

### Summary of answers received from SAIs in relation to the questionnaire on *de lege ferenda* motions

In August 2013, the Supreme Audit Office of Poland (NIK) distributed a questionnaire among the EU SAIs and SAIs of Candidate and Potential Candidate Countries, in which asked about the practice related to putting forward proposals for legislative improvements, so-called *de lege ferenda* motions, to introduce amendments to the law in force or to propose new regulations. The intention was to obtain answers to the following questions:

1. Does your SAI submit *de lege ferenda* motions? If yes: how many per year? (an example of such motions - one or two - would be appreciated). If not: what is the reason?
2. To whom does your SAI submit *de lege ferenda* motions? e.g. to the Parliament / the Government / the Head of the State
3. Is the information about *de lege ferenda* motions included /mentioned in the annual report of your SAI's activity?
4. How many of the submitted *de lege ferenda* motions are carried out in a given year? (an example of such case would be appreciated).
5. Does your SAI present its opinion on draft bills at the request of other bodies e.g. in the course of the government or parliamentary work?

NIK received answers from 21 SAIs<sup>1</sup>, which gave an interesting picture of the degree to which SAIs are (or are not) involved in the creation / enhancement of the national law.

#### Ad. 1

The **practice of making proposals for legislative improvements** (whether it is in the form of so-called *de lege ferenda* motions, opinions or comments) is followed by the SAIs of:

Albania - within the areas of its duties; in case of non-compliance of legal acts with the law, the Albanian SAI may ask the relevant body for the law amendments or abrogation;

Bulgaria - in relation to acts adopted by the National Assembly, the Government, ministries or other authorities; submits 5 or more proposals for legal amendments per year; most significant are those related to rules regulating the real property deals in municipalities or in the field of public procurement awarding;

Cyprus - the SAI includes such proposals in its audit reports;

Czech Republic - when requested by the Parliament and their bodies or in other interdepartmental processes, the SAI presents opinions on draft legislation concerning fiscal management, accounting, state statistics and performance of control, supervisory and inspection work; suggestions for modification to legislation are published as audit conclusions of individual audits or presented in the interdepartmental consultation process governed by the *Government Legislative Rules*; by 2013 (incl.) the SAI provided 46 opinions in different processes;

Germany - especially as part of work on regulatory impact assessment done by the SAI President in his ex officio function as Federal Performance Commissioner in his reports published; in 2005: 500 draft bills received and comments submitted on about 70;

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<sup>1</sup> Albania, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Macedonia, Poland, Portugal, Slovakia, Spain, Sweden, the Netherlands, Turkey.

Hungary - upon external requests and - from beginning of 2013 - in its sole discretion; upon request the SAI presented opinions to 10 draft legislation in 2012 and until Sept. 2013 -opinions to 10 draft legislation; in case of legislative changes and requirements seen in sole discretion until Sept. 2013 there were *de lege ferenda* motions concerning 11 legislations; e.g. proposal to amend the law related to electronic administration;

Italy - gives opinions and advices on draft laws and regulations and attends parliamentary hearings in the area of budget and public resources management; actively participated in the drafting e.g. law on fiscal federalism, on establishment of a board of auditors, public finance and functioning of local authorities;

Lithuania - proposals for legal acts are part of audit recommendations, as well as separate opinions on resolutions of the Government (audit recommendations concerning provisions of legal acts are not separately distinguished);

Poland - forwards *de lege ferenda* motions to introduce amendments to the law in force or propose new regulations; in 2012 - 65 *de lege ferenda* motions submitted (50 to amend the law and 15 to amend or adopt the Government regulations) as part of recommendations in individual audit reports, in 2013 – 78 *de lege ferenda* motions submitted (61 to amend the law and 17 to amend or adopt the Government regulations), in 2014 – 74 *de lege ferenda* motions submitted (52 to amend the law and 22 to amend the Government regulations); may also present the Constitutional Tribunal with motions e.g. to verify the compliance of laws or legal regulations with Constitution/ratified international agreements; also participates in inter-governmental consultation of new laws and law amendments;

Portugal - issues recommendations in the audit reports and the Report and Opinion on the General State Account or as part of some prior approval operations (pre-audit); the number of such recommendations per year varies and depends on the audit priorities set; the Court is informed on the approval of the new legislation during the follow-up of the recommendations.

Slovakia - expresses proposals for possible changes in the law in so-called inter-ministerial hearings to all submitted government proposals of the laws or to legislation of lower legal force; in the audit recommendations in the form of formal and substantive comments to deficiencies in proposed legislation; in 2012 - 110 comments to 343 submitted materials of legislative nature;

Spain - not being obliged by the law, the SAI issues opinions over the legislation drafting process e.g. proposals to modify laws or government procedures - when appropriate; motions may refer to one or several laws; important impact on Spanish legislation as in case of a motion on subsidies that drove to the initiative for approval of current subsidies legislation;

Turkey - *de lege ferenda* motions may be submitted in reports as a result of audits and examinations other than annual regular reports; no reports containing *de lege ferenda* motions so far.

The mandate for forwarding proposals for improvement of the legislation is usually prescribed in the acts on functioning of SAIs (e.g. the Czech Republic, Albania, Spain, Turkey) or in the constitution (Italy).

**In case there is no procedure of submitting by the SAIs *de lege ferenda* motions** nor any other proposals for amendments to the law, the main reason is that a particular SAI is not entrusted with such task/power within its mandate (Denmark, Belgium, France, Latvia); the legislative power might be entrusted exclusively to the Parliament and Government (Greece) or to an MP, group of MPs or Parliament's working bodies (Macedonia). The Swedish SAI expresses only opinions on already adopted governmental policy and does not initiate proposals for legislative improvements. In case of Belgium, the SAI's contribution to the law is indirect and consists in following up the legislation by examining the financial impact of draft bills (on demand of the Parliamentary committee) and

legality and performance audits. However, even when the SAI does not submit direct proposals, its audit recommendations might lead - indirectly - to the amendments in the legislation (e.g. in Belgium, France, Sweden). And sometimes the SAI indicates - in its audit reports - systemic weaknesses, non-compliance with laws and regulations and information on use of funds in line with legal regulations (Macedonia).

#### **Ad. 2**

Usually, proposals for law amendments or recommendations concerning law weaknesses are sent to relevant bodies responsible for developing draft law and / or its adoption such as the **Parliament** (Albania, Bulgaria, Cyprus, Czech Republic, Germany, Italy, Lithuania, Macedonia, Poland, Portugal, Spain, Turkey), **Parliamentary committees** (Hungary, Portugal), **Government** (Albania, Italy, Lithuania, Macedonia, Poland, Portugal), **President of the Republic** (Lithuania), **the ministry in charge** (Bulgaria, Cyprus, Germany, Hungary, Poland, Portugal) or **other relevant public administration bodies** (Albania, Bulgaria, Poland, Portugal, Slovakia, Turkey). In case of Poland, the SAI is authorised to ask the Speaker of the Parliament to request the Prime Minister to provide a statement on audit conclusions concerning the making and application of law.

#### **Ad. 3**

Information about proposals for legislation improvements is usually included in **individual audit reports** (e.g. Cyprus, Poland<sup>2</sup>) or/and in the **annual activity report** (Albania, Germany, Hungary, Lithuania, Macedonia, Poland, Portugal, Spain, Turkey), **annual EU report** (Czech Republic) or in other specific kind of reports like - in case of Italy - in the report attached to the certification of the State Annual Report, in the report on "coordination of public finance", as well as during "the inauguration of the judicial year". Sometimes, the recommendations related to the law improvement are of such general nature that they are not included in the annual report (Slovakia).

#### **Ad. 4**

An important issue is **whether submitted proposals for law improvement actually implemented to the law**. The situation looks quite satisfactory when the SAI's proposals for law improvement are in most or many cases accepted by a relevant authority and taken into consideration (Bulgaria, Cyprus, Italy, Spain). The number of measures for legislative proposals implemented may be quite high e.g. in Lithuania in 2011-2012 ca. 121 recommendations with direct impact on legislative changes were implemented, although not all at once. In Albania in 2012 almost half of the proposals submitted were put into the law (25 out of 58 measures for legislative improvements and changes), however in the 1<sup>st</sup> half of 2013 there were only 3 proposals implemented out of 19 submitted. In Poland that number is low: in 2012 only 8 out of 65 *de lege ferenda* motions were implemented. In Portugal the number of acts published to comply with SAI's recommendations were the following: in 2009 - 19; in 2010 - 33; in 2011 - 25; in 2012 - 29. Sometimes there is no feedback on such information (Hungary).

#### **Ad. 5**

Number of SAIs **present their opinion on draft bills at the request of other bodies** e.g. for state authorities and legislative decision-makers, in the course of the government or parliamentary work. It is the case of the SAI of: Albania, Cyprus, Italy, and also:

Bulgaria - also at its own initiative in form of recommendations in audit reports or special opinions;

Czech Republic - no requests made by Parliament or their bodies for SAI's opinion in 2012 and 2013;

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<sup>2</sup> Although the question refers to the annual report, in Portugal the proposals are also included in the individual audit reports.

Greece - in case of draft law and its provisions referring to pension claims;

Hungary - in 2012, the SAI gave opinion to 10 draft legislation, and to the same number by Sept. 2013;

Latvia - if draft regulatory enactments may affect the revenues and expenditure of the State/local governments, provide for actions with their property, with the resources allocated by EU and other international organisation or institutions which resources have been included in the State/local government budgets; in practice, the ministries request the SAI to submit opinion on draft bills (ca. 10 -12 draft bills are reviewed yearly and there might be more than one opinion on each draft bill) or SAI without asked to do so submits its opinion on important issues to the Cabinet of Ministers or to the Parliament. On case by case basis SAI representative attends sittings of the Cabinet of Ministers and the Parliament Committee's to give expertise on issues concerning revenues and expenditure of the State/local governments. Hence, SAI tends to act proactively when it comes to amending legislation in the way which could lead, for example, to misusing of the public funds;

Lithuania - in individual cases but not many of such requests, gives also comments and recommendations on draft law on financial indicators of the State/municipal budgets of respective year and on how fiscal discipline has been followed;

Macedonia - the SAI gives opinion on such request, but submitting them is not mandatory for state authorities and legislative decision-makers;

Poland - can submit proposals to the bills discussed in the Parliament and in the Government;

Portugal - on draft bills related to its competency domains at the request of the Parliament, from 2012 to Sept 2013 there were 4 such requests referring to the budgetary framework and regulatory entities framework laws, statutes of the Fiscal Council, new PPP law, and in 2014 there were 3 requests;

Spain - can submit proposals even if it is not obliged, and

Turkey - gives opinion on the by-laws and regulatory process to be prepared on financial matters by the public administration within the scope of the general government; annual reports contain information about opinions given: in 2012: opinions on 123 draft by-laws related to finance and decisions on 42 by-laws incl. 26 new by-laws, 10 by-law amendments and 6 by-laws regarding Revolving Fund Enterprises; the follow-up of the opinion implementation is carried out by the audit teams in charge of the audit of relevant public administrations.

Sometimes, the process of presenting opinion on draft bills is initiated by the SAI itself (Bulgaria, Germany). In case of the SAI of Belgium, the legislation is exceptionally assessed *ex ante* on demand of the Committee of the House of Representatives in case a draft bill has a financial impact. And the SAI of Sweden does not present opinions on draft bills, however, it comments on some of the official committee referrals from the government.