can be found in Annex 2, section 1.4, table 5.

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*, in finding the correct interpretation of Union law, a role which is much appreciated by the Courts. More information is available in Annex 2, section 1.4, table 7



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

In 2020, the Legal Service assisted the Court of Justice in 550 Preliminary rulings and the EFTA courts in 19 rulings, which is close to the average number of Preliminary rulings over the past four years. The decline in preliminary ruling requests in 2020 is likely to be attributable to the COVID-19 pandemic, which also led to a slowdown of the activities of national courts.

World Trade Organisation – WTO and Bilateral Trade Agreements

The Legal Service assists the European Commission 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.

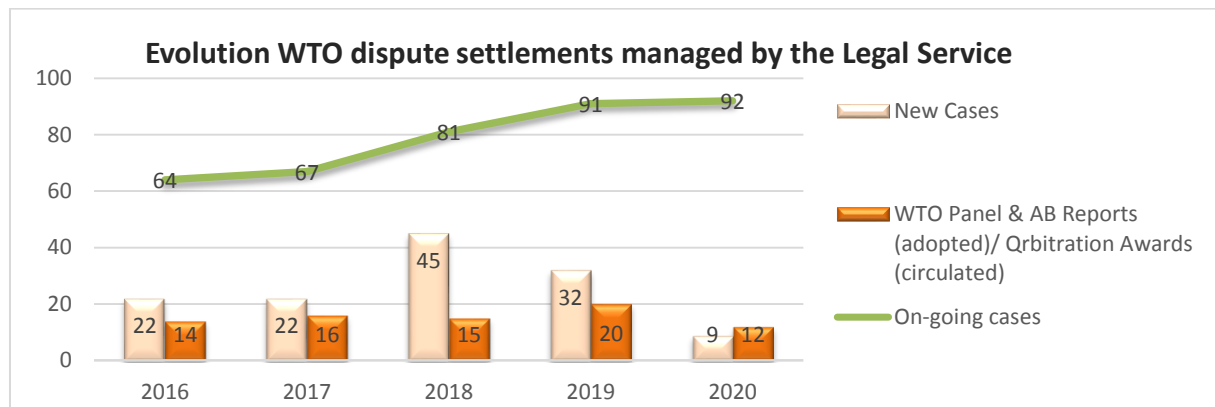


In 2020, the Legal Service dealt with three ongoing arbitration proceedings governed by the dispute settlement provisions of separate bilateral agreements (between the EU and Korea, the Southern African Customs Union and Ukraine respectively) and one new case against Algeria (pre-litigation phase).

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.

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 2020, there were 9 new dispute settlement cases and a total of 92 ongoing in WTO in which the Legal Service defends the interests of the European Union. More information is presented in Annex 2, section 1.4, table 8.

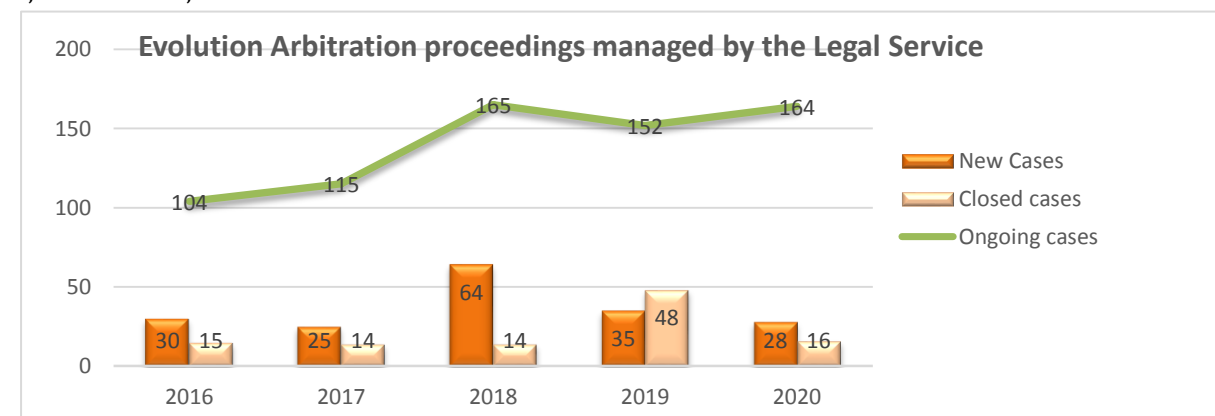


Graph 10: Evolution of WTO dispute settlements (Source: WTO, World Trade Law net and DG Trade)

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.

Arbitration proceedings

The Legal Service ensures that the interests of the European Commission are presented and argued in arbitration proceedings. There were 28 new arbitration cases in 2020 and 16 cases were closed during the year. At year-end, there were 164 ongoing cases. The number of arbitration proceedings has decreased over the past couple of years from the exceptionally high number of new cases in 2018. More information can be found in Annex 2, section 1.4, table 9.



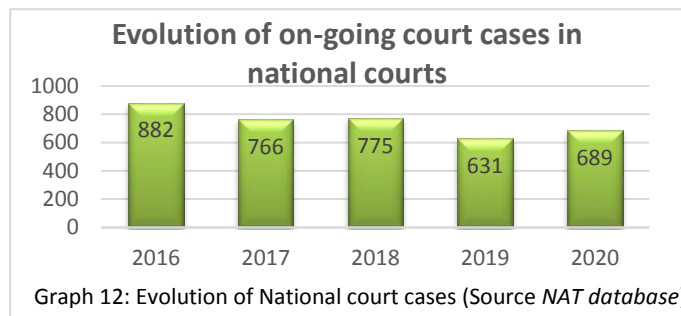
Graph 11: Evolution of Arbitration proceedings (Source: *Base contentieux* database)

National court cases

The Legal Service also represents the interests of 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 689 pending

cases before national jurisdictions, which is slightly below the average for the past five year, of which 430 cases concerned recovery of debts, i.e. 62 % of national litigation;

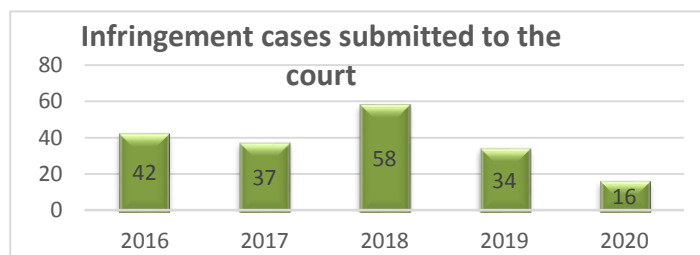
- the Commission intervened as a civil party in 5 new criminal cases;
- in 2020, 63 new cases were brought before national jurisdictions of which 38 (60%) concerned recovery of debts;
- 29 claims in the frame of liquidation/bankruptcy proceedings were still open.



- In 2020, a total amount of 30 million € in unpaid debts was transmitted to the Public Procurement and Recovery Unit for legal action with the purpose of recovering these amounts. In 2020, 7 million € were recovered by the Unit. At year-end 930 recovery orders for a total amount of 196 million € were still open.

Infringement cases

Only a fraction of the infringement proceedings will result in a court procedure. In 2020, 16 cases were brought to the court, to be compared to the 1.786 on-going infringement proceedings. Information is also presented in Annex 2, section 1.4, table 6.



Graph 13: Evolution of infringement cases submitted to the court (Source: NIF database or Base Contentieux)

Noteworthy judgements pronounced by the Court of Justice in 2020 concern the relocation of asylum seekers by Poland, Hungary and the Czech Republic (joined cases C-715/17, C-718/17 and C-719/17), air quality in Romania (C-636/18), in Hungary (C-637/18) and in Italy (C-644/18); the Hungarian NGO Transparency Act (C-78/18), the conditions introduced by Hungary for foreign higher education services (C-66/18), the seizure by Slovenian law enforcement authorities of ECB archives held by the Slovenian Central Bank (C-316/19), access to the EU asylum procedure in Hungary (C-808/18) and financial penalties imposed on Romania and Ireland for non-communication of transposition measures for directives (cases C-548/18 and C-550/18). On 8 April 2020, the Court of Justice made an interim order against Poland obliging it to suspend the activities of the Disciplinary Chamber of its Supreme Court concerning disciplinary proceedings against judges.

The Legal Service has met all court deadlines, for written procedures and for hearings, in Union courts and in national courts.

1.5 EU accession to the European Convention on Human Rights

The European Union's accession to the European Convention on Human Rights (ECHR) will be an important milestone in the protection of human rights and fundamental freedoms across Europe. All 47 Council of Europe member states, including the 27 EU Member States, are already parties to the European Convention on Human Rights. However, the EU itself is not. In 2013, negotiators for each of the 47 Member States of the Council of Europe and for the European Union (the '47+1 Group') negotiated a draft accession agreement. In its Opinion 2/13 of 18 December 2014, the Court of Justice declared the draft agreement of 2013 incompatible with the EU Treaties. The Council issued complementary negotiating directives in October 2019. A resumption of negotiations was envisaged for spring 2020, but due to the COVID-19 outbreak, it was postponed. As a result, negotiations resumed in September 2020 instead and have been ongoing since.

Specific objective 3:

Negotiations on the accession of the European Union to the European Convention on Human Rights

Result indicator 3.1:

Regular reporting on the progress on the negotiations to the Commission

Achieved results:

Reports sent to the Commission and the European Parliament

The INST (Institution) team in the Legal Service leads the negotiations for EU accession to the ECHR. The aim of the Union is to make EU accession to the European Convention on Human Rights legally possible in a manner that respects the basic features of EU law, as well as of the Convention, strengthens the protection of fundamental rights in Europe, and that benefits applicants. The EU's accession to the Convention is a legal requirement under the Lisbon Treaty.

The Commission conducts the negotiations in consultation with the FREMP⁴ 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 LIBE⁵ and AFCO⁶ Coordinators on the state of play of the negotiations. Information is also presented in Annex 2, section 1.5.

The European Union's accession to the European Convention on Human Rights will be an important milestone in the protection of human rights and fundamental freedoms across Europe.

⁴ FREMP: Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons

⁵ LIBE: Civil Liberties, Justice and Home Affairs

⁶ AFCO: Constitutional Affairs

2. Modern and efficient administration and internal control

This section describes the systems put in place by the Legal Service to ensure sound financial and other management systems and assessments of their efficiency and effectiveness.

2.1 Financial management and internal control

This section covers 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.

Assurance is provided based on 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 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.

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 objectives⁷. The Legal Service' assurance building and materiality criteria are outlined in AAR Annex 5. 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.

Total payments by the Legal Service (3.9 m€)

The Legal Service mainly has administrative spending. While the total budget commitment for the Legal Service in 2020 was 5.2 m€ , total payments amounted to 3.9 m€. The breakdown of payments is presented in chart 6. More information on committed and paid amounts in 2020 can be found in Annex 12.

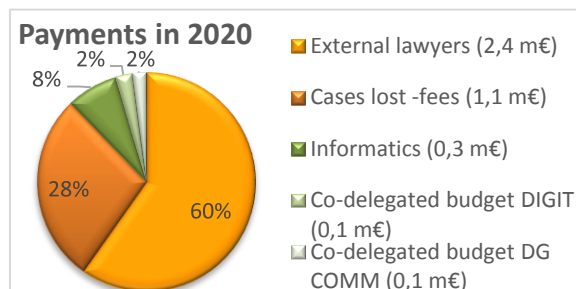


Chart 6: Payments (Source: ABAC)

Fees for external lawyers and other legal expertise (2.4 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 2020, 2.4 m€ was paid to external lawyers and legal experts.

Payments to opposing party for their legal costs (1.1 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 2020, payments to opposing parties for their legal costs amounted to 1.1 m€.

IT investments (0.3 m€) and Co-delegated budget lines (0.2 m€)

The Legal Service paid 0.3 m€ 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 Comm and DIGIT, each of 0.1 m€.

Recovery Orders, Revenue (0.3 m€)

The Legal Service is able to recover some of its expenditure for legal fees and missions from opposing parties. In 2020, recovery orders were issued for a total amount of 0.4 m€, payments of recovery orders were received for an amount of 0.3 m€. At year-end, unpaid recovery orders amount to 0.6 m€.

⁷ 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.

Provisions (3.8 m€) and Contingent liabilities (5.7 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 2020, the provision for cost compensation to opposing parties is 3.8 m€ and the contingent liability is 5.7 m€.

1. ***Effectiveness = the control results and benefits***

The Legal Service is using 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 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 Service has set an objective of 0.5%.

Legal fees for external lawyers (62 % of total payments)

The Legal Service's control strategy for its procurement procedure is based on ex-ante controls, in which the AOSD play an important role by reviewing all contracts before final approval.

The Financial Cellule reviews all invoices, which subsequently undergo ex-ante controls. The agents in charge of the court case give the 'conforme au faits' on the invoices before they are approved. All AOSDs perform ex-post controls before issuing their declaration of assurance. The Internal Control Officer (ICO) carries out subsequent ex-post controls, analytical reviews and/or random sampling.

The number of non-compliance incidents in the contracting procedure was 1% in 2020. During the past 7 years, two incorrect payments for a total of 5.500 € were discovered ex-post, of which 2.500 € was paid in 2020. The amount was recovered by year-end 2020.

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

Payments to opposing parties for their legal costs (28 % of total payments)

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 and the Financial Cellule.

In the thematic 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 back 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 thematic teams are requested to ensure full registration of closed cases and their potential financial consequences. The thematic teams can be asked to provide additional information by the Financial Cellule to ensure completeness of the information.

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 efficient and effective.

Provision and contingent liabilities

The provision for cost payments to opposing parties for their legal costs 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.

The Legal Service control strategy for the provisions and contingent liabilities is by ex-ante controls by the AOSDs. The Financial Cellule, the ICO and the Head of Unit HR BC IF also carry out controls.

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

Benefits of controls

The control environment in the Legal Service fulfil the baseline criteria, and, with the minimum but still sufficient resources, it effectively contributes to fulfil the intended control objectives in an efficient manner and at a reasonable cost.

The Legal Service has no operational spending. Its administrative spending has a relatively low error rate, i.e. 0.5%. This is, respectively, thanks to the inherent risk profile of the administrative spending and the performance of the related control systems.

Assessment: 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.

The Legal Service relevant expenditure, estimated overall risk at payment, estimated future corrections and risk at closure are disclosed in Table A.

The estimated overall risk at payment for 2020 expenditure amounts to EUR 0.0195 M, representing 0.5 % of the Legal Service's total relevant expenditure for 2020. This is the AOD's best, conservative estimation 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 2020 expenditure amounts to EUR zero M. This is the amount of errors that the Legal Service conservatively estimates will be identified and corrected by controls planned to be carried out in subsequent years.

The difference between those two amounts results in the estimated overall risk at closure of EUR 0.0195 M, representing 0.5 % of the DG's total relevant expenditure for 2020.

In the context of the protection of the EU budget, the Legal Service' estimated overall risk at payment, estimated future corrections and risk at closure are consolidated at Commission level in the AMPR.

Table A - Estimated risk at closure

Legal Service	"payment s made" (FY; m€)	<i>minus</i> new prefinancing [<i>plus</i> 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</i> AER; %)	estimated risk <i>at</i> <i>payment</i> (FY; m€)	Average Recoveries and Corrections (<i>adjusted</i> ARC; %)	estimated future corrections [and deductions] (for FY; m€)	estimated risk <i>at closure</i> (FY; 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)	<i>H-ARC</i> (as per ABAC DWH BO report on corrective capacity), <u>but</u> <i>adjusted</i>	= (5) x (8)	= (7) - (9)
Legal fees	2.4 mEUR	n/a	n/a	2.4 mEUR	0.5 %	0.012 mEUR	0 %	0	0.12 mEUR
Cost reimbursement to opposing parties	1.1 mEUR	n/a	n/a	1.1 mEUR	0.5 %	0.0057 mEUR	0 %	0	0.0057 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
DG total	3.9 mEUR	n/a	n/a	3.9 mEUR	0.5%	= 0.0197 mEUR; and 0.5 % of (5)	0%	= 0 mEUR; and 0% of (5)	= 0.0197mEUR; 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-Sub Delegations (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


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

The Legal Service also contributed to the Commission anti-fraud strategy by its legal advice in general and to Action 57 on the Legal Framework in particular, and followed up on OLAF's recommendation.

The results achieved during the year thanks to the anti-fraud measures in place can be summarised as follows: Given the rigorous controls operated by the Legal Service, there have been no discovered incidents of fraud over the past 7 years except for one in 2019. The OLAF investigation of the suspected fraud confirmed that it was an external fraud attempt that the Legal Service had identified on arrival of the invoice. OLAF issued an administrative recommendation that has been implemented.

Assessment: Based on the available information, the Legal Service has reasonable assurance that the anti-fraud measures in place are effective.

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

Indicator	<u>Timely Payments</u>
Category	Efficiency of Controls / Timeliness
Objective	Ensure efficient processing of payments within the legal deadlines
Result	Legal Service achieved 95% compared to the EC result of 99%. 
Comment	EC (99%) 95%

Assessment: Based on the available information, the Legal Service has reasonable assurance that it has efficient controls in the payment procedure.

3. *Economy = the estimated cost 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 Legal Service, with its flat organisational structure, has chosen a centralised financial circuit. The mission for the Legal Service and the control environment have been stable over many years. The budget comprise only administrative expenditure.

The two main categories of expenditure in the Legal Service are: 1) Contracted external legal expertise for cases in which the Legal Service does not possess the required resources, mainly in national court cases which require a nationally recognised lawyer, and, 2) Court decisions whereby the Legal Service is required to compensate opposing parties for their legal costs, these payments are not preceded by contracts.

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 average payment amounts and the average contract amounts in the Legal Service are low. Consequently, the cost/efficiency indicators will appear relatively high.

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 Table B in Annex 7.

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 (2.4 m€ for contracted legal expertise, 1.1 m€ paid to opposing parties for their legal fees and 0.3 m€ paid for IT investments and 0.2 m€ on co-delegated budgets)

have contributed to keep the error rates at 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

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 2020 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. At year-end, there are no outstanding critical or very important recommendations from the IAS.

The IAS' basis for their conclusions has been the work undertaken in 2018-2020, namely:

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

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 has put in place an organisational structure and an 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 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 Head of Unit for RMIC and the ICO,
- 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, the Risk Management Head of Unit and the Internal Control Officer.
- monitoring of audits and issued audit recommendations.

2.1.4 Conclusions on the assurance

This section reviews the assessment of the elements already reported above (in Sections 2.1.1, 2.1.2 and 2.1.3), and the sub-conclusions already reached. It draws an overall conclusion to support the declaration of assurance and whether it should be qualified with 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 exceptions and internal control weaknesses reported in 2020. 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: 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 for the administrative budget, declare that the information contained in this report gives a true and fair view⁸.

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 March 30, 2021

By electronic signature in ARES

Daniel CALLEJA CRESPO

⁸True 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

As with all other DGs and Services, in March 2020 due to COVID-19 restrictions, almost all staff were obliged in a very short period of time to convert to working from home using Commission laptops and other IT equipment. After some initial connectivity issues, home working has been extremely successful as a substitute for office work. This has been achieved through the technical support offered by DIGIT, and the Legal Services' own IT team but mainly through the flexibility and goodwill of all Legal Service staff. While recognising the impact of increased workload on staff, due to inherent inefficiencies of home working (lack of printers, lack of physical interaction etc.) and the impact on work/life balance, there has been no diminution in the quality of the output of the Legal Service. The huge effort made by staff to ensure delivery of high quality and on-time work has been extraordinary and needs to be recognised.

2.2.1 Human resource management

Four percent of staff in the Legal Service work with administrative functions; ten staff members in information and document management (InfoDoc), six staff members in Human Resources and finance, and five staff members work with IT development. Chart 7 presents the areas in which the Legal Service staff operates.

The Covid-19 pandemic has, to a certain extent, changed the work of the HR team and has forced Legal Service management to focus on the health and well-being of staff while meeting an increased volume of work, in particular in the area of *inter service* consultations. The HR team has therefore focused its resources on the prioritised matters and urgencies. At the

same time, for those activities maintained, the following achievements have been attained:

Staff well-being and staff engagement: The results from the staff surveys launched by DG HR are followed and reported on to senior management and customised actions are taken in the different directorates to meet the particular needs identified.

Middle Management: Preparations for the appointments of deputy Heads of Units have started.

Management training for female lawyers continues despite the constraints arising from the COVID-19 pandemic.

There have been no movements among the Heads of Units in the Legal Service in 2020; hence, there were no appointments of new middle managers during the year.

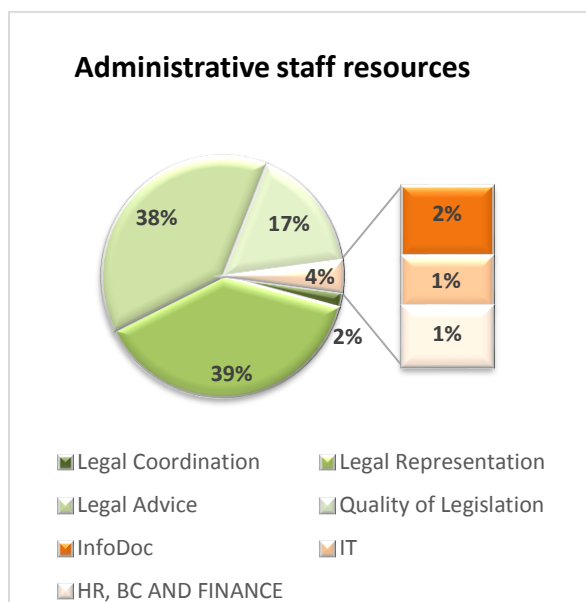


Chart 7: Staff employed in operational and administrative functions in the Legal Service (source: Sysper)

Senior Management: Deputies to the Directors have been appointed in all teams.

Local HR strategy: While waiting for guidance and input from the Corporate HR strategy, the development of the local HR strategy has been postponed to 2021.

2.2.2 Digital transformation and information management

2020 has seen the running-in of new versions of the specific information systems of the Legal Service currently in the works, in line with corporate digital policy⁹, ensuring a clean separation of data, business logic and user's experience. The mandatory rewriting of the current ColdFusion instances, due for phase-out triggered this major migration effort. This includes the delivery of all major front-end and back-end components for the modules of ULM (Unified Litigation Management) that handle the follow-up of litigation proceedings in front of the European Court of Justice and other European and international jurisdictions. The rewriting, testing and switch to production of back-end components should be completed shortly after that for more specialised modules for the follow-up of national litigation and of dispute settlements at the WTO.

The implementation of a full integration in Unified Litigation Management of the preparation of Court procedural documents is still ongoing. The procedures will start from contextual templates available in the system to the submission of the actual documents, possibly electronically signed while complying with the electronic signing native to e-Curia. The submitted documents will be finalised through an automated registration in the document management system of the Commission.

In addition, the migrated version of the system for the follow-up of recovery orders handed by DG BUDG to the Legal Service (RECO) has been put in the works before the end of the year. The same operation has also started for SOLON, the knowledge management toolset at the Legal Service, will be started. This will result in a major functional update and simplification.

In the context of the ISA² 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. The Legal Service has adapted the offer of Ref2Link so that its components can be put to efficient use by other DGs and services in full integration with the DIGIT's Digital Workspace in the Commission. Given the end of the ISA² program, a smooth transition to the new Digital Europe program has been planned.



In a push for a broader usage of collaborative platforms, the Legal Service has requested and obtained the availability of a specific platform suited for the co-edition of sensitive,

⁹ Communication to the Commission "EUROPEAN COMMISSION DIGITAL STRATEGY A digitally transformed, user-focused and data-driven Commission", C(2018) 7118 of 21 November 2018.

non-classified documents. This platform is currently evaluated in the context of the provision of advice in the field of competition and will possibly be extended to similar needs for other teams.

In order to increase awareness and knowledge of the rules on the protection of personal data, the internal communication site was updated to include information on the procedure in the event of data breaches and the DPO's Guidance document is now available online. All members of the Legal Service have 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. In the coming two years, all lawyers will be expected to attend a training session on data protection. Lawyers were invited to a seminar to examine the latest case law on data protection. A mapping exercise of all personal data transfers to third countries was undertaken in mid-2020 in the wake of the Court of Justice's Schrems II judgment.

2.2.3 Sound environmental management

In 2020, jointly with the other DGs, Services and Cabinets occupying the Berlaymont building, the Legal Service has replaced the individual waste bins with sorting stations at central locations. This action will contribute to a considerable improvement in correct waste sorting. Due to teleworking of the majority of staff, the other activities foreseen could not be undertaken during the year. More information can be found in Annex 2.

