

## ACA QUESTIONNAIRE FOR THE 2025 SEMINAR IN THE HAGUE ON CONTRIBUTING TO THE QUALITY OF LEGISLATION

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

### INTRODUCTION

#### The role of state powers in the legislative process

Laws order society, protect and give direction. Laws regulate the behaviour of citizens and government and are an important pillar to give citizens legal certainty. Legislation must therefore offer clarity but also flexibility in a changing society. Developments in society require choices that sometimes, but not always, also lead to legislation. Given this, the deployment and use of legislation must be handled with care because the expectations it raises must be fulfilled and the law must retain its validity in the long term.

Legislation ideally comes about in a continuous and constructive dialogue between the state powers. The executive and the judiciary branch depend on good legislation. Legislation that is carefully drafted, with sufficient attention to all relevant interests and values, including enforceability, will in practice lead to fewer problems and thus fewer lawsuits. And legislators can improve the quality of legislation by drawing in part on the previous practical experiences of executive agencies and (administrative) judges in implementing and enforcing the law and any shortcomings they have found.

There are various (formal, regulated but also informal) instruments or mechanisms through which (solicited or unsolicited) input from executive agencies and the judicial branch, as well as from independent general advisory bodies regarding future and existing legislation is or can be provided. For example, instruments that are used prior to the creation of legislation (simply referred to as 'consultation' or ex ante) and instruments that are used in response to existing legislation (simply referred to as 'feedback' or ex post).

On May 15, 2017, an ACA seminar in The Hague discussed the tools and mechanisms existing in different countries that can contribute to good legislative quality. Almost all ACA members who responded (28 in total) reported having some experience in providing feedback, whether on a regular basis or not, to legislators on trends and other developments they have observed. This input is provided in various ways; not only through independent opinions and (administrative) court rulings, but also through various formal and informal mechanisms used by consultants, executive agencies, regulators, and judges.

Now several years later, there is again a need to organize a new seminar on the contribution to legislative quality to further explore this topic among members of the



ACA-EUROPE and beyond, with a particular focus on legislative advice and judicial feedback to the legislator. To that end, this questionnaire is drafted.

### Legislative advice

Legislative advice can contribute to the quality of legislation. In that case- in short- it is tested whether a legislative proposal fits within existing laws and the legal system as a whole, is implementable and enforceable. In doing so, numerous aspects of legislative quality can be examined, both legal and policy aspects. And to that extent, legislative advice can respond to and make use of the interaction between the state powers. After all, the state powers each have an interest and a role to play in the legislative process based on their responsibility at any given moment. Policy, legislation and implementation can work closely together in the cyclical legislative process in order to provide solicited or unsolicited feedback on the quality of the proposed law.

Against this background, the Advisory Division of the Dutch Council of State conducts as part of its regular advisory task an analysis that examines whether, among other things, the experiences and views of executive agencies (including local and regional authorities) and the judicial branch have been adequately taken into account in the drafting of the bill. To this end, in addition to a constitutional and legal analysis, the Advisory Division also conducts a policy and implementation analysis and, where appropriate, also analyses the consequences for legal practice. No ranking or order exists between these parts of the assessment. The policy and implementation analysis may in themselves give rise to comments but also provide important input to the legal and constitutional analysis, for example with respect to the proportionality of the bill.

The Belgian Council of State, on the other hand, only carries out a legal examination, which in any case concerns the competence of the legislator, the existence of a sufficient legal basis for regulatory acts and compliance with higher legal standards, as well as compliance with the mandatory formal requirements for the creation of the new law. If it follows from the applicable higher legal standards or principles, a proportionality test, a test of substantive motives or an effectiveness test shall also be carried out where appropriate. In no case, however, does the opinion concern the mere policy expediency of a new legal norm.

### Communication between state powers

In order to function well the legislative, executive and judicial state powers are separated but also mutually dependent. There might be tension between the state powers sometimes, for example as a result of legislation which does not take certain interests or general principles of law into account. For a dynamic and healthy balance between the state powers judicial (constitutional) review ex ante and ex post are very relevant.

Depending on the design of an ex post constitutional review, this raises the question of what this means for the ex-ante constitutional review conducted within that framework. Of course, as legislative institutions, government and parliament are primarily responsible for the quality of legislation and ideally already conduct a thorough review of the constitution, higher law and fundamental legal principles during the creation of



legislation. What impact does the possibility of ex post judicial constitutional review have on an ex ante constitutional review by an independent general advisory body, such as an Advisory Division of a Council of State? And in how far do administrative courts provide feedback to the legislator in case they encounter more or less technical problems in legislation? But also vice versa, which influence does constitutional review ex ante have on judgements by (administrative) courts?

### ACA questionnaire

In light of these themes and developments and in the interest of the quality of legislation, a further survey of the instruments of feedback is desirable and also of great interest in the ACA context. For this reason, the Dutch and Belgium Council of State organise an ACA seminar in The Hague on March 17-18, 2025 on the topic of legislative advice and feedback. In preparation for that seminar, we are pleased to submit to you the questionnaire below, which aims to map the design of legislative advice and interaction with the (administrative) courts against the background of developments in the relationship between state powers in general and constitutional review in particular.

The purpose of this questionnaire (chapters 1-3) is to obtain an inventory of the existence, design and working method of independent general advisory bodies. What is that working method and what are the points of interest in the legal, constitutional ex ante review? What influence and significance does an opinion have in the legislative process?

In addition, the questionnaire (chapter 4) makes an inventory of the modes of influence of case law on legislation and the design of ex post judicial constitutional review in different countries. This may offer more insight into the interaction between legislative advice and the judiciary. What trends are visible and how can the ex-ante and ex post constitutional test reinforce each other?

In the case you as ACA-member and Supreme Administrative Court do not yourself have an advisory function ex ante please feel free to consult the institution in your country that has such a function.



## CHAPTER 1 GENERAL INFORMATION ON ADVISORY FUNCTION

In the European Union and beyond, there is no clear overview of which countries have a state body with a general legislative advisory function. This chapter aims to get a clearer overview of this.

### 1) Does your country have an independent governmental institution – such as a Council of State – giving advisory opinions ex ante aimed at the improvement of the quality of legislation?

- X Yes <sup>1</sup>  
0 No <sup>2</sup>

In Romania there is a Legislative Council, a body that approves draft laws in order to systematize, unify and coordinate all legislation.

However, it should be noted that it is not an independent governmental institution as stated in the title of the question, but it is a specialized consultative body of the Romanian Parliament, which joined in 2007 the family of bodies with a legislative advisory role in the European Union, becoming a full member of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe).

### 2) If yes, what is the name and address of this institution?

Legislative Council  
Parliament Palace, Building B1, Calea 13 Septembrie no. 1-3, District 5, 050711,  
Bucharest  
(Palatul Parlamentului, Corp B1, Calea 13 Septembrie nr. 1-3, Sector 5, 050711,  
Bucharest)

### 3) In what way is the independent position of this institution guaranteed?

- 0 In the national Constitution  
0 In a formal law  
0 Through customary law  
X In some other way, please explain:

The existence of the Legislative Council is enshrined in the Constitution of Romania<sup>3</sup>. The Legislative Council is organized and functions on the basis of Law no. 73/1993- for the organization and functioning of the Legislative Council.

---

<sup>1</sup> If you as ACA Member are not that institution, please ask their assistance in answering this questionnaire.

<sup>2</sup> Please proceed to question 38.

<sup>3</sup> ART. 79- The Legislative Council shall be an advisory expert body of Parliament, that advises draft normative acts for the purpose of a systematic unification and co-ordination of the whole body of laws. It shall keep the official record of the legislation of Romania.



There is no statute provision expressly guaranteeing the independence of this institution.

**4) How many members does this institution have? What are the selection criteria and incompatibilities? What kind of appointment do they get (e.g. full time / main job versus part time / additional job, for life versus a fixed period etc)?**

According to the provisions of Article 66 of the Rules of Organization and Functioning of the Legislative Council of 25.09.2024, the staff of the Legislative Council is composed of dignitaries, civil servants and contractual staff<sup>4</sup>.

The Legislative Council is headed by its President and each section is headed by a section chairman.

The President of the Legislative Council and the Chairmen of the sections are appointed for a period of five years (only renewable once) by a majority vote of the MPs present at the joint session of the two chambers of Parliament.

The position of President of the Legislative Council is assimilated to that of a minister and that of chairman of a section is assimilated to that of Secretary of State.

Public posts are filled by competition or examination, as the case may be, for an indefinite period.

With regard to the incompatibilities of these positions, it should be noted that the positions of president and section chairman are incompatible with any other public or private position, with the exception of university teaching positions.

The incompatibilities and prohibitions of public officials in the Legislative Council are laid down in the law on parliamentary public officials. The position of parliamentary civil servant is incompatible with any other public office, with the exception of university teaching functions and activities, scientific research and literary and artistic creation, as well as with the exception of functions exercised in the private sector, which are not directly or indirectly related to the duties exercised as a parliamentary civil servant, according to the job description.

The contractual staff of the Legislative Council shall respect the rights and duties provided for by Law no. 53/2003- Labor Code as laid down in the collective labor contract.

The incompatibilities regime for the staff of the Legislative Council is regulated by Order no. 106 of 20.12.2022 issued by the President of the Legislative Council.

The institution is composed of 100 members.

**5) Who has the competence to adopt the advisory opinion and how is the unity of advisory opinions ensured?**

The Legislative Council issues advisory opinions.

Depending on the category of normative acts subject to the advisory opinion, the state bodies concerned, upon receipt of the normative acts submitted for approval, shall immediately request the opinion of the Legislative Council on them. The President of the Legislative Council shall, depending on the subject matter, assign the work to the competent section, which shall draw up the specialized report within the set deadline.

---

<sup>4</sup> Art. 66 of the Regulation on the Organization and Functioning of the Legislative Council - (1) The staff of the Legislative Council shall consist of dignitaries, civil servants and contractual staff.



The draft opinion or note of referral shall be submitted to the President of the Legislative Council for consideration and approval. Draft legislative acts which are complex or raise particular problems may be referred to the sections for discussion.

**6) How much support staff is assisting this institution and what is their background (legal experts, other academic experts, communication professionals, et cetera)?**

The organizational structure of the Legislative Council, the nomenclature of functions and the number of managerial and executive posts, as well as the fields of activity and the duties of the sections, sectors, secretariat, directorates and other departments within the Legislative Council are laid down in the Rules of Organization and Functioning of the Legislative Council.

The Sections of the Legislative Council are: the Public Law Section, the Private Law Section and the Section for the Official Record of Legislation and Documentation.

The Sections are made up of Sectors organized according to the main areas of legislation.

The staff appointed to the Legislative Council on the basis of examination or competition is selected on the basis of the training necessary to carry out the work in each sector of activity, the fields of activity being vast. Thus, the staff includes lawyers, economists, technicians, IT specialists and other specialists with a high level of professionalism, capable of dealing rigorously and efficiently with all the complex aspects of legislative activity.

Each category of staff, from legal advisers and legislative experts to technical and administrative staff, makes an essential contribution to ensuring a high standard of performance, integrity and accountability.

Depending on the importance and the nature of the issues to be regulated, the President of the Legislative Council may approve the participation of academics or researchers from universities or research institutes or prestigious specialists as external collaborators in the documentation and drafting work.

**7) How many advisory opinions does this institution give yearly (on average)?**

After studying the Report of the Legislative Council for the year 2023, it turned out that during the year 2023, the Legislative Council was notified with 1362 draft normative acts and requests for republication/rectification for which the advisory opinion of this institution was needed.

**8) On average, how many weeks will it take for an advice to be finished?**

The deadlines for the completion of advisory opinions may vary depending on the category of draft legislative act, the initiator of the draft law and the institution or person responsible for setting the deadlines.

**9) Do any mandatory (e.g. legal) deadlines apply for the production of advisory opinions?**



- X Yes<sup>5</sup>  
0 No  
0 Sometimes. Please explain:

**10) In which phase of the legislative process is the advisory opinion given? (more answers are possible)**

- X Preparatory legislative process  
X Parliamentary legislative process  
0 Post-parliamentary process

Please explain:

The Legislative Council is a specialized advisory body of the Parliament that issues advisory opinions in the legislative process.

According to Romania's Constitution and Law no. 73/1993 on the establishment, organization and functioning of the Legislative Council, as amended and supplemented, this body has the role of giving opinions on draft legislation (laws, ordinances, decisions) before they are adopted by Parliament or the Government.

The opinions issued by the Legislative Council are advisory acts, which means that the authorities are not obliged to follow them, but they play an important role in ensuring the legality and legal consistency of legislative proposals.

We can also say that the advisory opinion is also issued within the parliamentary legislative process. According to the procedure, before a draft law is debated and adopted in Parliament, it has to be advised by the Legislative Council.

---

<sup>5</sup> These deadlines are regulated by Law no. 73/1993 on the establishment, organization and functioning of the Legislative Council and by the provisions of Article 21 of the Regulation on the organization and functioning of the Legislative Council.

- *2-day deadline.* The deadline requested by the Government in the case of draft normative acts with procedure;
- *10-day deadline.* The deadline requested by the Government for draft normative acts with ordinary procedure;
- *24-hour deadline.* The deadline required for draft emergency ordinances;
- *The deadline set by the Standing Office of the Chamber that requested it.* The deadline set in the case of draft laws adopted in the first Chamber and debated in the second Chamber of Parliament, in the case of legislative proposals initiated by senators or deputies after their registration in one of the Chambers of Parliament and in the case of legislative proposals adopted in the first Chamber and debated in the second Chamber of Parliament;
- *The deadline set by the parliamentary committee referred to the merits.* The deadline set in the case of amendments to draft laws subject to debate in the parliamentary committee responsible and in the case of amendments to legislative proposals subject to debate in the parliamentary committee referred to the merits;
- *The deadline set by the President of the Legislative Council.* The deadline for instructions and regulations of the Competition Council;
- *Deadline of no more than 30 days* from the date of referral to the Legislative Council by the member of the initiative committee empowered for this purpose;
- *The deadline set by the Legislative Council* for requests for the republication or rectification of normative acts.



This opinion is binding as a matter of procedure. Thus, any draft law or legislative proposal tabled in Parliament first goes through this procedure.<sup>6</sup>

For draft legislation received by the General Secretariat of the Government, the latter immediately requests the opinion of the Legislative Council, which is to be issued in accordance with the law, within the deadline requested by the Government.

**11) What kind of advisory opinions does this institution give? (more answers are possible) And how much of those advisory opinions do you give annually (approximately)?**

- 0 Mandatory advisory opinions on national legislation
- X Non-mandatory advisory opinions on national legislation**
- 0 Mandatory advisory opinions on decentral legislation
- X Non-mandatory advisory opinions on decentral legislation**
- 0 Solicited thematic advisory opinions
- 0 Unsolicited thematic advisory opinions
- 0 Verbal advisory opinions
- 0 Visuals / movie clips
- 0 All of the above
- 0 Other (reports, books, studies etc)

Explanation if desired:

The Legislative Council issues opinions on draft laws, legislative proposals and draft ordinances and decisions of a normative nature of the Government.

At the request of the president of the parliamentary committee responsible, it gives its opinion on amendments tabled for debate by the committee and on draft laws or legislative proposals received by the committee after their adoption by one of the Chambers of Parliament;

Draft laws and legislative proposals are submitted to Parliament for debate with the opinion of the Legislative Council.

**The opinion shall be consultative and shall concern:**

- a) the concordance of the proposed regulation with the Constitution, with the framework laws in the field, with the regulations of the European Union and with the international acts to which Romania is a party, and in the case of draft laws and legislative proposals, the nature of the law and which is the first Chamber to be referred to;
- b) ensuring the correctness and clarity of the legal expression, removing contradictions or inconsistencies in the content of the draft normative act, ensuring the completeness of its provisions, compliance with the rules of legislative technique, as well as the normative parlance;
- c) presentation of the implications of the new regulation on the legislation in force, by identifying the legal provisions which, having the same regulatory object, are

---

<sup>6</sup> Art. 4 of Law no.73/1993 on the establishment, organization and functioning of the Legislative Council-(1) Draft ordinances and decisions of a normative nature shall be submitted for adoption to the Government only with the opinion of the Legislative Council on the legality of the measures envisaged and on the manner in which the requirements provided for in Art. (3), which shall apply accordingly.



to be repealed, amended or unified, as well as by avoiding the regulation of identical aspects in different normative acts.

**Draft ordinances and decisions of a normative nature shall be submitted to the Government for adoption only with the opinion of the Legislative Council as to the legality of the measures envisaged.** The opinion is advisory.

As for 2023, as shown in the annual Legislative Council's Report, 1362 specialized opinions were issued:

- 527 legislative proposals from the Parliament;
- 134 requests for approval of republications-rectifications from the Chamber of Deputies;
- 4 amendments to legislative proposals in the Senate;
- 685 draft laws, ordinances, emergency ordinances and government decisions;
- 6 draft regulations and instructions from the Competition Council;
- 6 citizens' legislative initiatives.

**12) Who are the main addressees for the work of this institute? (more answers are possible)**

- Parliament**
- Government**
- Judiciary
- Civil servants
- Universities
- Media
- General public
- All of the above

Explanation if desired:

**13) When preparing an opinion, are insights from outside the institution used?**

- Yes**
- No

The Legislative Council may use information from outside the institution, depending on the nature of the draft law or normative act submitted for its opinion.

**14) If yes, what kind of information can be used? (more answers are possible)**

- Public (written) knowledge from scientific or other knowledge institutions, advisory councils or experts
- Additional information provided by the ministry (reports, consultations, et cetera)
- Ad hoc (written or verbal) insights on request from (academic) experts
- Ad hoc (written or verbal) insights on request from government officials
- Insights from implementation experts
- Insights from stakeholders or lobby groups
- Case law by (administrative) courts



**Co-funded by  
the European Union**

- All of the above  
 Other

Explanation if desired:

The aim of this process is to ensure that proposed legislation is well founded, coherent and in line with domestic and international legal standards.

**15) In case the institute uses case law by administrative courts, does it have any contact with the judiciary about these issues?**

- Yes  
 No

The Legislative Council seeks to ensure that a draft normative act does not contravene constitutional provisions or principles, national legislation or treaties to which Romania is a party.

To this end, it takes into account the decisions and rulings handed down by Romania's Constitutional Court, as well as the case law of the courts.

Explanation if desired:

This ensures the consistency and clarity of the legislation in terms of how a particular legal rule has been interpreted, avoiding ambiguity.

**16) Does the institute in any way provide feedback the other way around, i.e. by advising the supreme administrative court from a legislative-advisory point of view, for instance by pointing out the potentially undesirable consequences of legislation?**

- Yes  
 No

Explanation if desired:



**CHAPTER 2 THE CONTENT OF AN ADVISORY OPINION****17) What are the main components of the analysis to draft an advisory opinion? (more options are possible)**

- Legal analysis (see further questions 17–26)**  
 Policy analysis (see further questions 27-28)  
 Other, namely:

Explanation if desired:

Observations may be based on doctrine, case law and comparative law, without political considerations.

When drawing up an advisory opinion, the following shall mainly be considered:

- a) the consistency of the proposed legislative solutions with the provisions and principles of the Constitution, the framework laws in the field and higher-level normative acts;
- b) concordance with the provisions of the international conventions to which Romania is a party and with European Union regulations;
- c) determination of the nature of the law and of the first Chamber of Parliament to be seized of the matter, with reference to the provisions of the Constitution, republished;
- d) the removal of possible contradictions or inconsistencies in the draft text;
- e) the completeness of the proposed legislative solution, so as to cover the whole range of social relations which are the subject of the regulation;
- f) the implications of the new regulation for the legislation in force and how these are reflected in the draft text through repeals, amendments or additions;
- g) the avoidance of possible parallelism in the regulation, by reference to other normative acts or to the same normative act;
- h) the concentration in unitary regulations of provisions on the same subject-matter which are contained in several normative acts;
- i) the proper drafting of the draft text, ensuring the correctness and clarity of legal expression, terminological unity, good systematization and compliance with the other rules of legislative technique<sup>7</sup>;

**18) Does the advisory opinion generally contain a legal analysis of the draft legislation?**

- Yes, (almost) always**  
 No  
 Yes, sometimes, depending on:

---

<sup>7</sup> Art. 2 paragraph (1) of the Regulation on the organization and functioning of the Legislative Council.



**19) If yes, what are the elements of the legal analysis? (more answers are possible)**

- Relation to higher-ranking law (constitution and international and European law)**
- General principles of law**
- Legal systemic aspects (e.g. competence, discretionary powers, supervision, enforcement and legal protection, transitional law and evaluation)**
- Technical legislative quality and requirements**
- Other

Explanation if desired:

**20) What other aspects can be part of an advisory opinion?**

- Own views and ideas
- Technical remarks**
- Supporting remarks**
- None
- Other, namely:**

When finalizing the draft opinion or note of restitution, account shall be taken, as appropriate, of the report drawn up by the Section for Official Records of Legislation and Documentation, the doctrinal, case-law and legislative reports, including those on comparative law, the expert report, as well as the report of the Constitutional Analysis Section.

Explanation if desired:

.....

**21) Is the advisory body in any way involved in the drafting of legal acts of the European Union?**

- Yes, (almost) always
- No**
- Sometimes, depending on:

**22) When the draft legislation concerns implementation of legal acts of the European Union, what are the main components of the analysis to draft an advisory opinion? (more options are possible)**

- Legal analysis
- Policy analysis
- Other:

Please explain the differences with the answer to question 16:



In this case the analysis for an advisory opinion is no different. In general, the aim is to ensure that the legislative act does not contravene the Constitution, national legislation or treaties to which Romania is a party, and if it is found to do so, a reasoned negative opinion is issued.

**23) Does the advisory opinion also contain a legal analysis of legal acts of the European Union?**

- Yes, (almost) always  
 **No**  
 Sometimes, depending on:

Explanation if desired:

The Legislative Council has no constitutional control attributions, but in the activity of endorsing draft normative acts, it analyses the consistency of the proposed legislative solutions with the provisions and principles of the Constitution, national legislation and EU Law.

**24) If the advisory opinion contains a constitutional review (ex-ante), what are the relevant documents / sources to be used? (more answers are possible)**

- National constitution  
 Law of the European Union  
 International treaties  
 Customary law  
 General principles of law  
 Case law (national, European, international)  
 All of the above  
 **Other, namely:**

Explanation if desired:

The consultative opinion contains an indirect *ex-ante* constitutional control, as the draft normative acts are examined for their consistency with the provisions and principles of the Constitution, national legislation and EU Law.

**25) If the advisory opinion contains a constitutional review (ex-ante), which elements are taken into account? (more answers are possible)**

- Civil and political rights  
 Economic, social and cultural rights  
 Institutional norms  
 All of the above  
 **Other, namely:**



Explanation if desired:

The consultative opinion does not contain an *ex-ante* constitutional control as such, but when approving draft normative acts, it analyses the consistency of the proposed legislative solutions with the provisions of the Constitution.

**26) If the advisory opinion contains a constitutional review (ex-ante), which interpretations are taken into account? (more answers are possible)**

- 0 Literal interpretation
- 0 Historical interpretation
- 0 Teleological interpretation
- 0 Systematic or contextual interpretation
- 0 All of the above
- Other, namely:**

.....

Explanation if desired:

The advisory opinion does not contain an *ex-ante* constitutional control as such.

**27) If the advisory opinion contains a constitutional review (ex-ante), does it take constitutional review ex post into account?**

- Yes**
- 0 No

Please explain:

The consultative opinion does not contain an *ex-ante* constitutional control as such, but its issuance is aimed at ensuring that the new legislative proposals are in line with the Constitution. In cases where a draft legislative act or a provision is declared unconstitutional, the initiator is obliged to comply with the decision of the Constitutional Court.

The new legislative proposal is again submitted to the Legislative Council for its opinion.

**28) Does the advisory opinion also contain an analysis of the draft legislation focused on aspects of policy, implementation, execution and enforcement?**

- 0 Yes, (almost) always
- No**
- 0 Sometimes, depending on:

.....



**29) If the advisory opinion contains a policy analysis, which elements are taken into account? (more answers are possible)**

- 0 Analysis of the problem
- 0 Approach to the problem
- 0 Suitability and objective
- 0 Effects
- 0 Proportionality
- 0 Implementation
- 0 Execution
- 0 Enforcement
- 0 Legal practice
- 0 All of the above
- 0 Other, namely:

.....  
Explanation if desired:

The advisory opinion does not contain a policy analysis.

**30) To what extent does the advisory opinion suggest potential solutions for the issues (legal-technical or other) raised in the opinion?**

The advisory opinion shall not contain comments as to whether or not the law should be adopted and may not contain comments of a political nature.

In general, comments shall be made on questions of legislative technique, proposals for redrafting of the text and an indication of the aspects in which this is necessary.

Where additions, amendments or redrafting are necessary, the opinion shall contain comments and proposals necessary for the correct preparation of the draft legislative act.

**CHAPTER 3 THE FOLLOW-UP OF AN ADVISORY OPINION**

**31) Will advisory opinions be made public?**

- Yes, by the institution that produces them**
- 0 Yes, by the (principal) addressee
- 0 Sometimes, depending on:
- 0 No

The opinions of the Legislative Council, as well as the addresses of the Legislative Council transmitting the opinions to the initiators, are information of public interest.

**32) If yes, at what point will the advisory opinion be made public?**



- Upon adoption of the advisory opinion**
- Upon submission of the draft legislation to the parliament
- Upon adoption of the legislation
- Other
- Sometimes, depending on:

.....

Explanation if desired:

**33) If advisory opinions are made public does the institution work with press releases, summaries, press conferences, et cetera?**

- Yes, (almost) always
- No**
- Sometimes, depending on:

**34) Is there an obligation for the government to (publicly) respond to an advisory opinion?**

- Yes, (almost) always
- No**
- Sometimes, depending on:

.....

Explanation if desired:

**35) Does the advisory body evaluate its functioning and are the effects of the advisory opinions taken into account?**

- Yes, (almost) always
- No**

Explanation if desired:

The person preparing the draft opinion follows the legislative process and, after the adoption of the draft legislative act for which the opinion has been issued, draws up a file closure sheet, recording the manner in which the legislative process has been finalized. Once the legislative act has been published in the Official Journal of Romania, Part I, the record shall state whether the comments and proposals made have been taken on board or not. The file shall be attached to the file of the endorsement work, which consists of the draft normative acts submitted for endorsement, the instruments of presentation and reasoning, other documents that were the basis for their elaboration and all the documents elaborated by the structures of the Legislative Council in the endorsement process.



**36) Are general reports or annual reports issued in which the institution reflects upon trends and topics in its advisory opinions?**

0 Yes, (almost) always

0 No

Explanation if desired:

The Legislative Council reports annually to the parliament on its work.

**37) To what extent and in what way does ex post constitutional review, whether by a constitutional court or not, rely on advisory opinions?**

The opinions issued by the Legislative Council are of an advisory nature, in which case the initiator of the draft law, draft ordinance or government decision is not obliged to adopt it<sup>8</sup>.

However, although the opinion is not binding in the sense that it must be followed, its absence may lead to procedural flaws, since draft normative acts cannot be submitted for approval without the opinion of the Legislative Council, and draft ordinances and decisions of a normative nature are submitted for adoption to the Government only with the opinion of the Legislative Council.

In the constitutionality review carried out by the Constitutional Court of Romania, the advisory opinion is important only from the point of view of compliance with the procedure for the adoption of a law, when analyzing the extrinsic grounds of unconstitutionality.

---

<sup>8</sup> According to the provisions of Article 26 of the **Regulation of May 10, 2009** on the procedures, at the Government level, for the elaboration, endorsement and submission of draft public policy documents, draft normative acts and other documents for adoption/approval, approved by Government Decision no 561/2009, in the event that the initiator does not accept all or part of the observations and proposals made in the opinion of the Legislative Council, he will draw up a justification note containing the reasons that led to the non-acceptance of the observations and proposals



**CHAPTER 4 JUDICIAL FEEDBACK TO THE LEGISLATOR**

Dealing with cases, the judiciary can be confronted with more or less systemic problems in the interpretation and application of legislation. The following questions are based on the distinction between two kinds of these problems. Firstly, there may arise more or less technical legal issues such as inconsistencies in legislation, a missing legal base or an incompatibility with higher law. Secondly, the administrative courts may come across more structural problems that are not strictly technical in nature and may be more sensitive and complex. Think, for instance, of difficulties for the administration in implementing a certain statute or the exceptionally harsh consequences that legislation might have in certain types of individual cases.

In short, legal or practical reality may differ from what the legislator had in mind. Problems like these cannot always be remedied in the judicial decision. It is then conceivable that the administrative courts decide to signal these points of attention to the legislator in their decisions or by other means, in order to help improving the quality of legislation and the effectiveness of the implementation of law in practice. That kind of judicial feedback to the legislator is the subject of the following questions.

**38) Does the highest administrative court provide the legislator with feedback on technical legal issues that arise from legislation?**

- Yes  
 No

Explanation if desired:

In Romania, the High Court of Cassation and Justice (HCCJ) does not directly provide legislative feedback to the legislature on technical or legal issues arising from legislation, as its powers are judicial, not legislative. The main role of the HCCJ is to ensure the uniform interpretation and application of the law at national level, not to participate directly in the legislative drafting process.

According to Art. 126 para. (3) of the Constitution, the High Court of Cassation and Justice ensures the uniform interpretation and application of the law by the other courts, according to its competence.

The legislature may benefit, extra, from such feedback to the extent that, in the exercise of its constitutional powers, the High Court of Cassation and Justice:

1. Adopts decisions in appeals in the interest of the law: the HCCJ can issue decisions in appeals in the interest of the law when there is an inconsistent practice in the application of a certain legal rule by lower courts. These decisions are binding on all courts, and they can signal to the legislature the existence of gaps or ambiguities in the law.
2. Submits a referral to the Constitutional Court: When the HCCJ finds that a particular legal provision is unconstitutional, it can refer the matter to the Constitutional Court of Romania. If the Court decides that the law or part of it is unconstitutional, the Parliament will have to amend or repeal those provisions.
3. Adopts court rulings: Although the HCCJ does not formally provide opinions to the legislature, the reasoning in its judgments, especially those



concerning technical issues or legal interpretation, may draw attention to issues that may require legislative amendments.

4. The High Court of Cassation and Justice, in United Chambers, shall determine the cases in which it is necessary to improve the legislation and shall communicate them to the Minister of Justice and to the two Chambers of Parliament.

5. The High Court of Cassation and Justice shall analyze and formulate views, as well as comments and proposals on draft legislation initiated by other public authorities and forwarded to the High Court of Cassation and Justice for that purpose;

6. The High Court of Cassation and Justice conducts studies on legal problems arising in the application of legislation;

Through its work, the High Court of Cassation and Justice of Romania indirectly contributes to the process of improving and clarifying legislation<sup>9</sup>.

**39) If yes, where does it provide this feedback on technical legal issues (more options are possible)?**

- Judgments
- Indirectly by signalling structural problems to the advisory body
- Annual review
- Journal articles
- Conferences/meetings
- Formal or informal contacts with representatives of the legislator/civil servants
- All of the above
- Other, namely:**

In line with the replies to point 38<sup>10</sup>.

---

<sup>9</sup> The powers of the High Court of Cassation and Justice are laid down in Law No 304/2022 on Judicial Organization

<sup>10</sup> In accordance with the provisions of Article 27 of Law no. 304/2022 on judicial organization, the High Court of Cassation and Justice is constituted in United Chambers for the referral to the Constitutional Court for review of the constitutionality of laws before promulgation.

The United Chambers of the High Court of Cassation and Justice, when convened by the President of the High Court of Cassation and Justice, shall meet to debate the points of view formulated by the Legislation, Jurisprudence and Litigation Department, with regard to any provisions likely to affect substantive or procedural rights protected by the fundamental law, which are contained in the draft legislative acts submitted for approval and decide on the fulfillment of the conditions for the High Court of Cassation and Justice to trigger the mechanism for verifying the constitutionality of laws before promulgation, in accordance with the provisions of Art. 146 letter a) of the Constitution of Romania, republished;

Also, the United Chambers of the High Court of Cassation and Justice meet when convened by the President of the High Court of Cassation and Justice in order to formulate proposals for the improvement of legislation, and issue rulings to this effect, which ratify the proposals made.

They are forwarded to both Houses of Parliament and to the Minister of Justice.



**40) If the highest administrative court provides feedback in its judgments, how does it do this (more options are possible)?**

- 0 Implicitly in the reasoning of the judgments
- 0 Explicitly in a paragraph that directs itself to the legislator
- 0 By way of a legal decision on the applicability or bindingness of legislation
- 0 All of the above

Explanation if desired:

In line with the replies to point 38.

**41) Could you give an example of this kind of feedback in the highest administrative court's judgments?**

With regard to the proposals to improve the legislation, we reproduce by way of example an excerpt from the judgment of the [United Chambers No 2 of April 15, 2021<sup>11</sup>](#).

“The proposals for legal improvements were formulated based on the aspects found during the judicial activity at the High Court of Cassation and Justice and mainly followed the following coordinates: (i) putting an agreement in place between the stipulations of the law that regulates the capacity of the primary credit manager and those in Law #500/2012 on Public Finances; (ii) amending the rules for establishing the membership and leader of the Panels of 5 judges, starting from the various 2 dysfunctions arisen in practice in the application of the current legal framework; (iii) putting an agreement in place between the laws and the Decisions returned by the Constitutional Court; (iv) regulating the possibility of having the sessions of the Panel for appeals in the interest of the law, the Panel for preliminary ruling on questions of law, the United Chambers and the Collegiate Management Body of the Court in a videoconferencing system; (v) amending the rules concerning the jurisdiction of the Panels of 5 judges in the matter of appeals on law brought against judgments returned by the Criminal Chamber to deny motions to refer matters to the Constitutional Court; (vi) putting a screening procedure in place at the level of the Panels of 5 judges for cases whose object is exercising an avenue of appeal against final judgments; (vii) introducing a flexibility in the rules of the possibility that the High Court of Cassation and Justice contact the Minister of Justice every time it is found that improvements of the legislation are necessary; (viii) amending the rules concerning adoption of the judgments returned by the Panel for preliminary ruling on questions of law and the Panel for appeals in the interest of the law.”

- With regard to the submissions on the unconstitutionality of laws made by the High Court of Cassation and Justice prior to the enactment of the law, we mention [Judgment No. 6 of June 28, 2024<sup>12</sup>](#) → submission for constitutional review of the

---

<sup>11</sup> The proposals to improve the legislation have been formulated in the light of the issues observed in the High Court of Cassation and Justice's judicial activity in 2020.

<sup>12</sup> The High Court of Cassation and Justice, constituted in United Chambers decides to refer the matter to the Constitutional Court to rule on the unconstitutionality of the Law for the approval of Government Emergency Ordinance No. 99/2023 on some measures for the reporting of arrears



Law for the approval of Government Emergency Ordinance No. 99/2023 on some measures for the reporting of arrears by public institutions and for amending and supplementing Emergency Ordinance No. 109/2011 on the corporate governance of public enterprises, as subsequently amended and supplemented

"Regarding the solution provided for in Art. 1 para. (1) of the Emergency Ordinance, we specify that, with regard to public institutions, from the exclusive perspective of their debts consisting in obligations to pay salary entitlements established by administrative acts, the notion of "arrears" is removed from the legislation, these debts remaining at the stage of "outstanding payments". A legal regime derogating from the provisions of Article 284 of Public Finance Law No 500/2002 is therefore established, which is likely to affect the creditors' right of claim by removing the priority nature of their payment, creating the possibility of successive deferment of payment, contrary to Articles 44 and 115 para. (6) of the Constitution. "

It is also worth mentioning the judgment of September 26, 2023 handed down in Case no.3815/121/2019/a1, by which the High Court of Cassation and Justice - Administrative and Tax Litigation Chamber, panel C1, in view of the judgment of the ECHR in the case of Corneschi v. Romania, ordered the ex officio submission to the Constitutional Court of Romania of the exception of unconstitutionality of the provisions of Article 2 paragraph (2), art.7 and art.28 paragraphs (1) and (5) of Law no 182/2002, in relation to the provisions of art.1 paragraphs (4) and (5), art. (2) and (3) of the Constitution and the provisions of Article 6 ECHR

"The High Court considers that the exception of unconstitutionality is well-founded in the light of the recent case of Corneschi v. Romania, the provisions of art.2 paragraph (2), art.7 and art.28 paragraphs (1) and (5) of Law no. 182/2002 being unconstitutional by reference to art.1 paragraphs (4) and (5), art. 20, art. 21, art. 24, art. 124 paragraphs. (2) and (3) of the Constitution, in so far as they are interpreted in the sense that a court of law does not have the possibility to present to the plaintiff either orally or in the grounds of its decision the reasons that led to the rejection of his request, if these reasons are based on the content of classified information, in the context that the plaintiff's defense counsel does not have the possibility to communicate to the plaintiff the facts alleged resulting from such documents".

**42) Does the highest administrative court gather information about structural problems that might arise from legislation, such as its unforeseen or exceptionally harsh consequences?**

0 Yes  
X No

**43) If yes, from what sources does it gather information about these structural problems (more options are possible)?**

---

by public institutions and for amending and supplementing Emergency Ordinance No. 109/2011 on the corporate governance of public enterprises, (PL-x No. 782/2023) in relation to the constitutional provisions of Art. 61 para. (2) and Art. 75 para. (1) on the principle of bicameralism, Articles 115 para. (4), (6) and (7) relating to the legal regime of emergency ordinances, Article 1 para. (3) and (5) on the principle of the rule of law and legality, as well as Article 44 of the Constitution on the right to property.



Co-funded by  
the European Union

- Arguments raised by parties
- Case law**
- Advisory opinions on draft legislation
- Journal articles
- Conferences/meetings
- All of the above
- Other, namely:

.....

**44) Does the highest administrative court provide the legislator with feedback about these structural problems?**

- Yes
- No**

Explanation if desired:

According to its constitutional powers, the High Court of Cassation and Justice may refer a case to the Constitutional Court in cases where it considers that a law or a legal provision violates constitutional principles in the framework of the *a priori* review, according to the provisions of Article 27, letter b, of Law No 304/2022 on the organization of the judiciary.

At the same time, according to Order No. 26/HCCJ of 10.01.2024 of the President of the High Court of Cassation and Justice, a reflection group on the configuration of the HCCJ jurisdiction was established, consisting of judges, university professors and other legal specialists.

The proposals of this working group are to be analyzed and submitted for approval to the United Chambers and communicated to the Minister of Justice and to the two Chambers of Parliament, in accordance with Article 29 paragraph (1) of Law No 304/2022.

**45) If yes, where does it provide this kind of feedback (more options are possible)?**

- Judgments
- Indirectly by signalling structural problems to the advisory body
- Annual review
- Journal articles
- Conferences/meetings
- Formal or informal contacts with representatives of the legislator/civil servants
- All of the above
- Other, namely:**

As answered in points 38 and 44.



Occasional cooperation with Parliament or other authorities - Although rarely, in the case of major legislative reforms, the HCCJ may be consulted by Parliament or other authorities on the effectiveness and applicability of certain laws<sup>13</sup>.

**46) Could you give an example of this kind of feedback?**

An example of feedback provided indirectly by the High Court of Cassation and Justice was given in question 41.

**47) To what extent does the highest administrative court suggest potential solutions for the issues (legal-technical or other) raised?**

As answered in points 38 and 44.

**48) What kind of considerations determine whether and to what extent the highest administrative court provides feedback? Does the separation of powers limit the court in this regard and if so, how?**

Any feedback is limited to the constitutional competence that the High Court of Cassation and Justice has (referrals to the Constitutional Court, appeals in the interest of the law, preliminary rulings on points of law).

With regard to the principle of separation of powers in the state, we can say that it has a significant impact on the ability of the High Court of Cassation and Justice to provide feedback. The principle of the separation of powers limits the court's ability to directly influence the legislative process, and the feedback provided must be limited to the constitutional functions of the supreme court, which include the unification of jurisprudence<sup>14</sup>.

The principle of separation of powers limits the ability of the HCCJ to propose or impose legislative changes. It cannot amend laws; it only interprets and applies the law.

**49) Does the highest administrative court keep track of the given feedback, for instance in a list that is annexed to an annual review?**

0 Yes  
X No

Please explain:

There is no such evidence because it is not the exercise of a power to provide direct feedback, such feedback can only result indirectly from the decisions issued by the HCCJ in the exercise of its constitutional powers.

---

<sup>13</sup> Feedback may appear in formal opinions given to Parliament or other institutions in the context of legislative reform proposals.

<sup>14</sup> The HCCJ must maintain its independence from the legislature. This means that feedback must be objective and based on legal analysis, free from political influence.



**50) Does the highest administrative court monitor the effectiveness of feedback, for instance by speaking to representatives of the government or by monitoring new legislation?**

0 Yes  
 No

Please explain:

The High Court of Cassation and Justice does not have a formalized and systematic mechanism to monitor the effectiveness of the feedback provided to the legislature. However, the court tracks the impact of legislation on its case law.

**51) Is there any follow-up if the legislator does not respond to issues that are raised by the highest administrative court?**

0 Yes  
 No

Please explain:

In cases where the High Court of Cassation and Justice raises issues related to legislation and the legislature does not respond or act accordingly, there is no formalized mechanism for monitoring this situation. The judgments by which the High Court of Cassation and Justice signals issues of unconstitutionality of laws, proposals for improvement of legislation and other structural problems are made public and centralized on the institution's website.

**52) Does the highest administrative court have any formal or informal contacts with the legislator, for instance via its civil servants? If so, what kind of issues does it discuss there?**

Yes  
0 No

Please explain:

- The HCCJ may be asked to participate in formal consultations or working sessions with the legislator, in particular in the framework of important legislative reform projects. These meetings may take place in parliamentary committees or other legislative forums.
- The HCCJ may send formal reports to the legislator outlining problems encountered in the application of the law, requesting clarifications or legislative amendments.
- HCCJ representatives may attend conferences, seminars or other events where they can interact with members of the legislature and discuss issues of common interest.



Issues discussed include legislative ambiguities, the impact of legislation, suggestions for amendments and problems of consistency in the application of legislation.

**53) Is there a role for the highest administrative court in the process of legislation, i.e. by advising the legislator *ex ante* during the process of legislation?**

- 0 Yes  
 No

Please explain:

The High Court of Cassation and Justice does not have a formal role in the legislative process, but it can influence legislation by advising the legislator *ex ante*. This role is not structured or formalized, but may occur in certain contexts.

The HCCJ may be called upon to participate in formal consultations on draft legislation, in particular for complex legislation or legislation involving significant legal issues. This may include public hearings in parliamentary committees or working sessions with legal experts. The HCCJ may work with the Ministry of Justice or other relevant institutions to provide feedback on legislative proposals that may affect the judiciary. The HCCJ may participate in public discussions or conferences where legislative issues are addressed, thus contributing to raising awareness of the need for legislative change.

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

**54) Does the highest administrative court have contact with the advisory body about problems (legal-technical or other) that arise from its case law?**

- Yes  
0 No

Explanation if desired:

