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**CONTEXT AND LEGAL ELEMENTS  
OF A PROPOSAL FOR A  
REGULATION  
ON THE ADMINISTRATIVE  
PROCEDURE OF THE EUROPEAN  
UNION'S INSTITUTIONS,  
BODIES, OFFICES AND AGENCIES**

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## MATERIALI COMUNITARI E NAZIONALI

(a cura di Monica Bonini)

### **CONTEXT AND LEGAL ELEMENTS OF A PROPOSAL FOR A REGULATION ON THE ADMINISTRATIVE PROCEDURE OF THE EUROPEAN UNION'S INSTITUTIONS, BODIES, OFFICES AND AGENCIES (\*)**

(di Diana-Urania Galetta, Herwig C.H. Hofmann,  
Oriol Mir Puigpelat, Jacques Ziller)

This study was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee. It provides for an analysis of and comments on the proposal for a Regulation on EU administrative procedural law prepared by the project team supporting the Working Group on Administrative Law and endorsed by the latter Working Group. The purpose of this Regulation is fostering compliance with the general principles of EU law, reducing the fragmentation of applicable rules, improving transparency and allowing for simplification of Union legislation by establishing a concise basic set of procedural provisions common to multiple policies.

**SUMMARY:** 1. The general context for a Regulation on administrative procedure at EU level. — 1.1. Why establish an EU Regulation on administrative procedure? — 1.2. Codification of administrative procedures. — 2. General comments on the draft Regulation. — 2.1. Introductory remark. — 2.2. Title of the Regulation. — 2.3. Structure. — 2.4. Scope. — 2.4.1. Limitation to EU institutions, bodies, offices and agencies. — 2.4.2. Exclusion of legislative procedures and judicial proceedings. — 2.4.3. Exclusion of non-legislative acts of general application. — 2.4.4. Limitation to 'direct administration'? — 2.4.5. Application of the Regulation to administrative activities. — 2.4.6. Relationship between the envisaged Regulation and other EU secondary law. — 2.5. Notion of 'Party'. — 3. Specific comments to single provisions. — 3.1. Chapter I: General provisions. — 3.2. Chapter II: Initiation of the administrative procedure. — 3.2.1. Article 5 - Initiation of the administrative procedure. — 3.2.2. Article 6 - Initiation by the Union's administration. — 3.2.3. Article 7 - Initiation by application. — 3.3. Chapter III: Management of the administrative procedure. — 3.3.1. Article 8 - Procedural rights. — 3.3.2. Article 9 - Duty of careful and impartial investigation. — 3.3.3. Article 10 - Duty to cooperate. — 3.3.4. Article 11 - Witnesses and experts. — 3.3.5. Article 12 - Inspections. — 3.3.6. Article 13 - Conflict of interests. — 3.3.7. Article 14 - Right to be heard. — 3.3.8. Article 15 - Right of access to the file. — 3.3.9. Article 16 - Duty to keep records. — 3.3.10. Article 17 - Time-limits. — 3.4. Chapter IV: Conclusion of the administrative procedure. — 3.4.1. Article 18 - Form of administrative acts. — 3.4.2. Article 19 - Duty to state reasons. — 3.4.3. Article 20 - Remedies. — 3.4.4. Article 21 - Notification of administrative acts. — 3.5. Chapter V: Rectification and

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withdrawal of acts. — 3.5.1. Article 22 - Corrections of errors in administrative acts. — 3.5.2. Article 23 - Rectification or withdrawal of administrative acts which adversely affect a party. — 3.5.3. Article 24 - Rectification or withdrawal of administrative acts which are beneficial to a party. — 3.5.4. Article 25 - Management of corrections of errors, rectification and withdrawal. — 3.6. Chapter VI: Administrative acts of general scope. — 3.6.1. Article 26 - Respect for procedural rights. — 3.6.2. Article 27 - Legal basis, statement of reasons and publication. — 3.7. Chapter VII: Information and final provisions. — 3.7.1. Article 28 - Online information on rules on administrative procedures. — 3.7.2. Article 29 - Evaluation. — 4. Annex: Proposal for a Regulation of the European Parliament and of the Council on the administrative procedure of the European Union's institutions, bodies, offices and agencies.

### **List of abbreviations**

**APA/APAs** = (National) = Administrative = Procedure = Act/Administrative Procedure Acts

**Art./Arts.** = Article/Articles

**Austrian APA** = Allgemeines Verwaltungsverfahrensgesetz 1991

**Charter** = Charter of Fundamental Rights of the European Union

**CJEU** = Court of Justice of the European Union

**CoERGA** = Council of Europe Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration

**Dutch APA (GALA)** = Wet van 4 juni 1992 houdende algemene regels van bestuursrecht (General Administrative Law Act)

**DV** = Die Verwaltung

**DVBl.** = Deutsches Verwaltungsblatt

**ELJ** = European Law Journal

**EO** = European Ombudsman

**EO Code** = European Code of Good Administrative Behaviour

**EP 2012/2024** = European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL))

**EPL** = European Public Law

**EU** = European Union

**EuR** = Europarecht

**German APA** = Verwaltungsverfahrensgesetz in der Fassung der Bekanntmachung vom 23. Januar 2003

**Italian APA** = Legge 7 agosto 1990 n. 241, Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi

**JORF** = Journal officiel de la République française

**NVwZ** = Neue Zeitschrift für Verwaltungsrecht

**Para./Paras.** = Paragraph/Paragraphs

**Polish APA** = Ustawa z 14 czerwca 1960 r. Kodeks postępowania administracyjnego

**REDUE** = Revista de Derecho de la Unión Europea

**ReNEUAL** = Research Network on EU Administrative Law

**ReNEUAL MR** = ReNEUAL Model Rules on EU Administrative Procedure

**RIDPC** = Rivista italiana di diritto pubblico comunitario

**Spanish APA** = Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común

**TEU TFEU** = Treaty on the European Union Treaty on the Functioning of the European Union

## **EXECUTIVE SUMMARY:**

### **Background**

The Committee on Legal Affairs of the European Parliament has requested a study on “The context and legal elements of a Proposal for a Regulation on the Administrative Procedure of the European Union’s institutions, bodies, offices and agencies”. The study is intended to support the work of the Working Group on Administrative Law in preparing a proposal of a full draft text for such Regulation.

A previous in-depth Analysis on ‘The General Principles of EU Administrative Procedural Law’ (PE 519.224) outlined suggestions for the wording of some of the recitals of a Regulation on the Administrative Procedure of the European Union that aim at ‘codifying’ general principles of EU administrative procedural law.

This study examines legal issues and adds explanations to the European Parliament’s draft Regulation on the Administrative Procedure of the European Union (the ‘Regulation’).

### **Aim**

- This study aims at assisting the project team of the Working Group on Administrative Law in finalising the text of a draft proposal of the Regulation and its explanatory statement.

- Chapter 1 presents some comments on more general aspects of the notion and process of drafting a regulation on administrative procedures of the EU. This includes reflections which are not merely strictly legal. Chapter 2 contains some considerations of more strategic nature such as those reflecting on the effectiveness and acceptability of the wording of the European Parliament’s future proposal.

- Chapter 3 contains more specific comments on single provisions of the draft Regulation. Chapter 3 therefore individually addresses each provision of the draft Regulation as prepared by the project team and endorsed by the Working Group on Administrative Law.

## 1. THE GENERAL CONTEXT FOR A REGULATION ON ADMINISTRATIVE PROCEDURE AT EU LEVEL.

### 1.1. *Why establish an EU regulation on administrative procedure?*

The purpose of establishing an EU regulation on administrative procedure is to improve the quality of the EU’s legal system. The planned

Regulation can contribute to this objective by fostering compliance with the general principles of EU law in implementation of EU law by reducing fragmentation and complexity of the applicable law.

The existing fragmentation of the law applicable to administrative procedure is due to an increase in sector-specific legislation and the subsequent differentiated jurisprudence of the CJEU. Given the lack of a general procedure act of the Union, this has led, on one hand, to a frequently redundant multiplication of regulation of administrative procedures, and on the other, to gaps in applicable rules that need to be filled by General Principles of EU law.

Another important factor that has added to the complexity of EU administrative procedures is the pluralisation of administrative actors through the creation of an increasing amount of EU agencies for various policy areas. Further complexities arise from the multi-jurisdictional implementation of EU policies and the necessary cooperation between European and Member State actors. EU institutions, bodies, offices and agencies regularly contribute to administrative procedures in which a final decision is taken by Member State authorities.

The multiple approaches to defining procedural elements in EU policy specific legislation has caused incoherent rules and a reduced degree of transparency of procedural rights and obligations in administrative procedures. This has resulted in an overall lack of predictability, intelligibility and most-likely trust in EU administrative and regulatory procedures and their outcome, especially from the point of view of citizens, small businesses and other non-specialists.

An EU Regulation on administrative procedures has the potential to contribute to the objectives not only of clarification of rights and obligations but also of simplification of EU law by ensuring that procedures can follow one single rulebook, and thus contributing to better regulation by improving the overall legislative quality. A codification of the main rules of administrative procedure at the level of the EU's institutions, bodies, offices and agencies will thus enhance legal certainty, fill gaps in the EU legal system and contribute to compliance with the rule of law. By clarifying the rights of individuals in procedures that affect them it will contribute to compliance with principles of due process and foster procedural justice.

Rules of administrative procedure are necessary for the realisation of the rights and interests of addressees and third parties in the implementation of EU law. But establishing clear procedural rules will also help EU officials in structuring their work when interacting with citizens, businesses and other legal persons thus adding to the transparency and effectiveness of the legal system as a whole.

The EP has demonstrated these factors in the 'European Added Value Assessment' of October 2012 on a Law of Administrative Procedure of the European Union. It held that a Regulation on Administrative procedure for

the EU administration would contribute to rationalise and reduce fragmentation as '[v]ery few EU regulations embed principles, rights and rules of administrative procedure that apply across the board to all EU policy sectors and to all EU institutions, bodies, offices and agencies.' (1).

This make for a set of fragmented and sector-specific rules. Furthermore, 'the current situation is that the most precise and comprehensive codification can be found in the internal documents of the institutions, in particular their Rules of Procedure, and in soft law documents, such as codes of conduct. These cannot however properly safeguard citizens' rights. Only binding, mandatory instruments have the capacity to establish enforceable rights for citizens, i.e. rights which may be the basis for a claim and, if non-compliance with the rules is proven, which may be the source of sanctions. [...] Today, the parallel existence of different rules and codes of conduct for the various EU institutions and bodies can give rise to confusion and disorientation that is due to be felt by citizens who have to deal with different institutions and bodies, due to their own different activities. Including clear principles and standards in a written body which would be applicable across the board, would in itself constitute a step forward in terms of transparency: knowledge of the current law by authorities and citizens would be enhanced, which would in turn favour its acceptance and observance by both. Moreover, the new clear wording of the Regulation will offer series of advantages: it will be well structured, precise and written in a user-friendly language; it will be published in all language versions, with the benefit of the involvement of lawyer-linguists; the involvement of MEPs in the ordinary legislative procedure will offer a unique opportunity to check its closeness to citizens and its user-friendly character.' (2).

Additionally, as was recalled in the same 'European Added Value Assessment'

'[a] general law of administrative procedure would also have positive effects on the prevailing institutional culture, contributing in consequence to improving relations between the EU citizens and Institutions [...]' (3).

## 1.2. *Codification of administrative procedures.*

The European Added Value Assessment confirms that whereas it is often stated that there are already many — perhaps even too many — provisions that contain some elements of rules and principles of administrative procedures applicable to the administrative activities of the EU's institutions, bodies, offices and agencies, they suffer not only from a lack of coherence but also from important lacunae.

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(1) PE\_494.457, p. 6.

(2) PE\_494.457, pp. 16-17.

(3) PE\_494.457, pp. 16-17.

The existing set of legal principles, rights and rules that apply to EU administrative procedure suffer from lacunae in that only a few EU regulations embed principles, rights and rules on administrative procedure that apply across the board to all EU policy sectors and to all EU institutions, bodies, offices and agencies. Subject-specific or sector-specific regulations and practices on administrative procedure differ from one case to another. Not all differences in applicable rules are the indispensable consequence of objective differences of conditions from sector to sector. In some sectors there is clearly a lack of regulations and established practices guaranteeing the rights of citizens, economic actors and other legal persons.

Thus we agree with the findings of the ‘European Added Value Assessment’ which held that ‘[t]he Commission considers that a binding EU Law on Administrative Procedure might be largely detrimental for the administration, as it would bring excessive rigidity and slow down decision-making. On the contrary, if well-worded, a law of administrative procedure contributes to enhancing the efficiency of administrative systems — i.e. providing better service, possibly at a lower cost — through more effective and transparent procedures as well as cost savings.’ (4).

As a matter of fact, more than two thirds of the EU Member States have adopted a general law on administrative procedure, some already before World War II, most of them since the middle of the nineteen-seventies, with a significant increase in speed and depth since the nineteen-nineties (5). On the whole, the experience of Member States with codification shows that the benefits of being able to refer to a single text — which does not impede additions in sector specific regulation where needed — clearly outweigh the problems raised by the necessity for courts to sometimes further define the consequences of the rules which are laid down in a general way. Setting general rules on administrative procedure means being able to define a minimum common denominator for the regulation of the relations between citizens and Public Administration. This will balance the

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(4) PE\_494.457, p. 20.

(5) Even in France, for instance, where the supreme administrative court, the Conseil d’Etat, has for a very long time shown reluctance towards the codification of administrative procedure, such a general law has been adopted by delegated legislation on 23 October 2015: see JORF n° 0248 du 25 octobre 2015: Rapport au Président de la République relatif à l’ordonnance n° 2015-1341 du 23 octobre 2015 relative aux dispositions législatives du code des relations entre le public et l’administration; Ordonnance n° 2015-1341 du 23 octobre 2015 relative aux dispositions législatives du code des relations entre le public et l’administration; Décret n° 2015-1342 du 23 octobre 2015 relatif aux dispositions réglementaires du code des relations entre le public et l’administration (Décrets en Conseil d’Etat et en conseil des ministres, décrets en Conseil d’Etat et décrets) available at <http://www.legifrance.gouv.fr/>. See also Jean-Marc Sauvé, Vice-président du Conseil d’Etat, ‘A la recherche des principes du droit de la procédure administrative. Colloque organisé par la Chaire Mutations de l’action publique et du droit public (MADP) de l’Institut d’études politiques de Paris Conseil d’Etat, Vendredi 5 décembre 2014’ available at <http://www.conseil-etat.fr/content/download/37440/324829/version/1/file/colloque%20procedure%20administrative.pdf>.

need for generally applicable rules, on one hand, with the need for special regulation of specific procedures, on the other. It will also help courts in the difficult task of applying procedural rules in relation to changing tasks of the administration. For all these reasons, in the past quarter century a venerable list of authors from around Europe have supported or called for a Union code of administrative procedure (6).

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(6) An indicative and non-conclusive list might include, among others, (in chronological order of publication): VEDDER, CHRISTOPH, '(Teil)Kodifikation des Verwaltungsverfahrensrechts der EG?', EuR, special edition 1/1995, p. 75 (*passim*); SCHWARZE, JÜRGEN, 'Deutscher Landesbericht', Schwarze, Jürgen (Coord.): Das Verwaltungsrecht unter europäischem Einfluß, Nomos, Baden-Baden, 1996, p. 123 (p. 218 et seqq.); SCHWARZE, JÜRGEN: 'Konvergenz im Verwaltungsrecht der EU-Mitgliedstaaten - Zugleich ein Beitrag zu Chancen und Risiken der Kodifikation allgemeiner Grundsätze des indirekten Vollzugs von Gemeinschaftsrecht -', DVBl., 1996, p. 881 (p. 886 et seqq.) [also published in English, with a few changes: 'The Convergence of the Administrative Laws of the EU Member States', EPL 4 (1998), p. 191 (p. 204 et seqq.)]; DELLA CANANEA, GIACINTO, 'I procedimenti amministrativi della Comunità europea', Chiti, Mario P. Greco, Guido (Coords.), Trattato di diritto amministrativo europeo. Parte generale, Giuffrè, Milan, 1997, p. 225 (p. 247 et seqq.); SCHMIDT-ABMANN, EBERHARD, 'Europäisches Verwaltungsverfahrensrecht', Müller-Graff, Peter-Christian (Coord.), Perspektiven des Rechts in der Europäischen Union, C.F. Müller, Heidelberg, 1998, p. 131 (p. 160 et seqq.); NEHL, HANNES PETER, *Principles of Administrative Procedure in EC Law*, Hart Publishing, Oxford, 1999, pp. 4 and 169 et seq.; SCHOCH, FRIEDRICH, 'Die Europäisierung des Allgemeinen Verwaltungsrechts und der Verwaltungsrechtswissenschaft', DV, special edition 2/1999, p. 135 (p. 154); SCHILY, OTTO, 'Die Europäisierung der Innenpolitik', NVwZ 2000, p. 883 (p. 888); SCHNAPAUFF, KLAUS-DIETER, 'Deutsche Verwaltung und Europäische Integration', Magiera, Siegfried/Sommermann, Karl-Peter (Coords.), Verwaltung in der Europäischen Union, Duncker & Humblot, Berlin, 2001, p. 13 (p. 20 et seqq.); KAHL, WOLFGANG, 'Das Verwaltungsverfahrensgesetz zwischen Kodifikationsidee und Sonderrechtsentwicklungen', Hoffmann-Riem, Wolfgang/Schmidt-Abmann, Eberhard (Coords.), Verwaltungsverfahren und Verwaltungsverfahrensgesetz, Nomos, Baden-Baden, 2002, p. 67 (p. 123 et seqq.); CRAIG, PAUL, *EU Administrative Law*, Oxford University Press, Oxford, 2006, p. 279 et seqq.; NIETO GARRIDO, EVA/MARTÍN DELGADO, ISAAC, *European Administrative Law in the Constitutional Treaty*, Hart Publishing, Oxford, 2007, p. 107 et seqq. (adapted to the Treaty of Lisbon and translated into Spanish in 2010: Derecho Administrativo Europeo en el Tratado de Lisboa, Marcial Pons, Madrid); MIR, ORIOL, 'La codificación del procedimiento administrativo en la unión administrativa europea', Velasco Caballero, Francisco/Schneider, Jens-Peter (Coords.), La unión administrativa europea, Marcial Pons, Madrid, 2008, p. 51 (*passim*; with German translation published in DV, special edition 8, 2009, p. 177); LADENBURGER, CLEMENS, 'Evolution oder Kodifikation eines allgemeinen Verwaltungsrechts in der EU', Trute, Hans-Heinrich/Groß, Thomas/Röhl, Hans Chr./Möllers, Christoph (Coords.), Allgemeines Verwaltungsrecht - zur Tragfähigkeit eines Konzepts, Mohr Siebeck, Tübingen, 2008, p. 107 (p. 124 et seqq.); von DANWITZ, THOMAS, *Europäisches Verwaltungsrecht*, Springer, Berlin, 2008, pp. 447, 466, 607 et seqq.; KAHL, WOLFGANG, 'Die Europäisierung des Verwaltungsrechts als Herausforderung an Systembildung und Kodifikationsidee', DV, special edition 10, 2010, p. 39 (p. 58 et seqq.); MARTÍN DELGADO, ISAAC: 'El procedimiento administrativo en el Derecho de la Unión Europea', REDUE 19, 2010, p. 99 (pp. 131 et seqq.); MIR, ORIOL, 'Arguments in favour of a general codification of the procedure applicable to EU administration', European Parliament, Workshop on EU administrative law: state of play and future prospects, PE453.215, Brussels, European Parliament, 2011, pp. 67-74; FUERTES, MERCEDES, 'The importance of keeping it simple: Reflections on a Law on Administrative Procedure for EU Institutions', PE462.419, Brussels, European Parliament, 2011, pp. 4-10; ZILLER, JACQUES, 'Is a law of administrative procedure for the Union institutions necessary?', RIDPC 3, 2011, p. 699 (*passim*); SORIANO, JOSÉ EUGENIO (Ed.), *Procedimiento Administrativo Europeo*, Cizur Menor, Civitas-Thomson Reuters, 2012, *passim*; Hofmann, Herwig C. H./Schneider, Jens-Peter/Ziller, Jacques/Auby, Jean-Bernard/Craig, Paul/Curtin, Deirdre/della Cananea, Giacinto/Galetta, Diana-Urania/

## 2. GENERAL COMMENTS ON THE DRAFT REGULATION.

### 2.1. *Introductory remark.*

Part 2 of this study comments on the title, structure and scope of the draft and key definitions of the wording of the draft Regulation on a Law of Administrative Procedure of the European Union (hereafter the draft) (7), which has been drawn up and submitted to our consideration by the Legal Affairs Committee's project team on administrative law (8). Here, we also take into account our previous in-depth Analysis on 'The General Principles of EU Administrative Procedural Law' (9), which contained suggestions on the wording of those recitals that aim at 'codifying' general principles.

The draft shows that a codification of EU administrative procedure law is not only feasible, but also highly recommendable. It will not only clarify and operationalise the relevant elements of the right to good administration enshrined in Art. 41 of the Charter of Fundamental Rights of the European Union (hereafter Charter) in terms understandable by citizens and civil servants but will also ensure that the obligations arising from Art. 298 TFEU are complied with by the EU legislature. Art. 298 TFEU requires that legislative regulations establish provisions enhancing an open, efficient and independent European administration (10).

The comments made in this study are not only strictly legal in nature but are also based upon strategic considerations. Our assumption is that the European Parliament's Legal Affairs Committee will strive to find the right balance between ensuring broad acceptability of its proposal by MEPs of various political orientations and Member States as well as ensuring that the proposed Regulation has real impact on EU administration and would not risk resulting in a mere window dressing exercise. Overall, the draft Regu-

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Mendes, Joana/Mir, Oriol/Stelkens, Ulrich/Wierzbowski, Marek (Eds.), *ReNEUAL Model Rules on EU Administrative Procedure*, version for online publication, 2014, *passim* (see also with Spanish, Italian, Polish and German translations published to date); Viñuales Ferreiro, Susana, *El procedimiento administrativo de la Administración europea*, Cizur Menor, Aranzadi-Thomson Reuters, 2015, *passim*.

(7) Text in Annex.

(8) The authors of this note have been intensively working on the issues that the draft proposal of a Regulation is addressing as members of the drafting teams of the 'ReNEUAL Model Rules on EU Administrative Procedure' (hereafter ReNEUAL MR) which have been published online on 1 September 2014 by the Research Network on EU Administrative Law, <http://www.reneual.eu/>.

(9) In-depth Analysis in the framework of the preparation of this Draft proposal for a Regulation: *The General Principles of EU Administrative Procedural Law* (pe 519.224) Available on [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL\\_IDA%282015%29519224\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL_IDA%282015%29519224_EN.pdf).

(10) Purpose of the draft proposal of Regulation, as stated very correctly by Art. 1(2), which derives from Recommendation 1 of the European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL)) (hereafter EP 2012/2024).

lation has to achieve the balance between ensuring effective administration, on one hand, and no less importantly, the protection of individual rights, on the other hand.

## 2.2. *Title of the Regulation.*

The title of the draft ‘Proposal for a Regulation of the European Parliament and of the Council on the Administrative Procedure of the European Union’s institutions, bodies offices and agencies’, is a slightly modified version of the European Parliament resolution of 15 January 2013 (11). The title bears similarity with the titles of some of the Member State’s codifications of administrative procedure.

The mentioning of the EU’s institutions, bodies offices and agencies in the title underlines that the Regulation is not applicable to Member States. This is in compliance with the wording of Art. 41(1) of the Charter and ensures coherence with Art. 2 and Art. 4(a) of the draft.

## 2.3. *Structure.*

The draft has a simple and coherent structure, which follows the general practice in EU secondary law. It contains developed recitals followed by the substantive part of the Regulation starting with a chapter on general provisions and finishing with a chapter on final provisions.

The recitals contain three main groups. First, recitals 1 to 13 cover the *raison d’être* of the proposed regulation and its history. These recitals, according to the general legislative practice in the EU, begin with a reference to earlier relevant texts, EU Treaty provisions and provisions of the Charter of Fundamental Rights informing the current draft.

Second, recitals 14 to 36 reflect the provisions in the individual articles of the Regulation. Most of those recitals, as well as some additional ones (39 to 42) contain (non-binding) wording that aims at codifying the general principles of EU administrative procedures. The purpose of these recitals is not to redefine or to limit the principles referred to since these principles have their binding definition in various provisions of the EU treaties and the case law of the CJEU. Instead, the purpose of these recitals is to highlight the implementation of these rights and principles through the procedural rules in the draft and thus make their content not only transparent to the broader public but also make visible their concrete application.

Third, recitals 37 and 38 refer to two fundamental rights and principles codified in existing secondary legislation complementing the draft Regulation, i.e. the principles of transparency and protection of personal data codified in the regulations on access to documents and on data protection.

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(11) EP 2012/2024.

The method applied in drafting the recitals is akin to a 're-statement' approach which consists of identifying the principles and drafting the relevant substance from the basis of case-law of the CJEU, the practice of EU institutions, bodies, offices and agencies, including, where appropriate, the European Ombudsman's Code on good administrative behaviour and the 'ombudsprudence' of the European Ombudsman. Non-legally binding recitals are best adapted for attempting a codification of these principles. The reasons for this lie in the nature of the principles: Neither the wording chosen to describe general principles of administrative procedural law as developed by the CJEU is in all cases fully coherent, nor is there necessarily full coherence between the wording of the CJEU case-law, EU secondary law and soft law instruments. Additionally, over time, CJEU ruling have used varying terminology to refer to the same concepts and the translations of the relevant principles are not always consistent even within single language versions. For example, before the adoption of the Charter, the English version of the CJEU's case law used the words 'good', 'sound', 'proper' administration or even 'good governance' etc. whereas the French version generally, but not without exceptions, used the words 'bonne administration' and other language versions also differ from the French one without any specific apparent reason.

The body of the draft Regulation, apart from the usual general and final provisions, largely follows a chronological approach. Similar to many national laws of administrative procedure, it mirrors typical phases of procedure. It starts with a chapter on the initiation of the procedure, followed by the management of the procedure, the conclusion of the procedure and a chapter on rectification and withdrawal of administrative acts. Chapter III on the management of the procedure establishes the rights and duties of the parties to the procedure and of the EU administration that have to be respected during any administrative procedure.

Before entering into a detailed discussion over the scope and the legal basis of the regulation, an assessment of the impact of the proposed regulation should start with reading Chapters II, III, IV, V and VI. It would appear to us that some concerns which might exist as to the scope and the legal basis of the regulation could be best addressed by orienting a reader, first, towards the substance of rights and obligations guaranteed by procedural rules contained in the draft.

Chapter I on general provisions follows the usual structure of EU secondary law: subject matter and objective; scope; and definitions, which we comment upon in the following sections of this note. Chapter II deals with the initiation of the administrative procedure, either upon the own-initiative of the administration (Art. 6) or upon application by a party (Art. 7). Chapter III contains a general provision on procedural rights (Art. 8) that apply the entire scope of the Regulation; those procedural rights are complemented by rights and duties defined in a more detailed way in Arts.

9 to 17. There are furthermore a number of rights and duties specified in Chapter IV on the conclusion of the procedure and in Chapter V on rectification and withdrawals of acts. Chapter VI contains two brief articles clarifying specific procedural elements of acts of general scope. The legal elements and context of those substantive provisions we comment upon in the following section of this note, as well as the provision of Art. 28 concerning online information on rules on administrative procedures, which is quite logically placed in the final provisions as it is a provision of a general nature which is meant to enhance visibility of the rules of procedure applicable to categories of procedures.

#### 2.4. *Scope.*

Provisions delimitating the scope of a legally binding text are particularly difficult to draft. This results not only from the legal consequences that derive thereof. It also results from the sensitive choices that need to be made in terms of effectiveness of the proposed provisions of the draft.

The delimitation of the Regulation's scope is the result of not only Art. 2 of the draft but also — as is usual in EU acts based on Treaty provisions — the result of the definitions in Art. 4 of the draft as well as of the wording of specific provisions, starting with Art. 3 of the draft on the Relationship between the Regulation and sectorial procedural rules.

Following Recommendation 1 annexed to European Parliament resolution EP 2012/2024 the draft's scope of application is limited to administrative procedures of the Union's institutions, bodies, offices and agencies.

According to the wording chosen in Art. 2(3) of the draft, the Regulation is neither applicable to Member States, nor is it, according to Art. 2(2) of the draft, applicable to other activities of the EU institutions, bodies, offices and agencies such as legislative procedures and judicial proceedings which are not of administrative nature.

The provisions of the draft are also not applicable to the procedures leading to the adoption of non-legislative acts directly based on the provisions of the treaties. Further excluded are delegated acts and implementing acts. This makes for a particularly limited scope of application in line with the European Parliament's drafting team's intentions of providing for a codification of general principles of EU law which can in future be referred to in legislative acts where necessary and possible.

Also, although some laws on administrative procedures that include relevant provisions on administrative rule-making regard rule-making as part of administrative activity (such as the well-known provision of the US Administrative Procedure Act of 1946 on regulatory activity of agencies), at the present stage of the debate on the codification of administrative procedural law of the EU and in view of delicate issues relating to the legal basis for codification, it appears that the European Parliament's draft's reaction

is to leave administrative rule-making activities outside of the scope of the proposed Regulation in order not to confuse the debate about the merits of the draft with arguments about the outer limits of Article 298 TFEU as legal basis of such draft.

2.4.1. *Limitation to EU institutions, bodies, offices and agencies.*

A limitation of the scope of the Regulation to EU institutions, bodies, offices and agencies is a cautious approach and is in line with the most common understanding of the applicability of Art. 298 TFEU. Although there are important arguments in favour of a possibly broader scope of that treaty provision (12), we confer with the authors of the draft and deem it wise to follow a more cautious, limited approach for a draft by the European Parliament at this stage. This will be an important element to counter potential criticisms over the issue of legal basis that might otherwise be raised by some Member States.

The third paragraph of Art. 2 of the draft is a good solution to stress that the Regulation would apply only to EU authorities, which also results from the definition of ‘the Union’s administration’ in Art. 4(a) of the draft reflecting Art. 41(1) Charter.

2.4.2. *Exclusion of legislative procedures and judicial proceedings.*

The draft explicitly excludes legislative procedures and judicial proceedings from its scope of application. From a strictly legal perspective this exclusion is not essential. It goes without saying that ‘administrative’ is clearly different from ‘legislative’ or ‘judicial’. Nevertheless it is indeed useful for the sake of clarity to restate this exclusion, as is often done in EU legislative texts.

2.4.3. *Exclusion of acts under Art. 290 and 291 TFEU.*

Art. 2(2) explicitly excludes not only legislative procedures and judicial proceedings but also ‘procedures leading to the adoption of non-legislative acts directly based on the provisions of the treaties, delegated acts or implementing acts’.

Exclusions of this kind can be justified for a project such as the one envisaged by the European Parliament predominantly in order to ensure that the sometimes confused arguments concerning the legal basis cannot be used to cast doubt on the entire project. For example, Art. 291 TFEU is the legal basis for the rules applicable to implementing acts. However, since Art. 291 TFEU regulates only the phase following the presentation of a Commission proposal, an administrative procedure act could regulate the phase leading up to the Commission proposal, Art. 291 TFEU does not

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(12) See ReNEUAL MR, Introduction, side numbers 45 and 46.

address the preparatory phase of such Commission proposals. As a result, several legislative acts of the Union creating EU agencies, generally on the basis of Art. 114 TFEU, regulate exactly this phase in preparation of the Commission proposal. Examples include the regulations establishing the European Supervisory Authorities regarding the financial markets (13). Nonetheless, given the potential confusion over this matter, at this phase, excluding acts under Article 291 TFEU from the scope of the Regulation will most likely allow for a higher degree of acceptability of the act and will allow to establish the codification of general principles in EU law on the basis of a limited scope of applicability of the act.

This strategic choice should be made irrespective of the fact that administrative activities in the framework of the preparation of non-legislative acts of general application are required to comply with the principle of good administration. Therefore integrating preparation of non-legislative acts of general application into a single Regulation would in the future be in the interest not only of the citizens whose rights and interests can be immediately concerned by implementing acts but would also be in the interest of legislative simplicity and visibility of rights. Art. 2(2)(c) excludes these types of acts from the scope of application of this Regulation in order to concentrate predominantly on procedures leading to individual acts. Only administrative acts of general scope have some specific rules in Chapter VI.

Generally speaking, the Regulation applies to all other administrative activities of the EU administration which are not explicitly excluded, whether they result in a unilateral decision or in a contract. It is worthwhile guaranteeing the application of relevant provisions of the Regulation to the procedures leading to the conclusion of contracts and their execution and ending, clearly without prejudice to legally binding provisions specifically applicable to contracts (14). Indeed, in a growing number of policy fields — e.g. research and technological development or development aid, as well as economic, social and territorial cohesion, and also in the common agricultural policy — contracts are used for the implementation of EU legislation. Hence, contracts have established themselves, often outside of public view, as a very important form of exercising administrative activities where the EU administration is in direct and personal contact with individuals and legal persons. Excluding contracts from the scope of the Regulation might have triggered the use of contracting instead of unilateral decision making when such an alternative is available for the purpose of avoiding the application of procedural guarantees. Experience of complaints received by

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(13) See for example Articles 10 and 15 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority).

(14) For more details see e.g. ReNEUAL MR Book IV on contracts.

the European Ombudsman shows how important it is to insist on complying with the rules of good administration also in the framework of contracts (15). The CJEU explicitly recognises that the Commission when taking decisions regarding contractual matters is obliged to comply with the principles of good administration (16). Therefore, the burden of the proof of the ‘danger’ of applying rules of good administration to contracts, if any, should lie upon the opponents to such a Regulation.

#### 2.4.4. *Limitation to ‘direct administration’?*

Resolution EP 2012/2024 explicitly provided that the Regulation’s ‘scope should [...] be limited to direct administration’ (17). The definition of the scope of the draft Regulation does not include such a limitation: in light of the present day reality of administrative procedures for the implementation of EU legislation and policies, it would indeed be very reductive to render it applicable only to procedures of so-called ‘direct administration’ — which involve exclusively EU institutions, bodies, offices and agencies — but not to the activities of EU institutions, bodies, offices and agencies in so called ‘composite procedures’, where the activities of EU institutions, bodies, offices and agencies are intertwined (with various degrees of complexity) with activities carried out by member states’ authorities.

Composite procedures are increasingly frequent in EU policies. They ensure that input into single administrative procedures can be given from authorities from various jurisdictions. Irrespective of whether a final decision will be taken by a Member State or an EU authority, both levels can thus be directly involved in a single administrative procedure. Where an EU authority acts, it must be held to EU principles of law. Therefore, although we would not suggest to extend the scope of applicability of this Regulation to Member States’ authorities, it is important to require compliance of activities of EU institutions, bodies, offices and agencies in the framework of ‘composite procedures’. The same rules that concretise good administration in the framework of ‘direct administration’ have to be applicable to administrative activities by Union administration in composite procedures. Excluding action of Union authorities in the context of composite administration would have limited the real-life usefulness of the draft Regulation to individuals and businesses considerably. It would also have discriminated between situations which are for all practical purposes identical. It is not clear why Union authorities should be able to act according to lower standards, just because Union legislation provides for decisions ending an administrative procedure by Member State authorities.

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(15) For more details see e.g. ReNEUAL MR Book IV on contracts, Introduction.

(16) See e.g. C 100/14 P Association médicale européenne (EMA) of 11 June 2015, paras. 120-123.

(17) Annex, Recommendation 1, second para.

Limiting the scope of application to the sole cases of ‘direct administration’ would also have reduced the immediate usefulness of the Regulation because in most cases of ‘direct administration’ — such as e.g. the application of competition rules or the REACH regulation (18) — procedural rules are already laid down to a certain degree of precision in sector-specific secondary EU legislation and regulatory acts. A scope including all administrative activities of EU institutions, bodies, offices and agencies has the advantage that those DG’s of the European Commission as well as other offices and agencies that are involved in direct administration will be more inclined to focus on Art. 3 of the draft, which addresses the relationship between the proposed Regulation and the specific sectorial legislation applicable to their procedures.

#### 2.4.5. *Application of the Regulation to administrative activities.*

The definition of ‘administrative activities’ in Art. 4(b) is appropriate as it gives a broad scope of application to the guarantees of good administration concretised through the Regulation. It is therefore essential not to jeopardize this goal by the definition of ‘administrative act’ which is indeed absent in the draft. Such a definition is very difficult to draft and any definition is prone to trigger criticisms. The definition of administrative activities and the definition of the scope of the Regulation in Art. 2(2) are defined in opposition to legislative and judicial activities. Equally, the Treaties have no definition of what an act is, and limit themselves to the definition of regulations, directives, decisions, recommendations and opinions in Art. 288 TFEU which is the only provision of the section devoted to ‘The legal acts of the Union’ containing definitions. It may be furthermore pointed out that there are already pieces of EU legislation using the words ‘administrative acts’, *in primis* the Council’s Rules of Procedure (19), which refer to ‘administrative or budgetary acts’ in its Art. 8 without further defining them. Administrative act is at any rate a subcategory of the concept of legal act, which is known to member States’ law as opposed to a mere fact.

Also, the Regulation should by no means try to determine which acts of the EU administration are subject to judicial review since this is a matter of the case law of the Court of Justice to define.

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(18) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

(19) Decision 2009/937/EU adopting the Council’s Rules of Procedure (2009/937/EU) OJ L 325, 11.12.2009, pp. 35-61.

2.4.6. *Relationship between the envisaged Regulation and other EU secondary law.*

Last but not least, the definition of the relationship between the envisaged Regulation and other EU secondary law is fundamental and directly linked to its scope of application. Art. 3 of the draft gives a perfectly clear and coherent definition of this relationship.

Art. 3 rightly does not contain a concept of ‘*de minimis* nature’ — which was a term used in EP 2012/2014. The latter was not clear in legal terms. One possible interpretation of that formulation is that it was aimed at establishing minimum standards of protection of the right to good administration. Another understanding could be that the level of detail of the Regulation should be restricted and leave some detail to be defined in specific policy legislation.

The draft Regulation, by contrast, provides that its provisions are not only intended to fill the gaps of existing and future EU secondary law. They could also increase the guarantee of good administration where existing EU law contains administrative procedural rules. In order to achieve such goals, the wording of Art. 3 responds to the following points.

- First, the legislature cannot bind itself for the future by such a Regulation. Only the legal basis of ‘comitology regulation’ (20) in Art. 291(3) TFEU provides that ‘the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles’. By contrast, Art. 298 TFEU does not contain such exceptional powers. Therefore, only the comitology regulation can bind future legislatures to comply with the provisions of the existing comitology regulation. Legislation based on legal basis other than Art. 291 TFEU will not have this effect on future legislation and policy-specific acts.

- Second, this Regulation should be used in the interpretation of procedural rules contained in other EU secondary law in order to allow for more coherence in the application of similar procedures even if the details of those procedures remain different (21).

It is important to stress that once Art. 3 provides that ‘this Regulation shall apply without prejudice to other generally policy-specific legal acts of the Union’ it is not necessary to repeat in other Articles of the draft that rules which are laid down therein have a subsidiary nature. If such a precision were made, it would raise doubts about the subsidiary nature of provisions that do not stress that. Indeed when other provisions of the

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(20) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers.

(21) See Art. I-2(2) ReNEUAL MR and the relevant explanations.

Regulation refer to such other legal acts it is in the view of reminding that the relevant provision applies to a procedure that finds its legal basis in secondary legislation, such as e.g. Art. 12 on inspections (see point 3.3.5).

### 2.5. *Notion of 'Party'*

The definitions included in Art. 4 and used throughout the draft are particularly important. The draft rightly limits the number of definitions to those which are indispensable.

An essential definition refers to the notion of party in Art. 4(f). The notion of party gives rise to certain procedural rights associated with the status as party. Art. 4(f) defines a party as natural or legal person whose legal position *may* be affected by the outcome of an administrative procedure. This is an objective criterion to be established by the administration subject to full judicial review. This definition covers the notion of party for any administrative activity carried out by Union administration. This might be because of the individual's role in initiation of a procedure by application (Art. 7) but can also result from being subject to an own-initiative procedure (Art. 6). The status as party gives rise to procedural rights such as those spelt out in Arts. 8, 14 and 15. The status as party, however, also requires compliance with obligations under the duty to cooperate under Art. 10. The role of party is distinct from that of a witness or expert under Art. 11. Furthermore it is clear from Art. 12 that where inspections may take place, those who are not party to the original administrative procedure will obtain the status as party to the inspection procedure (Art. 12(3)).

The concept of 'legal position' of a person is preferable to other seemingly more precise terms such as e.g. 'rights and obligations', because it better covers the situations where the guarantees of procedural law should apply. It has to be stressed that terms such as 'rights' or 'interests' have a different scope in different languages and legal systems.

## 3. SPECIFIC COMMENTS TO SINGLE PROVISIONS.

### 3.1. *Chapter I: General provisions.*

See the comments in Chapter 2.

### 3.2. *Chapter II: Initiation of the administrative procedure.*

#### 3.2.1. *Article 5 - Initiation of the administrative procedure.*

In view of the regulation's approach to address the process on a quasi-chronological sequencing (see section 2.3 of this note), Chapter II deals with the initiation of the administrative procedure. Its first provision, Art. 5 lists the two ways administrative procedures may be initiated accord-

ing to sector-specific legislation: on the administration's own initiative or by an application (22).

### 3.2.2. *Article 6 - Initiation by the Union's administration.*

Art. 6 regulation of the initiation on the administration's own initiative is based on three main elements.

First, it imposes the duty to formally initiate the procedure by means of a decision of the competent authority. This formal initiation provides legal certainty as it sets the starting point of the important mandatory time-limit for the adoption of the final decision laid down by Art. 17(1) of the draft.

Second, it establishes a very important duty to notify the formal initiation and to provide the parties with relevant and comprehensive information that shall allow them to duly exercise their rights of defence during the procedure (23). Such information includes the name and contact details of the responsible member of staff for managing the procedure. The appointment of such a responsible official is important to promote a better management of the procedure and a stronger protection of the parties' procedural rights (24).

Art. 6(2) and (3) correctly prohibits making public a decision to initiate before it has been notified to the parties (25) and allows to delay or to omit such notification only when it is strictly necessary in the public interest — e.g., when an immediate notification might jeopardise the investigation of the case (26).

Third, Art. 6(1) imposes the duty to examine the particular circumstances of the case before taking the decision whether to initiate it, in line with the important duty of careful and impartial investigation laid down in Art. 9 of the draft.

### 3.2.3. *Article 7 - Initiation by application.*

Art. 7 subjects applications to few formal requirements and grants some important procedural rights to applicants, such as the right to an acknowledgement of receipt with some relevant information (27) or to be given a deadline for remedying a defective application (28).

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(22) This twofold distinction is envisaged by Recommendation 4.1 of EP 2012/2024; Art. 12 of the Council of Europe Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration (CoERGA); Art. III-5(1) ReNEUAL MR; and by many national APAs.

(23) See also Art. III-5(3) ReNEUAL MR.

(24) The duty to appoint a responsible official is contained in Art. III-7 ReNEUAL MR under influence from the Italian APA (Arts. 4-6 of Legge 7 agosto 1990 n. 241, Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi); see also Art. 14(2) EO Code.

(25) See also Art. 20(2) EO Code.

(26) See also Art. III-5(2) ReNEUAL MR.

(27) In addition to the information envisaged in Art. 7(3), which is almost the same that

Administrative efficiency is the central concern of the provision on pointless or manifestly unfounded applications that may be rejected as inadmissible by means of a briefly reasoned acknowledgement of receipt. No acknowledgement of receipt is necessary in cases where the same applicant abusively submits successive applications (Art. 7(4)) (29).

According to Arts. 7(1) and 17(1), the draft establishes that the Union's administration is obliged to manage the procedure and to adopt a final administrative act after receiving an application. It is not up to the authority to decide whether to initiate it and manage a procedure and the obligation to react to an application is an inherent feature of the application procedures.

The obligation to react is also the distinguishing feature which characterises its nature and marks the difference from procedures initiated *ex officio* (30). In such cases, the procedure is initiated by the party, by the application itself, not by the administration. By using the words 'when the competent authority proceeds with an administrative procedure', art. 7(6) acknowledges this assumption while reminding that there is no obligation to proceed with manifestly unfounded applications (Art. 7(4)). The reference to the provisions of Art. 6(2) to (4) is largely redundant as the content of Art. 6(4) is explicitly reflected in Art. 7(3); but Art. 7(3) applies to the acknowledgement of receipt, which has a different legal nature from the notification to which Art. 6(4) applies. By stating that Article 6(2) to (4) 'shall apply where appropriate', the provision draws attention to those parallelisms. That reference to 'where appropriate' must, importantly, also be read as safeguarding the position of third parties who might be affected by a procedure which is initiated by application. The latter could be explicitly mentioned in order to strengthen the importance of this point.

### 3.3. Chapter III: Management of the administrative procedure.

#### 3.3.1. Article 8 - Procedural rights.

Art. 8 enumerates some relevant general rights of the parties that are not granted elsewhere in the draft and which should be respected in all stages of the procedure.

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has to be given to the parties when procedures are initiated on the administration's own initiative (see section 3.2.2 of this Analysis; the duty to indicate 'the consequences of any failure to adopt the administrative act within the time-limit' may also include the indication of the available remedies in case no administrative act is adopted within the established time-limit), Art. 7(5) also obliges to indicate the competent EU authority to which the request has to be addressed, when it has been addressed to the wrong one.

(28) See also Art. 14 EO Code; Recommendation 4.2 EP 2012/2024; Art. 13(5) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market; Art. 13(4) CoERGA; Art. III-6(3) ReNEUAL MR.

(29) See also Art. III-6(3) ReNEUAL MR; Art. 14 EO Code.

(30) See for instance Art. III-5(4) ReNEUAL MR and the Spanish APA (Art. 42(1) of Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común).

Those rights duly complement other rights of the parties concerning specific stages of the procedure established in other provisions of the draft (such as the right to receive an acknowledgement of receipt in application procedures; to be heard; to access the file; to be given reasons for the final decision, etc.) (31).

### 3.3.2. *Article 9 - Duty of careful and impartial investigation.*

Art. 9(1) contains the important duty of careful and impartial investigation developed in the jurisprudence of the CJEU (32). This duty is a significant element of the principle of good administration, and as such implied in Art. 41(1) of the Charter (33).

Art. 9(2) further enumerates some relevant instruments of information gathering envisaged by the Union's sector-specific legislation, such as evidence of parties, witnesses and experts, visits and inspections and the request of documents and records (34).

In view of the rights of defence, Art. 9(3) explicitly enumerates the parties' right to produce evidence.

### 3.3.3. *Article 10 - Duty to cooperate.*

Art. 10 complements the principle of *ex officio* investigation laid down in Art. 9 by establishing the duty of the parties to cooperate with the competent authority in ascertaining the facts and circumstances of the case (35).

Art. 10 is particularly important in order to show that the draft Regulation is balancing the duties imposed upon the administration with duties imposed upon the parties, and hence complying with the objective of protecting citizens and legal persons and fostering efficiency at the same time.

Paras. 2 and 3 contain important safeguards. Para 2 requires that a reasonable time-limit shall be given to the parties to reply to any request of cooperation and para. 3 correctly grants the privilege against self-

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(31) A similar general list is contained in Art. III-8(1) ReNEUAL MR and in Art. 35 of the Spanish APA. See also Arts. 7, 8(1) and 13(2) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market; Recommendation 3 EP 2012/2024; Arts. 10(3), 15(3) and 22 EO Code; Art. 16 CoERGA.

(32) See for instance Case C-269/90 TU München v Hauptzollamt München-Mitte [1991] ECR I-5469, para. 14; Case T-13/99 Pfizer Animal Health v Council of the EU [2002] ECR II-3305.

(33) See also Art. 9 EO Code; Art. III-10(1) ReNEUAL MR; § 24 of the German APA (Verwaltungsverfahrensgesetz in der Fassung der Bekanntmachung vom 23. Januar 2003); Art. 3:2 of the Dutch APA (Wet van 4 juni 1992 houdende algemene regels van bestuursrecht); Art. 6(1)(b) of the Italian APA; Arts. 77-79 of the Polish APA (Ustawa z 14 czerwca 1960 r. Kodeks postępowania administracyjnego).

(34) See also § 26(1) of the German APA.

(35) See also § 26(2) of the German APA; Art. III-13 ReNEUAL MR.

incrimination, an important element of the rights of defence developed by the CJEU (36), in cases where the administrative procedure may lead to an administrative sanction (37).

### 3.3.4. *Article 11 - Witnesses and experts.*

Art. 11 specifies that witnesses and experts may be heard at the initiative of the competent authority or proposed by the parties, and that experts chosen by the competent authority shall be technically competent and not affected by a conflict of interest.

This latter requirement is particularly important considering the key role consulted experts have in many EU administrative procedures, like those where the final decision relies on an accurate scientific risk assessment (38). Conflicts of interest are regulated in Art. 13 (see section 3.3.6 of this Analysis).

### 3.3.5. *Article 12 - Inspections.*

Art. 12 lays down a set of basic rules regarding inspections, one of the main instruments of information gathering before and during administrative procedures. National APAs do not usually regulate inspections, but this is nowadays considered to be a shortcoming by many scholars, considering the big impact inspections may have on citizens and businesses, their relevance for administrative decision-making and the existence of a number of procedural rights that can be granted in all kinds of inspections.

Art. 12 correctly summarizes relevant principles and rules contained in different pieces of sector-specific legislation (39), adding some interesting contents.

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(36) See for instance Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij (LVM) and others v Commission* [2002] ECR I-8375, paras. 258-293; Case 347/87 *Orkem v Commission* [1989] ECR 3283, paras. 27-42.

(37) See Art. III-14 ReNEUAL MR.

(38) Such requirements are foreseen by sector-specific legislation like e.g. Arts. 22(7), 23(a), 28, 32(1), 37 and 38 of the Regulation (EC) 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, with regard to the experts of this Authority.

(39) See e.g. Arts. 8 and 9 of Council Regulation (EC, Euratom) 2988/95 of 18 December 1995 on the protection of the European Communities financial interests; Council Regulation (Euratom, EC) 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities; Arts. 20 and 21 of Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; Arts. 12 and 13 of Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation); Regulation 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) 1074/1999. See also Arts. III-16 to III-21 ReNEUAL MR.

Art. 12(1) recalls that inspections need a specific legal basis in a policy-specific legislative act of the Union. Art 12(1) thereby establishes no general power to inspect but instead reiterates that inspections may be carried out only under a specific legal basis and where necessary to fulfil a duty or achieve an objective under Union law specified in the legal authorising legal act (40).

The provisions of Art. 12 hence apply in order to fill gaps in the provisions relating to inspections of the relevant legislative acts and in order to help in the interpretation of the provisions that regulate those inspections in the relevant sectoral piece of legislation.

Paras. 2 to 5 establish some basic rights for the parties subject to inspection, like the right to be notified in advance of the date and starting time of the inspection (unless this could jeopardise the results of the inspection), to be given a written authorisation of the inspection, to be informed of the identity and position of the inspectors, to be present during the inspection and to express opinions and ask questions related to it, to be informed of the subject matter and purpose of the inspection, of the procedure and rules governing the inspection and of the follow-up measures and possible consequences of the inspection, and to receive a copy of the important inspection report inspectors shall draw according to para. 5. The principle of proportionality is also taken into account when establishing that the inspection shall be carried out without causing undue inconvenience to the object of the inspection or the person possessing it.

Paras. 6 and 7, in light of the fact that Union's inspections always take place in the territory of a Member State, oblige Union's inspectors to cooperate with the authorities of the respective Member State and to respect existing national procedural requirements (41).

### 3.3.6. *Article 13 - Conflict of interests.*

Art. 13 addresses in a brief and convincing way the key aspect of the impartiality and the conflicts of interests of members of staff participating in the procedure. The right to be treated impartially by EU authorities is a facet of the fundamental right to good administration enshrined in Art. 41(1) of the Charter.

Currently, the duty of impartiality is regulated at EU level in the Financial Regulation and in the Staff Regulations (42). However, it is also necessary to address this central issue, which is also connected to the principles

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(40) See Art. III-16(1) ReNEUAL MR.

(41) On the cooperation between the Union's and the Member States' authorities during inspections see Arts. III-18 to III-21 ReNEUAL MR and the corresponding explanations.

(42) Art. 57 of Regulation (EU, Euratom) 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) 1605/2002; Art. 11(a) of Regulation 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of

of equality and non-discrimination (43). from a procedural perspective, in order to ensure adequate protection of the (other) parties. Similar rules on impartiality are indeed contained in many national APAs (44).

Para. 1 of Art. 13 obliges any member of staff to abstain from participating in the procedure where he or she has, directly or indirectly, a personal interest, including, in particular, any family or financial interest, such as to impair his or her impartiality. Instead of including an exhaustive list of grounds, as some APAs do, Art. 13 opts for a broader and functional approach.

Paras. 2 and 3 regulate how this duty is to be fulfilled. Para. 2 obliges the affected member of staff to communicate any conflict of interests to the competent authority, which will in most cases be his or her superior, who shall decide whether to exclude the official or not, in view of the particular circumstances of the case. In coherence with the procedural perspective mentioned before and with the right to be treated impartially of Art. 41(1) of the Charter, para. 3 also grants the right of the parties to request the exclusion of a member of staff affected by a conflict of interest (45).

### 3.3.7. *Article 14 - Right to be heard.*

Art. 14 regulates the central question of the right to be heard, the oldest and most important procedural right in the different legal traditions, a general principle of EU law according to the CJEU and a core element of the fundamental right to good administration enshrined in Art. 41(2)(a) of the Charter.

Para. 1 reproduces this Charter provision (in its English version) (46) and paras. 2 and 3 specify four important aspects deriving from the CJEU case law (47): the right of the parties to receive sufficient information and to be given adequate time to prepare their defence, the right to be assisted by

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Employment of Other Servants of the European Economic Community and the European Atomic Energy Community ('Staff Regulations').

(43) Arts. 20 and 21 of the Charter.

(44) See e.g. §§ 7 and 36a of the Austrian APA (Allgemeines Verwaltungsverfahrensgesetz 1991); Art. 2:4 of the Dutch APA; §§ 20 and 21 of the German APA; Arts. 28 and 29 of the Spanish APA.

(45) See Recommendation 4.3 EP 2012/2024; Art. III-3 ReNEUAL MR.

(46) Some other language versions of the Charter require that the contested measure is initiated against the claimant.

(47) See e.g. Cases C-48 and 66/90 Netherlands and Koninklijke PTT Nederland NV and PTT Post v Commission [1992] ECR 565; Case C-135/92 Fiskano AB v Commission [1994] ECR I-2885; Cases C-402 and C-415/05 P Kadi and Al Barakaat International Foundation v Council and Commission [2008] ECR I- 6351; Case C-349/07 Sopropé [2008] ECR I-10369. See also Recommendation 4.4 EP 2012/2024; Arts. III-23 and III-24 ReNEUAL MR, granting also specifically the right to be heard in composite procedures between EU authorities and Member States.

a person of their choice (48) and to express their views in writing or orally (49).

### 3.3.8. *Article 15 - Right of access to the file.*

Art. 15 addresses the right of access to the file, another important element of the fundamental right to good administration enshrined in Art. 41(2)(b) of the Charter, which is closely related to the right to be heard.

Para. 1 reproduces this Charter provision and adds two important elements: it establishes that the access to the file shall be ‘full’ (50), and imposes the duty to give reasons for access restrictions.

Para. 2, in line with the jurisprudence of the CJEU (51), establishes that where no full access to the entire file can be granted, the party should be given an adequate summary of the content of those documents (52).

These provisions are applicable irrespective of the general right of access to documents, which in itself is a fundamental right, protected by Art. 42 of the Charter and Art. 15(3) TFEU. Reference to that general right is made in recital 37 of this Regulation. This shows that access to the file is not the same as access to documents. In fact, the right of access to documents under Art. 42 of the Charter remains unaffected by these provisions and is implemented through Regulation 1049/2001 (53) (or a possible successor thereof).

### 3.3.9. *Article 16 - Duty to keep records.*

In line with Art. 24 EO Code (54) and with the jurisprudence of the CJEU (55), Art. 16 indicates that the Union’s administration ‘shall keep records of its incoming and outgoing mail, of the documents it receives and of the measures it takes’, and shall establish an index of the files it keeps.

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(48) This right relates to the right to be represented by a lawyer or some other person of the party’s choice included in Art. 8(e) of the draft.

(49) It seems that the choice as to whether the hearing should be written or oral is left to the authority’s discretion, in line with the existing case law of the CJEU.

(50) See also Recommendation 4.5 EP 2012/2024.

(51) See Case T-30/91 *Solvay v Commission* [1995] ECR II-1775, paras. 87-95; Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others v Commission* [2000] ECR II-491, paras. 142 to 144 and 147; Case T-329/00 *Bonn Fleisch Ex-und Import v Commission* [2003] ECR II-287, para. 59; in general Case C-204-205/00 *Aalborg Portland A/S and Others v Commission* [2004] ECR I-123.

(52) See also Art. III-22(2) *ReNEUAL MR*.

(53) Regulation (EC) 1049/2001 of the European Parliament and of the Council of 28 May 2001 regarding public access to European Parliament, Council and Commission documents.

(54) See also Recommendation 3 (“Principle of transparency”) EP 2012/2024; Art. III-7 *ReNEUAL MR*.

(55) See e.g. Opinion of Advocate General Kokott in *Solvay SA v European Commission*, Case C-109/10 P delivered on 14 April 2011, [2011] ECR I-10329 para. 194.

This is a very useful complement to the right of access to the file, as guaranteed by Art. 15 of the draft, and also to the regulation on access to documents. It is clearly in the interest of not only a transparent but also an efficient European administration, as called for by Art. 298 TFEU. Keeping an adequate file is also crucial to allow the parties to exercise their rights of defence and to enable judicial review.

Para. 2 recalls the obvious duty to respect the fundamental right to data protection (Art. 8 Charter) when keeping records.

### 3.3.10. *Article 17 - Time-limits.*

An important problem of the current regulation of EU administrative procedures is that EU sector-specific legislation, with few exceptions, generally lacks clear time-limits for administrative procedures. This is seen as one of the reasons for undue delays and to legal uncertainty for the parties concerned.

Art. 17 addresses this problem by laying down a time-limit of three months (56) in order to make operational the duty established by the CJEU to adopt decisions within a reasonable time (57). Sector-specific legislation, in line with Art. 3 of this draft, can provide for shorter or longer time-limits, according to the specific requirements of the matter.

The time specified in Art. 17(1) begins, in the case of Art. 17(1)(a), with the notification in case of own-initiative procedures (Art. 6 of the draft). This corresponds to the solution usually adopted by APA's. Under Art. 17(1)(b), on the other hand, the time-limit begins with the acknowledgement of receipt for cases of initiation of a procedure by application (Art. 7 of the draft). Art. 17(1)(b) differs from most APA's which rather refer to the date of the application itself. The Regulation, instead of opting for such a solution, which might be more coherent from a systematic point of view, chooses a solution that does not induce problems of evidence since, in order to solve the problems that might arise if the administration neglects to send an acknowledgement of receipt, Art. 17(3) establishes a mechanism which safeguards the rights of the applicant.

Art. 17(2) of the draft is special in the context of this draft as it is one of the few provisions which contains rules on what happens in case of non-compliance with the obligations of the administration spelt out within the Regulation. Where no administrative act can be adopted within the relevant time-limit, Art. 17(2) obliges the administration to inform the

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(56) See also Recommendation 4.6 EP 2012/2024; Art. III-9(1) ReNEUAL MR; Art. 42(3) of the Spanish APA; § 42a(2) of the German APA; Art. 2 of the Italian APA.

(57) See e.g. Case C-282/95 P Guérin automobiles v Commission [1997] ECR I-1503, para. 37, even with regard to complaints.

parties in case of delays and to give reasons for the delay (58). The authority is also obliged to respond to questions of parties which may arise anytime concerning the progress of the consideration of the matter. This is coherent with the right to be given all relevant information related to the procedure granted in Art. 8(a) of the draft.

Art. 17(3) establishes the consequences of a particular type of administrative silence. It holds that in absence of a receipt of an application in cases under Art. 7 of this draft, a negative decision shall be deemed to have been adopted. Generally, however, such presumed act will suffer from a lack of reasoning under Art. 296 TFEU and may thus be subject to judicial review. It should also be noted that for cases of non-action of the administration, Article 265 TFEU offers the option of bringing an action for failure to act and thus to remedy situations of non-action of the Union administration.

Art. 17(4) maintains consistency in Union law by referring to the general Union rules under Regulation 1182/71 (59) for the calculation of time-limits.

### 3.4. *Chapter IV: Conclusion of the administrative procedure.*

#### 3.4.1. *Article 18 - Form of administrative acts.*

Art. 18 establishes that the administrative act concluding the administrative procedure shall be in writing, shall be signed and drafted in a clear, simple and understandable manner (60).

The latter requirement shouldn't be interpreted in a merely formal way and should include also the substantive duty to duly specify the decision, in order to enable the parties to understand their rights or duties (61).

#### 3.4.2. *Article 19 - Duty to state reasons.*

Paras. 1 and 2 of Art. 19 contain a brief and convincing regulation of the important duty to state reasons, another crucial element of the fundamental right to good administration enshrined in Art. 42(2)(c) of the Charter and the second para. of Art. 296 TFEU (62).

In line with the existing case law of the CJEU (63), both paras. of Art. 19 require that the statement of reasons is clear and that it indicates the

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(58) See also Recommendation 4.6 EP 2012/2024; Art. III-9(3) ReNEUAL MR; Art. 42(6) of the Spanish APA; § 42a(2) of the German APA; Art. 35 of the Polish APA.

(59) Regulation (EEC, Euratom) No 1182/1971 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.

(60) See also Recommendation 4.7 EP 2012/2024; Art. III-31(1) ReNEUAL MR; Art. 55 of the Spanish APA; § 37 of the German APA.

(61) See Art. III-28 ReNEUAL MR; § 37(1) of the German APA; Art. 53(2) of the Spanish APA.

(62) See also Art. 296(2) TFEU.

(63) See e.g. Case C-367/95 P, *Commission of the European Communities v Chambre*

legal basis, the relevant facts and the way in which the different relevant interests have been taken into account (64).

Unlike some national APAs, Art. 19 does not restrict the duty to give reasons to certain types of acts nor envisages any exceptions (65); this is in line with the Treaty obligations deriving from Art. 296 TFEU.

Para. 3 only allows to replace the individual statement of reasons by a general one where a large number of parties are concerned; in such cases, the authority is only obliged to provide with an individual statement of reasons those parties who expressly request it (66). This para. 3 should be interpreted restrictively and not serve as an excuse to provide stereotyped statements of reasons.

### 3.4.3. *Article 20 - Remedies.*

The duty to indicate available remedies laid down in Art. 20 (67), which is foreseen in many national APAs (68), is very positive, since it facilitates the use of existing remedies by the parties, especially in composite procedures between the Union's administration and Member States, where the identification of such remedies may be particularly difficult. The duty to indicate not only administrative and judicial remedies, but also the possibility of lodging a complaint with the EO, goes beyond most national standards and duly reflects the importance of the Ombudsman at EU level.

It is however less clear that a Regulation on administrative procedure like the current draft should also regulate the possibilities of administrative review, as Art. 20(2) does when it grants the right to always request an administrative review by the hierarchical superior authority, or — where that is not possible — by the same authority which adopted the administrative act. If enacted, such regulation of administrative review should in any case address the particularities of review of the decisions adopted by Union's agencies, and it should make clear that requesting administrative review is not a prerequisite for bringing an action before the CJEU and that the two months deadline of Art. 263(6) TFEU does not begin until the administrative review has finished.

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syndicale nationale des entreprises de transport de fonds et valeurs (Sytraval) and Brink's France SARL [1998] ECR I-1719; Case C-301/96, Commission v. Germany [2003] ECR I-9919.

(64) See also Art. 18(1) EO Code; Recommendation 4.8 EP 2012/2024; Art. III-29 ReNEUAL MR (imposing also the duty to give reasons in composite procedures between EU authorities and Member States).

(65) As is the case e.g. of § 39(2) of the German APA; Art. 54 of the Spanish APA; Art. 21-octies(2) of the Italian APA; or Section 20(1) of the Swedish APA (Förvaltningslag (1986:223) Utfärdad: 1986-05-07).

(66) See Art. 18(3) EO Code; Recommendation 4.8 EP 2012/2024.

(67) See also Art. 19 EO Code; Recommendation 4.10 EP 2012/2024; Art. III-30 ReNEUAL MR.

(68) See e.g. Art. 3(4) of the Italian APA; § 61 of the Austrian APA; Art. 89(3) of the Spanish APA.

#### 3.4.4. *Article 21 - Notification of administrative acts.*

Art. 21 regulates two things. First, it obliges the Union's administration to notify to the parties about the adoption of an act (69). Second, Art. 21 also establishes that an act shall only take effect upon notification. Both rules are also foreseen in Art. 297(2) TFEU and in many national APAs (70), and constitute a general requirement of the principle of legal certainty applicable to all kind of decisions having legal effects (71).

However, according to Art. 27(2) of the draft, 'administrative acts of general scope' shall be published and not notified, and shall enter into force as from the date of publication by means directly accessible to those concerned.

#### 3.5. *Chapter V: Rectification and withdrawal of acts.*

The possibility of rectification or withdrawal of unlawful administrative acts adopted by the EU administration has been dealt with by the CJEU since the very beginning of its case law, for example in *Algera* of 1957. Therein, the CJEU acknowledges, on the basis of '*the rules acknowledged by the legislation, the learned writing and the case-law of the Member States*', the existence of a general principle of revocability of illegal measures at least within a reasonable period of time (72). Also many sector-specific EU regulations contain provisions on rectification and withdrawal of acts (73).

The provisions of Chapter V introduce general rules on rectification and withdrawal of acts adopted by EU Administrations, expressly taking into account the need to differentiate between, on one hand, the procedure to be followed for the revision of decisions adopted which affect adversely the interests of a person and, on the other hand, those which are beneficial to that person.

##### 3.5.1. *Article 22 - Corrections of errors in administrative acts.*

According to Recommendation 5 of EP 2012/2024 (on the review and correction of own decisions) 'The regulation should include the possibility for the Union's administration to correct a clerical, arithmetic or similar

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(69) According to Art. 8(d) of the draft, also the previous procedural steps that may affect them shall be notified to the parties. The duty not to make public the decision to initiate the procedure before the notification has taken place established in Art. 6(2) of the draft seems to be applicable also to the administrative act closing it.

(70) See e.g. § 41 of the German APA; Art. 7 of the Italian APA; Arts. 58-61 of the Spanish APA.

(71) See also Recommendation 4.9 EP 2012/2024; Art. 20 EO Code; Art. III-33(1) ReNEUAL MR.

(72) Court of Justice, 12.07.1957, in joined cases 7/56, 3/57-7/57.

(73) See e.g. Art. 10 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

error at any time on its own initiative or following a request by the person concerned.<sup>7</sup>

The Regulation follows this Recommendation by adding also a paragraph specifying the obligation to always inform parties about such corrections.

*3.5.2. Article 23 - Rectification or withdrawal of administrative acts which adversely affect a party.*

This Article and the following regarding rectification and withdrawal of decisions which were called for by EP 2012/2024 provide a significant added value, presenting the four different possible situations in a clear framework.

According to the provision of Art. 23, an unlawful administrative act which adversely affects a party should be rectified or withdrawn with retroactive effect. On the other hand, a lawful administrative act which adversely affects a party, in cases where the reasons that lead to the decision no longer exist, should be rectified or withdrawn without that decision having retroactive effect. This appears coherent with the principles set out to this regard in the CJEU case law (74).

Para. 4 then properly specifies that administrative acts which both adversely affect a party but which at the same time are beneficial to other parties, require an assessment of the possible impact of a rectification or withdrawal upon all the parties.

*3.5.3. Article 24 - Rectification or withdrawal of administrative acts which are beneficial to a party.*

In addition to what has already been said in the previous section, Art. 24 takes into account — in a consolidated manner — the principles stated in the CJEU case-law concerning the protection of legitimate expectations in this specific context (75).

Para. 2 specifies therefore that ‘[d]ue account shall be taken of the consequences of the rectification or withdrawal on parties who legitimately could expect the act to be lawful’ and that ‘[i]f such parties would incur losses due to reliance on the lawfulness of the decision, the competent authority shall evaluate if those parties are entitled to compensation.’

From this point of view, the provision takes also into account the distinction between lawful and unlawful administrative acts and properly specifies that, in case of a lawful administrative act which was beneficial to

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(74) Starting from the well-known Judgment of the Court of 22 March 1961, *Société nouvelle des usines de Pontlieue - Aciéries du Temple (S.N.U.P.A.T.) v High Authority of the European Coal and Steel Community*. Joined cases 42 and 49/59.

(75) See 54/77 *Herpels v Commission* [1978] ECR 585, para. 38; Case 14/81 *Alpha Steel v Commission* [1982] EC R 749, para. 10; Case 15/85 *Consorzio cooperative d’Abruzzo v Commission* [1987] ECR 1005, para. 12.

a party, its withdrawal shall not have retroactive effect with regard to that party (76).

3.5.4. *Article 25 - Management of corrections of errors, rectification and withdrawal.*

Art. 25 contains an important confirmation that certain procedural guarantees contained in earlier chapters of the draft Regulation also apply in procedures leading to the withdrawal and rectification of administrative acts.

3.6. *Chapter VI: Administrative acts of general scope.*

Arts. 26 and 27 address the phenomenon that administrative acts may also be general in scope. This does not take away from their nature as administrative acts. Where an act is of general scope certain specificities need to be taken into account in the procedure for the adoption of its acts, the notifications and publication requirements. Especially regarding a regulation intended to address administrative activities by Union bodies, offices, agencies and institutions, such provisions appear important, since much of Union administration covers the adoption of acts of general scope.

3.6.1. *Article 26 - Respect for procedural rights.*

The objective of this article is to ensure that the procedural requirements set out in this Regulation are also applicable to administrative procedures resulting in acts of general scope. The wording declaring this implicitly indicates that the practical requirements surrounding these types of act may allow for some specific procedural provisions, which would best be placed in sector specific legislation.

Art. 26 states that 'The content of administrative acts of general scope adopted by the Union's administration shall respect the procedural rights provided for in this Regulation'. This wording stresses that administrative acts of general scope which are not outside of the scope of the regulation as defined in Art. 2(2) cannot derogate from the rules set up in the Regulation. As such acts of general scope are neither legislative acts nor acts directly based upon the treaties, they may not derogate to the Regulation, which is a legislative act. From a strict legal perspective this goes without saying, but it is indeed good to stress this limit and underline the importance of respecting procedural rights.

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(76) See for this distinction already in the Judgment of the Court of 22 March 1961, *Société nouvelle des usines de Pontlieue - Aciéries du Temple* (S.N.U.P.A.T.) cit.

### 3.6.2. *Article 27 - Legal basis, statement of reasons and publication.*

Art. 27 contains legally necessary indications. The indication of legal basis and reasons generally derive from primary law (Art. 296 TFEU) and the Court of Justice's case-law.

The key to Art. 27 is its second para. on the specificities of the entry into force of acts of general scope. The regime of entry into force of such acts derives from the relevant treaty provisions (Art. 297 TFEU), which makes a difference between 'decisions which do not specify to whom they are addressed' and those which 'specify to whom they are addressed'. The second para. of Art. 27 explicitly refers to the possibility by making an act known 'by means directly accessible to those concerned' which for all practical purposes would generally be publication by internet or in the Official Journal of the European Union.

### 3.7. *Chapter VII: Information and final provisions.*

#### 3.7.1. *Article 28 - Online information on rules on administrative procedures.*

Including an Article establishing the duty to promote the provision of general updated online information on the existing administrative procedures seems very important to ensure citizens' access to applicable law and procedures in real-life. This is also a contribution to the overall transparency of the legal system (77). It is important to stress that 'existing procedures' does not mean 'ongoing procedures'. The information to be presented on-line is information on the specific elements of categories of procedures established according to Treaty provisions, acts of the institutions or any other form of regulation of soft-law instrument.

This information should allow potential applicants to know in advance the applicable legislation and the procedural and substantive legal requirements that have to be fulfilled in order to submit necessary notifications or to obtain, for example, permits or available subsidies. This also has the advantage of efficiency in that it helps avoiding the public authority to advise individuals and reduces wasteful processing of defective applications and notifications (78).

#### 3.7.2. *Article 29 - Evaluation.*

EU legislative acts habitually contain provisions on the evaluation of their functioning. It would appear to comply with good legislative practice, to include an obligation of evaluation of this Regulation in its Art. 29. This

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(77) As emphasised in Mandelkern Group on Better Regulation, Final Report (13 November 2001), available at: [http://ec.europa.eu/smart-regulation/better\\_regulation/documents/mandelkern\\_report.pdf](http://ec.europa.eu/smart-regulation/better_regulation/documents/mandelkern_report.pdf), pp. 10, 40-46.

(78) This provision has been taken from Art. III-4 ReNEUAL MR.

will allow for a proper preparation of future revisions and continuous improvement of legal acts.

4. ANNEX: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ADMINISTRATIVE PROCEDURE OF THE EUROPEAN UNION'S INSTITUTIONS, BODIES, OFFICES AND AGENCIES (79).

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 298 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments, Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) With the development of the competences of the European Union, citizens are increasingly confronted with the Union's institutions, bodies, offices and agencies, without always having their procedural rights adequately protected.

(2) In a Union under the rule of law it is necessary to ensure that procedural rights and obligations are always adequately defined, developed and complied with. Citizens are entitled to expect a high level of transparency, efficiency, swift execution and responsiveness from the Union's institutions, bodies, offices and agencies. Citizens are also entitled to receive adequate information regarding possibility to take any further action in the matter.

(3) The existing rules and principles on good administration are scattered across a wide variety of sources: primary law, secondary law, case-law of the Court of Justice of the European Union, soft law and unilateral commitments by the Union's institutions.

(4) Over the years, the Union has developed an extensive number of sectoral administrative procedures, in the form of both binding provisions and soft law, without necessarily taking into account the overall coherence of the system. This complex variety of procedures has resulted in gaps and inconsistencies in these procedures.

(5) The fact that the Union lacks a coherent and comprehensive set of codified rules of administrative law makes it difficult for citizens to understand their administrative rights under Union law.

(6) In April 2000, the European Ombudsman proposed to the institutions a Code of Good Administrative Behaviour in the belief that the same code should apply to all Union institutions, bodies, offices and agencies.

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(79) A very slightly modified version has been adopted by the JURY Commission in April 2016; see [http://www.emeeeting.europarl.europa.eu/committees/agenda/201604/JURI/JURI%282016%290420\\_1/sitt-2202254](http://www.emeeeting.europarl.europa.eu/committees/agenda/201604/JURI/JURI%282016%290420_1/sitt-2202254) topic n° 20.

(7) In its resolution of 6 September 2001, Parliament approved the European Ombudsman's draft code with modifications and called on the Commission to submit a proposal for a regulation containing a Code of Good Administrative Behaviour based on Article 308 of the Treaty establishing the European Community.

(8) The existing internal codes of conduct subsequently adopted by the different institutions, mostly based on that Ombudsman's Code, have a limited effect, differ from one another and are not legally binding.

(9) The entry into force of the Treaty of Lisbon has provided the Union with the legal basis for the adoption of an Administrative Procedure Regulation. Article 298 of the Treaty on the Functioning of the European Union (TFEU) provides for the adoption of regulations to assure that in carrying out their mission, the institutions, bodies, offices and agencies of the Union have the support of an open, efficient and independent European administration. The entry into force of the Treaty of Lisbon also gave the Charter of Fundamental Rights of the European Union ("the Charter") the same legal value as the Treaties.

(10) Title V ("Citizens' Rights") of the Charter enshrines the right to good administration in Article 41, which provides that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. Article 41 of the Charter further indicates, in a non-exhaustive way, some of the elements included in the definition of the right to good administration such as the right to be heard, the right of every person to have access to their file, the right to be given reasons for a decision of the administration and the possibility of claiming damages caused by the institutions and its servants in the performance of their duties, and language rights.

(11) An efficient Union administration is essential for the public interest. An excess as well as a lack of rules and procedures can lead to maladministration, which may also result from the existence of contradictory, inconsistent or unclear rules and procedures.

(12) Properly structured and consistent administrative procedures support both an efficient administration and a proper enforcement of the right to good administration guaranteed as a general principle of Union law and under Article 41 of the Charter.

(13) In its Resolution of 15 January 2013 the European Parliament called for the adoption of a regulation on a European Law of Administrative Procedure to guarantee the right to good administration by means of an open, efficient and independent European administration. Establishing a common set of rules of administrative procedure at the level of the Union's institutions, bodies, offices and agencies should enhance legal certainty, fill gaps in the Union legal system and should thereby contribute to compliance with the rule of law.

(14) The purpose of this Regulation is to establish a set of procedural rules which the Union's administration should comply with when carrying out its administrative activities. These procedural rules aim at assuring both an open, efficient and independent administration and a proper enforcement of the right to good administration.

(15) In line with Article 298 TFEU this Regulation should not apply to the Member States' administrations.. Furthermore, this Regulation should not apply to legislative procedures, judicial proceedings and procedures leading to the adoption of non-legislative acts directly based on the Treaties, delegated acts or implementing acts.

(16) This Regulation should apply to the Union's administration without prejudice to other Union's legal acts which provide for specific administrative procedural rules. However, sector-specific administrative procedures are not fully coherent and complete. With a view to ensuring overall coherence in the administrative activities of the Union's administration and full respect of the right to a good administration, legal acts providing for specific administrative procedural rules should, therefore, be interpreted in compliance with this Regulation and their gaps should be filled by the relevant provisions of this Regulation. This Regulation establishes rights and obligations as a default rule for all administrative procedures under Union law and therefore reduces the fragmentation of applicable procedural rules, which result from sector-specific legislation.

(17) The procedural administrative rules laid down in this Regulation aim at implementing the principles on good administration established in a large variety of legal sources in light of the case law of the Court of Justice of the European Union. Those principles are set out here below and their formulation should inspire the interpretation of the provisions of this Regulation.

(18) The principle of the rule of law, as recalled in Article 2 of the Treaty on European Union (TEU), is the heart and soul of the Union's values. In accordance with that principle, any action of the Union has to be based on the Treaties in compliance with the principle of conferral. Furthermore, the principle of legality, as a corollary to the rule of law, requires that activities of the Union's administration are carried out in full accordance with the law.

(19) Any legal act of Union law has to comply with the principle of proportionality. This requires any measure of the Union's administration to be appropriate and necessary for meeting the objectives legitimately pursued by the measure in question: where there is a choice among several potentially appropriate measures, the least burdensome option has to be taken and any charges imposed by the administration not be disproportionate to the aims pursued.

(20) The right to good administration requires that administrative acts be taken by the Union's administration pursuant to administrative procedures which guarantee impartiality, fairness and timeliness.

(21) The right to good administration requires that any decision to initiate an administrative procedure be notified to the parties and provide the necessary information enabling them to exercise their rights during the administrative procedure. In duly justified and exceptional cases where the public interest so requires, the Union's administration may delay or omit the notification.

(22) When the administrative procedure is initiated upon application by a party, the right to good administration imposes a duty on the Union's administration to acknowledge receipt of the application in writing. The acknowledgment of receipt should indicate the necessary information enabling the party to exercise his or her rights of defence during the administrative procedure. However, the Union's administration should be entitled to reject pointless or abusive applications as they might jeopardize administrative efficiency.

(23) For the purposes of legal certainty an administrative procedure should be initiated within a reasonable time after the event has occurred. Therefore, this Regulation should include provisions on a period of limitation.

(24) The right to good administration requires that the Union's administration exercise a duty of care, which obliges the administration to establish and review in a careful and impartial manner all the relevant factual and legal elements of a case taking into account all pertinent interests, at every stage of the procedure. To that end, the Union's administration should be empowered to hear the evidence of parties, witnesses and experts, request documents and records and carry out visits or inspections. When choosing experts, the Union's administration should ensure that they are technically competent and not affected by a conflict of interest.

(25) During the investigation carried out by the Union's administration the parties should have a duty to cooperate by assisting the administration in ascertaining the facts and circumstances of the case. When requesting the parties to cooperate, the Union's administration should give them a reasonable time-limit to reply and should remind them of the right against self-incrimination where the administrative procedure may lead to a penalty.

(26) The right to be treated impartially by the Union's administration is a corollary of the fundamental right to good administration and implies staff members' duty to abstain from taking part in an administrative procedure where they have, directly or indirectly, a personal interest, including, in particular, any family or financial interest, such as to impair their impartiality.

(27) The right to good administration might require that, under certain circumstances inspections be carried out by the administration, where this is necessary to fulfil a duty or achieve an objective under Union law. Those inspections should respect certain conditions and procedures in order to safeguard the rights of the parties.

(28) The right to be heard should be complied with in all proceedings initiated against a person which are liable to conclude in a measure adversely affecting that person. It should not be excluded or restricted by any legislative measure. The right to be heard requires that the person concerned receive an exact and complete statement of the claims or objections raised and is given the opportunity to submit comments on the truth and relevance of the facts and on the documents used.

(29) The right to good administration includes the right of a party to the administrative procedure to have access to its own file, which is also an essential requirement in order to enjoy the right to be heard. When the protection of the legitimate interests of confidentiality and of professional and business secrecy does not allow full access to a file, the party should at least be provided with an adequate summary of the content of the file. With a view to facilitating access to one's files and thus ensuring transparent information management, the Union's administration should keep records of its incoming and outgoing mail, of the documents it receives and measures it takes, and establish an index of the recorded files.

(30) The Union's administration should adopt administrative acts within a reasonable time-limit. Slow administration is bad administration. Any delay in adopting an administrative act should be justified and the party to the administrative procedure should be duly informed thereof and provided with an estimate of the expected date of the adoption of the administrative act.

(31) The right to good administration imposes a duty on the Union's administration to state clearly the reasons on which its administrative acts are based. The statement of reasons should indicate the legal basis of the act, the general situation which led to its adoption and the general objectives which it intends to achieve. It should disclose clearly and unequivocally the reasoning of the competent authority which adopted the act in such a way as to enable the parties concerned to decide if they wish to defend their rights by an application for judicial review.

(32) In accordance with the right to an effective remedy, neither the Union nor Member States can render virtually impossible or excessively difficult the exercise of rights conferred by Union law. Instead, they are obliged to guarantee real and effective judicial protection and are barred from applying any rule or procedure which might prevent, even temporarily, Union law from having full force and effect.

(33) In accordance with the principles of transparency and legal certainty, parties to an administrative procedure should be able to clearly

understand their rights and duties that derive from an administrative act addressed to them. For these purposes, the Union's administration should ensure that its administrative acts are drafted in a clear, simple and understandable language and take effect upon notification to the parties. When carrying out that obligation it is necessary for the Union's administration to make proper use of information and communication technologies and to adapt to their development.

(34) For the purposes of transparency and administrative efficiency, the Union's administration should ensure that clerical, arithmetic or similar errors in its administrative acts are corrected by the competent authority.

(35) The principle of legality, as a corollary to the rule of law, imposes a duty on the Union's administration to rectify or withdraw unlawful administrative acts. However, considering that any rectification or withdrawal of an administrative act may conflict with the protection of legitimate expectations and the principle of legal certainty, the Union's administration should carefully and impartially assess the effects of the rectification or withdrawal on other parties and include the conclusions of such an assessment in the reasons of the rectifying or withdrawing act.

(36) Citizens of the Union have the right to write to the Union's institutions, bodies, offices and agencies in one of the languages of the Treaties and to have an answer in the same language. The Union's administration should respect the language rights of the parties by ensuring that the administrative procedure is carried out in one of the languages of the Treaties chosen by the party. In the case of an administrative procedure initiated by the Union's administration, the first notification should be drafted in one of the languages of the Treaty corresponding to the Member State in which the party is located.

(37) The principle of transparency and the right of access to documents have a particular importance under an administrative procedure without prejudice of the legislative acts adopted under Article 15(3) TFEU. Any limitation of those principles should be narrowly construed to comply with the criteria set out in Article 52(1) of the Charter and therefore should be provided for by law and should respect the essence of the rights and freedoms and be subject to the principle of proportionality.

(38) The right to protection of personal data implies that without prejudice of the legislative acts adopted under Article 16 TFEU, data used by the Union's administration should be accurate, up-to-date and lawfully recorded.

(39) The principle of protection of legitimate expectations derives from the rule of law and implies that actions of public bodies should not interfere with vested rights and final legal situations except where it is imperatively necessary in the public interest. Legitimate expectations should be duly taken into account where an administrative act is rectified or withdrawn.

(40) The principle of legal certainty requires Union rules to be clear and precise. That principle aims at ensuring that situations and legal relationships governed by Union law remain foreseeable in that individuals should be able to ascertain unequivocally what their rights and obligations are and be able to take steps accordingly. In accordance with the principle of legal certainty, retroactive measures should not be taken except in legally justified circumstances.

(41) With a view to ensuring overall coherence in the activities of the Union's administration, administrative acts of general scope should comply with the principles of good administration referred to in this Regulation.

(42) In the interpretation of this Regulation, regard should be had especially to equal treatment and non-discrimination, which apply to administrative activities as a prominent corollary to the rule of law and the principles of an efficient and independent European administration,

HAVE ADOPTED THIS REGULATION:

CHAPTER I  
GENERAL PROVISIONS

*Article 1 - Subject matter and objective.*

1. This Regulation lays down the procedural rules which shall govern the administrative activities of the Union's administration.

2. The objective of this Regulation is to guarantee the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union by means of an open, efficient and independent administration.

*Article 2 - Scope.*

1. This Regulation applies to the administrative activities of the Union's institutions, bodies, offices and agencies.

2. This Regulation shall not apply to the activities of the Union's administration in the course of:

(a) legislative procedures;

(b) judicial proceedings;

(c) procedures leading to the adoption of non-legislative acts directly based on the Treaties, delegated acts or implementing acts.

3. This Regulation shall not apply to the administration of the Member States.

*Article 3 - Relationship between this Regulation  
and other legal acts of the Union.*

This Regulation shall apply without prejudice to other legal acts of the Union providing for specific administrative procedural rules. This Regula-

tion shall supplement such legal acts of the Union, which shall be interpreted in coherence with its relevant provisions.

*Article 4 - Definitions.*

For the purposes of this Regulation, the following definitions apply:

(a) 'Union's administration' means the administration of the Union's institutions, bodies, offices and agencies;

(b) 'administrative activities' means those carried out by the Union's administration for the implementation of Union law, with the exception of the procedures referred to Article 2(2);

(c) 'administrative procedure' means the process by which the Union's administration prepares, adopts, implements and enforces administrative acts;

(d) 'member of staff' means an official within the meaning of Article 1a of the Staff Regulations and a servant as defined in indents 1 to 3 of Article 1 of the Conditions of Employment of Other Servants of the European Union.

(e) 'competent authority' means the Union institution, body, office or agency or the entity therein or the holder of a position within the Union's administration which according to the applicable law is responsible for the administrative procedure;

(f) 'party' means any natural or legal person whose legal position may be affected by the outcome of an administrative procedure.

CHAPTER II

INITIATION OF THE ADMINISTRATIVE PROCEDURE

*Article 5 - Initiation of the administrative procedure.*

Administrative procedures may be initiated by the Union's administration on its own initiative or by an application of a party.

*Article 6 - Initiation by the Union's administration.*

1. Administrative procedures may be initiated by the Union's administration on its own initiative, pursuant to a decision of the competent authority. The competent authority shall examine the particular circumstances of the case before taking the decision whether to initiate the procedure.

2. The decision to initiate an administrative procedure shall be notified to the parties. The decision shall not be made public before the notification has taken place.

3. The notification may be delayed or omitted only when it is strictly necessary in the public interest. The decision to delay or to omit the notification shall be duly reasoned.

4. The decision to initiate an administrative procedure shall indicate:

- (a) a reference number and the date;
- (b) the subject matter and purpose of the procedure;
- (c) the description of the main procedural steps;
- (d) the name and contact details of the responsible member of staff;
- (e) the competent authority;
- (f) the time-limit for the adoption of the administrative act and the consequences of any failure to adopt the administrative act within the time-limit;
- (g) the remedies available;
- (h) the address of the website referred to in Article 28, if such a website exists.

5. The decision to initiate an administrative procedure shall be drafted in the languages of the Treaties corresponding to the Member States in which the parties are located.

6. An administrative procedure shall be initiated within a reasonable time after the date of the event that would be the basis of the procedure. It shall in no case be initiated later than 10 years after the date of that event.

*Article 7 - Initiation by application.*

1. Administrative procedures may be initiated by a party.

2. Applications shall not be subject to unnecessary formal requirements. They shall clearly indicate the name of the party, an address for notification, the object of the application, the relevant facts and reasons for the application, a date and place and the competent authority to which they are addressed. They shall be submitted in writing, either on paper or by electronic means. They shall be drafted in one of the languages of the Treaties.

3. Applications shall be acknowledged in writing. The acknowledgment of receipt shall be drafted in the language of the application and shall indicate:

- (a) a reference number and the date;
- (b) the date of receipt of the application;
- (c) a description of the main procedural steps;
- (d) the name and contact details of the responsible member of staff;
- (e) the time-limit for the adoption of the administrative act and the consequences of any failure to adopt the administrative act within the time-limit;
- (f) the address of the website referred to in Article 28, if such a website exists.

4. Where an application does not comply with the one or more of requirements set out in paragraph (2), the acknowledgment of receipt shall indicate a reasonable deadline for remedying the error or producing any missing document. Pointless or manifestly unfounded applications may be

rejected as inadmissible by means of a briefly reasoned acknowledgement of receipt. No acknowledgement of receipt shall be sent in cases where successive applications are abusively submitted by the same applicant.

5. If the application is addressed to an authority which is not competent to deal with it, that authority shall transmit it to the competent authority and shall indicate in the acknowledgment of receipt the competent authority to which the request has been transmitted or that the matter does not fall within the competence of the Union's administration.

6. When the competent authority proceeds with an administrative procedure, Article 6(2) to (4) shall apply where appropriate.

### CHAPTER III MANAGEMENT OF THE ADMINISTRATIVE PROCEDURE

#### *Article 8 - Procedural rights.*

The parties shall have the following rights related to the management of the procedure:

(a) to be given all relevant information related to the procedure in a clear and understandable manner;

(b) to communicate and to complete, where possible and appropriate, all procedural formalities at a distance and by electronic means;

(c) to use any of the languages of the Treaties and to be addressed in the language of the Treaties of their choice;

(d) to be notified of all procedural steps and decisions that may affect them;

(e) to be represented by a lawyer or some other person of their choice;

(f) to pay only charges that are reasonable and proportionate to the cost of the procedure in question.

#### *Article 9 - Duty of careful and impartial investigation.*

1. The competent authority shall investigate the case carefully and impartially. It shall take into consideration all relevant factors and gather all necessary information to adopt a decision.

2. With the purpose of gathering the necessary information, the competent authority may, where relevant:

(a) hear the evidence of parties, witnesses and experts,

(b) request documents and records,

(c) carry out visits and inspections.

3. Parties may produce evidence that they deem appropriate.

#### *Article 10 - Duty to cooperate.*

1. The parties shall assist the competent authority in ascertaining the facts and circumstances of the case.

2. The parties shall be given a reasonable time-limit to reply to any request of cooperation, taking into account the length and complexity of the request and the requirements of the investigation.

3. Where the administrative procedure may lead to a penalty, the parties shall be reminded of the right against self-incrimination.

*Article 11 - Witnesses and experts.*

Witnesses and experts may be heard at the initiative of the competent authority or proposed by the parties. The competent authority shall ensure that it chooses experts that are technically competent and not affected by a conflict of interest.

*Article 12 - Inspections.*

1. Inspections may be carried out where a legislative act of the Union establishes a power to inspect and where this is necessary to fulfil a duty or achieve an objective under Union law.

2. The inspections shall be carried out in accordance with the specifications laid down and within the limits set by the act that mandates or authorises the inspection as regards the measures that can be taken and the premises which can be searched. Inspectors shall exercise their power only on production of a written authorisation showing their identity and position.

3. The authority responsible for the inspection shall give notice to the party subject to the inspection of the date and starting time of that inspection. That party shall have the right to be present during the inspection and to express opinions and ask questions related to the inspection. Where it is strictly necessary in the public interest, the authority responsible for the inspection may delay or omit such notification on duly reasoned grounds.

4. During the inspection, parties present shall be informed, insofar as possible, of the subject matter and purpose of the inspection, the procedure and rules governing the inspection and the follow-up measures and possible consequences of the inspection. The inspection shall be carried out without causing undue inconvenience to the object of the inspection or the person possessing it.

5. Inspectors shall draw up without delay a report of the inspection, summarising the contribution of the inspection to achieving the purpose of the investigation and noting the essential observations made. The authority responsible for the inspection shall send a copy of that inspection report to the parties entitled to be present during the inspection.

6. The authority responsible for the inspection shall prepare and conduct the inspection in close cooperation with the competent authorities of the Member State in which the inspection takes place, unless the Member

State itself is the subject of the inspection, or this would endanger the purpose of the inspection.

7. In carrying out an inspection and when drawing up the inspection report, the authority responsible for the inspection shall take account of any procedural requirements laid down in the national law of the Member State concerned which specify the admissible evidence in administrative or judicial proceedings of the Member State in which the inspection report is intended to be used.

*Article 13 - Conflict of interests.*

1. A member of staff shall not take part in an administrative procedure, in which he or she has, directly or indirectly, a personal interest, including, in particular, any family or financial interest, such as to impair his or her impartiality.

2. Any conflict of interests shall be communicated by the member of staff concerned to the competent authority, which shall take the decision whether to exclude such person from the administrative procedure, having regard to the particular circumstances of the case.

3. Any party may request that a member of staff be excluded from taking part in an administrative procedure on the ground of conflict of interests. A reasoned request to that effect shall be submitted in writing to the competent authority, which shall take a decision after hearing the member of staff concerned.

*Article 14 - Right to be heard.*

1. The parties shall have the right to be heard before any individual measure which would adversely affect them is taken.

2. The parties shall receive sufficient information and they shall be given adequate time to prepare their case.

3. The parties shall be given the opportunity to express their views in writing or orally, if necessary, and if they so choose, with the assistance of a person of their choice.

*Article 15 - Right of access to the file.*

1. The parties concerned shall be granted full access to the file, while respecting the legitimate interests of confidentiality and of professional and business secrecy. Any limitation to this right shall be duly reasoned.

2. Where no full access to the entire file can be granted, the parties shall be given an adequate summary of the content of those documents.

*Article 16 - Duty to keep records.*

1. For each file, the Union's administration shall keep records of its

incoming and outgoing mail, of the documents it receives and of the measures it takes. It shall establish an index of the files it keeps.

2. Records shall be kept with full respect to the right to data protection.

*Article 17 - Time-limits.*

1. Administrative acts shall be adopted and administrative procedures shall be concluded within a reasonable time-limit and without undue delay. The time-limit for the adoption of an administrative act shall not exceed three months from the date of:

(a) the notification of the decision to initiate the administrative procedure if it was initiated by the Union's administration, or

(b) the acknowledgment of receipt of the application if the administrative procedure was initiated by application.

2. If no administrative act can be adopted within the relevant time-limit, the parties concerned shall be informed thereof and of the reasons justifying the delay and they shall be provided with an estimate of the expected date of adoption of the administrative act. Upon request, the competent authority shall respond to questions concerning the progress of the consideration of the matter.

3. If the Union's administration does not acknowledge receipt of the application within three months, the application shall be deemed to be rejected.

4. Time-limits shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council (80).

CHAPTER IV  
CONCLUSION OF THE ADMINISTRATIVE PROCEDURE

*Article 18 - Form of administrative acts.*

Administrative acts shall be in writing and shall be signed by the competent authority. They shall be drafted in a clear, simple and understandable manner.

*Article 19 - Duty to state reasons.*

1. Administrative acts shall clearly state the reasons on which they are based.

2. Administrative acts shall indicate their legal basis, the relevant facts and the way in which the different relevant interests have been taken into account.

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(80) Regulation (EEC, Euratom) No 1182/1971 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.

3. Administrative acts shall contain an individual statement of reasons relevant to the parties' situation. If that is not possible due to the fact that a large number of persons are concerned, a general statement of reasons shall be sufficient. In that case, however, any party who expressly requests an individual statement of reasons shall be provided with it.

*Article 20 - Remedies.*

1. Administrative acts shall clearly state that an administrative review is possible.

2. Parties shall have the right to request an administrative review against administrative acts adversely affecting their rights and interests. Requests for administrative reviews shall be submitted to the hierarchical superior authority and, where that is not possible, to the same authority which adopted the administrative act.

3. Administrative acts shall describe the procedure to be followed for the submission of a request for administrative review, as well as the name and office address of the competent authority or the responsible member of staff with whom the request for review has to be submitted. The act shall also indicate the time-limit for submitting such request.

4. Administrative acts shall clearly refer, where Union law so provides, to the possibility of bringing judicial proceedings or lodging a complaint with the European Ombudsman.

*Article 21 - Notification of administrative acts.*

Administrative acts which affect the rights and interests of the parties shall be notified in writing to them as soon as they are adopted. Administrative acts shall take effect for a party upon notification to that party.

CHAPTER V  
RECTIFICATION AND WITHDRAWAL OF ACTS

*Article 22 - Correction of errors in administrative acts.*

1. Clerical, arithmetic or similar errors shall be corrected by the competent authority on its own initiative or following a request by the party concerned.

2. The parties shall be informed before any correction is implemented and the correction shall take effect upon notification. If this is not possible due to the large number of parties concerned, the necessary measures shall be taken to ensure that all parties are informed without undue delay.

*Article 23 - Rectification or withdrawal of administrative acts which adversely affect a party.*

1. The competent authority shall rectify or withdraw, on its own initiative or following a request by the party concerned, an unlawful

administrative act which adversely affects a party. Rectification or withdrawal shall have retroactive effect.

2. The competent authority shall rectify or withdraw, on its own initiative or following a request by the party concerned, a lawful administrative act which adversely affects a party if the reasons that lead to the decision no longer exist. Rectification or withdrawal shall not have retroactive effect.

3. Rectification or withdrawal shall take effect upon notification to the party.

4. Where an administrative act adversely affects a party and at the same time is beneficial to other parties, an assessment of the possible impact upon all the parties shall be drawn up and the conclusions included in the reasons of the rectifying or withdrawing act.

*Article 24 - Rectification or withdrawal of administrative acts  
which are beneficial to a party.*

1. The competent authority shall, on its own initiative or following a request by another party, rectify or withdraw an unlawful administrative act which is beneficial to a party.

2. Due account shall be taken of the consequences of the rectification or withdrawal on parties who legitimately could expect the act to be lawful. If such parties would incur losses due to reliance on the lawfulness of the decision, the competent authority shall evaluate if those parties are entitled to compensation.

3. Rectification or withdrawal shall have retroactive effect only if done within a reasonable time. If a party could legitimately expect the act to be lawful and has argued that it should be upheld, the rectification or withdrawal shall not have retroactive effect with regard to that party.

4. The competent authority may rectify or withdraw a lawful administrative act which is beneficial to a party on its own initiative or following a request by another party if the reasons that lead to the specific act no longer exist. Due account shall be taken of legitimate expectations of other parties.

5. Rectification or withdrawal shall take effect upon notification to the party.

*Article 25 - Management of corrections of errors,  
rectification and withdrawal.*

The relevant provisions in Chapters III, IV and VI of this Regulation shall also apply to the correction of errors, rectification and withdrawal of administrative acts.

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CHAPTER VI  
ADMINISTRATIVE ACTS OF GENERAL SCOPE

*Article 26 - Respect for procedural rights.*

Administrative acts of general scope adopted by the Union's administration shall comply with the procedural rights provided for in this Regulation.

*Article 27 - Legal basis, statement of reasons and publication.*

1. Administrative acts of general scope adopted by the Union's administration shall indicate their legal basis and shall clearly state the reasons on which they are based.

2. They shall enter into force as from the date of publication by means directly accessible to those concerned.

CHAPTER VII  
INFORMATION AND FINAL PROVISIONS

*Article 28 - Online information on rules on administrative procedures.*

1. The Union's administration shall promote the provision of updated online information on the existing administrative procedures in an ad-hoc website, wherever possible and reasonable. Priority shall be given to application procedures.

2. The online information shall include:

(a) a link to the applicable legislation,

(b) a brief explanation of the main legal requirements and their administrative interpretation,

(c) a description of the main procedural steps,

(d) the indication of the authority competent to adopt the final act,

(e) the indication of the time-limit for the adoption of the act,

(f) the indication of remedies available,

(g) a link to standard forms that may be used by parties in their communications with the Union's administration within the procedure.

3. The online information set out in paragraph (2) shall be presented in a clear and simple way. Access to that information shall be free of charge.

*Article 29 - Evaluation.*

The Commission shall submit a report on the evaluation of the functioning of this Regulation to the European Parliament and the Council before (xx years after the entry into force).

*Article 30 - Entry into force.*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety.

Done at,

For the European Parliament The President

For the Council The President