



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-9999/2012

12.11.2012

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)

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	7
EXPLANATORY STATEMENT	12
OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS	14
OPINION OF THE COMMITTEE ON PETITIONS	20
RESULT OF FINAL VOTE IN COMMITTEE	24

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 2000/633/EC, ECSC, Euratom 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 Committee of Ministers to member states on good administration, dated 20 June 2007,

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.

- having regard to the 'Public service principles for the EU civil service' published by the European Ombudsman on 19 June 2012,
 - 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 the European Added Value Assessment on a Law of Administrative Procedure of the European Union, presented by the European Added Value Unit to the Committee of Legal Affairs on 6 November 2012⁴,
 - 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 with the development of the competences of the European Union, citizens are increasingly directly confronted with the Union's administration, without always having the corresponding procedural rights which they could enforce against it in cases where such actions may prove necessary;
- B. whereas citizens are entitled to expect a high level of transparency, efficiency, swift execution and responsiveness from the Union's administration, regardless of whether they are making a formal complaint or exercising their right of petition under the Treaty, together with information as to the possibility of their taking any further action in the matter;
- C. 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;
- D. 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

¹ <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.

⁴ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/dv/eav_lawofadminprocedure_/EAV_LawofAdminprocedure_EN.pdf.

rights under Union law;

- E. whereas the existing internal codes of conduct of the different institutions have a limited effect, differ from one another and are not legally binding;
- F. 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;
- G. 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;
- H. 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, both for citizens and for officials, the importance of such principles;
- I. whereas all actions of the Union must comply with the rule of law under a strict separation of powers;
- J. 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;
- K. whereas rules on good administration promote transparency and accountability;
- L. whereas a pressing problem facing the European Union today is the lack of confidence on the part of citizens, which can affect its legitimacy; whereas the European Union needs to address swift, clear and visible answers to the citizens in order to respond to their worries;
- M. whereas the codification of the service principle – that is, the principle that the administration should seek to guide, help, serve and support citizens, act with appropriate courtesy and therefore avoid unnecessarily cumbersome and lengthy procedures, thus saving the time and effort both of citizens and of officials – would help to meet the legitimate expectations of citizens and benefit both citizens and the administration in terms of improved service and increased efficiency; whereas awareness of the right of Union citizens to good administration should be increased, including through the Commission's relevant information services and networks;
- N. whereas, taking into account the recommendations of the Group of States against corruption (GRECO) of the Council of Europe, a clear and binding set of rules for the Union's administration would be a positive signal in the fight against corruption in public administrations;
- O. whereas a core set of principles of good administration is currently widely accepted among Member States;

- P. 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 administration by the Union;
- Q. whereas a European Law of Administrative Procedure would help the Union's administration in using its power of internal organisation to facilitate and promote the highest standards of administration;
- R. whereas a European Law of Administrative Procedure would enhance the Union's legitimacy and increase the confidence of citizens in the Union's administration;
- S. 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;
- T. whereas a European Law of Administrative Procedure could foster cooperation and the exchange of best practices between national administrations and the Union's administration, in order to fulfil the objectives set up by Article 298 of the Treaty on the Functioning of the European Union;
- U. 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;
- V. whereas the legislative action requested in this resolution should be based on detailed impact assessments *inter alia* quantifying the cost of administrative procedures;
- W. whereas the Commission should engage in adequate consultation with all relevant actors, and should in particular make use of the special knowledge and expertise of the European Ombudsman, since it is to him that public complaints about abuses within the bodies and institutions of the Union are made;
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 does not have 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 (including financial), family or national interest or by political pressure. The Union's administration shall guarantee a fair balance between different types of citizens' interests (business, consumers and other).

- 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 fairness: this must be respected as a basic legal principle indispensable in creating a climate of confidence and predictability in relations between individuals and the administration;

- Principle of transparency: the Union's administration shall be open. It shall document the administrative procedures and keep adequate records of incoming and outgoing mail, documents received and the decisions and measures taken. All contributions from advisory bodies and interested parties should be made available in the public domain.

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

- Principle of efficiency and service: actions on the part of the 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 on 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.

10.10.2012

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Legal Affairs

on the law of administrative procedure of the European Union
(2012/2024(INI))

Rapporteur: Anneli Jäätteenmäki

(Initiative – Rule 42 of the Rules of Procedure)

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Legal Affairs, as the committee responsible:

- to incorporate the following suggestion in its motion for a resolution:
- A. whereas a pressing problem of the European Union today is the lack of confidence from citizens which can affect its legitimacy; whereas the European Union needs to address swift, clear and visible answers to the citizens in order to respond to their worries;
- B. whereas the Lisbon Treaty provides for the drafting of a Regulation on European Administration, on the basis of Article 298 of the Treaty on the Functioning of the European Union (TFEU), which still needs to be implemented;
- C. whereas all the actions of the Union must comply with the principles of the rule of law and the separation of powers;
- D. whereas Article 41 of the Charter of Fundamental Rights of the European Union, which recognises the right to good administration as a fundamental right of the citizens, became legally binding as primary law under Article 6(1) of the Treaty on European Union;
- E. whereas Article 298 TFEU provides a suitable legal basis for adoption of an EU Administrative Procedure Law;
- F. whereas the Code of Good Administrative Behaviour prepared by the European

Ombudsman and approved by Parliament on 6 September 2001¹ provides a good basis for the new Regulation, as does the set of 'public service principles for the EU civil service' published by the Ombudsman on 19 June 2012 and the Council of Europe's Recommendation on good administration; the experience gained from the Ombudsman's activity could also be of use in this connection;

- G. whereas a Regulation on European Administrative law could aim towards a future convergence of the National rules on administrative law, as far as the general principles concerning citizens are concerned, and could help strengthening the process of integration in this field;
 - H. whereas, taking into account the recommendations of the Group of States against corruption (GRECO) of the Council of Europe, a clear and binding set of rules for the EU administration would be a positive signal in the fight against corruption in public administrations;
 - I. whereas a Regulation could foster the cooperation and the exchange of best practices between National administrations and the EU administration, in order to fulfil the objectives set up by Article 298 TFEU;
- 1. Requests the Commission to submit, on the basis of Article 298 TFEU, a proposal for a regulation including the basic principles of sound administration and laying down minimum quality standards and procedural guarantees to be respected by all institutions, bodies, offices and agencies of the Union;
 - to incorporate the following recommendations in the annex to its motion for a resolution:
 - 2. The Regulation should establish a guarantee and lay down more detailed procedural rules in order to ensure respect of the fundamental principles of separation of powers, good administration, namely the principles of lawfulness and legal certainty, proportionality, independence, impartiality and fairness, legitimate expectations and equality;
 - 3. The Regulation should act as a framework legislation providing the EU administration with a universal set of principles and should lay down a procedure applicable as a *de minimis* rule where no *lex specialis* exists;
 - 4. Given that good faith is now similarly recognised as a basic legal principle and must be regarded as indispensable in creating a climate of confidence and predictability in relations between individuals and the administration, it should accordingly be included as a separate entry in the list of general principles which should govern administrative activity;
 - 5. The principle of acting in the public interest and the principle of good faith should therefore be included among the general principles of good administration;

¹ European Parliament 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 Behaviour (OJ C 72 E, 21.3.2002, p. 331).

6. The administration of the European Union should be guided by the service principle which means that the administration should act in the spirit of service to citizens, for example by providing citizens with the advice they need and responding to their questions, stating in writing reasons for the decisions adopted and informing them of the remedies available to them;
7. A general obligation requiring the institutions, bodies, offices and agencies to act within a reasonable time should be specified in the relevant procedural rules;
8. The procedural rules must guarantee, in accordance with point (a) of Article 41(2) of the Charter of Fundamental Rights, that the person concerned will be heard before any individual measure that would affect his or her rights or interests, is taken;
9. The citizens' right to information should be implemented by means of a rule obliging the institutions, bodies, offices and agencies to provide citizens promptly with any information that they may need in order to defend their rights and further, by affording them the access to documents provided for by 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 documents¹, together with the right to access their own file; the institutions, bodies, offices and agencies should be under an obligation to keep a register of their documents;
10. Since every citizen has the right, pursuant to point (d) of Article 20(2) TFEU, to communicate in an official Union language of his or her choice in correspondence with the Union administration, the language used by the institutions when addressing citizens should be clear and easy to understand.
11. In order to encourage the extrajudicial resolution of disputes, procedures should be laid down for administrative appeal against decisions adopted by Union institutions, bodies, offices and agencies;

¹ OJ L 145, 31.5.2001, p. 43.

GROUND S

It has been two and a half years since the Treaty of Lisbon entered into force. Article 298 on good administration is the only one of the Treaty's new Articles on which the Commission has not yet taken any action. It is now time for action to be taken.

Trust in the administration could be significantly increased by preparing an administrative code which applies to all of the EU's institutions and which defines the principles and practices of good administration. Article 298 of the Treaty of Lisbon provides for the drafting of such a regulation, stating that *'In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end.'*

Article 41 of the Charter of Fundamental Rights of the European Union defines the right of citizens to good administration. According to the article, 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. The Article also sets out the rights of citizens to be heard, to have access to their own files, to receive compensation for damage and to contact the institutions in one of the languages of the Treaties, as well as the obligation of the administration to give reasons for its decisions.

This list of rights, along with existing guidelines on good administration, forms a basis upon which this proposal is to be transformed into regulation. One good example of such guidelines is the European Code of Good Administrative Behaviour, which was drafted by the European Ombudsman and approved by the European Parliament in 2001. The Council of Europe's recommendations on good administration could also be used as a source text for the regulation.

The administrative regulation should apply to all of the EU's institutions, bodies and agencies. However, it cannot apply to Member States when they are implementing decisions made by the EU.

Legitimacy is dependent upon citizens believing that they are able to influence the policies of the EU through democratic decision-making processes and upon generating trust in the fairness and independence of the EU's administration.

Defining regulation for administrative procedures generates a sense of security, both for citizens and for the Union's officials, for whom the regulation will offer support in the course of their duties. A law on good administration will also act as a foundation for the Court of Justice of the European Union as it handles cases related to the Union's administration.

At present, there are various sector-specific guidelines which apply to administrative procedure. These exist in areas such as competition policy, regional policy and consumer policy. The problem with these rules is that they exist across many different areas of EU

legislation, and no integrated legislation exists on this subject.

Openness is an essential part of good administration. It is also the most important factor in generating trust. The rules on access to documents (1049/2001) have been open for review by the European Parliament and the European Council for many years now. It is clear that the forthcoming law on administration must comply with the provisions of this regulation. However, it should also go beyond the limits of the regulation in some respects. For example, a requirement that documentation be registered, which is not included in regulation 1049/2001, should be part of the law on administration.

The European Code of Good Administrative Behaviour, drafted by the European Ombudsman, expresses the sentiment that the administration of the EU's institutions should comply with certain service principles. According to the Code, it is the duty of officials to do whatever possible to assist citizens in their interactions with institutions. This requires that citizens' questions be answered, that they be guided towards the relevant body and that they be treated with respect.

One of the biggest problems that citizens experience with the EU's administration is its language. Although the Treaty requires citizens to be able to interact with institutions in any of the official languages of the EU, this does not necessarily mean that the language is comprehensible. The intricacies of legal and official language become even more unintelligible when they are translated into another language. Officials in EU institutions should receive training on how to use comprehensible language.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	9.10.2012
Result of final vote	+: 22 -: 0 0: 0
Members present for the final vote	Alfredo Antoniozzi, Andrew Henry William Brons, Carlo Casini, Andrew Duff, Roberto Gualtieri, Enrique Guerrero Salom, Gerald Häfner, Stanimir Ilchev, Constance Le Grip, David Martin, Morten Messerschmidt, Paulo Rangel, Algirdas Saudargas, Indrek Tarand, Rafał Trzaskowski, Manfred Weber
Substitute(s) present for the final vote	Zuzana Brzobohatá, Andrea Češková, Marietta Giannakou, Anneli Jäätteenmäki, Vital Moreira, Helmut Scholz, György Schöpflin

25.6.2012

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Legal Affairs

on the Law of Administrative Procedure of the European Union
(2012/2024(INI))

Rapporteur: Margrete Auken

(Initiative – Rule 42 of the Rules of Procedure)

SUGGESTIONS

The Committee on Petitions calls on the Committee on Legal Affairs, as the committee responsible:

- to incorporate the following suggestions in its motion for a resolution:
- 1. Welcomes the conclusions of the Working Group on EU Administrative Law of Parliament's Committee on Legal Affairs;
- 2. Considers that, with the development of the competences of the European Union, citizens are increasingly directly confronted with the Union's administration, without always having the corresponding procedural rights which they could enforce against it in cases where such actions may prove necessary;
- 3. Points out that, following the entry into force of the Treaty of Lisbon, the right to good administration is a fundamental right of citizens, and that 'soft-law' administrative procedures, which can be modified unilaterally by the institution concerned, are not always sufficient to protect the individual's right to good administration, although they will retain their importance for an overall culture of good administration as an addition to 'hard-law' provisions;
- 4. Recalls that, previously, the first European Ombudsman proposed the adoption of a binding code on good administrative behaviour and that Parliament supported that proposal and called on the Commission to present a proposal, based on the code, for a general regulation on administrative procedures, but that the Commission agreed only to the adoption of non-binding guidelines;
- 5. Calls on the Commission to envisage a regulation, based on Article 298 of the Treaty on

the Functioning of the European Union (TFEU), that provides for minimum standards of quality and procedural guarantees which would be horizontally applicable to all Union administration; considers that that general law should be limited to direct EU administration, in accordance with Article 298 TFEU;

6. Calls on the Commission to guarantee the right to good administration by an open, efficient and independent European administration, with the right to good administration, as defined by Article 41 of the Charter of Fundamental Rights and subject to the general restrictions of Article 51 thereof, being understood as every person's right to have his or her affairs handled impartially, fairly and within a reasonable time;
7. Notes that the general principles of the future European administrative regulation should include the principle of equality and the principles of impartiality and independence, while guaranteeing fairness, lawfulness and legal certainty and the principles of proportionality and openness;
8. Considers that the introduction of the service principle – that is, the principle that the administration should seek to guide, help, serve and support citizens, act with appropriate courtesy and therefore avoid unnecessarily cumbersome and lengthy procedures, thus saving the time and effort of both citizens and officials – would help to meet the legitimate expectations of citizens and benefit both citizens and the administration in terms of improved service and increased efficiency;
9. Stresses the urgent need to introduce more extensive administrative rules for the procedure applicable under the current Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 on public access to European Parliament, Council and Commission documents¹, to be adopted on the basis of Article 15 TFEU, with particular regard to codifying the relevant case-law of the Court of Justice and extending the scope of the Regulation to the whole of the EU's administration; similarly, more effective provisions ought to exist concerning the procedure applicable to the processing of personal data – particularly regarding implementation of the citizens' rights guaranteed therein – under the current 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 data², to be adopted on the basis of Article 16 TFEU; acknowledges, however, that the regulations mentioned have led to the codification of two areas of general Union administrative law, which has already enabled relatively clear administrative procedures to be introduced, and that the further development of these should build on what has been achieved to date;
10. Considers that generally applicable rules are necessary in order to guarantee the procedural rights – such as the right to be informed and the right to be heard – of natural or legal persons when a decision is taken on a matter in which they can be considered a party and which produces legal effects for the person or entity concerned, and regarding the right to access one's own files;
11. Calls on the Commission to introduce specific administrative provisions for infringement

¹ OJ L 145, 31.5.2001, p. 43.

² OJ L 8, 12.1.2001, p. 1.

proceedings based on Article 258 TFUE, in order to prevent any possibility of abuse of power and arbitrary decisions; considers that such a provision should regulate the whole relationship between the Commission and a citizen or undertaking that submits a complaint which may lead to an infringement procedure, thereby strengthening primarily the position of the individual complainant; regards it as particularly advisable that Parliament's Committee on Petitions be provided with clear information on the stages reached in infringement procedures covered by an open petition in order to ensure parliamentary scrutiny of the fundamental right to petition the European Parliament;

12. Notes that the Staff Regulations lay down general rules on conflicts of interest as regards situations in which an official must inform his/her superiors, etc., but considers that those rules need to be supplemented by rules governing the consequences, such as the possible revocation of decisions taken in violation of the rules on conflicts of interests, as well as the establishment of a deadline for enforcement of all decisions, in order to ensure the predictability of administrative processes;
13. Considers that Union citizens should expect a high level of transparency, efficiency, swift execution and responsiveness from the Commission, regardless of whether they are making a formal complaint or exercising their right of petition under the Treaty, together with information as to the possibility of their taking any further action in the matter.
14. Calls on the Commission to engage in adequate consultation with all relevant actors when drawing up a proposal for a regulation on the introduction of general EU administrative procedures, and in particular to make use of the special knowledge and expertise of the European Ombudsman, since it is to him that public complaints about abuses within the bodies and institutions of the Union are made;
15. Considers that the Commission should also investigate the use of a further extension of IT-based services under the regulation; recalls that not only that the potential of IT-supported administrative procedures is not limited to new online information systems but also that they can encompass interactive 'settlement systems' between administrative authorities and also between the authorities and citizens;
16. Calls on the Commission, when drawing up a proposal for a general administrative act, to increase public awareness of the right of Union citizens to good administration, including through its relevant information services and networks (such as Europe Direct); stresses that such information initiatives should also take into account the appeal procedures that are available in the event of a presumed violation of the right to good administration and, in particular, the specific limits of those procedures, as laid down in, for example, Article 228 TFEU on the European Ombudsman; is convinced that constructive public pressure will result from increased knowledge and awareness amongst citizens concerning that right and the associated complaints procedures, and that this may be conducive to the formation of an open, efficient and independent administration in everyday affairs.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	19.6.2012
Result of final vote	+: 18 -: 0 0: 0
Members present for the final vote	Margrete Auken, Philippe Boulland, Simon Busuttil, Michael Cashman, Lidia Joanna Geringer de Oedenberg, Iliana Malinova Iotova, Peter Jahr, Lena Kolarska-Bobińska, Erminia Mazzoni, Willy Meyer, Ana Miranda, Adina-Ioana Vălean, Jarosław Leszek Wałęsa, Tatjana Ždanoka
Substitute(s) present for the final vote	Phil Prendergast, Axel Voss, Angelika Werthmann
Substitute(s) under Rule 187(2) present for the final vote	Othmar Karas

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	6.11.2012
Result of final vote	+: 24 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eva Lichtenberger, Angelika Niebler, József Szájer, Axel Voss
Substitute(s) under Rule 187(2) present for the final vote	Sylvie Guillaume