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

Questionnaire

Responses from **the Supreme Administrative Court of the Slovak Republic**

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 ☐

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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 .... ☒

To begin with, we would like to state that the Slovak legal system uses the term "natural person" and not the term "private individual".

Natural persons may participate in the exercise of public power only in cases where a special law so provides. A natural person may be entrusted with either decision-making powers (issuing decisions on the rights and obligations of individuals), or issuing various measures, certificates, assessments or confirmations in the field of public administration.

The professional literature indicates that the most common example of such a natural person to whom the exercise of public administration has been transferred is a member of the forest, field, water, fishing and hunting guard. This is a specialized branch of state administration that ensures protection and monitoring compliance with regulations in the relevant sectors. Their task is to prevent illegal activity, or to sanction it. Their status, rights and obligations are regulated by special laws:

Member of the forest guard pursuant to Sections 52 to 54 of Act No. 326/2005 Coll. on forests,
Member of the field guard pursuant to Act No. 255/1994 Coll. on field guard,
Member of the water guard pursuant to Section 69 of Act No. 364/2004 Coll. on water law,
Member of the fishing guard pursuant to Sections 23 to 34 of Act No. 216/2018 Coll. on fishing,
Member of the hunting guard pursuant to Section 27 of Act No. 274/2009 Coll. on hunting.

Furthermore, according to Act No. 138/1992 Coll. on Authorized Architects and Authorized Civil Engineers, authorized architects and authorized civil engineers perform state administration within the scope of this Act in the field of architecture and construction (e.g. supervision of the construction of a building according to the approved project documentation according to the Construction Act, preparation of expert opinions, estimates and reports within the scope of their authorization).

Natural persons to whom the law entrusts the issuance of various certificates, opinions or confirmations in the field of public administration, participate in the exercise of public power, but legal theory does not consider them to be public authorities, however, the administrative authority considers other acts issued by them when exercising public power. The involvement of natural persons or private persons in issuing administrative decisions is possible under the law, but public power is mostly exercised through civil servants and institutions authorized by law (e.g. in the case

of architects and engineers, this is the issuance of opinions, opinions and approvals on the designs and implementation of load-bearing structures of buildings and their changes in terms of mechanical resistance and stability of buildings, including their resistance to extraordinary loads and the resistance of load-bearing structures in the event of fire).

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

As stated in the previous answer, the specific natural person to whom decision-making authority in the field of public administration is transferred must be identified in a special law. The legal possibility of a natural person to issue certificates, opinions, statements, recommendations and similar measures is also defined in special regulations.

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

Directly by law .... ☒
By an administrative act .... ☐
By contract .... ☐
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 .... ☒
Issuance [adoption] of the administrative act .... ☒
Implementation of the administrative act .... ☒
Other .... ☒

In general, regarding the scope of powers of a natural person to whom the law has entrusted the power to make decisions in the field of public administration, we state that administrative proceedings are a set of procedural procedures within which the competent administrative authority decides, as a rule, in a declaratory or constitutive manner, on the rights and/or obligations of the party to the proceedings. In individual special legal acts, the power to make decisions in the field of public administration is then transferred to specific natural persons, together with the definition of the specific powers and obligations they have in a given area.

As an example of such persons, we cite members of the forest, water, field guard, fishing and hunting guard, who through their actions ensure the protection of forests, fields, fishing, water areas and hunting management, as well as impose sanctions for violations of obligations related to this protection, with the exception of a member of the fishing and hunting guard, who does not impose fines. In this protection, a member of the forest, field, water, fishing and hunting guard ensures the implementation of all provisions of the legal and by-laws governing the protection of forests, fields,

water, fishing areas and hunting management. Within the scope of their authorizations, they may, for example, enter the subject of protection, inspect documents, call for the abandonment of unlawful action, or for the seizure of an item, request the cooperation of the police force, or impose and collect fines in block proceedings, with the exception of a member of the fishing and hunting guard, who does not impose fines.

The definition of specific powers and obligations of natural persons who do not have the status of an administrative body but exercise public power to a certain extent is also contained in special regulations. The acts issued by them, namely certificates, opinions, statements, recommendations and similar measures, may serve as supporting documents for the administrative body in administrative proceedings.

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 .... ☒

The specific scope of the powers of a natural person to whom the law has entrusted the power to make decisions in the field of public administration is defined in specific special regulations.

In relation to recommendatory decisions, authorized architects and engineers may issue final opinions, expert opinions and estimates and benefits.

In decision-making practice, a member of the forest, field and water guard may impose block fines - i.e. issue a final decision. Members of the fishing and hunting guard do not have such authority, but they act in cooperation with the police force.

Regarding inspection powers, members of the forest, field, water, fishing and hunting guard may determine whether there has been a violation of the protection of forests, fields, water, fishing areas and hunting management and may also carry out the legal qualification of violations. These violations may, in addition to members of the fishing and hunting guard, be sanctioned with a block fine. They also perform other actions, which are the identification of persons, the seizure of property, entry into protected areas or the use of technical means necessary to establish the facts of the case

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.

It is prohibited whenever the law does not allow it. On the other hand, the Slovak legal system does not specify specific procedures where the involvement of private individuals in administrative proceedings is prohibited. For this reason, we do not cite any case-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 ....… ☒
Other ....… ☒

The following criteria are set for members of the forest, field, water and fishery guards: a natural person who has reached the specified age, full capacity to act in law, integrity, health and professional competence to perform this function, liability insurance, taking an oath and being entered in the list kept by the competent state administration, forestry, field, water and fishery management authority. For members of the hunting guard, the criteria are a natural person who has reached the specified age, has a valid hunting license and a weapons license of group "D", has medical and professional qualifications to perform this function, has not committed a misdemeanor or disciplinary offense in the field of hunting in the last five years for which their hunting license was revoked, has taken a pledge and is registered in the list maintained by the relevant district office. For authorized architects and engineers, citizenship, full legal capacity, integrity, documents of education and professional experience, passing an authorization exam, and taking an oath are required.

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 conditions under which a natural person is legally entrusted with making decisions on the rights, legally protected interests or obligations of natural persons and legal persons in the field of public administration are regulated by specific special regulations. Members of the forest, field, water, fishing and hunting guard are proposed by the owner, administrator, forest manager or user of the hunting ground. They are appointed to the position by the competent state administration, forest, field, water and fishing management body. Members of the hunting guard are appointed by the district office by entering them in the list.

Authorized architects and civil engineers may exercise their authorizations after meeting the prerequisites set forth by law (e.g., member of a member state, full capacity to act in law, good repute, proof of education and professional experience, passing the authorization examination) from the moment of their entry in the list by the relevant chamber.

The conditions that natural persons must meet in order to issue certificates, opinions, statements, recommendations and other similar measures and thus indirectly participate in the exercise of public authority are also defined in special regulations (e.g. Act No. 25/2025 Coll., Building Act or Act No. 138/1992 Coll., on Authorized Architects and Authorized Civil Engineers).

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 .... ☐

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

Incompatibilities .... ☐
Impediments .... ☐
Criminal or disciplinary liability .... ☐
Other .... ☒

In general, legality and impartiality in decision-making in public administration are enshrined in the Constitution of the Slovak Republic and also in the Administrative Procedure Code in the basic rules of procedure. Natural persons in the position of an administrative body, among other things, proceed in accordance with laws and other legal regulations. They are obliged to protect the interests of the state and society, the rights and interests of natural persons and legal entities and to consistently require the fulfillment of their obligations. According to the Administrative Procedure Code, the above also applies to the issuance of certificates, opinions, statements, recommendations and other similar measures by natural persons.

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

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

4. Administrative checks [controls]

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

Yes ☒
No ☐

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

A priori ☐
A posteriori ☐
At any time ☒

iii. How are checks activated?

Following a complaint/administrative appeal ☒
Ex officio ☒

iv. How extensive are the checks?

Checks based on sampling ☒
Mandatory checks for all actions ☒

v. What is the nature of the checks?
Of legality ☒
Of the substance, of appropriateness ☒

vi. What is the type of checks?
On persons ☒
On actions ☒

vii. Are the conclusions of private individuals binding on the Administration?
Yes ☒
No ☐

It depends on the specific powers entrusted to a natural person by a special regulation. In some cases, such as the imposition of a block fine in summary proceedings, this conclusion is binding on the administration. In other cases, the entities listed above in the questionnaire only provide a basis for the decision, which is not binding on the Administration.

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.

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We have not found any relevant case law of the supreme judicial authorities concerning the judicial review of legality of procedures, measures, or decisions of the natural persons mentioned in Part 2 i).

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

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

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

The process of recruiting private individuals outside the hierarchy of the civil service as senior managers within the Administration is not specifically regulated in the legal order of the Slovak Republic.

However, it can be mentioned that under Section 2(5) of Act No. 575/2001 Coll. on the Organization of Government Activities and the Organization of the Central State Administration, distinguished experts from theory and practice may be members of an advisory body to the Government or a ministry. These experts usually have only an advisory function. However, they are not managers in the strict sense of the word.

An administrative authority may contract an external entity for consultancy activities, such as a project manager, but usually through a contract like an employment agreement. It is also possible to enter into a commercial contract for the purpose of obtaining consultancy services from private law entities, for example, in the fields of cybersecurity or GDPR. In both cases, however, such a person does not acquire the status of a manager within the hierarchy of the body concerned.

Within the hierarchy of state administration, management positions are held by civil servants. The state is of course interested in senior managers from the private sector applying for management positions in the state administration and thus bringing new, effective management elements to public administration. The attractiveness of these positions is reduced by salary limits in public 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?

See the answer above.

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

See the answer above.

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) ☐

Regarding questions B.1.iv. and B.1.v., as mentioned above, expert advisors outside the public service hierarchy serve only in an advisory capacity. Senior managers who have transitioned from the private sector to the public sector and have become part of the public service hierarchy may issue decisions; subsequently, an error on the part of a senior manager may give rise to both the civil liability of the State and the disciplinary liability of the manager. Individuals outside the public service hierarchy cannot hold management positions within the public administration.

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.

The Recovery and Resilience Plan of the Slovak Republic, as a key package of reforms and investments financed by the European NextGenerationEU mechanism, includes among its goals an efficient public administration and its digitalization. Other areas where the Plan aims to support reforms and investments include quality education, science, research and innovation, the green economy, and better healthcare. In terms of streamlining and digitalizing public administration,

the plan focuses on increasing transparency in public processes, fighting corruption, improving the quality of public services, and reducing bureaucracy.

At the same time, the Ministry of Investments, Regional Development and Informatization of the Slovak Republic, influenced by the EU's Digital Decade 2030 program, has adopted the National Concept for the Informatization of Public Administration. This concept is based on three main pillars:

1. Digital transformation of processes and competencies in public administration while fully utilizing digital technologies;
2. Data-driven operation, including the use of data for better decision-making, personalized digital services, and the support of artificial intelligence in the public interest;
3. Open e-Government, where the public administration provides basic infrastructure and open application programming interfaces (APIs) for selected services and data, thereby enabling the creation of innovative services by both the public and private sectors.

The Government has also adopted a cross-sectoral Digital Transformation Strategy for Slovakia, which defines the policy and particular priorities of Slovakia in the context of the currently ongoing digital transformation of the economy and society under the influence of innovative technologies and global megatrends of the digital era.

In addition, several ministries have analytical units that help the state make decisions based on high-quality analytical support and data. A prime example is the analytical unit of the Ministry of Finance, the so-called Value for Money Unit, which assesses, for instance, the efficiency of public spending.

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

A suitable example is Act No. 305/2013 Coll. on e-Government. The aim of this Act is to establish a general legal framework for the exercise of public authority in electronic form, including related legal institutes, thereby enabling the implementation of electronic services by public authorities in a uniform manner, without the need to amend every specific regulation that governs such exercise in particular cases. This Act regulates:

a) certain information systems for the exercise of the powers of public authorities in electronic form,
b) electronic filings, electronic official documents, and certain conditions and methods of the electronic exercise of public authority and electronic communication,
c) electronic mailboxes and electronic delivery,
d) identification and authentication of persons,
e) authorization,
f) guaranteed conversion,

g) the method of making payments to a public authority, h) reference registries.

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.

Specific objectives are set for specific projects resulting from the abovementioned Recovery and Resilience Plan of the Slovak Republic, where the condition for the disbursement of funds is the achievement of the set objectives. Another example is the analytical unit of the Ministry of Finance, the so-called Value for Money Unit. The aim of its activities is to assess whether taxpayers' money will actually be spent in the best possible way to achieve the set objective. Some of the goals of digitalization are regulated by the aforementioned e-government law as well as the national concept of informatization of public 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 organization ☒
- Financial consequences for the assessed organization ☒

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*

The Administrative Procedure Code (Section 48) allows settlement as one of the ways to end administrative proceedings in disputed matters, if the nature of the matter allows it, but it is only admissible between the parties to the proceedings – not if one of the parties to the dispute is an administrative authority. In general, settlement must be in accordance with legal regulations and the general interest. If these conditions are met, the competent administrative authority approves the settlement and thus the conciliation becomes claimable for the party to the proceedings. The principle of settlement by the administrative authority is also expressed in the basic rules of procedure that administrative authorities are obliged to comply with in administrative proceedings. In some special legal regulations, the administrative authority may even be obliged to attempt settlement in a specific type of case. For example, under the Act on Offences, in the case of an offence of defamation, the district office is obliged to attempt to reconcile the person insulted and the person accused of the offence. (Section 78)

Within the framework of administrative judicial proceedings, the so-called satisfaction of the plaintiff (Section 101) is available, which also has a conciliatory nature, in accordance with the Administrative Procedure Code. The purpose of this institute is to demonstrate the principle of economy linked to the effectiveness and subsidiarity of judicial protection. In practical application, the application of satisfaction of the plaintiff can be expected mainly in cases where the defendant public administration body is aware of its unlawful decision or measure challenged in an administrative court by an administrative action and at the same time does not have a normatively established possibility of eliminating the unlawful situation, primarily due to the impossibility of using extraordinary remedies. The defendant public administration body may initiate satisfaction of the plaintiff. The conditions for the application of this institute are: a proposal by the defendant public administration body, the fact that the administrative court has not yet decided, i.e. has not issued a decision on the merits, the fact that the satisfaction will not affect the rights or obligations of a person other than the plaintiff, and the consent of the administrative court. The method of satisfying the plaintiff will always depend on the subject of the action. This means that if the plaintiff seeks, for example, the annulment of a decision of a public administration body that he considers unlawful, the satisfaction will consist in issuing a new decision. Even though the institute of satisfying the plaintiff establishes the defendant public administration body's authority to decide anew on the matter, a new decision can only be made in accordance with the law. The administrative court does not explicitly approve the satisfaction of the plaintiff, but in essence its decision to discontinue the proceedings has exactly such a function.

2. Settlement and Mediation

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

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

Yes ☐
No ☒

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

-

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

-

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

-

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

-

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

Yes ☐

No ☐

If yes, by which court?

-

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

-

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

-

Which court has jurisdiction over disputes concerning such enforcement?

-

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

a legislative provision ☒

a general principle of law ☐

As mentioned above, a settlement may be concluded under the Administrative Procedure Code only by the parties to the proceedings and is subsequently approved by the administrative authority if it meets the legal conditions, i.e. does not contradict legal regulations and the general interest. The law also defines the conditions for the so-called satisfaction of the plaintiff. This institute, however, does not have the character of a settlement agreement or other similar document, which would be signed by the Administration and private individuals/legal entities, but a new decision, measure or other act is issued by the administrative authority.

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 ☒

iia. If yes,

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

-

Is it mandatory or optional?

-

If it is optional, does it require:

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

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

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

-

At what stage can a case be referred for mediation?

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

Is there a specific piece of legislation governing the mediation process?
Yes ☐
No ☐

If yes, please specify:

-

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

-

How is the impartiality of the mediator ensured?

-

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

-

At the end of the mediation process,
If an agreement is concluded:
  A document is drawn up
  Other possibility (please specify)

-

If an agreement is not concluded:
  Is a time limit set for bringing the matter before the competent court?
  Are the litigation proceedings already under way (if applicable) continued

-

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

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

a legislative provision ☒
a general principle of law ☐

The Mediation Act states that this Act applies to disputes arising from civil law relationships, family law relationships, commercial obligations and employment law relationships. Mediation within administrative proceedings is therefore excluded.

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 Arbitration Act defines the scope of disputes in which it is permissible to decide in arbitration proceedings, and these are disputes concerning civil and commercial law relations. Therefore, any public law relations arising from the exercise of public authority are excluded. However, private law relations with the state are not excluded if it acts in the field of private law.

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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?

Our Public Procurement Act transposes, inter alia, Article 10(c) of Directive 2014/24. According to this Article, the Directive does not apply to public service contracts which have as their subject matter arbitration and conciliation services. This Directive should therefore not apply to service contracts relating to the provision of such services, regardless of their designation under national law. However, the binding part of the text expressly mentions only arbitration and conciliation services, which is also taken up by the Act, albeit using the term 'proceedings'. However, the exception under this provision can, according to our legal theory in the sense of a Euro-conform interpretation, be applied only in relation to the services of arbitrators or conciliators, and not to the proceedings as such. Arbitration or conciliation services, however, can be used for any type of contract. This means that even a purchase contract for goods or a contract for work resulting in a building may contain an arbitration or conciliation clause without the arbitrator having to be procured according to law. The exception applies regardless of the financial limit of the contract and, from the point of view of the subject, is beneficial to both the contracting authority and the contracting entity.

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

Impartiality of decision-making is one of the fundamental pillars of arbitration. The Arbitration Act states that whoever accepts the function of arbitrator undertakes to perform it impartially and with professional care in such a way as to ensure fair protection of the rights and legitimate interests of the participants and to prevent their rights and legally protected interests from being violated and to prevent their rights from being abused to their detriment. The arbitrator is also obliged to act and decide without unnecessary delay in the performance of his or her function. Violation of impartiality could constitute grounds for annulment of the arbitration award and, under certain circumstances, even an intensity of conflict with public order. The impartiality of the arbitrator is ensured already when the arbitrators are appointed. The most common way of appointing arbitrators is to appoint one arbitrator by each party, with the arbitrators thus appointed subsequently appointing a third presiding arbitrator. The person appointed as an arbitrator is obliged to inform the contracting parties without undue delay of all facts for which he could be excluded from the hearing and decision of the case, if, considering his relationship with the case or with the contracting parties, there may be doubts about his impartiality.

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

-

vi. In arbitration concerning administrative disputes:

	yes / no
Is there an obligation to make publicly available the basic information and documents relating to the proceedings?	□ □
Is the participation of third parties permitted?	□ □
Is legal representation mandatory?	□ □
If yes, is legal aid available?	□ □
Is the hearing public?	□ □
Is the arbitral tribunal obliged to give reasons for its award?	□ □
Is the arbitral award made publicly available?	□ □

vii. During the proceedings, the applicable system is:

the adversarial system □

the inquisitorial system □

viii. What powers does the arbitral tribunal have?

Reviews the legality of administrative acts of a non-pecuniary nature □

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

Does the arbitral award have effect:
Erga omnes (with regard to all) ☐
Inter partes (between the parties) ☐

Is it considered 'case-law' for other cases? ☐
If the answer to the last question is yes, please explain.

-

Can the validity of the arbitral award be challenged in court?
Yes ☐
No ☐

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

-

Is it possible to waive the right to judicial review?

-

Which courts have jurisdiction?

-

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

-

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

-

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, Eco Swiss China Time Ltd v Benetton International NV and C-168/05 Mostaza Claro v Centro

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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?

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