



**Seminar organized by the Council of State of Belgium and ACA-
Europe**

**Better regulation through smarter consulting
“Best practices”
regarding regulatory advisory opinions in Europe**

Brussels, 11 December 2015



Seminar co-funded by the “Justice” programme of the European Union

ACA Seminar – Brussels – 11th December 2015

Better regulation through smarter consulting

“Best practices” regarding regulatory advisory opinions in Europe

Questionnaire

To make answering easier for you, wherever possible, the questions have been given tick-boxes. However, where necessary, you will also be asked to provide a brief written explanation. It is also possible, if you wish, to add further comments or responses to specific questions. Space is provided for this purpose at the end of the questionnaire.

If, as an example, you wish to provide (or an extract from) a specific advisory opinion for one of the questions, you can include it as an attachment to the questionnaire and then refer to it in the answer to the question.

The answers to this questionnaire will be published. If the answer to some of the questions is confidential, you may mention this at the end of the questionnaire (indicating the number(s) of the questions involved). The answer(s) to those questions will not be published. This also applies to (extracts from) any advisory opinions that you may attach to your answers. However, please strive for a maximal publicity.

Explanation of the terms used:

- authority requesting the advisory opinion: the official body (minister/government department/parliament/etc.) requesting the advisory opinion
- request for advisory opinion: the formal submission of the request for advisory opinion, together with the required documents
- advisory body : your institution, issuing the advisory opinion to the authority requesting the advisory opinion
- draft text: the draft legal text to be submitted by the authority requesting the advisory opinion
- laws: legislation issued by parliament
- regulations: legislation issued by the executive branch

A. Communication with the authority requesting the advisory opinion

1. Information and documents required to be submitted with the request for an advisory opinion

[1] Which of the following documents will be submitted with the request for an advisory opinion (if applicable)?

- a. explanatory note
 - mandatory possible does not apply
- b. regulation impact analysis (ex ante)
 - mandatory possible does not apply
- c. transposition table¹ of European directives
 - mandatory possible does not apply
- d. advisory opinions from other advisory bodies that have already been consulted
 - mandatory possible does not apply
- e. documents on budgetary scrutiny
 - mandatory possible does not apply
- f. other:
 -
 - mandatory possible
 -
 - mandatory possible
 -
 - mandatory possible

2. Contacts/consultation between the advisory body and the authority requesting the advisory opinion

[2] Is direct consultation between the advisory body and the authority requesting the advisory opinion itself possible?

yes no

[3] Is it possible for a contact person to provide an explanation about the draft text on behalf of the authority requesting the advisory opinion?

yes no

[4] If yes, will this person be designated in advance?

always usually sometimes seldom never

[5] What capabilities does this contact person have? (more than one answer is possible)

- a. to provide an explanation on the draft text
- b. to answer questions from the advisory body

¹ A transposition table is a table showing in one column each individual provision of a European directive to be implemented and, in another column, the individual provision of the draft text which implements that provision of the European directive.

- c. to adopt a position on behalf of the authority requesting the advisory opinion about modifications to the draft text proposed by the advisory body as the result of problems
- d. to propose himself/herself modifications to the draft text if the advisory body highlights problems
- e. other:

[6] Do advisory opinions reflect the result of consultations with the contact person?

- always usually sometimes seldom never

3. Formulating conclusions in advisory opinions

[7] Does the advisory opinion include a summarising conclusion?

- yes no

[8] Do standard formulations exist for this conclusion (such as an internal list)?

- yes no

[9] Do standard formulations exist for other, more specific comments in the advisory opinion (such as an internal list)?

- yes no

[10] Is it possible that a comment will be formulated with some reservation because your advisory body is not entirely sure of the conclusion?

- yes no

If yes, can you give an example?

[11] Is the advisory opinion merely a statement as to the legal acceptability of the draft text, or is it in principle also possible to make alternative suggestions to amend the draft text in a certain way?

- acceptability only also alternative suggestions

[12] What score in terms of comprehensibility do you think the following persons would usually give your advisory opinions?

- a. an uninitiated citizen
 - very clear reasonably clear not very clear difficult to understand
- b. a higher educated citizen
 - very clear reasonably clear not very clear difficult to understand
- c. a legally trained citizen
 - very clear reasonably clear not very clear difficult to understand

- d. a politician
 very clear reasonably clear not very clear difficult to understand
- e. an expert in the subject
 very clear reasonably clear not very clear difficult to understand
- f. an academic
 very clear reasonably clear not very clear difficult to understand

[13] In your advisory body, is attention being given to the way advisory opinions are drafted? (e.g. through internal editorial instructions, training sessions, etc.)

yes no

If yes, can you provide more details?

B. Legal review framework of the advisory opinion

1. Nature of the legal review

[14] Which of the following comment types may be made in the advisory opinion? (more than one answer is possible)

- a. compatibility with treaties
- b. correct implementation of European law
- c. constitutionality of laws
- d. legality of regulations
- e. internal and external judicial consistency of the draft text
- f. legal drafting comments
- g. comments of a more policy-oriented nature
- h. merely technical, non-legal comments
- i. other:

2. Monitoring of the implementation of European law

[15] Will the authority requesting the advisory opinion be asked for a transposition table for texts implementing European law texts?

for all texts for most texts for some texts never

[16] Will this transposition table be drawn up by your advisory body itself?

for all texts for most texts for some texts never

[17] If necessary, does your advisory body contact the European Commission for questions about the scope of European law?

always often sometimes seldom never

[18] Is there an overall check on the transposition of directives when this transposition is spread across more than one draft text?

always often sometimes seldom never

Can you comment on this, where applicable?

.....

[19] Is there a specialist internal unit in your advisory body that can be consulted about problems relating to compliance/implementation of European law?

yes no

If yes, please provide more details

[20] Will new European regulations and directives be monitored proactively by your advisory body for the purpose of their implementation in the future?

always often sometimes seldom never

3. Quality of the advisory opinions

[21] Does the quality of the advisory opinions depend on:

- a. the case load (number of advisory opinions pending)
 to a large extent somewhat hardly not
- b. the deadline for the advisory opinion
 to a large extent somewhat hardly not
- c. the volume of the draft text (long texts may mean that less attention is paid to each element)
 to a large extent somewhat hardly not
- d. the level of legal difficulty of the draft text (major legal difficulties may mean that less attention is paid to secondary issues)
 to a large extent somewhat hardly not
- e. the social relevance of the draft text (if the text is not relevant for the society, less attention will be paid to the advisory opinion)
 to a large extent somewhat hardly not

f. the size of the group of stakeholders (if the text is only relevant for a small group of citizens or bodies, less attention will be paid to the advisory opinion)

to a large extent somewhat hardly not

g. other:

.....

to a large extent somewhat hardly not

.....

to a large extent somewhat hardly not

C. Response that will be given to advisory opinions

1. Reaction of the authority requesting the advisory opinion to the advisory opinion itself

[22] Is the advisory opinion binding for the authority requesting the advisory opinion?

yes no

If yes, please provide more details

[23] Is the authority requesting the advisory opinion obliged to respond to the advisory opinion:

a. for draft laws?

yes in practice, yes no

b. for important draft regulations issued by the executive branch?

yes in practice, yes no

c. for subordinate draft regulations issued by the executive branch?

yes in practice, yes no

[24] How thorough is the reaction from the authority requesting the advisory opinion to the advisory opinion itself?

very thorough sufficient usually brief very brief virtually non-existent

[25] Is your advisory body able to respond to the reaction of the authority requesting the advisory opinion?

yes, publicly yes, but only to the authority requesting the advisory opinion no

[26] How great is the impact of the advisory opinion about the text of draft laws usually on parliamentary discussion?

high reasonable limited non-existent

[27] To what extent are the advisory opinions given by your advisory body usually adhered to?

always usually sometimes seldom never

[28] Are the advisory opinions adhered to better than average when they relate to:

a. important political issues?

yes no

b. technical judicial details?

yes no

[29] Is there a set procedure in your advisory body for assessing the response given to the advisory opinions?

yes no

If yes, please provide more details

2. Advisory opinions and disputes before the courts

[30] Are advisory opinions regularly put forward in legal arguments for internal law courts?

always usually sometimes seldom never

[31] Are the conclusions in advisory opinions usually followed by internal law courts?

always usually sometimes seldom never

[32] Does the non-adherence to advisory opinions lead to disputes before internal law courts?

always usually sometimes seldom never

[33] Does this latter point occur more often/as much/less with laws or with regulations from the executive branch?

more often as much less

3. Publication of advisory opinions

[34] How often are advisory opinions published relating to the following draft texts (either by your advisory body, or by another institution, such as the authority requesting the advisory opinion or the parliament)

a. laws

always often sometimes seldom never

b. important regulations issued by the executive branch

always often sometimes seldom never

c. subordinate regulations issued by the executive branch

always often sometimes seldom never

[35] Does a legal regulation exist (such as a law or in a decision by your advisory body) for the publication of advisory opinions?

yes no

If yes, what is the text or the decision?

[36] Are there any exceptions to the publication?

yes no

If yes, please provide more details

[37] Is there a publicly accessible database from which advisory opinions can be retrieved based on content-related criteria or key words?

yes no

If yes, please provide more details

[38] Is there an internal database from which advisory opinions can be retrieved based on content-related criteria or key words?

yes no

If yes, please provide more details

[39] Has the introduction of the publication of advisory opinions led to better compliance with advisory opinions?

yes no

If yes, please provide more details

[40] Is a summary of the advisory opinions produced for the broader public?

always usually sometimes seldom never

[41] Is the draft text about which the advisory opinion has been requested published by your advisory body during the period the request for an advisory opinion is being dealt with (before the advisory opinion is issued)?

yes no

[42] In case of publication, when is the text of the advisory opinion published by your advisory body?

a. As soon as the advisory opinion is issued?

yes no

- b. Only once the text to which the advisory opinion relates has been published? (enactment of the regulation or tabling of the draft law in parliament)
- yes no

If you have any specific comments or reactions about specific questions, please state them below, indicating the number of the corresponding question (e.g. [12] (...)).

Our sincere thanks for your contribution to this questionnaire.