



# **Study on the enforcement of State aid rules and decisions by national courts**

Annex 4 – Methods and evidence of data  
collection for Task 4  
(Cooperation tools in State aid rules)



## Table of Contents

Table of Contents .....	2
Introduction.....	3
Part A: Aggregated outcomes of the online questionnaire .....	4
Part B: Overview of gathered information in the interviews.....	15

## Introduction

This annex forms part of the Final Study for the 'Study on the enforcement of State aid rules and decisions by national courts (COMP/2018/001)' (also referred to as: the 'Study'). It presents the evidence gathered with regard to Task 4 on the use of and efficiency of the cooperation tools between national courts and the European Commission (also referred to as: the 'Commission') provided for by the State aid Procedural Regulation.<sup>1</sup> Task 4 was conducted by Ecorys (also referred to as: the 'Cooperation Tools Team'). This annex includes the following parts:

- **Part A:** The aggregated outcomes of the online questionnaire distributed among national courts (national judges, also referred to as: 'respondents');
- **Part B:** Overview of the information gathered *via* the interviews with individual judges (also referred to as: 'interviewees').

Part A presents the aggregated outcomes of the online questionnaire among national courts. The input provided is presented for the entire group of respondents (national judges) for all the questions listed. The Final Study (Chapter 4) presents, where relevant, the results for specific groups of respondents.

Part B provides a summarised overview of the information gathered through the interviews with individual judges. The summaries focus specifically on (1) the inputs from interviewees on the use of and/or views on the cooperation tools and (2) the suggestions provided for improving the cooperation between the Commission and the national courts. Due to confidentiality and data protection reasons, not all information collected could be revealed. The Final Study (Chapter 4) presents the actual analysis of the data gathered.

During this Study, the Cooperation Tools Team has only been in contact with judges within national courts. Support staff working at national courts were not consulted and therefore did not provide any input for the data collection.

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<sup>1</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.

## Part A: Aggregated outcomes of the online questionnaire

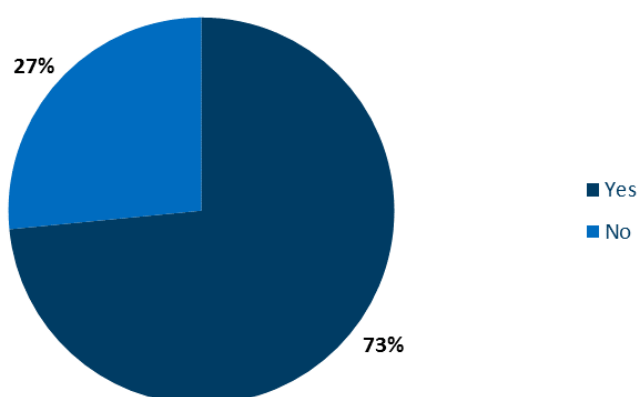
This part presents the aggregated outcomes of the online questionnaire. The number of respondents is presented for each question. It should be noted that not all participating judges completed the questionnaire. In addition, not all judges were asked the same questions. All judges were asked to complete question 1 to question 8 and question 17 to question 21. Judges who indicated having used one or more of the cooperation tools (answered 'Yes' to question 8) were also asked to complete questions 9 to 12. Judges who indicated that they had not used one or more of the cooperation tools (answered 'No' to question 8) were also asked to complete questions 13 to 16.

### Q1. Please select the country in which you work.

Country	Share of participants	Country	Share of participants
Austria	1%	Italy	4%
Belgium	3%	Latvia	5%
Bulgaria	6%	Lithuania	12%
Croatia	3%	Luxembourg	1%
Cyprus	1%	Malta	1%
Czech Republic	1%	Netherlands	4%
Denmark	1%	Poland	3%
Estonia	1%	Portugal	7%
Finland	6%	Romania	5%
France	1%	Slovakia	4%
Germany	5%	Slovenia	1%
Greece	5%	Spain	14%
Hungary	1%	Sweden	1%

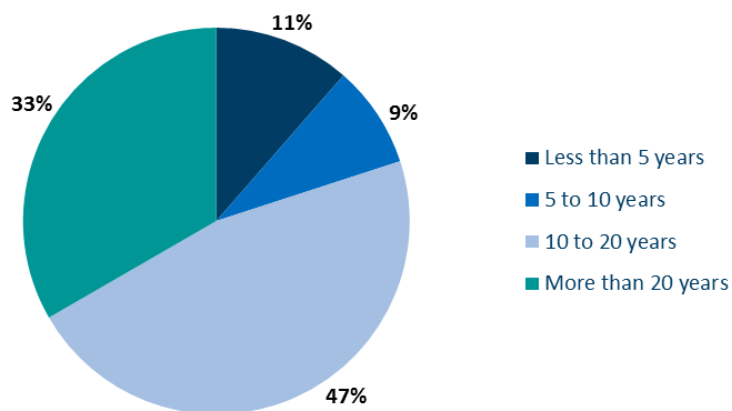
Number of responses received: 147

### Q2. Are you a practising judge or a member of a court involved in cases which (partly) include State aid elements?



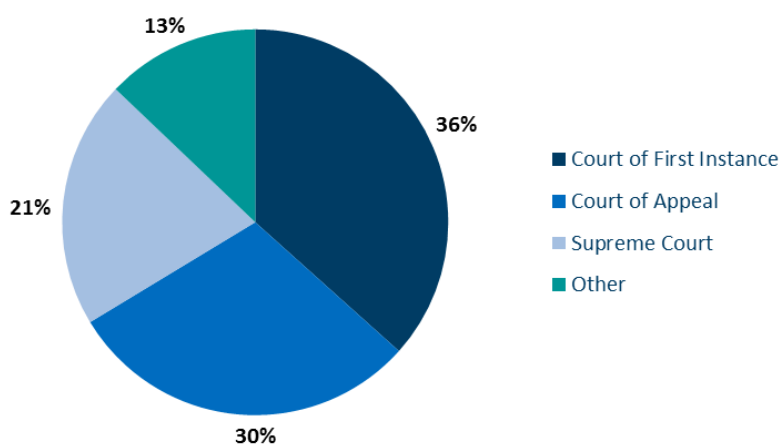
Number of responses received: 147

**Q3. Please indicate the number of years for which you have worked as a judge.**



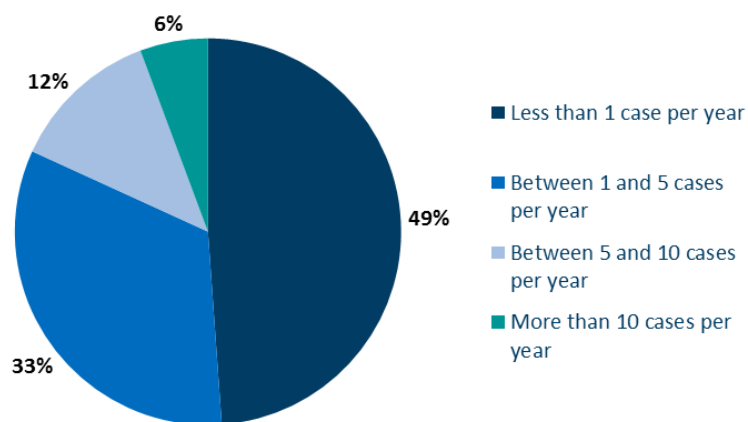
Number of responses received: 144

**Q4. At what type of court are you currently working?**



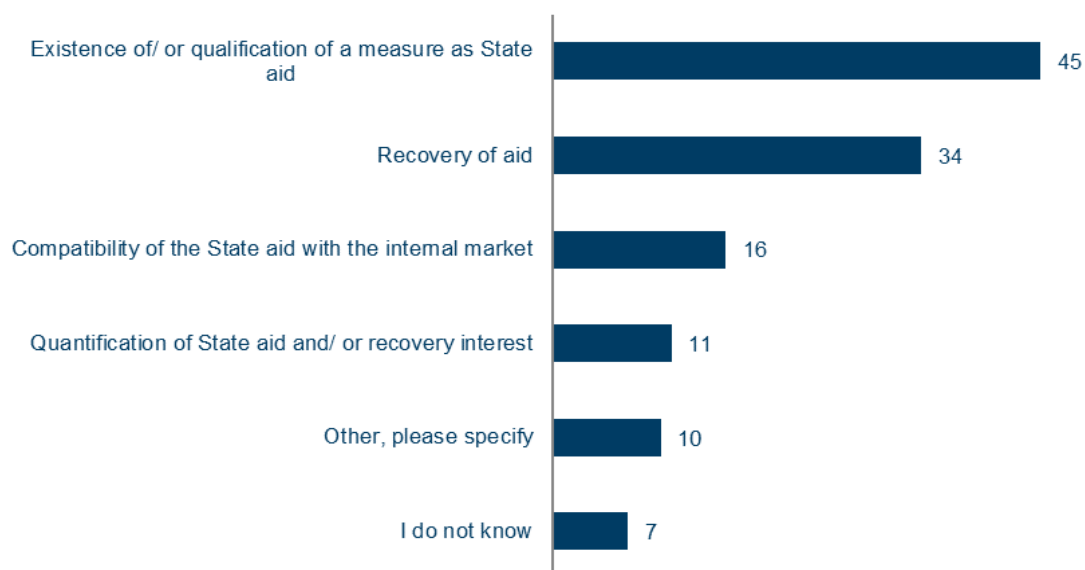
Number of responses received: 101

**Q5. How often do you work on a case involving State aid elements?**



Number of responses received: 88

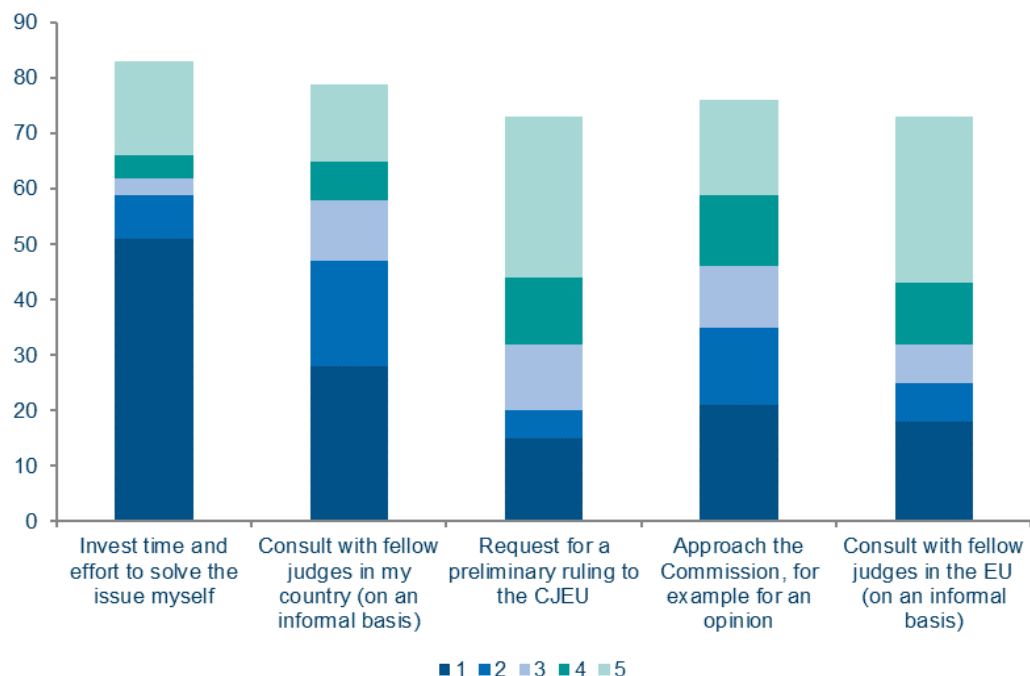
**Q6. What was the subject matter of the State aid cases you dealt with? Please check the boxes that are applicable.**



Number of responses received: 88

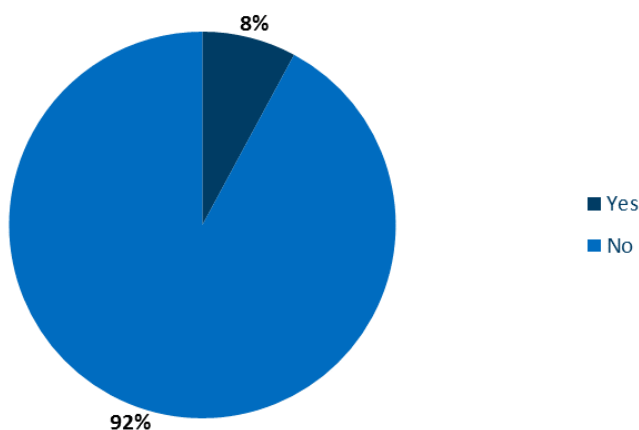
*Please note that respondents were allowed to provide more than one answer to this question.*

**Q7. If you are confronted with a case which involves State aid elements and there exists some uncertainty in how this case should be dealt with, which action(s) do you take? Please indicate the likelihood of taking the action, with 1 being the most likely, 5 being the least likely.**



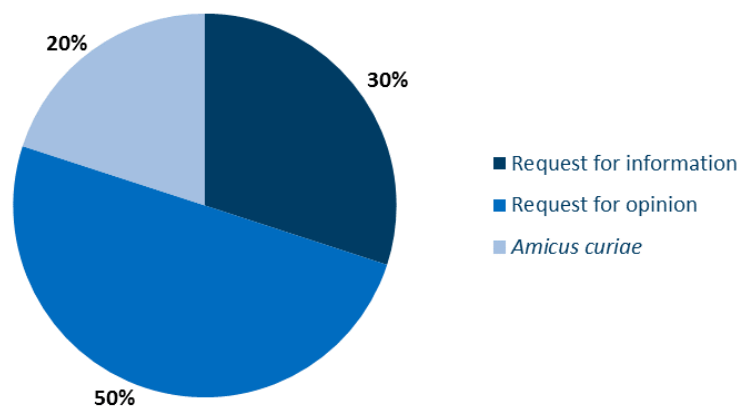
Number of responses received: 83

**Q8. Have you been in contact with the Commission on one of the cooperation tools, i.e. the request for information, the request for opinion and the *amicus curiae*?**



Number of responses received: 89

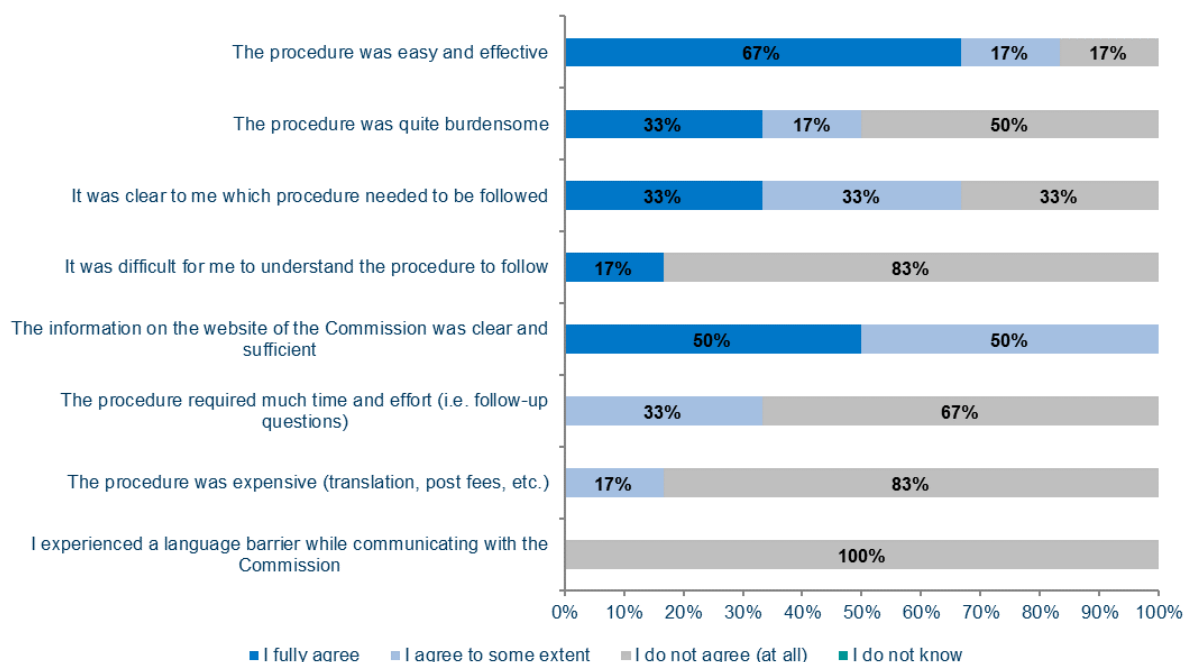
**Q9. You indicated that you have been in contact with the Commission on one of the cooperation tools. Could you please indicate with which of the tools you are familiar? In case you filled in 'yes', please indicate the number of times.**



Number of responses received: 6

*Please note that the online questionnaire only included questions asking whether judges were familiar with a tool, but not how often they had used a tool.*

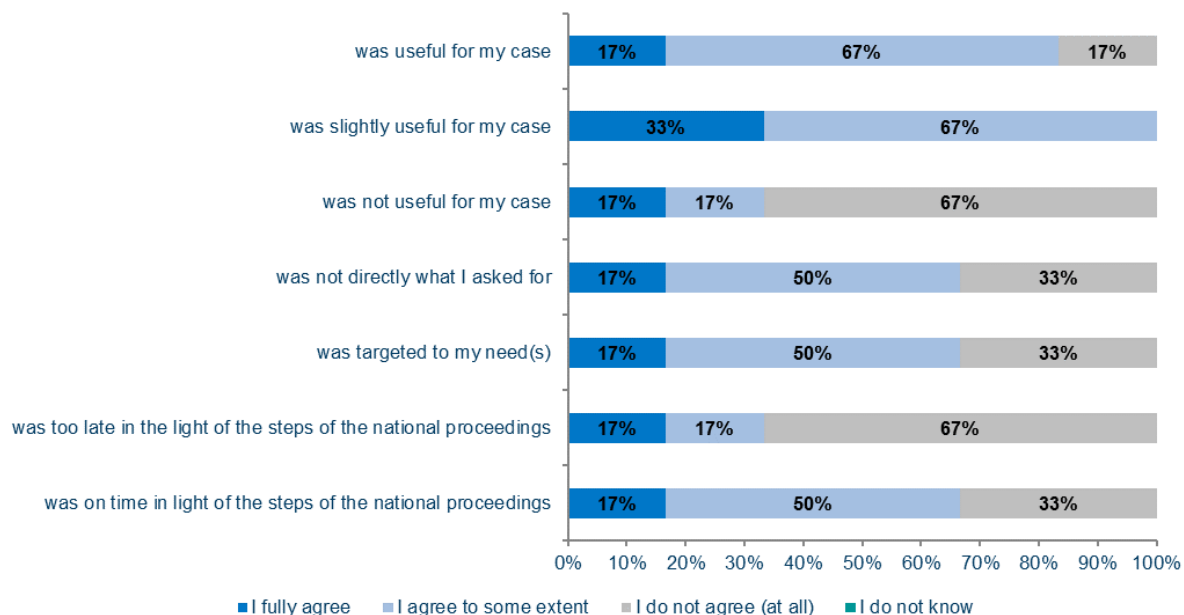
**Q10. How did you experience the use / application of the tools request for information and / or request for opinion? Please respond to the following statements:**



Number of responses received: 6

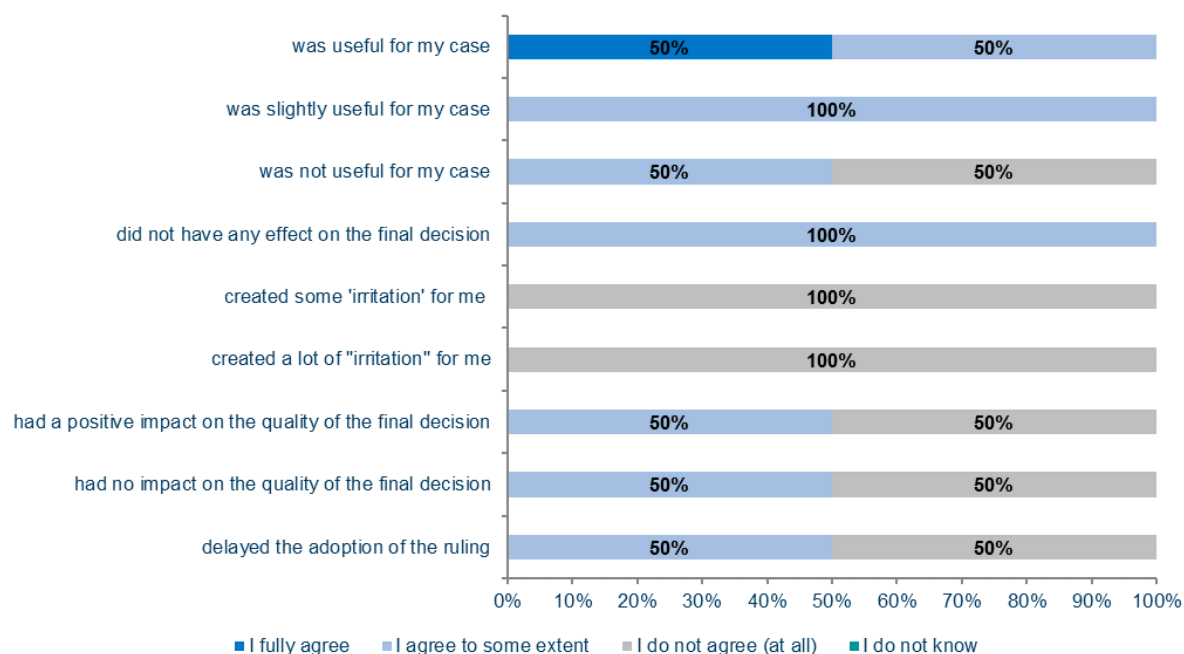


**Q11. How did you experience the response of the Commission? Please respond to the following statements. The response provided by the Commission...**



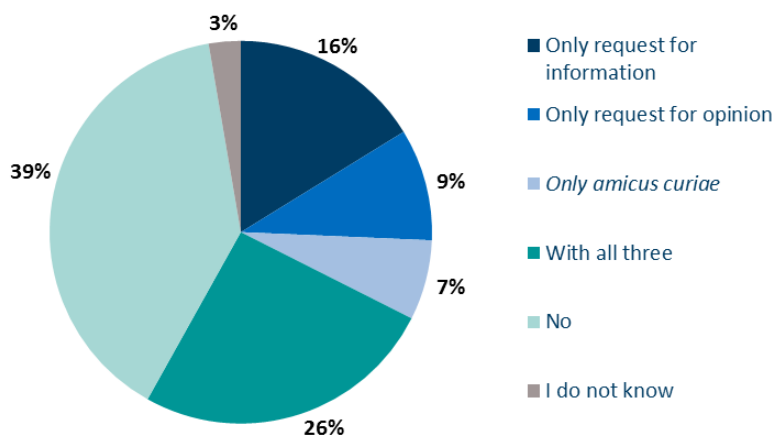
Number of responses received: 6

**Q12. How did you experience the involvement of the Commission? The involvement of the Commission...**



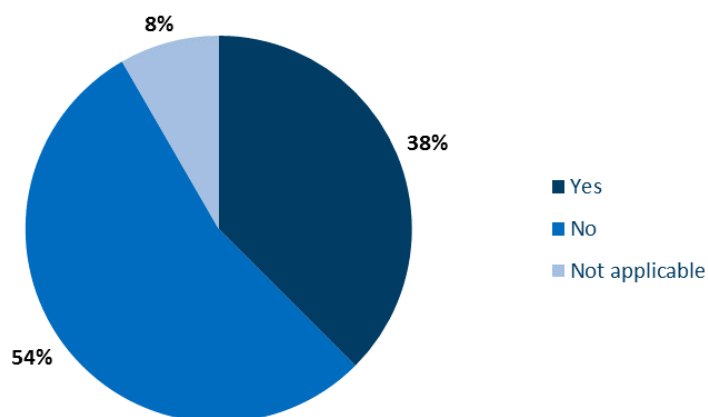
Number of responses received: 2

**Q13. Are you familiar with the cooperation tools, i.e. the request for information, the request for opinion and the *amicus curiae*?**



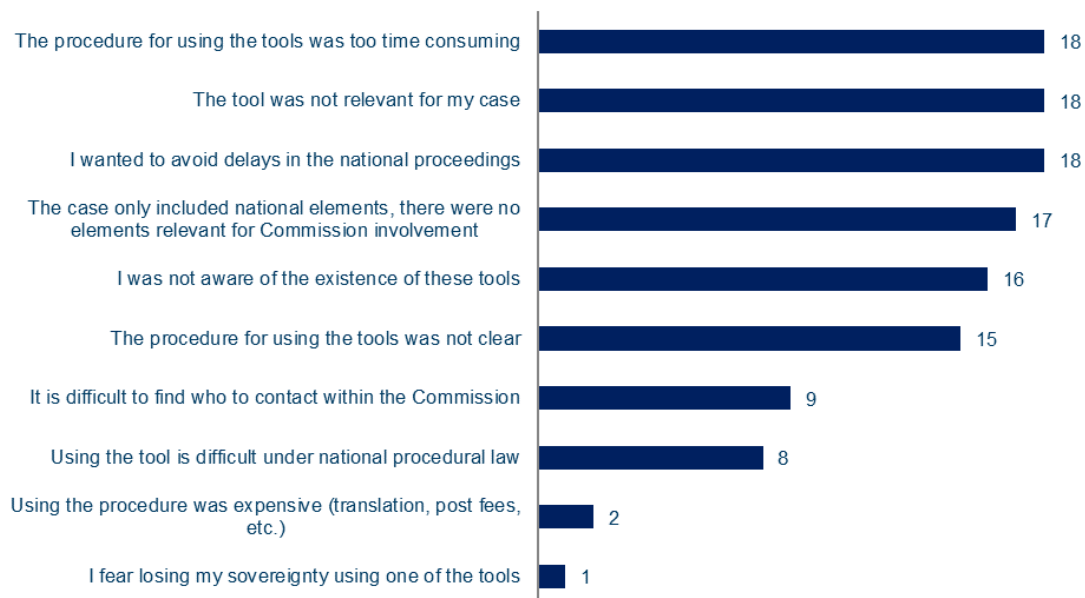
Number of responses received: 72

**Q14. Have you ever considered using the 'request for information' or 'request for opinion'?**



Number of responses: 72

**Q15. What were your reasons for using neither the request for information nor the request for opinion? Please check the boxes of the statements that are applicable.**



Number of responses received: 72

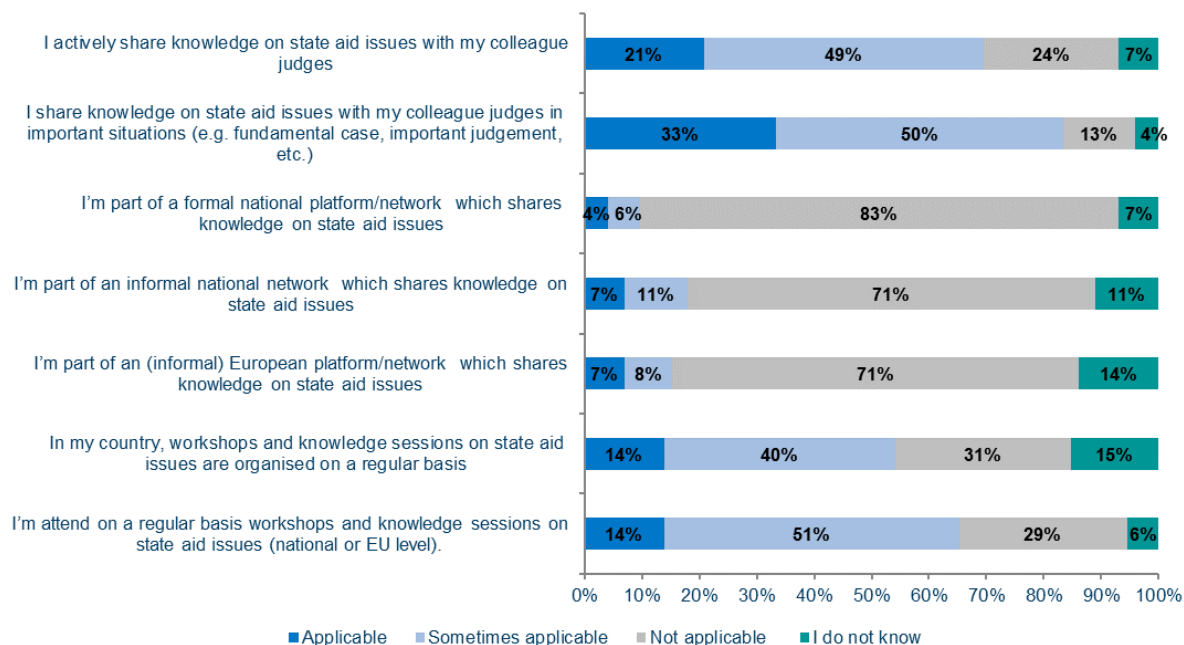
*Please note that that respondents were allowed to provide more than one answer to this question.*

**Q16. Of the reasons you marked as applicable, please indicate their importance, with 1 being the most important reason and 5 the least important one.**

*Please note that the detailed analysis of the individual responses to question 16 in combination with question 15, showed several inconsistencies. Therefore, the answers to this question were not used further in this Study.*

Number of responses received: 72

**Q17. We are interested to know to what extent knowledge sharing of State aid issues exists among judges in national courts in your country. Please indicate which statements are applicable.**

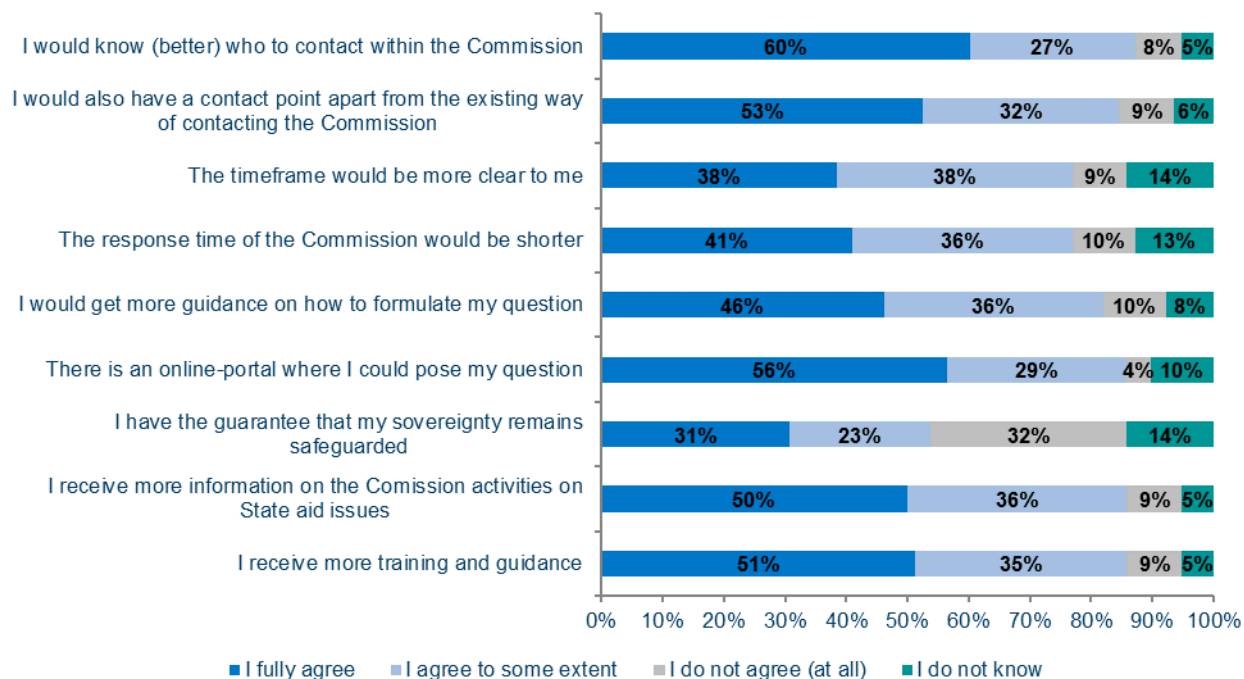


Number of responses received: 78

**Q18. If you are part of a network of (State aid) judges, could you please describe the set-up of this network and (if applicable) share their contact details for follow-up contact?**

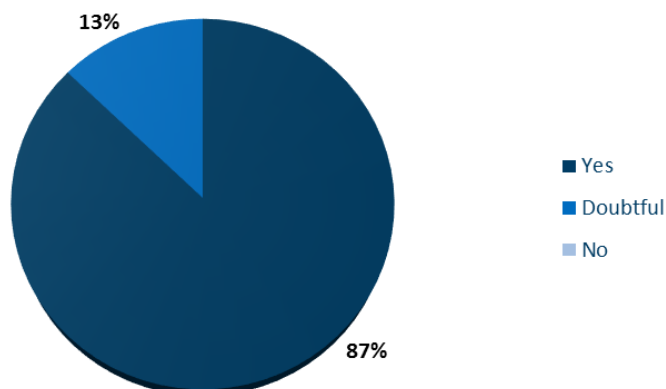
Nine respondents answered the question. Nevertheless, the answers were either not conclusive or contained confidential information.

**Q19. How, in your opinion, could the use of the cooperation tools between national courts and the Commission be improved? Please respond to the following statements: It would help if...**



Number of responses received: 78

**Q20. Would you consider using one of the cooperation tools in the future?**



Number of responses received: 78

**Q21. What is your main motivation for this?**

A total of 46 respondents provided a reason as to why they would or would not consider using one of the cooperation tools, with up to 40 indicating that they would use a tool in the future. Their motivations can be summarised in the following points:

- To ensure that they reach the right decision in a particular case;
- To understand and solve the practical case in the best way;

- To become or remain informed about the latest developments in the field of State aid;
- More cooperation will lead to better quality of judgments.

Six respondents indicated that they were not sure whether they will use one of the cooperation tools in the future. Their motivations can be summarised as follows:

- Speed of justice is as important as quality;
- The fact that questions related to State aid rules primarily raise legal issues that should be submitted to the Court of Justice of the European Union (also referred to as: 'CJEU');
- Independence is important;
- Not enough knowledge of how the tools work.

## Part B: Overview of gathered information in the interviews

This part presents the summarised outcomes of the interviews with judges. However, not all details are disclosed, as the information shared during the interviews is either confidential or relates specifically to the (personal data of the) respective judge.

### Interview #1

#### Country: anonymised

Familiar with the cooperation tools? Yes

Use of one of the tools? Yes

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee used the request for opinion to ask the Commission whether the case at hand included State aid elements or not.
- The interviewee is of the opinion that a response period of four months is too long. Especially in the case for which the judge used the tool, as this case had to be decided within one month. As a result, the interviewee had to postpone the case several times.
- The interviewee is of the opinion that the answer received was too long. The interviewee received an answer consisting of a couple of pages, while a one-page answer would have been sufficient.
- In the interviewee's opinion, the Commission's response did not answer the question. The interviewee felt that an interpretation of the opinion was required. A straightforward answer would have been preferred.

Suggestions for improving the cooperation between the Commission and national courts:

- The interviewee is of the opinion that the use of tools would become more attractive if the response period was less than four months.
- In addition, it would be helpful if the Commission could give an answer that is more to the point. In other words, it is better if the Commission provides a straightforward answer, which does not require interpretation.

### Interview #2

#### Country: Spain

Familiar with the cooperation tools? Yes

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is familiar with the cooperation tools but has never used any of them. In general, the interviewee is positive about the potential of the cooperation tools.
- The interviewee remarks that, in case of a question, the interviewee would not immediately approach the Commission. The CJEU is the first logical choice (despite the long procedure). This is probably true for many judges.
- In the opinion of the interviewee, an answer from the CJEU has, in principle, 'more legal value' than an opinion from the Commission. However, a general problem with the CJEU answers is that they are often very academic and difficult to implement in the concrete context of a case. In essence, it depends on the concrete legal issue. The interviewee is of the opinion that simple and straightforward questions are well suited to send to the Commission. In matters that are more complicated the CJEU is the preferred option. The interviewee notes that cases often contain multiple legal issues, which may fall outside the scope of the Commission's relevant competence.

Suggestions for improving the cooperation between the Commission and national courts:

- The interviewee states that judges would welcome a pro-active attitude of the Commission. The Commission should be visible, support knowledge sharing events, facilitate networking, etc.

### Interview #3

#### Country: Croatia

Familiar with the cooperation tools? No

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is not familiar with the cooperation tools but indicates that (now that the interviewee has heard about them) the use of the tools might be a suitable / viable option.
- In case of an unclear State aid related issue, the interviewee would (i) contact fellow judges, (ii) make an own assessment of case law or (iii) approach a higher court to ascertain what the most suitable actions are to conclude the case. Referring a request for a preliminary ruling to the CJEU is also an option, but this would probably result in a lengthy delay. Overall, the possibility to request an opinion of the Commission seems to be very useful, as the Commission is an important and reliable source for State aid related questions / issues.
- In the opinion of the interviewee, a period of four months to provide an opinion is very reasonable, as the duration of a court case is often two years or longer.
- *Amicus curiae*: for the interviewee, the (unasked) involvement of the Commission should not be a problem. Observations of the Commission can serve as valuable input, as one is not aware of (all) Union law / jurisprudence or experiences from other Member States of the European Union (also referred to as: 'Member States').
- The interviewee states that working in the national language is important for judges. In particular, older judges may find the use of one of the working European Union (also referred to as: the 'EU') languages (English, French and German) an important obstacle.

Suggestions for improving the cooperation between the Commission and national courts:

- Information accessibility / knowledge sharing from the side of the Commission is always useful, for example *via* workshops or the Commission website. In Croatia, a few national 'networks for judges' exist which may be relevant for knowledge sharing from the Commission's side.

### Interview #4

#### Country: Romania

Familiar with the cooperation tools? Yes

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee states that the awareness among Romanian judges regarding State aid rules has been limited. In recent years, awareness has improved, but knowledge should be further improved.
- The interviewee is aware of the possibility to ask the Commission a question (e.g. request for information or request for opinion), but so far the interviewee has never used the procedure. The interviewee is of the opinion that other administrative judges are aware of the possibilities too, but are also hesitant to use the procedures.
- Several reasons could play a role: (1) Judges prefer to consult the CJEU, as consulting another court is preferred instead of consulting a public authority; (2) The parties



involved in the case do not explicitly ask a judge to pose a question to the Commission; (3) Many administrative judges / courts are overwhelmed with work, therefore, they wish to keep things as simple as possible; (4) Judges deal with many cases at the same time and often do not have the time to get sufficiently acquainted with the topic. As a result, they become reluctant to ask a question; (5) Language might be a barrier for some judges.

- The current timeframe for a request for opinion is not a problem, as most cases take one or two years, so a waiting period of four months does not influence the case.

Suggestions for improving the cooperation between the Commission and national courts:

- Generally, providing training and sharing knowledge is important. This could be done at both the EU level and national level. The Commission can play an active role in this.

### **Interview #5**

#### **Country: Spain**

Familiar with the cooperation tools? Yes

Use of one of the tools? No

#### **Main findings:**

Input on the use of and / or view on the cooperation tools:

- The interviewee is willing to use one of the tools, if a case would require it. The main reason for using one of the tools is that State aid rules are, in the opinion of the interviewee, complicated, especially considering that the interviewee rarely uses these rules. Advice on how to deal with State aid is welcome. However, the interviewee is not very familiar with the related procedures and outcomes of the cooperation tools.
- As the interviewee deals with many cases at the same time, the time to learn more about the tools is limited. In order to decide whether or not to use one of the tools, the interviewee would like to have more knowledge about these tools. Training on this topic would be helpful.
- The timing of the current tools, especially the four months for a request for opinion, does not seem to pose problems, as on average a case has a duration of a year.
- Before using a tool, the parties involved (i.e. the plaintiff and the defendant) should be consulted. It is general practice in Spain to consult both parties about procedural steps that (i) were not proposed by one of the parties or (ii) are not regular procedural steps.

Suggestions for improving the cooperation between the Commission and national courts:

- In order to increase the use of the cooperation tools, training would be required. The same applies to the application of State aid rules in general. Many Spanish judges are not aware of State aid rules. In law school, only a limited amount of time is spent on anti-trust and State aid rules, meaning that graduating judges have very little knowledge about these topics. Providing additional training on State aid rules would ensure that judges become more aware of the relevant legislation.
- For knowledge on the general State aid rules, the interviewee would welcome training courses organised at EU level, as judges from different Member States can exchange experiences during such training courses. For more specific topics, such as the use of cooperation tools, national training courses would be needed, as a link with the Spanish procedural rules is required.

### **Interview #6**

#### **Country: anonymised**

Familiar with the cooperation tools? Yes

Use of one of the tools? Yes

#### **Main findings:**

Input on the use of and / or view on the cooperation tools:

- The interviewee used the request for information in order to obtain information from the Commission as to whether the defendant had declared a specific support measure as State aid or not. As the interviewee decided to send in a request for information, the interviewee decided to ask several other factual questions and clarify some legal questions (i.e. request for opinion) as well.
- The interviewee shared quite some information with the Commission, as they did not know how much information was required. As a result, the interviewee spent a substantial amount of time on preparing the request.
- There was no contact between the court and the Commission during the procedure. The interviewee appreciates this, as a dialogue would have led to delays in the case.
- The interviewee appreciates the possibility to communicate with the Commission in the national language as this reduces the risk on translation errors and misinterpretations.
- The Commission provided their answer within five months. The interviewee considers this as a reasonable period. Compared to the CJEU replying to a request for a preliminary ruling, the Commission quickly delivered a response.

Suggestions for improving the cooperation between the Commission and national courts:

- To increase the use of the cooperation tools, the Commission could promote the tools more extensively. It might very well be possible that many judges are not aware of their existence and therefore their use is limited. Nevertheless, the use of the tools should not become mandatory.
- The judge would welcome the sharing of experiences as well as outcomes, especially on the request for opinion and the *amicus curiae* observations. The Commission could adopt a system similar to that of the preliminary rulings of the CJEU. For each article, the posed questions together with their answers are published on EUR-Lex, which judges can easily access.
- The interviewee states that it would be helpful if the Commission provided information on whom to contact within the Commission in relation to the use of the cooperation tools. In this regard, the interviewee would welcome guidance that is more practical as well. Practical guidance could relate to the information required, as well as the required procedure.

## Interview #7

**Country: anonymised**

Familiar with the cooperation tools? Yes

Use of one of the tools? Yes

### Main findings:

Input on the use of and / or view on the cooperation tools:

- The main reason for using the cooperation tool was that one of the parties claimed that the case contained State aid related elements. The interviewee used the request for opinion to identify which of the relevant Union law articles (provisions) should be used – rules on competition or rules on State aid.
- The interviewee considered submitting a request for information as well. Eventually, the interviewee did not send it, as the national authorities could provide the required information.
- The process for contacting the Commission was relatively easy. The interviewee could easily find the contact details and it was clear to the interviewee which information the Commission needed, in order to properly formulate the question and ensure an answer.
- The interviewee was rather satisfied with the answer provided, as it gave some new insights in the case. Nevertheless, the answer was not conclusive and the interviewee decided to consult the CJEU as well. In the meantime, the parties settled the case, so the judge did not use the ruling of the CJEU in a final verdict.

Suggestions for improving the cooperation between the Commission and national courts:

- In the opinion of the interviewee, the procedure is straightforward and therefore there is no need for improvement or adjustment. Not much effort is required from judges to use the tools and judges appreciate this. In case questions are complicated and focus specifically on the explanation of law, a preliminary ruling of the CJEU would be more suitable. For simpler / more factual questions, it would be convenient to contact the Commission.
- The interviewee would be willing to use one of the tools again. However, it would depend on the particular case.

### Interview #8

#### Country: Poland

Familiar with the cooperation tools? No

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee was not aware of the existence of the cooperation tools until the Cooperation Tools Team contacted interviewee for this Study. Additionally, the interviewee's fellow judges at the court were not aware of their existence. The interviewee finds it disappointing that he/she was not aware of the existence of the tools, as it might have been useful in several cases the interviewee had to deal with.
- Although the cooperation tools appear to be useful, the interviewee expressed concerns about whether a judge can use the outcome of a cooperation tool in a court case, considering Polish procedural law. In Poland, the law clearly defines who can submit evidence in a case and how a judge needs to deal with external advice. The law explicitly sets out the possibility to refer a request for a preliminary ruling to the CJEU. Conversely, using a cooperation tool may fall outside the scope of the judge's discretion. It seems that information from a request for information may be used more easily in the procedure (as it is of a more factual nature), than the explanations provided by the Commission (the opinion or *amicus curiae* observations).

Suggestions for improving the cooperation between the Commission and national courts:

- The interviewee would appreciate if the Commission would promote the tools more, for example during a conference or seminar. Such a seminar would be even more beneficial if it was organised for judges from all EU countries.

### Interview #9

#### Country: Portugal

Familiar with the cooperation tools? No

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee states that national judges are, most likely, not very familiar with the cooperation tools. Generally, Portuguese judges / courts have limited experience with State aid and competition cases. As a result, their knowledge regarding the cooperation tools is limited.
- With regard to the request for opinion / information: judges in general often want to 'solve' difficult cases themselves; they are less likely to actively approach the Commission. Nevertheless, the option to request information or an opinion of the Commission is a good alternative to the CJEU, especially if it concerns a 'technical legal question'.
- Currently judges, both in Portugal and in general, are under a lot of pressure to speed up court rulings. The current period of four months for receiving a Commission opinion

is not ideal. The interviewee would appreciate shorter response times from the Commission. Although the current response time of four months is not ideal, it is also not too long. If the response time is four months, the judge does not have to postpone cases.

- *Amicus curiae*: the interviewee sees the (proactive) involvement of the Commission in a national case as positive, as it improves / strengthens the overall quality of the case.
- Language is important; all procedures are in Portuguese. If the Commission were to provide a reaction only in English, this answer needed translation, creating delays and additional costs.

Suggestions for improving the cooperation between the Commission and national courts:

- The interviewee indicates that it would be helpful to know whom to contact within the Commission in relation to the cooperation tools. In addition, the interviewee states that a shorter response time and more training / guidance would be beneficial.

### Interview #10

#### Country: Germany

Familiar with the cooperation tools? Yes

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- With regard to the request for opinion / information, the interviewee states that for most judges the likelihood of asking for the Commission's opinion is probably very low. A judge would initially try to solve the issue himself/herself or with the help of fellow judges. However, compared to the CJEU, a question to the Commission is most likely faster and offers more flexibility. The interviewee once referred a request for preliminary ruling to the CJEU (related to cartel law); the overall procedure was very burdensome, took a lot of time (2.5 years) and resulted in an unclear answer.
- The cooperation tools can be very useful to determine whether something constitutes State aid or not (a relatively simple question); in those situations, four months is acceptable, but five to seven months would also be acceptable.
- *Amicus curiae*: the interviewee appreciates the involvement of the Commission, as it would strengthen the overall case.
- Language is not a critical issue (as all documents will be translated anyway), but one runs the risk of losing valuable insights / formulations. The interviewee prefers to work in the national language.

Suggestions for improving the cooperation between the Commission and national courts:

- Currently only judges can use the cooperation tools. The interviewee thinks it would be beneficial if other judicial actors, for example public prosecutors, could also use the tools, as they might also have questions related to State aid rules. In criminal cases, State aid elements, especially fraud with EU-funds, might play a role as well. The public prosecutor is an independent body, which should also have access to a solid *ex ante* information base. Providing such a possibility to public prosecutors could be very relevant / cost efficient for the overall legal procedure.
- In the opinion of the interviewee, it is important to offer national judges an accurate / accessible platform with an elaborate overview of relevant up-to-date information. This will also help national judges to formulate the relevant question.
- For antitrust / cartel law there is an obligation to report / list national cases to the EU. By introducing a similar obligation for State aid cases, the Commission could make an overview of cases. The Commission could also make clear in which cases they could provide *amicus curiae* observations.

**Interview #11****Country: The Netherlands**

Familiar with the cooperation tools? Yes

Use of one of the tools? No

**Main findings:**

Input on the use of and / or view on the cooperation tools:

- The interviewee is aware of the cooperation tools but has never used any of them. Recently, the interviewee discussed with their team whether they would use one of the tools, but eventually they decided against it. The main reason was that the case was rather straightforward, and the judges knew how to deal with matter. Involving the Commission would have caused a delay to the case.
- The interviewee indicated that, overall judges are hesitant to use one of the tools. The main reasons relate to 'constitutional arguments'. (1) It is unclear what the value of the Commission's guidance is and how it could best be used in a case. (2) In addition, parties (i.e. the plaintiff and the defendant) can question the guidance of the Commission, especially when they go to the Supreme Court and its judges refer a request to the CJEU for a preliminary ruling. The initial ruling can be changed completely and the outcome can be different. For the course of justice, it is more convenient to directly refer a question to the CJEU instead.
- In the view of the interviewee, judges could best approach the Commission for more factual questions, for example on the definition of a particular market and not whether a certain agreement leads to selectivity. It should be noted that the guidance provided by the Commission might be more practical (and related to a case) than the guidance of the CJEU, who tends to provide high-level (and not case specific) guidance.
- Based on the above argumentation, the interviewee is of the opinion that the request for information is a suitable tool (the interviewee might also consider using that tool), while the other two tools pose conflicts with the constitutional setting of Member States.

Suggestions for improving the cooperation between the Commission and national courts:

- Sharing outcomes of tools used would be helpful. Currently it is difficult to become aware of the views of the Commission on the tools. The interviewee would see the sharing of such information, for example *via* EUR-Lex, as a welcome addition. For preliminary rulings, this system works well.
- Sharing knowledge (informally) at national level would be beneficial. Currently, it is difficult to learn from fellow judges. If one could occasionally discuss topics with fellow judges, everyone could learn from it. There is less need for international networks of judges. The primary reason for this is that State aid rules are embedded in national legislation.
- There is no need for additional general guidance documents on State aid rules. There is a sufficient number of communications from the Commission related to State aid rules.

**Interview #12****Country: Malta**

Familiar with the cooperation tools? Yes

Use of one of the tools? No

**Main findings:**

Input on the use of and / or view on the cooperation tools:

- The interviewee is aware of the existence of the tools, but so far has never used any of them. The main reason is that the majority of their cases have not involved State aid elements.
- In addition, many of these cases (might) relate to potential State aid in tendering procedures and according to Maltese law, in such cases the judiciary needs to reach a

judgment within four months. In particular, the duration of the request for opinion might cause problems and consequently could delay cases substantially.

- A judge also feels pressure to issue a judgment if they decide to refer a request for a preliminary ruling to the CJEU. As a result of this pressure, judges might be reluctant to approach either the Commission or the CJEU. Nevertheless, it is more important to reach a 'decent verdict' than a swift one.
- The interviewee is of the opinion that they know whom to contact when using one of the tools. In case it was to prove difficult, the interviewee would walk by the Commission's office in Malta.

Suggestions for improving the cooperation between the Commission and national courts:

- It would be helpful if guidance existed on which information the judge should submit to ensure that the Commission could assist. Which type of information does the Commission need and what is the required level of detail?
- The interviewee would also appreciate if the Commission could give a seminar on the topic. The Maltese judiciary organises a seminar on a specific topic every month. The Commission would be more than welcome to join such a meeting and discuss the tools with the judges. In addition, other EU judges would be welcome to join and share their experiences with the Maltese judiciary.

### Interview #13

#### Country: Bulgaria

Familiar with the cooperation tools? Yes, but only recently

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- Bulgarian judges are often not be familiar with the cooperation tools; at least the interviewee was not aware before they heard about it during a training / workshop in 2018.
- The tools, especially the request for opinion or information seem to be a very good support mechanism, which could strengthen the overall quality. A duration of four months is much faster than referring a request for a preliminary ruling to the CJEU (or the Supreme Court) and fits well with the overall procedure time in Bulgaria.
- *Amicus curiae*: the interviewee would welcome any initiative from the Commission, as it could strengthen the understanding of the case.
- Working in one's own national language is very important, as it lowers the barriers to ask for an opinion. Naturally, English and French can be translated, but it leads to additional costs and may serve as a barrier for using the tools.

Suggestions for improving the cooperation between the Commission and national courts:

- The interviewee indicated that they were not in the position to provide specific suggestions.

### Interview #14

#### Country: anonymised

Familiar with the cooperation tools? Yes

Use of one of the tools? Yes

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee used the request for opinion to find out whether the case contained State aid elements. As the dispute became very specific, the interviewee decided to involve the Commission.
- The procedure for sending in the request was simple.

- Within five months, the interviewee received the response. For the interviewee this was not a problem as the case was still ongoing and such cases usually take a long time.
- In the opinion of the interviewee, the response was constructive, and the Commission answered the question in a satisfactory manner.

Suggestions for improving the cooperation between the Commission and national courts:

- According to the interviewee, there is no need to change / amend the cooperation tools. The interviewee would use the tools again when required.

### Interview #15

#### Country: Slovakia

Familiar with the cooperation tools? Yes

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is aware of the existence of the tools. Nevertheless, the interviewee has never used any of them. The main reason for this is that the cases that the interviewee usually decides on are of a rather simple nature.
- For the interviewee, it is quite clear whom to contact within the Commission. The interviewee is also aware of the type of information the Commission would need in order to provide either information or an opinion.
- A response period of four months seems reasonable. Even within six months, an opinion could still be used in a court case, as Slovakian court cases often take much longer; a response period of four to six months is fine and will not pose procedural problems.

Suggestions for improving the cooperation between the Commission and national courts:

- The interviewee would appreciate it if the Commission were to disseminate more information on opinions and *amicus curiae* observations that it has provided, as it would help judges in their judgments. The Commission could do so by sending email updates or by publishing the outcomes on a central website. The interviewee prefers the latter.
- Having a conference or training course on the use of cooperation tools would also be welcome. The most productive option would be a conference where judges from different Member States could come together and where they can share experiences. The Commission could also develop an e-learning tool on the subject. By doing so, judges are able to train themselves whenever the need arises.

### Interview #16

#### Country: Italy

Familiar with the cooperation tools? No

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- Italy has specialised courts, which deal with State aid related matters (i.e. courts of Rome, Milan and Naples). Other courts generally refer state aid cases to those courts, which implies that other judges are often not dealing with State aid cases.
- The interviewee was not aware of the cooperation tools and has therefore not used them. If the interviewee had been aware, the tools would not have had an added value as the State aid related cases the interviewee deals with do not pose any legal difficulties.
- In general, the use of the cooperation tools seems useful, especially as the Commission has an extensive knowledge on State aid rules and is therefore well equipped to support

national judges. The interviewee thinks the Commission might be even better equipped than the CJEU.

Suggestions for improving the cooperation between the Commission and national courts:

- In the opinion of the interviewee, it would be useful if the Commission published the outcomes of opinions or *amicus curiae* observations. However, it is questionable how relevant this would be for other judges as the advice provided relates to a specific case.

### Interview #17

#### Country: Spain

Familiar with the cooperation tools? No

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee was not familiar with the cooperation tools and was not aware of their existence.
- The cooperation tools seem a very good support mechanism, which could contribute to the overall understanding and quality of a State aid case. The duration of four months to provide an opinion is not a problem. It is an acceptable period. During this period, the judge will suspend the case.
- *Amicus curiae*: the interviewee would welcome any initiative from the Commission, as it would strengthen the understanding of the case. A judge could definitely learn from the expertise of the Commission.
- Working in one's own national language is important, especially because support staff are often not able to work in English.

Suggestions for improving cooperation between the Commission and national courts:

- It is very important that the Commission staff understands the national system, as the Spanish procedure has various specificities.
- It would be useful if the Commission shared information, for example, when a regional Spanish case has 'lessons learned' for other Spanish regions.

### Interview #18

#### Country: Austria

Familiar with the cooperation tools? No

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is not familiar with the cooperation tools and was not aware of their existence. In situations where the interpretation of the law is not entirely clear, the interviewee first reads the relevant literature. Secondly, the interviewee will consult / discuss with direct colleagues. However, support of the Commission is also an option.
- The interviewee emphasises the distinction between the CJEU and the Commission; the CJEU is better positioned (i.e. responsible) to interpret national and Union law, and as a result, their opinion has more 'value'. Nevertheless, the opinion of the Commission would be very useful in less fundamental or more practical situations.
- The duration of four months for the Commission to reply to requests for opinion is not a problem. It is an acceptable period. In bankruptcy cases, speed is more important.
- *Amicus curiae*: the interviewee would welcome any initiative from the Commission, as it would strengthen the understanding of the case.



- Working in one's own national language is important, especially as support staff are often unable to work in English. Working in the national language avoids information being lost and enables good interpretation.

Suggestions for improving cooperation between the Commission and national courts:

- The most important thing is that the Commission provides concrete, targeted answers.
- The Commission should ensure an accessible 'one-stop-shop', where judges can find relevant information. After all, the Commission is an important source if a question arises.

### Interview #19

#### Country: Portugal

Familiar with the cooperation tools? Yes

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is familiar with the cooperation tools (*via* workshops, etc.), but has never used any of the tools. The interviewee is under the impression that State aid is often not on the top of one's mind; the issue is only rarely brought up by lawyers in a case; it seems also quite difficult for judges to identify whether State aid rules apply or not. Training and education are very important to improve this.
- In situations where the interpretation of the rules is not entirely clear, the first line of action would be to consult colleagues / academic experts, followed by referring a request for a preliminary ruling to the CJEU.
- Asking for the Commission's opinion would be an option, but in that case, one also has to convince the other judges in the chamber; referring a request for a preliminary ruling to the CJEU seems to be a more natural and easier step. In general, the judges see the Commission as an 'administrative body' and not really as a potential source of expertise. Judges may regard the opinion of the Commission as being of 'less value' than the opinion of the CJEU. The duration of four months to provide an opinion is not a problem, it is an acceptable period.
- *Amicus curiae*: the interviewee would welcome any initiative from the Commission, as their 'expert opinion' would strengthen the understanding of the case. The interviewee is not sure whether all judges would be open for this.
- Working in one's own national language is important, especially as support staff are often unable to work in English. NB: good Portuguese is also very important. Currently publications are sometimes written in 'Brazilian Portuguese'. This also applies to Commission publications.

Suggestions for improving cooperation between the Commission and national courts:

- It is important that the Commission promotes itself to the judges; similar to the CJEU, which is definitely 'present' in the mind of all EU judges. In addition: it is important that judges become more trusting of the Commission, which can be a very valuable source of expertise.

### Interview #20

#### Country: Lithuania

Familiar with the cooperation tools? No

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee was not aware of the existence of the cooperation tools. Although the interviewee was not aware of their existence, they are of the opinion that the tools are useful. In particular, the request for information could be useful, as the interviewee often struggles with obtaining factual information. If the Commission could facilitate the collection of certain facts, the interviewee would welcome this.
- Overall, the possibility to ask for an opinion seems less relevant, as the legal framework is rather clear. In Lithuania, many Acts provide guidance to judges on how to deal with State aid related matters. The methodology is clear, and it is rather easy to reach a detailed judgment.
- The possibility to receive *amicus curiae* observations also seems valuable.
- It is important to know what the required timeframe of the Commission is. In Lithuania, the majority of cases last no longer than six months, so the judge needs to receive any guidance within that timeframe as well. Otherwise, the judge has to delay the case and this is something the judge needs to avoid.

Suggestions for improving cooperation between the Commission and national courts:

- Information sharing is always useful. This relates both to State aid in general and the cooperation tools in particular. A good way to increase the awareness about the work of the Commission is to send digital newsletters. The effort for the judge is limited in that situation, which the interviewee would welcome.
- Training would also be welcome. It could even be compulsory, as judges should be aware of the basics of State aid rules. Preferably, the training would be open to judges from the entire EU, as knowledge would benefit from this. Nevertheless, English is a barrier for many judges in Lithuania.

## Interview #21

### Country: Greece

Familiar with the cooperation tools? Yes

Use of one of the tools? No

### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is aware of the existence of the tools. Nevertheless, the interviewee has never used any of them. The interviewee heard about the cooperation tools *via* international conferences.
- In situations where the interpretation of the rules is not entirely clear, the first line of action would be to consult colleagues / academic experts, followed by referring a request for a preliminary ruling to the CJEU. However, in Greece, judges are overall quite sceptical about referring a request for a preliminary ruling to the CJEU, as they feel the procedure is very burdensome and time consuming.
- Asking an administrative body such as the Commission is uncommon and most likely judges are hesitant to approach the Commission. Language is an important barrier, especially amongst judges who are older than 55. A standard way to solve issues is to dig into the matter oneself. 'Externals' are only involved if it is absolutely needed.
- *Amicus curiae*: The interviewee would welcome any initiative from the EC, as their 'expert opinion' would strengthen the understanding of the case. Nevertheless, the interviewee is not sure whether all judges would be open for this initiative, as it may feel like an 'intrusion'.

Suggestions for improving cooperation between the Commission and national courts:

- A good direct contact within the Commission will be very important.
- It is important that the Commission promotes the tools to the judges, not in EU-wide meetings, but in meetings in the national language (as English is a big problem).
- Working in one's own national language is important, especially because staff are often not able to work in English.

**Interview #22****Country: anonymised**

Familiar with the cooperation tools? Yes

Use of one of the tools? Yes

**Main findings:**

Input on the use of and / or view on the cooperation tools:

- The interviewee has experience with the cooperation tools; especially the request for opinion and the request for information, as the interviewee used the tools multiple times. The main motivation to send in the request for information was that the plaintiff claimed that a certain aid measure was not notified to the Commission, while the defendant claimed it was.
- In all cases, the interviewee was obliged to hear the parties, both before and after sending in a request to the Commission. The parties need to get the chance to have a say about the response given by the Commission. This is contrary to preliminary rulings given by the CJEU, as the preliminary rulings are non-debatable.
- The contact with the Commission was good. Sending in the requests was also easy.
- *Amicus curiae*: The interviewee has no experience with *amicus curiae* observations. The interviewee finds this tool difficult, especially as it will lead to procedural problems. How does the court need to involve the Commission? Is an oral hearing needed? What is their position? Do parties need to be heard? Involving the Commission will lead to delays in the procedure. How should the additional expenses of the parties be dealt with? Do they have to pay for it?

Suggestions for improving cooperation between the Commission and national courts:

- All courts should be able to seek advice. Nevertheless, some proper guidance is required. Courts could easily formulate their questions too broadly, and as a result could receive a less targeted reply.
- The Commission should not deal with the merits of the case. The courts should keep this in mind when formulating their questions.

**Interview #23****Country: Poland**

Familiar with the cooperation tools? Yes

Use of one of the tools? No

**Main findings:**

Input on the use of and / or view on the cooperation tools:

- The interviewee is aware of the existence of the tools. Nevertheless, the interviewee has never used any of them.
- The interviewee thinks the tools might be a positive addition to the possibility of obtaining advice on Union law. Referring a request for a preliminary ruling to the CJEU takes a relatively long time and if the Commission could provide a swifter procedure (and answer), the interviewee would welcome this. Of course, judges still should refer the legal questions to another court.
- The interviewee thinks the *amicus curiae* observations would be a useful tool as well. In the past, the interviewee asked the Commission several questions on an informal basis and the quality of Commission's answers impressed the interviewee. The answers helped a lot in deciding on the cases. If the Commission could deliver the same quality in the *amicus curiae* observations, courts cases would only benefit.

Suggestions for improving cooperation between the Commission and the national courts:

- The interviewee would welcome more seminars. Prior to the accession to the EU, many seminars were provided, and they helped with training the national judges. Although judges appreciated such seminars, they remained rather technical. Judges would have

welcomed some more practical guidance. If the Commission could participate in a seminar this would be good as they could provide relevant information.

- A seminar would be most beneficial when held with national judges. In the past, the interviewee participated in international seminars, where judges from other Member States presented cases. Although it is interesting to hear experiences from others, real life applicability is a challenge as the judicial systems are very different and holding a seminar with judges from the same legal system is more meaningful.

#### Interview #24

##### Country: France

Familiar with the cooperation tools? Yes

Use of one of the tools? No

##### Main findings:

Input on the use of and / or view on the cooperation tools:

- In case of a State aid related question, the interviewee would spend time and effort to resolve the issue. The starting point is relevant case law to understand better the issue. If this does not provide the answer needed, the interviewee would refer a request for a preliminary ruling to the CJEU.
- A preliminary ruling has a stronger and more definitive authority than an opinion provided by the Commission. The interviewee also indicates that when a case concerns a sensitive economic sector in France, a preliminary ruling of the CJEU is preferred. However, when the case concerns a less sensitive economic sector for France, the interviewee might request an opinion of the Commission.
- The interviewee understood from a colleague (who used one of the cooperation tools) that the opinion received was clear and effective.
- *Amicus curiae*: The interviewee did not receive *amicus curiae* observations. Nevertheless, the interviewee considers *amicus curiae* observations to be a very useful tool.

Suggestions for improving cooperation between the Commission and the national courts:

- To increase the use of the tools, it would be helpful to know whom to contact within the Commission. Currently, it is unclear to the interviewee who is the main contact point at the Commission's side.
- Such a contact point could also deal with the follow-up between the Commission and the requesting judge. Both would then need fewer interactions, which is more efficient.

#### Interview #25

##### Country: Hungary

Familiar with the cooperation tools? Yes

Use of one of the tools? No

##### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is aware of the existence of the tools. Nevertheless, the interviewee has never used any of them. The interviewee can imagine that it is useful to use the tools, but at this moment, the interviewee has no idea how to use them. Questions the interviewee has, relate to the relevant contact point, the format of the request (what the request should look like) and the required level of detail. The interviewee would welcome some guidance on this.
- As far as the interviewee can see, a judge can easily use the opinion or information provided by the Commission in the national court proceedings. There are no procedural rules hampering the use of Commission information.
- *Amicus curiae*: The interviewee is open to receiving *amicus curiae* observations, especially as the interviewee finds the State aid rules complicated. Therefore, guidance is more than welcome.

Suggestions for improving cooperation between the Commission and national courts:

- The interviewee would welcome receiving information *via* a newsletter. By receiving a newsletter on a regular basis, it becomes easier to apply State aid rules and it increases general awareness.
- Wherever possible, the interviewee would welcome interaction with judges from other Member States. A comparative overview could help judges in dealing with their ongoing cases.

### Interview #26

#### Country: Belgium

Familiar with the cooperation tools? Yes

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is familiar with the tools but has not used any of them. The reason for not using one of the tools is that the interviewee perceived the response period of four months as too long. When the plaintiff and the defendant plead their cases before the judge, they wait for a decision within a reasonable period. In Belgium, the delay between the pleadings and the final judgment is one month (according to the civil procedural law). When the national judge decides to request information from the Commission, the response should be given also within a time period of one month. When receiving a response takes longer, it might give the impression to the pleaders that the judge is trying to postpone their decision. Parties could interpret this as a form of denial of justice (which national law prohibits).
- The interviewee indicates that they would in any case go to the CJEU because this is an authority of the judicial order composed by judges. In fact, the judge has to consider the advice of the Commission as the advice of an expert. In Belgian procedural law, the advice of an expert remains advice that a judge can follow or not. It is up to the judge whether or not to follow the advice. In that case, they convert the arguments of the expert to their own arguments.
- Cooperation tools can only be interesting to show to the national judge how the Commission (or for other tools, how a colleague in another Member State) should like to resolve the dispute and which arguments could be adopted, but in any case the national judge (at least in Belgium) has to indicate their own motivation based on the supranational laws, but also seriously influenced by strict national laws such as civil procedural laws.

Suggestions for improving cooperation between the Commission and the national courts:

- The interviewee states that it might be interesting if there were a kind of Frequently Asked Questions list, so that judges could find online an answer on all the questions that have been asked.
- In addition, the Commission could introduce an online platform, which offers the opportunity for a judge to ask a question online on a protected platform only accessible by judges. Such a solution could also reduce the time between question and answer.

### Interview #27

#### Country: Lithuania

Familiar with the cooperation tools? Yes

Use of one of the tools? No

#### Main findings:

Input on the use of and / or view on the cooperation tools:

- The interviewee is familiar with the tools, but has not used any of them.

- The interviewee considered using one of the tools, but the interviewee deemed the time needed to send in a request as well as to receive an answer too long. The interviewee deals with cases, which must be concluded within a short time frame. Therefore, the interviewee is of the opinion that a response period of four months is too long, particularly as judges have to conclude cases in Lithuania as soon as possible.

Suggestions for improving cooperation between the Commission and the national courts:

- The interviewee states that the main improvement would be a shortened response period of the Commission. Instead of a response period of four months, the interviewee would welcome a response period of one month.
- The Commission could also provide practical guidance (e.g. information on whom to contact within the Commission, information on how to send in the request, information on the format of the request etc.). Currently, the interviewee does not know whom to contact within the Commission.

