



Council of the European Union  
General Secretariat

Legal Service  
*The Director-General*

# 2016 ANNUAL ACTIVITY REPORT OF THE AUTHORISING OFFICER BY DELEGATION

MARCH  
2017

For the attention of the Secretary-General of the Council

## I. INTRODUCTION - MISSION STATEMENT

### Legal Service mission statement

1. The Legal Service is the legal adviser to the Council and the European Council.
2. It assists the European Council, the Council and its preparatory bodies, the Presidency, and the General Secretariat, in order to ensure the legality and the drafting quality of legal acts. It contributes, by taking a creative approach where appropriate, to identifying legally correct and politically acceptable solutions, in cooperation with other Council departments. To that end, it gives opinions in complete impartiality – orally or in writing, at the request of the Council or on its own initiative – on any question of a legal nature.
3. The Legal Service also represents the European Council and the Council in proceedings before the courts of the European Union.
4. The Legal Service is responsible for checking the drafting quality of legal acts of the European Council and the Council and ensuring that they are legally and linguistically consistent in all of the Union's official languages.
5. The constant objective of the Legal Service is to provide timely contributions which are distinguished by their full respect for the law, their impartiality and their clarity.

## II. PERFORMANCE OF DUTIES

### A) PERFORMANCES/ACHIEVEMENTS

#### Main activities of the Legal Service

In 2016, the Legal Service continued to ensure the legality and drafting quality of European Council and Council legal acts in the course of legislative and non-legislative procedures. For this purpose, the Legal Service continued to

- provide oral and written legal advice to the European Council, the Council and its preparatory bodies;
- participate in the meetings of the European Council, the Council and its preparatory bodies;
- assist the Presidency and the General Secretariat, including during trilogues and technical meetings;
- contribute to identifying legally correct and politically acceptable solutions;
- assist with drafting (by offering suggestions for the drafting of provisions, improving the quality of drafting, or otherwise participating in drafting work);
- ensure compliance with the applicable procedural rules at all levels;
- provide legal support and assistance on administrative issues (i.e. public procurement, contracts, building projects, security, taxation, staff-related issues, personal data protection and procedures related to access to documents);
- ensure optimal quality and speed in the legal-linguistic finalisation of all legislative texts (including corrigendum procedures).

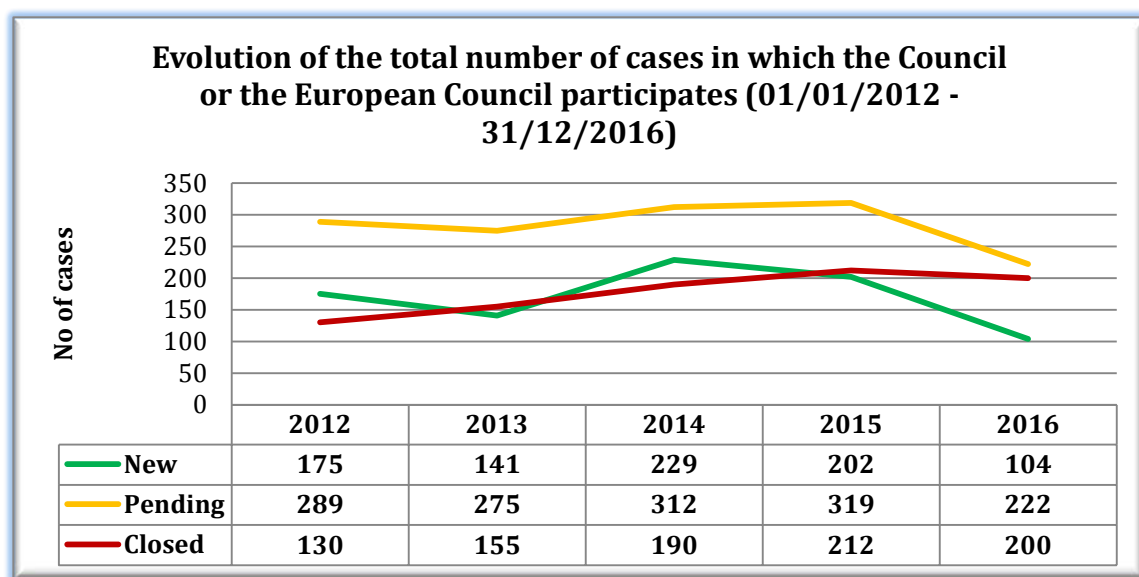
The nature of the Legal Service's work requires its members to provide sound legal advice at meetings of the European Council, the Council and the Council's preparatory bodies, and during trilogues. Accordingly, its members liaise closely with the relevant services of the GSC in order to anticipate and solve legal issues at an early stage. Much of their work is done 'behind the scenes', during the discussion process of a file, either orally in briefings and informal meetings or in writing. As a result, the Legal Service's contribution to the deliberations on a particular file is difficult to quantify and easily underestimated, because much of the work is not visible. Its members certainly also contribute to the meetings of preparatory bodies and provide oral given advice whenever needed. On important legal questions, the Legal Service may provide written contributions and opinions in the form of a document distributed to delegations (on its own initiative or upon request from the body concerned). In 2016, Directorates 1 to 6 and the Coordination Unit issued 73 of such contributions and opinions.



In addition to legal advice, the Legal Service continued to perform secretariat functions (as the '*service traitant*') for *COJUR*, *COJUR ICC*, *COMAR*, the Court of Justice, the Friends of the Presidency, the Codification working parties, and for the panel provided for in Article 255 TFEU<sup>1</sup> that is responsible for giving an opinion on candidates' suitability to perform the duties of judges and advocates-general.

Lastly, the Legal Service represents the European Council and the Council in proceedings before the Court of Justice of the European Union. It should be noted that, as a rule, the Council is represented in proceedings before the Court of Justice of the European Union by members of the Legal Service. It is only in a few exceptional cases that it uses external lawyers (see below 'Legal Service as Authorising Officer').

The chart below describes the workload of Directorates 1 to 6 relating to litigation. In the course of 2016, the workload remained very heavy: 200 court cases were closed, 222 were pending and 104 new court cases arrived<sup>2</sup>.



## Core activities per directorate/unit

As a preliminary remark, it should be stressed that one of the major components of the Legal Service's work in 2016 was legal input to the discussions on the future agreement regarding UK withdrawal. The Legal Service provided a substantive and procedural legal analysis in all the EU's areas of activity, as well as input for drafting.

Within each of the Legal Service's directorates/units, the following activities should be highlighted.

## Directorate 1 'Competitiveness, Environment, Transport, Telecom, Energy'

Directorate 1 shares responsibilities in the area of internal market with Directorate 2 (see below). Most of the work of the legal advisers in these directorates involves providing legal assistance and advice on a large number of legislative and non-legislative files.

<sup>1</sup> The panel provided for in Article 255 TFEU issues a separate annual activity report.

<sup>2</sup> The decrease in the number of new cases brought is partly because listed persons and entities usually chose, when bringing a legal challenge to the renewal of their listing, to join that challenge to an already pending casewhich they had brought against a previous listing decision.

During 2016, the work carried out by the members of Directorate 1 mainly covered the following files:

- Climate change: adoption of the Directive on the reduction of national emissions of certain atmospheric pollutants (NEC), adoption of a Council Decision on the ratification by the Union of the Paris Agreement, and on-going work on 3 main proposals to implement the Paris Agreement.
- Environment: conclusion of the regulation on mercury (including changing the legal basis proposed by the Commission); conclusion of two extremely lengthy files, on medical devices and in vitro diagnostic medical devices, involving 10 trilogues; intensive on-going work on the circular economy package.
- Telecommunications & information society: completion of the negotiations with the EP on the Web Accessibility Directive and the 700 MHz Decision; initiation of the negotiation with the EP on the Wholesale Roaming Regulation; the partial general approach on WiFi4EU; preparation of the general approach on telecoms-related provisions in the Omnibus Regulation.
- Transport: finalisation of the market pillar of the 4th railway package with the adoption of the PSO Regulation and Governance Directive; adoption of Council decisions authorising the opening of negotiations with several third countries in the framework of the external aviation policy (ASEAN, Turkey, Qatar, UAE, Armenia); general approach on the EASA Regulation establishing rules for civil aviation safety; adoption of the Port Services Regulation; general approach for a Directive on safety rules and standards for passenger ships, and coordination regarding the Helsinki Convention; the Paris Memorandum of Understanding and the International Maritime Organisation.
- Company Law: first-reading agreement between co-legislators achieved in December 2016 on the Shareholders Rights Directive and preparation of negotiations on the Directive on public disclosure of income-tax information (CBCR).
- Consumer protection: adoption of the general approach on the Geo-blocking Regulation and preparation of the general approach on the Consumer Protection Cooperation Regulation.
- Industry/Internal Market/Better Regulation: discussions on the role of the Commission and Member States on the working methods for ensuring better regulation objectives, in particular in the field of the internal market.
- Euratom:
  - (a) discussion on the Communication from the Commission on a Nuclear Illustrative Programme presented under Article 40 of the Euratom Treaty,
  - (b) discussion on EU/Member States' accession to the amended CPPNM (Convention on the Physical Protection of Nuclear Material),
  - (c) discussion on the Commission report on investments in nuclear safety and the Nuclear Illustrative Programme (PINC).
- Space: discussions on the Commission Communication on a Space Strategy for Europe.
- Energy: finalisation of the legislative Decision of the EP and the Council establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the area of energy; general approach on the legislative proposal for a Regulation on energy efficiency labelling of products.
- Intellectual Property: examination of two proposals on copyright reform, examination of two proposals on the implementation of the Marrakesh Treaty; general approach and negotiations with the EP on the proposal on portability; adoption of the proposal on trade secrets and of the numerous Union positions at international meetings or within international organisations (in particular WIPO).

- Customs Union: adoption of the proposals on customs duties, tariffs and suspensions; examination of the Council conclusions on customs funding and of the numerous Union positions at international meetings or within international organisations (in particular the WCO).
- Postal services: examination of the proposal on cross-border parcel delivery.
- Research: examination of the proposal on PRIMA.

Directorate 1 represented the Council in a number of important court cases. The following favourable rulings should be flagged:

- C-358/14, C-477/14 and C-547/14 - cases concerning the validity of the Tobacco Products Directive,
- C-272/15 concerning ETS aviation stop-the-clock,
- C-444/15 concerning the validity of the Environmental Impact Assessment Directive,
- Joined Cases C-408/15 P and C-409/15 P (Ackerman and others) concerning the validity of the Regulation implementing the Nagoya Protocol on access to genetic resources,
- C-572/15 (Hoffman la Roche) concerning the validity of Article 21 of Regulation (EC) No 469/2009 on the supplementary protection certificate.

In addition, it worked on the following on-going court cases:

- C-5/16 - written procedure finalised concerning the validity of the Market Stability Reserve Decision, with implications in particular on the legal basis of the EU ETS and the Union's climate policy in general,
- C-687/15 (Commission v Council) - annulment of the Council Conclusions on the 2015 World Radiocommunications Conference -pending,
- C-53/16 P (Carsten René Beul) - written procedure finalised,
- C-389/15 - written procedure finalised - Lisbon Agreement on geographical indications,
- C-365/15 (Wortmann) - hearing in case concerning the validity of Article 241 of the Customs Code),
- Opinion 3/15 - hearing - Marrakesh Treaty,
- T-191/14 - hearing - Lubrizol (customs duties suspensions).

## **Directorate 2 'Employment, Social Affairs, Agriculture, Fisheries'**

In 2016, the work of Directorate 2 focused, like Directorate 1, on providing legal assistance on a large number of legislative and other files. The following should be flagged in particular:

- Agriculture: political agreement on the Official Controls Regulation covering food and feed; continuation of negotiations on the proposed Regulation on Organic Production (multiple trilogues and technical meetings); multilateral treaties and preparation of Union positions in international fora (OIV, IPPC, OIE, G20); work on defining the Council's approach on 3 legislative proposals on veterinary medicines and on the agricultural aspects of the draft 'Omnibus' Regulation; and adoption of Council conclusions on strengthening farmers' position in the supply chain and tackling unfair trading practices.
- Fisheries: adoption of the first of the new generation of multiannual plans (Baltic Sea), of a major overhaul of the Regulation regulating access to deep sea fishing, of the reform of the data collection framework for fisheries, and of an amendment to the North Sea multiannual cod plan (post-ECJ judgment); general approach on the Regulation concerning access of Union fleets to non-Union waters and non-Union fleets to Union waters; significant progress in work on the comprehensive overhaul of the technical measures regulations and implementation of measures adopted by ICCAT covering blue-fin tuna; non-legislative files: adoption of seven TAC and quota regulations (TQR): Baltic Sea, Deep Sea, Principal TQR for the North Sea and overseas, Black Sea TQR, three amendments to the 2016 TQRs; bilateral agreements and Sustainable Fisheries Partnership

Agreements (SFPAs): Council decisions authorising the Commission to open negotiations on new SFPAs/the renewal of the Protocols, on signing/provisional application and on the conclusion; multilateral treaties and preparation of Union positions in international fora (RFMOs, FAO, OECD, UNGA), provision of advice on public international law, including the Law of the Sea (Norway, Faroe Islands, Iceland, Russia, Svalbard, Arctic Ocean, fishing for snow crab on the continental shelf around Svalbard and in the Barents Sea); and MOU on sharks – preparation of positions for the meeting of signatories.

- Education, youth, sport, audiovisual, culture: General approach on: (1) Council Decision on European Year of Cultural Heritage 2018; (2) Council Decision on European Capitals of Culture. Work on defining the Council's approach on various legislative files: (1) Recommendation on the establishment of the European Qualifications Framework for lifelong learning (EQF); (2) modification of the Audiovisual Media Service Directive; (3) Council Decision on a common framework for the provision of better services for skills and qualifications (Europass); preparation of Union+MS positions for WADA (World Anti-Doping Agency) meetings; assistance with the preparation of Council conclusions and resolutions (and those of the Council and the Representatives of the Governments of the Member States meeting within the Council) in these policy areas; and adoption of the Council Recommendation on Upskilling Pathways: New Opportunities for Adults.
- Public Health: preparation of Union+MS positions (notably Framework Convention on Tobacco Control) and Council Conclusions (1) on the next steps under a One Health approach to combat Antimicrobial Resistance; (2) on Food product improvement.
- Codex Alimentarius, FAO, OECD: preparation of a large number of Union+MS positions.
- Employment and Social Affairs: General approaches on three legislative proposals relating to the three tripartite agencies; general approach on amendments to Directive 2004/37/EC relating to exposure to carcinogens or mutagens at work; political agreement on the implementation of the social partners' agreement on the Work in Fishing Convention; work on defining the Council's approach on matters including posting of workers and the European Accessibility Act, both of which entailed the CLS issuing written opinions; assistance with the preparation of several sets of Council conclusions in these policy areas and work on the employment and social affairs aspects of the European Semester.

As far as litigation is concerned, the members of the directorate represented the Council in a number of important court cases. The following cases should be flagged in particular:

- C-626/15 (Weddell Sea) - Commission v Council (on the issue of establishment of marine protected areas in Antarctica) concerning the delimitation of competence between the areas of fisheries and protection of the environment.
- C-128/15 (Grenadiers) - Spain v Council on the application of the principle of relative stability and the Council's margin of discretion when adopting regulations on fishing opportunities.
- T-153/16 Acerga case - (challenge by a fishermen's association against the principal TQR for 2016).
- C-113/14 (Germany v EP and Council): judgment issued by the Court concerning the scope of Article 43 TFEU.
- C-426/16 (Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen e.a.): defence of the validity of Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing
- Judgments of the Court of Justice of 4 May 2016 in the 'tobacco' cases: C-358/14 (Poland v European Parliament and Council), C-477/14 (Pillbox 38) and C-547/14 (Philip Morris Brands and others); the validity of the Tobacco Directive was upheld.



## Directorate 3 'External Relations'

Directorate 3 is responsible for providing legal advice to some fifty working groups dealing with external relations including those relating to trade, sanctions, development, the common foreign and security policy (including common security and defence policy), international law and relations with third countries and international organisations. It also provides legal advice to the Political and Security Committee and on matters relating to the Foreign Affairs Council. In addition the Directorate acts as the secretariat for the COJUR, COJUR ICC and COMAR working groups.

Examples of work carried out by members of the Directorate in 2016 included the provision of legal advice relating to:

- CFSP & CSDP: additional tasks for Operation Sophia, Capacity Building for Security and Development, the scope and application of the mutual assistance provision in Article 42(7) TEU and the new code of conduct for civilian crisis management operations.
- Trade: modernisation of trade defence instruments, the 'Anti-torture' Regulation, the 'Conflict Minerals' Regulation, the signature and provisional agreement of the Comprehensive Economic and Trade Agreement (CETA) with Canada, and China's WTO Accession Protocol.
- Development: European Sustainable Development Fund (ESDF) Regulation, European Consensus on Development, Post 2020 partnership with the ACP countries, and 2030 Sustainable Development Agenda.
- Relations with third countries and organisations: External legal aspects of migration, signature of the EU-LAC (European Union - Latin America and the Caribbean) Foundation Agreement, (c) signature of the PDCA (Political Dialogue and Cooperation Agreement) with Cuba, and ratification of the Association Agreement with Ukraine.
- International Law & Consular Affairs: guidance on the South China Sea tribunal award; tool box for consular demarches;
- Sanctions: Review of the sanctions regimes concerning Syria, Ukraine, Russia, North Korea, Iran, Tunisia and Egypt; creation of a legal framework for EU autonomous designations of ISIL/Da'esh; and establishment of a GSC database on sanctions.

The Directorate also took the lead in cross-Secretariat work on preparing a report on the role of the GSC in External Relations within the framework of the Secretary General's Action Plan, and on the follow-up to the IIA on Better Law Making in relation to international agreements.

In addition, the Directorate continued to represent the Council in some 135 cases before the European Union, most notably those relating to sanctions, and in litigation on anti-dumping and legal and institutional issues relating to international agreements and external relations generally.

During 2016, cases covered by the team included the successful defence of challenges to the Ukraine, Syria, Tunisia and Iran sanctions regimes; litigation relating to Western Sahara; Opinion 2/15 on the proposed agreement with Singapore; and the successful confirmation of the Council's powers in relation to non-binding international instruments in C-660/13 (Council v Commission).

## Directorate 4 'Institutional Questions, Staff Regulations, Litigation'

The activities of Directorate 4 cover institutional questions, Staff Regulations issues, litigation and administrative questions. In addition, the directorate is the 'service traitant' for the Working Party on Codification, which is chaired by one of its members.

- Reform of the Court of Justice of the European Union: adoption of Regulation 2016/1192 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants. Approval of the amendments to the Rules of Procedure of the Court of Justice and of the General Court relating to the transfer of jurisdiction in civil service cases to the General Court and to the treatment of confidential information pertaining to the security of the European Union or to that of one or more of its Member States or to the conduct of their international relations in appeal proceedings before the Court of Justice.
- Appointment of Judges and Advocates-General: the directorate acts as the secretariat of the panel provided for in Article 255 TFEU and is responsible for the Conferences of the Representatives of Governments of the Member States ('Intergovernmental conferences') who appoint the Judges and Advocates-Generals;
  - the panel examined 37 nominations, including one nomination for the post of Advocate-General at the Court of Justice and 36 nominations for the post of Judge at the General Court<sup>3</sup>;
  - organisation of 3 intergovernmental conferences to appoint a total of 31 Judges at the GC and 1 Advocate-General at the Court of Justice<sup>4</sup>;
- Interinstitutional Agreement on Better Law-Making: work on the implementation of the agreement, in particular concerning delegated acts and implementing acts, leading to on-going projects (including alignment with the Lisbon Treaty of a number of legal acts providing for the former regulatory procedure with scrutiny, preparation of a register of delegated acts, and preparation of an interinstitutional discussion on delineation criteria);
- Reform of European Electoral Law: written legal opinion on the proposed EP text, constant legal advice in GAG meetings and assistance to the presidencies with the drafting of compromise texts;
- Transparency Register: initial legal analysis on the proposal that was submitted to the GAG in second half of the year (October);
- Transparency and access to documents: legal advice on issues related to requests for public access to Council documents; legal revision of all confirmatory replies drafted by DGF (24 in 2016); handling of requests concerning 93 Legal Service documents<sup>5</sup>; and work on improvements to Council practice and internal procedures in the area of access to documents;
- European Ombudsman: complaints to the EO concerning alleged instances of maladministration by the Council and legal revision or drafting of the opinion submitted to the Ombudsman. In 2016, the directorate handled 9 ongoing enquiries (8 complaint-based and 1 own-initiative enquiry), while 7 Ombudsman complaints were decided: in one instance the Ombudsman did not find any maladministration, in six others the matter was settled by the Council. The own-initiative enquiry on the transparency of trilogues was closed without a finding of maladministration but the Ombudsman submitted recommendations. The inquiry on the Council's reply to a request for access to the opinions on the suitability of candidates to perform the duties of judges and Advocate-General to the Court of Justice issued by the Panel of experts established under Article 255 TFEU was closed in 2016 in a favourable way for the Council. In one other case, the Ombudsman's decision is pending.

<sup>3</sup> In the context of the first and second stage of the enlargement of the General Court, the partial renewal of the General Court in 2016 and one nomination following the resignation of a Judge at the General Court.

<sup>4</sup> The appointments related to 11 judges from the 1st stage of the enlargement, 5 judges from the 2d stage, 14 judges from the partial renewal of the General Court (9 from the 'classical' renewal and 5 judges who were appointed in the context of the 1st stage and whose mandate expired on 31 August 2016), 1 Judge to replace the Swedish Judge who resigned and 1 Advocate General.

<sup>5</sup> 58 of those requests (62,4 %) were dealt with by the first deadline (15 working days), while 27 (29%) were dealt with by the second deadline. 8 replies (8,6%) were made after the second deadline. In 2016 Directorate 4 also drafted 4 confirmatory replies concerning Legal Service documents.



- Staff issues: legal advice to the administration on staff matters, in particular on complaints based on Article 90(2) of the Staff Regulations (the Legal Service was consulted on the draft replies to 23 such complaints registered in 2016), and also on contracts, buildings and public procurement;
- Registry: notifications to and from the Court of Justice, the General Court and the Civil Service Tribunal and update of the database of all cases in which the Council is a party. In 2016, approximately 5000 notifications in around 1900 cases were processed.

The Legal Service is the '*service traitant*' for codification, and a member of Directorate 4 chairs the Working Party on Codification. In 2016, the work included the examination of a voluminous proposal for horizontal codification of 6 directives in the field of company law. Recast proposals were examined by the Interinstitutional Consultative Working Group of the Legal Services, in which Directorate 4 represents the Council Legal Service.

As far as litigation is concerned, the directorate represented the Council in a number of court cases related to transparency and to staff and civil service matters.

Regarding transparency, a direct case against the Council was decided in favour of the Council (T-710/14), while another one in which the Council was intervening in support of the Commission, was decided in favour of the Commission. 3 more transparency cases involving the Council are currently pending. In 2016, the Council received no new direct actions concerning its replies to requests for access to documents but intervened in one case in support of the Commission (T-423/16).

In the area of staff matters and civil service litigation, seven cases directly involving the Council were decided by the Civil Service Tribunal in 2016, six of which ruled in favour of the Council and one against. Four further cases were also decided in the Council's favour by the General Court on appeal. Two cases were decided by the General Court concerning the legality of Regulation No 1023/2013 of 22 October 2013 amending the Staff Regulations and two regulations adopted in 2014 adjusting the remuneration and pensions of officials and other servants for 2011 and 2012; both were decided in the Council's favour. Finally, one case in which the Council had intervened to defend the legality of a provision of the Staff Regulations was decided in 2015; the legality of the said provision (Article 22 of the Staff Regulations) was confirmed.

## Directorate 5 'Justice and Home Affairs'

2016 continued to be a very busy year for Directorate 5. During 2016, the members of the Directorate helped in the finalisation of a number of files and provided legal support on some important on-going legislative files and other files. Examples of the work carried out by the Directorate in the different areas include:

- Judicial cooperation in civil matters: (a) Contracts for the supply of digital content and (b) Matrimonial property regimes and property consequences of registered partnerships.
- Judicial cooperation in criminal matters: (a) European Public Prosecutor's Office (EPPO), (b) European criminal record information system (ECRIS), (c) Protection of the Union's financial interests (PIF), (d) Terrorism Directive, (e) Consequences of data retention judgments (cases C-293/12 and C-594/12), Digital Rights, and joined cases C-698/15 and C-203/15, Tele 2), (f) Presumption of innocence, (g) Legal aid and (h) Rights of suspected children.
- Police cooperation: (a) Europol Regulation, (b) Europol / DK, (c) Revision of Council implementing Decisions on 'Prüm' connections (databases on fingerprints, DNA and vehicle registration) and (d) Revision of the guide, relationship with the Commission and OLAF and on international agreements on exchange of information.

- Fundamental Rights: (a) Istanbul Convention and (b) Multi-annual framework for the Fundamental Rights Agency.
- Data Protection: (a) Data Protection Regulation and (b) Data Protection Directive and EU-US Umbrella Agreement.
- Schengen: (a) Visa suspension mechanism, (b) Visa liberalisation (Georgia and Ukraine), (c) Visa stickers, (d) Visa Code Recast, (e) FADO, (f) European Border and Coast Guard (EBCG), (g) Schengen evaluation procedure (interpretation SchEval Regulation) and (h) Article 29 on the reintroduction of internal border controls.
- Asylum and migration: (a) Legal migration (research, studies, pupil exchange), (b) Blue card (recast), (c) Safe countries, (d) Return procedure and readmission, (e) Dublin IV (recast), (f) Eurodac (recast), (g) EASO, (h) Asylum qualification and procedures, reception conditions and (i) Resettlement Regulation.

Directorate 5 represented the Council in a number of important court cases. The following cases should be flagged:

- Case 1/15 PNR Canada: Request by the Parliament for an opinion on the compatibility with the Treaties of the proposed PNR Agreement with Canada
- Case C-601/14, Commission v Italy: intervention by the Council to defend the validity of Article 12(2) of Directive 2004/80/EC on free movement of EU citizens
- C-601/15 PPU: intervention by the Council to defend the validity of Article 8(3)(e) of Directive 2013/33/EU on reception conditions of asylum seekers following a request for a preliminary ruling by the Dutch Council of State
- C-14/15 and C-116/15, Parliament v Council: action for annulment of Council Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU on the launch of automated data exchange with regard to Vehicle Registration Data in Malta, Cyprus and Estonia respectively (Prüm)
- Cases C-643/15 and C-647/15, Slovakia and Hungary v Council: action for annulment of Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (relocation)
- C-18/16, K v Dutch State Secretary for Security and Justice: intervention of the Council to defend the validity of Article 8 of Directive 2013/33/EU on reception conditions of asylum seekers
- Cases before the General Court of the European Union (actions for annulment of the 'EU-Turkey statement': T-192/16 NF v European Council, T-193/16 NG v European Council and T-257/16 NM v European Council.

## Directorate 6 'Economic and Financial Affairs, Budget, Structural Funds'

Directorate 6 was set up on 1 October 2015. It is responsible for providing advice to the Ecofin configuration of the Council and all its related preparatory instances, including the Economic and Financial Committee. During 2016, it provided legal assistance on the following main files:

- Economic and Monetary Union: (a) negotiations concerning the third programme of financial assistance for Greece, (b) simplification of the Stability and Growth Pact, (c) the European Semester and (d) application of the Excessive Deficit Procedure.
- Financial Services: (a) banking union related questions (in particular the establishment and start of activities of the Single Resolution Board; the agreement between the participating Member States on the allocation of credit lines to the Single Resolution Board and the backstop; and the negotiations on the European Deposit Insurance Scheme); securitisation (capital markets union); the new risk reduction legislative package; and on the proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

- Budget: annual budgetary negotiations; the MFF midterm review; proposal for amending the Financial Regulation; the new making available Regulation; and budgetary aspects of the refugee facility for Turkey.
- Structural and investment funds: Regulation on the European Fund for Strategic Investments (EFSI) (before the Council general approach and in the subsequent trilogues), including institutional and budgetary questions and the 2016 omnibus proposal (amending the Common Provisions Regulation and Structural Funds provisions).
- Direct taxation: Anti-Tax Avoidance Directives and the Directive on Administrative Cooperation.
- Indirect taxation: FTT enhanced cooperation (ongoing negotiations) and ongoing VAT legislative proposals and implementing acts of the Council.
- Code of Conduct (Business taxation): the list of non-cooperative jurisdictions.
- PANA Committee : the Committee of Inquiry of the European Parliament to investigate alleged contraventions in the application of Union law in relation to money laundering, tax avoidance and tax evasion.

Members of Directorate 6 represented the Council in proceedings before the Court of Justice of the European Union brought by private parties against the Council, the European Council and the Eurogroup as regards the Greek bail-out and Cypriot bail-in measures (Cases T-680/13, T-38/14, T-495/14, T-496/14, T-531/14, T-405/14, T-350/14, T-413/14, T-765/14, T-786/14 and T-379/16) and on other matters (C-304/16, C-305/16 and T-466/16).

## Directorate 7 'Quality of Legislation' (DQL)

In 2016, the Directorate for Quality of Legislation (DQL) undertook the multilingual legal-linguistic finalisation of approximately 23 000 pages of legislative text, which was more than in either of the two previous years. At the same time, the total number of requests for lawyer-linguist intervention in terms of 'mise au point' was slightly lower with a figure of 640 requests. The explanation lies in a number of voluminous international agreements, which, moreover, had to be finalised under great time pressure.

Keeping these tighter deadlines was mainly possible through an understanding reached between the relevant Commission, EEAS and GSC services on a new technical working method for handling international agreements, consisting of a first intervention by DQL prior to the translation by the Commission. This new arrangement enabled the timely finalisation of the CETA agreement despite particularly difficult circumstances.

DQL staff organised and chaired 30 Working Party meetings of Legal/Linguistic Experts. As part of the 'quality team' formed with the legal adviser, lawyer-linguists already advised on the legal drafting quality of 113 legislative texts during the negotiation phase, in line with the planned extension of that practice to files that do not come under the ordinary legislative procedure.

To optimise our service in this field, the network of DQL lawyers who specialise in each particular legislative field was coordinated by a group of volunteers who regularly liaise with the policy DGs and the corresponding sister-Directorate of the Council Legal Service ('the quality coordinators').

In the course of 2016, DQL received 514 new requests for post-adoption corrigenda (*rectificatifs*) and closed 637 such requests, virtually eliminating the previous backlog stemming from the pre-EP-election period that had seen a particularly high workload.

A new consolidated version of the Treaties was finalised by DQL and published both in the Official Journal and in book and e-book format, thus facilitating the task of legal drafters and translators throughout the institutions. This was the first time that this consolidation had included a Croatian language version.

In the same vein, a 'Joint Handbook' for files under the ordinary legislative procedure, establishing a common set of precedents for the Commission, the European Parliament and the Council in all official languages, was finalised and is now available online.

DQL continued to actively participate in the GSC's contribution to inter-operability of document formats among the institutions which will help prevent resource-intensive and error-prone duplication of work. Important progress was made in the various fora of the Interinstitutional Formats Committee and in work on cross-institution XML drafting solutions, in line with the mandate given by the Secretaries-General.

In line with the Secretary-General's Action Plan, DQL undertook a thorough assessment of priority needs in modernising internal working methods and information flows. Based on a DQL-wide staff survey, dedicated management meetings and a round of direct meetings with staff, a multi-annual Quality Plan was established which lists a set of priority actions to be implemented over a five-year time span.

## **Coordination Unit**

The unit supports the management of the Legal Service in all matters pertaining to the planning and organisation of resources and internal decision-making procedures.

It assists the DG in ensuring that Legal Service opinions in the different areas of expertise are consistent and coordinated and help safeguard a high quality of work. With this aim, the unit has participated in and contributed to the preparation of the following meetings:

- European Council and summits: 8 meetings;
- Coreper II: approximately 60 sessions, plus Antici meetings and briefings for Coreper II;
- meetings of the Directors of the Legal Service: 12 meetings;
- weekly meetings of the Legal Service: 35 meetings.

Another important part of the unit's responsibilities is to help Legal Service members in their tasks by providing information of interest and by carrying out research activities. In 2016, the unit continued to publish relevant information on the interactive website of the Legal Service (Lex Forum), including the monthly newsletter covering judicial events during the previous month (judgments, new cases, etc.) in court cases of interest for the Council and news on issues of interest for the members of the Legal Service (more than 60 posts in 2016). Regarding research activities for the members of the Legal Service (or other persons from the GSC), the unit carried out 476 searches, mostly focused on external doctrine (60% of searches), the others on case law, legislation or Legal Service internal doctrine.

The unit regularly provided speakers for training for the presidencies and for 'newcomers' (newly arrived delegates of the Member States).

As regards training of the members of the Legal Service, the main event organised by the unit (in cooperation with DG A) was a seminar on recent case law of the Court of Justice with three external speakers, attended by 100 people. In addition, it organised 4 lunchtime conferences related to recent case law or to adopted legislation.

## **Legal Service as Authorising Officer**

In its capacity as an authorising service, the Legal Service is responsible for the management of

- contracts with external lawyers aimed at providing the necessary assistance to the Council before the Court of Justice of the European Union and in national courts, as well as on administrative files such as building permits or the execution of contracts with external firms (budget item 223610);
- claims for legal costs to be borne by the Council in accordance with judgments of the Court of Justice of the EU (item 223610);

- claims for legal costs to be borne by the opposing parties in accordance with judgments of the Court of Justice of the EU (item 223610) and
- claims for damages, interest and compensation to be borne by the Council or by the opposing party (item 223620).

As a rule, the Council is represented in proceedings before the Court of Justice and the General Court by members of the Legal Service acting as agents, without assistance from external lawyers. In such cases, in accordance with settled case-law, when the Council wins a case and the other party is ordered to bear the costs of the proceedings, the Council is essentially only able to recover the mission expenses. So the recoverable costs in such cases are minimal.

However, in certain specific cases the Legal Service seeks the assistance of external lawyers, in particular in cases concerning anti-dumping measures and trade defence. Such cases require highly specialised knowledge and involve analysis of extremely detailed and voluminous documentation. In 2016, the Council was assisted by external lawyers in 17 trade defence cases. In three of these cases the Council acted as a respondent in appeals brought by the opposing parties, in ten cases the Council itself appealed to the court. The other cases are one request for a preliminary ruling, one anti-dumping damages case and two cases where the external lawyer was only contracted to assist the Council in the oral hearing.

The Council also occasionally needs outside legal advice and assistance on questions related to administrative issues, public procurement or contractual obligations governed by national law, and in litigation before Belgian national or regional courts. In 2016, the Council was assisted by external lawyers in only one new administrative file. The most important ongoing file is the legal assistance provided to the Council on the reception and on ad hoc questions related to the new EUROPA Building.

If the Council wins a court case in which it is assisted by an external lawyer, it can claim the full costs incurred for lawyers' fees and expenditure, subject to those costs being challenged by the other party as excessive. Ultimately, if there is a disagreement between the parties, the competent court fixes the recoverable costs by an order of taxation of costs. In 2016, the Legal Service recovered the costs it had incurred in 24 cases, totalling EUR 435 347,61. Compared to the 10-year average of assigned revenue (EUR 207 000), this amount is unusually high. On the other hand, it should be noted that in certain cases there may be practical difficulties in enforcing claims for recoverable costs, in particular where the other party has its domicile outside the EU. In such cases, the estimated enforcement costs need to be balanced against the amount of the claim.

When the Council loses a case before the court and is ordered to bear the costs, and in cases where there is an amicable settlement comprising an agreement on the costs, the Council must pay the recoverable costs incurred by the other party. In 2016, the Legal Service settled 21 claims for legal costs totalling EUR 538 760,08, which is a very high amount compared to the 10-year average of EUR 325 000.

One claim for damages was settled in 2016 and resulted in a payment of EUR 183 395,09 to the Council.

### Volume dealt with

Number of direct purchase orders issued in 2016	11
Number of invoices received in 2016	63
Number of credit notes received in 2016	8
Number of funds commitments issued in 2016	8
Number of payment requests issued in 2016	26
Number of acceptance requests issued in 2016	48
Number of payments received in 2016	25



The significant higher number in legal costs - paid and received - is reflected in an increase of the numbers of payment and acceptance requests issued and of the number of payments received. All other figures are similar to those from the previous year.

## B) HUMAN RESOURCES ALLOCATED FOR THE INTENDED PURPOSE

The Legal Service had the following human resources on 31 December 2016 allocated between its seven Directorates (Directorate 1 'Competitiveness, Environment, Transport, Telecom, Energy', Directorate 2 'Employment, Social Affairs, Agriculture, Fisheries', Directorate 3 'External Relations', Directorate 4 'Institutional Questions, Staff Regulations, Litigation', Directorate 5 'Justice and Home Affairs', Directorate 6 'Economic and Financial Affairs, Budget, Structural Funds', Directorate 7 'Quality of Legislation') and one Coordination Unit.

	Permanent staff	Temporary staff	Others	Total
<b>Administrators</b>	146,05			146,05
<b>Assistants</b>	98,75	2,95		101,7
<b>Secretaries</b>	16	2		18
<b>Subtotal</b>	260,8	4,95	0	265,75
<b>Contractual agents</b>		14		14
<b>National experts</b>				0
<b>Subtotal</b>	0	14	0	14
<b>Total</b>	<b>260,8</b>	<b>18,95</b>	<b>0</b>	<b>279,75</b>

*Table includes staff in place on 31 December 2016, expressed as full-time equivalents (FTEs)  
Source: Staffing Office*

In 2016, the question of regular and recurring statutory absences of legal advisers in directorates 1 to 6 giving rising to compensatory recruitment was discussed with DGA. After a thorough analysis of the situation, in October 2016 DGA agreed to the creation a pool of contract agents comprising four legal advisers with a three year contract to address the temporary staff needs of the Legal Service in a more efficient way. The pool currently has three legal advisers attached to the Coordination Unit and deployed in Directorates 1, 3 and 5.

Following the reorganisation of the Legal Service undertaken in 2015, an additional step was made in September 2016 with the integration of the Council's Treaties and Agreements Office into Council Legal Service Directorate 7 (DQL)<sup>6</sup>. This transfer - which mirrors the organisational set-up in other international institutions - will help optimise the GSC-internal work processes for international agreements.

In addition, preparatory discussions on the next important organisational element were started in 2016: the return of DQL to the Justus Lipsius building. This will be a challenge in logistical and administrative terms, given the need to avoid any disruption of service on all sides. The planning and preparation phase will therefore take one year, with the actual move only scheduled for 2018.

<sup>6</sup> Decision 29/16 of the Secretary-General of the Council amending the organisation chart of management posts and administrative entities at the General Secretariat of the Council.



## C) FINANCIAL RESOURCES ALLOCATED FOR THE INTENDED PURPOSE

**Table 1: Overview of the implementation of the budget 2016**

					1 - Initial Budget 2016	2 - Final Budget 2016	3 - Commit- ments 2016	4 = 3/2 - (%)	5 - Carry-over to 2017 Commitments- payments
Fund	Funds Centre	Commit- ment item			EUR	EUR	EUR	%	EUR
1	SJ	Legal Service	2236	Legal expenses and costs, damages and compensations	1.250.000,00	1.250.000,00	541.903,13	43	227.536,33
1	SJ	Legal Service	Article 223	Miscellaneous expenses	1.250.000,00	1.250.000,00	541.903,13	43	227.536,33
1	SJ	Legal Service	Chapter 22	Operating expenditure	1.250.000,00	1.250.000,00	541.903,13	43	227.536,33
1	SJ	Legal Service	Title 2	Buildings, equip- ment and operating expenditure	1.250.000,00	1.250.000,00	541.903,13	43	227.536,33
1	SJ	Legal Service	EX- PENSE	EXPENSE	1.250.000,00	1.250.000,00	541.903,13	43	227.536,33
1	SJ	Legal Service	COUN- CIL	Council Legal Reporting	1.250.000,00	1.250.000,00	541.903,13	43	227.536,33
Overall Result					1.250.000,00	1.250.000,00	541.903,13	43	227.536,33

The initial budget of EUR 1 250 000 remained unchanged compared to 2015. No further budget reinforcement had to be requested. Appropriations committed account for 43 % of final appropriations. The reason for this low outturn rate is the low value of new anti-dumping cases. Although there were more cases (17 compared to 9 in 2015), the average value of the cases was significantly lower than in the previous year because a number of cases concerned the same country and the same industry sector and could therefore be dealt with jointly.

The underspending was reported and in October 2016 EUR 341 469'46 was made available for the general budget of the Council and the European Council. Another EUR 183 395'09 paid in damages and compensation to the Legal Service budget line was made available for the institution as a reserve.

EUR 314 366, i.e. 58 % of the actual commitments, was paid in 2016, whilst the rest, EUR 227 536, was carried over to 2017. Most of this budget serves to enter into commitments to pay for external lawyers assisting the Council's agents before the courts of the European Union. The number of cases is difficult to predict, and usually court cases last longer than the duration of the corresponding commitment due to the principle of annuality, which explains the outturn rate.

**Table 2: Overview of the implementation during 2016 of appropriations carried over from 2015**

					1 - Carry-over from budget 2015	2 - Payment 2016 on carry-over 2015	3 = 2/1 - Out turn rate (%)	4 = 1-2 - Cancelled appropriations
Fund	Funds Centre		Commitment item		EUR	EUR	%	EUR
4	SJ	Legal Service	2236	Legal expenses and costs, damages and compensations	434.767,18	367.710,12	85	67.057,06
4	SJ	Legal Service	Article 223	Miscellaneous expenses	434.767,18	367.710,12	85	67.057,06
4	SJ	Legal Service	Chapter 22	Operating expenditure	434.767,18	367.710,12	85	67.057,06
4	SJ	Legal Service	Title 2	Buildings, equipment and operating expenditure	434.767,18	367.710,12	85	67.057,06
4	SJ	Legal Service	EXPENSE	EXPENSE	434.767,18	367.710,12	85	67.057,06
4	SJ	Legal Service	COUNCIL	Council Legal Reporting	434.767,18	367.710,12	85	67.057,06
Overall Result					434.767,18	367.710,12	85	67.057,06

An amount of EUR 67 057,06 carried over from 2015 had to be cancelled. The amount of cancelled appropriations is not higher than the average from previous years. The main reason for the cancellations is also the length of court proceedings combined with the limited duration of a budgetary commitment.

### III. FUNCTIONING OF THE INTERNAL CONTROL SYSTEM

#### A) EFFICIENCY AND EFFECTIVENESS OF THE INTERNAL CONTROL SYSTEMS

A set of rules on procurement and budgetary matters, last updated in December 2015, has been put in place by the GSC Directorate of Finance. In addition, the Legal Service has a set of internal control standards and processes. These are written down in the annual work programme, the rules on budget implementation, the risk register and internal service instructions, or are directly built into the financial management system (SOS II).

Values, objectives and information for staff are communicated on the Legal Service's website (including through the publication of a task allocation list), at regular staff meetings (at the level of the directorate-general and of each directorate/unit) and at weekly debriefs for legal advisers by the director-general and the directors.

The efficiency and effectiveness of the internal control systems are ensured by an appropriate organisational structure, a centralised financial circuit (which best reflects the size of the entity, of its budget and of the number of transactions), the planning of work and the assessment of achievements, risk management, mobility and recruitment of staff, staff evaluation, delegation of powers, segregation of duties and regular staff training.

Specific rules concerning the budgetary treatment of judgments ordering the Council to bear legal costs or pay damages have existed since 2005 and were updated in June 2015. Experience has shown that the liquidation and payment of amounts the Council has to bear are subject to long negotiations, and sometimes the claimants never even request the amounts in question. In order to avoid the loss of previously committed budgets, a procedure was therefore agreed with the Budget Management Unit of the Finance Directorate, which allows commitments from the budget at the time when an agreement is reached with the opposing party about the exact amount to be paid (and not as soon as the court delivers judgment).

Furthermore, specific rules concerning the budgetary treatment of legal assistance contracts for trade defence cases were laid down in 2007. Experience of the management of budget line 223610 has shown that several commitments covering the fees of external lawyers expire at the end of each financial year, due to the duration of proceedings before the Court of Justice of the European Union, which means that commitment appropriations have to be cancelled at the end of year +1 and then re-committed at the beginning of year +2. To avoid a substantial loss of appropriations, only 80 % of the estimated fees are committed, since experience has shown that this is the percentage of fees corresponding to the written procedure. The remaining 20 % are not committed until the date of the oral hearing is known. This had led to a considerable reduction of cancelled appropriations.

## B) ASSESSMENT OF THE ESTIMATED COSTS AND BENEFITS OF CONTROLS

The Legal Service has in place an organisational structure in accordance with established standards and having due regard to the risks associated with the environment in which it operates.

The financial circuit of the Legal Service is a centralised system of initiation, verification and authorization, with two full-time equivalent staff members mainly dealing with financial matters, who closely cooperate with the Council agents and/or the desk officer in charge of the file, acting as operational initiators for the cases and files for which they are responsible. This best reflects the size of the entity, the budget, the numbers and size of transactions as well the availability of human resources.

As regards the benefits of controls, it is difficult to make a comprehensive quantification, given the nature of the Legal Service's financial operations. However, one indicator for the efficiency of controls is the fact that the negotiations on settlements of legal costs to be borne by the Council regularly lead to substantial savings in comparison with the initial request for payment of the opposing parties.

The benefits of controls in non-financial terms cover better value for money, efficiency gains and system improvements.

## C) RISKS ASSOCIATED WITH THE OPERATIONS

Given the nature of its role, the Legal Service has no control over its workload. The Legal Service alone cannot speed up, slow down or decrease work which depends on the priorities of the legislator, on the European Commission and, to some extent, on the priorities set by the presidencies. Similarly, in litigation the workload depends on the number of cases taken to court, which is unpredictable.

The main risk facing the Legal Service as a legal adviser is that it might be unable to perform its tasks with the requisite quality due to a high workload, short deadlines or the fact that in some areas it is not consulted at all. This risk is minimised by the constant involvement of the members of the Legal Service at all levels and in all stages of the Council's deliberations and the practice of 'lessons learned' in cases of non-consultation. Variations in workload are addressed either by ad-hoc measures or, if necessary, by reallocation of human resources within the Legal Service. In addition, a pool of contract agents was established in October 2016 so as to be able to find suitable candidates within a reasonable time period for temporary replacement of legal advisers.

The main risk facing the Legal Service as a case-handler before the courts is that a deadline may not be met or that its defence may not be of the requisite quality owing to a high workload or an oversight. This risk is minimised by a centralised system for monitoring deadlines (managed by the Registry of the Legal Service), the appointment of at least two members of the Legal Service as agents in each court case and, where necessary, the temporary assignment of additional human resources to handle workload peaks on litigation in certain areas.

The main financial risks facing the Legal Service as regards the execution of its budget lines are linked to the difficulties in finding suitable external lawyers at short notice and at a reasonable price, the high costs to be paid when cases are lost, problems with recovering costs due after cases have been won and very high claims for damages (especially in sanctions cases). These risks are systematically analysed and

reduced through measures such as forward planning using improved IT tools, negotiations with the opposing party in the event of excessive claims for costs and careful weighting of enforcement costs against the amount of the Council's claim. Where there is an actual risk of very high claims for damages in ongoing court cases, timely information is provided with a view to ensuring that sufficient budgetary provisions are made if needed.

All risks associated with the Legal Service's tasks are set out in a risk register. This register is regularly updated, most recently in February 2017.

#### **IV. CONCLUSIONS ON ASSURANCE**

In conclusion, the Legal Service operates in an environment where the residual risks - linked to financial and non-financial matters - are sufficiently well managed and generally relatively low.

Based on the elements and facts given above, on the strength of the validation of the financial system and on the positive report on the quality of the accounting data, reasonable assurance may be given regarding the legality and regularity of the underlying transactions.

## V. DECLARATION OF ASSURANCE

I, the undersigned, Hubert LEGAL

Director-General of the Legal Service,

in my capacity as authorising officer by delegation,

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

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

This reasonable assurance is based on my own judgement and on the information at my disposal, such as observations of the internal audit service and lessons learnt from the reports of the Court of Auditors for years prior to the year of this declaration.

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

Brussels, 23/03/2017

*[signed]*

Hubert LEGAL