CONTENTS

Pages

FOREWORD 17

ACKNOWLEDGEMENTS 21

PREFACE 23

INTRODUCTION 25

I. THE COUNCIL OF STATE OF THE KINGDOM OF SPAIN 31

1. **A brief historical overview** 33

1.1 Introduction 33
1.2 The Council of State under the Bayonne Constitution (1808-1812) ... 34
1.3 The Council of State under the Constitution of Cádiz and subsequent events (1812-1834) 35
1.4 The Council of State between 1834 and 1844 36
1.5 The Royal Council (1845–1858) and the Council of State with administrative adjudicative functions (1858-1904) 37
1.6 The Council of State loses its administrative adjudicative functions (1904-1923) 38
1.7 The Council of State during the dictatorship of General Primo de Rivera (1923-1930) 38
1.8 The Council of State during the Second Republic and the Civil War (1931-1939) 39
1.9 The Council of State during General Franco's regime (1939-1975) ... 40
1.10 The Council of State under the 1978 Constitution 41

Pages

2. **General aspects** 41

2.1 Constitutional, statutory and regulatory framework 41
2.2 Nature 42
2.3 Autonomy and independence 43

3. **Composition** 44

3.1. President 44
3.2 Councillors of State 45
3.3 Secretary-General 51
3.4 Legal advisers of the of the Council of State 53
3.5 Data 58

4. **Organisation** 59

4.1 Sections 59
4.2 Permanent Commission 61
4.3 Plenary Session 62
4.4 Commission of Studies 64
4.5 Special committees. 65

5. **Procedures** 66

5.1 Procedure for the adoption of opinions 66
5.2 Procedure for the approval of studies, reports and annual reports 72
5.3 Data 73

6. **Advisory function and its manifestations** 74

6.1 Advisory function 74
6.2 Opinions 74
6.3 Motions 88
6.4 Studies, reports, annual reports and legislative or constitutional reform proposals 88
6.5 Activities complementing the exercise of the advisory function ... 90

7. **Other matters of interest** 91

7.1 International relations 91
7.2 Transparency and communication 91
7.3 Training 92
7.4 Headquarters 92

Pages

II. THE COUNCIL OF STATE OF THE FRENCH REPUBLIC 95

1. **A brief historical overview** 95

1.1 Introduction 95
1.2 The creation of the Council of State 96
1.3 The Council of State between 1815 and 1870 97
1.4 The Third Republic (1870-1940) 98
1.5 The Second World War (1940-1944) 99
1.6 Liberation and the Fourth Republic (1944-1958) 99
1.7 The Fifth Republic (1958 to the present day) 100

2. **General aspects** 101

2.1 Constitutional, statutory and regulatory framework 101
2.2 Nature 102
2.3 Independence 103

3. **Composition** 104

3.1 Vice-President 105
3.2 Section Presidents 106
3.3 Councillors of State 108
3.4 *Maîtres des requêtes* 113
3.5 *Auditeurs* 117
3.6 Secretary-General 120
3.7 Some points of interest regarding the councillors of state 121
3.8 Data 124

4. **Organisation and operation** 125

4.1 Administrative sections 125
4.2 Section for Studies, Foresight and Cooperation 128
4.3 General Assembly 130
4.4 Permanent Commission 133
4.5 Other interesting aspects of the organisation and operation 134

5. **Functions** 135

5.1 Introduction 135
5.2 Advisory role 136

6. **Other matters of interest** 158

6.1 Relations with other institutions 158
6.2 Transparency and communication 159
6.3 Training 161
6.4 Code of Ethics 162
6.5 Headquarters 162

Pages

III. THE COUNCIL OF STATE OF THE ITALIAN REPUBLIC 165

1. **A brief historical overview** 165

1.1 Introduction 165
1.2 The Council of State in the Kingdom of Sardinia (1831-1861) 166
1.3 The Council of State following the unification of Italy (1861-1889) 167
1.4 The assumption of judicial functions (1889-1923) 168
1.5 The Council of State during the Fascist regime (1923-1943) 169
1.6 The Republican Council of State of the early period (1944-1970) ... 171
1.7 The Council of State and the Regional Administrative Courts (1971-2010) 171

2. **General aspects** 174

2.1 Constitutional, statutory and regulatory framework 174
2.2 Nature 176
2.3 Independence 178

3. **Composition** 183

3.1 President 183
3.2 Deputy President 186
3.3 Section presidents 186
3.4 Councillors of State 187
3.5 General Secretariat 191
3.6 Other matters of interest 193
3.7 Data 195

4. **Organisation and operation** 196

4.1 General Assembly 196
4.2 Sections 197
4.3 Special commissions 200
4.4 Office of Research, Case Law and Training 200

5. **Functions** 203

5.1 Introduction 203
5.2 Advisory function 207
5.3 Other functions 223

6. **Other matters of interest** 225

6.1 Institutional and international relations 225
6.2 Transparency, communication and digitalisation 225
6.3 Training 226
6.4 Headquarters 226

Pages

IV. THE COUNCIL OF STATE OF THE KINGDOM OF BELGIUM 229

1. **A brief historical overview** 229

1.1 The Council of State under the Ancien Régime 229
1.2 The Napoleonic Council of State (1799-1815) 230
1.3 The Council of State of the Kingdom of the Netherlands (1815-1830) 230
1.4 The abolition of the Council of State and the failed attempts to create a new Council of State with a purely advisory role (1830-1919) 231
1.5 The 1919 draft constitutional reform and the final failed attempts to establish a Council of State with advisory and judicial functions (1919-1837) 233
1.6 The establishment of the Council of State and its successive reforms (1945-present) 234

2. **General aspects** 235

2.1 Constitutional, statutory and regulatory framework 235
2.2 Nature 237
2.3 Independence 237

3. **Composition** 238

3.1 Introduction 238
3.2 Council of State *stricto sensu* or Council 238
3.3 A sui generis figure: the *assesseurs* 244
3.4 *Auditorat* 245
3.5 Office of Coordination 251
3.6 Registry *(Greffe)* 253
3.7 Other matters of interest 254

4. **Organisation and operation** 256

4.1 Legislation Section 257
4.2 General Assembly of the Council of State 262

5. **Functions** 263

5.1 Introduction 263
5.2 Advisory function 263
5.3 Other functions 278

6. **Other matters of interest** 280

6.1 Management 280
6.2 International relations 280

Pages

6.3 Communication and transparency 281
6.4 Training 282
6.5 Performance appraisal 282
6.6 Annual Report 283
6.7 Headquarters 283

V. THE COUNCIL OF STATE OF THE KINGDOM OF THE NETHERLANDS 287

1. **A brief historical overview** 287

1.1 The Council of State during the Spanish period (1531-1581) 287
1.2 The Council of State as an executive council (1584-1795) 288
1.3 The Council of State during the French period (1795-1813) 288
1.4 The Council of State under William I (1814-1848) 289
1.5 The Council of State as an advisory body to the Government (1848-1962) 289
1.6 The gradual development of administrative justice (1963-1994) 290
1.7 The Council of State in crisis (1994-2010) 291
1.8 The Council of State today (2010-present) 291

2. **General aspects** 292

2.1 Constitutional, statutory and regulatory framework 292
2.2 Nature 293
2.3 Independence 293

3. **Composition** 294

3.1 The President and other members of the Royal Household 294
3.2 Vice-President 294
3.3 Members and Councillors of State 296
3.4 Secretary-General 300
3.5 Legal advisers 302
3.6 Data 302

4. **Organisation and operation** 303

4.1 Sections 303
4.2 Advisory Division 304
4.3 Special commissions 305
4.4 Support committees 306
4.5 Committee of the Three 307

5. **Functions** 307

5.1 Advisory role: opinions and information 307
5.2 Research and analysis function: reports and other documents 320

Pages

5.3 Supervisory role: reports 321
5.4 Data 323

6. **Other matters of interest** 323

6.1 Matters of interest regarding internal operations 323
6.2 International relations 325
6.3 Transparency and communication 325
6.4 Training 326
6.5 Staff appraisal 327
6.6 Close ties with the Royal House of the Netherlands 327
6.7 Council of State of the Netherlands and Council of State of the Kingdom of the Netherlands 327
6.8 Headquarters 328

VI. THE COUNCIL OF STATE OF THE GRAND DUCHY OF LUXEMBOURG 331

1. **A brief historical overview** 331

1.1 The Council of State of the Kingdom of the Netherlands (1815-1830) 331
1.2 The Belgian Senate (1830-1839) 332
1.3 The first constitution of the Grand Duchy of Luxembourg (1839-1848) 333
1.4 The Permanent Commission on Legislation (1848-1856) 333
1.5 The establishment of the Council of *S*tate of the Grand Duchy of Luxembourg (1856-1868) 334
1.6 The consolidation of the Council of State and the enshrining of the exemption from the second constitutional vote (1868-1939) 336
1.7 The dissolution, re-establishment and reorganisation of the Council of State (1939-1961) 337
1.8 Successive reforms to the composition of the Council of State (1961-1989) 337
1.9 Formal independence of the Council of *S*tate (1989-1996) 338
1.10 A new structure of the Council of State (1996-2017) 338
1.11 Strengthening the legitimacy of the Council of State (2017-present) 341

2. **General aspects** 341

2.1 Constitutional, statutory and regulatory framework 341
2.2 A unique institutional position 343

3. **Composition** 344

3.1 President 344
3.2 Vice-Presidents 346

Pages

3.3 Councillors of State 347
3.4 Secretary-General 354

4. **Organisation and operation** 355

4.1 Permanent commissions 356
4.2 Plenary session 358
4.3 Public session 360
4.4 Special commissions 360
4.5 Office 361

5. **Functions** 362

5.1 Introduction 362
5.2 Advisory function 362
5.3 Second constitutional vote 369
5.4 Other functions 370

6. **Other matters of interest** 370

6.1 International relations 370
6.2 Ethics 370
6.3 Accountability 371
6.4 Headquarters 371

ANNEX 1. THE COUNCIL OF STATE OF THE REPUBLIC OF COLOMBIA 375

1. **A brief historical overview** 375

1.1 Introduction 375
1.2 Establishment of the Council of State 376
1.3 The Council of State during the 19th century 376
1.4 The Council of State during the period of the 1886 Constitution ... 377
1.5 The Council of State under the 1991 Constitution 379

2. **General aspects** 380

2.1 Constitutional, statutory and regulatory framework 380
2.2 Institutional position 381
2.3 Independence 381

3. **Composition** 381

3.1 President 382
3.2 Vice-President 382
3.3 President of the Advisory Chamber 383
3.4 Councillors of State 383

Pages

3.5 Associate Judge 385
3.6 Secretary-General 386
3.7 Assistant judges and the councillors' teams 386

4. **Organisation and operation** 386

4.1 Plenary Chamber 387
4.2 Advisory Chamber 388
4.3 Governing Chamber 390

5. **Advisory functions** 390

5.1 Plenary Chamber 390
5.2 Advisory Chamber 391
5.3 On the initiative of the Council of State 394

6. **Other matters of interest** 395

6.1 International relations 395
6.2 Relationship between the Administrative Litigation Chamber and the Advisory Chamber 395
6.3 Ethics, Transparency and Accountability Commission 396
6.4 Legislative Commission 397
6.5 Publications 397
6.6 Headquarters 397

ANNEX 2. THE COUNCIL OF STATE OF THE REPUBLIC OF PORTUGAL..... 401

1. **A brief historical overview** 401
2. **General aspects** 403
3. **Composition** 403
4. **Jurisdiction** 405
5. **Organisation and operation** 406

BIBLIOGRAPHY..... 409

1. **Introduction** 409
2. **The Council of State of the Kingdom of Spain** 409
3. **The Council of State of the French Republic** 413
4. **The Council of State of the Italian Republic** 416
5. **The Council of State of the Kingdom of Belgium** 420
6. **The Council of State of the Kingdom of the Netherlands** 421
7. **The Council of State of the Grand Duchy of Luxembourg**..... 421
8. **The Council of State of the Republic of Portugal** 423
9. **The Council of State of the Republic of Colombia**..... 423