

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.¹ 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.

¹ Not being specialized advisory bodies that focus on certain sub-interests or sectors or that perform a more technical review, for example, focused on the regulatory burden.



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?

- Yes ²
 No ³

Further clarification> The **Spanish Council of State**, in accordance with its legal statute, exercises its functions with **organic and functional autonomy**. This means that while it serves as the supreme consultative body to the government, it operates independently in both its internal organization and the execution of its advisory duties.

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

*Consejo de Estado
 Calle Mayor, 79
 28013 Madrid*

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

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

.....

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)?

The Spanish Council of State (Consejo de Estado) is composed of several types of members, as outlined in its governing legislation:

1. Members:

- The President.

² If you as ACA Member are not that institution, please ask their assistance in answering this questionnaire.

³ Please proceed to question 38.



- *Permanent councillors.* In a number equal to the Sections of the Council, are appointed indefinitely by Royal Decree from among individuals who are or have been included in one of the following categories:

1. Minister.
2. President or member of the Executive Councils of the Autonomous Communities.
3. State Councillor.
4. Members of consultative councils or equivalent bodies of the Autonomous Communities.
5. Senior Lawyer (Letrado Mayor) of the Council of State.
6. Full Academician of the Royal Academies integrated into the Institute of Spain.
7. Tenured professor of legal, economic, or social disciplines at a University Faculty, with at least fifteen years of service.
8. General Officer of the Legal Corps of the Armed Forces.
9. State officials with at least fifteen years of service in bodies or ranks that require a university degree for entry.
10. Former Governors of the Bank of Spain.

When appointing Permanent Councillors, the principle of balanced representation between men and women will be guaranteed, ensuring that each gender represents at least forty percent of the appointees.

- *Ex-officio councillors (consejeros natos). These are the ex-officio councillors*

a) The Director of the Royal Spanish Academy and the Presidents of the Royal Academies of Moral and Political Sciences, and of Jurisprudence and Legislation.

b) The President of the Economic and Social Council.

c) The Attorney General of the State.

d) The Chief of the Defense Staff.

e) The President of the General Council of the Spanish Bar Association.

f) The President of the General Codification Commission or the President of its First Section if the former is a Government Minister.

g) The Solicitor General of the State-Director of the State Legal Service.

h) The Director of the Center for Political and Constitutional Studies.

i) The Governor of the Bank of Spain.



Additionally, those who have held the office of Prime Minister will acquire the status of **ex-officio State Councillors** for life, and at any time, they may inform the President of the Council of State of their desire to join.

In addition to being part of the Plenary of the Council of State, they may carry out the duties and tasks provided for in the organic regulations, which will include the relevant provisions regarding their potential dismissal, resignation, or suspension from the effective exercise of the position of ex-officio Councillor.

Their personal and economic status will be the same as that of **Permanent Councillors**, without prejudice to what corresponds to them as former Prime Ministers.

- Elective councillors (up to 10), who are appointed for a four-year term.

- The Secretary-General.

2. Selection criteria and incompatibilities:

- The President is appointed by royal decree from among distinguished jurists with experience in state affairs.
- Permanent councillors are appointed indefinitely and must have held significant public offices, such as ministers or university professors with at least 15 years of service.
- Elective councillors are chosen for a four-year term from a pool of former public officials, including members of the Spanish parliament, ministers, judges, or university rectors.
- In terms of incompatibilities, the roles of President and Permanent councillor are incompatible with being a member of the legislative bodies (i.e., the Spanish Parliament or regional assemblies).

3. Appointment and term:

- Permanent councillors hold their positions indefinitely.
- Elective councillors are appointed for a fixed term of four years, although two must have previously served as regional presidents for at least eight years and have an eight-year term.

The Secretary-General shall be appointed by Royal Decree from among the Senior Lawyers of the Council, upon the proposal of the Permanent Commission and approved by the Plenary. The Secretary-General will attend the sessions of the Plenary, the Permanent Commission, and the Commission of Studies, with the right to speak but not to vote.

In summary, the Spanish Council of State has a flexible composition, including permanent and elective members, with significant restrictions on incompatibilities to maintain independence. Some members serve indefinitely, while others are appointed for specific terms.

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



Based on its legal stature, the competence to adopt advisory opinions within the Council of State is structured as follows:

1. The Council of State in Plenary Session or Permanent Commission can issue advisory opinions. The Plenary is composed of the President, permanent councillors, ex-officio councillors, elective councillors, and the Secretary-General. The Permanent Commission includes the President, permanent councillors, and the Secretary-General

2. The unity of advisory opinions is ensured by the following mechanisms:

- Binding rules for issuing opinions: The advisory opinions are adopted by majority vote, and in case of a tie, the President has the deciding vote.

- Non-binding opinions: Although the opinions are not binding, the Plenary and the Permanent Commission have the exclusive competence to issue them.

- Deliberation protocols: The deliberations and agreements require the presence of the President (or their substitute) and at least half of the councillors and the Secretary General.

These rules help maintain the consistency and integrity of the advisory opinions issued by the Council of State.

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

According to the latest statistics available, as of 2023, 142 people were employed at the Council of State.

As regards to the types of personnel or staff in the Council of State include the following:

1. Permanent Councillors: High-ranking officials who serve without a fixed term, appointed by Royal Decree.

2. Ex-Officio Councillors: Individuals who hold certain significant roles in other state institutions (e.g., Director of the Royal Spanish Academy, Governor of the Bank of Spain).

3. Elective Councillors: Appointed for a fixed period, generally four years, from a pool of former public officials.

4. Secretary-General: Appointed by Royal Decree, attends meetings but does not vote. High level law background.

5. Senior Lawyers (Letrados Mayores): Senior legal staff who provide legal advice and prepare draft opinions.

6. Lawyers (Letrados): Legal professionals who work under the direction of Senior Lawyers and assist with legal drafting, research, and the preparation of advisory opinions.

7. Administrative and Support Staff: Includes secretaries and other personnel responsible for administrative tasks within the various sections of the Council.

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



In 2023, the Council of State handled 1,657 files, of which 1,514 resulted in full advisory opinions, with 1,505 of those being mandatory consultations

To estimate an average, we can look at the previous five years:

- 2018: 1,157 advisory opinions
- 2019: 1,099 advisory opinions
- 2020: 790 advisory opinions
- 2021: 1,165 advisory opinions
- 2022: 2,075 advisory opinions

*Using these figures, the ****average number of advisory opinions**** per year over the last five years would be approximately 1,257*

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

The available figures do not explicitly provide the average time in weeks for completing an advisory opinion. However, the 2023 figures mentions that **98 urgent opinions** were completed in 2023, with some of these handled in **reduced time frames**. In urgent cases, the maximum time allowed is typically **15 days** (approximately 2 weeks), as specified by law . For **regular (non-urgent) opinions**, the time is generally longer, but the exact average completion time is not provided. Based on typical advisory processes in similar institutions, it could range from a few weeks to several months, depending on the complexity of the case and workload.

Therefore, for urgent cases, the time frame is about **2 weeks**, while regular cases could take longer, although the specific average for regular cases is not detailed.

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

- Yes
- No
- Sometimes. Please explain:

Advisory opinions must be issued within a period of two months, as a general rule. The consulting authority may declare urgency, in which case it is understood that the opinion must be issued within fifteen days. To set a deadline shorter than this, it is necessary for the Government or its President to agree on it.

When the order for the submission of files specifies the urgency of the advisory opinion, the maximum period for its issuance shall be fifteen days, unless the Government or its President sets a shorter deadline.



If the deadline is set at less than ten days, the consultation will be handled by the Permanent Commission, even if it falls under the competence of the Plenary, without prejudice to the Government's ability to subsequently request the opinion of the Plenary.

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

- Preparatory legislative process
- Parliamentary legislative process
- Post-parliamentary process

Please explain:

The **Council of State** can be consulted on any issue. However, in certain cases, it must be consulted as required by law. These are called **mandatory consultations**: regulatory provisions issued in execution of laws; laws and regulations issued in execution of international treaties or community law; challenges to general provisions before the Constitutional Court; appeals for review; contractual modifications; contract and concession terminations when contractors oppose such termination; or in cases of liability proceedings, among others. All other consultations, which are not mandatory, are referred to as **discretionary consultations**.

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)?

- | | | |
|-------------------------------------|--|----------|
| <input checked="" type="checkbox"/> | Mandatory advisory opinions on national legislation | (1505) |
| <input checked="" type="checkbox"/> | Non-mandatory advisory opinions on national legislation | (9) |
| <input checked="" type="checkbox"/> | Mandatory advisory opinions on decentral legislation | () |
| <input checked="" type="checkbox"/> | Non-mandatory advisory opinions on decentral legislation | () |
| <input checked="" type="checkbox"/> | Solicited thematic advisory opinions | () |
| <input type="checkbox"/> | Unsolicited thematic advisory opinions | () |
| <input type="checkbox"/> | Verbal advisory opinions | () |
| <input type="checkbox"/> | Visuals / movie clips | () |
| <input type="checkbox"/> | All of the above | () |
| <input type="checkbox"/> | Other (reports, books, studies etc) | () |

Explanation if desired:

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

- Parliament
- Government
- Judiciary
- Civil servants



- 0 Universities
- 0 Media
- 0 General public
- 0 All of the above

Explanation if desired: [Please see answers to question 10](#)

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

- 0 Yes
- X No

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

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

Explanation if desired:

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

- 0 Yes
- X No

Explanation if desired:

[Relations between the Council of State and the judiciary take place within an exclusively institutional framework.](#)

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?

- 0 Yes
- 0 No



Explanation if desired:

The doctrine of the Council of State is public. Possible undesirable consequences of legislation will be described in the advisory opinion and the judiciary – like all other institutions – will be able to take notice of the Council views through the advisory opinion.

It has to be taken into account that the publication of the opinions is not regulated. Article 132 of the Regulations of the Council contains a brief reference to the publication of collections of legal doctrine established in the opinions and the publication of a database that compiles them. Beyond this, the Council has generally maintained that it is the consulting authority that should decide when the opinions are published. They have typically interpreted that such publication is possible when the regulation to which the consultation refers has already been approved and published in the Official State Gazette.



Co-funded by
the European Union

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:

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

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

.....

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:

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:

The Advisory division is not involved in the drafting of EU legal acts itself but during the negotiation phase the government can ask a non-mandatory advisory opinion regarding legal aspects of the proposal of the European Commission or amendments of the European Parliament on behalf of its own negotiation position.

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:

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:

.....

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:

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

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

.....

Explanation if desired:

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
- 0 Other, namely:

.....

Explanation if desired:

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

- 0 Yes
- 0 No

Please explain:

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
- 0 No
- X Sometimes, depending on:

.....



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

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

.....

Explanation if desired:

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 provided by the Council of State can vary in the extent to which it suggests potential solutions to the issues raised, depending on the case and the needs of the consultation.

CHAPTER 3 THE FOLLOW-UP OF AN ADVISORY OPINION

31) Will advisory opinions be made public?

- Yes, by the institution that produces them
- Yes, by the (principal) addressee
- Sometimes, depending on:

Further explanation

Please see answer to question 16

.....

- No

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



Co-funded by
the European Union

- 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: [Please see answer to question 16](#)

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:

The Council has a communication section.

The **Communications Section** of the **Council of State** is dedicated to addressing **institutional matters** and other **general interest topics**. Its primary role is to facilitate media relations and provide information related to the Council's activities and functions. However, this section is **not responsible** for the general **publication or explanation of advisory opinions (dictámenes)**.



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:

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

- Yes, (almost) always
- No

Explanation if desired:

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

Lawyers and judges may refer to advisory opinions in their positions or judgment. To what extent that depends on each case and particularities.

In our legal system, the **advisory opinions** of the **Council of State** are **not considered a source of law**. However, due to their **high technical quality** and the **prestige of the institution**, these opinions are generally regarded as a valuable tool for the **analysis, study, and application of law**. They are often referenced by legal professionals and scholars for their well-reasoned insights and interpretations, providing a helpful resource in shaping and understanding legal principles and practices.



CHAPTER 4 JUDICIAL FEEDBACK TO THE LEGISLATOR

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

- Yes
 No

Explanation if desired:

Yes, the **highest administrative court** can provide the legislator with feedback on technical legal issues arising from legislation. This type of feedback is often conveyed through various channels:

1. **Judgments and rulings:** The court's decisions frequently contain **reflections** and **legal reasoning** that highlight technical issues or ambiguities in existing legislation. These insights can indirectly inform the legislator of challenges in the interpretation or application of the law.
2. **Annual Report of the Judiciary:** The **Judicial Power's annual report** often includes **evaluations** of the legal system, identifying issues and areas for improvement. These reports provide a structured form of feedback that may address the **effectiveness** and **applicability** of laws.
3. **Conclusions from official judicial training activities:** The conclusions drawn from **judicial training programs** and other **official activities** within the Judiciary can also offer valuable insights. These activities provide a forum for discussing **practical challenges** faced by judges, including difficulties stemming from legislative technicalities, which can ultimately be shared with lawmakers.
4. **Institutional meetings and training activities:** There are also, or can be, **institutional meetings** or **training activities** where representatives of the **government** or the **legislative branch** are invited. These encounters provide a direct platform for discussing the practical implications of legislation and for offering feedback on **technical legal issues** in a collaborative setting.

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:



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

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

Explanation if desired:

.....

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

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

- Yes
- No

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

- 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: [Please see answer to question 38](#)

.....



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:

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

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

The Administrative Jurisdiction Division does not propose a solution. Sometimes a judgment contains suggestions made by parties in the presentation of their arguments. Generally this is done with the statement that it is up to the legislature to follow up those kind of suggestions if desired.

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?

A consideration to be taken into account when determining the need for feedback is if a problem arose in more cases already or could likely occur again in more future cases. If a problem is more structural in nature, the judge cannot solve it in a durable way by only giving a customized solution in the judgment in the case at hand. In that case, there is more reason to provide feedback to the legislator.

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

- Yes
- No

Please explain:

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
X No

Please explain:

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

- 0 Yes
X No

Please explain:

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?

- 0 Yes
X No

Please explain:

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
X No

Please explain:

No, the **Sala de lo Contencioso Administrativo del Tribunal Supremo** does not have a formal role in advising the legislator **ex ante** during the legislative process. This would conflict with the principle of **separation of powers** and the judiciary's **independence** from the legislative branch. The court's primary function is to **interpret and apply** the law, not to participate in its creation.

The governing body of the Judiciary, in this case, the **General Council of the Judiciary (Consejo General del Poder Judicial - CGPJ)**, does have a role in the legislative process when it comes to **judicial-related legislation**. The **CGPJ** can participate by issuing certain **mandatory reports**, as provided by law, whenever legislation that affects the organization, functioning, or competencies of the **judicial branch** is being developed.



More specifically, the General Council of the Judiciary must issue a report on draft bills and general provisions that deal with the following matters:

- Modifications to the Organic Law of the Judiciary.
- Determination and modification of judicial districts, as well as their capitals.
- Establishment and modification of the staffing levels of Judges and Magistrates, Judicial Secretaries, and personnel serving the Administration of Justice.
- Organic statute of Judges and Magistrates.
- Organic statute of Judicial Secretaries and other personnel serving the Administration of Justice.
- Procedural norms or those affecting the legal-constitutional aspects of the protection of fundamental rights before ordinary courts.
- Norms affecting the constitution, organization, functioning, and governance of the courts.
- Criminal laws and norms on the prison system.
- Any other matter that the Government, the Cortes Generales, or, where appropriate, the Legislative Assemblies of the Autonomous Communities deem relevant.

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
 No

Explanation if desired:

The Sala de lo Contencioso of the Tribunal Supremo may have institutional-level contacts with the advisory body, but these are typically limited to discussions on general topics rather than specific cases or legal-technical problems arising from its case law. Such interactions usually occur through training activities, reflection sessions, or similar events, where broader legal issues are discussed, allowing for the exchange of ideas and perspectives on the legal system as a whole.

However, there is no institutionalized regular contact between the court and the advisory body for the discussion of case-specific issues or ongoing jurisprudence. This ensures that the separation of functions between the judiciary and advisory bodies is maintained, with each fulfilling its independent role without overlapping or undue influence.

A joint task that has to do with conflicts of jurisdiction is relevant, since the Organic Law of the Judiciary determines in its article 38.1 that "Conflicts of jurisdiction between the Courts or Tribunals and the Administration shall be resolved by a collegiate body constituted by the President of the Supreme Court, who shall preside over it, and by five members, of whom two will be Magistrates of the Contentious-Administrative Chamber of the Supreme Court, appointed by the Plenary of the General Council of the Judiciary, and the other three will be Permanent Councillors of State, with the Secretary of Government of the Supreme Court acting as Secretary".



