



Strasbourg, 24 August 2006

CJ-DA-GT (2006) 3

**WORKING PARTY OF THE**  
**PROJECT GROUP ON ADMINISTRATIVE LAW**  
**(CJ-DA-GT)**

**4<sup>th</sup> meeting**  
**Strasbourg, 10 – 12 July 2006**

**MEETING REPORT**

**FOREWORD**

During the meeting the CJ-DA-GT:

- a) finalised the preliminary draft recommendation on good administration and consolidated model code of good administration (see section II and Appendix III below);
- b) discussed proposals for future CJ-DA activities as part of the process of preparing its draft terms of reference for 2007-2008 (see section III below).

Secretariat memorandum  
Prepared by the Directorate General of Legal Affairs

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## **I. INTRODUCTION**

1. The Working Party of the Project Group on Administrative Law (CJ-DA-GT) held its fourth meeting at the Council of Europe headquarters in Strasbourg from 10 to 12 July 2006 with Mr Vittorio Ragonesi (Italy) in the chair. The list of participants is set out in Appendix I to this report.
2. The CJ-DA-GT examined and adopted the draft agenda, as set out in Appendix II.
3. The Secretariat reminded the CJ-DA-GT that it needed to finalise the preliminary draft recommendation on good administration and consolidated model code of good administration at this meeting so that they could be examined and approved by the CJ-DA at its next plenary meeting in October 2006.
4. The CJ-DA-GT finished drawing up the preliminary draft recommendation on good administration and consolidated model code of good administration (see section II and Appendix III below). It was decided not to prepare an explanatory memorandum on the recommendation (see section II, paragraphs 77 to 79 below).
5. The CJ-DA-GT agreed on the activities to be proposed to the CJ-DA with a view to the preparation of its draft terms of reference for 2007-2008 (see section III below).

## **II. PREPARATION OF THE PRELIMINARY DRAFT RECOMMENDATION ON GOOD ADMINISTRATION AND CONSOLIDATED MODEL CODE OF GOOD ADMINISTRATION**

6. The scientific expert, Professor Pierre Delvolvé, said that he had made some purely editorial changes to the version adopted by the CJ-DA-GT at its last meeting of the preliminary draft code to be appended to the recommendation; the task now was to discuss a few unresolved matters and review the articles already discussed. As agreed, he had tried to incorporate some provisions on good governance into the code or the recommendation, but had ultimately failed, among other things because of the difficulty of putting concepts of good management into legally binding language.
7. One delegation said that the idea of good governance should be clearly reflected in the recommendation; the aim of the recommendation was to explain what good administration was while that of the code was to show how to achieve it. The Working Party might wish to include a description of the demands placed on the public authorities in the recommendation.
8. On a proposal by the Chair and in accordance with the decision taken at their third meeting (5-7 April 2006), the delegations resumed their discussion of the preliminary draft, as revised by the scientific expert (see document CJ-DA-GT (2005)1 rev. 6), beginning with Article 10 of the code, before proceeding with their second reading of the draft recommendation and the first nine articles of the code.

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### Article 10: Definitions

9. With regard to the rules governing decisions covered by Section II of the draft code, the scientific expert pointed out that not exactly the same meaning was attached to administrative decisions in all domestic legal systems, particularly where it came to the concept of “rule-making decisions” as compared with individual decisions. It was also important to point out that there were decisions which were neither regulatory nor individual (see paragraph 2).

### Article 11: Requests from private persons

10. One delegation found it disproportionate for a public authority to be required to acknowledge receipt of a request if it replied to it immediately (see paragraph 3).

11. In this connection, the scientific expert noted that it was not always possible for an authority to reply immediately to a request as it needed at least some time to consider the request and prepare a reply. Acknowledgement of receipt was intended to confirm to the citizen that his or her request had been received and mark the beginning of the time within which the authority was required to take an implicit or explicit decision.

12. According to one delegation, it was difficult for private persons to argue directly that a failure to respond was tantamount to a decision. It was important to take account of the differences between national systems because, while a failure to respond could be regarded as significant in one system, it might have no meaning whatsoever in another. Acknowledgment of receipt served only as a polite gesture and had no legal significance *per se*.

13. Another delegation considered it important to state that as the authority could not refuse to express an opinion, the authority’s reply should mark the beginning of the time during which a legal appeal could be entered.

14. The scientific expert said that cases could be referred to the courts if no decision was taken and that replies could be official or just a courtesy. It would be preferable, however, to find a more appropriate form of words than the expression “*acknowledged in writing*” in the French language, which had an excessively postal connotation.

15. Paragraph 3 was changed accordingly.

### Article 12: Right of private persons to be heard with regard to individual decisions

16. The Chair and another delegation had doubts about the clarity of paragraph 2 which stated that private persons “[shall/should] have the right to be informed of the plan” for an individual decision that the authority intended to take. Yet, the important thing was for private persons to participate before the preparation of such a plan. Furthermore, it could be inferred from the wording that private persons would be entitled to be involved only at this stage in the procedure. Citizens had to be informed according to the particular circumstances. In view of all this, it seemed that paragraph 1 was sufficient to cover all possible scenarios while avoiding the ambiguities of paragraph 2.

17. Following the discussion, paragraph 1 was amended and paragraph 2 was deleted.

Article 13: Right of private persons to be involved in certain non-regulatory decisions

18. The scientific expert noted that, as a result of previous changes, this article no longer contained any provisions on regulatory decisions. It was regrettable that the recommendation made no provision for citizens to take part in important regulatory decisions such as urban development plans. Paragraph 1 related to measures which could have consequences for an indeterminate group of people. It was important for those likely to be affected to be able to participate and procedures should be followed which enabled those concerned to take part in the framing of a decision affecting them. The right to participation was a relatively broad right and this was reflected in paragraphs 3 and 4, which entitled those concerned to express their views.

19. One delegation wondered whether the expression “an indeterminate number” in paragraph 1 was sufficient and whether it would not be better to replace it with the expression “a large number”. Another delegation referred to Recommendation R (87) 16, which related to “administrative procedures affecting a large number of persons”. The Chair pointed out that the cases covered by this recommendation were more narrowly defined than those described in the recommendation currently being prepared.

20. The scientific expert explained that the main consideration was the person or persons affected by the decision. A non-regulatory act could affect a number of people which was not, or could not be, determined.

21. In view of the discussions, changes were made to paragraph 1.

Article 14: Procedures for developing administrative decisions

22. Some delegations expressed perplexity at this article describing the participation of citizens in the procedure for drawing up administrative decisions. The position of the article gave rise to much debate. Some proposed that it could be merged with Articles 12 and 13 because the right to be heard described in Article 12 was a form of participation in the drafting procedure and that knowledge of the procedure was linked to notification of the existence and the aim of the administrative procedure. The Chair submitted that if this article, which was very general in scope, were to be moved, it should come before Articles 12 and 13, which related to more specific aspects. It was not certain, however, that Article 14 duplicated Articles 12 and 13. The Chair proposed that paragraph 1 of Article 14 be merged with paragraph 1 of Article 12 but one of the delegations said that Article 14 covered citizens’ participation in decision-making in the same way as Article 13. Another delegation suggested that both paragraphs of Article 14 be moved to the section on principles, with paragraph 1 under the heading of participation and paragraph 2 under the new heading of costs.

23. With regard to the costs mentioned in paragraph 2, the scientific expert explained that the aim of this provision was to charge citizens at a level commensurate with their request and, in particular, in keeping with the purpose of the procedures concerned. Moreover, public authorities were concerned about the total costs of the administrative procedure whereas private persons were interested in any amount which they might be required to pay themselves.

24. The CJ-DA-GT delegations felt that considerable caution was required in this matter and that it was probably sufficient to say that where a share of the costs of the measures taken by the public authorities was charged to citizens, the sum should be in proportion to the cost of the measures and, at all events, if not as low as possible for citizens then at least neither excessive nor unfair. With this in mind, the delegations made various proposals including a proposal to remove the article. However, one delegation took the view that the article contained important items and that, while the question of costs was a less sensitive one in countries with Anglo-Saxon legal systems, consideration had to be given to all those affected. This idea should not be overlooked and, moreover, the principle of participation was important because it was one of the intrinsic principles of non-contentious proceedings. Another delegation drew attention to the fact that the proportionality referred to in paragraph 2 was intended to be understood not in terms of a mathematical relationship (i.e. a charge in proportion to the costs) but rather as a charge in proportion to the measure taken by the administration.

25. At the end of the discussion, the CJ-DA-GT decided to amend paragraph 1 and move it to the section on principles of good administration, where it would become article 7 bis: "Principle of participation"; paragraph 2 was also amended and article 14 was given the new title: "Charges for administrative decisions".

#### Article 15: Form of administrative decisions

26. With regard to paragraph 1, one delegation wondered whether administrative decisions should not be issued in writing. The scientific expert pointed out that most administrative decisions were made in writing but there were also oral or implicit decisions, which, by nature, could not be written down. Requiring decisions to be written down under all circumstances would be at variance with any provision enabling decisions to be adopted implicitly.

27. With regard to paragraph 2, one delegation wondered whether authorities should not be required to give reasons for all their decisions, not just for unfavourable ones. In reply, the scientific expert said that there was no point in giving the reasons for a favourable decision to a citizen whose request had been satisfied. Requiring an authority to give reasons could only be justified in the event of an unfavourable decision in order to give the citizen concerned the opportunity to appeal. Reasons could be given for all favourable decisions that affected third parties but there was a risk that it would be exaggerated to require reasons for some decisions.

28. One delegation also pointed out that oral replies raised the problem of proof. It was said that when an oral reply was given, citizens should be able to request written proof from the authority afterwards.

29. The article was not amended.

#### Article 16: [Notification and] Publication of administrative decisions

30. With regard to paragraph 1, one delegation said that while publication was clearly general in nature, the word "impersonal" seemed inappropriate as the publication was aimed at an individual person. Furthermore, in the circumstances described in paragraph 2, publication had to be personal in nature. Accordingly, the word "impersonal" should be deleted.

31. The word “notification” was removed from the title of the article.

#### Article 17: Entry into force of administrative decisions

32. The scientific expert explained that the application of the rule in paragraph 4 caused a major problem in that it was not always possible to comply immediately with new rules and so legal certainty could not be guaranteed. Consequently, it was necessary for the persons concerned to be given time in which to react in order for the new regulations to be implemented properly and effectively.

33. Some delegations drew attention to the link between paragraph 4 of Article 17 and Article 6 on the principle of legal certainty; they suggested that the paragraph should be moved and reworded. The scientific expert took the view that moving the article would dispel any ambiguity; it needed to be made clear that transitional measures were neither old provisions nor new ones. Another delegation asked for the expression “in certain cases” in paragraph 4 to be clarified.

34. Many amendments were adopted in the course of the discussion.

#### Article 18: Execution of administrative decisions

35. The CJ-DA-GT examined paragraph 3 in the light of the provisions on enforcement in Recommendation Rec(2003)16 on the execution of administrative and judicial decisions in the field of administrative law.

36. Following the discussion, it was decided to change the order of the paragraphs.

#### Article 19: Changes to individual administrative decisions

37. Some delegations asked for the aim of this article to be clarified. It was explained that it covered administrative decisions which had already had an effect but had been changed subsequently.

38. The delegations agreed that the different paragraphs of this article expressed the same idea in different ways. What was needed was a form of wording which would apply both to individual decisions and to regulatory decisions. The delegations expressed a preference for paragraph 2, with a possible reference to the rights and interests of individuals mentioned in paragraph 3, which should be taken into account and protected, particularly where it was possible for an administrative decision to be changed. It was pointed out however, that, in some cases, the rights of the persons affected precluded any change to the content of the decision.

39. The scientific expert proposed that the current paragraphs 2 and 3 should be retained and reworded, especially as there was a link between the sections on principles and on the rules governing administrative decisions. It was preferable to use the somewhat vague term “changes” as it had the advantage of covering various types of change such as setting aside, repeal and withdrawal rather than having to define each of these terms precisely.

40. Another delegation agreed with this view, pointing out that the word “change” implied an effect on both the past and the future of an administrative decision.

41. The Chair pointed out that a change could be made at any moment.
42. Following the discussion, amendments were made to the draft article.

#### Article 20: Appeal against administrative decisions

43. It was pointed out that the Working Party had already held a detailed discussion on time limits on the right to appeal.
44. One delegation wondered whether it might be appropriate to add a paragraph on the subject and proposed, at any rate, that the first sentence of paragraph 2 should be added to paragraph 3. The scientific expert agreed to this merger.

#### Article 21: Appeal for compensation

45. The CJ-DA-GT decided to reword paragraph 4 in order to highlight the right to issue legal proceedings against public officials personally. This right could be exercised in appropriate circumstances by a victim or by the public authorities. Paragraph 5 was deleted.

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46. The Working Party examined the draft of the recommendation and the first nine articles of the draft code a second time.

#### Draft Recommendation

47. A request was made for references to Committee of Ministers' Recommendations R (2000) 6, Rec (2002) 2 and Rec (2004) 20 to be added to the preamble.
48. Amendments were made to the recommendations to member states.

#### Article 1: Scope

49. Paragraph 1 established the right to good administration, but some delegations felt that the right to good administration should be mentioned in the preamble to the recommendation rather than the code.
50. The Chair drew attention to the matter of the organisation and judicial supervision of the authorities and asked for an article on good governance and the supervision of the authorities' activities to be added. The scientific expert said that in all the member states, quite substantial changes to the organisation, functioning and supervision of the authorities had been recommended with a view to improving results. The problem was identifying precisely which solutions should be given priority and then adding them to the code. It was suggested that these aspects should be mentioned in the preamble to the recommendation, as was the case with a number of items relating to good governance which had already been included there. An arrangement of the sort would avoid adding to the code itself items which would be at odds with the thinking and structure of the code as it had been drafted to date.



51. One delegation pointed out that, according to the European Committee on Legal Cooperation (CDCJ), good administration was a key component of good governance. In its view, the code as it stood was enough as it already contained the principles underlying good governance. If, nonetheless, the Working Party decided to add a paragraph on the subject it would be preferable for it to be in the code rather than the recommendation. Another delegation argued that it was pointless to elaborate further on the concept of good governance.

52. Another delegation reiterated what it had already said at previous meetings, namely that good administration could be divided into three component parts: administration and procedures, relations between the authorities and the public and relations between the authorities and private persons. Although it had not lost its overall grasp of the subject, the CJ-DA-GT had focused on just one of these aspects, namely relations between the authorities and private persons. The delegation was aware that the core concepts of the draft text could not be changed at this stage but it would be in favour of a broader approach and suggested that in future the Working Party should look into the other components of good administration with a view to completing the work already done on the subject.

53. Article 1 was amended in the light of the discussions.

#### Article 2: Principle of lawfulness

54. A minor adjustment was made to paragraph 1.

#### Article 3: Principle of equality

55. One delegation suggested that paragraph 1 should not repeat the principle already established in the title. Other delegations pointed out that titles of articles were never legally binding. For the consistency of the text, it was decided to use, wherever possible, the same wording as in paragraph 1 of Article 2, namely “act in accordance with ...”, in all the articles of the code which lay down principles.

56. Paragraph 2 did not give rise to any particular comments, but the Working Party did discuss the examples of grounds for discrimination listed in paragraph 3. It was proposed to draw on Article 14 of the European Convention on Human Rights (ECHR) but it was also said that Protocol No. 14 to the ECHR went beyond Article 14 in that it assumed that discrimination was understood not just within the meaning of Article 14 but also in its general sense. It was pointed out that paragraph 3, which protected against discrimination, also went beyond Article 14 of the ECHR.

#### Article 4: Principle of impartiality [and objectivity]

57. The Chair questioned whether it was advisable to retain the reference to the principle of objectivity, which he regarded as obscure.

58. One delegation questioned whether it was right for the principle of objectivity to be referred to in this paragraph and suggested that it might be more readily linked to the principle of lawfulness already described. Impartiality seemed to be a more appropriate term for the conduct of officials who should refrain from expressing their views. According to another delegation, the concepts of impartiality and objectivity coincided and so it was unnecessary to make any distinction between the two. It referred to the European Ombudsman’s European Code of Good

Administrative Behaviour, which dealt with impartiality and independence in Article 8 and objectivity in Article 9, and argued that the principle of objectivity differed from the principle of lawfulness.

59. Another delegation was in favouring of retaining both concepts, which were very close but did differ. They were not identical.

60. The scientific expert said that the rules could not be absolutely identical, even if there were indeed links between the two principles. He concluded that the solution was to refer only to impartiality and that the word “objectivity” should be removed from the title.

61. One delegation said that, while it was not essential for objectivity to be mentioned in the title of the article, it had to be kept in paragraph 2. This delegation, along with certain others, was also in favour of retaining the notion of neutrality.

62. Following the discussions, a paragraph was added on impartiality, specifying that public officials were prohibited from expressing personal views, and the word “objectivity” was removed from the title.

#### Article 5: Principle of proportionality

63. In reply to a question by one of the delegations as to why the word “liberties” was included in paragraph 2, the scientific expert said that it would be too restrictive to refer solely to rights. Another delegation referred to the ECHR, which talked of rights and freedoms; freedom was a fundamental right like others such as equal treatment. In its view, it was sufficient to refer to rights, as this encompassed all fundamental rights.

64. The article was amended accordingly.

#### Article 6: Principle of legal certainty

65. This article had already been reviewed during the discussion of Article 16.

#### Article 7: Principle of reasonable time limit for taking action

66. One delegation suggested that paragraphs 1 and 2 should be merged as they overlapped and the only thing that distinguished them was who took the initiative of the action.

67. On the matter of whether the notion of a reasonable time limit was determined with reference to a period of adjustment or according to circumstances, the scientific expert replied that the reasonable time limit was relative in that it could equally be very short or of a certain length.

68. One delegation felt that, in view of the importance of this article, it would be more appropriate for it to be in Section II; another submitted that a reasonable time limit was a working principle which had to be kept in its current place among the principles.

69. The article was amended accordingly.

Article 7 bis: Principle of participation

70. According to one delegation, this was a useful rule, but it was not necessary to mention administrative measures.

71. Another delegation said that participation was a current trend and that the member states subscribed to this principle of participatory action. Consequently, it should be included in the code, not in the recommendation as the scientific expert suggested.

72. See also the comments regarding Article 14, in paragraphs 24 to 27 above.

Article 8: Principle of respect for privacy

73. No changes were made to this article.

Article 9: Principle of transparency

74. The scientific expert wondered whether this article should not be moved from Section I to Section II. There had previously been much discussion on the question of the communication by the authorities of documents at its disposal and their duty both to publish certain documents and to give private persons access to documents. This was an important article because it went beyond the principle of transparency and as a result it would be possible to move it to Section II.

75. One delegation announced that the Group of Specialists on Access to Official Information (DH-S-AC) was currently drafting a European Convention on Access to Official Information and that the current draft included all the principles set out in Recommendation Rec (2002) 2. In view of this recommendation, it would be preferable to refer only to “official” documents and not to ones “of general scope”.

76. Following the discussion, numerous amendments were made to Article 9.

Explanatory memorandum

77. As the CJ-DA-GT had not yet taken any decision on the advisability of drawing up an explanatory memorandum on the draft recommendation, the Chair opened a discussion on the subject. The delegations said that as far as the recommendation was concerned, only certain historical issues could possibly be mentioned in the text. As to the code, it was difficult to see any reason for an explanatory memorandum as the principles should be sufficiently clear to be understood by those it was aimed at without any explanation.

78. The Secretariat pointed out that explanatory memorandums were documents without any legal force whose aim was to offer clarification on the content of the recommendations. They were not an integral part of recommendations. The Committee of Ministers adopted recommendations but it merely took note of explanatory memorandums.

79. The Chair said that this was a procedural matter: an explanatory memorandum would have to be drawn up if the CDCJ considered it necessary. If it did, the memorandum would be required to explain in general terms why the Working Party had made the decisions it had with regard to the code and its composition. In the light of its discussions, the CJ-DA-GT decided not to prepare an explanatory memorandum unless the CDCJ decided otherwise.

80. The draft of the recommendation and accompanying model code resulting from the most recent work of the CJ-DA-GT appears in document CJ-DA-GT (2005) 1 rev 7, which is set out in Appendix III to this report.

81. To harmonise and finalise the English and French versions of the draft, it was decided that, as soon as possible, the Secretariat would send the text, as endorsed beforehand by the Chair and the Vice-Chair of the CJ-DA, to the members of the Working Party for any comments they might have. On receiving the document, delegations who so wished would have until the end of August to send the Secretariat their comments, so that the finalised text could be sent to the CJ-DA members at the very beginning of September, in other words six weeks before their plenary meeting.

### **III. EXCHANGE OF VIEWS ON QUESTIONS TO BE EXAMINED BY THE CJ-DA FROM 2007 ONWARDS UNDER ITS TERMS OF REFERENCE FOR 2007-2008**

82. The CJ-DA-GT exchanged views on the activities that the CJ-DA might carry out from 2007 onwards, on the basis of document CJ-DA-GT(2006)2 bil, as prepared by the Secretariat.

83. The Secretariat pointed out that proposals for future activities which could serve as the basis for the CJ-DA's next terms of reference were scheduled to be adopted by the CJ-DA at its October plenary meeting. After this they would be submitted to the Bureau of the CDCJ, which had been instructed by the CDCJ to examine the draft of the new terms of reference of the CJ-DA at its next meeting in December 2006. Bearing this in mind, the Secretariat recommended that the CJ-DA should be presented with a few carefully selected proposals, possibly along with some indication of the order of priority. These proposals should take account of the Council of Europe's current priorities, particularly those set at the Third Summit of Heads of State and Government (Warsaw, 16 and 17 May 2005), and bear in mind the forthcoming 27<sup>th</sup> Conference of European Ministers of Justice (Yerevan, 12 and 13 October 2006).

84. The delegations proposed the following activities for the CJ-DA from 2007 onwards, without indicating any order of priority:

- i) possible remedies for persons suffering loss or damage as a result of the actions of the authorities, with a view, for example, to a new recommendation which would reiterate and elaborate on existing recommendations on the subject; the subject of legitimate expectations could be combined with this;
- ii) updating the handbook *The administration and you*;
- iii) continued work on good administration and good governance and practices with regard to the controls placed on civil services by society;
- iv) the harmonisation of administrative procedures in Greater Europe, particularly with regard to the relations between the state and private firms;
- v) outsourcing of public services;

- vi) free legal aid during administrative proceedings, designed to absolve citizens from procedural and legal costs under certain circumstances;
- vii) protection of vulnerable and defenceless victims.

85. It was pointed out that, in view of the budgetary problems that the Council of Europe was encountering and the priority activities set at the Third Summit of Heads of State and Government, it was essential to propose new subjects that were of interest to as many member States as possible.

86. One delegation asked the Secretariat to prepare draft terms of reference including a number of topics, even if it meant adding more later, and to try to find a general heading under which good governance and good administration could be combined.

87. It was agreed that the Working Party members should revise their proposals for activities in the light of the Summit Action Plan. These proposals, complete with a brief statement of reasons on each topic (bearing in mind that new subjects of interest to the member states could be included), should be sent to the Secretariat as soon as possible and no later than 31 August 2006. The Secretariat would prepare a summary to be submitted to the CJ-DA.

#### **IV. DATE OF THE NEXT PLENARY CJ-DA MEETING**

The plenary meeting of the CJ-DA would be held at the Council of Europe headquarters in Strasbourg from 11 to 13 October 2006.



## APPENDIX I

**LIST OF PARTICIPANTS****MEMBER STATES / ETATS MEMBRES****CJ-DA-GT Members / Membres du CJ-DA-GT****BELGIUM / BELGIQUE**                      apologised / excusée**FINLAND / FINLANDE**

Mr Matti NIEMIVUO, Deputy Director General, Ministry of Justice, HELSINKI

**IRELAND / IRLANDE**Mrs Caroline DALY, Advisory Counsel, Office of the Attorney General, DUBLIN (**Chair of the CJ-DA /  
Présidente du CJ-DA**)**LUXEMBOURG**                      *apologised / excusé***ITALY / ITALIE**Mr Vittorio RAGONESI, Judge of the Supreme Court of Cassation, ROME (**Chair of the CJ-DA-GT /  
Président du CJ-DA-GT**)**NETHERLANDS / PAYS-BAS**

Mr Theo SIMONS, Senior Vice-President of the Administrative Court of Appeal, UTRECHT

**POLAND / POLOGNE**Mme Teresa GÓRZYŃSKA, Chef du Département de Droit Administratif, Institut des Sciences Juridiques,  
Académie Polonaise des Sciences, VARSOVIE**PORTUGAL**M. Mário AROSO de ALMEIDA, Professeur universitaire de droit administratif, Ministère de la Justice,  
PORTO**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**Mr Mark ENTIN, Director of the MGIMO University, Moscow State Institute of International Relations,  
Institute of European Law, MOSCOW**REPUBLIC OF SERBIA / REPUBLIQUE DE SERBIE**Ms Jelena TISMA-JOVANOVIC, Senior Adviser for Administrative Law, Supreme Court of the Republic  
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Département Fédéral de Justice et Police, BERNE  
(**Vice-Chair of the CJ-DA / Vice-Président du CJ-DA**)

**Others / Autres****CROATIA / CROATIE**

Mrs Ljiljana KARLOVCAN-DUROVIC, Judge, Head of the Property Rights Department, Administrative Court of the Republic of Croatia, ZAGREB

**FRANCE**

Mme Dominique GENIEZ, Chargée de Mission auprès du Directeur des Affaires Civiles et du Sceau, Premier Conseiller de Tribunal Administratif, Direction des Affaires Civiles et du Sceau, DACS/Justice, Ministère de la Justice, PARIS

**GREECE / GRECE**      apologised / excusée

**SCIENTIFIC EXPERT / EXPERT SCIENTIFIQUE**

M. Pierre DELVOLVE, Professeur à l'Université Panthéon-Assas Paris II, PARIS

**COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPEENNE**

not represented / non représenté

**EUROPEAN COMMISSION / COMMISSION EUROPEENNE**

apologised / excusée

**OBSERVERS WITH THE COUNCIL OF EUROPE/  
OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE**

**CANADA**      not represented / non représenté

**HOLY SEE / SAINT SIEGE**      not represented / non représenté

**JAPAN / JAPON**      not represented / non représenté

**MEXICO / MEXIQUE**      not represented / non représenté

**UNITED STATES OF AMERICA / ETATS-UNIS D'AMERIQUE**

not represented / non représentés

**OBSERVERS WITH THE CJ-DA/  
OBSERVATEURS AUPRES DU CJ-DA****ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) /  
ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUE (OCDE)**

apologised / excusée

**UNITED NATIONS / NATIONS UNIES**      not represented / non représentés

**INTERNATIONAL COMMISSION ON CIVIL STATUS /  
COMMISSION INTERNATIONALE DE L'ETAT CIVIL (CIEC)**      apologised / excusée

**EUROPEAN PUBLIC LAW CENTRE /  
CENTRE EUROPEEN DE DROIT PUBLIC**      not represented / non représenté



**ASSOCIATION OF EUROPEAN ADMINISTRATIVE JUDGES /  
FEDERATION EUROPEENNE DES JUGES ADMINISTRATIFS**

M. Pierre VINCENT, Representative of the Association of European Administrative Judges, Presiding Judge, Nancy Administrative Court of Appeal, NANCY

**COMMISSIONER FOR HUMAN RIGHTS /  
COMMISSAIRE AUX DROITS DE L'HOMME**

not represented / non représenté

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (Venice Commission)/  
COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT (Commission de  
Venise)** not represented / non représentée

**STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH) /  
COMITE DIRECTEUR POUR LES DROITS DE L'HOMME (CDDH)**

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**CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE /  
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**INTERPRETATION**

Mrs Julia TANNER

Mr Christopher TYCZKA

Mr Robert SZYMANSKI



## APPENDIX II

AGENDA / ORDRE DU JOUR

1. Opening of the meeting / *Ouverture de la réunion*
2. Adoption of the agenda / *Adoption de l'ordre du jour*
3. Information by the Secretariat / *Informations par le Secrétariat*
4. Finalisation of the preliminary draft recommendation concerning good administration and consolidated model code of good administration / *Finalisation de l'avant-projet de recommandation concernant une bonne administration et de code modèle consolidé de bonne administration*

Working documents / Documents de travail

Preliminary draft recommendation on good administration and consolidated model code of good administration revised by the scientific expert / *Avant-projet de recommandation concernant une bonne administration et de code modèle consolidé de bonne administration révisé par l'expert scientifique*

**CJ-DA-GT (2005) 1 rev. 6**

Preliminary draft recommendation on good administration and consolidated model code of good administration as amended by the CJ-DA-GT at its 3<sup>rd</sup> meeting / *Avant-projet de recommandation concernant une bonne administration et de code modèle consolidé de bonne administration tel qu'amendé par le CJ-DA-GT lors de sa 3<sup>e</sup> réunion*

**CJ-DA-GT (2005) 1 rev. 5**

Preliminary draft recommendation on good administration and consolidated model code of good administration as revised by the scientific expert / *Avant-projet de recommandation concernant une bonne administration et de code modèle consolidé de bonne administration tel que révisé par l'expert scientifique*

**CJ-DA-GT (2005) 1 rev. 4**

Background documents / Documents de référence

Preliminary draft recommendation on good administration and consolidated model code of good administration prepared by the scientific expert and the Secretariat / *Avant-projet de recommandation concernant une bonne administration et de code modèle consolidé de bonne administration préparé par l'expert scientifique et le Secrétariat*

**CJ-DA-GT (2005) 1**

Report of the 3<sup>rd</sup> meeting of the Working Party of the Project Group on Administrative Law (CJ-DA-GT) (Strasbourg, 5-7 April 2006) / *Rapport de la 3<sup>e</sup> réunion du Groupe de travail du Groupe de projet sur le droit administratif (CJ-DA-GT) (Strasbourg, 5-7 avril 2006)*

**CJ-DA-GT (2006) 1**

Revised specific terms of reference of the CJ-DA for 2005-2006 / *Mandat spécifique révisé du CJ-DA pour 2005-2006*

**CJ-DA (2005) 6**

Report of the 17<sup>th</sup> meeting of the Project Group on Administrative Law (CJ-DA) (Strasbourg, 28 February-2 March 2005) / *Rapport de la 17<sup>e</sup> réunion du Groupe de projet sur le droit administratif (CJ-DA) (Strasbourg, 28 février-2 mars 2005)*

**CJ-DA (2005) 5**

Preliminary draft report on the feasibility and desirability of preparing a recommendation and/or a consolidated model code of good administration prepared by the CJ-DA / *Avant-projet de rapport sur la faisabilité et l'opportunité de préparer une recommandation relative à une bonne administration et/ou un code modèle consolidé de bonne administration préparé par le CJ-DA*

**CJ-DA (2005) 4**

Principles of good administration in Council of Europe member States / *Principes de bonne administration dans les Etats membres du Conseil de l'Europe*

**CJ-DA-GT (2004) 7**

Parliamentary Assembly Recommendation 1615 (2003) on the institution of ombudsman and its explanatory memorandum / *Recommandation 1615 (2003) de l'Assemblée Parlementaire sur l'institution du médiateur et son exposé des motifs*

**CJ-DA-GT (2004) 1**

Reply by the Committee of Ministers to Parliamentary Assembly Recommendation 1615 (2003) on the institution of ombudsman / *Réponse du Comité des Ministres à la Recommandation 1615 (2003) de l'Assemblée Parlementaire sur l'institution du médiateur*

**CJ-DA-GT (2004) 2**

Council of Europe instruments relevant to the preparation of a draft opinion on the feasibility of preparing a consolidated model code of good administration / *Instruments du Conseil de l'Europe pertinents pour l'élaboration d'un projet d'avis sur la faisabilité de l'élaboration d'un code modèle consolidé de bonne administration*

**CJ-DA-GT (2004) 3**

The European Code of Good Administrative Behaviour of the European Ombudsman / *Le code européen de bonne conduite administrative du Médiateur européen*

**CJ-DA-GT (2004) 4**

Conclusions of the European Conference on «Training of civil servants to achieve good administration» (Vilnius, Lithuania, 27-28 October 2005) / *Conclusions de la Conférence européenne sur «La formation des fonctionnaires dans l'intérêt d'une bonne administration» (Vilnius, Lituanie, 27-28 octobre 2005)*

**DA/Conf (2005) Conclusions**

5. Exchange of views on questions to be considered by the CJ-DA as from 2007 / *Echange de vues sur les questions devant être examinées par le CJ-DA à partir de 2007*

Working documents / Documents de travail

Future work of the CJ-DA - Proposals sent by delegations of the CJ-DA-GT / *Travaux futurs du CJ-DA - Propositions envoyées par des délégations du CJ-DA-GT*

**CJ-DA-GT (2006) 2 bil.**

*Background documents / Documents de référence*

Legal instruments of the Council of Europe in the field of administrative law / *Les instruments juridiques du Conseil de l'Europe dans le domaine du droit administratif*

**CJ-DA (2005) Inf.**

6. Any other business / *Divers*

*Background documents / Documents de référence*

Warsaw Declaration – Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) / *Déclaration de Varsovie – Troisième Sommet des Chefs d'Etat et de Gouvernement du Conseil de l'Europe (Varsovie, 16-17 mai 2005)*

**CM (2005) 79 final**

Plan of Action – Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) / *Plan d'Action – Troisième Sommet des Chefs d'Etat et de Gouvernement du Conseil de l'Europe (Varsovie, 16-17 mai 2005)*

**CM (2005) 80 final**

Message from the Committee of Ministers to the Committees involved in the intergovernmental co-operation at the Council of Europe / *Message du Comité des Ministres aux Comités oeuvrant dans le cadre de la coopération intergouvernementale du Conseil de l'Europe*

**CJ-DA (2005) CM Message**



## APPENDIX III

PRELIMINARY DRAFT RECOMMENDATION  
ON GOOD ADMINISTRATION AND  
CONSOLIDATED MODEL CODE OF GOOD ADMINISTRATION

as revised by the CJ-DA-GT

*Note: changes adopted by the working party at its meetings on 14-16 November, 14-16 December 2005 and 5-7 April 2006 are indicated **in red** (the changes which are still subject to discussion are between brackets - highlighted **in yellow**); changes to the initial preliminary draft which have not yet been discussed by the working party are indicated **in green**; the remaining parts of the text are those of the initial preliminary draft.*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to Recommendation 1615 (2003) of the Parliamentary Assembly, which calls on the Committee of Ministers to draft a model text for a basic individual right to good administration and a single, comprehensive, consolidated model code of good administration, deriving in particular from Committee of Ministers Recommendation No. R (80) 2 and Resolution (77) 31 and the European Code of Good Administrative Behaviour, thus providing elaboration of the basic right to good administration so as to facilitate its effective implementation in practice;

Having regard to Resolution (77) 31 of the Committee of Ministers on the protection of the individual in relation to the acts of administrative authorities;

Having regard to Recommendation R (80) 2 of the Committee of Ministers concerning the exercise of discretionary powers by administrative authorities;

Having regard to Recommendation R (81) 19 of the Committee of Ministers on the access to information held by public authorities;

Having regard to Recommendation R (84) 15 of the Committee of Ministers relating to public liability;

Having regard to Recommendation R (87) 16 of the Committee of Ministers on administrative procedures affecting a large number of persons;

Having regard to Recommendation R (91) 10 of the Committee of Ministers on the communication to third parties of personal data held by public bodies;

**Having regard to Recommendation R (2000) 6 of the Committee of Ministers on the status of public officials in Europe;**

Having regard to Recommendation R (2000) 10 of the Committee of Ministers on codes of conduct for public officials;

**Having regard to Recommendation Rec (2002) 2 of the Committee of Ministers on access to official documents;**

Having regard to Recommendation Rec (2003) 16 of the Committee of Ministers on the execution of administrative and judicial decisions in the field of administrative law;

**Having regard to Recommendation Rec (2004) 20 of the Committee of Ministers on judicial review of administrative acts;**

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that public administration plays a key role in democratic societies; that it is active in numerous spheres; that its activities affect private persons' rights, **liberties** and interests, that national legislation and various international instruments, particularly those of the Council of Europe, offer these individuals certain rights with regard to **government the administration**; that the European Court of Human Rights has applied the Convention for the Protection of Human Rights and Fundamental Freedoms to the protection of private persons in their relations with **government the administration**;

Considering that it is desirable to combine the various rights with regard to **government the administration** into a right to good administration and to clarify its content, **based on** the example of the European Charter of Fundamental Rights;

Considering that ~~the requirements everyone in a democratic society has of~~ a right to good administration, ~~whose requirements~~ may be reinforced by a general legal instrument; that these requirements are linked to the fundamental principles of the rule of law, such as those of equality, non-discrimination, neutrality, impartiality, the rights of the defence, transparency, proportionality and effectiveness; and that ~~they call for~~ procedures **exist to protect the rights and interests of private** persons, provide them with information and enable them to participate in the official decision making process;

Considering that the authorities must provide private persons with a certain number of services and issue certain instructions and rulings, and that when they are required to take action, they must do so within a reasonable period;

Considering that there must be appropriate procedures, including possibly judicial procedures, to deal with complaints of maladministration, whether as a result of official inaction, delays in taking action or action in breach of official obligations;

Considering that good administration must be ensured by the quality of the **regulations legislation**, which must be clear, accessible, easily understood and appropriate;

Considering that good administration implies the provision of services meeting the basic needs of society;

Considering that good administration is an aspect of good governance; that it is not just concerned with legal arrangements; that it depends on quality of organisation and management; that it must meet the requirements of effectiveness, efficiency and relevance to the needs of society; that it must maintain, uphold and safeguard public property and other public interests; that it must comply with budgetary requirements; and that it must preclude all forms of corruption;

Considering that good administration also depends on the quality of human resources and of training ~~and of~~ **public officials' attitudes**;



Recommend to Governments of member States:

• To promote good administration by the organisation and functioning of public authorities in accordance with the principles of efficiency, effectiveness and ~~quality for value~~ **value for money**. These principles **require that public authorities**:

- ~~need to~~ ensure that objectives are set and performance indicators are devised in order to monitor and measure on a regular basis the achievement of these objectives by the administration and its public officials; ~~and ensure that the objectives are reviewed as to whether they have been achieved and how they have been achieved and if they have not been achieved to examine why they have not been achieved;~~
  - ~~require [that public authorities/administration] to check, in accordance with the law, whether current services [which are required] are/can be provided at a lesser cost [services are provided in a cost effective manner], if they should be replaced by other services, if they became obsolete/useless and, in that instance, or be suppressed;~~  
regularly audit, within the remit of the law, the services they provide to examine whether the services can be provided at a lesser cost, replaced or withdrawn;
  - ~~impose on administration to seek/ensure function on the basis that the best means to obtain the best results are pursued~~ **especially concerning costs;**
  - ~~impose on administration to ensure acts are performed within a reasonable time;~~
  - ~~their implementation~~ shall be guaranteed by internal and external monitoring mechanisms of administration and its public officials' actions; / **conduct appropriate and meaningful their implementation shall be guaranteed by internal and external monitoring mechanisms of the administration and the action of its public officials; <sup>2</sup>actions**
- ~~To recognise~~ **promote** a right to good administration by approving a single, comprehensive and consolidated national code of good administration based on the model code of good administration appended to this Recommendation.
- To promote a right to good administration by adopting a single national code of good administration or comprehensive and consolidated standards and rules, inspired by the model code of good administration appended to this Recommendation.**

## Appendix to the recommendation

### Code of good administration

#### Article 1      Scope

~~1. Private persons have a right to good administration in accordance with this code.~~

~~2. This code lays down principles and rules which must be applied by public authorities in their relations with private persons, in order to achieve good administration.~~

3. For the purposes of this code, public authorities shall be taken to mean: *(former Article 2, para. 1)*

a) any public-law entity of any kind or at any level, including state, local and autonomous authorities, providing a public service or acting in the public interest,

b) ~~or~~ any private-law entity exercising the prerogatives of a public authority responsible for providing a public service or acting in the public interest.

4. For the purposes of this code, private persons shall be taken to mean individuals and legal persons under private law who are the subject of public authorities' activities. *(former Article 2, para. 2)*

## Section I

### Principles of good administration

#### Article 2      Principle of lawfulness

1. Public authorities shall act in accordance with the law. ~~They shall take no arbitrary measures, including when exercising discretion even when exercising their discretion. / They shall not act in an arbitrary manner including where they may exercise their discretion.~~

2. They shall comply with domestic law, international treaties and the general principles of law governing their organisation, functioning and activities.

3. They shall act in accordance with the rules defining their powers and procedures laid down in their governing legislation.

4. They shall exercise their powers if the established facts and the applicable law entitle them to do so and solely for the purpose for which they have been conferred.

### Article 3      Principle of equality

1. Public authorities shall ~~respect~~ **act in accordance with** the principle of equality. ~~[between/with regard to private persons.]~~
2. They shall treat private persons who are in the same situation in the same way. **Any** difference in treatment ~~[by public authorities or their public officials]~~ shall be objectively justified.
3. They shall not discriminate ~~[arbitrarily]~~ between private persons on grounds, *inter alia*, of sex, ethnic origin, religion or ~~belief~~.

### Article 4      Principle of impartiality ~~[and objectivity]~~

1. Public authorities shall ~~respect~~ **act in accordance with** the principle of impartiality.
2. They shall act **objectively**, having regard to relevant matters only.
3. **They shall not act in a biased manner.**
4. They shall ensure that their public officials carry out their duties ~~with neutrality in a neutral manner~~ **[and impartiality]**, irrespective of their beliefs and their personal interests.

### Article 5      Principle of proportionality

1. Public authorities shall ~~respect~~ **act in accordance with** the principle of proportionality.
2. They shall impose measures affecting rights, ~~liberties~~ or interests of private persons only if they are necessary **and to the extent required to achieve the aim pursued** ~~their content should be appropriate and capable of reaching the goal/aim pursued.~~
3. When exercising their discretion, they shall maintain a proper balance between any adverse effects which their decision may have on the rights, ~~liberties~~ or interests of private persons and the purpose which they pursue, any measures taken by them must not be excessive.

### Article 6      Principle of legal certainty

1. Public authorities shall ~~respect~~ **act in accordance with** the principle of **legal** certainty.
2. They may not take any retroactive measures ~~[which affect rights and interests of private persons]~~ except in duly justified circumstances. ~~[where they have unfavourable effect, they have been announced or they fill legal vacuum, inter alia following judicial decisions.]~~ *(see together with Article 16)*
3. They shall not interfere with vested rights and final legal situations except where required by overriding public interest.
4. They shall adopt **[**comply with transitional measures in order to apply new measures, except when public interest requires an immediate implementation of such measures. **]** They shall introduce transitional measures in new measures they adopted for their implementation, except when public interest requires an immediate implementation of such measures.

~~————— [They shall be consistent [and accountable in their opinions] / and not change opinions unnecessarily/all the time.]~~

~~————— [They shall not modify or abrogate measures which are associated with a time limit before this time limit except for the needs overriding the public interest / except where required in the public interest.]~~

~~5. ——— In certain cases, a reasonable time shall / may have to elapse between the adoption and notification or publication of an administrative decision imposing new obligations and the date on which [it becomes applicable] these obligations will apply.~~

**5. It may be necessary in certain cases, in particular where new obligations are imposed, to provide for transitional provisions or to allow a reasonable time for the entry into force of these obligations.**

~~6.5. ——— They shall comply with confidence of private persons in keeping/maintaining final legal situations.~~

~~————— [They shall not infringe / shall comply with final legal situations.~~

~~————— They shall not infringe / shall comply with vested rights.~~

~~————— Rule-making decisions should provide for transitional measures when it is necessary to preserve the legal status of those concerned.]~~

**Article 7**      **[Principle of reasonable time limit for taking action]**

1. Public authorities shall act **and perform their duties** within a reasonable time.

~~2. ——— They shall carry out their duties within a reasonable time.~~

~~3. ——— They shall respond to requests made by private persons within a reasonable time.~~

~~4. ——— The time limits they impose [on private persons] shall be reasonable.~~

**Article 7 bis**      **Principle of participation**      ~~Procedures for administrative decisions (par.1 former article 14)~~

1. Public authorities shall ensure participation by private persons through appropriate means in the development and implementation of administrative measures which concern them. These procedures ~~Procedures for administrative decisions~~ should be made known by citizens ~~the persons concerned~~ in order to enable them either to participate or to check they are implemented.

**Article 8**      **Principle of respect for privacy**

1. Public authorities shall respect privacy, *inter alia* in processing personal data.
2. When public authorities are authorised to process personal data or files, particularly by electronic means, they shall take all necessary measures to guarantee privacy.
3. Private persons shall have the right to consult personal information concerning them and secure the **rectification** or removal of any information that is inaccurate or should not have been recorded.

**Article 9**      **Principle of transparency**

1. Public authorities shall act in accordance with the principle of transparency.
2. ~~They shall make known, in an appropriate manner, their actions and decisions.~~  
They shall ensure private persons are informed, by appropriate means, of their actions and decisions. This may include publication of official documents.
3. They shall respect the right of access to official documents.

~~3. They shall be accountable for their actions/decisions.~~

~~1. Public authorities shall take appropriate steps to inform interested persons of official documents of general scope/range. (former Article 18, para. 1)~~

~~2. Public authorities shall publish important documents of general interest/[scope/range?], in particular documents which relate to the general application of legislation, such as directives, instructions and circulars. (former Article 18, para. 2) / Public authorities shall ensure that important public documents which are of general interest/scope/range are published and available to private persons. They shall ensure that legislation including directives, instructions and circulars [which explain the legislation] are published and accessible by private persons.~~

~~3. Private persons shall have the right of access to official documents. (former Article 19, para. 1)~~

~~4. Access to official documents may be refused where their secrecy or confidentiality must be preserved to protect public or private interests defined by law. (former Article 19, para. 3)~~

~~5. Documents under preparation shall not be communicated. (former Article 19, para. 4)~~

~~6. In the case of refusal or failure to communicate the requested document within a reasonable time, the applicant shall have an effective remedy. (former Article 19, para. 5) / In the case of refusal or failure to communicate requested documents within a reasonable time, the applicant shall be provided with an effective remedy.~~

~~7. Communication and copying of official documents may be subject to the payment of an amount covering the real cost of this. (former Article 19, para. 6) / Public authorities may charge a fee for the administrative cost involved in communicating and copying documents to private individuals.~~

~~8. For the purposes of this code, official documents shall be taken to mean all information recorded in any form, drawn up or received and held by public authorities and linked to any administrative function. They shall include in particular decisions of administrative authorities, files, reports, studies, records, minutes, statistics, directives, instructions, opinions and forecasts. (former Article 19, para. 2)~~

## Section II

### Rules governing administrative decisions

#### Article 10     Definitions (former Article 2)

1. For the purposes of this code, administrative decisions shall be taken to mean decisions taken by the public authorities exercising the prerogatives of a public authority. ~~These decisions~~ They may be either rule-making decisions taken in the exercise of regulatory power or non-regulatory rule-making decisions. (former Article 2, para. 3)

*(Variant: For the purposes of this code, decisions of public authorities shall be taken to mean rule-making decisions taken in the exercise of regulatory power and non-regulatory decisions)*

2. Non-regulatory decisions may be individual or otherwise. (former Article 2, para. 4)

3. Individual decisions are those that directly affect the person(s) concerned. (former Article 2, para. 5)

#### Article 11     Requests from private persons (former Article 10)

1. All private persons shall have the right to ask public authorities to take one or more individual decisions that lie within their competence.

2. When such a request is made, within a public authority, to an authority lacking the relevant competence, the latter shall forward it to the competent authority within this public authority and advise the applicant that it has done so.

3. All requests for individual decisions made to public authorities shall be answered/responded to / receive a reply. ~~acknowledged in writing with an indication; Unless the response/answer can immediately contain a decision, it should/shall indicate, if the law so provides, of the time within which the decision will be taken, and of the consequences of a decision not being taken. / All requests for individual decisions made to public authorities shall be acknowledged in writing with an indication of the time within which the decision will be taken, and of the consequences of a decision not being taken. An acknowledgement in writing may be dispensed with where the public authorities may respond immediately with a decision.~~

4. Decisions in response to requests to public authorities shall be taken within a reasonable time defined by law or regulations. ~~Failure to respond within the specified time shall may implicitly signify rejection or acceptance of the request.~~

**Article 12**      **Right of private persons to be heard with regard to individual decisions** *(former Article 11)*

1. If a public authority intends, on its own initiative or at the request of a private person, to take an individual decision that will directly affect the rights of private persons, those persons shall be given an opportunity to **participate in the procedure and to be heard** within a reasonable time.

~~2. They [shall/should] have the right to be informed of the plan.~~

32. **They/Private persons** shall have the right to express their views in writing or orally, if necessary with the assistance of a person of their choice.

**Article 13**      **Right of private persons to be involved in certain non-regulatory decisions** *(former Article 12)*

1. If a public authority intends to take a non-regulatory decision that may collectively affect the situation of an indeterminate number of people, it **should/shall** observe procedures - **such as consultations, public enquiries** - enabling them to be involved in the preparation of this decision. **/ If a public authority proposes to take a non-regulatory decision that may affect an indeterminate number of people, it shall observe procedures allowing for their involvement in the decision making process, such as consultations and public enquiries.**

~~2. These procedures should/shall include consultations and public enquiries.~~

3. Those concerned in such consultations and public enquiries shall be clearly informed of the proposals in question and have a full opportunity to express their views. The proceedings shall take place within a reasonable time.

4. The views expressed in these consultations and public enquiries shall be summarised in a form that enables the relevant authorities to take them into consideration.

**Article 14**      **Charges for administrative decisions** ~~Procedures for administrative decisions~~

~~2. These procedures / Procedures followed by public authorities for developing/preparing administrative decisions should be known by citizens/persons concerned in order to enable them either to participate or to check they/administrative decisions are implemented.~~

~~3. The cost of such procedures should be adapted/proportionate to the purpose of these procedures.~~

**1. Charges if payable by private persons to public authorities in respect of administrative decisions shall be fair and reasonable.**

**Article 15**      **Form of administrative decisions** *(former Article 13)*

1. Administrative decisions shall be **formulated** in simple and clear language that is easily understood by private persons **to whom they are directed**.

2. **Adequate** reasons shall be given for any unfavourable individual decision taken with regard to private persons, **stating the legal and factual grounds on which the decision was taken.**

**Article 16** ~~[Notification and]~~ **Publication of administrative decisions** *(former Article 14)*

1. Administrative decisions shall be subject to publication in order to make it possible for those concerned to have an exact and comprehensive knowledge [according to circumstances,] by personal notification or publication of general **and impersonal** nature.

**Administrative decisions shall be published in order to ensure those affected by those decisions have an exact and comprehensive knowledge of them which may be by personal notification or publication of a general nature.**

2. Individual decisions shall be **personally** notified to those concerned **except** in exceptional circumstances where publication **alone only** is possible. In all cases, appeal procedures including time-limits shall be indicated.

**Article 17** **Entry into force of administrative decisions** *(former Article 15)*

1. Administrative decisions may not be **made** retroactive **in effect** to a date prior to their adoption and notification or publication, **except where they have no favourable effect or if there is a necessity linked to specific circumstances of the case, unless is justified by special circumstances or prior information has been supplied on the future adoption of such decisions.**

**Administrative decisions may not be retroactive in effect to a date prior to their adoption and notification or publication, except where the rights and interests of private persons would not be adversely affected or when it would be necessary in specific circumstances.**

2. Individual decisions may not be **applied operative** until those concerned have been notified of them.

3. Rule-making decisions may not be **applied operative** until they have been properly **publicised published.**

4. ~~In certain cases, a reasonable time shall / may have to elapse between the adoption and notification or publication of an administrative decision imposing new obligations and the date on which [it becomes applicable] these obligations will apply.~~

*See also Article 6*

**Article 18** **Execution of administrative decisions** *(former Article 16)*

1. Public authorities shall be responsible for the **execution** of their own decisions.

2. An appropriate system of administrative and criminal penalties shall normally be established to ensure that private persons comply with decisions of the public authorities.

3. ~~{They~~ **Public authorities shall allow private persons a reasonable time to perform the obligations imposed on them, except in urgent cases where they shall duly state the reasons for this.** *(former Article 6)*

4. Enforced execution by public authorities **shall/should** be expressly prescribed by law. Private persons subject to the execution of a decision shall be informed of the procedure and of the justification for it. ~~They are to be given the possibility to comply with the administrative decision within a reasonable time except in urgent duly justified cases.~~ Enforced execution measures shall be proportionate.



~~4. — [They shall allow private persons a reasonable time to perform the obligations imposed on them, except in urgent cases where they shall duly state the reasons for this. (former Article 6)]~~

## **Article 19**      **Changes to individual administrative decisions** *(former Article 17)*

**1. Public authorities can amend or withdraw individual administrative decisions if necessary in the public interest and where rights acquired by private persons or their interests allow for it.**

~~1. — [Public authorities can change administrative decisions only taking into account the requirements of the public interest and the protection of the rights of those affected by such decisions.]~~

~~2. Administrative decisions can be modified if justified by the requirements of public interest and as far as the protection of the rights of those affected by the decision permit so.~~

~~3. — Administrative decisions affecting the rights and interest of individuals can be changed by public authorities if changes required in the public interest and the rights and interest of individuals are taken into consideration.~~

~~4. — Public authorities can not change administrative decisions except when the change is necessary in the public interest and the rights of individuals affected by the decision are taken into consideration.~~

~~5. — In order to change administrative decisions, public authorities shall take into consideration the requirements of the public interest and of the rights of those affected by the decision.~~

## **Section III**

### **Appeals**

## **Article 20**      **Appeals against administrative decisions**

**1. Private persons shall be entitled to seek, directly or by way of exception, a judicial review of an administrative decision which affects directly their rights and interests.**

~~2. — In principle, administrative appeals [should/shall] be possible in relation to any administrative decision. They may concern the expediency and/or legality of an administrative decision. (former Article 20, para. 2)~~

~~3. — Administrative appeals, as a prerequisite to seeking judicial reviews. May, in principle be possible in relation to any administrative decision and may, in some cases, be compulsory.~~

**2. Administrative appeals, prior to a judicial review, must in principle be possible. They may, in certain cases, be compulsory.** They may concern ~~the expediency and/or~~ a full appeal or an appeal on the legality of an administrative decision. *(former Article 20, para. 2)*

**4.3. Private persons should not suffer any prejudice from public authorities for appealing an administrative decision.**

*Appeal time limit and duration?*

~~5. — A prior review by an administrative body should be possible or in certain cases should be obligatory, before bringing cases before the courts. (former Article 21)~~

**Article 21**      **Appeals for compensation** *(variant: appeal for damage(s?))*  
*(former Article 22)*

1. Public authorities shall provide compensation to private persons who are the victims of unlawful administrative decisions or administrative negligence on the part of the administration or its officials for damage suffered. *(former Article 22, para. 1)*

2. Before bringing actions for damages against public authorities in the courts, private persons may first be required to submit their case to the authorities concerned. *(former Article 22, para. 2)*

3. Court orders **against** public authorities to provide compensation for damage suffered shall be executed within a reasonable time. *(former Article 22, para. 3)*

4. ~~It should be possible to seek to establish the personal liability of public officials in an appropriate manner, where appropriate, either by public authorities or either by victims.~~  
*(former Article 23, para. 1)*

**It shall be possible, where appropriate, for public authorities or victims to issue legal proceedings against public officials personally.**

~~5. Public authorities may only object to proceedings brought by private persons against their officials if the errors committed by the latter are related to the performance of their duties. *(former Article 23, para. 2)*~~