



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

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First name: Jonas
Nationality: Belgian
Country of exchange: Italy

Identification of the exchange

Hosting jurisdiction/institution: Consiglio di Stato
City: Rome
Country: Italy
Dates of the exchange: 16-20 June 2025





SUMMARY

From 16 to 20 June 2025, I participated in an exchange at the Consiglio di Stato, Italy's highest administrative court. It is a constitutional body with both judicial and consultative functions.

The programme included presentations and discussions on the Italian administrative justice system, procedural rules, the protection of fundamental rights, and the Consiglio di Stato's advisory role on draft regulations. I attended hearings and deliberations, studied case files and engaged in discussions on a multitude of topics, including several aspects of EU law, digitalization and artificial intelligence and knowledge management.

This experience was highly enriching, offering insights beyond a mere comparison between legal systems or institutions. The exchange provided inspiration for future improvements in my home institution.



REPORT

I. Programme of the exchange

The exchange took place at the Consiglio di Stato, the Italian Council of State, from the 16th until the 20th of June 2025. The programme can be summarized as follows:

- information about the Consiglio di Stato and the legal framework in which it operates (presentations and meetings), such as:
 - o a general introduction into the Italian administrative justice system and the relationship between the administrative courts and the civil courts;
 - o the procedural rules for litigating before the Consiglio di Stato and the possible remedies by the administrative judge;
 - o the protection of fundamental rights before the administrative judge, with a specific focus on economic freedoms and anti-mafia measures;
 - o the advisory role of the Consiglio di Stato about draft regulations;
- attending specific activities of the Consiglio di Stato:
 - o preparing several specific cases about different matters (by studying the relevant documents and discussing the cases with magistrates);
 - o attending hearings of two different sections about those – and other – cases;
 - o attending the deliberation of those sections;
- information about organizational aspects and new challenges for administrative courts (presentations, demonstrations and meetings):
 - o the digital platform developed and used by the Consiglio di Stato and the regional administrative tribunals (Administrative Justice Information System);
 - o the use of Artificial Intelligence: strategies, methodologies and safety measures;
 - o cybersecurity in administrative justice;
 - o knowledge management (Study & Training Office and Massimario Office of the Administrative Justice).

Throughout the exchanges there was ample opportunity to discuss a range of more specific matters with the interlocutors.

A full copy of the programme as received from the Consiglio di Stato is attached.

II. The hosting institution

The Consiglio di Stato is Italy's highest administrative court and a constitutional body with both judicial and consultative functions. It operates under articles 100, 103 and 113 of the Italian Constitution and is located in Rome at the Palazzo Spada.

Its consultative role involves rendering advice to the government about draft regulations, as well as several other matters, such as general models for certain types of contracts, agreements and conventions, extraordinary petitions to the president of the republic or questions about the interpretation of the law.

Judicially, it serves as the supreme appellate court for administrative disputes, ensuring legality and protecting citizens' legitimate interests against public authorities. Whereas the protection of legitimate interests is a matter of administrative courts, the protection of subjective rights of a matter of the ordinary courts. Disputes of jurisdiction are decided by the Court of Cassation.

The Italian administrative justice system is organized in two tiers. At the first instance, cases are heard by the *Tribunali Amministrativi Regionali* (TAR). These regional administrative courts were established in 1971. The TAR handle challenges to administrative decisions at local and national levels. Decisions of the TAR can be appealed exclusively to the *Consiglio di Stato*, which provides final rulings and guarantees uniform interpretation of administrative law across the country.

The Council is organized into different consultative and judicial sections

III. The law of the host country

As required by the guidelines for this report, I will focus on *one aspect* of the law of the host country.

The so-called Anti-Mafia Code establishes a comprehensive system of preventive measures aimed at safeguarding the public administration and the economy from mafia infiltration. Its scope extends beyond criminal prosecution, focusing on administrative prevention. A central feature is the anti-mafia documentation system, which requires enterprises seeking public contracts, concessions or funding to obtain clearance from the Prefecture. This clearance is based on checks against the national anti-mafia database. If the Prefect identifies links—direct or indirect—between a company and organized crime, measures can be taken that exclude the enterprise from public tenders and may lead to the suspension or revocation of licenses, with severe economic consequences.

Considering those consequences and the inherent vagueness of certain concepts in the Anti-Mafia Code, the *Consiglio di Stato* plays an important role as the administrative judge of last instance.

This topic is of particular interest to me because recently somewhat similar legislation has been adopted in Belgium (on the federal level: law of 15 January 2024 'relative à

l'approche administrative communale, à la mise en place d'une enquête d'intégrité communale et portant création d'une Direction chargée de l'Évaluation de l'Intégrité pour les Pouvoirs publics'; on the regional level: Flemish decree of 22 December 2023 ('houdende de bevordering van de integriteitsbeoordeling door het openbaar bestuur'). The consultative section of the Belgian Council of State has rendered advice about the proposals that have led to this legislation. Appeals about the application of the legislation will need to be brought before the jurisdictional section of the Council of State.

I had the opportunity to have an in-depth discussion about the evolution of the different Italian measures, the difficulties in the application of the Anti-Mafia Code, the relation to criminal investigations and proceedings, the adaptations that were made over the last couple of years, partly in light of European law, and possible future legal challenges. Although there are notable differences between the Italian and the Belgian legislation, there are interesting similarities, for example about the presumption of innocence, the right to be heard in advance, the proportionality of the measures, etc.

IV. The comparative law aspect in your exchange

Italy has a dual system of jurisdiction, in which the ordinary courts and tribunals on the one hand and the administrative judges on the other hand have different competences. Subjective rights are protected before the ordinary courts and tribunals; the TAR and the Consiglio di Stato handle cases concerning so-called legitimate interests. Although the precise demarcation of the competences differs, there is a large similarity with the Belgian dual system. In both countries, disputes about the jurisdiction are decided by the Court of Cassation. Notably, relatively recent a conflict arose about the meaning of 'jurisdiction' in the Italian context. According to the Italian Court of Cassation, the appeal regarding the jurisdiction also consisted of, among other things, the alleged infringement of EU law. The Constitutional Court ruled that such was not the case (judgment n° 6/2018). The Court of Cassation subsequently requested a preliminary ruling from the European Court of Justice (ECJ) about the conformity with EU law of this judgment. The ECJ ruled that EU law does not require a member state to allow individual parties, such as tenderers who participated in a procedure for the award of a public contract, to "challenge the conformity with EU law of a judgment of the highest court in the administrative order of that Member State by means of an appeal before the highest court in that Member State's judicial order" (C-497/20). In Belgium there has not been such a conflict about the division of jurisdiction in recent history.

An important difference between Italy and Belgium can be found in the two-tiered structure of the Italian administrative court system. The regional administrative tribunals (TAR) are the administrative courts of first instance; the Consiglio di Stato hears the appeals against the judgments of the TAR. New questions may, in principle, not be raised in the appeal proceedings. The Consiglio di Stato will generally decide the matter in full,

but may refer the matter back to the TAR, for example when there has been a violation of a party's right of defence. In contrast, parties generally need to introduce proceedings directly before the Belgian Council of State (where a so-called "double examination" takes place, first by independent magistrates called auditors and then by the judges of the Council of State). The Council of State has a subsidiary jurisdiction, which means specific matters can be attributed to another administrative court. Judgments by those courts can be appealed to the Council of State, but only for matters of law ('cassation procedure'). If the appeal is declared well-founded by the Council of State, the case is sent back to the lower court.

V. The European aspect of your exchange

Aspects of EU law and the ECHR were relevant throughout the exchange. Several examples were already mentioned under (III) and (IV). I add some other examples here.

Public contracts and concessions.

I discussed at length the new Italian Public Contracts Code (2023), which was drafted by (judges of) the Consiglio di Stato and which obviously needs to conform with the EU directives on public procurement. I also prepared and attended hearings about cases relating to procurement law.

Beach concessions and Services Directive.

I also studied a case regarding beach concessions and attended the hearing in that case. The automatic renewal of these concessions has been deemed contrary to EU law, more specifically the Services Directive 2006/123/EC (see ECJ case C-348/22; see also joined cases C-458/14 and C-67/15). Italy changed its legislation in 2024. Generally speaking, all beach concessions need to be tendered by 2027. The case I studied concerned a dispute about a transitory measure.

VI. "Good Practice" within the host jurisdiction

Digitalization and AI strategy.

One of the domains offering significant opportunities for inspiration and the adoption of best practices is the field of information technology. The Consiglio di Stato has developed a modern and highly efficient portal for administrative judges. The entire workflow is fully digitized, covering all stages from the initiation of proceedings to the publication of judgments, both for regional tribunals and for appeals before the Consiglio di Stato.

During the exchange, I received a demonstration of the web-based judicial interface and a presentation on the underlying philosophy and system architecture. A dedicated briefing addressed cybersecurity and information security. Artificial intelligence was also

a key topic of discussion. The Consiglio di Stato has articulated a clear AI strategy, explicitly defining the tasks for which AI may be employed and those for which it may not. Planned use cases include identifying similar cases, searching for precedents (using semantic rather than purely logical queries), displaying cited legal provisions and judgments and pseudonymizing judgments.

It was emphasized that three prerequisites are essential for the successful implementation of AI, all of which have been met by the Consiglio di Stato: (1) availability of comprehensive digital data; (2) a fully integrated IT-infrastructure; (3) a synergy of expertise between judges and technical specialists. The importance of judicial independence, including independence from AI tools, was strongly underscored. Furthermore, attention was drawn to the risk of asymmetric access to AI technologies: as new tools are developed, it is crucial that the public sector – and judicial institutions in particular – does not lag behind.

In all these respects, the Consiglio di Stato demonstrates a clear and forward-looking vision for the use of information technology, ensuring that technical expertise and judicial perspectives are integrated from the outset.

Examination of the effectiveness of draft legislation.

During the exchange, I had a highly insightful discussion with a former member of the advisory section regarding the scope of review applied to draft regulations. The Consiglio di Stato does not limit its analysis to the legality of proposed measures; it also evaluates their utility. In particular, it considers whether a legal provision is likely to be effective in achieving its intended purpose and whether the legislative record provides sufficient evidence to support this conclusion.

The speaker confirmed that the Consiglio di Stato may also explore alternative solutions, as this traditionally is part of a regulatory impact analysis. This assessment of utility, however, must be clearly distinguished from political decisions concerning policy objectives, on which the Council does not take a position. To illustrate this distinction, the speaker used a metaphor: the destination is not questioned, but the chosen vehicle might be. The importance of this evaluation was strongly emphasized: measures that fail to deliver may have damaging effects and pollute the legal order.

While the Belgian Council of State adopts a more cautious approach in this respect, this exchange of views offered an interesting starting point for further reflection.

VII. The benefits of the exchange

The exchange was very enriching and offered far more than a mere comparison between two institutions or legal systems. It provided an opportunity for deeper reflection on our

own legal order, practices and habits. Moreover, it served as a source of inspiration for new opportunities that can be explored in the future, both from a legal and an organizational perspective (some of which are set out in the parts above). The one-on-one discussions with various stakeholders allowed me to examine in greater detail specific aspects that may be relevant to my own institution.

I have already briefed colleagues for whom certain topics are of direct relevance. For other themes, I have shared my notes and documentation with those who may find them useful. In addition, I will be able to apply the knowledge and experience gained during this exchange in my future activities within our institution.

VIII. Suggestions

My suggestions in this regard are rather limited. My exchange at the Consiglio di Stato was an individual one. It might be interesting to organize an exchange involving magistrates from several countries at the same time, allowing participants to learn about the legal systems and institutions of different colleagues as well. However, such an arrangement would inevitably reduce the depth of the exchange and the flexibility that I personally experienced. To compensate for this, the exchange might need to last longer than one week, which could raise other concerns, such as the organizational impact on both the home and the host institution.

A practical suggestion could be to provide certain materials prior to the start of the exchange, enabling participants to study them as preparation. I am thinking in particular of information on the cases for which I attended hearings during the exchange. This would allow more targeted questions to be asked of the magistrates involved prior to the hearings. Of course, this would only be possible with adequate safeguards for the protection of personal data.

These suggestions in no way detract from the exceptionally valuable nature of my exchange at the Consiglio di Stato. I would like to take this opportunity to once again express my sincere gratitude to everyone who contributed to making it possible.