Ankara Seminar

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JUDICIAL REVIEW OF THE ACTS OF INDEPENDENT ADMINISTRATIVE AUTHORITIES

SYNTHESIS REPORT

Subject 1: 1 Independent Administrative Authorities / Regulatory Authorities: activities and powers

1.1. How does public authorities intervene in the economic sphere? Are there institutions such as independent administrative authorities, regulatory bodies, or institutions with similar regulatory or supervisory functions for certain markets and economic sectors?

When the answers given to the questionnaire are analyzed; (27 member states responded.) in the vast majority of countries, in parallel with the developments in the global and/or regional (especially European Union) economic order, the need for re-regulation and the need to introduce universal service obligation for some sectors arising after the privatization/liberalization/regulation of state monopolies/natural monopolies (telecommunications, electricity, natural gas, railways, etc.) or public-dominated sectors, and the need to introduce universal service obligations for some sectors, *although there may be differences in nomenclature among countries*, it is understood that structures called "independent administrative authority" or "regulatory body" [1] have been established to ensure

[1]In this study, the terms "independent administrative authority" or "regulatory body/authority" will be used without taking into account the differences in terminology between countries. Although it should be noted that both of these terms are sometimes used interchangeably on a conceptual basis, it is seen that the concept of regulatory authority corresponds to economic sectoral regulators in most of the countries that addressed this issue in their responses. On the other hand, by noting the existence of a series of debates on the concepts of independent administrative authority/regulatory body and the reasons for the existence of these structures, especially in continental European legal systems, their existence, fields of duty, legal structure, functions and relations with the central administration and their place in the unitary state structure, the subject of this study is to compare the

the change in the form of state authority over markets and/or to perform regulation-supervision-surveillance and similar functions in some sensitive sectors of public life or in areas concerning fundamental rights and freedoms.

This situation does not necessarily imply the complete exclusion of the state from intervening in the economy and the tools used in this intervention, *as emphasized in the responses provided by many member countries*. Especially in sectors and markets later opened up to competition and in other areas with sensitive or strategic importance for countries, despite the liberalization, the presence of the public authority continues, representing a shift in the state's role from being a "player" to a "rule maker" or "referee" position, or a redefinition of its operator-regulator roles. In this sense, it can be said that both the presence of the State/central authority/public administrations in the markets and the possession of the instruments of intervention in the economic order envisaged by public economic law continue with different weights in all member states, *albeit with erosion*.

In only 1 respondent country **(China)**, there are no independent administrative authority/regulatory body-type structures, but regulation and supervision functions are carried out in certain areas by bodies subordinate to the central administration, and in another country **(Chile)**, there are institutions (*Inspectorates*) close to independent administrative authority/regulatory bodies, but it is stated as a footnote that these structures do not have the characteristics of OECD countries.

With some exceptions, in all countries, independent administrative authorities/regulatory bodies and similar structures in administrative organization structures operate in various markets, sectors and areas.

These answers show that global or regional political and economic developments and approaches have led to similar effects and consequences on the legal systems of the member states, and have led to the emergence of similar institutional structures in countries with different geographies and different legal systems, albeit differentiated in terms of nomenclature, subject or field based on similar motives.

1.2. If there are independent administrative authorities, regulatory bodies or similar institutions within your administrative system, what sectors, markets or areas do they regulate or control? Please identify these institutions.

This question aims to identify the subject and areas in which these institutions operate in countries where independent administrative authority/regulatory body-type structures exist. However, from the responses provided, it is evident that there is no consensus among member countries regarding which institutions are in the status of independent administrative authority/regulatory bodies in an organic sense, or whether these entities have legal

current situation of the IASAJ member countries in the regulatory framework and to indicate the commonalities and differences, and in this sense, the study deals with what is, not what should be.

personality[2], their autonomy, and their relationships with the central administration[3]. Additionally, some countries regulate similar markets/sectors/areas[4] through other public institutions[5] or entities affiliated with the central administration or through private legal entities[6], while in other countries, this function is provided by independent administrative authorities/regulatory bodies within their administrative structure. Therefore, the focus should not be on determining which areas are subject to regulation/regulation, but rather on understanding **which areas are subject to economic regulation or administrative oversight and control by independent administrative authorities/regulatory bodies**. It should be noted that this determination also depends on the responses provided by each member country's national legislation and classification in questionnaires. In other words, it should not be overlooked that institutions performing similar functions in a similar manner in each country may be subject to different legal characterizations.

Following the aforementioned determination, it can be said that the structures of independent administrative authorities/regulatory bodies in the member states can generally be **evaluated under 4 (four) main headings in terms of their purposes and the areas they regulate**, *although there may be exceptional cases which will be mentioned*. However, it should be noted that this distinction is not very sharp in some cases, and the functions of some authorities may cover more than one purpose. Considering the large number and complexity of authorities in each country, this method has been adopted in this study in order to make a sound classification.

The first and most common among these is the authorities that **regulate the market economy**, particularly in the field of economics. Notably, institutions that regulate and oversee areas such as **energy, telecommunications and electronic communications, banking, capital**

[2] For instance, in **France**, it was stated that independent public authorities (*API*), not independent administrative authorities (*AAI*), have public legal personality, while in **Belgium**, the concept of independent administrative authority corresponds to those authorities to which the legislator grants a different level of autonomy margin, regardless of whether they have legal personality or not. It is also stated that in **Hungary**, there is a distinction between autonomous public administration bodies and autonomous regulatory bodies, and that the autonomy of autonomous regulatory bodies does not refer to the separation of the institution from the central administration, but to the institutional, personal and professional autonomy regarding the regulatory activity. In **Türkiye**, it is observed that the public legal personality of all of these structures, which are called regulatory and supervisory agencies, is legally guaranteed. In Portugal, there is also a distinction between an independent administrative body and a regulatory authority, with the latter being responsible for the regulation of markets.

[3]For example, in **Switzerland**, it is understood that the concept of independent administrative authority is characterized as being independent regardless of its affiliation with the central administration. A similar approach is observed in **Belgium**.

[4] For example, in **Türkiye**, the pharmaceutical and medical products market is administered by an institution with legal personality but affiliated to the Ministry of Health, but this institution is not characterized as an independent administrative authority in the Turkish legal system. However, in **Ivory Coast, Switzerland, Poland, Slovakia and Belgium**, the administration in this field is characterized as an independent administrative authority/regulatory body. Similarly, while in **Türkiye**, the Board in charge of access to information/documents is an unincorporated body under the Ministry of Justice, in countries such as **Ivory Coast, France, Hungary, Portugal and Belgium**, this duty is fulfilled by an independent administrative authority/regulatory body. These examples can be multiplied.

[5] Conceptually, "public institutions" (*êtablissements publics*) are public legal entities established by a "public administration" (*administrations public*) and functioning under its tutelage, with a certain degree of autonomy and operating in specific areas of expertise. While independent administrative authorities can be broadly considered as public institutions, it can be accepted that they need to be examined under a separate category in terms of their authority, functions, scope of duties, and degrees of autonomy, distinguishing them from other public institutions.

[6] For example, in **Türkiye, the Central Bank** is structured as a joint stock company subject to private law, whereas in countries such as **Belgium, Spain, Sweden, Italy, Latvia, Lithuania, Portugal, Romania and Slovakia** it is listed among independent administrative authorities/regulatory bodies.

markets, insurance, and private pensions stand out among them. As privatization and statist policies have been replaced by a regulated market economy approach, the number of independent administrative authorities/regulatory bodies, which have become the most important instrument of public intervention in the economy, has increased in many countries.

In this economic framework, *although there are isolated examples*, it has been observed that member states have established **competition authorities** with general competence in order to establish competition in regulated areas and all other goods and services markets and to monitor and sanction anti-competitive behavior (*anti-competitive agreements, concerted practices, abuse of dominant position, control of mergers and acquisitions*) and that these authorities play a central role in the regulatory framework.

At this point, another observation in terms of state intervention in the economic field is related to the developments in the field of public service. The increase in contracts where the government acts as a party due to the transformation of the state from directly providing public services to overseeing and procuring services, the widespread adoption of public procurement in all sectors, and the need to minimize potential irregularities and political influences in this field have led to the regulation and oversight of public procurement becoming a necessity. Consequently, driven by these motives, it is observed that Public Procurement Authorities have been established as independent administrative authorities/regulatory bodies in eight countries (**Algeria, Ivory Coast, Lithuania, Hungary, Niger, Poland, Togo, and Türkiye**).

A sectoral analysis reveals that in almost all member states, one or more energy market areas (*electricity, natural gas, petroleum, LPG, nuclear, hydrocarbon*) are regulated by independent administrative authorities/regulatory bodies. Exceptionally, in 4 countries (**Spain, Sweden, Norway, Togo**), there is no independent administrative authority/regulatory body type organization in this field.

It is also observed that the **telecommunications, information technologies, electronic communications and postal sectors** are covered by independent administrative authorities/regulatory bodies in the vast majority of member states, while only in 4 countries **(Spain, Sweden, Norway, Hungary)** this area is not regulated by these bodies.

Except for 12 countries **(Germany, Austria, Czechia, Morocco, Ivory Coast, Switzerland, Hungary, Niger, Norway, Poland, Togo, Thailand)**, there is a regulatory authority in the field of banking, while in 9 countries **(Belgium, Spain, Sweden, Italy, Latvia, Lithuania, Portugal, Romania, Slovakia)**, where there is no special authority in this field, this function is partially fulfilled through the Central Banks.

In the area of **private insurance and pensions**, 6 countries **(Algeria, Morocco, Italy, Portugal, Thailand and Türkiye)** have independent authorities.

In the field of **capital markets, stock exchanges and similar financial and securities markets**, all countries except 10 **(Germany, Austria, Czechia, Ivory Coast, Latvia, Lithuania, Hungary, Niger, Slovakia, Togo)** have independent authorities.

Unlike these areas, in some countries where **rail transport** has been liberalized or privatized, there are independent administrative authorities/regulatory bodies established to regulate this market. At this point, 6 countries **(Germany, Austria, Czechia, France (together with highway), Switzerland, Poland)** have regulatory authorities in this sector. Again, there

are independent administrative authorities/regulatory bodies in 5 countries **(Ivory Coast, Italy, Niger, Portugal, Romania)** in the fields of **national transportation, transportation infrastructure and domestic transportation** in general, independent of rail transportation.

Again, exceptionally, in 2 countries **(Algeria, Hungary)** a separate authority is in charge of **mining**.

On the other hand, **auditing of capital companies-independent auditing** is another field that indirectly corresponds to the regulation of the market economy, and the regulation of company auditing and accounting standards and independent auditing rules is another field. In this field, independent authorities in **Switzerland, Türkiye and France** are in charge.

To sum up, it is observed that in addition to sectoral regulators in the economic field, Competition Authorities and Public Procurement Authorities, which are competent for all sectors, are included in the regulatory framework.

The second area where there are independent administrative authorities/regulatory bodies is under the umbrella of **fundamental rights and freedoms, protection of personal data, protection of intellectual property and patent rights, consumer protection, electoral security and supervision of electoral financing.**

The most common authorities in the field of fundamental rights and freedoms are the authorities in charge of the regulation and supervision of radio, television, internet and audio-visual broadcasting via digital media.[7]. With the exception of 7 countries **(Germany, Austria, Spain, Sweden, Latvia, Lithuania and Norway)**, all member states have an independent administrative authority/regulatory body in this field.

As regards the processing and protection of personal data, in 8 countries **(Algeria, Czechia, France, Italy, Hungary, Niger, Portugal and Slovakia)** this function is performed by independent administrative authorities/regulatory bodies.

In 5 countries **(Czechia, Ivory Coast, France (Financing), Hungary and Portugal)**, the task of regulating and supervising elections and political parties or supervising electoral financing is carried out by so-called independent administrative authorities.

There are independent authorities in the field of intellectual property and patents in 2 countries **(Ivory Coast and Norway)**.

In the field of consumer rights and consumer protection, 5 countries **(Sweden, Switzerland (Price Inspectorate), Poland, Romania and Greece)** have such institutions.

Thirdly, it is understood that with the development of the concept of public administration that sets rules and monitors and supervises the implementation of the rules with an objective and egalitarian approach apart from the interventionist state, regulatory institutions independent from the central administration have been established in order to regulate the relations between the state and individuals. In this context, under the general heading of regulating the **relations between the administration and individuals,** it is understood that

[7] In fact, this area, which may also mean the regulation of an economic market, can be evaluated under this heading since it is closely related to the freedoms of expression and the press.

independent administrative authorities have been established in the member states for the fields of transparency, reduction of administrative arbitrariness and bureaucracy, good governance or prevention of corruption.

Examples are the Ombudsman[8], Good Governance[9], Integrity Authorities[10], Grant Supervisory Authorities[11], Compensation Commission for Nuclear Test Victims[12], Public Debate Commission etc.[13]

In this context, there are independent anti-corruption authorities in 5 countries **(Algeria, Ivory Coast, Italy, Togo and Thailand)**, and in the area of document entry/access, there are independent authorities in 5 countries **(Ivory Coast, France, Hungary, Portugal and Belgium)**.

It is also noted that in 1 country (Spain) the management of taxation processes is also carried out by independent administrative authorities/regulatory bodies.

The fourth and final area is the authorities that arise from the **need to regulate and supervise certain sensitive sectors** that exist in every country. While some of these areas have a function related to market regulation and others are focused on protecting fundamental rights and freedoms, categorization under this heading has been done with consideration to the limited and country-specific implementation examples. Furthermore, it is assessed that neither of these functions dominates the other.

Examples include water resources/waste management[14], food safety[15], pharmaceuticals and medical devices[16], civil aviation[17], exams[18], health[19], environment[20], urban mobility[21], migration and refugees[22], defense secrecy[23], state secrets[24], control of intelligence techniques[25], anti-doping[26], storage[27], prisons[28] and gambling or games of chance[29]. *(It should be noted that some very exceptional areas are not noted).*

[8] Italy, Portugal (Although there is an Ombudsman's Office in Türkiye, it is not technically organized under the title of independent administrative authority).
[9] Ivory Coast, France
[10] Hungary
[11] Hungary
[12] France
[13] France
[14] Latvia, Poland, Niger, Portugal, Romania
[15] Slovakia, Belgium
[16] Ivory Coast, Belgium, Switzerland, Poland, Slovakia
[17] Poland, Portugal
[18] Belgium
[19] Portugal (bio-ethics, medically assisted reproduction, DNA database and public health), Slovakia
[20] France (airport noise control), Italy, Belgium
[21] Ivory Coast
[22] Belgium
[23] France
[24] Portugal
[25] France, Portugal
[26] France
[27] Ivory Coast
[28] France
[29] Ivory Coast, Switzerland, Greece, Hungary and Belgium

1.3. What are the powers of these institutions (regulation, supervision, licensing, dispute resolution, consulting, etc.)? Can these institutions impose administrative sanctions (including fines)?

Among the fundamental functional features of independent administrative authorities/regulatory bodies, it has been observed that *(although there may be institutional variations in domestic practices)* these units in almost all countries' legal systems have the authority to **regulate and oversee** market sectors or areas, **establish and monitor ex ante competitive structures** in economic fields, **issue licenses, permits, or certificates** to market players within the framework of their rules, **determine maximum or minimum price tariffs** applicable in the market or sector, **supervise the area** where they set the rules, **implement necessary preventive or enforcement measures**, and **impose sanctions** on actors who violate these rules. In some authorities, there are also powers such as voluntary or mandatory mediation, reconciliation, arbitration, ombudsman services, and similar alternative dispute resolution methods. As mentioned, this situation is in line with the purposes for which independent administrative authority/regulatory body-type structures exist.

On the other hand, most responding member states **(Czechia, Ivory Coast, France, Spain, Switzerland, Lithuania, Hungary, Niger, Norway, Poland, Slovakia, Togo, Türkiye and Greece)** also indicated that these authorities have specific opinion/advice/consultation functions.

After repeating that these powers do not exist in every authority, but at least in one authority, it should be noted that, as examples of different practices, it is noteworthy that in **Austria**, in case of suspicion of a cartel, the competition authority will refer the matter to the Cartel Court and the fine will be imposed by this court; in **France**, fines are imposed under the supervision of a judge (no detailed explanation regarding the procedure is provided); in **Hungary**, these authorities have the authority to file a lawsuit; and in **Norway**, the regulatory authority is limited.

1.4. Is there a Competition Authority within your administrative system? Is this authority the only one that can take measures to prevent or sanction anti-competitive practices? If other administrative authorities also have this power, how does it combine with the activity of the Competition Authority?

According to the responses of the Supreme Administrative Courts, only 3 countries **(Niger, Chile and Togo)** do not have an independent competition authority; however, in **Niger and Togo** the functions of this authority are performed by some other regulatory authorities, while in **Chile** the judicial bodies, the *Court for the Defense of Free Competition and the National Economic Prosecutor*, are responsible for the enforcement of competition legislation.

In 12 member states **(Algeria, Austria (with an exception on due process), China, Spain, Italy, Latvia, Hungary, Norway, Poland, Slovakia, Greece and Belgium**), the Competition Authority is the sole competent authority for the supervision and sanctioning of anti-competitive conduct, or no statement to the contrary was made or no answer was given to this sub-part of the question. *(Therefore, it is assumed that the Competition Authority is the sole competent authority for the countries that did not make a statement or did not provide an answer).*

In 8 countries, it is stated that for some markets/sectors, the authority regulating that market has similar powers with the competition authority. In this context, it is stated that the authorities in charge of postal services in **Germany**, telecommunications and energy in Czechia, banking and telecommunications in **Morocco**, telecommunications, public procurement, press, games of chance in **Ivory Coast**, postal services and telecommunications in **Sweden**, telecommunications and price control in **Switzerland**, telecommunications in **Lithuania**, and audiovisual communication in **Thailand** are competent in competition law.

In 4 countries **(France, Portugal, Romania and Türkiye)**, each of the authorities regulating an economic market and sector has the function of ensuring competition in its own field; in **Romania and Türkiye**, as additional information, these authorities can only conduct ex-ante surveillance and supervision and do not have competition investigation and sanctioning powers; in **Türkiye**, there are exceptions to this, albeit very limited *(in terms of the telecommunications authority)*, and in **France**, unlike these 3 countries, these authorities have the authority to impose sanctions on anti-competitive behavior.

Thus, it can be said that in a total of 12 countries, in addition to competition authorities, other sectoral regulators are authorized to establish and monitor competition and control anti-competitive behavior in the market or sector they are in charge of at various scales. This is in line with the fact that the main function of sectoral regulatory authorities is to be responsible for the operation of their area of responsibility according to the rules of market economy. However, if the exceptions are ignored, it is understood that in most cases, these authorities have powers limited to their own fields and arising from the function of ensuring competition within the scope of market regulation authority, and in almost all countries, the general authority is vested in the competition authority. The responses to sub-heading 3 of this question confirm this assertion.

The responses to sub-question 3; which asks how the division of authority between the competition authority and sectoral regulators will be handled, which are also stated to have functions in the field of competition, indicate that in **Portugal, Romania and Morocco** this problem will be solved through cooperation, consultation and exchange of information; in **Ivory Coast and Sweden**, the competition authority has general competence, and in this sense, this problem will be solved with the opposition of general competence and special competence; in **France**, the regulatory authorities can communicate anti-competitive events and facts to the Competition Authority and request an opinion and cooperation, in particular, the legislation on the Electronic Communications and Postal Authority regulates the power of referral; similarly, in **Switzerland**, there are legal regulations on consultation, information, especially in the fields of telecommunications and price control, and the right to vote in meetings in an advisory manner, In **Lithuania**, this issue was discussed before the supreme judiciary and it was decided that the function of the telecommunications authority was different from the competition authority and that this authority could not enter the field of the competition authority; in **Türkiye**, in order to prevent conflict of authority and to ensure consultation and exchange of information, cooperation protocols were signed between the Competition Authority and the *energy, information technologies and communication, banking, personal data and public procurement authorities* and the issue was placed on a legal basis.

1.5. Do independent administrative authorities (in particular the Competition Authority) have the power to control the anti-competitive practices of public institutions or private-law bodies with public authority prerogatives? Can such pratices be subject to judicial review?

Before proceeding to the analysis of the answers given to the question, it should be noted that the first part of the question does not aim to determine whether the competition authority is competent for the anti-competitive behavior of public administrations arising from their role as undertakings/market actors, but whether the competition authority is competent for the supervision of the administrative actions of the central administration or other public administrations arising from their role as market regulators, which are in the nature of intervention in the economy and often based on law. However, most of the member states answered in terms of the behaviors of public administrations arising from their role as market actors, and the synthesis of the answers should be evaluated accordingly.

As for the answers following this preliminary explanation, it is understood that in **Spain, Poland, Romania, Türkiye and Chile**, competition authorities do not have the authority to investigate and sanction anti-competitive conduct of public authorities as a rule, but this is the case when the conduct in question is the exercise of a power provided by law and/or a superior public interest, It is understood that, with these exceptions, the authorities will pursue the establishment of competition in all areas, but this will be manifested in **Romania and Türkiye** by filing a lawsuit against the relevant administrative act, in **Chile** by proposing legislative amendments, and in these countries by making advisory decisions in general. In addition, it is stated that in **Türkiye**, if the price tariff determination of the professional chambers, which are within the scope of the competition law as an association of undertakings, is based on a legal authority, the competition authority has the right to file a lawsuit against this decision, which is an administrative act, but in cases where the authority does not derive from a law, it has the authority to directly open an investigation and impose sanctions, and that a similar situation is valid for state-owned enterprises, and that the activities of these organizations due to their independent enterprise nature are within the scope of the competition authority's supervisory authority without exception.

Although it is stated that in all other countries except the countries mentioned above, there is no distinction between public and private undertakings in terms of competition legislation, it is assumed from the answers given by some countries that state-owned enterprises are meant by public institutions.

In this context, a separate parenthesis should be opened for some member states that provide detailed explanations and specific information on this issue. In **France**, it is specifically stated that the competition authority can be consulted on draft legislation, local authorities, chambers, trade unions and some authorities are included in this scope, according to the French Commercial Code, the government is required to consult the Competition Authority on certain situations that are likely to be anti-competitive, the competition authority can give an opinion on regulated prices and tariffs upon the request of the government, it can give advice to the relevant ministries, in addition to these, there is no exception for public institutions in terms of competition legislation, and the behavior of public institutions that may restrict competition may be subject to sanctions.

In **Sweden**, it is stated that the competition authority can intervene in public tenders; in **Switzerland**, the competition authority is also competent with respect to public institutions, but

will intervene through litigation; in **Lithuania**, it is stated that public institutions can be imposed administrative fines in terms of practices that are not based on the law.

All of the countries that responded in this direction indicate that the decisions taken are subject to judicial review. (Some countries did not respond in this direction but also did not indicate otherwise).

1.6. Can independant administrative or regulatory authorities resolve disputes between market participants? Can they use alternative dispute resolution methods such as mediation? If so, can their decision be subject to judicial review?

Except for 3 countries **(Spain, Lithuania, Norway),** independent administrative or regulatory authorities have the authority to resolve disputes between market participants. At this point, the countries that responded positively to this question indicate that this authority is general, but for the majority of the countries, it is stated that this authority is valid for some institutions.

It has been stated in almost all countries that the decisions taken by authorities with alternative dispute resolution competence as a result of using these powers are subject to judicial review. In **Switzerland**, it is emphasized that if an agreement is reached as a result of the use of the administrative mediation authority, this agreement includes the waiver of the judicial remedy, in which case no judicial remedy can be taken, and in **Sweden**, if an agreement is reached as a result of the mediation method, it is emphasized that the enforcement of this agreement will proceed to the enforcement phase.

The main alternative dispute resolution methods used are conciliation, commitment, mediation. In addition, it is stated that in **France** there are ombudsman offices within some authorities, in **Hungary** there is an arbitration board in the field of public procurement, a media council for media disputes, and a permanent arbitration court for concession agreements.

Subject 2: Judicial review of the acts of Independant Administrative Authorities / Regulatory Authorities: jurisdiction of the courts

2.1 Jurisdiction of the courts to review the acts of independent administrative authorities / regulatory authorities;

2.1.1 If there is a separation of judicial system in your country, which system has jurisdiction to hear appeals against acts of independant administrative or regulatory authorities?

In the member states that responded to the survey and where a system of judicial separation applies **(Germany, Austria, Belgium, Algeria, Czechia, Morocco, Ivory Coast, France, Italy, Sweden, Latvia, Lithuania, Niger, Poland, Portugal, Romania, Slovakia, Thailand, Türkiye and Greece)**, judicial review of the acts of independent administrative or regulatory authorities is as a rule [30] carried out by administrative courts.

[30] In **France**, for example, judicial review of the actions of the Competition Authority and some other authorities/regulatory bodies is carried out before the judicial court of appeal (Paris).

In countries without judicial separation **(China, Spain, Switzerland, Hungary, Norway, Chile and Togo)**, judicial review of the acts of independent administrative or regulatory authorities varies from country to country. In **China**, the judicial review of the acts of these authorities is carried out by administrative units (departments) [31], established to hear administrative cases, in **Spain** by administrative courts, one of the specialized courts within the judicial system, in **Switzerland**, as a rule, by administrative courts, one of the three types of courts[32] within the same judicial system, in **Hungary**, by administrative judges in the administrative departments of the eight supreme courts, in **Norway**, by the District Court, in **Chile**, by ordinary courts of justice and special courts established by law, in **Togo**, by the administrative division of the courts.

As a result, even in countries with a system of unity of jurisdiction, it is observed that, as a rule, jurisdiction over applications against the acts of these authorities is not resolved by ordinary courts, but by separately established administrative courts or administrative divisions of ordinary courts.

2.1.2 Within this order, which courts have jurisdiction to hear these appeals? Does the attribution of a jurisdiction to a court depend on the field of the activity of the independant administrative authority or the regulatory authority?

In many countries with separation of judiciary **(Germany, Algeria, Morocco, Italy, Sweden, Latvia, Lithuania, Poland, Romania, Slovakia, Thailand and Türkiye),** the judicial review of the acts of independent administrative authorities or regulatory bodies is conducted by the administrative courts as the court of first instance; in **Belgium**, as a rule, by the Supreme Administrative Court[33]; in **France**, because of special legislation by the Supreme Administrative Court as the court of first and last instance, in **Greece**, by the administrative court of appeal and the Supreme Administrative Court, depending on the individual or regulatory nature of the action and the relevant Institution, in accordance with the provisions of the special laws. [34]

[31] As monopoly litigation in China requires strong expertise, such administrative cases are heard by the Intellectual Property Court (Department) of the Supreme People's Court of China.

[32] Civil courts that handle disputes between private individuals, criminal courts that investigate and prosecute crimes, and administrative courts that handle disputes between private individuals and the government.

[33] In France, the Administrative Court of Appeal has jurisdiction as a court of first and last instance against some decisions of the Audio and Visual Communication and Digital Communication Regulatory Authority. On the other hand, it is understood that the Paris Court of Judicial Appeal has jurisdiction over certain decisions of ARCEP, AMF and ADLC.

[34] In **Greece**, the judicial review of the actions of the National Broadcasting Board and the Personal Data Protection Authority will be carried out by the Council of State as the Court of first and last instance. In Greece, the Administrative Courts of Appeal are competent to decide as the court of first instance on full judicial proceedings

In **Sweden and Portugal**, where a system of judicial separation applies, courts within the administrative jurisdiction as well as special courts are responsible for judicial review of the acts of independent administrative or regulatory authorities. In **Sweden**, decisions of certain independent administrative authorities are subject to the jurisdiction of special courts. For example, the Immigration Courts are tasked with examining applications against decisions of the Swedish Immigration Authority, and the Patent and Market Court is tasked with examining applications against decisions of the Swedish Competition Authority. In **Portugal**, regulatory authorities (understood to mean sectoral/economic regulators) are subject to the Competition, Regulation and Supervision Court, while other administrative authorities are subject to the administrative and tax courts.

In countries with judicial unity **(China, Spain, Switzerland, Hungary, Norway, Chile and Togo)**, appeals against the decision of an independent administrative or regulatory authority are as a rule resolved by separately established administrative courts or administrative divisions of ordinary courts. In **China and Chile**, although the rule is the same, there are specialized courts for resolving certain exceptional cases. For example, in **China**, there is the Financial Court established to handle financial administrative cases, and in **Chile**, there is the Environmental Court that reviews appeals against the actions of the Environmental Inspectorate.

In this case, it has been evaluated that, as a rule, the fields of activity of the mentioned institutions are not taken as a basis in the appointment of the courts that will carry out the judicial review of the acts of independent administrative or regulatory authorities, and the fields of activity of that authorities are taken into consideration in the appointment of the establishment, duties and powers of special courts.

2.1.3 If there is an administrative court system, can the civil courts be called upon to review the acts of independent administrative authorities or regulatory authorities?

Of the countries with a separate administrative justice system, **Algeria and Thailand** did not answer the question, **Niger, Slovakia, Greece and Romania** answered the question in the negative, and all the remaining countries stated that judicial review of the acts of independent administrative or regulatory authorities can be brought before civil courts.

In this context, in **Germany**, the decisions of the Federal Cartel Office and the Federal Communications Network Office regarding electricity and gas regulation can be appealed to the civil courts, and in **Austria**, some decisions of the Energy Control Commission can be appealed to the courts of law. In **Belgium**, with various legislative amendments, disputes have been transferred from the Supreme Administrative Court to the Markets Court. In this context, for example, administrative fines imposed by the Financial Services and Markets Authority, the Belgian Postal Services and Telecommunications Institute, the Electricity and Gas Regulatory Commission and the Central Bank of Belgium, as well as administrative fines and periodic fines imposed by the Belgian Competition Authority may be challenged before the Markets Court. The situation in **Ivory Coast** is the same as in Belgium. Where jurisdiction is delegated by law to the civil courts, the civil courts hear the dispute. For example, the legislation of the

against the Competition Authority, the Energy Regulatory Authority, the National Telecommunications and Postal Commission and the Financial Markets Authority.

competition and inflation combating authorities and the Supreme Authority for Good Governance delegates jurisdiction to the civil courts.

In France, the Paris Court of Appeal provides judicial review of the decisions of certain independent administrative authorities when they are intended to resolve disputes between private economic operators, individual decisions of the Competition Authority and the Financial Markets Authority, decisions and provisional measures of the Electronic Communications, Postal and Press Distribution Regulatory Authority. In **Sweden**, the Patent and Market Court, the Immigration Court, the Land and Environmental Court review administrative decisions of the relevant independent administrative authority. In **Italy**, the civil courts have jurisdiction only over actions of the personal data protection authority and penalties imposed by the banking and financial market regulatory authorities. In **Poland**, some regulatory acts are reviewed by civil courts. For example, regulatory acts of the Directorate for Electronic Communications (under the Telecommunications Act) and certain decisions taken by the Directorate for Competition and Consumer Protection (under the Competition and Consumer Protection Act) can be challenged before the Competition and Consumer Rights Court.

In Czechia, Türkiye and Portugal, cases arising from the private law activities of these authorities may be brought before civil courts.

In **Switzerland**, which does not have separation of the judiciary but has three separate courts in its legal system, namely civil courts, criminal courts and administrative courts, the judicial review of the acts of independent administrative or regulatory authorities is, as a rule, carried out by administrative courts. However, in some cases, these actions are reviewed by the civil courts. For example, disputes concerning agreements on access to mailboxes and the provision of address data. Again, in **Togo**, where there is no separation of the judicial system, judicial review of the acts of these authorities is carried out by the administrative division of the courts and no application for review of these acts can be made to the civil courts.

It has been assessed that the procedures subject to judicial review by civil courts differ across countries. For example, in **Czechia**, **Türkiye and Portugal**, cases arising from the private law activities of these authorities are heard by civil courts and this applies to all authorities. However, in many other countries **(e.g. Germany, Belgium, France, Poland, Sweden, Italy etc.)**, the actions taken by these authorities in their field of activity are subject to judicial review by civil courts and are limited to those independent administrative authorities whose legislation provides for such review. In some countries **(e.g. Germany, Sweden)**, all of the acts of some independent administrative or regulatory authorities are subject to judicial review by civil courts, while in other countries **(e.g. Austria, Poland)**, some acts of these authorities are reviewed by civil courts.

2.1.4 If there is a single judicial system in your country, are there any specialized courts having jurisdicion for the judicial review of the acts of these authorities?

Switzerland and Togo explicitly state that there are no courts with special jurisdiction to review the actions of these authorities. **China** states that there are special courts or judicial bodies that exercise judicial review over the acts of certain authorities, and cites as examples the judicial bodies established in the Supreme People's Court to hear monopoly cases and the Finance Court established to hear cases concerning the acts of financial regulatory authorities.

Under this heading, **Spain, Hungary and Chile** have made explanations regarding the courts in charge of reviewing applications against the acts of independent administrative authorities. Accordingly, judicial review of the acts of these authorities is conducted in **Spain** through administrative courts, specialized administrative chambers in regional courts and the National Court; in **Hungary** through administrative chambers in only eight of the twenty supreme courts; and in **Chile** through ordinary courts, civil courts of first instance, courts of appeal and the Supreme Court. **Spain and Hungary** did not further clarify whether there is a court of special competence to review the acts of these authorities. **Chile**, on the other hand, stated that judicial review of decisions taken by the Environmental Inspectorate is carried out by the Environmental Courts, which are special courts.

2.1.5 In the event that any of these authorities impose an administrative sanction, which court has jurisdiction to review an appeal against the sanction?

In **Austria, Belgium, Algeria, Czechia, Morocco, Ivory Coast, France, Sweden, Italy, Latvia, Lithuania, Niger, Poland, Romania, Slovakia, Thailand, Türkiye and Greece**, judicial review of administrative sanctions imposed by independent administrative or regulatory authorities is, as a rule, carried out by administrative courts. Within the administrative jurisdictions, this control is also exercised by administrative courts **(Austria, Algeria, Czechia, Morocco, Ivory Coast, Sweden, Italy, Latvia, Poland and Slovakia)**. In **Belgium, France and Greece**, the Supreme Administrative Court has jurisdiction in this respect.

In **Türkiye**, the judicial review of most of the administrative fines imposed by independent administrative authorities can be filed before administrative judicial authorities due to special provisions in their laws.

In **Belgium and Ivory Coast**, the exception to the rule that judicial review of administrative sanctions imposed by independent administrative or regulatory authorities is carried out by administrative tribunals is when the dispute is assigned by law to another court. For example, in **Belgium**, administrative fines imposed by the Financial Services and Markets Authority, the Belgian Postal Services and Telecommunications Institute, the Belgian Electricity and Gas Regulatory Commission and the Central Bank of Belgium, as well as administrative fines and periodic fines imposed by the Belgian Competition Authority, may be challenged before the Markets Court, as they are regulated by law. **Austria and Italy**, the judicial review of administrative sanctions imposed by certain independent administrative or regulatory authorities is outside the jurisdiction of administrative courts. In Austria, the judicial review of fines in the field of competition law and in Italy of fines imposed by the banking and financial markets regulatory authorities is carried out before the judicial courts.

In **Germany and Portugal**, administrative sanctions imposed by independent administrative or regulatory authorities are judicially reviewed by judicial courts. In Germany, this judicial review is carried out through the criminal courts, while in **Portugal** it is carried out before the Competition, Regulation and Supervision Court.

In **China, Spain, Switzerland, Hungary, Norway, Chile and Togo** , where there is no separation of jurisdiction, the court competent to hear appeals against administrative

sanctions imposed by independent administrative or regulatory authorities is the same as the court competent to hear other decisions of those authorities.

In most of the countries with separation of judiciary **(Austria, Belgium, Algeria, Czechia, Morocco, Ivory Coast, France, Sweden, Italy, Latvia, Lithuania, Niger, Poland, Romania, Slovakia, Thailand, Türkiye and Greece)**, judicial review of administrative sanctions imposed by independent administrative or regulatory authorities is carried out by administrative courts, with exceptions, whereas in two countries **(Germany, Portugal)** the judicial review power belongs to judicial courts.

2.2 Jurisdiction of the Supreme Administrative Court

2.2.1 Does the Supreme Administrative Court have jurisdiction to review appeals against the acts of independant administrative authorites and regulatory authorities?

All countries (except for countries where the judicial system is not separated) answered this question in the affirmative. (Details on the jurisdiction review are provided in question 2.2.2.)

2.2.2 Does the Supreme Administrative Court have jurisdiction at first instance, on appeal or in cassation?

Czechia and Italy explicitly stated that the supreme administrative court is always the second and final decision-maker, i.e. that the supreme court has only appellate jurisdiction. **Germany, Algeria, Latvia, Poland, Romania and Slovakia** did not explicitly state this, but when their responses to this questionnaire are taken as a whole, it is concluded that the higher administrative courts in these countries also have only appellate jurisdiction.

In **Austria, Morocco, Ivory Coast, Sweden, Lithuania, Thailand and Türkiye,** the supreme administrative court has appellate jurisdiction as a rule, but in some cases it examines disputes at first and last instance. The situations in which the supreme administrative courts of these countries have jurisdiction as courts of first and last instance are different. For example, the Ivory Coast supreme administrative court has jurisdiction to examine at first and last instance appeals against the judicial acts of certain independent administrative or regulatory authorities *(National Public Procurement Regulatory Authority, National Press Authority, Ivory Coast Telecommunications Regulatory Authority)*. In **Lithuania**, the Supreme Administrative Court is the sole and final authority in cases where jurisdiction is vested by law in the Supreme Administrative Court and in relation to regulatory administrative acts. In **Türkiye**, cases against nationwide regulatory acts of independent administrative authorities are heard by the Supreme Administrative Court (Danıştay) as the court of first instance.

In Belgium and France[35] the Supreme Administrative Court is competent to decide at first and last instance on a significant part of disputes arising from the actions of regulatory authorities.

In **Greece,** [36] the Supreme Administrative Court is the first and final instance to decide on a significant part of the disputes arising from the actions of regulatory authorities.

It is concluded that the appellate jurisdiction of the higher administrative courts is primary, the first instance jurisdiction is exceptional **(except in Belgium, France and Greece)** and, as a rule, this jurisdiction is valid for limited transactions (such as regulatory acts, sanctions, transactions of some institutions) and there is no power of appeal.

2.2.3 Does its jurisdiction vary according to the individual or regulatory nature of the disputed act?

Exceptionally, in **Austria and Latvia**, it is stated that the judicial review of the regulatory acts/regulations of independent administrative or regulatory authorities shall be conducted by the Constitutional Court. On the other hand, in **Sweden**, it is stated that the regulatory acts of these institutions cannot be challenged.

Germany, Czechia, Ivory Coast, Italy, Niger, Poland, Romania, Thailand and Slovakia have stated that the individual or regulatory nature of the administrative act is not effective in determining the jurisdiction (first instance, appeal) of the supreme administrative court. Indeed, except for **Niger and Thailand**, the supreme administrative courts of other countries have only appellate jurisdiction.

France, Lithuania, Türkiye and Greece answered this question in the affirmative (Detailed assessment is made under question no. 2.2.2).

2.3 Are there any special rules for determining the territorial jurisdiction of courts to review the acts of independent administrative authorities or regulatory authorities?

In many countries **(Germany, Austria, Belgium, Czechia, China, Morocco, Poland, Portugal, Slovakia, Togo, Türkiye)** there are no specific rules for determining the court that

[35] The proceedings reviewed by the French Supreme Administrative Court as a court of first and last instance are as follows: Decisions taken within the scope of the supervisory or regulatory role of the independent administrative or regulatory authorities expressly listed in the Code of Administrative Jurisdiction (French Anti-Doping Agency, Prudential Control and Remedy Authority, French Competition Authority, Financial Markets Authority, Audiovisual and Digital Communications Regulatory Authority, Electronic Communications and Postal Regulatory Authority, National Gaming Authority, Public Procurement Regulatory Authority, French Nuclear Safety Authority, Energy Regulatory Commission, National Commission for Information Processing and Freedoms, High Authority for Good Governance, National Commission for the Control of Intelligence Techniques), Sanctions imposed by certain independent administrative or regulatory authorities expressly enumerated in the Administrative Jurisdiction Law (sanctions imposed by the Careful Supervision and Resolution Authority, the Electronic Communications and Postal Regulatory Authority and the Energy Regulatory Committee, and sanctions imposed by the Financial Markets Authority on approved investment service providers), regulatory actions of all independent administrative or regulatory authorities, including independent administrative or regulatory authorities not expressly enumerated in the Administrative Jurisdiction Law

[36] The acts subject to the judicial review of the Hellenic Supreme Administrative Court as a court of first and last instance are: Regulatory acts of independent administrative or regulatory authorities, individual acts of independent administrative or regulatory authorities in all cases where the law does not confer jurisdiction on another court

will hear appeals against acts of independent administrative or regulatory authorities. The competent court to resolve the dispute is determined in accordance with the general rule of competence, which also applies to other administrative acts. In these countries, the rule of territorial jurisdiction is usually applied to determine the competent court **(Czechia, Morocco, Poland, Türkiye)**. Therefore, the competent administrative court is usually the administrative court where the headquarters of the independent administrative or regulatory authority is located.

Italy and Romania declare that there are special rules for the determination of the court that will hear appeals against the acts of independent administrative or regulatory authorities, but do not explain what those special rules are. Examples of courts competent to review the acts of some independent administrative and regulatory authorities are given.

Although **France** has answered this question in the affirmative, it has been observed that the statement made is not related to the jurisdiction of the court that will conduct the review.

Some countries **(Spain, Sweden, Switzerland, Latvia, Lithuania, Hungary, Norway, Chile, Greece)** only state what the rule is for the determination of the court that will examine applications against the acts of independent administrative and regulatory authorities, but do not emphasize whether the rule is general or specific. It is therefore unclear whether there are any special rules for determining the competent court in these countries.

Subject 3: Judicial review of the acts of Independant Administrative Authorities / Regulatory Authorities: *Rules of procedure and admissibility of the appeals*

3.1. Are judicial appeals against those acts the same as those available against the administrative acts of other administrative authorities? For example, is there a mandatory administrative application procedure?

From the analysis of the responses of the higher administrative courts to this question, in almost all countries, there is no difference in principle in the remedies foreseen against the acts of independent administrative authorities/regulatory bodies compared to other administrative acts.

In some member states **(Austria, Czechia, China, Morocco, Chile, Türkiye)**, exceptions are provided for applications against the acts of independent administrative authorities/regulatory authorities. For example, in **Türkiye**, for certain public procurement procedures, there is a mandatory administrative remedy called complaint and objection complaint for applications to be made against actions taken by contracting authorities in relation to procurement processes, first to the contracting authority and then to the *Public Procurement Authority*, which is an independent administrative authority, against the action taken by that contracting authority. In this framework, as a rule, it is not possible to file a lawsuit directly against such transactions, but it is necessary to file a lawsuit upon the decision of the *Public Procurement Board.*

6 countries **(Ivory Coast, Niger, Poland, Romania, Thailand, and Togo)** provide for a mandatory administrative remedy before filing a lawsuit against the actions of independent administrative authorities/regulatory bodies.

Some countries **(France, Spain and Italy)** do not provide for a mandatory administrative remedy before filing a lawsuit against the acts of independent administrative authorities/regulatory bodies.

3.2. Is there any special procedure for judicial review of the acts of these institutions? If so, what are the differences between this particular judicial procedure and the usual procedure?

In 2 countries **(Austria and Togo)**, special jurisdictional procedures have been established in cases brought against the actions of independent administrative authorities/regulatory bodies. In **Austria**, for example, a special procedure is provided for certain decisions of the Austrian Energy Control Authority *(Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft, E-Control*) on dispute resolution. In **Togo**, the time limit for the processing of cases brought against the actions of these institutions is shorter than the usual procedure.

In 8 countries **(China, France, Switzerland, Italy, Poland, Portugal, Chile and Türkiye)**, the general procedure applies as a rule for judicial review of the acts of these institutions, but some exceptions are envisaged. In **China**, special rules on jurisdiction, trial mechanism, cross-examination, verification of evidence, mediation and conciliation, and the time limit for filing a lawsuit have been set for the judicial proceedings of certain types of cases that require special knowledge in the field of economics. In **France**, for some actions, the judicial authorities are given the power to rectify the disputed actions in addition to the power to annul them. In **Chile**, different procedures are established for each action. In **Italy**, the time limits for actions taken by these institutions are half the time limits for other actions. In **Türkiye**, a special procedure, the expedited procedure, has been established for certain proceedings (e.g. disputes arising from public procurement procedures). Differences are envisaged regarding the time limit for filing a lawsuit, initial examination, finalization of the file, objection to decisions on stay of execution requests, and legal remedies for court decisions.

In other countries, there is no special judicial procedure for judicial review of the acts of these institutions.

3.3. Are there any special rules regarding the admissibility of appeals against the acts of these authorities? (interest in bringing proceedings, time limits for appeal, etc.)

In almost all countries, there is, as a rule, no difference in admissibility for actions brought against the acts of independent administrative authorities/regulatory bodies compared to other administrative acts.

In some countries **(France, Sweden, Switzerland, Italy, Chile, Türkiye)**, exceptions are provided for the admissibility of actions brought against certain actions of these institutions. For example, in **France**, a special time limit of ten days is set for appeals against decisions taken by the *Autorité des marchés financiers (AMF)*. In **Türkiye**, some of these institutions have different time limits for filing a lawsuit against their actions than the general time limits for filing a lawsuit. For example, administrative sanctions imposed by the *Radio and Television Supreme Council* must be filed within fifteen days.

3.4. Can the "soft law" instruments of these authorities (opinions, recommendations, warnings, opinion papers) and, more broadly, all the documents they

may publish for market operators (in whatever form: codes of conduct, guidelines, press releases, website sections, frequently asked questions, etc.), be directly subject to an action for annulment?

5 countries **(Germany, China, Italy, Hungary and Chile)** have stated that the "soft law" activities of these institutions may be subject to direct annulment proceedings.

Algeria, one of the member states, did not provide a clear answer to this question.

In other countries, it is stated that the "soft law" activities of these authorities cannot be directly subject to annulment proceedings. In 3 countries **(France, Spain and Türkiye)**, the merits of the lawsuits to be filed against these actions will be examined if they have an impact or change in the legal fields of the persons concerned or if they involve a threat of sanction.

3.5. Who can challenge the acts of regulatory authorities? Please specify the criteria for assessing the interest in bringing an action, making any useful distinction according to the type of act (soft law instruments, regulatory acts, individual acts, administrative sanctions, etc.).

Almost all countries recognize that persons who have a legally protectable, concrete, actual and legitimate interest in the actions of independent administrative authorities/regulatory bodies have the capacity to sue.

In one country **(Austria)**, persons other than those whose subjective rights have been violated also have the capacity to sue against the actions of these institutions in order to ensure objective legality.

In some of the member states **(Germany, Czechia, Ivory Coast, France, Türkiye, Greece, Thailand)**, persons bringing an action for annulment or revocation of an act must show that the act affects them sufficiently specifically, definitively and directly.

In a number of member states **(Algeria, Morocco and Spain)**, the relevance of interest is broadly assessed in actions for the annulment of regulatory acts.

In some countries **(China, Hungary, Poland, Slovakia, Togo)** it is provided that the public prosecutor's office may also bring a case on behalf of the public. In **Poland**, if an appeal is not raised by the public prosecutor, the *Commissioner for Human Rights (Ombudsman)* or the *Ombudsman for Children*, it can only be lodged after the complainant has exhausted his or her remedies before the competent authority. In **Latvia**, the right to appeal to the Constitutional Court on the conformity of regulatory acts with the rules of supreme judiciary is granted to certain persons and/or institutions.

3.6. If the time limit for appeal has expired, can the legality of the act be challenged on the occasion of an appeal against another act, taken by the same authority and applying the first act (plea of illegality)? Will the plea of illegality lead to the annulment of the first act?

11 of the Member States **(Austria, Algeria, Czechia, Morocco, France, Spain, Hungary, Niger, Togo, Türkiye and Greece)** stated that if the time limit for filing a lawsuit has expired, the legality (illegality) of the action may be asserted in a lawsuit filed against

another action based on that action. **Austria, Czechia, France and Türkiye** have stated that if the claim of illegality in terms of the regulatory act is deemed justified in these cases, an annulment decision may be issued in terms of the individual act based on the regulation in question. **Greece,** on the other hand, stated that an annulment decision may not be issued in respect of the individual act. The other 6 countries in this group did not give a clear answer as to whether or not an annulment decision would be issued in the context of a claim of illegality.

For other countries, except for some exceptions, negative answers have been given to this question.

Thailand did not respond to this question.

3.7. Before which courts should actions for damages resulting from the acts of these authorities be brought? Do these actions lead to the liability of the authorities or the liability of the State, on whose behalf the authorities act?

In 10 countries **(Germany, Austria, Belgium, Czechia, Sweden, Hungary, Norway, Poland, Slovakia and Chile)**, it is stated that the civil courts adjudicate cases brought by these authorities/regulatory bodies seeking compensation for damages caused by their actions. In countries other than **Belgium, Czechia and Hungary,** claims for compensation can be brought against the State. In **Czechia,** a distinction is made between damages caused by the exercise of State authority and damages caused by regional autonomous units (municipalities, regions and their authorities), and the addressee to whom the claim for compensation is directed is determined. In Belgium and Hungary, after determining whether the institution causing the damage has legal personality or not, the claim for compensation is brought against the administration with legal personality or the State. On the other hand, in Belgium, in some cases, such actions may also be brought before the Supreme Administrative Court.

Ivory Coast has stated that in the absence of administrative courts and administrative courts of appeal, the ordinary courts deciding administrative matters are competent to hear cases for damages arising from the acts of independent administrative authorities.

In 15 other countries, administrative courts decide on claims for compensation for damages caused by the actions of these authorities. In 8 countries **(China, France, Lithuania, Niger, Portugal, Togo, Greece and Spain)**, claims for compensation can be brought against the State; in 4 countries **(Algeria, Morocco, Switzerland and Latvia)**, claims for compensation can be brought against the legal entity or the State after determining whether the authority causing the damage has legal personality or not; and in 4 countries **(Italy, Romania, Thailand and Türkiye)**, claims for compensation can be brought against these authorities.

<u>Subject 4: Hearing of appeals by the courts</u>

4.1 Are these cases assigned, within the courts and more particularly within the supreme administrative court, to dedicated chambers or panels? Are there special rules for allocating these cases to chambers or panels?

There are basically two practices regarding the courts or tribunals that will hear cases brought against the actions of independent administrative authorities/regulatory bodies: in some countries, these cases will be heard by a randomly allocated court like other cases, while in other countries, it may be decided that these cases will be heard by specific courts.

There are basically three practices as to which chambers or panels of the Supreme Administrative Court will examine the cases filed against the actions of independent administrative authorities/regulatory bodies. In some countries, these cases are examined by specific chambers, in some countries, these cases are examined by all chambers as a result of a random distribution, and in some countries, as a natural consequence of the fact that only one chamber within the supreme court is responsible for administrative cases, these cases are resolved by the chamber of the supreme court that deals with administrative cases. In cases where there is only one chamber dealing with administrative cases, or where there is only one chamber in the supreme court, there are countries where these cases are dealt with by specialized judges/members/sections.

In a number of countries with supreme administrative courts **(Austria, Czechia, Ivory Coast, Sweden, Lithuania, Hungary, Portugal and Greece)**, there is no separate chamber in charge of examining appeals against the acts of independent administrative authorities, and these cases are referred to existing chambers/judges on a random allocation basis without any specific rule. In some countries **(Sweden and Lithuania)**, where the number of chambers is small or there is no chamber organization, cases can be allocated according to the specialization of the judges.

In some of the countries with supreme administrative courts, there is no separate chamber(s) in charge of examining appeals against the actions of independent administrative authorities/regulatory bodies. In 2 countries **(Germany and Italy)**, the supreme administrative courts have a separate chamber in charge of resolving these disputes. In some countries **(Belgium, Algeria, France, Türkiye and Thailand)**, these cases are not sent to a single chamber, but there are specific chambers assigned to examine the actions of specific administrations or specific issues within the scope of the division of labor determined by the competent councils. For example, in Algeria, there is a chamber in charge of public procurement cases. In **France**, cases related to regulatory authorities are referred to the chambers in charge depending on the administration or sector that established the transaction *(e.g. cases in the field of energy are examined by the 9th Chamber and cases related to the Financial Markets Authority are examined by the 6th Chamber)*. In **Türkiye**, the vast majority of these cases are resolved by the 13th Chamber and in exceptional cases, the 10th Chamber is in charge.

In some countries with a supreme administrative court **(Poland and Slovakia)**, it is stated that the subject matter of the proceedings (e.g. social, commercial or financial) is the basis for the referral of cases to the chambers, not the nature of the administration that established the procedure. For example, in **Poland**, the Supreme Administrative Court is divided into three divisions: fiscal, commercial and general administrative, and these cases are referred to the commercial division. It is stated that a similar method is applied in the Supreme Administrative Court of **Slovakia**.

In another country **(Niger)**, there is only one case chamber of the Supreme Administrative Court, which hears all appeals in these cases.

In countries **(Morocco-Spain-Latvia-Norway-Romania-Togo)** where there is no separate supreme administrative court and where there is a single court of appeal (in some countries referred to as the supreme court), administrative cases arising from the acts of independent administrative authorities/regulatory bodies are resolved by the chamber of these courts in charge of resolving administrative disputes **(e.g. Spain, Romania)** or, if there is no

multi-chamber organization **(e.g. Norway)**, by the section/judge dealing with administrative cases within a single chamber. However, it is also noted that, depending on the nature of the dispute, it may be referred to specific departments within the administrative chamber or to judges specialized in this field **(e.g. Latvia)**. In the supreme courts of **Switzerland and Chile**, where there is a single court of appeal, there are multiple chambers, but no separate administrative chamber, and these cases are resolved by a specific chamber within the supreme court (2nd Public Law Chamber in **Switzerland**, 3rd Chamber in **Chile**).

In **China**, these cases are handled by specialized courts within the Supreme People's Court.

In cases where there is a three-tier judicial system and the jurisdiction of the regional courts, which constitute the second stage of the proceedings, is limited to a certain geographical area, as a natural consequence of the fact that the headquarters of some administrations are located within the jurisdictional area of the regional administrative court, all of the files of the relevant administrations are examined by the regional court where their headquarters are located. For example, since the headquarters of the **Czech** Department for the Protection of Competition is located in Brno, all competition protection and public procurement cases are examined by the Regional Administrative Court of Brno. In some countries with a three-tier judicial system **(Italy and Türkiye)**, it has been stated that there is a specialized department in charge of resolving these disputes within the regional administrative courts.

It was noted that in some countries **(Germany and Türkiye)**, the court that will examine these files is determined by the random distribution of the files and that the referral of certain cases to certain courts is strictly prohibited. In some countries **(China)**, it is stated that a decision can be taken to refer cases to a specific court. In **Greece**, it is stated that there is a specialized panel within the Athens Administrative Court to evaluate the cases filed against the decisions taken by the Greek Competition Authority.

4.2 Within the supreme court, do the stages of the hearing of these appeals differ from the usual stages of the work of the judges?

With the exception of two countries **(China and Morocco)**, the review stages of these cases are subject to the same rules and procedures as other cases and there are no differences. However, it is also stated that there is a need for special examination methods.

One country **(Lithuania)** stated that the examination stages of these cases are the same as in other cases, but that due to the complex technical and legal nature of some of these cases, oral hearings are held in addition to the traditional written procedure.

4.3 Do you use particular methods of investigation, particularly in complex cases (hearing, expert's reports, amicus curiae etc.)?

Supreme courts are basically divided into two categories in terms of the nature of the examination they conduct at the appeal stage. While some supreme courts only conduct legal review, some supreme courts also conduct factual review. Countries that only conduct legal review have stated that the so-called *amicus curiae* (friend of the court) intervention, such as expert examination, expert opinion, etc., is not available at the appellate stage.

Most of the supreme courts **(Belgium, Algeria, Czechia, China, Morocco, Ivory Coast, France, Sweden, Italy, Latvia, Lithuania, Hungary, Niger, Portugal, Chile, Togo, Thailand, Türkiye and Greece)** use expert opinion, expert examination, bar or on-site examination **(France)**, ordering an investigation by the administrative authority **(Chile)**, visiting facilities **(Thailand)**, hearings, etc. in technical and complex disputes. However, some of these countries state that these methods are used rarely and in exceptional cases. On the other hand, all of the countries that use these methods state that these methods are used to obtain full information about the dispute due to the complex and technical nature of these cases.

Some of the supreme courts **(Germany, Austria, Spain, Switzerland, Norway, Poland, Romania, Slovakia)** do not, as a rule, use special investigative methods due to the fact that judicial review is carried out at the appellate stage. However, in some countries, as an exception to this, a hearing may be held, and in European Union member states, the European Commission may intervene in the case through an *amicus curiae* intervention and submit information and opinions on the matter.

4.4 What is the practice of the Supreme Administrative Court regarding the business secrecy?

In **Germany**, at the request of the parties, the trade secrets of the parties are kept confidential. At the request of the plaintiff or another party, the court may, as an interim procedure, hold secret hearings before a special panel, which assesses whether the blackouts in administrative files relate to trade secrets that need to be protected, and if so, the panel approves the blackouts; otherwise, it lifts the blackouts. The blackout includes non-disclosure of trade secrets in the justification for the decision.

In **Austria**, Supreme Court employees are reminded of the legal procedures on official secrecy upon taking office.

In **Algeria**, the publication of trade secret data in the context of a case is prohibited.

In **Czechia,** hearings on trade secrets can be closed to the public, trade secret information can be requested to be removed from the file, and requests for access to such information under the "Act on Free Access to Information" can be denied.

In **China**, if the evidence involves trade secrets, a closed session may be held ex officio or at the request of the parties, and protective measures may be taken, such as prohibiting copies, providing access only to lawyers or enforcing confidentiality undertakings.

In **Morocco**, measures to protect commercial confidentiality can be implemented by balancing the need for confidentiality with the principles of transparency and access to justice. These measures include restrictions on the disclosure of confidential information during trials, the use of closed courtrooms for sensitive cases or the adoption of specific protocols for handling confidential information.

In **France**, the Supreme Administrative Court may decide that the need to exercise defense rights may justify a regulatory authority's lifting of trade secrecy. The application of the provisions on trade secrecy in the course of the proceedings is regulated in detail in the Commercial Code, and the rules on the protection of commercial secrecy may also be applied in administrative proceedings if the conditions set out in the Code are met.

In **Spain**, the Supreme Court has stated that the Trade Secrets Law, issued pursuant to the European Union Directive 2016/943 on the protection of confidential information and trade secrets, applies to trade secrets.

For information to be confidential in **Sweden**, a provision in the Public Access to Information and Privacy Act must be applicable, and there is no general provision protecting trade secrets. Stronger confidentiality generally applies to cases involving potentially damaging information (e.g. arising from proceedings of the Swedish Competition Authority).

In **Switzerland and Slovakia**, trade secrets are not included in the decisions as they are published anonymized.

In **Italy**, trade secrets are anonymized in the administrative process before filing a lawsuit and remain anonymous for the parties during the proceedings.

In **Latvia and Lithuania**, a decision to restrict access to trade secrets can be taken upon application of the parties and in the presence of the necessary conditions.

Norway has rules on exemption from the introduction of trade secrets as evidence, closed-door hearings and confidentiality.

In **Poland**, hearings can be held behind closed doors if necessary for the protection of privacy or other important private interests (including trade and company secrets).

In **Ivory Coast and Togo**, court proceedings and negotiations are confidential.

In **Thailand**, when a request for a commercial confidentiality order is made, the judge determines whether the documents or information sent to him/her fall into the category of those that may be exempted from adversarial proceedings, and if these elements are exempted from adversarial proceedings, the judge may make a decision based on these documents without transmitting them to the other party.

In **Türkiye**, an interim decision at the stage of the proceedings gives the party submitting the document a deadline to submit the documents to the file by removing the trade secrets, and the information and documents free of trade secrets are notified to the opposing party as a result of the second evaluation made upon the response.

In **Greece**, only the judge has access to documents protected by commercial confidentiality.

4.5 Can administrations, such as ministerial departments, intervene in the trial?

This question concerns whether, in cases where independent administrative authorities/regulatory bodies have a separate legal personality, the relevant Ministry may participate in the case as an intervener if it will be affected by the outcome of the case.

The majority of supreme courts **(Germany, Austria, Algeria, Czechia, Morocco, Ivory Coast, France, Spain, Switzerland, Italy, Niger, Norway, Romania, Thailand, Togo, Türkiye and Greece)** recognize that the relevant ministries have the right to intervene in the case under general principles and rules. Some countries **(Germany)** note that in practice this

rarely happens because regulatory authorities, as competent bodies in their field, effectively represent their views. However, there are countries **(Morocco)** where the involvement of ministries in litigation contributes to the resolution of the dispute by providing additional information.

In countries where it is possible to be included as an intervener, it is stated that ministries may intervene voluntarily or upon request by the court.

In **Hungary**, it is stated that ministries may intervene as interested parties if they have been involved as a party in the process of establishing administrative acts.

In five countries **(Belgium, Sweden, Latvia, Lithuania, Poland and Slovakia)**, it is not possible for ministries to intervene in the case.

4.6 When hearing an appeal against an act with significant economic consequences, does the court seek comments from other stakeholders? If so, is this done on the court's own initiative or at the request of the stakeholders?

A number of supreme courts **(Algeria, China, Morocco, Ivory Coast, France, Switzerland, Latvia, Lithuania, Niger, Chile, Thailand, Togo and Türkiye)** may request views from relevant stakeholders. In the majority of countries that have adopted the procedure of requesting views, the court does so on its own initiative. In **Chile and Togo**, it is stated that this can also be done at the request of other stakeholders. In **China**, citizens, legal entities or other organizations can also submit opinions and suggestions or related requests on case work through letters, online complaint and petition platforms, online service platforms of people's courts, lawyers' case service platforms and case service hotlines, and courts have the responsibility to respond to such opinions, suggestions or requests. In Türkiye, it is stated that the case may be notified to persons who may be affected by the outcome of the case. In **Lithuania**, it is stated that this procedure is applied in rare cases.

Some supreme courts **(Germany, Austria, Czechia, Sweden, Italy, Norway, Poland, Portugal, Romania, Slovakia, Greece)** do not request stakeholders' views. **Norway, Portugal and Slovakia** have indicated that relevant stakeholders can express their views by participating in the proceedings through intervention rules or through *amicus curiae* applications. In Czechia, stakeholders are free to present submissions to the court.

4.7 If a third party appeals against an act taken by an independent administrative authority for the benefit of one of the market operators (e.g. a license or an authorization), can the beneficiary of the act intervene before the court? Is there a procedure enabling him to be informed of the appeal that has been lodged (on the initiative of the parties or by notification by the court)? Does he have any particular procedural rights?

The majority of countries **(Germany, Austria, Belgium, Algeria, Czechia, China, Morocco, France, Ivory Coast, Italy, Latvia, Lithuania, Hungary, Niger, Norway, Poland, Portugal, Romania, Chile, Togo, Türkiye and Greece)** recognize the right of the beneficiary or right holders to intervene as a third party in the proceedings.

There are differences between countries with regard to the procedures for third parties to be informed of the case. While some countries allow third parties to intervene in the proceedings at their own request, **Germany, Austria, Belgium, Czechia, China, Morocco,**

Ivory Coast, France, Spain, Switzerland, Italy, Latvia, Lithuania, Hungary, Niger, Poland, Portugal, Togo, Türkiye and Greece apply invitation and notification procedures to involve right holders in the proceedings. In Germany, Austria, Belgium, Czechia, France, Spain, Italy, Lithuania, Hungary, Niger, Poland, Portugal, Togo, notice to rightsholders through the court is mandatory, while in the others, notice is left to the discretion of the court. In Hungary, notification is made by sending the statement of claim and the statement of defense to the relevant party. In Chile, a report is requested from those who may be affected by the outcome of the case.

In **Sweden**, it is stated that if a third party sues a transaction for the benefit of one of the market operators, the third party who benefits from the transaction becomes a party to the lawsuit.

The rights of the beneficiary of the transaction who is involved in the proceedings as a third party vary across countries. In the majority of countries, third parties are granted most of the basic rights of the parties to the proceedings, including the right to a fair defense, to present evidence and to participate in the hearing. In **Germany**, the invited third party has full judicial rights and can also appeal against the decision. In **Algeria, France, Latvia, Niger and Portugal**, the intervener has the same rights as the other parties. In **Türkiye**, the intervener can file a legal remedy alone, even if the parties do not appeal the decision.

In **China**, if a court makes a decision that harms the rights and interests of a third party, the third party may appeal against the decision.

Subject 5: Scope of judicial review

5.1. What are the most frequently raised complaints in appeals against acts of independent administrative or regulatory authorities? According to your experience and the case law of your country, do you believe that these appeals generate particular legal difficulties? Have they led to significant legal or jurisprudential developments?

In some countries, it is not possible to generalize/discriminate about the complaints most frequently raised in lawsuits against the actions of independent administrative authorities and regulatory bodies. For example, Sweden, Hungary, Portugal, Slovakia.

It was noted that some countries do not have statistics to provide information on these complaints. For example, **Switzerland, Norway.**

The most frequent complaints related to administrative sanctions are; In **Algeria**, the freezing or withdrawal of powers granted by independent administrative authorities or the imposition of fines; in **France**, the lack of competence of these authorities, breaches of the procedural rules governing their decisions, disregard of the principle of impartiality and the rights of defense in the exercise of their powers to impose sanctions, and violations of the right to respect for private life; In **Niger**, formal and procedural defects and discrimination; in **Poland**, matters under the jurisdiction of the Financial Supervisory Authority, the Electronic Communications Authority and the Competition and Consumer Protection Authority; In **Thailand**, complaints about inadequate control and supervision and against an implementing regulation or a decision to withdraw a license; in **Austria**, issues related to the independence of the independent administrative authority, the costs, targets and quantity structure of system operators, which are periodically determined by the Austrian Energy-Control; in **Italy**,

violations of specific legal regulations, as well as technical compliance, economic sustainability and proportionality of measures taken are the most frequently raised complaints.

In general, the most frequently raised complaints across countries are related to compliance with the law, exercise of discretion, reasonableness or proportionality of the proceedings, errors of law and fact, incorrect or inadequate legal characterization, issues related to the expertise of independent/regulatory authorities, lack of legal basis, failure to protect fundamental rights, failure to comply with the principle of adversarial proceedings, and alleged discrimination. For example, **Germany, China, Czechia, Morocco, Ivory Coast, Spain, Lithuania, Chile, Türkiye.**

While these complaints can cause legal difficulties in some countries, in **Germany**, for example, the inherent complexity of regulatory law requires a judge in this area to have a nuanced understanding of economic interests and circumstances and therefore to put more effort into the resolution of the dispute, and in the Senate concerned requires rapporteurs and co-rapporteurs to prepare their preparatory opinions (votes), often more thoroughly than in other cases; In **Switzerland**, the clerks drafting the decisions had to be particularly qualified jurists whose knowledge and working capacities had to meet the highest standards in order to be hired, and the volume of cases reached a remarkable level and took several years to be decided; in **Lithuania**, there were legal difficulties in some areas due to the complex nature of the questions raised, resulting in a large number of requests for preliminary rulings (including technical details in some areas, such as communications, and legal questions in areas such as competition).

In some countries, these complaints have not led to any legal challenges. These are **Portugal, Togo**.

In Türkiye, since independent administrative authorities/regulatory bodies are specialized institutions, unlike other classical administrations, their procedures are of a higher quality; especially the complete submission of information and documents such as the justification of the procedure, analysis, technical reports, etc. to the file, and since these institutions are subject to detailed administrative procedure rules, all decision-making processes can be observed transparently during judicial review, and it can be said that these situations create a positive result in judicial review.

These complaints and legal challenges have not led to significant legal or jurisprudential developments in some countries **(e.g. Latvia)**, but have in others **(e.g. Algeria, China, Poland)**.

5.2 Does the court consider itself bound by the technical, economic or financial aspects of the decisions of the authorities? Or does it feel entitled to control them? Is the judicial review of these acts seen as a "minimum control" of legality?

In some countries, judicial review of transactions is seen as the maximum review. These include **China, Morocco, Ivory Coast, Spain, Latvia, Niger, Romania, Chile.**

In some countries, it is seen as a minimum check on compliance with the law. These countries include **Algeria, Czechia, Lithuania, Portugal, Poland, Thailand, Togo.**

In **Germany**, judicial review is seen as limited review. In Germany, as regulatory law is characterized by discretionary powers granted to the administration by the legislature, the

powers of the independent regulatory authority include regulations that are less binding than more specific legal requirements (such as an appropriate interest rate), in particular in relation to EU law, leading to only limited judicial review by the administrative courts in this area. In Austria, decisions of regulatory authorities characterized by discretion (in particular regulatory discretion) are subject to limited review.

In some countries, there are cases of limited review and maximum review. In **France**, for example, the scope of review varies according to "the amount of room for maneuver given to the authority under the texts, the nature of the decisions challenged and the content of the questions asked". In some cases, the review is limited to obvious errors of assessment. This concerns, for example, the recommendations made by the National Agency for the Safety of Medicines and Healthcare Products, in which it explains the elements it intends to take into account to assess the appropriateness of the applicable regulations on the name and packaging of medicines, thus contributing to the prevention of medication errors. In other cases, the judge exercises full control. These examples are the Telecommunications Regulatory Authority's decision to force price changes in application reference prices, the Competition Authority's position allowing a company to obtain exclusive distribution rights for television channels on another company's broadcasting platform in order to implement a merger decision, the National Commission for Information and Freedom's (CNIL) decisions to force search engine operators to comply with requests to "remove ratings", or the assessments contained in the Electronic Communications and Postal Regulatory Authority's routing guidelines.

Although the issue of minimum review is discussed in the legal literature in **Türkiye** regarding the judicial review of the acts of independent administrative authorities/regulatory bodies, this discussion has no equivalent in judicial practice. As a rule, technical and economic analysis, which is the causal element of the action taken by the authority, is one of the elements subject to judicial review. Since the main element of judicial review is to determine the illegality, it is considered that discussions on minimum or maximum review may mean avoiding the review of illegality.

5.3. In the context of an appeal against an act or a sanction, does the court have the power to reform the contested act or modify the sanction imposed?

In some countries, the court is authorized to correct the challenged action or modify the sanction imposed. For example, in **Germany** the criminal court is authorized to modify an administrative sanction, e.g. it can reduce a fine, in the case of an appeal against an obligatory regulatory decision, the court can only annul it. If the decision is divisible, it can also annul it in part. If a negative regulatory decision is challenged, the administrative court may annul the negative decision and instruct the regulatory authority to issue the requested decision.

In **Algeria**, in appeals against administrative penalties, the court may correct them and substitute its decision for the contested decision of the competent authority.

In **China**, when an administrative penalty is clearly inappropriate or other administrative actions have led to an incorrect determination of the amount of the penalty, the court has the power to issue an order to modify the administrative action or sanction.

In **France**, the court has plenary jurisdiction over fines imposed by regulatory authorities, i.e. it has the power to annul and modify contested fines. In some cases, in particular where there are texts authorizing the head of the regulatory authority to bring an action against

the fine imposed by the penal body of which he is not the head and of which he is not a member, the judge may have to increase the fine. For example, in the decision 06/04/2016 of the Supreme Administrative Court, following a simultaneous application filed both by the person subjected to the fine (requesting its annulment or at least its reduction) and by the President of the Financial Markets Authority that imposed the fine (requesting an increase in the level of the fine imposed by the Fines Committee of this Authority), it was decided to increase the amount of the fine due to the seriousness of the willful infringement committed by a person who held important positions in a bank.

Sweden has the power to modify the sanctions imposed.

In **Latvia and Hungary**, if the court finds the application justified, it may annul the relevant administrative procedure and, if necessary, order the administrative authority to conduct a new procedure and issue a new decision with instructions for the new procedure.

In **Chile**, the legislator has provided various remedies for each of the administrative authorities. For example, in cases brought against the actions of the Financial Market Commission, the court may, in its decision, neutralize, uphold or modify the sanction due to the background facts brought to its attention.

In some countries, the courts are only authorized to annul the challenged transaction. These are **Belgium, Morocco, Ivory Coast, Spain, Slovakia, Thailand, Togo, Türkiye.**

Subject 6: Drafting of Court Decisions / Judgments and Publicity

6.1 Does the drafting of court decisions/judgments raise particular issues due to the technical nature or media exposure of some of these cases?

In some countries, the drafting of decisions does not pose particular problems due to the technical dimension of the disputes and their media coverage. These are **Austria, Algeria, China, Ivory Coast, Spain, Switzerland, Latvia, Lithuania, Norway, Portugal, Togo, Switzerland, Türkiye.**

In a smaller number of countries, it has led to specific problems. For example, in **Morocco**, when disputes involve complex technical issues, judges are required to understand and analyze the specific technical aspects of the area in question and this in-depth research, consultation with experts and a thorough understanding of the technical concepts involved, and judges must be able to translate these technical aspects into legal terms that are clear and understandable to the parties involved; when disputes attract significant media attention, there can be additional pressure on judges to render fair and balanced decisions, taking into account the influence of the media and public opinion, this can make the drafting of judgments more delicate, as judges need to explain their reasoning in a clear and convincing manner, take into account technical aspects and communicate effectively with the public; writing judgments in such cases may require special skills, both technical and communication skills; judges need to be able to analyze technical aspects accurately and rigorously, while at the same time ensuring that their judgments are understandable and justifiable for all interested parties, including the public.

In **France**, the Supreme Administrative Court pays particular attention to the drafting of its decisions, especially when the subject matter is technical, and to the enrichment of its

reasoning in law and in fact, making it understandable and readable for litigants and the legal community.

In **Romania**, due to the complexity of the cases, a high level of justification of decisions is required.

6.2 Are these decisions / judgments subject to any particular rules regarding publicity or to any additional measures (e.g., a press release)?

In some countries, decisions are not subject to special publicity or additional measures. These include Czechia**, Ivory Coast, Spain, Switzerland, Italy, Hungary, Norway, Portugal and Türkiye.**

In **Germany**, all decisions of public interest are published with press releases.

The publicity given to judgments and decisions in **Morocco** can vary depending on their nature and significance. Some judgments may be widely disseminated and interpreted, while others may have a more limited scope and be published primarily for legal reference purposes.

In some countries, judgments are anonymized. In **France**, for example, the surnames and forenames of the persons named in the judgment, if they are parties or third parties, are withheld before public disclosure. Any information enabling the identification of the parties, third parties, judges and members of the court staff will also be withheld where disclosure would prejudice the security or privacy of these persons or their associates. Decisions of the Supreme Administration Court in disputes concerning acts of regulatory authorities may be disclosed in accordance with the principle of public access to justice, subject to the deletion, in certain cases, of the names of the persons involved in the case or anything else that may fall within the scope of commercial confidentiality. The main decisions of the judicial panels are published anonymously on the website of the Supreme Administrative Court, and most of the important decisions issued by the administrative courts are available in the online database. Furthermore, since Law No. 2019-222 of 23 March 2019 on the 2018-2022 programming and reform of the justice system, the administrative justice system has committed to open and make available all court decisions as open data. The decisions of the Supreme Administrative Court as of September 30, 2021 have been made available online in accordance with the privacy rules and interoperability criteria specific to open data.

In **Togo**, these decisions are not published and are not accompanied by any press releases or other publications. In **Slovakia**, a Ministry of Justice decision regulates the process of publishing court judgments and the categories of data to be subject to anonymization. In **Chile**, where a court determines that certain information contained in a judgment is subject to confidentiality, it may take appropriate measures to protect that information. The anonymization technique may be used by the court to the extent appropriate to protect such confidentiality.

In some countries, these decisions are published on the court's website and/or in press releases. These include **Austria, Czechia, Ivory Coast, Italy, Latvia, Lithuania, Poland, Greece.**

6.3 Is sensitive information, relating to "business secrecy", mentioned in the decisions/judgments? If so, is there any anonymization technique before these judgments are made public?

Most countries anonymize trade secret information in decisions before they are made public; this information is not included in the decision. In **Togo**, the court or arbitral tribunal maintains the confidentiality of its deliberations until decisions are rendered in open court, and there is no technique for anonymizing decisions before they are rendered.

Subject 7: Institutional Relations, Training and In-court Support Units

7.1 Do your court or its members regularly participate in exchanges bringing together legal professionals from the relevant economic sectors (independent administrative authorities/regulatory authorities, practitioners, academics, ministries, etc.)?

In a number of supreme courts **(Czechia-China-Morocco-Ivory Coast-Spain-Lithuania-Thailand-Togo-Greece)**, judges exchange views with people from relevant economic sectors and meetings are organized. In **Lithuania**, the Supreme Court organizes special roundtables on specific issues related to the relevant sectors and invites representatives of public institutions, regulatory authorities, bar associations and the academic community. In **Morocco**, judges can participate in conferences and seminars with the participation of independent administrative authorities/regulatory bodies, bringing together lawyers, academics and experts in the economic field, aiming to disseminate good practices and exchange information.

In a number of supreme courts **(Germany-Algeria-Sweden-Switzerland-Italy-Hungary-Slovakia-Chile-Türkiye)**, judges can participate in symposiums and academic meetings as participants or speakers, as well as lecturers. In Sweden, it is stated that judges can usually attend events to follow the legal debate in relevant fields, but before attending an event, the possibility of recusal and related issues that may arise should be taken into account. In **Türkiye**, it was reported that judicial institutions participate in such events by sharing case law.

In **Austria**, there is no interaction between judges and legal professionals from the economic sectors, although judges are informed about opportunities to attend academic lectures and symposiums.

In **France**, exchanges with regulators in the past were abandoned as they were too hampered by mutual ethical considerations related to ongoing litigation, were unstructured and lacked a clear vision, and symposiums can now be organized within the Supreme Administrative Court with the participation of regulators.

In some supreme courts **(Latvia, Poland, Portugal and Romania)** it was noted that such interactions do not exist. **Romania** stated that such meetings are not organized to protect the impartiality of judges.

7.2 Are there training, decision support, or other internal resources available to enhance judges’ understanding of these areas?

It was noted that in most of the higher courts **(Germany, Austria, Czechia, China, Spain, Sweden, Switzerland, Portugal, Slovakia, Chile, Togo, Türkiye and Greece)** the organization in charge of training judges (judicial academy, etc., in **Switzerland** it was noted that this task is performed by a foundation) can organize events and trainings to share experiences and increase the level of knowledge. In Czechia, it was noted that in addition to training aimed at enhancing judges' legal skills, there are also courses aimed at improving their knowledge in the field of economics.

In some countries **(Ivory Coast-Hungary-Türkiye)**, training activities can also be organized by the supreme courts. In **Türkiye**, the Administrative Judiciary Commission at the Supreme Administrative Court (Danıştay) organizes at least 7 panels every year, researching current administrative law issues on a national and international scale and ensuring the participation of stakeholders from the relevant academic or judicial unit. The articles prepared as a result of the presentations made during the year are also published in a book at the end of each year and made available to all legal professionals.

Morocco has training and decision-support systems designed to enable judges to deepen their understanding of regulated economic sectors, aiming to provide judges with the knowledge and skills needed to understand the technical, economic and legal issues specific to these sectors. It is also noted that courts can establish mechanisms for cooperation with independent administrative and regulatory authorities, in particular through information exchange, consultation and regular meetings, which enable judges to obtain first-hand information on developments and practices in regulated economic sectors.

In **France**, members of the Supreme Administrative Court and members of administrative courts and administrative courts of appeal can be appointed to regulatory bodies. It is stated that the purpose of this method is to ensure that members assigned to other institutions develop skills and a regulatory culture that they can use and share when they return to their home institutions. It is also noted that some members of the Supreme Administrative Court have experience of regulatory bodies through their professional experience outside the court.

It was noted that in some supreme courts **(Algeria-Norway)** such practices do not exist.

In **Italy**, the Working Office regularly organizes seminars and trainings on judicial review of the actions of regulatory authorities, inviting academic professors and members of independent administrative authorities/regulatory bodies, as well as judges from the specialized divisions of the Supreme Administrative Court and the Regional Administrative Court.

In **Latvia**, judges and deputy judges can regularly participate in trainings, courses and experience exchange programs in specific areas of law in order to increase their professional competence and knowledge. In addition, the Supreme Court has a "Legal Jurisprudence and Research Department" whose task is to study the solutions of specific problems in the field of European Union law and international law, the case law of international courts or the laws and jurisprudence of other countries, and the department can conduct a study on a specific topic upon the request of a judge. It is also stated that the Department of Administrative Affairs has six legal research advisors who assist judges in specific areas of law. It is also stated that legal

research advisors are not specialized in cases concerning the actions of regulatory authorities, but can be involved in the study of a specific issue when necessary.

The **Lithuanian** Supreme Administrative Court also has a "Legal Research Department" tasked with providing technical and analytical support to judges for a specific case. This department is composed of consultants and academics and is responsible for ensuring consistency of case law and providing opinions and information on various legal issues.

Within the organizational structure of the Supreme Administrative Court in Poland, there is a "Bureau of Judicial Decisions", which is responsible for research and documentation. This unit monitors the quality of judicial jurisprudence and the efficiency of the adjudication process in administrative courts, analyzes and makes recommendations to achieve these goals. It also organizes training conferences and seminars.

In **Romania**, the research and documentation department within the Supreme Court conducts legal studies based on doctrine, comparative law, European and national case law at the request of the courts.

Thailand organizes in-house training courses, inviting experts in various fields such as energy, budget and fiscal discipline or telecommunications. In addition, every year a large number of judges are sent to foreign institutions for specialized training in various subjects.

Subject 8: Statistics

8.1. What is the number of cases concerning independent administrative or regulatory authorities registered before the Supreme Administrative Court in 2022? What is the number of cases concerning independent administrative or regulatory authorities settled by the court in 2022 (this number may include cases that were referred to the court in previous years)?

10 countries **(Austria, Belgium, China, Spain, Switzerland, Lithuania, Norway, Portugal, Slovakia, Thailand)** did not provide an open answer to the eighth question.

When the responses of other countries are analyzed[37], the country with the highest number of cases filed and decided in the relevant period was **Türkiye**. The number of cases (mostly appeals) filed in **Türkiye** was 3762 (10,095 including those from previous years) and the number of cases finalized (mostly appeals) was 3,620. **Chile** ranked second (781 cases filed, 534 cases concluded). After these countries, the country with the highest number of cases filed and concluded was **Italy** (249 cases filed and 273 concluded). In the other countries that responded to this question, the number of cases filed and concluded (separately) was below 150 (e.g. 141 cases filed and 118 concluded in **Poland**; 107 cases filed and 86 concluded in **France**; 44 cases filed and 34 concluded in **Togo**; 18 cases filed and 5 concluded in **Algeria**).

[37] Although not stated by some countries, it is understood that the figures for the number of cases dismissed also include cases from previous years.

8.2. What is the estimate percentage of cases concerning independent administrative or regulatory authorities in the total number of cases registered and settled by the court in 2022?

From the analysis of the responses to this question by member states, it appears that in all countries, except **Togo**, cases concerning independent administrative authorities in the relevant period constitute a small proportion of the cases filed and concluded in the Supreme Administrative Courts in the same year. For example,in **Türkiye** it was 4.1%; in **Latvia**, 2.4%; in **France**, 1.1%; in **Romania**, 1.05%; and in **Chile**, 0.3%. **Togo** reported a rate of 77%.

8.3. What percentage of these applications resulted in the full or partial annulment of the contested act?

An analysis of the answers to this question reveals that this rate varies between 0% and 60%. For example, this rate is 29% in **Italy**, 13.7% in **France** and 1.5% in **Sweden**. **Morocco** has the highest rate at 60%. In **Algeria**, none of the lawsuits have been partially or fully annulled. In **Türkiye**, although there is no precise data on the entire Supreme Administrative Court (Danıştay), according to 2022 data, the 13th Chamber, whose main task is the proceedings of independent administrative authorities, issued 21 annulment decisions in 698 cases heard as a court of first instance and 831 reversal decisions in 4721 cases heard on appeal.