

Citizens First: Modernisation of the System of Administrative Procedures in South-Eastern Europe

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Reforming public administration has been one of the key priorities on the recent political agenda of all South Eastern European (SEE) countries on their way towards EU membership. Upon request of all of these countries, the SIGMA programme has been involved by providing technical support. This paper addresses the challenge of policy-makers and the problems of administrative practitioners. It provides an overview of the reform processes with a view on the particular circumstances and requirements of EU candidate and potential candidate countries in SEE. However, many principles and aspects referred to in the paper are valid not only in the EU accession context. They may be seen as universal and, therefore relevant for and to a certain extent transferable to many other countries, in particular to the EU neighbourhood countries in SEE

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when planning and implementing public administration reform activities.

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1. The Need for Reforming the System of Administrative Procedures

Reforming public administration has been one of the key priorities on the recent political agenda of all South Eastern European (SEE) countries on their way towards EU membership. Upon request of all of these countries the Sigma programme, a joint EU-OECD initiative principally financed by the European Commission (EC), has been involved in these processes by providing technical support.

In the context of Sigma's assistance to this modernisation process, two major questions have been frequently asked: (1) Why is it so important to have a rational system of administrative procedures and why is a Law on General Administrative Procedures (LGAP) necessary for achieving it? (2) What does a good LGAP look like and how can it be put into administrative practice?

The first question is usually posed by political decision-makers, the latter mainly by law-drafters and managers in administrative bodies. This paper addresses both the challenge of policy-makers and the problems of administrative practitioners. It will provide a very short overview of the reform processes with a view on the particular circumstances and requirements of EU candidate and potential candidate countries in SEE. However, many principles and aspects referred to in the following text are valid not only in the EU accession context. They may be seen as universal and therefore relevant for and to certain extent transferable to many other countries, in particular to the EU neighbourhood countries in the South and East when planning and implementing public administration reform activities.

2. Why is a Good System of Administrative Procedures Necessary

The political success of a government stands and falls with the quality of public administration. Therefore, the first answer to the question of a politician, why a good system of administrative procedures is needed, has to emphasise the general political importance of public administration for a governance system. Max Weber wrote, »Administration is the exercise of political authority in everyday life«. (Weber, 1922/1980: 28).¹ The best political concepts, aimed at issues such as creating an education system fit for the future, providing social security, protecting the environment, combating the unemployment rate, generating sustainable economic growth, or ensuring law and order, will fail if public administration lacks the necessary capacity to put those concepts into the reality of every day life.

Not least because of this general political importance, the status of public administration and its adjustment to rapidly changing needs of society and government is currently debated practically in all European countries. In this political and social context, good administration has emerged as an all-encompassing concept, indicating the overall objective of the modernisation process.

2.1. Key Elements of Good Administration

Good administration is at the service of the community. It responds to the expectations and requirements of a balanced approach to safeguarding the public interest while respecting the rights and interests of the individual citizen. In this way, it promotes social trust in the executive power and fosters economic development and social wealth. In contrast, malfunctioning administration is an obstacle to productive investments and can lead to citizen's distrust of the state.

The principles and standards of good administration derive from EU legislation and judicature² as well as from good administrative practice in EU

¹ »Politische Herrschaft im Alltag ist Verwaltung.«

² Article 41 of the Charter of Fundamental Rights of the European Union (2000/C 364/01). Of fundamental relevance for public administration are also: Article 2 of the Treaty on European Union, according to which the »Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities«. Article 197 of the Treaty on the

Member States and other European countries. Thus, these principles also provide baselines in the light of future EU membership and cross-border administrative cooperation.

2.2. New Challenges

The concept of good administration has redefined administrative operation and citizen-administration relationships. In the past, the main challenge for good administration was the respect of the rule of law, according to which administrative actions have to be based on a valid legal provision circumscribing the competence of the administrative authority and setting its limits. Predictability and accountability of administrative actions are ensured in this way.

However, a more recent and additional challenge for good administration has to respond to fundamental social, cultural, technological and economic changes that have occurred during the last decades. These changes affect all countries, but are particularly relevant for transition countries and EU candidates.

One of the recent changes can be described as a more equal relationship between the state authorities and citizens. Modern democratic administration does not regard the citizen as subordinated to public authorities anymore. For a democratic public administration of today, the citizen is seen as an asset: the citizen is given space as an active partner, who can contribute to the general welfare. His/her input, cooperation and participation is encouraged and sought after as a necessary condition for democratic and efficient administration and for economic development. In this new context, administrative decision-making and provision of administrative services need to adjust. This involves a new place for values such as transparency, simplicity and clarity, participation, responsiveness and »citizen oriented« performance. They redefine the relationship to citizens as more »horizontal«. Legal provisions and their administrative implementation need to incorporate this redefinition and keep up with these developments.

The second change is related to the fact that today people communicate differently than they did ten, twenty, or thirty years ago. This is not only

Functioning of the European Union, which refers to administrative capacity of the Member States as a matter of common interest. For the complete text of these provisions see Annex I of this paper.

the result of the fast-paced and revolutionary development of information and communications technology. It is also the style of communication in general that has changed within society; the diction is more direct and less formalised, differences between communicating parties in terms of social standing or stage of life have become more and more irrelevant.

A third fundamental change is characterized by a significant speedup of any kind of processes within society. Everywhere and always immediate response is expected, waiting for a reaction is seen as waste of time.

Good administration, oriented to citizens' needs, has to answer to those societal cultural changes, i.e. administrative processes are more horizontal, use contemporary technology and style of communication and strive for prompt results.

2.3. Benefits of Good Administration

Good administration presents multiple advantages and benefits: it enhances democratic governance and political efficiency; it fosters economic development and – for EU candidate countries – prepares accession and future membership.

Impact on political efficiency and democratic governance. Reliable, fair, open, accountable and efficient administration means proper implementation of political decisions and legal rules. The public interest is pursued effectively and efficiently and the rights and interests of citizens are respected. This is to the benefit of government, the citizens and more generally, democratic governance. Furthermore, by creating predictability, enhancing political legitimacy and promoting democratic governance, good administration principles promote political efficiency.

Predictability is important for government in order to make sure its decisions will be implemented. It is also important for citizens, who are familiar with their rights and obligations, act accordingly, and know what to expect from public administration when deploying their activities.

Fair treatment of citizens' interests through possibilities of hearings, consultation and participation, as well as accountability, shape favourable conditions for the acceptance of administrative decisions and, more generally, government policies by those affected as well as by the general public. Good administration fosters trust in institutions, a vital precondition for low compliance costs, social peace and political stability.

On the contrary, the lack of such conditions results in weak administration, weak state institutions and, in the end, a low capacity of a society to promote its well-being. Delays, inefficiency, partiality, arbitrariness, corruption, nepotism, patronage, and other forms of maladministration lead to citizens' resentment, resistance and protest against the state and its institutions; they undermine the legitimacy basis of the government and lead to a failing state.

All this is important at the international level as well. A well-performing administration invites respect and acceptance among other states and supranational organisations. Cross-border cooperation needs to be based on clear and predictable rules and on efficient domestic institutions. These conditions promote the political and economic position of a country in the EU and on the globalised markets.

Impact on economic development. The administrative, legal and court systems of a country form the most important part of its institutional infrastructure. Their importance for the development of the economy is universally acknowledged. They constitute the basis for the market operation and the encouragement of the most dynamic parts of society to contribute to its general welfare. Economic success requires institutions that encourage individuals to engage in productive and innovative activities, to look for opportunities and take up challenges. Foreign investors assess the risk by the chief criterion of predictability and stability of the political and institutional environment. It is a primary role of the state to define and follow up the respect of the rules of the game, ensuring predictability for the deployment of economic activities.

All this is served by good administration principles as described above. Therefore, state institutions need to reduce uncertainty regarding the behaviour of other market participants and the economic and social environment in general. Reliable, efficient and transparent administration and a legal system that guarantees economic rights by making sure the law is properly enforced are a condition *sine qua non* for important long-term investments, either private or public.

Where such institutions are missing, transaction costs for market participants are high and represent counter-incentives for productive economic initiatives. Economic agents tend to adopt opportunistic behaviour concentrating their activities on less productive investments, e.g. in projects with little fixed capital and short payback periods. Maladministration in the form of administrative deficiencies and obscure, lengthy and unnecessarily complex administrative procedures yield to partiali-

ty and corruption. In such circumstances, the courts will be unable to play their role guaranteeing the rule of law. Such conditions obstruct economic initiatives of domestic or foreign potential investors, with a negative impact on unemployment, and a potential negative impact on political stability.

Public administration is the institution that represents the public interest. The principles of good administration aim at balancing the needs of society and economic actors in view of the common good. They help to shape strong institutions on whose basis a country can achieve welfare objectives while preserving individual – including economic – rights and freedoms. They encourage and support socially beneficial economic activities and assess the impact administrative procedures and regulations have on them. Good administration, therefore, strives to reduce the economic costs necessary to adhere to administrative requirements, to reduce unnecessary red tape. Efforts to facilitate the encounter and communication with public bodies include the use of IT-based communication means and the introduction of single contact points (one-stop-shops).

Impact on European integration: the non-formalised *acquis communautaire*. It is not a coincidence that the principles of good administration form an integral part of the value system of the EU. The EU constitutes a complex political and economic environment in which predictability is of utmost importance either for joint decision-making or for achieving its economic and social goals. This is why these principles are common to all member states, and to the institutions of the EU itself. They represent part of the non-formalised *acquis communautaire* that has to be adopted by candidate countries.

The right of the EU citizens to good administration is laid down in Article 41 of the Charter of Fundamental Rights of the European Union. Furthermore, the Council of Europe in its Resolution 77 (31) also acknowledges the right of the European citizens to an administration that follows principles of good administration ensuring the protection of the individual's fundamental rights and freedoms and promoting fairness in citizen-administration relations. Additionally, the European Court of Justice (ECJ) has shaped general administrative principles on the basis of those created and refined by national administrative courts of the EU member states; they came to form a core of common European values.

Not least because of the ever-increasing extension of the corpus of European law and the rulings of the ECJ, the legal systems of the EU member

states are undergoing a process of constant approximation. This includes an increasing number of fields of material law and procedural law. As a result, quite a large number of the principles of good administration are not only widely accepted among the member states, but also enacted as general and legally binding rules in their national constitutional or statutory legislation, even though the specific material embodiment of the rules may differ between the member states.

In terms of European integration, good administration serves first and foremost the national interest of each member state. It allows coping with the pressure of economic competition and the forces at work on the common market. Accession states that wish to contribute to and benefit from the common market can do so for their own benefit only if they possess a functioning market economy as well as corresponding state institutions supporting it. A degree of compatibility of their administrative systems with the other EU countries is required for administrative cooperation, which in turn reduces transaction costs for cross-border business and investments.

Additionally, the EU requires all accession states to be able to assume the obligations of the membership. In particular, this requires adherence to the objective of the political, economic and monetary union, guaranteed by stable institutions that uphold democracy, the rule of law, human rights as well as respect for, and protection of, minorities. Furthermore, the accession states need to adopt the entire body of the European legislation, the *acquis communautaire*, and implement it effectively through appropriate administrative and judicial structures. The extent to which a country has implemented the non-formalised *acquis communautaire* is indicative of and correlates with the ability of this country to effectively adopt and implement the formal *acquis communautaire*.

The EC is increasingly interested in ensuring that accession countries fulfil the Copenhagen and Madrid criteria. This includes the readiness and the ability to follow the principles of good administration in all their aspects, including administrative and judicial reform, the rule of law, and the fight against corruption. From the accession countries perspective, this represents an opportunity to benefit from the collective prior experience of other EU countries in order to either shape or streamline and rationalise existing rules and administrative procedures.

2.4. Administrative Procedures: Good Administration in Practice

The implementation of the principles of good administration requires a well-designed and solid platform consisting of four components: a system of administrative procedures regulating the administrative decision-making process; a clearly structured organisation of public administration and its bodies in all policy areas and at all territorial levels; professional, competent and independent personnel; and a system of effective judicial control of administrative actions. Each of them is equally indispensable for good administrative practice.

Thus, for putting the principles of good administration into practice an adequate system of administrative procedures is imperative. Such a system sets the general rules for the process of carrying out an administrative action, ensuring its quality as well as its legal correctness. A good system of administrative procedures protects citizens' rights and promotes citizens' participation. It further avoids unnecessarily complicated, formalistic and lengthy processes and enhances transparency and accountability and thus contributes considerably to stronger integrity of public administration, since plenty of cases of corruption aim at ensuring nothing else but an administrative decision that is in compliance with the law and issued in a reasonable time. Finally, a good system of administrative procedures reduces both transaction costs for citizens and government expenditures; on the other hand, a system of complicated and inefficient administrative procedures is costly for citizens and burdens the state budget significantly.

2.4.1. *The Current State of Administrative Procedures in South Eastern European Countries*

Two phases of reform of the system of administrative procedures can be observed in all SEE countries: the first phase, in the period 1995–2005, was followed by the recent phase beginning in 2007 and still unfinished in most of the countries. During the first phase, the former Yugoslav countries undertook some marginal changes of the existing Law(s), whilst Albania adopted a new Code on Administrative Procedures. In the second phase, all of these countries started drafting a completely new piece of legislation in this field³ and asked for Sigma's support to the law drafting process.

³ Croatia: new LGAP in force since 1st January 2010; Albania: first draft LGAP finalised in March 2011; draft under discussion; Serbia: first draft LGAP submitted to the

In the former Yugoslav countries, the legal tradition and its academic doctrine related to administrative law goes back to the Austrian Administrative Procedure Law of 1925, adopted in Yugoslavia in 1930 and adjusted twice, in 1956 and 1986. This piece of legislation has been considered and respected by generations as a model of a good law and there is no doubt that the old LGAP had its merits in the past. It used to be a sound legal basis for a public administration through law, since it provided legal certainty of administrative decision-making processes and a sufficient degree of legal protection of the citizen against administrative decisions.

However, 80 years after its first codification and more than 50 years after the adoption of the LGAP in socialist Yugoslavia, the understanding of public administration in a democratic state, the requirements of a good, citizen-oriented administrative practice, the culture and technical means of communication between citizens and administrative authorities, and the legislative methodology for drafting a good law have substantially changed.

As a consequence, the old LGAP has become inappropriate to serve the demanding new situation of a modern state. It reflects the notion of the traditional bureaucratic administration and not the administration of a country that has to deliver large and complex public service. European administrative law principles, as well as the standards of administrative practice in EU member states are not at all or are only partly reflected in the current LGAP. The current Law does not cover all modern types of administrative activities and therefore does not provide complete legal protection against all types of administrative activities. It stipulates unnecessarily complicated, lengthy and costly procedures. The current LGAP does not provide the necessary general legal framework for e-administration and point-of-single-contact approach. Its general legislative approach draws the administration's attention on formalities and procedures rather than on the results of the decision-making process. Finally, as it is typical of legislation stemming from socialist times, the current LGAP goes into regulatory details that would be better dealt with through secondary legislation or internal administrative rules.

Government in February 2012; Montenegro: first draft LGAP in the public consultation process, the second one adopted by the Government in June 2014; Macedonia: first draft submitted to the Government in January 2014; Kosovo: drafting process started in September 2012.

2.4.2. A New LGAP is Needed to Respond to Substantial Societal and Technological Changes within Society

Nevertheless, due to the high reputation of the old LGAP, legal experts in all of these countries have been reluctant to abolish this classical piece of legislation and replace it by a completely new one. A facelift of the tried and trusted law by amendments appeared to be the better and easier approach; and for the legislator this approach was used particularly for some short- and medium-term solutions.

However, all attempts to adjust the old LGAP to newly emerging needs, during the aforementioned first phase of the reform, could not produce sustainable results. Innovative administrative tools such as IT based communication, point-of-single-contact approach, administrative contract and an effective system of administrative legal remedies can hardly be integrated into the existing legal framework, partly because the given structure of the Law does not provide an appropriate systemic place for them, and partly because of contemporary demands' incompatibility with the whole conceptual content, in other words the spirit of the current LGAP.

From the present vantage point, the amendments in the first phase of the reform need to be seen as medium-term measures to bridge the period required for the general review of the overall system. Further amending of the current LGAP would entail an imperfect and illegible patchwork rather than a good, consistent, and comprehensible law.

Therefore, all of the countries finally opted for modernising the system of administrative procedures based on a completely new legal framework. The opinion prevailed that new LGAP is needed in order to achieve both: preserving the traditional values and merits of the current LGAP while opening the door for the recent and future societal and technological developments.

3. How to Promote Proper Implementation of a New System

The introduction of a new LGAP serving the above purposes is not only a matter of perfect regulatory substance of the Law, but also a very practical issue. »A policy, in any field of endeavour, is only as good as its implementation.« (Dunsire, 1990: 15). In the largest number of cases, it is

impossible to say whether policies failed because they were based on bad laws or because good laws were poorly implemented (Williams, Elmore, 1976: 21).

Successful implementation of a new law depends on a number of well-coordinated preparatory steps. These include initiatives to be taken during the drafting process as well as measures to create favourable conditions for efficient implementation, after the Law has been adopted. In Annexes II and III to this paper, a general plan and schedule for drafting, adopting and implementing a new LGAP is proposed. According to this plan, ideally, a period of 36 to 45 months is to be foreseen for the whole process starting with the policy design and ending with a public promotion campaign before the new Law applies.

The drafting process. The proper implementation of a new system of general administrative procedures depends on how the process of drafting the legal framework is managed. Implementation goes hand in hand with drafting.

The point of departure is usually the political decision of the authorised body to respond to deficiencies in the current system of administrative procedures. The policy is very often formulated in a public administration reform strategy or programme. In an ideal world, such a document describes the status quo of the existing system for each reform area, explains the reasons why change is needed, defines the wider and specific objectives of the change process, and outlines budgetary and other requirements and a timeframe for its realisation.

The political decision-makers' motivation for the change is crucial for successful implementation. If the only motivation for facing the challenge of restructuring the system of administrative procedures is to fulfil expectations from outside the country, there is a very high risk that the reform will not be sustainable, i.e. the implementation will finally fail.

The next step is to draft a policy paper stipulating guidelines for the rest of the legislation procedure. The policy paper prescribes the principles, the scope, the major regulatory elements and the structure of the new law. It is advisable that the paper also refers to methodological aspects of law drafting. Finally, such a concept paper should provide a programme for preparing the proper implementation of the adopted piece of legislation.

For the work on the preparation of the policy paper and subsequent drafting of the legal text, the responsible Ministry usually establishes a working group of national experts representing administrative and judicial practice and academia (ideally no more than five members). Where appropriate,

the national experts are supported by expertise from abroad. Every member of the working group should be familiar (or if necessary, be familiarised) with the state of the art of law drafting.

As already stressed, implementation starts with the drafting. The working group of law drafters must be aware that the methodological approach of their work, be it the drafting of the policy paper or subsequent writing of legal provisions, will be predefined among others by the requirements of a successful implementation management. Information and participation are the most important tools of implementation management.

The first priority target group for an information and participation strategy are the implementers at the bottom of public administration. One of the goals of their early involvement is motivation. Every change of a status quo gives rise to uncertainty. Not only bureaucrats but also human beings in general prefer the actual and familiar situation to an unknown future. Therefore, civil servants, who have to implement the new system, will overcome their natural tendency to adhere to the old ways, and – to put it in positive words – will accept the new situation only if they can be convinced that the new law is better than the current one, with clear advantages for every day work of the administrative authorities as well as the individual civil servant, while possible disadvantages must not be hidden. This conviction requires intense information.

The other goal of involvement of administrative practitioners is to benefit from their expertise and know-how. If a large number of civil servants actively participate in meetings and conferences on the draft policy paper, they will contribute to the design of a legal framework that is in line with practical possibilities and limits of the administrative reality.

Other target groups of a comprehensive information and participation strategy should be the legal community (judges, lawyers, academics), interest groups (business organisations, other civil society organisations, etc), and citizens in general. LGAP affects virtually every individual in a society in everyday life.

A public consultation process should not only use the traditional public promotion tools (conferences, brochures, media, website) but also all recent means of IT based interactive communication such as social networks. It needs to be emphasised that a comprehensive public consultation process costs both time and money. However, the investment of efforts and funds is necessary and worthwhile, because a badly implemented and therefore dysfunctional system of administrative procedures will become very costly for public administration, the individual citizen and the economy in general.

When the responsible authority (e.g. the Government) has adopted the policy paper on the principles, major content and structure of a new LGAP, the law drafting working group gets a clear mandate for formulating the legal text. It is not necessary for every single country to start from scratch. International institutions like the EU, OECD and the Council of Europe have developed standards and formats on the legislative and operational aspects of good administration that conform the EU and ECHR criteria. This means that the burden of drafting a LGAP is not necessarily too heavy. Each country could examine the existing standards and formats. However, just copying a piece of legislation from alien sources would result in a system rich in written law but poor in law that effectively regulates in accordance with its intended purpose. The examination of existing standards and formats means that they must be carefully adapted to the specific national legal, administrative and cultural context. Thus, time is saved and the harmonisation of systems of general administrative procedures of the countries is achieved and contributes to further development of the European Administrative Space.

It is of utmost importance that the provisions to be adopted are assessed with regard to their implementability in the respective national environment, i.e. the capacity of public administration to observe the procedural obligations they introduce. This is particularly important when it comes, for example, to deadlines for response, and, consequently, deadlines for appeal and review of decisions. A balance between the requirement for speed and the accuracy and fairness of administrative replies and decisions is imperative. Therefore, deadlines must be realistic: too much reform effort is often counterproductive in this respect.

In this stage of the legislation process, stakeholders (such as courts, administrative practitioners, the Ombudsman, NGOs, business community and legal experts) are substantially involved again, as described above for the policy paper. Their participation allows reaching realistic compromises between the principles to respect and their practical formulation; to be aware of possibilities offered and limits to accept from the start; and to be better prepared to support the implementation process, particularly by providing the relevant information to the groups they represent.

The existing stock of special laws and procedures has to be screened against the general principles and guidelines of good governance adopted by the general law. Too many special procedures create unnecessary complexity and red tape, and raise administrative costs. Depending on the stage of development of administrative processes, in some cases the

introduction of a general law may involve a partial or total reform. The most important part, however, is to lay down clearly the principles and guidelines and provide for the solution in case special laws include diverging provisions.

Finally, manuals of administrative actions that streamline processes while taking into account the requirements of good administration, as laid down in the law, may accompany the general law. Similarly, manuals for training as well as for implementation will be needed (see Annex III). In any case, one should avoid mixing in the general law legal provisions and description of administrative actions. These two subjects belong to different documents.

Putting adopted legislation on general administrative procedures into practice. Planning in terms of time and financial resources is very important for successful implementation of such a reform. It is recommended that at least one year be allowed between adoption of the law and its application in order to prepare implementation. Monitoring the implementation for a period of up to 5 years may also be necessary.

Furthermore, it might be useful to set up a standing advisory committee (of experts and civil servants) to which the various services implementing the law can refer in order to clarify their practice and seek solutions. This committee could also monitor and evaluate the implementation progress annually. This will allow enough time until courts come to examine relevant cases and make their contribution to the implementation of the general law by applying, interpreting and completing the legislative provisions.

A budget will be necessary for the training of civil servants and judges and for informing citizens and businesses, in order to make the implementation of the law as effective as possible. The training of civil servants is an essential part of smooth and correct implementation. This may involve manuals to which they may refer in everyday practice.

It goes without saying that administrative courts should be equally prepared for handling cases of this nature. Training of judges will offer a common starting point for the consideration of procedural disputes.

Cooperation with law faculties may help not only in the training of civil servants but also in terms of introducing good administration procedural requirements in the education of future judges, lawyers and administrative employees.

In parallel to the training of practitioners, it is essential to undertake actions for raising citizens' awareness of their rights and strengthen their

trust in effective legal protection. Again, public promotion campaigns, leaflets, modern communication tools (social networks, Twitter) and cooperation with NGOs and the media are some of the ways to achieve this. A higher level of citizens' awareness would allow them to monitor, scrutinize, and criticise the operation of public administration institutions with a view to improving it. Finally, a transparent and well-functioning administrative procedure on the one hand and a citizen, who is well informed about her/his position and rights towards the administrative authorities on the other, are the two basic prerequisites for a public administration invulnerable to systemic corruption.

4. Constitutional Basis of a Law on General Administrative Procedures

An LGAP must realise the balance between the public interest and the requirements of an objective and fast decision making process of public administration on the one hand and protection of rights and legitimate interests of individuals participating in this procedure on the other, in other words between public welfare and social justice. In order to ensure this balance the law must comply with:

- the constitutional order of the state and other principles and values deriving from the national legal tradition;
- the European Charter of Human Rights and international obligations;
- the legal order of the EU *acquis communautaire*;
- the quality standards of modern public administration;
- the positive experiences of national and European administrative culture and practice;
- the standards of good legislation.

This section of the paper will focus on the key elements – the rule of law, human rights, and democracy as the constitutional basis, which determine an LGAP. It follows the final section that proposes key elements of the content and structure of a good LGAP.

4.1. The Rule of Law – Public Administration through Law

The rule of law is the fundamental constitutional value for the legislature, executive and judiciary of a democratic state.⁴ It constitutes a system of the separation of powers; in other words, a system of checks and balances, within which public administration is a state power of equal rank beside the legislative branch and judiciary. In such a system, public administration has its own, exclusive authority, which includes both administrative decisions and their enforcement.

For the administrative decision-making process, the rule of law provides various principles, amongst others the principles of legality, due process and proportionality.

The principle of legality of public administration. The principle of the legality of administration is a cornerstone of all EU member states' public administrations.⁵ It not only aims at protecting the rights of individuals, but also safeguards the public interest. The principle consists of the following two basic elements: i) public administration is bound by the constitution, statutory laws and secondary legislation, i.e. every administrative action must be in conformity with the law; ii) every action of an administrative authority, which interferes with the individual rights of the citizen, is legal only if there is an authorisation for this action provided by law.

Furthermore, derived from these two basic elements, the principle of legality also comprises:

- the requirement of clearly defined competences and responsibilities of administrative authorities, transparent organisation, and predefined decision-making processes;
- the principle of legal certainty to guarantee that a citizen can rely on public administration and foresee possible administrative actions affecting him or her (in other words predictability of ad-

⁴ Article 2 of the Treaty on the European Union recites the principles on which the EU is based and which are common to all member states. Part of these constitutional principles is, among others, liberty, democracy, respect for human dignity and basic freedoms, the state under the rule of law (Case T-54/99 *max.mobil v Commission* (2002) E.C.R., II-313, note 48, CFI).

⁵ Cf. Case 38/70 *Deutsche Tradax GmbH v. Einfuhr – und Vorratsstelle für Getreide und Futtermittel*, (1971) E.C.R. 145, note 10, ECJ; case 113/77, *NTN Toyo Bearing Company Ltd v Council*, (1979) E.C.R. 2859, note 19, ECJ.

ministrative decisions and protection of legitimate expectations of individuals);

- the strict interdiction of undue political interference or political motivation in administrative decisions;
- legal remedies against administrative actions including recourse to the administrative court in order to ensure legal control of administration and protection of individual rights as well as of the public interest.

Fairness of procedures (due process). From the rule of law, the following procedural rights of the citizen are commonly classified under the notions due process or fair procedure:

- the protection of human dignity and individual freedom, including data protection;
- the guarantee not to be subject to unfavourable retroactive law;
- a fair hearing in all stages of the procedure;
- legal aid (i.e. exemption of costs of administrative procedures according to entitlements awarded by the law), if needed and requested by the party;
- the right to understand proceedings;
- the right to listen to other participants in their presence, such as officials, witnesses and experts, when oral proceedings are conducted;
- the right to receive all available information on the case;
- voluntary withdrawal or compulsory exclusion of public officials from the procedure who are suspected of self-interest and prejudice according to strict legal provisions on conflict of interest;
- the right to participate in a procedure initiated by somebody else, if one's interest is at stake;
- the right to obtain a decision within a reasonable time frame;
- the right to receive compensation for damages caused by public administration (state liability).

To summarize, the due process principle establishes a system of fair balance of weapons⁶ between public administration and the citizen.

⁶ General principle of a level playing field as referred to by the European Court of Justice, Case T-36/91 *ICI v Commission* [1995] E.C.R. II-1847, note 93, CFI.

Proportionality. The principle of proportionality means that the administrative authority must not interfere with rights and freedoms beyond what is necessary to achieve the purpose of the respective administrative action. Any administrative action requires the compliance with the proportionality principle. This means that an administrative action may restrict an individual right only if the measure is:

- suitable to attain the purpose prescribed by law;
- strictly necessary to obtain the purpose;
- adequate, i.e. the administrative intervention does not imply a disadvantage that is out of proportion with the designed end.

Human Rights. For administrative procedures, the principle of human dignity and the body of individual freedoms and rights are particularly relevant. Human dignity and freedom provisions are the background for a new understanding that it is the citizen who is the centre of all administrative action. Public administration is called upon to equip him/her with basic services and protect his/her rights. The principle of general equality is both a human right and a democracy-element. Protection of human rights also includes data protection and private secrecy. Modern administration is oriented to protect human rights by organisation and procedure, be it by transparent and accessible organisation or by procedural instruments like participation, fair hearing, remedies etc.

Democracy. The principle of democracy comprises – in the context of public administration – three major aspects:

- Every administrative authority, be it at the state or local level, derives its power from the people's will;
- The role of public administrative bodies towards citizens, entrepreneurs and society is imprinted with democratic elements. A democratic society calls for public administration that should be perceived as the custodian of the public interest on the one hand, and as a set of service-oriented activities directed towards citizens and society on the other. Service to citizens, entrepreneurs and society as a whole, in one word citizen-orientation, is the main goal of a democratic public administration.
- Sometimes citizen-oriented administration and regulatory administration⁷ are understood as antithetical, and therefore it is said

⁷ From the context, the notion of regulatory administration is distinct from either administration of regulation or regulatory bodies/agencies.

that the regulatory administration needs to be transformed into a citizen-oriented one. Such understanding is erroneous. Citizen-/service-orientation does not substitute the rule-of-law-based public administration but complements it by introducing a second value of similar importance. In addition to values like legal certainty and predictability, which are fundamental for a citizen-oriented administration, an administrative culture that comprises citizen-orientation allows more informal relationships between public administration and citizen and more flexibility (discretion) for the administrative decision-maker. However, this requires – as a counterweight – not fewer but new, i.e. different, regulatory instruments.

- The practical side and the most direct form of making democratic principles operational is the participation of citizens and their organisations in public affairs. Open, fully transparent and objective administrative procedures are one of the most important prerequisites for such participation.

Participation may take different forms, ranging from observation of public administrative actions – which is a form of control – to cooperation with administrative bodies through participation in the decision making process. A good LGAP should provide all forms and conditions of such participation. It should guarantee complete and effective protection of participatory rights of individuals in administrative proceedings. According to EU Law (Aarhus Convention of 25 June 1998), NGOs must be admitted to participate in proceedings, when a public interest calls for such participation.⁸

5. Key Elements for the Structure and Content of a New LGAP

5.1. General Goals of a New LGAP

In their policy papers on drafting a new LGAP all the legislators of the aforementioned six EU candidates and potential candidates have included the following political goals:

⁸ In force since October 2001, forms part of EU Law since the Decision of the EU Council of 17 February 2005.

- Ensuring the protection of both individual rights and the public interest as well as the proportionality of administrative decisions;
- Improving the transparency of administrative procedures;
- Enhancing the citizens' confidence in public administration;
- Promoting a service-oriented administrative practice and a professional public administration as an essential condition for economic development;
- Supporting the effective and ethical behaviour of civil servants in the protection of the public interest;
- Improving the efficiency (cost-effectiveness) of administrative decision-making to the benefit of both public administration and citizens;
- Paving the way and open the use of modern information-communication technologies for the delivery of administrative services (e-administration);
- Harmonising the national public administration with EU standards.

However, even though the six pieces of legislation drafted in accordance with those political goals show quite different legislative solutions as far as regulatory details are concerned, the following catalogue of key elements of a new LGAP have been part of all of the agendas for discussion.

5.2. The Scope of the New LGAP Must Minimise the Number of Special Procedures

The principles of the new LGAP must be applied – as a rule – to every administrative action in order to ensure unified administrative procedures. Transparency, predictability and legal certainty in decision-making, as well as the standards of good legislation, require a coherent, unified system of administrative procedures with a minimal number of special procedures.

Such uniformity also reduces administrative costs, speeds up administrative decisions, and increases the effectiveness and efficiency of public administration. It is opportune for both citizens and civil servants to have all procedural rules in the same law. Therefore, special administrative procedures should be subjected to very strict scrutiny and their number reduced as much as possible. The more administrative procedures are

covered by the general administrative procedures law, the more likely it is that procedural rules are known and observed.

Some special procedures may be appropriate for specific areas, but they must be special only in as much as it is absolutely necessary. Those institutions that propose enacting special procedures must explain why special legislation is needed. If special administrative procedures cannot be avoided, the degree of such deviation from general procedure must be minimised and special procedures, as far as possible, combined with the legal institutes of the LGAP.

5.3. Types of Administrative Action

The new LGAP should define a much broader notion of the administrative action than the current Law does. According to such a broad understanding, the new LGAP should be applicable to four different types of administrative actions.

Administrative Act. The administrative act is the most characteristic instrument for the exercise of traditional administrative functions and the only one with which the current LGAPs in the six afore-said countries operate. Nevertheless, a legal definition of the administrative act is missing in those Laws. The new draft Laws will fill this gap by defining the administrative act as every individual unilateral decision or other measure taken by an administrative authority in the sphere of administrative law that directly affects rights, obligations, and the legal interest of an individual party or a restricted number of parties.

Administrative Contract. Although the unilateral administrative act is the traditional and most characteristic instrument of exercising administrative functions, it is not always the adequate tool to regulate the relationship between an administrative authority and a citizen. Democratic cooperation between administrative authorities and citizens demands new forms of administrative actions to enable citizens' participation in its most extensive sense, in particular for those administrative matters that are characterized by the need of co-operation between citizens and administration.

Therefore, a modern LGAP should provide rules, which comply with the universal trend towards more flexibility of public administration. Good administration focused on public welfare requires flexible and efficient instruments beyond the traditional administrative actions. It requires instru-

ments that allow public administration to match its community interests with those of the party and put into practice the fundamental idea that the citizen is not subject of the administrative authority but its partner and equal before the law, so that consensual solutions of administrative problems are rendered possible. Doing so increases the social acceptance of administrative decisions.

That is why the instrument of administrative contract was included in the above-mentioned draft LGAPs. The concept of administrative contract indicates that this administrative action is positioned between public and private law. *In concreto*, the administrative contract utilizes the freedom of contract for the fulfilment of public tasks.

The administrative contract is an agreement (concurrent declaration of intent) in which as a rule at least one of the parties is an administrative authority (or a person acting on behalf of the state) and which directly aims at the fulfilment of a public task. The object of an administrative agreement is a legal relationship under administrative law (*differentia specifica*). *A contrario*, relationships under private law cannot be object of an administrative contract. In most cases, an administrative contract will be concluded between a public authority and a private person, but it can also be concluded between two or more public authorities.

Administrative contracts can be divided into two categories: coordination contracts and subordination contracts. Subordination contracts are applicable when the relationship between the administrative authority and the party is characterized by subordination, i.e. in the cases where the authority would otherwise issue an administrative act. This also applies when partners of the administrative contract are both administrative bodies on different levels (e.g. a regulatory agency applies for a building licence). It follows from this that a subordination contract is admissible only if the law leaves the decision on the subject matter to the discretion of the public authority. Only in this case there is room for negotiation and compromise and only within the legally defined discretion scope. In contrast to the subordination contract, the coordination-contract is a contract between two equal partners, e.g. a contract between two municipalities.

Other Administrative Action. In contrast to the current Law, the new LGAP is also applicable when an administrative authority executes its tasks under administrative law by other unilateral administrative actions that do not fall under the concept of the administrative act but are related to citizens' rights, duties and legal interests, such as delivery of information,

warnings, reporting, publishing expert opinions, or dealing with citizens' petitions.

Delivery of Public Service. The new LGAP shall also provide legal protection, when the delivery of public services (such as telecommunication, electricity or water supply) interferes with the citizen's right or legitimate interest. Privatisation of the delivery of public services must not lead to diminished legal protection of service users (citizens).

5.4. Efficient, Simple, Speedy Procedure

Unnecessary formalism in administrative procedures impedes legal protection of individuals and complicates economic activities. Therefore, the new LGAP should ensure efficient, simple and speedy administrative procedures as much as possible. In this way, it reduces administrative costs for the state budget as well as for the business sector. Efficient and speedy administrative decision-making processes foster investments and contribute to the economic development of the country.

In general, an administrative procedure is not bound to a specific form, all means of communication between administrative authorities and citizens ought to be permitted. Only in cases explicitly prescribed by law, rules on formalities such as the written form or the communication of an administrative action must be applicable.

An appropriate tool to improve the efficiency of administrative procedures is the legal institute of administrative assistance. It ensures non-bureaucratic cooperation and mutual help and support of administrative authorities.

5.5. E-administration

The LGAP should lay the legal conditions for developing IT based communication between public administration and citizens (e-administration). E-administration must cover:

- e-assistance (e.g. dissemination of information for the general public, public relation activities, etc.);
- e-administration, a very important form of communication between the administrative authority and a party to an administrative procedure.

E-administration should be regarded as an additional option in the work of public administration. The LGAP should guarantee that this technical option of easy communication is not to the disadvantage of those citizens who do not have access to online systems or who are not familiar with information technology.

The new LGAP should provide the general legal framework for an integrated portal that facilitates the access to information of public interest in connection with the legislation on free access to public information.

5.6. Point of Single Contact

The principal procedural aspects of the point of single contact approach should be incorporated in the LGAP in a general manner, so as to leave details to special laws and secondary regulations.

5.7. Advice and Information

One instrument derived from the right to due process is the right to obtain advice and information. Since not every citizen is familiar with administrative (procedure) law, the administrative authority must proactively inform the parties of their rights and obligations in the procedure and indicate the legal consequences of the parties' activities or omissions.

5.8. *Ex-officio* Investigation of Facts

The administrative authority must investigate the relevant facts for an administrative decision *ex officio*. The party to an administrative proceeding is not obliged to present documents or provide information kept in official records and registers. The principle of *ex-officio* investigation of facts derives from the rule of law, especially from the principle of legality, and contributes to the security and reliability of the law and to public trust in public administration. The implementation of the principle of *ex-officio* investigation of facts requires a thorough preparation and training of those civil servants responsible for the conduct of the administrative procedure.

5.9. Delegation of Decision-Making Competence

The new LGAP must allow for improved delegation of decision-making competence within a given administrative body. The current situation, when almost all decisions are taken at the top level of an administrative body (minister, state secretary, director, etc.), can be seen as one of the key problems of administrative practice in all of the former socialist countries. This hierarchical organisation of decision-making processes contradicts the rule of good administrative practice, according to which expertise and authority should rest with those who are closest to the user of an administrative service, i.e. the citizen.

The most important negative consequences of a strictly hierarchical decision-making process concentrated on the top of an organisation are as follows:

- Overloading the top of an organisation with any, big or small, administrative decision creates bottlenecks that are inimical to both efficiency and quality in administrative decision-making. At the same time, it weakens the quality of policy-making at the top level of the organisation («Policy-making becomes devalued and administration offers poor quality.»)
- Nobody within a public authority can be familiar with every detail of a subject matter. Thus many decisions taken in a strictly centralised and hierarchical process, inevitably suffer from lack of familiarity with the subject matter.
- Even if a civil servant from the operational level is involved in the internal decision making process, in a centralised and hierarchical system he/she is neither authorised to take the final decision nor appears as the responsible person through his/her name and signature. This is de-motivating and a waste of – very often qualified and well-educated – personnel resources, and thus a reason for the lack of accountability of civil servants.
- A strictly hierarchical decision-making process implies the tendency to politicise administrative decisions, i.e., decisions tend to be based more on political convenience than on what is established in legislation. This also promotes the blurring of political and administrative responsibilities and a clear distinction of either field.

5.10. Public Services – Citizens' Access and Legal Protection

The incorporation of the delivery of services of general interest in the draft LGAPs aims at ensuring effective and low-cost legal protection of service users even if the service provider is a private-law entity. It is true that with such a regulation in the LGAP the legislator would enter into a new administrative law area, but this novelty is recommended in order to respond to newly emerged needs.

In the past, it was exclusively the public sector that provided vital public services to fulfil basic needs of the citizens, but this paradigm has changed. In recent years, governments have increasingly transferred the provision of services of general interest to the private sector. This has been a trend that needs to be seen as a fact, at least for the time being, even if in some EU member states the privatisation euphoria is declining due to non-satisfactory results of such a policy and in some areas, a counter-tendency can be observed.

The EU describes services of general interest as »services covering such essential daily realities as energy, telecommunications, transport, radio and television, postal services, schools, health and social services, etc«. ⁹ According to EU Law, ¹⁰ the Union and the member states shall take care that these services operate based on shared values of the Union. These shared values include in particular a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of users' rights.

In principle, these values, which derive from public law, shall also apply when, as the result of liberalisation, a private service supplier provides the service. It is the responsibility of the public body that commissions a private service supplier, be it a ministry or a regulatory agency, to ensure the private service supplier's compliance with the shared public law values of the EU. The responsible public body exercises its responsibility *inter alia*

⁹ Cf. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions accompanying the Communication on »A single market for 21st century Europe« – Services of general interest, including social services of general interest: a new European commitment {COM(2007) 724 final} {SEC(2007) 1514} {SEC(2007) 1515} {SEC(2007) 1516}

¹⁰ Article 14 of the Treaty on the Functioning of the European Union and Article 1 of the Protocol (No 26) to the Treaty of the EU.

through supervisory and controlling measures towards the private service supplier.

The legal consequence of such public-private constructions is that the direct relationship between the service supplier and the receiving citizen (service user) is based on a private law contract. Through the applicability of private contract law, however, the citizen loses his/her strong and effective legal protection granted by public law (administrative legal remedies, administrative court review) and is limited to the relatively weak legal position of a consumer, who can enforce his/her rights through very costly and lengthy civil proceedings only.

To a certain extent, an LGAP can compensate this shortcoming by creating an administrative-procedure-law-relationship between the citizen/user and the supervisory body. Such a public law relationship would give access to the system of legal remedies provided by the LGAP. As a result, the user would obtain the right to lay claim to supervisory measures to be executed by the responsible public body, if he/she shows probable cause that the private supplier's provision of the service is not or has not been in compliance with the EU values, such as high quality, safety and affordability, equal treatment, universality, and transparency of procedures respectively. Thus, a good LGAP regards the principle that privatisation of the delivery of public services must not diminish the protection of citizens' rights towards the service provider. Good quality and equal provision of services to citizens must be guaranteed irrespective of the legal form of utilisation, whether based on public or private law.

5.11. Legal Limits of Discretionary Power

In a modern public administration, discretion is the means to respond flexibly to new developments of the reality. The empowerment of administrative authorities to take discretionary decisions is a relativisation of the principle of legal certainty. However, administrative discretion is necessary in cases, when the conditions and circumstances of the field of application of a legal provision cannot be foreseen in detail by the legislator.

Where an administrative authority is empowered to act at its discretion, the new LGAP shall regulate that discretionary power must be used strictly in line with the purpose of such empowerment and shall respect the legal limits to such discretionary powers. Furthermore, a written statement of grounds must accompany the discretionary decision. When giving reasons for such an administrative act, among others, an administrative

authority must indicate the discretionary power's source regulation and list the reasons for reaching such a decision.

5.12. Administrative Silence – Fictitious Administrative Act after Expiry of Deadlines

The Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 regulates administrative silence in Art. 13 paragraphs 3 and 4. In the statement of reasons of this Directive (Preamble, Recital No. 43) it is explained that one of the fundamental difficulties for a party dealing with public administration »... is the complexity, length and legal uncertainty of administrative procedures. For this reason, following the example of certain modernizing and good administrative practice initiatives undertaken at Community and national level, it is necessary to establish principles of administrative simplification; inter alia through ... the introduction of the principle of tacit authorisation by the competent authorities after a certain period of time elapsed«.¹¹

It needs to be carefully considered whether and to what extent such a regulation establishing the legal institute of a »fictitious administrative act«, which is directly applicable to authorising service activity in the internal market, should be transposed in the LGAP as a general rule. If so, the law should provide a well-balanced system of various tools, safeguarding the public administration's interest in having sufficient time to investigate facts, comprehensively examine the legal situation and take the appropriate decision on the one hand, and on the other hand the parties' interest and right to receive a response on their request within a reasonable time frame. Moreover, then interpretation of such regulation has to take into

¹¹ The text of Art. 13 para 3 and 4 of the Directive reads:

3. Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance. The period shall run only from the time when all documentation has been submitted. When justified by the complexity of the issue, the time period may be extended once by the competent authority, for a limited time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired.

4. Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.

consideration the public interest in legal certainty and last but not least, the interest of a third party involved in or affected by the procedure.

5.13. Obligation to Notify about the Administrative Act and to Give Written Statements of Grounds

An administrative act can only become effective if notification is made to the party to whom it is intended and who is affected by it. As a rule, a written administrative act has to be accompanied by a statement of the chief material and legal grounds, which have caused the public authority to take its decision. Both requirements – the notification and statement of grounds – are essential elements of the system of protection of citizens' rights.

Furthermore, the administrative act has to state the appropriate legal remedy, i.e. the administrative or the judicial remedy, respectively. Only such a correct statement justifies a relatively short deadline (e.g. one month) for lodging a remedy. Otherwise, the administrative act will remain subject to appeal for a longer period (e.g. one year).

5.14. Administrative Legal Remedies and Judicial Control

Legal control of administrative actions does not belong only to the administrative courts. Internal control by administrative bodies is also needed, not to substitute administrative disputes but to provide an additional system of protection, proof and correction. Thus, it is recommended that a new LGAP should provide a system of internal legal administrative remedies, which is, as a rule, to be conducted prior to the parties' appeal to the administrative court. The scope of both the administrative legal remedies and the judicial control has to correspond to the wider scope of the new LGAP and its overall concept of administrative actions, i.e. legal remedies are provided not only against administrative acts or omissions of administrative acts but also against any other administrative action.

Administrative legal remedies are not only an instrument in the hands of the citizen to defend his or her rights versus an administrative body. It is also a tool of self-control of administrative authorities because it gives supervisory administrative authorities the possibility to identify systemic mistakes and thus improve the administrative practice in general concerning similar cases.

The main aims of legal remedies in a good LGAP are:

- to institute an effective, easy and inexpensive way to protect legal rights of the parties before appealing to the administrative courts;
- to provide the possibility and duty of an efficient self-control of the administrative authorities;
- to lighten the burdens of administrative courts by settling cases within the internal legal remedy procedures.

Procedural decisions should not be challenged separately, but in general ought to be challenged only through an appeal against the substantive administrative decision, i.e. the final ruling (administrative act). In comparison to the situation *de lege lata* in the former Yugoslav countries, where a special appeal can be filed against a considerable number of procedural decisions, the adoption of such regulation will substantially simplify and shorten the administrative procedure.

5.15. Notification and Delivery

Regulations on notification are vital for fast and efficient administrative procedure. Speedy and simple communication takes precedence over highly formalised procedure. Formalised delivery should remain the exception.

5.16. Costs of Administrative Procedures

Regulation of costs of administrative procedures must guarantee a fair balance of costs between parties and administrative authorities and enhance cost-effectiveness of administrative procedures. It shall shift costs in favour of the parties by providing that, as a rule, the administrative authority bear the regular costs of administrative procedures.

5.17. Administrative Enforcement

The last phase of an administrative procedure is the enforcement of an administrative act in cases when the addressee has not fulfilled its obligation imposed by the administrative act. Such an action might prove as a severe interference into citizen's rights. On the other hand, it is essential for the

rule of law that an administrative decision is enacted. Thus, a chapter of the new LGAP on administrative enforcement shall equilibrate the interests of the party in a fair and comprehensive procedure of enforcement and the interests of public administration in a fast and efficient closure of the administrative procedure.

5.18. Methodological Aspects of Legislation

Avoiding overregulation. Whenever possible, good law drafting techniques favour general norms rather than detailed legislation for the following reasons:

- Even the best legislator is not able to foresee every single concrete fact in detail whilst formulating the law. This has two likely consequences: the law contains gaps and sooner or later parts of the law become obsolete and non-operational.
- Long and too detailed laws become complicated and thus, difficult to read, understand and learn. Incorrect application could be the immediate result. Social disrespect for the law may be a long-term consequence.
- Too detailed laws shape the mentality of the applicant of the law, in particular the applicant of the administrative law, i.e. the civil servant. He or she is inclined to function in an automatic way; neither seeing himself/herself urged nor even allowed to consider the practical consequences of his or her actions. Such laws do not improve the accountability of law applicants but achieve the opposite: civil servants will more likely think and act only in a very formalistic (bureaucratic) way.
- Details regulated in the law may need frequent adaptations through amendments. Frequent amendments of the law confuse the applicants of the law and overburden the legislature unnecessarily.

The legislative approach preferring a more general legislation brings the following advantages:

- Laws are shorter, they have a clearer structure and are easier to comprehend and apply.
- General legal terms, may cover a wider range of cases, i.e. also those cases the legislator was not able to anticipate. Such laws

remain operational for a longer period of time; gaps in the law are less probable.

- Laws using general terms expect the applicant not to stick with the words of the law but to find the *ratio legis* by using teleological interpretation.
- The application of procedural law relies on professional civil servants, who do not require prescription of every detail in order to carry out an administrative procedure, but are capable enough (or, if necessary, have to be enabled) to choose the appropriate technical solutions for individual cases on the basis of the *ratio legis*.
- Admittedly, the demands on the applicant, when deciding on the basis of general and abstract legal terms, are high. They require a responsible civil servant but they are also necessary for the development of a citizen-oriented civil service in which every individual civil servant is aware of his or her importance and accountability.

Language, Structure, Definitions. The new LGAP should be as short as possible. The language should be concise, brief and easy to understand. The Law should set priority on clear and transparent regulation and terminology. This applies in particular to competences and responsibilities. The systematic order has to be logical. The articles must have short and precise titles, in order to facilitate the implementation of the law, contribute to its intelligibility for citizens and raise the level of legal certainty.

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Annex I: Primary EU Law relevant for a good system of administrative procedures

Article 2 of the Treaty of the EU

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 197 of the Treaty of the EU

Administrative Cooperation

(1) Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.

(2) The Union may support the efforts of the Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.

(3) This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union.

Article 41 Charter of Fundamental Rights of the European Union

Right to good administration

(1) Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

(2) This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

(3) Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

(4) Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Annex II:

Proposal for a general plan and schedule for drafting, adopting and preparing the implementation of a new Law on General Administrative Procedures (LGAP)

Step	Activity	Timeframe
1	<ul style="list-style-type: none"> – Establishment in the responsible authority (e.g. ministry) of the core Law Drafting Group: 3–5 national experts (ideally: 2–3 administrative practitioners, 1 judge) supported by assistance from abroad. – Analysis of current relevant legislation (e.g. Law on Organisation of Administration, Civil Service Law, possibly Law on Electronic Communication, etc.). – Identify current problems/shortcomings in public administration to be solved by a modernised system of administrative procedures. 	2 months
2	<ul style="list-style-type: none"> – Draft a Policy Paper outlining the objectives of the new LGAP, its structure and major content (10–20 pages). – During the drafting process, involvement of stakeholders (administrative practitioners from other ministries/administrative bodies, judges, chamber of commerce, bar association, NGOs, etc.). – Submission of the Policy Paper to the Government (maybe responsible Minister) for adoption. 	3 months
3	<ul style="list-style-type: none"> – Public consultation about the adopted Policy Paper at a bigger conference (media coverage). 	1 month

4	<ul style="list-style-type: none"> – Drafting the legal text – 8–10 monthly meetings of the Law Drafting Group. – In between: e-mail communication between Law Drafting Group and technical assistance from abroad. – 2–3 meetings with stakeholders. 	12 months
5	<ul style="list-style-type: none"> – Period of public consultation of the draft text. – Evaluation of the comments/recommendation received through the public consultation process. – Finalising the draft text. 	3 months
6	<ul style="list-style-type: none"> – Adoption by the Government and Parliament. 	3–6 months
7	<ul style="list-style-type: none"> – Programme to facilitate proper implementation of the new LGAP to be carried out during a <i>vacatio legis</i> of 18 months. 	12–18 months
Time frame total		36–45 months

Annex III:

Draft Programme for the support to implementing a new Law on General Administrative Procedure (LGAP), to be carried out during a *vacatio legis* of 18 months

Step	Activity	Timeframe
1	<ul style="list-style-type: none"> – Prepare a manual/commentary for practitioners (administrators, judges, lawyers) explaining the provisions of the new LGAP. – Prepare a training programme (including case studies) for administrators and judges. 	month 1–4
2	<ul style="list-style-type: none"> – Deliver training of trainers on the new LGAP for civil servants from state administration and local self-government bodies (required number of trainers: 1 trainer for no more than 200 civil servants). 	month 5–6
3	<ul style="list-style-type: none"> – Deliver training on the new LGAP to civil servants from state administration and local self-government bodies (20% of the civil servants should be trained, in order to ensure that in every administrative body at least one civil servant has passed a training course). 	month 7–16
4	<ul style="list-style-type: none"> – Deliver training to 20–30 judges/court advisors. 	month 12–16
5	<ul style="list-style-type: none"> – Develop curricula on the new LGAP for the law faculties and business school(s). 	month 12–16

6	– Include LGAP in state exam requirements.	by month 18
7	– Integrate the training programme on the new LGAP in the curricula of the regular education/training institution for civil servants.	by month 18
8	– Analyse operational infrastructure of all administrative bodies at the state and local levels and, if necessary, suggest adjustments to needs arising from implementation of the new LGAP.	month 6–12
9	– Establish a central information desk (help desk/hot line staffed with a group of experts) to be addressed by administrative bodies for legal/practical advice related to procedure law questions; this help desk should operate during the first years of application of the new LGAP.	by month 15
10	– Screening the existing administrative law to identify special procedures and recommend harmonisation with the new LGAP in order to reduce the number of special procedures.	month 5–10
11	– Analyse the existing law on Administrative Dispute and recommend necessary adjustments to the new LGAP.	month 4–12
12	– Design and carry out a comprehensive awareness raising programme to inform the general public about the advantages for the citizen provided by the new LGAP (using all modern means of public promotion/communication: leaflets, print media, radio/TV, website, Facebook, Twitter, etc.).	month 12–18
13	– Make suggestions for the development of an internal controlling mechanism within administrative bodies to ensure compliance with law and procedures (to enhance administrators' respect towards the new LGAP).	month 12–18

Annex IV: Example for possible structure and major areas of a Law on General Administrative Procedures

Part I Basic Provisions

Goals and scope of the law, principles

Part II Administrative Actions

- Chapter I Administrative Act
- Chapter II Administrative Contract
- Chapter III Other Forms of Administrative Actions
- Chapter IV Provision of Services of General Interest

Part III General Procedural Rules

- Chapter I Administrative Authorities
- Chapter II The Party and Its Representation
- Chapter III Steps of Procedure

Chapter IV	Deadlines
Chapter V	Costs of Procedure
Part IV	Administrative Legal Remedies
Chapter I	Appeal against Administrative Act
Chapter II	Complaint against Other Administrative Actions or Omissions
Chapter III	Reopening of Procedure
Part V	Notification
Chapter I	Principles and Procedures of Notification
Chapter II	Delivery (special formalised notification)
Part VI	Enforcement of Administrative Acts
Part VII	Concluding and Transitional Provisions

CITIZENS FIRST:
MODERNISATION OF THE SYSTEM OF ADMINISTRATIVE
PROCEDURES IN SOUTH-EASTERN EUROPE

Summary

Reforming public administration has been one of the key priorities on the recent political agenda of all South Eastern European (SEE) countries on their way towards EU membership. Upon request of all of these countries, the Sigma programme has been involved by providing technical support. This paper addresses the challenge of policy-makers and the problems of administrative practitioners. It provides an overview of the reform processes with a view on the particular circumstances and requirements of EU candidate and potential candidate countries in SEE. However, many principles and aspects referred to in the paper are valid not only in the EU accession context. They may be seen as universal and, therefore, also relevant for and to a certain extent transferable to many other countries, in particular to the EU neighbouring countries in SEE when planning and implementing public administration reform activities.

Key words: public administration, reforms, general administrative procedure, south-eastern Europe

GRAĐANI NA PRVOM MJESTU:
MODERNIZACIJA SUSTAVA UPRAVNOG POSTUPANJA
U JUGOISTOČNOJ EUROPI

Sažetak

Reforma javne uprave nalazi se visoko na listi političkih prioriteta svih zemalja jugoistočne Europe tijekom njihova puta prema članstvu u Europskoj uniji. Na zahtjev tih zemalja, Sigma program pomaže im pružajući stručnu potporu. Rad se bavi izazovima za oblikovatelje javnih politika kao i problemima upravnih praktičara. Daje se pregled procesa reformi s obzirom na posebne okolnosti i zahtjeve koji su postavljeni pred zemlje pristupnice EU iz jugoistočne Europe, kao i države s tog područja koje žele dobiti status zemalja-pristupnica. Međutim, mnoga načela i aspekti koji se spominju u radu ne vrijede samo u kontekstu pridruživanja EU. Oni se mogu smatrati univerzalnim te stoga relevantnim i prenosivim u mnoge druge zemlje, posebno u države jugoistočne Europe u susjedstvu Europske unije tijekom planiranja i primjene reformi javne uprave.

Ključne riječi: javna uprava, reforme, opći upravni postupak, jugoistočna Europa