

SUGGESTIONS FOR CORRECTION OF THE ACA GENERAL REPORT ON THE CONTRIBUTION TO THE QUALITY OF LEGISLATION PRESENTED AT THE SEMINARIO HELD IN THE HAGUE 17-18 MARCH 2025 WITH REGARD TO REFERENCES TO THE COUNCIL OF STATE

Page 3 of the Report:

*Note 1 includes Spain among the countries that have an independent consultative body endowed with a "general legislative advisory function".*

However, the Council of State does not have this function in general. It has the right to draft laws necessary to execute, comply with or develop international treaties or European Union law, to those affecting the organisation, competence or functioning of the Council of State and to draft organic laws on the transfer or delegation of state powers to the Autonomous Communities.

Page 5 of the Report:

*The "consultative part" of the Council is said to have more than 100 people.*

In reality, the Council is made up of the President, 9 Permanent Councillors, 10 Elective Councillors, 11 Ex-officio Councillors and the Secretary General. Total: 32.

For the preparation of the opinions, it currently has 32 active lawyers and the different services of the Council are attended by a total of 86 people.

Page 7 of the Report:

*Referring to the average number of opinions adopted by the advisory bodies that had a "general legislative advisory function" and expressly citing Spain, he indicated that the annual average was 1000 to 1500 opinions.*

That would be the total number of all the opinions approved, but most refer to non-legislative matters. In 2024, the number of opinions on draft laws was 8.

Also on page 7 it is said that in Spain there is no maximum period for issuing the opinion but this is not the case: according to the Regulations, the period is two months unless it is declared urgent, in which case the maximum period is fifteen days; this period of urgency may be reduced by decision of the Government or the President of the Government.

Page 12 of the Report:

*Regarding the involvement in the drafting of the legal acts of the European Union, it is stated that during the negotiation phase the Government can ask for an opinion on the legal aspects of the European Commission's proposal or the European Parliament's amendments.*

This is not expressly provided for and, regardless of the fact that the Government may optionally consult the Council of State on any matter, in practice it does not do so on these matters.

Pages 12 and 16 of the Report:

*Both point out that the Council of State also makes a "policy" analysis.*

Literally, what the Organic Law of the Council of State says is that it "will assess the aspects of opportunity and convenience when the nature of the matter requires it or the consulting authority expressly requests it", so the expression "policy" may be misleading.