



SIGMA

Support for Improvement in Governance and Management

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CHECKLIST FOR A GENERAL LAW ON ADMINISTRATIVE PROCEDURES

Introduction

The following checklist intends to be a tool for all countries which are interested in introducing a general law on administrative procedures. But the checklist needs to be understood as stemming from some essential administrative law principles rooted in democratic constitutional systems. Thinking about an administrative procedural law is not possible without thinking about the definition of administration. These general considerations are followed in this paper by a list of questions that a law should attempt to respond to and which law drafters may find useful in the drafting process.

1. The General Principles of Administrative Law

Administrative action must be embedded in general principles, which are common in every European Union Member State and which are also defined by the European Court of Justice. These principles mainly concern the obligation of public authorities to safeguard the rights of citizens. Concerning the obligations of public authorities first of all the principles of reliability and predictability and the principle of openness and transparency must be established in administrative law; without them the rule of law cannot exist. In administrative procedures also the issue on the way in which the citizen can demand an administrative action is crucial.

1.1 *Legality*

One of the essential principles for administrative action is the principle of legality. This principle includes reliability and predictability, also termed as legal certainty or juridical security of public administration actions and decisions. Inherent to this principle is that administrative action must be carried out according to the rules laid down, and to the interpretative criteria produced by the courts, disregarding any other consideration, so that there can be no contradiction between law and administrative activity. Administrative action is rule-bound. The principle means also that the administration is entitled to act only if there is a law enabling the administration the right to. Public authorities can only decide over matters on which they have legal competency. Competency within this context means legal power to decide on a matter, which legally enables the administration not only to take decisions on the matter but also obligates it to take responsibility.

This principle of legal competence seems a very strict one, but a law cannot foresee every situation emerging in real life. Administrative discretion needs to be used at times to decide upon a given matter. Discretion means that the law does not regulate every consequence, but enables the administration to choose between two or more possibilities. Administrative discretion is different from arbitrariness because discretionary decisions refer to matters where in a legal framework some degree of choice is given to the public administration. This choice is necessary in many cases, because the legislator is not able to foresee and regulate every circumstance that may arrive in further situations. The legal framework of the administrative discretion cannot be exceeded. Otherwise the administrative action is against the law and can be nullified by the courts. Administrative actions must be also in keeping with the principle of proportionality. The action should be appropriate and within proportion to the end pursued by the law, without depriving citizens from more than it is strictly necessary for achieving this end. The public administration is also obliged to treat equally and impartially all the subjects with whom it enters into relation. No one shall be privileged or discriminated because of sex, race, religion, language, ethnic, political, religious or cultural pertaining.

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Procedural fairness and timeliness strongly support the principle of legality too. This means that procedures should provide for procedural guarantees for citizens rights (information, hearing, giving reasons, appeals, etc) in a reasonable way. Nobody should be affected in his rights and interests without having been acquainted with the facts and issues at stake and heard in a suitable procedure. Timeliness is also part of the principle of legality, as delays in administrative decision-making or in taking action can affect negatively private legitimate interest. Legal rules can help to alleviate the problem by setting out clear time limits within which things must be done. Procedural guarantees should be regulated in a way that while preserving the rights of citizens makes the administration to act efficiently. A sound balance should be struck between guaranties and efficiency.

1.2 Openness and Transparency

As a general rule administrative activity should be transparent and open. Only exceptionally should matters be kept secret. Openness and transparency are essential to protect individual rights. One instrument favouring transparency is the obligation of giving the reasons and rationale upon which an administrative decision is founded. This helps to exercise the right to redress through appeal by the interested party. Administrative actions have to be motivated and subscribed by the appropriate competent public authority. An administrative decision should be accompanied by a statement of reasons, which convey the grounds and a sufficient degree of justifications for enabling the interested party to prepare an appeal against the administrative decision. This is the reason why the decision must carefully show and justify why the argument or evidence submitted by a party has not been or has been accepted. For exercising the right to appeal it is also important that the decision includes where, when and in which way the parties can file a review action of the administrative decision and what will happen, when the decision will not be appealed by one of the parties.

The principle of openness and transparency will also mean that the parties in the administrative procedure must have the right to examine the relevant files. Both parties, the public authority and the interested party, must have the same information available. But it must be mentioned that this right has his limits in the interest of the functioning of the public administration and that not everybody but only the interested parties can have the right to see in the files.

1.3 Legal Certainty

The principle of legal certainty is a further essential principle in the administrative law. To safeguard legal certainty it is important that citizens and authorities can recognize in an easy way, when and under which requirement administrative decisions enter in force.

That is the reason why in most cases an administrative act enters into force with his notification. Only if the administrative act has an evident and obvious defect the act should be void and should have no legal consequences. The fact that the requirement for an act to have legal consequences is the mere notification does not mean that the administrative act can be at variance with the law. This principle may be strange at a first glance, but it is necessary to maintain legal certainty, as the clear establishment of date of commencement of the legal effects of an administrative act has to be clear and visible. Citizens and authorities have to accept the entrance in force, even if there are doubts on its legality. The entrance in force will stay until the administrative act is cancelled by another decision of public authority (administrative or judicial). The legal effects of an administrative act terminate by a decision of the same or other state authority or by legal elapsing. Clarity on the date of termination of the legal effects is also serving the legal certainty.

This principle of legal certainty does not deprive interested parties from the right they have to seeking redress. This is the reason why the appeal against an administrative decision regularly has interim relief if its immediate execution is not expressly ordered by law or by the public authority entitled to do so. The suspension of the administrative act effects means that the administrative decision will not enter in force and consequently the decision cannot be executed. Only if the immediate entrance in force is in an overriding public interest the decision can enter in force, even if it was appealed by any affected party. In some cases the law presumes the overriding public interest. This usually concerns decisions taken by the police or tax authorities. In other cases the responsible public authority can have the right to order the immediately entrance in force.

1.4 The right of citizens to demand administrative activities

The above-mentioned principles concerned the subjection of the public administration to the law. But another general principle in administrative procedures refers to the question of when and in which way a citizen can request the administration to take action according to the law. This right to apply for administrative action should be guaranteed to anybody by the state and usually it is a constitutional right. Every citizen can request action from the administration when he is affected in his own rights, a thing that can be understood either in a large or a narrow and strict sense. The recent tendency is for awarding application or petition rights to those directly or indirectly affected by the matter at stake.

2. The Notion of Administrative Activity

Administration activity means here execution of state powers. This includes on the one side all state administration institutions like government, ministries and authorities of the state, but also the administration of municipalities, public cooperation and in certain circumstances private persons, which have been concessioned with a public power. In this sense administrative law is the set of rules and principles applying to the organization and management of public administration (and its resources, like finances and civil servants) and to the relations between administration and citizens.

Administrative intervention is varied. Administrative activities occur in a great number of life spheres, like finance, education, social issues, health care, trades and economics, defense, agriculture, environment, constructions, etc. In these different fields the administrative activity is divided into two basic lines. Administration acts can burden citizens with obligations or sanctions or by limiting their rights. But on the other way the public administration can be favoring citizens, if it grants benefits or other privileges.

Administrative activities are sovereign activities. This means that the administration can use means which are exclusively given to her by law. Private institutions or persons have no right to use them. If the administration is acting as if it were a private person in the fields of private law these acts are not substantially different from those of private individuals. Certain administrative laws also admit the possibility of special administrative agreements, which have to be distinguished from the ordinary civil law contract. These agreements are also an instrument exclusive to public authorities.

3. Methodological Procedure of this Checklist

The following checklist should help preparing laws on administrative procedures. the checklist starts with some general principles which are part of administrative law and that have been already referred to above. These principles may also be in the constitution. As administrative action has to respect the constitution it might be not necessary to mention such principles twice. What is crucial is that there is no contradiction between administrative procedures law and general principles.

The checklist deals with the steps or phases that are conducive to taking a decision on an administrative matter. Paragraph two also introduces questions concerning the scope of the law, responsibility or the interested parties followed by principles governing every administrative procedure like the form and beginning of an administrative procedure but also questions of language, evidence and time limits. A question like the termination of an administrative procedure, administrative silence and the retrial complete the administrative decision making procedure.

But administrative activities can have various forms. It is possible that the administration is acting with unilateral decisions like administrative acts. But it is possible also that the administration can close contracts or is acting by doing things like reports over administrative activities or removing traffic obstacles from a road, things which have no legal consequences, in principle. Because of the fact of this lack of legal effects these acts usually are not regulated in a law on administrative procedures. Concluding contracts by public authorities represent an important portion of public authorities' activities, but for a law on administrative procedures these contracts are interesting only if public authorities act as public law subjects. Contracts concluded by public authorities like rental agreements belong to private law and are not regulated by a law on administrative procedures. In Germany, the regulation of public contracting is contained in the law on administrative procedures. In other countries there are specific laws on public procurement and public contracting which refer the procedural arrangements for concluding the contract to the general law on administrative procedures in a supplemental basis. The administration should have special procedures for issuing decisions concerning a big number of people. The ordinary decision taking procedure for administrative acts or contracts is not suited to handle issues which require hearing or

informing a lot of persons or institutions. In these cases special procedures should be introduced in an administrative procedural law.

Finally the execution of administrative decisions is a subject which should be also regulated in a law on administrative procedures. Although some law systems regulate the execution in separate laws the checklist mentions the issue.

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General principles of administrative activity

1.1 Legality

- 1.1.1 In which way, reliability and predictability are safeguarded?
- 1.1.2 Is it safeguarded that the administrative activity must be in accord with the law?
- 1.1.3 Is it safeguarded that the administration is only acting when it is entitled to (legal competence)?
- 1.1.4 Are administrative agencies governed by the principle of equality? Is it safeguarded that there will be no discrimination because of sex, race, religion, language, ethnic, political persuasions, religion or cultural pertaining?
- 1.1.5 Are public authorities obliged to observe the principle of proportionality?

1.2 Impartiality

- 1.2.1 Is the impartiality of civil servants guaranteed?
- 1.2.2 In which cases civil servants can be excluded from decision-making e.g.
 - direct or personal interest in the case
 - relationship with interested persons
 - forward involvement in the case
 - the civil servants or their relatives are debtors or creditors of any interested parties
- 1.2.3 Which persons are relatives in the sense of the law, e.g.
 - spouse
 - person living with the civil servants
 - kinsman up to the second grade
 - brothers and sisters, children and relationship of them?
- 1.2.4 Who decides over whether or not reasons of bias/conflict of interest concur?
- 1.2.5 Which procedure for deciding over reasons of bias will be introduced?
- 1.2.6 Is the staff/civil servant obliged to give notice of the reasons of bias?

1.3 Procedural Fairness

- 1.3.1 Is it guaranteed that nobody will be affected in his rights without having been acquainted with the facts and issues of the case?
- 1.3.2 Are there exceptions from this principle as for
 - decisions which must be taken in a very short time and can not be put off
 - subjects in which acquaintance will not affect the public interest?
- 1.3.3 If yes, is guaranteed that these exceptions can be used extremely rarely?
- 1.3.4 Are their duties of public authorities to help citizens in case of obvious mistakes and to advise them how to apply?

1.4 *Openness and Transparency*

- 1.4.1 Have the parties the right to see in the files?
- 1.4.2 Are their limits for this rights as:
 - the parties must have a direct interest to see in the files
 - time limits, so that the right can only be exerted during an administrative procedure
 - the functioning administrative work may not be affected more than necessary?
- 1.4.3 Is there a duty for the public authorities to keep personal or business secrets?
- 1.4.4 Are there limits of this duty as:
 - accord of the interested party
 - obligation to open the files (see 2.3.1 and 2.3.2)?

1.5 *Accountability and Liability*

- 1.5.1 Which requirements are cause liability of civil servants
- 1.5.2 Is the civil servant liable in every case or is the public authority standing in?
- 1.5.3 If the public authority is standing in, under which requirements (in case of negligence)?

2. *Scope of the Law/Interested Parties*

2.1. *Scope of the Law*

- 2.1.1 To whom the provisions of the Law on administrative procedures apply?
 - administrative activities of public authorities, legal entities and public corporations like:
 - government
 - ministries
 - parliament
 - municipalities, regional administrative authorities like country districts
- 2.1.2 To which kind of activity applies the Law on administrative Procedures? Exist there exceptions like special codes e.g. for tax administration, criminal law, social law, foreign activities?

2.2 *Responsibility or Jurisdiction (competences)*

- 2.2.1 Which public authority may be responsible and will be charged with the administrative activity?
 - The authority where the private person or private institution entering in administrative relations is living?
 - The authority where property which is involved in the administrative activity is situated?
- 2.2.2 Which regulations apply in case of dispute over responsibility?

2.3 *Interested Parties*

- 2.3.1 Which may be the interested parties in an administrative procedure?
 - natural and legal entities
 - companies, societies

– authorities?

2.3.2 Which requirements do they need?

- natural persons: competence to make contracts (reference to civil law)
- legal entities: acting through natural persons which are entitled to act

2.3.3 Must they have a (direct) legal interest as a condition to participate in the administrative procedure?

2.3.4 How can natural and legal entities be represented in an administrative procedure?

- right to be represented by other people
- rights or duties for attorneys
- Forms of giving power to them?

3. Principles Governing the Administrative Procedure

3.1 *Definition of Administrative Activity*

3.1.1 What means administrative activity in this Law?

3.1.2 What possibilities of administrative acting exist?

- Individual and collective administrative act
- real acts
- administrative contracts?

3.2 *Form of the Administrative Procedure*

3.2.1 Is there a special form for administrative procedures?

3.2.2 If not, which is the relationship to special regulations?

3.2.3 Is the public administration obliged to serve the public interest in the most efficient way?

3.3 *Beginning of the Administrative Procedure*

3.3.1 In which way can an administrative procedure start?

- request of one of the parties
- initiative of the public authority

3.3.2 Is there an obligation for the public authority to start an administrative procedure in case of request?

3.3.3 Are there cases in which the public authority can only start an activity if there is a request?

3.4 *Language*

3.4.1 What is the official language in public administration?

3.4.2 In case of different official languages, how is the relationship?

3.4.3 How to deal with documents or applications in other languages?

3.5 ***Evidence***

- 3.5.1 Who is responsible for evidence, the parties or the public authorities (principle of investigation)?
- 3.5.2 In which way facts can be proofed? Which are the ways accepted, e.g.
 - documents
 - statements
 - visual judgments
 - Witnesses
 - Expert judgment
- 3.5.3 If witness or expertise are necessary, will they been compensated?
- 3.5.4 Does the public authority have the right to demand an oath? If yes, are there any requirements?

3.6 ***Hearing the Interested Parties***

- 3.6.1 Under which requirements an interested party must be heard?
- 3.6.2 Is it guaranteed that the interested party, which could be negatively affected by the administrative decision, must be heard before making the decision?
- 3.6.3 Is a hearing in every case necessary or can the public authority ignore if an immediately decision will be necessary?

3.7 ***Time Limits/Terms and Reinstatement***

- 3.7.1 How time limits will be calculated? Are there special regulations for holidays or weekend? Is there a reference to the civil law?
- 3.7.2 At what moment a term will start?
- 3.7.3 Can a time limit be extended by the public authority? If so, under what circumstances?
- 3.7.4 Is there a possibility for reinstatement? What are the requirements to become reinstated?

3.8 ***Termination***

- 3.8.1 In which way an administrative procedure can be terminated, e.g.
 - decision of the public authority
 - withdrawal of the application by an interested party
 - closing of the administrative contract
 - settlement of the issue?

3.9 ***Administrative Silence***

- 3.9.1 Are there time limits in which the public authority has to take a decision?
- 3.9.2 Is there a possibility to distinguish between the different matters of administrative decisions (easy decision, complicating decision that needs more time)?
- 3.9.3 What will happen, when the public authority does not take a decision within the time limits

foreseen in the law? Is there a possibility to appeal the courts or another authority?

3.9.4 Is it possible to replace the delayed decision with a decision of another authority or court?

3.10 *Retrial*

3.10.1 Which requirements need a retrial:

- change of law
- change of facts
- new evidence?

3.10.2 Is it guaranteed that retrial is not possible if the possibility to invoke new facts had already existed during the first procedure?

3.10.3 Is there a time limit?

3.10.4 Which authority is responsible for the retrial?

4. *Administrative Act*

4.1 *Definition of the Administrative Act*

4.1.1 Is there a concrete definition of administrative act to:

- other public activities like contracts, real acts or not sovereign activities
- legislation activity of public authorities (second legislation)
- internal activities which have no relation to citizen
- including favouring and incriminating acts so far as acts concerning a big number of people?

4.1.2 Can this definition be applied to every administrative field or are there special definitions in other laws?

4.2 *Form and Reasoning*

4.2.1 Under which requirements administrative acts must be done in written form?

4.2.2 Are there oral administrative acts, which must be confirmed, in written form?

4.2.3 Which contents must be written or written-confirmed administrative acts include:

- issuing authority
- signature of the civil servant of the issuing authority
- date of the decree?

4.2.4 Under which requirements an administrative act must be reasoned?

4.2.5 Which contents need the reasoning of a written or written-confirmed administrative act?

4.2.6 How a discretionary decision must be reasoned?

4.2.7 Notification of the act: where and in which way the decision can be appealed?

4.3 *Additional Regulations Included by the Administrative Act*

4.3.1 Under which requirements an administrative act can include additional regulations like:

- to limit the duration of the detrimental or favouring decision
- conditions on which the administrative act will be enter in force or will no longer apply
- the possibility of a revocation by the decision-making authority
- special duties for the receiver of the favouring administration act?

4.3.2 Is it safeguarded that these additional regulations cannot be included if the citizen has the right to demand a specific administrative act?

4.3.3 Is it safeguarded that these additional regulations are not in contradiction with the contents of the administrative act?

4.4 *Guarantees*

4.4.1 What effects have guarantees given by civil servants?

4.4.2 Do they need special requirements (e.g. written form) to be liable?

4.4.3 How is the relation between the guarantor and the guaranteed administrative act?

4.5 *Discretion*

4.5.1 Under which requirements discretionary decision can be taken by a public authority?

4.5.2 Is there a legal frame for discretion?

4.6 *Delegation*

4.6.1 Under which conditions and circumstances is possible the administrative delegation?

4.7 *Notification*

4.7.1 Is it guaranteed that the administrative act must be notified to the interested parties?

4.7.2 Must the administration act been notified by the responsible authority?

4.7.3 Are there special regulations for administrative acts concerning a great number of citizens (public notification)?

4.8 *Entrance into Force*

4.8.1 Under which requirements an administrative act will enter into force? Is the notification sufficient?

4.8.2 Can a void administrative act enter in force? (4.9.2)

4.8.3 Is safeguarded that the administrative act will only enter into force with the contents he was notified?

4.8.4 Under which requirements the administrative act will stay no longer in force?

- repeal or revocation by the public authority
- cancellation by the courts (nullification)
- other kind of settlement like expiry?

4.9 Error

- 4.9.1 What happens with administrative acts with obvious mistakes like calculation or clerical-typing errors?
- 4.9.2 Have the parties a right to demand a correction?

4.10 Void Acts

- 4.10.1 Under which requirements an administrative act will be void? Acts suffering from a severe violation of the law, like
 - acts issued by a not identifiable public authority
 - acts issued by a not responsible authority
 - acts made by departing ostensibly from the established procedure
 - acts which force to an impossible acting
 - acts which force to act against the law?
- 4.10.2 What are the consequences of a void administrative act? Do they have any consequences or can they never enter into force? (4.7)

4.11 Other Acts Against the Law

- 4.11.1 Is there a distinction between void and other illegal acts?
- 4.11.2 What effects do have other administrative acts that are not fully in accordance with the law but not void either?
- 4.11.3 Are there different levels of illegal administrative acts like acts infringing formal law (responsibility, missing of reasoning, missing of participating of any other authority) and acts infringing material law?

4.12 Cure/Touch Up/Repair

- 4.12.1 Is it possible to touch up infringements, especially infringements against formal law? (4.10.3)
- 4.12.2 Under which requirements a touching up is possible?
- 4.12.3 Is there a difference between discretionary decisions and other decisions, because the discretionary decision can be influenced by an infringement against formal law?

4.13 Repeal

- 4.13.1 What happens with an administrative act, which is not in accordance with the law but entered in force?
- 4.13.2 Is there a possibility to repeal this act by the public authority?
- 4.13.3 Is there a distinction between the repeal of favouring and detrimental administrative acts?
- 4.13.4 Can the public authority repeal every favouring act or are there some interests of citizens who should be protected by the law?

4.13.5 May the citizen get compensation in case of repealing a favouring administrative act? Is compensation justified in every case or are there cases in which trust in the administrative decision is not justified (e.g. obtaining of the decision by underhand methods)?

4.13.6 How the compensation will be regulated?

4.13.7 Is there a time limit to repeal an administrative act?

4.13.8 Which public authority is responsible for the repeal?

4.14 *Revocation*

4.14.1 Can the public authority revoke a legal administrative act?

4.14.2 Is there a distinction between favouring and detrimental acts?

4.14.3 Under which requirements a legal detrimental act can be revoked? Is there a duty in some cases?

4.14.4 Under which requirements a legal favouring administrative act can be revoked:
– if the revocation is provided by the law?
– if the revocation was foreseen in the administrative act?
– if a special duty in the administrative act was not performed (see 4.3.1 para 4)?
– if the law has changed and the administrative act accord no longer to them?
– if the revoke is necessary to avoid big damage for the public interest?

4.14.5 Is there a time limit to revoke an administrative act?

4.14.6 Which public authority is responsible for the revoking?

4.14.7 In which cases damage must be compensated? Are there situations when compensation is not justified (revocation is provided by the law, was foreseen or if a duty was not performed)?

4.14.8 How the compensation will be regulated?

4.15 *Appeal*

4.15.1 In which way an administrative act can be reviewed? Will there be an administrative appeal or will there be an appeal by the court?

4.15.2 Is an administrative appeal requirement for the appeal by the court?

4.15.3 Is the administrative appeal necessary for every administration act or can some acts appealed directly by the court?

4.15.4 Which public authority is responsible for the administrative appeal?

4.15.5 What is the appealing proceeding in the administrative appeal? Will there be a review by the authority, which was responsible for the administrative act?

4.15.6 What is the time limit in which the administrative act must be appealed?

4.15.7 What are the other formal requirements of the administrative appeal:
– written form?

- identification of the appellant?
- contested administrative act?
- reasons for the appeal?

- 4.15.8 What will happen if the time limit elapsed?
- 4.15.9 What effect has the appeal? Can the administrative act be implemented until the responsible authority/court will not decide over the appeal or will the appeal have suspending effects?
- 4.15.10 Is the suspension excluded in some cases like:
- the administrative act is aimed at the collection of public revenues (taxes and fees)?
 - when the administrative act concerns police measures?
 - when the immediate implementation of the act is indispensable for public interest?
- 4.15.11 Are there instruments to implement or execute the administrative act although there is an appeal against him?

5. Real Acts

- 5.1 Is there a definition for real acts?
- 5.2 What is the difference between real acts and administrative acts? Have real acts no legal consequences?
- 5.3 Which regulations are also liable for real acts? Is there a reference to the regulations of administrative acts?
- 5.4 What are the possibilities to appeal against real acts? Are there special kinds of review? Is there an internal administrative review necessary?
- 5.5 What are the effects of an illegal real act? Compensation?

6. Administrative Contracts

6.1 Definition of an Administrative Contract

- 6.1.1 Is there a definition of administrative contracts?
- 6.1.2 Is it safeguarded that only public law entities can be the subject of an administrative contract?
- 6.1.3 Is it possible, that the public authority substitute an administrative act by an administrative contract?
- 6.1.4 Is safeguarded that the subject of a contract cannot be in contradiction with the law?

6.2 Kinds of Administrative Contract

- 6.2.1 Do the public authorities have the possibility to conclude contracts with one another?
- 6.2.2 Do they have the possibility to conclude contracts with a citizen (see also 6.1.3)?

6.3 *Form of an Administrative Contract/Rights of Third Persons*

- 6.3.1 Must an administrative contract be concluded in written form or can the form chosen be free, as it is the case in the administrative act?
- 6.3.2 Is it safeguarded that a contract, which is detrimental for a third person, cannot be concluded without his agreement?
- 6.3.3 Must this agreement be given in written form or is verbal form sufficient?

6.4 *Void of Administrative Contracts*

- 6.4.1 In which cases an administrative contract is void:
 - if one of the parties was not competent to close a contract?
 - if other regulations demand that the contract must be also subscribed by a notary?
 - if the contract opposes essential rules of civil law?
 - If the contract was concluded by a representative without having the power to?
 - if an administrative act with the same contents would be void as well?
 - if an administrative act with the same content would be against the law and both parties are aware of this?
 - If the content of the contract is in contradiction with the legal framework of discretion?
- 6.4.2 What are the effects of a void administrative contract?

6.5 *Execution of Administrative Contracts*

- 6.5.1 Is there a possibility for the parties to agree that the contract can be executed without any additional decision by the courts?
- 6.5.2 If this possibility is given, what are the requirements?
 - Must the contract be signed by a civil servant with a special qualification?
 - does the contract need the permission by another public authority?
- 6.5.3 How such a contract will be executed? Is there a reference to the regulations for the execution of administrative acts?

7. Special Procedures

7.1 *Application*

- 7.1.1 In what subjects special procedures will be applicable:
 - if it is regulated in special laws (environment permissions, highways, railways, and nuclear waste repositories)?
 - if the activity concern a big number of people?

7.2 *Procedure*

- 7.2.1 Is there a special duty of the public authorities to inform involved institutions or citizens?
- 7.2.2 How do interested institutions like other authorities or special associations can participate in this procedure and demand their rights? Are there some time limits in which rights must be declared?
- 7.2.3 How do citizens can demand their rights in this procedure? Are there some time limits in which

rights must be declared?

- 7.2.4 What happens if citizens or other institutions miss the time limit to demand their rights? Are they excluded forever or can they introduce their rights at another time?
- 7.2.5 Is there a special meeting where all objections and suggestions of the interested parties could be discussed?
- 7.2.6 How such a meeting must be organised like information of the place and date of this meeting?
- 7.2.7 Are there special regulations to ensure that the meeting runs smoothly like the right to lead the meeting or to exclude disturbing persons?
- 7.2.8 Is a written record necessary? Which subjects of the meeting must be written down?

7.3 *Decision*

- 7.3.1 What is the legal nature of the decision taken by the responsible authority after a special procedure? Has the decision the nature of an administrative act?
- 7.3.2 Does the decision need a special form and reasoning?
- 7.3.3 How the decision will be notified to the interested parties. Is it necessary to notify every interested party separately?
- 7.3.4 What happens, if the decision is touching upon more than one field of law (e.g. permission of a nuclear pile touches law concerning buildings/air pollution/ water/ streets)? Does the decision include all this different field of laws?

7.4 *Appeal*

- 7.4.1 In which way this administrative decision can be appealed?
- 7.4.2 Is an internal administrative review necessary or can the decision be reviewed directly by the courts?
- 7.4.3 Are there special time limits or the same regulations apply as for ordinary administrative decisions?

8. Execution

8.1 *General Principles*

- 8.1.1 Which authorities are enabled to execute administrative decisions? Is it the authority that was responsible for the decision that will be executed?
- 8.1.2 Which administrative decisions can be executed:
– acts?
– contracts?
- 8.1.3 Are there different requirements to execute an act or to execute an administrative contract (see 6.5)?

- 8.1.4 Which are the requirements to execute an administrative act?
– entrance in force
– appeal is no more possible because the time limit for appeal came to an end?
– a decision of a court is legally valid or an immediately execution decision is necessary?

8.2 *Kinds of Execution*

- 8.2.1 Are there different requirements between administrative acts, which demand money and acts, which demand actions, toleration or default?
- 8.2.2 Are there different ways to execute an administrative act which demand actions, toleration or default like:
– substitution of the task by the authority or by an other person or institution?
– payment of a fee, if only the interested party is able to fulfil the task?
– custody?
- 8.2.3 What are the requirements of this different ways of execution? Must the responsible authority first choose the less depriving way?

8.3 *Execution Procedure*

- 8.3.1 Is there a duty to announce the execution beforehand?
- 8.3.2 Does the announcement need a written form?
- 8.3.3 What must the announcement include:
– time limit after which the execution will start?
– way which the decision will be executed?
– announcement of the costs that must be paid in case of execution?
- 8.3.4 How the announcement must be notified? Is there a special delivery necessary?
- 8.3.5 Is an appeal of the announcement possible?