Possible action at EU level for an open, efficient and independent EU administration

Impact Assessment

STUDY

EPRS | European Parliamentary Research Service

Ex-Ante Impact Assessment Unit
PE 621.841 – July 2018

EN

Impact Assessment of possible action at EU level for an open, efficient and independent EU administration

Final Report

EU administrative law is highly fragmented and has never evolved into a consistent set of rules applicable across the EU administration. This fragmentation impinges on the EU's ability to consistently uphold standards of good governance and administration, as well as to protect citizens' rights when they interact with the administration. This impact assessment compares the option of 'doing nothing' with two alternative policy options: making the 2001 Code of Good Administrative Behaviour binding vs. adopting the regulatory framework proposed by the European Parliament in 2016. The study concludes that adopting the European Parliament's regulatory framework would be the preferred option, since it would lead to clear advantages in terms of cost savings for the public, as well as the accessibility, transparency, legal certainty and predictability as well as the legitimacy of, and trust in, EU institutions. This option would also offer additional advantages in terms of its compatibility with Member States' administrative law and readiness for the transition towards e-government and e-administration tools, which promises further efficiency increases in the EU administration.

EPRS | European Parliamentary Research Service

AUTHOR(S)

This study has been written by Andrea Renda, Felice Simonelli and Antonella Zarra from CEPS; and Anne Meuwese and Carlo M. Colombo from Tilburg University. The study was written at the request of the Ex-Ante Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament, following a request from the European Parliament's Committee on Legal Affairs (JURI). This impact assessment is part of a project that also includes the public consultation on an EU law for an open, independent and efficient European administration conducted for JURI by the European Added Value Unit of the Directorate for Impact Assessment and European Added Value.

ADMINISTRATOR RESPONSIBLE

Hubert Dalli, Ex-Ante Impact Assessment Unit, DG EPRS

To contact the publisher, please e-mail EPRS-impactassessment@ep.europa.eu

LINGUISTIC VERSIONS

Original: EN

Manuscript completed in June 2018.

PE 621.841
ISBN: 978-92-846-3205-3
DOI:10.2861/157069
CAT: QA-02-18-811-EN-N

eprs@ep.europa.eu
http://www.eprs.ep.parl.union.eu (intranet)
http://www.europarl.europa.eu/thinktank (internet)
http://epthinktank.eu (blog)

Executive Summary

The availability of an open, efficient, transparent and accountable administration is widely acknowledged as a precondition for ensuring a high-quality policy and administrative process, as well as the legitimacy of public institutions in the eyes of citizens, business and civil society. At the EU level, 'administrative procedures' are relevant in a variety of interactions involving many different EU actors. Rules for administrative procedures are scattered across a vast number of sources: international treaties, primary law, case law of the Court of Justice of the EU, secondary legislation, a variety of soft law documents and practices, as well as expressions of 'self-commitment' and normative elements of internal work processes of parts of EU administration. This scattering ultimately caused a degree of fragmentation in the *corpus* of applicable rules, some of which are binding on the respective parts of the EU administration, whereas others are not.

Over the past two decades the introduction of a shared, ambitious set of rules on administrative procedure, applicable to all EU institutions, has emerged as an increasingly debated issue. As early as 2001, the European Parliament adopted a resolution in which it approved, with amendments, a European Code of Good Administrative Behaviour drafted by the European Ombudsman, and called on the European Commission to submit an appropriate proposal for a regulation containing a Code of Good Administrative Behaviour. With the Lisbon Treaty a new legal basis for a general law on administrative procedure at the EU level emerged. In particular, Article 298(1) TFEU provides that in carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration. On the side of citizens' rights, Article 41 Charter of Fundamental Rights of the European Union introduced the right to good administration by granting to every person the right to have his or her affairs handled impartially, fairly and within a reasonable length of time by the institutions, bodies, offices and agencies of the Union.

On 9 June 2016, the European Parliament adopted a Resolution for an open, efficient and independent European Union administration, stressing that the Lisbon Treaty had provided the Union with a legal basis for the adoption of an Administrative Procedure Regulation and invited the European Commission to examine a suggested proposal for a regulation, which closely followed the main recommendations included in the 2013 resolution, and to come forward with a legislative proposal to be included in its work programme for the year 2017. This proposal does not entail a full and total harmonisation, but sets minimum rules to be applied by the EU institutions while leaving the possibility to adopt sectoral-specific rules, which would however need to respect the general rules. The European Commission replied in November 2016, however, that it was 'not convinced that the benefits of using a legislative instrument that would codify administrative law would outweigh the costs'.[1] This study was therefore commissioned by the European Parliamentary Research Service (EPRS), at the request of the Parliament's Committee on Legal Affairs (JURI), to analyse the costs and benefits of possible alternative options, in particular: their impact on the accessibility of the EU administration; their impact on the transparency of the EU administration; the extent to which they guarantee legal certainty and adequately protect citizens' rights and their impact on trust in the institutions and on the efficiency and effectiveness of administrative procedures.

[1] SP(2016)613, 18 November 2016.

Definition of the problem

We define the problem in terms of the existing fragmentation of EU administrative procedure, adding that the fragmentation negatively affects the openness, efficiency and independence of EU administration. The existence of fragmentation and its negative impact are validated in several ways during the study.

- *There is a high level of fragmentation in administrative procedure across EU institutions, agencies, offices and bodies*. Apart from fragmentation of the 'hard law' framework across many important areas of administrative procedure (right of access to the file, right to be heard, time limits and the right to information about the procedure), fragmentation appears evident across codes of administrative behaviour adopted by different EU bodies. The same is true between bodies that have adopted a code (30), and bodies that do not (35). Fragmentation goes beyond the level of flexibility that one could expect given the heterogeneity of EU bodies and their related powers and mission. More explicitly, fragmentation also affects the implementation of basic principles of good administration, such as the respect of the right to be heard, the administration's duty to motivate decisions, the duty to operate and interact in all official languages of the EU, the adoption and respect of time limits, use of online procedures and access to the file.
- *Based on our analysis of existing codes, fragmentation appears evident in all phases of the administrative procedure*, and notably in the initiation of proceedings; in the handling of requests from members of the public; in the formal and procedural requirements of inspections; in the recognition of user's rights to communicate online, be heard and represented by a lawyer, and be given clear, timely and understandable information on the content and scope of administrative acts, as well as ongoing proceedings and remedies.
- Our empirical analysis, the results of the open public consultation run by the JURI Committee,[2] and the stakeholder workshop we organised show that *problems related to fragmentation are not only theoretical, but are also experienced in practice by citizens and other stakeholders*. Our analysis also shows that introducing general default rules, whilst allowing for tailored requirements in certain sectors, is indeed feasible without impinging on the degree of flexibility needed in specific policy areas.
- *The existing fragmentation is coupled with insufficient compliance with principles of good administration, leading to negative impacts on the public*. These, based on the results of the public consultation, take the form of uncertainty and difficulty to find basic (or contact) information on the competent officials; delays in the administrative procedure; lack of predictability of the outcome of administrative procedures; opportunity costs due to the lack of information on possible remedies and complaints procedures; and, last but not least, a general loss of legitimacy of EU institutions in the eyes of the public.

These conditions determine the existence and relevance of a policy problem for the purposes of our impact assessment. This problem is likely to worsen over time for two main reasons: i) the ongoing 'agencification' of the European Union, with increased regulatory powers being attributed to bodies other than the European Commission (e.g. in the financial sector, in medicines and chemicals, in network industries, and also for research, innovation and SME policy); and ii) the forthcoming transition towards a fully digitised administration, triggered by the Ministerial Declaration on e-

[2] http://www.europarl.europa.eu/committees/en/juri/eu-administrative-law.html.

Government adopted in Tallinn,[3] which would require a massive upgrade of processes, communication patterns and procedures across EU administration, which can only be justified by an effective centralisation and harmonisation of the way in which EU bodies deal with the public.

Objectives and legal basis

The general objective of the proposed intervention is to *promote the quality of EU governance and government by ensuring the most efficient and effective functioning of EU institutions, bodies, offices and agencies*. This general objective is rooted in the provisions of the Treaty on the Functioning of the European Union. For many EU legislative proposals, the objectives are already specified in the Treaty. This can only partially be said to be the case for a possible EU regulation on administrative procedure. The specific objective of the intervention is to *guarantee, in the most cost-effective way possible, respect for the right to a good administration enshrined in the TFEU and in Article 41 Charter of Fundamental Rights of the European Union*. This right to good administration, as explained above, can be further broken down into a number of key principles recognised in the case law of the Court of Justice as well as in international literature and practice on good governance and administration, and include (at a minimum) openness, efficiency and independence, and possibly also transparency, uniformity and consistency in decision-making.

The legal basis for intervening to address the policy problem is Article 298 TFEU. While there has been debate as regards the suitability of these provisions as legal basis for the proposed intervention, mostly due to claims that the wording of Article 298 TFEU refers to administration within the institutions, instead of regulating the relationship between the institutions and the public, this argument has been dismissed on the basis that the Treaty already includes other possible legal bases for the adoption of the institutions' own Rules of Procedures.

Policy options

This Impact Assessment was carried out at a time when a policy proposal had already been tabled by the European Parliament, and certain options had been considered as not feasible in the short term. In this context, we have not included in the analysis an in-depth assessment of more comprehensive and ambitious proposals that would go well beyond the European Parliament's proposal. For example, we did not consider options that would entail maximum harmonisation of administrative procedures across the EU administration, and would therefore remove the possibility to adopt special rules when the specificities of the case require it (e.g. for DG COMP's dawn raids). Likewise, we have not retained the option of going beyond individual administrative procedures to also encompass rulemaking, in what would lead to the adoption of an 'EU Administrative Procedure Act', similar to the one in effect in the US. That option, although advocated by some stakeholders during our empirical analysis, would require a much longer assessment from a legal and economic standpoint, and was seen as unfeasible at this stage.

We thus have identified the following policy alternatives for the purposes of our impact analysis:

Option zero ('Do nothing'). This corresponds to the existing situation and incorporates its likely evolution. The fragmentation of the rules of administrative procedure in the EU would

[3] See the new European Interoperability Framework (https://ec.europa.eu/isa2/publications/european-interoperability-framework-eif_en) and the Ministerial Declaration on e-Government (https://ec.europa.eu/digital-single-market/en/news/communication-eu-egovernment-action-plan-2016-2020-accelerating-digital-transformation).

persist, with one-third of the analysed EU institutions, offices, agencies and bodies (23 out of 65) having adopted some form of non-binding code of administrative procedure, and a smaller number (7) having officially adopted the 2001 Code of Good Administrative Behaviour. The conduct of EU officials in the remaining entities would be only partly covered by the EU Staff Regulations.

Option 1. *Make the European Ombudsman Code binding.* This would be in line with the first proposal by the EP on the matter in 2001, where the Parliament had called upon the Commission to submit a proposal for a Regulation containing a code of good administrative behaviour. Under this option, the Code drafted by the European Ombudsman and endorsed by the European Parliament in 2001 would be made binding on all EU institutions, agencies, offices and bodies. This would imply the adoption of implementation measures that would make the provisions of the 2001 Code enforceable.

Option 2. *Adopt the European Parliament's proposed regulatory framework.* This would entail a regulation covering administrative procedures in the relationship between EU administrations and the public. This corresponds to the regulatory framework proposed by the European Parliament in 2016. More specifically, this means that rules would be enacted: i) on the initiation of proceedings, including proceedings started on own initiative of the Union's administration, and proceedings started upon application by a party; ii) on various rights related to the management of the procedure (various procedural rights, the duty of careful and impartial investigation; the duty to cooperate; rules that apply in case witness or experts are to be heard; rules on inspections, conflicts of interest and access to the file; the duty to keep records and rules on time limits); iii) on the conclusion of the administrative procedure (form of administrative acts, duty to state reasons, duty to communicate available remedies and the notification of acts); and iv) on the rectification and withdrawal of acts. In addition, there would be a new, general obligation for the Commission to publish updated online information on the existing administrative procedures in an *ad-hoc*, public and free website, wherever possible and reasonable, with priority given to application procedures.[4]

Impact Assessment

Concerning the analysis of impacts, we have decided to adopt a mix of quantitative and qualitative approaches. The subject matter does not easily lend itself to quantification, given that most of the associated impacts are not quantifiable (e.g. good governance or transparency). Another obstacle that we faced is the lack of reliable data on the current practice of EU institutions, agencies, offices and bodies. Given the limited response rate to our survey, we ended up relying on the content of official documents posted on the internet websites of EU administrations, rather than on field data

[4] Such website should contain information such as a link to the applicable legislation, a brief explanation of the main legal requirements and their administrative interpretation, a description of the main procedural steps, the indication of the authority competent to adopt the final act, the indication of the time-limit for the adoption of the act, the indication of remedies available, a link to standard forms that may be used by parties in their communications with the Union's administration within the procedure.

related to their practice. This may lead to some inaccuracies in the assessment of the current situation. In addition, when attempting to quantify specific costs or benefits, we have made a selection of those provisions existing in the current European Parliament's proposal, which could more easily be quantified.

In quantifying impacts, we have chosen different methods for cost savings on the side of the administration and on the side of the public. For the former, we relied on existing data from our own empirical analysis, coupled with time and cost parameters calculated in previous studies; and tables used by the German government as reference for the calculation of the cost of specific activities carried out by the administration. These were coupled with reasonable assumptions on salary levels in the EU institutions. For cost savings on the side of the public, we relied on the assumption that a more transparent and efficient set of provisions in the EU administration would reduce the level of complexity of specific administrative activities for members of the public. This allowed us to provide an estimate of the magnitude of potential savings on both sides. The final impact assessment and comparison of options was carried out by means of a scorecard table, in which the intensity of specific impacts is described in a common metric, regardless of whether the underlying analysis is qualitative or quantitative. This method proved optimal and sufficient to show how the two alternative options perform in our analysis.

Table A below shows a comparison of the three alternative policy options from the standpoint of costs, benefits and overall effectiveness, measured as the extent to which the options can lead to the achievement of the general and specific objectives identified. We adopt a scorecard approach, with scores varying between 0 (lowest) and √√√√ (maximum).

As shown in the table:

- *Option 1 is expected to cause limited administrative burdens for EU institutions, agencies, bodies and offices*. In order to assess them, we focused on a limited sample of requirements that the option would introduce and have tried to quantify their associated costs. We estimate that these requirements (access to documents, stating purpose and indicating remedies, right to use any EU official language, provisions on time limits) cost **€4,717,764** yearly. *Option 2 might generate slightly higher administrative burdens*. For the same sample of provisions, we estimated administrative burdens to reach **€5,988,879**, and for the first year we also envisaged one-off costs of **€178,750**. However, Option 2 already consists of a text that is designed to be enforceable, whereas Option 1 would entail a time-consuming translation of the 2001 Code into an enforceable set of rules.

- *Options 1 and 2 create significant cost savings for the public*. We estimated such costs savings by assuming a total number of administrative acts of 102,581, and providing calculations for cost savings for both options in order to make them comparable. Our calculations for a limited sample of administrative activities led to estimates of **€13,297,004** for Option 1 and **€14,151,627** for Option 2. It bears recalling, however, that these are only a sub-set of the projected cost savings. In particular, Option 2 is expected to save time and information costs for citizens and businesses, as well as for the administrations, which would avoid duplicative efforts each time they introduce a new procedure.

- *Option 2 scores better than Option 1 for non-monetised benefits*. Importantly, in order to make Option 1 comparable to Option 2, we had to assume that the provisions contained in the 2001 Code would be made enforceable through regulatory intervention. Even after adopting this assumption, Option 2 remains preferable in all respects, with the additional advantage of being more compatible with Member States' administrative law frameworks, as well as more

appropriate for preparing the EU administration for the digital transition.

- Finally, we have ranked the options based on their ability to achieve the specific impacts mentioned in this study's terms of reference: accessibility, transparency, legal certainty and predictability, efficiency and effectiveness, enhanced protection of citizens' rights, and the legitimacy of and trust in EU institutions. We have then added also two additional dimensions: compatibility with Member States' administrative law (mentioned in previous studies, e.g. Blomeyer and Sanz 2012) and readiness for e-government, which emerged as an important element during our research and the workshop. In all these aspects, Option 2 deserves the highest score.

All in all, as shown in the table below, Option 2 appears preferable to Option 1 since it is more detailed and precise, features a broader coverage and entails lower discretion in interpretation, thereby promoting more legal certainty and predictability. As a consequence, Option 2 would also improve the compatibility of EU administrative law with the rules on administrative procedures adopted by most Member States. It would also prepare the EU administration to make the most out of the upcoming digital transformation in the administration.

Table A. Comparing alternative policy options: A synopsis

	Option 0	Option 1	Option 2
Costs	**0**	**√**	**√√**
One-off costs for EU institutions	0	0	√
Admin burdens (EU institutions)	0	√	√√
Benefits	**0**	**√√**	**√√√√**
Cost savings (EU institutions)	**0**	**0**	**0**
Cost savings (Public)	**0**	√	√
Accessibility	**0**	√√	√√√
Transparency	**0**	√√	√√√
Legal certainty and predictability	**0**	√√	√√√
Efficiency and effectiveness	**0**	√√	√√√
Enhanced protection of citizens' rights	**0**	√	√√
Legitimacy of and trust in EU institutions	**0**	√√	√√√
Compatibility with Member States' administrative law	**0**	√√	√√√
Readiness for e-government	**0**	√√	√√√

Monitoring and evaluation

If Option 2 were to be selected as the preferred policy option, as our analysis suggests, a detailed data gathering and management plan would have to be devised to allow monitoring and evaluation to take place effectively over time. Table B below shows the indicators that we consider useful and necessary for the monitoring and the evaluation of Option 2.

Table B. Data collection and management plan for monitoring and evaluation

Impact	Indicator
Costs (EU institutions)	*Cost of setting up and maintaining the ad-hoc website; cost of administering complaints for the European Ombudsman; administrative burdens inside the administration*
Cost savings (Public)	*Data on perception of user-friendliness, accessibility and transparency of the EU administration, to be collected through online surveys (Eurobarometer) and digital rating systems*
Accessibility	*Data on perception of user-friendliness, accessibility and transparency of the EU administration, to be collected through online surveys (Eurobarometer) and digital rating systems*
Transparency	*Data on perception of user-friendliness, accessibility and transparency of the EU administration, to be collected through online surveys (Eurobarometer) and digital rating systems*
Legal certainty and predictability	*Data on perception of the predictability of EU administrative action, to be collected through online surveys (Eurobarometer) and digital rating systems*
Efficiency and effectiveness	*Data on notification of proceedings initiated by the administration, per institution and per subject matter* *Data on number of requests submitted by the public, per institution and per subject matter (i.e. access to documents, requests for clarifications, access to one's own file, etc.)* *Data on timeliness of action of the EU administration, to be collected internally through records and indexes*
Enhanced protection of citizens' rights	*Data on number of proceedings, complaints, decisions and investigations, to be cross-analysed with perception surveys (Eurobarometer)*
Legitimacy of and trust in EU institutions	*Perception surveys (Eurobarometer)*

Table of Contents

List of figures

List of Tables

Introduction

The availability of an open, efficient, transparent and accountable administration is widely acknowledged as a precondition for a high-quality policy and administrative process, as well as the legitimacy of public institutions in the eyes of citizens, business and civil society. In 2013, the United Nations High-Level Report on the post-2015 Development Agenda called for a 'fundamental shift' to recognise the significant role of institutions in contributing to citizens' well-being.[5] This message was echoed by the Open Working Group on Sustainable Development Goals, which put forward a proposal including targets for reducing corruption; promoting transparency, access to information and accountability; as well as ensuring that decision-making processes are more inclusive and representative. Countries around the world have understood the intimate link between the openness, transparency and efficiency of institutions on the one hand, and economic performance (whether measured as growth or sustainable development) on the other. The European Union has been both an importer and an exporter of ideas in this regard (Harlow et al., 2017, 15).

At the EU level, "administrative procedures" are relevant in a variety of interactions involving many different EU actors, such as the EU administration's relations with the public in general (e.g. correspondence, dealing with infringement complaints, dealing with requests for access to documents, consultation with interested parties, rules on interest representation, etc.) and policy-specific administrative regimes in which an EU agency or the Commission plays a role as a regulator or adjudicator.[6] EU institutions, bodies, agency and offices generally aim at high standards in terms of transparency, openness, accountability, legality and impartiality. However, when it comes to the operationalisation of these principles in concrete administrative procedures, rather than a common set of rules, the EU has so far developed a combination of rights expressed at the most general level (e.g. Article 41 Charter of Fundamental Rights)[7] and a series of *ad hoc* requirements and procedures in certain policy domains (e.g., in competition policy, trade policy, state aid, access to EU documents, the EU civil service). Rules for administrative procedures at the EU level are therefore scattered across a vast number of sources: international treaties (Aarhus); primary law; case law of the Court of Justice of the European Union;[8] secondary legislation; a variety of soft law documents and practices; as well as expressions of 'self-commitment'; and normative elements of internal work processes of parts of the EU administration. This ultimately caused a degree of fragmentation in the *corpus* of applicable rules, some of which are binding on the respective parts of the EU administration, whereas others are not.

---

[5] United Nation Secretary-General's High-Level Panel of Eminent Persons on the post-2015 Development Agenda, "A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development", United Nations, New York, NY, 2013.

[6] Working Group on EU Administrative Law, "State of Play and Future Prospects for EU Administrative Law", Working Document (WD-State of Play), Working Document submitted to the Committee on Legal Affairs, 19 October 2011, p. 9. (http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/dv/juri_wdadministrativelaw_/juri_wdadministrativelaw_en.pdf).

[7] Mir 2011, 64 calls this a "micro-codification".

[8] See footnotes 20-22 for examples.

A recent publication by Galetta et al. (2015a, 6) for the Policy Department of the European Parliament specifies that 'an established authoritative catalogue of general principles of EU administrative procedural law does not exist – neither as an instrument of primary or secondary EU law, nor in the jurisprudence of the CJEU, nor is there a minimum consensus in scholarship about such a list'.[9] Oriol Mir lists the following pieces of legislation as 'notable examples of sectoral codifications' (Mir 2011, 10): Regulation (EC) No 1/2003 on defence of competition,[10] Regulation on concentrations,[11] Regulation on control of State aid,[12] Regulation on the Structural Funds and the Cohesion Fund,[13] Single Regulation on the common organisation of agricultural markets,[14] as well as the regulations on certain European agencies (which contain general rules on their form of action), particularly on those agencies with decision-making powers (Mir 2011, 60-61). Apart from this non-exhaustive list of examples of acts of secondary law that may be seen as sources of EU administrative law but that apply within a single policy area, there is also secondary legislation containing elements of a 'general administrative law' and which Mir refers to as 'notable examples of (very) partial general codifications' (Mir, 2011, 11). One example is Council Regulation 1 of 15 April 1958 regarding the languages to be used by the European Economic Community,[15] establishing the language regime applicable to all EU institutions. The same goes for general rules applicable to periods, dates and time limits in EU law, for instance concerning the calculation of administrative time limits,[16] as well as access to EU institutions' documents[17] and administrative practices with respect to data privacy.[18] Finally, there are more or less general

[9] Galetta, Diana-Urania, Herwig C. H. Hofmann, Oriol Mir Puigpelat, Jacques Ziller, 'The context and legal elements of a Proposal for a Regulation on the Administrative Procedure of the European Union's institutions, bodies, offices and agencies', study for the JURI committee, December 2015, http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536487/IPOL_STU%282016%29536487_EN.pdf.

[10] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

[11] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

[12] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

[13] Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999.

[14] Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

[15] EEC Council Regulation 1 of 15 April 1958 determining the languages to be used by the European Economic Community, OJ 1958 17/385 as last amended by the 2003 Act of Accession. The language policy is also an element of the right to good administration referred to in Art 41(4) CFR.

[16] Regulation (EEC, Euratom) 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, OJ 1971 L 124/1.

[17] Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145/43. The regulation needs to be read in conjunction with Art 255 EC and Art 42 Charter on Fundamental Rights. This regulation is subject to debate about reform, see Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents, COM2008(229)final, 2008/0090 (COD).

[18] Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8/1.

rules applying to agencies, such as those in the "Statute for executive agencies to be entrusted with certain tasks in the management of Community programmes".[19]

Over the past few years, the Court of Justice of the European Union has also contributed to shaping EU administrative law by developing general principles of administrative law and procedure, especially those related to the rights of defence. In this respect, landmark decisions acknowledged, confirmed, delineated or expanded, for instance, the right to be heard,[20] the right to access to the file[21] and the duty for the administration to give reasons.[22]

Against this background of fragmentation, over the past two decades the introduction of a shared, ambitious set of rules on administrative procedure, applicable to all EU institutions, has emerged as an increasingly debated issue. The introduction of a consistent regulatory framework for administrative procedure at the EU level can occur at different levels of ambitions. At a minimum, EU institutions, agencies and bodies could be bound by the EU Code of Good Administrative Behaviour drafted by the European Ombudsman and endorsed by the European Parliament in 2001. Going one step further, it would be possible to bind all EU institutions, agencies and bodies to the same set of rules and respect for stakeholder rights when dealing with individual administrative procedures: for example, when opening an investigation, when responding in a timely and comprehensive manner to an application, when asked to provide an explanation for the exclusion from a competitive procedure, etc.

But good administration and administrative due process could in principle also extend to the whole policy process, and in particular to stakeholder consultation, as well as the obligation to abide by evidence-based policy-making. All these options imply the adoption of a comprehensive general act of administrative procedure at the EU level, similar to the laws in place in many legal systems around the world, in some form. Depending on the exact scope, for instance whether rule-making is also regulated or not, such an act could look similar to administrative law codes in civil law countries, including many EU Member States (The Netherlands, France, Germany, Sweden, Italy and Poland); or rather to the US 1946 Administrative Procedure Act, which accommodates inter alia the use of Notice and Comment procedures, as well as (from 1981) the obligation to perform Regulatory Impact Analysis on major federal regulatory interventions.

At the EU level, as mentioned above, already in 2001, the European Parliament adopted a resolution in which it approved with amendments a European Code of Good Administrative Behaviour drafted by the European Ombudsman;[23] and called on the European Commission to submit an appropriate proposal for a Regulation containing a Code of Good Administrative Behaviour. With the Lisbon Treaty, a new legal basis for a general law on administrative procedure at the EU level was created. In particular, Article 298(1) TFEU provides that in carrying out their missions, the institutions, bodies, offices and agencies of the Union shall

---

[19] Council Regulation (EC) 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes, OJ 2003 L 11/1.

[20] Case 17/74 Transocean Marine Paint v Commission [1974] ECR 1063, [15].

[21] Case C-204-205/00, Aalborg Portland A/S and Others v Commission [2004] ECR I-123.

[22] Case C-367/95, Commission v Chambre syndicale nationale des entreprises de transport de fonds et valeurs (Sytraval) and Brink's France SARL [1998] ECR I-1719.

[23] Resolution of 6 September 2001 on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour (OJ C 72 E, 21.3.2002, p. 331)

have the support of an open, efficient and independent European administration. On the side of citizens' rights, Article 41 Charter of Fundamental Rights (CFR) of the European Union introduced the right to good administration by granting to every person the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union – a right that has since been strongly promoted by the European Court of Justice.[24] The right to good administration includes the right of every person to be heard before any individual measure that would adversely affect him or her is taken; the right of access to files, while respecting the legitimate interests of confidentiality and of professional and business secrecy; the duty of the administration to give reasons for its decisions and the possibility of claiming damages. As will be explained in more detail in section 3 below, Article 298(1) TFEU, read in conjunction with Article 41 CFR, provides the main legal basis for the proposed introduction of measures aimed at strengthening the openness, efficiency and independence of the EU administration.

In the decades following this first call, the European Parliament and the European Ombudsman have extensively recognised the need for a debate on the regulation of EU administrative procedure. During the 7th legislature (2009-14), the European Parliament's Committee on Legal Affairs set up a Working Group on EU Administrative Law aimed at taking stock of the existing EU rules on administrative law, and at examining the possibility of legislative action on the basis of Article 298 TFEU. The findings of the activities of research, analysis and discussions of the Working Group are summarised in a working document proposing the adoption of a legislative initiative for a single general administrative procedure that would be binding on the Union's administration. The Working Document was approved by the Committee on Legal Affairs at its meeting of 22 November 2011. Following the recommendations of the Working Group and the own-initiative report by the Committee on Legal Affairs on 15 January 2013, the European Parliament adopted a resolution with recommendations to the Commission on a Law of Administrative Procedure of the European Union.[25] The resolution was adopted under Article 225 TFEU (legislative initiative). The resolution implied a request from the Parliament to the Commission to submit a proposal for a regulation on a European Law of Administrative Procedure codifying the fundamental principles of good administration, including and regulating the procedure to be followed by the Union's administration in its relations with the public. In concrete terms, the European Parliament proposed that the following principles would be codified: the principle of lawfulness, the principle of non-discrimination and equal treatment, the principle of proportionality, the principle of impartiality, the principle of consistency and legitimate expectations, the principle of respect for privacy, the principle of fairness, the principle of transparency and the principle of efficiency and service.[26] Importantly, already at this time, it was made clear that the scope of the Regulation should be limited to the direct administration of the EU and should lay down a applicable procedure as a general rule where no *lex specialis* exists (Recommendation 2). Furthermore, the resolution lays down a number of detailed recommendations as to the content of the proposal requested.

---

[24] Case C-439/11 P Ziegler SA v. the Commission, para. 154.

[25] Resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (OJ C 440, 30.12.2015, p. 17).

[26] Ibid.

The European Commission responded on 14 January 2013, informing the European Parliament that it would take full account of the Parliament's recommendations, that it would undertake a thorough review of the current legislation in order to evaluate the need for further action and that it would consider all options to reinforce the open, efficient and independent EU administration.[27] The Juncker Commission, and in particular its First Vice President Frans Timmermans, committed to examining the possibility of a European law of administrative procedure, but also expressed a degree of scepticism on the viability and cost-effectiveness of the proposal. On 9 June 2016, the European Parliament adopted a Resolution for an open, efficient and independent European Union administration, stressing that the Lisbon Treaty had provided the Union with a legal basis for the adoption of an Administrative Procedure Regulation and invited the European Commission to examine a suggested proposal for a regulation, which closely followed the main recommendations included in the 2013 resolution, and to come forward with a legislative proposal to be included in its work programme for the year 2017. This proposal (see Box 1) does not entail a full and total harmonisation either, but only sets minimum rules to be applied by EU institutions while leaving the possibility to adopt sectoral-specific rules, which would nevertheless need to respect the general rules.

The European Commission again replied in November 2016, however, that 'as the EU administers a range of diverse, mostly highly specialised activities, its administration also relies on sector-specific rules', and that it is 'at this stage, not convinced that the benefits of using a legislative instrument that would codify administrative law would outweigh the costs'. The Commission in particular highlighted that '[f]ollowing the Parliament's proposal would not only mean new legislation. It would also require the revision of a considerable volume of existing EU legislation. Even where done with care and a sense of proportion, codification is likely to lead to problems of delimitation between the general and specific rules – not making legislation any clearer or litigation any easier for citizens and businesses affected. It would also remove the flexibility required to adapt to particular needs'.[28] According to the Commission, the draft Regulation from the Parliament 'does not identify what the gaps and inconsistencies in current law are, and therefore what the justification is for coming forward with horizontal legislative solutions as a proportionate answer to deal with them. Neither does it assess the concrete impact of the provisions it contains'. As a result, '[i]nstead of engaging in a highly complex exercise of codification, with uncertain added-value, the Commission is of the opinion that [it] should continue to address concrete problems where they arise, analyse the root causes and then take the sort of action that is needed'.[29]

In its resolution of 26 October 2017 on monitoring the application of EU law 2015, the Parliament repeated its call on the Commission to present a comprehensive legislative proposal on a European Law of Administrative Procedure[30] The Parliament emphasises that

---

[27] http://europa.eu/rapid/press-release_SPEECH-13-37_en.htm.

[28] SP(2016)613, 18 November 2016.

[29] Ibid.

[30] See European Parliament resolution of 26 October 2017 on monitoring the application of EU law 2015 (2017/2011(INI)), OJ C 440, 30.12.2015. In particular at §35 the Parliament "Stresses that the lack of a coherent and comprehensive set of codified rules of good administration across the Union makes it difficult for citizens to easily and fully understand their administrative rights under Union law, and also contributes to a deterioration of their legal protection; emphasises, therefore, that codifying rules of good administration in the form of a regulation setting out the various aspects of the administrative procedure – including notifications, binding time limits, the

the lack of a coherent and comprehensive set of codified rules of good administration across the Union level makes it difficult for citizens to easily and fully understand their administrative rights under Union law, and also contributes to a deterioration of their legal protection. It called for codifying rules of good administration in the form of a regulation setting out the various aspects of administrative procedures – including notifications, binding time limits, the right to be heard and the right for every person to have access to his or her file –'tantamount to reinforcing citizens' rights and transparency'.[31] It also clarified that these rules would be supplementary to existing EU law, when legal gaps or interpretation problems arise, and would bring more accessibility.[32] The main content of the European Parliament's proposal is described in Box 1 below.

Box 1. The European Parliament's proposal

The European Parliament's proposed Regulation is composed of 44 recitals and 30 articles. The content of the proposal introduces the following rights for the members of the public and corresponding obligations on the EU administration:

- The obligation for EU administration to i) notify any decision to initiate an administrative procedure to the parties and provide the necessary information enabling them to exercise their rights during the administrative procedure; ii) acknowledge receipt of the application in writing where the administrative procedure is initiated at the request of a party.
- The initiation of an administrative procedure within a reasonable time after the event has occurred; the regulation includes provisions on the period of limitation.
- The exercise of a duty of care, which obliges the Union's administration to establish and review in a careful and impartial manner all the factual and legal elements of a case, taking into account all interests, at every stage of the procedure. The administration should be empowered to hear the evidence of parties, witnesses and experts, request documents and records and carry out visits or inspections. When choosing experts, the administration should ensure that they are not affected by a conflict of interest.
- The parties should have a duty to cooperate by assisting the administration in ascertaining the facts and circumstances of the case;
- The conditions and procedures that should be observed for inspections carried out by the administration, in order to safeguard the rights of the parties;
- The right to be heard by the parties in all proceedings initiated against a person which are liable to conclude in a measure adversely affecting that person;

right to be heard, and the right for every person to have access to his or her file – is tantamount to reinforcing citizens' rights and transparency; clarifies that these rules would be supplementary to existing Union law, when legal gaps or interpretation problems arise, and would bring more accessibility; reiterates its call on the Commission, therefore, to come forward with a comprehensive legislative proposal on a European law of administrative procedure, taking into account all the steps already taken by Parliament in this field, as well as the contemporary developments in the Union and its Member States".

[31] Ibid.

[32] Ibid.

- The right of a party to the administrative procedure to have access to its own file, bearing in mind the protection of the legitimate interests of confidentiality and of professional and business secrecy;
- The adoption of administrative acts within a reasonable time-limit. Any delay in adopting an administrative act should be justified and the party to the administrative procedure should be duly informed thereof and provided with an estimate of the expected date of the adoption of the administrative act;
- The imposition of a duty on the Union's administration to state clearly the reasons on which its administrative acts are based and to enable the parties to defend their rights by an application for judicial review;
- The obligation for the Union's administration to ensure that its administrative acts are drafted in a clear, simple and understandable language and take effect upon notification to the parties. When carrying out that obligation, parties should have the right to communicate and to complete, where possible and appropriate, all procedural formalities at a distance and by electronic means;
- The right of citizens to write to the Union's institutions, bodies, offices and agencies in one of the languages of the Treaties and to have an answer in the same language;
- The right to protection of personal data;
- The obligation to ensure that Union rules are clear and precise, so that individuals are able to ascertain unequivocally what their rights and obligations are and be able to take steps accordingly.

Against this background, upon the request of the European Parliament's Committee on Legal Affairs (JURI), the European Parliamentary Research Service selected, through a tender procedure, our research team for the drafting of an "Impact Assessment on possible action at EU level for an open, efficient and independent European Union administration". Based on the Terms of Reference for this study, the impact assessment will analyse the costs and benefits of the options identified and will quantify/monetise such impacts to the extent possible. The Impact Assessment will also take due account of the impact of the options on the coherence of the EU administrative framework and how they would respect the principles of subsidiarity and proportionality. Other impacts mentioned by the Terms of Reference include: the impact of the options on the accessibility of the EU administration; the impact of the options on the transparency of the EU administration; the extent to which the identified options guarantee legal certainty; the extent to which the identified options adequately protect citizens' rights; the impact of the identified options on trust in the institutions; the impact of the identified options on the efficiency and effectiveness of administrative procedures; and the regulatory costs that the identified options would impose on natural and legal persons and on the EU administration.

Section 1 below describes the methodology we followed in order to complete this impact assessment. Section 2 contains an analysis and definition of the problem, as well as its main drivers. It also describes the possible evolution of the problems in the coming years, in order to establish a dynamic baseline, which will then constitute a reference for alternative policy options. This section also summarises the results of the consultation phase, including the online consultation run by the JURI Committee of the European Parliament, the survey we distributed to 40 EU institutions, bodies and agencies and the results of a workshop we organised to discuss some of the findings of the survey. Section 3 then reflects on the

objectives of the proposed initiative, distinguishing between general and specific objectives. Section 4 analyses the legal basis, as well as the issues potentially arising from regulatory intervention in terms of subsidiarity and proportionality. Section 5 identifies the alternative policy options, starting from the baseline or "do nothing" option. Our team selected two further alternative options: i) making the 2001 Code binding on the whole administration and ii) adopting the new regulatory framework proposed by the European Parliament in 2016. Section 6 discusses the benefits and costs of the alternative options, largely from a qualitative, but also, where possible, from a quantitative perspective. Options are also compared in terms of their effectiveness, relevance and coherence: these evaluation criteria are broken down to reflect the taxonomy of impacts used by the Better Regulation Guidelines and Toolbox. At the end of the section we illustrate the features of the preferred policy option. Section 7 contains proposed provisions for monitoring and evaluation of the preferred policy option over time, further specifies the option's operational objectives and proposes a timeframe and a data collection strategy to ensure that monitoring and evaluation are effective. Section 8 briefly concludes.

1 Methodological considerations

This study follows the structure of European Commission impact assessment studies, as described in the European Commission Better Regulation Guidelines, and approaches the appraisal of policy impacts in line with the methods listed in the Better Regulation Toolbox.[33] Accordingly, we start from the definition of the policy problem (section 2 below). Such definition does not follow the typical reference to market failures, since the subject matter is not linked to the functioning of a market system. Rather, we define the problem as a regulatory failure, corresponding to the existing fragmentation of administrative procedures across EU institutions, agencies, offices and bodies – and only to the extent that this affects the openness, transparency and efficiency of EU administration.

This definition then leads us to undertake an extensive empirical analysis, which relies on several elements: a limited number of scoping interviews with officials and academics with strong expertise in the field; a survey distributed to EU institutions, agencies and bodies in the months between January and April 2018; desk research on existing codes of administrative procedures adopted by EU institutions, agencies and bodies in March-April 2018; a detailed analysis of complaints handled by the European Ombudsman, in particular during the period of the Juncker Commission; a stakeholder workshop organised on 7 May 2018 to collect ideas on an earlier draft of this report; and finally an analysis of the opinions submitted during the public consultation run by the JURI Committee on this issue between 15 December 2017 and 9 March 2018. These data-gathering activities were aimed at validating our definition of the policy problem, and thus ascertaining whether the current situation of EU administrative procedure really features extensive fragmentation and whether such fragmentation significantly affected the openness, transparency and efficiency of EU administration. Throughout the report, we present the findings of our empirical analysis, including opinions expressed by stakeholders during the workshop, the interviews and the public consultation.

This empirical analysis provided us with compelling evidence of the existing fragmentation, as well as the potential margins for improving the openness, efficiency and transparency of EU administration without sacrificing the flexibility needed to accommodate different needs of different EU administrations. The need to provide extensive evidence on the policy problem is also related to the lack of evidence highlighted by the European Commission in its formal response to the European Parliament in October 2016. As a matter of fact, the methodological peculiarity of this Impact Assessment is that it was carried out after a policy proposal had already been tabled by the European Parliament. This is not normally the case with Impact Assessments, which are carried out from an *ex-ante* perspective with the objective of selecting suitable policy options and assessing their possible economic, social and environmental impacts. Still, this impact assessment also considers an intermediate option between the baseline and the European Parliament's proposal.

This peculiar approach also reverberates on the selection of the alternative policy options. In this context, we have not included an in-depth assessment of more comprehensive and ambitious proposals that would go well beyond the European Parliament's proposal. For

[33] Both the Guidelines and the Toolbox are available at https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en.

example, we did not consider options that would entail maximum harmonisation of administrative procedures across the EU administration, since this option would remove the needed flexibility in sectors that require *ad-hoc* rules such as competition policy, trade policy, etc. This option would also fall short of a feasibility check since it is not backed by any institution. Likewise, we have not retained the option of going beyond individual administrative procedures to also encompass rulemaking, in what would lead to the adoption of an EU Administrative Procedure Act similar to the one used in the United States. That option, although also advocated by some stakeholders during our empirical investigation, would require a much longer assessment from a legal and economic standpoint, which was seen as disproportionate and unfeasible at this stage.

Concerning the analysis of impacts, we decided to adopt a mix of quantitative and qualitative approaches. The subject matter does not lend itself easily to quantification, given that most of the associated impacts are not quantifiable (e.g. good governance or transparency). Another obstacle that we faced is the lack of reliable data on the current practices of EU institutions, agencies, offices and bodies: given the limited response rate to our survey, we ended up relying on the content of official documents posted on the websites of EU administrations, rather than on field data related to their practice. This may lead to some inaccuracy in the assessment of the current situation. In addition, when attempting to quantify specific costs or benefits, we have made a selection among those provisions existing in the current European Parliament's proposal that could be more easily quantified due to the availability of the key parameters needed for quantification, or proxies that could be used to reach reasonable estimates. In quantifying impacts, we have chosen different methods for calculating cost savings on the side of the administration and on the side of the public. Both revolve around the family of methods used within the Standard Cost Model framework (Renda et al. 2013). For the former, we relied on existing data from our own empirical analysis, coupled with time and cost parameters calculated in previous studies, for example by Frontier Economics (2006) on Freedom of Information in the United Kingdom; and tables used by the German government as reference for the calculation of the cost of specific activities carried out by the administration. These were coupled with reasonable assumptions on salary levels in the EU institutions. For cost savings on the side of the public, we relied on so-called CASH tables, i.e. pre-compiled tables used by a number of governments to attribute a specific duration (in minutes) to selected administrative activities, based on their estimated level of complexity. This was done under the assumption that a more transparent and efficient set of provisions in the EU administration would reduce the level of complexity of specific administrative activities for members of the public. Such approach allowed us to provide an estimate of the magnitude of potential savings on both sides.

The final impact assessment and comparison of options were carried out by means of a scorecard table, in which the intensity of specific impacts is described in a common metric, regardless of whether the underlying analysis is qualitative or quantitative. This method proved optimal and sufficient to show how the two alternative options perform in our analysis. All other phases of this Impact Assessment have been carried out in full adherence to the Better Regulation Guidelines and Toolbox.

2 Definition of the problem

2.1 There is no disagreement on the existing fragmentation

There is no disagreement in the academic and policy-oriented literature regarding the facts that the regulation of EU administrative procedure is highly fragmented and that this is a problem. Of course, one can argue that fragmentation is not a problem *per se*, unless it leads to a lack of openness, efficiency and independence of EU administrations. Still, some authors assume that fragmentation is a problem in and of itself, reasoning from the perspective of coherence, accessibility and simplicity of the law. Harlow and Rawlings (2014, 333), for instance, mention a 'coverage' that is 'spotty, difficult to access and leaves obvious gaps'. Others have attempted to specify the problematic nature of fragmentation in this area of law. The European Risk Forum's publication on 'EU Law of Administrative Procedures – The Rationale'[34] states an 'acute need' for a general EU Law of Administrative Procedure by listing several 'structural weaknesses', which are illustrated by 'exhibits'. For Ziller (2011a), it is a matter of the magnitude of the fragmentation, which makes EU administrative law ('fragmented, too much fragmented indeed, and […] contains too many gaps' (Ziller 2011a, 6)) fall short of the best standards of 'an open, efficient and independent European administration' (Art. 298 TFEU) and the right to good administration as expressed in Article 41 (1) EU Charter of Fundamental Rights. Ziller also emphasises the discrepancy between the 'proliferation of new forms of administrative action in the EU and their regulatory framework' (Ziller 2011a, 6) on the one hand, and their embeddedness in various control and legitimacy mechanisms, on the other. The fact that this gap is growing leads to a 'lack of transparency, predictability, intelligibility and trust in EU administrative and regulatory procedures and their outcome' (Ziller 2011a, 6). Empirical evidence suggests that these problems are indeed experienced by citizens and other stakeholders of EU administration.[35]

The case law of the Court of Justice, important as it is as a source of current EU law of administrative procedure,[36] is not a good source for getting a firmer grip on the potential problem of diminishing trust on the part of citizens. Case law analysis would not add much to the problem definition in this context, for three reasons: i) because a citizen-oriented generic administrative procedure act is precisely absent; ii) because the court always rules in individual cases, and as such hardly tackles the issue of a lack of generality; and iii) because the barriers to court access for private citizens are high.

The perspective on the intended addressees of a regulatory framework for administrative procedures –whether unified or fragmented – is highly relevant, however. The European Commission's replies to the Parliament's resolutions reveal a perspective on administrative activity as being of a professional nature mainly ('the EU administers a range of diverse, mostly highly specialised activities'). Indeed, for certain sectors such as competition law, administrative interactions will be between highly trained professionals, for whom the

[34] Policy Note 30, May 2014

[35] See Section 1.3.3 below for an analysis of the recent consultation carried out by the JURI committee of the European Parliament.

[36] See footnotes 20-22 for examples.

existence of tailor-made sector-specific rules is only convenient. However, there are two arguments to be made to counter this view. First of all, even among business addressees, not all actors possess vast resources to use sector-specific rules to their advantage; moreover, it is one of the fundamental rationales of administrative law that this area of law exists so that actors of public administration are forced or encouraged to minimise the fundamental lack of equality between them and those over whom they hold power. Secondly, we simply do not know which 'activities' may turn out to have an administrative aspect in the future, or in which situations citizens may want to engage with the administration. As the study reporting on the findings from the public consultation by the JURI Committee also mentions, '[t]here is no comprehensive catalogue of services directly provided by the EU administration to citizens or businesses'. Therefore, and as reflected in the way the consultation survey was set up, what counts as 'administrative activity' is at least in part determined by the perspective of the citizen. Assuming this broader view of the 'administrative arena', not having a code or regulation containing default rules appears to be a missed opportunity from the perspective of both efficiency and accessibility.

In view of the need to look beyond administrative activity involving professionals mainly, the database of complaints received by the European Ombudsman over the past few years is a useful source. Here too, a caveat is inevitable, since there could be problems of selection bias due to the fact that the lack of (clear) information on the existence and mode of protection of a specific right might give rise to few or no complaints before the Ombudsman or courts. Cases of misconduct that are not accompanied by specific procedures for filing complaints, or for which stakeholders perceive that the procedure is uncertain, lengthy and costly, end up being inevitably under-represented.

During the drafting of this Impact Assessment, consistent opinions on the relevance and extent of existing fragmentation were also expressed by interviewees and stakeholders, in particular during the workshop we organised on 7 May 2018. Also, as will be set out in more detail below, the public consultation launched by the JURI Committee of the European Parliament largely confirmed that stakeholders are favourably disposed to the introduction of rules that would provide for a minimum harmonisation of administrative procedure across the EU administration.

2.2 Current legal fragmentation of selected issues

Within the scope of this report it is not possible to map the existing legal fragmentation comprehensively and in detail, because of the number of relevant issues (see the summary of the European Parliament's proposal in Box 1 for an impression) in combination with the number of relevant policy fields and EU bodies. Instead we have selected a number of issues for which we briefly sketch the current legal situation in terms of its degree of fragmentation, in order to be able to gauge the legal and institutional impacts of potential efforts to bring more uniformity to the way in which they are regulated (see section 5): the right to access the file, time limits, the right to be heard and the right to information about the procedure. These issues have been selected for being relatively uncontested as core areas of general administrative law, as also evidenced by the frequency with which they appear in the codes we analysed (60-90%, see Figure 9 below). This finding rules out contestation as a driver of fragmentation, making it possible to look at the state of fragmentation and the effects of

reducing it *per se*. At the same time, we have deliberately chosen two issues already firmly embedded in European primary and secondary law as legal requirements with a fairly general reach (access to the file and the right to be heard) and two issues for which this is not the case, or at least to a much lesser extent (time limits and the right to information about the procedure).

2.2.1 Right to access to the file

The right to gain access to one's case file is a component of the right to good administration (Article 41 (2)(b) CFR), as well as of the right to be heard and the right of defence (Craig 2012, 326). In addition, such a right may be interpreted as a sub-species of the right of access to documents promoted both as a general principle of EU law and through provisions of EU primary law (Article 42 CFR and Article 15 (3) TFEU), and the subject of an individual regulation (Reg. 1049/2001). Its main purpose is to allow an 'equality of arms' in investigations, meaning that an affected party should be able to access the same documents and evidences included in the file held by the administration, in order to prepare representations in its own defence.[37]

This process right has been developed by case law in the area of competition law and is now explicitly shaped in the regulation governing that policy-area.[38]The fact that it is available in numerous other countries, however, allows it to draw from it a general principle of EU law that can be invoked in EU courts. According to Craig (2012, 327), it is now clear that the right of access to the file can be applied by analogy outside of competition cases in areas where no specific regulation is provided. As already ruled in Eyckeler,[39] the right to access the file can be enforced in other contexts if necessary to challenge administrative decision, by applying the reasoning from competition cases. This would serve to make the right to be heard effective and to avoid a serious breach of the rights of the defence.

The European Parliament's proposal contains a provision that codifies this interpretation:

> **Article 8 - Procedural rights**
>
> The parties concerned shall be granted full access to the file, while respecting the legitimate interests of confidentiality and of professional and business secrecy. Any limitation to this right shall be duly reasoned.
>
> Where no full access to the entire file can be granted, the parties shall be given an adequate summary of the content of those documents.

In addition to codifying the aforementioned case law, the provision clarifies particular limitations to the right to access to the file, such as documents that contain business secrets and confidential information. However, the provision seems to miss the opportunity to provide clarity on other important constraints to this right, such as the impossibility to access files in cases involving other persons or when the documentation contained in the file is irrelevant with regard to the allegations in the statement of objection.[40]

---

[37] See Case C-310/93 P *BPB Industries and British Gypsum v Commission* ECLI:EU:C:1995:101, para. 25.

[38] See Article 27(1) and (2) of Council Regulation (EC) No 1/2003 and relevant implementing regulations.

[39] Case T-42/96 *Eyckeler & Malt AG v Commission of the European Communities* ECLI:EU:T:1998:40, paras. 79-80.

[40] See Case C-204-205/00, *P Aalborg Portland A/S and Others v Commission* ECLI:EU:C:2004:6.

2.2.2 Right to be heard

The right to be heard, which is embedded in Article 41 (2)(a) CFR,[41] is one of those issues that the Court of Justice has long insisted is a general rule of EU law (Craig 2012, 290-292).[42] Although initially the right to be heard appeared to be limited to situations in which a sanction was imposed,[43] current case law only requires that there is an adverse impact on the applicant's interests or that these have been significantly affected (Craig 2012, 290; Craig et al. 2017, 123). A codification of the latter criterion would offer greater legal certainty in this regard. Muzi (2017, 488), using quantitative analysis of the case law of the Court of Justice, concludes that there is an increased predisposition on the part of the EU Courts to admit due process claims with regard to administrative decision-making. Specific requirements for EU bodies to give those affected by individual decisions an opportunity to make their views known may be found in a variety of regulations, directives and decisions.

2.2.3 Time limits

The current legal framework regulating time limits in administrative procedures is scattered in the sense that time limits may often be found in legislation specific to the activities of a particular agency. That said, the limits of two months and three months respectively, recur frequently,[44] suggesting that three months – as per the European Parliament's proposal[45] –

---

[41] EP proposal, Article 14: 'Right to be heard

1. The parties shall have the right to be heard before any individual measure which would adversely affect them is taken.

2. The parties shall receive sufficient information and they shall be given adequate time to prepare their case.

3. The parties shall be given the opportunity to express their views in writing or orally, if necessary, and if they so choose, with the assistance of a person of their choice.'

[42] A landmark case in this regard is Case 17/74 Transocean Marine Paint v Commission [1974] ECR 1063, [15].

[43] Case 85/76 Hofmann-La Roche v Commission [1979] ECR 461, [9].

[44] Regulation on ESMA, Regulation No 1095/2010, Art. 60, para. 2: '(…) The Board of Appeal shall decide upon the appeal within 2 months after the appeal has been lodged.'; Art. 15, para. 1: ' (…) Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require. (…)' The regulation on EIOPA contains similar rules: Regulation on EIOPA, Regulation 1094/2010, Art. 60, para. 2: '(…) The Board of Appeal shall decide upon the appeal within 2 months after the appeal has been lodged.' Regulation on Europol, Regulation No 794/2016, Art. 36, para. 4: 'Europol shall confirm receipt of the request under paragraph 3. Europol shall answer it without undue delay, and in any case within three months of receipt by Europol of the request from the national authority.'; Art. 37, para. 9: 'Within three months of receipt of a request in accordance with paragraph 1 or 2, Europol shall inform the data subject in writing of any refusal of rectification, erasure or restricting, of the reasons for such a refusal and of the possibility of lodging a complaint with the EDPS and of seeking a judicial remedy.'

[45] EP proposal, Article 17: 'Time-limits

1. Administrative acts shall be adopted and administrative procedures shall be concluded within a reasonable time-limit and without undue delay. The time-limit for the adoption of an administrative act shall not exceed three months from the date of:

(a) the notification of the decision to initiate the administrative procedure if it was initiated by the Union's administration, or

(b) the acknowledgment of receipt of the application if the administrative procedure was initiated by application.

2. If no administrative act can be adopted within the relevant time-limit, the parties concerned shall be informed thereof and of the reasons justifying the delay and they shall be provided with an estimate of the expected date

could be a suitable default time limit. Competition law has many more tailored time limits, expressed in working days rather than months, specific to certain elements of procedures.[46] This is not incompatible, however, with the suggestion that a general act regulating administrative procedure could leave room for sector-specific rules, in particular in competition law. The aforementioned Regulation No 1049/2001 also has deviating time limits of normally 15 days (Articles 7 and 8). Hofmann (2014, 25) contends that the notions of fairness in the wider sense and legal certainty are also relevant for the right to the treatment of an issue 'within a reasonable time' as 'slow administration is bad administration'.[47] Existing general rules also include the calculation of administrative time limits,[48] and these could easily be referred to in a general act on administrative procedure.

2.2.4 Right to information about the procedure

The European Parliament's proposal (as well as the proposal for 'Model Rules on EU administrative procedure put forward by the academic Research Network in European Union Administrative Law (ReNEUAL)' – see Craig et al. 2017) contain some requirements that can be grouped under the heading of 'right to information about the procedure'. The main provision operationalising said right reads:

Article 8 - Procedural rights

The parties shall have the following rights related to the management of the procedure:

(a) to be given all relevant information related to the procedure in a clear and understandable manner;

(…)

---

of adoption of the administrative act. Upon request, the competent authority shall respond to questions concerning the progress of the consideration of the matter.

3. If the Union's administration does not acknowledge receipt of the application within three months, the application shall be deemed to be rejected.

4. Time-limits shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council.'

[46] The time limits in Regulation 139/2004, art. 10, are 25 days (which can be increased to 35 days), and 90 days (which can be increased to 105 days). (Hofmann et al. 2011, 378, 379). There is also a type of lex silencio positivo in art. 10 paragraph 6. EC Merger Regulation, Regulation No 139/2004, Art. 10: '1. Without prejudice to Article 6(4), the decisions referred to in Article 6(1) shall be taken within 25 working days at most. That period shall begin on the working day following that of the receipt of a notification or, if the information to be supplied with the notification is incomplete, on the working day following that of the receipt of the complete information. That period shall be increased to 35 working days where the Commission receives a request from a Member State in accordance with Article 9(2)or where, the undertakings concerned offer commitments pursuant to Article 6(2) with a view to rendering the concentration compatible with the common market. (…) 3. Without prejudice to Article 8(7), decisions pursuant to Article 8(1) to (3) concerning notified concentrations shall be taken within not more than 90 working days of the date on which the proceedings are initiated. That period shall be increased to 105 working days where the undertakings concerned offer commitments pursuant to Article 8(2), second subparagraph, with a view to rendering the concentration compatible with the common market, unless these commitments have been offered less than 55 working days after the initiation of proceedings.'

[47] AG Jacobs in C-270/99 P Z v Parliament [2001] ECR I-9197, para. 40 with reference to Art. 41 Charter and claiming that this was 'a generally recognised principle'.

[48] Regulation (EEC, Euratom) 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, OJ 1971 L 124/1.

A more specific and more detailed requirement in this regard is:

Article 28 - Online information on rules on administrative procedures

1. The Union's administration shall promote the provision of updated online information on the existing administrative procedures in an ad-hoc website, wherever possible and reasonable. Priority shall be given to application procedures.

2. The online information shall include:

(a) a link to the applicable legislation,
(b) a brief explanation of the main legal requirements and their administrative interpretation,
(c) a description of the main procedural steps,
(d) the indication of the authority competent to adopt the final act,
(e) the indication of the time-limit for the adoption of the act,
(f) the indication of remedies available,
(g) a link to standard forms that may be used by parties in their communications with the Union's administration within the procedure.

3. The online information set out in paragraph (2) shall be presented in a clear and simple way. Access to that information shall be free of charge.

With regard to this latter provision (III-4 in ReNEUAL) the explanations of the ReNEUAL Model Rules state that the requirements it contains are not very common comparatively speaking (Craig et al. 2017, 102). However, s

Such requirements, however, 'seem necessary in order to adapt the regulation of administrative procedures to the information society and to fulfil the expectations of citizens with regard to e-government' (ibid.). The added value of a generic requirement to provide parties with all relevant information related to the procedure in combination with more detailed rules on which part of this information should be retrievable online mainly occurs in application procedures. Here there are no rules in place that are comparable to the provisions cited above. This is a bit different for procedures involving sanctions that are imposed, since in such situations there often are already requirements to inform addressees individually laid down in sector-specific legislation and/or case law.

2.3 Empirical evidence confirms that fragmentation exists and leads to problems

There are many ways to describe the *status quo*: data, although not abundant, exist on various aspects of EU bodies' administrative procedures. In order to fully describe the problem, we analyse the complaints received by the European Ombudsman in recent years; and report on our survey of EU bodies, complemented by the results with desk research on all available 30 codes of good administration (7 of which are mere adoptions of the 2001 Code of Good Administrative Behaviour) out of a population of 65 EU institutions, bodies and agencies. This exercise is intended to map the differences between these documents and, where possible, the discrepancy between the text of the existing codes and the Parliament's proposed regulatory framework. Moreover, we have analysed the results of the public consultation run by the JURI Committee of the European Parliament between 15 December 2017 and 9 March 2018 (section 2.3.3).

2.3.1 An analysis of the European Ombudsman's recent activities

In this section, we describe recent European Ombudsman (EO) inquiries related to alleged maladministration in EU institutions.[49] This analysis will serve as a proxy to pinpoint the areas in which major problems in the relationship between the EU administrations and citizens emerge.

Pursuant to Article 228 TFEU, the EO is entrusted to combat maladministration by the executive branch of the EU.[50] To fulfil this task, she is requested (but not obliged) to implement 'The European Code of Good Administrative Behaviour' (ECGAB). Adopted by the EU Parliament in 2001 in the form of a resolution, the Code is a soft-law instrument that retains a vital role to illustrate the function of the EO vis-à-vis the EU administration. In fact, the Code reflects three different connotations of good administration (Mendes 2009). In addition to codifying general principles of EU administrative law, it restates procedural and substantive rights and duties resulting from EU law, as well as promotes standards of administrative practices directed at encouraging a culture of service.

When analysing the EO's position and role to identify structural problems of the EU administration, some aspects seems particularly relevant, as discussed below.

- In order to exercise the power to conduct own-initiative investigation, the EO should necessarily have a broader picture of the status quo of the EU administration. In this respect, own-initiative investigations are particularly important to identify endemic problems in the EU administration.[51]
- The EO can exert a stronger impact than courts in promoting standards of 'good administration'. Not only can it inspect administrative behaviour and ask for relevant documents (which EU institutions are obliged to supply), but it can also monitor the implementation of its decisions. As such, the analysis of the EO decisions can provide a more truthful picture of the issues affecting the EU administration and its relationship with citizens.
- Finally, as already observed, due to the lack of a comprehensive body of rules on administrative procedure, EU case law is scattered and offers little clarity on the scope of the problems involved in the area, whereas the EO has more scope to create her own understanding of the concept of 'good administration' and to provide redress to the affected citizens (Harlow and Rawlings 2014).

---

[49] The following analysis focuses on the inquiries closed by the EO since the Juncker Commission took office – i.e. over a period of about four years' time between 1 November 2014 and 22 May 2018. It contains an elaboration of the data supplied by the EO and collected from the EO annual reports (for the years 2015, 2016 and 2017).

[50] This broad goal involves ensuring greater positive impact on the transparency and accountability of the administrative institutions and agencies to the benefit of EU citizens and residents. The EO may find maladministration if an institution fails to respect fundamental rights, legal rules or principles, or the principles of good administration. This covers administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, and unnecessary delay, for example. Any citizen or resident of the EU, or business, association, or other body with a registered office in the EU, can lodge a complaint, also when not individually affected by the maladministration to complain.

[51] For instance, in 1996 the then EO Söderman announced that the purpose of creating the office of EO was to emphasize the Union's commitment to transparency, due to the numerous issues emerging during his term. See Harlow and Rawlings 2014.

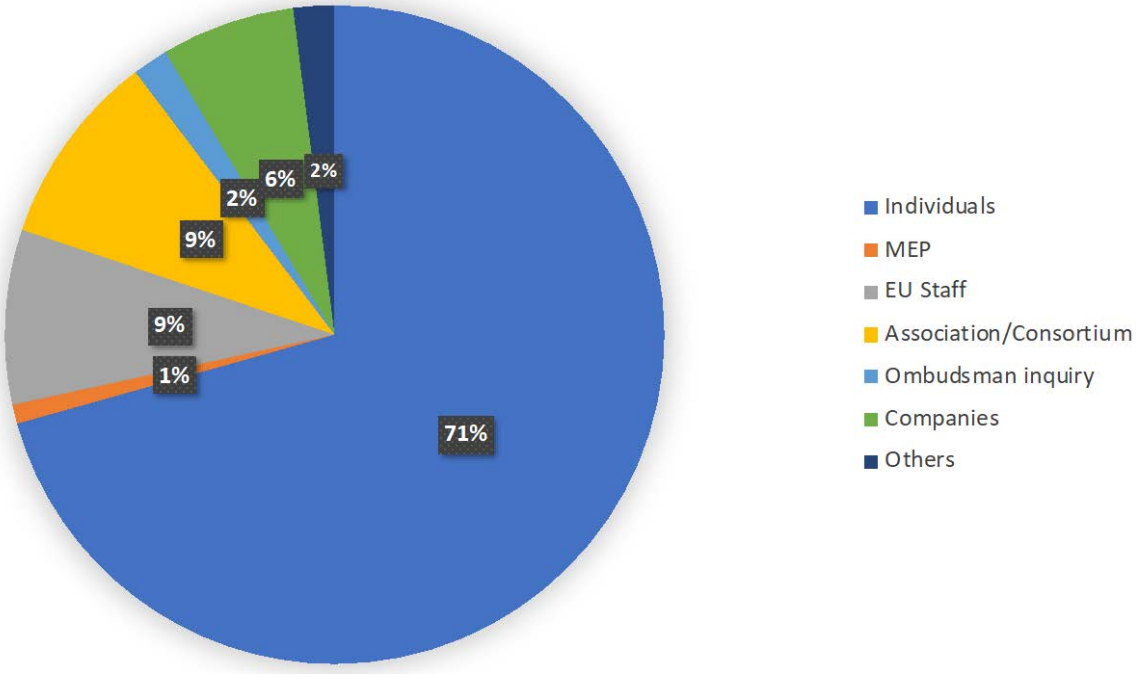
Nonetheless, the EO's role in promoting standards of good administration across the EU executive faces some clear limitations. This element must be taken into account when trying to draw general patterns or trends from its decisions.

- The number of inquiries closed by EO decisions is relatively low (around 250-350 per year), also as compared to the total number of complaints received (between 1200 and 2800). This means that an empirical analysis of its inquiries might not capture all problems affecting EU administration.
- Since the EO is entrusted to combat 'maladministration' committed by the executive branch of the EU in its direct contact with citizens, its attention is mainly focused on instances of direct administration (De Leeuw 2003). Yet, EU administrative tasks are increasingly exercised through models of joint and shared administration and composite decision-making, for which the EO is said to be ill-equipped to exercise control (De Leeuw 2003), given the likely difficult to disentangle the activities of the EU institutions that may endanger private interests.
- Given the rather flexible concept of 'maladministration', the position and activities of the EO strongly depend on how the individual occupying the office interprets his/her tasks.[52] It may thus be difficult to draw an overall picture of the role of the EO in enforcing uniform standards of good administration over the years.
- The EO's decisions about maladministration are neither enforceable, nor do they produce binding effects for the EU institutions concerned. In addition, the EO can only initiate an investigation if EU or national Courts have not taken action on the same case. Therefore, the EO may at times play a limited role to enhance observance of good administration in EU institutions.

Figure 1 below shows the breakdown by type of complainant of inquiries closed by the EO in 2014-18. It clarifies that 71% of the complaints come from citizens, followed by associations or consortia, EU staff and companies.

[52] For instance, while the current EO, Emily O'Reilly, and her predecessor, Nikiforos Diamandouros, have adopted a strategy of launching a set of systemic investigations and placed more emphasis on the consumer-watch role, another one (Jacob Söderman) saw himself more as a redress-ombudsman. See Harlow and Rawlings 2014.

Figure 1 – Inquiries closed the EO in 2014-18, by complainant



Source: Own elaboration on official data from the EO.

2.3.1.1 *Finding 1: The European Commission is the biggest subject source of the complaints over maladministration*

Overall, while the number of complaints submitted to the EO has been rather stable during the last three years (707 in 2015, 711 in 2016 and 751 in 2017), the number of inquiries opened by the EO steadily increased during the same period (261 in 2015, 245 in 2016 and 447 in 2017). This may imply that more complaints fell outside the competences of the EO and that the new implementing procedure is extending the EO's powers of control over the EU administration.[53] Compared to the generality of the enquiries, the number of inquiries settled by the EU administration is rather stable (148 in 2015, 145 in 2016 and 166 in 2017); those where no maladministration was found slightly increased (79 in 2015, 89 in 2016 and 164 in 2017); and decisions where no further inquiries were justified are reducing (54 in 2015, 52 in 2016 and 27 in 2017). The actual number of decisions of maladministration taken by the EO over the same period follows a rather similar decreasing pattern (30 in 2015, 20 in 2016 and 24 in 2017). Overall, then, the compliance rate of the EU administration with the EO's proposal is rather high, especially compared to the years before the Juncker Commission took office.[54] However, the compliance rate has decreased lately from 90% in 2015 to 85% in 2017 (with the Commission scoring an even lower 77% in 2017).[55]

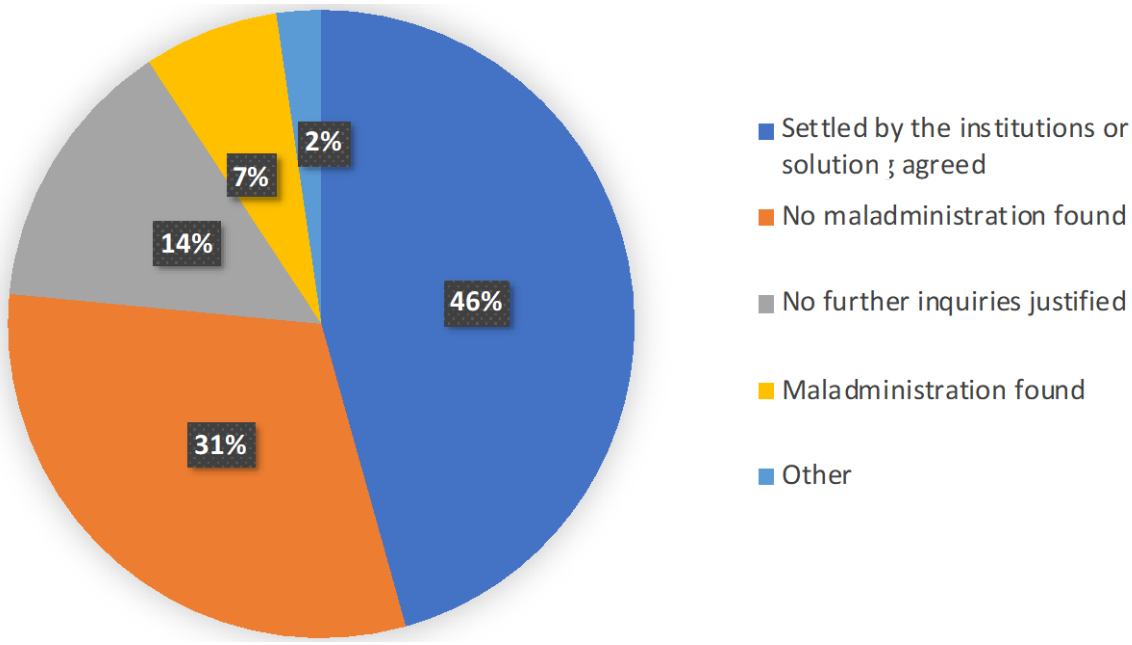
[53] EO Annual report 2017, 41.

[54] EO Annual report 2015, 5.

[55] EO Annual report 2017, 44.

Figure 2 below shows results the inquiries closed in 2014-18 by the EO.[56] The data demonstrate that in more than 46% of the decisions the case was settled by the institution concerned and in 31% of the cases no maladministration was found, whereas 7% of the inquiries were closed with a finding of actual maladministration.

Figure 2 – Results of the inquiries closed by the EO in 2014-18

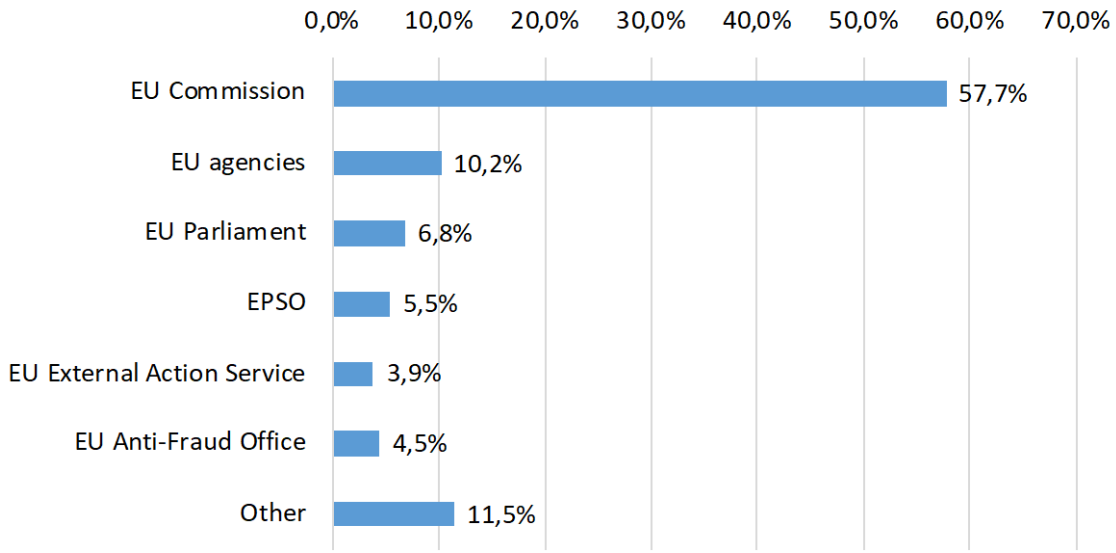


Source: Own elaboration on official data from the EO

Regarding the EU administrations involved in the investigation, the majority of the EO's closed inquiries concerned complaints related to the behaviour of the European Commission, accounting for about 58% of all cases in the period considered. Throughout these years, the number of decisions involving the Commission has been rather stable, accounting for 55.5% of all cases in 2015 (145 cases), for 58.8% in 2016 (144 cases) and for 57% in 2017 (256 cases).

[56] Certain inquiries in the period have been closed both as 'settled by the institutions and as 'no further inquiries justified'.

Figure 3 – Inquiries closed the EO in 2014-18, by EU administration concerned



Source: Own elaboration on official data from the EO

This conclusion can be explained, on the one hand, by the administrative size, output and range of duties of the institution[57] as compared to the other branches of the EU administration, and, on the other hand, by the scope of its administrative activities, which normally have a more direct impact on people's lives and businesses (especially as compared to EU agencies).

EU agencies, EPSO and the Parliament have been the other major targets of investigations. EU agencies have been investigated by the EO in 11.5% of all inquiries in 2015 (30 cases), 12.3% in 2016 (32 cases) and 7.8% in 2017 (35 cases); EPSO between 5.7% and 10% of the total (14 inquiries in 2015, 26 in 2016 and 34 in 2017); the EU Parliament between 8% in 2015 (21 cases), 6.5% in 2016 (16 cases) and 4.9% in 2017 (22 cases). For the EU agencies, major cases focused especially on the lawfulness and transparency of their decision-making procedures, such as in two cases involving the approval of medicines by the European Medicines Agency[58] or the registration of products by the European Chemicals Agency.[59]

Other relevant EU executive structures inquired by the EO in the mentioned period are the Council of EU, the European Council and the trilogue, as well as the European Investment Bank (EIB) and the European Central Bank (ECB). Their low scores in the present analysis is presumably due to their limited direct interaction with EU citizens. However, each of these structures have been targeted by the EO in her effort to promote broader accountability and transparency in lobbying activities in key areas and topics of EU decision-making,[60] such as economic and financial matters or the Brexit negotiations, because they produce substantial effects on the daily lives of EU citizens, as well as on national administrations and companies.

[57] EO Annual report 2015, 16.

[58] EO Annual report 2016, 15; EO Annual report 2017, 16.

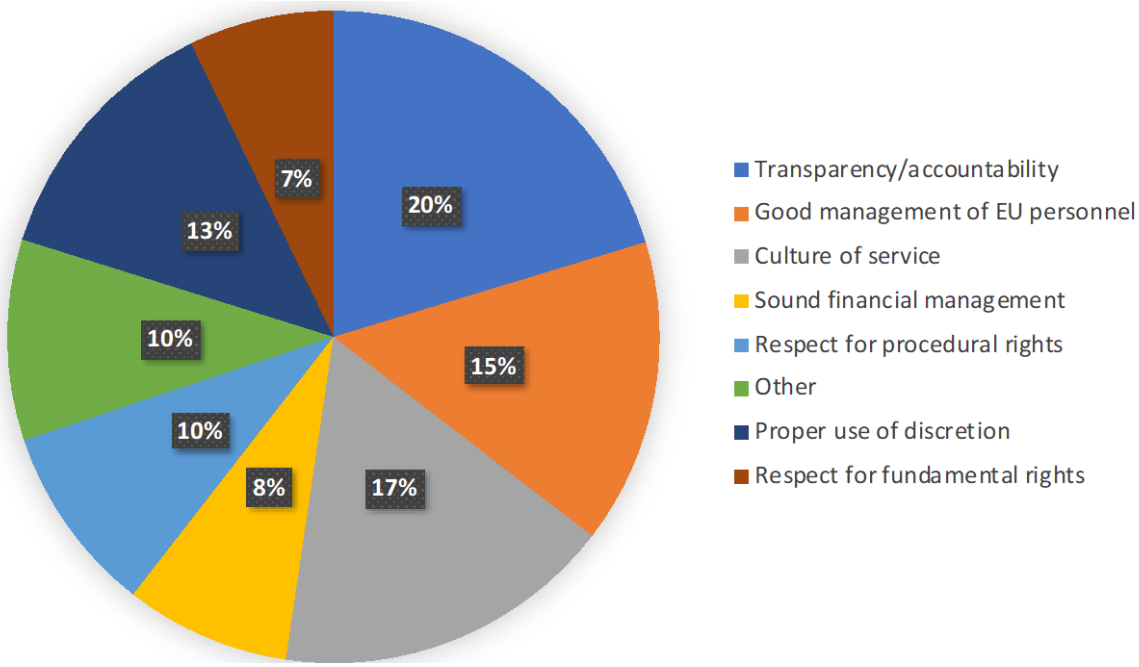
[59] EO Annual report 2016, 15.

[60] EO Annual report 2017, 10-13.

2.3.1.2 Finding 2: Lack of transparency is the most recurrent subject of inquiries

In general, among the subject matter investigated by the EO,[61] transparency issues of the EU executive rank the highest, with 22.4% of the total cases in 2015 (62 cases), 29.6% in 2016 (86 cases), and 20.6% in 2017 (75 cases). The most common transparency issues, guaranteed also by the Charter of Fundamental Rights of the EU, are the refusal to grant access to files and the refusal to provide information (respectively around 5.2% and 16.2% of the total cases in the period 2014-18).[62] This result is in part surprising, given the fact that Regulation 1049/2001 is traditionally pointed to as one of the few cases where a common body of rules is shared across most of the EU administrations. What emerges from the cases handled by the EO, however, is not only that the scope of application of these rules is contested,[63] but also that certain executives follow provisions that are still not in line with those laid down in Regulation 1049/2001.[64]

Figure 4 – Inquiries closed by the EO in 2016-17, by subject matter



Source: Own elaboration on official data from the EO.

Moreover, transparency involves also behaviours of the EU administrations about the (lack of) reasoning behind decision-making (about 2.5% of the cases in the period 2014-2018) and

[61] On this aspect, the classification made by the EO on its decisions has changed since 2016. For this reason, the following analysis compares the subject matter of the inquiries closed by the EO compared only for the years 2016-2017.

[62] Given the fact that both issues are time-sensitive, the EO has lately introduced a new fast-track procedure for these complaints where an individual can receive a response within weeks (instead of months). EO Annual Report 2017, 8.

[63] EO Annual Report 2016, 8.

[64] EO Annual Report 2017, 8.

violation of the right to public participation in EU decision-making (around 2% of the cases in the year 2017). The apparently unexpected low score of these two categories can have three main explanations: first, it shows that EU institutions perform rather well in these sectors; second, it may be explained by the fact that violation of rights and the duty to state reasons are fundamental issues that are mostly dealt with in judicial review (rather than with soft modes of resolutions, such as the EO); third, as for the participation in EU decision-making, it demonstrates that this procedure is still little deployed and challenged by citizens. Nevertheless, the EO is currently making a great effort to contribute to the improvement of citizens' participation in the EU decision-making process, by handling complaints on the procedure and monitoring how the European Commission will manage the process.[65]

Regarding the relationship between the EU administration and citizens, issues connected to the level and culture of service (such as friendliness, language and timeliness) have been one of the major subjects of complaints (17% of total cases), as much as respect for procedural rights, including the right to be heard (10% of the total cases). Conversely, fundamental rights have not been major issues of investigation for the EO (constituting 7% of total complaints). Given their key relevance, however, they have been part of five strategic investigations started on the EO's own initiative (for instance, the strategic initiative closed in 2016 on asylum and refugee policies).[66] Other subjects of inquiries handled by the EO have related to sound management of EU personnel (recruitment and conflicts of interests) (at around 15%), and complaints regarding the Commission's use of discretion (also at around 13%).

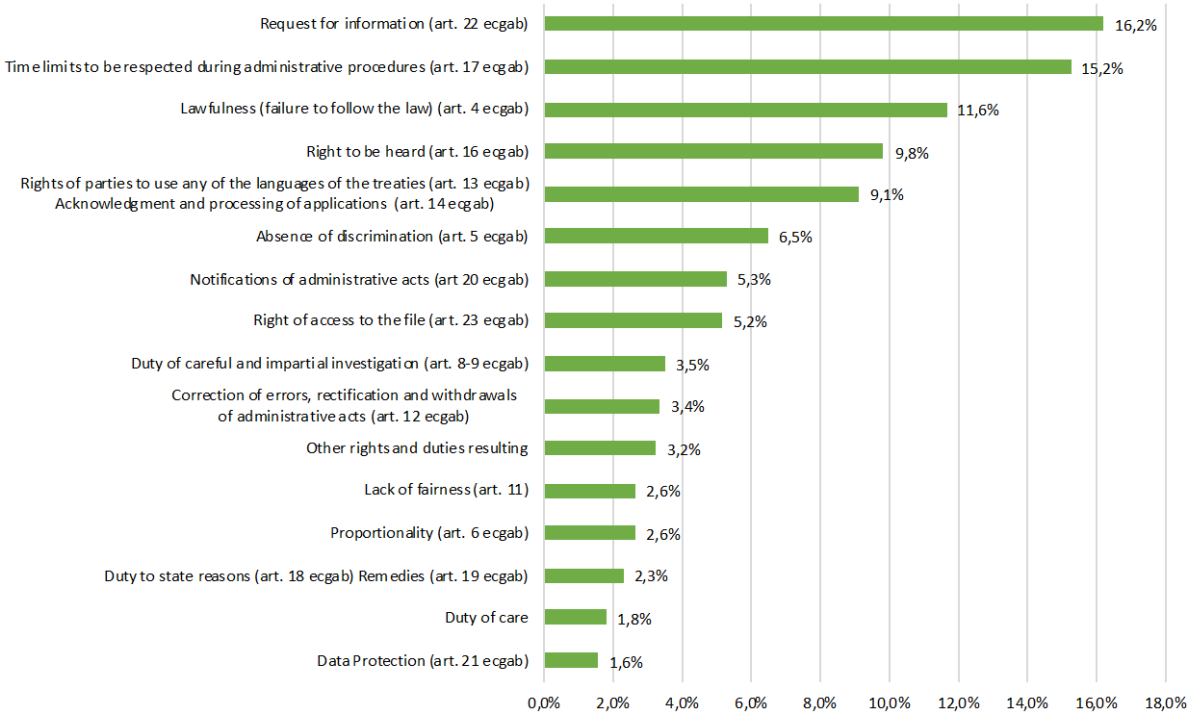
A slightly similar pattern emerges from the EO's strategic inquiries. In addition to the above-mentioned issues of respect of fundamental rights (28.5% of the total strategic inquiries), the largest number of inquiries concern transparency issues and occur mainly when the right to access to a file is violated (6 cases or 42.8% of the total number of inquiries). On both aspects, as well as on ethical issues of (current or former) personnel of the EU administration, the EO is devoting considerable energy in order to promote good administration across the EU executive.

Transparency issues also emerge as problems in the relationship between the EU administration and citizens and companies from the types of maladministration mainly involved in the EO's investigations. During the period investigated, complainants mainly invoked provisions of the ECGAB related to failure to reply to a request for information (16.2% of the cases), failure to respect the time limits of the procedure (15.2%) and violation of the right to be heard (9.8%).

[65] EO Annual Report 2017, 18.

[66] See EO complaint n. SI/1/2015/MHZ.

Figure 5 – Inquiries closed by the EO in 2014-18, by allegation



Source: Own elaboration on official data from the EO.

2.3.1.3 *Finding 3: 'General, financial and institutional matters' represent around half of the total cases handled*

About the fields of law[67] where most findings of maladministration emerged, around half of the total cases (52% of the cases in the category) fall within the broad category of 'general, financial and institutional matters' and this figure is rather stable throughout the period investigated. This result is not unexpected, given the broad category considered, which involves a large number of issues connected to the functioning of the institutions and their decision-making process.

Other policy fields where numerous cases have emerged are environment, consumers and health policies (7,5 % of the total cases), the area of freedom, security and justice (6,5% of the total cases) and the freedom of movement of workers and social policies (4,9% of the total cases). This finding should be connected to the fact that administrative behaviours in these areas are most likely to affect citizens. Indeed, being policies that may produce a deep impact on EU citizens' lives and involve a vast number of administrative activities (including enforcement), it is not surprise that they gave rise to a vast number of EO decisions over the period investigated.

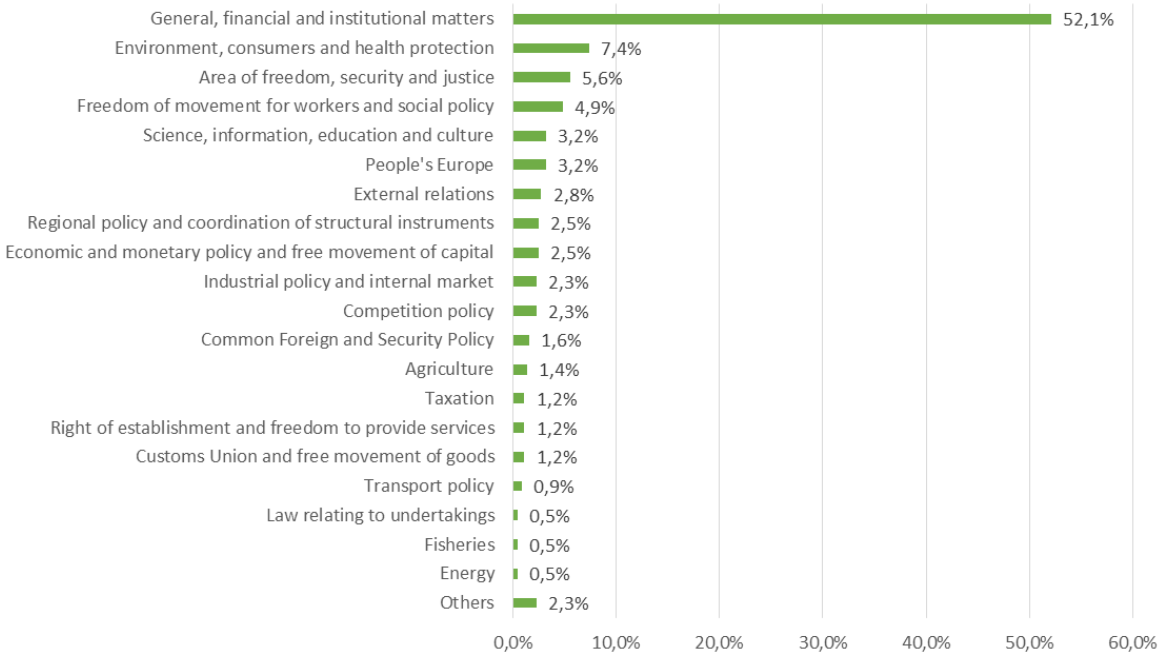
Inquiries on the use of administrative power in competition policy enforcement are instead low in numbers (2,3% of the total cases), but they are nevertheless important due to the

[67] On this aspect, the classification followed by EO on its decisions has changed since 2016. For this reason, the following analysis compares the field of law of the inquiries closed by the EO only for the years 2014-2016.

relevance of the administrative procedures within the EU executive (instances of maladministration here mainly relate to issues of access to documents[68] and the lawful conduct of the Commission during the investigation).

Policy areas where relatively few decisions of maladministration have been taken are agriculture, customs and freedom of goods, energy policies, transport, common foreign and security policies, tax and economic policies, fisheries. This pattern can be explained from at least three different perspectives: because the EU executive maintains a good administrative behaviour in the area, because of the lack of interest for complainants (especially private persons), or because national administrations are more involved or take decisions directly impacting on others in these areas.

Figure 6 – Inquiries closed by the EO in 2014-16, by field of law



Source: own elaboration on official data from the EO

2.3.1.4 Synopsis

Based on the assessment of the data about the complaints and decisions of the EO, a consistent pattern can be identified in the most problematic aspects of EU administrative procedure, as follows:

- **The European Commission is the authority most often involved in cases of (alleged or verified) maladministration**. This conclusion seems to be due to two major elements: the rather broad dimension of the institution as compared to the whole administrative branch of the EU and the scope of its administrative activities, which have normally a more direct impact on people's lives and businesses (especially compared to EU agencies). EU agencies and EPSO are the other most-involved institutions, the latter only on cases

[68] Case Infineon, EO Annual report 2014, 15.

regarding the correct application of rules governing the selection procedure of EU staff. As highlighted by the EO's strategic enquiries, however, attention should also be paid to the administrative activities of other authorities, such as the Council of the EU, the European Council, the EIB and the ECB. Despite their limited direct interaction with EU citizens, each of these structures has a substantial impact on EU citizens' lives, as well as on national administrations and companies. Thus, their decision-making processes require adequate guarantees and rules that ensure the quest for more transparency and accountability.

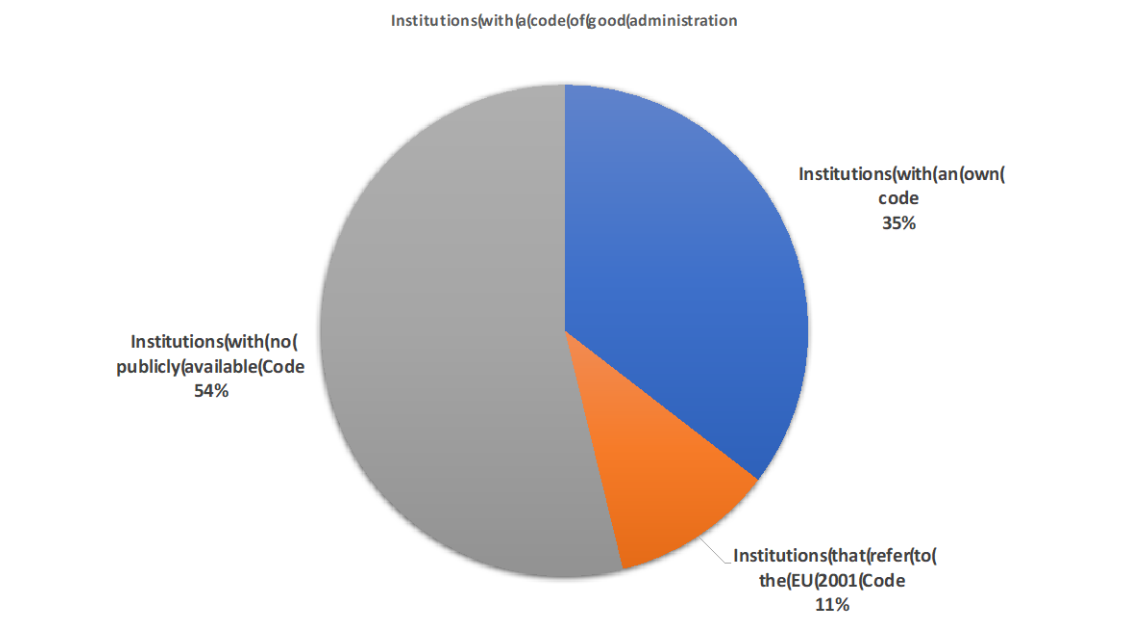
- **Transparency issues are the main case of maladministration by the EU administration.** This involves a rather comparable number of complaints about the refusal of an institution to grant access to documents and to provide information, which form the most relevant cases of alleged maladministration, together with complaints about the level and culture of service (such as friendliness, language and timeliness). On the opposite side, decisions about the transparency in the reasoning behind decision-making and the right to public consultation are more limited, as well as the issues about respect for procedural and fundamental rights. This unexpected result can have perhaps different explanations. With respect to violation of rights and legal reasoning, these issues of maladministration seem to be mostly dealt with in judicial review rather than through the EO's soft-control powers. Participation in EU decision-making, however, is infrequently invoked by citizens. Nevertheless, the concrete contribution given by the EO to the reform of the participatory procedure[69] shows the key importance of ensuring uniform and broad rules on transparency and accountability throughout the EU executive.

2.3.2 Codes of good administration in EU institutions

In order to validate our findings related to the fragmentation of rules of good administrative conduct in EU agencies, bodies and institutions, we sent a survey to 40 EU institutions, agencies, offices and bodies. Given the limited number of replies received (10), we complemented our analysis by scrutinising the codes of good administration that are publicly available on the websites of EU institutions. Among the 65 bodies identified (see list in Annex 2), we found 23 publicly available codes of good administration, many of which echo the content of the 2001 European Code of Good Administrative Behaviour, but with some important differences. In addition, we found seven bodies that, rather than adopting an ad-hoc code, decided to adopt the entire 2001 Code of Good Administrative Behaviour prepared by the European Ombudsman. Overall, this means that there are 30 EU bodies out of the 65 identified that have adopted a formal code of good administrative behaviour or good administration (see Figure 7 below). The remaining bodies resort on many occasions to ad-hoc rules for ruling on access to documents and resolving conflicts of interest.

[69] EO Annual report 2017, 18.

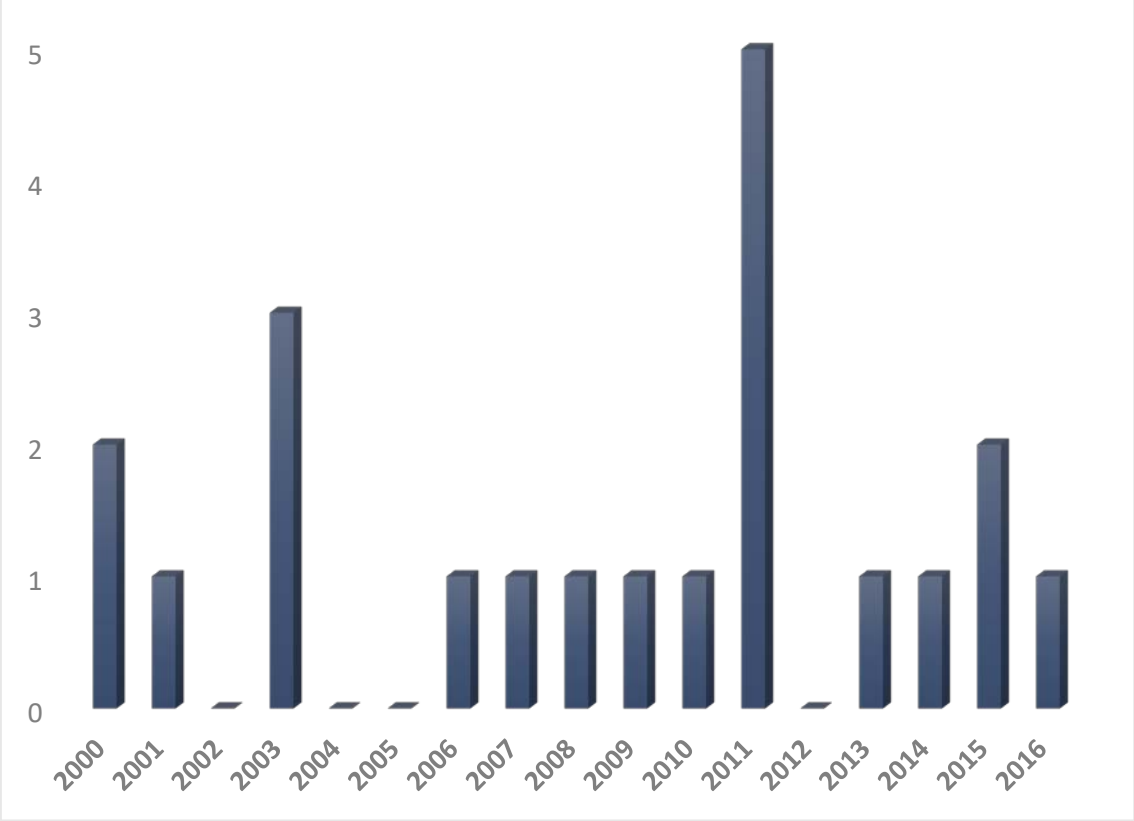
Figure 7 – EU Institutions and codes of good administration



Source: own elaboration

Within the population of codes that we could find, or that were reported by the bodies themselves, we found significant variation. Of the 23 bodies for which we could analyse the full coverage of their codes of good administration, we found a wide divergence in the coverage of administrative rules, between themselves, with the 2001 Code and with the European Parliament's proposed rules. This might also be due to the fact that existing codes have been enacted at different moments in time, as shown in Figure 8. Our sample covers 16 years of codes of good administration, during which the CJEU has had the opportunity to rule in order to clarify certain rights, in particular the right to be heard, the duty for the administration to give reasons and to adopt decisions within a reasonable time, as well as the privilege against self-incrimination.

Figure 8 – Year of adoption of the codes in our sample



Source: Own elaboration.

There are numerous important differences in the coverage of codes of good administrations adopted by the EU institutions. In this section, we compare the coverage of these codes to the scope of the European Parliament's proposed regulatory framework as described in Box 1 above. As explained in more detail in Section 1 of this report, we adopted the European Parliament's framework as a benchmark in order to enable an assessment of the relative impact that the adoption of that framework (which constitutes a policy option in this impact assessment study) would have on the EU administration. Our intention is thus to assess the distance between the status quo (option zero in our impact assessment) and the European Parliament's framework (Option 2 in our impact assessment, see Section 5 and 6 below), in a way that leads to an assessment of the impact of moving from the former to the latter option.

2.3.2.1 Methodological clarifications

A caveat to keep in mind when reading through our findings is that our analysis is largely based on desk research, which means that we capture what is written in the existing codes, rather than what happens in practice. A higher response rate would have better represented the current practice in EU institutions, agencies, offices and bodies, since our survey was aimed at capturing also, beyond the rules explicitly adopted in the form of codes, existing practice (see Annex 1). The prevalence of desk research in our findings has both advantages and disadvantages in terms of accuracy: it is more accurate since it is more objective, and not based

on the self-reporting of institutions as regards compliance with specific standards of good administration (as would have occurred if we had based our results only on the survey). It may, however, be less accurate since the real impact of the adoption of a new regulatory framework should in principle be measured on the actual *status quo*, not on what is written in the codes, regardless of current practice. Furthermore, we have included in our sample only codes of good administrative practice, and not other rules followed by individual administrations, which may address specific types of administrative conduct (e.g. inspections). This decision may lead to an incomplete account of the full set of rules governing administrative conduct in specific institutions, agencies, offices or bodies. That said, we assume that for the 30 administrations that have given themselves a code of good administrative behaviour or good administration, that code represents the most important set of rules that the administration is expected to follow in its daily activities. For this reason, we prefer to show our findings mostly with reference to the 30 institutions, agencies, bodies and offices that have a code in place, rather than for the full 65 regardless of whether they have adopted an ad hoc code, or endorsed the 2001 one.

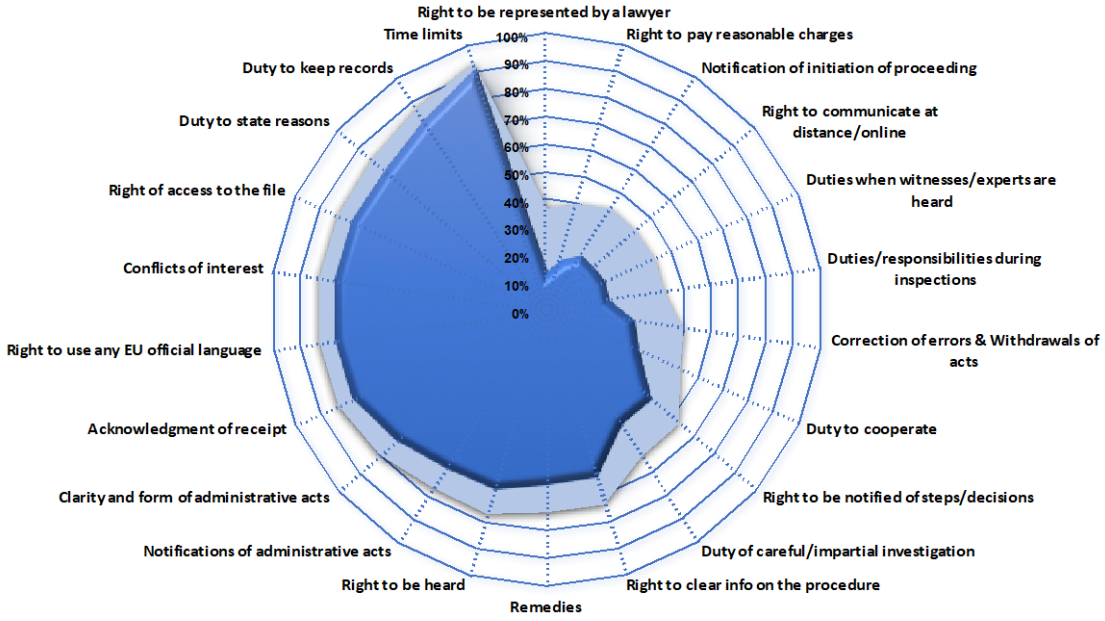
2.3.2.2 Distance between the status quo and the European Parliament's proposal

As a result, Figure 9 below shows the distance between current coverage and the content of the European Parliament's proposed regulatory framework for the 23 institutions, agencies, offices and bodies that have explicitly adopted a code (dark blue area); and the coverage obtained by adding the 7 institutions that explicitly adopted the 2001 Code (light blue area). As shown in the picture, the least-covered items in existing codes are the right for the parties to be represented by a lawyer, the right to pay reasonable charges where appropriate and the right to receive a notification of the initiation of a proceeding. And while these areas may be less covered for understandable reasons (i.e. many bodies do not initiate proceedings, and many do not charge for any relationship or transaction with members of the public), our analysis also reveals limited coverage of key issues such as the provisions related to the rectification and correction of mistakes; the duty of careful and impartial investigation, the duty to specify remedies, the right to be heard and the clarity and form of administrative acts. Relatively more widespread (over 75% of the sample) are provisions on the requirements related to the acknowledgment of receipt, provisions on the right to use any EU official language and receive a reply in the same language; provisions on the right to access one's file (but not to be given a summary of the content in cases in which access is not possible); rules on conflicts of interest; the duty to keep records (but not to make an index); and the existence of time limits. The latter tend to be set in particular for the acknowledgment of receipt (often to be given within 15 days, but sometimes less, and already automatic/instantaneous in a few bodies); and for the communication of the decision on a request to access the file (typically within two months).

Figure 10 shows the same analysis, but with respect to all 65 institutions, agencies, offices and bodies we have analysed, 35 of which do not have a code in place. As explained, this may be taken as a high-end, less conservative estimate of the distance between the rules in place and the European Parliament's proposed regulatory framework, which would apply to the whole EU administration, leaving the possibility for ad hoc sectoral rules where needed. In order to

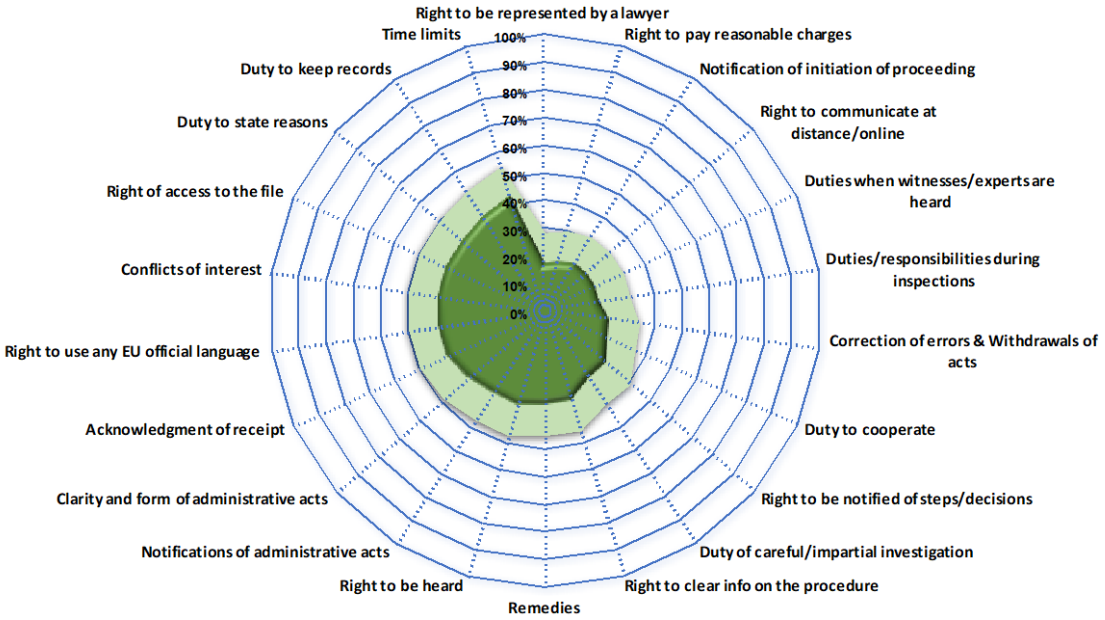
account for the existence of some form of rules of administrative conduct in those institutions, agencies and bodies that do not have an explicit code, we have formulated two assumptions: i) that no administrative rule exists (and total coverage coincides with the dark green area); and ii) that a 25% BAU (business as usual) factor applies (light green area). Regardless of the total number of institutions, agencies, offices and bodies referenced, the picture shows a remarkable distance between the situation as it now stands and the aims that the European Parliament proposed to achieve.

Figure 9 – Coverage of existing codes of good administrative conduct (n. 30)



Source: Own elaboration.

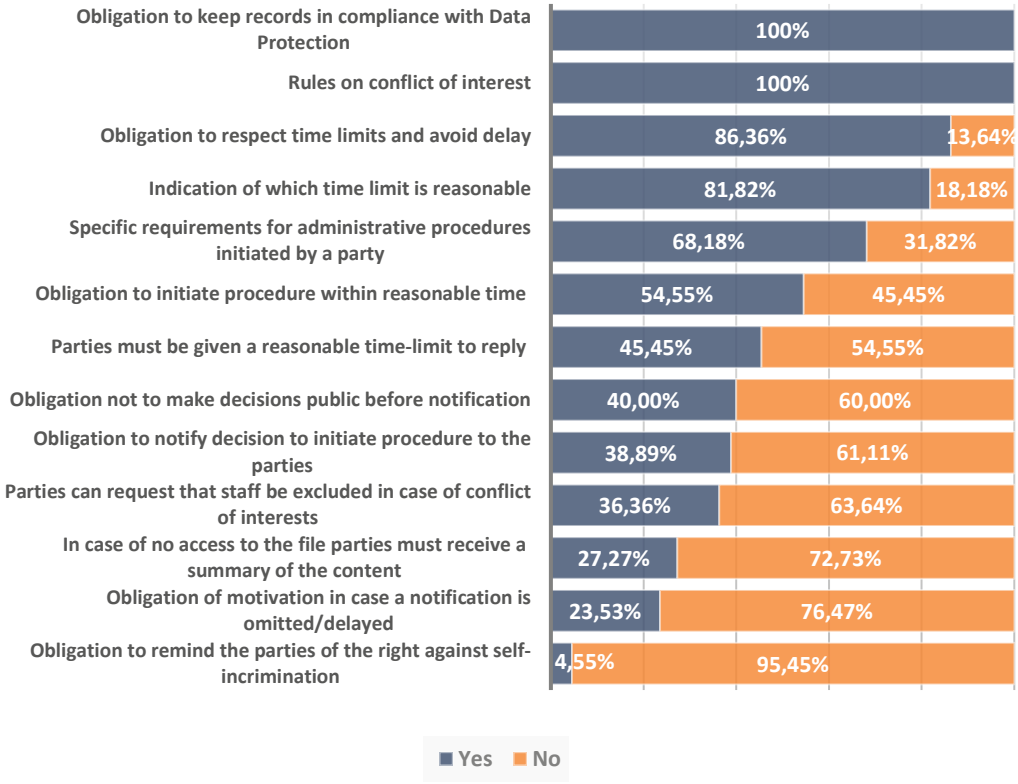
Figure 10 – Coverage of existing codes of good administrative conduct (n. 23 out of 65)



Source: Own elaboration.

Figure 11 below provides a more in-depth description of the specific provisions that can most often be found in the available codes of good administration. As shown, all institutions, agencies, offices and bodies are explicitly subject to an obligation to keep records in compliance with data protection rules, as well as an obligation to avoid conflicts of interest. On the latter issue, however, provisions differ in terms of the type of conflict in question (financial, personal, or other), as well as on the depth of the provisions, with some of the institutions, agencies, offices and bodies being very detailed on issues such as the behaviour to adopt in case of invitations, gifts and attendance at conferences or other events, whereas others limit themselves to a short declaration of principle. Moreover, only 36% of the sample offer the possibility for individuals involved to request the exclusion of a member of the staff on grounds related to the conflict of interest. Similarly, most institutions, agencies, offices and bodies specify the time limits that are to be considered reasonable, but such limits vary: while many consider two weeks as a reasonable time for sending an acknowledgment of receipt, one agency (EMA) does not have this problem as it uses the EudraLink system, which produces instantaneous acknowledgments of receipts upon the filing of a request by a member of the public. While time limits are often referred to, less than half of our sample provide the public with a reasonable time limit to reply to requests. Relatively less common are provisions on the obligation to provide a motivation in case a notification is omitted or delayed (23.53%) and the obligation to remind the parties of the right against self-incrimination.

Figure 11 – Specific provisions in the existing codes (n = 30)

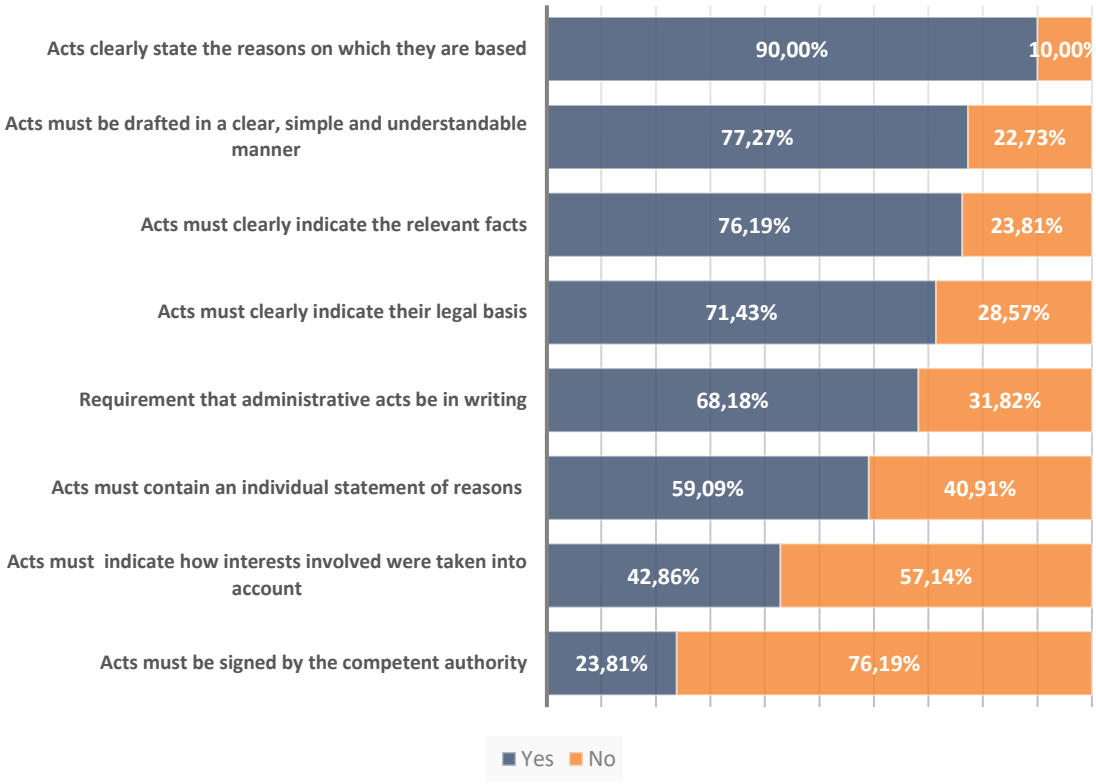


Source: Own elaboration.

2.3.2.3 Requirements in place for administrative acts

Figure 12 focuses in particular on the requirements in place for administrative acts. The figure shows that most of the 30 institutions, agencies, offices and bodies that have a code (90%) have rules that explicitly mandate the specification of the reasons behind the adoption of the act; and more than half of them are explicitly obliged to adopt acts that are clear, understandable, simple, in writing and contain an indication of the legal basis and the relevant facts. Such acts, however, do not necessarily indicate how interests were taken into account, and often do not mandatorily have to be signed by the competent authority (only 23.81% of the 30 EU institutions, agencies, offices and bodies in our sample).

Figure 12 – Requirement in place for administrative acts (n = 30)

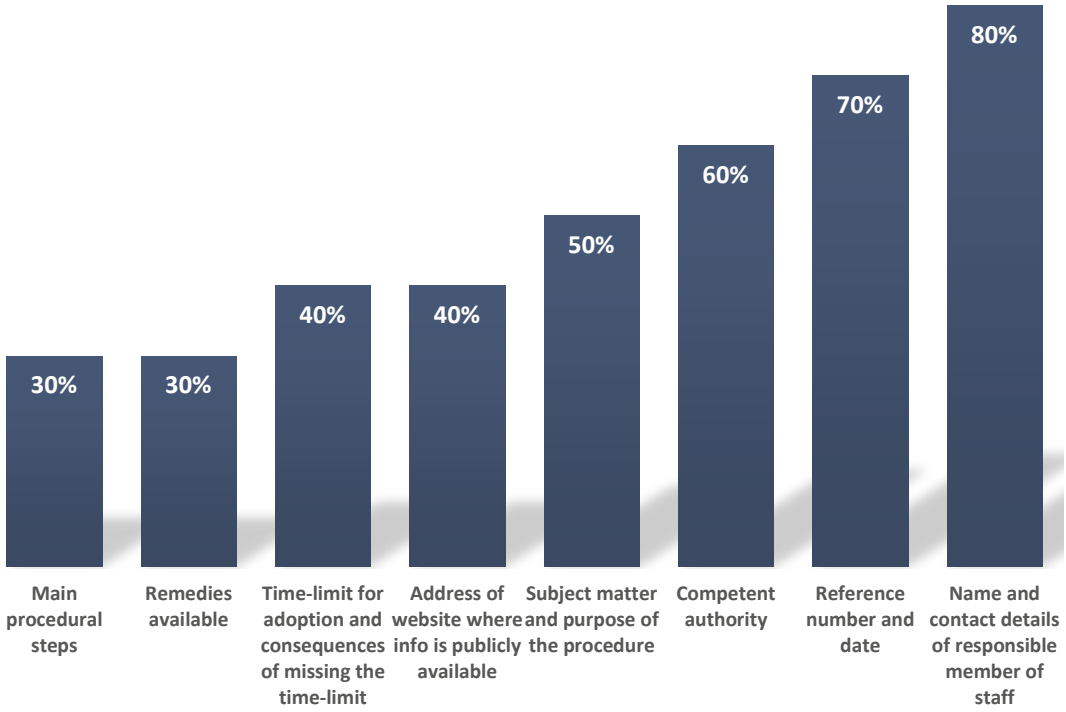


Source: Own elaboration.

2.3.2.4 Provisions on the content of notifications

Figure 13 focuses on the content of the notifications sent by EU institutions, agencies, offices and bodies to members of the public when initiating a proceeding. As shown in the figure, while most notifications (90%) must explicitly contain the name and contact detail of the responsible member of staff, there is seldom a requirement to include an explanation of the main procedural steps that affect the interests of the notified individual or the remedies available to the individual. This percentage goes down 14.29% in the specific case of acknowledgments of receipt. Some bodies also do not explicitly have to mention the competent authority for the procedure or for remedies, and even less (40%) have to mention time limits for the adoption of the act or consequences for failure to adopt the act within the time limit; and the address and website where the code or other relevant public information is available.

Figure 13 – Content of the notifications when initiating a proceeding

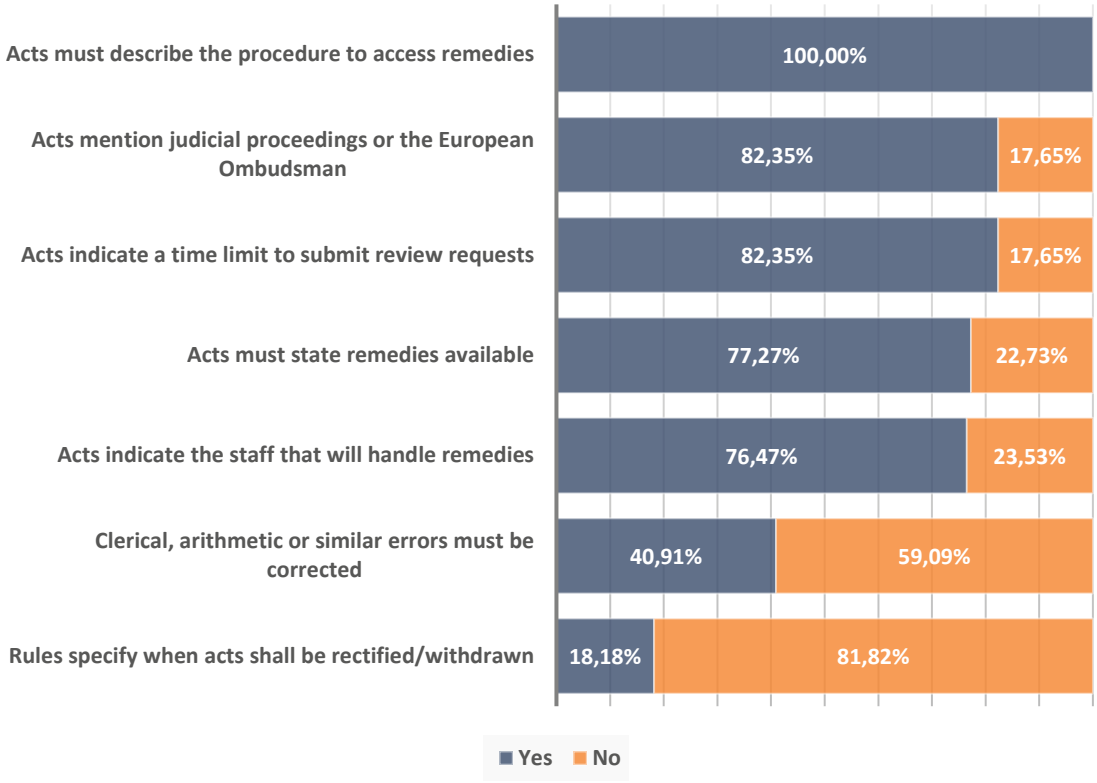


Source: Own elaboration.

2.3.2.5 Provisions on the indication of remedies

A further set of information was collected with regard to the codes' provisions on the treatment of remedies in administrative acts. There, understandably, all institutions, agencies, offices and bodies that are obliged to clearly state that remedies (such as administrative review) are available must also describe the related procedure to access these remedies. Many of them (82.35%) must also mention the existence and availability of judicial proceedings and/or the European Ombudsman and identify which remedies are available and the staff that will handle the related procedure (77% and 76%, respectively). The codes of a much smaller share, however, include an obligation to rectify or correct mistakes or spell out the conditions under which the obligation to correct/rectify arises.

Figure 14 – Treatment of remedies in administrative acts

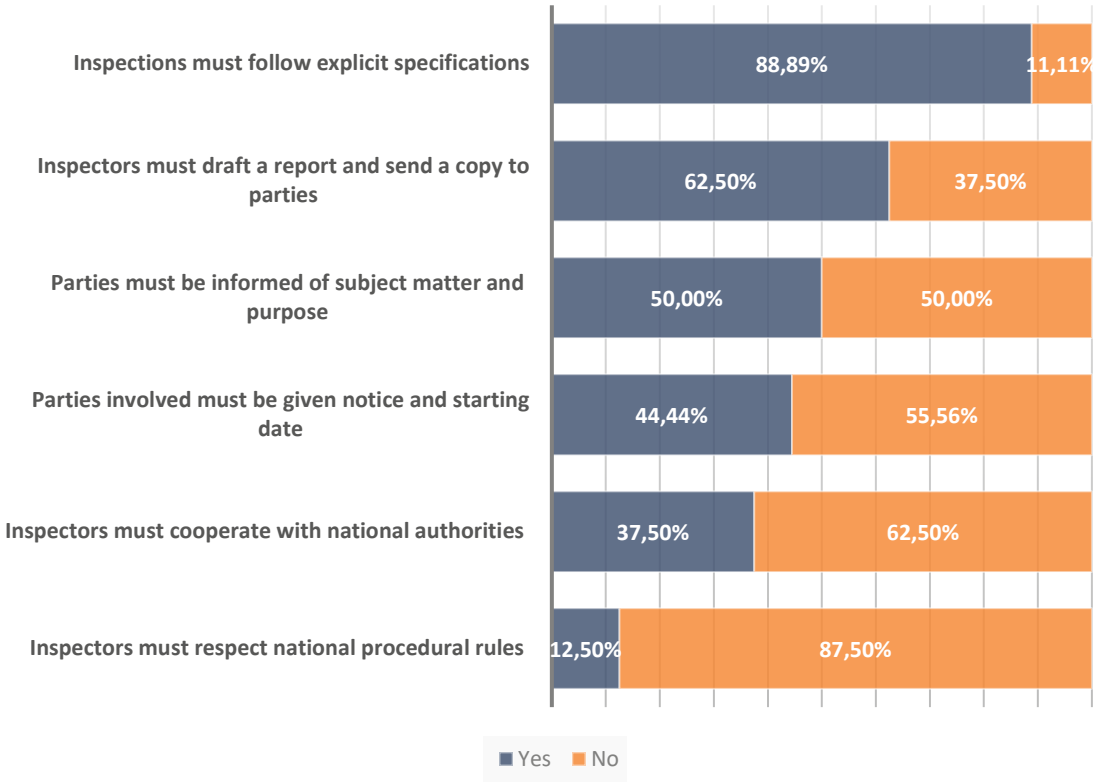


Source: Own elaboration.

2.3.2.6 Provisions on inspections

Another specific issue that emerged during our empirical analysis is that of inspections. Not all surveyed institutions, agencies, offices and bodies carry out inspections, as was to be expected (only 41% do). Among them, as shown in Figure 15 below, 89% have specific procedures in place for inspections, but only 62.5% require inspectors to draft a report and send a copy to the parties. Only half of the surveyed entities, however, reported having an obligation to inform the parties about the purpose and subject matter of the inspection. Less than half are obliged to give notice to the parties and inform them of the expected starting date. And only one of them has an obligation to respect national rules for inspections.

Figure 15 – Provisions on inspections



Source: Own elaboration.

2.3.3 The results of the public consultation of the JURI Committee of the European Parliament

As a follow-up to the European Parliament Resolution of 9 June 2016 for an open, efficient and independent European Union administration, the Committee on Legal Affairs requested the European Parliamentary Research Service, European Added Value Unit, to carry out a public consultation. The aim of the consultation was to receive views from the public, first, on general perceptions and attitudes towards EU administration; second, on personal experiences in dealing with EU bodies and third, on further actions that EU should take in the area of EU administrative law. The findings of the consultation can also be used to supplement the lack of data on the number and the type of administrative procedures in the EU institutions and the scope of administrative activity. The Summary Report on the public consultation (EPRS 2018) points out that the lack of such data "could be in itself an indication of the high complexity of the current systems characterised not only by a growing number of EU institutions, bodies and agencies but also by a growing number of interactions between citizens and the EU administration" (p. 11). We report the main results below and analyse specific answers given by private individuals and by corporations. A more extensive analysis

may be found in the Summary Report on Public consultation on an EU law for an open, independent and efficient European administration (EPRS 2018).[70]

2.3.3.1 Main results

In response to the consultation, the European Parliament received 166 fully completed responses from 20 EU Member States. The general perception of the EU administration was mixed: 52% had a positive perception, while 36% had a negative perception of the functioning of the EU administration. Professional interests, direct experiences and media are three main sources of information based on which respondents formed their opinion regarding EU administration. The perceived general awareness on what services EU bodies provide for the public and companies is high: 73.5% of respondents indicated that they know what services are provided by the EU bodies to the public and companies. At the same time, only 45.8% of all respondents indicated that they are familiar with their right to submit a petition to the European Parliament.

2.3.3.2 The experience with EU bodies

The experience of the respondents with the EU bodies is mixed: 54% of respondents reported either a negative or mixed experience, and only 46% had a positive experience. The European Commission, European Parliament and EU agencies are the bodies with which respondents had the most direct contact. Access to documents (46%), requests for general information (44%) and EPSO competitions (31%) are the three top reasons why respondents contacted the EU administration. The three main problems contributing to the negative experiences include length of procedure (42%), difficulty to find information (37%) the quality of the reply received (30%).

Interesting insights were provided by private individuals and corporations when responding to the survey. First, the respondents showed relatively high awareness of the Regulation 49/2001 on the right to access documents (56% of respondents) and the right to lodge a complaint with the European Ombudsman (55%). The familiarity with the European Code of Good Administrative Behaviour is however lower: only 37% of the respondents indicated that they are familiar or very familiar with this instrument, whereas 27% of respondents replied that they are not at all familiar with the Code. 28% of respondents don't know whether there is a legally binding code of administrative procedure applicable to all EU institutions, and 24% incorrectly think that there is one. 23% of respondents do not know that the Charter of Fundamental Rights of the European Union provides a fundamental right to good administration and 18% (wrongly) think that this is not the case. One third of the respondents incorrectly replied that European Code of Good Administrative Behaviour is binding on all EU institutions.

The main problems encountered by individuals in dealing with EU bodies were the difficulty in finding information (45% of those respondents who had negative or mixed experience); the

[70] Tatjana Evas, EU law for an open, independent and efficient European administration: Summary report of the public consultation, EPRS, July 2018.

length of the procedure (41%); the lack of reply and the complexity of the procedure (28%); followed by the fact that only a vague and generic answer was given, the difficulty in finding the competent person and the perception of lack of impartiality of the person handling the request (each of these answers was mentioned by 24% of the same sample).

Among the more problematic issues, respondents mentioned the cost of both delays and operational incoherence.[71] Individuals seem to have more problems in dealing with the final stages of the administrative procedure than with the initiation of proceedings. As a matter of fact, when asked which stage of the administrative procedure seemed more difficult to manage, individuals pointed more at the conclusion of the administrative procedure (including remedies) and at the management and correction of errors, withdrawal and rectification of administrative acts.[72] Relatively negative comments were also received such as 'I have made requests to which I never received any reply'; 'Lack of comprehensive public registers causes unnecessary or unnecessarily broad requests'; and 'a particular problem are procedures that are initiated through a web-based form and that do not give you a confirmation of submission' (#306); 'EPSO makes pre-selection tests which include wrongly formulated submissions. But citizens cannot see these after tests'; 'OLAF is slow, needs more staff and rules which makes it easier for them to penalise corrupt practices' (#310); 'the first and foremost issues is that of languages, as too often only limited language versions are available'(#165). Overall, in order of the importance they attached to the issues, respondents ranked highest respect for fundamental rights, followed by transparency and respect for procedural rights such as the right to motivate decisions, accountability and ethics.

Among corporations and organisations, the length of the procedure was reported as problematic by two out of every three respondents. And one respondent noted the difficulty to find information, the lack of respect for the right to be heard, lack of an acknowledgment of receipt and lack of impartiality or fairness in the procedure or the competent official. Among the very few corporations/organisations that responded, interesting comments were made on the lack of access to Council documents (#105), the need to apply ILO Convention 98 as a means for the Commission to get rid of conflicts of interest (#302); and the need to provide access to information in all official languages (#437).

When asked to evaluate their experiences with specific EU institutions, bodies or agencies, survey respondents indicated substantial differences in their evaluation of experiences across different EU bodies. The European Personnel Selection Office (EPSO) received the most critical evaluations, with 46% of respondents reporting a negative or very negative experience (well above the average of 24% who report a negative experience with the EU administration in general). As the study reports, '[t]he External Action Service (38%), European Commission (32%), Anti-Fraud Office (31%) and European Ombudsman (28%) rank above the general level of negative experience too' (p. 26), whilst the European Parliament (19%) and the EU agencies (16%) scored better. The explanation the study offers for the substantial differences in evaluation is that these indirectly suggest a 'great variation in the quality of institutional practices, at least if measured by the overall level of satisfaction with the EU administration'. (p. 26)

---

[71] These are defined as costs for citizens or companies related to the operational or regulatory inefficiencies of the EU administration in providing a service.

[72] http://www.europarl.europa.eu/cmsdata/142802/eu-administrative-law-private-individual.pdf

2.3.3.3 The public's view on policy measures

There is a high support from the respondents (76%) for additional measures on the EU level to reinforce EU administrative procedures. The two main reasons why respondents would like the EU to take action are: to improve efficiency (57%) and to improve transparency (50%) of the EU administration. In response to the question on how the EU should best reinforce the functioning of the EU administration, 82% of the respondents support the adoption of a new law (52% support a new law with minimum standards, while 30% new law with full harmonisation). The proportion of respondents who support an adoption of non-binding code of conduct is low (7%). Some 23% of the respondents do not support a new law but would rather like the EU to focus on the improving existing legislation; 23% also do not support a new law but would rather see measures focusing on technical solutions to simplify access of the public to the EU administration.

Overall, 75.42% of private individuals replied that the EU should take additional measures to reinforce EU administrative procedure. And out of a total of eight respondents among corporations and organisations, 100% agreed that the EU should take additional measures to reinforce EU administrative procedure. All of these eight respondents advocated measures to enforce citizens' right to good administration, to simplify procedures and to guarantee minimum standards applicable across all EU institutions.

2.3.4 The Workshop on Possible Options for a more Open, Efficient and Independent EU Administration

On 7 May 2018, we convened a workshop on the subject of this impact assessment, attended by 28 participants (see a detailed report on the workshop in Annex 4 below). During the workshop, after an introduction by the JURI Committee of the European Parliament and a presentation of the findings of an earlier draft of this report, presentations were given by three academics (Prof. Dr Herwig Hoffman, Prof. Dr Alberto Alemanno and Prof. Dr Henk Addink) and by a representative of DG DIGIT. These presentations were followed by a lively discussion: participants were asked to address a number of questions (reported in Annex 3 to this report) on their experience with EU administration. Overall, there was overwhelming support for the introduction of new measures such as the European Parliament's proposed regulatory framework. Such support came from both academics, representatives of the private sector and Member States.

Importantly, the presentation by DG DIGIT helped us to clarify one specific aspect of our impact assessment: as the European Commission is developing a roadmap for the implementation of e-government and e-administration procedures both at the EU and at Member State level, the existing fragmentation of administrative procedure across EU institutions, agencies, offices and bodies may constitute an obstacle to reaping the benefits of digitalisation. This is due to the fact that the Commission is working towards the standardisation of specific modules ('building blocks') that individual administrations may adopt and re-use in order to deliver specific services in a standardised and streamlined way, thus enabling seamless interoperability across EU institutions. This also avoids inefficient centralisation of specific functions, as it allows institutions to use similar modules in a distributed, decentralised way. This transition, which promises enormous savings and

improvements in terms of transparency and openness, is only possible if minimum standards are complied with by all EU bodies. We have reported this finding in our impact assessment analysis below (Section 6), as an indirect benefit of Option 2.

2.4 Codifying good administration: academic perspectives and selected experience in EU Member States

Member States display different approaches to administrative law, partly due to their different legal traditions. Hofmann et al. distinguish three systems: i) countries in which the general act and acts containing procedures for specific sectors have their own scopes of application, which exist completely in parallel; ii) countries in which the specific legislation prevails in case of a conflict with the general administrative procedure act and iii) countries in which the Law of Administrative Procedure is the default standard (Hofmann et al. 2017).

Academic literature generally favours more detailed and prescriptive administrative law as opposed to purely principles-based legislation (cf. Option 1, see Section 5 and 6 below). Ziller (2011b) argues that '[i]f the general Administrative Procedure Law remains too much at the level of general principles, there are two risks: First, the margin left for complementary regulation of administrative procedure might be such that the purpose of ensuring homogeneity and clarification will be in the end defeated. Second, the officials in institutions, bodies, offices and agencies will probably simply ignore the Administrative Procedure Law and rather use the internal regulation or the guidelines for their application that are issued by their administration; if no such guidelines are issued by the institutions, bodies, offices and agencies, the officials will not find the necessary remedies in the default rules and principles that are formulated in the Administrative Procedure Law.' In this respect, academic literature seems to support the approach developed further on in this report as Option 2.[73]

Several authors have listed possible approaches for codifying good administrative conduct and principles. According to Ladenburger (2008), these include: sectoral codification, partial codification (codification of a specific aspect of general Union administrative law), horizontal codification (aimed at providing a framework for the administration).[74] Ziller (2011a) refers to pure codification ('establishing a legally binding consolidated version of existing legislation') or innovative codification ('i.e. taking over principles and rules from existing legislation and case law, making choices in cases of conflict and adopting new principles and rules in order to substitute inappropriate ones or to complement existing ones' Ziller 2011a also speaks about more general ('Principle-based', e.g. legal certainty, equality, transparency) as opposed to more detailed ('Rule-based') codification. Incremental codification, such as in the case of the

[73] The introduction by Hofmann et al. mentions the Swedish Law of Administrative Procedure as an example of a brief one, and the Croatian act as an example of an extensive one. A comparative study has concluded that the content of administrative procedure acts around the world varies, but that there are patterns across countries, the most important of which indicates that acts dealing with rulemaking next to individual decision-making tend to be adopted in countries with a presidential system (Jensen & McGrath 2011) http://doi.org/10.1177/1065912910364218.

[74] Working Group on EU Administrative Law, "State of Play and Future Prospects for EU Administrative Law", Working Document (WD-State of Play), Working Document submitted to the Committee on Legal Affairs, 19 October 2011, p. 27-28. (http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/dv/juri_wdadministrativelaw_/juri_wdadministrativelaw_en.pdf).

Dutch *Algemene Wet Bestuursrecht* (Awb), which has been codified but also evaluated ex post in three rounds,[75] is rather common for general acts of administrative procedure.

In fact, as also observed by the ReNEUAL network (Craig et al. 2017, 35), many Member States currently have laws on general administrative procedure in place. After Spain was the first to adopt such a law in 1889, many followed over the course of the 20th century, often through lengthy codification exercises. The codification trend really gained momentum in the second half of the century. Galetta et al. (2015b, 8) report that 'more than two thirds of the EU Member States have adopted a general law on administrative procedure, some already before World War II, most of them since the middle of the nineteen-seventies, with a significant increase in speed and depth since the nineteen-nineties.' . The resulting laws do differ significantly in terms of scope and purpose, but none of the Member States with general administrative procedure acts has changed its mind about having such an act after adopting it. Galetta et al. (2015b, 8) conclude that '[t]he experience in many Member States over the last century confirm that an administrative procedure act can contribute to balancing the need for sector-specific rules with clear generally applicable procedures as well as clearly defining individual rights whilst ensuring effective and efficient administrative decision-making.' . They go on to state: '[o]n the whole, the experience of Member States with codification shows that the benefits of being able to refer to a single text – which does not impede additions in sector specific regulation where needed – clearly outweigh the problems raised by the necessity for courts to sometimes further define the consequences of the rules which are laid down in a general way. Setting general rules on administrative procedure means being able to define a minimum common denominator for the regulation of the relations between citizens and Public Administration. This will balance the need for generally applicable rules, on one hand, with the need for special regulation of specific procedures, on the other. It will also help courts in the difficult task of applying procedural rules in relation to changing tasks of the administration. For all these reasons, in the past quarter century a venerable list of authors from around Europe have supported or called for a Union code of administrative procedure.' (Galetta et al. 2015b, 10).

Building up his argument in favour of a European Agencies Procedural Regulation (EAPR), (Geradin 2005, 229) points to a 'major difference between the EU and the US [namely] that the US Congress has established common procedural rules through the Administrative Procedure Act […], as well as additional statutes discussed below. For a regulated industry or even a simple citizen, it makes a huge difference to be able to identify fairly easily the type of procedural obligations (in terms of transparency, participation etc.) that apply to regulatory agencies. Of course, these obligations will vary from one agency to the other, as Congress can add or subtract procedural requirements depending on the circumstances and, in some cases, the courts have added additional procedural obligations, but the APA represents a set of core requirements, which discipline regulatory processes" (Geradin 2005, 227).

On 1 January 2016, the long-awaited French code of administrative procedure came into effect as 'the code of the relationships between the public and the administration' (*Code des*

[75] The obligation to evaluate, which was included until 1 January 2013 in Section 11(1) of the LAW OF ADMINISTRATIVE PROCEDURE, resulted in three official evaluations of the LAW OF ADMINISTRATIVE PROCEDURE since it came into force: application and effects of the General Administrative Law Act 1994-1996; application and effects of the General Administrative Law Act 1997-2001; application and effects of the General Administrative Law Act 2002-2006.

relations entre le public et l'administration - CRPA).[76] Compared to the codes adopted in other European countries, the French code has a rather circumscribed scope and ambition, as it only defines the rules for the adoption of administrative acts, while other aspects (legal regimes for public contracts or for administrative remedies) are left to sectoral provisions.[77] The process that led to this code and its content, however, sheds some lights on the reasons why a country could decide to codify its rules on administrative procedures. Two explanations are put forward to adopt this uniform corpus of rules. The government wanted to ensure legal certainty and especially foster the citizens' access to justice, as well as to modernise the state by reforming the relationship between the public sphere and its final users.[78] As such, it may be said that the codification of administrative procedure in France encapsulates two prominent trends of the transformation of administrative law over the past few decades towards the promotion of standards of good administration: proceduralisation and subjectivisation (Custos 2015).

2.5 Conclusion

This section has analysed the policy problem from different angles: the academic literature (Section 2.1), the legal reality, in particular on selected aspects of administrative procedure (Section 2.2), the Ombudsman's findings (Section 2.3.1); the current practice in ten EU bodies; our desk research on the EU bodies' websites (Section 2.3.2); the results of EP public consultation run by the JURI Committee of the European Parliament (Section 2.3.3); and summarised insights into the activity of codifying good administration (Section 2.4).

The overall results are clear, and can be expressed through the following summarised findings:

- *There is a high level of fragmentation in administrative procedure across EU institutions, agencies, offices and bodies*. Fragmentation appears evident across codes adopted by different EU bodies, and also between bodies that have adopted a code (30) and bodies that have not (35).
- Fragmentation goes beyond the level of flexibility that one could expect given the heterogeneity of EU bodies and their related powers and mission. More explicitly, fragmentation also affects the implementation of basic principles of good administration, such as the respect of the right to be heard, the administration's duty to motivate decisions, the duty to operate and interact in all official languages of the European Union, the adoption and respect of time limits, the use of online procedures and the duty to grant access to one's file.
- *Based on our analysis of existing codes, fragmentation appears evident in all phases of the administrative procedure*, and notably in the initiation of proceedings; in the handling of requests from members of the public; in the formal and procedural requirements of inspections; in the recognition of user's rights to communicate online, be heard and represented by a lawyer, and be given clear, timely and understandable information on

[76] Adopted with Ordonnance no 2015-1341 du 23 octobre 2015 et du décret no 2015-1342 du même jour.

[77] P. Gonod, Codification de la procédure administrative, La fin de « l'exception française » ?, AJDA 2014 p.395.

[78] Loi d'habilitation n° 2013-1005 du 12 novembre 2013.

the content and scope of administrative acts, as well as ongoing proceedings and applicable remedies thereof.

- Our empirical analysis and the results of the public consultation and the workshop show that problems related to fragmentation are not only theoretical but are also experienced in practice by citizens and other stakeholders. Our analysis also shows that introducing general default rules, whilst allowing for tailored requirements in certain sectors, is indeed feasible without impinging on the degree of flexibility needed in specific policy areas.
- The existing fragmentation is coupled with insufficient compliance with principles of good administration, leading to negative impacts on the public. These, based on the results of the public consultation, take the form of uncertainty and difficulty to find basic information or the contact of competent officials; delays in the administrative procedure; lack of predictability of the outcome of administrative procedures; opportunity costs due to the lack of information on possible remedies and complaints procedures; and, last but not least, a general loss of legitimacy of EU institutions in the eyes of the public.

These conditions determine the existence and relevance of a policy problem for the purposes of our impact assessment. This problem is unlikely to be solved in the absence of a regulatory intervention involving some degree of general codification. In fact, the problem is likely to worsen over time for two main reasons: i) the ongoing 'agencification' of the European Union, with increased regulatory powers being attributed to bodies other than the European Commission (e.g. in the financial sector, in medicines and chemicals, in network industries, and also for research, innovation and SME policy); as well as ii) the forthcoming transition towards a more digitised administration, which would require a massive upgrade of processes, communication patterns and procedures across the EU administration, which can only be justified by at least a partial harmonisation of the way in which EU institutions, agencies and bodies deal with the public.

3 Objectives of the proposed intervention

Article 298 TFEU states that '[i]n carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration'. Paragraph 2 goes on by mandating that '[i]n compliance with the Staff Regulations and Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end'. Against this background, the objectives of a possible EU regulation on administrative procedure include (increased) openness, efficiency and independence. Other objectives often encountered in the literature are transparency, uniformity and consistency in decision-making.

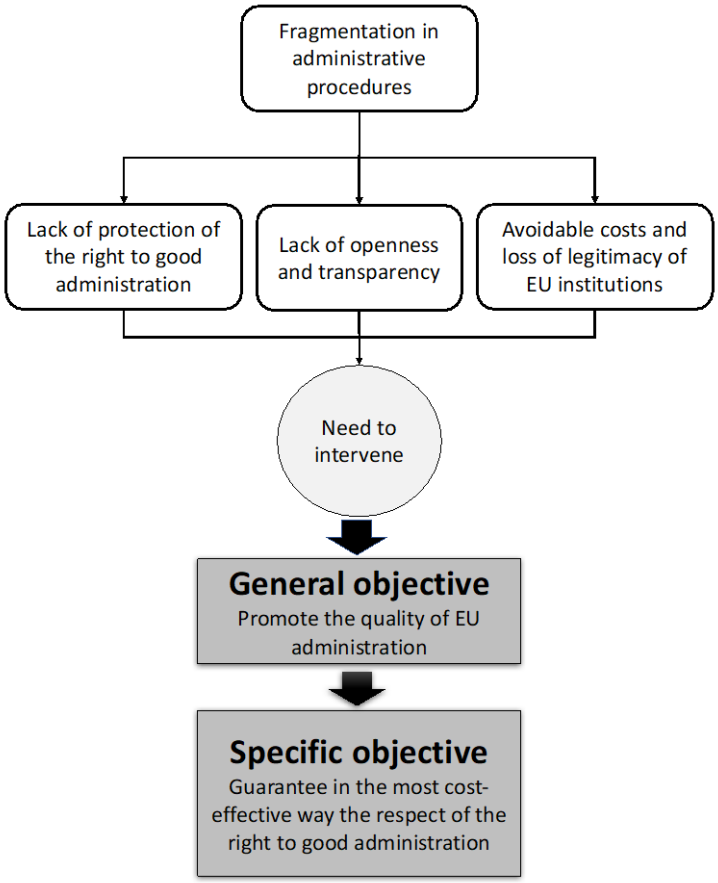
More specifically, the following taxonomy of objectives can be identified:

- The general objective of the proposed intervention is to *promote the quality of EU governance and government by ensuring the most efficient and effective functioning of EU institutions, bodies, offices and agencies*. This general objective is rooted in the provisions of the Treaty on the Functioning of the European Union. For many EU legislative proposals, the objectives are already specified in the Treaty basis. This can only partially be said to be the case for a possible EU regulation on administrative procedure.
- The specific objective of the intervention is to *guarantee, in the most cost-effective way possible, the respect for the right to a good administration enshrined in the TFEU and in Article 41 Charter of Fundamental Rights of the European Union*. This right to good administration, as explained above, can be further broken down into a number of key principles recognized in the case law of the Court of Justice, some of which are derived from the provision without having been explicitly mentioned therein,[79] as well as in international literature and practice on good governance and administration, and include (at a minimum) openness, efficiency and independence, and possibly also transparency, uniformity and consistency in decision-making.

Figure 16 below summarises the intervention logic for possible measures in support of a more open, efficient and independent EU administration. The top of the graph shows the drivers of the problem, which revolve around the compelling evidence we gathered, which points at the significant fragmentation and lack of compliance with basic principles of administrative procedure at the EU level. Such evidence, coupled with our finding that the situation is not likely to change significantly absent a policy intervention, determines the need to intervene. Such need to intervene is then coupled with general and specific objectives, along the lines outlined in this section.

[79] E.g. Case T-54/99, max.mobil Telekommunikation Service GmbH v Commission [2002] ECR II-313 in which the principle of diligent and impartial treatment, or, the principle of care was confirmed. See also Craig 2012, p. 338 and p. 344.

Figure 16 – Intervention Logic: problem definition, drivers and objectives



4 Legal basis, subsidiarity and proportionality

As mentioned, the claimed legal basis for intervening to address the policy problem is Article 298 TFEU. According to the European Parliament's European Added Value Assessment of a EU Law of Administrative Procedure, 'the suitability of this legal basis to legislate on general administrative principles and rules is beyond doubt'.[80] In fact, since question marks concerning a possible legal basis for enacting a European law of administrative procedure had been swirling around for a while, the introduction of Article 298 TFEU was specifically aimed at addressing this problem (Leino 2014). However, there has been some debate as regards the suitability of these provisions as a legal basis for the proposed intervention. This is mostly due to claims that the wording of Article 298 TFEU refers to administration within the institutions, instead of regulating the relationship between the institutions and the public. However, this argument has been dismissed on the basis that the Treaty already includes other possible legal bases for the adoption of the institutions' own Rules of Procedures (notably Article 336 TFEU). Staff regulations, which regulate the relationship between the institutions and their civil servants, are specifically left outside the scope of Article 298 TFEU. Adding another legal basis for the institutions' own Rules of Procedures, and staff regulations would indeed have made little sense (Leino 2014). In the words of Craig et al. (2017, 37): '[t]he narrow interpretation would have the effect of reducing the scope of [Article 298 TFEU] to a mere reference announcing the possibility of staff regulations being adopted under Article 336 TFEU, or a simple restatement of the principle of self-organization'. Moreover, the explanations adopted by the Intergovernmental Conference concerning the interpretation of the Article 41 ECHR specifically mentions the legal basis in Article 298 TFEU for the adoption of legislation in the interest of an open, efficient and independent European administration, clearly establishing a link between the two provisions. Furthermore, the entry into force of the Treaty of Lisbon has emphasised the citizens' perspective even more generally due to the introduction of a new Treaty Title on democratic principles governing all Union action. In particular, Articles 9 and 10 TEU underline the right of citizens to participate in the democratic life of the Union. Since these principles apply by definition to 'all areas of Union action' and are not limited e.g. to the Union's legislative work, they clearly set high requirements for Union administration as well (Craig 2012; 2013; 2015).

As regards proportionality, the most important issue is whether the objectives identified in Section 2 above can be achieved through non-regulatory means, or require a binding legislative intervention. In this respect, the existence of a non-binding code since 2001 and the activity of the European Ombudsman in recent years have shown that soft-law measures are not sufficient to alleviate the existing fragmentation of practices. As observed i.a. by Hofmann et al. (2014), although 'general principles of law can in theory cover rights and obligations arising in the context of rule-making, contracts, planning procedures, information exchange systems, enforcement networks, in reality the development of many of these issues is hampered by the limited standing rights of individuals especially when it comes to rule-making and contracts as well as information management activities' (Hofmann et al. 2014, 6).

[80] See, European Added Value Assessment of the Law of Administrative Procedure of the European Union, EAVA 1/2012, European Added Value Unit, European Parliament, page 5.

Accordingly, a regulatory measure appears to be proportionate to the objectives, subject to the assessment of its prospective impacts (see below, Section 6).

The assessment of the European Added Value can be subsumed under the umbrella of proportionality, since the European dimension is inherent in the type of regulatory intervention at hand (i.e., establishing a regulatory framework for Good Administration at the EU level) and, as already explained, regulating national administrative procedure does not fall within the scope of the proposal and of its corresponding legal basis.

In terms of subsidiarity, Article 298 TFEU leaves national procedural autonomy relating to forms of action or procedural requirements untouched. The focus of the future Regulation will be on the EU institutions, bodies and agencies. Thus, the matter would not be problematic from the point of view of subsidiarity: the openness, efficiency and independence of administration in the EU institutions would be regulated only at EU level, not at the national level as well.

5 Alternative policy options

Once the policy problem has been identified along with its drivers and the objectives of a possible policy intervention, it is important to identify alternative policy options that potentially address the policy problem. These options typically include also the so-called 'zero option', or 'do nothing' option, which implies that no new policy measure is taken. Including the zero option in the list of alternatives is important in order to compare the potential added value of policy measures under consideration.

In this respect, this impact assessment is peculiar since it was drafted after the adoption of a policy initiative, rather than beforehand. Moreover, the policy initiative in question was tabled after a two-decade-long debate that clarified that going beyond the scope of the proposal itself would not be politically feasible, as it would lack the backing of all EU institutions. Accordingly, in the selection of alternative policy options we have focused on the initiatives that fall in between the status quo and the Parliament's proposal. Moreover, the selection of alternative policy options that ideally address the identified policy problem and meet the aforementioned objectives proceeds along two parallel threads: on the one hand, the substantive debate on which rules of administrative procedure are 'good' (or at least 'fit the constitutional and legal system'); on the other hand, whether these need (uniform) codification across a certain administration. The debate at the EU level appears to centre on the latter issue, which, however, is no binary issue (to codify or not), making it more complex than it may seem, but also offering more possibility to 'meet in the middle'.

Against this background, we have identified the following policy alternatives for the purposes of our impact analysis.

Option zero ('Do nothing'). This corresponds to the existing situation and incorporates its likely evolution. As explained already in Section 2 above, under this option it is unlikely that there would be any consolidation and simplification of EU administrative law. Over time, one could expect a gradual development of e-administration tools across EU institutions, but this may not lead to any convergence in the application of EU rules of administrative procedure. The European Ombudsman would continue its activity in the attempt to shape and promote principles of good administration; and the Court of Justice of the EU will continue to provide its orientations on the protection of the rights of the members of the public when interacting with EU institutions.

Option 1. *Make the European Ombudsman Code binding.* This would be in line with the first proposal by the European Parliament on the matter in 2001, where the Parliament had called the Commission to submit a proposal for a Regulation containing a code of good administrative behaviour.[81] Under this option, the Code drafted by the European Ombudsman and endorsed by the European Parliament in 2001 would be made binding on all EU institutions, agencies, offices and bodies. This would imply the adoption of implementation measures that would make the provisions of the 2001 Code enforceable. It would also

[81] European Parliament resolution on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour (C5-0438/2000 - 2000/2212 (COS))

entail the introduction of measures focused on administrative behaviour, rather than administrative procedure: as a matter of fact, the Code addresses 'the official' (the person), rather than the institutions. Most of these measures would be less ambitious than the ones foreseen by the European Parliament in its 2016 proposed regulatory framework, although in a subset of cases (access to documents) they would go beyond.[82]

Option 2. *European Parliament's proposed regulatory framework.* This would entail a regulation covering administrative procedure in the relationship between EU administrations and the public. This corresponds to the regulatory framework proposed by the European Parliament in 2016 and described in Box 1 above. More specifically, this means that rules would be enacted:

- On the initiation of proceedings, including proceedings started on the own initiative of the Union's administration, and proceedings started upon application by a party;
- On various rights related to the management of the procedure (various procedural rights, the duty of careful and impartial investigation; the duty to cooperate; rules that apply in case witness or experts are to be heard; rules on inspections, on conflicts of interest, on access to the file; the duty to keep records and rules on time limits);
- On the conclusion of the administrative procedure (form of administrative acts, duty to state reasons, duty to communicate available remedies and the notification of acts);
- On the rectification and correction of acts.

In addition, there would be a new, general obligation for the Commission to publish updated online information on the existing administrative procedures in an ad hoc, public and free website, wherever possible and reasonable, with priority given to application procedures.[83]

It is important to reiterate that none of the proposed policy options would entail so-called 'maximum harmonisation', i.e. the definition of common rules of administrative procedure for EU institutions, agencies, offices and bodies, with no possibility of derogation, or the preservation of special sets of rules for individual, specific cases. We considered and then discarded this option at an early stage, as it would be excessively rigid, and would not allow the preservation of specific regimes that are needed to reflect the peculiarities of the administrative actions. In addition, this option would not address the concern expressed by the European Commission in responding to the European Parliament in October 2016: as already mentioned, the Commission found that Codification would 'remove the flexibility

[82] As a matter of fact, the European Parliament proposal focuses on access to the file.

[83] Such a website should contain information such as a link to the applicable legislation, a brief explanation of the main legal requirements and their administrative interpretation, a description of the main procedural steps, the indication of the authority competent to adopt the final act, the indication of the time limit for the adoption of the act, the indication of remedies available, a link to standard forms that may be used by parties in their communications with the Union's administration within the procedure.

required to adapt to particular needs.'[84] Finally, this option was explicitly ruled out by the European Parliament in its Resolution of 26 October 2017, in which it clarified that the proposed rules would be supplementary to existing EU law, when legal gaps or interpretation problems arise, and would bring more accessibility.[85]

Much in the same vein, we do not consider more ambitious options that are thought desirable by some of the stakeholders, including academics (including, for example, many of the members of the RENEUAL network) and think tanks (e.g. the European Risk Forum). These stakeholders advocated the need for a broader intervention on several occasions, which also encompasses the policy process, in particular with regard to lawmaking procedures (in particular implementing and delegated acts), as well as stakeholder consultation. This would amount to a European 'Administrative Procedure Act', similar to the US APA, which incorporates notice and comment procedures, as well as the obligation to perform regulatory impact analysis on major regulatory proposals. This system would also make it possible to engage in more evidence-based policymaking throughout the policy process, in particular in cases of risk regulation; and to create a 'docket management system' at the EU level, possibly more structured and accessible than the US one (see ERF, submission to the public consultation of the JURI Committee).[86]

[84] Exchange of views of Commissioner Oettinger with BUDG, CONT and JURI Committees, see http://www.europarl.europa.eu/cmsdata/113048/161221_Oettinger%20exchange%20of%20views_written%20answers_final.pdf, 47.

[85] European Parliament, Resolution of 26 October 2017 on monitoring the application of EU law 2015, 2017/2011(INI).

[86] In the United States, the Federal Docket Management System (FDMS) is a centralised document management system that provides Federal Agencies and citizens the ability to search, view, download, and submit comments on federal Notices and Rules. The public interface for FDMS can be found at www.regulations.gov.

6 Impact assessment

Assessing the impact of measures related to administrative procedure is a very challenging task, as mentioned in Section 1. First, singling out the net impact of the existence of a Law of Administrative Procedure from the general impact of the whole conduct of the administration on citizens and business inevitably comes with a degree of approximation. Second, many of the impacts at stake (e.g. enhanced legal certainty; protection of the right to be heard; etc.) are not susceptible to quantification, and are to be classified within the general categories of non-market impacts, which can be extremely important, despite not being quantifiable or monetisable. Third, the extent to which changes in the law will improve the protection of the rights at hand (as recognised by Article 298 TFEU and Article 41 CFR) depends very much on the adoption of specific provisions, but also on their concrete implementation, which depends on the way in which these provisions are included and mainstreamed in the daily practices of the institutions, agencies, offices and bodies of the European Union.

In this context, the EU impact assessment system requires that relevant economic, social and environmental impacts of alternative policy options are identified and assessed. Among the impacts contemplated by the European Commission Better Regulation Toolbox, the ones mostly concerned by the policy measures under analysis are: (i) governance and good administration, classified as a social impact; (ii) public authorities (and budgets), classified as an economic impact; and (iii) citizens' rights and justice, both classified as fundamental rights.

At a more granular level of detail, we focus on a number of impacts, which can be considered as conducive to a more open, efficient and independent administration, and can mostly be subsumed under the three categories of impacts mentioned above.

- *Good administration*. This is still an evolving concept in EU law. Hofmann (2014) observed that the CJEU has referred to notions of 'good', 'sound', or 'proper' administration since the very early case-law. The right to good administration is now a right recognised as a general principle of EU law (Article 6(3) TEU), and with the entry into force of the Charter of Fundamental Rights (CFR) under the Treaty of Lisbon, good administration is also recognised as a binding fundamental right under Articles 41 CFR, pursuant to Article 6(1) TEU, which gives the Charter the 'same legal value' as the Treaties (see chapter 9).

  Good administration is often broken down into sub-principles, which include (Hofmann 2014):

  - *The right to have his or her affairs handled impartially, fairly and within a reasonable time (the duty of care)*, which implies an obligation for the administration to impartially and carefully establish and review the relevant factual and legal elements of a case, prior to making decisions or taking other steps. This also requires that there be no conflict of interest; to know the identity of persons conducting investigations and making decisions; and to the treatment of an issue 'within a reasonable time'.
  - *Hearing and Access to One's File*. Article 41(2)(a) and (b) CFR address the right to a fair hearing (*audi alteram partem* or *audiatur altera pars*) 'before any individual measure' which could affect a person 'adversely' is taken.
  - *Reasoning of Decisions*. Article 41(2)c) CFR is grounded in the more general obligation under the EU Article 296(2) TFEU, which includes the duty to provide

and indicate evidence used to back restrictive measures.

- *Damages*. The right to good administration in Article 41(3) CFR contains an explicit reference to the right to receive compensation for damage under Article 340 TFEU.
- *Language Rights.* The entitlement to 'write' to the institutions of the Union in one of the languages of the treaties and to receive an answer in the same language' simply repeats the existing right under Article 24(4) TFEU.

- *Good governance,* more generally, includes principles such as accessibility, transparency, legal certainty and predictability, and information-related rights.
  - *Transparency and accountability of the European institutions*. The more open an administration, the more citizens understand how decisions are taken. The more decisions are motivated, the more citizens can see which factors drive administrative action. The more an administration abides by transparency obligations, disclosing the expectations and beliefs that led to administrative action, the greater the administration's accountability for the input, throughput (process), output, outcomes and impacts of its decisions. The 'right to transparency' is part of the third generation of human rights, and includes, in turn, the following rights: (i) the *right to know*: citizens have the right to know what happens inside the government that is at their service; (ii) the *right to control*: when the actions of the authorities are known, it is possible to control the legality and timeliness of the decisions taken, it is also likely to know how public funds are used and what is their fate; and (iii) the *right of citizens to be actors* and not just spectators of political life.
  - *The accessibility of EU administration*. Provisions on the right to access information and access to the file increase the accessibility of EU administration for members of the public, and is directly related to the legitimacy of the administration.
  - *Legal certainty and predictability*. The uniformity of procedures across institutions, the easy access to information on ongoing administrative procedure, the respect of time limits and fair procedure, the obligation to motivate decisions and the availability of easily accessible remedies contribute to legal certainty. Legal certainty is acknowledged as a general principle of EU law.[87] According to the CJEU the principle of legal certainty requires essentially two things: (i) 'legal rules be clear and precise, and aims to ensure that situations and legal relationships governed by Community law remain foreseeable; and (ii) those subject to the law must know what the law is so as to plan their action accordingly.[88] Practically speaking, this has a series of consequences, for example: EU institutions are barred from applying rules to individuals that are inconsistent or contradictory;[89] the

[87] Case C 55/91 Italien v Commission [1993] ECR I-4813, para. 66; Joined Cases T-55/93 and T-232/94, T-233/94 and T234/94 Industrias Pesqueras Campos v Commission [1996] ECR II-247, paras. 76, 116, 119; Case 43/75 Defrenne v SABENA [1976] ECR 455, paras. 69ff.; Case C-143/93 Gebroeders van Es Douane Agenten vs Inspecteur der Invoerrechten en Accijnzen [1996] ECR I-431, para. 27; Joined Cases 205/82 to 215/82 Deutsche Milchkontor and Others v Germany [1983] ECR 2633.

[88] Takis Tridimas, The General Principles of EU Law, 2nd edn. (OUP, 2006) 242.

[89] Case T-115/94 Opel Austria v Council [1997] ECR II-39, para. 125; Case C-143/93 Gebroeders van Es Douane Agenten vs Inspecteur der Invoerrechten en Accijnzen [1996] ECR I-431, para. 27; there the Commission was

prohibition of double jeopardy, also known as the principle of *ne bis in idem* in criminal law and embodied in Article 50 CFR in comparable terms; the requirement that administrative proceedings be conducted within a reasonable period of time;[90] the requirement of legal certainty with respect to legal charges, limitation periods; and the prohibition, in principle, of retroactive effect of EU law. After all, 'slow administration is bad administration';[91] and might be in violation of the concept of legal certainty. This concept is reflected in Article 265 TFEU (Article 232 EC), giving a remedy for undue delays in decision-making.

- *The trust of citizens towards the administration*. As the European Commission (in this case, DG Enlargement) itself recognised, the concept of Good Administration 'redefines administrative operation and citizen-administration relationships', 'serves the community and promotes social trust in the executive power',[92] Among others, Mashaw concludes that 'administration without reason cannot meet the challenge of defending its democratic legitimacy' (Mashaw 2007, 124).

- *Information-related rights.* Any person, not only parties not subject to an individual measure, enjoys the general right of access to documents under Articles 42 CFR and 15(3) TFEU. The right of access to documents is now protected both as a general principle of Union law and through provisions of primary law. The right of access to documents has, over the years, also been an element of several generations of regulation in secondary law. Currently, Regulation 1049/2001 issued on the basis of what is now Article 15 TFEU is the general legislation on access to documents.

- *Citizens' rights of defence and to an effective remedy*. A remedy under EU law, by analogy with Article 13 ECHR, 'must be "effective" both in law and in practice.' Compliance with the right to an effective remedy, therefore, depends both on (i) the procedural aspect whether the Member State offers procedural rules granting fair possibilities of bringing a case and that admissibility criteria allow actual access to a court, and (ii) the more substantive issue whether success on the grounds of the claim of violation of a right under EU law would lead to a remedy that is capable of addressing the violation of the right. As for additional rights of defence, the CJEU held that, 'Respect for the rights of the defence constitutes a fundamental principle and must therefore be ensured not only in administrative procedures which may lead to the imposition of penalties but also during preliminary inquiry procedures such as investigations.'[93] Generally speaking, rights of defence include:

---

held to be 'under an obligation to amend those regulations' which were detrimental to the principle of legal certainty which requires that an individual will be able 'to ascertain unequivocally what his rights and obligations are and take steps accordingly'.

[90] Case T-347/03 Branco v Commission [2005] ECR II-2555, para. 114; Case T-125/01 José Martí Peix v Commission [2003] ECR II-865, para. 111; Joined Cases T-44/01, T-119/01, and T-126/01 Vieira and others v Commission [2003] ECR II-1209, para. 167.

[91] AG Jacobs in C-270/99 P Z v Parliament [2001] ECR I-9197, para. 40 with reference to Art. 41 of the Charter and claiming that this was 'a generally recognised principle.

[92] Speech by the Head of the EU Delegation to Montenegro: http://www.delmne.ec.europa.eu/code/navigate.php?Id=939

[93] Case 46/87 Hoechst v Commission [1989] ECR 2859, summary point 1.

(i) a limited right of legal professional privilege, concerning the right to confidentiality of communications with an external lawyer; and (ii) a limited right against self-incrimination. This, for example, prohibits the Commission, in a request for information in competition proceedings, to require the undertaking 'to provide it with answers which might involve an admission on its part of the existence of an infringement'.

- *The effectiveness and efficiency of EU institutions*. By effectiveness we intend the ability of the administration to achieve its intended goals and objectives. On the other hand, efficiency implies the ability of doing so at the least possible cost. Efficiency is typically measured through cost-benefit analysis, and more specifically through the calculation of net benefits, or qualitative analysis aimed at demonstrating that benefits justify the costs. In this respect, impacts are not to be intended as limited to institutions: a more efficient EU administration also means lower costs for EU citizens (Ladenburger (2005), Ziller (2011a and 2011b) and Mir (2011)).

In order to assess these impacts and where possible quantify them, we rely extensively on the results of our empirical analysis in Section 2 above, and use other studies, estimates and available statistics to illustrate the possible impact of alternative policy options. More specifically, we map the areas of good administrative practice in which there is significant distance between the existing practice in EU institutions, and the corresponding requirements of the option at hand (e.g., for Option 2, these would be the provisions existing in the European Parliament's proposed regulatory framework). For those areas, we identify the types of impacts that are most likely to occur, and seek to describe them in detail in a qualitative or quantitative way. The mapping of the individual parts of the administration that are more distant from the required set of good administrative rules is also important to estimate the population of bodies that would face the adaptation costs.

Sections 6.1, 6.2 and 6.3 below contain an assessment of the main impacts of the alternative options identified above. Section 6.3 compares alternatives and indicates the preferred policy option.

6.1 Option zero ('Do nothing')

Under this option, no new regulatory intervention would be adopted. This does not necessarily mean that EU administrative procedures would not evolve over time, or that fragmentation would remain unchanged. But as demonstrated by the limited convergence towards the 2001 EU Code of Good Administrative Behaviour observed over the past 17 years, there is reason to doubt that EU bodies would take active steps to change and upgrade their rules of administrative procedure. There may be, however, a gradual digitisation of transactions guided by an attempt to realise the vision set by the Digital Single Market strategy and the European Interoperability Framework agendas and the Ministerial Declaration adopted in Tallinn.[94] As the benefits of digitisation are more easily reaped in the presence of compatible and interoperable standards and practices, such a transition may however fall

[94] See the new European Interoperability Framework at https://ec.europa.eu/isa2/publications/european-interoperability-framework-eif_en; and the Ministerial Declaration on e-Government at https://ec.europa.eu/digital-single-market/en/news/communication-eu-egovernment-action-plan-2016-2020-accelerating-digital-transformation.

short of producing the desired benefits and cost savings, unless more uniform practices are promoted through the administration.

This option would have significant cost implications for EU institutions, agencies, offices and bodies and for members of the public, mainly in the following areas:

- *The lack of full protection of the right to a good administration in Europe.* As shown in Section 2.3 above based on our empirical analysis, the current situation is characterised by a high level of fragmentation among EU institutions, agencies, offices and bodies. This fragmentation operates at all levels: between parts of the EU administration that have a code of administrative procedure and those that don't (almost evenly split); and among those that have a code of administrative procedure, or a code of good administrative behaviour. Our map of the coverage of existing codes shows that, at least in terms of formalised rules, option zero would mostly lead to the lack of protection of various types of citizen rights, including i.a. the right to be heard; the right to a careful and impartial investigation; the right to accessible remedies; the right to a fair procedure, the right of access to the file; language rights; etc. The recent public consultation, as reported in Section 2.3. above, confirmed that stakeholders consider the *status quo* as insufficient to protect these basic rights. Some of these rights are closely linked to the very concept of EU citizenship, as set out in Article 20 TFEU. These include the right to write to any EU institution or body in one of the languages of the Member States and to receive a response in the same language (Article 24(4) TFEU); and the right to access European Parliament, Council and Commission documents, subject to certain conditions (Article 15(3) TFEU).
- *Inefficiencies, transaction costs and opportunity costs.* As confirmed by our empirical analysis (Section 2), the status quo generates various types of costs, including:
    - *Cost of delays by public administrations*. As observed during the public consultation and confirmed by our empirical analysis, not adopting time limits, and/or respecting existing time limits is perceived as a real problem. This can give rise to, most often, 'hassle costs' for citizens; and also opportunity costs for citizens and businesses that depend on the completion of an administrative procedure to start or continue their businesses. Inefficient public administration is considered internationally as an obstacle to growth and competitiveness, and can cost between 1% and 2% of GDP for some countries. In certain legal systems, e.g. France and Mexico, methods to assess the cost of the delays in administrative procedures have been added to the better regulation toolbox (see e.g. Renda et al. 2013; and the Mexican SIMPLIFICA methodology).[95] In our empirical analysis, the lack of consistent and enforceable rules on time limits, as well as the lack of consistent and enforceable rules on acknowledgment of receipt can lead to these

[95] In the French methodology, the increased costs due to administrative delay include personnel costs (e. g. costs for personnel that could not be utilised); financing costs (e. g. additional loans to bridge the administrative delay); fines or compensation payments (e. g. because certain orders could not be fulfilled in time); costs incurred in the award of sub-contracts; costs incurred by the loss in value of goods or products, etc. The effects caused by lowered production or decreased sales can extend to the current, as also to the future, situation of the enterprise, e. g. with respect to certain market share. Financial costs result from a non-utilisation of invested capital (taking into account all asset components). The costs of delays are calculated as opportunity costs or profits foregone on account of the delay (e. g. using average returns in relation to the foregone sales or the capital that was not invested). See, for a detailed description, Renda et al. (2013).

types of costs.

- *Costs due to legal uncertainty*. The lack of legal certainty was reported during the public consultation, as well as during our workshop. This can lead to hassle and opportunity costs that are similar in nature to the costs generated by delays in public administrative proceedings. Legal uncertainty can chill investment and lead to suboptimal investment decisions on the part of both individuals and businesses.
- *Costs due to lack of adequate information*. These costs were consistently and frequently observed during our empirical analysis. The public consultation, in particular, has shown that individuals and businesses often have problems in finding basic information related to administrative procedures; they often find it difficult to locate the competent persons inside the administration and to gain information about the state of advancement of their requests. This leads to additional investment in information gathering by the public, which can be classified either as 'transaction costs', where the transaction in question is the interaction between the administration and the individual, or as 'administrative costs', due to the greater complexity of the administrative activities required by the public.
- *Costs due to redundancies, inconsistencies and lack of communication inside the administration*. Our analysis has shown that fragmentation is not caused solely by the need for flexible administrative procedures, it also affects the basic principles of good administrative behaviour and the respect of fundamental rights. This being the case, the lack of common, uniform procedural rules leads to inconsistencies across the EU administration, and possibly also duplication of procedures, or 'costs of reinventing the wheel' as authoritatively defined during our workshop.[96]

- *Opportunity costs due to the impossibility of fully reaping the benefits of e-government and e-administration.* The obstacles that the *status quo* and its likely evolution poses for the development of e-administration and e-government services and infrastructure across the EU administration are potentially huge. Our workshop hosted an important discussion on the need for consistency and reasonable uniformity across the administrative rules and procedures of various EU institutions, agencies, offices and bodies as a precondition for the development of 'building blocks' and the realisation of huge efficiency gains in the EU administration (see Section 2.3.4 above). The concept of 'legal interoperability' is also part of the European Interoperability Framework, and includes the interoperability of procedures.
- *Cost for the European Ombudsman related to the need to investigate cases of alleged maladministration* that (if confirmed) would not have occurred under more binding rules; or (if not confirmed) may have been interpreted more clearly under more understandable and transparent rules.
- *Lack of legitimacy of the European Union in the eyes of the public.* Citizens and businesses do

[96] Prof. Dr. Herwig Hofmann, during our workshop held on May 7, 2018.

not have a particularly favourable view of the functioning of EU administration; in the public consultation, more than half (54%) of respondents had a mixed or negative perception. The partial lack of compliance with basic principles of good administration and the failure to always respect citizens' rights leads EU institutions, agencies and bodies to become 'black boxes', partly inaccessible to the public and not always transparent and accountable for the information they process (input), the way in which such information is produced and processed (throughput), the decisions that are taken (output) and the ultimate outcomes and impacts of their decisions. The EU administration is thus not seen as being fully inclusive, open, transparent and accountable.

All in all, option zero would appear to be very costly for the European Union, especially in terms of its relationship with the public and its legitimacy in the eyes of citizens. Option zero also creates concrete, monetisable costs for citizens and businesses, which will be assessed in the form of potential benefits in the analysis of options 1 and 2 below.

6.2 Option 1: making the 2001 Code binding

Our first alternative option would be to implement the recommendation adopted by the European Parliament back in 2001, and make the Code of Good Administrative Behaviour binding on all EU institutions, agencies, offices and bodies. This Code addresses EU officials and, in reiterating the right to good administration enjoyed by the public under Article 41 CFR, specifies that EU officials shall:

- Be guided by a spirit of service towards the European Union and its citizens; by a sense of propriety and conduct (integrity).
- Be impartial, open-minded, guided by evidence, and willing to hear different viewpoints.
- Avoid conflicts of interests.
- State the grounds for the decisions adopted by the administration (Art. 18), and notify them in writing (Art. 19).
- Indicate appeal possibilities clearly (Art. 20).
- Handle requests for information effectively (Art. 22), and requests for access to documents in line with Regulation 1049/2001 (Art. 23).
- Respect the privacy and the integrity of the individual in accordance with the provisions of EU legislation, and avoid processing data for non-legitimate purposes (Art. 21).
- Be ready to acknowledge and correct mistakes (Art. 12.3).
- Be merit-based when involved in comparative evaluations.
- Be respectful to each other and to citizens, as well as polite, service-minded, helpful, timely, and cooperative (Art. 12.1).
- Ensure that measures taken are proportional to the aim pursued; and respect the fair balance between the interests of private persons and the general public interest (Art. 6).
- Be consistent in his or her own administrative behaviour as well as with the administrative action of the institution (Art. 10).

- Ensure that every citizen of the Union or any member of the public who writes to the institution in one of the Treaty languages receives an answer in the same language (Art. 13).
- Ensure that every letter or complaint to the institution receives an acknowledgement of receipt within a period of two weeks, indicating the name and the telephone number of the competent official, as well as the service to which he or she belongs (Art. 14).
- Ensure that a decision on every request or complaint to the institution is taken within a reasonable time limit, without delay, and in any case no later than two months from the date of receipt (Art. 17).
- Ensure the respect of the rights of defence (Art. 16)
- Keep adequate records (Art. 24).

All these obligations are addressed to the official, not to the institution. Two closing provisions are addressed to institutions: the obligation to publish, where possible, the Code on their websites (Art. 25); and the obligation to review its implementation of the Code after two years of operation and to inform the European Ombudsman of the results of its review (Art. 27).

Option 1 would imply that the 2001 Code is translated into enforceable measures through a regulatory intervention. This would mean that EU officials would be subject to all obligations listed above. The adoption of a regulatory measure would anyway be complicated by the fact that the Code was not initially written to be enforceable, but rather to exert a moral suasion on officials. Furthermore, the Code would overlap with other pieces of regulation such as the EU staff regulations, which are addressed to EU officials. This was originally the strategy of the Ombudsman, who saw the possibility of enacting EU administrative law by means of a regulation, as recalled by Mendes (2009). However, the text of the Code was criticised as a basis for regulatory intervention since it mixes provisions that remained at the level of principles (e.g. the duty to be service-minded) with more concrete obligations that could lead to sanctions in case of non-compliance.

Making the 2001 Code binding would have important consequences for the EU administration. These impacts are summarised below.

6.2.1 Cost of compliance with Option 1 for the EU administration

Given the existing fragmentation of administrative procedures across the EU administration, it is reasonable to expect that many EU institutions, agencies and bodies would incur additional costs if the 2001 Code were made binding. Several types of additional costs can be identified. They fall under the category of compliance costs for the administration and will be borne by EU bodies.

First, EU bodies that carry out more administrative proceedings will inevitably be more exposed (in particular, the European Commission, and EU agencies will face most of the burden): more specifically, it is important to analyse those administrations that carry out inspections (e.g. the European Commission, DG COMP; or FRONTEX); administrations that receive a large number of complaints or petitions (e.g. EPSO, the European Parliament, or

ECHA); and administrations that receive a large number of requests for access to documents (e.g. the Council, the Commission).

Second, bodies that feature a comprehensive set of rules of administrative procedure similar to those envisaged under Option 1 will face lower costs than other bodies, in particular those that have fewer rules and no code of good administrative behaviour or good administration in place. We assume that the latter institutions have some rules of administrative conduct or procedure in place, but no comprehensive set of rules that govern administrative procedure in the administration's interaction with members of the public.

Compliance costs for the administration can be divided into one-off adaptation costs (due to the need to adopt the new procedure); and recurrent administrative burdens, due to the need to collect, store and provide more information to members of the public who request them.

More specifically, *one-off adaptation costs* will include the revision of administrative rules to bring them in line with the new regulatory framework: this category includes i.a. the partial revision of the Staff and Financial regulations of the Commission; and the possible need to adapt the internal workflow in many of the institutions, agencies, offices and bodies to reflect the changed rules of administrative procedure. These costs are not significant, given that the Code has been in place as a reference and the basis for the Ombudsman's activity on maladministration for almost two decades. In addition, training costs are also likely to be low, since many of the provisions of the Code (e.g. the obligation to be service-minded) do not themselves require substantial new knowledge on the part of EU officials, but rather a commitment to follow the principles and comply with the obligations of the Code.[97] Accordingly, costs for the training of EU administrative personnel to bring them up to speed with the new rules of administrative procedure should not be high. However, we would expect the cost of drafting, discussing and adopting measures that would make the 2001 Code enforceable to be relatively high: the simple transposition of the 2001 Code into a binding text would not be sufficient to create legal certainty and predictability and may risk the provisions remaining a dead letter.

Recurrent costs will take the form of administrative burdens. These would include costs generated by all those activities (collection of information, storage of records, provision of information to the members of the public, etc.) that are currently not being carried out by EU bodies, and would be performed (differently) once the new provisions are in place. The activities to be carried out could fall in categories such as sending an acknowledgment of receipt, logging the request and administering the case, searching/obtaining information, reading time, consideration time, consultation with colleagues or external bodies, consultation with hierarchy, drafting of response and signing off.

Quantifying these costs with precision is difficult. As stated i.a. by Holsen (2007) for the case of access to information, 'the precise cost of complying with [freedom of information] legislation…is virtually impossible to calculate. One reason for this is that some agencies keep track of costs while others do not; another reason is the wide variation in how the costs are

[97] Some of the other provisions such as the obligations to be merit-based when involved in comparative solutions; to ensure that measures are taken proportional to the aim pursued; and to be consistent in their own administrative behaviour may entail some training modules to be added to the current training officials already receive. We consider these as a marginal addition in terms of training costs.

calculated'.[98] In addition, costs depend on a number of variables such as the time allocated to comply with Freedom Of Information (FOI) requests for access to documents, as well as the efficiency of response procedures (ibid., 52). Such factors increase the complexity of achieving accurate estimates.[99]

That said, past attempts have led to the measurement of the cost of specific administrative procedures, such as handling requests for access to information, as discussed below in Box 2. We take these estimates as a proxy for estimates related to the general handling of requests in the administration. This allows us to engage in a quantitative estimate of some of the costs that would arise under options 1 and 2.

Box 2: Existing studies: the case of FOI laws

In the UK in 2011 the Ministry of Justice completed an impact assessment for modifications to Section 6 of the Freedom of Information Act 2000 (FOIA) in order to extend the scope of the FOIA to cover companies wholly owned by two or more public authorities. A study by Frontier Economics provided economic estimates of costs associated with procedural requirements: for example, the average FOI request was estimated to take 7.5 hours on average to process, and internal reviews were estimated to take 30.6 hours on average to process. Estimates of indicative annual average costs of organising for FOI requests were produced for organisations that were expected to receive 'high' (£245,000) 'medium' (£29,000) and 'low' (£4,000) volumes of requests. The average cost per FOI request in various jurisdictions was calculated a few years ago by the Constitution Institute in the UK, and is reported below in Table 1. As shown in the table, the average cost per request ranged from 189 GBP in Scotland to 1,208 Australian Dollars; and the time needed to process a request ranged from 7h22m in Scotland to 38 hours in Canada.

[98] Holsen (2007), Freedom of Information in the U.K., U.S., and Canada.

[99] Factors that differed according to country reports included: (i) Assessing the cost of or costs associated with processing FOI, i.e. whether or not the cost of tribunals and internal reviews is included in the cost of processing FOI, or the division between staff and non-staff costs; (ii) Difference between using the number of requests received or requests processed as an annual figure; and (iii) Classifications of request, i.e. FOI versus Enviromental Information Regulation (EIR) requests and whether they are treated separately. In the U.S. the report separated all requests within the categories of 'simple', 'complex' and 'expedited'.

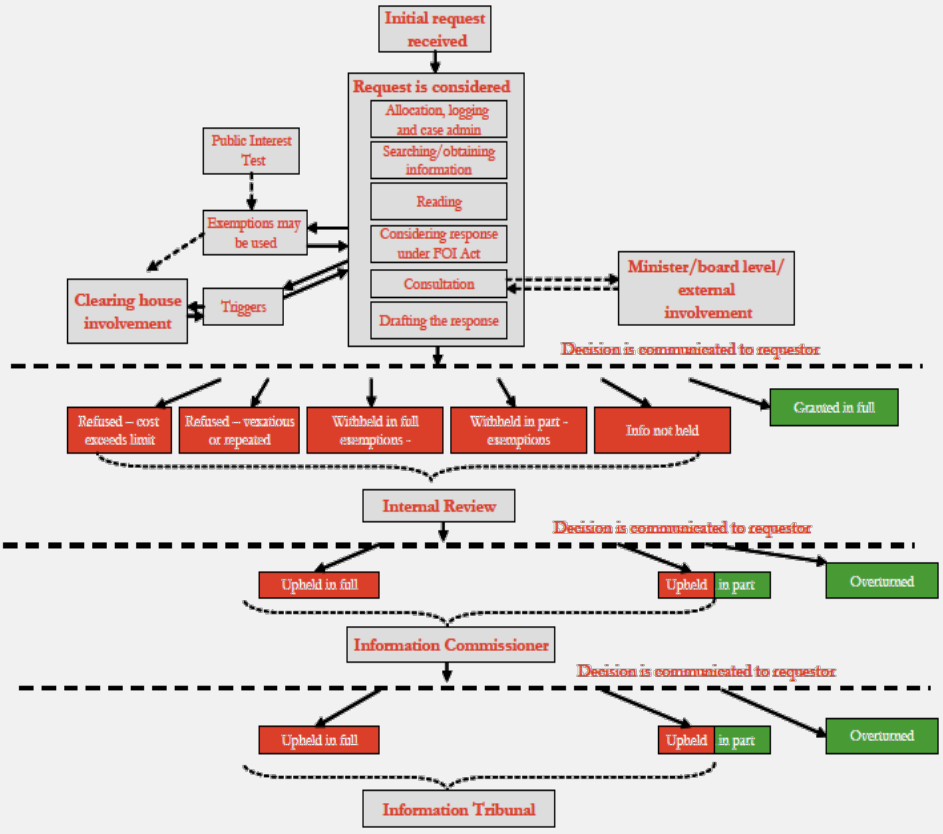
Table 1 – Average cost of FOI request per country

Country	Year	Total Number of FOI Requests per year	Total Cost of FOI per year	Average time taken to complete FOI request	Average Cost per FOI request
U.K.	2005	121,000	GBP 35.5 million	7 hours 30 mins	GBP 293
Scotland	2009	-	-	7 hours 22 mins	GBP 189
Ireland	2009	14,290	EU 6.9 million	-	EU 425
Canada	2000-2001	20,789	CAD 28.8 million (IN 1999)[1]	38 hours	CAD 1,035
Australia	2008-2009	27,561	AUD 30,358,484	18 hours 42 mins	AUD 1,208
U.S.	2009	557,825	USD 382,244,225	-	USD 685

Source: Constitution Institute

The costing figures presented by the Frontier Economics report were calculated from a one-week costing exercise carried out in January of the year considered. The graph below shows the process of handling a request as described in the study:

Figure 17 – Flow chart: handling a FOI request



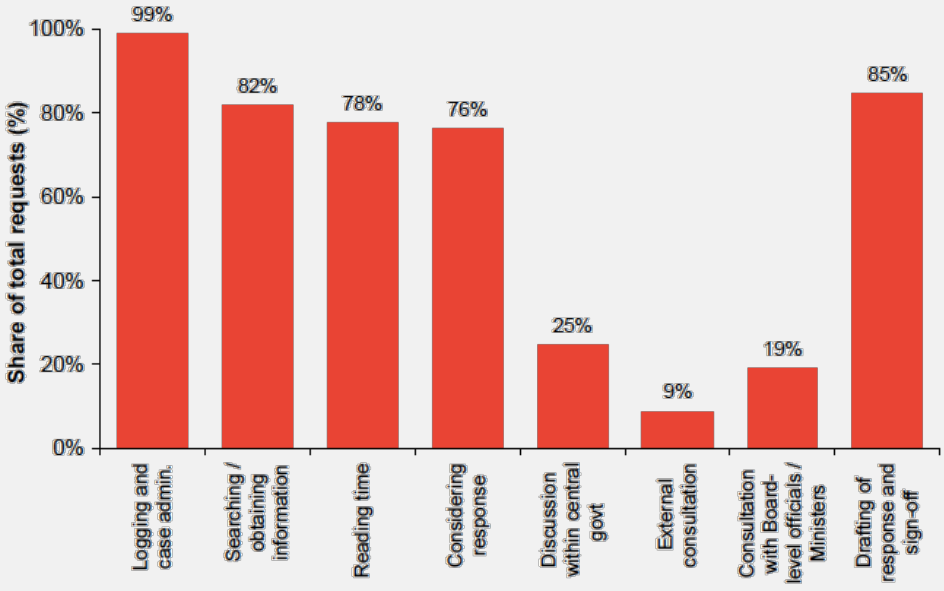
Source: Frontier Economics (2006)

The figures below show the average cost estimated per type of activity, and the percentage of FOI access requests per administrative activity involved. Similar analyses were performed for the Irish Freedom of Information Bill[100] and to address the overall cost of FOIA in the United States, however without fully considering the corresponding savings.[101]

Figure 18 – Average cost per type of FOI activity

Source: Frontier Economics (2006)

Figure 19 – Percentage of FOI requests per admin activity



[100] See https://www.tasc.ie/download/pdf/an_economic_argument_july29th2010.pdf

[101] See http://sunshineingovernment.org/wordpress/2013/05/23/cbo-releases-cost-estimate-on-foia-bill-but-doesnt-address-savings/

Source: Frontier Economics (2006)

For the purposes of this study, we selected a number of representative administrative procedures (the right to access documents, time limits, the right to be heard and the right to information about the procedure) and referred to past research and studies (e.g. the study by Frontier Economics on FOI); and existing tables (e.g. the Dutch CASH table and the German CASH table on the time and cost of individual administrative activity; the list of administrative activities existing in the European Commission's better regulation toolbox). Finally, we use our mapping of existing codes of administrative behaviour and good administration across EU institutions, agencies and bodies as a proxy for the business as usual (BAU) factor;[102] the impact of individual provisions on individual bodies is mapped, also based on the perceived volume of administrative proceedings handled by the EU body at hand.

Costs are generally measured according to the basic formula ***time x cost x frequency***, net of business as usual ('BAU factor') for various administrative activities, e.g. in the case of access to documents, lodging the request and case administration; searching/obtaining the information; reading time; consideration time; consultation with external bodies; consultation with higher level officials; drafting of response and sign off. In general, the methodology we adopt for quantifiable costs and cost savings is the following:

Step 1. Identification of the type of conduct from the list of the quantifiable ones: e.g. notification of the decision to start a procedure; access to information or documents; stating the purpose and legal grounds of the act; indicating available remedies and the competent official.

Step 2. Definition of a list of administrative activities that would be needed in order to comply with the new obligation, stemming from the implementation of Option 1.

Step 3. Analysis of existing fragmentation and distance from 'frontier', per EU body (each body is given a BAU factor per individual type of activity, and a label 'high', 'medium' or 'low' depending on their estimated volume of administrative acts.

Step 4. Estimation of how many additional administrative activities would be needed under Option 1.

Step 5. Quantification of the administrative burden of each individual act.

Step 6. Measurement of total burden per type of administrative conduct required.

6.2.1.1 Cost of provisions on access to documents

The provisions of access to documents are already contained in Regulation 1049/2001, which makes them binding. As a result, there is more data available for these procedures than for

[102] The European Commission Better Regulation Toolbox contains an explanation of the so-called BAU factor: 'all costs (and benefits) considered for the purposes of an impact assessment should exclude those costs (and benefits) that would materialize anyway even in absence of a new policy measure ("BAU")'. http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf.

many other provisions contained in the 2001 Code. We use the calculation of the cost of handling a request for access to document as a proxy for the cost of a relatively simple administrative procedure.

Many EU institutions receive a large number of requests for access to documents. For example, in 2016 the Council received 2,342 initial requests for access to documents and 24 confirmatory applications, requiring the analysis of 10,232 documents. Full access was eventually granted to 7,307 documents and partial access to 556 documents. More than 76% of the documents for which access was requested were released in full, and more than 82% either in full or partially.[103]

In order to assess the cost of provisions related to access to documents, we provide an estimate based on available figures of complaints lodged with the Ombudsman, and existing estimates of administrative burdens. In particular:

- *We consider that there are 10,000 yearly requests.* This is based on the reported requests to the Council (2,342 in 2016, requesting access to 10,232 documents, with full access eventually granted to 7,307 documents); the Commission (6,077 applications registered in 2016);[104] EMA (865 requests for access to documents in 2017);[105] ESMA (6 in 2016);[106] EIOPA (6 in 2016, for a total of 10 docs);[107] ECHA (85 in 2017, for a total of 811 documents requested);[108] Frontex (63 requests in 2016, for a total of 725 documents);[109] the European Parliament (499 requests in 2016, for a total of 802 documents).[110]
- *We consider a breakdown of requests that reproduces that of the data we collected*: 61% for the European Commission, 24% for the Council, 9% for EMA, 5% for the European Parliament; 1% rest.
- *Given that the provisions on access to documents are already subject to a binding regulation, we assume a 75% BAU factor.* This is because the public consultation and our workshop both revealed a lack of full compliance with Regulation 1049/2001: pressure towards actual compliance would probably increase if the 2001 Code were made binding.
- We assume, partly based on past FOI studies (see Box 2), the following times to comply with procedural steps, for a total of 14 working hours:[111]
    - Processing of acknowledgment of receipt: 1 hour
    - Logging the request and case administration: 1 hour

---

[103] http://www.consilium.europa.eu/en/press/press-releases/2017/05/22/public-access-documents/

[104] http://eur-lex.europa.eu/resource.html?uri=cellar:05a0236b-dbf9-11e7-a506-01aa75ed71a1.0021.02/DOC_2&format=PDF

[105] http://www.ema.europa.eu/docs/en_GB/document_library/Annual_report/2018/04/WC500248201.pdf

[106] https://www.esma.europa.eu/sites/default/files/library/esma20-95-590_annual_report_2016.pdf

[107] https://eiopa.europa.eu/Publications/Reports/EIOPA%20Annual%20Report%202016.pdf

[108] https://echa.europa.eu/documents/10162/13604/adt_2017-key-figures_en.pdf/e35dd59d-0f5a-4393-d86d-7739a2c09dc5

[109] http://www.statewatch.org/news/2017/aug/eu-frontex-activity-report-2016.pdf

[110] http://www.europarl.europa.eu/RegData/PDF/rapport2016/1127323_1_EN.pdf.

[111] These values are also roughly in line with the estimates by Frontier Economics for the UK (see box 2 above).

- Searching/obtaining the information: 2 hours
- Reading time: 2 hours
- Consideration time: 1 hour
- Consultation with colleagues or external bodies: 3 hours
- Consultation with hierarchy: 3 hours
- Drafting of response and sign off: 1 hour.

- We assume the following hourly cost of EU personnel: 30€/hr for ordinary service (project officer); 45€/hr for intermediate service (e.g. Head of Unit); and 60€/hour for higher service (e.g. head of unit or higher).[112]
- Given the different levels of complexity of the requests, we assume that the distribution follows the same pattern found by Frontier Economics (2006) in terms of activities required per type of request (see Figure 18 above). In practice, this means that the activity 'logging the request and case administration' will be incurred 99% of times, whereas 'reading time' will be required in only 78% of cases.

This translates into the following calculations. Table 2 assumes an allocation of the different tasks across various levels of seniority in the administration, and reaches an estimate of 278 EUR per FOI request processed.

Table 2 – Estimated time needed to process a single request for access to document

Activity	Time (hrs)	% of cases	Net	Low (30€/hr)	Intermediate (45€/hr)	High (60€/hr)	Total (Euros)
Processing and delivery of notification of initiation of procedure	1	100%	1.00	100%			30
Logging the request and case administration	1	99%	0.99	100%			29.7
Searching/obtaining the information	2	82%	1.64	50%	50%		61.5
Reading time	2	78%	1.56	100%			46.8
Consideration time	1	76%	0.76	50%	50%		28.5
Consultation with colleagues or external bodies	3	25%	0.75	50%	30%	20%	30.375
Consultation with hierarchy	3	19%	0.57	50%	30%	20%	23.085
Drafting of response and sign off	1	85%	0.85	80%	20%		28.05

[112] See, for equivalent German values, https://www.destatis.de/EN/FactsFigures/Indicators/BureaucracyCosts/Download/ComplianceCostsGuidelines.pdf?__blob=publicationFile

TOTAL	**14**		**8.12**				**278.01**

These figures have then been attributed to EU institutions and agencies based on the existing figures we collected for major EU bodies. The resulting table summarises the yearly administrative burden for EU institutions and agencies, which amount to **€695,025 per year**.

Table 3 – Estimate of total administrative burden from processing of requests

Institution	% of requests	N=10,000	Total Cost	BAU (%)	Administrative Burden
European Commission	61.2%	6125	€ 1,702,748	75%	€ 425,69
European Parliament	5.0%	503	€ 139,818	75%	€ 34,96
Council	23.6%	2360	€ 656,218	75%	€ 164,06
EU Agencies	10.1%	1012	€ 281,316	75%	€ 70,33
TOTAL	100%	10,000	€ 2,780,100		**€ 695,025**

6.2.1.2 Costs for other requirements

In this section, we provide an example of how to estimate the costs that would arise under Option 1 for EU administrations, under the assumption that 102,581 administrative acts are adopted every year.[113] Our analysis of the content of existing codes of administrative procedure showed that a number of provisions are not always mandated by the rules in place: without sufficient empirical data, we assume that administrations that have not adopted specific provisions related to a given conduct are not engaging in that conduct. However, under the assumption that these administrations will have certain rules in place, we have attributed a low, but positive Business As Usual (BAU) rate to these agencies: this implies that, should new rules of administrative procedure be introduced, their net impact on these administrations will take into account the existence of previous administrative conducts that overlap with the scope of the new rules.

[113] This is an estimate of the total number of yearly administrative proceedings in the EU (excluding competition law and personnel matters). The total figure is in line with the estimate provided in the Summary Report of the Public Consultation on a EU law for an open independent and efficient European administration (EPRS 2018).

Under this assumption, for illustrative purposes, we perform our assessment of the additional costs that would be incurred if the authorities that do not comply with a specific requirement started complying. This requires the following data points:

- The number of proceedings (as explained, they are estimated at 102,581);
- The distribution of these proceedings across agencies (we use the same as for Table 3 above);
- A 'BAU level', i.e. the percentage of compliance with the obligations found in our analysis of existing codes. We assume 75% BAU for those institutions, agencies or bodies that have directly endorsed the 2001 Code or have adopted a code (due to information that points to lack of full compliance, which prevents us from assigning 100%); 50% BAU factor for institutions, agencies or bodies that have adopted some form of code of good administrative behaviour, with a lower number of provisions than the 2001 EU Code; and 25% BAU for institutions, agencies or bodies with no code of good administrative behaviour or good administration. This means that we adopt a 75% BAU factor for the European Parliament, a 25% for the Council and a 40% BAU factor for EU agencies.[114]
- Time needed to comply with the obligation: we here further assume the following times needed to comply with the regulatory obligations: (i) stating the purpose of the act: 0.5 hours; indicating available remedies and the competent person: 1 hour.
- The hourly rate of the person that would comply with the obligation by carrying out administrative activities is estimated at 30 EUR.

The table below shows the result of our calculations, totalling **€1,863,538 yearly.**

Table 4 – Estimate of total costs from stating the purpose and indicating available remedies

Institution	% of requests	N=102,581	BAU (%)	Cost (1.5 hrs per act)
European Commission	61%	62780	75%	€ 706,270
European Parliament	5%	5129	75%	€ 57,702
Council	24%	24209	25%	€ 817,058
EU Agencies	10%	10463	40%	€ 282,508
TOTAL	**100%**	**102,581**		**€ 1,863,538**

Compliance with the new obligations may be costlier in the case of granting the right to use all official languages of the EU. Information we gathered through own analysis, the public consultation, and during the workshop organised during the drafting of this impact assessment suggests that some of the EU institutions, agencies and bodies do not offer the

[114] Within EU agencies, the average BAU factor is 39.75%, which we rounded up to 40%.

possibility of using all official languages. In particular, the Committee of the Regions, EFSA, the EDPS, the European Fisheries Control Agency and the EESC appear to accept requests only in English or in a limited number of languages. Other administrations accept all EU languages, but the form available online is only in English. However, none of the EU bodies that account for the bulk of the requests, as discussed above, experiences this problem.

In order to estimate the cost for these administrations to offer the possibility to be contacted in all languages of the European Union we need to estimate the number of expected contacts that would occur in a language that is different from the ones currently used. We would need to add an estimated number of requests that would be filed in addition to the current ones, under the assumption that some requests are not submitted due to the language barrier. The EDPS received 11 requests in 2017;[115] whereas the Fisheries Control Agency only received two;[116] Accordingly, there is reason to believe that the addition of this requirement to the administrations' administrative rules would not imply significant costs. Imagine that every year a total of 10 new requests is submitted in a language not currently covered by these agencies: for each request, the need for translation of the correspondence with the requestor may require services whose cost would remain below €500 in the most complex cases. Even in the least conservative scenario, the cost to the administration would not exceed **€5,000 per year**.

Finally, in the case of time limits we can assume that administrations would need additional resources to comply with more stringent rules, leading to an average reduction in waiting time of 10% for the estimated 102,581 requests. We adopted, as a conservative estimate, that administrative acts take on average 7 hours to complete, which translates into 718,067 person/hours per year. Assuming that the administration would have to work 10% more to respect time limits, this translates into an additional 42 minutes of additional work per administrative act. Assessing these minutes are valued at the minimum rate (€30/hr), this translates into **€2,154,201**.[117]

6.2.1.3 Total estimated costs

All the components of the expected cost of Option 1 that could be quantified are represented in Table 5 below, which provide an overall estimate of **€4,717,764.**

[115] https://edps.europa.eu/sites/edp/files/publication/18-03-15_annual_report_2017_en.pdf

[116] https://www.efca.europa.eu/sites/default/files/atoms/files/Annual%20Report%202017_0.pdf

[117] Administrative acts entail different types of activities such as requests for documents, requests for information, acts related to public procurement, complaints filed with the Ombudsman, European Parliament petitions. Data is available mostly for some of these categories, and in particular requests for access to documents, for which estimates at the international level range from 7 hours (Scotland, UK) to 38 hours (Canada). Since we consider these acts to be likely to be costlier than the average administrative act, we decided to adopt, as a low-end, conservative estimate, 7 hours as average time needed to complete an administrative act in the EU.

Table 5 – Total estimates costs of selected provisions for Option 1

Type of requirement	Estimated cost per 10k acts/year
Access to documents	**€ 695,025**
Stating purpose and indicate remedies	**€ 1,863,538**
Right to use any EU official language	**€ 5,000**
Time limits	**€ 2,154,201**
Total yearly costs	**€ 4,717,764**

6.2.2 Benefits of Option 1

An earlier report on the added value of a EU Law of Administrative Procedure (Blomeyer and Sanz 2012) identified five specific categories of benefits, which fall within the abovementioned groups: (i) Enhanced legal security; (ii) Enhanced legal and policy consistency; (iii) Enhanced compatibility between Member State and EU law; (iv) Reduced burden - administrators, lawyers and judges; and (v) Contribution to legal research/best practice exchange. Of these, the 'reduced burden for administrators, lawyers and judges' is the only one that could possibly be subject to quantification, whereas the others are very important but impossible to quantify. In our opinion, another source of reduced burdens can be identified in the form of the members of the public that interact with the EU administration: this is related to other, previously identified benefits, such as enhanced legal and policy consistency. As a matter of fact, the availability of a uniform set of rules of administrative procedure and the more explicit illustration and protection of citizens' rights in administrative documents can lead to a simplification of procedures and a consequent reduction of administrative burdens on the part of the members of the public that interact with the administration.

Furthermore, it is possible to imagine a double effect on enforcement costs for administrations, in particular for what concerns litigation: on the one hand, enhanced awareness of citizens' rights and available remedies may lead to an increased number of complaints filed to the administration, on the other hand, the foreseen improvements in the clarity and comprehensiveness of administrative acts should lead to a reduction in litigation, due to reduced uncertainty.

Below, we consider all these benefits and quantify them wherever possible. Section 6.1.2.1 addresses cost savings, whereas Section 6.1.2.2 deals with transparency and good governance, which includes enhanced legal security and enhanced legal and policy consistency. Section 6.1.2.3 deals with indirect benefits, such as the enhanced compatibility between Member States and EU law and the benefits for legal research/best practice exchange.

6.2.2.1 Cost savings

Just as the option generates costs for the administration, it is also expected to generate benefits for the public, in terms of:

- *Reduced transaction costs* when dealing with the administration, including lower costs of finding information on the remedies available, lower costs for the identification of the competent person in the administration, etc.;
- *Reduced waiting time* if time limits were not respected or complied with by EU bodies.

Quantifying these cost savings is far from easy. We proceed as follows. First, we provide a calculation based on requests for access to documents filed by the members of the public (so-called 'FOI requests'), to be used as a proxy for other administrative proceedings. We then focus on proceedings initiated by EU institutions, agencies and bodies.

For FOI requests, we assume that the procedure for submitting the request will remain similar to the current one in many EU bodies; and accordingly the administrative burden on the side of the public will not be heavily affected. However, if the FOI process becomes more structured and efficient there would be a reduction in the waiting time due to enhanced respect of procedural limits by the EU administration. As stated, waiting time can be monetised in terms of reduced opportunity cost for the members of the public involved (Renda et al. 2013; Marneffe 2015). If we assume, as we did above, that 10,000 requests are received every year, mostly by the European Commission, the Council the Parliament and a few agencies (see Table 4 above), then it is possible to model an improvement in administrative delays as a reduction in the opportunity cost faced by applicants. Without more detailed information we relied on one figure, i.e. the fact that 10% of Ombudsman enquiries concern refusals or delays by EU bodies in releasing documents requested under the EU's transparency regulation:[118] and assume that meeting the time limits will increase the intensity of work by 10% (consistent with Section 6.2.1.2 above). This means that the waiting cost for access to documents would be reduced in 10% of the cases by an average of 10 days.

In computing the cost of delays, we discarded methods based on the economic opportunity cost corresponding to the impossibility of running a business or fully exercising one's own economic activity. These models are normally used for cases of delays in the issuance of permits and authorisations, such as a construction licence or the authorisation to market a new food or a pharmaceutical product. Some of these models use proxies such as GDP per capita for citizens (used, for example, in Mexico's SIMPLIFICA model) or average turnover per business day in the case of companies. In our case, we considered these methods to be very likely to over-estimate the opportunity cost generated by delays in the completion of administrative procedures in EU institutions, agencies or bodies. We have thus assumed that, rather than full working time, waiting time is equivalent to commuting time, which is often included in regulatory impact analysis, especially in the United States. Commuting time is typically valued at half the hourly salary rate of the individual commuter (e.g. by the Department of Transportation). In our case, if we adopt a hourly rate for citizens and members of the public of €30/hour (which means that waiting time is valued at €15/hr) and assume that

[118] https://europa.eu/newsroom/content/ombudsman-launches-%E2%80%98fast-track%E2%80%99-complaint-procedure-access-documents_en

on average two parties will be involved in the delayed procedure,[119] this means that a 10-day average reduction in waiting time for 10% of the estimated 10,000 requests gives a final result of

(10,000 x 10%) x €15 x two parties x (10 days x 24 hours) = **€7,200,000**

We adopt this as our estimate of the benefits from the reduction of delays.

For other types of administrative proceedings, we estimate possible reductions of administrative burdens by looking at those administrative activities that are likely to be most affected by the introduction of Option 1. From our analysis in Section 2 above, based on the texts of the codes of administrative behaviour and good administration we found, we infer that:

- 22% of existing codes mention the possibility to access judicial proceedings of the possibility to lodge a complaint with the European Ombudsman.
- 22% indicate a timeline to submit a request for review.
- 20% of codes mandate that the act indicates the identity of the staff that will handle remedies.
- 25% of codes mandate that proceedings be conducted under the obligation to respect reasonable time limits and avoiding undue delays.

We thus assume these as BAU factors, i.e. the percentage of EU institutions, offices and bodies (that have a code) that already comply with these requirements. For simplicity, we adopt an average BAU factor value, set at 22%. We further assume, for the purposes of our illustrative example, that the absence of this information will increase the cost for the members of the public who will have to invest time and resources to find out about possible redress and remedies, as well as about the identity of the contact person in the administration. Also, we consider that only EU institutions and agencies initiate administrative proceedings towards individual members of the public, which narrows down our sample.

In order to capture the impact of a simplification measure that increases legal certainty for individual citizens and businesses, we adopt the CASH table developed for both categories by the German Destatis (see below): our assumption is that Option 1 will reduce the complexity of administrative activities from high to medium.

[119] Some procedures involve many members of the public, whereas others involve only one individual. In the absence of more precise information on the average number of parties involved, we assume the average is two.

Table 6 – CASH Table – Germany - Citizens

No.	Activity	Time in minutes		
		Easy	Moderate	Complex
1	Familiarizing oneself with the obligation	2	5	20
2	Obtaining expert advice (advisory institutions, local administration, etc.)	10	30	79
3	Gathering and compiling information (e.g. printed forms, documentary evidence, photos, etc.)	1	3	20
4	Processing information and data (including performing calculations and checks)	1	5	54
5	Filling in forms	2	5	25
6	Drafting correspondence (letters, faxes, e-mails, etc.)	3	5	13
7	Sending information or data to competent authorities (if necessary, incl. handing it over in person)	1	2	5
8	Making payments (e.g. filling in a bank transfer form)	1	2	3
9	Photocopying, filing and storing documents	1	3	6
10	Arranging inspections by public authorities (Safety inspections, control visits, public health officer, etc.)	1	15	60
11	Submitting other information to authorities in response to queries (presenting documents, etc.)	2	5	15

(As at October 2011; source: Federal Statistical Office)

Table 7 – CASH Table – Germany - Businesses

	General standard activity	Easy (min.)	Mod-erate (min.)	Complex (min.)	Explanation
I.	**Familiarizing oneself** with the information obligation	3	15	120	Are separate costs incurred because the information obligation is regularly changed or is only rarely used?
II.	**Procuring** data	3	15	120	What costs are incurred by procuring necessary information and data?
III.	**Filling in forms, labelling, classifying**	3	7	30	What costs are incurred, for example, by filling in an application form?
IV.	Performing **calculations**	3	20	120	What calculations, evaluations, counts have to be performed?
V.	**Checking** data and inputs	1	5	45	Are costs incurred through control measures?
VI.	**Correcting errors**	2	10	60	Are costs incurred through corrective measures?
VII.	**Processing** data	3	15	120	What costs are incurred through the processing of data?
VIII.	**Transmitting and publishing data**	1	2	10	What costs are incurred through sending data and/or publishing data or information?
IX.	**Internal meetings**	5	30	480	What costs are incurred through necessary internal meetings?
X.	**External meetings**	10	60	480	What costs are incurred through necessary external meetings (e.g. with tax consultants)?
XI.	Making **payments**	2	8	30	Are costs incurred, e.g. when filling in a bank transfer form?
XII.	**Photocopying, filing, distribution**	2	5	15	Are costs incurred, e.g. for photocopying activities or filing work?
XIII.	**Audit** by public authorities	2	30	240	What costs are triggered, e.g. through company auditors?
XIV.	**Corrections** which have to be made as a result of the audit	3	90 [1]	90 [1]	Are costs incurred for corrections and revision of data?
XV.	**Procuring additional information** in case of difficulties with the responsible authorities	3	15	120	Are costs incurred through procuring additional information?
XVI.	**Training**	3	35	480	Are costs incurred because compliance with an information obligation necessitates training?

(As at December 2008; source: Federal Statistical Office in cooperation with the Institute for SME Research, Bonn)

1 Due to the low number of cases, no differentiation was made between "moderate" and "complex"

This leads us to the following calculations for a yearly representative set of legal provisions. We assume that 102,581 administrative acts are adopted; and for those the relevant activities on the part of members of the public are: familiarisation with the information obligation;

collecting required information; assessing the required information and data; filling in or entering the required data; obtaining information from third parties. We then assume that for 102,581 administrative procedures (discounted to account for EU bodies that already comply with some of the obligations), these activities will move from high complexity to medium complexity as a result of the implementation of Option 1. The cost per hour saved is again set at €30. The results are shown in Tables 8 (citizens) and 9 (businesses) below.

Table 8 – Simulation of simplification for citizens under Option 1

	Medium complexity	High Complexity	Minutes Saved
Familiarisation with the information obligation	5	20	1,200,198
Gathering and compiling information	3	20	1,360,224
Processing the required information and data	5	54	3,920,646
Filling in forms	5	25	1,600,264
Sending information to competent authorities	2	5	240,040
Total minutes saved (for 102,581 acts)			8,321,371
Total hours saved (for 102,581 acts)			138,690
Value (30€/hr)			**€ 4,160,685**

Table 9 – Simulation of simplification for businesses under Option 1

	Medium complexity	High Complexity	Minutes Saved
Familiarisation with the information obligation	15	120	8,401,384
Gathering and compiling information	15	120	8,401,384
Processing the required information and data	15	120	8,401,384
Filling in forms	7	30	1,840,303
Sending information to competent authorities	2	10	640,105
total minutes saved (for 102,581 acts)			27684560
total hours saved (for 102,581 acts)			461409
value (30€/hr)			**€ 13,842,280**

In the absence of detailed information about the distribution of administrative acts between citizens and businesses, we assume that a Pareto distribution applies, with citizens involved in 80% of the administrative acts, and businesses accounting for 20%. Under this assumption, the total cost savings estimated through this illustration would be equal to €6,097,004.

All in all, the quantified yearly cost savings for members of the public would amount to €7,200,000 + €6,097,004 = **€13,297,004**.

6.2.2.2 Non-monetisable benefits

Non-monetisable benefits are the bulk of the positive impacts produced by adopting a binding code of good administrative behaviour as in Option 1. These benefits include greater accessibility of the EU administration; enhanced transparency of the EU administration; enhanced legal certainty; increased protection of citizens' rights; and greater trust in EU institutions. More in detail:

- *Accessibility*. The 2001 Code contains far-reaching provisions on the right to access information and access to the file, which can increase the accessibility of EU administration for members of the public, and are directly related to the legitimacy of the administration.
- *Transparency*. The 2001 Code contains a number of provisions that can enhance transparency of EU bodies in the eyes of the public. The obligation to state the grounds for the decisions adopted by the administration (Art. 18 of the current Code) and notify the requester in writing (Art. 19); the obligation to clearly indicate appeal possibilities (Art. 20); the obligation to handle requests for information effectively (Art. 22) and requests for access to documents in line with Regulation 1049/2001 (Art. 23); and the obligation to keep adequate records (Art. 24) all have a positive impact on transparency.
- *Legal certainty and predictability*. In particular, the uniformity achieved by the adoption of a binding set of principles and a limited set of obligations will increase legal certainty in particular in those institutions, agencies or bodies that have neither adopted an own code, nor endorsed the Ombudsman or the Commission one. In particular, provisions that mandate stating the grounds for the decisions adopted by the administration (Art. 18), and notifying them in writing (Art. 19); the obligation to avoid processing data for non-legitimate purposes (Art. 21); the obligation to acknowledge and correct mistakes (Article 12.3); proportionality obligations (Article 6); the obligation to behave consistently with the administrative action of the institution (Article 10); provisions on time limits (Articles 14 and 17); and provisions on rights of defence (Art. 16) all contribute positively to legal certainty. In addition, Option 1 can *improve legal and policy consistency across the EU administration* by fostering the consistency of practices and enforcement of legal rules. Policy consistency would also improve due to enhanced compatibility between EU and Member States law, since, as already reported, many Member States do have a uniform set of rules of administrative conduct. This is particularly important if one considers that the border between the EU and the Member State level is becoming increasingly blurred, and the existence of a whole EU administrative space is more widely acknowledged among academics (Harlow et al. 2017, 3). Without Option 1, Member States will continue to be 'faced with the task to introduce different administrative law provisions depending on the sector whilst Member State administrative law is harmonized' (Blomeyer and Sanz 2012), with EU administrative law trumping Member State administrative law despite the latter being generally of better quality. Better compatibility is expected to result in efficiency and effectiveness benefits.
- *Enhanced protection of citizens' rights*. In particular, the provisions on the indication of appeal possibilities (Art. 20); effective handling of requests (Art. 22, 23); correction of mistakes (Art. 12.3); respect for the privacy and the integrity of the individual, including personal data protection (Art. 21); the obligation of proportionality (Art. 6), consistency (Art. 10), impartiality and service-mindedness (Article 12.1); language rights (Art. 13); and

rights of defence (Art. 16) all contribute to an enhanced protection of citizens' rights with respect to the *status quo*.

- *Legitimacy of, and trust in, EU bodies*. The most important indirect benefits of Option 1 are the increased legitimacy of EU bodies in the face of EU citizens, and the overall improved economic environment due to the improved quality of administration. Such quality is, indeed, positively correlated with economic growth (see i.a. the World Bank's Worldwide Governance Indicators or WGI; the World Bank's Global Indicators of Regulatory Governance or GIRG; and the OECD measuring government indicators). For example, the reduction in the delays of the EU administration will provide overall economic benefits. For example, Marneffe et al. (2013) regress regulatory delay variables from the World Bank Ease of Doing Business databank on economic growth for a panel of 184 countries between 2004 and 2011; they find a significant impact of delay on growth. For example, a decrease of overall regulatory delay by 10% led to an additional growth of 0.78% for Belgium. A positive relationship between cutting delay and growth is therefore established.

- *Efficiency*. The impact of Option 1 on efficiency would be positive, as suggested by the fact that our quantification of cost savings seems to offset the additional burden imposed on administrations due to the need to perform limited additional administrative activities. Benefits may also emerge since the greater clarity of administrative acts may result in lower litigation costs and lower transaction costs (in particular, information costs on the side of citizens): as a matter of fact, the more information is provided by the administration to the public, the lower the public's investment in fact-finding. For example, if the competent office and official and related contact information are provided by the administration, citizens will save time and resources in having to find out by themselves. And the more precise the information on available redress mechanisms, the lower the chance of misallocating resources in litigation. That said, much depends on the actual translation of the 2001 Code into binding measures: the current text, as explained, contains neither binding nor precise (and thus enforceable) measures. As such, the impact on efficiency may be more limited than in the case of fully accurate and binding legislation.

- *Effectiveness*. The ability of Option 1 to achieve the intended objectives greatly depends on the way in which the option is implemented. In principle, the option would at least partly improve upon the *status quo*, since it would introduce new obligations for EU officials, which would strengthen the protection of the public's right to good administration and openness, transparency, uniformity and consistency in decision-making, for example. Also the general objective of promoting the quality of EU governance and government by ensuring the most efficient and effective functioning of EU institutions, bodies, offices and agencies would be served better by Option 1 than by the current situation, as the availability of a consistent set of rules of administrative conduct is considered, internationally and by the European Commission, as a key element of good governance.

6.3 Option two: the European Parliament's proposed regulatory framework

Under this option, the European Parliament's *Proposal for a Regulation of The European Parliament and of the Council on the Administrative Procedure of the European Union's institutions, bodies, offices and agencies* (described in Box 1 above) would be adopted. This would imply the introduction of specific new provisions compared to the status quo, on several aspects of administrative procedure.

The provisions to be adopted under Option 2 would cover: the initiation of proceedings, including proceedings started at the initiative of the Union's administration, and proceedings started upon application by a party; various rights related to the management of the procedure (various procedural rights, the duty of careful and impartial investigation; the duty to cooperate; rules that apply if a case witness or experts are to be heard; rules on inspections, on conflicts of interest, on access to the file; the duty to keep records and rules on time limits); the conclusion of the administrative procedure (form of administrative acts, duty to state reasons, duty to communicate available remedies and the notification of acts); the rectification and correction of acts.

In addition, there would be a new, general obligation for the Commission to publish updated online information on the existing administrative procedures in an ad hoc, public and free website, wherever possible and reasonable, with priority given to application procedures. This website would contain information such as a link to the applicable legislation, a brief explanation of the main legal requirements and their administrative interpretation, a description of the main procedural steps, the indication of the authority competent to adopt the final act, the indication of the time limit for the adoption of the act, the indication of remedies available, a link to standard forms that may be used by parties in their communications with the Union's administration within the procedure.

Table 10 below shows the difference in coverage between Options 1 and 2. The table clarifies the different scope of the two options (Option 1 being more focused on the behaviour of the official, Option 2 being more focused on procedural rules for the whole EU administration). The different scope also leads to slight differences in the coverage of specific behaviours: the 2001 code contains more explicit references to the behaviour of the official, including his/her service-mindedness and integrity. The European Parliament's proposal is far more detailed and precise, and contains provisions on administrative procedures such as inspections, which were not covered by the 2001 Code. The Parliament's proposal is also inevitably more prescriptive, in a way that reduces discretion in interpretation: as such it should promote more legal certainty and predictability. More generally, the European Parliament's proposal seems to protect citizens' rights during all phases of administrative procedures more comprehensively.

Table 10 – A comparison of Options 1 and 2

Issue	2001 Code	European Parliament's proposed regulation
Scope	Rules of behaviour, in line with public service principles Ref. to Art. 41 CFR	Procedural rules which shall govern the administrative activities of the Union's administration (Art. 1) Ref. to Art. 41 CFR
Integrity, respect and service-mindedness	Be respectful to each other and to citizens, as well as polite, service-minded, helpful, timely, and co-operative (Article 12.1).	No specific provision
Impartiality and evidence-based decision-making	Be impartial, open-minded, guided by evidence, and willing to hear different viewpoints.	Recital 20: right to good administration requires that administrative acts guarantee impartiality, fairness and timeliness. Recital 26: right to be treated impartially is a corollary of the right to good administration and implies staff members' duty to avoid conflicts of interest Duty of careful and impartial investigation (Art. 9) includes careful and impartial investigation, consideration of all relevant factors and all necessary information.
Duty to cooperate	No provision	Article 10: The parties shall assist the competent authority in ascertaining the facts and circumstances of the case; and shall be given a reasonable time limit to reply to any request of cooperation.
Privilege against self-incrimination	No provision	Art. 10(3). 3. Where the administrative procedure may lead to a penalty, the parties shall be reminded of the right against self-incrimination.
Conflicts of interest	Mentioned in the Introduction: Civil servants should avoid financial or other types of conflicts of interest, and should promptly declare any private interests relating to their functions. They should take steps to avoid conflicts of interest and the appearance of such conflicts; and take swift action to resolve any conflict that arises.	Recital 26 (see above) Article 13. Members of staff shall not take part in administrative procedures for which they are conflicted; have a duty to communicate conflicts to the competent authority Parties can request that a staff member be excluded from an administrative procedure on the ground of conflict of interests, filing a reasoned request.
Motivation and notification of decisions	State the grounds and legal basis for the decisions adopted by the administration (Art. 18), and notify them in writing (Art. 19). Acts should contain an individual statement of reasons relevant to the parties' situation; if impossible due to number of persons concerned, a general statement	Article 19. Administrative acts shall clearly state the reasons on which they are based; the relevant facts and the way in which the different relevant interests have been taken into account. They should contain an individual statement of reasons relevant to the parties' situation; if impossible due to number of persons concerned, a general statement shall be sufficient, but upon request an individual statement of reasons shall be provided.

Issue	2001 Code	European Parliament's proposed regulation
	shall be sufficient, but upon request an individual statement of reasons shall be provided.	
Legal basis	No specific provision	Article 27: Administrative acts of general scope adopted by the Union's administration shall indicate their legal basis and shall clearly state the reasons on which they are based.
Rights of defence	Ensure the respect of the rights of defence (Art. 16)	Recital 22: The acknowledgment of receipt should indicate the necessary information enabling the party to exercise his or her rights of defence.
Indication of remedies and appeal possibilities	Decisions shall indicate clearly appeal possibilities (Art. 20), and in particular the nature of the remedies, the bodies before which they can be exercised, and the time limits for exercising them. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman.	Article 20: Administrative acts shall clearly state that an administrative review is possible. Parties shall have the right to request an administrative review against administrative acts adversely affecting their rights and interests. Administrative acts shall describe the procedure to be followed, as well as the name and office address of the competent authority or the responsible member of staff, and the time limit for submitting such request. Acts shall clearly refer, where Union law so provides, to the possibility of bringing judicial proceedings or lodging a complaint with the European Ombudsman.
Requests for information and access to documents	Handle requests for information effectively (Art. 22), and requests for access to documents in line with Regulation 1049/2001 (Art. 23).	Article 15 (Right of access to the file) provides that the parties concerned shall be granted full access to the file, while respecting confidentiality and professional and business secrecy. Any limitation to this right shall be duly reasoned. Where no full access to the entire file can be granted, the parties shall be given an adequate summary of the content of those documents.
Respect for privacy and integrity of individuals, including data protection	Respect the privacy and the integrity of the individual in accordance with the provisions of EU legislation, and avoid processing data for non-legitimate purposes (Art. 21).	Recital 38: The right to protection of personal data implies that without prejudice of the legislative acts adopted under Article 16 TFEU, data used by the Union's administration should be accurate, up-to-date and lawfully recorded. Art. 16. Records shall be kept with full respect to the right to data protection.
Acknowledgment and correction of mistakes	Be ready to acknowledge and correct mistakes (Article 12.3).	Article 23 (Rectification or withdrawal of administrative acts which adversely affect a party). Article 24. (Rectification or withdrawal of administrative acts which are beneficial to a party) Article 25 (Management of corrections of errors, rectification and withdrawal) The relevant provisions in Chapters III, IV and VI of the proposed Regulation apply to the correction of errors, rectification and withdrawal of administrative acts.

Issue	2001 Code	European Parliament's proposed regulation
Merit-based judgment	Be merit-based when involved in comparative evaluations.	No provision
Proportionality	Ensure that measures taken are proportional to the aim pursued; and respect the fair balance between the interests of private persons and the general public interest (Article 6).	Recital 19: Any legal act of Union law has to comply with the principle of proportionality. This requires any measure of the Union's administration to be appropriate and necessary for meeting the objectives legitimately pursued by the measure in question Recital 37: Any limitation of the principle of transparency and the right of access to documents should be narrowly construed to comply with the criteria set out in Article 52(1) CFR, and should be subject to the principle of proportionality.
Consistency	Be consistent in his or her own administrative behaviour as well as with the administrative action of the institution (Article 10).	Recitals 11-12. Properly structured and consistent administrative procedures support both an efficient administration and a proper enforcement of the right to good administration.
Language rights	Ensure that every citizen of the Union or any member of the public who writes to the institution in one of the Treaty languages receives an answer in the same language (Article 13).	Article 6(5): initiation of procedure shall be drafted in the language of the country where addressees are located. Article 7(2): applications shall be drafted in one of the languages of the treaties. The acknowledgement of receipt shall be drafted in the language of the application. Article 8: parties have the right to use any of the languages of the Treaties and to be addressed in the language of the Treaties of their choice.
Acknowledgment of receipt	Ensure that every letter or complaint to the institution receives an acknowledgement of receipt within a period of two weeks, indicating the name and the telephone number of the competent official, as well as the service to which he or she belongs (Article 14).	Article 7: Applications shall be acknowledged in writing. The acknowledgement of receipt shall be drafted in the language of the application and shall indicate: (a) reference number and date; (b) the date of receipt; (c) a description of the main procedural steps; (d) name and contact of responsible member of staff; (e) time-limit for the adoption of the administrative act and consequences of failure to meet the time limit; (f) address of the website (if any). In case of errors in the application, the acknowledgment of receipt shall indicate a reasonable deadline for remedying the error.
Time limit for decisions on requests or complaints	Ensure that a decision on every request or complaint to the institution is taken within a reasonable time limit, without delay, and in any case no later than **two months** from the date of receipt (Art. 17).	Article 17. Acts shall be adopted and administrative procedures shall be concluded within a reasonable time limit and without undue delay. The time limit for the adoption of an act shall not exceed **three months** from the date of the notification or the acknowledgment of receipt. If no administrative act can be adopted within the relevant time limit, the parties shall be informed with

Issue	2001 Code	European Parliament's proposed regulation
		a reasoned statement and shall be provided with an estimate of the expected date of adoption. If the EU administration does not acknowledge receipt of the application within three months, the application shall be deemed to be rejected.
Keeping of records	Keep adequate records (Art. 24).	Article 16: Duty to keep records 1. For each file, the Union's administration shall keep records of its incoming and outgoing mail, of the documents it receives and of the measures it takes. It shall establish an index of the files it keeps. 2. Records shall be kept with full respect to the right to data protection.
Provisions on inspections	No provision	Article 12. Detailed provisions on the limits and scope of inspections, on the need for a written authorisation showing identity and position of the inspector; on the need for notice to the party subject to the inspection of the date and the indication of the starting time. Right for parties to be present during the inspection and to express opinions and ask questions. Parties present shall be informed of the subject matter and purpose of the inspection, the procedure and rules governing the inspection and the follow-up measures and possible consequences of the inspection. Parties have a right to receive a report of the inspection. Provisions on cooperation with the competent authorities of the Member State in which the inspection takes place.
Witnesses	No provision	Article 11. Witnesses and experts may be heard at the initiative of the competent authority or proposed by the parties. The competent authority shall ensure that it chooses experts that are technically competent and not affected by a conflict of interest.
Online info	Article 25: The institution shall take effective measures to inform the public of the rights they enjoy under this Code. If possible, it shall make the text available in electronic form on its website.	Article 28. Set up an ad hoc website including information on applicable legislation, main legal requirements and their administrative interpretation, main procedural steps, indication of the authority competent to adopt the final act, time limits for adoption of the act, remedies available, links to standard forms that may be used by parties in their communications with the Union's administration within the procedure.
Evaluation and reporting	Article 27 Each institution shall review its implementation of the Code after two years of operation and shall inform the European Ombudsman of the results of its review.	Article 29. The Commission shall submit a report on the evaluation of the functioning of this Regulation to the European Parliament and the Council before (xx years after the entry into force).

As discussed, Option 2 can in principle be implemented in two different ways: through the introduction of a general law of administrative procedure, which pre-empts all special and sectoral procedural rules currently in place, as well as rules enshrined in sectoral legislation; or as a *lex generalis* which does not preclude the possibility of application of a *lex specialis* where circumstances require it. The former case was not retained as a viable policy option as it would not leave enough space for needed flexibility in those cases in which it is clearly needed (e.g. competition investigations, especially dawn raids). The latter case, which seeks to balance the need for a uniform set of rules with the flexibility needed to reflect peculiar circumstances, would in any event require that the sectoral rules be fully compatible with the general regulatory framework. According to the European Commission, Option 2 would require the revision of a substantial amount of existing legislation. There is no disputing the claim that some existing rules for EU administrative procedure will need to be changed (or at the very least that a stock-taking exercise of the points of deviation would be needed). However, simplification would be part of the point, and the costs associated with the adaptation would be of a one-off nature (to be set off against the benefits of not having to reinvent the wheel each time a new set of administrative activities is introduced).

In both cases a transition period would be needed, in which the legislator either needs to bring specific rules in line with the general act, or needs to take a conscious decision as to which specific rules deviate from it for good reason. It is also important to emphasise that the extent to which the provisions in a possible general regulation on administrative procedure allow for administrative discretion is relevant for the effects that such a regulation will have on existing rules. 'Minimalistic codification' (with leeway for existing rules to further specify obligations) could lessen the need to adapt legislation, but also trigger more litigation (and hence possibly undermine legal certainty). A minimalistic codification 'will hardly solve the type of problems in which there is a clash of values, as in the Bavarian Lager case, where a choice had to be made between access to information and privacy or data protection – both incidentally, protected Charter rights. Nor will it resolve the issue of 'composite decision-making', where decision-makers operating in a shared decision-making process are proceeding according to different standards of administrative behaviour' (Harlow & Rawlings 2014, 332-333).

In what follows, as explained in Section 5 above, we assume that Option 2 will not remove the flexibility needed in specific sectors, and would therefore be compatible with the adoption of *lex specialis* in fields where administrative procedure needs to depart from the generally applicable EU rules. This implies a minimum harmonisation approach, in which a general administrative procedure act is adopted as the minimum standard all institutions, agencies and bodies have to meet, and specific rules can only offer 'greater protection'. As a matter of fact, it appears to be the case that many existing rules, especially in the field of competition law, already have the required level of protection.

6.3.1 Cost of compliance

Compared to Option 1, Option 2 will have slightly higher one-off costs since it foresees the setting up of a comprehensive website, which would contain information such as a link to the applicable legislation, a brief explanation of the main legal requirements and their administrative interpretation, a description of the main procedural steps, the indication of the

authority competent to adopt the final act, the indication of the time limit for the adoption of the act, the indication of remedies available, a link to standard forms that may be used by parties in their communications with the Union's administration within the procedure. Option 2 might also entail slightly higher training costs, due to the more prescriptive and detailed nature of the obligations contained in the European Parliament's proposals. One-off costs thus include a number of items, such as the cost for setting up an ad hoc website and filling it with content; the time spent for the revision of internal regulations that clash with Option 2; and the time spent replacing existing codes and training the competent officials on the content of the new rules. None of these costs appears to be prohibitive, and as such we decided to provide a direct estimate based on the cost of an equivalent service procured on the market (for the ad hoc website); and on the estimated reasonable amount of time that would be needed to complete the other tasks (400 hours to upload necessary content on the website, 1,500 hours for the revision of existing legislation, 2,000 hours for the upgrade of existing codes). Table 11 below shows the result, which yields a total one-off cost of **€178,750**.

Table 11 – Estimate of total one-off costs from Option 2

Activity	Time (hours)	Ordinary service (15€/hr)	Intermediate service (30€/hr)	Higher service (45€/hr)	Total (Euros)
Setting up an ad hoc website	Flat fee				25000
Content of the website	400	100%			12000
Revision of the internal regulations and procedures	1,500	50%	30%	20%	60750
Upgrade of existing codes	2,000	50%	30%	20%	81000
TOTAL	**3,900**				**178,750**

As far as recurring costs are concerned, there is no reason to expect that the cost of granting access to documents will be greater under Option 2. We therefore maintain our estimate of €695,025/year. However, the existence of a larger number of information obligations that are currently not followed by EU administrations would justify the adoption of a lower BAU factor when it comes to other provisions. We then reduce the BAU factors in Table 4 by 25%.

Table 12 – Estimate of total costs from stating the purpose and indicating available remedies, Option 2

Institution	% of requests	N=102,581	BAU (%)	Cost (1.5 hrs per act)
European Commission	61.20%	62780	50%	€ 1,412,540
European Parliament	5.00%	5129	50%	€ 115,404
Council	23.60%	24209	0	€ 1,089,410
EU Agencies	10.10%	10463	25%	€ 353,135
TOTAL	100%	**102,581**		**€ 2,970,489**

Also the costs related to the protection of language rights are expected to be slightly higher, since the use of all official languages of the EU is mentioned with respect to a higher number of administrative acts under Option 2 compared to Option 1 (for example, the initiation of proceedings, and the acts produced during inspections, must be drafted in the language of the addressees). Given the high level of compliance with this requirement we observed in our empirical analysis (with only the Committee of the Regions, EFSA, the EDPS, the European Fisheries Control Agency and the EESC appearing to accept requests only in English or in a limited number of languages) there is reason to believe that, in any event, these costs would not be much higher, and as such we adopt a high-end estimate of **€50,000/year**.

Finally, Option 2 is less stringent regarding time limits (three months as opposed to two, see Article 17). At the same time, the European Parliament's proposal mentions time limits for the acknowledgment of receipt, the initiation of the act and the adoption of decisions. We assume that the cost estimated for Option 1, based on an expectation of a reduction of 10% in delivery time, will be the same under Option 2. We thus confirm our estimate of **€2,154,201**.

All the components of the expected cost of Option 1 that could be quantified are represented in Table 13 below, which provide an overall estimate of **€5,988,879** for the recurrent costs, and a one-off cost of **€178,750** to be computed only for the first year.

Table 13 – Total estimates costs of selected provisions for Option 2

Type of requirement	Estimated cost
Access to documents	**€ 794,189**
Maintenance of ad hoc website	**€ 20,000**
Stating purpose and indicate remedies	**€ 2,970,489**
Right to use any EU official language	**€ 50,000**
Time limits	**€ 2,154,201**
Total yearly costs (for 102,581 acts)	**€ 5,988,879**
- One off costs	*€ 178,750*

6.3.1.1 Non-monetised costs and risks: the loss of flexibility

Apart from the costs that could be monetised, Option 2 could generate possible risks, which may translate into negative impacts. The most important of such risks is certainly the loss of flexibility, which would emerge if ad hoc rules tailored to the needs of specific administrations were eliminated and replaced with generally applicable rules. This concern is apparently also shared by the European Commission. The most effective mitigating rule in this context would be the adoption of Option 2 as a mandatory, 'minimum harmonisation' option, which does not prevent individual institutions, agencies, offices, or bodies from adopting more ambitious rules; or, in specific cases, from being exempted from specific provisions. The latter case may emerge in the case of inspections, for example in the case of dawn raids organised by DG COMP to gather information about the existence of possible cartels. Dawn raids, and the application i.a. of the right to a fair procedure and the right against self-incrimination in their context, have been subject to specific litigation over the past few years. But certainly, certain provisions included in the European Parliament's proposal, such as the duty to give notice, cannot apply to dawn raids, as they would critically undermine their efficacy as an instrument of investigation in antitrust law.

More generally, there seems to be a great deal of heterogeneity in the way in which authorities such as OLAF, the European Commission DG COMP, the ECB and ESMA carry out inspections (Luchtman & Vervaele 2017). In this specific area, also in light of the limited number of administrations involved, there seems to be room for fruitful harmonisation of basic rules of operation. Luchtman and Vervaele, in their analysis of OLAF's powers in comparison with ECB, ESMA and DG COMP, argue that 'particularly for autonomous investigations, it is essential that these take place on the basis of a uniform legal framework defining the powers of the authorities, including the possible consequences in cases of non-cooperation (through imposing fines, but also via ensuring the assistance by national law enforcement officials)' (Luchtman & Vervaele 2017, 323. Also, the authors find significant differences in the authorities' application of rules related to the safeguards of criminal procedure, where Regulation 883/2013 (on OLAF's investigative powers) is a unique case compared to the

regulations of ECB, ESMA and DG Comp; and the privilege against self-incrimination, where differences relate particularly to (the use of compulsory powers to obtain) statements.

Against this background, there also seems to be room for a partial harmonisation of rules in the case of inspections: in some specific cases, however, the introduction of Option 2 would have to create exceptions in order to safeguard the powers and effectiveness of specific administrative procedures, in particular for inspections.

6.3.2 Benefits of Option 2

Compared to Option 1, Option 2 provides for a higher level of protection of citizens' rights, a stronger contribution to good governance and good administration, and a greater contribution to simplification. The very detailed provisions included in the European Parliament's proposal only leave some aspects of administrative procedure uncovered (some aspects related to silence of the administration, the type of and effects of administrative acts, revocation or suspension). Other than this, members of the public should enjoy an even greater degree of simplification and in particular a reduction of information costs and enforcement costs compared to Option 1. Below, we look at cost savings, and then at non-monetisable benefits.

6.3.2.1 Cost savings

Following the same methodology adopted for Option 1, we assume that Option 2 will generate even greater reductions in transaction costs and waiting time. *Regarding our estimate based on access to documents requests*, we have assumed no change compared to Option 1, and thus we estimate savings at €7,200,000. For other types of administrative proceedings, we follow the same assumptions as for Option 1, but assume that the new rules will lead highly complex administrative activities to become easy (low complexity). This leads us to different values from Tables 8 and 9. Such values are reported, based on the German CASH tables shown in section 6.1.2.1 above, in Tables 14 and 15.

Table 14 – Simulation of simplification for citizens under Option 2

	Low complexity	High Complexity	Minutes Saved
Familiarisation with the information obligation	2	20	1440237.24
Gathering and compiling information	1	20	1520250.42
Processing the required information and data	1	54	4240698.54
Filling in forms	2	25	1840303.14
Sending information to competent authorities	1	5	320052.72
Total minutes saved (for 102,581 acts)			9361542
Total hours saved (for 102,581 acts)			156026
Value (30€/hr)			**€ 4,680,771**

Table 15 – Simulation of simplification for businesses under Option 2

	Low complexity	High Complexity	Minutes Saved
Familiarisation with the information obligation	3	120	9361542
Gathering and compiling information	3	120	9361542
Processing the required information and data	3	120	9361542
Filling in forms	3	30	2160356
Sending information to competent authorities	1	10	720118
total minutes saved			30965101
total hours saved			516085
value (30€/hr)			**€15,482,550**

Based hypothetically on an 80/20 ratio between citizens and businesses, the total cost savings estimated through this illustration would be equal to **€6,841,127**.

Finally, for the case of **inspections**, we can use another set of administrative activities included in the German CASH table. We assume that only 2,000 inspections are performed every year, given that very few of the EU institutions, agencies and bodies carry out inspections. Also, we assume a high BAU rate (75%), since the few EU bodies that carry out inspections (EC DG COMP, DG SANTE, EDPS, ESMA) seem to have adopted rules in this respect, which do not deviate substantially from the text of the European Parliament's proposed rules. The relevant activities are: audits by public authorities; the corrections to be made as a result of an audit; and the procurement of additional information in case of problems. Under the same assumption (that activities that were highly complex become less complex), we can tentatively estimate the magnitude of savings as in Table 16.

Table 16 – Reduced burdens from inspections, Option 2

	Low complexity	High Complexity	Average BAU 75%
Audit by public authorities	2	240	119000
Corrections to be made as a result of the audit	3	90	43500
Procuring additional info in case of problems	3	120	58500
Total minutes saved			221000
Total hours saved			3683
value (30€/hr)			**€110,500**

All in all, the quantified yearly cost savings for members of the public would amount to €7,200,000 + €6,841,127 + 110,500 = **€14,151,627**.

6.3.2.2 Non-monetisable benefits

In this section, we analyse the non-monetisable benefits of Option 2 with direct reference to Option 1. Here too, we assume that non-monetisable benefits are the bulk of the positive impacts produced by the adoption of a law of administrative procedure as in Option 2. These benefits include greater accessibility of the EU administration; enhanced transparency of the EU administration; enhanced legal certainty; increased protection of citizens' rights; and greater trust in EU institutions, agencies, bodies and offices.

More in detail:

- *Accessibility*. Option 2 scores better than Option 1 in this respect. As a matter of fact, while the 2001 Code contained far-reaching provisions on the right to access information (regulated also by Reg. 1049/2001), the European Parliament's proposal would imply the creation of a comprehensive, informative ad hoc website with information on applicable legislation, main legal requirements and their administrative interpretation, main procedural steps, indication of the authority competent to adopt the final act, time limits for adoption of the act, remedies available, links to standard forms that may be used by parties in their communications with the Union's administration within the procedure. This would substantially increase the accessibility of the EU administration. Finally, several other provisions in Option 2 add detail to the corresponding provisions in the 2001 Code, as explained in Table 10 above: in particular, Article 19 and 20 provide a much clearer definition of the way in which the administration should handle communication with the public, including stating the reasons for the adoption of specific administrative decisions, and clearly indicating remedies.
- *Transparency*. Option 2 goes beyond the 2001 Code, for example by providing that administrations keep records together with an index, which is important for the traceability of information and chains of communication within the administration; and also by mandating that EU institutions, agencies and bodies provide access to the file whenever interested parties request it, while respecting strict time limits.
- On *legal certainty and predictability*, several provisions in Option 2 would improve on Option 1. These include provisions on inspections that add predictability, in addition to the duty to state the grounds and legal basis for the decisions adopted by the administration; the duty to notify in writing; the obligation to respect data protection rules; the more detailed and far-reaching obligations to acknowledge and correct mistakes; the provisions on time limits and rights of defence. As with Option 1, Option 2 can also *improve legal and policy consistency across the EU administration* by fostering the consistency of practices and enforcement of legal rules.
- *Enhanced protection of citizens' rights*. Here too, Option 2 goes further than Option 1 in the definition and protection of the rights of the public when interacting with the EU administration, by reproposing most of the provisions of Option 1 on the duty of care, impartiality and avoidance of conflicts of interests, and adding more detail and enforceable obligations on the indication of appeal possibilities; on the effective handling of requests; on the correction of mistakes; on the respect for the privacy and integrity of the individual, including personal data protection; language rights; the right to be heard and the use of witnesses.

- *Legitimacy of, and trust in, EU bodies*. By providing a comprehensive framework for the protection of the right to good administration, Option 2 increases the openness, the transparency and the efficiency of EU administration. This, over time, can have a positive impact on the perceived 'throughput legitimacy' of EU institutions, agencies, offices and bodies.[120]

- *Efficiency*. The impact of Option 2 on efficiency would be positive, and greater than that of Option 1 as suggested by our quantification of selected costs and benefits in Section 6. Benefits would emerge due to the greater clarity of administrative acts, to lower litigation costs and lower transaction costs. Benefits will also be maximised by the compatibility of Option 2 with e-government solutions. Several studies have been completed at the international level on the possible impact, in terms of additional costs, cost savings and indirect benefits, of the adoption of widespread e-government solutions across administrations. A number of new proposals have been adopted within the framework of the Digital Single Market and the European Interoperability Framework, which aim to reap the benefits of e-government, while minimising cost.[121] At the EU level, the transition towards Digital Services Infrastructure or 'building blocks' in e-government is being successfully trialled by DG DIGIT with funding from the Connecting Europe Facility (CEF), and promises huge savings and efficiency improvements across the administration, as well as administrative burdens reductions for both the administration and the public.[122] Our exchange with DG DIGIT during the workshop organised within the context of the present report confirmed that the transition towards building blocks will require an action plan that spans the whole EU administration. This action plan must also be seen as part of the implementation of the recent Ministerial Declaration on e-Government signed in Tallinn on October 6, 2017, in which the Ministers in charge of e-government policy from 32 countries of the European Union (EU) and the European Free Trade Area (EFTA) unanimously committed to the vision laid out in the EU e-Government Action Plan 2016-2020 and in the new European Interoperability Framework that public administrations and public institutions in the EU should be open, efficient and inclusive, and provide borderless, interoperable, personalised, user-friendly, end-to-end digital public services to all citizens and businesses – at all levels of public administration.[123] This includes, i.a., the development of more efficient and user-centric digital services; a call on the EU institutions to develop more interoperable, efficient, open and transparent administrative procedures to best serve their citizens and interoperate with all levels of government.[124]

---

[120] On the notion of throughput legitimacy, see Schmidt (2013).

[121] Already Blomeyer and Sanz (2012) reported that a general law on administrative procedure was found to have the potential to motivate administrative innovation e.g. in the area of eGovernment in Germany (*VwVfG als Impulsgeber fuer E-Government*). Looking at their survey feedback on this issue, 59% of survey respondents considered that a general law allows to test/promote innovative administrative procedures.

[122] The CEF building blocks offer basic capabilities that can be used in any European project to facilitate the delivery of digital public services across borders; the aim of the building blocks is thus to ensure interoperability between IT systems so that citizens, businesses and administrations can benefit from seamless digital public services wherever they may be in Europe.

[123] https://ec.europa.eu/digital-single-market/en/news/ministerial-declaration-egovernment-tallinn-declaration

[124] Id. The Tallinn declaration implies, i.a. that, when interacting with public administrations and using digital public services, citizens and businesses should expect i.a.; to have the option to digitally interact with their administrations; that public administrations reduce administrative burdens by optimising and/or creating digital processes and services, and by offering personalised and proactive services; not to be asked to provide

- *Effectiveness*. The impact of Option 2 on the achievement of the intended general and specific objectives would be significant, and greater than in the case of Option 1. This option would improve upon the status quo, since it would introduce a comprehensive set of new rules for EU institutions, agencies and bodies that would strengthen the protection of the public's right to good administration, in particular to openness, transparency, uniformity and consistency in decision-making. At the same time, the new set of rules would not jeopardise the possibility to introduce flexibility where the specificities of EU action require a special set of rules (e.g. in the case of DG COMP's dawn raids). The new rules on inspections, not present in Option 1, would further contribute to the transparency and efficiency of the EU administration. The general objective of promoting the quality of EU governance and government by ensuring the most efficient and effective functioning of EU institutions, bodies, offices and agencies would be met more effectively by Option 2 compared to both alternatives considered in this report.

Overall, Option 2 scores better than Option 1 in all impacts we consider for the purposes of this impact assessment. This is not surprising as, compared to Option 1, the European Parliament's proposal constitutes a more comprehensive and enforceable regulatory framework, which was designed to be enforceable and focused on the procedural rules to be followed by the administration, rather than on the principles to be followed by individual officials. In this respect, Option 2 is also more in line with Member States' administrative laws.

6.4 Summing up: comparing alternative policy options

Table 17 below shows a comparison of the three alternative policy options from the standpoint of costs, benefits and overall effectiveness, measured on the extent to which the options can lead to the achievement of the general and specific objectives identified in Section 4 above. We adopt a scorecard approach, with scores varying between 0 (lowest) and √√√√ (maximum).[125]

As shown in the table:

- *Option 1 is expected to cause limited administrative burdens for EU institutions, agencies, bodies and offices*. In order to assess them, we have focused on a more limited sample of requirements than the option would introduce and have tried to quantify their associated costs. Our estimate for these requirements (access to documents, stating purpose and indicating remedies, right to use any EU official language, provisions on time limits) is that they cost **€4,717,764** yearly. *Option 2 might generate slightly higher administrative burdens*. For the same sample of provisions, we estimated administrative burdens to reach **€5,988,879**, and for the first year we also envisaged one-off costs of **€178,750**. However, Option 2 already consists of a text that is designed to be enforceable, whereas in the case of Option 1 a time-consuming translation of the 2001 Code into an enforceable set of rules

the same information to public services more than once; that public services be fully handled online, including the provision of any evidence required to obtain a right or fulfil obligations; that the status of service delivery can be checked online where relevant; that the handling of personal data respects the general data protection regulation and privacy requirements in the EU and national levels; and that redress mechanisms and complaint handling will be available (also) online.

[125] On the merits and limits of the scorecard approach, see Renda et al. (2013).

would have to be performed.

- *Options 1 and 2 create significant cost savings for the public*. We estimated such costs savings by assuming a total number of administrative acts of 102,581, and provided calculations for cost savings for both options in order to make them comparable. Our estimates for a limited sample of administrative activities led to an estimate for Option 1 of **€13,297,004**; and for Option 2 of **€14,151,627**. However, we stress that these are only a sub-set of the projected cost savings. In particular, Option 2 is expected to save time and information costs for citizens and businesses, as well as for the administrations, which would avoid duplicated efforts every time they introduce a new administrative procedure.
- *Options 2 scores better than Option 1 concerning non-monetised benefits*. Importantly, in order to make Option 1 comparable to Option 2 we had to assume that the provisions contained in the 2001 Code would be made enforceable through a regulatory intervention. Even after adopting this assumption, Option 2 remains preferable in all respects, with the additional advantage of being more compatible with Member States' administrative law frameworks, as well as more suitable for preparing the EU administration for the digital transition.
- Finally, we have ranked the options according to their ability to achieve the specific impacts cited in our terms of reference: accessibility, transparency, legal certainty and predictability, efficiency and effectiveness, enhanced protection of citizens' rights, and the legitimacy of, and trust in, EU institutions. We then added two additional dimensions, compatibility with Member States' administrative law (mentioned in previous studies, e.g. Blomeyer and Sanz 2012); and readiness for e-government (which emerged as an important element during our research, and the workshop). In all these aspects, Option 2 deserves the highest score.

Table 17 – Comparing alternative policy options: a synopsis

Option	Option 0	Option 1	Option 2
Costs	**0**	**√√**	**√√**
One-off costs for EU bodies	0	√√	√
Admin burdens (EU bodies)	0	√	√√
Benefits	**0**	**√√**	**√√√√**
Cost savings (EU bodies)	**0**	√	√√
Cost savings (Public)	**0**	√	√√√
Accessibility	**0**	√√	√√√√
Transparency	**0**	√√	√√√√
Legal certainty and predictability	**0**	√√	√√√√
Efficiency and effectiveness	**0**	√√	√√√√
Enhanced protection of citizens' rights	**0**	√	√√√
Legitimacy of, and trust in, EU institutions	**0**	√√	√√√√
Compatibility with Member States' administrative law	**0**	√√	√√√√
Readiness for e-government	**0**	√√	√√√

7 Provisions for monitoring and evaluation

Should Option 2 be selected as the preferred policy option, as our analysis suggests, a detailed data gathering and management plan would have to be devised such that monitoring and evaluation can take place effectively over time. The following indicators are necessary for effective monitoring:

- Data on notification of proceedings initiated by the administration, per EU body and per subject matter.
- Data on number of requests submitted by the public, per EU body and per subject matter (i.e. access to documents; requests for clarifications; access to one's own file).
- Data on complaints lodged with the European Ombudsman.
- Data on the uptake of e-government tools and standards across EU administrations, to be collected by the European Commission.
- Data on the cost of processing transactions and requests under the new system.
- Data on public perception: these could be collected in the form of an evaluation survey; a simpler rating system, sent to the individuals upon making use of it; and also through more traditional channels (e.g. Eurobarometer).

These indicators should be sufficient to answer the key questions that the future evaluation (typically within five years from the entry into force of the new legislation): are the new rules effective? Are the new rules efficient? Are the new rules providing added value? For the relevance and coherence questions, additional research will be needed, in particular to reflect two aspects: (i) whether technology has changed significantly, so that the system should be further changed or upgraded; (ii) whether EU legislation has changed, such that a reconsideration of the existing legislation is warranted.

Table 18 below shows the indicators that we consider useful and necessary for the monitoring and the evaluation of Option 2.

Table 18 – Data collection and management plan for monitoring and evaluation

Impact	Indicator
Costs (EU bodies)	*Cost of setting up and maintaining the ad hoc website; cost of administering complaints for the European Ombudsman; administrative burdens inside the administration.*
Cost savings (Public)	*Data on perception of user-friendliness, accessibility and transparency of the EU administration, to be collected through online surveys (Eurobarometer) and digital rating systems*
Accessibility	*Data on perception of user-friendliness, accessibility and transparency of the EU administration, to be collected through online surveys (Eurobarometer) and digital rating systems*
Transparency	*Data on perception of user-friendliness, accessibility and transparency of the EU administration, to be collected through online surveys (Eurobarometer) and digital rating systems*
Legal certainty and predictability	*Data on perception of the predictability of EU administrative action, to be collected through online surveys (Eurobarometer) and digital rating systems*
Efficiency and effectiveness	*Data on notification of proceedings initiated by the administration, per EU body and per subject matter.* *Data on number of requests submitted by the public, per EU body and per subject matter (i.e. access to documents; requests for clarifications; access to one's own file).* *Data on timeliness of action of the EU administration, to be collected internally through records and indexes.*
Enhanced protection of citizens' rights	*Data on number of proceedings, complaints, decisions and investigations, to be cross-analysed with perception surveys (Eurobarometer)*
Legitimacy of, and trust in, EU institutions	*Perception surveys (Eurobarometer)*

8 Conclusions

This impact assessment report provided a comprehensive analysis of the prospective impacts of alternative policy options for a more open, efficient and independent EU administration. We conclude that the introduction of a set of harmonised rules on administrative procedure would contribute positively to good governance in the EU and lead to enhanced levels of protection, in particular with respect to the right to good administration and to the enhanced openness, efficiency and independence of EU institutions, agencies and bodies, in line with Article 298 TFEU. The preferred option (Option 2), which corresponds to the proposal tabled by the European Parliament in 2016, would also improve the compatibility of EU administrative law with the rules on administrative procedure adopted by most Member States. It would also prepare the EU administration to make the most of the upcoming digital transformation in the administration. This option could also become the first important step to introducing more ambitious options in the future, such as a fully fledged Administrative Procedure Act, also covering rulemaking. This option was not fully considered in this report because it was not thought to be feasible in the near future; in any case it is subject to the adoption of a comprehensive set of rules on administrative procedure.

References

- Alonso de León, Sergio: 'Composite administrative procedures in the European Union', Iustel 2017.
- Bermann, George, 'A Restatement of European Administrative Law: Problems and Prospects', 2009.
- Bignami, Francesca and David Zaring, *Comparative Law and Regulation. Understanding the Global Regulatory Process*, Research Handbooks in Comparative Law series, Edward Elgar 2016.
- Cassese, S., 'Functions of administrative procedure: introductory remarks', Colloque sur la procédure administrative, Faculté de droit de Lisbonne, 2011.
- Chiti, Edoardo, Adelante, con juicio: la prospettiva di una codificazione del procedimento europeo, Giornale di diritto amministrativo 7/2014.
- Chiti, Edoardo, European Agencies' Rulemaking: Powers, Procedures and Assessment.
- Coglianese, C., 'Empirical analysis and administrative law', *U. Ill. L. Rev*., 2002.
- Craig, Paul, *EU Administrative Law*, Oxford University Press 2012 (second edition).
- Craig, Paul, 'A General Law on Administrative Procedure, Legislative Competence and Judicial Competence', *European Public Law*, 19 (2013), 503-524.
- Craig, Paul, UK, EU and Global Administrative Law. Foundations and Challenges, Cambridge University Press 2015.
- Craig, Paul, Herwig C.H. Hofmann, Jens-Peter Schneider & Jacques Ziller*, ReNEUAL Model Rules on EU Administrative Procedure*, Oxford University Press 2017.
- Custos, C., The 2015 French code of administrative procedure: an assessment, in S. Rose-Ackerman, P. L. Lindseth and B. Emerson (eds) *Comparative administrative law*, Edward Elgar, 2017.
- De Leeuw, M., 'The Regulation on the Public Access to European Parliament, Council and Commission Documents in the European Union: Are Citizens Better Off?' *European Law Review*, (2003)28.
- Dragos, D. and Neamtu, B., 'Advancing transparency in the EU: the role of the European Ombudsman', in Ziller and Hofmann (Eds.) *Accountability in the EU. The role of the European Ombudsman*, Edward Elgar 2017.
- Driessen, B., 'The Council of the European Union and Access to Documents', *European Law Review*, 30 (2005).
- Donaldson, M., & Kingsbury, B., 'The Adoption of Transparency Policies in Global Governance Institutions: Justifications, Effects, and Implications', *Annual Review of Law and Social Science* 2013, 9, 119-147.
- European Parliament (2012), European Added Value Assessment of the Law of Administrative Procedure of the European Union, EAVA 1/2012, European Added Value Unit, European Parliament.

- European Parliamentary Research Service (EPRS), EU law for an open, independent and efficient European administration: Summary report on the public consultation. Author: Tatjana Evas (2018).
- Fuentetaja Pastor, Jesús Ángel: Derecho Administrativo Europeo, 2ª ed., Civitas-Thomson Reuters, Cizur Menor, 2015.
- Galetta, Diana-Urania, Herwig C.H. Hofmann & Jens Peter Schneider, 'Information Exchange in the European Administrative Union: An Introduction', *European Public Law* 2014, 20(1), 65–69.
- Galetta, Diana-Urania, Herwig C.H. Hofmann, Oriol Mir Puigpelat, Jacques Ziller: The General Principles of EU Administrative Procedural Law. An In-Depth Analysis, RIDPC 2015/5 (Galetta et al. 2015a).
- Galetta, Diana-Urania, Herwig C. H. Hofmann, Oriol Mir Puigpelat, Jacques Ziller, 'The context and legal elements of a Proposal for a Regulation on the Administrative Procedure of the European Union's institutions, bodies, offices and agencies', study for the JURI committee, December 2015, http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536487/IPOL_STU%282016%29536487_EN.pdf (Galetta et al. 2015b).
- Geradin, Damien, 'The Development of European Regulatory Agencies: Lessons from the American Experience', in: Damien Geradin, Rodolphe Muñoz & Nicolas Petit (eds.), *Regulation Through Agencies in the EU: A New Paradigm of European Governance*, Edward Elgar 2005, 215-245.
- Gonod, P., 'Codification de la procédure administrative, La fin de « l'exception française»?', *AJDA* 2014.
- Harlow, Carol and Rawlings, Richard, *Process and procedure in EU administration*, Hart Publishing 2014.
- Harlow, Carol, Päivi Leino, Giacinto della Cananea (eds.), 'Introduction: European administrative law – a thematic approach', *Research Handbook on EU Administrative Law*, Edward Elgar 2017, 1-17.
- Hofmann, Herwig C.H., Gerard C. Rowe & A.H. Türk, *Administrative Law and Policy of the European Union*, Oxford University Press 2011.
- Hofmann, Herwig C.H., 'General Principles of EU law and EU administrative law', in: C. Barnard and S. Peeps, (eds.), *European Union Law*, Oxford: Oxford University Press 2014.
- Hofmann, Herwig C.H., Jens-Peter Schneider & Jacques Ziller, 'Administrative Procedures and the Implementation of EU Law and Policies', University of Luxemburg Law Working Paper Series number 2014-02, Contribution by the Research Network on EU Administrative Law (ReNEUAL) project on administrative procedure to the EU Commission's 'Assises de la Justice' conference in Brussels, 21-22 November 2013, https://orbilu.uni.lu/bitstream/10993/19855/1/N%202014-02_Herwig%20C%20H%20%20Hofmann_Administrative%20Procedures%20and%20the%20Implementation%20of%20EU%20Law%20and%20Policies%20%282%29.pdf.

- Jensen, C. & McGrath, R., 'Making Rules about Rulemaking: A Comparison of Presidential and Parliamentary Systems', Political Research Quarterly 2011, 64(3), 656-667.
- Ladenburger, Clemens, Evolution oder Kodifikation eines allgemeinen Verwaltungsrecht in der EU, Mohr Siebeck 2008.
- Ladeur, Karl-Heinz, The Evolution of General Administrative Law and the Emergence of Postmodern Administrative Law (March 21, 2011). Osgoode CLPE Research Paper No. 16/2011.
- Leino, P., 'Efficiency, Citizens and Administrative Culture. The Politics of Good Administration in the EU', European Public Law 2014 (4), 682-710.
- Luchtman, Michiel & John Vervaele (eds.), 'Investigatory powers and procedural safeguards: Improving OLAF's legislative framework through a comparison with other EU law enforcement authorities (ECN/ESMA/ECB)', report co-funded by the European Commission/OLAF, Utrecht April 2017, available at https://dspace.library.uu.nl/bitstream/handle/1874/352061/Report_Investigatory_powers_and_procedural_safeguards_Utrecht_University_1_.pdf?sequence=2&isAllowed=y.
- Marneffe, W., Time is money: the cost of waiting for the government, The Theory and Practice of Legislation 2015, (3)2, 213–229.
- Marneffe, W., B. Van Aarle and L. Vereeck (2013), 'Regulatory Delay and Growth: A Cross Country Analysis', 35(3) European Journal of Law and Economics 385.
- Mashaw, Jerry, 'Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance', *The George Washington Law Review* 2007, 76(1), 99-124.
- Mendes, Joana, 'Good administrative in EU law and the European Code of Good Administrative Behaviour', EUI Working papers 2009.
- Meuwese, A.C.M., Schuurmans, Y.E. & Voermans, W.J.M., 'Towards a European Administrative Procedure Act', *Review of European Administrative Law*, 2010 2(2), 3-35.
- Michel, J., 'Les relations entre l'Etat et les citoyens au miroir du droit administratif: l'exemple du noveau code des relations entre le public et l'administration', Zbornik radova Pravnog fakulteta u Splitu, god. 54, 1/2017, 89.-98.
- Mir, O., 'Arguments in favour of a general codification of the procedure applicable to EU administration', in: European Parliament, Workshop on EU Administrative Law : state of play and future prospects, PE_432.776, 2011.
- Muzi, Laura, 'Administrative due process of law in the light of the jurisprudence of EU Courts: a quantitative and qualitative analysis', in: Harlow, Carol, Païvi Leino, Giacinto della Cananea (eds.), *Research Handbook on EU Administrative Law*, Edward Elgar 2017, 468-489.
- Nehl, Hanns Peter, Principles of Administrative Procedure in EC Law, Hart Publishing 1999.
- Ortlep, Rolf, Willemien den Ouden, Ymre Schuurmans, Albertjan Tollenaar, Gerrit van der Veen, Johan Wolswinkel, 'Nut en noodzaak van een algemene codificatie van bestuursrecht', *NALL* 2014.

- Remac, M., 'Standards of Ombudsman assessment: a new normative concept?', *Utrecht Law Review*, 2013, 9(3), 62-78.
- Renda et al., Assessing the costs and benefits of regulation, Study for the European Commission, Secretariat General, Brussels 2013 available at http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf.
- Schmidt-Assmann and others in Ruffert, Matthias (Ed.), The Model Rules on EU Administrative Procedures: Adjudication, Europa Law Publishing, Groningen, 2016.
- Schneider, Jens-Peter, Klaus Rennert, Nikolaus Marsch (eds.) ReNEUAL-Musterentwurf für ein EU-Verwaltungsverfahrensrecht - Tagungsband. Dokumentation der Fachtagung im Bundesverwaltungsgericht vom 5. und 6. November 2015, C.H. Beck Verlag, München 2016.
- Schneider, Jens-Peter/Rennert, Klaus/Marsch, Nikolaus (Eds.): ReNEUAL Musterentwurf für ein EU-Verwaltungsverfahrensrecht. Tagungsband, C.H. Beck, München, 2015 (Different relevant German scholars and judges).
- Schmidt, V., Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput', Political Studies 2013, 61(1), 2-22.
- United Nations, High-Level Report on the Post-2015 Development Agenda, available at https://www.un.org/sg/en/management/beyond2015.shtml.
- Ziller, Jacques, Towards Restatements and Best Practice Guidelines on EU Administrative Procedural Law. Note to the European Parliament´s Committee on Legal Affairs – Working Group on EU Administrative Law (October 2010) .
- Ziller, Jacques, Is a law of administrative procedure for the Union institutions necessary? Introductory remarks and prospects, March 2011, (Ziller 2011a).
- Ziller, Jacques, Alternatives in Drafting an EU Administrative Procedure Law, 2011, http://www.reneual.eu/images/Projects/JacquesZiller.pdf , (Ziller 2011b).

List of annexes

Impact Assessment of possible action at EU level for an open, efficient and independent EU administration

Annexes

Annex 1 – Questionnaire used for our survey

SURVEY ON POSSIBLE OPTIONS FOR AN OPEN, INDEPENDENT AND EFFICIENT EUROPEAN UNION ADMINISTRATION

1. General information

1.1. Name of the institution

What institution are you working for?

_____

1.2. Role of the respondent in the institution

Please briefly clarify what is your position in the institution

_____

1.3. Are you responsible for good administrative conduct in your institution?

Please briefly clarify whether you are the person in charge of ensuring good administrative conduct in your institution, and in particular:

- ☐ Accountability
- ☐ Culture of service
- ☐ Ethics
- ☐ Good management of personnel issues, including recruitment
- ☐ Proper use of discretion (including in infringement procedures)
- ☐ Public participation in EU decision-making
- ☐ Respect for fundamental rights
- ☐ Respect for procedural rights, such as, for example the duty to state grounds for a decision
- ☐ Responsiveness
- ☐ Sound financial management
- ☐ Transparency
- ☐ Other

Please clarify below if needed:

_____

1.3.1. How many administrative procedures leading to the adoption of individual decisions are initiated by own decision of your Institution every year?

Please provide an estimate

_____

1.3.2. How many complaints or requests for review do you receive every year?

Please provide an estimate

_____

1.3.3. How many inspections does your administration carry out every year?

Please provide an estimate

_____

2. Code/set of rules of Good Administrative behaviour in your institution

2.1. Does your institution have a framework or a set of rules, which regulates administrative behaviour?

- ☐ **Yes, a Code of good administrative behaviour**
- ☐ **Yes (other)**
- ☐ **No (end of questionnaire?)**

If other, please specify below, and answer this questionnaire based on the set of rules your administration is following, even if they do not amount to a proper code.

_____

2.2. When was the Code/set of rules of good administrative behaviour adopted?

Please specify the year(s) of adoption.

_____

2.3. Does the Code/set of rules make reference to, or is based on, the *European Code of Good Administrative Behaviour*?

- ☐ **Yes**
- ☐ **No**

Please briefly explain if needed

_____

2.4. Does the Code/set of rules apply to:

- ☐ **Legislative procedures**
- ☐ **Judicial proceedings**
- ☐ **Procedures leading to the adoption of non-legislative acts directly based on the Treaties, delegated acts or implementing acts.**
- ☐ **Procedures leading to the adoption of individual decisions**
- ☐ **Behaviour of the staff when dealing with individual stakeholders**

Please briefly explain if needed

_____

2.5. Does the Code/set of rules contain specific provisions on the following aspects of good administrative behaviour?

- ☐ Notification of initiation of proceeding
- ☐ Acknowledgment and processing of applications to initiate a proceeding received from a party
- ☐ Rights of parties to be given all relevant information related to the procedure in a clear and understandable manner
- ☐ Rights of parties to communicate and to complete, where possible and appropriate, all procedural formalities at a distance and by electronic means
- ☐ Rights of parties to use any of the languages of the Treaties and to be addressed in the language of the Treaties of their choice
- ☐ Rights of parties to be notified of all procedural steps and decisions that may affect them
- ☐ Rights of parties to be represented by a lawyer or some other person of their choice
- ☐ Rights of parties to pay only charges that are reasonable and proportionate to the cost of the procedure in question
- ☐ Rights of parties to pay only charges that are reasonable and proportionate to the cost of the procedure in question
- ☐ Duty of careful and impartial investigation
- ☐ Duty to cooperate
- ☐ Duties in case witnesses and experts are to be heard
- ☐ Duties and responsibilities when carrying out inspections
- ☐ Conflicts of interest
- ☐ Right to be heard
- ☐ Right of access to the file
- ☐ Duty to keep records
- ☐ Time limits to be respected during administrative procedures
- ☐ Clarity and form of administrative acts
- ☐ Duty to state reasons
- ☐ Remedies
- ☐ Notifications of administrative acts
- ☐ Correction of errors, rectification and withdrawals of administrative acts

Please briefly explain if needed

_____

2.6. Is the Code/set of rules available online?

☐ **Yes**

☐ **No**

Please provide the URL (if unavailable, please provide a copy of the document)

_____

_____

3. Individual practices

3.1. Notification of the decision to initiate a procedure

3.1.1. Does your Code/set of rules require your institution to notify the decision to initiate an administrative procedure to the parties involved?

- ☐ Yes
- ☐ No

Please briefly explain if needed

_____

3.1.2. Does your Code/set of rules require your institution not to make the decision public before the notification has taken place?

- ☐ Yes
- ☐ No

3.1.3. Does your Code/set of rules require your institution to provide a motivation in case the notification is omitted or delayed?

- ☐ Yes
- ☐ No

Please briefly explain if needed

_____

3.1.4. Does your Code/set of rules require your institution to indicate in the notification

- ☐ a reference number and the date
- ☐ the subject matter and purpose of the procedure
- ☐ the description of the main procedural steps
- ☐ the name and contact details of the responsible member of staff
- ☐ the competent authority
- ☐ the time-limit for the adoption of the administrative act and the consequences of any failure to adopt the administrative act within the time-limit
- ☐ the remedies available
- ☐ the address of a website where the information listed above is publicly available, if such a website exists.

Please briefly explain if needed

_____

3.1.5. Does your Code/set of rules require your institution to draft the notification in the languages of the Treaties corresponding to the Member States in which the parties are located

☐ **Yes**

☐ **No**

Please briefly explain if needed

_____

_____

3.2. Procedures initiated by a party

3.2.1. Does your Code/set of rules include specific requirements for administrative procedures initiated by a party?

☐ Yes

☐ No

If yes, please give details

_____

_____

3.2.2. Does your Code/set of rules require that the acknowledgment of receipt specify:

☐ A reference number and the date

☐ The date of receipt of the application

☐ A description of the main procedural steps

☐ The name and contact details of the responsible member of staff

☐ The time-limit for the adoption of the administrative act and the consequences of any failure to adopt the administrative act within the time-limit

☐ The address of the website where information on your code of administrative procedure is posted, if such a website exists.

Please briefly explain if needed

_____

_____

3.2.3. Does your Code/set of rules require the rejection of an application to be duly motivated?

☐ Yes

☐ No

If yes, please give details

_____

_____

3.3. Initiation of the procedure

3.3.1. Does your Code/set of rules require your institution to initiate an administrative procedure within a reasonable time after the date of the event that would be the basis of the procedure?

☐ Yes

☐ No

If yes, please clarify what is to be meant as a reasonable time

_____

3.3.2. In practice, how many days normally elapse after the event before a procedure is initiated?

Please explain

_____

3.4. Management of the procedure

3.4.1. Does your Code/set of rules require your institution to give the parties a reasonable time-limit to reply to any request of cooperation, taking into account the length and complexity of the request and the requirements of the investigation?

☐ Yes

☐ No

If yes, please clarify what is to be meant as a reasonable time

_____

3.4.2. Where the administrative procedure may lead to a penalty, does your Code/set of rules require that your institution remind the parties of the right against self-incrimination?

☐ Yes

☐ No

Please briefly explain if needed

_____

3.4.3. Does your Institution carry out inspections?

☐ Yes

☐ No

3.4.3.1. If YES, do inspections have to follow explicit specifications?

☐ Yes

☐ No

Please briefly explain

_____

_____

3.4.3.2. Does your Code/set of rules mandate that the parties involved be given notice of the inspection and information on the starting date?

☐ Yes

☐ No

Please briefly explain

_____

_____

3.4.3.3. Does your Code/set of rules mandate that the parties involved be informed of the subject matter and purpose of the inspection?

☐ Yes

☐ No

Please briefly explain

_____

_____

3.4.3.4. Does your Code/set of rules mandate that inspectors draw up a report on the inspection and send a copy to the involved parties?

☐ Yes

☐ No

Please briefly explain

_____

_____

3.4.3.5. Does your Code/set of rules mandate that inspectors cooperate with competent authorities of the Member State in which the inspection takes place?

☐ Yes

☐ No

Please briefly explain

_____

_____

3.4.3.6. Does your Code/set of rules mandate that inspectors take into account relevant procedural rules applicable in Member State in which the inspection takes place?

☐ Yes

☐ No

Please briefly explain

_____

_____

3.5. Conflicts of interest

3.5.1. Does your Code/set of rules mandate that members of staff abstain from taking part in administrative procedures in which they have, directly or indirectly, a personal interest, including, in particular, any family or financial interest, such as to impair their impartiality?

☐ Yes

☐ No

3.5.2. Does your Code/set of rules provides for the possibility that parties request that a member of staff be excluded from taking part in an administrative procedure on the ground of conflict of interests?

☐ Yes

☐ No

3.6. Right to access the file

3.6.1. When access to the file cannot be granted, does your Code/set of rules mandate that the parties receive a summary of the content of the file?

☐ Yes

☐ No

3.7. Duty to keep records

3.7.1. Does your Code/set of rules mandate that your administration keep records and establishes an index thereof?

☐ Yes

☐ No

3.7.2. Does your Code/set of rules mandate that your administration keep records in full compliance with data protection legislation?

☐ Yes

☐ No

3.8. Time limits

3.8.1. Does your Code/set of rules mandate that administrative proceedings be completed within reasonable time limits and without undue delay?

☐ Yes
☐ No

3.8.2. Does your Code/set of rules include an indication of what time limit is considered to be reasonable?

☐ Yes
☐ No

If yes, please clarify what time limit is indicated

_____

3.8.3. Does your Code/set of rules mandate that in case administrative acts cannot be adopted within the relevant time limits, information is provided to the parties along with the motivation for the delay and an estimated timeline for completion?

☐ Yes
☐ No

If yes, please explain

_____

3.8.4. What happens when your administration does not acknowledge receipt of an application within the set time limit?

☐ The application is considered as approved
☐ The application is considered as rejected
☐ Other

Please explain

_____

3.9. Form and content of acts

3.9.1. Does your Code/set of rules mandate that administrative acts be in writing?

☐ Yes

☐ No

3.9.2. Does your Code/set of rules mandate that administrative acts be signed by the competent authority?

☐ Yes
☐ No

3.9.3. Does your Code/set of rules mandate that administrative acts be drafted in a clear, simple and understandable manner?

☐ Yes
☐ No

3.9.4. Does your Code/set of rules mandate that administrative acts clearly state the reasons on which they are based?

☐ Yes
☐ No

3.9.5. Does your Code/set of rules mandate that administrative acts clearly indicate their legal basis?

☐ Yes
☐ No

3.9.6. Does your Code/set of rules mandate that administrative acts clearly indicate the relevant facts?

☐ Yes
☐ No

3.9.7. Does your Code/set of rules mandate that administrative acts clearly indicate how all interests involved have been taken into account?

☐ Yes
☐ No

3.9.8. Does your Code/set of rules mandate that administrative acts clearly contain an individual statement of reasons relevant to the parties' situation?

☐ Yes
☐ No

3.9.9. Does your Code/set of rules mandate that administrative acts clearly state that remedies (such as administrative review) are available?

☐ Yes
☐ No

3.9.9.1.	*If YES, does your Code/set of rules mandate that administrative acts describe the procedure to be followed to access remedies?*
☐	Yes
☐	No

3.9.9.2.	*Does your Code/set of rules mandate that administrative acts indicate the responsible member of staff that can handle the request for review?*
☐	Yes
☐	No

3.9.9.3.	*Does your Code/set of rules mandate that administrative acts indicate a time limit for submitting the request for review?*
☐	Yes
☐	No

3.9.9.4.	*Does your Code/set of rules mandate that administrative acts mention the possibility of bringing judicial proceedings or lodging a complaint with the European Ombudsman?*
☐	Yes
☐	No

3.10. Correction, rectification and withdrawal of acts

3.10.1.	*Does your Code/set of rules mandate that clerical, arithmetic or similar errors be corrected by the competent authority on its own initiative or following a request by the party concerned?*
☐	Yes
☐	No

3.10.1.1.	*If Yes, are parties to be notified before the correction is made?*
☐	Yes
☐	No

3.10.2.	*Does your Code/set of rules specify the conditions under which the competent authority shall rectify or withdraw administrative acts?*
☐	Yes
☐	No

Annex 2 – List of institutions, agencies and bodies surveyed

1. ACER
2. ARTEMIS
3. BBI JU
4. BEREC
5. CDT
6. CEDEFOP
7. CEPOL
8. CHAFEA
9. Clean Sky
10. CoE
11. CoR
12. CPVO
13. EACEA
14. EASA
15. EASME
16. EASO
17. EBA
18. EC SecGen
19. ECA
20. ECB
21. ECDC
22. ECDPC
23. ECHA
24. ECJ
25. ECSEL
26. EDA
27. EDPS
28. EEA
29. EEAS
30. EESC
31. EFCA
32. EFSA
33. EIB
34. EIGE
35. EIOPA
36. EIT
37. EMA
38. EMCDDA
39. EMEA
40. EMSA
41. ENIAC JU
42. ENISA
43. EP
44. ERCEA
45. ESMA
46. ETF
47. eu-LISA
48. EU-OSHA
49. EUIPO
50. EUISS
51. EUROFOUND
52. EUROJUST
53. EUROPOL
54. F4E
55. FCH JU
56. FRA
57. FRONTEX
58. GSA
59. IMI 2 JU
60. INEA
61. OLAF
62. REA
63. Satcen
64. SESAR
65. SRB

Annex 3 – List of questions distributed during the workshop held on 7 May 2018

QUESTION 1

In your experience, what are the main gaps that need addressing from the perspective of Article 298 TFEU and Article 41 (1) EU Charter of Fundamental Rights?

QUESTION 2

Why wouldn't heterogeneity, instead of uniformity, of procedural rules be the solution to achieve the goal of "an open, efficient and independent European administration"?

QUESTION 3

Assuming that some degree if fragmentation is inevitable, how should the ideal level of fragmentation of procedural rules in the EU administration look alike and what factors would you take into account for such an evaluation?

QUESTION 4

If partial uniformity is to be achieved, on which aspects could EU administrative rules be made uniform?

QUESTION 5

Do you recognize the preliminary findings from our research on the European Ombudsman cases and the results of the public consultation?

QUESTION 6

Can you think of any examples of where fragmentation of the regulatory framework for EU administrative procedure has been problematic per se? And, vice versa, can you think of problems to be expected if this regulatory framework were to be made more uniform?

QUESTION 7

To what extent/how can we use national experiences as a basis for assessing impacts of European regulation of administrative procedure *ex ante*?

QUESTION 8

If so what points of difference need to be taken into account? Which experiences from beyond the EU are particularly valuable to look at in your opinion (the team has currently focused on The Netherlands and the US)

[Suggested answer from the literature review:

- Mixed administration/composite procedures (even if a regulation would only apply to direct administration, this context could still be relevant, e.g. because one could argue that there would not be uniformity anyway);
- 'Participation' more important than in the national context, in relative terms?
- Interaction with the administration is a matter for professionals to a larger extent than is the case in member states?
- The 'administration' that the EP proposal would apply to is much more diverse than what counts as 'the administration' for the purposes of many national GALAs]

QUESTION 9

Would a uniform code of procedural rules represent a necessary step to implement EU e-Government Action Plan 2016-2020?

QUESTION 10

Would this be possible also with a fragmented body of procedural rules, or does it essentially need a streamlined and harmonized set of rules?

Annex 4 – Minutes of the workshop held on 7 May 2018

Possible actions at EU level for an open, efficient and independent European Union administration

Monday, 7 May 2018, 9:30-15:30

CEPS Conference Room, 1 Place du Congrès, 1000 Brussels

On May 7th, CEPS hosted stakeholders from academia, institutions and businesses to debate on the state of play of the current EU administration. In December 2017, the European Parliament launched a public consultation on the topic, open until March 2018, whose results helped the Research Team to frame the discussion.

Prof. Andrea Renda from CEPS presented the preliminary findings and the procedural steps followed by the Research Team for the Impact Assessment. Amongst the key findings, the most problematic highlighted by EU citizens and organizations were the operational incoherence within institutions and the burdens of administrative costs as well as long replying times.

To come up with the problem definition, CEPS researchers contacted most of the EU institutions, asking whether they had a code of conduct. Out of 65 EU institutions, 54% have no publicly available codes. Even in cases where codes exist, some topics are not covered (such as the right to pay reasonable prices) whereas others are more common (e.g. the duty to reply in a reasonable time). All the codes examined clearly indicate institutions' obligation to keep records in compliance with data protection rules. In general, 76% of respondents to the Parliament survey supported additional measures at the EU level, whereas more than 50% would like to set minimum standards. Only 7% is against a new, more harmonized code.

All in all, fragmentation per se is not a problem as long as it does not impact the efficiency, openness and transparency of the system.

Moreover, the Research Team analysed the complaints to European Ombudsman in the recent years. Currently, EU Ombudsman initiatives are mainly focused on transparency, and the European Commission is the institution where most of the problems of maladministration arise. Among the most investigated issues of

maladministration, there are matters related to lawfulness, institutions, finance and, to a lower extent, competition.

Evidence gathering session and discussion on the policy options

The workshop tried to gather more granular information on the administrative procedures followed by the EU agencies. Some participants highlighted that usually codification efforts are characterized by a very large degree of consensus. However, this does not involve that all the topics need to be covered by EU law. Participants debated on which aspects of administrative law would be more efficient if a uniform standard applied. A common EU code would be helpful for access to documents for all the citizens and not only for the users of public services. Administrative rules should be more citizen-friendly.

Participants also stressed that the information process from the administration to the citizens should be simplified

Another relevant point emerged from the discussion: the original understanding was that EU administrative law was a sort of second level system complementing the national law. This approach is now outdated, as the EU is dealing directly with citizens. For instance, public hearings are becoming a leading field in need of administrative rules.

An efficient EU administration would also encompass more integrated procedures, as currently common problems are solved with many sets of solutions, as to each policy field a variety of procedural rules apply. In this respect, citizens would benefit from general rules.

Citizens awareness of the EU competence is also fundamental. The EU is finally becoming closer to people, being able to enrich citizens' rights. However, there is still a lack of knowledge about the EU competences in certain fields. The backlash of this unawareness, combined with incoherent rules, is that EU citizens not only ignore their rights but also do not feel invited to participate in the political process.

Other problems faced by complainants regard their right of accessing documents. The large majority of institutions do not provide all the information, sometimes the address of the applicant is needed (against data protection law), certain documents are available only in English. This is a systemic gap between theoretical legal rules and practice. Administrative rules are part of a political problem and should be seen as such.

More problems arise when it comes to delegated and implementing acts, as different approaches are followed within DGs and even within different services.

Citizens represent only one side of the coin. Businesses have also strong interest to push for a better working administration. In this respect, trade or competition are areas where the EU has strong competencies and they could serve as starting points to implement good practices.

Finally, organization tools are needed to properly enforce the harmonization of administrative rules.

The speaker from DG Digit, brought the example of Digital Building Blocks as enablers of secure EU-wide digital interactions.

From a digital perspective, every policy domain has developed its own digital platform independently. The biggest challenge in the past has been replacing paper with electronic documents. Only recently the institutions have started working on better processes. DG Digit is working to ensure the smooth flow of data among policy areas through building blocks. These platforms are allowing the Member States to have different standards but at the same time to be connected to each other through common IDs.

Applying e-government solutions would accelerate the transformation process of EU administrations and at the same time make the processes more efficient.

List of attendees

Organisation/Description
European Transport Safety Council
University of Luxembourg and ReNEUAL
European Public Health Alliance
Transport Environment
DG DIGIT - European Commission
JURI Secretariat - European Parliament
Ex-Ante Impact Assessment Unit, European Parliament Research Service
Assistant of Member of the European Parliament
Committee of the regions
MSL Group
Banco Santander
JTI
BBVA
The Good Lobby
Tilburg University
CEPS
Confederation of Danish Industry
CEFIC
ULB
University of Utrecht
Individual entrepreneur

EU administrative law is highly fragmented and has never evolved into a consistent set of rules applicable across the EU administration. This fragmentation impinges on the EU's ability to consistently uphold standards of good governance and administration, as well as to protect citizens' rights when they interact with the administration. This impact assessment compares the option of 'doing nothing' with two alternative policy options: making the 2001 Code of Good Administrative Behaviour binding vs. adopting the regulatory framework proposed by the European Parliament in 2016. The study concludes that adopting the European Parliament's regulatory framework would be the preferred option, since it would lead to clear advantages in terms of cost savings for the public, as well as the accessibility, transparency, legal certainty and predictability as well as the legitimacy of, and trust in, EU institutions. This option would also offer additional advantages in terms of its compatibility with Member States' administrative law and readiness for the transition towards e-government and e-administration tools, which promises further efficiency increases in the EU administration.

QA-02-18-811-EN-N

This is a publication of the Ex-Ante Impact Assessment Unit
EPRS | European Parliamentary Research Service

PE 621.841
ISBN 978-92-846-3205-3
doi:10.2861/157069
QA-02-18-811-EN-N