

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

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

#### Questionnaire

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Responses from **The Legislative Council of Romania** (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

In section 1 "Provisions regarding participation in the process of drafting normative acts" of Law



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No. 52/2003 on decision-making transparency in public administration, with subsequent amendments and supplements, a series of rights and obligations belonging to natural and private persons are regulated.

Thus, within the procedures for the preparation of draft normative acts, the public administration authority is obliged to publish an announcement regarding this action on its own website, to display it at its headquarters, in a space accessible to the public, and to transmit it to the central or local mass media, as the case may be. The public administration authority will transmit the draft normative acts to all persons who have submitted a request to receive this information.

Therefore, persons interested in a draft normative act are obliged to submit a request in this regard. (art. 7 para. (1)).

The announcement regarding the development of a draft regulatory act with relevance to the business environment is sent by the initiator to business associations and other legally established associations, in specific fields of activity, at least 30 working days before the submission of the draft regulatory act for approval by the public authorities. (art. 7 para. (3)).

Interested individuals or organizations have the opportunity to submit in writing proposals, suggestions or opinions regarding the draft normative act submitted to public debate, specifying the article(s) to which they refer, mentioning the date of sending and the contact details of the sender (art. 7 paragraph (6)).

Also, in art. 8 of Government Emergency Ordinance no. 57/2019 on the Administrative Code, the principle of transparency is regulated, according to which in the process of drafting normative acts, public authorities and institutions have the obligation to inform and submit draft normative acts to public consultation and debate and to allow citizens access to the administrative decision-making process, as well as to data and information of public interest, within the limits of the law.

In accordance with the provisions of art.86 para. (2) and (3) of the Administrative Code, the central public administration authorities initiating a draft normative act are obliged to consult the associative structures, at least 15 working days before submitting for adoption/approval any draft normative act that directly concerns the local public administration and/or that has an impact on local communities. In the case of draft normative acts of an urgent nature, the term may be reduced to 10 working days.

The points of view of the associative structures of the local public administration authorities regarding the draft normative acts on which they have been consulted shall be motivated in accordance with the legal provisions and may be transmitted, through the care of their presidents, within 10 working days of receipt, to the central public administration authority initiating the draft normative act, respectively within 7 working days, in the case of draft normative acts of an urgent nature.



According to art. 247 of Government Emergency Ordinance no. 57/2019 on the Administrative Code, citizens may propose draft decisions to the local councils and county councils within whose territorial jurisdiction they reside, for debate and adoption.

The promotion of a draft decision may be made by one or more citizens with the right to vote, if it is supported by signatures of at least 5% of the population with the right to vote registered in the Electoral Register with domicile or residence in the administrative-territorial unit.

At the same time, according to art. 248, citizens of the commune or city may also be consulted through citizen assemblies organized in villages, in rural areas, and in neighborhoods or streets, in urban areas.

The convening and organization of citizen assemblies are made by the mayor, at his initiative or at the initiative of one third of the number of councilors in office.

The convening of the citizen assembly is done by making public the purpose, date and place where it is to be held.

The citizen assembly is validly constituted in the presence of the majority of citizens with the right to vote and adopts proposals with the majority of those present.

The proposals are recorded in a report and submitted to the mayor, who submits them to the debate of the local council in the first meeting, in order to establish the concrete methods of implementation and financing, if applicable.

The solution adopted by the local council is made public by the care of the secretary general of the administrative-territorial unit/subdivision.

Also, according to art. 197 paragraph (5) and in accordance with annex no. 1 to the Administrative Code, decisions and provisions, financial documents and information, as well as other documents provided for by law are published, for information, in electronic format and in the local official monitor.

The official county monitors are electronic platforms where city halls and county councils publish decisions, provisions and other administrative acts. They ensure the transparency of local normative acts, being accessible through the official portals of city halls or on certain websites.

## 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 .....

-Constitutional provision: According to art. 74 par. (1) of the Constitution of Romania, republished, "The legislative initiative belongs, as the case may be, to the Government, the deputies, the senators or a number of at least 100,000 citizens with the right to vote. Citizens who exercise their right to legislative initiative must come from at least a quarter of the country's counties, and in each of these counties, respectively in the municipality of Bucharest, at least 5,000 signatures must be registered in support of this initiative".

-General legislative provisions: -Law no. 52/2003 on decision-making transparency in public administration -Government Emergency Ordinance no. 57/2019 on the Administrative Code

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

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

- Directly by law .....
- By an administrative act .....
- By contract .....
- Other .....

e.g. -Law no. 52/2003 on decision-making transparency in public administration  
and -Government Emergency Ordinance no. 57/2019 on the Administrative Code

**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 .....

Law No. 52/2003 gives individuals and private individuals the opportunity to submit in writing proposals, suggestions or opinions regarding the draft normative act submitted to public debate during the stage of drafting an administrative act.

At the same time, according to the same normative act, interested individuals or organizations have the opportunity to submit in writing proposals, suggestions or opinions regarding the draft

normative act submitted to public debate, specifying the article/articles to which they refer, mentioning the date of sending and the contact details of the sender.

Also, according to the Administrative Code, the central public administration authorities initiating a draft normative act are obliged to consult the associative structures before submitting for adoption/approval any draft normative act that directly concerns the local public administration and/or that has an impact on local communities.

Citizens may propose draft decisions to the local councils and county councils within whose territorial jurisdiction they reside, for debate and adoption. Citizens of the commune or city may also be consulted through citizen assemblies. Decisions and other documents provided for by law are published, for information, in electronic format and in the local official monitor of the respective county.

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: in the case of lawyers, according to Law no. 51/1995 on the organization and exercise of the legal profession, republished, with subsequent amendments and completions.

-Decision-making tasks: - ascertaining tasks, but without decision-making power: in the case of audit missions or technical, judicial expertise, etc.

-Control and verification tasks: in the case of audit missions.

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.

Yes, there are cases in which the involvement of individuals in administrative procedures is prohibited:

- According to art. 108 par. (4) last sentence of the Romanian Constitution, "Decisions of a military nature shall be communicated only to the interested institutions".

Therefore, individuals cannot be involved in the process of drafting normative acts of a military nature, and cannot formulate proposals, suggestions or opinions regarding the respective projects.

Other: In accordance with art. 36 par. (1) of Law no. 182/2002 on the protection of classified information, as subsequently amended and supplemented, individuals entrusted with classified information are obliged to ensure its protection and to comply with the provisions of the programs for preventing the leakage of classified information.

### 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 ..... | <input type="checkbox"/>            |
| Selection based on criteria .....   | <input checked="" type="checkbox"/> |
| Other .....                         | <input checked="" type="checkbox"/> |

-Participation in exams:

Ex: In the case of technical experts, the quality of judicial technical expert is acquired based on an exam, according to art. 7 of Government Ordinance no. 2/2000 on the organization of judicial and extrajudicial technical expertise.

-Selection based on criteria:

Ex: In the case of adult vocational training, this can be carried out by natural persons or legal entities, of public or private law, established in Romania, according to art. 9 of Government Ordinance no. 129/2000 on adult vocational training.

Also, the authorization of vocational training providers is done based on evaluation criteria, for a period of 4 years, with the possibility of renewal at the request of the provider, at least 30 days before the expiration of the validity period of the authorization, according to art. 26 paragraph (1) of Government Ordinance no. 129/2000.



Other:

The relevant regulation in the field is Law no. 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania.

The provisions of this law apply to any citizen of a Member State of the European Union, of the European Economic Area or of the Swiss Confederation who wishes to exercise in Romania, independently or as an employee, a profession regulated by Romanian law.

It also applies to the certification by the competent Romanian authorities of an official Romanian qualification title, possibly supplemented by professional experience or regulated training, with a view to accessing or exercising a regulated profession in a Member State of the European Union, of the European Economic Area or in the Swiss Confederation.

At the same time, certification is managed by various authorities, such as: the Public Supervisory Authority for Statutory Audit Activity - ASPAAS in the case of auditors or the National Association of Authorized Evaluators in Romania - ANEVAR in the case of financial auditors, evaluators, etc.

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 .....

-Random selection from a list/register:

e.g.: Lists of technical judicial experts - The nominal list including the selected specialists, with identification data, drawn up by specialties and counties, depending on their domicile, is periodically communicated to the local offices for technical and accounting judicial expertise, according to art. 13 para. (3) of Government Ordinance no. 2/2000.

-Selection from a list/register based on criteria:

e.g.: selection from the body of administrators of public enterprises - database organized and managed by the Agency for Monitoring and Evaluation of Performances

Public Enterprises - AMEPIP, - published on its website, which includes the list of natural or legal persons registered and pre-selected by AMEPIP, as a result of meeting the criteria announced by it



for the national pre-selection process and who will be able to apply, alongside natural or legal persons who are not registered in the body of administrators, in the recruitment and nomination processes for administrator positions within public enterprises, as well as natural or legal persons who have been selected and appointed as administrators following the application of the provisions of this emergency ordinance; in the case of legal persons, selected and appointed as administrator of the public enterprise, AMEPIP registers in this database the natural persons designated in this regard by the legal persons - art. 2 point 6 of Government Emergency Ordinance no. 109/2011.

-Absolute discretion of the Administration: ex: the decision of the National Authority for Citizenship to reject the application for Romanian citizenship filed by a person who was convicted of drug trafficking abroad is judicious, since Law no. 21/1991 provides that one of the conditions for granting citizenship is not to have been convicted in the country or abroad for a crime that makes him unworthy of being a Romanian citizen.

-Selection by the citizen (based on a declaration): ex: In order to simplify administrative procedures, public administration authorities carry out an analysis of all the conditions required for issuing authorizations and identify those conditions that are not absolutely necessary, in order to eliminate or replace them with declarations on their own responsibility, according to art. 5 of Government Emergency Ordinance no. 27/2003 on the tacit approval procedure

**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 .....

Yes, there is.

e.g.: art. 653 et seq. of Title XVI “Civil liability of medical personnel and of the provider of medical, sanitary and pharmaceutical products and services” of Law no. 95/2006 on the reform in the field of healthcare.

-General normative act: Law no. 287/2009 on the Civil Code, Law no. 134/2010 on the Code of Civil Procedure, Law no. 53/2003 – Labor Code. e.g.: According to art. 1349 paragraph (1) of the Civil Code, “Any person has the duty to respect the rules of conduct that the law or local custom imposes and not to harm, through his actions or inactions, the legitimate rights or interests of other persons.(2) The one who, having discernment, violates this duty is liable for all damages caused, being obliged to fully repair them”.



-Codes of conduct, good practices:

E.g.: -Code of Ethical Conduct for Internal Auditors

-National Code of Ethics for Professional Accountants

**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"/>

-Incompatibilities: They are regulated, for example, in Law no. 161/2003 on some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, the prevention and sanctioning of corruption.

-Impediments: They are regulated, for example, in Law no. 176/2010 on integrity in the exercise of public functions and dignities, for the amendment and completion of Law no. 144/2007 on the establishment, organization and operation of the National Integrity Agency, as well as for the amendment and completion of other normative acts. Ex.: the case of members of boards of directors, management boards or supervisory boards, as well as persons holding management positions within autonomous public authorities of national or local interest, national companies and societies or, as the case may be, societies regulated by Law no. 31/1990, republished, with subsequent amendments and completions, in which the state or a local public administration authority is a majority or significant shareholder, directly or indirectly, including in subsidiaries or other divisions and units of the entities listed above, as well as in societies regulated by Law no. 31/1990, republished, with subsequent amendments and completions, in which one of the entities listed above is a majority or significant shareholder;

- Criminal liability

- Law no. 286/2009 on the Criminal Code,

- Law no. 78/2000 on the prevention, detection and sanctioning of acts of corruption

or disciplinary: disciplinary liability of members who are part of the regulated professions (lawyers

- Law no. 51/1995 on the organization and exercise of the legal profession, notaries - Law on notaries public and notarial activity no. 36/1995, bailiffs - Law no. 188/2000 on bailiffs, etc.).



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

Legal consequences:

-Withdrawal of certification: for experts, evaluators, architects, etc.

-Exclusion from the professional association:

E.g.: -exclusion from the Romanian Standardization Association – ASRO or exclusion from the Romanian Businessmen’s Association

-Personal liability of the private individual (civil, criminal, disciplinary): applies

-Revocation of the administrative act in the issuance of which the individual collaborated: applies.

#### 4. Administrative checks [controls]

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

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

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

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

iii. How are checks activated?

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



**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.**

## **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?

**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 | <input type="checkbox"/> |
| Advisory        | <input type="checkbox"/> |
| Other           | <input type="checkbox"/> |

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

- |   |                          |
|---|--------------------------|
| Civil liability of the State                                      | <input type="checkbox"/> |
| Personal liability of the manager (civil, criminal, disciplinary) | <input type="checkbox"/> |

### **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.

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

**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.

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 .....

Arbitration – Law no. 134/2010 on the Code of Civil Procedure - Book IV – On arbitration

Mediation - Law no. 192/2006 on mediation and the organization of the mediation profession

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*

### 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?

Yes, it is allowed for administrative authorities and natural/legal persons to sign settlement agreements (transactions) in administrative disputes, including in the litigation phase, without the need for mandatory prior mediation. The parties can transact directly, and the court can confirm the agreement, according to the principles of availability and the Administrative Litigation Law no. 554/2004.

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?

Alternative resolution mechanisms, such as mediation, in administrative disputes (according to Law no. 554/2004) are not limited only to cases currently under trial, but can also be used to prevent the emergence of new disputes. They allow for the clarification of legal situations before they become official disputes, offering a faster and more flexible solution.

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)?

Yes, Romanian legislation and case law make a clear distinction between the two, based on the scope of judicial review. The request for annulment/appeal (common law) usually concerns only legality, while the appeal allows for a complete retrial of the case in fact and law (merits), according to procedural principles. • Appeal on the merits (Complete review): It involves a reanalysis of all evidence and the factual situation, allowing the court to change the contested decision for both legal and factual errors. • Request for annulment/Appeal (Legality review): This concerns strict grounds of illegality (e.g. lack of competence, violation of the law), the reviewing court not making a new assessment of the evidence (merits). • Case law emphasizes that the appeal is a devolutive remedy, unlike extraordinary remedies (of annulment), which are limited to grounds of illegality.

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?



Alternative dispute resolution (ADR) methods, such as mediation or arbitration, are not left exclusively to the discretion of the parties, but follow specific procedures, regulated by law or institutional rules (e.g. Law no. 192/2006 for mediation, the Civil Procedure Code for arbitration). Although the parties have great autonomy in choosing the mediator/arbitrator and the procedure, essential steps must be respected: information, signing the contract/clause, holding the sessions and formalizing the result.

Key aspects of the procedures:

- Mediation: It is legally regulated, requiring a formal information procedure and the signing of a mediation contract.
- Arbitration: It can be institutionalized (follows the rules of a chamber of commerce) or ad hoc (established by the parties), but requires a written arbitration agreement and compliance with minimum procedural rules.
- Autonomy of will: The parties can decide the place, language and rules, but they cannot ignore the general legal framework that guarantees the fairness of the procedure. Therefore, there is a binding legal framework (the special procedure), within which the parties can customize, by mutual agreement, the way in which the procedure is conducted

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?

The amicable settlement agreement (transaction), once validated by the court through a preliminary ruling, acquires the force of res judicata and constitutes an enforceable title,



allowing for forced prosecution. The simple signed agreement does not have the force of *res judicata*, but its judicial validation confirms the obligations of the parties.

Which court has jurisdiction over disputes concerning such enforcement?

The jurisdiction in enforcement disputes (contests) usually lies with the court in whose jurisdiction the debtor has his domicile or registered office at the date of notification to the enforcement body. This is the enforcement court, according to art. 651 of the Civil Procedure Code, and remains the same throughout the procedure.

**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?

Yes, Romanian legislation, in particular Law No. 192/2006 and the Administrative Litigation Law No. 554/2004, allows for mediation in disputes between individuals/legal entities and the administration. It can be used to resolve conflicts, although it operates with certain practical limitations in relation to public authorities, which often prefer to resolve them in court.



Is it mandatory or optional?

Mediation is a voluntary, fast and confidential way to resolve conflicts amicably, with the help of a neutral third party called a mediator. It offers an alternative to court, allowing the parties to find a suitable solution together, in a relaxed setting, often at the mediator's premises.

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:

A case can be referred for mediation at almost any stage of a conflict: before a trial begins (pre-litigation phase), during the trial (in first instance or appeal), and even during the enforcement phase. Mediation is voluntary, suspends statutes of limitations, and can be initiated by an invitation to mediation. - Law No. 192/2006

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?

The mediator's impartiality is guaranteed by maintaining an equidistant position, non-involvement in the conflict, avoidance of conflicts of interest and equal treatment of the parties. This is ensured by the obligation to inform the parties about the procedure, the signing of a confidentiality agreement and strict compliance with legal norms.

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

Law No. 134/2010 on the Civil Procedure Code

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.

**iiib.** If no mediation process is provided for, is this exclusion provided for in:  
a legislative provision



a general principle of law

### 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

**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

On the state side, arbitration is usually initiated through central or local public authorities (ministries, agencies, city halls) based on an arbitration agreement (arbitration clause or compromise) included in commercial, administrative or investment contracts.

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.

In general, contractual disputes between natural/legal persons and the state may be submitted to arbitration, applying the common rules of arbitration procedure of the Code of Civil Procedure (art. 541-621). However, the state and public entities may conclude arbitration agreements only if the special law or the administrative contract expressly allows it, because the patrimonial rights that the state can dispose of are limited, and arbitration cannot concern acts of power.  
Special regime - Yes, provided that the state acts in private law relations and the dispute is arbitral – see the rules of the Chamber of Commerce and Industry of Romania and art. 550 of the Code of Civil Procedure.

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?

No.

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



The arbitrator's independence and impartiality are ensured by the obligation to declare any conflicts of interest, the possibility of recusal, the need to have no personal/economic relationships with the parties, and the assumption of a firm commitment to neutrality. These guarantees prevent doubts about the arbitrator's ability to judge the case fairly.

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?

The Code of Civil Procedure  
Arbitration Rules, in force from 1.01.2021  
Arbitration Rules, in force from 31.12.2024

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

In administrative dispute arbitration, confidentiality is the general rule, unlike in public courts. However, in the case of institutionalized arbitration or when public entities are involved, procedural rules may require limited transparency, such as publishing basic information but not the full file, ensuring the balance between public interest and confidentiality.

The participation of third parties in arbitration is generally permitted only with their consent and that of all parties involved, according to art. 581 of the Code of Civil Procedure. Accessory intervention is an exception, being admissible even without this unanimous consent, under the procedural rules.

In general, legal representation (by a lawyer or legal advisor) is not strictly mandatory by law in civil/commercial arbitration, as the parties have the right to represent themselves. However, the

rules of some arbitral institutions (e.g. the Court of International Commercial Arbitration) may require representation by a lawyer or legal advisor.

The arbitration hearing is not public, being generally private and confidential, unlike court hearings in state courts. This is one of the main features of arbitration, ensuring the discretion of the parties involved, access being limited only to the participants in the dispute and their representatives.

In general, arbitral awards are not public, as arbitration is a private and confidential process. They are communicated directly to the parties involved. Their publication usually requires the explicit consent of both parties or is limited to specific situations, such as the annulment of the court decision.

**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?

Yes, the validity of the arbitral award can be challenged in court by means of an action for annulment (application for annulment), according to the Code of Civil Procedure. This procedure does not allow for a retrial on the merits, but only covers limiting grounds, such as serious procedural irregularities, the absence of an arbitration agreement or a violation of public order.

Through the annulment action, a mechanism for dissolution, limited to procedural or public order reasons – Civil Procedure Code.

Is it possible to waive the right to judicial review?

It is not possible to voluntarily waive the right to judicial review, but the measure may be revoked or replaced by the judicial authorities if the grounds that determined it have ceased to exist or new circumstances have arisen (art. 242 of the Code of Criminal Procedure). The defendant may file a request for revocation of the measure with the prosecutor or court.

Which courts have jurisdiction?

Civil courts

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

According to the case law, in particular that of the Constitutional Court of Romania, the scope of the judge's control aims at verifying the constitutionality and legality of normative acts, including the interpretation of the law in the light of "living law". This control extends to the obligations imposed by restrictive measures, such as judicial control, verifying their necessity and proportionality.

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?

When the state is a party to the arbitration.



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.

Free movement and prohibitions related to money laundering or international sanctions.

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?