SEMINAR ORGANISED BY THE COUNCIL OF STATE OF THE NETHERLANDS, THE COUNCIL OF STATE OF BELGIUM AND ACA-EUROPE

The Hague, the Netherlands, 17-18 March 2025

GENERAL REPORT

CONTRIBUTING TO THE QUALITY OF LEGISLATION

Looking into the role of advisory bodies, like Councils of State ex ante, but also the role of Supreme Administrative Courts ex ante or ex post (giving feedback to the legislature) aimed to improve practical effectiveness, proportionality, and fairness of legislation

1. INTRODUCTION

The upcoming ACA-Europe seminar in The Hague, scheduled for March 17-18, 2025, will continue to explore the contribution to the quality of legislation. This seminar is a follow-up to the (May 15) 2017 seminar on the tools and mechanisms in different countries that can contribute to good legislative quality. Now, several years later, there is again a need to organize a new seminar on the contribution to legislative quality to further explore this topic among members of the ACA-Europe and beyond, with a particular focus on legislative advice and judicial feedback to the legislator.

This general report is based on a semi-structured questionnaire, including multiple-choice questions, comprising fifty-four questions. The questionnaire received thirty-three national reports. This general report does not list all the responses in its entirety. Instead, the general report seeks to provide an initial start of an analysis of similarities, differences, trends and developments regarding the role, organization and working methods of general legislative advisors and the supreme administrative courts giving advisory opinions or feedback to the legislature aimed to improve the quality of legislation. On this basis the seminar in The Hague will aim to further explore and discuss the following topics of interest based on the national reports:

1. *The independent general legislative advisory function, including the consultation of supreme administrative courts*
The further exploration of this topic may address the working methods of the general legislative advisory bodies in conducting their advisory function to contribute to legislative quality. This may include the phase in the legislative process at which the advisory opinion is given, the various analyses (legal, policy, technical, implementation) that are conducted to draft an advisory opinion, and the impact and effectiveness of the opinions. In particular, it will explore how the policy and implementation analyses are conducted and how they relate to the legal analysis. This also may include the ways in which supreme administrative courts are consulted in the legislative process regarding potential repercussions on judicial practice and/or workload.

2. *Constitutional review (ex-ante) by advisory bodies and highest administrative courts*
On this topic a further examination may be conducted regarding the constitutional analysis (as a part of the legal analysis) by advisory bodies and administrative courts.

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This could include the different constitutional sources that are used, the different methods of interpretation in explaining constitutional norms, and especially the interaction between legislative advisory bodies and administrative courts in explaining and/or applying constitutional norms.

3. *The judicial dialogue with the legislator*
The elaboration of this topic may address the factors that influence the way and extent to which highest administrative courts may help the legislator to improve the quality of legislation. This could include the degree of influence of the principle of separation of powers, the political sensitivity and nature of an issue at hand, and the channel through which supreme administrative courts provide feedback. An annual review, for instance, may address more general issues, such as trends in legislation, whereas a judgment is normally confined to the case at hand.

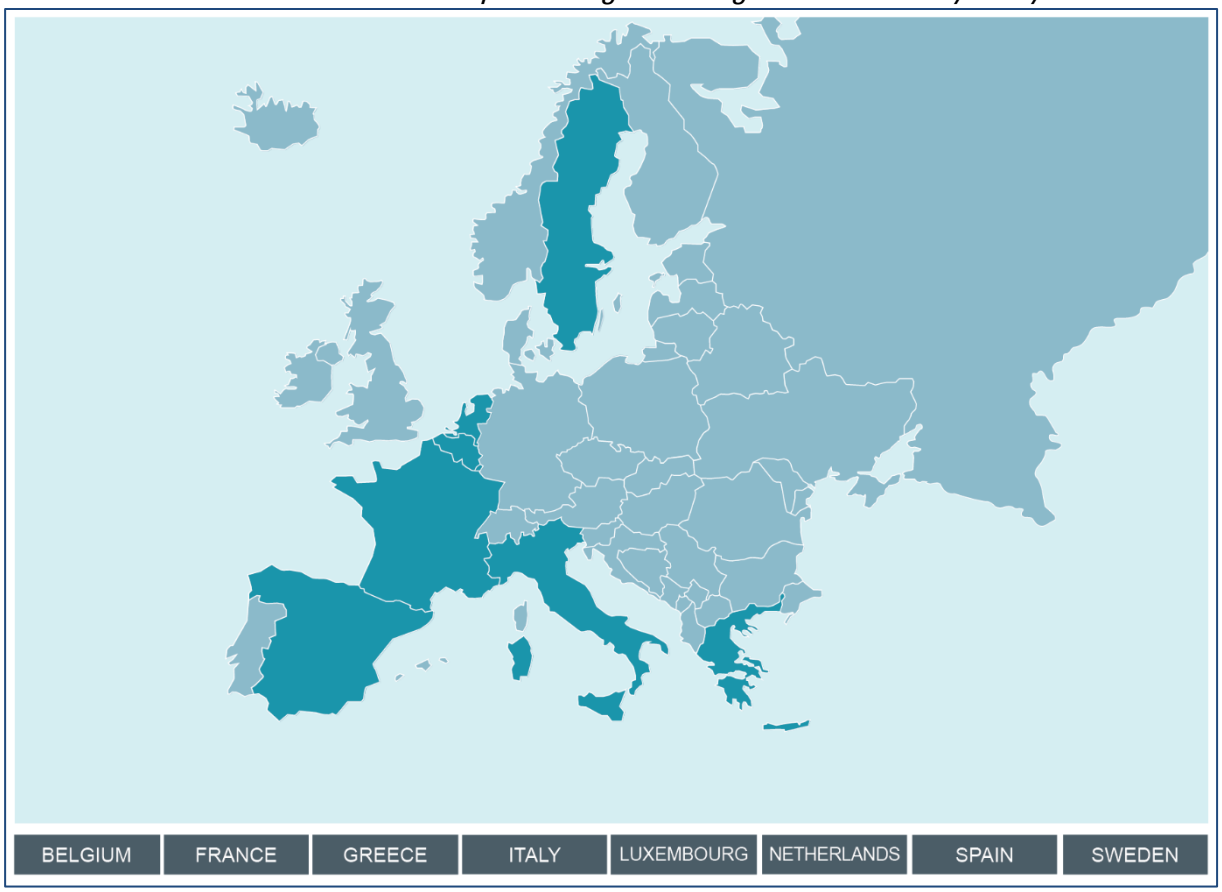
The outline of this general report follows the questionnaire. Accordingly, it is divided into five sections, this section being the first. The second section focuses on the general information of the advisory function. The third section focuses on the outline of the content of advisory opinions. The fourth section addresses the follow-up of an advisory opinion. The fifth section focuses on the judicial feedback to the legislator.

2. GENERAL INFORMATION ADVISORY FUNCTION

2.1 *Organization (questions 1-2)*

8 of 30 countries that submitted a 'national report', report to have an independent advisory body with a general legislative advisory function.[1] In 6 countries with an advisory body, the advisory function is assigned to the Council of State of the respective country. This is the case in *Belgium, France, Italy, Luxembourg, the Netherlands,* and *Spain*. In *Greece*, another government institution is designated as the general legislative advisor. This is the Committee for Quality Evaluation of the Law-making Process. In *Sweden*, advisory opinions within the legislative process are adopted by the Council of Legislation. The Council is formally attached to the Supreme Court, yet it can be considered an independent institution within the legislative process.

Overview of countries with an independent general legislative advisory body



Other types of advisory institutions

In addition to the countries mentioned above, four countries completed the questionnaire on an advisory institution that does not qualify as an independent general advisory body. This paragraph briefly addresses these other types of advisory institutions. The analysis will focus on the countries with a general independent advisory body but will also refer to the institutions of the other countries when relevant.

[1] Belgium, France, Greece, Italy, Luxembourg, the Netherlands, Spain, and Sweden.

In *Cyprus*, the Law Commission is an independent governmental institution which does not give advisory opinions per se. Among other competencies, it submits suggestions or recommendations to the executive power for modernizing, simplification, completion, consolidation, amendment, codification, and revision of national legislation.

Romania has a Legislative Council. The Council evaluates draft laws in order to systematize, unify, and coordinate all legislation. It is a specialized consultative body of the Romanian parliament and therefore cannot be considered independent.[2]

Slovenia states that it does not have a general advisory institution but does appoint the Judicial Council of the Republic of Slovenia. This is an autonomous and independent public body whose task, based on the Constitution, is to contribute to ensuring the independence and quality of the judiciary. Its advisory competence is limited to laws affecting the judiciary and therefore the Council does not have a general advisory function. Slovenia additionally identifies the role of the Supreme Court as a legislative advisor. The Supreme Court is involved in the legislative process in the preparatory inter-ministerial phase. It provides advice on the legal aspects of draft laws. It actively participates in reviewing and providing input on legislative proposals that may impact the judiciary, ensuring that the perspective of the courts is considered in the drafting and amending of laws.

The *Czech Republic* has a Government Legislative Council that is not independent since it is part of the government. It advises the government at the preliminary stage of the legislative process and reviews proposals for constitutionality and compatibility with higher law, international law, and case law.

Guarantee of independence (question 2)
The independence of advisory bodies with a general legislative advisory function is in most countries[3] both enshrined, implicitly, or explicitly, in the Constitution and a national law. The independence of the *French* Council of State is embedded in a fundamental principle of law: the principle of the independence of the administrative judiciary in its totality. The independence of the *Spanish* Council of State is guaranteed only by a national law. The *Swedish* Council of Legislation is formally attached to the Supreme Court but constitutes an independent institution in the legislative process. This is enshrined in the Constitution and a national law.

2.2 *Organizational structure (questions 3-9)*

With the exception of *Greece* and *Sweden*, the independent advisory function is exercised by the Council of State in all countries. In *Belgium*, *France, Italy* and *the Netherlands*, the Council is divided into an administrative law division and an advisory or legislative division. In *Luxembourg* and *Spain*, the Council of State is exclusively an advisory body.

The Councils' advisory divisions consist of state councilors, who in some countries are appointed for life, as in *Belgium* and *the Netherlands*, and in some countries for a fixed period of time. In *Luxembourg*, they are appointed for 12 years. The *Spanish* Council has a mixed composition of state councilors appointed for life, state councilors who are ex

[2] In 2007, the Legislative Council of Romania became a member of the ACA as an advisory body.
[3] Belgium, France, Luxembourg, the Netherlands, and Sweden.

officio members, and state councilors who are appointed for 4-year terms. The ex officio councilors hold a certain office outside the Council of State, which automatically gives them the position as councilor at the Council of State.

In terms of the size, the advisory bodies with a general legislative advisory function in *Belgium, Italy, Luxembourg,* and *the Netherlands* are of a similar size. Including support, those advisory bodies consist of less than 60 people. In *France* and *Spain*, the advisory part of the Council has a size of more than one hundred people. The *Swedish* Council of Legislation and the *Greek* Committee are small in size compared to the others. The *Swedish* Council of legislation normally consists of six members. That Council is formed by judges who are on full-time leave from their regular duties as judges for one or two years. The Council support consists of only one administrative assistant, but the six councilors use their own court's resources for research support. Therefore, there is no record of exactly how many people contribute to writing an opinion. In *Greece*, the Committee consists of approximately ten members. Participation in the committee is not a main function but an additional function.

Formal authority to adopt opinions
In *Luxembourg and Italy*, advisory opinions are formally adopted by a majority vote in the plenary assembly and signed by the president of the Council of State. Formally this is about the same in *the Netherlands*, even though in practice advisory opinions are nearly always adopted by consensus without voting. The vice-president (who presides over the Advisory Division) signs advisory opinions to have them formally adopted. In *Belgium*, advisory opinions are issued by the chamber (composed of three state councilors) within the legislative department that makes the opinion. Opinions are adopted by consensus in *Belgium* as well. If the request for an opinion raises an important or new question about the division of powers between the federal state, the communities, or the regions, it is referred to the united chambers of the Legislation Section. In this case, an opinion is issued by a Dutch speaking and a French speaking chamber together. Finally, the general assembly may meet when requested by the consulting government or if the president so decides. In *Spain*, an advisory opinion can be adopted in plenary or by a permanent committee. The plenary is composed of the President, permanent councilors, ex-officio councilors, elective councilors, and the Secretary-General. The Permanent Commission includes the President, permanent councilors, and the Secretary-General. The *Greek* Committee for Quality Evaluation of the Law-making Process is a collegial body that adopts advisory opinions in a general assembly.

The *Swedish* Council of Legislation is divided into panels of three members. The panels adopt their opinions independently. *France* indicates that the advisory opinions issued are mainly adopted by the administrative divisions, the standing committee, or the general assembly. *Luxembourg* points out that it is possible for state councilors who disagree with the majority to draft a dissenting opinion. Other state councilors can join the dissenting opinion and it will be attached to the majority opinion when the advisory opinion is published. The *Dutch* Council of State also formally has the possibility of a dissenting opinion but in practice this rarely occurs (last time that occurred was in 2004).

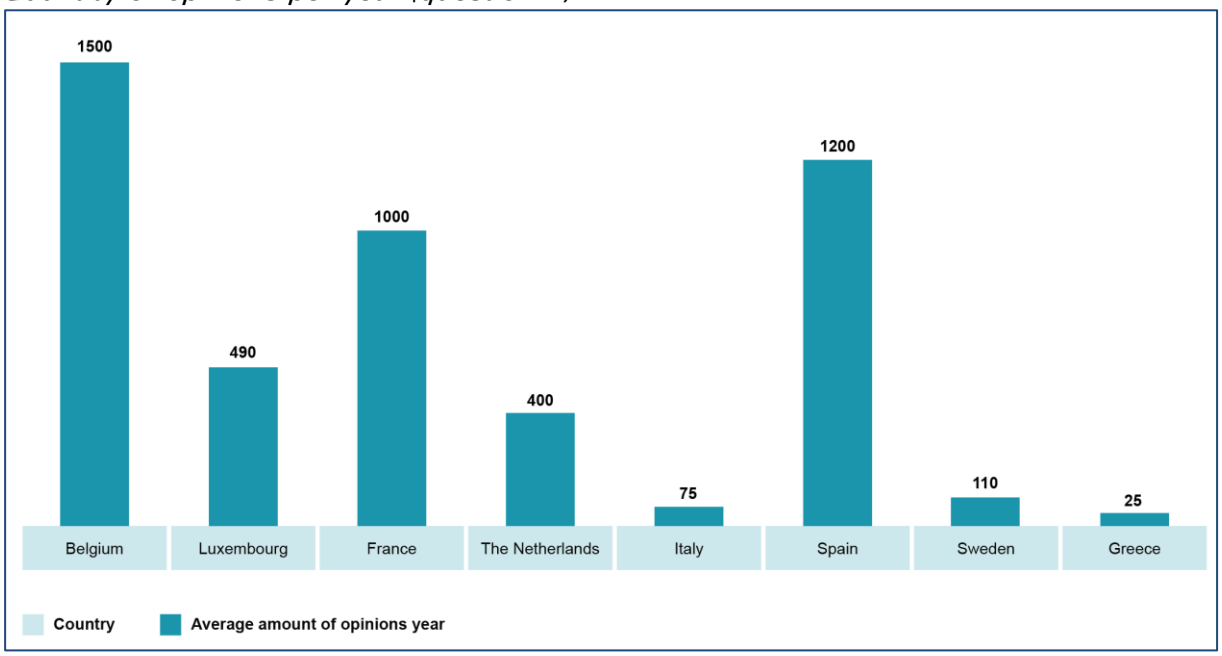
Incompatibilities (question 4)
The position of state councilor is a full-time position in some countries and others it is a position performed in addition to another occupation/job. Incompatibilities vary from country to country. In *Belgium*, there are far-reaching rules regarding incompatible

professions in addition to the position of state councilor. The office of state councilor is incompatible with judicial office, with the exercise of public office by election, with any paid public office or any office of a political or administrative nature, with the offices of notary and bailiff, with the profession of lawyer, with military status and with church status. An exemption for teaching for example is possible for a maximum of two half-days per week. In *France*, members of the Council of State are subject to the general incompatibilities applicable to civil servants. In principle, every civil servant must devote his entire professional activity to the tasks entrusted to him. Therefore, apart from exceptions particularly in the field of writing literature, they may not engage in any profitable private activities. Council members may participate in administrative activities or activities of general interest provided that these activities are compatible with their duties within the Council of State and that they have received prior approval from the Vice President. In *Luxembourg*, the (part time) office of state councilor is compatible with the exercise of another occupation. For state councilors in *the Netherlands* it is possible to have additional functions and activities for one day per week, as long as there are no conflicts of interest. For each proposed additional function permission has to be given by the vice-president, who deliberates with the chair of the Administrative Jurisdiction Division and the secretary-general before deciding. In all countries, political offices are incompatible with the function of state councilor.

Ensuring the unity of advisory opinions (question 5)

The advisory bodies with a general legislative advisory function indicate that they guarantee the unity of advisory opinions primarily by taking into account previous advisory opinions and, if necessary, explicitly deviating from a previous line. *France, Luxembourg, the Netherlands,* and *Spain* also indicate that unity is ensured by dealing with all opinions in the general assembly and adopting them by majority vote. In the Netherlands the advisory opinions are preferably adopted by consensus rather than the formally prescribed majority vote. In *Belgium*, not all advisory opinions are adopted in the general assembly, but when requested by the consulting authority or if the president so decides. In this way, the *Belgian* Council of State ensures the unity of opinions. The *Swedish* Council of Legislation takes previous advisory opinions into account but also emphasizes that complete consistency is not in itself a goal given the non-binding nature of the advisory opinions. In *Luxembourg*, the President of the Council can convene a coordinating committee when the unity and consistency of opinions are in danger of being compromised. This is the case when several committees deal with similar legal issues in different ways. The purpose of the committee is to agree on the line to be followed.

Quantity of opinions per year (question 7)



In terms of the average number of opinions adopted by advisory bodies with a general legislative advisory function per year, there are significant differences. *Belgium*, *France*, and *Spain* report annual averages of between 1000 and 1500 advisory opinions. The other countries issue considerably fewer opinions per year. *Greece, Italy,* and *Sweden* have the lowest averages not exceeding 130 per year. In between there are *the Netherlands* (average 400) and *Luxembourg* (average 490).

The time limit for issuing an opinion (questions 8 and 9)

Whether there is a mandatory time limit for issuing an opinion varies from country to country. In *France*, *Luxembourg*, *the Netherlands*, *Sweden*, and *Spain* there is no formal general maximum time limit. In *Luxembourg*, the parliament has the option of adopting a law article by article and after three months the parliament can vote on it in full without waiting for the advisory opinion. This special procedure means that the Council of State has three months to prepare an opinion. In *Belgium*, the applicant can set a time limit. That deadline can be 30 or 60 days. The vast majority of opinions are adopted within 30 days. If the applicant does not give a deadline, the council attempts to adopt an opinion within 4 months. *The Netherlands* use internal deadlines that vary according to the complexity of an advisory opinion. Non-complicated proposals are provided with an advisory opinion within one-month, complex proposals within three months, and in between there is a category for two months. In *Italy*, there is a general legal deadline of 45 days. If this deadline is exceeded, the government can proceed to the next step in the legislative process without the advisory opinion. In addition to these general rules, all countries have an emergency procedure that sets a short-term deadline.

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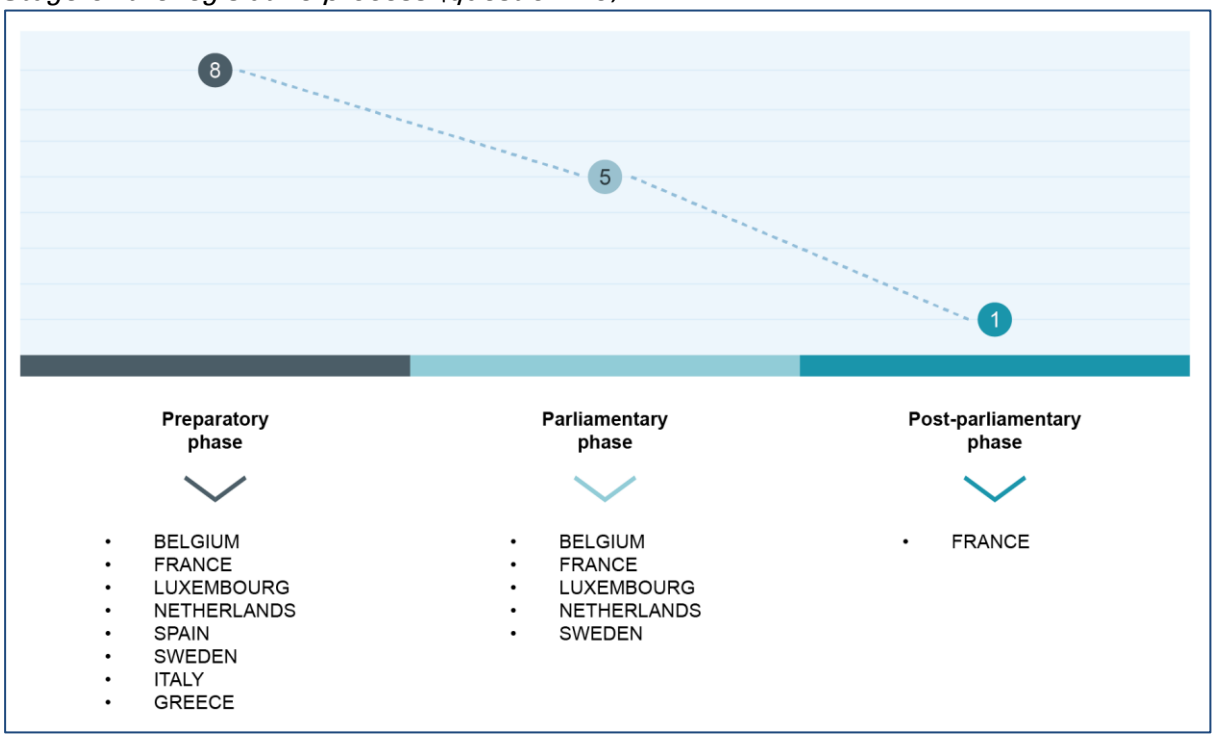
2.3 *Place of the advisory opinion in the legislative process (questions 10-16)*

Stage of the legislative process (question 10)



All advisory bodies with a general legislative advisory function give advice in the preparatory phase of the legislative process. *Luxembourg* states as the only rule that a proposal must also be submitted to the Council no later than the moment of submission of the draft law to the parliament. In other countries, the government must wait until the advisory opinion is adopted before the proposal can be submitted to parliament. Some countries (inter alia, *the Netherlands*) emphasize that the preparatory phase of the legislative process must be finished regarding the draft legislation at the time of a request for an advisory opinion. After receiving the advisory opinion, in those countries, the draft legislation can be modified and submitted to the Council of Ministers for approval.

In addition, five of the eight advisory bodies with a general legislative advisory function can advise in the parliamentary phase of the legislative process. How this is done varies from country to country. In *France*, bills initiated by the parliament (*'proposition de loi'*) are already submitted to the bureau of Parliamentary Assemblies before the president of the assembly submits the text to the Council of State. As a result, the text is already public before the Council of State adopts an advisory opinion. In *Belgium*, the presidents of Parliament may request the opinion of the Legislative Section of the Council of State on any draft legislation. Among other things, the President of Parliament is obliged to request an opinion on draft legislation and on amendments to draft or proposed legislation when at least one third of the parliament concerned so requests. In *the Netherlands* most bills send to the Council of State are initiated by government, although a small number originates from members of the Second Chamber of parliament. The *Dutch* government and parliament can request an additional advisory opinion during the parliamentary process (for instance if the proposal is seriously amended or when new questions are raised). In *Sweden*, a parliamentary committee can submit a proposal to the Council of Legislation. This does not happen often, and it usually happens in the context of bills

initiated by the parliament. *Luxembourg* reports that the deadline for requesting an advisory opinion must be at the same time as submitting the proposal to parliament. It can be understood from this that if the government only requests an advisory opinion at the same time as the proposal is submitted to parliament, the advisory opinion is adopted in the parliamentary phase.

Finally, the *French* Council of State is the only institution that also adopts opinions in the post-parliamentary phase of the legislative process. The Council refers to the possibility for the Prime Minister or the minister involved to request an advisory opinion "on problems arising in the administrative field." This allows them to ask questions about provisions when they have already entered into force. This possibility is designed to be able to ask questions about the interpretation of new or old provisions.

Types of advice (questions 11-12)
In all eight countries with an advisory body with a general legislative advisory function, the advisory opinions are predominantly about national legislation in the context of a mandatory opinion. In *Belgium*, the number of mandatory opinions on decentralized legislation is about the same as on national legislation. A small number of unsolicited opinions on national legislation are also given in *France*, *the Netherlands,* and *Spain*. *The Netherlands*, *Luxembourg*, *Italy*, and *France*, report to also give solicited or unsolicited thematic opinions. Sweden reports to only issue mandatory advisory opinions on national legislation.

In most countries, the main addressees of the opinions are the government or parliament. Only in *Spain, Greece* and *Italy* advisory opinions are addressed exclusively to the government. Indirectly, advisory opinions are also addressed to the general public in countries where the opinions are published. In this context, the opinions of the *Luxembourg* Council of State have a particularly great influence outside the legislative process on court cases, case law, and legal doctrine. The situation in *Luxembourg* is unique since there exists little or no independent academic doctrine in some areas of law. Its advisory opinions are sometimes the only source of legal considerations for understanding the law. Therefore, advisory opinions are often cited and critically examined by *Luxembourg* jurists.

Which information is used (questions 13-14)

Type of information	Used by							
	BE	FR	LU	NL	ES	IT	SE	GR
Public (written) knowledge from scientific or other knowledge institutions, advisory councils or experts	●	●	●	●	●		●	●
Additional information provided by the ministry (reports, consultations, et cetera)	●	●	●	●	●	●	●	●
Ad hoc (written or verbal) insights on request from (academic) experts	●						●	
Ad hoc (written or verbal) insights on request from government officials	●		●				●	
Insights from implementation experts		●		●			●	
Insights from stakeholders or lobby groups		●	●				●	
Case law by (administrative) courts	●	●	●	●	●		●	●

Interaction with the judiciary (questions 15-16)

Case law is frequently used in the research to form an advisory opinion. All eight advisory bodies with a general legislative advisory function indicate that they never contact the judiciary about case law. Judicial decisions are reasoned and that is sufficient for the use of case law by the advisory bodies. All eight institutions also report no to provide feedback to the judiciary in any form. In the countries where opinions are made public, the advisory bodies report that they pay attention in the advisory opinions to all possible negative consequences of the legislation and that the courts can take these considerations into account by consulting the published advisory opinions.

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3. THE CONTENT OF AN ADVISORY OPINION

3.1 *Legal analysis in general (questions 17-19)*

All the responding advisory bodies with a general legislative advisory function (*Belgium, France, Italy, Greece, Luxembourg, the Netherlands, Spain* and *Sweden*) conduct a legal analysis of draft legislation as part of preparing the advisory opinion. This legal analysis consists of the following aspects: 1) relation to higher-ranking law; 2) general principles of law; 3) legal systemic aspects; 4) technical legislative quality and requirements (question 19).

The Netherlands points out that legal and policy analysis are usually very much intertwined. Also, *Luxembourg* points out that when the legal analysis includes political elements, particularly in regard to proportionality, it is limited to verifying that the measure is not disproportionate and, if necessary, inviting the legislature to provide additional information.

Italy reports that the legal analysis also consists of an assessment of whether the approach to the problem is legally well-organized and how unnecessary consequences are avoided. Furthermore, an examination of how supervision and enforcement are organized is conducted. Also, the need for transitional law is taken into consideration.

Belgium, explains that in most cases, their legal analysis is more limited to three main points: the fulfillment of compulsory prior formalities (consultation of authorities, compulsory notifications under a standard of domestic, European, or international law, etc.), the competence (distribution of competences between the components of the *Belgian* Kingdom and between the legislative and executive powers) and its legal basis (analysis of the text with regard to hierarchically superior standards).

France, on the other hand, points out that their legal analysis consists of an assessment on three levels: 1) the quality of drafting (accessibility and intelligibility; compliance with the rules of legislative drafting); 2) legal soundness (legal certainty; compliance with the hierarchy of norms); 3) administrative appropriateness (will the draft text fit correctly into the existing legal system? What are the conditions of implementation in regard to the efficiency of the means to the aims pursued and the capacities available to administrative departments or courts?) It is emphasized that this is distinct from political appropriateness.

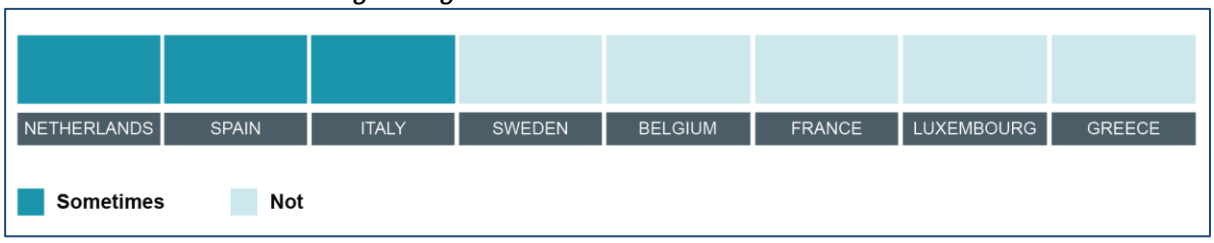
Greece reports that the legal analysis consists of an assessment of the legality and constitutionality of the draft law, compatibility with EU law, consistency and exhaustiveness of the provisions, possible repeal or modification of other provisions by the draft law, and the quality of the impact assessment.

3.2 *EU-aspects (question 21-23)*

Part of the responding advisory bodies with a general legislative advisory function can in principle be involved in any way in the drafting of legal acts of the European Union (*Italy, the Netherlands and Spain*). *Italy, the Netherlands,* and *Spain* point out that they are not involved in the drafting itself but during the negotiation phase, the government can ask for a non-mandatory advisory opinion regarding legal aspects of the proposal of the

European Commission or amendments of the European Parliament on behalf of its negotiation position. This happens once in a few years. On the other hand, *Belgium*, *France*, *Greece, Luxembourg,* and *Sweden* report that they are not in any way involved in the drafting of legal acts of the European Union.

Involvement in the drafting of legal acts of the EU

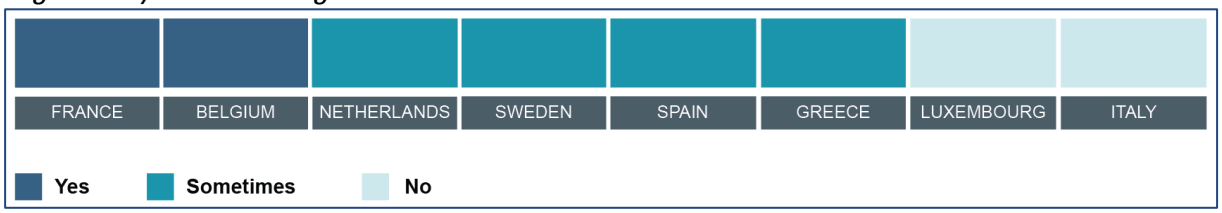


When draft legislation concerns the implementation of legal acts of the European Union, all responding advisory bodies with a general legislative advisory function conduct a legal analysis. In this regard, *Belgium* points out that the analysis focuses on the respect for the hierarchy of norms, including relevant European law, and, if necessary, on the correct transposition of the directive. Moreover, *France* reports a careful procedure in which all relevant documents are requested and analyzed to conduct the legal analysis on the transposition of a legal act of the EU. *Luxembourg* however, reports that the legal analysis focuses in particular on the coherent insertion into the national legal order. *Luxembourg* also takes into account the case law of the Court of Justice of the European Union and may also make remarks on feasibility when the competent authority is unlikely to ensure effective implementation.

In addition, *the Netherlands*, *Spain*, and *Sweden* also conduct a policy analysis as part of preparing the advisory opinion. In this regard, *Italy,* and *the Netherlands* report that there is less room for policy analysis when it concerns the implementation of legal acts of the EU. Because the question of necessity is no longer an issue. Nevertheless, this does not undo the interconnection of the policy and legal analysis, for example on questions of proportionality. On the other hand, *Sweden* reports that the implementation of legal acts of the EU often leads to conflict with established legal techniques in national legislation, use of legal concepts, and accessibility to legislation. This is very often pointed out in advisory opinions.

The responses to question 23 show a mixed picture. *Belgium* and *France* report that advisory opinions contain a legal analysis of the legal acts of the EU. *Greece*, *the Netherlands*, *Spain,* and *Sweden* however, report that advisory opinions sometimes contain a legal analysis of legal acts of the EU. On the other hand, *Luxembourg* and *Italy* report that advisory opinions don't contain a legal analysis of the legal acts of the EU.

Legal analysis of the legal acts of the EU



In this regard, *Belgium* points out that incidentally a legal analysis of European texts must be carried out to understand their scope, and to ensure compliance of the national laws

by both legislative and regulatory standards. This analysis is generally limited to an explanation of a specific measure, sometimes in the light of case law of the Court of Justice of the EU.[4] In the case of projects aimed at transposing a new directive, a more comprehensive analysis is sometimes provided on the scope of the European standard to be transposed. In cases where the draft concerns for example, a mixed trade agreement the advisory opinion focuses largely on the content of this instrument, for example, to address potential incompatibilities with other texts such as the Constitution and the European treaties.[5] *France* reports that the legal analysis of legal acts of the EU and the case law of the Court of Justice of the EU is necessarily integrated into the assessment of the legal correctness of the draft transposition text to ensure faithful and complete transposition of the act in question and to prevent the risk of over-transposition or, on the contrary, unfaithful transposition.

On the other hand, *the Netherlands* reports that when there is relevant case law of the Court of Justice of the EU that could question the legality of an EU legal act (for example, the conformity with higher law such as the right to privacy or the right to property), the advisory opinion can contain the advice to the government to enter in dialogue with the European Commission (which does not derogate from the duty to implement). *Sweden* however reports that when appropriate legal acts of the EU may play a part in the legal analysis, especially concerning the interpretation regarding national measures.

3.3 *Constitutional review ex-ante (question 24-27)*

Almost all responding advisory bodies with a general legislative advisory function (*Belgium, France, Luxembourg, the Netherlands, Spain* and *Sweden,* with the exception

[4] Noted examples: opinion no. 69.659/1 of September 22, 2021, on a bill to prohibit the import into Belgium, export and re-export of hunting trophies of specimens of certain species. However, in order to assess the admissibility of the proposal, the Legislation Section examined the content of Council Regulation (EC) no. 38/97 of December 9, 1996 "on the protection of species of wild fauna and flora by regulating trade therein", and concluded that it already regulated the import, export and transit of hunting trophies from third countries, and that the proposal could not therefore be implemented; opinion 76.298/16 of May 28, 2024 concerning a draft decree of the Government of the Brussels-Capital Region 'regulating the use of phytopharmaceutical products other than low-risk products...'. In particular, it aims to introduce a ban in principle on the use of plant protection products other than low-risk products. To assess the compatibility of this measure with the free movement of goods within the European Union, the Legislation Section examined the scope of two European instruments, Regulation 1107/2009 and Directive 2009/128/EC. Following a detailed analysis of the relevant case law and the interpretations raised, it finally recommended that, in view of the legal uncertainty encountered, the requesting party should pursue a dialogue with the European Commission before adopting the proposed scheme.

[5] For example: opinion 53. 064/VR of May 6, 2013 on a preliminary draft decree of the Flemish Community and the Flemish Region 'tot instemming met het akkoord tussen het Koninkrijk België en de Europese Unie over de voorrechten en immuniteiten van het Secretariaat van de Parlementaire Assemblee van de Unie voor de Mediterrane Regio, ondertekend in Brussel op 10 juli 2012', the Legislation Section thus observes that the headquarters agreement whose assent is being considered appears to have been signed, for the European Union, by the President of the European Parliament. However, it notes that article 335, last sentence, of the TFEU, invoked by the applicant, can hardly serve as a legal basis for this signature. The Conseil d'Etat therefore invites the Belgian authorities to consider what additional measures, if any, need to be taken to ensure that the headquarters agreement is validly concluded and signed in the light of article 218 TFEU.

of *Italy*) conduct a constitutional review (ex-ante) as a part of the preparation of an advisory opinion, using (at least) the following constitutional sources: national constitution, EU-law, international treaties, customary law, general principles of law, case law (national, European, international). They also take civil, political, economic, social, and cultural rights and institutional norms into account. *Sweden,* however, points out that *Swedish* constitutional law is austere on economic, social, and cultural rights and thus the constitutional review in this regard is rather limited. *Greece* reports that the constitutional review is primarily focused on the text of the constitution and the related case law. Other elements of the constitutional review are constitutional principles and the public interest.

The meaning of constitutional norms is usually not straightforward and therefore requires interpretation before it can be applied. In this regard, almost all responding advisory bodies with a general legislative advisory function (except for *Italy*) have reported that (at least) the following methods of interpretation are applied: literal interpretation, historical interpretation, teleological interpretation, systematic or contextual interpretation. Furthermore, *the Netherlands* points out that it is important to consider the underlying constitutional system, values, and principles (system of the constitution, as well as the constitution in a broader sense including treaties with equivalent provisions). Thus, the place of a constitutional provision in a particular chapter of the Constitution and its relationship to other constitutional norms must be considered to properly interpret the meaning and scope of a provision. It is also important to look at existing legislation in the formal sense, in which a constitutional provision is elaborated. This may also include European legislation. The interpretation of constitutional provisions is made explicit in an advisory opinion (insofar relevant) in a separate paragraph: 'constitutional framework'.

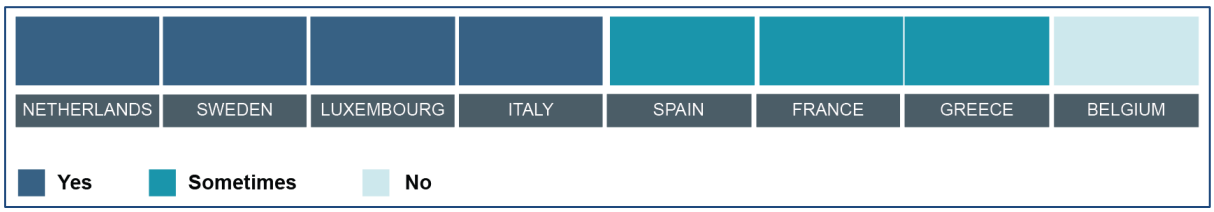
However, *Italy* reports that in the Italian legal system, the Constitutional Court is competent to decide whether a provision of law is compatible with the constitution. Along the same lines, *France* reports that in the French constitutional system, the 'Conseil constitutionnel' (Constitutional Council - judiciary) is the privileged interpreter of the constitution, with its interpretation methods and techniques: 1) the reservation interpretation – interpret directly on the normative substance of the law to bring it into harmony with constitutional requirements; 2) conforming interpretation - when a text is susceptible of several meanings, the meaning chosen will be that which ensures compliance with higher standards. Thus, the Conseil d'Etat's interpretation of constitutional norms is (inter alia) guided by a concern for consistency with those already issued by the Conseil constitutionnel and also the Cour de cassation, as well as by a desire to anticipate future interpretations of these norms. They also use the following common rules of technical interpretation:
- when a principle has been established, derogations from this principle are subject to strict interpretation;
- between two possible interpretations of a text, the one that gives it its useful effect must be chosen;
- terms with two possible meanings should be interpreted in the sense best suited to the subject matter;
- a term that appears several times in the same text should be interpreted in the same sense;
- the clear letter of a text prevails over its spirit;
- the explicit norm prevails over the implicit norm, as established by a contrario, for example;

- the special rule prevails over the general rule;
- the later norm prevails over the earlier rule which applies to the norm under review and not to the reference norm.

On the other hand, *Sweden* points out that in general, the constitutional interpretation tends to be predominantly textual (literal interpretation). Furthermore, Luxembourg points out other methods of interpretation: interpretation of international law and comparative interpretation.

In response to question 27, almost all responding advisory bodies with a general legislative function (except for *Italy*) report that constitutional review ex-post is taken into account in (the preparation of) advisory opinions. In this regard, *Belgium,* and *France* report that reference to and convergence between the interpretations (ex-ante and ex-post) is important. In *Belgium*, when carrying out its ex ante review of the constitutionality of laws, decrees and ordinances, the Legislation Section takes account of the rulings of the Constitutional Court, for several reasons. Its aim may in fact be to give a full opinion on draft texts that are intended to replace rules whose constitutionality has been challenged in the context of other litigation, to highlight similarities between the case under consideration and other texts that the Constitutional Court has previously had to deal with, or to better define the scope of the constitutional rules of reference. Both the Constitutional Court and the Legislation Section thus refer to each other's work and often develop convergent interpretations. Also, *France* points out that the revision of the French Constitution in 2008 instituted an ex-post constitutional review in which the Conseil d'Etat does not pre-judge the constitutionality of provisions submitted to it. As soon as there is a reasonable doubt about the constitutionality, it is forwarded to the 'Conseil constitutionnel' for constitutional review. In the advisory role, the Conseil d'Etat relies on all relevant case law to assess the constitutionality of draft legislation submitted to it, including that handed down by the 'Conseil constitutionnel' on priority questions of constitutionality previously referred to it.

3.4 *Policy analysis (question 28-29)*



A part of the responding advisory bodies with a general legislative function report to conduct a policy analysis (*Italy, Luxembourg, the Netherlands and Sweden*), which take the following aspects into account: analysis of the problem, approach to the problem, suitability and objective, effects, proportionality, implementation, execution, enforcement, legal practice. In this regard, *the Netherlands* points out that it is important to include the points of view of relevant stakeholders. *Sweden* however, notes that (insofar possible) generally this does not involve 'pure policy' issues.

France, *Greece,* and *Spain* report to sometimes conduct a policy analysis. In this regard, *France* notes that the political objectives of the draft legislation are not assessed. However, it will be assessed whether the draft legislation is realistic and effective,

particularly in light of the timetable for implementation and the resources earmarked for achieving it. The policy analysis in *Greece* contains an assessment the of impact studies, the accuracy of the qualitative and quantitative data they contain, and their ability to support the legislator' s intended aim.

Belgium reports not to conduct a policy analysis.

3.5 *Other aspects (questions 20 & 30)*

The responses from the advisory bodies with a general legislative function give a diverse view on the other aspects that can be part of an advisory opinion. *Spain* and *Sweden* can in principle broadly include other aspects in advisory opinions, such as suggestions on potential solutions, technical remarks, and supporting remarks.

Sweden points out that all advisory opinions have solutions to legal-technical issues and provide alternative texts.

However, *the Netherlands* includes technical remarks about major shortcomings in advisory opinions. Minor supporting-technical remarks are not included in the advisory opinion but are forwarded to the relevant department without becoming public. The latter also applies to *Sweden*. Furthermore, *the Netherlands* does not suggest alternative texts and can to some extent suggest potential solutions, but this is not expected as the standard.

Italy reports to include technical and supporting remarks in advisory opinions. Also, advisory opinions can include recommendations and remarks on drafting issues and adhering to government guidelines. Furthermore, advisory opinions can include suggestions on potential solutions, but this is not expected as a standard. In this respect, there is no obligation to suggest alternative texts, but this often happens in a spirit of dialogue and collaboration from the perspective of the interest of the law.

Luxembourg often includes suggestions on solutions to legal problems in advisory opinions. Moreover, *Luxembourg* points out that in principle practical, economic, sociological, or political considerations can be included in advisory opinions, but this is increasingly rare.

Moreover, *France* points out that advisory opinions may include drafting recommendations, regarding legal difficulties. This can also include, where appropriate, ways of overcoming these difficulties. Also, the preparation of advisory opinions can include an assessment of the quality of the impact studies that must accompany draft legislation (impact studies on the impact of the bill on European law, domestic legal system, methods of application over time, economy, financial system, environment and the methods used to calculate them, and the consequences for the public sector).

4. THE FOLLOW-UP OF AN ADVISORY OPINION

4.1 *Public access to advisory opinions (questions 31-32)*

Most of the advisory bodies with a general legislative function make their advisory opinions public by publishing them on their websites at the time an opinion is adopted.[6] *Spain* also publishes advisory opinions online, but usually only after the adoption and publication of the regulation in the Official Gazette. In *Spain*, the publication of advisory opinions is not regulated and the consulting party must decide at what point in the legislative process advisory opinions are published. Traditionally, *France* does not publish its advisory opinions. In 2015, the president of the republic decided to deviate from that rule for opinions accompanying draft laws of parliament ("*proposition de loi*"). These advisory opinions are made public on Légifrance, subject to certain categories of exceptions. All other proposals are still not made public. In *Greece*, the advisory opinions are never made public.

4.2 *Tools for publication (question 33)*

Advisory bodies with a general legislative function in most cases make little or no use of press releases, summaries, press conferences, or other means of publication. In *Belgium*, *Italy*, and *the Netherlands*, press releases are sometimes used for the publication of opinions with high public interest. The Council of State website and social media channels are used for this purpose. Apart from *the Netherlands*, no country reports to organize press conferences in any form. *Spain* indicates that it has a communications department responsible for maintaining media relations and providing information about the activities the Council performs.

4.3 *Response to the advisory opinion (question 34)*

In *Belgium*, *Italy*, and *the Netherlands*, the (Flemish) government is obliged to respond to advisory opinions before a draft law is submitted to parliament. In *Belgium* and *the Netherlands*, this obligation is not regulated by law or in the constitution but driven by practice or an (internal) regulation of the (Flemish) government. *Italy* does not explain how the obligation is regulated. In other countries, there is no obligation to respond to the advisory opinions.

4.4 *Evaluation (questions 35-36)*

In general, advisory bodies with a general legislative function evaluate their work by monitoring the continuing progress of the legislative process after issuing an advisory opinion. They thus keep track of the extent to which opinions are followed up. This is the case in *France*, *Italy, Luxembourg,* and *the Netherlands*. Also, these countries report issuing an annual report that considers the work done by the advisory body and often provides an overview of the main trends in the advisory opinions. *France* points out that the judiciary division informs the advisory division about lawsuits challenging a regulation on which the Council has issued an opinion. In addition, *France* evaluates its advisory opinions by organizing annual meetings with the Government Secretary. The purpose of these meetings is to exchange views on the operation and practice of the opinions and

[6] Belgium, Italy, Luxembourg, the Netherlands, and Sweden.

to improve this process. *Greece* only prepares an annual report addressed to the parliament and ministers. *Belgium* reports not to evaluate its advisory opinions with formal processes and does not make an annual report. The Council only considers the impact of previous opinions when formulating a new advisory opinion.

4.5 *The role of advisory opinions in ex post constitutional review (question 37)*

On the extent and manner in which ex post constitutional review relies on the advisory opinions, most countries[7] report that lawyers and judges can refer to them. Constitutional courts are never bound by advisory opinions. *France* states that there is a high degree of agreement between the Constitutional Court and the Council of State on constitutional interpretation and that the Court considers the views of the Council of State. Only *Belgium* has been able to provide figures about the extent to which the ex post constitutional review relies on advisory opinions. In *Belgium*, the Constitutional Court frequently refers to opinions of the Legislative Section of the Council of State. The advisory opinions usually serve to support the Court's reasoning. This also happens in judgments of the highest administrative court when the opinions are relevant to the assessment of the case. In a scientific article from 2021 (L. Martens), based on an overview of all Flemish draft decrees of a given period, the following result was found. In 17.78% of the cases in which the annulment of a decree was sought before the Constitutional Court, explicit reference was made to the opinion of the Council of State when the decree was drafted. In almost 27% of rulings on decrees, the Constitutional Court explicitly referred to opinions of the Legislative Department. In *Spain*, the advisory opinions are not considered a source of law. Nevertheless, advisory opinions are seen as a valuable tool for the analysis, study, and application of law due to their high technical quality and the prestige of the institution. Advisory opinions are therefore often cited by professionals and are a useful source for shaping and understanding the law.

[7] Belgium, France, Greece, Italy, Luxembourg, the Netherlands, and Spain.

5. JUDICIAL FEEDBACK TO THE LEGISLATOR

5.1 *Providing feedback on legal technical problems*

Providing feedback (questions 38 -40)
The vast majority of members (27) answer they provide the legislator with feedback on technical legal issues that arise from legislation[8], whereas only 3 members answer they do not.[9] From the 27 members who answer affirmative, 26 members mention feedback on technical legal issues in existing legislation, whereas 10 members mention feedback on technical legal issues in draft legislation as well.[10] 1 member mentions feedback on technical legal issues in draft legislation only.[11]

Although 26 members[12] mention feedback on technical legal issues in existing legislation, a certain spectrum is visible as to the directness of this feedback. This has to do, on the one hand, with the channel where feedback is given: judgments and/or other channels (see question 39). On the other hand, it has to do with the methods of providing feedback in judgments (see question 40).

Nearly all the 26 members (25[13]) provide feedback on technical legal issues in existing legislation at least through their judgments. Therefore, here we focus on the methods of providing feedback in judgments first. 24 members[14] at least provide feedback implicitly in the reasoning of the judgments.

From these, 4 members express reluctance to do so. *Cyprus, Greece,* and *Portugal* emphasize that they don't address the legislator explicitly and directly in their judgments. *Cyprus* states the separation of powers is very well rooted in the system and the unwillingness to interfere in any way with the powers of the legislature is expressly stated in a number of judgments. The *Czech* SAC traditionally states in its judgments that it is only competent to assess the legality of decisions and procedures of administrative bodies *de lege lata*, and not to project *de lege ferenda* considerations on the most appropriate arrangement of legal relations into its decision-making activities. However, still these members at least occasionally provide feedback on technical legal issues implicitly

[8] Albania, Austria, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Finland, France, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Sweden.
[9] Malta, Romania, United Kingdom.
[10] Albania, Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Hungary, Italy, Serbia, Slovakia.
[11] Hungary.
[12] Albania, Austria, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Finland, France, Estonia, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Sweden.
[13] Albania, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Finland, France, Estonia, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Sweden.
[14] Albania, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Estonia, Finland, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Serbia.

through the reasoning of their judgments or (as mentioned by *Greece*) through an *obiter dictum* as well. In *Cyprus* in this way the SC in rare cases can point out an obvious discrepancy in the law or decide on the applicability or bindingness of a law. Anyhow, in *Cyprus* the SC can refer the question whether a law aligns with the provisions of the Constitution to the constitutional court. In *Portugal* the SAC, as part of its judicial functions, makes an assessment regarding the legislation's interpretation and application (lack of a legal basis, legislative error and/or incompetence of the law) through its judgements. In the *Czech Republic* the SAC has occasionally addressed technical and structural issues of legislation in its judgments.

Another 20 out of the 24 members do not emphasize so strongly that they don't address the legislator directly and explicitly in their judgments, but still provide their feedback at least implicitly to the legislator through the reasoning of their judgments, though maybe with some less reluctance. In *Albania*, in its judgments, the SC delivers interpretative guidance concerning the applicability or binding nature of the legal norm under consideration, as well as the resolution of conflicts between norms raised in the cassation appeal. In *Belgium,* it depends on the motivation of the judgment which legal problems may be resolved. In *Bulgaria*, the SAC provides feedback in its judgments by drawing conclusions about the facts of the case, the applicable law, and relevant legal principles. In *Estonia*, the SC can express for example, that the existing regulation should be more precise, or an issue should be regulated systematically. Also, the *Finnish* SAC can provide feedback to the legislator through judgments. In *Ireland,* the SC provides feedback on legislation to the legislator insofar as it indicates where legislation is incompatible with higher law (the Constitution or EU Law) or the ECHR. In *Lithuania* the SAC, in the *Netherlands* the AJD of the Council of State and in *Slovenia* the SAC provide feedback to the legislator, for example if there is a lack in a legal basis or competence in the law. In *Lithuania* this feedback is at times provided in normative cases because the SAC has the authority to rule on the legality of regulatory acts. In *Luxembourg* feedback is given mainly through legal arguments contained in the motivation of the judgments of the AC. In *Spain* the SC's decisions frequently contain reflections and legal reasoning that highlight technical issues or ambiguities in existing legislation. In *Sweden* the SAC may for example point out that the legislation seems to have unintended results that cannot be addressed by legal interpretation, but this happens rarely.

13 out of the 24 members who can provide feedback implicitly in the reasoning of their judgments, can give feedback in their judgments also by way of a legal decision on the applicability or bindingness of legislation.[15]

Furthermore, 8 of these 24 members (*Belgium, Czech Republic, Estonia, Finland, Ireland, the Netherlands, Serbia, Spain*) can give feedback in their judgments also explicitly in a paragraph that directs itself to the legislator. *Belgium* explains that, in order to give feedback explicitly, one of the parties need to request that the court in the motivation of its judgment will precise which measures have to be taken to remediate the illegality that has led to the annulment. For *Italy* providing feedback explicitly in a paragraph that directs

[15] Albania, Bulgaria, Czech Republic, Estonia, Germany, Ireland, Lithuania, Malta, the Netherlands, Norway, Portugal, Slovenia, Spain.

itself to the legislator is the only method to provide feedback in judgments. The *Italian* Council of State in practice has a reporting power in its judgments, to refer to the government cases of laws not updated and not coordinated and of legislation difficult to interpret and apply. Feedback can for example be given if there is an antinomy between different laws that cannot be overcome by interpretation or if there is uncertainty in relation to the regime to be applied due to the lack of clarity of the provisions.

Now we focus more on the channel where feedback is given: judgments and/or other channels. *Belgium, Cyprus, Germany, Greece, Ireland, Malta, Norway, Portugal, Sweden* provide their feedback only in judgments.

Austria and *France* do not use their judgments to provide feedback on existing legislation. Therefore, they use alternative methods. In *Austria*, the SAC can propose suggestions for improvement as well as criticism regarding existing laws in the annual activity report but also informally. In *France* the analysis of technical legal difficulties that can arise during the exercise of the judiciary function of the Council of State, is done by the "section des études, de la prospective et da la coopération", which returns this analysis to public authorities in its annual public report, studies, publications, events and regularly contacts with parliament.

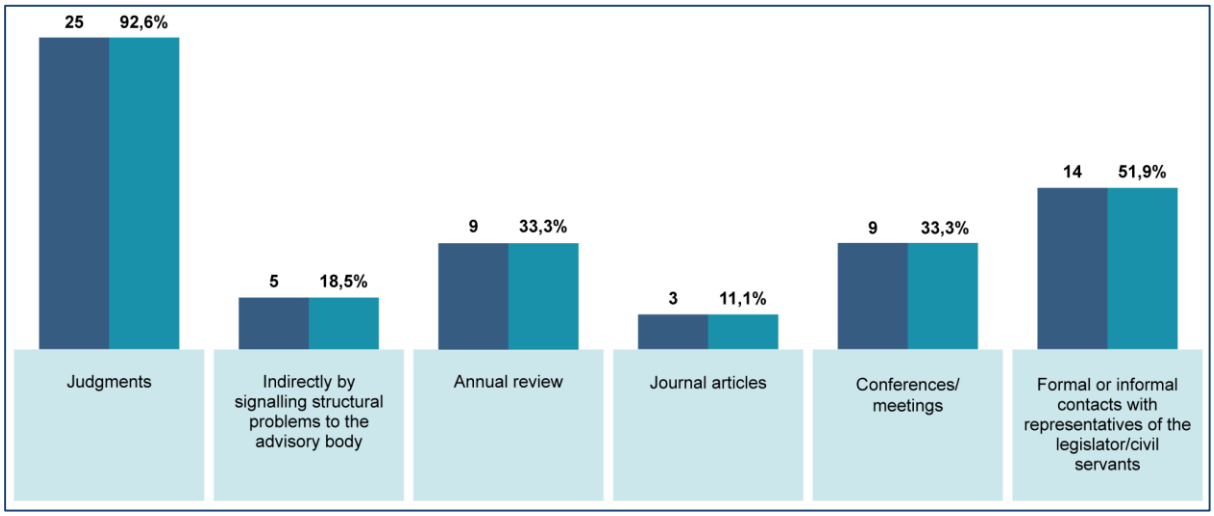
The other members use a plurality of communication methods. In this regard, it can be pointed out that some members mention more direct ways to provide feedback. In *Latvia* a court may take an ancillary decision about, amongst others, a possible violation of legal provisions. The ancillary decision shall be sent to the relevant authority. In *Poland,* the President of the SAC informs the Prime Minister about problems in the functioning of public administration resulting from cases examined by administrative courts. In *Serbia* the SCC, if it notices deficiencies in the application of the law in practice, may point out to the authorized proponents the deficiencies of particular legal solutions.

As stated before, 10 members mention feedback on technical legal issues in draft legislation as well, and 1 member mentions feedback on draft legislation only. In *Albania,* as part of a consultation process, the High Judicial Council forwards to the SC requests for an ex-ante advisory opinion/revision, with relation to various draft-law proposals that might affect the judiciary. The *Austrian* SAC may provide feedback on draft laws either as an informal suggestion or as a statement in the course of the legislative process as a consulted institution if the subject of the bill is relevant for the court or if the court is directly affected by the bill. The *Bulgarian* SAC has a unit that prepares opinions on draft laws submitted for consideration to parliament and government, concerning the administration of justice and constitutional cases. In the *Czech Republic* the SAC serves as a consulting body for the area of legislation that pertains to its activities, although the SAC cannot raise "substantive comments". The *Finnish* SAC can provide feedback to the legislator through opinions requested by the SAC in the legislative process, when draft legislation concerning a particular legal technical issue is identified by the SAC as problematic. The SAC has the authority to propose legislative amendments as well. In *France* the same as described about feedback on technical legal issues arising during the exercise of the judiciary function of the Council of State, applies to feedback on technical legal issues arising during the exercise of the consultative function of the Council of State. In *Hungary*, the President of the National Office for the Judiciary (OBH) is entitled to

propose legislation to the authority who initiates legislation. The Curia participates in preparing bills and adopting an opinion of them only on an ad hoc basis, at a specific request or because of the membership of judges in certain working groups of the OBH. In *Italy*, the Council of State, according to a Royal Decree, in advisory function refers to the government cases of laws not updated and not coordinated and of legislation difficult to interpret and apply. In *Slovakia,* the Office of the SAC regularly monitors upcoming legislative changes and, if necessary, submits comments under the interdepartmental comment procedure. The plenary of the SAC, on the basis of reports on the application of laws, makes suggestions to the Minister of Justice for new legislation. In *Serbia* public authorities are obliged to use the e-Consultation Portal for conducting consultations and public hearings in the process of adopting regulations and planning documents.

Three members answer they do not provide the legislator with feedback on technical legal issues that arise from legislation (*Malta, Romania, United Kingdom*). *Malta* points out that the judiciary is not directly engaged in the law-making process. Any feedback to the legislator is usually indirect. *Romania* states that the HCCJ does not directly provide legislative feedback to the legislature on technical or legal issues arising from legislation and does not participate directly in the legislative drafting process, but the reasoning in its judgments, especially those concerning technical issues or legal interpretation, may draw attention to issues that may require legislative amendments. Also, the SHCCJ can refer the question whether a law aligns with the provisions of the Constitution to the constitutional court.

Where feedback (question 39)
In so far as feedback is given, the respondents use a variety of channels:

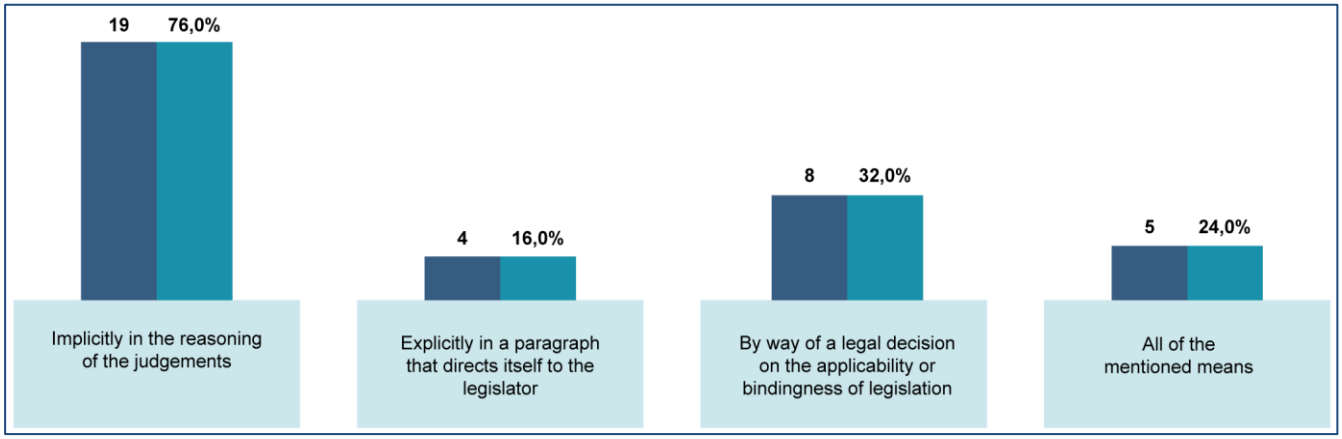


In addition, a number of members mention other channels where feedback is provided. Regarding feedback on existing laws, *Latvia* mentions ancillary decisions, whereas *Malta* states that the judgment can contain an order to send it to the Clerk of the House of Representatives.

Regarding feedback on draft laws, *Austria* clarifies it can make an informal suggestion or a statement in the course of the legislative process, the *Czech Republic* acts as consulting body and participates in roundtable discussions, *Estonia* gives advisory opinions, *Hungary*

mentions indirect influence through the President of the National Office for the Judiciary (OBH) and *Italy* gives advisory opinions and *Romania* comments on draft legislation.

Methods of providing feedback in judgments (question 40)
As to providing feedback in judgments, the respondents use the following methods:



Examples of feedback on technical legal issues in the highest administrative court's judgments (question 41)
In *Albania,* the SC by declaring the unlawfulness of a normative act because it omitted foreseeing the right of a magistrate to possess a service passport although the law provided for it, imposed the Government to fill as soon as possible the omission as the only way to repair the infringed right of a magistrate.

Belgium cites a judgment in which the court decided that the Law on Animal Welfare had an insufficient legal base. Although the provisions served animal welfare, the legal base did not allow the government to impose a restriction on breeders to grow only seven different races of animals.

Bulgaria mentions a judgment concerning a law that aims to preclude a conflict of interest affecting a mayor. According to the court, the objective of the legislator has been achieved. This is evidenced by the fact that the reconciliation of public functions with activities in the private sphere, which is undesirable by law, has been eliminated.

In *Croatia*, the Law on Administrative Disputes did not grant the High Administrative Court the possibility to return the case to the first-instance court for retrial. Nevertheless, through its decisions, the court established such a practice and returned cases for retrial if significant violations of the procedure were established. As a consequence a revised Law of Administrative Disputes, entered into force that states that the High Administrative Court will return the case to the first-instance court for a retrial if it determines that the administrative court has committed a significant violation of the provisions of the administrative dispute, or that he has wrongly established a decisive fact or has not established it.

In the *Czech Republic,* the SAC in a judgment provided very strong feedback on technical and structural issues accompanying the election process for the Chamber of Deputies. The key issue was the use of double-sided ballots. As a result of these issues, the Court

declared the election of one candidate invalid and recognized another candidate as the duly elected member of the Chamber of Deputies.

Also, in a judgment the SAC addressed the system of administrative punishment for traffic offences, specifically the imposition of penalty points. It follows from the legal provisions that while reaching 12 points (leading to a disqualification form driving or the driving license being revoked) is automatically notified to the driver, to obtain information about individual point records and the current point status, the driver must submit a request to the relevant authority. Given that even a single point record in the driver's register constitutes a "punishment" within the meaning of the Charter and the Convention, according to the Court it appears more appropriate *de lege ferenda* that the driver should also be officially notified of each individual record.

In *Estonia*, in a case that concerned a question about the member of local government´s right to appeal in internal dispute matters, the Administrative Law Chamber explained, that currently the law does not state the member a right to appeal, but the legislator can establish appropriate regulation to give council members the right to appeal in important internal disputes. In a second case that dealt with the same issue, the Administrative Law Chamber stated furthermore, that it is within the competence of the legislator to decide whether to establish such a regulation for the settlement of disputes arising from internal disputes. If the legislator creates such a set of regulations and deems it necessary to grant the right of appeal, then issues arising from internal disputes should be resolved systematically and comprehensively, also providing for the necessary legal remedies that the council member would be able to use in the event of a violation of their rights.

In *Finland*, in a case where the applicant argued that the Finnish and Swedish language versions (both official and equally valid) of the relevant provision of law differed from each other, the SAC in a paragraph of the decision noted that it is for the legislator to ensure the uniformity of legislation, and to this effect sent the decision to the responsible ministry for information.

In another case, a government regulation was in force according to which legal aid fees in cases involving international protection where set at certain predetermined sums (normally four hundred euros/case). The SAC found that this led to unreasonable outcomes for legal assistants, as the wording of the regulation did not allow for equitable remuneration, as stipulated in the Legal Aid Act, to be paid to the legal assistant, where the amount of work exceeded that of normal cases. The SAC found that the regulation was in contradiction with the Legal Aid Act. The regulation on legal aid was amended shortly after, to account for the systemic problem found by the SAC:

The *German* FAC ruled that in view of the importance of performance appraisals for the selection decision to be made solely in accordance with the Basic Law, the requirements for the preparation of performance appraisals cannot be left to administrative regulations alone. The basic requirements for their preparation must be regulated in legal norms. The principle of the rule of law and the principle of democracy obliges the legislator to essentially make the relevant regulations for the realisation of a fundamental right or - as in this case - a right equivalent to a fundamental right itself and not to leave these to the actions and decision-making power of the executive.

In *Greece* judgments can contain a phrase stating that "nothing prevents the legislator from providing for a new provision".

In *Ireland* a SC judge declared that a provision of the Act involved is inconsistent with the Constitution insofar as it does not extend to Mr <...> as a parent of the second, third and fourth appellants. This is not a complete solution for the appellants since it would require a legislative amendment to positively provide for benefit in their case. It remains a matter for the Oireachtas (Ireland's national parliament) to consider how best to make provision for benefit consistent with the provisions of the Constitution.

The *Italian* Council of State gave feedback to the legislator about a possible conflict between definitions provided for by a Legislative Decree.

Latvia provides an example of a judgment in which the SC noted that the Energy Efficiency Law does not *expressis verbis* regulate the situation in the case, nor does the drafting material provide clear information on the energy efficiency levy system. The Court also pointed out that the shortcomings identified in the law generally indicate its poor quality. As an example of an ancillary decision Latvia states that the SC has drawn the attention of the Cabinet of Ministers to the need to clarify a provision of the Regulations on Eligible Expenses for Education and Medical Services.

In *Lithuania* the SAC ruled that the efforts to eliminate violations of passive electoral rights, even though there are no established legal norms in the Election Code regulating the extraordinary situation, represent the expression of the constitutional powers granted to the Central Electoral Commission in organizing elections. The decision to reinstate a candidate should be viewed as a justified, albeit not ideal, attempt to correct the shortcomings in election organization and thus protect the rights of individuals exercising active electoral rights.

In *Luxembourg*, in a case concerning the dismissal of a deputy prime minister for health reasons, the Administrative Court emphasized that the absence of regulation providing social security coverage for political representatives who must cease to exercise their functions for reasons of illness or disability, is all the more analyzed as a dysfunction of the state public person, without however the administrative judge being authorized to fill such a structural deficit.

In the *Netherlands* the AJD of the Council of State stated that the Aliens Act 2000 is insufficiently clear and precise to be used as a basis for investigating mobile phones of aliens in custody without their consent, given the nature of the interference in private life that the investigation of a phone entails today. This means that the legislator needs to elaborate on this basis if it wants to make it possible to investigate mobile phones of aliens in custody without their consent.

The *Polish* SAC ruled that the implementation of the right to participate in a local referendum should be based on an appropriate system of institutions and procedural solutions. The task of the legislator is to regulate the procedural competences of the legal entity and the obligations of the addressees of these competences in such a way as to fully respect the principles of subjectivity of members of the local government community entitled to participate in the referendum. First of all, legal solutions should guarantee them

influence on the definition of the subject of the referendum and legal means of control over the course of the referendum process.

In *Portugal* the SAC when assessing a legislative error, considered there was an oversight on the part of the legislator. From the CPT to the CPPT, the legislator wanted to put an end to the appellant's option of arguing before the court of appeal. By mistake, the legislator kept it in the CPPT, rising doubts in the interpretation. Recognising this oversight a Decree-Law removed this legal provision.

Romania provides an example of a judgment in which the court considered that the proposals for legal improvements were formulated based on the aspects found during the judicial activity at the HCCJ and mainly followed the coordinates as described. Romania also provides examples with regard to the submissions on the unconstitutionality of laws made by the HCCJ prior to the enactment of the law. The HCCJ considered that the exception of unconstitutionality is well-founded in so far as a court of law does not have the possibility to present to the plaintiff either orally or in the grounds of its decision the reasons that led to the rejection of his request if these reasons are based on the content of classified information.

In *Slovakia* the SAC emphasised that an ambiguity was primarily contained in the legislation itself, which on the one hand identifies the management of municipal roads as a municipal competence and, at the same time, states that local state administration in matters of local roads and special purpose roads is carried out by municipalities as a delegated exercise of the state administration. Municipalities then find themselves in the so-called 'grey area' of unclear legislation when dealing with otherwise legitimate issues such as parking regulations on their territory, which then leads to expedient solutions. The court of cassation therefore calls on the legislator to define *de lege ferenda* the competences of the municipality in a normatively unambiguous manner.

In *Slovenia* the SAC ruled that the court may not interpret the law in a manner that attributes to it a meaning that the legislator should not have determined under the stated conditions. The proposed interpretation would constitute an infringement of the Constitution, for which there does not appear to be any constitutionally permissible objective. In light of the above, it is the task of the SC to seek an alternative interpretation of the aforementioned provision that is consistent with the Constitution.

In *Serbia* the SAC noted that in fiscal cases, the Law on Tax Procedure and Tax Administration contains rules about the delivery of the tax act, including the situation that delivery was not possible. According to the SAC that means that the legislator must elaborate when it is considered that the delivery of the act was not possible, if they want to regulate this issue through the *lex specialis* in a way that is different from the way the issue is regulated by the Law on General Administrative Procedure.

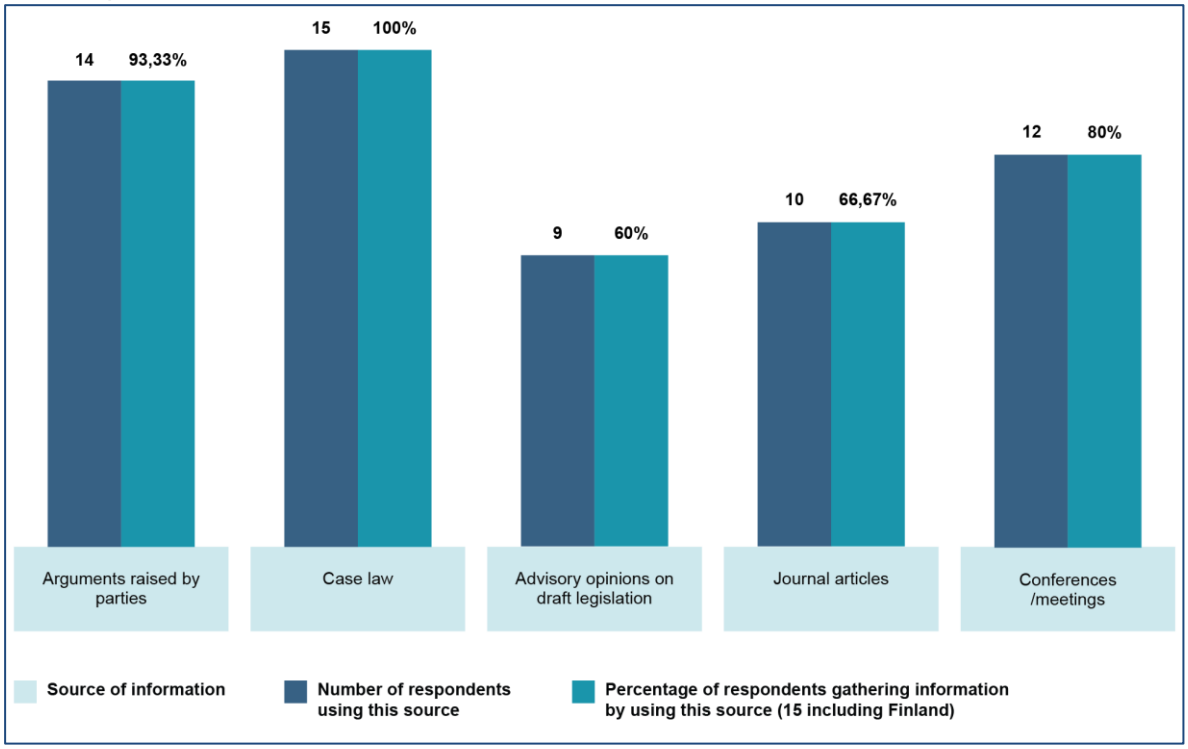
In *Sweden*, the SAC decided upon a case concerning the absence of a right to economic compensation for legal costs in administrative courts in Sweden. The court held that to the extent it is deemed to be critical to create a possibility for the administrative courts to award individuals' compensation for their litigation costs, questions of both principle and practice arise which require considerations which should befall the legislature.

Accordingly, such a regime should not – when the right to a fair trial does not so require – be implemented by means of case law.

5.2 *Providing feedback on structural problems*

Gathering information (question 42)
In total, 14 respondents answer that they gather information about structural problems that might arise from legislation.[16] 15 institutions have answered that they do not gather such information.[17] The highest administrative court of *Finland*, however, explains that whereas it does not structurally gather information about structural problems, it does incidentally receive such information when dealing with particular cases. In such a case, the highest administrative court seizes the opportunity to address the structural problem at hand through its case law.

Sources of information (question 43)
The respondents gathering information about structural problems, including *Finland*, use a variety of sources:



France explains that its "section des études, de la prospective et de la cooperation" uses all available public information, including the advisory opinions of its Council of State's advisory section and the reasoning in its judicial section's case law.

[16] Bulgaria, the Czech Republic, France, Greece, Lithuania, Luxemburg, the Netherlands, Slovakia, Slovenia, Spain, Serbia, and Norway.
[17] Austria, Belgium, Croatia, Cyprus, Finland, Germany, Hungary, Ireland, Italy, Latvia, Poland, Portugal, Romania, Sweden, and the United Kingdom.

Lithuania points out that it also consults the legislative history and other preparatory documents of statutes, as well as working groups tasked with drafting legislation materials.

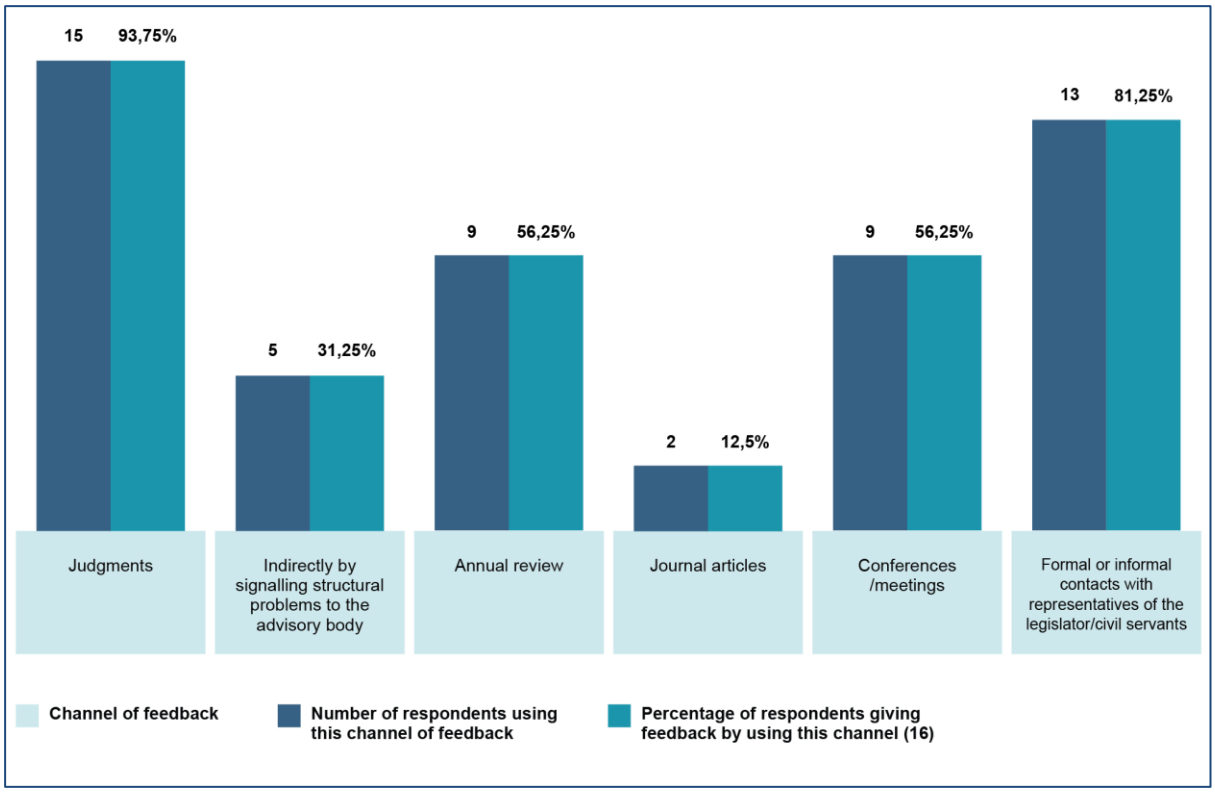
Albania clarifies that it acquires insight into structural issues or recurring practices primarily through the arguments raised by parties during judicial proceedings. The court then supplements this information by relying on its established case law and the statistical data compiled on a monthly/yearly basis by the court's colleges and registry. This enables the court to discern broader trends and structural problems from a macro perspective.

Providing feedback (question 44)
16 respondents answer that they provide feedback about structural problems. These are the same respondents that replied they gather information (see above), except *Albania* but plus *Croatia*, *Italy,* and *Finland*. *France* and *Spain* specify in this regard that there is no difference with providing feedback on technical legal issues.

13 respondents answer that they do not provide feedback about structural problems.[18] Of these, *Germany*, *Portugal,* and *Albania* indicate that whereas their highest administrative courts do not provide such feedback directly to the legislator, they do provide such feedback in an indirect manner, i.e. implicitly in the reasoning of their judgments. The frequency of this depends on the judicial panel dealing with a case. *Cyprus* and *Romania* clarify that whereas they do not provide feedback about structural problems, they can refer such problems to the constitutional court for judicial review. *Albania* also mentions the role of its constitutional court in this regard: it may, other than the highest administrative court, provide feedback when adjudicating the constitutionality of legal norms.

Where feedback (question 45 and 46)
In so far as feedback is given, the respondents use a variety of channels:

[18] Austria, Belgium, Cyprus, Germany, Hungary, Ireland, Latvia, Poland, Portugal, Romania, Sweden, and the United Kingdom.



Greece and *Norway* provide their feedback only in judgments. The other respondents use a plurality of communication methods. *France* and *Serbia* do not use their judgments to provide feedback. *Lithuania* indirectly addresses certain issues through non-formal statements published in case law reports and annual reviews. *Italy* and *Estonia* clarify they also provide feedback through advisory opinions.

Bulgaria, the *Czech Republic,* and *Romania* specify that their highest administrative court may be consulted by the legislator on draft legislation. *Bulgaria* further specifies in this regard that its highest administrative court may draft regulations itself concerning its own activities.

The *Czech Republic* and *Serbia* organise and participate in round table discussions and other kinds of informal meetings with representatives of the legislator. *The Netherlands* also participates in such informal meetings, specifying that these meetings are focused on the annual report of the Council of State.

Lithuania clarifies that it addresses certain issues through informal comments published in its case-law reports and annual reviews. These reports serve as platforms for the court to highlight recurring legal concerns, trends, and systemic problems. *Italy* answers that its Council of State may also provide feedback via its advisory opinions.

5.3 *Suggesting solutions for the issues (legal-technical or other) raised (question 47)*

Only 4 respondents answer that they have the opportunity to suggest solutions for the issues (legal-technical or other) raised. *Slovakia* is unequivocal about this: its highest administrative court clearly sets out how the wording of a legal provision could be changed in order to solve the problem at hand. *Germany's* answer is more cautious: it

depends on the particular panel of judges that handles a case whether its highest administrative court suggests solutions. Usually, these panels are reluctant to offer a solution, out of respect for the legislator's discretion. Further, *Belgium* points out that its Council of State may suggest solutions on request of the parties to a dispute. In that case, however, its power to suggest solutions is limited to those shortcomings in the law that have led to the annulation of a legal provision in the particular case at hand. *Estonia* states that when there is need to provide feedback to the legislator, its highest administrative law court usually also explains how the legislator could solve a concrete problem. It does not propose a concrete wording of new legislation, except in some situations when it is expressly asked to give its opinion on draft legislation (*ex ante*).

The other 23 respondents do not suggest solutions for the issues raised. Mostly, this is motivated with a reference to the principle of separation of powers. However, many respondents point out that there are other ways to help the legislator deal with problems. One way of doing so is to provide a clear argumentation for judgments. By its reasoning, that is, the court may indicate the direction in which a solution could be found (*Lithuania* and *Luxembourg*). Another way of helping the legislator is to give opinions on draft legislation. Several respondents state that they have this power if the draft legislation affects their administrative courts' activities (*Austria*, *Hungary*, *Romania,* and *Slovenia*). *Hungary* states that its highest administrative court's president may also propose certain legislation (in so far as it affects the courts). Further, 7 respondents point out that the parties to a dispute may also suggest solutions themselves. These suggestions can be included in the judgment with the statement that it is up to the legislature to follow up those kinds of suggestions if desired (*Croatia*, *Czech Republic*, *Greece*, the *Netherlands*, *Poland*, *Slovenia,* and *Spain*).

5.4 *Considerations on the extent to which the highest administrative court provides feedback (question 48)*

All 27 respondents underline the importance of the principle of separation of powers for the extent to which their highest administrative courts provide feedback to the legislator. Given the discretionary powers of the legislator, several respondents limit their feedback to those suggestions that directly follow from the law (*Belgium*, *Cyprus,* and *Germany*), or to laws that directly affect their functioning (*Austria* and *Bulgaria*).

Latvia clarifies that its highest administrative court rarely provides feedback and mostly through its judgments. Outside these judgments, the mechanism of feedback is only used in order to inform the relevant authority of the executive branch of problems with the implementation or enforcement of a law. Given the separation of powers, the court does not seek contact with parliament.

Others state that the provision of feedback is part of their highest administrative courts' core task to contribute to the quality, enforcement, and implementation of law (*Croatia*, *Italy,* and *the Netherlands*). Feedback is part of a constitutional dialogue between the state powers (*Croatia*, the *Netherlands*, *Poland*, *Slovenia*). In this regard, *Italy* refers to a royal decree by which its Council of State is expressly empowered to provide feedback to the legislator.

All the same, the extent of the feedback given is limited. A consideration to be taken into account is if a problem arose in more cases already or could likely occur again in more

future cases. If a problem is more structural in nature, the judge cannot solve it in a durable way by only giving a customized solution in the judgment in the case at hand. In that case, there is more reason to provide feedback to the legislator (the *Netherlands*, *Poland,* and *Spain*). In *Italy*, feedback is limited to legislation that is either not updated or coordinated, or difficult to interpret and apply. On the other hand, *Slovakia* seems less reticent in giving feedback. When it comes to application problems in relation to proposed or existing legislation, *Slovakia's* highest administrative court may suggest ways to solve these problems. These suggestions are not binding.

Several respondents point out that their highest administrative courts' judgments as such are already a form of feedback to the legislator (*Greece*, *Luxembourg*, *Malta*, *Sweden,* and *Norway*). In so far there is no encroachment on the principle of separation of powers.

Some respondents argue that there is more leeway for providing feedback when the legislator expressly asks the court to do so through a consultation procedure on draft legislation (*Bulgaria* and *Czech Republic*). *Bulgaria* adds to this that its highest administrative court is allowed to participate in working groups on draft legislation concerning the judiciary and concerning activities within the competence of the minister of justice. The *Estonian* highest administrative court includes in its advisory opinions on draft legislation an express statement that its suggestions are not binding. Furthermore, during the consultation procedure this court does not make direct statements on the constitutionality of legal norms, as only the Constitutional Review Chamber of the Supreme Court or the Supreme Court *en banc* has jurisdiction to do so.

5.5 *Follow up feedback (questions 49-51)*

The answers to questions 49 till 51 of the questionnaire provides an insight in the role of national highest administrative courts after a form of feedback is communicated to the legislator.

Keeping track of feedback (question 49)
France, Italy, Latvia, Luxemburg, Serbia (5 countries) confirm that their highest administrative court keeps track of the given feedback. *France, Latvia, and Serbia* refer to a reflection of feedback in their annual reports. *Latvia* clarifies the annual report keeps track of ancillary decisions. As not all the ancillary decisions are related to problems with the implementation or enforcement of law, the number of ancillary decisions does not correspond with the actual number of cases in which the Court has drawn the attention of the relevant authority to shortcomings in the law. *Luxemburg* mentions that feedback as an essential part of the reasoning in written judgements and is therefore by its nature traceable.

The vast majority of the respondents mention the highest administrative courts don't keep track of given feedback. For *Slovenia*, *Finland, Slovakia, Greece, and Romania* information about given feedback might be found in non-structured or implicit ways. *Slovenia* explains the highest administrative court does include a chapter in the annual report which sums up the findings of the Legislative Department at the Supreme Court. *Finland* clarifies they don't keep track of feedback in a structured way. *Slovakia* states that it does only keep track on given feedback on a case-by-case basis. *Greece* has a list of published judgements. *Romania* answered that feedback can only indirectly result from decisions. *The Netherlands* states that the highest administrative court intends to use

their annual report for the purpose of keeping track of feedback from 2024. For some countries the lack of an overview on given feedback is simply related to the lack of the competence of the highest administrative court to give such feedback.

Monitoring the effectiveness of feedback (question 50)
Latvia, Luxemburg, the Netherlands, Poland, Slovakia, Slovenia, and Serbia state the highest administrative courts monitor the effectiveness of feedback to the legislator (7 countries). *Latvia, Servia, Poland, and Slovakia* clarify that they monitor new legislation or regulations. *Slovenia, Luxemburg, and the Netherlands* comment that the monitoring found or can find place by meeting with representatives of the legislative powers. *Slovenia* gives as a monitoring example that the Head of the Administrative Department, the Administrative Court and representatives of the relevant ministries did meet to discuss the introduction of new competences for the Administrative Court regarding the implementation of the EU Regulation on Digital Services and the EU Regulation on Terrorist Content. *Luxemburg* details that the Chamber of Deputies' Justice Committee began offering the presidents of the supreme courts and the State Prosecutor General periodic meetings to exchange views on legal issues that arise. In the *Netherlands* there is an internal commission from the Council of State since 2024 that plans to contact the government via its ministries on a regular basis, in general in order to monitor the effectiveness of its feedback.

A part of the respondents that don't see that the highest administrative courts monitor the effectiveness of feedback, do have ways to notice how feedback is received by the legislator and can draw attention on given feedback. The highest administrative court of *Czech Republic* does track the effectiveness of its feedback in the legislation process. In this legislation process is room for a reconciliation meeting between representatives if the authorities and the participant in the consultation process disagree about how comments were addressed. If no agreement is reached than a draft bill, including noted disagreements, will be sent to the government. If the government makes substantive changes the process requires a new round of consultation. *France* details that the highest administrative court takes no role in controlling the implementation of its recommendations to the Government due to the separation of powers. It does, however, monitor their impact, consideration, and implementation. In particular, this gives rise to the monitoring of the action taken on its studies in its annual report. *Greece* explains that the highest administrative court does examine if the legislator respected or applied case law when they have to give a judgement about an appeal against an act which has been adopted on new legislation. *Finland* mentions the highest administrative court does not monitor the effectiveness of feedback in a systematic way, but it notices how the feedback is taken into account. *Estonia* states that their highest administrative court bears in mind if it has pointed out a specific problem before. *Romania* comments that The High Court of Cassation and Justice tracks the impact of legislation on its case law. *Lithuania* states that the highest administrative court may highlight areas that require legislative attention and on instances there can be informal contacts with representatives of the government. It does however not have the mandate or resources to evaluate the implementation or outcomes of its feedback.

Follow-up if the legislator does not respond (question 51)
Czech Republic, Finland, Latvia, and Slovakia explain the highest administrative courts can give a follow-up to feedback if the legislator does not respond to issues that they raised (4 countries). *Czech Republic* refers to their role in the legislative process. *Finland*

points out that the Supreme Administrative Court will seek informal and if necessary, more formal ways to ask attention for not addressed issues by the legislature that concerning structural problems. In *Latvia*, according to the Administrative Procedure Law, the highest administrative court can give an ancillary decision with a time frame in which the authority has to provide a reply. The court can impose a pecuniary penalty when an official fails to execute an ancillary decision or doesn't respond in time. In practise the court didn't impose such a penalty, but, if needed, takes the initiative to contacts the relevant authority to bring an ancillary degree to their attention.
Slovakia explains that given the separation of powers it is up to the legislator to decide what to do with feedback. When the Supreme Administrative court of the Slovak Republic gives feedback in form of 'de lege ferenda Consideration' in its decision, there is no follow-up if the legislator does not respond to issues that are raised. If the Supreme Administrative Court of the Slovak Republic makes ex-ante comments to improve the quality of legislation in the interdepartmental comment procedure, an assessment is made in which the submitter of the proposal accepts or rejects the comments.

Of the countries in which the highest administrative courts don't give a follow-up to feedback to the legislator, *Croatia, France, the Netherlands, Poland, Portugal, Slovenia, Norway, Italy, Lithuania,* and *Albania* (10 countries) comment that there is no such follow-up in order to respect the separation of powers. Further on *Germany* mentions that if the highest administrative court raised an issue that needs to be addressed in a new case the court can give a follow-up decision about an issue with the same content as a previous decision. *Ireland* notes that there's no follow-up, because the legislator respects and adheres to the findings of the highest administrative court. *Luxemburg* explains there is no formal follow-up as the feedback process is completely informal. *Estonia* points out it is the responsibility of the legislator how to act on feedback. However, when an issue arises about compliance with the Constitution it may be possible that the Supreme Court will have to address this issue later in constitutional review proceedings.

5.6 *Means of feedback to the legislator by informal contacts, a role in the legislation process or contact with the advisory body (questions 52-54)*

The answers to questions 52 till 54 of the questionnaire reveal further details in three means of highest administrative courts to communicate feedback to the legislator. At first by informal contacts between representatives of the highest administrative court and the legislator, regardless if these contacts find place during or after a legislation process. Further on highest administrative courts can have a specific role in the legislation process in order to give feedback to the legislator that contributes to the quality of legislation. In addition, the highest administrative court can contact the advisory body about legal-technical or other problems that are coming to the surface in its case law.

Formal and informal contact with the legislator (question 52)
In *Austria, Estonia, Finland, France, Germany, Hungary, Lithuania, Latvia, Luxemburg, the Netherlands, Poland, Romania, Slovenia, Sweden, Serbia, Norway* (17 countries) the highest administrative courts have contacts with the legislator. These contacts are not related to individual cases. The contact with the legislator takes place:

- By consultation or participation in the legislation process, for example in *Latvia, Estonia, Romania, Slovakia,* and *Serbia*.

- By organized meetings, for example by a round table in *Czech Republic*, an ongoing dialogue in *Finland*, an annual meeting or review in *France* and *Estonia*, panels in *Germany*, and regularly exchange of views in *Luxemburg*.
- In the context of occasionally informal contacts, generally focused on overarching themes, for example in Lithuania.

Austria mentioned the Supreme Administrative Court can only discuss topics that are relevant for the court, which would mean related to an existing law or bill, and it has no position to discuss political questions.

Although *Croatia and Czech Republic* respond there are no formal or informal contacts between the highest administrative courts with the legislator, they mention that this contact does exist in a limited way. As for *Croatia* only about general issues. And *Czech Republic* refers to contacts in a consultation procedure. *Albania* details that there is no dialogue between the Supreme Court and legislator. The only contact is related to the State Advocacy who communicates final rulings from the European Court of Human Rights to the Supreme Court when these rulings can impact pending cases.

Advising the legislator ex ante (question 53)
In more than half of the countries the highest administrative courts has a role in the process of legislation, namely in *Austria, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Hungary, Latvia, Lithuania, Luxemburg, the Netherlands, Poland, Slovenia, Slovakia Sweden, Norway, United Kingdom* (19 countries). Most often the role is embedded in a consultation procedure. The answers of the respondents show that the organisation of the consultation procedures varies in:

- whether the initiative of the legislator or highest administrative courts activates the role of the highest administrative court;
- whether the role of the highest administrative court has a legal base or is more informal;
- the ways in which the highest administrative court communicates comments on draft legislation. Countries refer for example to written statements, a hearing or meeting, an expert review, an opinions and publications;
- what value is attributed to the comments, for example if comments have a binding status for the legislator or not;
- Whether the role of the highest administrative court is tied to requirements, for example that the consultation is limited to draft legislation that is related directly to the system or activities of the highest administrative court.

Lithuania, Slovakia, the Netherlands, and the United Kingdom (4 countries) explain that their highest administrative courts can take part in a public consultation in the process of legislation. *Lithuania* states the legislature often conducts public consultations related to draft legislation, allowing various stakeholders, including the court, to express their views on proposed laws. In this context, the Court may provide an opinion to highlight legal considerations and implications related to the draft legislation. Additionally, if a proposed law directly affects the Court's functions or operations, the court is usually formally requested to provide its insights. Moreover, representatives from the Court, judges, and legal scholars sometimes participate in working groups tasked with drafting legislation. This collaboration allows them to offer expert opinions and evaluations on proposed legal acts, ensuring that practical and legal aspects that may impact judicial processes are considered. *Slovakia* refers to the so-called interdepartmental comment procedure by the website www.slov-lex.sk – Legislative and Information Portal of the Ministry of Justice

of the Slovak Republic. This website is accessible in general so that the highest administrative court and the public could give ex ante comments that aim to improve the quality of legislation. The Supreme Administrative Court of the Slovak Republic usually comments specifically on legislation that directly affects its activities.
The Netherlands mention the legislator makes use of public consultation, i.e. it enables Dutch citizens and institutions to give their opinion on draft legislation. The Administrative Jurisdiction Division sometimes uses this opportunity to issue a consultative opinion. Moreover, when a draft statute directly concerns the activities of the Administrative Jurisdiction Division, it is normally expressly asked to do so. *The United Kingdom* details the legislator sometimes makes use of public consultation, i.e. it enables UK citizens and institutions to give their opinion on proposed legislation. The UK Supreme Court sometimes uses this opportunity to respond to the consultation. An example would be the formerly proposed British Bill of Rights which opened for consultation in December 2021. Furthermore, the UK Supreme Court is sometimes consulted informally when information is sought about the operational consequences for the courts of a possible change in the law.

Finland notes that the Supreme Administrative Court gives around 20-30 opinions annually with a focus on procedurally issues and matters that affect the judicial system. *Estonia* details that the Administrative Law Chamber of the Supreme Court can be asked to give an opinion on legislative intents and following draft acts. Even though the court is not obliged to give such an opinion, it does usually give an opinion and can use this opportunity to address concerns, especially about the functioning of the courts. In *France* the Council of State sees their publications, in particular the studies at the request of the Prime Minister as their guidance for the legislature in the field of administrative law.

Germany and Luxemburg emphasized how their highest administrative courts safeguard judicial independence. *Germany* notes that the Federal Administrative Court considers if participation in a consultation process can interfere with their freedom to decide in judicial independence in a case that may arise from the concerning legislation. Formally there is no interference, because the responsibility for the consultation process lies with the President and the responsibility for later jurisprudence lies with the competent panel. *Luxemburg* mentions that since the Procola judgement of the European Court of Human Rights members of the administrative courts are prohibited to handle cases about a legal or regulatory provision on which he or she had given an opinion before. The Ministry of Justice requests the opinions, mainly informal during the draft of legislation. The President of the Administrative Court confines his essential intervention to questions of a purely structural nature.

Norway details that the preparation of legislative proposals include a general hearing where citizens, organizations, and institutions can express their opinions on the proposals. The Supreme Court submits statements in a few of these hearings, and usually only if the legislative proposal directly affects the activities of the Supreme Court.

Ireland states the only ex ante feedback to the legislator provided by the Supreme Court is given by a review of a Bills constituonality, a mechanism based on article 26 of the Constitution. This power is rarely exercised. In circumstances where the Supreme Court determines that a Bill is unconstiutional, the President will decline to sign that Bill into

law, in which case, it is up to the legislator to remedy the issue. Where a Bill is held to be compatible with the Constitution, the President will sign that Bill into law.

The President of Ireland has exercised the power of referral to the Supreme Court on sixteen occasions since 1937.

In *Cyprus* the highest administrative court doesn't give feedback to the legislation. It details that in rare cases it may make a comment on technical legal issues, i.e to point out an obvious discrepancy in the law or decide on the applicability or bindingness of a law. Cyprus explains the separation of powers is very well rooted in their system and the courts are unwilling to interfere in any way with the powers of the Legislature. This unwillingness is expressly stated in a number of judgments.

In *Romania* the High Court of Cassation and Justice does not have a formal role in the legislative process, but it can influence legislation by advising the legislator ex ante. This role is not structured or formalized but may occur in certain contexts. The High Court of Cassation and Justice may be called upon to participate in formal consultations on draft legislation, in particular for complex legislation or legislation involving significant legal issues. This may include public hearings in parliamentary committees or working sessions with legal experts. The High Court of Cassation and Justice may work with the Ministry of Justice or other relevant institutions to provide feedback on legislative proposals that may affect the judiciary. The High Court of Cassation and Justice may participate in public discussions or conferences where legislative issues are addressed, thus contributing to raising awareness of the need for legislative change.

The decisions of the High Court of Cassation and Justice may indirectly influence the legislative process, as the legislator may take into account existing interpretations and applications of the law to avoid contradictions or ambiguities.

Spain explains that the Judicial Council is competent to issue opinions on laws that regulate the courts and the judicial service, communication with the Supreme Court in the manner described above is possible and expected. The Judicial Council monitors the open matters and possible issues also on the field of the administrative law especially from the view of the judicial independence and adopts opinions that are among others addressed to the Supreme Court as well. More specifically, the General Council of the Judiciary must issue a report on draft bills and general provisions that deal with the following matters: modifications to the Organic Law of the Judiciary, determination and modification of judicial districts, as well as their capitals, establishment and modification of the staffing levels of Judges and Magistrates, Judicial Secretaries, and personnel serving the Administration of Justice, organic statute of Judges and Magistrates, organic statute of Judicial Secretaries and other personnel serving the Administration of Justice, procedural norms or those affecting the legal-constitutional aspects of the protection of fundamental rights before ordinary courts, norms affecting the constitution, organization, functioning, and governance of the courts, criminal laws and norms on the prison system, any other matter that the Government, the Cortes Generales, or, where appropriate, the Legislative Assemblies of the Autonomous Communities seems relevant.

Serbia clarifies the adoption of laws is under the jurisdiction of the National Assembly. The National Assembly forms permanent working bodies aimed at, among others, considering the draft laws and other acts or documents submitted to the National

Assembly. The competent board of the National Assembly adopts an act regulating unique methodological rules for drafting laws and other acts passed by the National Assembly. The Rules of Procedure of the National Assembly regulate rules for the adoption of the law (who can propose the law and procedure). In order to prepare the draft law, the authorized proposers form working groups, whose members are experts in various professions, to which the matter, which should be regulated, refers to. After the legislation has been drafted and prior to submitting to the National Assembly, public consultations on the draft legislation are being scheduled, aiming at discussion on the quality of a certain legal solution, so that proposal may be subject to amendments prior to its submitting to the National Assembly.

Contacts between the highest administrative court and the advisory body (question 54)
In *Czech Republic, Italy, France, Luxemburg, the Netherlands, Slovenia,* and *Albania* (7 countries) the highest administrative courts have contact with an advisory body about legal-technical or other problems that arise from its case law. *Czech Republic* refers to the contact in the consultation process for legislation. *France* sees the passage in the annual report about difficulties encountered by the high administrative court as a way of this contact. *Luxemburg* mentions that the Administrative Court and Council of State have regular contacts and can join forces on participating in or organising conferences, for example with the ACA-Europe. The *Netherlands* explains that this contact is taking shape by the internal Commission Feedback, which consists of Councilors from the Administrative Jurisdiction Division, and a State Councilor from the Advisory Division. Through this Commission, the Administrative Jurisdiction Division may suggest topics for an advisory opinion of the Advisory Division. In *Slovenia* it's possible and expected that the Judicial Council has contact with the Supreme Court when the Judicial Council uses its competence to issue opinions. Further on the Judicial Council monitors the open matters and possible issues on the field of the administrative law, especially from the view of the judicial independence. The Judicial Council also adopts opinions that are among others addressed to the Supreme Court. *Albania* mentions the Supreme Court often communicates prominent issues of pending cases to the High Judiciary Council with a view into addressing administration of justice, for example related to backlog, the length of proceedings and lack of staff.

The vast majority of respondents stated that the highest administrative court had no contact with an advisory body about legal-technical or other problems that arise from its case law. *Latvia, Lithuania, and Slovakia* explain there is no such contact as their countries don't have an advisory body. *Belgium* details that the Legislation division and Administrative jurisdiction division of the Council of State don't have this type of contact due to the clear functional separation between those divisions. However, these divisions do share newsletters with case law and opinions and lunchtime seminars. So, there is an informative communication. *Spain* explains that the *Sala de lo Contencioso of the Tribunal Supremo* may have institutional-level contacts with the advisory body by discussions on general topics and that interactions occurs through training activities, reflection sessions, or similar events, where broader legal issues are discussed, allowing for the exchange of ideas and perspectives on the legal system as a whole. To respect the separation of power there's no institutionalized regular contact between the court and the advisory body for the discussion of case-specific issues or ongoing jurisprudence. *Sweden* states there is no formal contact between the Supreme Administrative Court and the Council of legislation, but this council consists of members of the supreme courts, so general and specific knowledge is transferred this way.

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