

Legislation on administrative procedure

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Updated on 1 January 2017

Disclaimer

The laws and regulations in the document have been compiled and translated with great care but readers should always bear in mind that the only official versions of these texts are those published in the Official Journal of the Grand-Duchy of Luxembourg (from 1 January 2017) and in the *Mémorial du Grand-Duché de Luxembourg* (until 31 December 2016).

Updates

A newer version of this document may be available on our web site:
<http://www.thewes-reuter.lu/EN/Publications/downloads.html>

1. Non-contentious administrative procedure

Law of 1 December 1978 addressing non-contentious administrative procedure

Loi du 1^{er} décembre 1978 réglant la procédure administrative non contentieuse
Mém. A n° 87 of 27 December 1978, p. 2486.

Art. 1^{er}. The Grand-Duke is entitled to enact a body of general rules intended to regulate the non-contentious administrative procedure.

These rules must in particular ensure the respect of the rights of the defence of constituents by arranging the broadest possible participation of citizens in the administrative decision-making.

Within this framework, they ensure the procedural collaboration of the administration, establish the right of constituents to be heard and to obtain inspection of administrative files, impose the motivation of the administrative acts and indicate how advisory bodies operate.

Art. 2. Grand-ducal regulations can modify and supplement the general rules laid down by the regulation referred to in the first article to adapt them to the various particular procedures.

Grand-ducal regulations can also amend the existing laws and regulations to the extent required to adapt them to the general rules laid down by the grand-ducal regulation referred to in the first article.

Art. 3. The grand-ducal regulations provided for in this law are to be taken after consultation of the Council of State and with the approval of the Conference of Presidents of the Chamber of Deputies.

Art. 4. The rules established by the grand-ducal regulation referred to in the first article apply to all individual administrative decisions for which no particular text organizes a special procedure conferring at least equivalent guarantees to the citizen.

Art. 5. This law and its implementing regulations do not apply in matters relating to direct taxation.

Grand-ducal regulation of 8 June 1979 on the procedure to be followed by administrations of the state and communes

Règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l'État et des communes

Mém. A n° 87 of 27 December 1978, p. 2486.

Art. 1^{er}. Any administrative authority that receives a request for a decision must examine on its own motion whether it is competent.

If it considers that it is incompetent, it transmits the request to the competent authority without delay and informs the applicant.

When the competence of the requested authority is disputed by a party interested in the decision, the requested authority must rule on its competence in a reasoned decision

Art. 2. The various deadlines for procedures and recourses are deemed to have been observed if the constituent referred the matter in due course to an incompetent authority.

Art. 3. Every administrative authority must, on its own motion, apply applicable law to any matter before it.

Art. 4. Opinions of advisory bodies that are consulted prior to a decision must be reasoned and they must state the factual and legal elements on which they are based.

If the opinion emanates from a collegial body, it must indicate the composition of the organization, the names of the members having attended the deliberation and the number of votes cast in favour of the expressed opinion. Any separate opinions must be annexed, without mention of the names of their authors.

Art. 5. If an administrative decision is likely to affect the rights and interests of third people, the administrative authority must give the process adequate publicity in order to enable third parties to put forward their arguments.

To the extent possible, administrative authorities must make public the initiation of a procedure that will lead to such a decision.

Those who are interested must have the possibility of making known their observations.

The final decision must be disclosed to those who have presented observations by all means appropriate.

Art. 6. Any administrative decision must be based on legal reasons.

The decision must formally indicate the reasons in the form of at least a summary statement of the legal cause on which it is founded and the factual circumstances at its base, if it

- denies the application made by the interested party;
- revokes or modifies a prior decision, except where this is the consequence of an application from the interested party being granted;
- is taken following an application for reconsideration, a hierarchical recourse or a recourse to a supervision authority;
- is taken after a consultation procedure and differs from the opinion given by the consultative body or if it grants a derogation to a general rule.

In cases where an explicit motivation is not imposed, the constituent concerned by the decision has to right to require the communication of the reasons.

The obligation to give reasons does not apply where external or internal safety reasons of the State oppose it or where the indication of the reasons is likely to compromise the respect of the intimacy of the private life of other people.

Art. 7. When the decision must be reasoned, time limits for filing contentious and administrative recourses begin only from the communication of the reasons.

Art. 8. Except where the law provides otherwise, decisions granting or recognizing rights may only be withdrawn retroactively during the time available for filing contentious and administrative recourses and during the course of a contentious procedure engaged against such a decision

Such a decision can only be withdrawn for one of the causes which would have justified the annulment of the decision in contentious proceedings.

Art. 9. Except where there is danger in waiting, an authority which intends, by its own motion, to revoke or modify for the future a decision that has created or acknowledged rights to a party, or which intends to take a

decision outside of an initiative of the affected party, must inform the concerned party of its intentions by communicating to him the factual and legal elements which lead it to take this initiative.

This communication is done by registered letter. A time of at least eight days must be granted to the concerned party to present its observations.

If the concerned party requests it within the time limit, it must be heard in person.

The requirement to inform the concerned party applies only in so far as the competent authority is able to know its address. The notifications are validly made at the address indicated by the party itself or resulting from official declarations.

Art. 10. Every party involved in an administrative procedure has the right to be assisted by a lawyer or, if the matter is of a technical nature, by a technical adviser. Parties can also be represented, under the same distinctions, except in cases where personal presence is necessary.

If an agent is designated, the authority addresses its communications to the agent. However, the final decision is also notified with the party itself.

Art. 11. Every constituent has the right to the integral communication file regarding his administrative situation, each time his situation is affected, or likely to be affected, by an administrative decision that has been made or is in the process of being made.

He can, on this occasion, request the withdrawal of any document unrelated to the object of his file, if it is liable to harm him. The decision taken by the authority following such an application can be judicially challenged.

Art. 12. Any person affected by an administrative decision which is likely to impact their rights and interests is also entitled to obtain communication of the information elements on which the administration based its decision or intends to based its decision.

Art. 13. The communication of documents can always be refused if:

- important public interests require that the secret be kept;
- important private interests, notably those of parties who have opposed interests, require that the secret be kept, or if the documents contain information which may constitute a violation of the privacy of other persons;
- there is danger in waiting and the decision cannot be delayed.

Documents whose consultation was refused can be used to the citizen's disadvantage only if the authority communicated the essential contents pertinent to the matter in writing beforehand giving him the opportunity to present his observations.

Art. 14. Administrative decisions denying applications, in full or partly, or administrative decisions revoking or modifying out of the authority's own motion a decision which had created or acknowledged rights must indicate the appeals available against them, the time limit for such an appeal, the authority to which the appeal must be addressed as well as the manner in which it must be presented.

Art. 15. This grand-ducal regulation will come into force the first day of the third month following its publication in the *Mémorial* for administrative authorities of the state and the first day of the sixth month for administrative authorities of the communes.

Art. 16. (...)

2. Languages

Law of 24 February 1984 on the language regime

Loi du 24 février 1984 sur le régime des langues
Mém. A n° 16 of 27 February 1984, p. 196.

Art. 1^{er}. National language

The national language of Luxembourgers is Luxembourgish.

Art. 2. Language of legislation

The legislative acts and their enforcement regulations are written in French. When the legislative acts and regulations are accompanied by a translation, only the French text is binding.

If regulations not referred to the subparagraph which precedes are enacted by a body of the State, communes or public corporations in a language other than French, only the text in the language employed by this body is binding.

This article does not derogate from the applicable provisions as regards international treaties.

Art. 3. Administrative and judicial languages

In administrative matters, whether contentious or non-contentious, and in judicial matters, French, German and Luxembourgish may be used, without prejudice to special provisions governing certain subjects.

Art. 4. Administrative petitions

If a petition is written in Luxembourgish, in French or in German, the administration must use the language chosen by the applicant as far as this is possible.

Art. 5. Abrogation

(...)