



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2012/2024(INI)

21.6.2012

DRAFT REPORT

with recommendations to the Commission on a Law of Administrative
Procedure of the European Union
(2012/2024(INI))

Committee on Legal Affairs

Rapporteur: Luigi Berlinguer

(Initiative – Rule 42 of the Rules of Procedure)

PR\906128EN.doc

PE492.584v01-00

EN

United in diversity

EN

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	3
ANNEX TO THE MOTION FOR A RESOLUTION: DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED	6
EXPLANATORY STATEMENT.....	11

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with recommendations to the Commission on a Law of Administrative Procedure of the European Union
(2012/2024(INI))**

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Article 298 of the Treaty on the Functioning of the European Union,
- having regard to Article 41 of the Charter of Fundamental Rights of the European Union, which provides that the right to good administration is a fundamental right,
- having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹,
- having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents²,
- having regard to the extensive case-law of the Court of Justice of the European Union, which has recognised a set of general principles of administrative law based on the constitutional traditions of the Member States,
- having regard to its resolution of 6 September 2001 on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour³,
- having regard to the Commission Decision of 17 October 2000 amending its Rules of Procedure by annexing a Code of Good Administrative behaviour for staff of the European Commission in their relations with the Public⁴,
- having regard to the Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 25 June 2001 on a code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public⁵,
- having regard to the Council of Europe's Recommendation CM/Rec(2007)7 of the

¹ OJ L 8, 12.1.2001, p. 1.

² OJ L 145, 31.5.2001, p. 43.

³ OJ C 72 E, 21.3.2002, p. 331.

⁴ OJ L 267, 20.10.2000, p. 63.

⁵ OJ C 189, 5.7.2001, p. 1.

Committee of Ministers to member states on good administration, dated 20 June 2007,

- having regard to the survey commissioned by the Swedish Government from the Swedish Agency for Public Management on the principles of good administration in the Member States of the European Union¹,
 - having regard to the briefing notes presented at the Conference on EU administrative law organised by the Policy Department of Parliament's Committee on Legal Affairs and the University of León (León, 27-28 April 2011)²,
 - having regard to the recommendations included in the working document on the state of play and future prospects for EU administrative law presented by the Working Group on EU Administrative Law to the Committee of Legal Affairs on 22 November 2011³,
 - having regard to Rules 42 and 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Constitutional Affairs and the Committee on Petitions (A7-0000/2012),
- A. whereas the Union's existing rules and principles on good administration are scattered across a wide variety of sources: primary law, case-law of the Court of Justice of the European Union, secondary legislation, soft law and unilateral commitments by the Union's institutions;
- B. whereas 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;
- C. whereas the existing internal codes of conduct of the different institutions have a limited effect, differ from one another and are not legally binding;
- D. whereas in its abovementioned resolution of 6 September 2001, in the belief that the same code of good administrative behaviour should apply to all Union institutions, bodies and agencies, Parliament approved with amendments the European Code of Good Administrative Behaviour drafted by the Ombudsman;
- E. whereas in the same resolution Parliament 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;
- F. whereas, as emphasised by the Ombudsman, this would help eliminate the confusion currently arising from the parallel existence of different codes for most Union institutions and bodies, would ensure that the institutions and bodies apply the same basic principles in their relations with citizens and would underline, for both citizens and officials, the

¹ available at <http://www.statskontoret.se/upload/Publikationer/2005/200504.pdf>.

² <http://www.europarl.europa.eu/committees/en/juri/studiesdownload.html?languageDocument=EN&file=59983>.

³ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/dv/juri_wdadministrativelaw_/juri_wdadministrativelaw_en.pdf.

importance of such principles;

- G. whereas the fundamental right to good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union has become legally binding as primary law;
 - H. whereas a core set of principles of good administration is currently widely accepted among Member States;
 - I. whereas rules on good administration promote transparency and accountability;
 - J. whereas the case-law of the Court of Justice has developed well-established procedural principles which apply to Member States' procedures in community matters and which should a fortiori apply to direct Union administration;
 - K. whereas a European Law of Administrative Procedure would enhance the Union's legitimacy and increase the confidence of citizens in the Union's administration;
 - L. whereas a European Law of Administrative Procedure could strengthen a spontaneous convergence of national administrative law, with regard to general principles of procedure and the fundamental rights of citizens vis-à-vis the administration, and thus strengthen the process of integration;
 - M. whereas the entry into force of the Treaty of Lisbon has provided the Union with an appropriate legal basis for the adoption of a European Law of Administrative Procedure;
 - N. whereas the legislative action requested in this resolution should be based on detailed impact assessments *inter alia* quantifying the cost of administrative procedures;
1. Requests the Commission to submit, on the basis of Article 298 of the Treaty on the Functioning of the European Union, a proposal for a regulation on a European Law of Administrative Procedure, following the detailed recommendations set out in the Annex hereto;
 2. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;
 3. Considers that the requested proposal will not have any financial implications;
 4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council, to the European Ombudsman and to the parliaments and governments of the Member States.

**ANNEX TO THE MOTION FOR A RESOLUTION:
DETAILED RECOMMENDATIONS AS TO THE CONTENT
OF THE PROPOSAL REQUESTED**

Recommendation 1 (on the objective and scope of the regulation to be adopted)

The objective of the regulation should be to guarantee the right to good administration by means of an open, efficient and independent administration based on a European Law of Administrative Procedure.

The regulation should apply to the Union's institutions, bodies, offices and agencies ("the Union's administration") in their relations with the public. Its scope should therefore be limited to direct administration.

It should codify the fundamental principles of good administration and should regulate the procedure to be followed by the Union's administration when handling individual cases to which a natural or legal person is a party, and other situations where an individual has direct or personal contact with the Union's administration.

Recommendation 2 (on the relationship between the regulation and sectoral instruments)

The regulation should include a universal set of principles and should lay down a procedure applicable as a *de minimis* rule where no *lex specialis* exists.

The guarantees afforded to persons in sectoral instruments must never provide less protection than those provided for in the regulation.

Recommendation 3 (on the general principles which should govern the administration)

The regulation should codify the following principles:

- Principle of lawfulness: the Union's administration shall act in accordance with the law and apply the rules and procedures laid down in the Union's legislation. Administrative powers shall be based on, and their content shall comply with, the law.

Decisions taken or measures adopted shall never be arbitrary or driven by purposes which are not based on the law or motivated by the public interest.

- Principle of non-discrimination and equal treatment: the Union's administration shall avoid any unjustified discrimination between persons based on nationality, gender, race, colour, ethnic or social origin, language, religion or beliefs, political or any other opinion, disability, age, or sexual orientation.

Persons who are in a similar situation shall be treated in the same manner. Differences in treatment shall only be justified by objective characteristics of the matter in

question.

- Principle of proportionality: the Union's administration shall take decisions affecting the rights and interests of persons only when necessary and to the extent required to achieve the aim pursued.

When taking decisions, officials shall ensure a fair balance between the interests of private persons and the general interest. In particular, they shall not impose administrative or economic burdens which are excessive in relation to the expected benefit.

- Principle of impartiality: the Union's administration shall be impartial and independent. It shall abstain from any arbitrary action adversely affecting persons, and from any preferential treatment on any grounds.

The Union's administration shall always act in the Union's interest and for the public good. No action shall be guided by any personal, family or national interest or by political pressure.

- Principle of consistency and legitimate expectations: the Union's administration shall be consistent in its own behaviour and shall follow its normal administrative practice, which shall be made public. In the event that there are legitimate grounds for departing from such normal administrative practice in individual cases, a valid statement of reasons should be given for such departure.

Legitimate and reasonable expectations that persons might have in the light of the way in which the Union's administration has acted in the past shall be respected.

- Principle of respect for privacy: the Union's administration shall respect the privacy of persons in accordance with Regulation (EC) No 45/2001.

The Union's administration shall refrain from processing personal data for non-legitimate purposes or transmitting such data to unauthorised third parties.

- Principle of transparency: the Union's administration shall document the administrative procedures and keep adequate records of incoming and outgoing mail, documents received and the decisions and measures taken.

Requests for access to documents shall be dealt with in accordance with internal rules and with the general principles and limits laid down in Regulation (EC) No 1049/2001.

- Principle of efficiency and service: the action of Union's administration shall be governed by the criteria of efficiency and public service.

Members of the staff shall advise the public on the way in which a matter which comes within their remit is to be pursued.

Upon receiving a request in a matter for which they are not responsible, they shall direct the person making the request to the competent service.

Recommendation 4 (on the rules governing administrative decisions)

Recommendation 4.1: on the initiation of the administrative procedure

Administrative decisions can be taken by the Union's administration on its own initiative or at the request of an interested party.

Recommendation 4.2: on the acknowledgment of receipt

Requests for individual decisions shall be acknowledged in writing, with an indication of the time-limit for the adoption of the decision in question. The consequences of any failure to adopt the decision within that time-limit (administrative silence) shall be indicated.

In the event of a defective request, the acknowledgment shall indicate a deadline for remedying the defect or producing any missing document.

Recommendation 4.3: on the impartiality of administrative decisions

No member of staff shall take part in an administrative decision in which he or she has a financial interest.

Any conflict of interest shall be communicated by the member of staff concerned to his or her immediate superior, who may take the decision to exclude the member of staff concerned from the procedure, having regard to the particular circumstances of the case.

An interested member of the public may request that an official be excluded from taking part in any decision which will affect that person's individual interests. The request to that effect shall be submitted in writing and shall state the grounds on which it is based. The official's immediate superior shall take a decision after hearing the official concerned.

Appropriate deadlines should be set for the handling of conflicts of interest.

Recommendation 4.4: on the right to be heard

The rights of the defence must be respected at every stage of the procedure. If the Union's administration takes a decision that will directly affect the rights or interests of persons, the persons concerned shall be given the opportunity to express their views in writing or orally before that decision is taken, if necessary, or if they so choose, with the assistance of a person of their choice.

Recommendation 4.5: on the right to have access to one's file

An interested party shall be granted full access to his or her file. It should be up to the interested party to determine which non-confidential documents are relevant.

Recommendation 4.6: on time-limits

Administrative decisions shall be taken within a reasonable time-limit and without delay. Time-limits shall be fixed in the corresponding rule governing each specific procedure. Where no time-limit is established, it should not exceed three months from the date of the decision to initiate a proceeding if it was initiated *ex officio* or from the date of the request of the interested party.

If no decision can be taken within that time-limit for objective reasons such as the need to provide time for the remedying of a defective request, the complexity of the matters raised, the obligation to suspend the procedure pending the decision of a third party, etc., the person concerned shall be informed thereof and the decision shall be taken in the shortest possible time.

Recommendation 4.7: on the form of administrative decisions

Administrative decisions shall be in writing and shall be worded in a clear, simple and understandable manner. They shall be drafted in the language chosen by the addressee, provided that it is one of the official languages of the Union.

Recommendation 4.8: on the duty to state reasons

Administrative decisions must clearly state the reasons in which they are based. They shall indicate the relevant facts and their legal basis.

They must contain an individual statement of reasons. If this is not possible due to the fact that a large number of persons are concerned by similar decisions, standard communications should be allowed. In that case, however, any citizen who expressly requests an individual statement of reasons should be provided with it.

Recommendation 4.9: on the notification of administrative decisions

Administrative decisions which affect the rights and interests of individuals shall be notified in writing to the person or persons concerned as soon as they are adopted.

Recommendation 4.10: on the indication of remedies available

Administrative decisions shall clearly state – where Union law so provides – that an appeal is possible, and shall describe the procedure to be followed for the submission of such appeal, as well as the name and office address of the person or department with whom the appeal must be lodged and the deadline for lodging it.

Where appropriate, administrative decisions shall refer to the possibility of starting judicial proceedings and/or lodging a complaint with the European Ombudsman.

Recommendation 5 (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 error at any time on its own initiative or following a request by the person concerned.

Provisions should be inserted regarding the rectification of administrative decisions on other grounds, clearly differentiating between the procedure to be followed for the revision of decisions adopted which affect adversely the interests of a person and those which are beneficial to that person.

Recommendation 6 (on the form and publicity to be given to the regulation)

The regulation should be drafted in a clear and concise manner, and should be easily understandable by the public.

It should be adequately publicised in the web pages of each Union institution, body, office and agency.

EXPLANATORY STATEMENT

Background

On 23 March 2010 the Committee on Legal affairs set up a working group on EU Administrative Law with the aim to take stock of the panorama of existing EU administrative law and, as a second step, to propose those interventions it deemed appropriate in the light of Article 298 TFEU.

The working group benefited from a wealth of oral and written expertise from practitioners, academics, NGOs and members and officials from other institutions, agencies, bodies and offices which presented and discussed their briefing notes during the working group meetings.

These documents and the subsequent discussion with experts in the working group together with the results of a conference organised jointly by the European Parliament and the University of León fed a working document, drawn up under the direction of the rapporteur.

In particular, the working documents suggested the possibility of preparing a legislative initiative for a single general administrative law binding on the Union's Institutions, bodies, agencies and offices, based on Article 298 TFEU, focusing on the administrative procedure and providing a minimum safety net of guarantees to citizens and businesses in their direct dealings with the Union's administration.

The working document was approved by the Committee on legal Affairs at its meeting of 21 of November.

Law of Administrative Procedure of the European Union

The rapporteur sees in a Law of Administrative Procedure an opportunity to reinforce the legitimacy of the Union and, at the same time, to give citizens and legal persons clearer rights and more legal certainty in their relations with the Union's administration.

He proposes to call on the Commission to submit a proposal for a regulation on a European Law of Administrative Procedure.

The Law should be limited to direct EU Administration and be applicable, as *lex generalis*, to all Union's Institutions and to all areas of Union's activity.

In the rapporteur's view this set of general principles should act as *de minimis* rules where no *lex specialis* exists and the guarantees provided to the persons in the sectoral instruments should never be lower than those provided in the regulation.

The rapporteur recommends to codify a set of general principles of good administration which should guide the actions of the Union's administration and to establish a minimum number of basic procedural rules to be followed by the Union's administration when handling individual

cases, to which a natural or legal person is a party, and other situations where an individual has a direct or personal contact with the Union's administration. Those rules should, in particular, promote transparency and accountability and increase the citizen's confidence in the EU administration.

The recommendations included in this report are based on Article 41 of the Charter of Fundamental Rights and on the European Code of Good Administrative Behaviour. The Commission and the Council Codes have also been a source of inspiration.

The rapporteur has also taken into account the principles set down in the case law of the Court of Justice and of the General Court that guarantee a fair and impartial administrative procedure and are based on the constitutional traditions of the different Member States.