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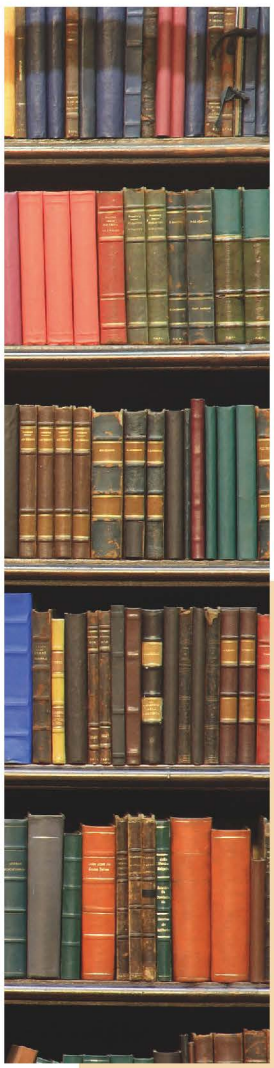

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The General Principles of EU Administrative Procedural Law

In-depth analysis for the JURI Committee

EN

2015

DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

LEGAL AFFAIRS

The General Principles of EU Administrative Procedural Law

In-depth Analysis

Abstract

Upon request by the JURI Committee this in-depth analysis explains what general principles of EU administrative procedural law are, and how they can be formulated in the recitals of a Regulation on EU administrative procedure.

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LIST OF ABBREVIATIONS

Charter	Charter of Fundamental rights of the European Union
CJEU	Court of Justice of the European Union
EEC	European Economic Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECSC	European Coal and Steel Community
TEU	Treaty on European Union
TFEU	Treaty on the functionning of the European Union

EXECUTIVE SUMMARY

Background

The Committee on Legal Affairs of the European Parliament has requested an In-depth Analysis on "The general principles of EU administrative procedural law". The In-depth Analysis is intended to be presented at a meeting of the Working Group on Administrative Law.

Aim

- The Analysis puts forward drafting proposals for the general principles of EU administrative procedural law to be included in the Recitals of a draft Regulation on EU Administrative procedures.
- More specifically, the Analysis tries to clarify the content of the general principles of EU administrative procedural law and suggest the most accurate formulation for the corresponding recitals.
- The following general principles, which are related to the Right to good administration embedded in Article 41 Charter, to the principle of an open, efficient and independent European administration enunciated in Article 298 TFEU are translated into recitals: [1] Access to information and access to documents; Access to the file ; Duty of care; Data protection; Data quality; Effective remedy; Equal treatment and non-discrimination; Fair hearing; Fairness; Good administration; Impartiality; Legal certainty; Legality; Legitimate expectations; Participatory democracy; Proportionality; Reason giving; Rule of Law; Timeliness; Transparency.

[1] Listed in alphabetical order in the key findings, but in a different, structured order in the recitals themselves.

1. WHAT ARE GENERAL PRINCIPLES OF EU ADMINISTRATIVE PROCEDURAL LAW?

KEY FINDINGS

- 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.
- Many rules and/or principles of EU law that focus on administrative procedures or which are at least especially relevant to administrative procedures are embedded in the EU Treaties and in the Charter. Of these principles, most have the status of 'general principles of European Union law', i.e. principles that have been expressly qualified as such by the EU courts. There are also principles and/or rules of EU administrative procedures which are established by soft law instruments, especially in codes of conduct, guidelines, communications etc.
- Given the nature of principles, the purpose of legislation consists of explaining how their sometimes competing commands are to be balanced in a way allowing to maximise the scope of each. In this context, it is not possible to establish a hierarchy ranging from the most important to the least since such hierarchy simply does not exist.
- As these principles are laid down in various provisions of the EU treaties and the case law of the CJEU the purpose of the recitals is not to redefine or to limit the principles referred to. Instead, the purpose of the recitals is to enhance the visibility of their implementation through procedural rules.

1.1. Sources of general principles of EU administrative procedural law

The European Parliament resolution of 15 January 2013 on a Law of Administrative Procedure of the European Union includes a Recommendation on the general principles which should govern the Union's administration.[2] Section 2 of this note will explain the reasons for dealing with general principles in the recitals of a Regulation on EU administrative procedures[3] rather than attempting to codify them in the form of articles of the operative part of such a regulation. This however requires asking the preliminary question what general principles of EU administrative procedural law are.

[2] European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL)), Annex, Recommendation 3.

[3] The issue saying law on administrative procedure or 'procedures' has been discussed at length in earlier occasions in the framework of the ReNEUAL network (http://www.reneual.eu/), of which the authors of this note are members. The native speaking members of the ReNEUAL network, while conceding that procedure in singular was grammatically also possible, thought that from a legal point of view 'procedures' was better in English than 'procedure'; while the French, German, Italian and Spanish members of the network confirmed that in their language the singular is to be used.

An established authoritative catalogue[4] of such principles 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. This absence can be explained primarily by the multiple meanings of the expression 'general principles' in the context of European Union law. Although the scholarly literature on the possible doctrinal differences between 'principles' and 'rules' is abundant,[5] the distinctions drawn therein are not relevant for the specific context of EU positive law. For all practical purposes it is therefore primarily necessary to recall the sources of general principles of EU administrative procedural law before trying to indicate what the principles to take into account are.

A number of rules and/or principles of EU law that focus on administrative procedures or are especially relevant to administrative procedures are embedded in the EU Treaties.[6] Already the ECSC Treaty of 1951 had in its Article 15 made reference to the obligation of reason giving – which has been taken over in the EEC Treaty of 1957 (nowadays Article 296 TFEU second indent) – and in its Article 5 a general principle of 'publicity' that is the antecedent of the principle of transparency embedded in Articles 11 and 15 TFEU and of the principle of openness embedded in Articles 1 and 10 TEU, 15 and 298 TFEU.

Within the Charter of Fundamental rights of the European Union, which with entry into force of the Treaty of Lisbon acquired the same legal status as the Treaties, EU procedural law is codified in Article 41 on the Right to good administration, as well as in Articles 42 on the Right of access to documents, 43 on the European Ombudsman, and also in Articles 47 on the Right to an effective remedy and to a fair trial and 48 on Presumption of innocence and right of defence. Further Articles 8 on Protection of personal data, 20 on Equality before the law and 21 on Non-discrimination are equally of particular relevance for administrative procedures. This being said the scope of most, if not all, of the provisions which have just been recalled is not limited to administrative procedures.

There are also rules and/or principles contained in international agreements to which the EU is a party. The foremost example of these agreements is the Aarhus Convention,[7] which guarantees the right of everyone to receive environmental information that is held by public authorities, the right to participate in environmental decision-making, and the right to review procedures to challenge public decisions that have been made without respecting environmental law and the two aforementioned rights.
A very important number of principles applicable to EU administrative procedures has the status of 'general principles of European Union law'. General principles of EU law are principles that have been expressly qualified as such by the EU courts. Many such principles have been established by the Court of Justice on the basis of a comparative study of Member State's law, such as typically and as early as 1957, the principles applying to the withdrawal of decisions of EU institutions.[8] With the EEC treaty of 1957 an explicit recognition of the Court's method has been given to 'the general principles common to the

[4] Recommendation 3, quoted above, contains a list of 9 principles, while Recommendation 4 contains a list of 10 'rules governing administrative decisions', and they are followed by Recommendation 5 (on the review and correction of own decisions).
[5] See e.g., to quote just a few of the most famous pieces of literature on the topic: Josef Esser, *Grundsatz Und Norm In Der Richterlichen Fortbildung Des Privatrechts* (1956); Ronald Dworkin, T*aking Rights Seriously* (1977); Robert Alexy, *Zum Begriff Des Rechtsprinzips* (1979) and *Theorie der Grundrechte* (1985).
[6] For more details see e.g. the *Working document State of Play and Future Prospects for EU Administrative Law to be submitted to the Committee on Legal Affairs by the Working Group on EU Administrative Law*, 19 OCTOBER 2011, p. 9-10, available on http://www.europarl.europa.eu/meetdocs/2009_2014/documents/juri/dv/juri_%20wdadministrativelaw_/juri_wdadministrativelaw_en.pdf.
[7] United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted on 25 June 1998.
[8] Joined Cases 7/56, 3/57 to 7/57 *Algera* [1957] ECR 0039.

laws of the Member States', by the provision on non-contractual liability (now Article 340 TFEU second indent) which is restated in Article 41 (3) Charter on the right to good administration. Many principles have also been derived by the Court of Justice from 'constitutional traditions common to the Member States', as acknowledged in Article 6 (3) TEU as well as in the Preamble and Article 52 (4) Charter. Last but not least a number of general principles of EU law have been established by the Court of Justice on the basis of the ECHR, as acknowledged equally by Article 6 (3) TEU as well as in the Preamble and Article 52 (3) Charter. The differences in sources of general principles of EU law does not generate any hierarchy between such principles: the status which they acquire by being so declared by the CJEU entails that all EU institutions, as well the legislature as other institutions, bodies, offices and agencies are bound by those principles; and the same goes for the Member States in the scope of application of EU law. Any legal act based on Union law has to comply with the general principles of EU law and will, as far as possible, be interpreted in compliance with them. Where that is not possible, Union acts will be declared invalid by the CJEU in a case before it. As long as the CJEU itself does not change its jurisprudence only a revision of primary EU law might impede the further application of a general principle of EU law or change its meaning.

We would like to stress that the above concerns only 'general principles of EU law' properly so recognised by the CJEU. Not all principles of EU administrative procedural law have the status of 'general principles of EU law'. A principle that has been established in secondary law but has not been explicitly declared to be a 'general principle of EU law' by the CJEU may be overridden by the EU legislature. Furthermore while the scope of 'general principles of EU law' coincides with the scope of EU law, the scope of a principle that has been established only in secondary law is limited to the scope of the relevant piece of legislation.

Last, there are also principles and/or rules of EU administrative procedures which are established by soft law instruments, especially in codes of conduct, guidelines, communications etc. While those soft law instruments are not formally binding – contrary to secondary legislation and decisions of EU institutions, bodies, offices and agencies – they can nevertheless generate legal effects in application of the EU courts' jurisprudence on legitimate expectations.[9]

1.2. Nature of general principles of EU administrative procedural law

Next to the various functions of general principles of EU administrative law which will be commented upon in section 2 of this note, also the nature of the general principles to be listed needs to be taken into account for drafting the recitals of a regulation on administrative procedures. Given the nature of principles, the purpose of legislation consists of explaining how their sometimes competing commands are to be balanced in a way allowing to maximise the scope of each. In this context, it is not possible to establish a hierarchy ranging from the most important to the least since such hierarchy simply does not exist.

Nonetheless, the general principles which require to be listed do differ in their scope and content. Some principles are more generally formulated than others and some offer themselves more directly to creating clearly defined rights and obligations than others. The reason for this is that some of the general principles, such as for example the 'rule of law'

[9] See Recital (10).

(Article 2 TEU), the 'right to good administration' (Article 41 Charter) and the principle of 'sincere cooperation' (Article 4(3) TEU) (which are sometimes referred to as 'umbrella' principles) contain and are defined by a series of sub-principles. Each of these sub-principles are developed and referred to in the case law as specifically identifiable principles conferring rights on individuals and/or obligations on public bodies.

The purpose of this note is therefore to propose a structured approach to listing general principles that are relevant to EU administrative procedures. The list will be structured in a way to allow for the utmost transparency as to the principles informing the drafting of the regulation and enhancing the visibility of the balancing decisions which have been undertaken in drafting the specific articles of this regulation. Overall, an EU regulation on administrative procedures is a regulation of cross-policy relevance. It is a central piece of law contributing to the 'translation' of constitutional values of the Union into the complexities of everyday decision-making in implementation of EU law. The purpose of recitals of an EU regulation on administrative procedures is therefore also to remind all addressees and other readers of the constitutional background of the detailed rules which must be interpreted 'in the light' of these principles. The recitals of the EU Regulation on administrative procedures therefore refer to rules and principles which guide any administrative activity in the scope of EU law.

Since these principles are laid down in various provisions of the EU treaties and the case law of the CJEU the purpose of the recitals is not to redefine or to limit the principles referred to. Instead, the purpose of the recitals is to enhance the visibility of their implementation through procedural rules. However, great care must be exercised in the formulation of the recitals and the principles referred to therein since the same principles might have diverse sources in the Charter and the case law establishing general principles. This is especially relevant to the right to good administration.

The method applied to identify the principles but also to draft the substantive provisions of an EU regulation on administrative procedures for implementation of EU law and policies will consist of restating principles of EU law, the case-law of the CJEU, the practice of EU institutions, bodies, offices and agencies, including, where appropriate, the European Ombudsman's Code on good administrative behaviour and the 'ombudsprudence' of the European Ombudsman. This is all the more important since the conditions of implementation might considerably differ from policy area to policy area each having a distinctive mix of institutions and bodies from various levels involved in the administration of a specific matter. More generally, an EU regulation on administrative procedures will need to be designed to equally maximise the twin objectives of public law: to ensure that the instruments in question foster the effective discharge of public duties and, at the same time, and no less importantly, that the rights of individuals are protected irrespective of the fact that any rules on EU administrative procedures must be based on constitutional principles. For that reason we propose to start the recitals dedicated to general principles with a short text recalling those twin objectives.

The general principles of administrative procedural law such as they have been developed by the CJEU are not fully coherent in their wording; nor is there a full coherence between the wording of the CJEU case-law, EU secondary law and soft law instruments. Over time, different words have been used in different CJEU rulings for the same concepts; also, the translations of the relevant principles are not always consistent even within single language versions (e.g. before the adoption of the Charter, the English version of the CJEU's case law used the words 'good', 'sound', 'proper' administration or even 'good governance' etc. whereas the French version generally used the words 'bonne administration'; other

language versions also differ from the French one without any specific apparent reason). Furthermore, there appear to be different categories of principles in view of their effect:

-some principles are quite consistently interpreted to generate enforceable rights for citizens and legal persons, such as general principles governing the investigation of a matter, which concern specifically the activity of the public administration in its relationship with the citizens, e.g. transparency, duty of care, etc.;

-some principles are often not interpreted to generate enforceable rights for citizens and legal persons, such as organisational/internal principles, that are guidelines concerning the activity of the public administration but do not directly concern the relationship to the citizens, e.g. clear allocation of responsibilities, efficiency, etc.; and

-some principles may generate enforceable rights, but not systematically, such as general principles governing administrative actions, e.g. consistency, legitimate expectations, etc.

This being said there may be differences in time and according to circumstances. The following quotation of Advocate general Kokott's opinion in Solvay[10] shows very clearly how organisational principles can be directly linked to enforceable rights:

> '[…] in accordance with the principle of good administration, the Commission has an obligation to ensure the file's proper management and safe storage. Proper management of the file includes not least the production of a meaningful index to be used for the purposes of granting access to the file at a later date'.

The lack of such an index in the case at hand, where an important part of the relevant documents appear to have been lost by the Commission resulted in a violation of the rights of defence[11].

The proposed content of the recitals reflects the differences which have just been exposed.

[10] Opinion of Advocate General Kokott in *Solvay SA v European Commission*, Case C- 109/10 P delivered on 14 April 2011, [2011] ECR I-10329 para. 194.
[11] P. 205.

2. WHY FORMULATE GENERAL PRINCIPLES OF EU ADMINISTRATIVE PROCEDURAL LAW AS RECITALS OF A REGULATION?

KEY FINDINGS

- As far as general principles of EU administrative procedural law are concerned, there are two options for 'codification' in the framework of a Regulation on EU administrative procedures: first to try and formulate all relevant principles in articles of the operative part the Regulation or, second, to use the recitals of the proposed Regulation. There are a number of legal technical and expediency reasons that lead to favour the second solution.

- Trying to exhaustively codify the fundamental principles of good administration in the operative part of a regulation would be counterproductive to the objective of Article 41 Charter on the right to good administration. The objective of adding Article 41 to the Charter was to codify some of the most important principles of good administration and to give them the status of a fundamental right. The experience of the Convention of 2000 drafting the Charter further shows how difficult it is not only to make a choice between principles in order to determine which ones are fundamental (hence the word 'includes') but also how to have a wording that reflects the variety of expressions in case-law, primary and secondary law.

- On the other hand, placing the principles in the recitals has the advantage that, while not being in themselves binding, they are a demonstration of the legislature's interpretation of principles. The recitals then may contain certain redundancies which might be necessary not least for the sake of clarity in addressing a non-expert public. Last but not least, recitals are not strictly limited by the legal basis of the relevant instrument, and they are also not limited by the legal scope of the Regulation.

- An important aspect of general principles is that they serve to guide the interpretation of legal rules of all levels of the EU's legal system and fill gaps. Taking into account the very nature of recitals our proposal is mainly grounded in the idea that the recitals not only have a legal purpose (of interpreting the norms in the regulation), but should also have a 'citizen friendly' informative purpose. The principles in the recitals therefore to be presented in a way that may prompt the non-expert to read them.

2.1. Reasons in favour of recitals as a locus for general principles

The European Parliament resolution of 15 January 2013 on a Law of Administrative Procedure of the European Union includes a recommendation on the objective and the scope of the regulation to be adopted.[12] The recommendation states that '[t]he objective of the regulation should be to guarantee the right to good administration by means of an open, efficient and independent administration based on a European Law of Administrative

[12] European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL)), Annex, Recommendation 1.

Procedure.[…] It should codify the fundamental principles of good administration and should regulate the procedure to be followed by the Union's administration when handling individual cases to which a natural or legal person is a party, and other situations where an individual has direct or personal contact with the Union's administration'.

As far as general principles of EU administrative procedural law are concerned, there are two options for 'codification' in the framework of a Regulation on EU administrative procedures: first to try and formulate all relevant principles in articles of the operative part of the Regulation or, second, to use the recitals of the proposed Regulation. There are a number of legal technical and expediency reasons that lead to favour the second solution.

At any rate, Article 41 of the Charter on the right to good administration has been conceived by the Convention of 2000 only as a first attempt to codify some of the most important principles of good administration and to give them the status of a fundamental right. This is particularly evident in the wording of paragraphs 1 and 2 first indent, '1. Every person has 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. Paragraph 2 of Article 41 of the Charter continues with the words 'this right includes'. Those three words are intended to highlight that the listing of Article 41 is not exhaustive. The term 'includes' in legal terms has to be read as 'includes among others'. Trying to exhaustively codify the fundamental principles of good administration in the operative part of a regulation would be counterproductive to that objective. In any case, a simple legislative regulation has a lower hierarchical rank than an Article of the Charter, which has the status of primary law and the regulation itself could not impede other legislative acts of the Union to depart from the principles as codified in the regulation.

The experience of the Convention of 2000 drafting the Charter further shows how difficult it is not only to make a choice between principles in order to determine which ones are fundamental (hence the word 'includes') but also how difficult it is to have a wording that reflects the variety of expressions in case-law, primary and secondary law. The Explanations to Article 41[13] are indispensable in order to understand better what is meant in the text of Article 41 itself. Not only their style but their length would not be appropriate for an exercise of plain codification of the articles itself.

Also with regard to CJEU case law, there are inherent difficulties in the codification of CJEU case law due to the nature of case-by-case development of principles. These will have to be faced for the codification of procedural rules as the core of the operative part of the regulation. Those difficulties are increased in a very important way when it comes to general principles, because when the CJEU relates to a general principle of EU law it uses very few words, and it is not always clear whether they are interchangeable: typically many of the rulings quoted in the Explanations to Article 41 Charter refer to the 'principle of good administration' and to the 'duty of care' in the same sentence.

The lack of linguistic coherence in much of the relevant case-law is a further challenge which might slow down to a great extent the exercise of codification of general principles. The process by which Commission proposals are drafted with the involvement of jurist-linguist in order to come to have 24 linguistic versions that not only correspond to each other but also are meaningful in the context of each legal language is a time-consuming process even when it comes to technical texts. It would be even more time consuming for a

[13] Explanations Relating to the Charter Of Fundamental Rights, Doc. 2007/C 303/02, at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:en:PDF

codification of principles that are expressed with variations in words in the EU Courts' jurisprudence which are not always coherently used over time and not always consistently translated into all language versions. With recitals, variations between linguistic versions have a lesser impact due to the fact that they are not binding law.

On the other hand, placing the principles in the recitals has the advantage that, while not being in themselves binding, they are a demonstration of the legislature's interpretation of principles. The courts are not directly bound by the relevant wording, but they may use the recitals in order to choose a specific orientation in interpretation – as demonstrated by the case law of the EU Courts – or to identify a specific concept to be a 'general principle of EU law'.

Furthermore, there are no problems if some of the recitals are redundant in legal terms, as is often needed for the sake of clarity in addressing a non-expert public. Unlike, articles of the operative part, where redundancy usually fosters problems of interpretation as soon as the wording is only slightly different.

Las but not least, recitals are not strictly limited by the legal basis of the relevant instrument, and they are also not limited by the legal scope of the Regulation. Therefore the recitals may well serve the idea which is highlighted in letters N, O and S of the Parliaments resolution of 15 January 2013 that 'taking into account the recommendations of the Group of States against corruption (GRECO) of the Council of Europe, a clear and binding set of rules for the Union's administration would be a positive signal in the fight against corruption in public administrations', that 'a core set of principles of good administration is currently widely accepted among Member States' and 'European Law of Administrative Procedure could strengthen a spontaneous convergence of national administrative law, with regard to general principles of procedure and the fundamental rights of citizens vis-à-vis the administration, and thus strengthen the process of integration'. Indeed whereas there would be very important problems in trying to extend the scope of a Regulation on EU administrative procedures to Member State's authorities, the formulation of general principles in recitals would lend itself best to a voluntary use of their definitions by courts and legislatures of Member States.

In fact, it might be argued, that the real added value of an EU regulation on administrative procedures is not the codification of general principles of EU law itself. The added value stems from establishing a body of rules which 'translates' these general principles in simply applicable rules which contain a fair balance between different competing interests each protected by general principles of law. This is the experience of the national codifications on administrative procedures (nearly all EU Member States have adopted such acts) and this is a central contribution to the clarification and simplification of EU law. For these reasons also, the Model Rules on EU Administrative Procedures established by the Research Network on EU Administrative Law (ReNEUAL)[14] follow the approach to refer to the general principles in the recitals.

2.2. Structure and wording of recitals

Which general principles of EU law need to be referred to in the recitals of an EU regulation on Administrative Procedures depends on the content of the substantive provisions of the regulation. The purpose of establishing an EU regulation on administrative procedures is to

[14] http://www.reneual.eu/

improve the quality of the EU's legal system by fostering compliance with the general principles of EU law in the reality of fragmentation between sector-specific procedures and the reality of the multi-jurisdictional nature and pluralisation of actors involved in the implementation of EU policies. Fragmentation has often resulted in a lack of transparency, predictability, intelligibility and trust in EU administrative and regulatory procedures and their outcome, especially from the point of view of citizens. A codification of administrative procedures can contribute to simplifying the legal system of the Union, enhancing legal certainty, filling gaps in the legal system and thereby ideally contributing to compliance with the rule of law. Overall, it can be expected that establishing enforceable rights of individuals in procedures that affect them, contributes to compliance with principles of due process and fosters procedural justice.

Adopting such a regulation further has the potential to contribute not only to the clarity of the legal rights and obligations of individuals and participating institutions, offices, bodies and agencies, but also to the transparency and effectiveness of the legal system as a whole. An EU Regulation on Administrative Procedures has the potential to contribute to the objectives of clarification of rights and obligations. It also contributes to simplification of EU law by ensuring that procedures can follow one single rule-book and better regulation by allowing to improve the overall legislative quality.

The recitals of an EU regulation on administrative procedures will therefore contain various principles of EU law. When identifying the principles of EU law which should be referred to in the recitals not only is it important to provide a list of principles but also to give them some order. In establishing such order, it has to be taken into account that there is neither an established 'hierarchy' of principles, nor do all general and foundational principles of EU law work in the same way. The important aspect of general principles is that they serve to guide the interpretation of legal rules of all levels of the EU's legal system and fill gaps. In that context, the reference to a general principle of EU law in the recitals serves to reiterate its importance in interpreting a legal text such as the regulation on EU administrative procedure. It also serves to clarify which principles have been balanced by the legislature in establishing specific provisions of the regulation.

However, in order to structure the approach to the reference to general principles of EU law in the recitals of the EU regulation on administrative procedure, the various principles can be grouped. Taking into account the very nature of recitals our proposal is mainly grounded in the idea that the recitals not only have a legal purpose (of interpreting the norms in the regulation), but should also have a 'citizen friendly' informative purpose. The principles in the recitals therefore need to be presented in a way that may prompt the non-expert to read them.

While the order of presentation of the general principles is not primarily grounded in legal terms, their wording on the contrary is based upon an attempt to render the essence of the content of principles visible, especially in view of the relevant jurisprudence of the CJEU.

3. PROPOSED RECITALS ON GENERAL PRINCIPLES OF EU ADMINISTRATIVE PROCEDURAL LAW

KEY FINDINGS

- The proposed recitals are not comprehensive: they are limited to the scope of clarifying the content of general principles of EU administrative procedure law, what other general principles are relevant to the implementation and interpretation of administrative procedure rules, and why those principles are important.

- Recitals (1) to (5) are intended to explain to a broader public why general principles matter. Recital (6) briefly alludes to internal principles which are very important for an open, efficient and independent administration without necessarily creating enforceable subjective rights. Recitals (7) to (22) attempt to explain what the content and meaning of those principles are. They enunciate the following principles:[15] Access to information and access to documents; Access to the file ; Duty of care; Data protection; Data quality; Effective remedy; Equal treatment and non-discrimination; Fair hearing; Fairness; Good administration; Impartiality; Legal certainty; Legality; Legitimate expectations; Participatory democracy; Proportionality; Reason giving; Rule of Law; Timeliness; Transparency.

3.1. Explanatory note

The proposed recitals are not comprehensive: they are limited to the scope of clarifying the content of general principles of EU administrative procedure law, what other general principles are relevant to the implementation and interpretation of administrative procedure rules, and why those principles are important. Other components need to be added to the recitals such as, to name one example, the legal basis of the act.

Recitals (1) to (5) are intended to explain to a broader public why those principles matter. Recitals (7) to (22) attempt to explain what the content and meaning of those principles are. Recital (6) briefly alludes to internal principles which are very important for the implementation of the principles mentioned in Article 298 (1) TFEU of an open, efficient and independent administration without necessarily creating enforceable subjective rights; contrary to the other principles those internal principles are not further developed in their enunciation in so far as they do not necessarily correspond to subjective rights. One or more specific recitals might be devoted to those principles once the articles of the operative part of the Regulation will have been drafted.

The order in which those principles are presented derives from grounds which are explained in section 1.2 of this note. The recitals include footnotes that are obviously not intended to remain in the proposal of a Regulation. Their purpose is to give the most useful references (mainly about case law) to the reader of this note.

[15] Listed in alphabetical order in the key findings, but in a different, structured order in the recitals themselves.

3.2. Proposed Recitals

Whereas:

(1) In a Union under the rule of law it is necessary to ensure that where citizens are confronted with European administration, procedural rights and obligations are always adequately defined, developed and complied with. According to the European Parliament Resolution of January 2013, an EU Regulation on Administrative Procedure should be adopted to guarantee the right to good administration by means of an open, efficient and independent European administration. Such a Regulation should define the procedures to be followed by the European administration when handling cases to which a natural or legal person is a party. This includes situations where a person has direct or personal contact with the Union's institutions, bodies, offices and agencies, as well as situations where action of Union authorities is part of a procedure which also involves Member States' authorities.

(2) A European administration which does not function properly is detrimental to the public interest. Such maladministration can be the result of an excess as well as a lack of rules and procedures. It can also result from the existence of contradictory or unclear rules and procedures.

(3) Article 298 TFEU requires a legislative regulation to establish procedures for an open, efficient and independent European administration. Properly devised administrative procedures support both an efficient administration and a proper enforcement of the right to good administration guaranteed as a general principle of EU law as well as in Article 41 of the Charter.

(4) An EU Regulation on Administrative procedures should serve to clarify rights and obligations as a default rule for all procedures under Union law. Rules and principles governing European administrative procedures which are currently established in diverse sources of law: In Treaty provisions and protocols, general principles of EU law as recognized by cases of the Court of Justice of the European Union as well as principles common to the laws of the Member States, sector-specific legislative acts of the Union, soft law (published[16] or unpublished)[17] and unilateral commitments by the Union's institutions, bodies, offices and agencies.

(5) General principles of EU law govern administrative action regardless of the possible existence of sector-specific EU law. Referring to general principles of EU law in a regulation on administrative procedures should not reformulate such principles but reaffirm the importance of those principles in interpreting the provision of this Regulation. A list of general principles highlights the fact that those principles are being

[16] The European Ombudsman has emphasized that a Regulation on the administrative procedures of the European Union would help eliminating the confusion currently arising from the parallel existence of different codes for most Union institutions and bodies, and would underline the importance of such principles both for citizens and for officials. See recital H of the European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union.

[17] For example the Director-General of OLAF had issued detailed procedural instructions to his staff in the form of a Manual of Operational Procedures. In his own words: these instructions 'are not intended to have any legal force: they simply determine the practice to be followed in order to implement the applicable legal framework'. See Foreword to Manual, p.2, 1 December 2009. The manual has been replaced by 'OLAF Instructions to Staff on Investigative Procedures, which are of the same legal nature albeit they do not include the preface any more; see http://ec.europa.eu/anti_fraud/documents/about_us/instructions-to-staff-120201.pdf consulted on 10 June 2015.

implemented through the procedural rules laid down in this Regulation and illustrates which ones are balanced against each other in specific provisions of this Regulation.

(6) Although there is no established hierarchy of general principles applicable to EU administrative procedural law, not all are equal in content and scope. Some principles, such as the rule of law, good administration, or sincere cooperation are formulated in such general manner that their exact content is defined by their sub-components which, if the latter are clear, precise and unconditional also contain individual rights.

(7) The principle of the rule of law, which is part of the Union's values, as recalled in Article 2 TEU applies to administrative actions. According to that principle any action of the Union has to be based on the treaties according to the principle of conferral[18]; furthermore the rule of law requires that EU institutions, bodies, offices and agencies shall act in accordance with the law[19] and apply the rules and procedures laid down in the legislation.

(8) The principle of legality, as a corollary to the rule of law, requires that actions of European administration occur under and within the law. According to Article 52(1) sentence 1 of the Charter of Fundamental Rights 'Any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms'.[20]

(9) The principle of legal certainty,[21] another corollary of the rule of law, requires EU legal rules to be clear and precise. The principle aims to ensure that situations and legal relationships governed by EU law remain foreseeable[22] in that individuals must be able to ascertain unequivocally what their rights and obligations are and be able to take steps accordingly.[23] Under the principle of legal certainty retroactive measures shall not be taken except in legally justified circumstances.[24] Further, public authorities shall act and perform their duties within a reasonable time.[25]

(10) The principle of protection of legitimate expectations has been recognised since the very early case law of the CJEU as sub-principle of the rule of law.[26] Actions of public

[18] Case 46/87 *Hoechst v Commission* [1989] ECR 2859, summary point 3.

[19] The hierarchy of legal norms must be recognized and respected in that no act may violate higher-level Union law (Case 1/54 *France v High Authority* [1954] ECR 7, 23; Case 38/70 *Deutsche Tradax GmbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1971] ECR 145, para. 10.)

[20] Case C-355/10, *European Parliament v Council* [2012], ECR I- published in the electronic Reports of Cases para77: 'Second, it is important to point out that provisions on conferring powers of public authority on border guards – such as the powers conferred in the contested decision, which include stopping persons apprehended, seizing vessels and conducting persons apprehended to a specific location – mean that the fundamental rights of the persons concerned may be interfered with to such an extent that the involvement of the European Union legislature is required'.

[21] Case C-55/91 *Italy v Commission* [1993] ECR I-4813, para. 66; Joined Cases T-55/93 and T-232/94, T-233/94 and T-234/94 *Industrias Pesqueras Campos v Commission* [1996] ECR II-247, paras. 76, 116, 119; Case 43/75 *Defrenne v SABENA* [1976] ECR 455, paras. 69 ff.; 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.

[22] Case C-199/03 *Ireland v Commission* [2005] ECR I-8027, para. 69. See also Case C-29/08 *SKF* [2009] ECR I-10413, para. 77.

[23] See e.g. Case C-158/06 *ROM-projecten* [2007] ECR I-5103, para. 25 with further references.

[24] See Case T-357/02 *Freistaat Sachsen v Commission* [2007] ECR II-1261, para. 98, where the Court stated that 'provisions of Community law have no retroactive effect unless, exceptionally, it clearly follows from their terms or general scheme that such was the intention of the legislature, that the purpose to be achieved so demands and that the legitimate expectations of those concerned are duly respected'.

[25] Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano v Commission* [2002] ECR I-7869, para. 140.

[26] See Case 111/63 *Lemmerz-Werke v High Authority of the ECSC* [1965] ECR 677, where the concept of protection of legitimate expectations was first explicitly enunciated. See also Joined Cases 7/56 and 3/57 to 7/57 *Algera and Others v Common Assembly of the ECSC* [1957] ECR 39, 55; Cases 42 and 49/59

bodies shall not interfere with vested rights and final legal situations except where it is imperatively necessary in the public interest. Legitimate expectations shall be duly taken into account where an administrative decision is cancelled or revoked.

(11) The principle of proportionality is a criterion for the legality of any act of Union law. Next to legislative action as provided for in Protocol n° 2 on the application of the principles of subsidiarity and proportionality, the principle of proportionality is applicable as criteria of legality of acts of European administration as results from Articles 52(1) of the Charter of Fundamental Rights of the European Union and Article 5(4) TEU.[27] The Court of Justice of the European Union has interpreted the principle of proportionality to require that any measure of the European administration be based on law; to be appropriate and necessary for meeting the objectives legitimately pursued by the act in question; where there is a choice among several appropriate measures, the least onerous measure must be used; and the charges imposed must not be disproportionate to the aims pursued.[28]

(12) The right to an effective remedy[29] which is enshrined in Article 47 of the Charter,[30] in Articles 6 and 13 European Convention of Human Rights and recognised as a general principle of EU law is a key component to a legal system under the rule of law. According to this principle, neither the EU nor Member States can render virtually impossible or excessively difficult the exercise of rights[31] conferred by EU law, are obliged to guarantee real and effective judicial protection[32] and are barred from applying any rule or applying any procedure which might prevent, even temporarily, EU rules from having full force and effect.[33]

(13) The principle of good administration which is also enshrined in Article 41 of the Charter synthetizing some of the case law of the Court of Justice in this field[34] is of particular relevance to administrative procedures. According to the Charter the right to good administration requires that decisions be taken pursuant to procedures which guarantee fairness, impartiality and timeliness. Good administration includes the right to be given reasons and the possibility of claiming damages against public authorities who have caused harm in the exercise of their functions. Good administration also

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S.N.U.P.A.T. v High Authority [1961] ECR 53; Case 14/61 *Koninklijke Nederlandsche Hoogovens en Staalfabrieken v ECSC High Authority* [1962] ECR 253.

[27] Article 5(4) TEU 'Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties […]'.

[28] See e.g. Case C-265/87 *Schräder v Hauptzollamt Gronau* [1989] ECR I-2237 para 21. See also e.g. Case C 343/09 *Afton Chemical v Secretary of State for Transport* [2010] ECR I 7027, para 45, and Joined Cases C 581/10 and C 629/10 *Nelson and Others v Deutsche Lufthansa AG* (C-581/10) and T*UI Travel and Others v Civil Aviation Authority* (C-629/10) [2012] published in the electronic Reports of Cases, para 71.

[29] Case 85/76 *Hoffmann-La Roche v Commission* [1979] ECR 461, para. 9; Case 222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, para 19.

[30] Article 47 Charter: 'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article".

[31] See e.g. Case C 128/93 *Fisscher v Voorhuis Hengelo BV and Stichting Bedrijfspensioenfonds voor de Detailhandel* [1994] ECR I 4583, para. 37; Case C-261/95 *Palmisani v Istituto nazionale della previdenza sociale (INPS)* [1997] ECR I-4025, para 27; C-453/99 *Courage and Crehan v Courage Ltd and Others* [2001] ECR I-6297, para 29; Case C 78/98 Preston and Others [2000] ECR I 3201, para. 39; Case C-187/00 *Kutz-Bauer* [2003] ECR I-2741, para. 57; Case C-30/02 *Recheio-Cash & Carry* [2004] ECR I-6051, paras 17, 18; Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, para. 95; Joined Cases C-231/06 to C-233/06 J*onkman and Others* [2007] ECR I-5149, para. 28.

[32] Case 14/83 *von Colson* [1984] ECR 1891, para 23.

[33] Case C-213/89 *Factortame* [1990] ECR I-2433, paras. 19, 20.

[34] The CJEU has referred to good administration principles since the very early case-law: Joined Cases 7/56, 3/57 to 7/57 *Algera and Others v Common Assembly of the ECSC* [1957] ECR 0039; Case 32/62 *Alvis* [1963] ECR 49, para 1A; Joined Cases 56 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299; Case 64/82 *Tradax v Commission* [1984] ECR 1359; see the Explanations Relating to the Charter Of Fundamental Rights, Doc. 2007/C 303/02, at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:en:PDF

requires the protection of the rights of defence and of language rights.[35] In addition, good administration extends to information rights which include privacy and business secrets as well as access to information. Principles of good administration can be understood to further contain the following elements:

(14) The duty of care includes the right of every person to have his or her affairs handled impartially, fairly and within a reasonable time[36]. It obliges the administration to carefully establish and review all the relevant factual and legal elements of a case taking into account not only the administration's interests but also all other relevant interests, prior to making decisions or taking other steps.[37] Impartiality requires the absence both of arbitrary action and of unjustified preferential treatment including personal interest.[38]

(15) Timeliness, which pertains to the principle of fairness, means that decisions have to be taken within a reasonable time[39] since slow administration is bad administration[40] and might be in violation of the concept of legal certainty.

(16) The right to a fair hearing must be observed in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person.[41] That principle (*audi alteram partem* or *audiatur altera pars*) is addressed in Article 41(2)(a) and (b) Charter;[42] it cannot be excluded or restricted by any legislative provision.[43] The right to a fair hearing requires that the party concerned must receive an exact and complete statement of the claims or objections raised and must also be given the opportunity to make its views known on the truth and relevance of the facts and on the documents used.[44]

(17) The right of access to the file is essential in order to enjoy the right to a fair hearing. The right of access to the file is the right to get full information on matters which may affect a person's position in an administrative procedure, especially where sanctions

[35] See Article 24 fourth subparagraph TFEU: 'Every citizen of the Union may write to any of the institutions or bodies... in one of the [official] languages... and have an answer in the same language'. Article 41 (4) Charter:'Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language'. See also EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community, Official Journal 017, 06/10/1958 P. 0385 – 0386.

[36] Charter, Article 41(1).

[37] See to that respect, AG van Gerven in Case C-16/90 *Eugen Nölle v Hauptzollamt Bremen –Freihafen* [1991] ECR I-5163; Case C-269/90 *TU München v Hauptzollamt München Mitte* [1991] ECR I-5469, para. 14.

[38] Case T-146/89 *Williams v Court of Auditors* [1991] ECR II-1293, para. 40; Case T-305/94 *Limburgse Vinyl Maatschappij v Commission* [1999] ECR II-931, paras. 317ff.

[39] Article 24 fourth subparagraph TFEU ; Article 20(2)(d) TFEU ; Article 41 (1) Charter.

[40] 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.'

[41] Case T-306/01 *Yusuf and Al Barakaat International Foundation v. Council and Commission* [2005] ECR II-3533, para. 325.

[42] Article 41(2)(a) Charter: The right to good administration includes: 'the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;' ; Article 11(1) 'The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action' and (3) TEU 'The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.'

[43] Case T-260/94 *Air Inter v. Commission* [1997] ECR II-997, para. 60; case C-135/92 *Fiskano v. Commission* [1994] ECR I-2885, para. 39.

[44] See, e.g., Case 100/80 to 103/80 *Musique Diffusion française v Commission* [1983] ECR 1835, para. 10; Case 121/76 *Moli v Commission* [1977] ECR 1971, para. 19; Case 322/81 *Michelin v Commission* [1983] ECR 3461, para. 7; Case C-328/05 *SGL Carbon v Commission* [2007] ECR I-3921, para. 71. In Joined Cases C-402/05 P and Case C-415/05 P *Kadi v Council and Commission* [2008] ECR I-6351, paras. 338-352, the Court held that overriding considerations of safety or the conduct of international relations might justify that certain matters may not be communicated to the persons concerned, but do not allow for evidence used against them to justify restrictive measures or for them not to be afforded the right to be informed of such evidence within a reasonable period after those measures were taken.

may be involved.[45] It includes the right to get the administration's response to complaints or representations,[46] as well as to receive notice of the outcome of procedures and of decisions made,[47] including information related to the rights of appeal.[48]

(18) The duty to give reasons for decisions arises from Article 296(2) TFEU and is recognised as a right under Article 41(2)c) of the Charter of Fundamental Rights of the European Union as well as being an essential component of the right to an effective remedy recognised in Article 47 of the Charter of Fundamental Rights of the European Union. The obligation to give reasons comprises an indication of the legal basis of the act, the general situation which led to its adoption and the general objectives which it intended to achieve;[49] the statement of reasons must disclose in a clear and unequivocal fashion the reasoning followed by the authority which adopted the measure in such a way as enable the persons concerned to decide if they want to defend their rights by an application for judicial review.[50]

(19) The principles of transparency and of participatory democracy[51] are applicable also to situations where the proceedings lead to the adoption of an act of general application including decisions with general applicability. In order to ensure that such hearing can effectively take place, active information of the public and structured means of feedback and response should be created.

(20) The right of access to documents[52] under Article 15 (3) TFEU[53] and Article 42 of the Charter[54] is a fundamental right of EU law and also a basic condition of an open,

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[45] Case 270/82 *Estel v Commission* [1984] ECR 1195, paras. 13ff.; Case 64/82 *Tradax v Commission* [1984] ECR 1359, paras. 21f.; Case C-34/89 *Italy v Commission* [1990] ECR I-3603, paras. 14f.; Case T-100/92 *La Pietra v Commission* [1994], ECR (civil service) I-A-83, II-275, paras. 43ff.; Case C-54/95 *Germany v Commission* [1999] ECR I-35, para. 118.

[46] Case 179/82 *Lucchini Siderurgica v Commission* [1983] ECR 3083, para. 27; Cases 96-102 and 104-106 and 110/82 *NV IAZ International Belgium v Commission* [1983] ECR 3369, paras. 12ff.

[47] Case 120/73 *Lorenz v Germany* [1973] ECR 1471, para. 5; Case 121/73 *Markmann v Germany* [1973] ECR 1495, para. 5; Case 122/73 *Nordsee v Germany* [1973] ECR 1511, para. 5; Case 141/73 *Lohrey v Germany* [1973] ECR 1527, para. 5; see also Ralf Bauer, *Das Recht auf eine gute Verwaltung im Europäischen Gemeinschaftsrecht* (Frankfurt/Main: Peter Lang, 2002) 64.

[48] Case 41/69 *Chemiefarma v Commission* [1970] ECR 661, para. 27. See also Commission 'Code of Good administrative behaviour', Point 3, third indent: 'Where Community law so provides, measures notified to an interested party should clearly state that an appeal is possible and describe how to submit it, (the name and office address of the person or department with whom the appeal must be lodged and the deadline for lodging it).Where appropriate, decisions should refer to the possibility of starting judicial proceedings and/ or of lodging a complaint with the European Ombudsman in accordance with Article 230 or 195 of the Treaty establishing the European Community.' European Ombudsman 'Code of Good administrative behaviour', Article 19 - indication of the possibilities of appeal: 'A decision of the Institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time-limits for exercising them. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the European Ombudsman under the conditions specified in, respectively, Articles [263] and Articles [228 TFEU].'

[49] Case 5/67 *Beus GmbH v Hauptzollamt München* [1968] ECR 83, 95 (English Special Edition 83); See also Case T-13/99 *Pfizer Animal Health v Council* [2002] ECR II-3305, para. 510; Case T-70/99 *Alpharma v Council* [2002] ECR II-3495, para. 394; Case C-304/01 *Spain v Commission* [2004] ECR I-7655, para. 51; Case C-184/02 *Spain and Finland v European Parliament and Council* [2004] ECR I-7789, para. 79; Case C-342/03 *Spain v Council* [2005] ECR 1975, para. 55.

[50] Case C-269/90 *TU München v Hauptzollamt München Mitte* [1991] ECR I-5469, paras. 14, 26.

[51] Article 10(3) TEU: 'Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.' Articles 11(1) and (3) TEU require Union institutions to hear views and opinions on EU measures and especially enter into consultation procedures.

[52] See Regulation No 1049/2001.

[53] Article 15(3) TFEU: 'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.... Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in

efficient and independent European administration. Any limitation of this principle must be narrowly construed to comply with the criteria of Article 52(1) of the Charter of Fundamental Rights of the European Union and must therefore be based on law, must respect the essence of the right and follow the criteria of proportionality.

(21) The right to protection of personal data which is embedded in Article 16(1) TEU and in Article 8 of the Charter[55] implies that beyond the need to respect all general rules on data protection,[56] special attention needs to be dedicated to data protection aspects of complex and intertwined administrative procedures involving as well EU institutions, bodies, offices and agencies as member States' authorities, which are related to inter-administrative information exchange and databases.[57] An essential point of reference is therefore the principle of transparent information management, which includes duties to record data processing activities.[58] This duty supports data protection and also fosters inter-administrative accountability and interaction with regard to collaborative information gathering. According to the principle of data quality, data used by the EU Administration shall be accurate, up-to-date and lawfully recorded. The data supplying authority shall be responsible for ensuring that the data are accurate, up-to-date and lawfully recorded.

(22) In the interpretation of this regulation, regard should be had especially to equal treatment and non-discrimination, which apply to administrative actions as a prominent corollary to the rule of law and the principles of an efficient and independent European administration.

accordance with the regulations referred to in the second subparagraph....'; Charter, Article 42: 'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.'

[54] Article 42 Charter: 'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.'

[55] Article 16(1) TEU: 'Everyone has the right to the protection of personal data concerning them.' ; Charter, Article 8 *Protection of personal data*.

[56] Regulation (EC) no 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.

[57] Given that many administrative procedures are inextricably linked to IT systems (e.g. EU PILOT for infringements, CHAP for COM communication with complainants, ARES for COM document management, GEDA and EPADES for EP document management, etc.),

[58] See European Ombudsman 'European Code of Good administrative behaviour', Article 24 - *Keeping of adequate records:* 'The Institution's departments shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take.'

4. TABLE OF GENERAL PRINCIPLES ENUNCIATED IN THE RECITALS

This table is intended to allow the readers to find in which of the recitals they can find an attempt to enunciate – rather than to codify (see section 2) the general principles of EU administrative law.

Principle	Recital (s)
Access to information and access to documents	20
Access to the file	17
Care (duty of)	14
Data protection	21
Data quality	21
Effective remedy	12
Equal treatment and non-discrimination	22
Fair hearing	16
Fairness	14
Good administration	13 to 18
Impartiality	14
Legal certainty	9
Legality	8
Legitimate expectations	10
Participatory democracy	19
Proportionality	11
Reason giving	18
Rule of Law	7
Timeliness	5
Transparency	19

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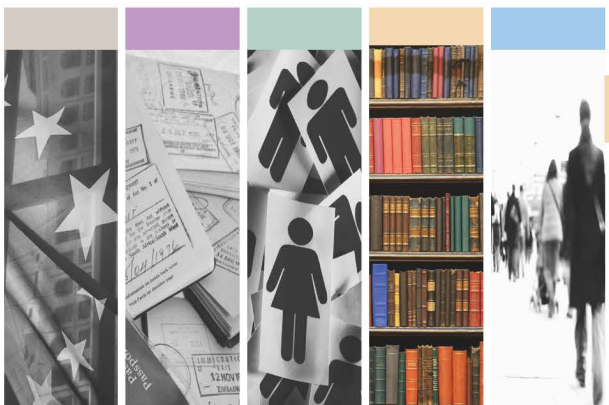

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