ASSOCIATION OF THE COUNCILS OF STATE AND SUPREME ADMINISTRATIVE JURISDICTIONS
OF THE EUROPEAN UNION

ACA-EUROPE

TRANSVERSAL ANALYSIS 2018

CONTRIBUTION TO THE EN JUSTICE SCOREBOARD

THE QUALITY OF JUDGMENTS

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TABLE OF CONTENT

INDICATOR 1: “FORM” AND STYLE OF A DECISION

A. Written or oral?
   1.1. Judgments in written form
   1.2. Decisions given orally
   1.3. The written form and the quality of a judgment

B. The formal style of a judgment
   1.4. The structure of a written judgment
   1.5. Issues provided for in the law
   1.6. The reasoning component versus the “order” of the judgment
   1.7. Legal training on the structure of a written decision
   1.8. The formal style of a written judgment and the quality of the judgment

INDICATOR 2: REASONING OF JUDGMENTS

2.1. The legal basis of the characteristics of the reasons for rulings
2.2. The scope of the obligation to provide reasons for rulings
2.3. The harmonisation of the reasons for rulings
2.4. The references mentioned in rulings
2.5. The training of judges as regards providing reasons for the rulings
2.6. The analysis of quality indicators relating to the reasons for rulings

INDICATOR 3: CLARITY OF JUDGMENTS

3.1. Clear and Simple Language
3.2. For Whom Are Reasons Primarily Written?
3.3. Mechanisms for Clarification
3.4. Member States Which Allow for a Mechanism of Clarification
3.5. Member States Without a Mechanism for Clarification
3.6. Clarity of a Judgment Lending to Quality
3.7. Clarity of Judgments Indicated by Information Given to the Administration

INDICATOR 4: CONCISE JUDGMENTS

4.1. Is the principle of conciseness of judgments based on law, (Supreme) Court regulations, practices, ...
4.2. Do requirements (in law, case law, practices, etc.) exist that could have an impact on the length of a judgment? (e.g. requirement to address all arguments)
4.3. Are there situations (in law, case law, practice) which lead to short judgments? (e.g. rejection of a leave to appeal/cassation application)
4.4. Practices leading to long judicial decisions
4.5. Conciseness as an indicator of quality of judgment? ........................................ 23
4.6. Synthetic (or discursive) style of a written judgment (in the broadest sense, that is to say: number of pages and the synthetic of analytical style of writing) as an indicator of the quality of a judgment? ......................................................................................... 24
4.7. Analytic style of a written judgment (in the broadest sense, that is to say: number of pages and the synthetic of analytical style of writing) as an indicator of the quality of a judgment? ................................................................................. 24
4.8. Bibliometric aspects of a judgment (e.g. the average length of a judgment) as an indicator of quality of judgment? ................................................................................................................................. 25

INDICATOR 5: ASSESSMENT OF QUALITY OF JUDGMENTS ........................................ 25

INDICATOR 1: THE NOMOPHYLACTIC PRINCIPLE .................................................. 28
1.1. The nomophylactic function .................................................................................. 28
1.2. Binding value: legal v. “moral” persuasion .......................................................... 28
1.3. Binding value: in all cases v. in cases decided by the SAC. ................................. 28
1.4. Binding precedent and the quality of a judgment ................................................. 28
1.4.1 Responses indicating a view that Binding precedent is an indicator of the quality of a judgment ................................................................................................................................. 29
1.4.2. Responses indicating a view that binding precedent is not an indicator of the quality of the judgement ......................................................................................................................... 29
1.4.3. Responses indicating a view that binding precedent is neutral in assessing the quality of the judgements ......................................................................................................................... 29

INDICATOR 2: INSTRUMENTS TO RATE THE QUALITY OF DECISIONS .................. 30
1. In its action plan for 2018-2021, ACA-Europe has determined its annual operational activity to be the organisation of a cross-sectional analysis activity by its members, comprising the collection of data, analyses and conclusions in the domain of access to administrative justice. The purpose of the cross-sectional surveys is the collection, analysis, exchange and provision of information, good practices and recommendations.

2. In the past few years, our organisation has familiarised itself with the concept of this analysis. The first cross-sectional survey was conducted in 2015 and pertained to the following topic: “Access to supreme administrative courts and to their decisions”. A second cross-sectional survey was conducted in 2016 and pertained to the following topic: “Uniformisation of administrative jurisprudence”. Lastly, a third cross-sectional survey was conducted in 2017 and pertained to the following topic: “Supreme (Administrative) Courts’ case-law on safeguards for judicial independence”. The summary reports of these surveys can be viewed on the website of the Association. (www.aca-europe.eu).

3. For 2018, ACA-EUROPE has chosen the following topic:

   The quality of the decisions.

The purpose of this analysis is to examine what the supreme administrative courts consider to be the main characteristics of a quality judgment and the manner in which these characteristics are monitored and integrated by the lower courts from the case-law of the Supreme Courts.

4. The analysis comprises two sections.

   - Firstly, the purpose of the cross-sectional analysis is to study the quality of the most essential “product” of the Supreme Courts, namely the court decision (ruling, judgment, etc.) as an essential factor of the quality of justice. The analysis does not cover any other aspect (or does not cover all other aspects) of the quality of justice, especially the maintenance of the Rule of Law, public access to rulings, guarantee of the regularity of the proceedings as regards accessibility, pronouncement of a judgment within a reasonable timeframe and in an efficient manner, application of court decisions, etc.

   1 A judge may pronounce different types of court decisions (especially final decisions, intermediate decisions and decisions on the examination of the case: e.g. a decision to adjourn the public hearing, an interim decision on the fact that a case should be handled by a full bench or a single judge, a decision to accept/reject a request for referral, etc.). In the context of this study, a “ruling” refers only to the final decision rendered in the case (final ruling) by the Supreme Court. Furthermore, the term “decision” refers only to the court decisions pronounced by lower tribunals and courts, pertaining to the solution of the dispute (and not, as explained earlier, on the conduct of the examination).
It should also be noted that the purpose of the cross-sectional analysis is not to exhaustively define the quality requirements or indicators of what should be a quality ruling. On the contrary, the purpose is to examine, via a questionnaire\(^2\), what the supreme administrative courts consider to be the main characteristics of a quality judgment and the manner in which these characteristics are monitored and integrated by the lower courts from the case-law of the Supreme Courts;

- Secondly, the purpose of the cross-sectional analysis is to study the question of the monitoring and/or integration, by lower courts, of the key quality factors of a ruling as determined by the Supreme Courts. This part too does not aim to examine the quality of the court decisions pronounced by the lower court, but instead to determine the instruments that are or could be useful in extending the quality of the case-law of the Supreme Court to the lower courts. These instruments can be the binding nature or moral influence of the decision pronounced by the Supreme Court, the rate of appeal / appeal in cassation, other instruments or awareness raising methods, etc.

5. As regards the methodology, the choice was made to establish a task force in the organisation, named the “2018 EU Justice Scoreboard”. This group is made up of Ms. Mylène BERNABEU, Mr. Luigi CARBONE, Mr. Joris CASNEUF, Mr. Jacek CHLEBNY, Ms. Elisabeth DUNNE, Mr. Geert DEBERSAQUES, Mr. Carsten GÜNTHER, Mr. Auke KUIPERS, Ms. Marina PERRELLI et Mr. Ales ROZTOČIL.

In close collaboration with M. E. CRABIT and his team (DG Justice), this group firstly defined the methodology and prepared the questionnaire, which was approved by the Board of ACA-Europe\(^3\).

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

6. The participation on this topic was particularly significant: 29 members of the Association, which constitute the supreme administrative courts of each of the Member States of the European Union, participated in this study. Among the Courts having the status of observer or guest, of particular note is the participation of Serbia and Turkey. We can therefore conclude that the obtained results give a highly accurate overview on the status of the question in the member courts of the Association.

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\(^2\) This is why the questionnaire contains several questions in which the members are asked to specify, on a scale of values, why a particular aspect is an indicator of the quality of court decisions, according to the courts.

\(^3\) See Appendix 1.
PART A: QUALITY OF JUDGMENTS

INDICATOR 1: “FORM” AND STYLE OF A DECISION

A. Written or oral?

1.1. Judgments in written form

7. In a strong majority of Member States (89.7%) all types of judgments of the SAC are given in written form. This requirement is mainly based on law (82.8%), but in some Member States it is based on Supreme Court rulings (13.8%), practice (6.9%), regulations of the judiciary as a whole (3.5%) or other legal foundations (3.5%).

1.2. Decisions given orally

8. In a small group of Member States (10.3%) most, but not all, types of judgments of the SAC are given in written form (Austria, Ireland, The Netherlands). The requirement to give most types of judgment in written form is either based on law (6.9%) or practice (6.9%) in these Member States.

In this group of Member States, decisions of the SAC are given orally in judgments dealing with minor issues (3.5%) or in other cases (10.3%). Agreement between the parties does not constitute a situation in which decisions of the SAC are given orally (0.0%). Although some judgments of the SAC are given orally in this group of Member States, it can be concluded from the answers to the questionnaire that oral judgments are transcribed in all of these Member States (10.3%).

1.3. The written form and the quality of a judgment

9. A vast majority of Member States (75.9%) agree, or strongly consider the written form of a judgment to be an indicator of its quality. These Member States deem the written form of a judgment desirable because of the significance of a judgment for the judge, the parties, administrative bodies, the development of the law and the doctrine.

The written form of a judgment forces the judges to formulate their thoughts carefully (Finland, Latvia) and to find a coherent motivation (Germany). It also forces the judge to explain (Belgium, Germany) and fully express the motivation for his or her decision (Latvia, United Kingdom). This provides for a systematic, reasonable and logical statement of grounds and helps the judge to avoid illogical arguments (Slovenia). In France, only written judgments can meet the requirements set forth by law. Also, the complexity of the applicable law and the nature of the subjects dealt with by the SAC make the written form the most suitable (Greece). Furthermore, the written form of judgments allows the parties to know exactly the reasons that led to a certain solution (Italy). The written form enables the public to know the reasoning and argumentation of the court (Poland). In this way, the written form enables the parties to understand and examine the reasoning of the Court (Belgium, Croatia, Czech Republic, United Kingdom). The written form allows a judgment to be verified on the basis of the facts and the evidence (Bulgaria). This also makes it easier to prepare a legal remedy.
(Serbia) or to lodge a complaint with the Constitutional Court or the ECtHR (Czech Republic). Without a judgment in writing it would be very difficult to assess the judgment by other means (Sweden). It is the only yardstick (Malta).

Especially in administrative cases the written form of a judgment is of key importance for the manner in which the administrative body executes the decision of the court (Poland). In addition, the written form is of central importance for the development of the common law, since this is a legal system which develops by precedent. Written judgments provide the opportunity for the court to provide detailed reasoning where necessary and to lay out legal tests for future decisions (United Kingdom). The written form is considered indispensable for the “erga omnes” effect of a preliminary ruling by the CJEU. It is a means of increasing permanence and stability in judicial decisions (Turkey). Finally, the written form facilitates research of the doctrine (Turkey).

Five Member States (17.2%) have a neutral opinion as to whether the written form is an indicator for the quality of judgments (Cyprus, Estonia, Hungary, Netherlands, Spain). The Netherlands value a written judgment for its assessable reasoning and its function as a source of case law, but according to The Netherlands that does not mean that the quality of an oral judgement is, generally speaking, less. In Cyprus ex-tempore judgments (judgments given orally immediately after the conclusion of the hearing) do not differ in form or in style to written judgments. The Court is obliged to provide a transcript of an ex-tempore judgment, within 7 days thereafter. Although Hungary has a neutral point of view, it still sees advantages of the written form. The courts feel inclined to set out its reasons in greater length, depth and detail. The consequent more precise wording excludes the possibility of misunderstanding.

Two Member States (6.8%) disagree, or strongly disagree, with the written form as being an indicator of the quality of judgments. According to Ireland, the written form of a judgment is not considered to be an indicator of its quality. The style and format of a judgment is left to the discretion of the judge who gives the judgment. Slovakia is of the opinion that the quality of a judgment does not depend on its (written) form, but on its reasoning and the content.

B. The formal style of a judgment

1.4. The structure of a written judgment

10. In about half of the Member States (51.7%), the structure of a written judgment is completely predetermined by law. In about a third of the Member States (34.5%), the structure of a written judgment is partially predetermined by law. In a small minority of Member States (13.8%), the structure of a written judgment is not predetermined by law. In Member States where the structure of a written judgment is not completely predetermined by law, court practice predetermines the structure: completely in 17.5% of respondents; partially in 6.9%; and not at all in 10.3% of Member States. The structure of a written judgment is subject to legal traditions: completely in 10.3% of respondent States, partially in 13.8%; and not at all in 10.3% of Member States. The structure of a written judgment is subject to judges’ discretion: completely in 6.9% of respondent States, partially in 6.9%; and not at all in 20.7% of these Member States.
1.5. Issues provided for in the law

11. In Member States where the structure of a written judgment is completely or partially determined by the law, the following issues—mentioned in the questionnaire—are provided for in the law in the percentages of Member States as indicated below:

- names of the parties 86.2%
- the reasoning 86.2%
- the order (i.e. the formal decision or “dictum”) 86.2%
- names of the judges 82.8%
- signature(s) 82.8%
- the date of the judgment 79.3%
- the object of the litigation (convocation) 72.4%
- name of the lawyers 62.1%
- the legal provision or principle violated by the executive 62.1%
- the presence at the public audience of parties 44.8%
- application of the national languages 13.8%
- other(s) 37.9%.

Additional issues determined by law comprise the following:

- statement that the judgment is given in the name of the Republic (Austria, Estonia, Italy) or the people (France)
- the name of the court (Estonia, Italy); designation of the court (Poland)
- Appointment of formation of the Court / the section / chamber / president / state counselor (France)
- name of the recording clerk (Poland)
- name of the public prosecutor (Poland)
- the file number of the case (Estonia)
- indication that parties were convocated properly (France)
- date of the court hearing (CJEU, Estonia, France); date and place (Poland)
- indication that the hearing was public (France);
- decision that the hearing has taken place without public (France)
- reference to written or simplified proceedings (Estonia)
- addresses of the parties (Greece); place of residence or registration of the party (Hungary)
- place of residence or registration of the legal representative (Hungary)
- legal position of the party in the lawsuit (Hungary)
- analysis of the conclusions and productions of the parties (France, CJEU)
- legal provisions applied by the parties (France)
- mention of written observations of a party (Greece); written observations made during the public hearing (France)
- the applications (Italy)
- requests or statements made by the parties concerning the lawsuit (Hungary)
- mention of the rapporteur, the public rapporteur and every person who has been heard by decision of the president (France)
- mention that the public rapporteur has been dispensed to pronounce his conclusions in public (France)
- mention that the advocate general has been heard and the date of his conclusions (CJEU)
- description of the procedure (Greece)
- statement of facts (Germany); facts declared proven and the evidentiary items (Estonia); evidence considered unreliable or irrelevant (Estonia); facts declared generally known (Estonia); reasons why not agreed with assertions of the parties (Estonia); the substantial facts (Greece)
- the law applied (Estonia)
- reasoning that takes into account all arguments of the parties (Italy)
- reference to the precedents the judgment is intended to comply with (Italy)
- a brief reasoning (referring to one precedent) in case of clear inadmissibility, a decision on the merits of an appeal, or interim measures (Italy)
- the fact/place/date of public pronouncement (Estonia, France, Greece, Italy)
- notification of the right to appeal (Czech Republic, France), including where the application has to be made within which period of time (France, Hungary)
- the executory formula (France); the order that the decision has to be carried out by the administrative authority (Italy).

1.6. The reasoning component versus the “order” of the judgment

12. The reasoning component does not form a separate document to the order (i.e. the decisional component of the judgment) in 72.4% of the Member States. It does, however, in 24.1% of the Member States (Belgium, Ireland, Latvia, Lithuania, Poland, Sweden). In Italy, in certain types of litigation the reasoning is sometimes filed after the publication of the sole formal outcome of the proceedings. This can be the case in procedures for awarding public works (where parties may request the advance publication of the formal ruling) and in proceedings relating to elections (where in complex cases the judgment can be published within ten days after the formal decision).

1.7. Legal training on the structure of a written decision

13. The structure of a written decision is subject to legal training of judges in 69.0% of Member States. It is not subject to legal training in 17.2% of the Member States. 13.8% of the respondent Member States provided an answer of ‘non-applicable’ to this question.

1.8. The formal style of a written judgment and the quality of a judgment

14. A vast majority of Member States (82.8%) agree, or strongly agree that the formal style or structure of a written judgment is an indicator of the quality of a judgment. A formal style makes a judgment clearer and more readable (Belgium, CJEU, Greece, Hungary, Italy, The Netherlands, Poland). It makes judgments understandable and accessible for the parties, other legal operators and a broader circle of interested persons (Belgium, CJEU, Finland, Greece, Hungary, Italy, The Netherlands, United Kingdom). It forces the judge to formulate more clearly (Belgium). It makes judgments more transparent (CJEU, Hungary, Poland). Without a formal style, a judgment might be less informative (Sweden) or even confusing for the parties (Czech Republic). It facilitates the assessment of the quality of a judgment (Poland, United Kingdom). The formal style contributes to the completeness and comprehensiveness
of the judgment (Germany). It can strengthen the rigor of the judgment in a way that it convinces more easily (Greece). The formal style ensures uniformity in decisions given by all of the administrative jurisdictions (France, Turkey). A coherent order of the important points and a clear and concise style is essential to let the judgment function as a precedent (Italy). Style and structure contribute to the development of the common law, because the judgments can be readily understood and applied by the lower courts (United Kingdom). France explains that the formal structure reflects the method followed by the judges in every case. The judge has to guide the reader of the decision through a sufficiently recognizable framework by making the different steps of reasoning as clear as possible in a logical way. Only a pre-established structure allows a judge to control whether a decision is perfectly coherent. Therefore, the formal style is a primary support of the reasoning of the judgment. Similarly, Cyprus states that judgments, despite individual styles of judges, must be well structured, because the court must reason its judgments in all material aspects and the administrative bodies must re-examine their decisions bound by the judgment. The formal style also enhances a due course of the procedure (CJEU). The formal style is evidence of guaranteeing and respecting the rights of the parties (Bulgaria). However, the structure is only a part of the quality of a judgment (Malta). Style and structure are but one factor in considering the quality of judgments, but an important one nevertheless (United Kingdom). On the other hand, Turkey states that the mere fact that a judgment does not comply with the general form or structure will not in itself affect the quality of the judgment adversely if the judgment contains all legal elements and is formed in a fluent, understandable and systematic, legal way.

Two Member States (6.9%) have a neutral opinion as to whether the formal style or structure is an indicator for the quality of judgments (Estonia, Slovenia). Slovenia states that, although a formal style reduces mistakes or shortcomings and makes it easier to find and understand the grounds for a decision, the formal style does not have any impact on the legal persuasiveness of the decision.

Three Member State (10.3%) disagree, or strongly disagree, that the formal style or structure is an indicator of the quality of a judgment. In Ireland, there is no formal structure as the structure is left to the discretion of the judge who is writing the judgment. According to Croatia, the formal structure does not necessarily mean that the judgment is of good quality, although it is easier to follow the text and examine the quality if judgments have more or less the same structure. Slovakia states that the formal style may have an impact on the readability of the judgment, but that it does not enhance the quality of it.

**INDICATOR 2: REASONING OF JUDGMENTS**

2.1. The legal basis of the characteristics of the reasons for rulings

15. In the different supreme administrative courts that are members of ACA-Europe, the characteristics of the reasons for rulings are predominantly prescribed by the law. Thus, for 8 members, they are entirely prescribed by a text while for 10 other members, they are partially prescribed by a text. However, 11 members have responded that they are not prescribed by law (this is the case mainly in the United Kingdom, Belgium, Netherlands, Ireland, Spain and Germany).
If these characteristics are entirely or partially prescribed by the law, the elements that are predominantly required by a text are as follows: the statement of arguments of the parties (“legal arguments”) for close to 52% of members concerned; the main factual aspects of the case for close to 59% of members; and the response to the pleas of the parties for approx. 52%. Close to 21% of members mentioned the implementation of certain measures of enquiry, indicating for example what has been carried out, an audit or questioning of a (third) party, the reference to expert reports, or the hearing of a child, etc.

If the characteristics of the reasons for a ruling are not entirely prescribed by the law, they are:
- predominantly determined, entirely or partially, according to the practices of the Supreme Administrative Court, mainly through templates prepared by the latter. Only 2 members, Cyprus and Malta, responded “no” to this question;
- predominantly subject to legal traditions (partially for 5 members, i.e. the Czech Republic, Greece, France, the CJEU and Finland, and entirely for 3 members, Cyprus, Malta and Italy, while 2 members, Poland and Lithuania, responded “no” to this question);
- left to the discretion of the judges (partially for 4 members, i.e. Cyprus, the CJEU, Lithuania and Malta, or entirely for 2 members, Poland and Finland).

2.2. The scope of the obligation to provide reasons for rulings

16. In a vast majority of members (close to 76%) the provisions of the reasons for a ruling by the Supreme Administrative Court is mandatory in all types of cases. However, six member Supreme courts responded that the obligation exists in a majority of cases (the Netherlands, the Czech Republic, Estonia, Slovenia, Sweden and Lithuania). There requirement to provide reasons is generally required by law (96% of the members). It can also stem from the regulations of Supreme Administrative Courts (for 5 Member states such as, for example, the Netherlands and Cyprus), rules of the legal system as a whole (3 States: Luxembourg, Malta and Belgium) or even practice (7 States including Austria, Ireland and Sweden). Of the member Supreme administrative courts which indicated that the provision of reasons is mandatory in a majority of cases and not in all of them, 2 Supreme administrative courts (Lithuania and Sweden) state that a brief statement of the reasons is provided in authorisations to present appeals in cassation. In Estonia, there is an exception to the general rule that all decisions of the Supreme Administrative Court must be justified where the Court refuses leave to appeal. In this type of decision, the Court has the right to refer only to the non-existence of the conditions of admissibility of the leave to appeal provided for by the law. The Netherlands indicates that only brief justification is required if the ruling pertains to minor questions or in cases in which the outcome is obvious. In Lithuania, if the defendant fully accepts the claims of the plaintiff, the Court can present, in the decision, a summary version of the reasons indicating the circumstances determined by the latter, the proof on which the conclusions of the Court are based and the applied provisions4. Exceptions to the obligation to provide reasons can also be considered but they are much rarer. This is the case, mainly in Estonia and Sweden, as regards authorisation to present appeals in cassation. In Estonia, there also are exceptions if the ruling pertains to minor questions or if the possibility of directly adapting the final ruling in a simplified form during the examination of interim relief is implemented. There

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4Article 84 of the law on administrative procedure.
are other hypotheses specific to certain Supreme administrative courts, such as in the Netherlands as regards certain cases pertaining to immigration. In the Czech Republic, in international protection cases, the Supreme Administrative Court can dismiss a complaint as being “unacceptable” without stating the reasons for same. Nevertheless, these decisions are, in practice, justified. In Estonia, the Supreme Administrative Court can deliver, in the context of simplified procedures, a ruling without the descriptive part and the reasons being stated therein, provided that a series of strict conditions is satisfied, including the dismissal of the appeal. Finally, although Member States have predominantly responded that all cases are subject to an obligation to state reasons, this does not mean that all cases must be justified in the same manner and some can have a more synthetic justification. Thus, in Italy, particularly when there is a clear absence of basis or inadmissibility of the application, the Council of State rules by a simplified ruling. The same applies, under certain conditions, for provisional measures. In these two cases, the judge is authorised to not process all the pleas of the applicant but to settle only the fundamental question of the dispute.

2.3. The harmonisation of the reasons for rulings

17. It is interesting to note that approximately half of the respondents to the questionnaire, including Spain, France, Belgium, Sweden, Finland, Hungary, the Netherlands, the CJEU and Turkey, responded that the Supreme court has guidelines or code(s) for drafting which specify the style for providing reasons while the other half, including Luxembourg, Croatia, Greece, Italy, Ireland, the Czech Republic, Poland, Germany or Portugal, responded in the negative. Among the States that responded “yes” to this question, the Republic of Serbia and Malta indicate sometimes having such guidelines or coedes in certain special cases. No member Supreme court of ACA-Europe indicated that these guidelines or code(s) for drafting were formulated by the departments of the Ministry of Justice, with these elements of drafting being almost exclusively enacted by the Supreme court itself, with two exceptions. Slovenia stated that these rules can be fixed by other judges (even if it also responded that the Supreme court also formulates such rules) and the Republic of Serbia indicated that they are fixed by the Council for the Judiciary.

2.4. The references mentioned in rulings

18. As regards the references mentioned in rulings, the study shows that a vast majority of the Supreme administrative courts cite their own case-law or that of other national courts as well as case law of the CJEU and the ECtHR. 8 members of ACA-Europe also indicated mentioning the case-law of other international courts, including Malta, Cyprus, Spain and Italy, and 9, including Slovakia, Poland, Ireland and Greece, indicated that they refer to case law of the members of ACA-Europe. 16 members, including Turkey, Portugal, Poland, Ireland and Germany also cite the doctrine. 8 others, like Poland, the United Kingdom, Sweden and Germany, indicate citing other sources such as draft regulations. Only one member, Malta, responded that the summary of rulings and decisions from the Jurifast database of ACA could be cited. Almost all of the members responded that the law does not provide for restrictions

5§ 104 a of the Code of administrative justice.
6§ 169 (1) of the Code of procedure of the administrative court.
7Article 74 of the code of administrative procedure.
8Article 60 of the same code.
that would prohibit making reference to another case-law (national or international) in a ruling. Only the Republic of Serbia, Belgium and Turkey responded that the law provides for such restrictions. The direct citation or the reference is thus authorised only under the foreign ruling translated in the national language of the procedure.

2.5. The training of judges as regards providing reasons for rulings

19. In a narrow majority of the member Supreme administrative courts (approx. 52%), the characteristics of the reasons for a written ruling are the subject of legal training of judges of the Supreme court. This is the case in France, the Netherlands, the United Kingdom, the Czech Republic, the Republic of Serbia, Germany, Poland, Italy and Slovakia. On the other hand, in other courts, there is no special training in this regard. This is the case in Spain, Estonia, Luxembourg, Sweden, Greece, Malta, the CJEU, Portugal and Belgium.

The manner of justifying a written ruling is predominantly the subject of legal training of judges. This is always the case in 9 Supreme administrative courts, i.e. in France, Finland, Germany, the Netherlands, Greece, Turkey, Slovakia, Portugal and the United Kingdom. This training is provided only in certain instances, for example, for certain special cases in respect of 8 other Courts, including the Czech Republic, the CJEU, Ireland, Poland and Italy. For 8 other courts, including Spain, Luxembourg and Belgium, no special training is provided in this regard.

More generally speaking, as regards the drafting of rulings, 19 members state that the judges receive specialised legal training before commencing the function of drafting rulings (mainly through a school of judges). This is mainly the case in Portugal, Poland, Austria, Italy, the Czech Republic, Germany, the Netherlands and Spain, or on the occasion of taking up their post, as in France. Then, an “on-the-field” specialised and practical training is also provided for in numerous Supreme courts (15 members thus responded in the positive). However, the method of drafting the rulings comes predominantly from the traditions of courts that are passed on by experienced judges to judges who have been appointed more recently (23 responded in the positive). Only 5 members (Spain, Bulgaria, the Republic of Serbia, Slovakia and Turkey) mention a general legal training at the university, in particular.

2.6. The analysis of quality indicators relating to the reasons for rulings

20. Firstly, a vast majority (22 members) provided a score of “4” or “5” on a scale from 1 to 5 to the question “Do you feel that the citation of a case-law from an international or European court in a written ruling is a quality indicator of this ruling?” Thus, for example, in the French Council of State, the citations of the case-law of the CJEU, the European Court of Human Rights and the French Constitutional Council are used when they would reinforce the intelligibility of the decision. Similar responses were provided in relation to intelligibility, clarity and legal rigour for the parties by, for example, the Netherlands, Greece, Latvia and Slovenia. As for Germany, it invokes a requirement of transparency in the extension of the aforementioned objectives. For the Belgian Council of state, as is the case in the Supreme Administrative Court of Poland, citation of case-law show that the national judge integrates supranational law and its interpretation into his or her own decisions. According to the Italian Council of State, the case-law of the CJEU and that of the European Court of Human Rights is now essential for the resolution of numerous cases. In a legal context in which the law of the
EU plays a fundamental role for the settling of certain questions (mainly competition, freedom of circulation and establishment, etc.), the citation of the case-law of international courts, designed as an indicator of the deepening of the cases submitted to the national court, is particularly important. It must be noted that most of the members feel that it is a good indicator of the quality of the rulings insofar as the cited case-law is sufficiently relevant to constitute an exact reference and to be able to reinforce the reasoning. For other members, it is even an obligation in case of application mainly of the law of the EU or of the European Convention on Human Rights (case of the Czech Republic).

A small number of respondent courts have a different or more measured point of view on the relevance of such an indicator:
- 3 members (Hungary, Portugal and the United Kingdom) provided a response of “3”;
- 2 others (Sweden and Austria) selected “2”. Of those, the Supreme Administrative Court of Sweden states that it refers very rarely in its rulings to case-law of European or international courts mainly due to the absence of easily comparable cases and taking into account the specificity of its own system. However, Austria states that the citation of the case-law of an international or European court in a written judgment is not considered, as such, as an indicator of quality. Rather, the judgment in its entirety, with all the reasons clarifying the reasoning, constitutes an indicator of quality and not the elements of a ruling taken individually;
- 2 members (Croatia and Ireland) selected “1”. Croatia states that the citation in itself does not necessarily mean that the judgment is of good quality and that a substantial number of citations can burden the judgment such that the reasoning is diluted in these references and citations. Ireland indicated that the quality of judgments is not measured by reference to its citation of jurisprudence of an international or European jurisdiction and whether citation of such jurisprudence is appropriate would very much depend on the issues in the appeal.

21. Secondly, a vast majority (19 members) responded around the values “3” and “4” to the question: “Do you believe that the fact of citing the national case-law (i.e. of another Member State) in a written ruling is an indicator of the quality of this ruling?” 6 members opted for “1” or “2”. Some members like Luxembourg, Italy or Hungary thus believe that the context and the practices very often differ from one country to another so that these references can actually constitute quality indicators of the ruling. In respect of other members (like for example Poland, Slovenia or the Czech Republic), who believe that it is not a very significant indicator, it is considered that the citation of the national case-law of other Member states can however contribute to the harmonisation of the application of European law by the courts and encourage dialogue between national supreme courts. Other Member Supreme administrative courts, like that of Spain, highlight that such references allow a judge to indicate that the reasoning held by the judges is based on the studies of comparative law. Greece and the Netherlands also state that the citation of case-law from another national court reinforces the strictness of the ruling and the feeling, among the persons concerned, of a more in-depth study of the case being litigated. Germany considers that this indicator is in line with an effort towards clarity and intelligibility of the decisions that are taken. Others, like Slovakia, point out that it is a relevant indicator only by reference to the case-laws of Courts applying the law of the EU. In Belgium, such an indicator appears relevant only if the application of such case-law is necessary to resolve a case, in the absence of international or national case-law relating to the case in question. As for the Supreme Administrative Court of
Cyprus, it indicates that on account of the specificities of its legal system, it is not unusual, in the case of administrative litigation, for it to refer, in its own rulings, to those of the Greek Council of State, the French Council of State and the German Federal Administrative Court. In France, to exercise its office, the Council of State has for several years used elements of comparative law and, particularly, the case-law of the other supreme courts. To this end, a cell of comparative law has been formed in the Centre for legal distribution and research of the Council of State, consisting of specialist lawyers of the main legal systems, in charge of carrying out research meant to clarify the formations of investigation and the court of the Council of State. However, for reasons of principle related to the national legal system, the case-law of the other supreme courts is not cited in the decisions delivered. Finally, members like Austria highlight that the citation of national case-law in a written ruling is not considered to be an indicator of quality. As is the case in respect of in the question considered in paragraph 2.6.1., the Austrian Supreme Administrative Court indicates that the judgment in its entirety, particularly the adopted reasoning, is an indicator of its quality and not its elements taken individually. Croatia expresses the same reasoning as stated in the previous question at 2.6.1., by indicating that an excess of references can burden the ruling and hinder its comprehension. Sweden once again highlights the difficulty in comparing cases from other national courts, which renders the indicator less relevant.

**INDICATOR 3: CLARITY OF JUDGMENTS**

3.1. Clear and Simple Language

22. In a significant majority of Member States (18 out of 29) there is some requirement for judgments to be written in clear and simple language. Within the different States, there are a variety of sources for such a requirement. In answering the question as to whether there was a requirement to use clear and simple language imposed by law, court regulation or professional practice – only in the CJEU in Luxembourg was there no such requirements.

   A requirement to use clear and simple language in judgments imposed by law is relatively rare, and was only the case in 6 States (the Czech Republic, the Republic of Serbia, Finland, Poland, Italy and Turkey). In Serbia and Italy there is no other emanation of that requirement.

   The use of court regulations to enact a duty to use clear and simple language in judgments is infrequent and only arises in the Netherlands, Sweden and Turkey.

   From the responses to the questionnaire, it is clear that the most common basis for imposing the requirement to use clear and simple language is via professional practice, with 25 out of 29 members indicating this practice. There is no such requirement in the professional practices of the Netherlands, Serbia, the CJEU and Italy.

   In a small number of states the need to use clear and simple language emanates from more than one source. In the Czech Republic and Finland this requirement comes from law and professional practice, in Poland it comes from law, court regulations and professional practice and in Sweden it comes from court regulations and professional practice. Turkey is
the only State whose response to the questionnaire was that clear and simple language in judgments is required by law, regulation and professional practice.

3.2. For Whom Are Reasons Primarily Written?

23. Member States were asked to comment on whether reasons were primarily written for litigants, the public in general, other judges, practicing lawyers, non-practicing academic lawyers, evaluation authorities of judges or administrative authorities.

The most common basis underpinning the need for written reasons is for litigants – every Member responding to the survey listed litigants as a group for whom reasons are primarily written; this indicated that the needs of litigants are at the forefront of judicial thought when providing such reasons.

Another substantial group for which reasons are written is the interested public in general – with 23 out of 29 Members including the public in their list of priorities for whom written reasons are given in cases. Courts in Germany, Hungary, Italy, Slovakia, Portugal and the CJEU do not primarily consider the public when providing written reasons.

Just over half of Member States (17 out of 29) include other judges as an audience for whom primary consideration is given for producing written reasons for judgments.

In the Member States, the needs of lawyers are found to be important with many Members including lawyers as a group for whom reasons are written. Interestingly, 18 out of 29 Member States included practicing lawyers in their answer to the questionnaire, whereas only 13 Member States included non-practicing academic lawyers in their response. The Czech Republic, Luxembourg, Belgium, Germany and Austria are countries which did not include non-practicing lawyers in their answer to the questionnaire, but did include practicing lawyers. From this we can infer that the needs of practicing lawyers seem to be slightly prioritised to non-practicing lawyers.

Few Member States included evaluation authorities in considering for whom judgments are written. The question put to the Members was whether reasons were written for internal authorities who may review magistrates – and only 7 Member States said they were. These States were Serbia, Greece, Poland, Portugal, Bulgaria, Turkey and the UK. As it was relatively uncommon for Member States to include these internal evaluation authorities in their responses (22 out of 29 Member States did not include evaluation authorities) – it does not appear that evaluation authorities are a main priority for providing written reasons in courts across Europe. It is interesting to note that of the 7 countries who included evaluation authorities; 6 of those States included every option (litigants, the general public, other judges, practicing and non-practicing lawyers, administrative authorities and evaluation authorities); only Portugal was the exception to this.

The majority of Member States (19 out of 29) identified administrative authorities as a group for whom reasons are written. Significantly, the responses for this question were higher than many others – i.e. the Supreme Administrative Courts in Europe identified administrative
authorities as a group for whom reasons are written, above and beyond other groups such as other judges, practicing and non-practicing layers and evaluation authorities.

3.3. Mechanisms for Clarification

24. The Courts were asked in the questionnaire that in the event that the text of a judgment is not clear, are there any mechanisms available to obtain clarification.

Approximately half (16 out of 29) of Member States provide for some form of mechanism through which the Court can provide clarification. Common themes which emerge are that Members States which allow for clarification often provide for the possibility of rectification of typographical errors, and can aid in interpretation.

3.4. Member States Which Allow for a Mechanism of Clarification

25. In Spain, mechanisms of clarification are available for rectification or errors and complement of sentences. Clarification also exists in the Luxembourg Courts where it is possible to request a clarification of a judgment. The Italian Code of Administrative Practice grants the right to parties to appeal and seek clarification, or for the Commissioner to seek such clarification.

The Lithuanian Court has a right to construction of the decision rendered by it, upon the request of the parties – however this construction must not change the actual contents of the decision; only aid in interpretation. The situation in Latvia is similar; Article 262 of their Administrative Procedure Law provides that a court which rendered a judgment may, pursuant to its decision, explain that judgment without changing its substance. This explanation is only permitted prior to the execution of the judgment and if the time period for compulsory execution has not yet expired. In Bulgaria find that where a decision given is unclear, there is a practice of interpreting the judgment.

In the UK, there is a practice whereby judgments are disclosed to the parties in advance of the judgment being delivered, to give the parties an opportunity to point out minor errors; but this does not permit the parties to ask for clarification in situations other than where the text does not make sense on it is face (for example, if the word ‘not’ has been omitted).

In Estonia, the courts have two procedures to deal with situations where the judgment rendered is not intelligible, cannot be executed or if there is a mistake in the judgment. The Code of Administrative Court Procedure provides that the Court may, on the basis of an application of a party to the proceedings and enter a supplemental judgment if the operative part of the judgment is unintelligible, or cannot be executed; for example, if a fine is to be paid and the judgment does not provide details for the amount of money to be paid. The Court also has the right at all times to correct mistakes of spelling, and obvious inaccuracies if the mistakes do not alter the contents of judgments.

Similarly, the German Courts provide for clarification insofar as obvious faults in a judgment (for example an incorrect number) may be corrected in a simple procedure.
In France, an appeal for the interpretation of a judicial decision is open to those who are parties to the proceedings at the end of which the judicial decision (within the meaning of the questionnaire, i.e. judgments of the Council of State and decisions of the courts) to be interpreted has been delivered. This appeal must be brought before the court from which the decision in question emanates and is admissible only if the decision is open to interpretation, i.e. if it is unclear or, at the very least, ambiguous. A judicial decision is subject to interpretation if it contains a contradiction between its grounds and its operative part. On the other hand, such an action cannot be brought to correct an error contained in the judicial decision in question. The correction of such an error can only be obtained, as the case may be, by the formation, within the time limit provided for by the applicable provisions, of an appeal, an appeal in cassation or, where appropriate, an appeal for rectification of a material error.

The Greek Court has a similar process whereby an interpretation can be provided to clarify ambiguities but no change can be made to the substance of the judgment.

In Belgium, a rectifying judgment can correct purely material errors, either at the request of a party or ex officio.

In Turkey, Article 29 of the Administrative Procedure Law provides a mechanism to make a decision understandable, where parties to a case may request the explanation of the decision, or correction of the irregularity.

The Courts in Cyprus and Malta allow for such a mechanism to clarify the text of a judgment by way of application to the Court. The CJEU also has a mechanism to clarify judgments through an application, however they note in their response to the questionnaire that this procedure is rarely used.

In Polish courts, a party to a case has the right to request a judgment be corrected, supplemented and interpreted.

Portugal did not give details as to the mechanism to seek clarification in their legal system.

In Slovenia, if there is unclear reasoning in a judgment, in certain circumstances, the parties are entitled to lodge a complaint due to a violation of constitutional rights. From Slovenian constitutional case law; it is evident that Supreme Court judgments must be clear, understandable and in a legally analytic manner explain the reasoning of the decision.

3.5. Member States Without a Mechanism for Clarification

26. There are many Member States (13 out of 29) which have no provision for a mechanism to clarify a judgment if the text is unclear. The Netherlands for example do not have a mechanism as they do not allow communication about judgments; however, like the Belgian Council of State, they do provide press releases to explain the outcome of a judgment in media sensitive cases. Sweden operates similarly; as their Supreme Administrative Court is a court of last instance, no other agency has competency to explain its decisions. The Court
may release a statement to the press in case of public interest, but does not elaborate on its findings other than those contained in the decision itself.

The Irish Courts do not clarify judgments, which are considered to speak for themselves; however, there is provision for correcting clerical mistakes in judgments arising from an accidental slips or commissions under a rule known as the ‘slip rule’.

The Czech Republic, Hungary and Finland do not have a mechanism to provide clarification, however there are no specific reasons why no mechanism is in place. The Croatian Courts are not aware of any specific reason why there is no clarification mechanism is in place however it is presumed that a judgment is clear for enforcement purposes.

There is no mechanism in place in Slovakia and Serbia, as such mechanism is not prescribed by law or the Constitution.

The Courts in Austria would prefer not to comment on this issue.

3.6. Clarity of a Judgment Lending to Quality

27. It is evident that the majority of Member States place a high correlation between clarity of written judgments and the overall quality of judgments. 25 out of 29 Member States considered that clarity was an indicator of the quality of judgments. 3 Member States considered clarity to rank a 4 on the 5 point scale available (Spain, Lithuania, the Netherlands). 1 Member (Portugal) ranked clarity as a 1 out of 5 as an indicator for quality. Not all Member States gave detailed reasoning in their response to the questionnaire – however some strong trends emerge.

The overall trends from Member States as to whether clarity is an indicator of quality, indicated a strong positive correlation between the two; with specific emphasis on comprehensibility, the acceptance of the litigants, as a mechanism for execution, and respect for the judiciary.

General support for the idea that clarity is an indicator for quality in judgments comes from Croatia and Cyprus. The Cypriot Courts find that reasoned judgments are an indispensable element to a fair trial; and that clarity leads to proper reasoning which is the very foundation of a just and fair decision. Judgments written in a simple and straightforward style will have the greatest influence because of their clarity of expression. Likewise, in Croatia – usually the clarity of reasoning in a judgment leads to the conclusion that the judgment itself is of a high quality.

Many Member States indicated that a clear judgment is one which is understood more easily – and that this is a hallmark for quality judgments. The Dutch Courts find that a good quality judgment is one which is clear, and comprehensible to everyone. Similarly, in

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9 The Supreme Administrative Court of Finland clarified that the Administrative Judicial Procedure Act allows for the rectification of errors in decisions. According to section 56, subsection (1) of the said act, the appellate authority shall rectify any typographic errors, miscalculations and other obvious errors in its decision. However, an error shall not be rectified if the rectification would have an unreasonable result for the party.
Luxembourg the clarity of a judgment, together with its reasoning contributes to its readability and comprehension. In the UK, it is of vital importance that the outcome of a judgment can be readily understood. This sentiment was repeated also in the Greek and Latvian Courts.

Almost half of member states made special mention of litigants, and parties to the proceedings for which a judgment is delivered. The Czech Republic Courts stress that a clear judgment is necessary to convince the parties in a litigation that the ruling is fair, correct and just; and that if a judgment of a court is unclear then it does not provide guidance to the parties on how to act in the future. In France, a judgment of high quality will be clear, as the decision will then have the power to convince the parties in good faith that the adopted solution is properly explained and justified by objective and intelligible means. Comparably, the courts in Serbia, Sweden and Greece find that clarity is a good indicator of quality, and is particularly useful for litigants who can be presented with the rationale behind a decision and a careful analysis of the merits of the chosen solution. This shows that Courts in Europe are very conscious of the needs of litigants; and place special emphasis on these parties. In Poland, a special emphasis is placed on clarity as it is used to convince parties to a case of the validity and justice of a decision; and in particular so parties can properly understand their legal position after the decision of the court is rendered.

28. Several Member States, in analysing whether clarity is an indicator of quality in judgments answered positively, and referenced that a clear judgment is one which can be executed and enforced – so is therefore a judgment of quality. In Serbia, a written judgment of high quality is one which facilitates proper execution – a clear judgment can ensure the proper adoption of a legal remedy, is such remedy is permitted. The CJEU, in a similar vein, notes that a clear written judgment assures the implementation of a decision; in Turkey, the clarity of a judgment is important as it serves to ensure the timely and accurate implementation of a judicial decision. This sentiment is expressed also in the Italian courts, where a judgment which is written in a clear manner will allow for proper execution.

The Courts in the UK and Ireland both made reference to clarity of judgment being an indicator of quality because a court of lower jurisdiction will more easily be in a position to follow a clear judgment, which will thereby facilitate a clear understanding of the law and encourage its coherent development. In Turkey, a quality judgment is one which allows for jurisprudence to be sustained. Similarly, a special emphasis is placed on clarity of judgments in France – where the accessibility and intelligibility of a decision was declared by the Conseil constitutionnel as an objective of constitutional value. In Bulgaria, a clear decision is a manifestation of the fundamental right of access to the courts.

29. Interestingly, a substantial number of Member States indicated that clarity of a judgment goes to the root of quality – and in fact is important for the ongoing respect of the judiciary. For example, in Slovenia – if the reasoning of a judgment is unclear, confidence of the parties and the public in general in the legal system of the State declines. The German Courts believe that as the clarity of a judgment is a precondition of its acceptance by litigants – it is therefore an important factor in the respect towards the authority of the judiciary as a whole. Likewise, in Austria, it is thought that the clearer and better understood judgments are, the more the standing of the Supreme Administrative Court will improve. There are also other reasons given by Member States explaining why they believe that clarity of judgments
is a gage of quality – it enables readers of the judgment to engage in criticism of the judgment for example. In Belgium, a clear judgment is a sign of quality as it demonstrates the judge’s knowledge of the case.

However, as was pointed out by one Member State (the Netherlands) - occasionally a case will be so complex that a judgment may lose some of its clarity; but this does not necessarily mean a decrease in quality.

30. It is plainly evident that throughout European Courts, the clarity of a written judgment is considered a very important indicator of the quality of the judgment. There are common reasons throughout the European Courts for coming to that conclusion; notably – that a clear judgment will be understood by the parties to a case; a clear judgment lends itself to being properly executed, and that clear judgments bolster the reputation of the court and increase respect for the legal system.

Member States which scored the question of whether clarity is an indicator of quality slightly lower (a 4 out 5) did not go into detail as to why it is not as strong an indicator in their countries. Portugal which scored clarity of a judgment a 1 out of 5 did not give details as to why clarity is not an indicator of quality in Portugal.

3.7. Clarity of Judgments Indicated by Information Given to the Administration

31. Member States were asked whether they considered as an index of clarity, the fact that the written judgment provides the administration with all the elements necessary for correct and timely execution; and were asked to mark how strongly they felt out of 5. The majority of Member States felt strongly (a 5 out of 5) that a judgment providing the administration with all the necessary elements for execution was a mark of the clarity of the judgment (20 out of 29 Member States), some Members felt neutrally about it (8 out of 29) and one Member State felt that providing the administration with necessary elements for execution was a weak indicator of clarity.

A strong motif amongst the Member States who felt strongly in this matter was that clarity of a judgment provides for appropriate execution of the decision. The French and Luxembourg Courts hold that the giving to the administration of all necessary elements for the execution of a judgment without unreasonable delay are an indicator of clarity. In France, this principle of intelligibility in written decisions allows the administration to identify the correct body to execute the judgment. In the Czech Republic, Belgium and Slovenia, a judgment cannot be seen to be clear if it does not give proper details on how it is to be enforced. In the Hungarian Courts, clear and enforceable provisions are a pre-requisite for proper execution of the judgment.

The situation in Ireland is that in order for the administration to give effect to the judgment of the Supreme Court by formulating the order of the Court, the administration must be able to understand the reasoning/judgment of the Court.

The Courts in Bulgaria believe that this furnishing of necessary elements for execution of a judgment to the administration ensures the legality of the implementation itself.
In Serbia, only those judgments which provide clear and justified reasons and provisions may be the basis for administration by the Court.

In Cyprus, Judicial Review is available under the Cypriot Constitution to scrutinise the legality of executive and administrative action or inaction – however so long as public authorities act within the parameter of the law and in good faith, they are the sole arbiters of their decisions. Nevertheless, an administrative body is duty bound to give effect to the Supreme Court’s decision; and this illustrates why judgments of the Court must be well-reasoned, but also clear and precise – as it enables the administration to give effect to the judgments correctly and timely.

In Poland, according to the Law on Proceedings Before Administrative Courts – if as a consequence of the decision the case is to be reconsidered by any administrative authority, the reasons of the judgment should additionally include directives as to further proceedings.

The Italian courts note that if a judgment is clear and contains all necessary elements to be performed by the administrative authority, there will be no need to refer to the judge for directions in enforcement, and therefore reduces time.

Execution of judicial decisions is a constitutional and legal obligation in Turkey – and therefore court decisions are very important, and must not be in any form or manner which could cause confusion to the administration.

Many Member States which expressed a neutral view as to whether providing administration with all elements necessary for correct and timely execution is an indication of clarity felt that each case was different. In Croatia for example, the correct and timely execution of a judgment is of great importance; but does not always mean that a judgment includes good, clear reasoning.

In Sweden, issues such as the necessary elements for execution of a judgment can be difficult to decide in a judgment from a Court of last instance; therefore, it is only in certain cases where such direction is suitable. Similarly, in Greece, the possibility of furnishing the administration with the necessary elements to execute a judgment depend on the individual characteristics of each case. However, in principle this provision is an indicator of quality in a judgment.

The Courts in the UK provide for some discretion as to the execution of judgments. Often the court will not lay out the specifics of how a judgment is to be implemented, and it will be a matter for the executive or the administration how a particular judgment is to be implemented.

The Courts in Portugal did not give details as to why a judgement furnishing information to the administration on the execution of a judgment was not a mark of quality of the judgment.
In general, across Europe there is a strong trend that providing information on how to correctly execute a judgment is a mark of quality on that judgment itself, with many Member States feeling it to be a necessary condition of the decision.

**INDICATOR 4: CONCISE JUDGMENTS**

4.1. Is the principle of conciseness of judgments based on law, (Supreme) Court regulations, practices, ....?

32. The principle of conciseness of judgments has a legal basis only in half of the member states. In only thirteen out of twenty-nine states such a principle is enshrined in law or is established in the Supreme Court regulations. In particular, in seven cases such a principle is provided for by law, in two cases by Supreme Court rulings and in one case by regulations of the judiciary as a whole. On the contrary, in eight cases such a principle is not provided for in the law but is followed by judges in practice without any binding duty to do so. However, among the states that have such a principle provided for in their laws, the extent to which this principle is applied varies. In some (Estonia), the requirement for conciseness concerns only the “descriptive part of the judgement”, i.e. the part dedicated to explain the matter involved and the claims of the parties. In others (Luxembourg and Italy), conciseness applies to the whole judgement. In one case (Italy) conciseness is a fundamental principle governing the work of both judges and lawyers that, however, up to recent times has not been fully respected by lawyers. In Poland the conciseness requirement concerns “certain elements of the reasoning of the judgment”, while in Cyprus the accent is primarily on the overall “quality of reasoning”, though conciseness still plays a significant role.

4.2. Do requirements (in law, case law, practices, etc.) exist that could have an impact on the length of the judgment? (e.g. requirement to address all arguments)

33. In most states (seventeen out of twenty-nine) there are legal requirements that may have an impact on the length of judgments. These requirements vary but, in general, are a consequence of the fundamental principle of the “rule of law”. In particular, the Courts:
- must consider all the arguments spent by the parties, as long as they pertain to the matter involved;
- must postpone the proper reasoning to a descriptive part dedicated to explain the matter involved;
- must indicate the provisions of substantive law that constitute the basis of the decision;
- must adopt a way of writing that must be clear and concrete;
- must verify motu proprio the existence of the preconditions established by law for the judicial review;
- must take in consideration “the nature and circumstances of the case”.

4.3. Are there situations (in law, case law, practices) which lead to short judgments? (e.g. rejection of an application for leave to appeal/cassation)

34. Regarding the existence of situations (in law, case law or practice) which lead to short judgments, a significant majority (almost 90%, that is to say twenty-six out of twenty-nine countries) of the respondents gave a positive answer. Only in three states are there no
situations which lead to short judgments (Luxembourg, Serbia and Croatia). The situations in which such short judgement are delivered vary. For the majority (seventeen out of twenty-nine), short judgments are given for decisions rejecting leave to appeal or cassation (Spain, Netherlands, Estonia, Slovenia, France, Sweden, Malta, Finland, Austria, Ireland, Portugal, Bulgaria, Turkey, United Kingdom, Poland). Half of respondents (fourteen out of twenty-nine) provide short judgments where the consequences of the decision are that the proceedings will be discontinued (e.g. the revocation of a decision) (Lithuania, Czech Republic, Estonia, France, Sweden, Cypurs, Malta, Belgium, Austria, Finland, Poland, Italy, Bulgaria, Turkey).

There are, moreover, many other cases in which short judgments are allowed:
- When the legal issue is clear (Ireland) or the case is considered simple (Hungary) and there are already decisions on the same matter, so it is possible just to refer to the precedent (Austria, Italy) or the application is manifestly founded or unfounded (Greece, Belgium, Italy, Gran Duchy of Luxembourg);
- When the claim is manifestly not receivable (because the time limit is expired) (Belgium, France, Italy, Greece, Austria) or can not go further because the litigant does not meet certain requirements (Netherlands) or when the case has to be sent back to the lower judge for procedural faults (Germany) or there is a lack of jurisdiction or res judicata (Austria);
- When the action is dismissed (Estonia, Cyprus), the respondent fully allows the claims (Lithuania), the administrative decision has been revoked or a settlement was reached (Cypurs);
- for litigation concerning certain kind of matters, like the right to access public documents, when a public body fails to reply to a request of a decision, the enforcement of previous judgements, public procurements, administrative elections, competition law (Italy);

In Italy, a simplified final decision with a short judgment can be rendered during the interim phase if the Court deems that that the adversarial principle has been respected and the case can be easily decided. Belgium has a similar possibility.

4.4. Do any of the following in practice lead to long judicial decisions?

35. The reasons which can, in practice, lead to long decisions are for the majority of respondents (nineteen out of twenty-nine, about 65%) the use of “copy paste” from previous or other judgments and concern that higher courts will revise the decision (seventeen out of twenty-nine, about 58%). For almost half of the respondents (fourteen out of twenty-nine, about 48%), another reason is the academic approach of judges. Eleven states have considered lack of experience as a judge to be another cause of long decisions. For seven states, another reason is concern of criticism by media. In three states, long judgments can be due to an aim of enhancement of the career of a judge.

4.5. Do you consider the conciseness of a judgment to be an indicator of its quality?

36. Regarding the question of whether the conciseness of a judgment can be considered as an indicator of its quality, a majority of respondents (about 62%) expressed their strong agreement (eleven countries) or their agreement (seven countries). The explanations given by respondents for their answers were the following:
- for the majority, a short judgment is an indicator that the decision is clear and easy to be read and understand (Croatia, Belgium, Hungary, France, Slovenia, Uk, Estonia)
- a short judgment can be important for its force of conviction (Germany) and in order to persuade parties and the public that the decision is fair and just (Czech Republic and Bulgaria). It can contribute to the demonstrative force of the decision (France);
- a short judgment can help the efficiency of judicial protection and can lead to a faster decision (Italy);
- the conciseness of judgments can be useful to make more effective judicial protection (Serbia and Turkey)

For ten states, the answer was neutral. They neither agreed nor disagreed. The explanation of this answer is that the length of the judgment depends on the case: some decisions may be short, others must be longer.

4.6. Do you consider the synthetic (or discursive) style of a written judgment (in the broadest sense, that is to say: number of pages and the synthetic of analytical style of writing) to be an indicator of the quality of a judgment?

37. It depends on the number of the issues to be considered and on the complexity of the case (Netherlands, Luxembourg, Sweden, Greece, Austria, Ireland, Finland). Only one respondent strongly disagreed considering conciseness as an indicator of quality of the judgment.

4.7. Do you consider analytic style of a written judgment (in the broadest sense, that is to say: number of pages and the synthetic of analytical style of writing) to be an indicator of the quality of a judgment?

38. When asked if the analytical style of a written judgment (i.e. number of pages, synthetic or analytical style of writing) is an indicator of the quality of a judgment (vq25), the vast majority of respondents (24 Countries equal to more than 80%) answered positively, rating the indicator from 3 to 5 out of 5. 22 Countries (75.85%) explained their replies and 7 did not (Spain, Lithuania, Latvia, Republic of Serbia, Finland, Slovakia, Portugal, equal to 24.14%).

Among the 22 States that made comments, 7 (The Netherlands, France, Luxembourg - Administrative Court- Sweden, Malta, Belgium, Ireland) simply referred to the previous question (vq24) about synthetic and discursive style of a written judgement and 2 did not expand on their answers (Germany and Grand Duchy of Luxembourg - CJUE).

Therefore, among the 13 respondents that answered in more detail: 3 (Croatia, Hungary, Turkey) straightforwardly pointed out that analytic style shows how and why a conclusion is made and helps to identify the legal problem leading to faster results in decision writing; 4 (Czech Republic, Slovenia, Cyprus, Italy) adopted a more “in-between” approach, arguing that analysis and synthesis are not incompatible; 6 Countries (Estonia, Greece, Poland, Austria, UK, Bulgaria) answered that the evaluation of the suitable style depends on the context, highlighting in two cases (Bulgaria, UK) that the choice is up to the judge/rapporteur.
4.8. Do you consider bibliometric aspects of a judgment (e.g. the average length of a judgment) to be an indicator of quality of judgment?

39. Answers to the question of whether bibliometric aspects of a judgment are an indicator of its quality (vq26) produced a different outcome from the previous one. A majority of the respondents (18 Countries equal to more than 60%) answered negatively, rating the indicator from 1 to 2 out of 5. 22 Countries explained their replies (75.85%) and 7 (Spain, Lithuania, Latvia, Serbia, Germany, Grand Duchy of Luxembourg- CJUE, Slovakia, Portugal) did not (24.14%). Among the 22 States that made comments, 5 (The Netherlands, Luxembourg, Malta, Cyprus, Ireland) referred to previous questions (vq25 and conciseness). A large majority of the countries that clarified their position (15 out of 17) replied that bibliometric aspects do not give much information about the quality of a judgment. One of these (Bulgaria) focused on the choice of judge/rapporteur, while another (UK) mentioned the importance of the context, as in the previous answer. Only Italy stated that the length of a judgment is an indicator in so far as it adds to the transparency and reliability of the judicial system and Turkey pointed out that bibliometric analysis may be an indirect indicator of the quality of a decision.

INDICATOR 5: ASSESSMENT OF QUALITY OF JUDGMENTS

5.1. Assessment of the quality of judgments

40. The assessment of the quality of judgments within the Supreme Courts and Councils of State of the ACA members may take an individual or a global approach.

As to the assessment of the individual quality of judgments of the court itself a vast majority of members pointed out that no such mechanism exists (86 %). Reasons for this can mostly be found in Constitutional Law and/or the independence of the judiciary. Since in many countries the independence of the judiciary is established by the Constitution, several members gave multiple reasons for the lack of an assessment of the individual quality of judgments. Three members explained that there are no specific reasons for the lack of such an assessment (Latvia, Poland, United Kingdom). Some members also pointed out that the assessment of the quality of individual judgments may be part of the procedure of evaluating the work of judges with a view to promotions etc. (Slovenia), while others explained that even for this purpose only the delay in making a judgment, but not its quality, could be assessed (Italy). It is estimated that both may apply to more members even though it was not specifically mentioned. Greece pointed out that the quality of the decisions of “maîtres de requêtes” is evaluated and Belgium explained that the assessment of the individual quality of judgments has to date not been considered necessary. Finland also pointed out that judgments are of course being discussed among colleagues (another aspect which probably applies to more members), but that the establishment of a systematic quality control would be too complicated.

Among the four members in whose supreme court or council of state in which the quality of judgments is assessed, the assessment concerns the craftsmanship (three members) and the merits of the case (two members). The Czech Republic explained that once a month a plenary of the Supreme Administrative Court discusses selected judgments issued recently.
This might also include criticism. The courts of lower instances and academics are invited to contribute to such a discussion. France pointed out that it was among the duties of the president of the formation of the Court to assure the editorial quality of decisions. In the Turkish Council of State the senior investigating judges would – on the basis of the work of investigating judges – write the final draft of decisions. This would then be submitted to the relevant Council of State chamber for inspection.

41. There is no clear picture of whether members consider the assessment of the individual quality of judgments to be an indicator of the quality of a judgment. There are as many supporters as objectors (24 %), whereas 38 % preferred a neutral rating. Those who agreed that assessment of the individual quality of a judgment is an indicator referred to a learning effect (Greece, Netherlands): Further judgments might profit from constructive criticism of a judgment; a precautionary effect (Czech Republic, Poland): The reasoning of a judgment may be carried out more thoroughly if the judge is aware of a possible assessment. Turkey underlines the principle of seniority, i.e. a form of hierarchical principle: The quality of judgments would increase under the control and corrections of more experienced colleagues.

On the other hand, quite a few members stressed the independence of judges which prevents the assessment of individual judgments being an indicator of quality (Austria, Cyprus, France, Germany, Ireland, Italy), also raising the question of who should decide what high quality of a judgment would be. Cyprus especially pointed out the importance of the differences in style, reasoning and opinion that were at the core of a judge’s independence and which would prohibit the assessment of quality.

In only a small contrast to the assessment of the individual quality of judgments, most members do not have a mechanism to assess/monitor the global quality of judgments of their supreme court or council of state (79 % = 23 members). Only six members (21 %) have relevant procedures. This competence lies with the Chief Justice (in three members), in the middle management of the court (two members), in a specific body (two members) or in other bodies/institutions (four members).

In only two of the 23 members which do not have such a mechanism are there external entities which assess the global quality of judgments. This is the judicial self-government body in Latvia which assesses the quality of judgments during the professional assessment of the judge and his professional qualification and regular conferences in the Czech Republic. In Poland the Judicial Decisions Bureau oversees the quality and uniformity of jurisprudence and in cases of divergence proposes to the President of the Court to apply to the Supreme Administrative Court for adopting a resolution. Such a resolution aims at safeguarding the unity of administrative court jurisprudence and has a binding effect on all administrative courts.

Among the members in which there is no global assessment mechanism, again Constitutional Law (34 %) and the independence of the judiciary (62 %) are among the primary reasons given. Also, 48 % point out that external bodies such as the Ministry of other courts do not have a relevant competence.
42. As compared to the assessment of the individual quality of judgments, less members consider the assessment of the global quality of judgments to be an indicator of the quality of judgments (17 %), whereas 41 % strongly disagree with this thesis. Further 14 % disagree and 21 % take a neutral position. Several members point out that the concept of global quality of judgments is hard to grasp (Belgium, Ireland, Luxemburg, Malta, Slovakia, Slovenia) whereas others again emphasize the independence of the judiciary (Austria, Cyprus, Germany, Italy and Turkey) and the principle of separation of powers (Finland).

5.2. Availability of judgments in databases

43. Evaluating the availability of judgments 97 percent of members publish their decisions in a database and 76 % of the members also provide meta-data. These include the date of the decision (72 %), the file number (76 %), the ECLI (38 %), key words (59 %), a headline and/or abstract (48 %), legal norms (66 %) or further (e.g. names of judges [Slovenia]) meta-data (38 %).

In Slovenia the Supreme Administrative Court is responsible for the publication of decisions, including those of lower instance courts. In this process, meta-data are also produced. In France the Council of State provides for the database, Ariane, which compiles decisions of administrative jurisprudence across all instances. The database, Ariane Web, is a public access database which contains about 230,000 documents. Also, Serbia and Austria provide public access to databases, whereas other members give access to decisions on the court website (Belgium, Serbia, Cyprus, Germany, Ireland, Turkey), the United Kingdom even provides search engines on its website.

The publishing of decisions in a database is considered as an indicator of the quality of judgments by 29 %, whereas 36 percent oppose this idea and a further 36 % assume a neutral position. Several members emphasize the publication of a decision as being a factor which affects the quality of a judicial system as a whole, more than being an indicator of the quality of the single decision (Austria, Cyprus, France, Ireland, Germany, Greece, Netherlands, Slovenia, United Kingdom). Others stress that the publication of a decision might affect the thoroughness of its drafting and thus contribute indirectly to its quality (Belgium, Croatia, Finland, Italy, Luxemburg, Turkey).

44. The provision of meta-data as an indicator of the quality of judgments is considered relevant by a minority of 18 %. Most members regard this aspect as neutral (39 %) or disagree with the idea (43 %). Arguments brought forth resemble those already displayed above (See 5.2.)

In summary a majority of members emphasise the importance of meta-data for the quality of the database and the accessibility of judgments for legal professionals and the general public. Yet, the effect on the quality of the judgment itself is mostly not recognized.
PART B: IMPLEMENTATION IN THE LOWER COURTS

INDICATOR 1: THE NOMOPHYLACTIC PRINCIPLE

1.1. The nomophylactic function

45. The nomophylactic function is attributed to the Supreme Administrative Courts because of their role in contributing to a uniform interpretation and application of national law in the Member States. The Court of Justice of the European Union has the same function in relation to European Union Law. It ensures that EU legislation is interpreted and applied in the same way in all EU Member States. The law should be equal for everyone and the courts should not give different rulings on the same issue. The binding value of judicial precedent (judgments) of the Supreme Administrative Court (SAC) upon this court and the lower courts could be one of the tools for ensuring consistency in the jurisprudence.

1.2. Binding value: legal v. “moral” persuasion

46. In a significant number of the Member States (34.48%) the judgment of the SAC is not formally binding. However, even in the absence of rules on the binding value of precedent, such judgments have high “moral” value (eg. Croatia, Finland, Greece, Italy, Luxembourg, Malta, the Netherlands, Slovenia, Spain and Sweden).

1.3. Binding value: in all cases v. in the case decided by the SAC.

47. A significant group of the respondents (over 31% eg. Belgium, Czech Republic, France, Germany, Latvia, Poland, Portugal, Serbia and Slovakia) pointed out that the binding value concerns only the case in which this judgment has been given and in such a case the lower court judge is bound by the decision of the SAC. This group of Member States clarified at the same time that the abovementioned requirement is based on law.

Six respondents (20.69%) answered that judgments of the supreme courts are binding on courts of lower instance in all cases - stare decisis doctrine (eg, Bulgaria, Cyprus, Hungary, Ireland, Lithuania, United Kingdom). All of them pointed to the law as a source of such a requirement. However, some countries indicated also practice (Ireland, United Kingdom) and rulings (Cyprus, United Kingdom). In a few cases (Austria, Estonia, Turkey, CJEU) the answer "others" (other situations) was chosen. Law (Austria, Estonia, Turkey), practice (Estonia) and regulations of the judiciary as a whole (CJEU) were considered as basis of the said requirement among these respondents.

1.4. Binding precedent and the quality of judgments

48. The assessment of the relevance of binding precedent as an indicator of quality of judgment varied among the respondents. However, despite such differences, nearly all
countries share the view that supreme court jurisprudence plays an important role in its persuasiveness and juridical argumentation in the judicial decisionmaking process.

1.4.1 Binding precedent as an indicator of the quality of a judgment

49. Formally binding precedent was considered to be an indicator of the quality of a judgment by the largest group (42.86%, eg. Austria, Belgium, Bulgaria, Croatia, Cyprus, Greece, France, Italy, Luxembourg, Serbia, Turkey, United Kingdom). It was explained that it is justified by the rule of law (Austria, Cyprus), the coherence and standardization of administrative jurisprudence (France), legal certainty or the predictability (Cyprus, Luxembourg) and uniformity of case-law (Turkey) or its enforcement (Bulgaria). In case of Greece it was highlighted that on one hand a non-binding character of precedent and the possibility of departure from supreme court’s jurisprudence are indicators of judicial independence and enable the evolution of case-law but on the other hand following the jurisprudence of the supreme court, particularly in the case of recent jurisprudence, constitutes an element of consistency and predictability as indicators of the quality of the whole judicial system.

1.4.2. Responses indicating a view that Binding precedent is not an indicator of the quality of the judgement

50. Nearly one third of respondents (32.14%) disagreed with the assumption that the binding character of the precedent can be taken into account as an indicator of the quality of a judgment (eg. Estonia, Germany, Hungary, Ireland, Poland, Portugal, Slovenia, Spain, Sweden). Slovakia underlined that formally binding precedent does not of itself quality judgment. Moreover, the possibility of departure from precedent can encourage judges to find innovative, persuasive legal approach to important legal questions, which can contribute to development of law and be in fact an indicator of the quality of judgments. Poland expressed the opinion that even though binding precedent is not a decisive indicator of quality of judgments, the SAC’s case-law can affect the quality of judgment in term of its cogency and legitimization. In turn, Estonia indicated persuasiveness as an indicator of the quality of judgments. It is worth mentioning that one of the common-law countries (Ireland), although in its legal system the *stare decisis* doctrine is a fundamental rule, explained - unlike other countries applying *stare decisis* rule (Bulgaria, Cyprus, Hungary, Lithuania, United Kingdom) - that it is not considered that the fact that a judgment has precedential weight is indicative of a certain quality.

1.4.3. Responses indicating a view that binding precedent is neutral in assessing the quality of the judgements

51. A neutral opinion about the role of binding precedent in relation to the quality of judgement was expressed by 25% of the total number of respondents (eg. Czech Republic, Finland, Latvia, Lithuania, Malta, the Netherlands, Slovakia). Some of the respondents noted the value of the continuity and uniformity of case-law in relation to the binding character of precedent (the Netherlands), whereas such a character can also be a hindrance to the
development of case-law or refusal of inadequate answers by the supreme court (Czech Republic). One of the countries (Slovakia), despite its neutral opinion given in the rating scale, pointed out that the normative [binding] effect of a precedent requires a higher quality of reasoning.

**INDICATOR 2: INSTRUMENTS TO RATES THE QUALITY OF DECISIONS**

52. This indicator inquired as to whether the rates of appeals or cassation are indicative of a certain quality of decision. According to the answers provided by a majority of countries (17 in total) this criterion is not applied. Only 11 countries reported that they apply it (Lithuania, Slovenia, France, Serbia, Cyprus, Malta, Finland, Croatia, Hungary, Portugal and Turkey).

Another quality indicator suggested in the survey was the percentage of decisions left standing after the appeal or cassation complaint. In this case the number of positive (14) and negative (14) answers was equal. The rate of (un)successful appeals is considered as helpful in evaluating quality in Lithuania, Slovakia, France, Serbia, Cyprus, Malta, Finland, Hungary, Poland, Portugal and Turkey (the countries using also the indicator of the number of appeals) and Estonia, Luxembourg, Poland and Bulgaria (the countries only considering the number of unsuccessful appeals but not the total number of appeals). In Croatia in contrast, only the total number of appeals and not the number of decisions left standing after the appeal is taken into consideration.

53. A further question posed in the questionnaire related to the techniques used to create an awareness among judges of lower jurisdictions of judgments of the supreme courts (other than deciding on the appeals against their decisions, of course). Seven countries reported that they do not use methods to do so (Spain, Luxembourg, Sweden, Malta, Italy, Portugal and the United Kingdom). Among other jurisdictions which use means to raise awareness of their case-law, the most frequent technique used is training provided by members of the Supreme Administrative Court (16 positive answers), exchanges of lower judges to fulfil a stage in the Supreme Administrative Court (15 positive answers) and newsletters or other electronic exchanges of jurisprudence to the lower courts (12 positive answers). Other less frequently used methods include: appeal/cassation to the Supreme Court in the interest of the law (e.g. to make uniform “top bottom” divergent jurisprudence in the lower court, or jurisprudential to be considered not conform with the jurisprudence of the Supreme Court of Higher (inter)national Courts...), which occurs in 9 countries (France, Serbia, Finland, Croatia, Greece, Hungary, Austria, Slovakia and Bulgaria). Quite rarely the Supreme Administrative Courts provide guidelines or drafting codes as a technique to creating awareness of their case-law. Only four countries reported that they use this option (the Netherlands, France, Cyprus, Bulgaria).

54. Eight respondents referred to other specific techniques used to raise awareness of the case-law of the Supreme Administrative Court. In the Netherlands the Council of State publishes “pre-announcement” of the cases to be decided in the course of the following week. In Czechia a plenary discussion on case-law take place regularly and the regional courts can comment the case-law of the Supreme Administrative Court. Estonia reported on the holdin of round table discussions in which the judges of the Supreme Court and the judges of inferior
courts participate. Furthermore, the senior judges supervise the junior judges informing them also of relevant case-law. In France, a network of correspondents of the various administrative courts, called "Juradinfo", contributes to the dissemination of jurisprudential solutions and to the identification of issues that may arise in many disputes (identification of "series"). The judges of lower courts can make use of the outputs of the Research and Documentation Service of the Council of State which prepares reviews of the case-law in certain areas of public law inter alia. Useful information on the case-law is provided on the website of the Council of State. The situation in Belgium is similar, where all judgments of the Council of State are published on its website. In Greece a joint database is used by the Council of State and the inferior courts. In Ireland the publication of the judgments and attendance at judicial meetings and conferences are considered helpful techniques. In Turkey the Council of State organizes the visits to the regional courts to share the information on cases dealt by the Council of State.

55. The final question asked what the respondents considered to be the best indicator of the quality of decisions of lower jurisdictions. An absolute majority of member jurisdictions considered the rate of decisions left standing after appeal to be the best indicator of quality (18). Only 4 countries reported the rate of appeals as a suitable way of testing the quality of judgments (Serbia, Malta, Croatia and Hungary). France considered both criteria to be equivalent. Germany and Ireland did not choose any of the suggested criteria. In Slovakia the publication of a lower court’s judgment in the Official Journal of the Supreme Court is considered to be the best indicator of quality. United Kingdom pointed out there were many factors which should be taken into account when evaluating the quality of a judgment. Even overturning the decision of lower court by the judgment of the Supreme Court does not necessarily indicate that the lower court’s reasoning was deficient.

Berlin, 14 May 2019