

## GENERAL ADMINISTRATIVE LAW ACT

Text as per 1 October 2009, incorporating the following bills and legislative proposals:

- Penalty and appeal in case of failure to take a timely decision (29 934)
- Fourth tranche of General Administrative Law Act (29 702)
- Interrelated decisions (30 980)
- 31 277 (flexibilisation of employment conditions of the judiciary)
- 31 084 (electronic notification)
- 31 124 (Act implementing fourth tranche)
- 31 115 (technical amendment Elections Act)
- Bulletin of Acts and Decrees, 100 (abolishment of local counsel requirement)

Ministry of Justice  
Legislation Department  
Constitutional Law and Administrative Law Division

## TITLE 1 INTRODUCTORY PROVISIONS

### Chapter 1.1 Definitions and scope

#### Article 1:1

1. 'Administrative authority' means:
  - a. an organ of a juristic person governed by public law, or
  - b. any other person or body vested with public authority.
2. The following organs, persons and bodies are not deemed to be administrative authorities:
  - a. the legislature;
  - b. the First and Second Chambers and the Joint Session of the States General;
  - c. independent bodies established by statute and charged with the administration of justice, the Council for the Judiciary and the Board of Representatives of the Netherlands Bar;
  - d. the Council of State and its divisions;
  - e. the Netherlands Court of Audit;
  - f. the National Ombudsman and the deputy ombudsmen referred to in article 9.1 of the National Ombudsman Act, and the ombudsmen and ombudsman committees referred to in article 9:17.b of the present Act;
  - g. the chairpersons, members, clerks and secretaries of the organs and bodies referred to in paragraphs b to f, the Procurator General, the Deputy Procurator General and the Advocates General of the Supreme Court, the management committees of the bodies referred to in paragraph c and the presidents of these committees, and committees composed of members of the organs and bodies referred to in subparagraphs b to f.
  - h. The Intelligence and Security Services Review Committee, as referred to in article 64 of the Intelligence and Security Services Act 2002.
3. An organ, person or body excluded under paragraph 2 is nonetheless deemed to be an administrative authority insofar as it takes decisions or performs acts with respect to public employees within the meaning of article 1 of the Public Employees Act not appointed for life, their surviving relatives or their successors in title.
4. The financial consequences of acts of an administrative authority fall on the juristic person of which the administrative authority is part.

#### Article 1:2

1. 'Interested party' means a person whose interests are directly affected by a decision.
2. Interests entrusted to administrative authorities are deemed to be their interests.
3. The interests of juristic persons are deemed to include the general and collective interests which they particularly represent pursuant to their objects and as evidenced by their actual activities.

**Article 1:3**

1. 'Decision' means a written decision of an administrative authority constituting a public-law juridical act.
2. 'Individual decision' means a decision which does not have general application, and includes a refusal to grant an application for such a decision.
3. 'Application' means a request from an interested party to take a decision.
4. 'Policy rule' means a general rule, not being a generally binding regulation, established by decision, concerning the balancing of interests, establishment of facts or interpretation of legislation in the exercise of a power of an administrative authority.

**Article 1:4**

1. 'Administrative court' means an independent body established by statute which is charged with the administration of justice in administrative matters.
2. Where Title 8 of this Act or the Administrative Enforcement of Traffic Regulations Act – with the exception of Title VIII of that Act – applies, a court forming part of the judiciary is deemed to be an administrative court.

**Article 1:5**

1. 'Lodging an objection' means exercising the right conferred by law to request the administrative authority that took a decision to reconsider it.
2. 'Lodging an administrative appeal' means exercising the right conferred by law to ask an administrative authority other than the one that took a decision to review it.
3. 'Lodging an appeal' means lodging an administrative appeal or lodging an appeal with an administrative court.

**Article 1:6**

Titles 2 to 8 and Title 10 of this Act do not apply to:

- a. the investigation and prosecution of criminal offences or the enforcement of criminal law decisions;
- b. the enforcement of measures depriving persons of their liberty under the Aliens Act 2000;
- c. the enforcement of other measures depriving persons of their liberty in an institution primarily dedicated to the enforcement of criminal law decisions;
- d. decisions and acts implementing the Military Disciplinary Law Act.
- e. decisions and acts implementing the Termination of Life on Request and Assisted Suicide (Review Procedures) Act.

**Chapter 1.2 Implementation of binding acts of organs of the European Communities****Article 1:7**

1. A provision of law requiring an administrative authority to obtain advice or consult an outside body before taking a decision does not apply if the sole purpose of the proposed decision is to implement a binding act of the Council of the European Union, of the European Parliament and the Council jointly, or of the Commission of the European Communities.
2. Paragraph 1 does not apply to the requirement that the Council of State be consulted.

**Article 1:8**

1. A provision of law requiring an administrative authority to give notice of a draft decision before taking the decision does not apply if the sole purpose of the proposed decision is to implement a binding act of the Council of the European Union, of the European Parliament and the Council jointly, or of the Commission of the European Communities.
2. Paragraph 1 does not apply to the presentation of a draft general administrative measure or draft ministerial regulation to the States General, if:
  - a. it is enacted that one of the Chambers of the States General or a number of its members are entitled to express the wish that the subject matter or the entry into force of that general administrative measure or ministerial regulation be regulated by statute, or

- b. Article 21.6.6 of the Environmental Management Act or article 33 of the Pollution of Surface Waters Act applies.

#### **Article 1:9**

This chapter applies *mutatis mutandis* to legislative proposals.

## **TITLE 2 DEALINGS BETWEEN INDIVIDUALS AND ADMINISTRATIVE AUTHORITIES**

### *Division 2.1 General provisions*

#### **Article 2:1**

1. To protect his interests any person is entitled in his dealings with administrative authorities to assistance or to representation by an authorised representative.
2. An administrative authority may require written authorization of a representative.

#### **Article 2:2**

1. If there are serious objections against a person, an administrative authority may refuse to allow him to provide assistance or to act as representative.
2. Written notice of refusal shall be sent to the interested party and the person referred to in paragraph 1 without delay.
3. Paragraph 1 does not apply to members of the Dutch Bar.

#### **Article 2:3**

1. An administrative authority shall forward documents which manifestly come within the competence of another administrative authority to the latter authority without delay, while at the same time informing the sender.
2. An administrative authority shall as soon as possible return to the sender any documents which are not intended for it and which are not passed on to another administrative authority.

#### **Article 2:4**

1. An administrative authority shall perform its duties impartially.
2. An administrative authority shall ensure that persons associated with or working for it who have a personal interest in a decision have no influence on decision-making in the matter.

#### **Article 2:5**

1. Any person who, while performing the duties of an administrative authority, gains access to information which he knows or should reasonably assume to be of a confidential nature, and who is not already bound to secrecy by virtue of his office, profession or any provision of law, is obliged to keep secret such information unless he is required by law or by the nature of his duties to disclose it.
2. Paragraph 1 also applies to institutions and to persons associated with or working for them who are involved by an administrative authority in the performance of its duties, and to institutions and to persons associated with or working for them who perform a duty assigned to them by or pursuant to statute.

### *Division 2.2 Languages used in administrative matters*

#### **Article 2:6**

1. Administrative authorities and persons working under their responsibility shall use the Dutch language, unless otherwise provided by law.
2. Notwithstanding paragraph 1, another language may be used if its use is more effective and does not disproportionately harm the interests of third parties.

#### **Article 2:7**

1. Any person may use the Frisian language in their communications with administrative authorities established in the Province of Fryslân.
2. Paragraph 1 does not apply if the administrative authority has requested the use of the Dutch language on the grounds that using the Frisian language would lead to a disproportionate burden on the administration.

#### **Article 2:8**

1. Administrative authorities may use the Frisian language in oral communications within the Province of Fryslân.
2. Paragraph 1 does not apply if the other party has requested that the Dutch language be used on the grounds that using the Frisian language would lead to unsatisfactory oral communication.

#### **Article 2:9**

1. Administrative authorities established in the Province of Fryslân which do not form part of the central government may lay down rules on the use of the Frisian language in documents.
2. The Minister concerned may lay down rules on the use of the Frisian language in documents by central government departments whose field of activity extends to the whole or part of the Province of Fryslân.

#### **Article 2:10**

1. A document in the Frisian language shall also be drawn up in the Dutch language if:
  - a. its addressees are or include administrative authorities established outside the Province of Fryslân or forming part of the central government;
  - b. it contains generally binding regulations or policy rules; or
  - c. it was drawn up in direct preparation of regulations or rules such as those referred to under b.
2. Unless it may reasonably be assumed that there is no need to do so, documents such as those referred to in paragraph 1 shall in any event be notified, communicated and deposited for inspection in Dutch as well as Frisian.

#### **Article 2:11**

1. If a document is drawn up in the Frisian language, the administrative authority shall provide a Dutch translation on request.
2. The administrative authority may charge a fee for the translation not exceeding the cost price.
3. No fee may be charged if the document:
  - a. contains the minutes of a meeting of a representative body and the subject matter of the minutes directly concerns the interest of the person requesting the translation, or contains the minutes of a meeting of a representative body and concerns the adoption of generally binding regulations or policy rules, or
  - b. contains a decision or other act in respect of which the petitioner is an interested party.

#### **Article 2:12**

1. Any person may use the Frisian language at meetings of representative bodies established in the Province of Fryslân.
2. Minutes of what is said in Frisian shall be taken in Frisian.

#### *Division 2.3 Electronic communication*

#### **Article 2:13**

1. Communications between citizens and administrative authorities may be transmitted electronically, provided that the provisions of this division are duly observed.
2. Paragraph 1 does not apply if:
  - a. declared non-applicable by or pursuant to law, or
  - b. a procedural rule precludes electronic transmission.

**Article 2:14**

1. An administrative authority may send a communication addressed to one or more persons by electronic means to those addressees who have indicated that they can be adequately reached by this means.
2. Unless otherwise provided by law, communications not addressed to one or more persons shall not be sent exclusively by electronic means.
3. An administrative authority sending a communication by electronic means shall use a procedure which is sufficiently reliable and confidential, having regard to the nature and content of the communication and the purpose for which it is used.

**Article 2:15**

1. A communication may be sent to an administrative authority by electronic means provided that the administrative authority has stated that this means is available. The administrative authority may impose further conditions on the use of electronic communication.
2. An administrative authority may refuse to accept data and documents sent electronically if acceptance would result in a disproportionate burden on the administrative authority.
3. An administrative authority may refuse to accept a communication sent electronically if the reliability or confidentiality of the communication is not sufficiently safeguarded, having regard to the nature and content of the communication and the purpose for which it is used.
4. The administrative authority shall communicate a refusal pursuant to this article to the sender as soon as possible.

**Article 2:16**

An electronic signature satisfies the requirement of signature if a sufficiently reliable authentication method is used, having regard to the nature and content of the electronic communication and the purpose for which it is used. Paragraphs 2 to 6 of article 15a and article 15b of Book 3 of the Civil Code apply *mutatis mutandis* where this is not incompatible with the nature of the communication. Further requirements may be imposed by law.

**Article 2:17**

1. A communication sent electronically by an administrative authority is deemed to have been sent at the time and date the communication reaches a data processing system not within the control of the administrative authority or, if the administrative authority and the addressee use the same data processing system, the time and date when the communication becomes accessible to the addressee.
2. A communication is deemed to have been received by an administrative authority at the time and date the communication reaches the authority's data processing system.

**TITLE 3 GENERAL PROVISIONS ON DECISIONS***Division 3.1 Introductory provisions***Article 3:1**

1. If a decision contains generally binding rules:
  - a. the provisions of division 3.2 apply only to the extent the nature of the decision permits;
  - b. the provisions of divisions 3.6 and 3.7 do not apply.
2. The provisions of divisions 3.2 to 3.4 apply *mutatis mutandis* to acts of administrative authorities other than decisions to the extent the nature of the act permits.

*Division 3.2 Duty of care and balancing of interests***Article 3:2**

When preparing a decision an administrative authority shall collect the necessary information concerning the relevant facts and the interests to be considered.

**Article 3:3**

An administrative authority shall not use the power to take a decision for a purpose other than that for which it was conferred.

**Article 3:4**

1. An administrative authority shall consider the interests directly affected by a decision, subject to any limitations following from a provision of law or the nature of the power to be exercised.
2. The adverse consequences of a decision for one or more interested parties may not be disproportionate to the objects to be served by the decision.

*Division 3.3 Advisers***Article 3:5**

1. For the purposes of this division 'adviser' means a person or body charged by or pursuant to law with advising an administrative authority on decisions to be taken by it and not working under the responsibility of this administrative authority.
2. This division does not apply to consultation of the Council of State.

**Article 3:6**

1. Unless a time limit has been set for the adviser by law, the administrative authority may state the time limit within which the adviser is expected to produce his report. The time limit may not be so short as to prevent the adviser from properly discharging his task.
2. If the report is not produced in time, the mere fact that it is not available shall not prevent the administrative authority from taking the decision.

**Article 3:7**

1. The administrative authority to which a report is to be presented shall provide the adviser with the information required for the proper discharge of his task whether or not at his request.
2. Article 10 of the Government Information (Public Access) Act applies *mutatis mutandis*.

**Article 3:8**

The name of the adviser who has produced a report shall be stated in or at the same time as the decision.

**Article 3:9**

An administrative authority taking a decision based on an investigation by an adviser into facts and conduct, shall satisfy itself that the investigation was carried out with due care.

**Article 3:9a**

This division applies *mutatis mutandis* to bills.

*Division 3.4 Uniform public preparatory procedure***Article 3:10**

1. This division applies to the preparation of decisions if it is so provided by law or by decision of the administrative authority.
2. Unless otherwise provided by law or by decision of the administrative authority, this division does not apply to the preparation of decisions refusing an application to revoke or amend a decision.
3. Division 4.1.1 also applies to decisions other than individual decisions if they are taken on application and prepared in accordance with this division.

### **Article 3:11**

1. The administrative authority shall deposit for inspection the draft decision, together with the relevant documents which are reasonably necessary to be able to assess the draft.
2. Article 10 of the Government Information (Public Access) Act applies *mutatis mutandis*. If certain documents are not deposited for inspection under these provisions, this shall be stated.
3. The administrative authority shall provide a copy of the documents deposited for inspection at no more than cost price.
4. The documents shall be available for inspection during the period referred to in article 3:16.1.

### **Article 3:12**

1. Before the documents are deposited for inspection, the administrative authority shall publish a notice of the draft decision in one or more daily or weekly newspapers or free local papers or in another suitable manner. Only the substance of the draft decision need be stated.
2. If the decision is by an authority forming part of the central government, the notice shall in any case be published in the Government Gazette, unless otherwise provided by law.
3. The notice shall contain the following information:
  - a. where and when the documents will be available for inspection;
  - b. who will be given an opportunity to express a view;
  - c. how they can do so;
  - d. if article 3:18.2 applies, the time limit within which the decision will be taken.

### **Article 3:13**

1. If a decision will be addressing one or more interested parties, the administrative authority shall send them – including the applicant – the draft decision before depositing it for inspection.
2. Article 3:12.3 applies *mutatis mutandis*.

### **Article 3:14**

1. The administrative authority shall add any new relevant documents and information to the documents deposited for inspection.
2. Paragraphs 2 to 4 of article 3:11 apply *mutatis mutandis*.

### **Article 3:15**

1. Interested parties may express their views on a draft decision to the administrative authority either in writing or orally, at their option.
2. It may be provided by law or by the administrative authority that other parties must also be given the opportunity to express their views.
3. In the case of a decision to be taken on application, the administrative authority shall, if necessary, give the applicant the opportunity to comment on the views that have been expressed.
4. In the case of a decision to amend or revoke a decision, the administrative authority shall, if necessary, give the person addressed by the decision to be amended or revoked the opportunity to comment on the views that have been expressed.

### **Article 3:16**

1. The time limit for expressing views and producing a report as referred to in division 3.3 is six weeks, unless a longer period is provided by law.
2. The time limit commences on the day on which the draft decision is deposited for inspection.
3. Articles 6:9 and 6:10 apply *mutatis mutandis* to views expressed in writing.

### **Article 3:17**

The administrative authority shall keep a record of views expressed orally pursuant to article 3:15.

**Article 3:18**

1. In the case of a decision on application, the administrative authority shall take the decision as soon as possible, but no later than six months after receiving the application.
2. If an application concerns a highly complicated or controversial matter, the administrative authority may, within eight weeks of receiving the application, extend the time limit referred to in paragraph 1 by a reasonable period before depositing a draft decision for inspection. Before deciding to extend the time limit the administrative authority shall give the applicant the opportunity to express his views on such extension.
3. Notwithstanding paragraph 1, the administrative authority shall take the decision within twelve weeks of depositing the draft for inspection, if it is a decision:
  - a. concerning the revocation of a decision;
  - b. concerning the amendment of a decision and the application was made by a person other than the person addressed by the decision to be amended.
4. If no views have been expressed, the administrative authority shall publish notice of this fact in the manner referred to in paragraphs 1 and 2 of article 3:12 as soon as possible after the time limit set for expressing views has expired. Notwithstanding the provisions of paragraph 1 or paragraph 3, the administrative authority shall in this case take the decision within four weeks after the expiry of the time limit set for expressing views.

*Division 3.5 Interrelated decisions*Section 3.5.1 General**Article 3:19**

This division applies to decisions which are necessary to allow a party to carry out a specific activity and to decisions determining a financial entitlement with a view to that activity.

Section 3.5.2 Information**Article 3:20**

1. An administrative authority shall ensure that an applicant is given notice of any other decisions to be taken on application which the administrative authority can reasonably assume are required for the activity to be carried out by the applicant.
2. For each decision the notice shall in any event state the following:
  - a. the name and address of the administrative authority that is competent to take the decision;
  - b. the provision of law pursuant to which the decision will be taken.

Section 3.5.3 Coordination of decision-making and legal protection**Article 3:21**

1. This section applies to decisions to which it is declared applicable:
  - a. by law, or
  - b. by decision of the administrative authorities having competence to take those decisions.
2. This section does not apply to the decisions referred to in article 4:21.2 or to decisions in respect of which a period has been determined by or pursuant to law, at the end of which the administrative authority will decide on the applications filed in this period.

**Article 3:22**

One of the administrative authorities involved shall be designated as the coordinating administrative authority by or pursuant to the provision of law referred to in article 3:21.1.a, or by the decision referred to in article 3:21.1.b.

**Article 3:23**

1. The coordinating administrative authority shall ensure efficient and coordinated decision-making, with the individual administrative authorities in any event giving consideration to the

interrelationship between applications when assessing them and also having regard to the interrelationship between the decisions to be taken by them.

2. The other administrative authorities shall give the cooperation required to achieve efficient and coordinated decision-making.

#### **Article 3:24**

1. As far as possible, the applications shall be filed at the same time, subject to the proviso that the last application shall be filed within six weeks of receipt of the first.
2. The applications shall be filed with the coordinating administrative authority. This authority shall send copies of the applications to the competent administrative authorities immediately upon receiving them.
3. If an application for one of the decisions is missing, the coordinating administrative authority shall give the applicant the opportunity to file the missing application within a time limit to be determined by the authority. If the missing application is not timely filed, the coordinating administrative authority may decide not to apply this section in respect of certain decisions. In that case the time and date at which the decision not to apply this section is taken shall, for the purposes of the time limits prescribed by law, be equated with the time and date the application is received.
4. The provision of law referred to in article 3:21.1.a may provide that an application for a decision will not be considered if the applicant has not filed an application for another decision at the same time.

#### **Article 3:25**

Without prejudice to article 3:24.3 and 3:24.4, the time limit for taking the decisions commences on the day on which the last application is received.

#### **Article 3:26**

1. If division 3.4 applies to the preparation of one of the decisions, it applies to the preparation of all decisions, subject to the following:
  - a. the documents which must be deposited for inspection pursuant to article 3:11 and article 3:44.1.a shall in any case be deposited for inspection at the office of the coordinating administrative authority;
  - b. the coordinating administrative authority shall ensure that an opportunity is given for expressing views orally on the drafts of all decisions jointly.
  - c. views may in any event be put to the coordinating administrative authority;
  - d. if anyone is entitled to express views on the draft of one of the decisions, the same applies in regard to the drafts of the other decisions;
  - e. the coordinating administrative authority shall effect the communications, notifications and sending of documents required pursuant to division 3:4 and division 3.6;
  - f. all decisions shall be taken within the time limit of the decision to which the longest time limit applies;
  - g. the day on which the documents are deposited for inspection at the office of the coordinating administrative authority is the reference date for the commencement of the appeal period as provided in article 6:8.4.
2. If division 3:4 does not apply, the decisions shall be prepared in accordance with the provisions of division 4.1.2 and of subparagraphs 1.b to 1.f of this article.

#### **Article 3:27**

1. The competent administrative authorities shall send the decisions they have taken to the coordinating administrative authority.
2. The coordinating administrative authority shall notify the decisions at the same time and shall also deposit them for inspection at the same time.

#### **Article 3:28**

1. If one of the decisions is open to objection or administrative appeal, the objection or administrative appeal shall be lodged by filing a notice of objection or appeal with the coordinating administrative authority. Immediately after receiving the notice of objection or appeal the coordinating administrative authority shall forward a copy to the competent administrative authority.
2. The competent administrative authorities shall send their decisions on any objections or appeals to the coordinating administrative authority. The coordinating administrative authority shall notify all the decisions at the same time and communicate them as required by article 7:12.3 or article 7:26.4.
3. A decision on a request as referred to in article 7:1a.4 for leave to appeal directly to an administrative court shall be taken by the coordinating administrative authority. Without prejudice to article 7:1a.2, the coordinating administrative authority shall in any case refuse the request if a notice of objection has been filed against any of the other decisions and this objection does not include a similar request.

#### **Article 3:29**

1. If one or more of the decisions are open to appeal to a district court, all the decisions are open to appeal to the district court within whose jurisdiction the coordinating administrative authority has its seat.
2. If all the decisions are open to appeal to an administrative court other than a district court, appeals against all the decisions may be lodged with:
  - a. the Administrative Jurisdiction Division of the Council of State, if an appeal lies to this Division against one or more of the decisions;
  - b. the Trade and Industry Appeals Tribunal, if an appeal lies to this Tribunal against one or more of the decisions and subparagraph 2.a does not apply;
  - c. the Central Appeals Tribunal, if an appeal lies to this tribunal against one or more of the decisions and subparagraphs a and b do not apply.
3. If the district court judgment on one or more of the decisions is open to appeal to:
  - a. the Administrative Jurisdiction Division of the Council of State, the judgments on all the decisions are open to appeal to this Division;
  - b. the Trade and Industry Appeals Tribunal and subparagraph a does not apply, the judgments on all the decisions are open to appeal to this Tribunal;
  - c. the Central Appeals Tribunal and subparagraph b and c do not apply, the judgments on all the decisions are open appeal to the Central Appeals Tribunal.
4. The district court having jurisdiction pursuant to paragraph 1 or the administrative court having jurisdiction pursuant to paragraph 2 or 3 may refer the appeals lodged with the district court or with the administrative court, as the case may be, to another district court or another administrative court considered a more convenient court to hear the appeals. Article 8:13.2 and 8:13.3 apply *mutatis mutandis*.

#### *Division 3.6 Notification and communication*

#### **Article 3:40**

A decision does not take effect until it has been notified.

#### **Article 3:41**

1. Decisions addressed to one or more interested parties are notified by sending or issuing them to the interested parties, including the applicant.
2. A decision which cannot be notified as provided in paragraph 1 shall be notified in another suitable manner.

**Article 3:42**

1. Unless otherwise provided by law, decisions of an administrative authority forming part of the central government which are not addressed to one or more interested parties are notified by publication of the decision or its substance in the Government Gazette.
2. Decisions of an administrative authority not forming part of the central government which are not addressed to one or more interested parties are notified by publication of the decision or its substance in a journal published by a public authority or in a daily or weekly newspaper or free local paper, or in another suitable manner.
3. If only the substance is published, the decision shall at the same time be deposited for inspection. The publication shall state where and when the decision is available for inspection.

**Article 3:43**

1. At the same time as the decision is notified or as soon as possible thereafter, it shall be communicated to the persons who expressed their views in the preparatory phase. The decision shall in any case be communicated to an adviser as referred to in article 3:5 if it differs from the opinion given in his report.
2. When a decision is communicated, it shall also be stated when and how the decision was notified.

**Article 3:44**

1. If a decision has been prepared in accordance with the provisions of division 3.4, the communication referred to in article 3:43.1 shall be effected:
  - a. with the *mutatis mutandis* application of article 3:11, article 3:12.1 or 3:12.2 and article 3:12.3.a on the understanding that the documents shall be available for inspection until the appeal period has expired, and
  - b. by sending a copy of the decision to those persons who have expressed views on the draft decision.
2. Notwithstanding subparagraph 1.b:
  - a. if the size of the decision so warrants, the administrative authority may confine itself to communicating only the purport of the decision to each of the persons referred to in that paragraph;
  - b. if more than five persons have expressed a view in one single document, the administrative authority may confine itself to sending copies to the five persons whose names and addresses are listed first in that document;
  - c. if more than five persons have expressed a view in one single document and the size of the decision so warrants, the administrative authority may confine itself to communicating only the purport of the decision to the five persons whose names and addresses are listed first in that document;
  - d. if the decision would have to be sent to more than 250 people, the administrative authority need not send it.

**Article 3:45**

1. If a decision is open to objection or appeal, this shall be mentioned when the decision is notified and communicated.
2. It shall at the same time be stated by whom, within what time limit and with which authority or body the objection or appeal may be lodged.

*Division 3.7 Stating reasons***Article 3:46**

A decision must be based on sound reasons.

**Article 3:47**

1. The reasons must be stated when the decision is notified.
2. Where possible, the provision of law on which the decision is based shall also be stated.

3. If it is impossible, due to the urgency of the matter, to state the reasons for a decision when it is notified, the administrative authority shall supply them within one week of notification.
4. In that case articles 3:41 to 3:43 apply *mutatis mutandis*.

#### **Article 3:48**

1. There is no need to state reasons if it is reasonable to assume that this is unnecessary.
2. If an interested party asks within a reasonable time to be informed of the reasons, the administrative authority shall provide them as soon as possible.

#### **Article 3:49**

If an advisory report produced with a view to a decision contains the reasons for the decision and if it is or has been published, a reference to the report will suffice as statement of the reasons for the decision or part of the decision.

#### **Article 3:50**

If an administrative authority takes a decision that departs from an advisory report issued on the matter pursuant to a provision of law, this shall be noted in the statement of reasons, giving the reasons for the departure.

### **TITLE 4 SPECIAL PROVISIONS ON DECISIONS**

#### **Chapter 4.1 Individual decisions**

##### *Division 4.1.1 Applications*

#### **Article 4:1**

Unless otherwise provided by law, an application for an individual decision shall be filed with the administrative authority having competence to decide on it.

#### **Article 4:2**

1. Applications shall be signed and shall in any event contain:
  - a. the name and the address of the applicant;
  - b. the date;
  - c. a description of the individual decision requested.
2. The applicant shall furthermore provide such information and documents as are necessary for deciding on the application and as he can reasonably be expected to obtain.

#### **Article 4:3**

1. An applicant may refuse to provide information and documents if their importance for the administrative authority's decision does not outweigh the importance of respecting the applicant's privacy, including confidentiality of the results of medical and psychological examinations, or the importance of protecting business and manufacturing data.
2. Paragraph 1 does not apply to information and documents designated by law as required to be submitted.

#### **Article 4:3a**

The administrative authority shall confirm receipt of an application filed electronically.

#### **Article 4:4**

The administrative authority which is competent to decide on an application may prescribe a form to be used for filing applications and supplying information, if this is not provided for by law.

**Article 4:5**

1. An administrative authority may decide not to consider an application if:
  - a. the applicant has failed to comply with any requirement laid down by law for an application to be taken up, or
  - b. the application has been refused in whole or in part pursuant to article 2:15, or
  - c. the information and documents supplied provide insufficient basis for assessing the application or preparing the decision, provided the applicant has been given the opportunity to supplement the application within a period set by the administrative authority.
2. If an application or any of the accompanying information or documents is in a foreign language and the assessment of the application or the preparation of the decision requires a translation, the administrative authority may decide not to consider the application, provided the applicant has been given the opportunity to add a translation to the application file within a period set by the administrative authority.
3. If an application or any of the accompanying information or documents is voluminous or complicated and the administrative authority requires a summary in order to be able to assess the application or prepare the decision, it may decide not to consider the application, provided that the applicant has been given the opportunity to add a summary to the application file within a period set by the administrative authority.
4. A decision not to consider an application shall be notified to the applicant within four weeks after the application is supplemented or the period set for doing so expires unused.

**Article 4:6**

1. If, after receiving a decision refusing all or part of his first application, an applicant files a new application, he must state newly emerged facts or changed circumstances.
2. If the applicant does not state any newly emerged facts or changed circumstances, the administrative authority may refuse the application without applying article 4:5, referring to its earlier decision refusing the application.

*Division 4.1.2 Preparation***Article 4:7**

1. Before refusing all or part of an application for an individual decision an administrative authority shall give the applicant the opportunity to express his views if:
  - a. the refusal would be based on information about facts and interests concerning the applicant, and
  - b. this information differs from information the applicant has himself supplied on the matter.
2. Paragraph 1 does not apply if the difference from the application can only have minor significance for the applicant.

**Article 4:8**

1. Before an administrative authority takes a decision about which an interested party other than the applicant can be expected to have reservations, it must give this interested party the opportunity to express his views if:
  - a. the decision would be based on information on facts and interests concerning the interested party, and
  - b. this information was not supplied for the purposes of the decision by the interested party himself.
2. Paragraph 1 does not apply if the interested party has failed to comply with a statutory obligation to supply information.

**Article 4:9**

For the purposes of articles 4:7 and 4:8 an interested party may, at his option, express his views either in writing or orally.

**Article 4:11**

An administrative authority may decide not to apply articles 4:7 and 4:8 if:

- a. their application is precluded by the urgency of the matter;
- b. the interested party has already been given the opportunity to express his views and no new facts or circumstances have emerged since then, or
- c. the intended purpose of the individual decision can be achieved only if the interested party is not informed of it in advance.

**Article 4:12**

1. An administrative authority may furthermore decide not to apply articles 4:7 and 4:8 with respect to an individual decision determining a financial obligation or entitlement if:
  - a. the decision is open to objection or administrative appeal, and
  - b. it is possible to fully remedy any adverse consequences after the objection or administrative appeal procedure.
2. Paragraph 1 does not apply to individual decisions:
  - a. refusing a subsidy pursuant to article 4:35 or in accordance with article 4:51;
  - b. determining a subsidy at a lower amount pursuant to article 4:46.2, or
  - c. revoking or amending, to the detriment of the recipient, a decision granting a subsidy or determining a subsidy amount.

*Division 4.1.3 Time limit for decisions and penalty for failure to give a timely decision*Section 4.1.3.1 Time limit for individual decisions**Article 4:13**

1. An individual decision must be given within the time limit prescribed by law or, in the absence of such time limit, within a reasonable period after an application is received.
2. The reasonable period referred to in paragraph 1 shall in any event be deemed to have expired if the administrative authority has not given a decision or sent a communication as referred to in article 4:14.3 within eight weeks of receiving the application.

**Article 4:14**

1. If an administrative authority is unable to give an individual decision within the time limit prescribed by law, it shall inform the applicant of this and state a period, which shall be as short as possible, within which the applicant can expect the decision to be given.
2. Paragraph 1 does not apply if the administrative authority will no longer be competent to take the decision after the expiry of the time limit laid down by law.
3. If in the absence of a statutory time limit the administrative authority is unable to give an individual decision within eight weeks, it shall inform the applicant of this and state a reasonable period within which the applicant can expect a decision to be taken.

**Article 4:15**

1. The time limit for giving an individual decision shall be suspended as of the day following the day on which an administrative authority:
  - a. invites the applicant to supplement the application pursuant to article 4:5 until the day on which the application is supplemented or the time limit allowed for this purpose expires without having been used.
  - b. informs the applicant that it has requested a foreign authority to provide information which is reasonably needed for the decision on the application, until the day on which this information is received or further delay is no longer reasonable.
2. The time limit for giving an individual decision shall furthermore be suspended:
  - a. during a period of postponement to which the applicant has agreed in writing,
  - b. as long as the delay is attributable to the applicant,
  - c. as long as the administrative authority is prevented from giving an individual decision due to force majeure.

3. In the event of force majeure the administrative authority shall inform the applicant as soon as possible of the fact that the time limit has been suspended, and also within which period the applicant can expect the decision to be given.
4. If the suspension ends, then in the cases referred to in subparagraph 1.b, or subparagraphs 2.b and 2.c, the administrative authority shall communicate this to the applicant as soon as possible, stating the time limit within which the decision must be given.

#### Section 4.1.3.2 Penalty in case of failure to give a timely decision

##### **Article 4:17**

1. If an administrative authority fails to give a timely individual decision on application, it shall forfeit a penalty payable to the applicant for each day it continues in default, up to a maximum of 42 days. The General Extension of Time-limits Act does not apply to this time limit.
2. The penalty is €20 per day for the first fourteen days, €30 per day for the next fourteen days and €40 per day for all subsequent days.
3. The first day in respect of which the penalty is payable is the day two weeks after the day on which the time limit for giving the individual decision expires and the administrative authority receives written notice of default from the applicant.
4. If the application could be filed electronically, article 4:3a applies *mutatis mutandis* to the notice of default.
5. An appeal against the failure to give a timely individual decision does not suspend the penalty.
6. No penalty is payable if:
  - a. notice of default was given to the administrative authority at an unreasonably late date,
  - b. the applicant is not an interested party, or
  - c. the application is manifestly inadmissible or manifestly unfounded.
7. If there is more than one applicant, the penalty is payable to each of the applicants in equal shares.
8. The amounts mentioned in paragraph 2 may be adjusted by general administrative measure in response to the consumer price index movements.

##### **Article 4:18**

1. The administrative authority shall, by an individual decision, establish the fact that a penalty is payable and determine its amount within two weeks after the last day in respect of which the penalty is payable.
2. The penalty shall be paid within six weeks after due notification of the individual decision.

##### **Article 4:19**

1. If the interested party disputes the amount of the penalty, an objection or appeal filed against the individual decision given on the application shall also be directed against the decision determining this amount.
2. The administrative courts may, however, refer an appeal against the decision determining the penalty amount to another body, if it is desirable that it be heard by this other body.
3. In appeal proceedings the interested party shall, where possible, submit a copy of the individual decision he is disputing.
4. Paragraphs 1 to 3 apply *mutatis mutandis* to requests for provisional relief.

##### **Article 4:20**

An administrative authority may claim back penalty payments made unduly provided less than five years have passed since the day on which the individual decision referred to in article 4:18.1 was given.

## **Chapter 4.2 Subsidies**

#### *Division 4.2.1 Introductory provisions*

##### **Article 4:21**

1. 'Subsidy' means an entitlement to financial resources provided by an administrative authority for the purposes of specifically named activities of the applicant, other than by way of payment for goods or services supplied to the administrative authority.
2. This chapter does not apply to entitlements or obligations arising from a provision of law pertaining to:
  - a. taxes,
  - b. the levy of contributions or of taxes in lieu of contributions under the Social Insurance (Funding) Act, or
  - c. the levy of income-related contributions or of taxes in lieu of contributions under the Care Insurance Act.
3. This chapter does not apply to entitlements to financial resources provided under a provision of law dealing exclusively with the provision of resources to juristic persons governed by public law.
4. This chapter applies *mutatis mutandis* to the funding of education and research.

##### **Article 4:22**

'Subsidy ceiling' means the maximum amount available in any given period for providing subsidies pursuant to a given provision of law.

##### **Article 4:23**

1. An administrative authority may only provide a subsidy pursuant to a provision of law that specifies the activities for which subsidies may be provided.
2. If such a provision of law is part of a general administrative measure not based on a statute, the provision shall cease to have effect four years after it enters into force, unless a bill regulating the subsidy has been presented to the States General before this date.
3. Paragraph 1 does not apply:
  - a. for a period of one year at most pending the adoption of a provision of law or until a bill presented to the States General within that year has been defeated or has been passed and entered into force;
  - b. if the subsidy grant is based directly on a programme adopted by the Council of the European Union, or the European Parliament and the Council jointly, or the Commission of the European Communities;
  - c. if the budget specifies the subsidy recipient and the maximum amount at which the subsidy may be determined, or
  - d. in isolated cases, provided the subsidy is given for a maximum of four years.
4. Each year the administrative authority shall publish a report of the subsidies provided in accordance with subparagraphs 3.a and 3.d.

##### **Article 4:24**

If a subsidy is based on a provision of law, a report on the effectiveness and the effects of the subsidy in actual practice shall be published at least once every five years, unless otherwise provided by law.

#### *Division 4.2.2 Subsidy ceiling*

##### **Article 4:25**

1. A subsidy ceiling may only be fixed by or pursuant to law.
2. A subsidy shall be refused if providing the subsidy would cause the subsidy ceiling to be exceeded.
3. If a decision on a subsidy is not given within the applicable time limit or is given in an objection or appeal procedure or by way of executing a judicial decision, the requirement of

paragraph 2 applies only if it also applied at the time the decision was or should have been given initially.

**Article 4:26**

1. It shall be laid down by or pursuant to law how the available amount will be allocated.
2. The manner of allocation shall be stated when the subsidy ceiling is notified.

**Article 4:27**

1. The subsidy ceiling shall be notified before the start of the period for which it has been determined.
2. If the subsidy ceiling or any reduction thereof is notified at a later date, the notification shall not affect applications filed previously.

**Article 4:28**

Article 4:27.2 does not apply:

- a. if it is provided by law that applications for the period for which the subsidy ceiling has been determined must be filed at a time when the budget has not yet been adopted or approved;
- b. if the reduction results from the adoption or approval of the budget; and
- c. if the possibility of a reduction and its consequences for applications already filed was pointed out when the subsidy ceiling was notified.

*Division 4.2.3 The subsidy grant*

**Article 4:29**

Unless otherwise provided by law, an administrative authority may give an individual decision granting a subsidy before giving an individual decision determining the amount, if the application for the subsidy was filed before the end of the activity or the period for which the subsidy is requested.

**Article 4:30**

1. An individual decision granting a subsidy shall include a description of the activities for which the subsidy is granted.
2. The description may be worked out in detail later if the decision so states.

**Article 4:31**

1. An individual decision granting a subsidy shall state the amount of the subsidy, or the manner in which it will be determined.
2. If the decision does not state the amount of the subsidy, it shall state the maximum amount at which the subsidy may be determined, unless otherwise provided by law.

**Article 4:32**

Subsidies in the form of a periodic entitlement to financial resources are granted for a specific period which shall be stated in the individual decision granting the subsidy.

**Article 4:33**

A subsidy may not be granted subject to the condition that the administrative authority or the subsidy recipient, and they alone, perform a certain act, unless the condition is that:

- a. the subsidy recipient cooperates in making an agreement to implement the decision granting the subsidy, or
- b. the subsidy recipient shows that an event – not being an action of the administrative authority or of the subsidy recipient – has taken place.

**Article 4:34**

1. If a subsidy is granted out of a budget which has not yet been adopted or approved, it may be granted subject to the condition that sufficient funds are allocated.

2. No such condition may be imposed if this follows from the provision of law on which the subsidy is based.
3. The condition shall cease to be effective if the administrative authority has not invoked it within four weeks of the adoption or approval of the budget.
4. If a subsidy concerns an activity which was also subsidized by the administrative authority in the preceding budget year, the condition is invoked in the form of a withdrawal on account of changed circumstances pursuant to article 4:50.
5. In other cases, the condition is invoked by a withdrawal pursuant to article 4:48.1.

#### **Article 4:35**

1. A subsidy may in any event be refused if there is good reason to assume that:
  - a. the activities will not take place or will not take place in full;
  - b. the applicant will not comply with the obligations attached to the subsidy;
  - c. the applicant will not render proper account of the activities performed and of the income and expenditure connected with them, insofar as relevant to the determination of the subsidy amount.
2. A subsidy may in any event also be refused if the applicant:
  - a. has provided incorrect or incomplete information in connection with the application and the provision of this information would have resulted in an incorrect individual decision on the application, or
  - b. has been declared bankrupt or granted a suspension of payment of debts, or if the statutory debt restructuring scheme for natural persons has been declared applicable to him, or a petition for any of the above measures has been filed with the district court.

#### **Article 4:36**

1. An individual decision to grant a subsidy may be implemented by way of an agreement.
2. Unless otherwise provided by law or precluded by the nature of the subsidy, the agreement may provide that the subsidy recipient is required to perform the activities for which the subsidy has been granted.

#### *Division 4.2.4 Obligations of the subsidy recipient*

#### **Article 4:37**

1. An administrative authority may impose requirements on the subsidy recipient relating to:
  - a. the nature and scope of the activities for which subsidy is granted;
  - b. the accounts to be kept of the income and expenditure connected with the activities;
  - c. the submission, prior to a decision on the subsidy amount, of information and documents required for the decision on the subsidy amount;
  - d. the risks to be insured;
  - e. the provision of security for advance subsidy payments;
  - f. the account to be rendered of the activities performed and the income and expenditure connected with them, insofar as relevant to the determination of the definitive subsidy amount;
  - g. the mitigation or elimination of the adverse consequences of the subsidy for third parties;
  - h. an audit by an accountant as referred to in article 393.1 of Book 2 of the Civil Code of the administrative authority's financial management and financial accounting.
2. If a requirement as referred to in subparagraph 1.c is imposed, articles 4:3 and 4:4 apply *mutatis mutandis*.

#### **Article 4:38**

1. An administrative authority may also impose on a subsidy recipient other requirements serving to achieve the object of the subsidy.
2. If the subsidy is based on a provision of law, the requirements shall be imposed by or pursuant to law when the subsidy is granted.

3. If the subsidy is not based on a provision of law, the requirements may be imposed by the decision granting the subsidy.

#### **Article 4:39**

1. Requirements which do not serve to achieve the object of the subsidy may only be attached to the subsidy insofar as it is so provided by law.
2. Requirements such as those referred to in paragraph 1 may relate only to the method or the means used to perform the subsidized activity.

#### **Article 4:40**

If the decision granting the subsidy so provides, the requirements may be worked out in detail after the subsidy has been granted.

#### **Article 4:41**

1. In the cases referred to in paragraph 2, if the subsidy grant has resulted in enrichment, the subsidy recipient shall pay the administrative authority a refund, provided that:
  - a. a provision of law or, in the case of a subsidy not based on a provision of law, the decision granting the subsidy so provides, and
  - b. the provision or decision also states the method for determining the amount of the refund.
2. The refund is payable only if:
  - a. the subsidy recipient alienates or encumbers or changes the designated use of goods used or intended for the subsidized activities;
  - b. the subsidy recipient receives compensation for the loss of or damage to goods used or intended for the subsidized activities;
  - c. the subsidized activities are terminated in full or in part;
  - d. the decision granting the subsidy or determining its definitive amount is revoked or the subsidy is terminated, or
  - e. the juristic person receiving the subsidy is dissolved.
3. The refund amount shall be determined within one year after the date on which the administrative authority became aware or could have become aware of the event giving rise to the right to a refund, but in any event within five years after the notification of the last individual decision determining the definitive subsidy amount.

#### *Division 4.2.5 Determination of the definitive subsidy amount*

#### **Article 4:42**

The individual decision determining the definitive subsidy amount determines the amount of the subsidy and confers entitlement to payment of that amount in accordance with division 4.2.7.

#### **Article 4:43**

1. If no decision to grant a subsidy has been given, the individual decision determining the definitive subsidy amount shall describe the activities for which the subsidy is granted.
2. Articles 4:32, 4:35.2., 4:38 and 4:39 apply *mutatis mutandis*.

#### **Article 4:44**

1. If an individual decision granting a subsidy has been given, the subsidy recipient must, after termination of the activities or the period for which the subsidy was granted, apply for a decision determining the definitive subsidy amount, unless:
  - a. the administrative authority determines the subsidy amount on its own motion pursuant to article 4:47.a.;
  - b. it is provided by law or by the decision granting the subsidy that an application shall be filed each time after the expiry of a part of the period for which the subsidy has been granted, or
  - c. the determination of the definitive subsidy amount is provided for in an agreement as referred to in article 4:36.1.

2. If no time limit is provided by law, the application for determination of the definitive subsidy amount shall be filed within a time-limit to be determined by the decision granting the subsidy.
3. If no time-limit is prescribed for filing the application for determination of the definitive subsidy amount or if the application has not been filed on or before the expiry of the prescribed time-limit, the administrative authority may set the subsidy recipient a time-limit for filing the application.
4. If the application has not been filed on or before the latter time-limit expires, the administrative authority may on its own motion determine the definitive subsidy amount.

#### **Article 4:45**

1. Together with the application for determination of the definitive subsidy amount the applicant shall submit proof that the activities have taken place in accordance with the requirements attached to the subsidy, unless the subsidy amount was determined before the activities were started.
2. Together with the application for determination of the definitive subsidy amount the applicant shall render account of the income and expenditure connected with the activities insofar as relevant for determining the subsidy amount.

#### **Article 4:46**

1. If a decision granting a subsidy has been given, the administrative authority shall determine the definitive subsidy amount in accordance with the provisions of this decision.
2. The subsidy may be determined at a lower amount if:
  - a. the activities for which subsidy has been granted have not or only partly taken place;
  - b. the subsidy recipient has not complied with the requirements attached to the subsidy;
  - c. the subsidy recipient has provided incorrect or incomplete information and the provision of correct or complete information would have resulted in a different decision on the application for a subsidy grant, or
  - d. the subsidy was otherwise granted incorrectly and the subsidy recipient knew this or should have known this.
3. Insofar as the subsidy amount depends on the actual costs of the activities for which the subsidy has been granted, costs which cannot reasonably be considered necessary shall not be taken into account when determining the subsidy amount.

#### **Article 4:47**

An administrative authority may wholly or partly determine the subsidy amount on its own motion if:

- a. a provision of law or the decision granting the subsidy sets a time-limit within which the administrative authority must determine the subsidy amount on its own motion;
- b. article 4:44.4 is applied, or
- c. the decision granting the subsidy or determining the definitive subsidy amount is withdrawn or amended to the detriment of the recipient.

#### *Division 4.2.6 Withdrawal and amendment*

#### **Article 4:48**

1. Until the definitive amount of the subsidy has been determined, the administrative authority may withdraw the decision granting the subsidy or amend it to the detriment of the subsidy recipient if:
  - a. the activities or part of the activities for which subsidy has been granted have not taken place or will not take place;
  - b. the subsidy recipient has failed to comply with the requirements attached to the subsidy;
  - c. the subsidy recipient has provided incorrect or incomplete information and the provision of correct or complete information would have resulted in a different decision on the application for a subsidy grant,
  - d. the subsidy grant was otherwise incorrect and the subsidy recipient knew this or should have known this, or

- e. the administrative authority, applying article 4:34.5, invokes the condition that sufficient funds be allocated.
2. Withdrawal or amendment has retroactive effect to the date when the subsidy was granted, unless otherwise provided in the decision to withdraw or amend the subsidy.

#### **Article 4:49**

1. An administrative authority may withdraw a decision determining the definitive subsidy amount or amend it to the detriment of the recipient:
  - a. on the grounds of facts or circumstances of which it could not reasonably have been aware at the time the definitive subsidy amount was determined and based on which the subsidy would have been determined at a lower amount than the amount determined in accordance with the decision granting the subsidy;
  - b. if the definitive subsidy amount was determined incorrectly and the subsidy recipient knew this or should have known this, or
  - c. if the subsidy recipient failed to comply with the requirements attached to the subsidy after the definitive subsidy amount was determined.
2. Withdrawal or amendment has retroactive effect to the date the definitive subsidy amount was determined, unless otherwise provided in the decision to withdraw or amend the subsidy.
3. A decision determining the definitive subsidy amount may no longer be withdrawn or amended to the detriment of the recipient if five years have elapsed since the day on which the decision was notified or, in the case referred to in subparagraph 1c., since the day on which the subsidy recipient acted in violation of the requirement or the day on which the requirement should have been complied with.

#### **Article 4:50**

1. Until the amount of the subsidy has been determined, the administrative authority may withdraw the decision granting the subsidy or amend it to the detriment of the subsidy recipient subject to a reasonable period of notice:
  - a. if the subsidy was granted incorrectly;
  - b. if changed circumstances or changed views form a serious impediment to the continuation or unchanged continuation of the subsidy, or
  - c. in other cases provided for by law.
2. In the event of withdrawal or amendment pursuant to subparagraph 1.a or 1.b, the administrative authority shall compensate the subsidy recipient for the damage he suffered by acting differently in reliance on the subsidy than he would have acted if the subsidy had not been granted.

#### **Article 4:51**

1. If a subsidy recipient has received a subsidy for the same or largely the same continuous activities for three or more successive years, a decision refusing to grant all or part of the subsidy for a subsequent consecutive period on the grounds that changed circumstances or changed views impede the continuation or unchanged continuation of the subsidy, must be notified a reasonable time before the subsidy is terminated.
2. If, at the end of the period for which the subsidy was granted, the time that has elapsed since the notification of the intended refusal of subsidy for the subsequent period is too short to be reasonable, the subsidy shall be granted for the remaining part of what constitutes a reasonable period, if necessary in derogation from article 4:25.2.

#### *Division 4.2.7 Payment and recovery*

#### **Article 4:52**

1. The subsidy amount shall be paid as specified by the decision determining the definitive subsidy amount.
2. If a subsidy is not based on a provision of law, the decision granting the subsidy or, if no such decision was given, the decision determining the definitive subsidy amount may set a time

limit for payment of the subsidy amount which differs from the time limit laid down in article 4:87.1.

**Article 4:53**

1. The subsidy amount may be paid in instalments, provided it has been laid down by law how the instalments shall be calculated and when they shall be paid.
2. If the subsidy is not based on a provision of law, it may be paid in instalments, provided that the decision granting the subsidy or, if no such decision was given, the decision determining the definitive subsidy amount provides how the instalments shall be calculated and when they shall be paid.

**Article 4:56**

The obligation to pay a subsidy or an advance shall be suspended from the day on which the administrative authority sends the subsidy recipient written notice that there is a strong suspicion that there are grounds to apply article 4:48 or 4:49 until the day on which the decision concerning withdrawal or amendment is notified or the day on which thirteen weeks have expired since the notice of the strong suspicion was sent.

**Article 4:57**

1. An administrative authority may recover subsidy payments paid unduly.
2. The administrative authority may collect an amount to be recovered by compulsory payment order.
3. The administrative authority may set off an amount to be recovered against a subsidy amount granted to the same subsidy recipient for the same activities for a different period.
4. Subsidies or advance payments may not be recovered if five years have expired since the day on which the subsidy amount was determined or the action referred to in article 4:49.1.c took place.

*Division 4.2.8 Subsidies granted to juristic persons on a financial year basis*

Section 4.2.8.1 Introductory provisions

**Article 4:58**

1. This division applies to subsidies granted on a financial year basis if a provision of law or a decision of the administrative authority so provides.
2. A general administrative measure may designate subsidies to which this division shall also apply.

**Article 4:59**

1. An administrative authority granting a subsidy in accordance with the provisions of this division may designate one or more inspectors charged with monitoring compliance with the requirements imposed on the recipient of the subsidy.
2. An inspector does not have the powers mentioned in articles 5:18 and 5:19.

Section 4.2.8.2 Applications

**Article 4:60**

Unless otherwise provided by law, an application for a subsidy shall be filed no later than thirteen weeks before the beginning of the financial year.

**Article 4:61**

1. Applications for subsidy shall at the very least be accompanied by:
  - a. an activities plan, unless it is reasonable to assume that this is not necessary, and
  - b. a budget, unless a budget is irrelevant to the calculation of the subsidy amount.

2. If the applicant has an equalization reserve as referred to in article 4:72, the application shall state its amount.

#### **Article 4:62**

The activities plan shall include an overview of the activities for which the subsidy is requested and the objectives pursued and shall state the human and material resources required for each activity.

#### **Article 4:63**

1. The budget shall include a statement of the applicant's estimated income and expenditure for the financial year in so far as they relate to the activities for which the subsidy is requested.
2. Each budget item shall be accompanied by an explanatory note.
3. Unless the activities to which the application relates have not previously been subsidized, the budget shall include a comparison with the budget for the current financial year and the actual income and expenditure for the preceding financial year.

#### **Article 4:64**

1. Unless filed by a juristic person governed by public law, where the applicant did not apply for subsidy for the year preceding the subsidy year, the application shall furthermore be accompanied by:
  - a. a copy of the instrument incorporating the juristic person or the articles of association as most recently amended, and
  - b. the most recent annual accounts as referred to in article 361 of Book 2 of the Civil Code, or the balance sheet and the statement of income and expenditure and the notes thereto, or, in the absence of such documents, a report on the applicant's financial position at the time of the application.
2. The documents referred to in subparagraph 1.b or the report on the financial position shall be accompanied by a written report from an auditor as referred to in article 393.1 of Book 2 of the Civil Code certifying their accuracy or a statement that there is no evidence of any inaccuracies.
3. Exemption or dispensation from the provisions of paragraph 2 may be granted by law or by decision of the administrative authority.

#### **Article 4:65**

An applicant who has at the same time filed subsidy applications in respect of the same budgeted expenditure with one or more other administrative authorities shall mention this in the application, specifying the status regarding the assessment of the other application or applications.

#### Section 4.2.8.3 The grant

#### **Article 4:66**

Subsidies may be granted only to juristic persons having full legal capacity.

#### **Article 4:67**

1. A subsidy is granted either for one financial year or for a specified number of financial years.
2. If a subsidy is granted for two or more financial years, it shall be granted subject to the requirement that the subsidy recipient periodically supplies the administrative authority with the relevant information for determining the definitive subsidy amount.
3. The decision granting the subsidy shall specify the information to be supplied by the subsidy recipient pursuant to paragraph 2 and the dates by which the information must be supplied.

#### Section 4.2.8.4 Obligations of the subsidy recipient

#### **Article 4:68**

Unless otherwise provided by law or in the decision granting the subsidy, the subsidy recipient shall make its financial year concur with the calendar year.

#### **Article 4:69**

1. The subsidy recipient shall organise its accounts in such a way that they will at all times show the rights and obligations that are relevant to the determination of the definitive subsidy amount as well as the payments and receipts.
2. The accounts and the accompanying records shall be kept for seven years.

#### **Article 4:70**

If significant discrepancies arise or threaten to arise in the course of the financial year between the actual expenditure and income and the estimated expenditure and income, the subsidy recipient shall inform the administrative authority of this without delay, stating the cause of the discrepancies.

#### **Article 4:71**

1. If it is so provided by law or by the decision granting the subsidy, the subsidy recipient shall require the consent of the administrative authority to:
  - a. incorporate or take a participating interest in a juristic person;
  - b. amend the articles of association;
  - c. acquire, alienate or encumber property subject to registration if the acquisition of the property or the ongoing charges are paid, in whole or in part, out of the subsidy funds;
  - d. enter into or terminate agreements to acquire, alienate, encumber, or take or grant the lease of property subject to registration if the acquisition of the property or the ongoing charges are paid, in whole or in part, out of the subsidy funds;
  - e. enter into credit or loan agreements;
  - f. enter into agreements by which the subsidy recipient provides security, including security for debts of third parties, or by which it undertakes to act as surety or joint and several debtor or warrants performance by a third party;
  - g. create funds or reserves;
  - h. determine or modify rates for goods or services supplied by the subsidy recipient in the ordinary course of its subsidized activities;
  - i. wind up the juristic person;
  - j. petition for its bankruptcy or to apply for a suspension of payment of its debts.
2. The administrative authority shall decide whether or not to give its consent within four weeks.
3. The decision may be postponed once for four weeks at most.
4. If no decision has been taken within the time-limit, consent shall be deemed to have been given.

#### **Article 4:72**

1. If it is so provided by law or the decision granting the subsidy, the recipient shall create an equalization reserve.
2. The difference between the subsidy as determined and the actual cost of the activities for which the subsidy was granted shall be credited or debited to the equalization reserve.
3. The equalization reserve shall be invested so as to achieve the highest possible interest at the lowest risk reasonably possible.
4. The interest earned on the equalization reserve shall be added to the equalization reserve.
5. In the cases referred to in article 4:41.2c, d and e, the subsidy recipient shall pay a refund out of the equalization reserve in proportion to the extent to which the subsidy has contributed to the equalization reserve.

#### Section 4.2.8.5 Determination of the subsidy amount

#### **Article 4:73**

The subsidy is determined for each financial year.

**Article 4:74**

Unless otherwise provided by law or unless the subsidy has been granted for two or more financial years pursuant to article 4:67.2, the subsidy recipient shall file an application for determination of the definitive subsidy amount within six months after the end of the financial year.

**Article 4:75**

1. The application for determination of the definitive subsidy amount shall in any case be accompanied by a financial report and an activities report.
2. If the subsidy recipient is required by law or the decision granting the subsidy to prepare annual accounts as referred to in article 361 of Book 2 of the Civil Code, the subsidy recipient shall submit the annual accounts instead of the financial report, without prejudice to article 4:45.2.

**Article 4:76**

1. If the subsidy recipient derives its income entirely from the subsidy, the financial report shall include the balance sheet and the operating statement plus notes, and paragraphs 2 to 5 apply.
2. The financial report shall provide such information according to generally accepted standards that it is possible to form a sound opinion about:
  - a. the financial position and the net operating result, and
  - b. insofar as the nature of the financial report permits, the solvency and liquidity of the subsidy recipient.
3. The balance sheet with explanatory notes shall give a fair, clear and systematic view of the amount and composition of the assets and liabilities at the end of the financial year.
4. The operating statement with explanatory notes shall give a fair, clear and systematic view of the amount of the net operating result for the financial year.
5. The financial report shall be in keeping with the budget on the basis of which the subsidy was granted and shall include a comparison with the actual income and expenditure figures for the year preceding the financial year.

**Article 4:77**

If the subsidy recipient derives its income predominantly from the subsidy, it may be provided by law or the subsidy grant decision that article 4:76 applies *mutatis mutandis*.

**Article 4:78**

1. The subsidy recipient shall instruct an accountant as referred to in article 393.1 of Book 2 of the Civil Code to examine the financial report.
2. The accountant shall examine whether the financial report satisfies the rules laid down by or pursuant to statute and whether the activities report is, to the best of his knowledge, consistent with the financial report.
3. The accountant shall record the findings of his examination in a written statement as to whether the financial report gives a true and fair view.
4. The application for determination of the definitive subsidy amount shall be accompanied by the statement referred to in paragraph 3.
5. Exemption or dispensation from the provisions of paragraphs 1 to 4 may be granted by law or by the decision granting the subsidy.

**Article 4:79**

1. It may be provided by law or by the decision granting the subsidy that the instruction referred to in article 4:78.1 shall include examination of compliance with the requirements attached to the subsidy.
2. If paragraph 1 applies, the instruction shall be accompanied by directions, to be laid down by or pursuant to law or by the decision granting the subsidy, about the scope and intensity of the examination.

3. If paragraph 1 applies, the financial report shall furthermore be accompanied by a written statement from the accountant about the subsidy recipient's compliance with the obligations attached to the subsidy.

#### **Article 4:80**

The activities report shall describe the nature and extent of the activities for which the subsidy was granted and shall include a comparison between the objectives pursued and actually achieved and a note on the differences.

### **Chapter 4.3 Policy rules**

#### **Article 4:81**

1. An administrative authority may establish policy rules in regard to a power vested in it, exercised under its responsibility or delegated by it.
2. In other cases an administrative authority may only establish policy rules if it is so provided by law.

#### **Article 4:82**

A reference to a consistent course of action will constitute a reason for a decision only if the consistent course of action is laid down in a policy rule.

#### **Article 4:83**

The notification of a decision laying down a policy rule shall where possible state the provision of law from which the power to which the decision relates ensues.

#### **Article 4:84**

The administrative authority shall act in accordance with the policy rule unless, due to special circumstances, this would affect one or more interested parties disproportionately in relation to the objectives of the policy rule.

### **Chapter 4.4 Money debts arising from administrative law**

#### *Division 4.4.1 Determination and details of a payment obligation*

#### **Article 4:85**

1. This chapter applies to money debts arising from:
  - a. a provision of law regulating obligations for payment of a sum of money exclusively to or by an administrative authority, or
  - b. decisions which are subject to objection or appeal.
2. This chapter does not apply to obligations to pay a fee charged by an administrative authority for handling applications.
3. This chapter does not apply to payment obligations imposed by judgments of administrative courts.

#### **Article 4:86**

1. An obligation to pay a sum of money shall be established in an individual decision.
2. The individual decision shall in any case state:
  - a. the sum to be paid;
  - b. the time limit for payment.

#### **Article 4:87**

1. Payment shall be made within six weeks after the individual decision is notified in the prescribed manner, unless the individual decision states a later date.
2. A different time limit for payment may be laid down by or pursuant to law.

**Article 4:88**

1. It may be laid down by law that a sum of money must be paid without this obligation having been established in an individual decision.
2. In that case the time limit for payment shall be laid down at the same time.
3. If the interested party so requests within a reasonable period, the administrative authority shall as soon as possible take a decision establishing its obligation to pay.

**Article 4:89**

1. Unless otherwise provided by law, payment shall be effected by transfer to a bank account designated for this purpose by the creditor.
2. Payment shall be made in euros, unless otherwise provided by law or by a decision of the administrative authority.
3. A payment by transfer to a bank account shall be deemed to have been effected at the time the creditor's account is credited.
4. It may be provided by law that payment shall be made to a person other than the creditor.

**Article 4:90**

1. If in the opinion of the administrative authority payment by transfer is inconvenient, it may receive or make payments by another means.
2. Unless otherwise provided by law, the creditor is required to give a receipt for each cash payment.

**Article 4:91**

1. Payment costs shall be borne by the debtor.
2. If an administrative authority pays a creditor outside the European Union, the additional costs may be deducted from the amount payable, unless otherwise provided by law.

**Article 4:92**

1. A payment in settlement of a specific money debt shall first be applied towards the payment of costs, next towards interest due and finally towards the principal and accrued interest.
2. A debtor who owes several money debts to the same creditor may, when making a payment, stipulate the money debt to which the payment is to be applied.

**Article 4:93**

1. A money debt may only be set off against an existing claim if the power to do so is conferred by law.
2. Set-off shall be effected stating the claim against which the money debt is set off and the sum set off.
3. Set-off shall have retroactive effect in conformity with article 129.1 and 129.2 of Book 6 of the Civil Code.
4. A debtor is not entitled to set-off if attachment of the creditor's claim would be null and void.
5. Deferral of payment does not preclude set-off.

**Article 4:94**

1. An administrative authority may grant the other party deferral of payment.
2. During the deferral period the administrative authority cannot demand payment or collect the debt.
3. The individual decision granting deferral of payment shall state the deferral period.
4. The administrative authority may make the deferral subject to conditions.

**Article 4:95**

1. Unless otherwise provided by law, an administrative authority may pay an advance in anticipation of establishing an obligation to pay out a sum of money, if it may reasonably be assumed that such an obligation will be established.

2. Notwithstanding article 4:86.2.a, an individual decision granting an advance need only state how the sum of the advance will be determined.
3. An individual decision granting an advance may set a time limit for payment of the advance which differs from the time limit of article 4:87.1.
4. Advance payments shall be deducted from the sum to be paid. Advances paid unduly may be recovered.
5. An administrative authority may collect a recoverable advance by compulsory payment order if it also has this power in respect of the principal.
6. An administrative authority may make an advance subject to conditions.

#### **Article 4:96**

An administrative authority may revoke or amend an individual decision granting deferral of payment or an advance if:

- a. the conditions are not complied with;
- b. the other party has provided incorrect or incomplete information and the provision of correct or complete information would have resulted in a different individual decision, or
- c. changed circumstances impede the continuation of the deferral or grant of an advance.

#### *Division 4.4.2 Default and statutory interest*

#### **Article 4:97**

A debtor is in default if he fails to pay within the prescribed time limit.

#### **Article 4:98**

1. Default results in liability to pay statutory interest pursuant to articles 119.1, 119.2 and 120.1 of Book 6 of the Civil Code.
2. Statutory interest is not payable if the amount of a sole or final interest payment is less than €20 or, where the administrative authority is the debtor, less than €10.
3. The amounts mentioned in paragraph 2 may be adjusted by general administrative measure in response to the consumer price index movements.
4. If the exchange rate of the currency in which a money debt is payable has changed after the default date, article 125 of Book 6 of the Civil Code applies *mutatis mutandis*.

#### **Article 4:99**

The administrative authority shall, by individual decision, determine the amount of the statutory interest payable.

#### **Article 4:100**

If an administrative authority fails to give a timely individual decision concerning payment of a sum of money payable by it, it shall be liable to pay statutory interest from the date on which it would have been in default if it had given the individual decision on the last day of the applicable time limit.

#### **Article 4:101**

If an administrative authority has granted deferral of payment or if the obligation to pay has been suspended by court order, the debtor shall be liable to pay statutory interest over the period of deferral or suspension, unless otherwise provided by the deferral decision or suspension order.

#### **Article 4:102**

1. If a payment to an administrative authority was made pursuant to an individual decision which is subsequently amended or set aside in an objection or appeal procedure, the administrative authority shall be liable to pay statutory interest on the overpaid amount over the period between the dates of payment and repayment.
2. If, as a result of an objection or appeal procedure, an administrative authority replaces an individual decision refusing payment by an individual decision granting payment, it shall be

liable to pay statutory interest from the date on which it would have been in default if the latter individual decision had been given on the last day of the applicable time limit.

3. An administrative authority is not liable to pay statutory interest if the interested party provided incorrect or incomplete information, or if the fact that incorrect or incomplete information was supplied is attributable to the interested party.
4. This article applies *mutatis mutandis* if an administrative authority amends or withdraws an individual decision approving payment with retroactive effect.

#### **Article 4:103**

This division does not apply if different rules on default and its consequences have been enacted.

#### *Division 4.4.3 Prescription*

#### **Article 4:104**

1. A right of action for payment of a sum of money is prescribed by the passage of five years after the requisite time limit for payment has expired.
2. After the relevant prescription period has expired the administrative authority can no longer exercise its powers of demand and set-off and of issuing and executing a compulsory payment order.

#### **Article 4:105**

1. A prescription period is interrupted by an act of legal recourse in accordance with article 316.1 of Book 3 of the Civil Code. Article 316.2 of Book 3 of the Civil Code applies *mutatis mutandis*.
2. Acknowledgement of the right to payment suspends prescription of the right of action against the person acknowledging entitlement.

#### **Article 4:106**

An administrative authority may also suspend prescription by sending a demand notice as referred to in article 4:112, taking an individual decision setting off the debt, issuing a compulsory payment order or acting in execution of a compulsory payment order.

#### **Article 4:107**

A creditor of an administrative authority may also suspend prescription by sending a demand notice or a notice in which he unambiguously reserves his right to payment.

#### **Article 4:108**

If a creditor of an administrative authority has a right of set-off as referred to in article 4:93, this right is not extinguished by prescription of the right of action.

#### **Article 4:109**

Articles 4:107 and 4:108 do not apply to a creditor of an administrative authority which is itself an administrative authority.

#### **Article 4:110**

1. Interruption of the prescription period causes a new prescription period to commence as of the following day.
2. The new prescription period is equal to the original period, but may not exceed five years.
3. If, however, a prescription period is interrupted by the institution of a claim which is subsequently awarded, article 324 of Book 3 of the Civil Code applies *mutatis mutandis*.

#### **Article 4:111**

1. If a debtor has been granted deferral of payment, the prescription period of the right of action for payment to an administrative authority is extended by the part of the deferral period falling after the commencement of the prescription period.
2. Paragraph 1 applies *mutatis mutandis* if:
  - a. the debtor has been granted a suspension of payment;
  - b. the debtor is bankrupt;
  - c. the debt rescheduling natural persons scheme has been declared applicable to the debtor;
  - d. the execution of a compulsory payment order has been suspended as a result of pending legal proceedings, in which case the period by which the prescription period is extended commences on the day on which the legal proceedings are instituted by a summons.

#### *Division 4.4.4 Demand notice and collection by compulsory payment order*

##### Section 4.4.4.1 Demand notices

###### **Article 4:112**

1. An administrative authority sends a defaulting debtor a notice demanding payment within two weeks from the day on which the demand notice is sent.
2. A different time limit may be set by law.
3. The demand notice shall state that, if payment is not made in time, payment may be enforced by collection measures to be taken at the debtor's expense.

###### **Article 4:113**

1. An administrative authority may charge a fee for the demand notice. The fee is €6 for debts of less than €454 and €14 for debts of €454 and over.
2. The demand notice shall state the fee charged.
3. The amounts mentioned in paragraph 1 may be adjusted by general administrative measure in response to the consumer price index movements.

##### Section 4.4.4.2 Collection by compulsory payment order

###### **Article 4:114**

'Compulsory payment order' means an order issued by an administrative authority for the purposes of enforcing payment of a sum of money as referred to in article 4:85.

###### **Article 4:115**

Power to issue a compulsory payment order exists only if it is conferred by statute.

###### **Article 4:116**

A compulsory payment order is an enforceable order, which enables the creditor to proceed to execution in accordance with the provisions of the Code of Civil Procedure.

###### **Article 4:117**

1. A compulsory payment order may only be issued if the debt has not been paid in full within the time limit set in accordance with article 4:112.
2. It may however be enacted that, if necessary, a compulsory payment order may be issued or executed without a demand notice having been sent and before the expiry of any payment time limit or demand-notice time limit set by law or previously allowed.

###### **Article 4:118**

Article 4:8 does not apply to demand notices and compulsory payment orders.

**Article 4:119**

1. The demand notice fee, the statutory interest and the cost of an enforcement order may also be collected by means of the compulsory payment order.
2. A compulsory payment order may relate to several obligations of a debtor to pay the administrative authority a sum of money.

**Article 4:120**

1. A compulsory payment order is served and executed at the expense of the person against whom it is issued.
2. Judicial costs are computed on the basis of the rates determined pursuant to article 434a of the Code of Civil Procedure. Extrajudicial costs are computed on the basis of rates to be determined by general administrative measure.
3. Costs are due and payable even if the compulsory payment order is not executed or not executed in full because the sums owed have meanwhile been paid.

**Article 4:121**

If a compulsory payment order issued for part of a payment obligation is executed by means of attachment, all instalments of the obligation which have fallen due up to the time of the attachment may be collected under the same compulsory payment order, provided it is possible to infer the amount collectable at that time from the compulsory payment order.

**Article 4:122**

1. A compulsory payment order shall in any case state the following:
  - a. the word 'compulsory payment order' in the heading;
  - b. the amount of the collectable principal;
  - c. the individual decision or the provision of law from which the money debt arises;
  - d. the cost of the compulsory payment order, and
  - e. the fact that it may be executed at the debtor's expense.
2. If applicable, the compulsory payment order shall state:
  - a. the amount of the demand notice fee, and
  - b. the commencing date of the statutory interest.

**Article 4:123**

1. A compulsory payment order shall be notified by service of a writ as referred to in the Code of Civil Procedure. Articles 3:41 to 3:45 of this Act do not apply.
2. The writ shall in any case specify the district court before which the compulsory payment order and its execution may be contested as provided by articles 438 and 438a of the Code of Civil Procedure.

**Article 4:124**

In regard to the collection of debts an administrative authority also has the powers conferred on creditors under private law.

*Division 4.4.5 Objection and appeal***Article 4:125**

1. An objection or appeal lodged against an individual decision determining an obligation to pay a sum of money is also directed against an additional individual decision of the same administrative authority concerning set-off, deferral of payment, grant of an advance, calculation of interest, or full or partial remission, if and insofar as the interested party challenges the additional decision.
2. An objection or appeal lodged against an additional individual decision is also directed against a subsequent additional individual decision relating to the same money debt, if and insofar as the interested party challenges the subsequent decision.

3. The administrative court may, however, refer an appeal against the additional individual decision to another body, if it is desirable that the appeal is heard by the other body.
4. Where possible, the interested party shall in appeal proceedings submit a copy of the individual decision he is disputing.
5. Paragraphs 1 to 4 apply *mutatis mutandis* to requests for provisional relief.

## **TITLE 5 ENFORCEMENT**

### **Chapter 5.1 General provisions**

#### **Article 5:1**

1. In this Act 'violation' means an act violating a rule laid down by or pursuant to law.
2. 'Violator' means the person committing a violation or participating in its commission.
3. Violations can be committed by natural persons and by juristic persons. Article 51.2 and 51.3 of the Penal Code apply *mutatis mutandis*.

#### **Article 5:2**

1. In this Act the following definitions apply:
  - a. 'administrative sanction' means an obligation imposed or an entitlement withheld by an administrative authority on account of a violation;
  - b. 'reparation sanction' means an administrative sanction intended to fully or partially undo or terminate a violation, to prevent repetition of a violation or to eliminate or limit the consequences of a violation;
  - c. 'punitive sanction' means an administrative sanction intended to inflict harm on the violator.
2. An order to perform certain specific acts is not in itself an administrative sanction.

#### **Article 5:3**

Articles 5:4 to 5:10 apply to:

- a. the administrative sanctions regulated in this Part, and
- b. other administrative sanctions designated by law.

#### **Article 5:4**

1. Power to impose an administrative sanction exists only if it is conferred by or pursuant to statute.
2. An administrative sanction may not be imposed unless the violation and the sanction are described by or pursuant to a provision of law that entered into force before the violating conduct.

#### **Article 5:5**

An administrative authority may not impose an administrative sanction if there was a justification for the violation.

#### **Article 5:6**

An administrative authority may not impose a reparation sanction as long as another reparation sanction imposed on account of the same violation is still in force.

#### **Article 5:7**

A reparation sanction may be imposed as soon as there is a clear threat of a violation.

#### **Article 5:8**

If two or more rules have been violated, a separate administrative sanction may be imposed for the violation of each separate rule.

#### **Article 5:9**

An individual decision imposing an administrative sanction shall state:

- a. the violation and the rule violated;
- b. if necessary, an indication of the date, time and place the violation was established.

#### **Article 5:10**

1. If an administrative sanction imposes an obligation to pay a sum of money, this sum accrues to the administrative authority which imposed the sanction, unless otherwise provided by law.

2. The administrative authority may collect the sum of money by compulsory payment order.

#### **Article 5:10a**

1. A person who is questioned with a view to the imposition of a punitive sanction on him is not required to make statements concerning the violation for this purpose.
2. Before the person concerned is questioned, he shall be cautioned that he is not required to answer.

### **Chapter 5.2 Monitoring of compliance**

#### **Article 5:11**

'Inspector' means a person who is charged by or pursuant to law with monitoring compliance with the rules laid down by or pursuant to any provision of law.

#### **Article 5:12**

1. When performing his duties an inspector shall carry an identity card issued by the administrative authority under whose responsibility the inspector is working.
2. On request, an inspector shall promptly show his identity card.
3. The identity card shall bear a photograph of the inspector and shall in any event state his name and official capacity. The format of the identity card shall be determined by regulation of Our Minister.

#### **Article 5:13**

An inspector may only exercise his powers to the extent that this is reasonably necessary for the performance of his duties.

#### **Article 5:14**

The powers of an inspector may be restricted by law or by decision of the administrative authority appointing the inspector.

#### **Article 5:15**

1. An inspector is empowered to enter any place with the exception of a dwelling if he does not have the occupant's consent, taking with him the necessary equipment.
2. If necessary, he may gain entrance with the assistance of the police.
3. He may be accompanied by persons he has designated for the purpose.

#### **Article 5:16**

An inspector is empowered to demand information.

#### **Article 5:16a**

An inspector is empowered to demand to see a person's identity card as referred to in article 1 of the Compulsory Identification Act.

#### **Article 5:17**

1. An inspector is empowered to demand to inspect business information and documents.
2. He is empowered to make copies of the information and documents.
3. If it is impossible to make copies on-site, he may take the information and documents away for a short time for this purpose, giving a written receipt for them.

#### **Article 5:18**

1. An inspector is empowered to inspect, survey and take samples of goods or land.
2. He is empowered to open packaging for this purpose.
3. Unless otherwise provided by or pursuant to law, the inspector shall, if possible, take a second sample at the request of the interested party.

4. If it is impossible to inspect, survey or sample goods on-site, the inspector may take the goods away for a short time for this purpose, giving a written receipt for them.
5. Where possible, the samples taken shall be returned.
6. The interested party shall at his request be informed as soon as possible of the results of the inspection, surveying or sampling.

#### **Article 5:19**

1. An inspector is empowered to inspect means of transport subject to his supervisory powers.
2. He is empowered to inspect a means of transport which he reasonably believes is being used to carry goods subject to his supervisory powers to see what it is carrying.
3. He is empowered to demand that the driver of a means of transport allow him to inspect the documents prescribed by law which are subject to his supervisory powers.
4. For the purposes of exercising these powers, he may demand that the driver of a vehicle or the master of a vessel stop his means of transport and take it to a place designated by the inspector.
5. The Minister of Justice shall, by ministerial regulation, determine the manner of demanding stoppage of a means of transport.

#### **Article 5:20**

1. Any person shall give an inspector all such assistance as he may reasonably demand in the exercise of his powers within a reasonable time limit set by him.
2. Persons who are bound to secrecy by virtue of their office or profession or by law, may refuse to cooperate if this follows from their duty of secrecy.

### **Chapter 5.3 Reparation sanctions**

#### *Division 5.3.1 Administrative enforcement orders*

#### **Article 5:21**

'Administrative enforcement order' means a reparation sanction:

- a. requiring full or partial reparation of the violation, and
- b. empowering the administrative authority to carry out the order itself if it is not carried out or not carried out in time.

#### **Article 5:23**

This division does not apply to action taken to ensure the immediate maintenance of public order.

#### **Article 5:24**

1. An administrative enforcement order shall describe the reparation measures to be taken.
2. An administrative enforcement order shall state the time limit within which the order must be carried out.
3. An administrative enforcement order shall be notified to the violator, the persons entitled to the use of the property to which the order relates, and the applicant.

#### **Article 5:25**

1. Administrative enforcement action is taken at the expense of the violator, unless he cannot reasonably be required to have to bear the costs or to bear all of the costs.
2. An order shall state to what extent the administrative enforcement costs will be charged to the violator.
3. The costs of administrative enforcement include the cost of preparing for administrative enforcement action incurred after the expiry of the time limit within which the order should have been carried out.
4. The cost of preparing for administrative enforcement action shall be payable even if no administrative enforcement action was taken because the order was carried out after all.

5. The costs of administrative enforcement also include compensation for loss or damage payable pursuant to article 5:27.6.
6. The administrative authority shall determine the amount of the costs payable.

#### **Article 5:27**

1. For the purposes of taking administrative enforcement action persons designated by the administrative authority are empowered to enter any place insofar as reasonably necessary for the performance of their duties.
2. An administrative authority taking administrative enforcement action has power to issue an authorization to enter a dwelling without the consent of the occupant as referred to in article 2 of the General Act on Entry into Dwellings.
3. A place not involved in the violation may only be entered after the administrative authority has given the entitled person at least 48 hours' written notice.
4. Paragraph 3 does not apply if the requisite speed precludes timely notice. In that case notice shall be given as soon as possible.
5. The notice shall specify the manner in which the place will be entered.
6. The administrative authority shall pay compensation for any loss or damage caused by the entry of a place as referred to in paragraph 3, insofar as the entitled person cannot reasonably be required to bear such loss or damage, without prejudice to the right to recover this damage from the violator pursuant to article 5:25.5.

#### **Article 5:28**

An administrative authority taking administrative enforcement action has power to place buildings, sites and anything in or on them under seal.

#### **Article 5:29**

1. An administrative authority may take away and store goods if this is necessary for the purposes of taking administrative enforcement action.
2. The administrative authority shall cause an official report to be drawn up of the removal and storage of goods. A copy of the official report shall be issued to the person in control of the goods.
3. The administrative authority shall arrange for the safekeeping of the stored goods and shall return them to the person entitled to them.
4. The administrative authority may defer returning the goods until the costs payable pursuant to article 5:25 have been paid.
5. If the entitled person is not also the violator, the administrative authority may defer returning the goods until the costs of safekeeping have been paid.

#### **Article 5:30**

1. If any goods that have been taken away and stored cannot be returned within thirteen weeks of having been taken away, the administrative authority may sell them.
2. The administrative authority may sell the goods at an earlier date as soon as the costs payable pursuant to article 5:25 plus the estimated selling expenses have become disproportionately high compared to the value of the goods.
3. The goods shall not, however, be sold until two weeks have passed after the issue of the copy of the official report of removal and storage of the goods, except in the case of hazardous substances or goods that will perish before then.
4. For a period of three years after the selling date the person who owned the goods on that date will be entitled to the proceeds of the goods less the costs payable pursuant to article 5:25 and the selling expenses. Upon the expiry of this period, any net balance shall accrue to the administrative authority.
5. If in the opinion of the administrative authority it is impossible to sell the goods, it may transfer title to them to a third party for no consideration or cause them to be destroyed. Paragraphs 1 to 3 apply *mutatis mutandis*.

**Article 5:31**

1. In urgent cases an administrative authority which has power to issue an administrative enforcement order may make a decision to take administrative enforcement action without first issuing an order. Article 5:24.1 and 5:24.3 apply *mutatis mutandis* to such a decision.
2. If a situation is so urgent that it is impossible to wait for a decision, the administrative authority may take immediate enforcement action, but shall subsequently notify a decision as referred to in paragraph 1 as soon as possible.

**Article 5:31a**

1. An applicant for an administrative enforcement order, or another interested party who is adversely affected by the violation, may request the administrative authority to take administrative enforcement action.
2. The request may be filed after the expiry of the time limit referred to in article 5:24.2.
3. The administrative authority shall decide on the request within four weeks by means of an individual decision.

**Article 5:31b**

To the extent the administrative enforcement order is revoked or annulled, the individual decision to take administrative enforcement action shall cease to have effect .

**Article 5:31c**

1. To the extent an interested party disputes an individual decision to take administrative enforcement action or determine administrative enforcement costs, an objection or appeal against an administrative enforcement order in the matter also disputes the individual decision.
2. The administrative court may, however, refer such an appeal against an individual decision to take administrative enforcement action or determine costs to another body, if it is desirable that it is heard by this body.
3. Where possible, the interested party shall in appeal proceedings submit a copy of the individual decision he is disputing.
4. Paragraphs 1 to 3 apply *mutatis mutandis* to requests for provisional relief.

*Division 5.3.2 Orders subject to a financial penalty***Article 5:31d**

'Order subject to a financial penalty' means a reparation sanction requiring:

- a. full or partial reparation of the violation, and
- b. payment of a sum of money if the order is not carried out or not carried out in time.

**Article 5:32**

1. An administrative authority which has power to issue an administrative enforcement order may instead issue the violator with an order subject to a financial penalty.
2. An administrative authority may not opt to issue an order subject to a financial penalty if this is incompatible with the interest which the rule violated aims to protect.

**Article 5:32a**

1. An order subject to a financial penalty shall describe the reparation measures to be taken.
2. An order subject to a financial penalty intended to repair a violation or to prevent further violation, shall set a time limit within which the violator can carry out the order without forfeiting a penalty.

**Article 5:32b**

1. The administrative authority shall determine the penalty either as a lump sum, or as a sum payable per unit of time in which the order has not been complied with or for each violation of the order.

2. The administrative authority shall also determine a maximum amount above which no further penalties will be forfeited.
3. The amounts shall be reasonably proportionate to the gravity of the interest violated and to the intended effect of the penalty.

#### **Article 5:33**

1. After a penalty has become forfeit by operation of law it shall be paid within six weeks.

#### **Article 5:34**

1. An administrative authority which has issued an order subject to a financial penalty may, at the violator's request, revoke the order, suspend its term of validity or reduce the penalty if it is permanently or temporarily impossible for the violator to perform all or part of his obligations.
2. An administrative authority which has issued an order subject to a financial penalty may, at the violator's request, revoke the order if the individual decision has been in effect for a year without the penalty being forfeited.

#### **Article 5:35**

1. Notwithstanding article 4:104 the power to collect a forfeited penalty is barred by prescription one year after the date on which it was forfeited.

#### **Article 5:37**

1. An administrative authority shall first give an individual decision on the collection of a penalty before sending a demand notice for payment of the penalty.
2. The administrative authority shall furthermore give a decision on the collection of a penalty if an interested party so requests.
3. The administrative authority shall decide on the request within four weeks.

#### **Article 5:38**

1. If it follows from an individual decision revoking or amending an order subject to a financial penalty that an earlier individual decision to collect the penalty cannot be allowed to stand, the earlier individual decision shall cease to have effect.
2. The administrative authority may give a new individual decision to collect the penalty which is consistent with the amended order.

#### **Article 5:39**

1. An objection or appeal against an order subject to a financial penalty is also directed against an individual decision to collect the penalty insofar as the interested party disputes it.
2. The administrative court may, however, refer the appeal against the individual decision to collect a penalty to another body, if it is desirable that it be heard by this body.
3. Where possible, the interested party shall in appeal proceedings submit a copy of the individual decision he is disputing.
4. Paragraphs 1 to 3 apply *mutatis mutandis* to requests for provisional relief.

### **Chapter 5.4 Administrative fines**

#### *Division 5.4.1 General provisions*

#### **Article 5:40**

1. 'Administrative fine' means a punitive sanction in the form of an unconditional obligation to pay a sum of money.
2. This chapter does not apply to the withdrawal or modification of an entitlement to financial resources.

#### **Article 5:41**

An administrative authority shall not impose an administrative fine if the violator cannot be held responsible for the violation.

**Article 5:42**

1. An administrative authority shall not impose an administrative fine if the violator has died.
2. An administrative fine is cancelled if it has not become irrevocable at the time of the violator's death. An irrevocable administrative fine is cancelled to the extent it is still unpaid at the time of death.

**Article 5:43**

An administrative authority shall not impose an administrative fine if an administrative fine had already been imposed on the violator before on account of the same violation or if notice has been given as referred to in 5:50.2.a.

**Article 5:44**

1. An administrative authority shall not impose an administrative fine if criminal proceedings have been brought against the violator for the same act and the hearing has started or a punishment order has been issued.
2. If the act also constitutes a criminal offence, it shall be submitted to the public prosecutor, unless it is provided by law or has been agreed with the Public Prosecution Service that the administrative authority may decide not to do so.
3. If an act is one that must be submitted to the public prosecutor, an administrative authority may only impose an administrative fine if:
  - a. the public prosecutor has informed the administrative authority that he has decided not to prosecute the offender, or
  - b. the administrative authority has not received a reaction from the public prosecutor within thirteen weeks.

**Article 5:45**

1. If article 5:53 applies, the power to impose an administrative fine expires five years after the violation took place.
2. In all other cases the power to impose an administrative fine expires three years after the violation took place.
3. If an objection or appeal is lodged against an administrative fine, the expiry period is suspended until a final decision is given on the objection or appeal.

**Article 5:46**

1. The maximum administrative fine which may be imposed on account of any specific violation shall be determined by statute.
2. Unless the amount of an administrative fine is determined by law, the administrative authority shall set the fine at an amount commensurate with the gravity of the violation and the extent to which the violator can be held responsible for it. If necessary, the administrative authority shall take account of the circumstances in which the violation was committed.
3. Where the amount of an administrative fine is determined by law, an administrative authority shall nevertheless impose a lower fine if the violator demonstrates that there are special circumstances causing the fine as determined by law to be too high.
4. Article 1.2 of the Penal Code applies *mutatis mutandis*.

**Article 5:47**

An administrative fine imposed on account of an act which is also a criminal offence is cancelled if the court of appeal, applying article 12i of the Code of Criminal Procedure, orders that the offender must be prosecuted for the offence.

**Article 5:48**

1. The administrative authority and the competent inspector may draw up a report of the violation.
2. The report shall be dated and shall state:
  - a. the name of the violator;
  - b. the violation and the rule violated;
  - c. if necessary the date, time and place the violation was established.
3. A copy of the report shall be sent to the violator or presented to the violator no later than the date of notification of the individual decision imposing the administrative fine.
4. If an investigating officer's report as referred to in article 152 in the Code of Criminal Procedure has been drawn up of a violation, it shall for the purposes of this division take the place of the report.

**Article 5:49**

1. On request the administrative authority shall allow the violator to inspect the information on which the fine or the proposed fine is based and to take copies of this information.
2. Insofar as reasonably required for the violator's defence, the administrative authority shall as far as possible ensure that this information is communicated to the violator in a language which he understands.

**Article 5:50**

1. If a violator is given the opportunity to express a view on the intention to impose an administrative fine,
  - a. the report shall be sent or presented to the violator at the same time as the invitation to express a view;
  - b. the administrative authority shall provide for the assistance of an interpreter if this is reasonably necessary for the violator's defence.
2. If, after the violator has expressed his views, the administrative authority decides:
  - a. not to impose a fine for the violation, or
  - b. to submit the violation to the public prosecutor after all,it shall inform the violator of this in writing.

**Article 5:51**

1. If a report has been drawn up of a violation, the administrative authority shall decide whether or not to impose an administrative fine within thirteen weeks of the date of the report.
2. If the act is submitted to the Public Prosecution Service, the time limit for the decision will be suspended from the day of submission until the day on which the administrative authority regains power to impose an administrative fine.

**Article 5:52**

An individual decision to impose an administrative fine shall state:

- a. the name of the violator;
- b. the amount of the fine.

**Article 5:53**

1. This article applies if the violation is punishable by a fine exceeding €340, unless otherwise provided by law.
2. Notwithstanding article 5:48, an administrative report or investigating officer's report shall be drawn up in all cases.
3. Notwithstanding division 4.1.2, violators shall in all cases be given the opportunity to express their views.

**Article 5:54**

If so provided by law, this chapter applies *mutatis mutandis* to other punitive sanctions.

## **TITLE 6 GENERAL PROVISIONS ON OBJECTIONS AND APPEALS**

### *Division 6.1 Introductory provisions*

#### **Article 6:1**

Title 6 and Title 7 apply *mutatis mutandis* if provision has been made for lodging an objection or appeal against acts of administrative authorities other than decisions.

#### **Article 6:2**

For the purposes of the provisions of law on objections and appeals, the following are equated with a decision:

- a. a written refusal to take a decision, and
- b. failure to take a timely decision.

#### **Article 6:3**

A ruling on the procedure for preparing a decision is not open to objection or appeal, unless it directly affects the interests of an interested party independently of the decision to be prepared.

### *Division 6.2 Other general provisions*

#### **Article 6:4**

1. An objection is lodged by filing a notice of objection with the administrative authority which took the decision.
2. An administrative appeal is lodged by filing a notice of appeal with an appellate authority.
3. An appeal to an administrative court is lodged by filing a notice of appeal with that court.

#### **Article 6:5**

1. A notice of objection or appeal must be signed and in any event contain:
  - a. the name and address of the person filing the notice;
  - b. the date;
  - c. a description of the decision against which the objection or appeal is directed;
  - d. the grounds for the objection or appeal.
2. If possible, a copy of the decision to which the dispute relates shall be submitted together with the notice of appeal.
3. If a notice of objection or appeal is in a foreign language and if a translation is required for the proper consideration of the objection or appeal, the person filing the notice shall provide a translation.

#### **Article 6:6**

An objection or appeal may be declared inadmissible if:

- a. the person filing the objection or appeal has failed to comply with article 6:5 or any other statutory requirement for the consideration of the objection or appeal, or
- b. the notice of objection or appeal has been refused in whole or in part pursuant to article 2:15, provided that the person filing the objection or appeal has been given the opportunity to remedy the omission within a time limit set for this purpose.

#### **Article 6:7**

The time limit for filing a notice of objection or appeal is six weeks.

#### **Article 6:8**

1. The time limit commences on the day following the day on which the decision is notified in the prescribed manner.

2. The time limit for filing a notice of objection against a decision open to administrative appeal by only one or more specified parties commences on the day following the day on which the appeal period ends without an appeal having been filed.
3. The time limit for filing a notice of appeal against a decision requiring approval commences on the day following the day on which the approval is notified in the prescribed manner.
4. The time limit for filing a notice of appeal against a decision prepared in accordance with division 3.4 commences on the day following the day on which the decision is deposited for inspection in accordance with article 3:44.1.a.

#### **Article 6:9**

1. A notice of objection or appeal is timely filed if it is received before the end of the time limit.
2. A notice of objection or appeal sent by mail is timely filed if it is posted before the end of the time limit, provided it is received within one week after the end of the time limit.

#### **Article 6:10**

1. A notice of objection or appeal filed before the commencement of the time limit shall not be declared inadmissible on this ground if at the time of filing:
  - a. the decision had already been taken, or
  - b. the decision had not yet been taken but the person filing the notice could reasonably believe it had been taken.
2. Consideration of the objection or appeal may be deferred until the time limit commences.

#### **Article 6:11**

A notice of objection or appeal filed after the end of the time limit shall not be declared inadmissible on this ground if the person filing the notice cannot reasonably be held to have been in default.

#### **Article 6:12**

1. If an appeal is directed against a failure to take a timely decision, no time limit applies to the appeal.
2. If a failure to take a timely decision is open to appeal in accordance with the provisions of division 8.2.4a, the notice of appeal may be filed as soon as:
  - a. the administrative authority has failed to take a timely decision, and
  - b. two weeks have passed since the day on which the interested party sent the administrative authority written notice of default.
3. If an interested party cannot reasonably be expected to give the administrative authority notice of default, the notice of appeal may be filed as soon as the administrative authority has failed to take a timely decision.
4. An appeal shall be declared inadmissible if the notice of appeal is filed unreasonably late.

#### **Article 6:13**

An interested party may not lodge an appeal with the administrative court if he has not expressed a view as referred to in article 3:15 or has not lodged an objection or administrative appeal and can reasonably be considered at fault for having failed to do so.

#### **Article 6:14**

1. The body with which a notice of objection or appeal has been filed shall acknowledge its receipt in writing.
2. The body with which a notice of appeal has been filed shall as soon as possible send notice of its receipt to the administrative authority which took the challenged decision.

#### **Article 6:15**

1. If a notice of objection or appeal is filed with an administrative authority or administrative court that does not have jurisdiction, the administrative authority or administrative court shall note the date of receipt on the document and forward it to the body that does have jurisdiction, at the same time communicating this to the sender.

2. Paragraph 1 applies *mutatis mutandis* if a notice of appeal has been filed instead of a notice of objection or *vice versa*.
3. The date on which the notice of objection or appeal is filed with the body lacking jurisdiction shall determine whether it has been filed in time, except in the event of manifestly unreasonable use of procedural law.

#### **Article 6:16**

An objection or appeal does not suspend the operation of the decision challenged, unless otherwise provided by or pursuant to law.

#### **Article 6:17**

If a person has appointed a representative, the authority having jurisdiction to decide on the objection or appeal shall in any event send the documents relating to the case to the representative.

#### **Article 6:18**

1. The fact that an objection or appeal is pending against a decision shall not affect a power to revoke or amend the decision which already exists independently of the objection or appeal.
2. If the administrative authority revokes or amends the challenged decision, it shall without delay inform the body before which the objection or appeal is pending.
3. After revoking or amending the decision, the administrative authority may not take a decision of the same content or purport as the original decision as long as the objection or appeal is pending, unless:
  - a. changed circumstances justify doing so and
  - b. the administrative authority would have had power to do so anyway independently of the objection or appeal.
4. An administrative authority shall without delay communicate a decision as referred to in paragraph 3 to the body before which the objection or appeal is pending.

#### **Article 6:19**

1. If an administrative authority has taken a decision as referred to in article 6:18, the objection or appeal shall be deemed also to address the new decision, unless the new decision satisfies the objection or appeal in all respects.
2. The decision on the objection or appeal against the new decision may, however, be referred to another body before which an objection or appeal against the new decision is pending or can be or could have been brought.
3. Revocation of the challenged decision shall not prevent its annulment if this is in the interest of the person filing the notice of objection or appeal.

#### **Article 6:20**

1. If an appeal is directed against a failure to take a timely decision, the administrative authority shall still be required to take the decision, unless the interested party no longer has an interest in it as a result of the decision on the appeal.
2. The administrative authority shall without delay communicate a decision as referred to in paragraph 1 to the body before which the appeal is pending.
3. The appeal against the failure to take a timely decision will also be directed against the subsequent decision, unless the latter fully satisfies the appeal.
4. The appeal may, however, be referred to another body before which an objection or appeal against the subsequent decision is pending or can be or could have been brought.
5. The appeal against the failure to take a timely decision may still be declared well-founded, if the party who lodged the appeal has an interest in such a declaration.

#### **Article 6:21**

1. An objection or appeal may be withdrawn in writing.
2. It may also be withdrawn orally at a hearing.

**Article 6:22**

A body deciding on an objection or appeal may allow the challenged decision to stand despite the fact that a procedural requirement has been violated, if it is clear that this has not adversely affected the interested parties.

**Article 6:23**

1. If the decision on the objection or appeal is open to appeal, this shall be stated when the decision is notified.
2. At the same time it shall be stated who may lodge an appeal, with which body and within what time limit.

**Article 6:24**

1. With the exception of article 6:12, this division applies *mutatis mutandis* if a judgment is open to appeal to a higher court or appeal in cassation to the Supreme Court of the Netherlands.

## **TITLE 7 SPECIAL PROVISIONS ON OBJECTIONS AND ADMINISTRATIVE APPEALS**

### *Division 7.1 Objection procedure before appeal to an administrative court*

#### **Article 7:1**

1. A person who has the right to appeal a decision to an administrative court, must first lodge an objection, unless:
  - a. the decision was taken in an objection procedure or administrative appeal procedure,
  - b. the decision is subject to approval,
  - c. the decision grants or refuses approval,
  - d. the decision was prepared in accordance with division 3.4, or
  - e. the appeal is directed against the failure to take a timely decision.
2. The decision on the objection is open to appeal; the appeal is subject to the same rules as apply to lodging an appeal against the decision objected to.

#### **Article 7:1a**

1. In derogation from article 7:1 the applicant may in his notice of objection request the administrative authority to consent to direct appeal to the administrative court.
2. The administrative authority must in any event refuse the request if another notice of objection that does not contain a similar request has been filed against the decision, unless the other notice of objection is manifestly inadmissible.
3. The administrative authority may consent to the request if the case lends itself to such a procedure.
4. The administrative authority shall decide on the request as soon as possible. A consenting decision shall be taken as soon as it is reasonable to assume that no new notices of objections will be filed. Articles 4:7 and 4:8 do not apply.
5. If the administrative authority consents to the request, it shall without delay forward the notice of objection to the competent court after endorsing it with the date of receipt.
6. A notice of objection received after consent has been given shall likewise be sent to the competent court without delay. Notwithstanding article 8:41.1, no court fee will be charged if this notice of objection does not contain a request as referred to in paragraph 1.

### *Division 7.2 Special provisions on objections*

#### **Article 7:2**

1. Before giving a decision on an objection an administrative authority shall give interested parties the opportunity to be heard.
2. The administrative authority shall in any event inform the person who lodged the objection of this and also the interested parties who expressed a view when the decision was being prepared.

#### **Article 7:3**

An administrative authority may decide not to hear interested parties if:

- a. the objection is manifestly inadmissible,
- b. the objection is manifestly unfounded,
- c. the interested parties have stated that they do not wish to exercise the right to be heard, or
- d. the objection is satisfied in all respects and this cannot prejudice the interests of other interested parties.

#### **Article 7:4**

1. Interested parties may file additional documents until ten days before the hearing.
2. Before the hearing the administrative authority shall deposit the notice of objection and all other documents relating to the case for inspection by interested parties for a period of not less than one week.

3. The notice inviting interested parties to the hearing shall draw their attention to the provision of paragraph 1 and shall state where and when the documents will be available for inspection.
4. Interested parties may obtain copies of these documents at no more than cost.
5. The administrative authority may decide not to apply paragraph 2 provided the interested parties agree.
6. The administrative authority may furthermore decide not to apply paragraph 2, whether or not at the request of an interested party, if there are compelling reasons for secrecy. It shall communicate the application of this provision to the interested parties.
7. In any event there can be no compelling reason if a request for information contained in these documents must be granted under the Government Information (Public Access) Act.
8. If the compelling reason is fear of injury to the physical or mental health of an interested party, inspection of the documents in question may be restricted to an authorized representative who is either an attorney-at-law or a physician.

#### **Article 7:5**

1. Unless the hearing is conducted wholly or partly by the administrative authority itself or by its chairperson or one of its members, the hearing shall be conducted by:
  - a. a person who was not involved in preparing the challenged decision, or
  - b. two or more persons of whom the majority, including the chairman of the hearing, were not involved in preparing the challenged decision.
2. Unless otherwise provided by law, the administrative authority shall decide whether the hearing will be held in public.

#### **Article 7:6**

1. Interested parties shall be heard in each other's presence.
2. Interested parties may be heard separately on the administrative authority's own initiative or on request, if it is likely that a joint hearing will prejudice the proper conduct of the hearing, or that facts or circumstances will be disclosed at the hearing which there are compelling reasons to keep secret.
3. Where interested parties are heard separately, each of them shall be informed of the proceedings at the hearing during his absence.
4. At the request of an interested party or otherwise the administrative authority may decide not to apply paragraph 3 insofar as there are compelling reasons for secrecy. Article 7:4.6, second sentence, and articles 7:4.7 and 7:4.8 apply *mutatis mutandis*.

#### **Article 7:7**

A record shall be drawn up of the hearing.

#### **Article 7:8**

At the request of an interested party witnesses and experts he has brought with him may be heard.

#### **Article 7:9**

If, after the hearing, the administrative authority becomes aware of facts or circumstances which may have considerable relevance to the decision to be given on the objection, this shall be communicated to the interested parties and they shall be given the opportunity to be heard on the matter.

#### **Article 7:10**

1. The administrative authority shall give its decision within six weeks from the day after the day on which the time limit for filing a notice of objection has expired, or within twelve weeks if a committee has been established as referred to in article 7:13.
2. The time limit shall be suspended from the day on which the person who lodged the objection is requested to remedy an omission as referred to in article 6:6 until the day on which the omission is remedied or the time limit set for this purpose expires without having been used.

3. The administrative authority may postpone the decision for six weeks at most.
4. The decision may be further postponed if,
  - a. all interested parties agree,
  - b. the person who filed the notice of objection agrees and the postponement cannot prejudice the interests of other interested parties, or
  - c. postponement is necessary in connection with the observance of procedural rules of law.
5. If the administrative authority has applied paragraph 2, 3 or 4, it shall communicate this to the interested parties in writing.

#### **Article 7:11**

1. If the objection is admissible, the challenged decision shall be reconsidered on the basis of the objection.
2. If the reconsideration gives cause to do so, the administrative authority shall revoke the challenged decision and, if necessary, take a new decision replacing it.

#### **Article 7:12**

1. The decision on the objection must be based on sound reasons, which shall be stated when the decision is notified. If it is decided not to hold a hearing pursuant to article 7:3, the reasons shall also be stated.
2. The administrative authority shall notify the decision by sending or delivering it to the persons to whom it is addressed. If the challenged decision did not address one or more interested parties, the decision on the objection shall be notified in the same way as the challenged decision.
3. As soon as possible after notification of the decision it shall be communicated to the interested parties who expressed a view in the objection procedure or during the preparation of the challenged decision.
4. Article 6:23 applies *mutatis mutandis* to the communication referred to in paragraph 3, which shall, with a view to the start of the appeal period, state as clearly as possible when the decision was notified in accordance with paragraph 2.

#### **Article 7:13**

1. This article applies if, for the purposes of deciding on the objection, an advisory committee has been established:
  - a. which consists of a chairman and at least two members,
  - b. whose chairman is not a member of the administrative authority and does not work under its responsibility, and
  - c. which satisfies any other requirements prescribed by law.
2. If a committee is to advise on the objection, the administrative authority shall as soon as possible communicate this to the person who filed the notice of objection.
3. The hearing shall be conducted by the committee. It may entrust the hearing to the chairman or a member who is not a member of the administrative authority and does not work under its responsibility.
4. The committee shall decide whether or not to apply articles 7:4.6, 7:5.2 and, unless otherwise provided by law, 7:3.
5. A representative of the administrative authority shall be invited to attend the hearing and shall be given the opportunity to explain the position taken by the administrative authority.
6. The recommendation of the committee shall be given in writing and shall include a record of the hearing.
7. If the decision on the objection departs from the committee's recommendation, the reasons for this departure shall be stated in the decision, and the recommendation shall be enclosed with the decision.

#### **Article 7:14**

Article 3:6.2, division 3.4, articles 3:41 to 3:45, division 3.7 – with the exception of article 3:49 – and chapter 4.1 – with the exception of article 4:14.1, article 4:15, paragraphs 1.b, 2.b and c, 3 and 4, and section 4.1.3.2 – do not apply to decisions taken pursuant to this division.

**Article 7:14a**

If an objection against a decision taken on application is lodged by a person other than the applicant, the applicant shall, for the purposes of section 4.1.3.2, be equated with the person who filed the notice of objection.

**Article 7:15**

1. No fee shall be payable for the consideration of an objection.
2. An administrative authority will only compensate an interested party, at his request, for the costs which he was reasonably required to incur in connection with the objection procedure if the challenged decision is revoked on the ground that the decision was taken unlawfully and the administrative authority is responsible for this. Article 243.2 of the Code of Civil Procedure applies *mutatis mutandis*.
3. The request shall be made before the administrative authority has decided on the objection. The administrative authority shall give its decision on the request together with the decision on the objection.
4. Further rules as to which costs are exclusively eligible for compensation and how the amount of the costs shall be determined shall be laid down by general administrative measure.

*Division 7.3 Special provisions on administrative appeals***Article 7:16**

1. Before giving a decision on an appeal, an appellate authority shall give interested parties the opportunity to be heard.
2. The appellate authority shall in any event inform the person who lodged the appeal of this, and also the administrative authority which took the decision and the interested parties who expressed a view when the decision was being prepared.

**Article 7:17**

The appellate authority may decide not to hear interested parties if:

- a. the appeal is manifestly inadmissible, or
- b. the appeal is manifestly unfounded, or
- c. the interested parties have stated that they do not wish to exercise their right to be heard.

**Article 7:18**

1. Interested parties may file additional documents until ten days before the hearing.
2. Before the hearing the appellate authority shall deposit the notice of appeal and all other documents relating to the case for inspection by interested parties for a period of no less than one week.
3. The notice inviting interested parties to the hearing shall draw their attention to the provision of paragraph 1 and shall state where and when the documents will be available for inspection.
4. Interested parties may obtain copies of these documents at no more than cost.
5. The appellate authority may decide not to apply paragraph 2 provided the interested parties agree.
6. The appellate authority may furthermore decide not to apply paragraph 2, whether or not at the request of an interested party, insofar as there are compelling reasons for secrecy. It shall communicate the application of this provision to the interested parties.
7. In any event there can be no compelling reason if a request for information contained in these documents must be granted under the Government Information (Public Access) Act.
8. If the compelling reason is fear of injury to the physical or mental health of an interested party, inspection of the documents in question may be restricted to an authorized representative who is either an attorney-at-law or a physician.

**Article 7:19**

1. The hearing shall be conducted by the appellate authority.
2. The conduct of the hearing may be entrusted by or pursuant to statute to an advisory committee consisting of one or more persons who are not members of the appellate authority nor work under its responsibility.
3. The hearing shall take place in public, unless the appellate authority decides otherwise at the request of an interested party or on its own motion for compelling reasons.

#### **Article 7:20**

1. Interested parties shall be heard in each other's presence.
2. Interested parties may be heard separately on the appellate authority's own initiative or on request, if it is likely that a joint hearing will prejudice the proper conduct of the hearing, or that facts or circumstances will be disclosed at the hearing which there are compelling reasons to keep secret.
3. Where interested parties are heard separately, each of them shall be informed of the proceedings at the hearing during his absence.
4. At the request of an interested party or otherwise the appellate authority may decide not to apply paragraph 3 insofar as there are compelling reasons for secrecy. Article 7:18.6, second sentence, and articles 7:18.7 and 7:18.8 apply *mutatis mutandis*.

#### **Article 7:21**

A record shall be drawn up of the hearing.

#### **Article 7:22**

At the request of an interested party witnesses and experts he has brought with him may be heard.

#### **Article 7:23**

If, after the hearing, the appellate authority becomes aware of facts or circumstances which may have considerable relevance to the decision to be given on the appeal, this shall be communicated to the interested parties and they shall be given the opportunity to be heard about the matter.

#### **Article 7:24**

1. The appellate authority shall give its decision within sixteen weeks from the day after the day on which the time limit for filing the notice of appeal has expired.
2. If, however, the appellate authority is part of the same juristic person as the administrative authority against whose decision the appeal is directed, it shall decide within six weeks from the day after the day on which the time limit for filing the notice of appeal has expired, or within twelve weeks if a committee has been established as referred to in article 7:19.2.
3. The time limit shall be suspended from the day on which the party who filed the notice of appeal is requested to remedy an omission as referred to in article 6:6 until the day on which the omission is remedied or the time limit set for this purpose expires without having been used.
4. The appellate authority may postpone the decision for ten weeks at most.
5. In the situation referred to in paragraph 2, however, the appellate authority may postpone the decision for six weeks at most.
6. The decision may be further postponed if,
  - a. all interested parties agree,
  - b. the person who filed the notice of appeal agrees and the postponement cannot prejudice the interests of other interested parties, or
  - c. postponement is necessary in connection with the observance of procedural rules of law.
7. If the appellate authority has applied paragraph 3, 4, 5 or 6, the appellate authority shall communicate this to the interested parties in writing.

#### **Article 7:25**

If the appellate authority finds the appeal admissible and well-founded, it shall annul the challenged decision and, if necessary, take a new decision replacing it.

#### **Article 7:26**

1. The decision on the appeal must be based on sound reasons, which shall be stated when the decision is notified. If the appellate authority decided not to hold a hearing pursuant to article 7:17, it shall also state the reasons for not holding a hearing.
2. If the decision departs from the recommendation of a committee as referred to in article 7:19.2, the reasons for this departure shall be stated in the decision, and the recommendation shall be enclosed with the decision.
3. The appellate authority shall notify the decision by sending or delivering it to the persons to whom it is addressed. If the challenged decision was not addressed to one or more interested parties, the decision on the appeal shall be notified in the same way as the appealed decision.
4. As soon as possible after notification of the decision it shall be communicated to the administrative authority against whose decision the appeal was directed, to the persons to whom the challenged decision was addressed and to the interested parties who expressed their views in the appeal procedure.
5. Article 6:23 applies *mutatis mutandis* to the communication referred to in paragraph 4, which shall, with a view to the start of the appeal period, state as clearly as possible when the appeal decision was notified in accordance with paragraph 3.

#### **Article 7:27**

Article 3:6.2, division 3.4, articles 3:41 to 3:45, division 3.7 – with the exception of article 3:49 – and chapter 4.1 – with the exception of articles 4:14.1, 4:15.1.b, 4:15.2.b and c, 4:15.3 and 4:15.4, and section 4.1.3.2 – do not apply to decisions taken pursuant to this division.

#### **Article 7:27a**

If an appeal against a decision taken on application is filed by a person other than the applicant, the applicant shall, for the purposes of section 4.1.3.2, be equated with the person who filed the notice of appeal.

#### **Article 7:28**

1. No fee shall be payable for the consideration of an appeal.
2. An administrative authority will only compensate an interested party, at his request, for the costs which he was reasonably required to incur in connection with the appeal procedure if the challenged decision is revoked on the ground that the decision was taken unlawfully and the administrative authority is responsible for this. In this case the appellate authority shall determine the compensation payable by the administrative authority. Article 243.2 of the Code of Civil Procedure applies *mutatis mutandis*.
3. The request shall be made before the appellate authority has decided on the appeal. The appellate authority shall give its decision on the request together with the decision on the appeal.
4. Further rules as to which costs are exclusively eligible for compensation and how the amount of the costs shall be determined shall be laid down by general administrative measure.

## **TITLE 8 SPECIAL PROVISIONS ON APPEALS TO THE DISTRICT COURT**

### **Chapter 8.1 General provisions**

#### *Division 8.1.1 Jurisdiction*

##### **Article 8:1**

1. An interested party may appeal a decision to the district court.
2. Where the interested party is a public employee within the meaning of article 1 of the Public Employees Act, affected in that capacity, or a conscript within the meaning of Chapter 2 of the National Service Framework Act, affected in that capacity, or a surviving relative or successor in title of such a person, an act of an administrative authority other than a decision is equated with a decision.
3. The following are equated with a decision:
  - a. a written refusal to approve a decision laying down a generally binding regulation or policy rule or revoking or determining the entry into force of a generally binding regulation or policy rule, and
  - b. a written refusal to approve a decision taken in preparation of a private-law juridical act.

##### **Article 8:2**

No appeal lies against:

- a. a decision laying down a generally binding regulation or policy rule,
- b. a decision revoking or determining the entry into force of a generally binding regulation or policy rule, and
- c. a decision approving a decision laying down a generally binding regulation or policy rule or revoking or determining the entry into force of a generally binding regulation or policy rule.

##### **Article 8:3**

No appeal lies against decisions taken in preparation of a private-law juridical act.

##### **Article 8:4**

No appeal lies against a decision:

- a. suspending or annulling a decision of another administrative authority,
- b. based on a power conferred or an obligation imposed by law in case of exceptional circumstances and taken in such circumstances,
- c. taken pursuant to a provision of law aimed at protecting the military interests of the Kingdom or its allies,
- d. appointing a person, unless the appeal is lodged by a public employee within the meaning of article 1 of the Public Employees Act, affected in that capacity, or a conscript within the meaning of Chapter 2 of the National Service Framework Act, affected in that capacity, or a surviving relative or successor in title of such a person,
- e. determining marks for or assessing the knowledge or ability of a candidate or student examined or otherwise tested on this knowledge or ability, or determining examination papers, marking criteria or further rules for such an examination or test,
- f. concerning a technical assessment of a vehicle or aircraft, or a measuring device or a part or auxiliary installation for it,
- g. relating to the numbering of lists of candidates, the validity of electoral alliances, voting procedure, vote counting, determination of vote values and of the results in elections of members of representative bodies, pronouncing that persons are appointed to vacant seats, admission of new members of a provincial council, of a municipal council and of the governing board of a water management board, and the grant of temporary retirement on account of pregnancy and childbirth or illness,
- h. taken pursuant to a provision of law relating to conscription, if it concerns medical examination or re-examination, active service, long furlough or discharge from service, unless

- the decision relates to extension of active service or household allowance, or unless the decision was taken pursuant to the Armed Forces (Reserve Personnel) Act 1985,
- i. constituting an official act of a bailiff or civil-law notary,
  - j. as referred to in articles 7:1a.4, 7:10 paragraph 2, 3 or 4, 7:24.3 to 6, or
  - k. containing a refusal pursuant to article 2:15;
  - l. as referred to in article 3:21.1.b,
  - m. constituting a demand notice as referred to in article 4:112 or a compulsory payment order.

#### **Article 8:5**

1. No appeal lies against a decision taken pursuant to a provision of law listed in the schedule to this Act.
2. If the schedule is amended, the version of the schedule in force before the date on which the amendment entered into force shall continue to apply when determining whether a decision notified before that date is open to appeal.

#### **Article 8:6**

1. No appeal lies against a decision which is or was open to appeal to another administrative court.
2. No appeal lies against a decision against which the interested party can lodge or could have lodged an administrative appeal.

#### **Article 8:7**

1. An appeal lodged against a decision of an administrative authority of a province or municipality, or a water management board, or a region as referred to in article 21 of the 1993 Police Act, or of a joint body or public body established under the Joint Arrangements Act, falls within the jurisdiction of the district court within whose district the administrative authority has its seat.
2. An appeal lodged against a decision of any other administrative authority falls under the jurisdiction of the district court within whose district the person lodging the notice of appeal is resident or domiciled. If the person lodging the appeal has no place of residence or domicile in the Netherlands, the district court within whose district the administrative authority has its seat has jurisdiction.

#### **Article 8:8**

1. If appeals have been lodged against the same decision with more than one competent district court, all the appeals shall be heard by the competent district court that received a notice of appeal first. If appeals were lodged with more than one competent district court at the same time, they shall be heard by the competent district court mentioned first in the Judiciary (Territorial Division) Act.
2. The other district court or courts shall refer the appeal or appeals brought before them to the district court that will hear the appeals. The documents relating to the appeals shall be sent to the district court that will further consider them.
3. If appeals against the same decision have been lodged with more than one district court, the administrative authority shall communicate this to those district courts without delay.
4. If, pursuant to article 7:1a.5 or article 7:1a.6, the administrative authority must forward several notices of objection, it shall forward them to the district court which is to hear the case pursuant to the second sentence of paragraph 1.

#### **Article 8:9**

The Administrative Jurisdiction Division of the Council of State or the Central Appeals Tribunal, as the case may be, shall be the court of last instance for deciding disputes between district courts about the application of article 8:7 in matters over which they have appellate jurisdiction.

#### *Division 8.1.2 Procedure before a single-judge or three-judge panel*

**Article 8:10**

1. Cases brought before the district court shall first be considered by a single-judge panel.
2. If the single-judge panel deems a case unsuitable for consideration by a single judge, it will refer it to a three-judge panel. A single-judge panel may also refer a case to a three-judge panel for other reasons.
3. If a three-judge panel thinks that a case is suitable for further consideration by a single judge, it may refer it to a single-judge panel.
4. A case may be referred at any stage of the proceedings. The case shall then be resumed at the point at which it was referred.

**Article 8:11**

1. The rules for hearing appeals apply to proceedings both before a single-judge panel and a three-judge panel.
2. A judge sitting alone has the same powers and obligations as a judge presiding over a three-judge panel.

**Article 8:12**

The district court may instruct a delegated judge to conduct all or part of the preliminary inquiry.

*Division 8.1.3 Referral, consolidation and separation***Article 8:13**

1. A district court may refer a case brought before it to a district court before which another case has been brought, if it considers it desirable that these cases are heard by a single court. If a district court holds that its involvement in a case brought before it makes it desirable that this case is heard by another court, it may refer the case to another district court.
2. A request for referral may be made until the start of the hearing.
3. If the district court to which a case has been referred agrees to the referral, the documents relating to the case shall be sent to it.

**Article 8:14**

1. A district court may consolidate cases involving the same or related matters, and may separate the consideration of consolidated cases.
2. A request to such effect may be made until the close of the hearing.

*Division 8.1.4. Judicial disqualification***Article 8:15**

At the request of a party any of the judges hearing a case may be disqualified on the grounds of facts or circumstances which might prejudice judicial impartiality.

**Article 8:16**

1. The request shall be filed as soon as the applicant has become aware of the facts or circumstances.
2. The request shall be filed in writing and shall state the grounds. The request may also be made orally after the start of the hearing or of the preliminary hearing of parties or witnesses, as the case may be.
3. All the facts and circumstances must be presented at the same time.
4. A subsequent request for disqualification of the same judge shall not be accepted unless the applicant puts forward facts or circumstances of which he did not become aware until after the previous request.
5. If the request is made at the hearing, the hearing shall be stayed.

**Article 8:17**

A judge who is challenged may accept his disqualification.

**Article 8:18**

1. The request for disqualification shall be dealt with at a court hearing as soon as possible by a three-judge panel not including the challenged judge.
2. The applicant and the challenged judge shall be given the opportunity to be heard. The district court may direct on its own motion or at the request of the applicant or the challenged judge that they will not be heard in each other's presence.
3. The district court shall decide on the request as soon as possible. The decision shall state the reasons and shall be communicated without delay to the applicant, the other parties and the challenged judge.
4. In the event of abuse of right the district court may direct that a subsequent request will not be heard. This shall be stated in the decision.
5. The decision cannot be appealed.

**Article 8:19**

1. Any of the judges on the panel hearing a case may request to be excused on the grounds of facts or circumstances as referred to in article 8:15.
2. The request shall be made in writing, stating the reasons. The request may also be made orally after the start of the hearing or of the preliminary hearing of parties or witnesses, as the case may be.
3. If the request is made at the hearing, the hearing shall be stayed.

**Article 8:20**

1. The request to be excused shall be heard as soon as possible by a three-judge panel not including the judge who has asked to be excused.
2. The district court shall decide on the request as soon as possible. The decision shall state the reasons and shall be communicated without delay to the parties and the judge who asked to be excused.
3. The decision cannot be appealed.

*Division 8.1.5 Parties*

**Article 8:21**

1. Natural persons without legal capacity to appear in judicial proceedings shall be represented according to the rules of civil law. The legal representative shall not require the authorization of the subdistrict court referred to in article 349 of Book 1 of the Civil Code.
2. Persons as referred to in paragraph 1 may appear in the proceedings themselves if they can be deemed to have a reasonable understanding of their interests.
3. If no legal representative is present or if he is unavailable and the case is urgent, the district court may appoint a temporary representative. The appointment shall cease as soon as the legal representative is present or as soon as he is available again.

**Article 8:22**

1. In the event of bankruptcy or suspension of payments or the application of the statutory debt restructuring scheme for natural persons, articles 25, 27 and 31 of the Bankruptcy Act apply *mutatis mutandis*.
2. Article 25.2 and article 27 of the Bankruptcy Act do not apply if the parties were invited to appear at a hearing of the court before the declaration of bankruptcy.

**Article 8:23**

1. Where an administrative authority is a collegial body, it shall be represented in proceedings by one or more members designated by the administrative authority.
2. The Crown shall be represented in proceedings by the Minister concerned or by one or more of the Ministers concerned, as the case may be.

**Article 8:24**

1. A party may be assisted or represented by an authorized representative.
2. The district court may require written authorization of a representative.
3. Paragraph 2 does not apply to members of the Dutch Bar.

**Article 8:25**

1. The district court may refuse to allow a person against whom serious objections exist to provide assistance or to act as representative.
2. The person referred to in paragraph 1 and the party concerned shall be notified without delay of the refusal and of the reason for it.
3. Paragraph 1 does not apply to members of the Dutch Bar.

**Article 8:26**

1. Until the close of the hearing the district court may allow the joinder of interested parties either on its own motion or at the request of a party or at the interested parties' own request.
2. If the district court has reason to assume that unknown interested parties exist, it may have an announcement published in the Government Gazette that a case is pending before it. In addition to publication in the Government Gazette, the announcement may also be made by other means.

**Article 8:27**

1. Parties the district court has summoned to appear in person, or to appear either in person or represented by an authorized representative, whether or not for the purpose of providing information, are required to appear and provide the requested information. The attention of the parties shall be drawn to this requirement and the provisions of article 8:31.
2. If the person summoned is a juristic person or an administrative authority which is a collegial body, the district court may summon one or more specifically named officers or members.

**Article 8:28**

Parties the district court has requested to provide written information are obliged to provide the requested information. The attention of the parties shall be drawn to this obligation and the provision of article 8:31.

**Article 8:28a**

1. Notwithstanding articles 8:27 and 8:28, if a party is appealing an administrative fine imposed on him, he shall not be obliged to testify about the violation.
2. Before questioning this party, the district court shall inform him that he is not obliged to answer.

**Article 8:29**

1. Parties who are required to provide information or submit documents may, if there are compelling reasons for this, refuse to provide information or submit documents or may inform the district court that the information or documents will only be disclosed to the court.
2. In any event there can be no compelling reason if a request for information contained in these documents must be granted under the Government Information (Public Access) Act.
3. The district court shall decide whether the refusal or restriction on disclosure referred to in paragraph 1 is justified.
4. If the district court decides that the refusal is justified, the obligation ceases.
5. If the district court decides that the restriction on disclosure is justified, it may only use the information or documents for its judgment with the consent of the other parties. If consent is refused, the case shall be referred to another court panel.

**Article 8:30**

The parties are obliged to cooperate in an investigation as referred to in article 8:47.1. The attention of the parties shall be drawn to this obligation.

**Article 8:31**

If a party fails to comply with the obligation to appear, provide information, submit documents or cooperate in an investigation as referred to in article 8:47.1, the district court may draw such conclusions from this fact as it deems appropriate.

**Article 8:32**

1. If it is feared that inspection of documents by a party would injure this party's physical or mental health, the district court may direct that inspection of these documents shall be restricted to an authorized representative who is either an attorney-at-law or a physician, or has obtained the court's special leave for such inspection.
2. If inspection of documents by a party would disproportionately breach another person's privacy, the district court may direct that inspection of these documents shall be restricted to an authorized representative who is either an attorney-at-law or a physician, or has obtained the court's special leave for such inspection.

*Division 8.1.6 Witnesses, experts and interpreters***Article 8:33**

1. Any person summoned by the district court as a witness is required to comply with the summons and give evidence.
2. The summons shall state the time and place where the witness is to be heard, the facts to which the hearing will relate and the consequences of non-appearance.
3. Articles 165.2, 165.3, 172, the first sentence of article 173.1, and articles 173.2, 173:2, 173.3, 174.1, 175, 176.1, 176.3, 177.1 and 178 of the Code of Civil Procedure apply *mutatis mutandis*.
4. The district court may direct that witnesses shall first take the oath or affirmation before they are heard, in which case they shall swear or affirm that they will tell the whole truth and nothing but the truth.

**Article 8:34**

1. An expert who has accepted his appointment is required to carry out his assignment impartially and to the best of his ability.
2. Articles 165.2.b and 165.3 of the Code of Civil Procedure apply *mutatis mutandis*.

**Article 8:35**

1. An interpreter who has accepted his appointment and who has been summoned by the district court is required to comply with the summons and carry out his assignment impartially and to the best of his ability. Articles 172 and 178 of the Code of Civil Procedure apply *mutatis mutandis*.
2. The summons shall state the time and place where the assignment is to be carried out and the consequences of non-appearance.

**Article 8:36**

1. Witnesses, experts and interpreters summoned by the district court, and experts who have carried out an investigation as referred to in article 8:47.1, shall be awarded a fee payable by the state. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act apply *mutatis mutandis*.
2. A party who has brought or called a witness or expert or for whom an expert has produced a report, shall pay the witness or expert a fee. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act apply *mutatis mutandis*.

*Division 8.1.7 Dispatch of documents*

**Article 8:37**

1. Summonses, the invitation to appear at a district court hearing and a copy of the judgment and of the record of an oral judgment shall be sent by the court registry by registered mail or by recorded delivery, unless the district court otherwise directs.
2. Unless the district court otherwise directs, other documents shall be sent by the court registry by ordinary mail.
3. Letters shall show the date of dispatch.

**Article 8:38**

1. If a document sent by the court registry by registered mail or by recorded delivery is returned and the court registry finds that on the dispatch date or not later than one week thereafter the addressee was registered in the municipal personal records database at the address stated on the document, it shall send the document as soon as possible by ordinary post.
2. In all other cases in which a document sent by the court registry by registered mail or by recorded delivery is returned, the court registry shall, if possible, correct the address stated on the document and send it again by registered mail or by recorded delivery.

**Article 8:39**

1. Unless the district court has decided otherwise pursuant to article 8:29 or 8:32, the court registry shall send the documents relating to the case to the parties as soon as possible.
2. The court registry need not send very large documents or documents which are inconvenient to copy. The court registry shall inform the parties of this, stating that the documents will be deposited at the court registry for inspection for a period it shall set at not less than one week.
3. The parties may obtain copies of or extracts from the documents referred to in paragraph 2. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act apply *mutatis mutandis* in regard to the costs.

**Article 8:40**

If an appeal has been lodged by two or more persons, the summons, the invitation to appear at a court hearing, the documents relating to the case and a copy of the judgment or of the record of the oral judgment need only be sent to the person listed first in the notice of appeal.

**Chapter 8.2 Appeal procedure***Division 8.2.1 Court fee***Article 8:41**

1. The court registry charges the person filing a notice of appeal a court fee. If a notice of appeal is directed against two or more related decisions or filed by two or more persons against the same decision, the court fee is payable only once. The fee shall then be the highest amount payable under paragraph 3 either for one of the decisions or by one of the persons filing the notice of appeal, as appropriate.
2. The court registry shall send a communication drawing the attention of the person filing the notice of appeal to the fact that a court fee must be paid and informing him that the amount payable must be credited to the account of the district court or deposited at the registry within four weeks of the dispatch date of the communication. If the amount has not been credited or deposited within this period, the appeal shall be declared inadmissible, unless the person filing the notice of appeal cannot reasonably be held to have been in default.
3. The amount of the court fee is:
  - a. €41 for an appeal lodged by a natural person against:
    - (1) a decision taken pursuant to a provision of law included in the Schedule to the Social Security Appeals Act, part B, or part C at 1 to 25, 29, or 33 insofar as it is a decision taken pursuant to article 30.d of the Act regulating the establishment of a structure for the implementation of the Work and Income Act.

- (2) a decision on an unemployment or sickness benefit taken in regard to a public employee within the meaning of article 1 of the Public Employees Act, affected in that capacity, or a conscript within the meaning of Chapter 2 of the National Service Framework Act, affected in that capacity, or a surviving relative or successor in title of such a person, or
- (3) a decision on a permanent incapacity for work benefit pursuant to a provision of law providing for a state disability pension covering a natural person's incapacity for work, or a decision taken pursuant to article P9 of the Public Employees Superannuation Act,
- (4) a decision taken under the Rent Rebate Act,
- b. €150 for an appeal lodged by a natural person against a decision other than a decision as referred to under a, unless otherwise provided by statute, and
- c. €297 for an appeal lodged by a person other than a natural person.
- 4. If an appeal is withdrawn because the administrative authority has met some or all of the objections of the person who filed the notice of appeal, the administrative authority shall refund the court fee paid by him. In other cases where the appeal is withdrawn, the administrative authority may reimburse all or part of the court fee paid.
- 5. The amounts referred to in paragraph 3 may be modified by general administrative measure in response to the consumer price index movements.

#### *Division 8.2.2 Preliminary inquiry*

##### **Article 8:42**

- 1. Within four weeks of the date on which a notice of appeal is sent to an administrative authority, this authority shall send the documents relating to the case to the district court and file a defence.
- 2. The district court may extend the time limit referred to in paragraph 1.

##### **Article 8:43**

- 1. The district court may give the person who filed the appeal the opportunity to submit a written reply, in which case the administrative authority shall be given the opportunity to submit a written rejoinder. The district court shall set the time limits for reply and rejoinder.
- 2. The district court shall give parties other than those referred to in paragraph 1 the opportunity to state their views on the case in writing at least once, for which it shall set a time limit.

##### **Article 8:44**

- 1. The district court may summon the parties to appear in person or to appear either in person or represented by an authorized representative, whether or not to provide information. If not all the parties are summoned, the parties not summoned shall be given the opportunity to attend the hearing and state their views on the case.
- 2. The court clerk shall draw up a record of the information provided.
- 3. The record shall be signed by the presiding judge of the three-judge panel and the court clerk. If the presiding judge or the court clerk is prevented from signing, this shall be mentioned in the record.

##### **Article 8:45**

- 1. The district court may request parties and others to provide written information and send in documents in their possession within a time limit to be set by the court.
- 2. Administrative authorities are required to comply with a request as referred to in paragraph 1 even if they are not a party to the action. Article 8:29 applies *mutatis mutandis*.
- 3. Employers of parties are required to comply with a request as referred to in paragraph 1 even if they are not a party to the action. Article 8:29 applies *mutatis mutandis*.

##### **Article 8:46**

- 1. The district court may call witnesses.

2. The district court shall inform the parties, at least one week before the hearing, of the names and places of residence of the witnesses, the date, time and place where they are to be heard and the facts about which they will be heard.
3. Articles 179.1 and 179.2, the first sentence of article 179.3, and articles 180.1, 180.2, 180.3 and 180.5 of the Code of Civil Procedure apply *mutatis mutandis*.

#### **Article 8:47**

1. The district court may appoint an expert to carry out an examination.
2. The appointment will state the instructions to the expert and the time limit as referred to in paragraph 4.
3. The parties shall be informed of the intention to appoint an expert as referred to in paragraph 1. The district court may give the parties the opportunity to express their wishes concerning the investigation to the court in writing within a time limit set by the court.
4. The district court shall set the expert a time limit for submitting his written report of the examination.
5. The parties may express their views on the report in writing within four weeks after the date on which the report is sent to them.
6. The district court may extend the time limit referred to in paragraph 5.

#### **Article 8:48**

1. A physician who has to examine a person for the purposes of an investigation as referred to in article 8:47.1 may obtain the relevant information about the person from the physician or physicians treating him or from the occupational physician of the administrative authority or its medical adviser.
2. They shall provide the information requested insofar as this will not disproportionately breach the privacy of the person.

#### **Article 8:49**

The district court may appoint interpreters.

#### **Article 8:50**

1. The district court may carry out an on-site investigation. For this purpose it shall have access to any place in so far as reasonably necessary for the performance of its duties.
2. Administrative authorities shall cooperate as required in the interest of the investigation.
3. The date, time and place of the investigation shall be communicated to the parties. They may be present at the investigation.
4. The court clerk shall draw up a record of the investigation.
5. The record shall be signed by the presiding judge of the three-judge panel and the court clerk. If the presiding judge or the court clerk is prevented from signing, this shall be mentioned in the record.

#### **Article 8:51**

1. The district court may appoint a judge's assistant or the court clerk to carry out an on-site investigation. This person shall have access to any place in so far as reasonably necessary for the performance of the task assigned to him. The district court has power to issue a warrant to enter premises.
2. Articles 8:50.2 and 8:50.3 apply *mutatis mutandis*.
3. The judge's assistant or the court clerk shall draw up and sign a record of the investigation.

#### *Division 8.2.3 Accelerated procedure*

#### **Article 8:52**

1. In urgent cases the district court may direct that the case is to be dealt with using an accelerated procedure.
2. In that case the district court may:

- a. shorten the time limit referred to in article 8:41.2;
  - b. shorten the time limit referred to in article 8:42.1;
  - c. decide not to apply all or part of article 8:43.2;
  - d. decide not to apply all or part of article 8:47.3; and
  - e. shorten the time limit referred to in article 8:47.5.
3. If the district court directs that a case is to be dealt with using an accelerated procedure, it shall also as soon as possible set the date and time when the court hearing is to take place and notify this to the parties without delay. Article 8:56 does not apply.

#### **Article 8:53**

If the court starts considering the case and finds that it is not sufficiently urgent to justify using the accelerated procedure or that it calls for the ordinary procedure, it shall direct that the case is to be further considered following the ordinary procedure.

#### *Division 8.2.4 Simplified procedure*

#### **Article 8:54**

1. Until the parties are invited to appear in court, the district court may close the inquiry if it is unnecessary to continue it for one of the following reasons:
  - a. the district court manifestly lacks jurisdiction,
  - b. the appeal is manifestly inadmissible,
  - c. the appeal is manifestly unfounded; or
  - d. the appeal is manifestly well-founded.
2. In a judgment given in accordance with paragraph 1 the court shall draw the parties' attention to article 8:55.1.

#### **Article 8:54a**

1. Until the parties are invited to appear in court, the district court may close the inquiry if it is unnecessary to continue the inquiry because it is manifest that the administrative authority wrongly consented to a direct appeal to the district court.
2. In that case the district court shall give judgment directing that the administrative authority deal with the notice of appeal as if it were a notice of objection. Article 7:10 applies *mutatis mutandis*.

#### **Article 8:55**

1. Opposition to a judgment as referred to in article 8:54.2 may be lodged with the district court by interested parties and by the administrative authority. The person filing the notice of opposition may also ask to be given the opportunity to be heard on the opposition. Articles 6:4.3, 6:5 to 6:9, 6:11, 6:14, 6:15, 6:17 and 6:21 apply *mutatis mutandis*.
2. If the effect of a judgment is suspended by statute until the time limit for lodging an appeal has expired, or, if an appeal has been lodged, until a decision has been given on the appeal, the effect of a judgment as referred to in article 8:54.2 shall be suspended in a similar manner.
3. If the person lodging the opposition has requested to be heard, the district court must give him the opportunity to be heard before deciding on the opposition, unless it considers the opposition to be well-founded. If the person lodging the opposition has not requested to be heard, the district may give him the opportunity to be heard in court.
4. If the opposed judgment was given by a three-judge panel, the decision on the opposition shall be given by a three-judge panel. The panel deciding the opposition shall not include any member of the panel which pronounced the opposed judgment.
5. The court may declare the opposition:
  - a. inadmissible,
  - b. unfounded, or
  - c. well-founded.

6. If the district court declares the opposition inadmissible or unfounded, the opposed judgment stands.
7. If the district court declares the opposition well-founded, the opposed judgment ceases to have effect and the inquiry shall be resumed at the point it had reached.

#### *Division 8.2.4A Appeal against failure to take a timely decision*

##### **Article 8:55b**

1. If an appeal is directed against a failure to take a timely decision, the district court shall give judgment in accordance with the provisions of article 8:54 within eight weeks after the notice of appeal is received and the requirements of article 6:5 are satisfied, unless the district court considers it necessary to hold a hearing.
2. If the district court considers a hearing necessary, it shall communicate this to the parties as soon as possible.
3. If the district court considers a hearing necessary, it shall if possible deal with the appeal in accordance with the provisions of article 8:52. In that case the district court shall if possible give judgment within thirteen weeks.

##### **Article 8:55c**

1. If the district court finds the appeal well-founded, it shall at the same time, on request, determine the amount of the penalty forfeited pursuant to article 4:17.

##### **Article 8:55d**

1. If the appeal is declared well-founded and no decision has yet been notified, the district court shall direct the administrative authority to notify a decision within two weeks after the date of dispatch of the judgment.
2. In its judgment the district court shall impose a further penalty for each day that the administrative authority fails to comply with the judgment.
3. The district court may set a different time limit or order a different measure in special cases or if compliance with other provisions of law so demands.

##### **Article 8:55e**

1. If an opposition is lodged against a judgment given pursuant to article 8:54, the district court shall decide on the opposition within six weeks.
2. Article 8:55.2 does not apply.
3. If the opposition is well-founded, the district court shall decide on the appeal as soon as possible.

#### *Division 8.2.5 The hearing*

##### **Article 8:56**

After the preliminary inquiry is closed, the parties shall be invited at least three weeks beforehand to appear in court at the date, time and place specified in the invitation.

##### **Article 8:57**

With the parties' consent, the district court may direct that there will be no hearing. In that case the district court shall close the inquiry.

##### **Article 8:58**

1. The parties may file additional documents until ten days before the court hearing.
2. The invitation referred to in article 8:56 shall draw the attention of the parties to this right.

##### **Article 8:59**

The district court may summon a party to appear in person or to appear either in person or represented by an authorized representative, whether or not to provide information.

**Article 8:60**

1. The district court may summon witnesses and appoint experts and interpreters.
2. A witness who has been summoned or an expert or interpreter who has accepted his appointment and is summoned by the district court shall be required to comply with the summons. Articles 172 and 178 of the Code of Civil Procedure apply *mutatis mutandis*. The summons to the expert shall state his instructions, the place, date and time the instructions are to be carried out and the consequences of non-appearance.
3. The invitation referred to in article 8:56 shall, as far as possible, state the names and addresses of the witnesses and experts who have been summoned and the facts about which they will be heard or the instructions to be carried out.
4. The parties may bring witnesses and experts or summon witnesses and experts by registered letter or bailiff's writ, provided they have sent the district court and the other parties notice thereof, stating names and addresses, at least one week before the day of the hearing. The invitation referred to in article 8:56 shall draw the attention of the parties to this right.

**Article 8:61**

1. The judge presiding over a three-judge panel shall be in charge of the hearing.
2. The court clerk shall keep notes of the proceedings at the hearing.
3. The court clerk shall draw up a record of the hearing if the district court so directs on its own motion or at the request of a party having an interest therein and if the judgment is appealed.
4. The record shall state the names of the judge or judges dealing with the case, the names of the parties and their representatives or authorized representatives who appeared at the hearing and the persons who assisted them, and of the witnesses, experts and interpreters who appeared at the court hearing.
5. The record shall contain an account of what passed at the hearing relating to the case.
6. The record shall be signed by the judge presiding over the three-judge panel and by the court clerk. If the presiding judge or court clerk is prevented from signing, this shall be mentioned in the record.
7. The written summaries of the oral arguments presented in court may be attached to the record.
8. The district court may direct that a statement by a party, witness or expert shall be included in the record in its entirety. In that case the statement shall immediately be put down in writing and read out to the party, witness or expert, who may then make changes to his statement. These changes shall be put down in writing and read out to the party, witness or expert. The statement shall be signed by the party, witness or expert. If it is not signed, the reason for this shall be stated in the record.

**Article 8:62**

1. The hearing shall be held in open court.
2. The district court may direct that the hearing shall be held wholly or partly behind closed doors:
  - a. in the interest of morals or public order,
  - b. in the interest of national security,
  - c. if the interests of juveniles or the protection of the private life of the parties so require, or
  - d. if publicity would seriously prejudice the interests of justice.

**Article 8:63**

1. Article 179.2 and the first sentence of article 179.3 of the Code of Civil Procedure apply *mutatis mutandis* to hearings of witnesses and experts. Article 179.1 of the Code of Civil Procedure applies *mutatis mutandis* to hearings of witnesses.
2. The district court may decide not to hear witnesses and/or experts brought or called by a party if it holds that this cannot reasonably be expected to contribute to the assessment of the case.

3. If a witness or an expert summoned by a party fails to appear, the district court may summon him. In that case the district court shall suspend the hearing.

**Article 8:64**

1. The district court may stay the hearing. It may at the same time direct that the preliminary inquiry shall be resumed.
2. If the district court did not set a date and time for resumption when it suspended the hearing, it shall do so as soon as possible. The court clerk shall inform the parties of the date and time of the resumed hearing as soon as possible.
3. In cases in which the hearing has been suspended, the case shall be resumed at the point at which it was suspended.
4. The district court may direct that the hearing shall be started again.
5. With the parties' consent, the district court may direct that the hearing will not be resumed. In that case the district court shall close the inquiry.

**Article 8:65**

1. The district court shall close the hearing if it holds that the examination of the case has been completed.
2. The parties have the right to make a final speech to the court before the hearing is closed.
3. Immediately after closing the hearing, the presiding judge shall announce the date when judgment will be given.

*Division 8.2.6 Judgment*

**Article 8:66**

1. Unless judgment is given orally, the district court shall give judgment in writing within six weeks of closing the inquiry.
2. In special circumstances the district court may extend this time limit by six weeks at most.
3. The parties shall be notified of the extension.

**Article 8:67**

1. The district court may give judgment orally immediately after closing the hearing. It may defer judgment for one week at most, announcing to the parties the date and time when judgment will be given.
2. An oral judgment shall comprise the decision and the grounds for the decision.
3. The court clerk shall draw up a record of the oral judgment.
4. The record shall be signed by the judge presiding over the three-judge panel and by the court clerk. If the presiding judge or the court clerk is prevented from signing, this shall be mentioned in the record.
5. The district court shall pronounce the decision referred to in paragraph 2 in open court, in the presence of the court clerk. It shall also state who is entitled to which remedy before which administrative court and within what time limit.
6. The information referred to in the second sentence of paragraph 5 shall be included in the record.

**Article 8:68**

1. If the district court considers the inquiry was not complete, it may reopen the inquiry. The district court shall then determine how the inquiry is to be continued.
2. The court clerk shall as soon as possible notify this to the parties.

**Article 8:69**

1. The district court shall give judgment on the basis of the notice of appeal, the documents submitted, the proceedings during the preliminary inquiry and the proceedings at the hearing.
2. The district court shall on its own motion state additional legal grounds on which the judgment is based.

3. The district court may on its own motion state additional facts on which the judgment is based.

#### **Article 8:70**

The judgment may declare that:

- a. the district court lacks jurisdiction,
- b. the appeal is inadmissible,
- c. the appeal is unfounded, or
- d. the appeal is well-founded.

#### **Article 8:71**

If an action may only be brought before the civil courts, this shall be stated in the judgment. The civil courts shall be bound by this decision.

#### **Article 8:72**

1. If the district court declares an appeal well-founded, it shall annul all or part of the challenged decision.
2. If a decision or part of a decision is annulled, this entails the annulment of the legal effects of the decision or the annulled part of the decision.
3. The district court may direct that the legal effects of the annulled decision or the annulled part of the decision shall be allowed to stand in full or in part.
4. If the district court declares an appeal well-founded, it may order the administrative authority to take a new decision or to perform another act in accordance with its judgment, or it may rule that its judgment shall take the place of the annulled decision or the annulled part of the decision.
5. The district court may set the administrative authority a time limit for taking a new decision or performing another act, and if necessary it may grant provisional relief. In the latter case the district court shall determine the date on which the provisional relief shall cease.
6. The district court may rule that provisional relief shall cease at a time later than the judgment date.
7. The district court may rule that, if or as long as the administrative authority fails to comply with the judgment, it shall forfeit a penalty in an amount determined in the judgment and payable to a party designated by the court. Articles 611a to 611i of the Code of Civil Procedure apply *mutatis mutandis*.

#### **Article 8:72a**

If the district court annuls a decision to impose an administrative fine, it shall decide about the imposition of a fine and shall direct that to this extent its judgment shall take the place of the annulled decision.

#### **Article 8:73**

1. If the district court declares an appeal well-founded, it may on the application of a party order the administrative authority to compensate this party for the damage suffered if there are grounds for doing so.
2. If the district court cannot determine or cannot fully determine the compensation amount when it gives its judgment, it shall direct in its judgment that the inquiry shall be reopened in preparation of a further decision on this matter. The district court shall at the same time determine how the inquiry is to be continued.

#### **Article 8:73a**

1. If an appeal is withdrawn because the administrative authority has met some or all of the objections of the person who lodged the appeal, then on his application the district court may by separate judgment and in accordance with the provisions of article 8:73 order the administrative authority to pay him compensation for the damage he suffered. The application must be filed at the same time the appeal is withdrawn. If this requirement is not met, the application shall be declared inadmissible.

2. If necessary, the district court shall give the person who lodged the appeal and submitted an application the opportunity to file a written explanation of the application and the administrative authority the opportunity to file a defence. The court shall set time limits. If the application is made orally, the district court may order that the application be explained and the defence put forward immediately and orally.
3. Where the application has been explained and the defence put forward orally, the district court shall close the inquiry. In other cases divisions 8.2.4 and 8.2.5 apply *mutatis mutandis*.

#### **Article 8:74**

1. If the district court allows the appeal, the judgment shall include an order to the administrative authority to reimburse the person who lodged the appeal for the court fee paid by him.
2. In other cases the judgment may include an order to the juristic person designated by the court to reimburse all or part of the court fee.

#### **Article 8:75**

1. The district court has exclusive jurisdiction to order a party to pay the costs which another party has reasonably incurred in connection with the appeal proceedings before the district court, the objection procedure and the administrative appeal procedure. Articles 7:15.2, 7:15.3 and 7:15.4, the first sentence of article 7:28.2, and articles 7:28.3 and 7:28.4 apply. A natural person may be ordered to pay costs only in the event of manifestly unreasonable use of procedural law. Further rules as to which costs are exclusively eligible for an order for costs as referred to in the first sentence and as to how the amount of the costs shall be determined in the judgment, shall be laid down by general administrative measure.
2. If costs are awarded for the benefit of a party who, pursuant to the Legal Aid Act, has been granted legal aid for the appeal to the district court, the objection or the administrative appeal, these costs shall be paid to the court registry. Article 243 of the Code of Civil Procedure applies *mutatis mutandis*.

#### **Article 8:75a**

1. If an appeal is withdrawn because the administrative authority has satisfied some or all of the objections of the person who lodged the appeal, the district court may, at this person's request, award the costs of the proceedings against the administrative authority by a separate judgment and in accordance with the provisions of article 8:75. The request must be filed at the same time the appeal is withdrawn. If this requirement is not met, the application shall be declared inadmissible.
2. Articles 8:73a.2 and 8:73a.3 apply *mutatis mutandis*.

#### **Article 8:76**

Insofar as a judgment includes an award of damages, costs or compensation for court fees as referred to in articles 8:73, 8:73a, 8:74, 8:75, 8:75a, 8:82.4 or 8:87.3, this part of the judgment shall be enforceable in accordance with the provisions of the Code of Civil Procedure.

#### **Article 8:77**

1. A written judgment shall state:
  - a. the names of the parties and their representatives or authorized representatives,
  - b. the grounds for the decision,
  - c. the decision,
  - d. the name or names of the judge or judges who heard the case,
  - e. the date on which the decision was given,
  - f. who is entitled to which remedy before which administrative court and within what time limit.
2. If the judgment declares the appeal well-founded, it shall state which written or unwritten rule of law or general principle of law is held to have been violated.
3. The judgment shall be signed by the judge presiding over the three-judge panel and by the court clerk. If the presiding judge or court clerk is prevented from signing, this shall be mentioned in the judgment.

**Article 8:78**

The district court shall pronounce the decision referred to in article 8:77.1.c in open court in the presence of the court clerk.

**Article 8:79**

1. Within two weeks of the date of the judgment the court registry shall send each of the parties a copy of the judgment or of the record of the oral judgment, free of charge.
2. Persons other than the parties may obtain copies of or extracts from the judgment or the record of the oral judgment. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act apply *mutatis mutandis* as regards the costs.

**Article 8:80**

If the district court determines that its judgment shall take the place of the annulled decision, the judgment shall furthermore be notified by the competent administrative authority in the manner prescribed for the decision in question.

**Chapter 8.3 Provisional relief and immediate judgment in the main action****Article 8:81**

1. If an appeal has been lodged with the district court against a decision, or if an objection or administrative appeal has been lodged prior to a possible appeal to the district court, the provisional relief judge of the district court that has or may come to have jurisdiction over the main action may, on application, grant provisional relief if, having regard to the interests involved, the situation requires immediate relief.
2. If an appeal has been lodged with the district court, any party to the main action may file an application for provisional relief.
3. If an objection or administrative appeal has been lodged against a decision prior to a possible appeal to the district court, the person who filed the notice of objection or appeal or an interested party who does not have the right to lodge an administrative appeal may apply for provisional relief.
4. Articles 6:4.3, 6:5, 6:6, 6:14, 6:15, 6:17 and 6:21 apply *mutatis mutandis*. An applicant who has lodged an objection or appeal shall submit a copy of the notice of objection or appeal together with his application.
5. If an application for provisional relief is filed after an objection or administrative appeal has been lodged and if a decision is given on this objection or appeal before the application is heard in court, the applicant shall be given the opportunity to lodge an appeal with the district court. The application for provisional relief shall be equated with an application made pending the appeal to the district court.

**Article 8:82**

1. The court registry charges the applicant a court fee. The second and third sentences of article 8:41.1 and articles 8:41.3 and 8:41.5 apply *mutatis mutandis*.
2. Article 8:41.2 applies *mutatis mutandis*, subject to the proviso that the time limit for transferring or depositing the amount due is two weeks. The provisional relief judge may set a shorter time limit.
3. If the application is withdrawn because the administrative authority or the interested party to whom the challenged decision is addressed, as the case may be, has informed the provisional relief judge in writing that it will suspend enforcement of the challenged decision pending the proceedings on the substance or take the requested provisional measures, the court registry shall refund the court fee paid. In other cases where the application is withdrawn, the administrative authority may refund all or part of the court fee paid.
4. The judgment may order the administrative authority to refund all or part of the court fee.

**Article 8:83**

1. The parties shall be invited as soon as possible to appear at a hearing at a time, date and place specified in the invitation. The provisional relief judge shall set a time limit within which the administrative authority shall send him the documents relating to the case. Article 8:58 applies *mutatis mutandis*, subject to the proviso that additional documents may be filed until one day before the hearing. Articles 8:59 to 8:65 apply *mutatis mutandis*, subject to the proviso that witnesses and experts may be brought or called without the requirement of giving notice as referred to in the first sentence of article 8:60.4.
2. Where an administrative appeal has been lodged, the appellate authority shall also be invited to appear at the hearing. The appellate authority shall be given the opportunity to state its views on the case at the hearing.
3. If the provisional relief judge manifestly lacks jurisdiction or if the application is manifestly inadmissible, manifestly unfounded or manifestly well-founded, the provisional relief judge may give judgment without applying paragraph 1.
4. If the situation requires immediate relief and the parties' interests will not be prejudiced as a result, the provisional relief judge may also give judgment in other cases without applying paragraph 1.

#### **Article 8:84**

1. The provisional relief judge shall give judgment in writing or orally as soon as possible.
2. The judgment may:
  - a. declare that the provisional relief judge lacks jurisdiction,
  - b. declare the application inadmissible on procedural grounds,
  - c. dismiss the application, or
  - d. grant all or part of the application.
3. The court registry shall, without delay, send a copy of the judgment or of the record of the oral judgment to the parties free of charge.
4. Articles 8:67.2, 8:67.3, 8:67.4, 8:67.5, 8:68, 8:69, 8:72.5, 8:72.7, 8:75, 8:75a, 8:76, 8:77.1, 8:77.3, 8:78, 8:79.2 and 8:80 apply *mutatis mutandis*.

#### **Article 8:85**

1. In the judgment the provisional relief judge may direct when the provisional relief shall cease to have effect.
2. The provisional relief shall in any event cease to have effect as soon as:
  - a. the time limit for appealing to the district court against the decision taken on the objection or administrative appeal expires without an appeal being lodged,
  - b. the objection or appeal is withdrawn, or
  - c. the district court has given judgment, unless the judgment sets a later date.

#### **Article 8:86**

1. If the application is filed where an appeal has already been lodged with the district court and the provisional relief judge takes the view that further inquiry after the hearing referred to in article 8:83.1 cannot reasonably be expected to contribute to the assessment of the case, he may give judgment on the substance immediately.
2. The attention of the parties shall be drawn to this power of the provisional relief judge in the invitation referred to in article 8:83.1.

#### **Article 8:87**

1. The provisional relief judge may, if necessary on his own motion, terminate or modify provisional relief.
2. Articles 8:81.2, 8:81.3, 8:81.4 and 8:82 to 8:86 apply *mutatis mutandis*. Furthermore, if an objection or administrative appeal has been lodged prior to a possible appeal to the district court, an application for termination or modification may also be filed by an interested party whose interests are directly affected by the provisional relief, by the administrative authority or by the appellate authority.

3. If an application for termination or modification has been filed by the administrative authority or the appellate authority and the application is granted in whole or in part, the judgment may order that the court registry refund the court fee paid by the administrative authority.

#### **Chapter 8.4 Review**

##### **Article 8:88**

1. The district court may, at the request of a party, review a judgment which has become final on the grounds of facts or circumstances:
  - a. which occurred before the judgment was given,
  - b. of which the person who filed the application was not and could not reasonably have been aware prior to the judgment, and
  - c. which might have resulted in a different judgment if the district court had been aware of them before.
2. Title 6 and chapters 8.2 and 8.3 apply *mutatis mutandis* insofar as necessary.

## **TITLE 9 COMPLAINT HANDLING**

### **Chapter 9.1 Complaint handling by an administrative authority**

#### *Division 9.1.1 General provisions*

##### **Article 9:1**

1. Any person has the right to lodge a complaint with an administrative authority about its conduct towards him or another person in a particular matter.
2. Conduct of a person working under the responsibility of an administrative authority is considered conduct of the administrative authority.

##### **Article 9:2**

An administrative authority shall ensure that oral and written complaints about its conduct and about conduct of administrative authorities operating under its responsibility are handled properly.

##### **Article 9:3**

A decision on the handling of a complaint about the conduct of an administrative authority is not open to appeal.

#### *Division 9.1.2 Processing of notices of complaint*

##### **Article 9:4**

1. If a written complaint relates to conduct towards the complainant and satisfies the requirements of paragraph 2, then articles 9:5 to 9:12 apply.
2. The notice of complaint must be signed and shall in any event contain:
  - a. the name and address of the person lodging the complaint;
  - b. the date;
  - c. a description of the conduct against which the complaint is directed.
3. Article 6:5.3 applies *mutatis mutandis*.

##### **Article 9:5**

As soon as an administrative authority has dealt with a complaint to the satisfaction of the complainant, it is no longer required to apply the remaining provisions of this Part.

##### **Article 9:6**

An administrative authority shall acknowledge receipt of a notice of complaint in writing.

##### **Article 9:7**

1. Complaints shall be handled by a person who was not involved in the conduct to which the complaint relates.
2. Paragraph 1 does not apply if the complaint relates to conduct of the administrative authority itself or its chairman or one of its members.

##### **Article 9:8**

1. An administrative authority is not required to deal with complaints relating to conduct:
  - a. about which a complaint had previously been lodged, which was handled in accordance with the provisions of articles 9:4 and following;
  - b. which occurred more than one year before the complaint was lodged;
  - c. against which the complainant could have lodged an objection;
  - d. against which the complainant can still lodge an appeal, unless the conduct consists of failure to take a timely decision, or could have lodged an appeal;
  - e. which is or has been the subject of a decision in proceedings instituted before a court other than an administrative court, or

- f. as long as this conduct is the subject of a criminal investigation ordered by a public prosecutor or of ongoing prosecution, or plays a part in the investigation or prosecution of a criminal offence which is the subject of a criminal investigation ordered by a public prosecutor or of ongoing prosecution.
2. An administrative authority is not required to deal with a complaint if the complainant's interest is manifestly not sufficiently weighty or the conduct manifestly not sufficiently serious.
3. If a complainant's complaint is not going to be considered, he must be informed in writing as soon as possible, but not later than four weeks after receipt of the notice of complaint. Article 9:12.2 applies *mutatis mutandis*.

#### **Article 9:9**

The person whose conduct is the subject of the complaint shall be sent a copy of the notice of complaint and of any documents enclosed with it.

#### **Article 9:10**

1. The administrative authority shall give the complainant and the person to whose conduct the complaint relates the opportunity to be heard.
2. The administrative authority may decide not to hear the complainant if the complaint is manifestly unfounded or if the complainant has stated that he does not wish to exercise the right to be heard.
3. A record shall be drawn up of the hearing.

#### **Article 9:11**

1. The administrative authority shall deal with the complaint within six weeks or – if division 9.1.3 applies – within ten weeks after receiving the notice of complaint.
2. The administrative authority may postpone dealing with the complaint by four weeks at most. The postponement shall be communicated in writing to the complainant and the person to whose conduct the complaint relates.

#### **Article 9:12**

1. The administrative authority shall notify the complainant, in writing and stating reasons, of the findings of the investigation into the complaint, of its opinion on the complaint and the consequences, if any, it will attach to it.
2. When sending this notification the administrative authority shall state with which ombudsman and within what time limit the complainant may subsequently file a request for investigation of the complaint.

#### **Article 9:12a**

The administrative authority shall keep a register of the written complaints lodged with it. The complaints registered shall be published annually.

#### *Division 9.1.3. Additional provisions for a complaints advisory procedure*

#### **Article 9:13**

The complaints handling procedure regulated in this division shall be followed in addition to the provisions of division 9.1.2 if this is provided by law or by decision of the administrative authority.

#### **Article 9:14**

1. A person or committee shall be charged by law or by decision of the administrative authority with handling and advising on complaints.
2. The administrative authority may give the person or committee only general instructions.

#### **Article 9:15**

1. When acknowledging receipt as referred to in article 9:6, the administrative authority shall mention that a person or committee will be advising on the complaint.

2. If the complainant and the person to whose conduct the complaint relates are heard, the hearing shall be conducted by the person or committee referred to in article 9:14. If a committee has been established, it may entrust the conduct of the hearing to the chairman or a committee member.
3. The person or committee shall decide whether or not to apply article 9:10.2.
4. The person or committee shall send a report of the findings, together with the opinion and recommendations, if any, to the administrative authority. The report shall include the record of the hearing.

#### **Article 9:16**

If the conclusions of the administrative authority differ from the opinion, the reason for this difference shall be stated in the conclusions and the opinion shall be enclosed with the notification referred to in article 9:12.

### **Chapter 9.2 Complaint handling by an ombudsman**

#### *Division 9.2.1 General provisions*

#### **Article 9:17**

'Ombudsman' means:

- a. the National Ombudsman, or
- b. an ombudsman or ombuds committee established pursuant to the Municipalities Act, the Provinces Act, the Water Management Boards Act or the Joint Arrangements Act.

#### **Article 9:18**

1. Any person has the right to request an ombudsman, in writing, to investigate the manner in which an administrative authority has acted towards him or another person in a particular matter.
2. If a request is filed with an ombudsman who does not have jurisdiction, it shall as soon as possible be forwarded to the ombudsman having jurisdiction, and this shall be communicated to the complainant at the same time.
3. Unless article 9:22, 9:23 or 9:24 applies, the ombudsman is required to act on a request as referred to in paragraph 1.

#### **Article 9:19**

1. If in the opinion of the ombudsman it is still possible for the complainant to lodge an objection, appeal or complaint against the conduct to which the request relates, the ombudsman shall draw the complainant's attention to this as soon as possible and, unless the complainant has stated that he wishes the request to be returned to him, pass on the request to the competent authority, endorsed with the date of receipt.
2. Article 6:15.3 applies *mutatis mutandis*.

#### **Article 9:20**

1. Before filing a request with an ombudsman, the complainant must first lodge a complaint about the conduct with the administrative authority concerned, unless he cannot reasonably be expected to do so.
2. Paragraph 1 does not apply if the request concerns the manner in which a complaint was handled by the administrative authority concerned.

#### **Article 9:21**

Title 2, with the exception of article 2:3.1, applies *mutatis mutandis* to dealings with an ombudsman.

#### *Division 9.2.2. Jurisdiction*

#### **Article 9:22**

An ombudsman has no competence to start or continue an investigation if the request relates to:

- a. a matter falling under general government policy, including law enforcement policy, or under the general policy of the administrative authority concerned;
- b. a generally binding regulation;
- c. conduct which is open to appeal or to a complaint procedure leading to a binding decision, unless the conduct consists of failure to take a timely decision, or conduct against which an appeal or a complaint procedure leading to a binding decision is pending;
- d. conduct on which an administrative court has passed judgment;
- e. conduct which is the subject of a procedure pending before a court other than an administrative court, or in respect of which appeal lies against a judgment given in such a procedure;
- f. conduct subject to supervision by the judiciary.

#### **Article 9:23**

The ombudsman is not required to start or continue an investigation if:

- a. the request does not satisfy the requirements referred to in articles 9:28.1 and 9:28.2;
- b. the request is manifestly unfounded;
- c. the complainant's interest in an investigation by the ombudsman or the gravity of the conduct is manifestly insufficient;
- d. the complainant is a person other than the person towards whom the conduct occurred;
- e. the request relates to conduct against which an objection may be lodged, unless it consists of failure to take a timely decision, or is conduct against which an objection procedure is pending;
- f. the request relates to conduct against which the complainant could have lodged an objection or appeal or started a complaint procedure leading to a binding decision;
- g. the request relates to conduct on which a court other than an administrative court has given judgment;
- h. the requirement of article 9:20.1 is not satisfied;
- i. a request relating to the same conduct is already being or has already been dealt with by the ombudsman, unless a new fact or a new circumstance has become known and this could have resulted in a different assessment of the conduct in question;
- j. a procedure concerning conduct of the administrative authority closely connected with the subject of the request is pending before a court or, as a result of an objection, appeal or complaint procedure resulting in a binding decision, before another body;
- k. the request relates to conduct that is closely connected with a matter concerning which proceedings have been brought before a court other than an administrative court;
- l. following the intervention of the ombudsman, it is his opinion that the administrative authority has properly satisfied the complainant's objections;
- m. a request relating to the same conduct is being handled or has been disposed of by an independent complaints body not being an ombudsman, pursuant to a statutory complaints provision.

#### **Article 9:24**

1. In addition, the ombudsman is not required to start or continue an investigation if the request is filed more than one year:
  - a. after the administrative authority has given notice of the findings of its investigation, or
  - b. after the administrative authority has terminated or should, pursuant to article 9:11, have terminated the complaint handling procedure in another manner.
2. Notwithstanding paragraph 1, if the complainant cannot reasonably be required to lodge a complaint with the administrative authority first, the time limit ends one year after the conduct occurred. If the conduct is submitted to a court other than an administrative court within one year after its occurrence, or if an objection, administrative appeal or complaint is lodged against it, the time limit ends one year after the date on which:
  - a. a judgment is given in this procedure which is not open to appeal, or
  - b. the procedure terminates in another way.

**Article 9:25**

1. If the ombudsman does not start or discontinues an investigation by virtue of article 9:22, 9:23 or 9:24, he shall as soon as possible notify the complainant of this in writing, stating the reasons.
2. If the ombudsman discontinues an investigation, he shall also send the notification referred to in paragraph 1 to the administrative authority and, if applicable, to the person to whose conduct the investigation relates.

**Article 9:26**

Unless article 9:22 applies, the ombudsman may of his own initiative start an investigation into the manner in which an administrative authority conducted itself in a particular matter.

**Article 9:27**

1. The ombudsman shall assess whether or not the administrative authority conducted itself properly in the matter investigated by him.
2. If a court has given a judgment with respect to the conduct to which the ombudsman's investigation relates, the ombudsman shall be bound by the legal grounds on which the judgment is based.
3. The ombudsman may make recommendations to the administrative authority based on his investigation.

*Division 9.2.3. Procedure***Article 9:28**

1. A request to investigate a complaint must be signed and shall in any event contain:
  - a. the name and address of the complainant;
  - b. the date;
  - c. a description of the conduct to which the request relates, particulars of the person whose conduct is the subject of the complaint and particulars of the person affected by the conduct, if this is not the complainant;
  - d. the grounds for the request;
  - e. the manner in which the complaint was lodged with the administrative authority, and if possible the findings of the administrative authority's investigation into the complaint, its opinion on the complaint and the consequences, if any, which the administrative authority has attached to it.
2. If the request is in a foreign language and a translation is required for the proper consideration of the request, the complainant shall provide a translation.
3. If the requirements of this article are not satisfied, the ombudsman shall give the complainant the opportunity to remedy the omission within a time limit set by him.

**Article 9:29**

A person who was involved in the conduct to which the request relates may not be involved in handling the request.

**Article 9:30**

1. The ombudsman shall give the administrative authority, the person to whose conduct the request relates and the complainant the opportunity to explain their positions.
2. The ombudsman shall decide whether their explanations will be given in writing or orally and whether or not in each other's presence.

**Article 9:31**

1. The administrative authority, persons working under its responsibility – even after termination of their activities –, witnesses and the complainant shall provide the ombudsman with the necessary information and shall appear before him upon being invited to do so. Collegial

bodies are subject to the same requirements, save that the collegial body shall determine which of its members is to fulfil the requirements, unless the ombudsman designates one or more specific members. The ombudsman may order persons who have been called up to appear in person.

2. If the ombudsman needs to obtain information relating to policies pursued under the responsibility of a minister or another administrative authority from persons and collegial bodies involved in these policies, he may do so only through the intermediary of the minister or the administrative authority in question. The intermediary body may send representatives when the public employees are heard.
3. At the ombudsman's written request and within a time limit to be determined by him, the documents in the possession of the administrative authority, of the person to whose conduct the request relates and of other persons shall, for the purposes of the investigation, be submitted to the ombudsman.
4. The persons called up pursuant to paragraph 1 and the persons required to submit documents pursuant to paragraph 3 may, if there are serious reasons to do so, refuse to provide information or submit documents or they may inform the ombudsman that only he may take note of the information or the documents.
5. The ombudsman shall decide whether the refusal or restriction on disclosure referred to in paragraph 4 is justified.
6. If the ombudsman decides that the refusal is justified, the requirement ceases.

#### **Article 9:32**

1. The ombudsman may instruct experts to perform work for the purposes of the investigation. He may also summon experts and interpreters in the interest of the investigation.
2. Experts or interpreters summoned by the ombudsman shall appear before him, and shall perform their services impartially and to the best of their ability. Articles 9:31.2 to 9:31.6 apply *mutatis mutandis* to experts who are also public employees.
3. The ombudsman may direct that witnesses and interpreters shall first take the oath or affirmation before they are heard or permitted to perform their duties. In that case witnesses shall swear or affirm that they will tell the whole truth and nothing but the truth and interpreters that they will conscientiously perform their duties as an interpreter.

#### **Article 9:33**

1. Complainants, witnesses, experts and interpreters called up by the ombudsman shall be paid a fee. If the juristic person of which the administrative authority whose conduct is at issue is a part is a municipality, province, water management board or 'joint arrangement', the fee is payable by the juristic person. In other cases the fee is payable by the State. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act apply *mutatis mutandis*.
2. Persons as referred to in paragraph 1 who are employed in public service shall not receive a fee if they are called up in connection with their duties in that capacity.

#### **Article 9:34**

1. The ombudsman may carry out an on-site investigation. For this purpose he shall, in so far as reasonably necessary for the performance of his duties, have access to any place with the exception of a dwelling if he does not have the occupant's consent.
2. Administrative authorities shall cooperate as required in the interest of the investigation referred to in paragraph 1.
3. A record shall be drawn up of the investigation.

#### **Article 9:35**

1. Before closing the investigation the ombudsman shall communicate his findings in writing to:
  - a. the administrative authority concerned;
  - b. the person to whose conduct the request relates;
  - c. the complainant.
2. The ombudsman shall give them the opportunity to comment on the findings within a time limit to be determined by him.

**Article 9:36**

1. After closing an investigation the ombudsman shall prepare a report, in which he lays down his findings and his opinion. He shall observe the provisions of article 10 of the Government Information (Public Access) Act when doing so.
2. If it is the opinion of the ombudsman that the conduct was improper, he shall state in the report what standard of conduct was violated.
3. The ombudsman shall send his report to the administrative authority concerned and to the complainant and the person to whose conduct the complaint relates.
4. If the ombudsman makes a recommendation as referred to in article 9:27.3 to the administrative authority, the latter shall inform the ombudsman within a reasonable time what action will be taken on the recommendation. If the administrative authority considers not following the recommendation, it shall communicate this to the ombudsman, stating reasons.
5. The ombudsman shall furnish a copy of or extract from a report as referred to in paragraph 1 to any person who so requests. The provisions laid down by or pursuant to the Civil Cases (Fees) Act apply *mutatis mutandis* to the fees to be charged for this and to furnishing such copies or extracts free of charge. In addition, the ombudsman shall deposit the report at a place designated by him.

## **TITLE 10 PROVISIONS ON ADMINISTRATIVE AUTHORITIES**

### **Chapter 10.1 Mandate, delegation and conferral of powers**

#### *Division 10.1.1 Mandate*

##### **Article 10:1**

'Mandate' means the power to take decisions in the name of an administrative authority.

##### **Article 10:2**

A decision taken by a mandatary within the scope of his power is deemed to be a decision of the mandator.

##### **Article 10:3**

1. An administrative authority may grant a mandate unless otherwise provided by law or unless the nature of the power is incompatible with the mandate.
2. In any event a mandate shall be not be granted where it concerns the power to:
  - a. adopt generally binding regulations, unless provision for a mandate was made when the power was conferred;
  - b. take a decision that has to be taken by a qualified majority or a decision for which the prescribed decision-making procedure is otherwise incompatible with a mandate;
  - c. decide on a notice of appeal;
  - d. annul or withhold approval of a decision taken by another administrative authority.
3. A person who, under a mandate, took a decision against which an objection has been lodged shall not be granted a mandate to decide on the notice of objection or a request as referred to in article 7:1a.1.
4. If article 5:53 applies, a mandate to impose an administrative fine shall not be granted to the person who drew up the administrative report or investigating officer's report of the violation.

##### **Article 10:4**

1. If the mandatary does not work under the responsibility of the mandator, the mandate shall require the consent of the mandatary and, where applicable, of the person under whose responsibility he works.
2. Paragraph 1 does not apply if the power to grant a mandate is conferred by law.

##### **Article 10:5**

1. An administrative authority may grant either a general mandate or a special mandate.
2. A general mandate shall be granted in writing. A special mandate shall in any event be granted in writing if the mandatary does not work under the responsibility of the mandator.

##### **Article 10:6**

1. A mandator may give the mandatary instructions regarding the exercise of the mandate either generally or on a case-by-case basis.
2. A mandatary shall supply the mandator, at his request, with information about the exercise of the mandate.

##### **Article 10:7**

A mandator retains authority to exercise the mandated power.

##### **Article 10:8**

1. A mandator may revoke a mandate at any time.
2. A general mandate shall be revoked in writing.

##### **Article 10:9**

1. A mandator may permit the grant of a submandate.

2. The other provisions of this division apply *mutatis mutandis* to submandates.

**Article 10:10**

A decision taken pursuant to a mandate shall mention the administrative authority in whose name it is taken.

**Article 10:11**

1. An administrative authority may provide that decisions taken by it may be signed on its behalf, unless otherwise provided by law or unless this is incompatible with the nature of the power.
2. In that case, the decision must show that it was taken by the administrative authority itself.

**Article 10:12**

This division applies *mutatis mutandis* where an administrative authority grants a power of attorney to perform private-law juridical acts to another person working under its responsibility, or authorizes such a person to perform acts which constitute neither a decision nor a private-law juridical act.

*Division 10.1.2 Delegation***Article 10:13**

'Delegation' means the transfer by an administrative authority of its power to take decisions to another person, who will exercise the power under his own responsibility.

**Article 10:14**

There may be no delegation to subordinates.

**Article 10:15**

There may be delegation only if the power to do so is conferred by law

**Article 10:16**

1. With regard to the exercise of a delegated power, the administrative authority may only issue policy rules.
2. The person to whom a power has been delegated shall supply the administrative authority, at its request, with information about the exercise of the power.

**Article 10:17**

The administrative authority may no longer exercise the delegated power itself.

**Article 10:18**

The administrative authority may at any time revoke a decision delegating a power.

**Article 10:19**

A decision taken by virtue of a delegated power shall cite the delegation decision and its source.

**Article 10:20**

1. With the exception of article 10.16, this division applies *mutatis mutandis* where an administrative authority transfers to a third party another administrative authority's power to take decisions.
2. It may be provided by law or by the decision to transfer the power that the administrative authority whose power has been transferred may issue policy rules regarding the exercise of the power.
3. The person to whom a power has been transferred shall supply information regarding the exercise of the power to the transferring administrative authority and the administrative authority originally vested with the power, at their request.

**Article 10:21**

This division applies *mutatis mutandis* where an administrative authority transfers its power to perform acts other than decision-making to another person who exercises the power under his own responsibility, on the understanding that article 10:19 applies only where this is not incompatible with the nature of the act.

*Division 10.1.3 Conferral of powers***Article 10:22**

1. If a power to take decisions is conferred by law on a person or collegial body working under the responsibility of an administrative authority, this administrative authority may issue instructions regarding the exercise of the conferred power either generally or on a case-by-case basis.
2. The person on whom the power has been conferred shall supply the administrative authority, at its request, with information about the exercise of the power.

**Article 10:23**

Article 10:22 applies *mutatis mutandis* where a power to perform acts other than taking decisions is conferred by law on a person or collegial body working under the responsibility of an administrative authority.

**Chapter 10.2 Supervision of administrative authorities***Division 10.2.1 Approval***Article 10:25**

In this Act 'approval' means the consent of another administrative authority required for the entry into force of a decision of an administrative authority.

**Article 10:26**

Decisions may be subjected to approval only in cases specified by or pursuant to statute.

**Article 10:27**

Approval may be withheld only on account of conflict with the law or on a ground laid down in the statute by or pursuant to which approval is prescribed.

**Article 10:28**

Approval of a decision on which a court has given judgment or which implements a final judgment may not be withheld on legal grounds that conflict with any or all of the legal grounds on which the judgment is based.

**Article 10:29**

1. A decision may be partially approved only if the nature and substance of the decision are compatible with its partial entry into force.
2. Approval may not be given for a fixed term or conditionally, nor may it be revoked.

**Article 10:30**

1. Approval shall not be granted partially or withheld until after the administrative authority which took the decision has been given the opportunity to discuss the matter with the supervisory authority.
2. The reasons stated in the approval decision shall refer to what was discussed.

**Article 10:31**

1. Unless otherwise provided by law, the approval decision shall be notified to the administrative authority that took the decision requiring approval within thirteen weeks after the decision was dispatched for approval.
2. The decision on approval may be postponed once for not more than thirteen weeks.
3. Notwithstanding paragraph 2, if the decision on approval requires the opinion of an adviser as referred to in article 3:5, it may be postponed once for not more than six months.
4. Unless otherwise provided by law, approval shall be deemed to have been granted if a decision on approval or postponement has not been notified to the administrative authority that took the decision requiring approval within the time limit mentioned in paragraph 1, or if a decision on approval has not been notified to it within the period of postponement.

#### **Article 10:32**

1. This division applies *mutatis mutandis* where an administrative authority requires the consent of another administrative authority to take a decision.
2. Consent may be given subject to a time limit within which the decision must be taken.

#### *Division 10.2.2 Annulment*

#### **Article 10:33**

This division applies where an administrative authority has power to annul a decision of another administrative authority otherwise than in an administrative appeal.

#### **Article 10:34**

Power to annul may only be conferred by statute.

#### **Article 10:35**

A decision may be annulled only on the grounds of conflict with the law or the public interest.

#### **Article 10:36**

A decision may be partially annulled only if the nature and substance of the decision are compatible with its partial continuation in force.

#### **Article 10:37**

A decision on which a court has given judgment or which implements a final court judgment shall not be annulled on legal grounds that conflict with any or all of the legal grounds on which the judgment is based.

#### **Article 10:38**

1. A decision which still requires approval cannot be annulled.
2. A decision against which objection or appeal lies or against which an objection or appeal is pending cannot be annulled.

#### **Article 10:39**

1. A decision to perform a private-law juridical act may not be annulled if thirteen weeks have passed since its notification.
2. If a decision is suspended in accordance with article 10:43 within the time limit mentioned in paragraph 1, it can still be annulled during the suspension period.
3. If a decision as referred to in paragraph 1 is subject to approval, the time limit mentioned in paragraph 1 commences after the decision approving it has been notified. Paragraphs 1 and 2 apply *mutatis mutandis* to the decision granting approval.

#### **Article 10:40**

A decision which has been suspended in accordance with article 10:43 cannot be annulled after the suspension has ended.

**Article 10:41**

1. A decision shall not be annulled until after the administrative authority which took the decision has been given the opportunity to discuss the matter.
2. The reasons stated for the decision of annulment shall refer to what was discussed.

**Article 10:42**

1. The annulment of a decision extends to all legal consequences the decision was intended to have.
2. The annulment decision may provide that all or part of the legal consequences of the annulled decision shall remain in force.
3. Where a decision to enter into an agreement is annulled and the agreement has already been entered into, then, without prejudice to the other party's right to compensation, the agreement shall not be performed or performed further unless the annulment decision provides otherwise.

*Division 10.2.3 Suspension***Article 10:43**

Pending the investigation whether there is reason to annul a decision, it may be suspended by the administrative authority having power to annul it.

**Article 10:44**

1. A suspension decision shall determine the duration of the suspension.
2. The suspension of a decision may be extended once.
3. A suspension may not exceed one year, even after extension.
4. If an objection or appeal has been lodged against the suspended decision, the suspension shall continue in force for thirteen weeks after a final decision is given on the objection or appeal.
5. A suspension may be terminated.

**Article 10:45**

Articles 10:36, 10:37, 10:38.1, 10:39.1, 10:39.3, and 10:42.3 apply *mutatis mutandis* to decisions concerning suspension.

## **Chapter 11 FINAL PROVISIONS**

### **Article 11:1**

1. Within three years after the entry into force of this Act and subsequently every five years the Ministers of Justice and of the Interior shall report to the States General on the manner in which it has been implemented.
2. Paragraph 1 does not apply to the provisions on appeal to the administrative courts.

### **Article 11:2**

This Act shall enter into force on a date to be determined by Royal Decree.

### **Article 11:3**

Prior to publishing this Act Our Minister of Justice shall renumber the articles, divisions, chapters and parts of this Act and adjust the references to articles, divisions, chapters and parts in this Act accordingly.

### **Article 11:4**

This Act may be cited as the General Administrative Law Act.