

## 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 Supreme Administrative Court of Poland

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

The Polish Code of Administrative Procedure (Journal of Laws 2025, Pos. 1691, as amended, hereinafter: CAP) expressly provides in Article 1, point 2, that other entities (including private bodies) may be competent to resolve disputes, including by issuing an administrative act. There has to be a legal basis for that, either in law or in an agreement with a public body.

Focusing on the law, the following examples from the specific legislation can be provided:

- 1) Non-public schools that can be established by private entities (individuals or companies) after obtaining an entry in the register kept by the local government unit responsible for running the relevant type of public schools and institutions. Then the bodies that govern the schools are competent to issue administrative acts in conjunction with the didactic process (admission to a school, removal from a school, the amount of fees, etc.).
- 2) Professional self-regulatory bodies (advocates, architects, notaries) are competent to decide about the admission to a particular profession and all issues connected with practising the profession (for example, suspension in practice, disciplinary liability). The position of these bodies is stipulated in Article 17 para. 1 of the Constitution of the Republic of Poland (Journal of Laws 1997, Number 78, Pos. 483 as amended, henceforth PC), which states that they may be established by statute to represent persons practising professions of public trust and to supervise the proper exercise of those professions within the limits of the public interest and for its protection.
- 3) On the basis of the agreement, according to Article 25 para. 1 of the statute on social welfare (Journal of Laws 2025, Pos. 1214 as amended), private entities (non-governmental organisations and individuals specialised in this field) may be entrusted by the public entities with the implementation of social assistance tasks by granting subsidies to finance or co-finance the tasks.

The Polish Code of Administrative Procedure provides examples of the involvement of private individuals in administrative proceedings.

According to the art. 69 of the CAP, an interpreter may be present during the hearing; according to the art. 84 of the CAP, where specialised knowledge is required in a case, the public administration authority may request an expert or experts to issue an opinion. And according to the art. 96a of the CAP, mediation may be conducted in the course of the proceedings, provided that the nature of

the case permits it. A mediator is a qualified person that is not an employee of the public administration authority before which the proceedings in the case are pending.

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

Polish national legislation sets out criteria under which administrative tasks may be delegated to private individuals:

1) focusing on the example of non-public schools, the Law on Education (Act of 14 December 2016, Journal of Laws 2025, item 1043, as amended) specifies the conditions for establishing non-public schools as well as for depriving them of that status (for example, entry in and removal from the register of non-public schools).

2) as regards the general rules, for example, the Code of Administrative Procedure (Article 96f para. 1) provides that a mediator may be a natural person who has full legal capacity and enjoys full public rights, in particular a mediator entered on the list of permanent mediators or in the register of institutions and persons authorised to conduct mediation proceedings, kept by the President of the Regional Court, or on a list maintained by a non-governmental organisation or a higher education institution, information on which has been provided to the President of the Regional Court.

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

- |                                |   |
|--------------------------------|---|
| Directly by law .....          | √ |
| By an administrative act ..... | √ |
| By contract .....              | √ |
| Other .....                    | □ |

**Directly by law:** Provisions of the statutes about the self-regulatory bodies (advocates, architects, notaries) result in specific competences of administrative tasks delegated to them.

**By an administrative act:** Article 25, para. 1 of the statute about the social welfare is a basis for entrusting the tasks from social welfare to private entities.

**By contract:** Article 9, para. 1 of the Law on Education provides a basis for a local government unit, being the governing body of a school with no more than 70 pupils, to transfer, by way of an agreement, the running of such a school to a legal person other than a local government unit.

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 .....         | √ |
| Issuance [adoption] of the administrative act ..... | √ |
| Implementation of the administrative act .....      | √ |



Other .....

An entity competent to issue an administrative act is responsible for its preparation. The above-mentioned examples from the Law on Education or self-regulatory bodies demonstrate that private individuals can be competent to issue administrative acts.

Private individual entrusted with an administrative task may also be responsible only for its preparation (e.g. expert issuing an opinion) or for physical implementation of this act (e.g. admitting people to nursing homes based on the decision of the public authority).

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 .....

Private individuals can perform **advisory tasks** by presenting specific documentation (expert opinions) that will serve as a basis for the public administration authority's decision. Examples for that are in the Building law (Journal of Laws 2025, pos. 418 as amended). A private entity that builds something without permission required during the legalisation proceedings may be obliged to submit a technical report on the building. It should contain conclusions on the building's safety, including its use in accordance with its current or intended use.

**Decision-making tasks** are stipulated in the examples presented above, in which the private entities are competent to decide on the merits in administrative disputes, i.e. professional self-regulatory bodies.

**Establishing the facts** involves all disputes in which expert opinions are required to find the necessary facts in a particular case. An example of that is all disputes in which real estate valuation is necessary (for example, division of real estate or expropriation). In the Real Estate Management Act (Journal of Laws 2024, pos. 1145 as amended) are the rules for preparing these opinions are set out (principles and methods for valuing real estates, the elements that should be considered in the expert opinion). The expert opinion is then a basis for an administrative body to assess the value of a real estate (the administrative body is obliged to control the consistency of the expert opinions; parties to the proceedings often question the elements of it) and to decide on the merits.

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

No

Yes (please specify .....)

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

Constitution .....

Legislation .....

Other .....

Please indicate any relevant case-law.

The involvement of private individuals in administrative proceedings, in the sense of deciding cases, is permissible if there is a legal basis for it. It is prohibited, for example, in enforcement proceedings, in that sense, that individuals (private entities) cannot solely be responsible for execution.

According to the art. 20 para. 3 of the law on administrative enforcement proceedings (Journal of Laws 2025, Pos. 132, as amended), the enforcement authority with respect to the administrative enforcement of non-pecuniary obligations arising from decisions within the scope of central government administration issued by state-owned enterprises and other state organisational units, cooperatives, as well as associations, professional and self-governing organisations, and other social organisations, is the voivode.

### 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 .....

For example, the relevant legislation for experts competent in property valuation is set out in the Real Estate Management Act. In Article 177 para. 1. of this Act the provisions for obtaining the competences in evaluating the real estate are stipulated (including a lack of a criminal record, finishing university studies, finishing postgraduate studies in property valuation, completion of a 6-month internship and passing the exam).

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 .....



The selection can be organised differently. The Council of Scientific Excellence, a public body, selects reviewers for academic degrees (habilitation and professorship). The legal position and the competences for appointing the reviewers are stipulated in the Law on Higher Education (Journal of Laws (Journal of Laws 2024, Position 1571 as amended).

From a list/register, the experts competent in property valuation are selected. Competent for the choice is the public administration authority.

Within the legalisation process the experts are selected by citizens-parties to the proceedings. However, the selection process is limited to experts with technical expertise in building construction. The Building Law, similarly to the Real Estate Management Act, stipulates the conditions that candidates must fulfil to become experts in construction (this function has an exact name: independent technical functions in construction; Articles 12-16 of the Building Law).

It is also possible that the public administration will exercise discretion in selecting experts. It is so when there are no special provisions for selecting legal experts, but special knowledge is still required to resolve a particular dispute. Then, a public administration body is responsible for selecting an expert who is most appropriate to answer the questions. The decision in a case is then given to the public administration body (if the expert opinion is not found to be illogical, incoherent, or subjective, the public administration body usually follows its conclusions).

**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                                                            | <input type="checkbox"/>            |
| If yes,                                                       | <input checked="" type="checkbox"/> |
| General normative act (e.g. Code of Administrative Procedure) | <input checked="" type="checkbox"/> |
| Specific normative acts .....                                 | <input checked="" type="checkbox"/> |
| Codes of Conduct, good practices (soft law) .....             | <input checked="" type="checkbox"/> |
| Other .....                                                   | <input type="checkbox"/>            |

The actions of private individuals performing administrative tasks are stipulated in the CAP (Article 84 provides that the choice of the expert). In special statutory provisions, the specific provisions are stipulated. For example, in the Real Estate Management Act mentioned, there are provisions on preparing expert opinions in property valuation (Articles 149-173c). The experts in this field also have their own Code of Conduct (Rules for the application of the Code of Professional Ethics for Property Appraisers from 8-9.12.2008, Resolution of the National Council of the Experts in Property Valuation No 23/2008).

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

- |                         |                                     |
|-------------------------|-------------------------------------|
| Incompatibilities ..... | <input checked="" type="checkbox"/> |
|-------------------------|-------------------------------------|

|                                          |                                     |
|------------------------------------------|-------------------------------------|
| Impediments .....                        | <input checked="" type="checkbox"/> |
| Criminal or disciplinary liability ..... | <input checked="" type="checkbox"/> |
| Other .....                              | <input type="checkbox"/>            |

In the CAP, there is a provision under which an expert should be excluded from a proceeding if there is a justified threat of bias (Article 84 para. 2). More specific rules on impediments and criminal liability are in other statutory acts. One of them is the Real Estate Management Act, which repeats the rule on excluding an expert for lack of objectivity (Article 176). There are also provisions regarding criminal (Articles 198-198f) and disciplinary (Articles 194-197a) liability.

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                                                                   | <input checked="" type="checkbox"/> |
| Disbarment from the professional association                                                      | <input checked="" type="checkbox"/> |
| Imposition of a fine or other penalty                                                             | <input checked="" type="checkbox"/> |
| Personal liability of the private individual (civil, criminal, disciplinary)                      | <input checked="" type="checkbox"/> |
| Revocation of the administrative act in the issuance of which the private individual collaborated | <input checked="" type="checkbox"/> |
| Civil liability of the State                                                                      | <input checked="" type="checkbox"/> |
| Other                                                                                             | <input type="checkbox"/>            |

#### 4. Administrative checks [controls]

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

|     |                                     |
|-----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| No  | <input type="checkbox"/>            |

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

|              |                                     |
|--------------|-------------------------------------|
| A priori     | <input checked="" type="checkbox"/> |
| A posteriori | <input checked="" type="checkbox"/> |
| At any time  | <input checked="" type="checkbox"/> |

iii. How are checks activated?

|                                             |                                     |
|---------------------------------------------|-------------------------------------|
| Following a complaint/administrative appeal | <input checked="" type="checkbox"/> |
| Ex officio                                  | <input checked="" type="checkbox"/> |

iv. How extensive are the checks?

|                          |                                     |
|--------------------------|-------------------------------------|
| Checks based on sampling | <input checked="" type="checkbox"/> |
|--------------------------|-------------------------------------|



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.

The delegation of administrative tasks to private individuals is subject to legislation. In the case-law, the actions of private individuals (for example, experts' opinions that form the basis for final case resolution) are assessed in terms of legality. For example, in the judgment from 05.08.2025, signature I OSK 1541/22, the SAC decided that the expert who prepares the property valuation expertise is not obliged to notify the parties to the proceedings of the property inspection. The on-site inspection of the property by the expert does not require the landowner's presence to be

admissible or effective. In another judgment from 02.03.2018, signature I OSK 2154/17, the SAC stressed that in the event of any doubts as to the correctness of the valuation expertise, the public authority should take all measures to remove those doubts. The only fundamental restriction in this regard is that it is unacceptable for the authority to determine the value of the property on the basis of evidence other than the opinion on the value of the property in the form of an expertise.

## **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?

These are, among others, the organisation's effectiveness and the professional skills of the candidates.

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?

In public administration, senior managers may be recruited from outside the civil service if the law does not prescribe otherwise. This is justified by the specific nature and content of the responsibilities of a particular position.

Article 2 of the Civil Service Act (Journal of Laws 2024, item 409, as amended) expressly specifies the sectors in which members of the civil service are recruited. These sectors are, among others, the Chancellery of the Prime Minister, ministerial offices, and offices of government administration in the provinces. In these sectors senior managers must belong to the civil service.

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

These are special expertise and experience.

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.

Digital Era Governance is adopted to make the public administration more efficient and to offer to the individuals more diversified services in such electronic platforms as [obywatel.gov.pl](http://obywatel.gov.pl), [biznes.gov.pl](http://biznes.gov.pl). Thanks to the informatisation of public administration, the ePUAP platform was created to ensure smooth official communication between private individuals and public authorities. At the same time, other electronic tools have been created or further developed, such as the electronic signature and the online filing of annual personal income tax returns. New Public Governance is adopted, for example, in the participatory budgets of many cities (e.g. Poznań, Gdańsk, Warszawa), where citizens decide on the allocation of part of the city budget.

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

There are specific statutes that establish the abovementioned models, above all the Act of 17 February 2005 on the computerisation of public entities performing public tasks (Journal of Laws 2025, item 1703, as amended).

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

|                                  |   |
|----------------------------------|---|
| The Administration stricto sensu | √ |
| Public enterprises               | √ |
| Other public entities            | √ |

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                                           | □ |

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



Social Insurance Agency Plan for years 2021-2025 (a modern e-office, automation and improvement of processes and modern IT architecture, electronisation of processes, communication and documentation, data exchange and integration within e-administration).

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



Mediation may be conducted in the course of the proceedings, provided that the nature of the case allows for it. The following categories of disputes are appropriate for mediation: 1) licenses or permits to conduct business activity, or entries in the register of regulated activities; 2) construction and architecture; 3) spatial development; 4) environmental and nature protection; 5) real estate; 6) agriculture; 7) forestry; 8) fisheries; 9) industrial property (Article 96 para. 1a of the CAP).

## 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)?

Non applicable.

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?

Mediation is regulated in the CAP (Chapter 5a).

Please note that in Poland the legislation regulates settlements conducted between parties with opposing interests (Chapter 8), with or without prior mediation.

Moreover, where mediation between an administrative authority and a party is conducted and results in a positive outcome, a decision will be issued.



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 a successful mediation, the administrative authority settles the dispute in accordance with the approved provisions: in the form of an administrative decision (where mediation is conducted between an administrative authority and a party) or in the form of an administrative order approving the settlement (where mediation is conducted between the parties).

Where there is no prior mediation leading to the settlement, the administrative authority approves it in the form of an administrative order.

Both an administrative decision and an administrative order approving the settlement may be subject to judicial review.

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?

Yes, it has a form of *res iudicata*. It can be pursued in the enforcement proceedings.

Which court has jurisdiction over disputes concerning such enforcement?

Administrative court

**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

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?

It is provided in Articles 96a-96n of the CAP.

Is it mandatory or optional?

Mediation is optional. Both the public administrative body and the individual party (private individual/legal entity) must agree to participate in it.

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

An administrative authority may suggest mediation to a party. However, such a suggestion may also be made by the individual party(private individual/legal entity).

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:

It is provided for in Articles 96a-96n of the CAP.

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

The main principles of the proceedings apply to the mediation process, including the principles of written form and of hearing the parties. Moreover, the mediator must be impartial. However, according to Article 96j para. of the CAP, mediation is not public.

How is the impartiality of the mediator ensured?

If a public administration body is involved in mediation, only a person entered on the list of permanent mediators or in the register of institutions and persons authorised to conduct mediation proceedings, kept by the president of the district court, or a mediator entered on the list kept by a non-governmental organisation or university, which has been communicated to the president of the district court, may act as a mediator (Art. 96f para. 2 of the CAP).

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

According to the Article 96e para. 1 of the CAP, when referring a case to mediation, the public administration body shall postpone consideration of the case for up to two months. This term can be prolonged, but only for one month.

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up

Other possibility (please specify)

√

According to Article 96n para. 1 of the CAP, if, as a result of mediation, arrangements are made to settle the matter within the limits of applicable law, the public administration body shall settle the matter in accordance with those arrangements, as set out in the minutes of the mediation proceedings. In other words, the public administration body issues an administrative act with a content precisely defined during mediation.

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?



According to Article 96e para. 3 of the CAP, if mediation fails, the public administration body issues an order to terminate the mediation and settle the matter in the administrative 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.

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

a legislative provision

a general principle of law

According to the Article 96a para. 1 of the CAP, a contrario, mediation cannot be used in cases where the nature of the case does not allow it.

### 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

The legal provisions do not provide for arbitration in administrative proceedings, and the nature of administrative matters does not justify conducting arbitration between an authority and private individuals or legal entities.  
Arbitration is a method of resolving disputes in civil matters, regulated by statutory provisions (Articles 1161 et seq. of the Civil Procedure Code).

**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? | <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.

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?

