

## Seminar organised by the Hellenic Council of State and ACA-Europe

Rhodes, 15-16 May 2026

### New elements in the organisation and functioning of the Public Administration and Administrative Justice

#### Questionnaire

Responses from     Austrian Supreme Administrative Court     (Please indicate your institution)

#### I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

- (A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.
- (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

#### A. Delegation of administrative tasks to private individuals

##### 1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act √

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers √



## 2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

- Constitutional provision .....
- General provision of a legislative nature .....
- Specific legislation .....

According to sec. 40a para. 1 and 4 of the Motor Vehicles Act (*Kraftfahrzeuggesetz 1967; KFG*), insurers can be authorised to establish and operate registration offices for the registration of motor vehicles.

Sec. 5 of the Civil Aviation Security Act 2011 (*Luftfahrtsicherheitsgesetz 2011; LSG*) provides that the operator of an airport is obliged to carry out certain activities on behalf of the security authority (e.g. security screening of passengers). Pursuant to sec. 6 LSG, the airport operator may contractually entrust a service provider with the tasks and powers relating to the security screening of the passengers.

The Austrian hunting law (e.g. *NÖ Jagdgesetz 1974; NÖ JG*) provides that the owners of hunting grounds are required to ensure adequate hunting protection (supervision of compliance with provisions and orders for the protection of wildlife and hunting) and, for this purpose, to appoint hunting wardens. In the performance of their duties, hunting wardens have the legal status of public guards. Within the scope of their duties, they are permitted to carry weapons and to use them where specifically provided by the law.

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

Yes, in the decision of the Austrian Constitutional Court of 14 March 1996, Case No. B 2113/94 and others, it was defined that the delegation of administrative tasks to private individuals (and also to private enterprises) is constitutionally permissible provided that (1) it is objectively justified and serves the principle of administrative efficiency, (2) the constitutionally required chain of direction and accountability of the state is preserved, and (3) only individual, clearly delineated tasks are transferred which do not form part of the core functions of state administration.

The Court compared the functions transferred to the private entity with those retained by the state authorities and concluded that the delegation was constitutionally permissible, as no core tasks were transferred and, when considered in their entirety, significant functions remained with the state authorities. Of particular importance was the fact that above all, all regulatory

powers provided for in the Austrian Aviation Act (*Luftfahrtgesetz*) remained with the competent Federal Minister.

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

- |                                |                                     |
|--------------------------------|-------------------------------------|
| Directly by law .....          | <input checked="" type="checkbox"/> |
| By an administrative act ..... | <input checked="" type="checkbox"/> |
| By contract .....              | <input checked="" type="checkbox"/> |
| Other .....                    | <input type="checkbox"/>            |

**Directly by law:** See Q A 2.i.

**By an administrative act:** Appointment of an expert by the administrative authority to prepare an expert report in administrative proceedings.

**By contract:** In public procurement proceedings, the contract is concluded with the successful tenderer following the award of the contract.

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]?

Please provide specific examples from legislation and case-law.

- |   |                                     |
|---|-------------------------------------|
| Preparation of the administrative act .....         | <input checked="" type="checkbox"/> |
| Issuance [adoption] of the administrative act ..... | <input checked="" type="checkbox"/> |
| Implementation of the administrative act .....      | <input checked="" type="checkbox"/> |
| Other .....   | <input type="checkbox"/>            |

**Preparation of the administrative act:** Aviation medical experts are required to examine pilots with regard to their physical and mental fitness. The expert is obliged to prepare a report on the examination and submit it to the competent authority. The authority is then responsible for issuing the certificate of fitness (sec. 30, 33, and 34 LSG).

**Issuance (adoption) of the administrative act:** An insurer authorised by the Governor is, pursuant to sec. 40a para 5 KFG, entitled, for example, to carry out registrations of motor vehicles.

**Implementation of the administrative act:** The Tunnel Administrative Authority is required to carry out regular inspections in order to ensure compliance with the applicable legal provisions. Where the Authority finds that a tunnel does not comply with the legal requirements, it notifies the Tunnel Manager of the measures required to be taken to enhance the safety of the tunnel. The Tunnel Manager is obligated to implement such measures (see sec. 3 of the *Road Tunnel Safety Act*).



v. What is the extent [range] of administrative tasks that can be entrusted to private individuals?

Please provide specific examples from legislation and case-law.

- |  |   |
|--|---|
| Advisory tasks .....                   | √ |
| Decision-making tasks .....            | √ |
| Control and verification tasks:        |   |
| Establishment of the facts .....       | √ |
| Legal qualification of the facts ..... | √ |
| Other .....                            | □ |

**Advisory tasks:** The Advisory Board for Urban Planning (e.g. sec. 3 of the Vienna Building Code) is an independent body composed of architects and experts from various disciplines. It reviews drafts prepared by the municipal authority for the adoption and amendment of land-use and development plans, as well as individual construction projects, when these have a significant impact on the local urban landscape or the protection of UNESCO World Heritage sites.

**Decision-making tasks:** See Q A 2.iv.

**Control and verification tasks:** Private individuals may be authorized by the Governor pursuant to sec. 57a KFG to conduct vehicle inspections. Within the scope of such inspections, they are required to assess and determine whether the vehicle complies with the statutory requirements concerning vehicle safety.

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

- |                           |   |
|---------------------------|---|
| No                        | □ |
| Yes (please specify ..... | √ |

The Constitutional Court hold in its established case law, that the delegation of matters to a private individual or entity is prohibited when a private individual or entity is entrusted or involved with administrative tasks and powers that fall within the core area of state administration. This core area includes e.g. the provision of internal and external security, foreign relations, and military affairs.

If yes, which legal instrument provides for the corresponding prohibitions?

- |                    |   |
|--------------------|---|
| Constitution ..... | √ |
| Legislation .....  | □ |
| Other .....        | √ |

Please indicate any relevant case-law.



For the first example see Q A 2.ii. A more recent example is the decision of the Austrian Constitutional Court of 5 October 2023, Case No. G 265/2022, regarding the COVID Financing Agency (COFAG). COFAG was a specially established private entity responsible for managing state financial aid during the COVID-19 pandemic. Its main tasks included disbursing subsidies to businesses, making decisions regarding the allocation of these funds, and thereby exercising essential political steering functions.

Since COFAG assumed functions that fall within the core area—namely, the administration of state funds with significant political steering authority—its delegation would amount to entrusting the exercise of inherent state sovereign powers to a private entity, which, under the case law of the Constitutional Court, is constitutionally prohibited.

In its decision of 14 December 2023, Case No. G 328/2022 and others, the Austrian Constitutional Court examined the Federal Agency for Reception and Support Services GmbH (BBU GmbH), a state-controlled limited liability company, which is responsible for providing initial reception services and legal support for asylum seekers. The Court held that the legal advice and legal representation provided under this structure do not constitute functionally state administrative activity within the meaning of Art. 20 para. 1 B-VG, unlike, for example, the above mentioned COFAG Agency. Although the BBU GmbH is state-controlled, its provision of legal advice and representation for asylum seekers is a service that could also be provided by private entities and is not regulated in a way that would make it part of the state administration. Therefore, the delegation of the aforementioned tasks is compliant with Art. 20 para. 1 and 2 B-VG.

### 3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals?

Please mention specific examples.

- |                                     |   |
|-------------------------------------|---|
| Participation in examinations ..... | √ |
| Selection based on criteria .....   | √ |
| Other .....                         | □ |

According to sec. 67 of the NÖ JG the applicant must be of full age, legally reliable, and professionally qualified to be confirmed as a hunting warden. Professional qualification specifically includes knowledge of hunting law and the regulations for the protection of wildlife and hunting areas. The authority also examines whether the applicant is capable of carrying out the official duties of a hunting warden properly and with due diligence.

Furthermore, the exercise of the activity as a hunting warden is subject to the participation and successful completion of an examination, the content of which is defined by law (sec. 68 of the NÖ JG).



ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

- Random selection from a list/register .....
- Selection from a list/register based on criteria .....
- Absolute discretionary power of the Administration .....
- Selection by the citizen [upon a declaration] .....
- Other .....

**Selection from a list: The authorities may appoint experts from the list based on criteria regarding the subject areas required for the preparation of the report.**

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

- No .....
- If yes, ..... 
  - General normative act (e.g. Code of Administrative Procedure)
  - Specific normative acts .....
  - Codes of Conduct, good practices (soft law) .....
  - Other .....

**General normative act: Sec. 52 to 53a of the *General Administrative Procedure Act 1991 (Allgemeines Verwaltungsverfahrensgesetz; AVG)* govern specific matters concerning experts, including impartiality, confidentiality, and the bearing of costs.**

**Specific normative act: As noted above, the NÖ JG regulates the scope of duties of the hunting warden.**

**Code of Conduct: The professional rules governing experts establish the ethical and professional standards to be observed in the conduct of their duties.**

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.

- Incompatibilities .....
- Impediments .....
- Criminal or disciplinary liability .....
- Other .....

According to sec. 7 and 53 AVG an expert may be excluded or rejected by the party if there are legitimate doubts regarding their impartiality or if a party raises justified objections to their suitability. Examples include, for instance, personal, financial, or other relationships with a party that could compromise their objectivity, or other circumstances that call the expert's independence into question.

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

- |   |   |
|---|---|
| Withdrawal of the certification   | ✓ |
| Disbarment from the professional association  | ✓ |
| Imposition of a fine or other penalty   | ✓ |
| Personal liability of the private individual (civil, criminal, disciplinary)                      | ✓ |
| Revocation of the administrative act in the issuance of which the private individual collaborated | ✓ |
| Civil liability of the State  | ✓ |
| Other   | □ |

#### 4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

- |     |   |
|-----|---|
| Yes | ✓ |
| No  | □ |

ii. If yes, at what stage are the checks carried out?

- |              |   |
|--------------|---|
| A priori     | ✓ |
| A posteriori | ✓ |
| At any time  | ✓ |

iii. How are checks activated?

- |   |   |
|---|---|
| Following a complaint/administrative appeal | ✓ |
| Ex officio                                  | ✓ |

iv. How extensive are the checks?

- |                                  |   |
|----------------------------------|---|
| Checks based on sampling         | ✓ |
| Mandatory checks for all actions | □ |

v. What is the nature of the checks?

- |             |   |
|-------------|---|
| Of legality | ✓ |
|-------------|---|



Of the substance, of appropriateness

✓

vi. What is the type of checks?

On persons

✓

On actions

✓

vii. Are the conclusions of private individuals binding on the Administration?

Yes

No

✓

## 5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

No

Yes

✓

If yes, what is the scope of the judicial review?

The review directly targets the action of the private individual (per se) ..... ✓

The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration) ..... ✓

ii. What types of disputes arise when challenging the actions of private individuals?

administrative disputes

✓

private disputes

✓

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

Typical cases concerning the delegation of administrative tasks deal with the criteria of delegation as set out by the Austrian Constitutional Court and the areas of public administration in which delegation of authority to private individuals is prohibited. See Q A 2.ii. and vi.

## B. Integration of private-sector methods and organisational models into the functioning of the Administration

### 1. Recruitment of senior managers outside the hierarchy of the civil service



i. What are the objectives of recruiting private individuals as senior managers within the Administration?

**The Austrian Administration's organisation mainly consists of civil servants employed either by means of administrative decision or private contract. Without being civil servants but also included in the Administration's structure, private individuals are employed e.g. as temporary workers or consultants. The recruitment of senior managers outside the hierarchy of the civil service, however, is not possible.**

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

iii. What criteria does the Administration use to select external senior managers?

iv. What is the nature of the duties of external senior managers?

- Decision-making
- Advisory
- Other

v. Does error on the part of a senior manager give rise to:

- Civil liability of the State
- Personal liability of the manager (civil, criminal, disciplinary)

## 2. Organisational models

i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

**New Public Management/Public Value Management: The Austrian Administration is based on Regulatory Impact Assessment. Therefore, e.g. the introduction of new laws or acts of the**



administration is subject to an evaluation considering not only financial aspects but also aspects such as gender equality, environmental protection, or consumer protection.

With regards to civil servants, also annual performance reviews take place and the appointment of civil servants by administrative decisions decreases. Instead, more and more civil servants are employed by civil contract.

Furthermore, the establishment of private enterprises in areas such as infrastructure (railway, road administration) or telecommunications is an example of New Public Management.

**Digital Era Government:** The Austrian Administration generally uses digital case management systems. With the so called "ID Austria", the Austrian government also introduced access to numerous services of the Administration online by means of a digital identification system. People registered with the "ID Austria" are able to carry out official procedures via the Internet (e.g. registration of a new place of residence, access to criminal records or insurance data).

ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

The application of the abovementioned models is based on various legal provisions. For example, the Regulatory Impact Assessment is regulated in sec. 17 of the Federal Budget Act 2013 (*Bundeshaushaltsgesetz*).

iii. In which public services and agencies is this type of organisation used?

- |                                  |                          |
|----------------------------------|--------------------------|
| The Administration stricto sensu | ✓                        |
| Public enterprises               | ✓                        |
| Other public entities            | <input type="checkbox"/> |

iv. Are the policies for achieving the objectives designed:

- |   |                          |
|---|--------------------------|
| At national level                               | ✓                        |
| At regional level                               | ✓                        |
| By subject-matter                               | ✓                        |
| By taking into account specific public entities | ✓                        |
| Other   | <input type="checkbox"/> |

v. Have specific objectives been set out for the action of the Administration? Please provide examples.

Examples are budget, transparency, efficiency, gender equality, sustainability.

If yes, is their accomplishment:

- Optional
- Mandatory

Does failure to meet these objectives lead to:

- Personal consequences for the senior managers
- Legal consequences for the assessed organisation
- Financial consequences for the assessed organisation

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved?

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

- Compliance with the regulatory framework
- Effectiveness
- Efficiency
- Economy
- Achievement of strategic objectives
- Other

## II. Alternative methods for resolving administrative disputes

### 1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

- Arbitration
- Mediation
- Other .....

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

\* Please elaborate on your answer, citing any relevant legislation and/or case-law

**Alternative methods for resolving administrative disputes are not provided for in Austrian administrative law.**



## 2. Settlement and Mediation

*\* Please elaborate on your answers, citing any relevant legislation and/or case-law.*

**i.** In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes

No

**ia.** If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes

No

If yes, by which court?



If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

Which court has jurisdiction over disputes concerning such enforcement?

**ib.** If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:

a legislative provision

a general principle of law

**According to Art. 18 of the Austrian Constitution (*Bundesverfassungsgesetz*) any administrative act must be strictly regulated by law (principle of legality).**

**ii.** Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

*\* The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

Yes

No

ii.a. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Is it mandatory or optional?

If it is optional, does it require:

- The mutual agreement of the parties
- Only the intention of the Administration
- Only the intention of the private individual/legal entity

Specifically with regard to the State as a party to the dispute, is mediation initiated:

- After approval by a special committee
- By the administrative authority involved in the dispute
- Other

At what stage can a case be referred for mediation?

- Necessarily before the introduction of legal proceedings
- At any stage of the litigation proceedings

Is there a specific piece of legislation governing the mediation process?

- Yes
- No

If yes, please specify:

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?)

How is the impartiality of the mediator ensured?

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up

Other possibility (please specify)

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

**ii.b.** If no mediation process is provided for, is this exclusion provided for in:

a legislative provision

a general principle of law

See Q B 2.ib.

### 3. Arbitration

*\* Please elaborate on your answers, citing any relevant legislation and/or case-law.*

**i.** In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes

No

**ia.** If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

Is it mandatory or optional?

**ib.** If arbitration is not permitted, is this prohibition due to

A legislative provision

A general principle of law

See Q B 2.ib.

**ic.** If arbitration is optional, does it require:

The mutual agreement of the parties

The sole intention of the Administration

The sole intention of the private individual/legal entity



On the part of the State, is arbitration initiated:

After approval by a special committee

By the administrative authority involved in the dispute

Other

**ii.** For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?

If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

**iii.** Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?

If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

**iv.** How are the independence and impartiality of the arbitrator ensured?

**v.** Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

**vi.** In arbitration concerning administrative disputes:

yes / no

Is there an obligation to make publicly available the basic information and documents relating to the proceedings?

Is the participation of third parties permitted?

Is legal representation mandatory?

If yes, is legal aid available?



- Is the hearing public?
- Is the arbitral tribunal obliged to give reasons for its award?
- Is the arbitral award made publicly available?

**vii.** During the proceedings, the applicable system is:

- the adversarial system
- the inquisitorial system

**viii.** What powers does the arbitral tribunal have?

- Reviews the legality of administrative acts of a non-pecuniary nature
- Reviews the legality of an administrative act of a pecuniary nature (fine, etc.)
- Annuls/amends an administrative act of a non-pecuniary nature
- Annuls/amends an administrative act of a pecuniary nature
- Addresses only recommendations to the Administration
- Restricts itself to awarding compensation for damages

Does the arbitral award have effect:

- Erga omnes (with regard to all)
- Inter partes (between the parties)

Is it considered 'case-law' for other cases?

If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

- Yes
- No

If yes, is the validity of the arbitral award reviewed directly or incidentally?

Is it possible to waive the right to judicial review?

Which courts have jurisdiction?



What is the scope of the judge's review according to case-law?

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, *Eco Swiss China Time Ltd v Benetton International NV* and C-168/05 *Mostaza Claro v Centro Móvil Milenium SL*, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?