

# 1. What is the title, rank and position of the Legal Adviser?

(April 2022)

The Legal Adviser is officially called "Head of the Service for Legal Affairs, Diplomatic Disputes and International Agreements." He/she holds the position of a Director-General. The position is assigned to a career diplomat, normally holding at least the rank of Minister Plenipotentiary. Since the reform of the Ministry (Presidential Decree No. 95/2010), there is no recruitment from outside the Ministry (an innovation from the previous period, as until 2008 the position was held either by a Full Professor in International Law or a State Attorney).

## 2. What are the principal functions of the OLA?

The reform of 2010 renovated the Office of the Legal Adviser according to the perceived needs for a broader range of activities. While in the past the Office ranked as Unit - attached to the Secretary General - dealing with Diplomatic Disputes and International Agreements, since 2010 the Office has been renamed as "Service for Legal Affairs, Diplomatic Disputes and International Agreements".

The functions of the Service are:

- to support the Minister and the Directorates General of the Ministry in providing legal assistance in matters related to public international law, European Union law and domestic law;
- research activities on legal matters concerning international relations;
- to provide legal assistance for the negotiations and the signature of international agreements and to follow the procedure for their approval and ratification;
- to collect the treaties, being the depository of international agreements for the Republic of Italy;
- to collaborate with the Agents of the Government before international courts, including the Agents for the ECJ and the ECHR;
- to deal with domestic litigation between the MFA and external subjects (with the exception of some specific categories of disputes - such as those concerning internal staff, visas and Italian schools abroad - which are dealt with by the competent DGs ) and to be the focal point for contacts with the State Attorney's Office (*"Avvocatura Generale dello Stato"*).

## 3. Please give a brief description of staff employed by the OLA, including overseas staff. What is the distribution of posts between men and women within the OLA and what category of staff do they respectively belong to?

The staff employed in the Service for Legal Affairs could be classified according to three categories: diplomats, administrative staff and experts.

Currently, there are 14 career diplomats (13 men and 1 woman) serving at the Service for Legal Affairs in Rome. While a degree in Law is not necessary in principle, most of the members hold a diploma in legal studies. As for the administrative staff, 49 people (30 men and 19 women) are part of the Service, dealing with tasks ranging from the procedures on treaties (analysis of draft agreements, granting full powers, etc.) and the draft of memories for proceedings involving the Ministry to the activities of the archives and of administration (human resources, secretary).

Experts are divided into several categories: 3 are judges (all women) temporarily assigned to the MFA from the Ministry of Justice; on a voluntary basis, the State Attorney General also joins in the activities of the Service concerning advice for administrative law and matters. The Service also collaborates with several Italian universities based on ad hoc conventions.

The distribution of posts between men and women is thus 45 to 23.

Some missions abroad (Washington, New York-UN, Brussels-EU, Strasbourg-CoE, The Hague) are also endowed with a legal expert, in most cases a professor or a judge. The rank of the expert (whose post is renewed every two years for a maximum period of eight years) is that either of a Counsellor or of Attaché. These experts are not part of the Service for Legal Affairs – although contacts are, necessarily, on a regular basis.

#### 4. Are there any specific recruitment and promotion policies, provisions and/or quotas to ensure non-discrimination and equal opportunities, e.g. for the underrepresented sex, for persons with disabilities or for persons belonging to ethnic or religious minorities or of immigrant origin?

As a general trend in the Ministry the recruitment of women is improving both in the diplomatic and in the administrative careers. Currently, around 20% of diplomats are women, while women account for 55% of the administrative staff. There are no specific recruitment policies for the underrepresented sex or for disabilities as far as the diplomatic career is concerned. However, for administrative staff posts are assigned to people with special disabilities, according to the relevant national legislation granting favor to these categories of workers.

As a general policy, the Ministry encourages application from categories that are under-represented.

#### 5. Is OLA staff trained on gender equality issues and are these issues mainstreamed into the OLA's work?

The staff of the Service is trained on gender equality within the activities of the Ministry, according to the program of the Unit for Professional Updating.

#### 6. Briefly describe the organization and structure of the OLA.

The Service for Legal Affairs, Diplomatic Disputes and International Agreements is structured into three divisions/offices: the first deals with treaties and international law; the second deals with domestic litigation between the MFA and external subjects and provides legal advice on domestic law; the third deals with dispute before international courts, arbitrates and harmonization of law.

The organization of the Service could be summarized as follows:

Office I – International treaties, agreements, and issues of International Law.

The Office is in charge of assisting and advising on bilateral and multilateral treaties and agreements, advice on international law related issues, international agreements on development cooperation.

Office II – Litigations with natural and legal persons and legal advice on domestic law.

The Office is in charge of:

- providing both legal advice and legal assistance to the MFA DGs and Services on domestic law, mainly in relation to civil law, administrative law, labor and contract law issues;
- ensuring, in coordination with the State Attorney's Office ("*Avvocatura Generale dello Stato*") and on the basis of the information provided by the competent DGs and Services, the defense of the

- MFA in domestic litigations before national courts against external subjects, with the exception of the above-mentioned specific categories of disputes which are dealt with by the competent DGs;
- Payment of legal fees and financing of other legal costs.

Office III – Diplomatic disputes, protection of Italy before international courts and assistance to Italian government agents, international arbitrations.

The Office is in charge of international and diplomatic disputes as follows:

*Court of Justice of the European Union (CJEU):* The Office supports and cooperates with the Italian Governmental Agent before the CJEU, acting as the Italian State Chancellery for all documents notified by the Court of Justice and the General Court. The Office promotes the inter-ministerial coordination to assess CJEU pending cases and outline the Italian position (e.g. decision to lodge an appeal or intervene in proceedings), jointly with the Presidency of the Council of Ministers and the Agent.

*International courts including International investments arbitration tribunals:* the Office follows the judicial activity of the main international Courts and Tribunals (in addition to the CJEU, the International Court of Justice, International Criminal Court, Permanent Court of Arbitration, Special Tribunal for Lebanon, International Residual Mechanism for Criminal), as well as ISDS tribunals. The Office issues memoranda, assistance and advice on international disputes, in particular litigations involving the Italian Republic. The Office also supports the State Attorney in handling the legal defence of the State.

*Harmonization and Unification of International Private law:*

The Office coordinates the Italian participation in the international organizations pursuing the harmonization and unification of International private law, such as UNIDROIT, UNCITRAL and the HCCH.

## 7. What is the OLA's place within the Ministry of Foreign Affairs?

The Service for Legal Affairs is compared to a Directorate General of the Ministry. As it stands as a division for internal counsel, the Service is activated by the different Directorates General according to the legal needs arising in the framework of their activities.

## 8. What are the main contacts of the OLA within Government?

The Service for Legal Affairs is an Office provides internal counselling and advice to the Minister for Foreign Affairs and the Directorates General within the Ministry. Contacts with the other Administrations (including the Office of the Prime Minister) are frequent, particularly on international disputes, in order to ensure a coherent and coordinated approach for the defense of the State in international disputes.

Contacts concerning international agreements negotiated by other Ministries are maintained through the Offices of the Diplomatic Advisors (career diplomats that are assigned to the Cabinet of the Ministries in the different Administrations to deal with international activities).

## 9. Please describe the relations of the OLA with lawyers in private practice, academics and legal institutions.

The Service for Legal Affairs is in constant relations with several categories dealing with legal issues.

The relations with the academia have been growing in the recent years. Interaction with universities is constant, focusing on various topics, mainly of international, through specific conventions. Collaboration with Universities include legal opinions, internship programs for students, joint events (seminars,

conferences, etc.).

The Service has an institutional relation with the Office of the State Attorney (see point 6) and with notaries (on matters of reciprocity).

## 10. Please provide a brief bibliography on the OLA, if available.

Baldi, S. (a cura di), Guida alla Farnesina, 1. Ed., ISDI-Press, Manuali di Formazione, 2012.