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QUALITATIVE AND QUANTITATIVE REVIEW OF THE 2019 SEMINARS

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I. INTRODUCTION

1. In its action plan for 2018-2021, ACA-Europe has determined its annual operational activity to be the organisation of a cross-sectional analysis activity by its members, comprising the collection of data, analyses and conclusions in the domain of access to administrative justice. The purpose of the cross-sectional surveys is the collection, analysis, exchange and provision of information, good practices and recommendations.

2. In the past few years, our organisation has familiarised itself with the concept of this analysis. The summary reports of these surveys can be viewed on the website of the Association. (www.aca-europe.eu).

3. For 2019, ACA-Europe has chosen the following topic:

Qualitative and quantitative review of the 2019 seminars.

4. In the agenda of the 2019 General Assembly it was explained that “the three 2019 seminars deal directly with the working methods of judicial officials and the functions of (supreme) administrative courts. It would appear vitally important to understand these working methods and these functions, so that their efficacy can be evaluated. In this regard, the three 2019 seminars enabled, and indeed still enable, research to be carried out into certain key aspects of the judicial work of ACA members. The seminars examined questions relating to working methods, such as the preparation of hearings, deliberations, and the use of support staff. The focus was also on the functions of supreme administrative courts, the possible forms of decisions, systems relating to workload and filtering, the structure of administrative justice, as well as its cost, and the cost of and access to justice or exclusion from access to justice.

From the questionnaires produced to facilitate preparations for the seminars, only a small amount of statistical data were gathered. However, it became clear in the course of the seminars that numerous aspects of the daily routine of the administrative judge must be considered in the light of statistical data. For example, the workload of a court may only be measured if one also knows the jurisdiction of the court, the number of judges, the number of inhabitants of the member State, etc. Some information may only be fully understood when considered alongside these data.

Under these circumstances, the cross-sectional analysis is based on the results and insights obtained from the 2019 seminars, with the added factor of data that is essential for the understanding of the judicial work of a judge.

5. As regards the methodology, the decision was made to establish a task force in the organisation, named the “2019 EU Justice Scoreboard”. This group is made up of, Mr. Joris CASNEUF, Mr. Jacek CHLEBNY, Mr. Geert DEBERSAQUES, Mr. Carsten GÜNTHER, Ms. Mary IRVINE, Lenka KRUPIČKOVÁ, Mr. Auke KUIPERS, Ms. Laure MARCUS, Ms. Marina PERRELLI.

In close collaboration with M. E. CRABIT and his team (DG Justice), this group first defined the methodology and prepared the questionnaire, which was approved by the Board of ACA-Europe.

From a methodological point of view, it was decided to prepare a questionnaire that identifies certain conceivable quality indicators and to collect useful data and more detailed information on these possible indicators. Furthermore, the members were asked to specify, on a scale of values, why in their view a particular aspect is an indicator of the quality of court decisions (or not). The results are summarised below.

6. The level of participation in this topic was particularly significant: 24 members of the Association, which constitute the supreme administrative courts of each of the Member States of the European Union, participated in this study. Among the Courts having the status of observer or guest, of particular note is the participation of Serbia and Turkey. We can therefore conclude that the results obtained give a highly accurate overview of the state of play in the member courts of the Association.

II. SCOPE OF JURISDICTION

A. Top 5 areas of competence of the Supreme Administrative Courts for 2018

a. Overview of the main areas of competence

7. Most of the Member States (Spain, Hungary, Slovakia, Estonia, Croatia, Poland, Slovenia, Latvia, Greece) mentioned taxes & financial cases as the top area of their jurisdiction. Sixteen Member States pointed out tax law as one of the top 5 areas in that regard. The questionnaire shows that, in general, 22 Member States have jurisdiction in tax & finances. Only the Netherlands, Germany and Italy declared no jurisdiction in this area (presumably there are other courts responsible for tax matters). Among countries which have jurisdiction in tax law there were those in which tax law was not one of the top 5 areas in 2018: Norway, Austria, Belgium (local taxes) and Ireland.

The number of cases in the area of urban planning and environmental disputes (town and city planning, environmental or building permits, environmental law, climate law etc.) is comparable with tax cases among the responding countries. All of the states generally had jurisdiction in this field. Belgium put urbanism and environment as a top area similar to Italy which mentioned building permits as its number one area of jurisdiction. Other countries put building permits further down but among top 5 areas (e.g. Luxembourg, Germany, Croatia). Some of the member States specified environmental issues separately (Slovakia, Estonia, Finland).

Migration law (asylum, immigration, foreigners, international protection) ranked third in the group of top 5 areas. However, 7 Member States considered it as the top area (Austria, Germany, Finland, Luxembourg, Czech Republic, Ireland, France). All of the countries have jurisdiction in migration law but in some Member States it is not one of the top 5 areas: Slovakia, Estonia, Norway, Poland, Croatia, Latvia, Belgium, Romania, Greece.

Public employment also had a large representation among top areas and was mentioned by 9 countries – first place in Cyprus, second place in Germany, Belgium and Greece and fourth place in Estonia.

Public procurement cases were ranked among top 5 areas and were mentioned by Spain, Hungary, Cyprus, Bulgaria, Italy and Czech Republic.

There were other areas also mentioned (e.g. rural planning in first place in the Netherlands and prisoner's cases in second place in Estonia). Such issues were isolated in comparison with the position in most countries.

b. Conclusions

8. The conclusions resulting from the analysis of this part of the questionnaire are not surprising as to the importance of tax and migration matters. The dominant role of tax cases derives from the extensive scope of the subject and object of taxation (universality of taxation). The high share of migration issues is a consequence of global socio-political processes taking place in the world. Migration is one of the biggest challenges facing Europe.

Significant representation of cases in the field of urban planning and environmental disputes may result from a wide range of issues falling within the scope of this term. The answers given by the countries confirm the accuracy of the selection of the specific areas of law analyzed in the questionnaire.

B. Specific fields of competence

a. Migration (international protection, citizenship, migration, family reunification, visas, ...)

9. All Member States indicated their jurisdiction in the field of migration.

Migration cases represent between 41-50% of the total number of cases in the Netherlands and Finland. Migration cases account for 31-40% of the total number of cases in Austria and Luxembourg. The percentage of migration cases in Cyprus, Czech Republic, Ireland and France amounts to 21-30%. In Lithuania and Germany this area of law constitutes between 11-20% of all cases. Other Member States (13) indicated migration cases as the lowest quantity (between 1-10%). Two responding countries (Spain and Norway) did not indicate the number of such cases in total.

As regards the review of decisions it was stated that 11 Member States have the power to annul the decision (e.g. Spain, Latvia, Ireland), 7 to reverse it (e.g. Estonia, Poland, Lithuania) 7 to vary¹ (e.g. Luxembourg, Romania, Portugal). One respondent gave no answer (Norway)².

¹ The Curia of Hungary clarified that “as to the amendment (in the paper called ‘vary’) of the decision, we note that there was an important change in Hungary regarding the scope of jurisdiction after 1 January 2018, when Act No. I of 2017 on the Code of Administrative Court Procedure entered into force.

We underline that the *actual regulation* is as follows: in case of establishing an infringement - on the basis of the action or ex officio - the court

- a) shall amend, annul or set aside the administrative act,
- b) shall, in addition to annulling or setting aside the administrative act, oblige the administrative organ to conduct a new procedure, if necessary,
- c) shall find against the administrative organ.

The court shall amend the unlawful administrative act if it is possible by the nature of the case, the facts are properly clarified and the legal dispute may be ultimately settled on the basis of the data available and

- a) the act was taken in an administrative procedure of more than one instance, or
- b) the act was taken in an administrative procedure of one instance and an Act allows it.

The court shall amend the unlawful administrative act if it is possible by the nature of the case and the administrative organ - on same legal ground and identical factual basis- in the repeated procedure took an act that is contrary to the court’s final and binding judgment.

Amendment shall not be allowed

- a) for an administrative act of general scope to be applied in a specific case, and not falling under the scope of the Act on law-making,
- b) for an administrative act taken, under the law, by assessing specific circumstances,
- c) for an administrative act relating to a payment affecting the budget based on exercising discretionary power, or
- d) if it is excluded by an Act.

In the event of infringement or deviation from a former, published decision of the Curia (the highest court of Hungary) on legal issues, the court of second instance shall amend the judgment of the court of first instance as a whole or in part, by upholding or setting aside certain provisions of the judgment.

If the decision requested to be reviewed violates the law in a way that affects the merits of the case or in case of a deviation from a former, published decision of the Curia (the highest court of Hungary) on legal issues, the Curia

- shall set aside the final and binding decision in full or in part and, if necessary, shall remit the case to the first or second instance court so that proceedings be resumed and a new decision be adopted.
- shall amend the decision by setting aside the final and binding decision with effect covering the administrative act as well, and shall order the administrative organ to conduct new proceedings.”

² The data only concerns the main competence in this area of law.

b. Public procurement

10. A vast majority of the respondents (76%) have jurisdiction in the field of public procurement. Only 6 Member States (the Netherlands, Germany, Poland, Lithuania, Slovenia, Romania) do not have any competence in this area.

Public procurement matters rank low among the total number of cases in the majority of Supreme Administrative Courts of the Member States. In fourteen countries it was at the lowest level (1-10%) and in Cyprus, Belgium and Greece it was between 11-20%. Spain and Norway did not provide data in term of quantity of cases.

Annulment of decisions was declared as a main competence in public procurement matters in the largest group of the Member States (10). Five countries (Hungary, Slovakia, Bulgaria, Portugal and Croatia) indicated that their main power is to vary a decision and three countries (Estonia, Greece³ and France) to reverse it.

c. Public employment (civil servants)

11. A vast majority of Supreme Administrative Courts in Member States (84%) have jurisdiction in public employment (civil servants) cases whereas the Netherlands, Slovakia, Poland and Romania do not have competence in this matter.

The estimated percentage of cases in this field out of the total number of cases in 2018 is generally low. Most of the countries (16 - e.g. Hungary, Estonia, Croatia, Latvia) indicated it as the lowest level (between 1-10%). In Lithuania it is between 11-20%, Greece indicated 21-30% and Cyprus 41-50%. Two responding countries (Spain and Norway) did not indicate the number of such cases in total.

The main competence of a majority of countries (12) is annulment of a decision (e.g. Spain, Austria, Germany, Portugal, Italy). The rest of the responding countries indicated their main power is to reverse (France, Lithuania, Germany, Estonia) or to vary a decision (Hungary, Portugal, Croatia, Bulgaria).

d. Planning and environmental disputes (town and city planning, environmental and/or building permits, environmental law, climate law, ...)

12. Planning and environmental disputes are within the scope of jurisdiction in all of the Member States.

The percentage of planning and environmental disputes cases in the context of the total number of cases in 2018 is rather low. Twelve Member States identified it as between 1-10% (e.g. Hungary, Portugal, Latvia), 7 Member States indicated percentage between 11-20% (e.g. the Netherlands, Finland, Croatia, Luxembourg, France). The level of 21-30% was

³ The Council of State of Greece specified that “in matters of public procurement, the Council of State is competent either in cassation or in summary proceedings (“en référé”) for cases concerning the pre-contractual stage. In the first case, it can overturn the decision of the Court of Appeal; in the second case, it is competent both to suspend the execution of the decision of the administrative authority (in the context of a stay of execution) and to annul it (in the context of an appeal for excess of power).”

indicated by Slovakia, Cyprus, Belgium and Greece. Two responding countries (Spain and Norway) did not indicate the number of such cases in total.

The main competence in the matter of planning and environmental disputes in terms of reviewing decision was annulment in 13 Member States (e.g. Spain, The Netherlands, Austria, Cyprus, Czech Republic), in 6 Member States reversal of a decision was mentioned (e.g. Estonia, Germany, France) and in 5 variation (Hungary, Slovakia, Portugal, Bulgaria, Romania).

e. Social welfare

13. Most of the Member State have jurisdiction in social welfare cases (80 %). The Netherlands, Germany, Romania, Luxemburg and Italy are not competent in this area.

The vast majority of respondents competent in social welfare had a low level of such cases in 2018 (1-10% out of all the cases). In Greece it is between 11-20% and in Slovakia and Finland between 21-30%. Two respondent countries (Spain and Norway) did not indicate the number of such cases in total.

In the field of social welfare 8 Member States declared annulment as their main competence (e.g. Spain, Cyprus, Ireland). The rest of the responding countries indicated their power to reverse (France, Greece⁴, Slovenia, Lithuania, Poland, Finland, Estonia) or to vary (Hungary, Slovakia, Portugal, Bulgaria) a decision.

f. Professional regulation (e.g. architects, advocates, pharmacies, ...)

14. All of the respondent countries except Lithuania have the competence in professional regulation.

All of the countries which have jurisdiction in this area stated that the quantity of such cases out of total number of the cases in 2018 was between 1-10%. Only Norway did not answer that question.

Most countries responded that the main power of the court in this field is to annul (13 countries) a decision. The main power of a significant group of countries (Estonia, Germany, Finland, Poland, Bulgaria and France) is to reverse a decision whereas Hungary, Slovakia, Portugal have a power to vary a decision. Norway did not give an answer in that regard.

g. Market regulation (e.g. competition law, consumer law, ...)

15. A significant majority of the Member States have jurisdiction in market regulation (21 countries). The Netherlands, Germany, Poland and Belgium do not have competence in this field.

For most of the competent supreme administrative courts the estimated percentage in this area of law varies between 1-10%. A higher amount – between 11-20 % out of total number

⁴ The Council of State of Greece has specified that "the Council hears social protection cases in cassation and the courts of first instance have full jurisdiction in the matter."

of cases in 2018 applies in Cyprus. Spain and Norway did not indicate a percentage of market regulation cases for 2018.

The most common competence among the Member States (9) in market regulation is the annulment of a decision (e.g. Spain, Austria, Cyprus, Czech Republic). In six countries the main competence is to reverse (e.g. Estonia, Finland, Lithuania) and in five to vary a decision in the area of market regulation (e.g. Hungary, Portugal, Romania)⁵.

h. Tax & finances

16. The Netherlands, Germany and Italy do not have jurisdiction in tax & finances. All other Member States have competence in this field.

Tax & financial cases constitute the largest group of cases in most Member States. Only a few responding countries had the lowest share in total number of cases between 1-10% (Austria, Lithuania, Bulgaria, Belgium, Ireland). In Estonia, Cyprus, Finland, Croatia, Slovenia, Czech Republic and France the percentage of such cases was between 11-20% out of the total number of cases. Spain, Hungary, Slovakia and Greece indicated a quantity of between 21-30%. In 4 responding countries (Poland, Latvia, Romania, Luxembourg) the amount of tax & financial cases was between 31-40% out of the total number. The highest percentage was declared by Portugal (between 41-50%).

The main competence of 9 Member States in terms of reviewing decision is annulment (e.g. Spain, Austria, Cyprus, Croatia). In 7 countries the main competence is to vary a decision (e.g. Slovakia, Finland, Luxembourg) and in 5 countries to reverse it (Estonia, Poland, Lithuania, Greece⁶ and France).

i. Local & regional administration

17. All Member States have competence in the area of local & regional administration.

Most of the respondents indicated a quantity of between 1-10% (e.g. Lithuania, Finland, Slovenia) of cases falling under this area. In Cyprus, Italy and Latvia, it was between 11-20% and in Austria between 41-50%.

As regards the review of decisions, in 13 of the Member States the main competence of the courts is annulment of a decision. In Estonia, Germany, Poland, Lithuania and France it is reversal and in Slovakia, Hungary, Portugal and Bulgaria variation.

j. Education (primary school, high school, university, ...)

18. All Member States except the Netherlands and Slovakia have jurisdiction in education.

⁵ The data only concerns the main competence in this area of law.

⁶ The Council of State of Greece has specified that "the Council hears social protection cases in cassation and the courts of first instance have full jurisdiction in the matter."

The percentage of education cases is low and none of the respondents indicated it at a level higher than 1-10%.

In most of the responding countries annulment of a decision is the main competence in education matters (14 countries - e.g. Spain, Cyprus, Belgium). Estonia, Germany, Poland, Lithuania and France chose reversal and Hungary, Portugal and Bulgaria variation of a decision.

k. Conclusions

19. The analysis of the given answers reveals differences in the scope of competences of individual Supreme Administrative Courts. There are cases in which all Supreme Administrative Courts consider themselves competent (migration, spatial planning). However, there are areas of law (public procurement, public employment, social welfare, market regulation) where there is a clear lack of convergence in the jurisdiction of these courts.

It should be pointed out that in Germany and Lithuania the percentage of migration cases is at the same low level (11-20%). However, this might be explained by the systems of leave of appeal (filtering process) adopted in these countries.

This part of the questionnaire shows quite clearly that the most common form of power of administrative courts is annulment of a decision. The possibility to vary a decision was least frequently indicated as a main competence in the given areas of law.

III. CASE LOAD AND NUMBER OF JUDGES IN JUDICIAL BODY, IF A FILTERING PROCESS IS NOT APPLIED

20. 11 members do not operate a filtering process for admission to their courts of last resort (The Netherlands, Slovakia, Cyprus, Croatia, Poland, Lithuania, Bulgaria, Romania, Luxembourg, Italy, Greece). The number of cases pending in these courts on 31 December 2018 varies strongly. Only a minority of members was able to subdivide the given number in the requested fields of law (VAT, building permit, public procurement, migration) or was not competent in these fields of law as displayed in the table below:

Cases pending on 31 December 2018:

	NL	SK	CY	HR	PL	LT	BG	RO	LU	IT	GR
Total	5043	2165	941	6026	28286	3460	22086	11235	111	27963	13463
VAT				784	4358				0		
Building permits				73	953	93			17		
Public proc.				116	0				3		
Migration	1878			48	80	64			23		

Table 1.

The data base of the subdivisions seems too small to draw general conclusions. Yet, it seems obvious that VAT cases play a predominant role where the court is competent in this field of law (13 - 15 % of all cases). Migration cases have a large share in the number of pending cases in the Netherlands (37 %) and in Luxemburg (21 %). In the other courts which explicitly listed migration cases their share is below 3 %.

Cases closed in 2018:

	NL	SK	CY	HR	PL	LT	BG	RO	LU	IT	GR
Total	13481	2681	155	5171	23123	2658	15942	4656	214	12646	3886
VAT				13	1805		1649		0	0	
Building permits				40	646	46	830		27	2177	
Public proc.				116	0		382		3	801	
Migration	8558			48	243	279	298		68	380	

Table 2.

The number of cases closed in 2018 only partly reflect the findings in pending cases. The share of VAT cases is still high with regard to Poland, Bulgaria and Italy (10 - 16 %). The predominance of migration cases in the Netherlands and in Luxemburg is even higher in cases closed than in pending cases (31/63 %). With regard to the other Member Courts it remains below 3 %.

The numbers of cases pending and closed are of special relevance with regard to the number of personnel which is assigned to working on the cases. These are first and foremost judges who are the decision makers in this process. Yet, the support of professional researchers may alleviate their workload. The following table therefore intends to demonstrate the workload of a judge. It also provides the total workload relative to the total number of judges and researchers. The number of judges and researchers is displayed in full-time equivalents (FTE).

Workload:

	NL	SK	CY	HR	PL	LT	BG	RO	LU	IT	GR
Number of judges	38,7	27	16	23	139 ⁷	19	97	30	5	85	168
Number of researchers	208	25	12	0	-	6,5	0	25	1	0	0
Sum	246,7	52	28	23		25,5	97	55	6	85	168
Ratio researcher/ Judge	5/1	1/1	3/4		3/4	1/3		1/1	1/5		
Cases pending per judge	130	80	59	262	203	182	228	375	22	329	80

⁷ This number is the sum of Supreme Administrative Court judges and delegated judges from the courts of the first instance working in the Supreme Administrative Court in 2018.

Cases closed per judge	348	99	10	225	166	140	164	204	43	149	
Cases pending per judge and researcher	20	42	34	262		136	228	155	19	329	80
Cases closed per judge and researcher	55	52	6	225		104	164	85	36	149	23

Table 3.

These results show that the number of cases pending and the number of cases closed per FTE varies strongly between the Member Courts. Also, the number of research assistants is not consistent (0 - 208), nor is their ratio in relation to the number of judges (5/1 - 1/5). Cases pending per FTE vary from 22 to 329 and cases closed from 10 to 348. Counting in the output of research assistants does explain the differences somewhat. Cases pending per FTE then go from 20 to 262 and cases closed from 6 to 225. This is not the place to compare the output of a research assistant to that of a judge. Many factors would have to be taken into consideration for this purpose. Yet, the output of researchers cannot be ignored when considering the fact that the number of research assistants varies from 0 to 208. This may strongly influence the working methods and the output of a court.

For the Council of State members (Netherlands, Italy, Greece) it has to be considered that a part of their judges/counsellors also have functions other than jurisdiction. Therefore, to make numbers comparable their workload would have to be increased at an unknown scale.

21. Of the 11 members who do not operate a filtering process for admission to their courts of last resort only one has a system of double examination. In Greece judges are divided into three grades. Counsellors of State, Researchers (“Maîtres de requêtes”) and auditors. The latter (48 of 168) assist the counsellors in the preparation of affairs.

Only in a minority of these courts are specialist judges assigned to resolve cases. This includes Slovakia, Croatia, Poland (only VAT cases) and Lithuania. Usually specialist judges have several special competencies so their workload cannot easily be allotted to a special field of law. From the numbers given there seems to be no direct correlation between specialization and the number of cases closed. Rather, the latter seems to be directly dependent on the number of pending cases, which gives rise to the assumption that judges adapt their working methods to the requirements of their workload.

In 6 of the 11 member courts scrutinized in this chapter the court is also competent in the determination of facts (Netherlands, Croatia, Lithuania, Bulgaria, Luxemburg and Greece).

In a majority of member courts judges are assigned additional roles such as presiding judge or rapporteur. Only in Greece and Cyprus is there also a special role as single judge.

In the Netherlands, Lithuania, Romania and Luxemburg the service of research or administrative assistance is shared by the judges. In Slovakia, Cyprus and Poland assistants are individually assigned to a single judge. With the exception of Luxemburg all judges have the same access to the support of assistants. The number of cases dealt with by the

assistants varies. Whereas in the Netherlands almost every case and any form of assistance is delivered, in Luxemburg and Bulgaria only a small part of cases will be subject to assistance. In Romania assistants mostly work on the preparation of pre-hearing documents.

IV. ORAL HEARINGS, IF A FILTERING PROCESS IS NOT APPLIED

22. Public oral hearings are held in 11 (Luxembourg 100%, Italy 100%, Greece 91%, Slovakia 85%, Romania 80%, Poland 65%, Bulgaria 60,67%, Cyprus 58%, The Netherlands 25%, Croatia 1,6%, Lithuania 0%) out of 25 countries with the percentage indicated above of the cases that received a public hearing on the total number of one's closed in 2018.

The percentage of cases with public hearing changes according to the different subjects dealt with (VAT, building permit, public procurement, migration) with 100% of cases on VAT and building permit that received a public hearing in Poland and 100% of cases on building permit, public procurement and migration in Luxembourg and Italy.

The average time in minutes of a public oral hearing may or may not vary according to the subject of the case. It does not change in 6 countries (Slovakia, Cyprus, where the length of public hearings is established by the Appeal Procedure Rules, Lithuania, Italy and Greece) in which public hearings last respectively: 0-5; 61-120; 31-60; 0-5 and 15-30 minutes.

In other countries, the average time can change for a particular type of cases.

For example: in the Netherlands the average time is always 31-60 minutes, apart from VAT cases in which public hearings last 0-5 minutes; in Croatia, the time always 31-60 minutes on average apart from migration cases in which public hearings last 0-5 minutes on average; in Poland public hearings always last 15-30 minutes, apart from public procurement cases because the Supreme Administrative Court of Poland does not decide on similar cases.

In Bulgaria, public hearings last 15-30 minutes on average for VAT and building permit cases and 31-60 minutes for public procurement and migration cases. In Romania they last 15-30 minutes for VAT cases, 0-5 minutes for building permit and public procurement cases and 6-15 minutes for migration cases. In Luxembourg the average time is more varied: 31-60 minutes for building permit cases, 61-120 minutes for public procurement cases, 15-30 minutes for migration cases. There are no data for VAT cases because the Administrative Court is not competent in these cases.

V. TIMEFRAMES FOR THE DECISION-MAKING PROCESS

23. The timeframes for the decision-making process section is applicable to 11 countries (the same as in chapter IV, i.e. those countries which do not apply a filtering process: The Netherlands, Slovakia, Cyprus, Croatia, Poland, Lithuania, Bulgaria, Romania, Luxembourg, Italy, Greece) out of 25.

In 10 countries there is an obligation, *ex officio*, to furnish written reasons in all cases. In the Netherlands this type of obligation does not exist. However, the estimated percentage of the cases where written reasons were provided in 2018 is in any event 38%.

Apart from Italy and Luxembourg, in the other 9 countries there is an obligation, *ex officio*, to provide written reasons in all VAT cases. In Luxembourg the estimated percentage of VAT

cases where written reasons were furnished in 2018 was 100%. In Italy the percentage is 0% because the Council of State does not have jurisdiction in this subject.

In all of the 11 mentioned respondents, there is an obligation, *ex officio*, to provide written reasons in all building permit, public procurement and migration cases.

Some respondents added comments or explanations to their answers. The Netherlands pointed out that the Supreme Administrative Court is not competent in public procurement and VAT cases and in migration cases written reasons are not given in the majority of the cases when a specific norm (art. 91 para. 2) of Asylum Law is applied. Cyprus noted that judgments of the Court must be duly reasoned following art. 30.2 of the Constitution; in Lithuania the Court is not competent in public procurement cases; in Greece the obligation to give a reasons for any judicial decision is provided for in the Constitution; in Italy the Council of State has no competence in VAT cases.

In 9 out of 11 respondents, there are timeframes within which written reasons for final judgments must or should be furnished. Only Luxembourg and Greece are excluded from such timeframes.

In respect of cases to which a time limit applies, the time runs from the date of the public hearing if there is one, for more than half of the respondents (The Netherlands, Croatia, Bulgaria, Romania, and Italy).

The average time (in days) for closing cases at the supreme administrative level in 2018 was different for the respondents.

In the Netherlands, the average time is 119 days for all cases and 63 days for migration cases. In Slovakia it is 159 days for all cases. In Croatia 195 days are usually needed for all cases with 126 days needed for VAT cases, 137 days for building permit cases, 30 days for public procurement cases and 57 days for migration cases.

In Lithuania the average time is 445 days for all cases, 522 days for public procurement cases and 55 days for migration cases.

In Bulgaria the cases are closed in 30 days on average no matter their subject. In Luxembourg the average time for closing a case is 119 days for all cases and 60 days when they concern migration.

In Italy all cases are closed in 791 days on average, with 780 days for building permit cases, 311 days for public procurement cases for which, according to art. 120 CAP, the procedural terms are shorter than ordinary terms, and in 422 days for migration cases.

Cyprus, Poland, Romania and Greece did not answer.

VI. FILTER SYSTEMS

24. The purpose of having a filter system is to reduce the potential case load of a Supreme Administrative Court or institution with equivalent jurisdiction by identifying whether or not a potential appeal has the necessary characteristics to make it admissible to the Supreme Administrative Court or equivalent institution, as the case may be. Of the 25 responses to the questionnaire, 9 countries (Hungary, Estonia, Norway, Austria, Germany, Portugal, Latvia, Ireland, and France) (36% of respondents) always operate a filtering process

for the admission of appeals to their court of last resort. There are then 5 countries (Spain, Finland, Slovenia, Belgium – for administrative cassation - and the Czech Republic) (20% of respondents) that sometimes operate a filtering process for the admission of appeals to their court of last resort and sometimes do not. However, a plurality of countries, 11 in total (The Netherlands, Slovakia, Cyprus, Croatia, Poland, Lithuania, Bulgaria, Romania, Luxembourg, Italy, and Greece⁸) (44% of respondents), do not operate a filtering process for the admission of appeals to their court of last resort.

A. Number of cases to which a filter process was applied

a. Total number of cases to which a filter process was applied

25. Of the 12 countries (Spain, Estonia, Norway, Austria, Germany, Portugal, Slovenia, Latvia, Belgium, the Czech Republic, Ireland and France) that provided figures for the total number of cases to which the filter process was applied in 2018, the aggregate number of cases was 26247. Hungary did not provide any figures for this section but explained that the data necessary to answer the questions are not gathered⁹. While Spain provided figures for the totals, there are no disaggregated data available. This gives an average number of filtered cases per Supreme Administrative Court of 2187 (after rounding down the remainder of 0.08). However, further analysis shows a large gap between the country with the highest number of filtered cases (Austria: 7998) and that with the lowest number of filtered cases (Ireland: 157). Of course, this must be viewed in the context of geographical and organisational differences, differences in jurisdiction between the institutions, and differences in the number of judges in various jurisdictions. These results provide a median of 905 cases to which a filter was applied among the Supreme Administrative Courts. The results are illustrated by the below tables.

Country	Total number of cases to which a filter process was applied in 2018
Spain	4784
Estonia	801
Norway	1009
Austria	7998
Germany	738
Portugal	1344
Slovenia	327
Latvia	1719
Belgium	447
Czech Republic	427
Ireland	157

⁸ The Council of State of Greece indicated that the answers on filtering did not appear on the questionnaire. The Council explained that “the filtering procedure before the Council of State mainly concerns appeals in cassation. According to Law 3900/2010, the appeal is inadmissible if the amount of the case does not exceed 40,000 euros (200,000 for public contracts). If it is higher than this figure, in addition, for the appeal to be considered admissible, the petitioner must prove that the contested decision is contrary to the jurisprudence of the Council of State or of another supreme court on a legal point determining the solution of the case or that there is no jurisprudence on this legal point. These provisions are also applied when the Council is judging on appeal.”

⁹ In Hungary, the filter process was introduced on 1 January 2018, therefore there were no data available at the time when the questionnaire was first answered.

France	6494
Total	26245

Table 4: Total number of cases to which a filter process was applied per country.

Maximum	7998
3 rd Quartile	4017,75
2 nd Quartile (Median)	905
1 st Quartile	432
Minimum	157

Table 5: Quartile analysis of the number of cases to which a filter process was applied.

b. Number of VAT cases to which a filter process was applied

26. Out of the 12 countries that provided figures for the total number of cases to which a filter process was applied in 2018, 6 (Austria, Germany, Portugal, Slovenia, the Czech Republic and Ireland) provided figures for the number of VAT cases to which a filter process was applied. Again, Hungary did not provide any figures for this section, but explained that the data necessary to answer the questions are not gathered and, while Spain provided figures for the totals, there are no disaggregated data available. Estonia does not gather data on appeal cases to which a filter process is applied. The relevant statistics for the answer to this question are not compiled by Norway. The aggregate was 49, giving an average of 7 per Supreme Administrative Court. Again, there was a large disparity between the country with the highest number of filtered VAT cases (Austria: 38) and the countries that gave a figure of 0 (Germany, Portugal, Belgium, the Czech Republic and Ireland). This is partly due to the fact that the Czech Republic only applies a filter in cases concerning international protection and Ireland does not maintain a catalogue of statistics for the areas of law about which the questions ask. Further, for some areas of law queried, Portugal does not gather the relevant statistics. These results provide a median of 0 and are illustrated in the tables below.

Country	Number of VAT cases to which a filter process was applied in 2018
Austria	38
Germany	0
Portugal	0
Slovenia	11
Belgium	0
Czech Republic	0
Ireland	0
Total	49

Table 6: Number of VAT cases to which a filter process was applied per country.

Maximum	38
3 rd Quartile	11
2 nd Quartile (Median)	0
1 st Quartile	0
Minimum	0

Table 7: Quartile analysis of VAT cases to which a filter process was applied per country.

c. Number of building permit cases to which a filter process was applied

27. Seven countries (Austria, Germany, Portugal, Slovenia, Belgium, the Czech Republic, Ireland) provided figures for the number of building permit cases to which a filter process was applied in 2018. Again, Hungary did not provide any figures for this section, but explained that the data necessary to answer the questions are not gathered and while Spain provided figures for the totals, there are no disaggregated data available. Estonia does not gather data on areas of law for leave to appeal cases. The relevant statistics for the answer to this question are not compiled by Norway. The aggregate was 590, giving an average of 84 per Supreme Administrative Court (after the remainder of 0.29 had been rounded down). Again, there was a large disparity between the country with the highest number of filtered building permit cases (Austria: 428) and the countries that gave a figure of 0 (Portugal, the Czech Republic and Ireland). Again, this is partly due to the fact that the Czech Republic only applies a filter in cases concerning international protection and Ireland does not maintain a catalogue of statistics for the areas of law about which the questions ask. Further, for some areas of law queried, Portugal does not gather the relevant statistics. These results provide a median of 13, as illustrated in the tables below.

Country	Number of building permit cases to which a filter process was applied in 2018
Austria	428
Germany	80
Portugal	0
Slovenia	13
Belgium	69
Czech Republic	0
Ireland	0
Total	590

Table 8: Number of building permit cases to which a filter process was applied per country.

Maximum	428
3 rd Quartile	80
2 nd Quartile (Median)	13
1 st Quartile	0
Minimum	0

Table 9: Quartile analysis of building permit cases to which a filter process was applied per country.

d. Number of public procurement cases to which a filter process was applied

28. Six countries (Austria, Germany, Portugal, Slovenia, the Czech Republic, Ireland) provided figures for the number of public procurement cases to which a filter process was applied in 2018. Again, Hungary did not provide any figures for this section, but explained that the data necessary to answer the questions are not gathered and while Spain provided figures for the totals, there are no disaggregated data available. Estonia does not gather data on areas of law for leave to appeal cases. The relevant statistics for the answer to this question are not compiled by Norway. The aggregate was 57, giving an average of 8 per Supreme Administrative Court (after the remainder of 0.14 had been rounded down). In actuality, only Austria provided any figures greater than 0. Again, this is partly due to the fact

that the Czech Republic only applies a filter in cases concerning international protection and Ireland does not maintain a catalogue of statistics for the areas of law about which the questions ask. The Slovenian Supreme Court is not competent in the area of public procurement, and thus provided a figure of 0. Further, for some areas of law queried, Portugal does not gather the relevant statistics. For these reasons, there are no tables provided as they would be redundant.

e. Number of migration cases to which a filter process was applied

29. For migration cases, 7 countries (Austria, Germany, Portugal, Slovenia, Belgium, Czech Republic and Ireland) provided figures for the number of cases to which a filter process was applied in 2018. Again, Hungary did not provide any figures for this section, but explained that the data necessary to answer the questions are not gathered and while Spain provided figures for the totals, there are no disaggregated data available. Estonia does not gather data on appeal cases to which a filter process is applied. The relevant statistics for the answer to this question are not compiled by Norway. The aggregated was 4496, giving an average of 642 per Supreme Administrative Court (after rounding down the remainder of 0.29). Again, there was a large disparity between the country with the highest number of filtered migration cases (Austria: 3599) and the country with the lowest (Portugal: 0). However, for some areas of law queried, Portugal does not gather the relevant statistics. These results provide a median of 79 and are illustrated in the table below.

Country	Number of migration cases to which a filter process was applied in 2018
Austria	3599
Germany	79
Portugal	0
Slovenia	14
Belgium	359
Czech Republic	427
Ireland	18
Total	4496

Table 10: Number of migration cases to which a filter process was applied per country.

Maximum	3599
3 rd Quartile	427
2 nd Quartile (Median)	79
1 st Quartile	14
Minimum	0

Table 11: Quartile analysis of migration cases to which a filter process was applied per country.

f. Total number of cases accepted for resolution after filtration

30. Ten countries (Estonia, Norway, Austria, Germany, Portugal, Slovenia, Belgium, the Czech Republic, Ireland and France) provided figures for the total number of cases accepted for resolution by their Supreme Administrative Court after the filter process was deployed in 2018. Again, Hungary did not provide any figures for this section, but explained that the data

necessary to answer the questions are not gathered, and while Spain provided figures for the totals before the filtration process, there are no disaggregated data available for any other sections from the questionnaire. The aggregate was 5632. This gives an average of 563 per Supreme Administrative Court. (when the remainder of 0.2 is rounded down). Again, there was a large disparity between the country with the highest number of cases accepted after the filtration process (France: 1756) and the country with the lowest (Slovenia: 37). This leaves a median of 245, as illustrated by the tables below.

Country	Total number of cases accepted for resolution after a filter process was applied in 2018
Estonia	91
Norway	323
Austria	1556
Germany	54
Portugal	1276
Slovenia	37
Belgium	216
Czech Republic	78
Ireland	49
France	1756
Total	5632

Table 12: Total number of cases accepted for resolution after a filter process was applied per country.

Maximum	1756
3 rd Quartile	1346
2 nd Quartile (Median)	245
1 st Quartile	52,75
Minimum	37

Table 13: Quartile analysis of the number of cases accepted for resolution after a filter process was applied.

g. Number of VAT cases accepted for resolution after filtration

31. Out of the 10 countries that provided figures for the total number of cases accepted for resolution after a filter process was applied in 2018, 7 (Norway, Austria, Germany, Portugal, Slovenia, the Czech Republic and Ireland) provided figures for the number of VAT cases accepted for resolution after a filter process was applied. Again, Hungary did not provide any figures for this section, but explained that the data necessary to answer the questions are not gathered and while Spain provided figures for the totals, there are no disaggregated data available. Estonia does not gather data on areas of law for leave to appeal cases. The aggregate was 20, giving an average of 3 per Supreme Administrative Court (after the remainder of 0.5 has been rounded up). Again, there was a large disparity between the country with the highest number of filtered VAT cases accepted for resolution (Austria: 19) and the countries that gave a figure of 0 (Germany, Portugal, Slovenia, Belgium, the Czech Republic and Ireland). This is partly due to the fact that the Czech Republic only applies a filter in cases concerning international protection and Ireland does not maintain a catalogue of statistics for the areas of law about which the questions ask. Further, for some areas of law queried, Portugal does not gather the relevant statistics. These results provide a median of 0 and are illustrated in the tables below.

Country	Number of VAT cases accepted for resolution after filtration in 2018
Norway	1
Austria	19
Germany	0
Portugal	0
Slovenia	0
Belgium	0
Czech Republic	0
Ireland	0
Total	20

Table 14: Number of VAT cases accepted for resolution after filtration per country.

Maximum	19
3 rd Quartile	0,75
2 nd Quartile (Median)	0
1 st Quartile	0
Minimum	0

Table 15: Quartile analysis of VAT cases accepted for resolution after filtration per country.

h. Number of building permit cases accepted for resolution after filtration

32. Eight countries (Norway, Austria, Germany, Portugal, Slovenia, Belgium, the Czech Republic and Ireland) provided figures for the number of building permit cases accepted for resolution after a filter process was applied. Again, Hungary did not provide any figures for this section, but explained that the data necessary to answer the questions are not gathered and while Spain provided figures for the totals, there are no disaggregated data available. Estonia does not gather data on areas of law for leave to appeal cases. The aggregate was 142, giving an average of 18 per Supreme Administrative Court (after the remainder of 0.75 has been rounded up). Again, there was a large disparity between the country with the highest number of filtered building permit cases accepted for resolution (Belgium: 69) and the countries that gave a figure of 0 (Norway, Portugal, the Czech Republic and Ireland). This is partly due to the fact that the Czech Republic only applies a filter in cases concerning international protection and that Ireland does not maintain a catalogue of statistics for the areas of law about which the questions ask. Further, for some areas of law queried, Portugal does not gather the relevant statistics. These results provide a median of 1 and are illustrated in the tables below.

Country	Number of building permit cases accepted for resolution after filtration in 2018
Norway	0
Austria	64
Germany	7
Portugal	0
Slovenia	2
Belgium	69
Czech Republic	0

Ireland	0
Total	142

Table 16: Number of building permit cases accepted for resolution after filtration per country.

Maximum	69
3 rd Quartile	49,75
2 nd Quartile (Median)	1
1 st Quartile	0
Minimum	0

Table 17: Quartile analysis of building permit cases accepted for resolution after filtration per country.

i. Number of public procurement cases accepted for resolution after filtration

33. Seven countries (Norway, Austria, Germany, Portugal, Slovenia, the Czech Republic and Ireland) provided figures for the number of public procurement cases accepted for resolution after a filter process was applied. Again, Hungary did not provide any figures for this section, but explained that the data necessary to answer the questions are not gathered and while Spain provided figures for the totals, there are no disaggregated data available. Estonia does not gather data on areas of law for leave to appeal cases. The aggregate was 17, giving an average of 2 per Supreme Administrative Court (after the remainder of 0.13 has been rounded down). In actuality, only Austria provided any figures greater than 0. Again, this is partly due to the fact that the Czech Republic only applies a filter in cases concerning international protection and Ireland does not maintain a catalogue of statistics for the areas of law about which the questions ask. The Slovenian Supreme Court is not competent in the area of public procurement, and thus provided a figure of 0. Further, for some areas of law queried, Portugal does not gather the relevant statistics. For these reasons, These results give a median of 0 and are illustrated in the tables below.

Country	Number of public procurement cases accepted for resolution after filtration in 2018
Norway	0
Austria	17
Germany	0
Portugal	0
Slovenia	0
Belgium	0
Czech Republic	0
Ireland	0
Total	17

Table 18: Number of public procurement cases accepted for resolution after filtration per country.

Maximum	17
3 rd Quartile	0
2 nd Quartile (Median)	0
1 st Quartile	0
Minimum	0

Table 19: Quartile analysis of public procurement cases accepted for resolution after filtration per country.

j. Number of migration cases accepted for resolution after filtration

34. Eight countries (Norway, Austria, Germany, Portugal, Slovenia, Belgium, the Czech Republic and Ireland) provided figures for the number of migration cases accepted for resolution after a filter process was applied. Again, Hungary did not provide any figures for this section, but explained that the data necessary to answer the questions are not gathered and while Spain provided figures for the totals, there are no disaggregated data available. Estonia does not gather data on areas of law for leave to appeal cases. The aggregate was 663, giving an average of 83 per Supreme Administrative Court (after the remainder of 0.88 has been rounded up). Again, there was a large disparity between the country with the highest number of filtered migration cases accepted for resolution (Austria: 360) and the country with the lowest (Portugal: 0). However, for some areas of law queried, Portugal does not gather the relevant statistics. These results provide a median of 9 and are illustrated in the tables below.

Country	Number of migration cases accepted for resolution after filtration in 2018
Norway	1
Austria	360
Germany	2
Portugal	0
Slovenia	6
Belgium	129
Czech Republic	78 ¹⁰
Ireland	12
Total	663

Table 20: Number of migration cases accepted for resolution after filtration per country.

Maximum	360
3 rd Quartile	147
2 nd Quartile (Median)	9
1 st Quartile	1,25
Minimum	0

Table 21: Quartile analysis of migration cases accepted for resolution after filtration per country.

Relative rates of successfully clearing the filter process

Area of law	Number of cases	Total accepted after filtration	Rate of successfully clearing the filter
VAT cases	49	20	40,82 %
Building permit cases	590	142	24,07 %
Public procurement cases	57	17	29,82 %
Migration cases	4496	663	14,75 %
All cases	26245	5632	21,46 %

Table 22: Relative rates of successfully clearing the filter process.

¹⁰ The Supreme Administrative Court of the Czech republic specified that it a filter is only applied in cases concerning international protection.

As can be seen from the above table, across all respondents for this section, a potential appeal as a 21.5% chance of being accepted for hearing before a Supreme Administrative Court. In terms of VAT cases, the percentage is considerably higher at 40.82%. Whilst, in terms of aggregate numbers, there are far more migration cases than the other types of cases combined, the actual percentage of cases that will successfully clear the filtration process is much lower than that for all cases, at only 14.75%. However, given the actual scale of the figures involved across most areas of law, it is difficult to draw decisive conclusions.

k. Other data of interest

35. Austria provided a great deal of detail about how its Supreme Administrative Court operates. As a rule, it only operates upon request as a court of last instance. However, there are many avenues of entry under the Federal Constitution. Natural and legal persons may petition for review of rulings by lower administrative courts, if they involve questions of fundamental importance. Pursuant to Article 133, paragraph 4, a lower court has to decide in its decision whether or not a final complaint to the Supreme Administrative Court is admissible. If the lower court decides that it is, the appeal is known as an “ordinary final complaint”, which, pursuant to the case law of the Supreme Administrative Court, must contain in conjunction with the legal question of fundamental importance, separately, reasons regarding its admissibility if the complainant regards the decision of the administrative court admitting it to be insufficient or if there are other questions of law of fundamental importance. If the lower court does not determine that the complaint is admissible, then the final complaint is known as an “extraordinary final complaint” and must contain, separately, reasons regarding its admissibility contrary to the finding of the lower court. While a final complaint that does not contain reasons can be rejected, this process shows that the Austrian Supreme Administrative Court does not have a wide degree of latitude in determining which appeals it will hear, notwithstanding the filter process.

This is similar to the additional comment provided by Germany, which noted that lower courts may also admit cases for resolution, and their decisions to do so are binding upon the Federal Administrative Court.

The Belgian federal administrative order is different to those in other European countries in that it is not composed like a pyramid with first instance courts, appellate courts, and a supreme court at the top. The administrative section of the Belgian Council of State acts as a quashing court of administrative decisions, the execution of which it can also suspend under the administrative summary procedure. It can also grant reparatory compensation following decisions to quash or findings of illegality. It also sits as a court of cassation for decisions rendered by certain lower administrative jurisdictions (federal, regional and comunitary), such as the “Raad voor Vergunningsbetwistingen” in the Flemish Region or, at the federal level, the “Raad voor Vreemdelingenbetwistingen - Conseil du contentieux des étrangers” (“Aliens Litigation Council”). Its power to annul extends to all acts of the Kingdom's administrative authorities, according to the powers conferred by the Constitution and special laws on the federal state, the Communities (French, Flemish and German-speaking), the Regions (Flemish, Walloon and Brussels-Capital) and decentralised entities (municipalities and provinces).

The Supreme Court of Ireland, which always operates a filtration process, based its figures on the number of Determinations (i.e. written reasons published by the Court) granting or rejecting filter applications that were issued in 2018. From the answers given, and considering that the Supreme Court of Ireland uses a filter process for all potential appeals, it is clear that the Court enjoys a wide latitude in determining what cases it will hear. The response from France notes that Article L. 822-1 of the Administrative Code of Justice institutes the admissions procedure for appeals that apply to all appeals that the Council has jurisdiction to hear.

I. Conclusions

36. While the figures given are at their most valuable and robust when viewed in their own domestic setting, what can be said is that, across the countries that responded, each appeal to a Supreme Administrative Court has a, roughly, 21% chance of successfully clearing the filter process. With migration cases, the chances of successfully clearing the filter are much lower. This suggests that, despite the greater numbers of potential appeals, the cases themselves deal with well-established principles and questions that have been, more or less, conclusively settled. However, in VAT cases, the chance of successfully clearing the filter is in-or-around 40% of all cases. What this suggests is that the issues raised in VAT cases are either novel or of such great importance to warrant Supreme Administrative Courts consistently revisiting the area of law.

Finally, for the countries for which the figures are available, the rate of successfully clearing the filter process varies depending on the country. There are numerous factors for this which can include the criteria each country sets for successfully being granted permission to appeal to the Supreme Administrative Court to the amount of control the Supreme Administrative Court, itself, has over managing its incoming case load. For this conclusion, the relative rates of success per country are set out in the table below. Given the disparity in figures between countries in terms of areas of law, only the totals have been calculated.

Country	Number of Cases	Total Accepted After Filtration	Rate of Successfully Clearing the Filter
Estonia	801	91	11,36 %
Norway	1009	323	32,01 %
Austria	7998	1556	19,45 %
Germany	738	54	7,32 %
Portugal	1344	1276	94,94 %
Slovenia	327	37	11,31 %
Belgium	447	216	48,32 %
Czech Republic	427	78	18,20 %
Ireland	157	49	31,21 %
France	6494	1756	27,04 %
Total	26245	5632	21,50%

Table 23: Relative rates of successfully clearing the filter per country.

B. Time and resources allocated to the filter process

a. Requirement of a written determination ex officio in respect of all applications

37. Out of the 25 countries, 14 (Spain, Hungary, Estonia, Norway, Austria, Germany, Finland, Portugal, Slovenia, Latvia, Belgium, Czech Republic, Ireland and France) (56%) require a written determination, ex officio in respect of all cases. The remaining 11 countries (The Netherlands, Slovakia, Cyprus, Croatia, Poland, Lithuania, Bulgaria, Romania, Luxembourg, Italy and Greece, i.e. those countries that do not apply a filtering process) (44%) answered with “Not Applicable”. Given these results, it is not necessary to examine whether written determinations are required for the various areas of law asked about (VAT, building permits, public procurement, and migration) as the answers are already contained in the first set of figures.

b. Time limits for the delivery of written determinations

38. Out of the countries surveyed, 5 (Hungary, Portugal, Slovenia, Belgium and the Czech Republic) (20%) have a time limit in place within which a determination must be delivered on an application. There are 9 countries (Spain, Estonia, Norway, Austria, Germany, Finland, Latvia, Ireland and France) (36%) that do not have a time limit in place for the delivery of such determinations. Finally, the remaining 11 countries (The Netherlands, Slovakia, Cyprus, Croatia, Poland, Lithuania, Bulgaria, Romania, Luxembourg, Italy and Greece) (44%) answered with “Not Applicable”.

c. Average time (in days) between an application for admission and the delivery of a determination on a filter application

39. Of the countries surveyed, 11 (Spain, Hungary, Estonia, Norway, Germany, Portugal, Slovenia, Belgium, the Czech Republic, Ireland and France) provided information about the average length of time, in days, that it takes for a determination of a filtered application to be delivered. However, the Supreme Court of Ireland notes that the figure provided reflects the time from the filing of complete documentation of an application for leave to appeal to the issuance of a written determination. This does not necessarily mean that the judge has been involved with the application throughout all of this time, as it must be processed. The aggregate number of days spent by all courts on this topic was 848.39. This gives an average of 77.13 days per Supreme Administrative Court. However, when the disparity between the country that reported the longest lapse of time (France: 170) and the country that reported the shortest lapse of time (Portugal: 0), the median number of days is 65. These results are illustrated in the tables below.

Country	Average time for delivery of determinations
Spain	162,00
Hungary	30,00
Estonia	65,00
Norway	17,50
Germany	151,00
Portugal	0,00
Slovenia	90,89
Belgium	30,00
Czech Republic	131,00
Ireland	42,00

France	170,00
Average time	77,13

Table 24: Average time for the delivery of determinations for filtered applications.

Maximum	170
3 rd Quartile	151
2 nd Quartile (Median)	65
1 st Quartile	30
Minimum	0

Table 25: Quartile analysis of the average time for delivering determinations for filtered applications.

d. Estimated percentage of overall time spent resolving filter applications

40. Of the countries surveyed, 8 (Hungary, Estonia, Germany, Portugal, Slovenia, Belgium, the Czech Republic and Ireland) provided estimates of their Supreme Administrative Courts' overall time spent on resolving filter applications. However, a number of caveats must be applied to these results. Spain does not have disaggregated data for this question. The estimate from Estonia is described as a "gut feeling" and must be taken as such. Slovenia provided an answer of 0 as data are not available to the Supreme Administrative Court. In Ireland, much of the judges' time is spent reading papers relating to the applications and drafting determinations, but this is very hard to calculate. In general, one day out of five is spent dealing with filter applications. In France, the percentage of time spent by judges is impossible to calculate, but, in general, 70% of work done by the Council of State is related to appeals. Since these figures are dealing with estimates of percentages, there is no need to give an aggregate figure, but on average, each Supreme Administrative Court spent 17.5% of its time on resolving filter applications. For completeness, comparing the highest figure (Estonia: 60%) with the lowest figures (Portugal and Slovenia: 0) gives a median of 10%.

Country	Estimated percentage of overall time spent on filter applications
Hungary	10 %
Estonia	60 %
Germany	30 %
Portugal	0 %
Slovenia	0 %
Belgium	10 %
Czech Republic	10 % ¹¹
Ireland	20 %

Table 26: Estimated percentage of overall time spent resolving filter applications.

Maximum	60,00 %
3 rd Quartile	27,50 %
2 nd Quartile (Median)	10,00 %
1 st Quartile	2,50 %

¹¹ The Supreme Administrative Court of the Czech Republic clarified that "the proportion of cases admissible for filtration against all cases is 10%. The ratio of admissible cases after the filtration process is 18,2%. However, this number does not reflect the overall time spend on the case."

Minimum	0,00 %
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Table 27: Quartile analysis of the estimated percentage of time spent resolving filter applications.

e. Other information relating to the delivery of determinations

41. In Belgium, appellate decisions (cassation) are subject to admissibility examinations that lead to admission or non-admission orders. The decision to admit a case before the Council of State is not justified, but the decision to reject requires “succinct” motivation. This rule is valid for all matters in which the Council of State is a court of cassation.

In France, the decisions to admit a case are decisions of jurisdictional administration. They are not, themselves, appealable. They take the form of a letter addressed to the applicant or their lawyer informing them of the admission of the appeal. On the other hand, the decisions to reject a case are judicial decisions. They are summarily justified and are effectively limited to enumerating the ways that a case can give rise to appeal before specifying, if necessary, that the case in question meets none of the requirement criteria. The only way to revisit such a case is if a material error has been made.

f. Public oral hearings for filter applications

42. Of the 25 countries surveyed, no (0%) countries provide public oral hearings for all filter applications. 11 countries (Spain, Hungary, Estonia, Norway, Austria, Germany, Finland, Portugal, Slovenia, Latvia and Belgium) (44%) do not provide a public oral hearing in any filter application cases. There are 3 countries (Czech Republic, Ireland and France) (12%) that provide a public oral hearing in some filter application cases. Finally, 11 countries (The Netherlands, Slovakia, Cyprus, Croatia, Poland, Lithuania, Bulgaria, Romania, Luxembourg, Italy and Greece) did not provide an answer as the question does not apply to them. The explanatory notes for this section shall be published in the Conclusions section. Furthermore, no country provided any figure greater than 0 in terms of filter applications that received a public oral hearing in 2018, so it is not necessary to analyse these figures any further.

g. Average time allocated to a public oral hearing on a filter application (in minutes)

43. There were 10 countries (Hungary, Estonia, Austria, Germany, Finland, Portugal, Slovenia, Latvia, Belgium and the Czech Republic¹²) (40%) that allocate 0-5 minutes for a public oral hearing on a filter application. France (4%) allocates 6-15 minutes per public oral hearing. Spain (4%) allocates 31-60 minutes per public oral hearing¹³. Finally, Ireland (4%) allocates the most time, on average, with more than 120 minutes. The remaining 12 countries (The Netherlands, Slovakia, Norway, Cyprus, Croatia, Poland, Lithuania, Bulgaria, Romania, Luxembourg, Italy and Greece) did not give an answer. The explanatory notes for this section shall be provided in the Conclusions section.

¹² The Supreme Administrative Court of the Czech Republic specified that it does not have the data for the average time allocated for a public oral hearing.

¹³ The Supreme Court of Spain clarified that it “allocates 31-60 minutes per public oral hearing in relation with substantive judicial problems, not about filter application cases”, that don’t get a public hearing.

h. Conclusion

44. In Hungary, no oral hearing is held in respect of filter applications. The Norwegian Supreme Court does not have oral hearings as part of its filtering procedure. In Austria, if a complaint is not suitable to be heard, it has to be rejected by order without any further proceedings pursuant to s. 34, para. 1 of the Supreme Administrative Court Act 1985. The Portuguese response notes that public oral hearings are not part of the filtration process. Slovenia provided the figure “0-5” for reasons of completeness, but there are no public oral hearings for filtered applications. In Belgium there is no oral hearing for filter applications. The Czech court notes that oral hearings are extremely rare for it. In Ireland, almost all filter applications are determined without an oral hearing. Relevant legislation does, however, provide for oral hearings where the Supreme Court, after considering the documents lodged, considers that such a hearing would be appropriate. This has only occurred in a very small number of applications. In France, pursuant to Article R. 822-2 of the Administrative Code of Justice, if the President of the Chamber does not directly admit the appeal, it is sent to the public rapporteur with a view to its publication for an audience. The application is heard in public unless the President of the Chamber or a specifically designated member of the Council of State refuses its admission by an order listed under Article R. 822-5. Almost 15% of cases are admitted after a public hearing, with the average time of each hearing being between 5 and 10 minutes.

As can be seen, the procedure for dealing with filter applications is quite uniform across all countries that issue determinations. Only France appears to use a public oral hearing as part of its normal filter process. Furthermore, estimates of time spent on filtering applications must be taken with caution due to the difficulty of estimating the time each court spends on them.

C. Case load and number of judges in the judicial body

a. Case load

45. Regarding the number of cases pending at Supreme administrative level on 31 December 2018, Italy has the most (27963), followed by Spain (9487), France (5255) and Belgium (4817).

Nevertheless, it must be underlined that in Italy, the Supreme Administrative Court has the function of a second and last instance court and in France, the Conseil d’Etat also has the competence of first instance and second instance and the competence of the Court of Cassation. In Belgium, the Council of State also has jurisdiction as a court of first instance, as well as a court of cassation, dealing with cases in the three national languages.

In contrast, there are countries with a very small number of pending cases, like Estonia (43), Norway (86) and Ireland (213). Regarding Norway, it should be noted that the data provided also relates to civil cases.

For the other countries, the average is a number of about 2.000-3.000 pending cases.

The major area of pending cases - where the data are available - seems to be in migration matters (with an average of 350-450 cases). Only in Finland is this number considerably higher (1023). There are then cases concerning building permits (with some countries with

an average of 300 cases, except Belgium which has 784 cases). Finally, we can mention cases concerning public procurement and VAT. Only in the Czech Republic is the number of VAT cases 300 and a number of 162 of such cases applies in France. In the other countries the number of cases is consistently less (7 cases in Estonia, 20 in Slovenia, 41 in Austria, etc.). It should be noted that in Italy, administrative judges do not have jurisdiction in VAT cases and tax cases in general. There is another judge (tax Commissions) with specific competence in these matters.

Regarding public procurement, Belgium has 297 pending cases and France has 147 pending cases. The other countries have a smaller number of cases (Austria 69, Czech Republic 25, Hungary 23, Finland 2).

The biggest number of cases closed at Supreme administrative level in 2018 (between 1 January 2018 and 31 December 2018) was in Italy (12646), followed by France (9583), Austria (7998), Spain (7386) and Finland (5904).

The other countries have a smaller number of decided cases (from Estonia, which decided 93 cases, to Czech Republic with 3489 cases decided).

A major number of them comprises of migration matters, with 3320 cases in Finland, 1770 in France, 1359 in Austria and 917 in Czech Republic. It should be mentioned that in Czech Republic the numbers which have been indicated represent only an estimate because they do not have detailed statistic on this issue.

By way of exception, in Italy, the largest number of decided cases refer to building permit matters (2177 cases) rather than migration cases (380).

The largest number of decided public procurements cases exists in Italy, with 810 cases. This is followed by Belgium with 240 cases and France with 228 cases. German and Slovenian administrative judges have no competence in this matter. The other countries have a significantly smaller number of cases (62 in Finland, 27 in Austria, 43 in Czech Republic, 3 in Estonia).

The total number of judges in full-time equivalent (FTE) serving in European administrative supreme courts in 2018 (between 1 January 2018 and 31 December 2018) is very different from one country to another.

The largest number of judges is those serving at the Conseil d'Etat in France (120). Belgium and Italy follow with 86 and 85 judges respectively. In Austria the number of judges is 68 and 55 in Germany. In Spain and Czech Republic, the number is respectively 35 and 34. In the other countries the number of judges is significantly smaller: 23 in Hungary, 16 in Portugal, 11 in Latvia, 8 in Czech Republic, 6,5 in Slovenia, 4,5 in Estonia.

In conclusion, we can say that where the workload is bigger the number of judges is higher, even if for some countries, like Spain and Italy, the number of judges in comparison with the huge number of cases seems to be rather small.

b. Double examination system

46. Only France and Belgium have a system of "double examination", whereby some judges assess cases and draft reports, which contain, in general, a summary of the facts of

the case and the arguments of the parties as well as an examination of the merits of the case and other judges deliver judgments.

In Belgium this competence belongs to the Auditorat, in which 56 magistrates work. The magistrates of the Auditorat are entitled to prepare the preliminary instruction of the dossier and write a report containing a proposed solution of the case. The panel may accept the proposal or not. In France, 83 % of the total number of judges are charged with drafting reports containing, in general, a summary of the facts of the case and the arguments of the parties as well as an examination of the merits.

In all of the other countries such a system of “double examination” is not known and the decision in relation to the case belongs to a panel, generally made up of three judges. In Italy, each judge who is appointed rapporteur, is charged with drafting judgments that generally contain a summary of the facts of the case, arguments of the parties and the reasons for decision. Presidents are not charged with drafting judgments, and draft only decrees and ordinances for urgent measures.

c. Specialized judges

47. In only Spain, Hungary, Germany and Latvia are there judges who are assigned to deciding cases involving only one or more specialized areas of law. 29 of such judges exist in Spain out of a total of 35; 7 in Hungary out of a total of 23; 55 in Germany and 86 in Belgium (meaning that all the judges are specialized judges)¹⁴.

The small number of specialized judges in Hungary can be explained by the fact that Hungary has specialized judges only for deciding VAT cases.

In these countries, with the exception of Germany, there are specialized judges to resolve cases of VAT. They are 8 in Spain, 7 in Hungary and 1 in Latvia. None of them is assigned to solve solely VAT cases.

In Portugal, the Supreme Administrative Court is composed of two sections: the Administrative and the Tax Sections.

In Italy, there are no specialized judges, but each judge is appointed to a section of the Council of State that deals with specific areas.

In all of the above-mentioned countries, with the exception of Hungary, there are specialized judges for building permit, migration and public procurements cases.

The number of judges who specialize in building permit are: 4 in Spain, 5 in Germany, 1 in Latvia. None of them is assigned to solve solely building permit cases. Only Germany provided the average number of building permit cases resolved by specialist judges (in FTE) in 2018 which was 21.

The number of judges who specializes in migration cases are: 4 in Spain, 6 in Germany, 3 in Latvia. None of them is assigned to solve solely migration cases. Only Germany provided the average number of migration cases resolved by specialist judges (in FTE) in 2018 which was 32.

¹⁴ The Supreme Court of Spain specified that it is not the judges who are specialized, but the sections or chambers, “in such way that these sections know of specific matters.”

The number of specialized judges assigned to resolve public procurement cases is: 6 in Spain, 2 in Latvia.

None of them is assigned to solve solely public procurements cases.

The average number of cases resolved by judges who are not solely assigned to resolving cases involving one specialized area of law is 85 in Hungary, 151 in Austria, 103 in Slovenia and 90 in Latvia, 117 in Czech Republic and 80 in France.

Conclusion: Most countries do not have specialized judges and in none of the interviewed countries are there judges solely assigned to solve cases in migration, public procurements, VAT and building permit areas.

d. Competence of Supreme Administrative Court in make findings of fact in a case

48. The Supreme Administrative Court in Hungary, Norway, Austria, Finland, Portugal, Slovenia, Belgium, Italy, Czech Republic and France have the authority to make findings of facts in a case. This competence is recognized when the Supreme Administrative Court has the function of a first or second instance court. This competence is not provided for when the Supreme Administrative Court has only a cassation function, reviewing only issues of law.

D. Additional judicial roles of judges

49. Twelve countries responded to this part of the questionnaire. Among these countries Portugal and Bulgaria did not provide relevant data. Some respondents answered to the question relating to the additional judicial roles of judges giving the number of cases per FTE judge (full-time equivalent). FTE is a unit that vindicates the workload of an employed person in a way that makes workloads comparable across various contexts¹⁵. Others provided the number of cases in 2018 in which judges played a specific role. Germany and Czech Republic expressed uncertainty whether they understood the questions properly. Germany divided the number of cases in 2018 by the number of the judges who have been given an additional role mentioned in the questions below. Czech Republic provided the number of cases in total in 2018 marking that decision is never given by a single judge. France explained that the functions of judge rapporteur and president of the chamber, and the fact of sitting in an enlarged chamber are not additional functions - the judges of the litigation section of the Council of State exercise either the function of a rapporteur, a reviser, or a president.

a. The number of cases (per FTE) in which judges were given an additional role as a judge rapporteur (case manager) in 2018

50. In Spain one full-time judge was given an additional role as a judge rapporteur in 16 cases. All of the cases are decided by collegiate panels, presided over by a chairman, being a judge, by turns, rapporteur of every case.

¹⁵ An FTE of 1.0 is equivalent to a full-time worker. 1 FTE equals 1 judge working full time - 100%.

In the Estonian Supreme Court, the number of cases per one judge was similar to that in the Spanish court. The Estonian supreme court usually delivers judgments in panels of 3 judges, one of whom is the rapporteur. The rapporteur is also the presiding judge in the panel, unless the panel includes the president of the chamber who is the presiding judge in this case.

In Norway all cases which are granted leave to appeal, and hence receive an oral hearing, do have a judge as a case manager. All substantive judgments are rendered by at least a chamber of five judges, and all such cases will have a presiding judge.

In Austria (7998 cases in 2018) in every incoming case one judge of the competent panel in accordance with the allocation of the matters is appointed as a rapporteur for the case by the President of the Supreme Administrative Court. The rapporteur prepares a draft ruling, which the panel then deliberates and decides on in a meeting which is not open to the public. Procedural instructions in the preliminary proceedings, procedural instructions serving only to prepare the decision, as well as procedural instructions and decisions concerning granting suspensive effect to a petition and legal aid is issued by the rapporteur as a single judge without resolution of the panel.

Ireland gave an estimated number of cases per FTE judge (49) since no statistics are available in relation to such activities. This represents the number of full appeals (i.e. the appeals admitted for hearing following the filtering process) determined by the Supreme Court during the relevant period. A case management judge is appointed for each case admitted during the filtering process. All judges of the Court carry out this additional role. The case management judge may not necessarily be the judge designated to write the judgment of the Court. So, in respect of each appeal, the senior judge of the panel assigned to determine the appeal will take on the role of 'presiding judge' or the case management judge, will be nominated to write the judgment. Judges do also have additional roles such as chairing the panels of three judges which consider applications for leave to appeal.

France did not give a number of cases per FTE judge due to the fact that the function of judge rapporteur and president of the chamber are not additional functions.

In Hungary the answer was 85 cases per FTE judge whereas in Germany the number was 33 cases. Czech Republic answered by giving the total number of cases (4109) indicating that the judges never decide in a single panel. There are usually 3-member panels with one presiding judge and one case manager. In 2018 total number of judges in case of this country was 34.

b. The number of cases (per FTE) in which judges were given an additional role as a presiding judge in a panel in 2018

51. Having regard to the organization of the courts in Member States mentioned above, the answers to the relevant question vary depending on the methods of adjudication and the understanding of the question. Judges have been given an additional role as a presiding judge in a panel in 2018 in the number of cases per FTE judge as follows: Spain (17), Hungary (175), Estonia (16), Austria (7998), Germany (131), Czech Republic (4109), Ireland (49), Norway and France did not give an answer to this question.

c. The number of cases (per FTE) in which judges were given an additional role as a single judge in 2018

52. In Hungary the number of cases per one FTE judge was equal to the number of cases in which judge was a case rapporteur (85). In Spain all the cases are settled by collegiate panels. Norway does not possess statistics relating to single judge decisions, but single judge decisions are limited to relatively minor decisions of a procedural nature. In Austria the number was equal to previous answers because of the method of adjudication described above. Germany did not give an answer. In Czech Republic there were no decisions given by a single judge. Ireland gave an estimated number of 49 cases per FTE judge. France considered function of a single judge as an additional function exercised by 27 judges in a number of 10 cases per FTE judge.

d. The number of cases (per FTE) in which judges were given other responsibilities (e.g. sitting in an enlarged panel)

53. In Spain there were 100 cases per FTE judge in which other responsibilities were entrusted to him/her. Enlarged sessions (all the administrative court judges from all panels) are to discuss common administrative law questions. In Hungary, the number of cases per one FTE judge was 0,5. In Norway, in 2018 the Supreme Court sat once as a grand chamber and once in plenary. In Estonia there were 34 cases per one FTE judge. In Austria there was 1 case per FTE judge. In Czech Republic there were 17 cases, where a seven members enlarged panel was supposed to decide. Germany, Ireland and France did not give an answer to this question.

e. Conclusions

54. Additional functions of judges are inevitable, although it would be ideal if a judge could adjudicate in a case without performing additional functions.

While providing the answers relating to the additional judicial roles of judges the respondent countries adopted different assumptions. Thus, it is difficult to draw clear conclusions in this regard.

It would be desirable to deepen the analysis on the burden sharing among judges and obtain harmonized data to draw further conclusions on the workload of judges.

E. Research and administrative assistance for judges of the court

a. Research assistance for judges

55. In a vast majority of the responding Member States research assistance is provided (13 out of 14 Member States). Only in Finland is such assistance not provided. Nevertheless, Finland explained that a court referendary prepares each case to be decided in session by a

panel of judges, of whom one serves as a judge rapporteur. In each case the referendary prepares a memorandum of the relevant facts and applicable law and drafts a proposed judgement, which includes a proposed decision. The extent of research, comparative law analysis, etc. which goes into the memorandum and proposed judgment depends entirely on the nature and scope of the case at hand. The referendary usually discusses the case with the judge rapporteur before the session. The judge rapporteur acquaints himself with all of the documents of the case before the session and provides the other judges on the panel with his comments regarding the case before the session.

b. Total number of legal assistants (in FTE) on December 2018

56. In December 2018 the total number of legal assistants (in FTE) in the Member States ranged from 3 assistants in Hungary to 67 in Czech Republic. There were 24 legal assistants in Spain, 7,5 in Estonia, 25 in Norway, 47 in Austria, 14 in Germany and Slovenia, 10 in Portugal, 19 in Latvia, 13,2 in Belgium, 11 in Ireland and 50 in France.

c. Legal assistants individually assigned/shared by judges

57. In most of the responding countries legal assistants are shared by judges whereas in Latvia, Czech Republic and Ireland they are individually assigned to a judge. Czech Republic noted that generally every judge has two assistants at their disposal but the president and vice-president have three such persons. In Ireland each judge of the Supreme Court has one judicial assistant who is a law graduate. Each judge also has an additional staff member to assist with court going duties, who is either a judicial assistant (law graduate) or an usher (non-law graduate) who is usually, for example, a retired member of the police or an army official.

d. Estimated ratio of legal assistants to judges (e.g. 1/3 = one assistant to three judges)

58. In France and Hungary there is 1 legal assistant to 3 judges, in Portugal it is 1 legal assistant to 16 judges, in Estonia the ratio is 7.5 legal assistants to 4.5 judges and in Germany 1 legal assistant works for 5 judges. Slovenia indicated that 14 assistants provide assistance to 6,5 judges.

e. Level of assistance

59. In Hungary, Estonia, Norway, Germany, Portugal, Slovenia, Latvia, Czech Republic and Ireland judges are provided with the same level of assistance whereas in Spain, Austria, Belgium and France the level is not the same.

In Hungary the research assistants' tasks are determined by the heads of the adjudicating panels. In the Supreme Court of Estonia, in addition to the assistants, there is one analyst and one specialist in the legal information department who, along with other functions, also assists the judges with background research for the cases. Since there are more legal assistants than judges in the Supreme Administrative Court of Portugal, the judges end up

sharing the assistance received. In Czech Republic there is also a Research and Documentation Service (five lawyers) at the disposal of the whole court.

Spain stated that assistants are only assigned to Admission Section judges (judges deciding to admit or not appeal cases).

In Austria legal assistance depends on the area of law involved in a specific case. About half of the available legal assistants are pooled in asylum law and work exclusively in this field of law. In this "pool" a team of four to five legal assistants works for one of the five asylum panels. In addition there is a pool of three legal assistants who work exclusively in gambling law and which deals with gambling cases for the judges. The rest of the legal assistants are assigned to single judges.

Belgium specified that certain chambers benefit from the assistance of a legal attaché who can carry out legal research but that this does not exist in all areas. The State Council Auditorate also benefits from several legal attachés who are responsible for, among other things, supplying databases. Independently of the legal attachés, all of the chambers of the Council benefit from the assistance of clerks.

In France the litigation section of the Council of State permanently includes from 45 to 50 employees working as a decision support staff divided between ten chambers, the office for interim measures and the powers of the president, the legal aid office and the Court of Conflicts. Each decision support team is headed by a justice assistant and therefore includes 3, 4 or even 5 trainees from the lawyers' training school or the university. The decision support teams are assigned to the chamber presidents.

f. Estimated percentage of cases in which judges receive assistance

60. Giving the precise percentage of cases in which a specific judicial assistance is provided turned out to be impossible for a portion of the responding countries. Portugal does not have statistics on this matter, nor does Slovenia, where in approximately 80 % of the cases in which assistants are involved, they give almost all of the types of judicial assistance listed in the question. The answers provided by Slovenia are the estimated percentage in which the judges received any type of assistance and is identical in every listed area of assistance. Belgium stated it is not possible to respond precisely for the question given. Similarly Ireland stated that it is not possible to provide an estimated percentage of cases in which judges receive assistance in the areas identified, as the type of assistance provided by each judicial assistant to the judge to whom he or she is assigned varies depending on the needs of the judge. In theory, a judicial assistant may assist a judge with any of the areas above, although the making of the decision is a matter for the judge and preparing sections of a proposed judgment including a decision and proposing a suggested decision are generally not something carried out by judicial assistants. A similar situation exists in Czech Republic (even though it provided data) where the range of judicial assistance depends on the needs of a judge at a given time. It is necessary to mention that Finland does not have judicial assistants but such a role played by referendaries who take action in each case. For that reason, Finland gave a response of 100% in every area identified in the question.

Austria did not provide data on this question but explained the role of judicial assistants in an additional comment. Legal assistants take the minutes at panel meetings and during office hours one legal assistant is available to deal with questions from the public concerning cases (not regarding the content) and general questions concerning the Supreme Administrative Court. Generally speaking, all of the duties mentioned in the relevant question are or can be carried out by legal assistants. The extent of support depends solely on the supported judges. The preparation of pre-hearing documents is normally not needed since oral hearings are uncommon at the Supreme Administrative Court. However, the rest of the stated duties are included in the main scope of functions of legal assistants. Apart from these tasks, the legal assistants are partly responsible for the systematic documentation of legal rules, which then are published online in the legal information system ("RIS"). Furthermore, some legal assistants are also assigned additional tasks: two legal assistants support the media spokesperson, two are responsible for tasks regarding the ACA and other international affairs and another two handle enquiries regarding human rights.

Norway stipulated that the answers must be read against the background of the law clerks' assistance being provided mainly to the Appeals Selection Committee in connection with the filtering process. The assistance provided to the Supreme Court judges when they sit as a chamber, grand chamber or plenary is in general much less extensive.

g. Preparation of pre-hearing documents, such as a memorandum to assist the judge prior to the hearing

70. Spain and Estonia specified that in 10% of cases judges receive assistance in the preparation of pre-hearing documents. Estonia noted in the commentary that the answer provided is a result of the fact that there are very few oral hearings and the overall percentage of all cases is close to 0%. Notably, in approximately 70 % of the cases in which there is a hearing, an assistant prepares the memorandum. In Hungary such assistance is provided in about 20% of the cases, in Germany - 30%, France - 40%, Slovenia - 70%, Latvia - 90%, Norway and Finland - 100%.

h. Undertaking legal research to assist a judge to make a decision in a case

80. In Germany and Hungary legal assistants undertake legal research in 30% of the cases in a decisive process. In France such action is taken in 40% of cases, in Estonia - 50%, Latvia - 60%, Slovenia - 70%, Norway, Czech Republic and Finland - 100%.

i. Discussing aspects of a case with a judge orally or in writing

81. The lowest percentage of cases involving the assistants on the discussion stage is in France - 40%, in Germany it is - 50%, in Slovenia - 70%, in Hungary and Latvia - 90% and in Estonia, Czech Republic and Finland - 100%.

j. Consideration and evaluation of the relevant (applicable) law

82. Legal assistance to examine and assess the relevant (applicable) law is provided to judges in Germany in about 30% of cases, in France - 40%, Czech Republic - 50%, Slovenia - 70%, Hungary and Latvia - 90% and Estonia, Norway and Finland - 100% of cases.

k. Undertaking comparative law analysis

83. Undertaking comparative law analysis by legal assistants appears to be uncommon. In Germany and Estonia such analysis is provided in about 10% of the cases, in Czech Republic and Hungary - 20%, in France - 40%, in Latvia - 60%, in Slovenia - 70% and in Finland - 100%.

l. Preparing a draft section of the proposed judgment which does not include the section which will contain the decision; Preparing sections of a proposed judgment which will include the proposed decision; Proposing a suggested or preliminary decision for the judge(s) to consider

84. The answers for the last three legal assistance areas identified in the question are the same in the responding countries. In Czech Republic legal assistants are involved in preparing draft section of the proposed judgement which does not contain the decision in 80% of the cases, as well as sections of a proposed judgement which will include the proposed decision and also in proposing a suggested or preliminary decision for the judges to consider. In Estonia, Slovenia and Latvia such assistance is provided in 70% of cases, in Finland - 100%, Hungary - 30% and France - 40%.

m. Conclusions

85. The general conclusion is that in most countries research and administrative assistance plays a significant role in the decision-making process. Although Finland does not benefit from help of legal assistants, other entities (referendaries) perform a similar function.

F. Oral hearings for substantive cases

86. Eleven countries (The Netherlands, Slovakia, Cyprus, Croatia, Poland, Lithuania, Bulgaria, Romania, Luxembourg, Italy, Greece) do not operate a filtering process. They answered the questions of this section with "Not Applicable".

All of the remaining countries (Spain, Hungary, Estonia, Norway, Austria, Germany, Finland, Slovenia, Latvia, Belgium, Czech Republic, Ireland, France, Portugal) hold public oral hearings for substantive cases. Portugal answered "no" but clarified in the additional comment that "the law considers some situations where oral hearings may take place".

The estimated percentage of substantive cases who received a public oral hearing in 2018 varied strongly. In 5 countries (Austria, Finland, Portugal, Slovenia and Czech Republic), public oral hearings were extremely rare in 2018 (less than 1%). In two other countries (Estonia, Latvia), the estimated percentage of public oral hearings is less than 5%.

On the other hand, in 5 countries (Norway, Germany, Belgium, Ireland and France), it is above 50%. In France, Belgium and Germany, the estimated percentages of public oral hearings are respectively 51.6%, 85% and 95%. In Norway and Ireland, all cases granted leave to appeal received a public oral hearing (100%).

Substantive cases who received a public oral hearing in 2018 (in %):

	SP	HU	EE	NO	AT	DE	FI	PT	SI	LV	BE	CZ	IE	FR
Total		25	3	12,2	0,01	95	0,0008		0,39	2	85		100	51,6
VAT		35	0	0	0	0	0		0	0	0		0	0
Building permits		20	0	0	0	95	0		0	0	0		0	0
Public proc.		20	0	0	0	0	0		0	0	0		0	0
Migration		50	33	0	0	95	0		0	0	0		100	0

Table 28.

87. The average time of a public oral hearing also varies. In 7 countries (Estonia, Norway, Germany, Finland, Latvia, Ireland and France), it is longer than one hour.

In Estonia, there were no oral hearings in VAT cases, building permit cases and public procurement cases in 2018. The Supreme Administrative Courts of Austria, Slovenia, Czech Republic and Portugal did not hold public oral hearings in the requested fields of law in 2018. The Federal Administrative Court of Germany is not competent in VAT and public procurement cases. In Finland, there was one oral hearing in an asylum case. The duration of this hearing was about five hours.

Average time of a public oral hearing (in minutes):

	SP	HU	EE	NO	AT	DE	FI	PT	SI	LV	BE	CZ	IE	FR
VAT	15-30	31-60	0-5	+120	0-5	0-5	0-5	0-5	0-5	61-120	0-5	0-5	+120	61-120
Building permits	31-60	31-60	0-5	+120	0-5	61-120	0-5	0-5	0-5	61-120	6-15	0-5	+120	61-120
Public proc.	31-60	31-60	0-5	+120	0-5	0-5	0-5	0-5	0-5	61-120	31-60	0-5	+120	61-120
Migration	0-5	15-30	61-120	+120	0-5	61-120	0-5	6-15	0-5	61-120	0-5	0-5	+120	61-120

Table 29.

G. Timeframes for the decision-making process

88. The same countries as in the previous section M answered the questions of this section with “Not Applicable”.

In almost all of the other countries (Spain, Hungary, Norway, Austria, Germany, Finland, Portugal, Slovenia, Latvia, Belgium, Czech Republic, Ireland, France), there is an obligation, *ex officio*, to prepare written reasons in all substantive cases. This obligation is applicable to substantive VAT cases, building permit cases, public procurement cases and migration cases, when the Court is competent. The Supreme Administrative Court of Slovenia is not competent in public procurement cases. The Federal Administrative Court of Germany is likewise not competent in VAT and public procurement cases.

In Estonia, there is no obligation of this type. However, the estimated percentage of substantive cases where written reasons were provided in 2018 is 100%. It is the same for substantive VAT cases, building permit cases, public procurement cases and migration cases.

In 7 countries (Hungary, Norway, Germany, Slovenia, Latvia, Belgium, Czech Republic), there are timeframes within which written reasons for final judgements must or should be furnished. In respect of cases to which a time limit applies, it runs from the date of the public hearing if there is one, in Hungary, Norway, Germany, Slovenia and Latvia.

There are no timeframes in Spain, Estonia, Austria, Finland, Portugal, Ireland and France. However, in Spain, when the Supreme Administrative Court serves as a first instance court, written reasons must issue within ten days after the closure of the proceeding.

The data on the average time for closing cases in 2018 are not available for all the countries.

Hungary, Latvia and Belgium gave no data at all. However, Hungary specified that from all cases closed in 2018 by the administrative department of the Curia, 778 cases were closed in 0-3 months, 238 cases in 3-6 months, 770 cases in 6-12 months, 163 cases in more than one year.

In Belgium, the average time for closing classic cases for annulment (for instance building permit cases of French-speakers) was 24 months, 15 months for French-speaking civil service cases, the average time for closing cases in cassation (for instance building permit cases of Dutch-speakers) was 10 months and the average time for closing public procurement cases with a request for an emergency suspension was 30 days.

In the other countries, the average time for closing all types of cases varies strongly, from 33 days in Norway to 582 days in Ireland. It is less than one year in 8 countries (Estonia, Norway, Austria, Germany, Finland, Slovenia, Czech Republic and France).

However, Norway specified that the average time of 33 days is not specific to administrative law cases and that judgements on the merits in cases which receive an oral hearing are usually rendered in 7 months. Ireland explained that the average time of 582 days is affected by certain cases which took longer than a standard case and involved more or more complex or a greater number of legal issues. It added that the time from the filing of complete documentation for an application for leave to appeal to determination of the application was 6 weeks (42 days) and the time from determination of an application for leave to final disposal of the case was 68 weeks (476 days). France stated that the delay of 359 days is the average time for closing ordinary cases (and not emergency cases).

In Norway, Austria, Germany, Portugal, Czech Republic, Ireland, the average times for closing cases in the requested fields of law are not available.

Average time for closing cases (in days):

	SP	HU	EE	NO	AT	DE	FI	PT	SI	LV	BE	CZ	IE	FR
Total	420		139	33	123	195	213	390	199			150	582	359
VAT	365		172				313	0	498					333
Building permits	426		147			195	240	0	202					247
Public proc.	456		63				283	0	0					212
Migration	426		113			195	109	0	114					107

Table 30.

H. Functions of Supreme Administrative Courts

89. In most countries (Spain, The Netherlands, Hungary, Slovakia, Estonia, Austria, Cyprus, Germany, Finland, Portugal, Croatia, Poland, Lithuania, Bulgaria, Slovenia, Romania, Luxembourg, Italy and Greece), the supreme administrative court has different levels of instance.

Six countries (Norway, Latvia, Belgium, Czech Republic, Ireland and France) stated that their supreme administrative court does not have different levels of instance. In Belgium, with a few exceptions, there are not several levels of administrative courts.

In most countries (Spain, The Netherlands, Hungary¹⁶, Slovakia, Austria, Germany, Finland, Portugal, Croatia, Poland, Lithuania, Bulgaria, Slovenia, Latvia, Belgium, Luxembourg, Ireland, Greece and France), the Supreme Administrative Court serves as a first instance court. However, this is usually a residual jurisdiction. The estimated percentage of cases tried by the Supreme Administrative Court as a first instance court in 2018 in comparison with the overall number of cases tried in first instance by the whole administrative jurisdiction varies from 0% (Austria, Luxembourg and Ireland) to 12 % (The Netherlands). It is to be noted that this data is not available in several countries.

In the Netherlands, the Supreme Administrative Court serves as a first instance court for spatial planning cases.

In Austria, the Supreme Administrative Court is competent to deal with the complaints of persons who claim to have been infringed in their rights granted by the General Data Protection Regulation (EU) by the Court itself during court proceedings. No such complaint has been filed in 2018.

¹⁶ The Curia of Hungary clarified that, “until 31 March 2020, administrative court actions and other administrative court proceedings, whose adjudication was not conferred upon the regional courts or the Curia under an Act, fell under the material jurisdiction of the administrative and labour courts. Administrative and labour courts ceased to exist in Hungary as of 31 March 2020, and currently administrative court actions are brought before - eight - regional courts. The highest court of Hungary, the Curia is the first and last instance court only in a few types of cases, e.g. procedure for reviewing a conflict between a local government decree and other laws, procedure for failure of a local government to fulfil its obligation to legislate, and procedure for establishing the procedural means to remedy a constitutional complaint, etc.”

In Luxembourg, the Supreme Administrative Court serves as a first instance court for disputes over referendums, lists of electors and refusals of supervisory authorities to approve municipal decisions. It has not ruled as a first instance judge since July 2017.

The Supreme Court of Ireland has only two first instance functions, which are exceptional and were not exercised in 2018. First, under article 26 of the Constitution, the President of Ireland may refer a bill to the Supreme Court for consideration of its constitutionality before signing it into law. Secondly, only the Supreme Court may consider whether the President of Ireland has become incapacitated. This second function has never been exercised.

90. In 18 countries (Spain, Hungary, Slovakia, Austria, Germany, Portugal, Croatia, Poland, Lithuania, Bulgaria, Slovenia, Latvia, Belgium, Romania, Luxembourg, Italy, Czech Republic and France), there is a separate Constitutional Court. The Supreme Administrative Court can refer preliminary questions on constitutionality to this Constitutional Court in almost all these countries, except in Slovakia and Portugal. However, the number of preliminary questions on constitutionality issued by the courts in 2018 is between 0 (Hungary, Croatia, Czech Republic) and 26 (France). It is less than 10 in almost all countries, except Belgium (22) and France (26).

It is possible for the parties claiming violations of constitutional law to challenge the decisions of the Supreme Administrative Court before the Constitutional Court in 9 countries (Spain, Hungary, Slovakia, Germany, Portugal, Croatia, Lithuania, Slovenia and Czech Republic).

There is no separate Constitutional Court in 7 countries: the Netherlands, Estonia, Norway, Cyprus, Finland, Ireland and Greece.

In Estonia, the Supreme Court has a separate Constitutional Review Chamber. If the Administrative Law Chamber doubts the constitutionality of a legal norm, the case is given for review to the Supreme Court “en banc”. No cases were given for review in 2018.

The Supreme Court of Cyprus serves as the Constitutional Court of the country since 1964. A Constitutional Amendment Bill, who proposes to divide the Supreme Court into the Supreme Constitutional Court and the High Court of Justice, has been introduced and is currently pending before the Parliament.

In Ireland, the Supreme Court hears appeals in constitutional law cases and has the function of constitutional review of legislation.

In Greece, all the courts are competent to review the constitutionality of the laws when they decide cases.

Functions of the Supreme Administrative Courts in 2018:

	ES	NL	HU	SK	EE	NO	AT	CY	DE	FI	PT	HR	PL
Number of leave to appeal decisions	8540	NA			801			NA	738	4282		0	
Number of public hearings per judge			25		2		0		10	0		11	

Number of cases of first instance pending		970	8		NA	NA	0	NA	92	22		614	
Number of cases of first instance closed		1107	40	62	NA	NA	0	NA	129	26		549	
Percentage of the overall number of cases		12 %	2 %		NA	NA	0	NA				5 %	
Number of preliminary questions on constitutionality	5	NA	0	NA	NA	NA	6	NA	3	NA		0	
Percentage of cases challenged before the constitutional court		NA	2 %		NA	NA	NA	NA		NA		12,63 %	NA

Table 31A.

	LT	BG	SI	LV	BE	RO	LU	IT	CZ	IE	GR	FR
Number of leave to appeal decisions			624			NA	0	49968				
Number of public hearings per judge			5,3			16	45	21				
Number of cases of first instance pending			3			NA	0	NA	NA	0		948
Number of cases of first instance closed			19			NA	0	NA	NA	0		1357
Percentage of the overall number of cases			0,6 %			NA	0	NA	NA	0		0,64 %
Number of preliminary questions on constitutionality	2	3	4	4	22	2	1	8	0	NA	NA	26
Percentage of cases challenged before the constitutional	NA en 2018	NA		NA	NA	NA	NA	NA	11 %	NA	NA	NA

Conclusion: generally, one half of the responding institutions require mandatory legal representation before the Supreme Administrative Court. Comparing particular areas of law, the duty to be represented by a legal professional mostly exists in the field of migration law cases. This is also the only area of law in which the number of countries with mandatory representation is slightly predominant over the number of countries with no mandatory representation.

b. The formality of the special authorisation to act in judicial proceedings

92. Special authorisation: out of the 25 responding countries, only in 5 do the legal professionals need special authorisation to act before the Supreme Administrative Court, namely Hungary, Norway, Cyprus, Italy and France.

In Cyprus and France, the number of legal professionals with abovementioned special authorisation is limited (in Cyprus there are 4212 and in France 124). There is no such limit in Hungary, Norway and Italy.

VIII. EMERGENCY PROCEDURES

93. The prevailing majority of the responding institutions (17 countries, 68 %) have an emergency procedure before the Supreme Administrative Court. Only 8 Member States (Spain, the Netherlands, Slovakia, Norway, Lithuania, Romania, Luxembourg and Czech Republic) do not have such a procedure.

In most countries (12) where there is an emergency procedure it is the case in all instances before the Supreme Administrative Court. In Finland, the emergency procedure applies only if the court is serving as a first instance Court. On the other hand, in Italy, the emergency procedure does not apply if the court is serving as a first instance Court but it does if the court is serving in other instances.

The quantity of interim orders issued by the Supreme Administrative Courts in particular countries in 2018 is varied in both instance levels. If a court is serving as a first instance Court the responding countries reported between 0 interim orders (Austria, Portugal, and Slovenia), 190 interim orders in Hungary and 517 in Finland. Germany is an an intermediate position with 31 interim orders and Croatia with 16 interim orders issued in 2018. An even larger range of numbers was reported by the countries in which interim orders were issued by the court serving in other instances. The responding countries reported from 0 interim orders (Portugal, Croatia and Slovenia) to 2 interim orders in Estonia and up to 1481 interim orders in Austria and even 3683 interim orders in Italy. Hungary is in an intermediate position with 190 interim orders, Greece with 399 interim orders and France with 347¹⁷ interim orders issued in 2018.

IX. FEES AND ACCESS TO SUPREME ADMINISTRATIVE COURTS

¹⁷ This figure corresponds to the total number of summary proceedings orders issued by the French Council of State in 2018. The Council of State issued 153 orders at first instance and 216 on appeal.

94. A vast majority of countries apply some judicial (filing) fee for the access to the Supreme Administrative Court. The rare exceptions are Spain, Luxembourg and France. In Spain, the judicial fee was abolished as a result of a judgment delivered by the Spanish Constitutional Court, dated July 21, 2016 declaring Article 7, part 1 of November 20, 2012 Act unconstitutional. Thus, judicial fees in the contentious administrative proceedings of between €200 for summary procedure and €1200 for cassation procedure were cancelled. In France, access to the Conseil d'Etat is not subject to a judicial fee from January 1, 2014.

Among the other countries we can distinguish between those where the subject matter of the case (area of law) determines the amount of the judicial fee (ten countries including the Netherlands, Slovakia, Germany, Finland, Portugal, Croatia, Poland, Romania, Italy, Greece) and those where the amount of the fee is the same in all areas of law (11 countries including Hungary, Estonia, Austria, Cyprus, Lithuania, Bulgaria, Slovenia, Latvia, Belgium, Czech Republic, Ireland).

95. In a vast majority of countries where the amount of the judicial fee does not depend on the content of the case (area of law) the amount of the fee is also flat for all cases. The rare exceptions are Hungary and Bulgaria. In both countries, the amount of the judicial fee is the same in all areas of law. However, in Hungary its amount is not flat and in Bulgaria it can differ on the field of public procurement law. Regarding the countries where the area of law is the factor determining the judicial fee, four countries indicated that its amount is flat in all areas of law (the Netherlands, Romania, Italy and Greece). On the other hand, 3 countries with judicial fees of varying amounts stated that its amount is also not flat (Slovakia, Germany, Portugal). Portugal reported that the amount of the judicial fee depends on the complexity of the case. In Finland, the amount of the fee is flat in the field of VAT, building permit law, migration law, and mostly flat in other areas of law whereas it can differ on the field of public procurement law. In Poland and in Croatia, the amount of the fee is flat on the field of building permit law, migration law, and mostly flat in other areas of law while it can differ in the field of VAT and public procurement law.

The general conclusion is that in most countries a flat judicial fee for access to the Supreme Administrative Court applies in all areas of law (68 % countries apply a flat judicial fee on the field of building permit law and migration law; 60 % on the field of VAT; and 72 % in other areas of law). The situation in the field of public procurement law is largely consistent, in that 11 countries apply a flat rate and 7 countries a non-flat rate.

96. In a vast majority of countries where there is any duty to pay a judicial fee for access to the Supreme Administrative Court it is the case that some types of petitioners are exempt by law from this duty (76 %). Only Germany and Lithuania do not apply any personal exemption from the duty to pay the fee by law. In Norway the law sometimes grants such an exemption for certain types of petitioners.

The Netherlands specified that petitioners in asylum law cases don't have to pay a judicial fee. Moreover any applicant may be exempt from paying the judicial fee provided that the net income of the applicant and his/her fiscal partner are lower than 90% of the maximum social welfare payment the individual is entitled to (€ 922.99 as of January 1, 2019) and the applicant or his/her fiscal partner does not have any financial capital. In case of some petitioners (civilians who are confronted with decisions made in respect of a public servant, a military servant, benefits in cases of unemployment, sickness, child support and old age) a reduced fee applies on the basis of the "Regeling verlaagd griffierecht".

Further, some countries reported that the exemption from the duty to pay any court fee by law is enjoyed by state and public authorities. In Austria, no judicial fee is due in case of public authorities if they so request on the legality of decisions issued by administrative authorities or lower administrative courts. In Ireland this exemption includes the Chief State Solicitors Office (which provides litigation and advisory services to Government departments and offices and the other State Offices) and the Chief Prosecution Solicitor (the lawyer for the Director of Public Prosecutions, Ireland's public prosecutor) or local State solicitors. In Cyprus, the public authorities represented by the Office of the Attorney-General are exempt from paying any fees and no fees shall be taken where the party chargeable therewith shall produce and file a statement signed by or on behalf of the Attorney-General, the District Officer, or the Head of a Department that he sues or defends, as the case may be, as representing the Government, and stating the Law under which he is entitled to sue or defend. Semi-governmental organizations, on the other hand, are subject to the prescribed fees.

An overwhelming majority of the countries in which certain types of petitioners are exempt by law from the duty to pay the judicial fee estimated the quantity of such cases closed in 2018 as 0 %. Only in the field of migration law cases were more significant figures reported by 6 countries for 2018. According to the estimated data, 100 % of petitioners in migration law cases were exempt in the Netherlands; 90 % in Finland; 50 % in Bulgaria; 40 % in Croatia; 20 % in Rumania; and 2 % in Austria. Regarding other fields of law, Finland estimated that 10 % of petitioners were exempt by law from the duty to pay the judicial fee in building permit law cases. Croatia estimated that 30 % of the petitioners were exempt by law from the duty to pay the fee in unspecified areas of law and 1 % of the petitioners in VAT cases and public procurement law cases. Thus, in Croatia more than 70 % of the petitioners were exempt from the duty to pay the judicial fee in proceedings before the Supreme Administrative Court in 2018.

However, it is to be pointed out that giving an estimated percentage of cases in which petitioners were exempt by law turned out to be impossible for a part of the responding countries. Therefore, it's hard to make a general conclusion with real informative value.

97. In most countries where there is any duty to pay the judicial fee for access to the Supreme Administrative Courts it is the case that some areas of dispute are exempt by law from this duty (60 %). Such an exemption is not applied in the Netherlands, Hungary, Austria, Cyprus, Portugal and Greece¹⁸.

According to the specification made by some countries, typical example of the disputes which are exempt covers social security law (Finland, Czech Republic, Norway), health care (Czech Republic, Norway), asylum law (Finland) and family law and extradition proceedings (Ireland). As in cases of personal exemption, for an overwhelming majority of the countries in which certain types of litigation (cases) is exempt by law from this duty, the estimated quantity of such cases closed in 2018 was 0 %. This concerns the VAT cases, building law cases and public procurement law cases. The respondents reported some figures only for the field of migration law cases and cases in other areas of law. According to the estimated data, 100 % of disputes in migration law were exempt in Slovenia; 95 % in Finland; 75 % in Germany; and 1 % in Croatia. Regarding other areas of law, the estimated percentage of

¹⁸ The Curia of Hungary clarified that, "partial legal aid (or in a few cases, exemption from costs) determined by law is also applied in Hungary."

cases exempt in 2018 amounts to 21 % in Germany; 18 % in Finland; 23 % in Croatia; 2 % in Romania; 1 % in Italy; and 5 % in the Czech Republic.

However, it must be pointed out that giving an estimated percentage of cases in which disputes were exempt by law turned out to be impossible for a number of the responding countries. Therefore, it is difficult to draw a general conclusion with real informative value.

X. COST OF PROCEEDINGS

98. The term costs can refer to the costs of legal services and representation for the parties in connection with cases before the Court, as well as court fees. A slight majority of members has a discretion as to how costs are awarded (14 out of 25: Bulgaria, Croatia, Cyprus, Estonia, Finland, Hungary, Ireland, Italy, Luxembourg, The Netherlands, Norway, Poland, Slovenia, Spain), whereas a slight minority does not have discretion on this matter (11 out of 25: Austria, Belgium, Czech Republic, France, Germany, Greece, Latvia, Lithuania, Portugal, Romania, Slovakia). The position that the Court “sometimes” has discretion, was not applicable in any of the member states.

Out of the 14 members that do have discretion (mentioned above), as at 31 December 2018, 12 members have this discretion in VAT law and 1 member has no competence in VAT cases (Luxembourg). In building permit law 13 members have this discretion. In public procurement law 11 members have this discretion and 2 members do not have competence in public procurement cases (Slovenia and Poland). In migration law 13 members have this discretion. In other areas of law 13 members have this discretion. 1 member only answered the general question (Norway).

In situations where the members have discretion as to how costs are awarded, this does not appear to mean that the Court is completely free in its assessment. This applies not only to the issue of whether costs are awarded, but also to the extent that costs are awarded.

Regarding the question of whether costs are awarded, for example, in Ireland the awarding of costs is basically at the discretion of the Court, but the general rule is that costs follow the event, and therefore the unsuccessful party is generally liable for the costs of the successful party. In Ireland, the Planning and Development Act 2000 provides that in certain cases each party will bear its own costs. In Norway the court must remain within the boundaries set out in rules on civil procedure and follow the guidelines. Nevertheless, the court may exempt a party from liability if the case was important to the welfare of the party and the relative strength of the parties justifies an exemption. In Cyprus, generally, the losing party will be required by the Court to pay all legal costs. However, in the presence of reasons that substantiate deviation from the general rule, the Court may make such order as it deems fit. In Belgium, the final decision determines who must bear the court fees and can assign a compensation for the costs of lawyers acting on behalf of the successful party.

Regarding the extent to which costs are awarded, in The Netherlands the Decree Costs of Proceedings Administrative Law covers the costs of legal representation with a tariff, which also is the case for fees for drafting a non-legal expert opinion, whereas travel expenses are covered if they are reasonable. In Italy tables of legal costs in Presidential decree 115/2002 provide for minimum and maximum amounts to be paid in each case. In Spain, according to the 29/1998 July 13 Act, the administrative Court fixes the maximum amount of costs which

could be discharged by the parties in the circumstances of the specific case. In Bulgaria, when awarding attorneys' fees on the other party's objection, the court assesses the factual and legal complexity of the case and may reduce the costs.

In situations in which members do not have discretion, rules may still enable exceptions. For example, in Austria generally speaking, the parties in a proceeding before the Supreme Administrative Court are entitled to claim reimbursement of their expenses in the event of a successful final complaint upon request, but there are certain exceptions. In Austria only fixed sums are paid as reimbursement. In Romania, the Court may limit the costs associated with lawyers, but not those with experts or witnesses. In France the court fee has been abolished.

XI. LEGAL AID

99. In a large majority of Member States, the legal order provides for free legal aid for participants, i.e. the applicability of any kind of legal aid in the Member State, including regulations which provide for an individual assessment of the prerequisites of granting legal aid (20 out of 25: Austria, Belgium, Bulgaria, Croatia, Cyprus (in administrative jurisdiction during the first instance proceedings), Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain). In 5 Member States (out of 25) the legal order sometimes provides a free legal aid for participants (Finland, Ireland, Lithuania, Norway, Romania).

In approximately half of the Member States legal aid is always a matter for the Court to decide (12 out of 25: Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Germany, Greece, France, Italy, Poland, Romania, Slovenia), whereas in 13 out of 25 Member States legal aid is not always a matter for the Court to decide (Belgium, Croatia, Finland, Ireland, Hungary, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Portugal, Slovakia, Spain).

Out of the 12 Member States where legal aid is not always a matter for the Court to decide, in 6 member states there are some categories of cases where an external party is involved in the decision (Ireland, Luxembourg, The Netherlands, Portugal, Slovakia, Spain). In 5 out of these 12 Member States this is not the case (Belgium, Croatia, Finland, Latvia, Lithuania). 1 member did not answer (Norway).

In the 6 Member States where an external party is involved in the decision in some categories of cases, this external party consists of a public authority or an authority with public powers. In Ireland a state body known as the Legal Aid Board provides a more limited form of legal aid in civil law cases to persons who satisfy the eligibility criteria set out in the Civil Legal Aid Act 1995. In Luxemburg the Dean of the Bar Association decides the attribution of legal aid according to the law of 10 August 1991 on the profession of lawyers. This law has considerably enlarged the circle of persons who may benefit from free legal aid. In the Netherlands participants may submit a request for legal assistance to the Council for the Legal Counsel. This Council always requires a (small) contribution by the petitioner depending on the income of the person. In Portugal it is up to the superior officer of the Social Security services to decide on the need for legal aid. In Slovakia the Centre for Legal Aid was created, pursuant to the Act Nr. 327/2005 Coll. on the Provision of Legal Aid for People in Material Need, as a state budgetary organization under the Ministry of Justice. The Centre offers legal aid in domestic disputes to all natural persons, if there is material need, it

is not an obviously unsuccessful dispute and the dispute value exceeds the minimum wage set by the law. In Spain the 1/1996, January 10, Act, assigns to an administrative body, called Free Legal Aid Commission, the implementation of the right that justice shall remain free when thus provided by law and shall in any case be so in respect to those who have insufficient means to litigate. This Commission is composed of 4 members: one from the bar association, one from the attorney association and two from the public administration.

In Croatia the provision of free legal aid falls within the competence of a specific administrative authority.

Most Member States do not have statistics in relation to the total number of cases in which free legal aid was provided between 1 January 2018 and 31 December 2018. In Austria the total number was 563. In Bulgaria, although no statistics are available, legal aid concentrates mainly on migration matters, as well as cases of prisoners for damages awarded as a result of poor prison conditions. In Estonia there were 2 cases in which free legal aid was provided before the Supreme Court. This number does not include cases in which legal aid had already been provided by the 1st or 2nd instance and continued in the cassation proceedings (which is almost always the case), as no data are readily available on this. Nevertheless, it is known that almost all applicants in migration cases receive free legal aid in court proceedings and continue to do so in cassation proceedings. In Finland the total number was 3500. In France 4111 requests for legal aid were decided upon by the legal aid office established within the Conseil d'Etat. Of these requests 574 were fulfilled, mainly in cases in relation to refugees, foreigners and social security, and furthermore in housing, public freedoms, public services, taxes, pensions and disabled militaries. In Germany the total number was 51. In Luxembourg the total number was 50 (estimated). In Romania the total number was 20 (estimated). In Spain in 2018 there were 323 requests for free legal aid before the Free Legal Aid Central Commission, 24 of which were refused.

Most Member States also have no statistics on the number of VAT law cases in which free legal aid was provided in 2018. In Austria and Finland, the number was 0. In Italy, the number was 811.

Most Member States do not have statistics on the number of building permit law cases in which free legal aid was provided in 2018. In Austria the number was 4. Finland the number was 3. In Germany the number was 0.

Most Member States do not have statistics on the number of public procurement law cases in which free legal aid was provided in 2018. In Austria and Finland, the number was 0.

Most Member States do not have statistics on the number of migration law cases in which free legal aid was provided in 2018. In Austria the number was 503. In Germany the number was 39. In Finland the number was 3000. In Luxembourg the number was 50 (estimated). In Romania the number was 5 (estimated).

Most Member States do not have statistics on the number of cases involving other areas of law in which free legal aid was provided in 2018. In Austria the number was 56. In Estonia the number was 2. In Germany the number was 12. In Finland the number was 500. In Romania the number was 15 (estimated).

In approximately half of the Member States the panel (judge) which presides over the case on the merits also decides on whether free legal aid should be granted for the proceedings (12 out of 25: Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Hungary, Ireland,

Latvia, Poland, Romania, Spain). In Spain the issue of the Commission granting or refusing legal aid can be challenged before the panel or judge who presides over the case on the merits.

In 13 out of 25 Member States the panel (judge) who presides over the case on the merits, does not decide on whether free legal aid should be granted for the proceedings (Austria, Croatia, Estonia, Finland, France, Italy, Lithuania, Luxembourg, The Netherlands, Norway, Portugal, Slovakia, Slovenia). In Austria decisions concerning legal aid are issued by the rapporteur without a resolution of the panel. In France, if an application for review has been lodged with the Court in parallel with a request for legal aid, the Court will set out proceedings until the legal aid office has decided on the request for legal aid. However, in the event of an urgent decision, the Court (in practice: the “juge des référés”) may take a provisional decision on the legal aid decision which later on will be confirmed or called into question by the final decision taken by the legal aid office.

A positive answer to this question does not imply a contradiction to a negative answer on the question of whether legal aid is always a matter for the Court to decide (treated above). For example, in Belgium legal aid is not always a matter for the Council of State to decide, e.g. in cassation proceedings, when the applicant was granted legal aid by the lower administrative court. In that case, the applicant automatically benefits from legal aid before the Council of State. Furthermore, in Ireland a judge presiding over a case on the merits decides on whether free legal aid should be granted in criminal cases. However, in civil cases, an applicant applies to the Civil Legal Aid Board for legal aid.

A negative answer to this question does not imply that the decision cannot be taken within the same Court. For example, in Estonia, while it is the Supreme Court itself that decides on free legal aid in its cases, it is not necessarily the same panel that will decide on the merits. Since the question of free legal aid must be decided on rapidly, it is sometimes decided by whichever judges are available at a particular time.

Most Member States do not have statistics in relation to the number of decisions of the panel (judge) which presides over the case on the merits and also decides on whether free legal aid should be granted in 2018. In Germany the number is 165. In Romania the number is 100 (estimated). In Spain the number is 10.

In Estonia the Administrative Law Chamber of the Supreme Court, but not necessarily the same panel who will preside over the case on the merits, decided on 16 applications for free legal aid in 2018.