**Implementation of laws on general administrative
procedure in the Western Balkans**

**SIGMA Paper No. 62**

**ANNEX**

**Template supporting the harmonisation
of the special laws with the LAP**

This paper’s main thesis is that some of the most important problems in the proceedings of the administrative systems under analysis can be attributed to the limited or, in some cases, non‑existent alignment of specialised/sectoral laws with procedural features of the laws regulating administrative procedure on a general level. This thesis was confirmed by the examples provided in the paper, which indicated that aligning these two is not a trouble‑free process. A model tool was thus prepared like one that was used during the development of the methodological framework of the paper. This could help those who draft the sectoral laws and the authorities responsible to perform alignment checks in a simple, efficient and transparent manner.

The tool can be used to conduct a quick comparison between the basic procedural principles as defined by the general procedural laws (LAPs) and solutions of the sectoral law under preparation or already adopted (when harmonising the stock of laws). As sometimes a highly technical or otherwise specialised nature of the matter regulated by the sectoral laws prevents a straightforward alignment, the differences (if not self‑evident) should also be shortly noted. Because laws do not function in isolation, not only laws under development and the anticipated effects of their interaction with other laws should be included. Finally, inasmuch as LAPs allow deviations from their general principles, it is always under a condition of necessity. Where a deviation is detected, a short explanation of the reasons should thus also be included. This form of comparison does not allow for in‑depth analysis, but it can identify possible disparities between the laws that might otherwise remain “buried” in the often lengthy texts of the laws, which make any other forms of comparison relatively difficult.

The tool consists of a table covering the main features of administrative procedures. The list of principles and elements is not exhaustive, and others can be added (e.g. all the general principles of the respective LAP, if not yet included in the table, as these mandatorily have to be complied with). The goal of the table is to capture the most important ones. The first column of the table should contain the exact provision of the LAP regulating the application of the general principle or element of any given country. The template contains selected references to some provisions from the WB LAPs as examples. The second column should contain the provision of the special law or draft regulating the same principle or element. Again, the template contains some selected examples from the WB special legislation, which stem from actual WB legislation, but which have been simplified as necessary to maintain the clarity and brevity of the example. Finally, the third column should contain a) the proposal to amend the special law (in case of contradiction with the LAP principles or unjustified deviation from the LAP); b) the explanation for any differences from the relevant LAP provisions, if they exist and deviations are allowed by LAP as well as can be justified, or c) a confirmation of compliance with the LAP.

General guidance for harmonising the special legislation with the LAP include the following principles.

* The special law should not deviate from the general principles of the LAP;
* In other aspects, differences from LAP can occur, but these have to be reasoned. If there is no particular need for deviations, uniform application of the administrative procedure as provided for in the LAP should be preferred, to simplify the participation of parties in different kinds of administrative procedures.
* In general, special legislation should not repeat general law, in order to avoid overlaps, but in some instances overlaps can exist (e.g. if the clarity of the legal framework will suffer without an overlap).
* The special law should include a clear and general reference to the LAP (since the principles of the LAP should apply in all administrative procedures).
* When harmonising the stock of existing special legislation, the use of omnibus laws for amending all relevant special legislation with one law helps to ensure consistency and process the amendments efficiently.

| **REFERENCE TO THE RELEVANT ARTICLE OF THE LAW ON ADMINISTRATIVE PROCEDURE (LAP)** | **REFERENCE TO THE ARTICLE OF THE SPECIAL LAW UNDER ANALYSIS** | **PROPOSAL FOR AMENDING THE SPECIAL LAW, JUSTIFICATION FOR DIFFERENCES OR CONFIRMATION OF LAP COMPLIANCE** |
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| **The Once Only Principle** requires that citizens and businesses provide diverse data only once when they contact the public administration. Public administration bodies should internally share and reuse data, while respecting data protection regulations and other constraints. As a rule, the Once Only Principle applies regardless of existence of certain preconditions (e.g. the interoperability of registers). In addition, the meaning of “state” here is used in its widest sense, also covering registries potentially kept by independent authorities or even other branches of government. |
| *For example, Article 23:**The party shall not be required to provide any data that is already available in public registers.* | *Some usual examples of discrepancies:**Article 45:** *The party has to provide a certificate of land ownership.*

*Article 34 of the Law on Land Register:** *A certificate of ownership can only be issued after a payment of a fee.*
 |  |
| **Proportionality of the Fee.** The costs of an administrative procedure, if payable by private persons to public authorities for administrative decisions, should be fair and reasonable. Administrative services should not be seen as a revenue‑making measure by the public authorities. There should not be significant differences in the fees for the same procedure, even if the procedure is conducted by different institutions (e.g. regional or municipal offices). |
| *Article 99: The procedure should be completed at the lowest possible cost to the party.* | *Article 15 of the Law on Administrative Fees:**EUR 40* |  |
| **Requirements for Applications and Consequences of Incomplete or Erroneous Submissions**.Requirements regarding the format and content of an application should not be unduly rigid – especially if a form is required – as regards subject matter. If a specific form is required, it must be easily available to the interested public.If an application is incomplete, the applicant must be given the possibility of correcting it within a reasonable deadline. |
| *Article 67:** *May be submitted in writing or electronically*

*Article 68:** *Must contain identification data and request, plus any additional data required by a special law*

*Article 69:** *If a submission is incomplete, parties must be allowed to correct it within a reasonable deadline*
 | *Article 76:** *Must contain a certificate of land ownership*

*Article 77:** *Incomplete submission must be corrected within five days.*
 |  |
| **Notification and Delivery of Documents**Parties should be appropriately notified of any relevant activities in the procedure.Any decision affecting their interest should be duly delivered to them. |
| *Article 65:**A party, interested authority and interested person shall be entitled to notification on the course of the proceedings. Notification shall mean the action through which an authority, in a suitable manner, notifies a party and another participant of actions taken during the administrative proceeding.**Article 68:**Personal service shall be obligatory when a non‑extendable time limit begins to run from the date of service, unless otherwise provided for by law.* | *Article 77:**All the events of the procedure shall be published on the authority’s web pages. The parties shall not be additionally notified.* |  |
| **Possibility of Electronic Communication** The legal framework should enable electronic communication between the participant of the proceeding and the administrative authority.As a rule, electronic communication is not mandatory, but usually depends on the consent of the party to the proceedings, unless electronic communication is explicitly provided for as the main form, under the special legislation.Between administrative authorities, electronic communication should be the preferred method of communication. |
| *Article 17: The public authority shall enable the party’s access to the public authority electronically.* |  |  |
| **Jurisdiction.** Administrative procedures can be conducted only by authorities with the legal competency to conduct them.Jurisdiction can be specified by subject matter or territory. |
| *Article 20:**Every public authority shall perform the administrative action within its area of jurisdiction.* | *Article 31:**Any public authority of general jurisdiction in the country may decide the matter.* |  |
| **Parties and Their Representation.** Determining the relevant parties is important, to engage them in the procedure. The parties also usually have wider rights than interested persons.The usual parties include the applicant, the recipient of the procedure (applicant and recipient can overlap), third person, approving authority (in case a prior approval by another authority is needed; the authority conducting the procedure is not a party).**Representation.** A possibility for the legally competent applicant to represent themselves or freely choose a representative should be ensured as widely as possible. |
| *Article 40:**A party with full legal capacity may undertake actions in the proceedings in person.**Article 45:**A party or their legal representative may authorise an advocate or any other person having full procedural capacity to represent them as a party in the procedure, save to make statements that can only be made by the party.* | *Article 68:**The applicant must be represented by a patent attorney.* |  |
| **Interested parties/legal standing.** If the decision might have adverse effects upon a person’s legally based interests, this person should be given the possibility of participating in the procedure. Frequent requests to participate in procedures for purely speculative reasons – to maliciously delay the decision – require purely objective criteria for determination of legal standing. |
| *Article 3:**“Party” shall be taken to mean any natural person or legal entity at whose request the administrative procedure is initiated, against whom the administrative procedure is initiated, who is included in the procedure initiated* ex officio*, or who, in order to protect his/her rights or legal interests, is entitled to participate in the administrative procedure.* | *Article 58:**The existence of the legal interest for participation in the procedure shall depend exclusively upon ownership of property within influence zone, determined by a formula set out by this provision.* |  |
| **Taking of Evidence.** Alignment is only relevant in context of the consistency of the system. |
| *Article 101‑105:**Detailed technical rules for hearing a witness or an expert, examination of documents and inspection on site* | *Article 157:**Specific rules for technical expertise and examination of documents* |  |
| **The Right to be Heard.** The party to the proceeding must be able to submit or propose evidence, to actively participate in the enquiry procedure, be notified about the outcomes of the procedure and be able to comment on them before the final decision is taken. The right to be heard does not necessarily mean an oral hearing in front of the authority.Exemptions to the right to be heard can be applied in the simpler procedures, if the decision can be based exclusively on the data provided by the applicant or data from public registers or if the applicant’s request can evidently be granted in full. |
| *Article 10:**Prior to issuing an administrative act, the party must be given the opportunity to make a statement concerning the facts and circumstances relevant for taking the decision.**The administrative act may be issued without prior hearing of the party only in cases stipulated by law.**Article 99:**If it is not a matter of generally known facts, a party shall propose evidence for his/her allegations and submit them to the authority, if possible.* |  |  |
| **The Right to Inspect Files** The party to the proceeding must be able to access the files of the case, except if this is incompatible with other rights and interests protected by a law and specifically prohibited by a law. Right to inspect files can also be ensured through access to an IT system/registry that is used for processing the administrative matter. |
| *Article 39:**The parties of an administrative proceeding shall be entitled to inspect the files of the proceeding. The right to inspect files includes the right to copy necessary documents.**Article 41:**The right of inspection of files may be limited only by special law for the purpose of protecting other legitimate interests stipulated by law.* | *Article 47:**Inspection of files is possible only electronically, through use of a controlled access system requiring special authorisation.* |  |
| **Procedural Deadlines and Consequences**. The procedural deadlines stemming from the law should be clearly established, including the method for calculating their duration (both start and end). There can also be deadlines not established in the law, where the administrative authority can determine the deadline based on the circumstances of the case and following the general principles of the LAP. |
| *Article 88:**The deadlines set by the authorised official may be extended upon the request of the interested party, if the request is submitted prior to the expiry of the time limit, provided that there are valid reasons for extension.* | *Article 51:**The deadlines set by the authorised official may not be extended.* |  |
| **Bearing of the Costs.** The arrangements regarding how the parties bear the costs should not discourage the parties from active participation in the procedure. |
| *Article 87:**In the proceedings where parties are involved with opposing interests, the party at whose request the proceedings ending in a decision against him/her has been instituted shall reimburse the opposing party for the reasonable expenses incurred, in proportion to the part of the request on which the party has failed.* | *Article 65:**In proceedings where parties with opposing interests are involved, the party at whose request the proceedings ending in a decision against him/her has been instituted shall be liable for all the damages of the opposing party that occurred because of a delay in the procedure.* | Frequent requests to participate in procedures for purely speculative reasons – to maliciously delay a decision – may require appropriate sanctioning. |
| **Stay of the Procedure.** The applicant should have an effective remedy against a decision upon stay of the procedure, in order to prevent undue delays. |
| *Article 95:**An appeal filed against the ruling on stay of the procedure shall not suspend the enforcement of the ruling.* |  |  |
| **Delegation of Decision Making**. The right level of delegation of responsibility and decision‑making authority is associated with a higher level of efficiency and effectiveness within an organisation, also promoting higher level of professional and personal accountability. |
| *Article 37:**An authority shall proceed in administrative matter through an authorised officer. An authorised officer, within the meaning of this Law, shall be a person appointed to the position, which also entails the tasks relating to the conduct of the proceedings and decision making in the administrative matter, or only the tasks relating to the conduct of the proceedings or undertaking certain actions in the proceedings. If the officer is not appointed, the ruling in the administrative proceedings shall be issued by the head of authority.* | *Article 37:**The city architect shall issue (sign) the decision.* |  |
| **The Content of the Decision.** The decision should contain the grounds/reasons, including the relevant facts and legal basis (the rationale) and indication of appeal possibilities, including the relevant bodies and time limits. The reasoning can be shortened or even omitted, if the request of the applicant is fully approved and the rights of third persons are not restricted. |
| *Article 120:**Mandatory contents of the administrative act are:**1) the introductory part, which should refer to the legal basis of the administrative act;**2) the rationale behind the decision and the decision itself;**3) and the description of appeal possibilities (the competent body, the appeal deadline; where relevant, these may also include clarifications on the suspensive effect of the appeal or its absence).* | *Article 68:**The rationale may be limited to drawing conclusions, with short comments and reference to the legal basis.* |  |
| **Duration of the Administrative Procedure.** A person has a right to have their affairs handled within a reasonable time.For example, the European Code of Good Administrative Behaviour stipulates that officials should ensure that a decision on every request or complaint is taken in any case no later than two months from the date of receipt. The special law can establish a shorter duration of the procedure than provided for in the LAP. |
| *Article 22: Must be completed within 30 days, in special cases prolongation of a further 30 days is possible.* | *Article 33: Must be completed within 15 days, no further extension is provided for.* |  |
| **Administrative Silence.** An adequate legal remedy should exist in cases where the administration is silent or refuses to take action. |
| *Article 100:**If the party has requested the issuance of a written administrative act and the public organ**does not notify the party of its administrative act within the deadline and fails to notify**of the extension, the request made by the party shall be considered to be fully granted.* | *Article 37:**Exceeding the maximum duration prescribed for the procedure creates a legal presumption that the applicant’s request has been granted.* |  |
| **The Right to Appeal and Corresponding Deadlines.** Adequate time should be allowed to submit the appeal after the recipient of the administrative act has learned of its contents. If LAP allows shorter appeal deadlines, the special law can include them, but there has to be a reason (e.g. necessary due to the urgent nature of the procedure) that is proportional to the deadlines that are applied to the administration.  |
| *Article 188:**The deadline for submission of an appeal shall be 15 days after service, unless stipulated otherwise by a law.* | *Article 39:**The deadline for submission of an appeal shall be two weeks.* |  |
| **The Mandate of the Appeal Authority.** The second‑instance authority should be able to conduct additional investigations in order to decide the appeal efficiently in substance and, if necessary, amend the reasoning of the administrative act or to decide the matter in full by itself with a new act. |
| *Article 153:**If the appeal is not dismissed by the second‑instance authority, the authority may reject the appeal, annul the ruling in full or in part and decide on the administrative matter itself, annul the ruling and return the case to the first‑instance authority to reopen proceedings, or modify it.**The second‑instance authority shall decide an appeal on the basis of facts established by the first‑ or the second‑instance authority.* |  |  |
| **Procedural Effects of an Appeal.** The procedural effects of an appeal should ensure effectiveness of the appeal (suspensive effect), but not unduly prolong the procedure (impossibility of appeal against procedural decisions). |
| *Article 142:**Rulings cannot be enforced before the end of the time limit for appeal, unless otherwise provided by law.**An appeal shall stay the enforcement of a ruling until the complainant has been informed of the ruling issued upon the appeal, unless otherwise provided for by law.* | *Article 53:**The appeal does not delay legal effects of the decision.* |  |
| **Deadline for a Decision on Appeal.** Participants in proceedings have a right to have their affairs handled within a reasonable time.The urgent nature of the matter at hand may dictate the stipulation of a shorter deadline than in the LAP. |
| *Article 205:**The matter has to be decided in 30 days, and under exceptional circumstances, this may be extended by another 30 days.* | *Article 54:**The matter must be decided within 15 days.* |  |
| **Reopening of a Procedure.** Procedural rules regulating the amendment, suspension and repeal of an administrative act should guarantee a fair balance between the public interest and the legitimate expectations of the individual regarding legal certainty. Potential reasons for limiting options reopening can include the need to prevent malicious requests for reopening without reasonable possibilities of success, aimed exclusively at causing damage to the beneficiary. |
| *Article 235:**Nine narrowly defined, exceptional reasons for reopening.* | *Article 75:**Additional condition for an applicant to demonstrate the possibility of a different outcome if reopening is granted.* |  |
| **Possibilities of Repealing or Annulling a Final Decision**. Procedural rules regulating the amendment, suspension and repeal of an administrative act should guarantee a fair balance between the public interest and the legitimate expectations of the individual regarding legal certainty. |
| *Article 124:**If the party agrees.**If necessary to eliminate a grave and direct danger to the life and health of people, public security, public order, provided that it cannot be eliminated successfully by other means.* |  |  |