

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 the Dutch Council of State

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



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	<input type="checkbox"/>
General provision of a legislative nature	<input checked="" type="checkbox"/>
Specific legislation	<input checked="" type="checkbox"/>

Article 1:1 sub 1 of the General Administrative Law Act (GALA):

“Administrative authority” means: [...] b) another person or body which is invested with any public authority.’

Article 3:5 sub 1 of the GALA:

‘In this division “adviser” means a person or body that is charged by or pursuant to a statutory regulation with advising on orders to be made by an administrative authority and that does not work under the responsibility of the administrative authority concerned.’

Article 3:8 of the GALA:

‘The name of the adviser who has delivered the opinion shall be stated in or with the order.’

Article 3:9 of the GALA:

‘If an order is based on an investigation carried out by an adviser into facts and actions, the administrative authority shall satisfy itself that the investigation was carried out with due care.’

Article 3:9a of the GALA:

‘This division shall apply *mutatis mutandis* to bills.’

Article 3:49 of the GALA:

‘To state the reasons of an order or part of an order, it is sufficient to refer to an opinion drawn up in this connection if the opinion itself contains the reasons and communication of the opinion has been or is given.’

Article 3:50 of the GALA:

‘If the administrative authority makes an order which derogates from an opinion drawn up for this purpose pursuant to a statutory regulation, this fact and the reasons for it shall be stated in the reasons of the order.’

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



In its judgments of 17 September 2014, ECLI:NL:RVS:2014:3394 and ECLI:NL:RVS:2014:3379, the Administrative Jurisdiction Division of the Council of State (AJD) ruled that, pursuant to Article 1:1(1)(b) GALA, an organ of a legal entity governed by private law is an administrative body if that body is vested with public authority. The decisive factor in this regard is whether that body has been granted a public-law power to unilaterally determine the legal position of other legal persons. In principle, official authority can only be conferred by or pursuant to law. In the absence of a statutory provision to that effect, an organ of a legal entity governed by private law is in principle not an administrative body.

However, in the case of organs of legal entities governed by private law that provide financial benefits to third parties, an exception to this rule may arise, as a result of which those bodies are nevertheless administrative bodies within the meaning of Article 1:1(1)(b) GALA. This exception occurs if two cumulative requirements are met.

The first requirement is that the substantive criteria for the provision of financial benefits are determined to a decisive extent by one or more administrative bodies (the substantive requirement).

The second requirement is that the provision of these benefits is predominantly financed, i.e. in principle to the extent of two-thirds or more, by one or more administrative bodies (the financial requirement).

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

Directly by law: X

According to the *Wegenverkeerswet 1994* (road traffic law 1994), private individuals or entities can be certified to perform obligatory periodic inspections of motorized vehicles.

By an administrative act: X

Administrative authorities can as well be invested with public authority by means of an administrative act. Under the Statute on electronic data exchange in healthcare, for example, only certified products may be used for exchanging data. The certifying body is the one designated as such by a ministerial administrative act.

By contract: X

The above-mentioned advisers, charged with advising pursuant to a statutory regulation, can be contracted private individuals.

Other □

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: X
The above-mentioned advisers.

Issuance [adoption] of the administrative act: X
The above-mentioned persons or bodies invested with any public authority. An example is the periodic technical inspection of cars. The outcome of this inspection is an administrative act declaring whether a car may be used on public roads.

Implementation of the administrative act
Other

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: X
The above-mentioned advisers advise the relevant administrative authority on which decision to take regarding matters that require expert opinions.

Decision-making tasks: X
The above-mentioned persons or bodies invested with public authority are private individuals and private legal entities adopting the role of administrative authority for a specific purpose. For an example, see the answer to the previous question.

Control and verification tasks:
Establishment of the facts
Legal qualification of the facts
Other

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

No
Yes (please specify) X

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

Constitution
Legislation
Other X

Please indicate any relevant case-law.

This follows from the case law mentioned in the answer to question 2ii. The involvement of private individuals in administrative proceedings is not allowed as far as it concerns the exercise of public authority in cases where official authority has not been conferred by or pursuant to law. An exception to this rule may arise in case of legal entities governed by private law that provide financial benefits to third parties (see the answer to question 2ii). The involvement of private individuals in administrative proceedings as adviser does not necessarily have to be assigned by or pursuant to law.

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

As stated before, according to the *Wegenverkeerswet 1994* (road traffic law 1994), private individuals and entities can be certified to perform obligatory periodic inspections of motorized vehicles. These private individuals must present a declaration of good behaviour (*verklaring omtrent het gedrag*). The road traffic service (*Dienst wegverkeer*) is responsible for issuing the certifications and has its own policy rules according to which it does this (*Toezichtbeleid Erkenninghouders, Keurmeesters en Technici RDW*).

- Other

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
- See the answer to question 3.i.
- Selection by the citizen [upon a declaration]
- Other

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):
- See the citations above under question no. 2.i.
- Specific normative acts
- Codes of Conduct, good practices (soft law)
- Other

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

- Incompatibilities
- Impediments
- Criminal or disciplinary liability
- The above-mentioned certified individuals (question 3.i) are checked on criminal antecedents. Also, they can't be certified if there are signals according to which they plan to use the certification for criminal acts.
- Other

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 | X |
| Ex officio | X |

iv. How extensive are the checks?

- | | |
|----------------------------------|---|
| Checks based on sampling | X |
| Mandatory checks for all actions | X |

v. What is the nature of the checks?

- | | |
|--------------------------------------|---|
| Of legality | X |
| Of the substance, of appropriateness | X |

vi. What is the type of checks?

- | | |
|------------|---|
| On persons | X |
| On actions | X |

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

- | | |
|--|---|
| Yes | X |
| In case of administrative acts performed by administrative authorities in the sense of Article 1:1 sub b of the GALA. These private individuals are themselves part of the administration in so far as they use the public authority with which they are invested. | |
| No | X |
| In case of the above-mentioned advisory opinions. | |

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 | <input type="checkbox"/> |
| Yes | <input type="checkbox"/> |

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

In general, the judicial review of a decision of an administrative body in Dutch administrative law involves a review against written and unwritten rules of law, and against general principles of law. With regard to the latter, administrative decisions in Dutch administrative law are assessed against the so-called "general principles of good administration". In addition to formal principles of diligence and reasoning, these are substantive principles such as the prohibition of "détournement de pouvoir" (the prohibition of using a power for a purpose other than that for which it was given), the principle of equality, the principle of the protection of legitimate expectations and the principle

of proportionality. In its ruling of 2 February 2022, ECLI:NL:RVS:2022:285, the AJD further developed its case law on the principle of proportionality. When assessing the principle of proportionality, the AJD distinguishes between the appropriateness, necessity and balance of the contested decision. The intensity of the review of the principle of proportionality is determined by, among other things, the nature and extent of the administrative body's discretion, the nature and importance of the objectives to be served by the decision and the nature of the interests involved and the extent to which they are affected by the decision. The more important those interests are, the more serious the adverse consequences of the decision are or the greater the infringement of fundamental rights, the more intensive the review will be.

This judicial review applies as well when the review directly targets the action of a private individual (see below), in case a power has been attributed or transferred to this private person (including private legal entities).

The assessment is different if the appeal indirectly targets the action of the private individual (appeal lodged against the final act of the Administration). This is the case, for example, when a private person acted as an adviser. As the AJD ruled in its decision of 15 January 2020, ECLI:NL:RVS:2020:88, that in such cases the court will assess whether the administrative body has complied with the so-called "obligation to ascertain". The administrative body may rely on the advice of an expert after it has verified whether this advice has been drawn up in a careful manner, the reasoning is understandable and the conclusions drawn are in line with it. If a party has put forward concrete indications for doubting the care taken in the preparation of the advice, the comprehensibility of the reasoning followed in the advice or the connection of the conclusions to it, the administrative body may not rely on the advice without further justification. If necessary, the body will ask the advisor for a response to what has been said about the advice.

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

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

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

In its ruling of 4 February 2015, ECLI:NL:RVS:2015:267, the AJD ruled that the Examination Board of the Flora and Fauna Act Examinations Foundation is an administrative body, because the

Regulations under the Flora and Fauna Act grant it the authority to conduct the hunting examination and to determine the results.

In its ruling of 24 May 2017, ECLI:NL:RVS:2017:1350, the AJD ruled that the Netherlands Measurement Institute N.V. has been granted the authority to examine police speed control meters and to issue a statement about this. This power is of a public law nature, because a meter covered by the Regulation may not be used without such a statement. The authority is now exercised by NMi Certin, a subsidiary of NMi B.V., a changed legal form of the Netherlands Measurement Institute N.V. NMi Certin is an administrative body in the exercise of its authority.

In its ruling of 11 September 2019, ECLI:NL:RVS:2019:3129, the AJD ruled that the Royal Dutch Tourist Association ANWB should be regarded as an administrative body insofar as it concerns the issuing of international driving licenses (as attributed to it by article 117 of the Road Traffic Act 1994).

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?

Sometimes private individuals are contracted in order to more efficiently reach certain political goals, for instance by providing expert advice on complex matters. They are not necessarily 'senior managers within the administration'.

Online, a dashboard is published on which it is made known how many private individuals, including interim managers, work for the central government (*Dashboard externe inhuur Rijksoverheid*).

Since 2010, a rule has been in place stipulating that expenditure on external hiring by ministries may not exceed 10% of the total wage bill.

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?

There are no specific rules on this. In principal senior managers from outside the civil service can be recruited for the entire Public Administration. Of course they will have to undergo the same security clearances et cetera as civil servants will have to undergo where applicable.

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

All selections will be based on a specific job description, that will have to state explicitly the expertise needed, the objectives to be achieved, a time frame et cetera. A reason should also be given why external expertise is needed in the first place and why this expertise is not available in the regular civil service.

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

Decision-making	<input type="checkbox"/>
Advisory	<input checked="" type="checkbox"/>



Other

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

Civil liability of the State X

Personal liability of the manager (civil, criminal, disciplinary) X

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.

Yes. Under the influence of theories of New Public Management (NPM), ministries have outsourced substantive expertise. It is no longer the standard that all relevant expertise is represented under civil servants. In general, civil servants are expected to be flexible in the sense that they can switch quickly between subjects depending on the demands of the day. Especially, this applies to top-level civil servants. They join the Senior Civil Service (*Algemene Bestuursdienst*) and are required to circulate between ministries.

Recently a public debate has started about the limits of NPM. Government agencies are in many ways intrinsically different from private sector companies. Managers in the public sector should of course like all managers be aware of the importance of effectiveness and efficiency, but according to NPM-critics they should also have substantive knowledge of the specific professional field in which they work and substantive knowledge of principles of good governance and the rule of law within which the government operates.

Another example constitutes the rise of independent administrative authorities (*zelfstandige bestuursorganen*). Such authorities are vested with public authority, but do not fall under the direct responsibility of the government (hence their independence). Full parliamentary control on their activities is therefore not possible. The reason why these authorities should be mentioned in the context of New Public Management, is that they make it possible to externalize specific expertise out of the central government. For instance, many supervision authorities have been established, where previously it was the government itself that performed the supervision activities. This makes it possible to concentrate expertise, provide the experts with more liberty in achieving their objectives, and work more efficiently, so is the idea. Simultaneously, however, this means that democratic accountability is lessened.

A third example is public-private cooperation. The government takes part in private companies by buying shares, in order to promote the general interest via the private law route. The Dutch Railway Company (*Nederlandse Spoorwegen*) is a 100% state-owned company, for instance.

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

Given the above-mentioned issue of democratic accountability, the Statute on independent administrative authorities (*Kaderwet zelfstandige bestuursorganen*) determines the extent to which the establishment of such authorities is allowed.

According to Article 3:

“1. An independent administrative authority can only be established if

- a. There is a need for independent judgment based on specific expertise;
- b. There is strict rule-bound implementation in a large number of individual cases;
- c. The participation of social organisations is considered particularly appropriate in view of the nature of the administrative task concerned.

2. The first paragraph applies accordingly if an already established independent administrative authority is charged with a task, involving the exercise of public authority, other than that for which the independent administrative authority was established.”

According to Article 4:

“1. Only a body of a legal entity established under public law is vested with public authority.

2. By way of exception to the first paragraph, a body of a legal entity established under private law may be vested with public authority by law, by general administrative order pursuant to law, or by ministerial regulation pursuant to law, provided that

- a. this must be considered particularly appropriate for the promotion of the public interest to be served and
- b. there are sufficient guarantees that the exercise of this authority can take place independently of the other existing and future activities of that organization.”

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

The Administration stricto sensu	X
Public enterprises	X
Other public entities	X



iv. Are the policies for achieving the objectives designed:

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

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

The above-mentioned independent administrative authorities all have their specific tasks, laid down in law.

If yes, is their accomplishment:

- | | |
|-----------|--------------------------|
| Optional | <input type="checkbox"/> |
| Mandatory | X |

Does failure to meet these objectives lead to:

- | | |
|--|--------------------------|
| Personal consequences for the senior managers | <input type="checkbox"/> |
| Legal consequences for the assessed organisation | <input type="checkbox"/> |
| Financial consequences for the assessed organisation | X |

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 | X |
| Effectiveness | X |
| Efficiency | X |
| Economy | X |
| Achievement of strategic objectives | X |
| Other | <input type="checkbox"/> |

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*

In the Netherlands, arbitration is only provided for in civil law disputes. Pursuant to Article 1020 of the Code of Civil Procedure, contractual parties may submit to arbitration disputes that have arisen or may arise between them from a specific legal relationship, whether or not arising from a contract. The GALA does not contain any similar regulation, nor does it declare Article 1020 of the Code of Civil Procedure to be applicable by analogy.

In the Netherlands, mediation is not regulated by law. However, judges (civil and administrative) are supposed to be allowed to encourage parties to make use of mediation in cases that are considered to be suitable for this. To assess whether mediation is suitable in a case, the courts make use of internal guidelines.

According to case law, disputes not suitable for mediation comprise disputes concerning purely legal questions, questions of principle in which a precedent shaping judgment is desirable, and disputes where there is no legal room or willingness for negotiation.

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,



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

It derives from a general principle of law. Interested parties have the right to appeal against an administrative decision. However, they are not obliged to do so, and also have the right to withdraw an appeal. The decision whether or not to lodge an appeal, or to withdraw an appeal, is up to the appellant, and may be based on an agreement reached with the administrative authority (and other parties), whether or not laid down in a signed settlement agreement or other similar document. The administrative authority is entitled to negotiate and sign an agreement, but agreements must not be unlawful.

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?

This option applies in any stage of the administrative and judicial procedure

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)?

No.

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?

There is no special procedure, all matters are 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?

Parties can file a claim for annulment of the agreement with the civil court on the grounds of error (Article 6:228 of the Dutch Civil Code), fraud (Article 3:44 of the Dutch Civil Code), threats (Article 3:44 of the Dutch Civil Code), abuse of circumstances (Article 3:44 of the Dutch Civil Code), or legal incapacity. Also, a rule applicable between the parties as a result of the agreement does not apply, insofar as this would be unacceptable in the given circumstances according to standards of reasonableness and fairness (Article 6:248, second paragraph, DCC). However, if the appellant has withdrawn his appeal already, this will not be revived after the annulment of the agreement.

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?

No res judicata. The parties can apply to the civil courts to demand performance of the agreement.

Which court has jurisdiction over disputes concerning such enforcement?

The civil courts.

- 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

Not applicable.

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 X
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?

It derives from a general principle of law.

Is it mandatory or optional?

Optional.

If it is optional, does it require:

The mutual agreement of the parties X
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 X

Mediation is offered to the parties by the administrative judge, if the judge deduces from the documents of the case that one or more of the criteria of its internal guidelines for referral to mediation is met. It is also possible for a party to ask on its own initiative the judge to make a proposal for mediation to the other parties. If not all parties are willing to mediate or not all do react to the proposal, the case will be continued. Administrative authorities are entitled to accept the offer by themselves (without approval from elsewhere). If all parties are willing to mediate, they sign a mediation agreement, which they need to send to the court. The judge then sends a letter to the parties in which the parties are given a period of 12 weeks to sign a settlement agreement. In the event of a successful mediation, in which a settlement agreement has been concluded, the appeal will in principle be withdrawn.

At what stage can a case be referred for mediation?

Necessarily before the introduction of legal proceedings □



At any stage of the litigation proceedings

X

There are two moments in which the administrative judge determines when a case seems suitable for mediation, namely in the instruction phase and at the hearing.

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

Yes

No

X

If yes, please specify:

Not applicable

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

Unlike the administrative court, the mediator does not rule, but helps the parties to find a possible solution to the dispute. The mediator makes an inventory of which issues need to be resolved and examines what the obstacles have been so far to get out of the problem. Experience shows that on average a maximum of five one-hour meetings will be held by the mediator. In doing so, the mediator must observe the principles of adversarial proceedings, confidentiality, and equality of arms. A lawyer or an authorised representative may attend the meetings, but his presence is not mandatory.

How is the impartiality of the mediator ensured?

The AJD uses a list of registered mediators. Mediators can request to be included in this mediator list. The request will be assessed for suitability. In any case, it is required that the mediator is registered with the Mediatorsfederatie Nederland (MfN). MfN registered mediators must demonstrate their qualities and experience as a mediator with various tests in order to be registered. The mediator must also be registered as a mediator with the Legal Aid Board with a specialization in administrative law. In addition, the mediator must have experience in administrative law disputes that have been pending before judicial bodies. Complaints about mediators can be submitted to the Foundation for Disciplinary Proceedings for Mediators (STM). With the proposal for mediation to the parties, the AJD sends the list of selected mediators, from which the parties can choose a mediator. The website of the AJD contains a short curriculum vitae of the selected mediators.

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

No.

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up

Other possibility (please specify)

If the parties reach an agreement within twelve weeks of starting the mediation process, they conclude a settlement agreement and draw it up in a document. In principle, the notice of appeal lodged with the AJD must then be withdrawn.

If the parties reach partial agreement within twelve weeks, they conclude a settlement agreement to that effect and draw it up in a document. The points on which no agreement has been reached will be dealt with further in the appeal procedure before the AJD, which will be continued.

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?

As stated before, mediation is proposed to the parties by the court, after an appeal has been lodged. By definition, therefore, an appeal is already pending. The handling of the appeal will be suspended for the duration of the mediation process. If the parties do not reach an agreement within twelve weeks of starting the mediation process, the AJD will continue the proceedings.

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.

The legality of the settlement agreement can be examined by the civil courts in the same manner as stated in the answer to question 2.ia.

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

a legislative provision

a general principle of law

Not applicable.

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?

Not applicable.

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?

Not applicable.

Is it mandatory or optional?

Not applicable.

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

A legislative provision

A general principle of law



See the answer to question II.1.i

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

Not applicable.

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.

Not applicable.

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?

Not applicable.

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

Not applicable.

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?

Not applicable.

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? | <input type="checkbox"/> <input type="checkbox"/> |
| Is the participation of third parties permitted? | <input type="checkbox"/> <input type="checkbox"/> |
| Is legal representation mandatory? | <input type="checkbox"/> <input type="checkbox"/> |
| If yes, is legal aid available? | <input type="checkbox"/> <input type="checkbox"/> |
| Is the hearing public? | <input type="checkbox"/> <input type="checkbox"/> |
| Is the arbitral tribunal obliged to give reasons for its award? | <input type="checkbox"/> <input type="checkbox"/> |
| Is the arbitral award made publicly available? | <input type="checkbox"/> <input type="checkbox"/> |

vii. During the proceedings, the applicable system is:

- | | |
|--------------------------|--------------------------|
| the adversarial system | <input type="checkbox"/> |
| the inquisitorial system | <input type="checkbox"/> |

viii. What powers does the arbitral tribunal have?

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

Does the arbitral award have effect:

- | | |
|------------------------------------|--------------------------|
| Erga omnes (with regard to all) | <input type="checkbox"/> |
| Inter partes (between the parties) | <input type="checkbox"/> |

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

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

Not applicable.

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?

Not applicable.

Is it possible to waive the right to judicial review?

Not applicable.

Which courts have jurisdiction?

Not applicable.

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

Not applicable.

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?

Not applicable.

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.

Not applicable.

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?

Not applicable.