

Key elements and benefits of the EU regulation on open, efficient and independent EU administration presented to the European Commission

- Citizens and economic operators are increasingly involved in matters at Union level: for example when applying for EU funds, when lodging a complaint or when requesting a document.
- The increased complexity of the procedures have not been accompanied by comprehensive and horizontal legislation. The fact is that Union administrative law is fragmented.
- In order to be able to exercise their right to good administration, citizens need to be provided with effective, foreseeable and accessible procedures: principles and rights need to be translated into rules which give clear and simple answers to basic questions concerning issues such as the initiation of an administrative procedure, time limits and remedies.

The regulation on open, efficient and independent administration **would codify for example the following principles, which currently exist only in Charter of Fundamental Rights or in the praxis of the European Court of Justice:**

- **Duty of careful and impartial investigation**
Article 9 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. With a view to effectively ensuring the rights of defence, this provision explicitly sets out the parties' right to produce evidence.
- **Duty to cooperate with witnesses and experts**
By establishing the duty of the parties to cooperate with the competent authority in ascertaining the facts and circumstances of the case, Article 10 contains important procedural safeguards for the parties to the procedure. It requires that a reasonable time-limit be given to the parties to reply to any request of cooperation and acknowledges the privilege against self-incrimination, an important element of the rights of defence developed by the CJEU, in cases where the administrative procedure may lead to an administrative penalty.

Article 11 specifies that witnesses and experts may be heard at the initiative of the competent authority or where proposed by the parties, and that experts chosen by the competent authority need to 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 Union's administrative procedures, such as those where the final decision relies on an accurate scientific risk assessment.
- **Conflict of interests**
Article 13 addresses the key issue of impartiality and potential conflict of interests of members of staff participating in the administrative procedure. This provision 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, this provision opts for a broader and functional approach. It further regulates how this duty is to be fulfilled and grants the right of the parties to request the exclusion of a member of staff affected by a conflict of interest

- **Right to be heard and right of access to the file**

The right to be heard is certainly the oldest and most important procedural right established in the different legal traditions. It has been recognised by the CJEU as a general principle of Union law and is a core element of the fundamental right to good administration enshrined in point (a) of Article 41(2) of the Charter. Article 14 of this Regulation reproduces the provision of the Charter and specifies four important aspects deriving from the CJEU case law: the right of the parties to receive sufficient information, the right to be given adequate time to prepare their defence, the right to be assisted by a person of their choice and the right to express their views in writing or orally.

Closely related to the right to be heard is **the right of access to the file**, another core element of the fundamental right to good administration. Article 15 of this Regulation not only reproduces the corresponding provision of the Charter but also adds two important elements: it establishes that the access to the file needs to be ‘full’ and imposes the duty to give reasons for restrictions to access. In line with the case law of the CJEU, this provision also establishes that where no full access to the entire file can be granted, it is necessary to give the party an adequate summary of the content of those documents. It is important to clarify that Article 15 is applicable irrespective of the general right of access to documents, which in itself is a fundamental right, protected by Article 42 of the Charter and Article 15(3) TFEU.

- **Duty to keep records**

In line with the case law of the CJEU, Article 16 enumerates the obligation on the Union's administration to keep a record of its incoming and outgoing mail, the documents it receives and the measures it takes, and the obligation to establish an index of the files kept. This duty to keep records is a very useful complement to the right of access to the file and it is clearly in the interest of not only a transparent but also an efficient Union's administration, as called for by Article 298 TFEU. Keeping an adequate file is also crucial to allow the parties to exercise their rights of defence and to judicial review.

- **Time-limits**

An important problem of the current state of regulation of the Union's administrative procedures is the general absence of clear time-limits imposed on the Union's administration in the sector-specific legislation. This is seen as one of the reasons for undue delays and leads to legal uncertainty for the parties concerned.

- **Form of administrative acts**

The administrative act concluding the administrative procedure has to be in writing and signed and drafted in a clear, simple and understandable manner. The latter requirement on drafting is not to be interpreted in a formalistic manner and includes within its scope also the substantive duty to duly specify the decision in such a way as to enable the parties to understand their rights or duties.

- **Duty to state reasons**

The duty to state reasons is another crucial element of the fundamental right to good administration enshrined in point (c) of Article 41(2) of the Charter and of Article 296(2) TFEU. Therefore, in line with the existing case law of the CJEU, Article 19 requires that the statement of reasons to be clear and indicate the legal basis, the relevant facts and the way in which the different relevant interests have been taken into account.

Benefits of the Regulation:

- A well-worded law on administrative procedures 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**.
- 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**.
- 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 [...].'