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

General Report

*Part I: New models of organisation and functioning in the Public Administration*

The upcoming seminar of the Hellenic Presidency of ACA-Europe, scheduled for May 14-16, 2026, in Rhodes, will examine the implementation of new models of organisation and functioning in Public Administration (*Part I of the questionnaire*), as well as the adoption of alternative methods for resolving administrative disputes (*Part II of the questionnaire*).

In this context, Part I of the General Report addresses, from a comparative perspective, two main topics: **(A)** The involvement of private individuals who are not public servants in unilateral actions taken by the Public Administration, with particular emphasis on the delegation of tasks traditionally performed by public servants during the issuance of an administrative act. This explicitly excludes general citizen participation in administrative proceedings, collaboration with private individuals in contractual activities, the privatisation of public-sector bodies and the creation of private law entities. **(B)** The incorporation of private-sector organisational models into the tools and operational methods of the Public Administration.

The Hellenic Council of State received 35 national reports on this subject. Drawing on these submissions, the General Report seeks to outline key legislative and case law assumptions across participating countries and to highlight points of convergence and divergence in national approaches.

## A. Delegation of Administrative Tasks to Private Individuals

### 1. Overview

Almost all participating courts report that the delegation of tasks traditionally performed by public servants during the issuance of an administrative act to private individuals, as a form of



collaboration between them and the Public Administration, is, in principle, recognised within their jurisdictions.

## 2. Involvement of Private Individuals in Administrative Proceedings

### i. Legal Framework

Constitutional provisions in **Finland, Serbia, Slovenia** and **Switzerland** explicitly authorise the delegation of administrative tasks to private individuals. According to **Portugal's** report, the **Portuguese** Constitution requires the Public Administration to be organised so that interested parties may participate in the management of services. It further recognises administrative decentralisation as a form of private participation in service management and, following the 1997 constitutional revision, incorporates private entities exercising public powers within the administrative framework. In some countries, such as **the Czech Republic, Germany** and **Türkiye**, constitutional provisions, in conjunction with ordinary legislation, permit the involvement of private individuals in administrative proceedings. National reports, such as those from **Croatia, Estonia, Italy, Latvia, Lithuania, Malta, Montenegro, the Netherlands, Norway, Poland, Slovakia** and **the United Kingdom**, indicate that both general and specific legislative provisions apply. Nearly all national reports demonstrate that sectoral legislation primarily governs the involvement of private individuals in administrative proceedings. The delegation of administrative tasks to private individuals is mainly observed in the following fields:

**-Environmental law:** In **Cyprus**, a committee including non-public officers is responsible for examining the environmental impacts of project execution or operation and for identifying appropriate mitigation or management measures within the environmental impact assessment procedure. Depending on the nature of the project, the characteristics of the affected environment and the anticipated impacts, the Director of the Department of Environment of the Ministry of Agriculture, Rural Development and Environment may invite expert representatives from specialised services or non-governmental organisations with relevant expertise (*Article 10(1) of the Assessment of the Environmental Impact of Certain Projects Law of 2018 (Law 127(I)/2018*). In **Latvia**, private experts participate in environmental impact assessments, while in **Malta**, qualified experts are required to prepare environmental reports.

**-Spatial planning law:** In **Denmark**, the municipal council may authorise a landowners' association or a residents' association to grant exemptions from the provisions of the district plan (*Section 21 of the Danish Planning Act*). In **Estonia**, the authority responsible for spatial planning



may enter into an administrative contract with a party interested in developing a detailed spatial plan, delegating the preparation of technical documents requiring expert knowledge. However, this delegation does not extend to the drafting of the plan itself or to the performance of procedural acts necessary for its adoption (*Section 130(1) of the Planning Act*).

**-Urban planning and construction law:** In **Greece**, building permits are issued 'automatically' through an electronic system, on the initiative and under the responsibility of a private engineer or technical company, following the electronic submission of the relevant file. The review of building permit applications is entrusted to building inspectors, who are private engineers (*Articles 28–51A of Law 4495/2017 and the relevant provisions of Law 4030/2011*). In **Latvia**, construction specialists (such as designers, construction supervisors and construction managers) participate in administrative procedures by preparing mandatory technical documentation and confirmations (e.g. construction designs, supervision reports and compliance declarations), which form an integral part of the administrative file examined by the municipal construction authority. In **Slovakia**, architects and engineers are responsible for issuing opinions and approvals on the design and implementation of load-bearing structures of buildings and their alterations, particularly with regard to mechanical resistance and structural stability, including resistance to extraordinary loads and fire. In **Türkiye**, private Building Inspection Organisations are responsible for inspecting compliance with the relevant legislation and carry out reporting activities (*Law no. 4708 on Building Inspection*).

**-Expropriation law:** In **Italy**, legislation permits the delegation of expropriation powers to private concessionaires (*Article 6(8) of Presidential Decree no. 327/2001*). In **Latvia**, private experts and certified professionals are authorised to determine the value of immovable property for expropriation purposes in accordance with statutory valuation rules (*Section 20(1) of the Law on the Alienation of Immovable Property Necessary for Public Needs*). In **Portugal**, experts are involved in procedures for declaring public utility and for taking administrative possession in expropriation proceedings (*see the Expropriation Code and Articles 6, 9 and 9A of Decree-Law no. 125/2002*).

**-Taxation law:** In **Finland**, a telephone service related to tax collection, which did not involve decision-making power regarding taxation, could be transferred to a private entity by agreement. In **Greece**, certified public accountants and auditing companies registered in the public register under Law 4449/2017 (which incorporates Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, in the version currently in force) may issue an annual tax certificate. This certificate details any tax violations, as well as instances of non-payment or incorrect payment of taxes identified from the

accounting records maintained during the audit (*Article 78 of Law 5104/2024*). Additionally, certified appraisers are responsible for drafting recommendations regarding the starting prices for immovable property for the purpose of determining taxable value (*Council of State, decision no. 928/2023*). In **Italy**, in the field of tax assessment, liquidation and collection, the public authority, as the holder of taxing powers, designates a concessionaire to exercise such functions on its behalf. **Türkiye's** report states that the control and certification activities carried out by private professionals, such as sworn-in certified public accountants and certified public accountants, constitute a significant example of participation in administrative processes in the field of taxation.

**-Social security and healthcare law:** In **Greece**, certified professionals (lawyers and accountants) may collaborate with the Electronic National Social Security Agency ('e-EFKA'), a legal person governed by public law, in the process of awarding main and supplementary pension benefits. In that context, certified professionals **(a)** ascertain the insured persons' periods of insurance and issue a relevant certificate, **(b)** ascertain any payable social security contributions and issue a relevant certificate, **(c)** calculate the amount due for the recognition of substitute qualifying periods and issue a relevant certificate, **(d)** draw up a draft pension decision, **(e)** issue an administrative act (referred as 'pre-retirement certification') for the certification of the total insurance period (*Article 255 in conjunction with Article 257 of Law 4798/2021, Council of State, Plenary Session, decisions nos. 750-752/2023*). Furthermore, real-time clinical administrative audits and the validation of specific health expenditure may be assigned by decision of the Board of Directors of National Organisation for the Provision of Health Services, a legal person governed by public law, to private auditing bodies specialising in clinical control and health expenditure auditing, in accordance with public procurement provisions (*Article 90(7)(c) of Law 4368/2016, as replaced by Article 34 of Law 5086/2024*). In **Latvia**, the State Agency of Medicines issues administrative decisions on medicinal product authorisation following a scientific evaluation of the documentation submitted by the applicant. This evaluation is inherently based on specialised expert knowledge prepared outside the authority and examined as part of the administrative file prior to the adoption of the administrative act (*see the relevant provisions of the Pharmaceutical Law and Cabinet Regulation no. 376 of 23 June 2006*). In **Malta**, Medical Boards, whose members are selected from a list of specialist medical practitioners and are not required to be public officers, are vested with advisory powers in respect of the approval or refusal of applications for social benefits. For example, the Medical Board is responsible for determining the degree of disability in cases of applications for disability benefits, without, however, exercising the power to take the final administrative decision (*Article 71(1) of the Social Insurance Law of 2010 (Law 59(I)/2010)*). In **Poland**, on the basis of an agreement, private entities (non-governmental organisations and individuals specialised in this field) may be entrusted by the public authorities with the implementation of social assistance tasks through the

granting of subsidies to finance or co-finance such tasks (*Article 25 (1) of the Act on Social Welfare (Journal of Laws 2025, Pos. 1214, as amended)*). In **Switzerland**, in the field of social insurance, private bodies responsible for implementing social insurance legislation determine the rights and obligations of insured persons through administrative decisions (*Article 34 et seq. of the Federal Act on the General Part of Social Insurance Law*).

**-Transport and vehicle regulation law:** In Austria, insurers may be authorised to establish and operate motor vehicle registration offices (*Section 40(1)–(4) of the Motor Vehicles Act*). In the **Czech Republic, Hungary, Italy, the Netherlands, Portugal, Slovenia and Türkiye**, statutory law permits private individuals or entities to perform vehicle inspection functions.

Furthermore, key instances of delegating administrative responsibilities to private individuals include: **(a) Certification tasks:** In **Italy**, certification is the primary area in which private entities exercise significant authority. In particular: **(i)** various professionals, including notaries, solicitors and accountants, are recognised as having the authority to certify the authenticity of their clients' signatures and statements; **(ii)** similar certification powers are traditionally granted to ministers of religion and ship masters; **(iii)** private entities also have authority to certify electronic signatures; **(iv)** significant certification bodies operate in the agricultural and food sector, particularly in relation to the certification of geographical indications and quality schemes; and **(v)** private entities are accredited to qualify companies seeking to participate in public procurement procedures. In **Latvia**, procedures for placing regulated products on the market require a conformity certificate issued by an accredited private body. This certificate is subsequently examined by the competent market surveillance authority, which shall adopt an administrative act approving, restricting or prohibiting the placing of the product on the market. In **Portugal**, private entities may assume control functions associated with the certification of a designation of origin or geographical indication for wine products, provided they notify the Institute of Vine and Wine (*Articles 18 and 20 of Decree-Law no. 61/2020*). In **Türkiye**, the processes for preparing and approving internal natural gas installation projects may be delegated to private persons through a certification procedure (*Law no. 4646 on the Natural Gas Market*). **(b) Monitoring functions:** In **Austria**, the operator of an airport, who is required to carry out certain tasks on behalf of the security authority, including passenger security screening, may contractually entrust a service provider with those tasks (*Sections 5 and 6 of the Civil Aviation Security Act 2011*). In **Finland**, the National Police Board, which is responsible for checking the quality and accuracy of passports and arranging their delivery, may delegate these tasks to a private service provider (*Section 35 of the Passport Act*). **(c) Specific competences assigned to notaries:** In **Albania**, the process of issuing the certificates of inheritance is no longer carried out by the courts, but by notaries (*Article 348 of the Civil Code and*



Article 111 of Law 110/2018). In **Montenegro**, notaries perform a public service and are authorised, inter alia, to draft notarial acts, certify signatures, manuscripts and transcripts, receive documents and money on deposit and undertake other tasks assigned by special law (Articles 2, 5 and 6 of the Law on Notaries). According to **Ukraine's** report, notaries are authorised to certify rights, as well as facts having legal significance, and to perform other notarial acts provided for by this Law, in order to ensure their legal certainty. **(d) Tasks in the field of sport:** In **France**, private individuals are generally not permitted to participate in administrative activities. However, exceptions exist for the organisation of championships and the management of national teams by sports federations (as well as for the organisation of regulated professions by professional bodies). In **Latvia**, the assessment of compliance and the licensing of sports tracks for automobile and motorcycle racing competitions is entrusted to sports federations. In **Portugal**, the regulation and discipline of sports are carried out by sports federations, while in **Sweden**, certain administrative tasks are delegated to the **Swedish Sports Confederation**.

## ii. Criteria for Authorisation of Delegation of Administrative Tasks to Private Individuals

National reports indicate a consensus that the delegation of administrative tasks to private individuals must be authorised by law. Statutory law and case law generally establish both the permissibility and the prerequisites for such delegation. The Constitution of **Finland** both authorises the delegation of administrative tasks to private individuals, as mentioned above, and explicitly delineates the conditions governing such delegation. Section 124 states: 'A public administrative task may be delegated to others than public authorities only by an Act or by virtue of an Act, if this is necessary for the appropriate performance of the task, and if basic rights and liberties, legal remedies and other requirements of good governance are not endangered'.

Generally, key criteria<sup>1</sup> include: **(a)** the nature of the delegated tasks (decision-making and/or auxiliary tasks), as well as the restrictions regarding 'core functions' of the State (e.g. **Austria, Bulgaria, Croatia, Germany, Greece, Malta, Slovenia, Switzerland, Türkiye**); **(b)** the required qualifications of private individuals (e.g. **Bulgaria, Finland, Greece, Latvia, Montenegro, Poland, Serbia, Ukraine**); **(c)** administrative supervision (e.g. **Estonia, Finland, Greece, Latvia, Malta**) or accountability (e.g. **Austria, Malta**); **(d)** the nationality of private individuals (e.g. **Serbia, Sweden**); **(e)** the impact of the delegation on constitutional principles and fundamental rights (e.g. **Finland, Germany, Sweden**); and **(f)** the objective of efficiency served by the delegation (e.g. **Austria, Latvia, Slovenia**).

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<sup>1</sup> For details on elements (a), (b) and (c), see Subsections iv and v of Section 2, as well as Sections 3 and 4 below, respectively.

More specifically, the following legislative and case law examples illustrate the application of a combination of the aforementioned criteria across different countries. In **Austria**, the delegation of administrative tasks to private individuals is constitutionally permissible provided that **(a)** it is objectively justified and serves the principle of administrative efficiency; **(b)** the constitutionally required chain of direction and accountability of the state is preserved; and **(c)** only individual, clearly delineated tasks are transferred that do not form part of the core functions of State Administration (see Austrian Constitutional Court, 14.3.1996, case no. B 2113/94). In **Greece**, according to settled case law of the Hellenic Council of State, administrative tasks may be delegated, under the supervision of the administration, to private individuals who have demonstrated the necessary qualifications, relevant specialisation and expertise, provided that these tasks are not inherently connected to the core functions of State authority or the exercise of sovereignty. In this context, the Court examines, on a case-by-case basis, the nature and the characteristics of the delegated administrative tasks, the performance of which may result in the adoption of an administrative act, whether explicit or implicit. In any case, it is essential that individuals affected by a final administrative act are not deprived of the right to lodge an appeal against it. In **Montenegro**, the delegation of administrative tasks to private individuals is conditional on: **(a)** the existence of an explicit legal basis for entrusting public powers; **(b)** the preparation of studies justifying and precisely determining the entrusted tasks; **(c)** fulfilment of special professional, ethical and organisational conditions prescribed by specific laws for certain categories of holders of public authority (notaries, public bailiffs, utility companies, etc.); and **(d)** compliance with the general rules of administrative procedure concerning authorised officials, impartiality and legality of decision-making.

In that regard, in **Malta**, as follows from legislative and case law principles, delegation is allowed only if the following conditions are met: **(a)** there is a legal basis; **(b)** core decision-making cannot be delegated: Private individuals may carry out technical, preparatory or auxiliary tasks. The final administrative decision must remain with the public authority, unless the law clearly provides otherwise; **(c)** tasks must be clearly defined; **(d)** the Administration must retain supervision, responsibility and accountability; **(e)** delegation must respect general administrative law principles, i.e. legality and non-abdication of public power. In **Slovenia**, according to Article 15 Of State Administration Act, individuals and private law entities may also obtain public authorisation to perform administrative tasks by law or on the basis of law: **(a)** if this enables administrative tasks to be performed more efficiently and effectively than if they were performed by an administrative body, particularly if the performance of administrative tasks can be financed in whole or in part by administrative fees or user charges; or **(b)** if, given the nature or type of tasks, constant direct



political control over the performance of such tasks is not necessary or appropriate. If the law allows several natural or legal persons to apply for public authorisation, the selection shall be made by public tender. In **Sweden**, the transfer of an administrative task to a private entity must not result in the restriction of individuals' fundamental rights (see the Supreme Administrative Court's ruling HFD 2019 ref. 43). Furthermore, the Constitution does not allow for the delegation of administrative tasks involving the exercise of public authority to private individuals who are not Swedish citizens.

### iii. Legal Instruments for Delegation of Administrative Tasks to Private Individuals

In most countries, including **Albania, Austria, Bulgaria, Denmark, Estonia, Finland, Germany, Greece, Italy, Lithuania, Malta, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Switzerland** and **the United Kingdom**, administrative tasks are delegated to private individuals through law, administrative act or a contract. In certain jurisdictions, such as **Cyprus, France, Hungary, Serbia, Slovakia Spain** and **Ukraine**, delegation is permitted exclusively by law. In other countries, including the **Czech Republic, Slovenia, Sweden** and **Türkiye**, administrative tasks may be delegated to private individuals either by law or by an administrative act; contracts are not recognised as valid instruments of delegation. Furthermore, reports from **Croatia** and **Latvia** indicate that delegation is not permitted by means of an administrative act. However, a competent authority may authorise or appoint a private individual, by decision, to perform specific preparatory or technical tasks, such as assessments or technical verification in **Latvia**, or auxiliary tasks in proceedings, such as providing professional findings or opinions during the evidence-gathering stage in **Croatia**, provided that the final administrative decision remains with the competent public authority.

Examples of administrative tasks delegated directly to private individuals by law include the following: **(a)** In **Croatia**, architects and engineers may be legally required to prepare technical documentation as part of administrative procedures for building or environmental permits. **(b)** In **Germany**, Section 12(1) of the Aviation Security Act designates the responsible aircraft pilot as the individual charged with fulfilling state functions, ensuring that security and order are maintained on board any aircraft during flight, and authorises the pilot to implement necessary measures. **(c)** In **Malta**, the Food Safety Regulations authorise official controls to be carried out by accredited private bodies, external inspectors or experts, provided that they meet strict conditions regarding competence, independence and supervision.



Cases where delegation precedes an administrative act include the following: **(a)** In **Greece**, responsibility for drafting recommendations on the starting prices of immovable property is assigned to certified appraisers by a decision of the Minister of Economy and Finance. **(b)** In **the Netherlands**, the certifying body for products used in electronic data exchange in healthcare is designated by a ministerial act under the Statute on Electronic Data Exchange in Healthcare. **(c)** In **Portugal**, official control functions related to the certification of a designation of origin or geographical indication for wine products are delegated to private management entities through a notice from the Institute of Vine and Wine.

Delegation through administrative contracts occurs in several contexts: **(a)** In **Estonia**, the Ministry of Climate enters into an administrative contract with the private legal entity Environmental Investment Centre, authorising it to organise the allocation of funds derived from the emissions trading system, including evaluating applications and making approval decisions. **(b)** In **Germany**, Section 3 of the Public Health Service Act of the Free State of Bavaria permits, for a limited period, the delegation of certain tasks and sovereign powers of public health authorities to private entities via a public law contract. **(c)** In **Latvia**, under the Law on the Alienation of Immovable Property Necessary for Public Needs, authorities contract certified immovable property appraisers to prepare valuations that serve as mandatory factual bases for administrative compensation acts. Additionally, in administrative offence proceedings, contracts may be concluded with certified valuers or other specialists for the valuation or examination of seized property.

#### iv. Content and Range of Administrative Tasks Entrustable to Private Individuals<sup>2</sup>

In the vast majority of countries, including **Albania, Austria, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Montenegro, Norway, Poland, Portugal, Slovakia, Slovenia, Switzerland** and **the United Kingdom**, administrative tasks may be delegated to private individuals for the preparation, issuance or implementation of an administrative act. In that regard, private individuals may be entrusted with advisory, decision-making, as well as control and verification responsibilities. Delegation of administrative tasks for the preparation, issuance, or implementation of administrative acts also occurs in **Hungary** and **Sweden**. National reports indicate that in **Hungary**, private individuals are assigned decision-making, control and verification tasks, whereas in **Sweden**, they hold inspection and decision-making responsibilities. The issuance of administrative acts is not permitted in **Croatia** and **Malta**; therefore, private individuals are not assigned decision-

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<sup>2</sup> This Section of the General Report addresses questions iv and v in Section A, Part I of the questionnaire.

making responsibilities. In **Cyprus** and **Türkiye**, neither the issuance nor the implementation of administrative acts is permitted, and private individuals similarly lack decision-making responsibilities. By contrast, reports from **the Netherlands** and **Serbia** indicate that private individuals are not involved in the implementation of administrative acts. In both countries, private individuals may hold decision-making responsibilities. In **the Netherlands**, they also have advisory roles, whereas in **Serbia** they are assigned control and verification functions. According to **Spain's** report, only implementation tasks may be delegated to private individuals, even where these include advisory responsibilities.

Examples of decision-making responsibilities include: **(a)** In **the Czech Republic**, the Nature Guard may suspend disruptive activities in cases of imminent danger, while the Nature or Forest Guard may impose fines. **(b)** In **Germany**, authorised district chimney sweeps issue certificates of inspection for heating appliances, and certified survey engineers are responsible for setting boundary markers. **(c)** In **Portugal**, qualified experts issue energy certificates, limited to verifying technical and factual elements as required by law. Additionally, Startup Portugal, a private entity, decides on the recognition of start-up and scale-up legal status under Article 7 of Law 21/2023, verifying only the company's compliance with the criteria provided for by law. **(d)** In **Slovakia**, members of the forest, water and field guard are responsible for protecting forests, fields, fishing areas and water bodies, as well as managing hunting activities. These guards are authorised to impose sanctions for violations, except for members of the fishing and hunting guard, who are not permitted to impose fines. Their authority includes entering protected areas, inspecting documents, ordering the cessation of unlawful activities, seizing items, requesting police cooperation and imposing and collecting fines through on-the-spot (block) proceedings.

The following cases illustrate private individuals' participation in the preparation of administrative acts: **(a)** In **Croatia**, private experts may prepare reports, assessments or evaluations that assist authorities in understanding factual circumstances in procedures related to building permits, environmental protection, or complex technical matters. **(b)** In **Greece**, private individuals may be assigned advisory, control and verification tasks, including: **(i)** collecting and processing real estate market data and formulating recommendations or opinions on property starting prices based on their assessments (Council of State, decisions nos. 928/2023, 1865/2019); **(ii)** preparing inspection reports following on-site evaluations by building inspectors, where the audit report must clearly state findings and document both the presence and absence of violations; and **(iii)** gathering data on companies subject to audit, in accordance with instructions and questionnaires provided by the Capital Market Commission, and drafting the corresponding audit report (Article 36(11) of Law 2324/1995 and Council of State, decision no. 2825/2014). **(c)** In **Malta**, under Food Safety



Regulations, private individuals may be entrusted with preparatory or technical tasks such as inspections, audits, drafting reports, technical assessments and data collection. **(d)** In **Spain**, urban planning collaborating entities are responsible for providing technical advice in the verification of documents and projects. Private inspection stations verify factual elements regarding vehicle conditions and urban planning collaborating entities conduct technical verification of projects and documentation. Authorised control bodies oversee industrial and safety matters. The Supreme Court has accepted technical verification by private entities, provided that the Administration retains direction and control (Supreme Court, decision of 15 October 2014).

The implementation of an administrative act can involve tasks, such as inspections by authorised district chimney sweeps in **Germany**, as well as demolition work ordered by authorities to remove unlawful or unsafe structures in **Greece** and **Latvia**.

#### v. Prohibitions on Involvement of Private Individuals in Administrative Proceedings

As previously noted, numerous national reports emphasise that the delegation of administrative tasks to private individuals is permissible only when explicitly authorised by law. In some jurisdictions, the delegation of specific administrative powers to private individuals is prohibited, particularly when these powers are considered inherent to 'core functions' of the State. The following examples<sup>3</sup> are noteworthy:

In **Montenegro**, the Constitution and key laws, including the Law on State Administration and the Law on Internal Affairs, establish, inter alia, that: **(a)** Tasks related to security, police authority, public order and peace, criminal prosecution, border protection and defence are reserved exclusively for state bodies and cannot be delegated to private individuals as holders of public authority; **(b)** Key fiscal and tax functions, such as the establishment, collection and control of public revenues, remain within the competence of tax and other state authorities; however, certain auxiliary tasks, such as IT support or printing, may be outsourced to private entities; **(c)** In areas where the law does not expressly provide for the delegation of public powers, private individuals are not permitted to independently conduct administrative procedures or issue administrative acts. The Law on State Administration permits the delegation of certain tasks to other legal entities only when there is an explicit legal basis and when the tasks are, by their nature, suitable for such delegation, such as professional, technical, or service-related tasks and public services.

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<sup>3</sup> The approach described below is further confirmed by case law; see Section 5 below.

Similarly, in **Latvia**, explicit prohibitions arise from legislation, in particular Section 41 of the State Administration Structure Law, which enumerates administration tasks that may not be delegated. In particular, the following administration tasks may not be delegated to private individuals: **(a)** sectoral policy-making and development planning; **(b)** coordination of sectoral activities; **(c)** supervision of institutions and administrative officials; **(d)** approval of the budget of public entities, distribution of public financial resources and control over such resources; **(e)** issuance (adoption) of administrative acts, except where expressly provided for by an external legal act; **(f)** administration tasks related to the external and internal security of the State, except where expressly provided for by law; **(g)** representation of the Republic of Latvia in economic, military, or political unions and their institutions, except where expressly provided for by law; **(h)** administration tasks ensuring the implementation and supervision of the human rights guaranteed by the Constitution, where procedures and institutions are determined by the legislator; and **(i)** other administration tasks which, by their nature, form the basis of State administration functions and may be performed only by institutions.

Comparable restrictions exist in **Switzerland**, where legislation prohibits the delegation of specific public authority functions, particularly in the domains of security and policing (Article 3 of the Federal Ordinance on the Delegation of Civil Service Enforcement Tasks to Third Parties) and benefit administration (Article 119c bis of the Federal Ordinance on Compulsory Unemployment Insurance and Insolvency Benefits).

**Croatia** imposes broader restrictions on the permissibility of such delegation. The prohibitions encompass issuing administrative acts, as private individuals are excluded from decision-making tasks; applying legal qualification of facts; imposing sanctions; and exercising enforcement powers. In Croatia, these tasks are considered 'core sovereign functions'.

Illustrative examples of the limitations on the permissibility of the delegation are provided by **Finland**. According to **Finland's** report, tasks involving significant public power, such as imposing administrative sanctions, may only be assigned to public authorities. Significant public power also includes the right, exercised in independent discretion, to use force or to substantially interfere with an individual's fundamental rights. In certain circumstances, the right to use force may be granted to non-authorities, provided that it is exercised within a strictly defined context and in response to a temporary need for external assistance. Inspection powers within the sphere of domestic peace constitute another significant public power that cannot be granted to private individuals under ordinary law. However, living quarters on ships and other means of transport are considered peripheral to domestic peace and limited inspection powers over such premises

may be granted to non-authorities. It should also be also noted that, according to **Germany's** report, delegation can be justified, even within the core area of sovereign powers, where supported by objective reasons. Nevertheless, exemptions from the functional reservation are constrained by the principle of proportionality.

### 3. Qualifications and Selection Procedure for Private Individuals

#### i. Procedure for Certification of Private Individuals

In most countries, legislation establishes procedures for certifying private individuals, mainly through either participation in examinations or selection based on specific criteria. By contrast, in **Cyprus, Denmark** (where public procurement rules also apply to some extent), **Estonia, the Netherlands, Norway, Slovenia** and **Switzerland**, certification relies solely on selection based on specific criteria.

Notable examples of legal provisions requiring private individuals to participate in examinations as a prerequisite for certification include the following: **(a)** In **Bulgaria**, Article 19a of the Independent Financial Audit and Assurance of Sustainability Act stipulates that individuals may acquire the qualification of registered sustainability auditor only after successfully passing written examinations. **(b)** In **Greece**, Article 255(7)(a) of Law 4798/2021 and Decision no. 45891/2.7.2021 of the Minister of Labour and Social Affairs, as amended, provide that the certification of professionals involved in awarding pension benefits requires participation in examinations. **(c)** In **Portugal**, the Expropriation Code and Articles 6, 9 and 9A of Decree-Law no. 125/2002 require that the selection of experts for procedures related to the declaration of public utility and administrative possession in expropriation proceedings is conducted through written and oral examinations, which are mandatory both for attendance and for completion of the relevant training course. **(d)** In **Romania**, Article 7 of Government Ordinance no. 2/2000 on the organisation of judicial and extrajudicial technical expertise stipulates that the status of judicial technical expert is acquired through an examination.

Selection based on specific criteria is, by way of illustration, stipulated in the following cases: **(a)** In **the Netherlands**, under the Road Traffic Law 1994, private individuals and entities eligible for certification to conduct mandatory periodic inspections of motorised vehicles must submit a declaration of good behaviour issued by the Road Traffic Service. **(b)** In **Slovakia**, members of the forest, field, water and fishery guards must meet the following criteria: be natural persons of the required age; possess full legal capacity; demonstrate integrity; be in good health; have the



necessary professional competence; hold liability insurance; take an oath; and be entered in the register maintained by the competent state administration or management authority. In addition, membership of the hunting guard requires individuals to meet further criteria, including: attainment of the specified age; possession of a valid hunting licence and a category D firearms licence; appropriate medical and professional qualifications; a clean record in respect of misdemeanours or disciplinary offences in hunting within the previous five years resulting in licence revocation; completion of a pledge; and registration in the list maintained by the competent district office. **(c) In Switzerland**, Article 5 of the Federal Act on the Supervision of Social Health Insurance specifies the requirements that private insurers must fulfil in order to be authorised to provide social health insurance. These requirements include adopting the legal form of a public limited company, cooperative, association or foundation; maintaining a registered office in Switzerland; establishing an organisational structure and management practices that ensure compliance with legal provisions; possessing sufficient initial capital; and demonstrating the ability to meet financial obligations at all times, in particular by maintaining the necessary reserves. **(d) In the United Kingdom**, Section 63(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('the 2007 Act') provides that private individuals may serve as enforcement agents if they hold a relevant certificate issued.

Certain countries combine examination requirements with selection based on statutory criteria. In **Austria**, under Section 67 of the Lower Austrian Hunting Act (NÖ Jagdgesetz, NÖ JG), applicants must be of full age, legally reliable and professionally qualified in order to be confirmed as hunting wardens. A professional qualification includes knowledge of hunting law and regulations for the protection of wildlife and hunting areas. The competent authority also assesses whether the applicant is capable of properly and diligently performing the duties of a hunting warden. In addition, appointment as a hunting warden requires participation in and successful completion of an examination whose content is defined by law. In **Latvia**, certified immovable property appraisers must satisfy statutory qualifications, including higher education, documented professional experience in property valuation and compliance with professional standards (Paragraph 4 of Cabinet Regulation No 559 of 23 September 2014). In certain cases, such as for appraiser assistants, a theoretical knowledge examination is also required (Paragraph 6). Only certified individuals are authorised to prepare valuation reports with legal effect in administrative procedures, including compensation determinations under Section 20(1) of the Law on the Alienation of Immovable Property Necessary for Public Needs. A similar integrated model applies to construction specialists. Under Sections 13(1)–(9) of the Construction Law, construction specialists, including designers, supervisors and managers, must possess a valid certificate of professional competence in order to participate in construction-related administrative procedures.



Certification, regulated by Cabinet Regulation no. 169 of 20 March 2018, is primarily based on statutory criteria such as education, professional experience, continuing professional development and compliance with professional and ethical standards. Competence assessment may involve testing or examination, but these form part of a broader evaluation process rather than constituting independent certification examinations. In **Poland**, the Real Estate Management Act specifies the requirements for obtaining qualifications in real estate valuation. These include a clean criminal record, completion of university and postgraduate studies in property valuation, a six-month internship and successful completion of an examination.

## ii. Selection of Private Individuals

The predominant method for selecting private individuals to perform delegated duties involves choosing from a list or register based on specific criteria (**Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Italy, Latvia, Lithuania, Malta, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Türkiye, the United Kingdom**). In certain countries, such as **Germany, Montenegro, Poland, Portugal, Romania, Spain and the United Kingdom**, random selection may also be employed. Additionally, in some jurisdictions, a citizen may designate a private individual through a declaration, as observed in **Croatia, Greece, Latvia, Malta, Poland, Portugal, Romania, Spain, the United Kingdom, Türkiye and Ukraine**. In specific instances, selection is determined solely by the administrative authority, as in **Estonia, the Netherlands and Romania**, or in combination with other selection methods, as in **Albania, Bulgaria, Greece, Italy, Norway, Poland, Portugal, Romania and Spain**. In the **Czech Republic**, selecting private individuals occurs through the application of private individuals seeking to be entrusted with a specific administrative task.

A prime example of the selection of private individuals from a list occurs in **Croatia**, where administrative authorities may appoint certified experts or interpreters from official registers to assist with technical matters during procedures. In **Greece**, random selection for building inspectors is implemented through a lottery system, as outlined in Article 45(2) of Law 4495/2017. In **Spain**, in some regions, citizens may freely choose an urban-planning collaborating entity to verify their documentation, provided that this entity is duly authorised. An example of the exercise of absolute administrative discretion is found in **Portugal**, where, pursuant to Article 21 of Decree-Law no. 51/2021, the appointment of honorary consuls is made by order of the member of the Government responsible for foreign affairs, upon proposal by the ambassador accredited to the respective country.



### iii. Legal Framework Governing Performance of Administrative Tasks by Private Individuals

Article 35(2) of **Switzerland's** Constitution stipulates that 'anyone [including private individuals] who undertakes a state task is required to respect fundamental rights and to contribute to their realisation'. This constitutional mandate is complemented by the Administrative Procedure Act, which obliges private individuals to observe procedural safeguards applicable to administrative authorities. These safeguards include the right to be heard, the obligation to provide reasons and the availability of remedies. Furthermore, general principles such as legality, public interest and proportionality regulate state activities. In **Sweden**, private individuals are required to adhere to the general principle of objectivity, as established in the Constitution (Chapter 1, Section 9 of the Instrument of Government). These obligations are set out in various statutes, including the Administrative Procedure Act, which prescribes requirements regarding legality, objectivity, conflicts of interest and, where decision-making powers are delegated, the right to be heard, the obligation to communicate the case file and the requirement to provide reasoned decisions.

In most countries, including **Albania, Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Montenegro, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Serbia, Türkiye and Ukraine**, the actions of private individuals performing administrative tasks are regulated by both general and specific normative acts. In the majority of these jurisdictions, codes of conduct or good practices, often considered soft law, are also applicable, as seen in **Albania, Austria, Croatia, Cyprus, the Czech Republic, Germany, Greece, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain and Ukraine**. In contrast, some jurisdictions, such as **Germany, Greece, Malta and the United Kingdom**, apply only specific normative acts and codes of conduct, rather than general ones. In **Denmark and Romania**, general normative acts and codes of conduct are in force. Furthermore, certain jurisdictions use additional legal instruments, including framework agreements between the state and professional associations in **Germany**, accreditation requirements issued by the Spanish National Accreditation Body (ENAC) in **Spain**, which function as quasi-regulatory standards and administrative contracts or concession agreements in **Croatia and Cyprus**.

Prominent examples of general normative acts governing the conduct of administrative proceedings include the following: (a) In **Croatia**, the General Administrative Procedure Act regulates the roles of participants such as experts, interpreters and other individuals involved in establishing facts or assisting the authority. The Act ensures that, even where private individuals contribute to the procedure, the process remains lawful, impartial and under the responsibility of



the competent administrative body. **(b)** In **Latvia**, the Administrative Procedure Law governs the manner in which evidence is obtained, assessed and used, including expert input provided by private individuals. Procedural safeguards under the Administrative Procedure Law ensure that input from private individuals does not replace the authority's own assessment, which retains ultimate responsibility for the evaluation of the evidence.

Specific normative acts and soft law instruments establish detailed requirements for the proper performance of duties by private individuals. For instance, in **Malta**, the provisions on Environmental Impact Assessment concerning reports submitted by qualified experts establish an implicit regulation of conduct through requirements regarding qualification, responsibility and oversight. Additionally, professional codes of conduct govern the behaviour of environmental consultants during their participation in administrative procedures. In **Latvia**, the Construction Law and related Cabinet Regulations govern the assessment and supervision of construction specialists. Certified construction specialists and certified immovable property appraisers must comply with professional ethical rules enforced by the relevant certification bodies under these Cabinet Regulations. Breaches of these ethical rules may result in disciplinary measures, including suspension or withdrawal of certification. In **Poland**, the Real Estate Management Act specifies provisions for preparing expert opinions in property valuation (Articles 149–173c). Experts in this field also follow a Code of Conduct (Rules for the Application of the Code of Professional Ethics for Property Appraisers of 8–9 December 2008, Resolution of the National Council of Experts in Property Valuation no. 23/2008).

#### iv. Guarantees of Impartiality and Integrity for Private Individuals

Legal provisions concerning incompatibilities, impediments and criminal or disciplinary liability serve to ensure the impartiality and integrity of private individuals. These provisions are present in most countries, although notable exceptions exist. For example, **Albania**, **Hungary** and **Serbia** lack incompatibility provisions, while Estonia has only incompatibility provisions. **The Czech Republic** enforces both incompatibility and liability provisions, whereas **France** applies only liability provisions. In **Sweden**, liability provisions are referenced, with the clarification that conflict-of-interest regulations are generally applicable. Lithuania extends civil liability and supervisory control to private individuals. According to **Slovenia's** report, the responsibilities of private individuals are generally equivalent to those of administrative bodies and civil servants, except that disciplinary liability is typically limited to civil servants. **Slovakia's** report indicates that impartiality and integrity are protected through constitutional and statutory measures that require natural persons acting as administrative bodies to safeguard the interests of the state and



society, as well as the rights and interests of both natural persons and legal entities and to consistently fulfil their obligations.

A notable example of incompatibility provisions is Article 10 of the **Estonian** Administrative Procedure Act, which stipulates that a person acting on behalf of an administrative authority must not participate in an administrative proceeding if they are a participant in the proceeding or act as a representative of a participant. Other grounds for exclusion include being a close relative or family member of a party to the proceedings or their representative, having a professional, service or other dependent relationship with a participant or their representative, or having any personal interest in the resolution of the matter or circumstances that may cast doubt on impartiality. In other countries, sector-specific provisions are applicable. For example, in **the Czech Republic**, individuals performing technical inspections are excluded if they engage in independent gainful activities related to the sale or repair of vehicles, or are otherwise involved in vehicle sales, while in **Portugal**, incompatibilities are provided for lawyers, trainee lawyers and solicitors cooperating with the Agency for Integration, Migration and Asylum in investigating administrative proceedings relating to the issuance and renewal of residence permits.

Regarding impediments, a relevant example is provided in **Greece**. Article 5 in conjunction with Article 6(2)(c) of Law 4449/2017 stipulates that individuals convicted by a final criminal court decision for offences, such as theft, embezzlement, fraud, extortion or forgery are ineligible for approval by the competent authorities to conduct statutory audits.

Furthermore, in **Latvia**, individuals may incur disciplinary liability, enforced by the relevant certification or accreditation bodies through measures such as the suspension or withdrawal of professional certificates for construction specialists or certified appraisers. If their conduct constitutes an offence, these individuals may also be subject to administrative or criminal liability, including for providing false information, falsifying documents, engaging in corruption or abusing trust, in accordance with applicable criminal and administrative offences legislation. In **Portugal**, Law 11/2011, which regulates the disciplinary regime for vehicle inspection activities, imposes fines for breaches of impartiality by inspection technicians or entities. As a last resort, the Institute for Mobility and Transport may order the administrative closure of the inspection centre.

#### v. Liability and Accountability of Private Individuals

Legal consequences resulting from an error, offence or failure by a private individual may include withdrawal of certification (**Austria, Bulgaria, Croatia, the Czech Republic, Finland, Germany,**



Greece, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine and the United Kingdom), disbarment from a professional association (Albania, Austria, Croatia, Cyprus, Greece, Italy, Latvia, Lithuania, Malta, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland, Türkiye, Ukraine and the United Kingdom), imposition of a fine or other penalty (Albania, Austria, Croatia, Cyprus, the Czech Republic, Finland, Germany, Greece, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine and the United Kingdom) and revocation of the administrative act in which the private individual participated (Albania, Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland, Türkiye and the United Kingdom).

In Lithuania, the temporary suspension of the right to perform administrative tasks is considered an additional consequence. Additional consequences may include personal liability of the private individual (civil, criminal or disciplinary) and civil liability of the state. Both types of liability apply in Albania, Austria, Croatia, the Czech Republic, Denmark, Finland, Germany, Greece, Italy, Latvia, Lithuania, Malta, Montenegro, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and Türkiye. Personal liability applies in Bulgaria, Cyprus, Serbia, Ukraine and the United Kingdom, while civil liability of the state applies in Estonia, Hungary and the Netherlands.

#### 4. Monitoring of Private Individuals in the Performance of Administrative Tasks: Types, Extent and Binding Effect of Administrative Checks

Nearly all countries provide supervisory mechanisms for monitoring private individuals in the performance of administrative tasks. In most jurisdictions, checks are initiated in response to a complaint, an administrative appeal, or ex officio. However, in Albania, Bulgaria and the United Kingdom, such checks are initiated only following a complaint or an administrative appeal, while in Albania and Estonia, they are conducted ex post.

In Albania and the United Kingdom, mandatory checks are conducted for all actions. In contrast, Austria, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Greece, Lithuania, Montenegro, Norway, Poland, Portugal and Slovenia employ a sampling-based approach. Both mandatory and sampling-based checks are implemented in Croatia, Italy, Latvia, Malta, the Netherlands, Serbia, Slovakia, Spain, Türkiye and Ukraine.



In all countries, checks primarily focus on the actions of private individuals. However, in several jurisdictions, including **Austria, Croatia, Cyprus, the Czech Republic, Denmark, Germany, Italy, Latvia, Lithuania, Malta, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye** and **the United Kingdom**, checks are also extended to individuals.

As regards their nature, in most countries—except **Lithuania, Poland, Portugal, Serbia** and **Ukraine**, where checks are limited to legality and **Albania**, where checks cover only appropriateness and substance—checks cover both aspects.

A further distinction concerns the legal effect of conclusions issued by private individuals. In **Austria, Croatia, Cyprus, Germany, Greece, Italy, Latvia, Lithuania, Malta, Montenegro, Norway, Poland, Spain, Switzerland** and **the United Kingdom**, such conclusions are not binding on the administration. In **Albania, the Czech Republic, Denmark, Estonia, Finland, Portugal, Serbia, Slovenia** and **Ukraine**, however, these conclusions are binding. In **Bulgaria, the Netherlands, Slovakia** and **Türkiye**, the binding effect varies depending on the legal framework and the specific powers conferred.

## 5. Judicial Review: Scope, Types of Disputes and Case Law Examples

The actions of private individuals are consistently subject to judicial review. In many jurisdictions, judicial review typically addresses these actions indirectly through appeals against a final administrative act. This is observed in **Bulgaria, Croatia, Cyprus, Denmark, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania** and **Serbia**. In some jurisdictions, including **the Czech Republic, France, Slovenia** and **Ukraine**, judicial review may directly target the actions of private individuals. Many countries provide for both approaches, as observed in **Albania, Austria, Germany, Italy, the Netherlands, Norway, Portugal, Slovakia, Spain, Sweden, Switzerland, Türkiye** and **the United Kingdom**.

In most cases, administrative disputes arise when the actions of private individuals are challenged. This occurs in **Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Sweden, Switzerland, Ukraine** and **the United Kingdom**. In some jurisdictions, both administrative and private disputes may occur. This is the case in **Albania, Austria, Croatia, Denmark, Germany, Malta, Montenegro, Serbia, Slovakia, Spain** and **Türkiye**. In **Montenegro**, criminal disputes may also arise.



Notable case law concerning the delegation of administrative duties to private individuals addresses several key issues:

**(a) The impugned act:**

In **Latvia**, the Senate has considered the initial conclusion at the environmental impact assessment screening stage—namely, whether a full assessment is required—as an intermediate step that generally cannot be challenged separately. Judicial review is instead carried out in relation to the final decision on the proposed activity. The court further stated that the purpose of the screening is to verify whether the competent authority has properly assessed the significance of the impacts, which depends on the quality of the technical documentation submitted (Senate, decision of 30 October 2012, Case no SKA-139/2012). In this regard, in **Spain**, judicial review is typically exercised indirectly through the final administrative decision, which is based on technical reports issued by authorised Control Bodies (Supreme Court, decision of 15 October 2014). However, inspection results from privately operated Vehicle Technical Inspection stations are subject to judicial review either directly—where they produce immediate legal effects—or indirectly through the final administrative act (Supreme Court, decision of 12 December 2017).

**(b) The role of private individuals as administrative authorities:**

In **the Netherlands**, the Dutch Council of State has held that the Royal Dutch Touring Club ANWB is to be regarded as an administrative authority insofar as it issues international driving licences (Council of State, decision of 11 September 2019, ECLI:NL:RVS:2019:3129). Similarly, NMi Certin, a private company, is considered an administrative authority in the exercise of its function of examining police speed-measuring devices and issuing related certificates (Council of State, decision of 24 May 2017, ECLI:NL:RVS:2017:1350). In **Greece**, the Council of State has ruled that the authority to issue a building permit belongs, in principle, to the urban planning administrative authority; however, under special circumstances, the authority of an independent engineer to issue a certificate equivalent to a building permit is not prohibited. This is the case when the following conditions are met: **(a)** the aforesaid administrative authority retains the power to investigate unauthorized construction, **(b)** the building pertains to minor works subject to environmental licensing procedure, **(c)** the State has the opportunity to submit comments and objections and, in the event of disagreement with the engineer, may appeal to the Technical Disputes Resolution Committee, and **(d)** third parties concerned are not deprived of effective judicial protection (Council of State, decision no. 2589/2014). In this regard, according to Germany's report, where the



State delegates sovereign powers to a private entity ('Beliehener') to perform public administrative tasks, that entity acts as a public authority. By contrast, where a private entity merely assists in the performance of public administrative tasks ('Verwaltungshelfer'), it does not act as a public authority.

**(c) Criteria for determining the legality of delegation:**

In decisions nos. 750–2/2023, the Plenary Session of the **Hellenic** Council of State held that the provisions of law permitting the involvement of certified professionals in the pension award procedure are not incompatible with the Hellenic Constitution. This conclusion is based on the following considerations: **(i)** These provisions, together with the contested ministerial decision, do not alter the identity of the social security provider, as the powers conferred on certified professionals are exercised within e-EFKA, a legal person governed by public law. **(ii)** Certified professionals, who are entered in a register maintained and supervised by e-EFKA, are required to complete a training programme and pass examinations in the relevant subject areas corresponding to the decisions they are called upon to draft. They possess the necessary qualifications, expertise and experience to perform their duties and are subject to enhanced liability even after the completion of their work. **(iii)** The assignment of these responsibilities to certified professionals facilitates the issuance of pension award decisions by e-EFKA, thereby ensuring that pensioners receive benefits sufficient to support a dignified standard of living. The measure is intended to expedite the award of pensions and to strengthen the Agency's pension award system pending full digitalisation; it is therefore of a temporary nature. **(iv)** Pension award decisions (whether express or implied), as acts of e-EFKA, are in principle subject to administrative appeals, in accordance with the applicable legislation, before the competent authorities; the same applies to pre-retirement certificates. **(v)** Pension award decisions are subject to mandatory sampling checks and discretionary reviews by the competent service; revocation or amendment is permitted where it is established that the certificates or draft decisions forming the basis of the pension award are incorrect or incomplete. **(vi)** Insured persons retain access to judicial protection, as pension award decisions, as well as any decisions revoking or amending them, constitute individual administrative acts and may be challenged on the merits before the ordinary administrative courts. **(vii)** The issuance of a pension award decision with the involvement of a certified professional remains, in all cases, subject to the choice of the insured person.

**(d) Limitations on delegation:**



**(i) Deriving from sectoral legislation:** As previously mentioned, according to Section 130(1) of the Estonian Planning Act, a local government may conclude an administrative contract with a person interested in the preparation of a detailed plan (i.e. a developer) for the transfer or commissioning thereof. However, such delegation is not permitted where the detailed plan is intended to amend an adopted comprehensive plan, as stipulated in Section 130(2). In its judgments of 15 December 2022 (case no. 3-20-1310) and 19 April 2007 (case no. 3-3-1-12-07), the Estonian Supreme Court addressed cases where the initial documents in the planning procedure for a detailed plan amending a comprehensive plan, including the commissioning of an assessment of the need for a strategic environmental assessment, had been ordered by the developer rather than by the local authority. The Court explained that the legislator intended to grant local governments a stronger role in the planning procedure. Where the local government itself prepares the plan or commissions its preparation, the possibility of taking different interests into account in a balanced manner may be more effective than in cases where the detailed plan is commissioned by a developer who has a direct interest in the profitability of the development activity and, consequently, in the adoption of the planning solution most favourable to that developer. In proceedings concerning a detailed plan that amends a comprehensive plan, public interests and the municipality-wide integrated solution reflected in the comprehensive plan must be afforded greater weight than usual. Accordingly, in such cases, the developer's role as preparer or as the party commissioning, the plan is prohibited.

**(ii) Regarding the 'core functions' of the State:** The **Austrian** Constitutional Court held that the delegation of functions within the core sphere of State activity—specifically the administration of State funds involving significant political discretion—to the COVID Financing Agency (COFAG), a specially established private entity responsible for managing State financial assistance during the COVID-19 pandemic, would constitute the exercise of inherent sovereign powers. According to the Court's case law, such delegation is constitutionally prohibited (Constitutional Court, 5 October 2023, case no G 265/2022). In contrast, the Court found that legal advice and representation provided by the Federal Agency for Reception and Support Services GmbH, a State-controlled limited liability company responsible for initial reception services and legal support for asylum seekers, does not form part of State administration as such. Accordingly, the delegation of these tasks is compatible with Article 20(1) and (2) of the Federal Constitutional Law (Constitutional Court, 4 December 2023, case no. G 328/2022).

The **Estonian** Supreme Court reviewed a provision of the Public Transport Act permitting a private company, under an administrative contract with the State, to verify passengers' possession of valid public transport tickets and to impose fines for non-compliance. The Court held that punitive



authority is a 'core State function' which cannot be delegated to private entities under any circumstances. Consequently, it declared the provision authorising a private company to impose fines for misdemeanours unconstitutional (Supreme Court, 16 May 2008, case no. 3-1-1-86-07). The Court further held that the administration of imprisonment likewise constitutes a core State function that cannot be delegated to private individuals under any circumstances (Supreme Court, 4 February 2026, case no. 3-25-144).

The **Hellenic** Council of State held that police power, as the highest form of public authority and an expression of sovereignty, is exercised through the police authority exclusively by the State and legal persons governed by public law, and not by private individuals (Council of State, Plenary Session, decisions nos. 1934/1998, 15 and 16/2015, etc.). Furthermore, the Court has held that, given the public purpose of ensuring that employees enjoy a standard of living comparable to that enjoyed during their working life, it is justified under Article 22(5) of the Constitution ('The State shall care for the social security of working people, as specified by law') to establish a compulsory social security system (through the obligation to pay insurance contributions) and, consequently, to provide social security benefits exclusively by the State or by legal persons governed by public law. The allocation of compulsory social insurance, both main and supplementary, to public bodies under this constitutional provision serves the public interest, in particular by guaranteeing the protection of insured persons and contributors against the commercial risks associated with private insurance entities (Supreme Special Court, decision no. 87/1997; Council of State, Plenary Session, decisions nos. 5024/1987, 1889/2019, 1890/2019, 750-752/2023, etc.).

The Constitutional Court of **Türkiye** held that, within the scope of zoning enforcement, the authority to grant or refuse building permits, or to suspend or demolish buildings, is vested in local administrations. The contested regulation did not authorise building inspection organisations to perform administrative acts. Rather, these organisations are tasked with conducting technical examinations and submitting reports, opinions and information to the relevant authorities, without exercising public power. Consequently, the services provided by building inspection organisations do not constitute the principal and permanent duties that the State must perform under the principles of general administration. On this basis, the Court concluded that the contested provisions did not violate Articles 127 and 128 of the Constitution (Constitutional Court, 26 June 2002, decision no. 2001/377, 2002/59). Similarly, the Court determined that the following tasks cannot be delegated to private individuals: **(i)** firefighting services (Constitutional Court, 26 June 2019, decision no. 2019/27, 2019/56); **(ii)** the granting of permits for the production, import and export of seed, seed certification, authorisation and supervision of seed production activities, inspection of seed compliance with market standards and verification of label and packaging

accuracy (Constitutional Court, 13 January 2011, decision no. 2007/2, 2011/13); and (iii) the examination and inspection, within the scope of licences, of electricity generation facilities and other facilities producing electricity (Constitutional Court, 5 July 2012, decision no. 2011/27, 2012/101).

**(e) The permissibility of sub-delegation:**

According to **Finland's** report, in principle, a restrictive approach should be adopted with regard to the further transfer of an administrative task to a private entity (sub-delegation). However, sub-delegation was not considered problematic under Section 124 of the **Finnish** Constitution in a case where a private service provider arranged for passport delivery through another service provider. This arrangement was deemed acceptable because the task was primarily technical, the National Police Board had approved the subcontractor and the subcontractor was subject to the same legal quality standards and requirements as the original provider. In such circumstances, subcontracting may be justified on grounds of expediency.

**(f) The evaluation of reports issued by private individuals:**

According to **Croatia's** report, in cases involving administrative decisions based on medical or technical evaluations by private experts, such as in health, pension, planning, or technical inspection matters, litigants may argue that the authority has improperly relied on such reports. Administrative courts subsequently examine whether the authority adhered to procedural rules and appropriately assessed the evidence in determining the legality of the act. This approach embodies the principle that, when reviewing administrative acts, courts must verify that all relevant legal requirements, including the proper use of expert evidence, have been satisfied. In addition, courts recognize that expert opinions are not binding on them and can be weighed like any other evidence. They may consider whether the authority fairly evaluated the expert's conclusions and whether the authority's decision based on that evidence meets the minimum legal requirements. Accordingly, in **Latvia**, the Senate has determined that a valuer's assessment constitutes evidence that is subject to judicial evaluation. If there are grounds to question the commission's opinion or a certified valuer's valuation, the court is not obligated to accept it and must independently determine the compensable value using procedural instruments (Senate, judgment of 30 August 2019, case no. SKA-603/2019). In **Poland**, the Supreme Administrative Court has held that an expert preparing property valuation evidence is not required to notify the parties to the proceedings of the property inspection. An on-site inspection by the expert does not require the presence of the landowner in order to be admissible or effective (Supreme

Administrative Court, decision of 5 August 2025, case no. I OSK 1541/22). In another judgment, the Court emphasised that, in the event of any doubts as to the correctness of a valuation report, the public authority must take all necessary measures to dispel those doubts. The only fundamental limitation in this respect is that it is impermissible for the authority to determine the value of the property on the basis of evidence other than an expert valuation report (Supreme Administrative Court, decision of 2 March 2018, case no. I OSK 2154/17).

#### (g) State liability:

The **Portuguese** Supreme Administrative Court has held that the State is not liable for delays in the administration of justice caused by the inaction of an enforcement administrator where such administrator is a private entity responsible for carrying out part of the enforcement proceedings (Supreme Administrative Court, decision of 3 July 2025, case no. 0909/23.3BELRA).

## 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. Key Objectives of Recruitment of External Senior Managers

In most countries, senior managers may be recruited from outside the civil service hierarchy. **Cyprus** clarifies, however, that although private individuals can apply for positions in the higher ranks of the civil service, appointees are classified as public officers.

The primary objectives of the recruitment of external senior managers include transferring private-sector experience into public administration (e.g. **Albania, France, Germany, Latvia, Luxembourg, Malta, the Netherlands, Spain, Switzerland, Türkiye, Ukraine**), diversifying and enhancing workforce expertise (e.g. **Finland, France, Montenegro**) and supplementing the civil service with external professional competence, managerial skills and contemporary organisational practices (e.g. **Croatia, Latvia, Montenegro, Poland, Switzerland**). Concurrently, public-law accountability and performance control are maintained (e.g. **Croatia, Lithuania, Malta, Ukraine**). Therefore, such recruitment aims to improve efficiency and effectiveness (e.g. **Belgium, Denmark, Greece, Italy, Latvia, Lithuania, Malta, Montenegro, the Netherlands, Poland, Slovakia, Spain, Switzerland, Türkiye**), increase organisational flexibility (e.g. **Belgium, Germany, Malta, Spain, Türkiye**),



strengthen public–private cooperation (e.g. **Spain**), align public management with private management parameters (e.g. **Portugal**) and ensure the implementation of a democratic governance approach in Public Administration (e.g. **Türkiye**). Reports from **Bulgaria**, **Croatia** and **Luxembourg** identify the recruitment of external senior managers as a key aspect of modernisation of Public Administration.

## ii. Sectors for Recruitment of External Senior Managers

In some countries, including **Albania**, **Bulgaria**, **Denmark**, **Luxembourg** and **the Netherlands**, there is no general prohibition on which sectors of the Public Administration may recruit external senior managers, unless specific exceptions apply. In some cases, such as in **Greece** and **Poland**, recruitment is permissible only if justified by the particular nature, the specific mission and the responsibilities of a certain service or position. In **the Netherlands**, authorities must justify the need for external expertise and demonstrate that expertise is unavailable within the civil service. Similarly, in **Germany**, among other requirements, documentation of the need for external expertise must be provided.

In several countries, such recruitment is prohibited or restricted in certain sectors of Public Administration, particularly where sovereign authority is exercised. In **Croatia**, the recruitment of senior managers from outside the civil service hierarchy is generally allowed in sectors where management functions are organised through public institutions, agencies, or contractual arrangements rather than classic state administration. In contrast, such recruitment is generally prohibited or strongly restricted in sectors that involve the direct exercise of core public authority and sovereign administrative powers (e.g. ministries and government offices, bodies exercising authoritative decision-making powers or judicial and law enforcement administration). Similarly, in **Lithuania**, the recruitment of external senior managers is permitted in public institutions and public enterprises, but is generally prohibited in bodies exercising sovereign authority (that is, bodies exercising public-law powers enabling the adoption of unilateral, binding administrative decisions or the application of coercive measures). In **Malta**, recruitment of external senior managers is generally restricted to core civil service departments, the police, the armed forces and judicial administration. In **Montenegro**, in the sectors of internal affairs, security and defence, management functions are strictly related to the status of an official and the engagement of external managers in those areas is practically excluded. In that regard, in **Switzerland**, certain sovereign tasks, such as national defence or foreign relations, cannot be assigned to external senior managers.

In other countries, the permissibility of external recruitment depends primarily on the nature of the administrative action or the specific position involved. In **Germany**, external personnel are prohibited from participating in the drafting of legislation or other legal acts, management or leadership functions, senior management or central control unit positions, roles with final decision-making authority, functions that directly affect the interests of the entity involved (including supervisory roles) and positions related to public procurement. In the **Czech Republic**, such recruitment is generally prohibited for standard 'service posts', though exceptions apply to Deputy Ministers and specific technical posts in bodies not fully covered by the Civil Service Act. In **Estonia**, senior managers in state and local government bodies are civil servants, whereas only executives of public law legal persons do not belong to the civil service hierarchy. In **France**, certain positions classified as 'at the government's discretion' (prefects, ambassadors, heads of public enterprises and heads of independent administrative authorities) and directors within the central administration allow for external recruitment. Similarly, in **Spain**, external managers may occupy roles in general management, strategic leadership, technical and specialised sectors and advisory and coordination positions.

### iii. Criteria for the Selection of External Senior Managers

In numerous cases, the selection of external senior managers is based on objective criteria (e.g. **Bulgaria, Croatia, Sweden**) and adheres to open procedures (e.g. **Albania, Latvia, Sweden**—with prescribed exceptions—**Switzerland, the United Kingdom**), guided by the principles of equality (e.g. **Bulgaria**), neutrality (e.g. **Germany**), transparency and meritocracy (e.g. **Croatia, Latvia, Malta, Sweden, the United Kingdom**). Key criteria include: (a) relevant experience and expertise (e.g. **Belgium, Croatia, Denmark, Estonia, France, Germany, Greece, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Spain, Montenegro, Ukraine, the United Kingdom**); (b) professional qualifications and education (e.g. **Croatia, Estonia, Finland, France, Latvia, Luxembourg, Montenegro, Portugal, Romania, Spain, Switzerland, Ukraine**); (c) administrative capacity, organisational skills and leadership abilities (e.g. **Finland, Italy, Latvia, Malta, Portugal, Spain, Switzerland, Ukraine, the United Kingdom**); (d) integrity (e.g. **Latvia, Lithuania, Malta, Montenegro, Spain**), including the absence of criminal convictions, as required in **Croatia, Romania** and **Ukraine**; (e) the nationality of a European Union Member State (e.g. **Luxembourg**) or national citizenship (e.g. **Luxembourg**—for positions that involve direct or indirect participation in the exercise of public authority or are designed to safeguard the general interests of the State or other public-law entities—**Romania, Ukraine**); and (f) other factors, such as proven social value in **Finland** or previous achievements in **Italy**.



#### iv. Nature of Duties of External Senior Managers

In **Albania, France, Latvia, Serbia and Ukraine**, external senior managers are assigned decision-making responsibilities. Conversely, in **Denmark, the Netherlands, Romania and Slovakia**, external senior managers are limited to advisory roles. In the majority of countries, including **Bulgaria, Croatia, the Czech Republic, Germany, Greece, Italy, Lithuania, Malta, Poland, Portugal, Spain, Switzerland, Türkiye and the United Kingdom**, external senior managers are tasked with both decision-making and advisory duties. In **Luxembourg**, the nature of these duties depends on the specific tasks assigned. In several countries, such as **Croatia, Germany, Latvia, Lithuania, Malta, Portugal, Spain and the United Kingdom**, additional responsibilities may be assigned. For example, in **Latvia**, external senior managers, in addition to decision-making duties, perform managerial and supervisory functions, including strategic planning, coordination and oversight of institutional activities, rather than serving solely in advisory roles. In **Malta**, additional tasks for external senior managers include supervisory and monitoring responsibilities, representing the authority, implementing projects and overseeing contracts and procurement, while in **Lithuania**, external senior managers are primarily responsible for managerial and organisational functions.

#### v. Liability of External Senior Managers

In almost all countries, an error by a senior manager may result in both civil liability for the state and personal liability for the manager, including civil, criminal, or disciplinary consequences.

## 2. Organisational Models

### i. Types of Organisational Models

Digital Era Governance and New Public Management (NPM) are the predominant approaches to organising Public Administration in most countries, whereas Public Value Management and New Public Governance policies are implemented to a more limited extent. Even when these models are not explicitly referenced (as in **Norway, Slovenia and Sweden**), the overarching objective remains consistent: *'to have an innovative and collaborative [...] administration that is in compliance with the rule of law and [is] efficient [with] well-developed quality, service and accessibility ...'* (see **Sweden's** report).

Nearly all countries have adopted Digital Era Governance policies, implementing digital management systems to *'simplify procedures, reduce administrative burdens, improve public service*



*accessibility and ensure transparency and traceability of administrative actions'* (see, in particular, the wording of **Latvia's** report). For example, in 2022, **Albania** adopted the Cross-sectional Strategy 'Albania's Digital Agenda' and an Action Plan for 2022–2026, which aims to promote investment in advanced information technologies, data processing, artificial intelligence (AI), cybersecurity and the digital skills required to develop these fields. Digital Public Administration includes the deployment of e-services for citizens, such as electronic identification and e-signature systems (e.g. **Albania, Croatia, Latvia, Poland, Portugal, Spain**), electronic notifications (e.g. **Spain**), residence registration (e.g. **Austria, Croatia**), applications for criminal record transcripts or other certificates (e.g. **the Czech Republic**), access to criminal records or insurance data (e.g. **Austria**), as well as to spatial and environmental data services (e.g. **Bulgaria**) and online submission of annual personal income tax returns (e.g. **Poland**). Furthermore, interoperability systems have been established to facilitate service integration among various Public Administration entities (e.g. **Albania, Bulgaria, Croatia, Italy, Latvia, Portugal, Spain**).

Despite criticism of NPM, particularly regarding the adoption of private-sector objectives in Public Administration, as highlighted in the 2023 analysis commissioned by **Estonia's** Ministry of Finance and in a recent public debate in **the Netherlands**, this organisational model remains widely implemented. NPM policies include the evaluation of public servants in **Austria, Greece, Hungary, Luxembourg** (where the appraisal system was abolished on 1 January 2023, except for probationary civil servants and state employees during the induction period), **Portugal, Spain** and **Ukraine**. They also encompass setting annual targets for directors and heads of public institutions that influence their allowances (e.g. **France**) and applying private labour law principles in Public Administration, such as transitioning to individual contracts and introducing collective bargaining (e.g. **Italy**). Other key components include outsourcing expertise (e.g. **the Netherlands**), utilising private entities for inspections (e.g. **Spain**) and implementing budget management measures in countries, such as **Germany, Latvia, Spain** and **Ukraine**.

An additional aspect of NPM in **Portugal** is that the establishment or transformation of a higher education institution into a public foundation governed by private law, with government approval, is contingent upon a proposal accompanied by a study on the implications of this institutional transformation for the organisation, management, financing and autonomy of the institution or its organisational unit. Moreover, in **Austria**, the introduction of new laws or administrative acts requires evaluation not only of financial aspects but also of factors such as gender equality, environmental protection and consumer protection. This process reflects the implementation of NPM in conjunction with Public Value Management.

Prominent examples of the Public Value Management approach can be found mainly in **Croatia** and **Spain**. In **Croatia**, strategic policy documents identify citizen satisfaction and service quality as key performance indicators. Furthermore, participation mechanisms, such as public consultations on action plans and digital initiatives, are designed to align with citizen expectations. In **Spain**, notable initiatives associated with this model include the Transparency Law of 2013, the development of open-data portals, participatory budgeting in major cities, the introduction of service charters and the implementation of impact evaluations.

The New Public Governance model has been primarily implemented in countries including **Italy**, **Malta**, **Poland** and **Spain**. In **Italy**, the collaborative principles underpinning this model have been developed predominantly at the local level, with limited adoption at the national level. In **Malta**, the approach is reflected in public-private partnerships, co-regulation and stakeholder participation. In **Poland**, participatory budgeting in numerous cities enables citizens to decide on the allocation of a portion of the municipal budget. In **Spain**, networked governance and multi-level coordination among the State, Autonomous Communities and municipalities are evident through sectoral conferences, shared management of European Union funds, public-private collaboration in innovation and the co-production of social services with Non-Governmental Organisations and private actors.

## ii. Provisions Governing the Organisation of Public Administration

Most countries lack constitutional or statutory provisions that explicitly reference the aforementioned approaches. Nevertheless, elements of these approaches are incorporated into legislative acts as well as strategic and policy documents. **Belgium**, **Finland**, **Greece**, **Portugal**, **Slovenia** and **Switzerland** possess relevant constitutional provisions; however, none explicitly refer to the models mentioned previously.

More specifically, according to Belgium's report, and in accordance with the consistent case law of the Constitutional Court and the Council of State, Article 107(2) of the Constitution, read in conjunction with Article 37, establishes a rule for the distribution of powers between the federal legislative authority and the federal executive authority with regard to the adoption of rules relating to the federal public administration. In this context, these provisions constitute the basis for the King's autonomous regulatory power to determine the status of the persons referred to in Article 107(2) of the Constitution (positions in the general administration and foreign relations and other positions). However, intervention by the legislature is permitted: **(a)** where it is expressly required by the Constitution itself, on a specific matter or with regard to a specific category of civil

servants; **(b)** exceptionally, where the regulation concerns issues relating to fundamental rights, including those of the staff members referred to in Article 107(2) of the Constitution or Article 87 of the Special Institutional Reform Act, which, with regard to officials of the Communities and Regions, constitutes its equivalent; **(c)** where it is justified by exceptional circumstances (Council of State, Legislative Section, Opinion No. 71.456/1 of 10 June 2022). In addition, Sections 119-126 of the **Finnish** Constitution regulate the organisation of Public Administration. Article **103** of the **Hellenic** Constitution stipulates that, as a general rule, Public Administration positions are to be filled by permanent civil servants, but it also allows, by exception, for the employment of personnel under private law contracts in specific circumstances, such as to address unforeseen and urgent needs (paragraph 2(b)) or to provide specialised scientific, technical, or support services (paragraph 3). Pursuant to paragraph 5 of the same Article, specific categories of employees who hold permanent positions outside the civil service hierarchy and are linked by a relationship of trust to the political leadership may be exempted from permanency. In **Portugal**, although the Constitution does not employ the term 'digitalisation', it establishes principles that render debureaucratisation and digitalisation constitutional obligations. In that regard, Article 81(c) stipulates that the state must ensure the efficiency of the public sector, while Article 267 emphasises the reduction of bureaucracy. Article 122 of the **Slovenian** Constitution states that employment in the State Administration is possible only on the basis of open competition, except in cases provided by law. Article 170 of the **Swiss** Constitution requires the Federal Assembly to ensure that the effectiveness of measures implemented by the Confederation is evaluated. This mandate, which also extends to the Federal Council and the Federal Administration, has significantly encouraged the adoption of measures to improve the evaluation of the Confederation's activities.

### iii. Public Services and Agencies Applying Modern Organisational Models

In most countries, the aforementioned organisational types are implemented within the administration *stricto sensu*, public enterprises and other public entities. This is observed in **Croatia, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, Poland, Portugal, Slovakia, Spain** and **Türkiye**. In certain countries, these organisational types are applied to both the administration *stricto sensu* and public enterprises, but not to other public entities. This occurs in **Albania, Austria, Bulgaria, Estonia, France, Greece** and **Ukraine**. In the **Czech Republic, Denmark, Finland, Hungary, Romania** and **Switzerland**, implementation is restricted to the administration *stricto sensu*.

### iv. Design of Policies to Achieve Objectives



In most countries, policies to achieve defined objectives are developed at the national level and/or by subject matter. This approach is observed in **Albania, Austria, Bulgaria, Croatia, Estonia, Germany, Greece, Latvia, Lithuania, Malta, Montenegro, the Netherlands, Poland, Portugal, Slovakia, Spain, Switzerland, Türkiye** and **Ukraine**. In the **Czech Republic, Denmark, Finland, Hungary, Romania** and **Serbia**, policies are designed at the national level without consideration of subject matter. **Austria, Germany, the Netherlands, Poland, Portugal, Slovakia, Spain** and **Türkiye** also develop regional-level policies, with the possibility of taking subject matter into account. **Slovenia** and **Serbia** set regional policy objectives without emphasising subject matter. In **Bulgaria, Croatia, Estonia, Germany, Greece, Latvia, Lithuania, Malta, Montenegro, the Netherlands, Poland, Portugal, Spain** and **Switzerland**, specific public entities are also considered. **Italy** develops such policies at the national level and/or by specific public entities, whereas **France** is the only country where objectives are set solely by a public entity.

Overall, the most common approach is to set policies at the national level and/or by subject matter. A smaller group of countries, including **Germany, the Netherlands, Poland, Portugal** and **Spain**, applies policies extensively at both national and regional levels, taking into account subject matter and specific entities. In contrast, **Serbia** and **Slovenia** develop policies at both national and regional levels, but with a more limited emphasis on subject-matter differentiation and the role of specific entities. **France** has the most targeted approach, adopting a public entity-driven model.

#### v. Definition and Evaluation of Objectives for Administrative Action

Nearly all countries have established specific objectives for administrative actions, primarily aimed at the full digitisation of Public Administration and the enhancement of the civil service. In **Albania**, objectives include not only the registration, simplification and standardisation of processes, but also the integration of technological applications and innovations. Anticipated outcomes include adapting the e-Albania government platform and official websites to ensure accessibility for persons with disabilities by 2025, as well as transforming all government institutions into 'paperless' units. In **Belgium**, strategic plans and operational plans are provided. Each public service sets out, in an annual operational plan, the implementation of the strategies and corresponding objectives set out in the strategic plan, as well as the delivery of the priorities set out in the annual policy statements of the relevant ministers and/or secretaries of state. To this end, the annual operational plan includes, amongst other things, 'a SMART (specific, measurable, achievable, realistic and time-bound) description of the operational objectives, as well as the resources allocated for this purpose'. Every holder of a management position is assessed every two

years during their term of office. These interim and final assessments focus, amongst other things, on the achievement of the strategic or operational objectives set out in the strategic and operational plans, for which the holder of the management position is responsible. The **Czech Republic** aims to implement a fully digitised case file system in Public Administration, which would be electronically accessible to the courts. **Switzerland's** New Model of Public Management, inspired by NPM, seeks to strengthen budgetary management by building on the debt brake and new accounting model, introducing budgeting and medium-term financial planning that prioritise services and results and optimising cost-effectiveness and efficiency within the Federal Administration.

Specific objectives are established within sectoral frameworks. In **France**, the public body responsible for the reception and integration of foreign nationals, under the Ministry of the Interior, sets targets for its Director-General, including response times for language training requests, processing times for asylum seekers and the reduction of vacant places in accommodation for asylum seekers. In **Portugal**, the 'Simplex Urbanístico' (2024) initiative aims to reduce housing licensing times by eliminating building and use permits for common cases and implementing tacit approval. In **Greece**, the Regulatory Authority for Waste, Energy and Water has defined objectives for resource management. In **Slovenia**, the Energy Act outlines various principles and goals, such as the principle of cost-effectiveness.

Achievement of the defined objectives is mandatory in nearly all countries. In **Switzerland**, implementation is not legally binding but may involve a certain degree of political obligation. According to reports from **Germany, Slovakia** and **Türkiye**, achievement of objectives can be either optional or mandatory.

Failure to meet these objectives may result in personal consequences for senior managers, as well as legal and financial consequences for the assessed organisation. This framework applies in **Croatia, Latvia, Lithuania, Malta, Slovakia** and **Spain**. In **Germany**, both personal consequences for senior managers and financial consequences for the assessed organisation may arise. In **Serbia** and **Slovenia**, personal consequences for senior managers and legal consequences for the assessed organisation are possible. In **France** and **Türkiye**, only personal consequences for senior managers are provided. In **Romania** and **Ukraine**, only legal consequences for the assessed organisation apply. In **Estonia, Italy, the Netherlands** and **Portugal** (in some cases), only financial consequences for the assessed organisation may occur. In **Switzerland**, there are no direct or automatic consequences if objectives or targets are not met; however, in some cases, the relevant bodies must provide explanations to Parliament. In **Luxembourg**, these objectives serve as a roadmap, and their



achievement depends on various socio-economic factors and political circumstances—there are currently no plans to impose legal consequences for failure to meet these policy objectives. No consequences apply in the remaining participating countries.

Various forms of incentives, such as remuneration, are provided to civil servants or public entities in **Albania, Austria, Bulgaria, Croatia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Montenegro** (to a limited extent for civil servants and mostly indirectly for legal entities), **Poland, Slovakia, Spain, Switzerland** and **Ukraine** to support the achievement of administrative objectives. In **Estonia**, variable salaries may be awarded as performance payments, additional compensation for extra duties, or bonuses for exceptional service-related achievements. The decision to use such incentives to advance the administrative authority's objectives is at management's discretion. **Luxembourg** notes that determining the use of incentives is challenging, as it depends on internal remuneration policies specific to each department and the responsibilities assigned to individual public servants.

#### vi. Indicators for the Evaluation of Administrative Action

In most countries, including **Albania, Austria, Bulgaria, Croatia, Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Switzerland** and **Türkiye**, indicators are employed to evaluate administrative actions with respect to compliance with the regulatory framework, effectiveness, efficiency, economy and the achievement of strategic objectives. **Montenegro** uses these indicators, except for effectiveness, whereas in **Sweden**, indicators are used specifically to assess compliance with the regulatory framework, effectiveness and the achievement of strategic objectives. In **Romania**, the indicator used pertains to compliance with the regulatory framework. **Ukraine** applies indicators to evaluate effectiveness, efficiency and the achievement of strategic objectives. Furthermore, **Croatia, Lithuania, Malta, Spain** and **Switzerland** utilise indicators that address additional factors. For instance, **Lithuanian** legislation and implementing instruments incorporate indicators related to service quality. In **Malta**, relevant indicators include citizen satisfaction indices, transparency and accountability measures, digital service uptake rates and staff training and development metrics.

### *Part II : Alternative Methods for resolving Administrative Disputes*

Over the past decades, a lively debate has taken place in the field of public law as to whether administrative disputes may be subject to alternative dispute resolution mechanisms, such as



settlement, mediation and arbitration, that is to say, extrajudicial means of dispute resolution. The advantages of such an approach are undeniably numerous: more flexible, less costly, faster and simpler resolution of disputes, the reduction of court caseloads, the promotion of good relations between citizens and the Public Administration, etc.

However, unlike private-law disputes, administrative disputes generally arise within legal relationships created through the exercise of public authority powers in the service of the public interest. For this reason, the question whether administrative disputes may, by their very nature, be subjected to negotiations conducted through procedures escaping the supervision of the administrative courts remains highly controversial. Recourse to alternative dispute resolution mechanisms in administrative disputes must not result in circumventing the principle of legality or excluding judicial review.

The fundamental issue, both theoretically and practically, concerns the parties' freedom to dispose of the subject matter of an administrative dispute, namely whether the subject matter of an administrative dispute may be left to the absolute discretion of the parties. Naturally, this is not merely a question of legality, since the legislature, subject to constitutional or European provisions, may in any event submit a category of administrative disputes to alternative dispute resolution mechanisms. It is primarily a question of expediency, namely whether it is appropriate to submit a particular category of administrative disputes to alternative dispute resolution mechanisms. In any case, if such recourse is permitted in principle, the question arises as to which specific categories of administrative disputes may be subject to alternative forms of resolution. For example, does this concern only disputes of a pecuniary nature, or also disputes in which the legality of an administrative act is challenged? Another issue is whether this is permissible only where the Public Administration acts pursuant to discretionary powers, or also where it acts under a situation of bound competence. Likewise, under what conditions should such procedures be conducted? Must the fundamental principles and guarantees of a fair trial (independence and impartiality of mediators or arbitrators, equality of arms, transparency, etc.) be ensured?

We received interesting responses to these questions, which we shall endeavour to present below in a concise and synthetic manner, referring to concrete examples.

The majority of countries replied that alternative dispute resolution mechanisms, such as conciliation, mediation and arbitration, do not apply to certain administrative disputes, such as tax litigation (**Germany, Belgium, Spain, Hungary**; by contrast, **Cyprus and Luxembourg**), electoral disputes (**Lithuania, Ukraine, Hungary**), disciplinary proceedings (**Germany, Hungary**), disputes



relating to the remuneration of civil servants (**Germany**) or the allocation of public jobs (**Belgium**), disputes in which the legality of regulatory acts (**Lithuania, Ukraine**) or individual administrative acts (**Croatia**) is challenged, cases in which the Public Administration does not act on a discretionary basis (**Slovenia, Latvia**), disputes relating to fundamental rights (**Croatia, Slovenia, Spain, Malta**) or to the rights of third parties (**Latvia, Ukraine, Slovenia**), disputes raising issues concerning the interpretation of constitutional law or public law in general, as well as disputes relating to the exercise of public authority powers (**Malta**). By contrast, alternative dispute resolution mechanisms are, in principle, permitted for disputes arising from contracts concluded between the State and private persons (**Croatia, Finland, Estonia**).

As is apparent from the replies to the first question, the national legislature's choice to subject or exclude a certain category of administrative disputes from alternative dispute resolution mechanisms depends primarily on the parties' freedom to dispose of the subject matter of those disputes. All the above-mentioned criteria, such as the exercise of public authority powers, the protection of the public interest, the Public Administration acting under bound competence, or the Public Administration's regulatory activity, revolve around the absence of freedom to dispose of the subject matter of the dispute.

#### A. Settlement

Settlement in administrative disputes is generally recognised in most countries (**Albania, Germany, Belgium, Bulgaria, France, Denmark, Greece, Estonia, Italy, Spain, Croatia, Cyprus, Latvia, Lithuania, Malta, Hungary, the Netherlands, Portugal, Romania, Türkiye, Norway, Switzerland, Ukraine, the United Kingdom, Slovenia**). Nevertheless, the number of countries having answered in the negative is not negligible (**Austria, the Czech Republic, Finland, Sweden, Serbia, Luxembourg, Poland, Slovakia, Montenegro**).

The possibility of resorting to settlement is generally recognised through a specific statutory provision (**Belgium, Germany, Greece, Croatia, Cyprus, Estonia, Hungary, Latvia, Romania, Slovenia, Spain, Türkiye, Ukraine**). However, it may also derive from a general principle of law (**Denmark, Malta, Italy, the Netherlands, the United Kingdom**) or from case-law (**France**).

The legislature does not recognise the possibility of settlement only in the context of disputes pending before the courts (**Albania, Croatia, Estonia, Lithuania**), but also as a non-contentious procedure aimed at avoiding litigation (**Belgium, Bulgaria, Denmark, Greece, Cyprus, France,**



**Italy, Latvia, Malta, the Netherlands, Romania, Slovenia, Spain, Switzerland, the United Kingdom, Hungary, Portugal, Ukraine).**

In several countries, special provisions govern settlement procedures (**Albania, Germany, Bulgaria, Greece, Croatia, Denmark, Estonia, Hungary, Italy, Spain, Latvia, Lithuania, Malta, Slovenia, Türkiye, Norway, Switzerland, Ukraine**), whereas in others the procedure to be followed may be left to the sole discretion of the parties (**Italy, Latvia, Ukraine**).

Moreover, a specific procedure is sometimes provided only for judicial settlement (**Portugal**) or, conversely, only for extrajudicial settlement (**Slovenia**). In other countries, no special procedure is prescribed and recourse to settlement is left to the discretion of the parties (the **Netherlands, the United Kingdom**).

Settlement agreements must sometimes be approved by a court (**Belgium, Bulgaria, Croatia, Estonia, Hungary, Lithuania, Slovenia, Ukraine**), particularly where the agreement is reached extrajudicially (**Bulgaria, Greece, Portugal, Slovenia, Lithuania**), whereas in other cases such approval is not required (**Albania, Germany, Cyprus, Denmark, Italy, Latvia, Malta, the Netherlands, Romania, Spain, Norway, Switzerland, the United Kingdom**).

Settlement agreements may be subject to judicial review. However, such review is limited to legality and does not extend to the merits (**Ukraine, Slovenia, Portugal**), and is admissible only on specific grounds, such as: (a) compliance with the applicable procedure (**Albania, Bulgaria, Malta**); (b) the existence of clear obligations for the parties (**Albania**); (c) the fact that the agreement infringes the law or public morals (**Bulgaria, Malta, the Netherlands, Portugal, Spain, Ukraine**) or the rights of third parties (**Ukraine**); (d) the fact that it is contrary to the public interest (**Spain**); (e) lack of consent, competence or authority of representation (**Bulgaria, Italy, France, Cyprus, Malta, the Netherlands, Ukraine, the United Kingdom, Slovenia**); and (f) the fact that it results from fraud or coercion (**Malta, Latvia, the Netherlands, the United Kingdom, Slovenia**).

Once signed or approved, settlement agreements generally constitute enforceable instruments binding upon the parties (**Albania, Bulgaria, Greece, Croatia, Malta, Estonia, Hungary, Latvia, Slovenia, Lithuania, the United Kingdom**). According to one approach, they acquire res judicata effect only if approved by a court (**Romania, Malta, Ukraine, Norway, Lithuania**), whereas according to another they do not possess the authority of res judicata, although their enforcement may be sought before a court (**Cyprus, the Netherlands, Spain**).

Jurisdiction in matters relating to the enforcement of settlement agreements is determined by the nature of the dispute; in some cases, the administrative courts have jurisdiction (**Bulgaria, Croatia, Estonia, France, Italy, Latvia, Hungary, Portugal, Spain**), while in others jurisdiction lies with the civil courts (**Denmark, Lithuania, Malta, the Netherlands, Cyprus**), even where the settlement has been approved by an administrative court.

Finally, where settlement is not permitted in administrative disputes, such prohibition is sometimes laid down by a specific statutory provision (**Bulgaria, Croatia, Poland, Slovakia**) and sometimes by a general principle of law (**Austria, the Czech Republic, Finland, Malta**).

In conclusion, it may be argued that settlement, as a means of resolving administrative disputes, has become established in many national legal systems. Its recognition on the basis of a specific provision or a general principle of law depends on the prevailing tradition within each legal order.

Its recognition is primarily driven by the intention to avoid litigation. The legislature does not merely recognise the possibility of submitting an administrative dispute to settlement, but generally establishes a specific framework governing the relevant procedure, rather than leaving it entirely to the discretion of the parties. Although judicial approval of settlement agreements is not always required, such agreements nevertheless remain subject to judicial review. Judicial review of settlement agreements, even where limited and based on specific grounds, constitutes a fundamental safeguard aimed at ensuring compliance with the principle of legality and protecting the public interest as well as the rights of third parties. Finally, settlement agreements constitute enforceable instruments binding upon the parties, who may apply to the courts in order to secure their enforcement. In other words, while the legislature recognises settlement in administrative disputes as an extrajudicial means of resolution, it does not remove it entirely from judicial supervision.

## **B. Mediation**

In certain countries, mediation is permitted in administrative disputes (**Albania, Belgium, Germany, Bulgaria, France, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Norway, Switzerland, Ukraine**), whereas in others it is not (**Austria, Cyprus, Denmark, Estonia, Greece, Croatia, Latvia, the Czech Republic, Finland, Slovakia, Slovenia, the United Kingdom, Spain, Sweden, Serbia, Montenegro and Türkiye**).



Where permitted, mediation is generally provided for by a specific statutory provision (**Germany, Belgium, Bulgaria, France, Hungary, Ukraine, Luxembourg, Poland, Portugal, Romania, Norway, Switzerland**). However, it may also derive from a general principle of law (**Italy, Malta, the Netherlands**).

Recourse to mediation is predominantly voluntary (**Germany, Belgium, Bulgaria, Italy, Lithuania, Luxembourg, Hungary, the Netherlands, Poland, Portugal, Romania, Switzerland, Ukraine**), although in some cases it may be mandatory (**France, Malta, Norway**).

Mediation is primarily based on the mutual agreement of the parties (**Belgium, Germany, Bulgaria, France, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Switzerland, Ukraine**). On the State's side, the competent authority is the administrative body directly involved in the dispute (**Belgium, Germany, Italy, Lithuania, Malta, Norway, Ukraine, Switzerland**). In the case of court-annexed mediation, the initiative may also come from the judge (**Hungary, the Netherlands, Portugal**). As a general rule, this mode of resolution is available at all stages of the proceedings (**Albania, Germany, Belgium, Bulgaria, France, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Norway, Switzerland, Ukraine**).

Most countries have established a specific framework governing mediation proceedings (**Albania, Germany, Belgium, Bulgaria, France, Hungary, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Norway, Switzerland, Ukraine**). Such proceedings are subject to the fundamental principles of due process, including equality of the parties, transparency (without necessarily implying public hearings), and confidentiality (**Albania, Belgium, Germany, Bulgaria, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Norway, Switzerland, Ukraine, Hungary, Spain**).

National legislatures (**Albania, Belgium, Germany, Bulgaria, France, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Norway, Switzerland, Ukraine**) pay particular attention to safeguarding the impartiality of mediators. This is reflected in the establishment of official lists or registers, rules on conflicts of interest, and codes of professional conduct/ethics.

In certain States, interim measures (such as the suspension of enforcement of the contested act) are available during mediation (**Germany, Belgium, Bulgaria, Lithuania, Malta, Poland, Ukraine, France, Italy, Switzerland, Norway**). Such measures are sometimes ordered exclusively by the



courts (**Norway, Malta, Spain**). By contrast, other countries exclude the possibility of interim measures (the **Netherlands, Portugal, Luxembourg**).

Mediation agreements generally take written form (**Hungary, Italy, Lithuania, Malta, Portugal, Norway, Spain**), although some countries do not exclude the validity of oral agreements (**Albania, Bulgaria**).

Where extrajudicial mediation fails, judicial proceedings resume their normal course (**Germany, Hungary, the Netherlands, Portugal, Ukraine, Italy, Spain, Switzerland, Malta, Lithuania**). As a rule, no specific time limit is imposed for bringing proceedings before the court after the failure of the mediation process (**Ukraine, Spain, Malta, Portugal**).

Mediation often follows the same basic regime as conciliation/settlement (**France, Hungary, Lithuania, Switzerland**), although notable differences remain between the two (in **France** and **Spain** regarding procedure, in **Malta** concerning confidentiality, and in **Ukraine** with respect to enforcement procedures).

Finally, in those categories of disputes where mediation is prohibited, such prohibition may stem either from an express statutory provision (**Albania, Bulgaria, Greece, Croatia, Switzerland, Slovenia**) or from a general principle of law (**Austria, the Czech Republic, Finland, Italy, Malta, Slovenia, Latvia, Poland**).

In conclusion, it may generally be said that mediation in administrative disputes has not been adopted by legal systems to the same extent as settlement.

Recourse to mediation in principle presupposes the mutual agreement of the parties. Its voluntary nature constitutes an essential element of the extrajudicial settlement of disputes, requiring a willingness on the part of the parties to seek mediation.

As with settlement, the legislature does not leave mediation entirely to the discretion of the parties, but subjects it to the fundamental principles of due process (equality, transparency, impartiality of the mediator, etc.). Compliance with the fundamental principles of a fair trial, even within extrajudicial dispute resolution mechanisms, demonstrates the legislature's concern regarding administrative disputes. Mediation agreements generally take written form, a choice serving legal certainty.

### C. Arbitration

To the question whether arbitration is permitted in administrative disputes, the majority of countries replied in the negative (**Austria, Cyprus, Croatia, the Czech Republic, Finland, Estonia, France, Hungary, Latvia, Lithuania, Luxembourg, Romania, Sweden, Slovenia, Slovakia, Poland, the Netherlands, Malta, Norway, the United Kingdom, Ukraine**). Several of them nevertheless specified that arbitration is exceptionally permitted in the field of private-law contracts concluded by public authorities (the **Czech Republic, France, Malta, Romania, Slovakia**).

Even among the countries that answered this question in principle in the affirmative (**Albania, Belgium, Germany, Bulgaria, Denmark, Italy, Portugal, Spain, Türkiye, Switzerland**), several clarified that this essentially concerns areas in which the State acts as a private person/*fiscus* (**Greece, Denmark**), notably in the context of its contractual activities (**Italy, Switzerland, Türkiye**).

In countries where arbitration is permitted in administrative disputes, this is generally provided for by express statutory provisions (**Belgium, Greece, Italy, Portugal, Spain, Denmark, Switzerland**). In those administrative disputes where arbitration is not permitted, such exclusion is sometimes laid down by express legislative provision (**Bulgaria, Croatia, Hungary, Slovakia**) and sometimes by a general principle of law (**Austria, the Czech Republic, Finland, France, Malta**).

Recourse to arbitration is in principle voluntary and based on the agreement of the parties (**Albania, Belgium, Germany, Bulgaria, Greece, Denmark, France, Malta, Portugal, Spain, Switzerland, Italy, Türkiye**). On the State's side, recourse to arbitration is decided by the administrative authority that would be party to the dispute (**Albania, Belgium, Germany, France, Greece, Malta, Portugal, Spain, Switzerland, Italy, Türkiye**).

To the question whether the general framework governing commercial arbitration applies, or whether a specific framework exists for administrative disputes, several countries replied that the general framework applies (**Albania, Belgium, Germany, Greece, Croatia, Denmark, Finland, Malta, Romania, Sweden, Switzerland, the United Kingdom, Italy**), sometimes supplemented by a specific framework (**Spain, Portugal, Malta, Türkiye**), provided that the general framework is compatible with the requirements of public law and subject to enhanced judicial review (**Spain**).

As regards whether arbitration is provided for in contracts falling within Directives 2014/24 and 2014/25, many countries answered in the affirmative (**Belgium, Bulgaria, Cyprus, Denmark,**



**Greece, Spain, Italy, Croatia, Malta, Portugal, Romania, Switzerland**), although such disputes are not always characterised as administrative disputes (**Estonia, Luxembourg**). The principal issues arising concern, on the one hand, whether the dispute is capable of settlement by arbitration (**Croatia**), and, on the other hand, the extent of judicial review, particularly where arbitration clauses or arbitral awards are contrary to European Union law (**Spain**), or seek to circumvent remedies provided by European Union law (**Malta**) or by national law (**Croatia**).

As regards guarantees of the independence and impartiality of arbitrators, a specific framework exists in almost all countries (**Albania, Belgium, Germany, Bulgaria, Greece, Croatia, Denmark, Finland, Malta, Portugal, Romania, Slovenia, Spain, Switzerland, the United Kingdom, Italy, Sweden**).

With regard to interim measures in arbitration proceedings, most countries replied in the affirmative. Jurisdiction in this regard lies sometimes with the courts (**Belgium, Spain, Portugal, Greece, Germany**) and sometimes with the arbitrator (**Croatia, Denmark, Malta, Italy**).

In almost all countries, arbitral awards must state reasons (**Albania, Germany, Greece, Croatia, Portugal, Romania, Spain, Switzerland, Italy, Malta**), while the adversarial principle generally prevails (**Albania, Belgium, Croatia, Denmark, Malta, Portugal, Romania, Spain, Italy**).

In almost all countries, administrative disputes submitted to arbitration primarily concern pecuniary matters (**Albania, Germany, Greece, Croatia, Denmark, France, Malta, Romania, Spain, Italy**).

As regards the effects of arbitral awards, almost all countries indicated that they produce effects *inter partes* (**Albania, Belgium, Germany, Greece, Bulgaria, Croatia, France, Denmark, Malta, Portugal, Romania, Spain, Switzerland, Italy**). Arbitral awards are in some jurisdictions regarded as case-law (**Denmark**), whereas in others they are not (**Croatia, Malta, Portugal**).

In almost all countries, arbitral awards may be challenged before a court (**Albania, Germany, Belgium, Bulgaria, Greece, Croatia, Denmark, Luxembourg, Portugal, Romania, Spain, Switzerland, Italy**). It is generally not possible to waive judicial review of an arbitral award (**Germany, Bulgaria, Greece, Croatia, France, Portugal, Spain, Switzerland, Malta, Romania**). Depending on the nature of the dispute, jurisdiction lies either with the administrative courts (**Germany, Spain, Portugal, France**) or with the civil courts (**Bulgaria, Malta, Romania**).

Judicial review of arbitral awards primarily concerns legality rather than the merits (**Albania, Malta, Croatia, Italy, Portugal, Spain, Romania**) and is admissible only on specific grounds, notably serious procedural defects (**Belgium, Denmark, the United Kingdom, Albania, Croatia**), breach of the adversarial principle (**Spain, Switzerland**), lack of jurisdiction or bias of the arbitrator (**Belgium, Spain, Italy, Croatia, the United Kingdom, Switzerland, Albania**), absence of consent (**France, Albania**), breach of public policy (**Belgium, Germany, France, Spain, Switzerland, Bulgaria, Croatia**), lack of motivation (**Belgium**) or lack of jurisdiction *ratione materiae*, namely whether the dispute was capable of settlement by arbitration (**Belgium, Germany, Spain**).

To the question whether the notion of public policy is construed differently where the State is party to the arbitration, several countries answered in the negative (**Bulgaria, Greece, Portugal, Switzerland, the United Kingdom, Italy**). However, in some cases judicial review is stricter where the State is involved, particularly with regard to the principle of legality and the protection of the public interest (**Croatia, Malta, Spain**).

As regards rules of European Union law liable to be characterised as matters of international public policy, the replies were limited. Nevertheless, some legal systems indicated that courts exercise strict review over arbitration clauses liable to exclude the application of fundamental rules of European Union law (**Malta**), such as those relating to money laundering (**Romania**) or VAT (**Greece**). Recently, a Spanish court referred a preliminary question to the Court of Justice of the European Union concerning the extent of judicial review of arbitral awards contrary to European Union law (case C-244/25, Cabify España).

As regards the enforcement of arbitral awards, in almost all countries such awards constitute enforceable instruments, and the courts (civil or administrative, depending on the nature of the dispute) may adjudicate matters relating to their enforcement. The issues raised concern primarily the possibility of reviewing the validity of the arbitral award, particularly as regards the arbitrability of the dispute (**Malta**). **Spain** constitutes a particular case, insofar as the arbitral award is regarded as falling within private law and must be enforced without the Public Administration being able to oppose it, the court no longer being entitled to review its legality at the enforcement stage.

In conclusion, it follows from the responses to the questionnaire that, generally speaking, national legislatures remain reluctant to submit administrative disputes to arbitration. Arbitration is mainly accepted in areas where the Public Administration acts as a private party. The Public



Administration's contractual activities and discretionary powers thus appear more compatible with arbitral logic.

By contrast, in matters concerning the public interest and the exercise of public authority powers, the legislature favours the role of the administrative courts. Where arbitration is permitted, it is allowed exceptionally and on the basis of an express statutory provision as well as the consent of the parties.

Disputes submitted to arbitration are mainly of a pecuniary nature, which facilitates compromise between the parties without affecting the rights of third parties. Conversely, disputes concerning the legality of administrative acts are rarely capable of settlement by arbitration.

The duty to state reasons in arbitral awards constitutes an essential requirement, ensuring transparency and compliance with the principle of legality. The legislature also strictly regulates the impartiality of arbitrators in order to strengthen the parties' confidence in the procedure.

National legislatures establish a specific framework aimed at guaranteeing the impartiality of arbitrators. This particular concern stems from the need to ensure the parties' confidence, which constitutes an essential condition for recourse to arbitration.

The application of the general regime governing commercial arbitration to administrative disputes is justified insofar as arbitration mainly arises in the State's contractual sphere, in accordance with the principle of equality of the parties.

Arbitral awards produce effects only between the parties and do not bind third parties. For this reason, most countries are reluctant to recognise arbitral awards as constituting judicial precedent. By its very nature, arbitration is a procedure founded on the contractual freedom of the parties and, consequently, the subjective limits of arbitral awards are difficult to extend. This is of particular importance in the field of arbitration involving administrative disputes.

Arbitral awards in administrative disputes are not exempt from judicial review. Judicial review of arbitral awards is regarded as an additional safeguard in arbitration involving administrative disputes. After carrying out the necessary balancing exercise, the legislature permits recourse to arbitration for administrative disputes, while preserving the courts' jurisdiction to review arbitral awards. It therefore appears that the legislature does not place complete trust in arbitrators in

administrative disputes. This guarantees compliance with objective legality and the protection of the public interest.

Judicial review of arbitrations involving the State appears to be stricter, for example with regard to the definition of public policy. Judicial review is likewise stricter in arbitrations raising issues under European Union law. Arbitration clauses often seek to exempt the parties from fundamental obligations arising under European Union law. Thus, the national court proves to be a constant guardian of the Union legal order.

However, judicial review of arbitral awards, important though it may be, does not go so far as to replace the arbitrator entirely. This reflects the balance which the national legislature seeks to achieve: on the one hand, the parties' intention to resort to arbitration must be respected; on the other hand, the possibility of judicial review, albeit limited, must exist.

In conclusion, it may be said that there exists an inherent incompatibility between the spirit of conciliation underlying alternative dispute resolution mechanisms and the principle of legality governing administrative disputes. It is not self-evident that the public interest and, more generally, the imposition of the Public Administration's will may become the subject of negotiations. Nevertheless, the possibility for the Public Administration to engage in extrajudicial consultations with the individual concerned does not necessarily entail a derogation from the principle of legality. Having examined each individual case, and always within the limits of the discretionary powers conferred by law, the Public Administration may seek a mutually beneficial compromise solution with the individual concerned, a solution capable of serving the public interest just as effectively as the adoption of an enforceable administrative act. This is subject to the following three fundamental conditions: (a) that the nature of the administrative dispute concerned permits it (particularly in matters of a pecuniary nature, where the Public Administration acts within the scope of its discretionary powers, etc.); (b) that the fundamental principles of due process are respected (impartiality of the mediator/arbitrator, equality of arms, transparency, etc.); and (c) that the process remain under the vigilant supervision of the courts, whose role as guardians of the principle of legality once again proves crucial. In other words, judicial review constitutes the necessary compromise adopted by the legislature in order to permit administrative disputes to be subjected to alternative dispute resolution mechanisms.