

# GENERAL ADMINISTRATIVE LAW ACT

## CHAPTER 1 INTRODUCTORY PROVISIONS

### Title 1.1 Definitions and scope

#### Article 1:1

1. 'Administrative authority' means:
  - (a) an organ of a legal entity which has been established under public law, or
  - (b) another person or body which is invested with any public authority.
2. The following authorities, 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 authorities established by law and charged with the administration of justice;
  - (d) the Council of State and its divisions;
  - (e) the General Chamber of Audit;
  - (f) the National Ombudsman and Deputy Ombudsmen;
  - (g) the chairmen, members, registrars and secretaries of the authorities referred to at (b) to (f), the Procurator General, the Deputy Procurator General and the Advocates General to the Supreme Court, and committees composed of members of the authorities referred to at (b) to (f).
3. An authority, person or body excluded under subsection 2 is nonetheless deemed to be an administrative authority in so far as it makes orders or performs acts in relation to a public servant not appointed for life as referred to in 1 of the Central and Local Government Personnel Act, his surviving relatives or his successors in title.

#### Article 1:2

1. 'Interested party' means a person whose interest is directly affected by an order.
2. As regards administrative authorities, the interests entrusted to them are deemed to be their interests.
3. As regards legal entities, their interests are deemed to include the general and collective interests which they particularly represent in accordance with their objects and as evidenced by their actual activities.

#### Article 1:3

1. 'Order' means a written decision of an administrative authority constituting a publiclaw act.
2. 'Administrative decision' means an order which is not of a general nature, including rejection of an application for such an order.
3. 'Application' means a request by an interested party for an order.
4. 'Policy rule' means an order, not being a generally binding regulation, which lays down a general rule for weighing interests, determining facts or interpreting statutory regulations in the exercise of a power of an administrative authority.

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

1. 'Administrative court' means an independent authority established by law charged with the administration of justice in administrative matters.

2. A court forming part of the judiciary is deemed to be an administrative court in so far as Chapter 8, the Administrative Justice (Taxes) Act<sup>1</sup> or the Traffic Regulations (Administrative Enforcement) Act - Chapter VIII excluded - applies.

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

1. 'Making an objection' means making use of a statutorily conferred power to seek redress against an order from the administrative authority which made the order.

2. 'Lodging an administrative appeal' means making use of a statutorily conferred power to seek redress against an order from an administrative authority other than the one which made the order.

3. 'Lodging an appeal' means lodging an administrative appeal or an appeal to an administrative court.

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

This act does not apply to:

(a) the investigation and prosecution of criminal offences or the execution of criminal-law decisions;

(b) the execution of measures depriving persons of their liberty under the Aliens Act;

(c) the execution of other measures depriving persons of their liberty in an institution primarily dedicated to the execution of criminal-law decisions;

(d) orders and acts implementing the Military Disciplinary Law Act.

### **Title 1.2 Implementation of binding decisions of authorities of the European Communities**

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

1. If, under any statutory regulation, an opinion must be sought or external consultation held by an administrative authority regarding an order before such order can be made, the provision shall not apply if the sole purpose of the proposed order is to implement a binding decision of the Council of the European Union, the European Parliament and the Council jointly, or the Commission of the European Communities.

2. Subsection 1 shall not apply to requirements to obtain the consultation of the Council of State.

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

1. If, under any statutory regulation, a draft order must be communicated by an administrative authority before such order can be made, the provision shall not apply if the sole purpose of the proposed order is to implement a binding decision of the Council of the

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<sup>1</sup> From the 1<sup>st</sup> of July 1999, this article will change.

European Union, the European Parliament and the Council jointly, or the Commission of the European Communities.

2. Subsection 1 shall not apply to the presentation of a draft order in council or ministerial regulation to the States General, if:

(a) an act of Parliament provides that the wish may be expressed by or on behalf of one of the Chambers of the States General, or by a number of members thereof, that the subject or entry into force of such order in council or ministerial regulation be regulated by Act of Parliament, or

(b) article 21.6, subsection 6, of the Environmental Management Act or article 33 of the Pollution of Surface Waters Act applies.

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

This title shall apply *mutatis mutandis* to bills.

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

### *Division 2.1 General provisions*

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

1. In looking after his interests in dealings with administrative authorities, anyone may be assisted or represented by a legal representative.
2. An administrative authority may require a legal representative to produce a written authorisation.

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

1. An administrative authority may refuse to allow assistance or representation by a person against whom there are serious objections.
2. The interested party and the person referred to in subsection 1 shall be informed in writing of the refusal without delay.
3. Subsection 1 shall not apply to attorneys-at-law and procurators.

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

1. An administrative authority shall send documents which manifestly come within the competence of another administrative authority to such authority without delay, while simultaneously informing the sender.
2. An administrative authority shall return to the sender as soon as possible documents which are not intended for it and are also not passed on to another administrative authority.

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

1. An administrative authority shall perform its duties without prejudice.
2. An administrative authority shall ensure that persons belonging to it or working for it who have a personal interest in an order do not influence its decisionmaking on the matter.

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

1. Anyone involved in the performance of the duties of an administrative authority who in the process gains access to information which he knows, or should reasonably infer, to be of a confidential nature, and who is not already subject to a duty of secrecy by virtue of his office or profession or any statutory regulation, shall not disclose such information unless he is by statutory regulation obliged to do so or disclosure is necessary in consequence of his duties.
2. Subsection 1 shall also apply to institutions, and persons belonging to them or working for them, involved by an administrative authority in the performance of its duties, and to institutions and persons belonging to them or working for them performing a duty assigned to them by or pursuant to an Act of Parliament.

### *Division 2.2 Use of Languages in Dealings with Administrative Authorities*

## **Article 2:6**

1. Administrative authorities and persons working under their responsibility shall use the Dutch language, unless provided otherwise by statutory regulation.

2. Notwithstanding subsection 1, another language may be used if its use is more effective and the interests of third persons are not disproportionately harmed.

## **Article 2:7**

1. Anyone may use the Frisian language in communications with administrative authorities in so far as the latter have their seat in the Province of Friesland.

2. Subsection 1 shall not apply if the administrative authority asks to use the Dutch language on the grounds that using the Frisian language would lead to a disproportionate burden on administrative communications.

## **Article 2:8**

1. Administrative authorities may use the Frisian language in oral communications within the Province of Friesland.

2. Subsection 1 shall not apply if the other party asked for the Dutch language to be used on the grounds that using the Frisian language would lead to the oral communications taking an unsatisfactory course.

## **Article 2:9**

1. Administrative authorities with their seat in the Province of Friesland that do not form part of central government may lay down rules on the use of the Frisian language in documents.

2. Our Minister whom it may concern may lay down rules on the use of the Frisian language in documents by parts of central government operating in the Province of Friesland or part thereof.

## **Article 2:10**

1. A document in the Frisian language shall also be drawn up in the Dutch language if it:

(a) is meant exclusively or otherwise for use by authorities outside the Province of Friesland or central government authorities;

(b) contains generally binding regulations or policy rules; or

(c) is drawn up in direct preparation of regulations or rules as referred to at (b).

2. The notification, communication or deposit for inspection of the document referred to in subsection 1 shall in any event also be in the Dutch language, unless it can reasonably be assumed that there is no need for this.

## **Article 2:11**

1. If a document is formulated in the Frisian language, the administrative authority shall provide a translation into the Dutch language on request.

2. The administrative authority may levy a charge for the translation not exceeding the cost thereof.

3. No charge shall be levied if the document:

(a) contains the minutes of a representative institution's meeting and the petitioner's interest is directly related to the subject matter, or contains the minutes of a representative institution's meeting and concerns the laying-down of generally binding regulations or policy rules, or

(b) contains an order or other act to which the petitioner is an interested party.

**Article 2:12**

1. Anyone may use the Frisian language at meetings of the representative institutions having their seat in the Province of Friesland.

2. What is said in the Frisian language shall be minuted in the Frisian language.

## **CHAPTER 3 GENERAL PROVISIONS CONCERNING ORDERS**

### *Division 3.1 Introductory provisions*

#### **Article 3:1**

1. Orders containing generally binding regulations:
  - (a) shall only be subject to the provisions of division 3.2 in so far as they are not incompatible with the nature of the orders;
  - (b) shall not be subject to the provisions of division 3.6.
2. Divisions 3.2 to 3.5 shall apply *mutatis mutandis* to acts of administrative authorities other than orders in so far as they are not incompatible with the nature of the acts.

### *Division 3.2 The duty of care and the weighing of interests*

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

When preparing an order an administrative authority shall gather the necessary information concerning the relevant facts and the interests to be weighed.

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

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

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

1. When making an order the administrative authority shall weigh the interests directly involved in so far as no limitation on this duty derives from a statutory regulation or the nature of the power being exercised.
2. The adverse consequences of an order for one or more interested parties may not be disproportionate to the purposes to be served by the order.

### *Division 3.3 Provision of advice*

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

1. In this division 'adviser' means a person or body that is charged by or pursuant to a statutory regulation with advising on orders to be made by an administrative authority and that does not work under the responsibility of the administrative authority concerned.
2. This division shall not apply to the consultation of the Council of State.

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

1. If no statutory time limit is imposed on the adviser by statutory regulation, the administrative authority may indicate within what time limit an opinion is expected. This time limit may not be so short that the adviser is unable to discharge his duties properly.
2. If the opinion is not delivered on time its absence alone shall not be an obstacle to making the order.

### **Article 3:7**

1. The administrative authority to which the opinion is delivered shall provide the adviser, at his request or otherwise, with the information needed to enable him to discharge his duties properly.

2. Article 10 of the Government Information (Public Access) Act shall apply *mutatis mutandis*.

### **Article 3:8**

The name of the adviser who has delivered the opinion shall be stated in or with the order.

### **Article 3:9**

If an order is based on an investigation carried out by an adviser into facts and actions, the administrative authority shall satisfy itself that the investigation was carried out with due care.

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

This division shall apply *mutatis mutandis* to bills.

#### *Division 3.4 Public preparatory procedure*

### **Article 3:10**

1. The procedure for the preparation of orders provided in this division shall be followed if this is required by statutory regulation or by order of the administrative authority.

2. The regulations of division 4.1.1 regarding administrative decisions shall also apply to other orders which are made on application and prepared in accordance with this division.

### **Article 3:11**

1. The administrative authority shall deposit the application for the order, or the draft of an order to be made on its own initiative or on application, together with the documents relating thereto, for inspection for a period of at least four weeks by those persons who are to be given the opportunity under article 3:13 to state their views.

2. Article 10 of the Government Information (Public Access) Act shall apply *mutatis mutandis*. If certain documents are not deposited for inspection under this provision, communication shall be given thereof.

3. A copy of the documents deposited for inspection shall be provided at no more than cost price.

4. In so far as not provided otherwise by statutory regulation, the deposit for inspection shall in any event take place at the offices of the administrative authority.

### **Article 3:12**



1. The communication of the application or the draft shall be given in one or more newspapers or free local papers, or in any other suitable way, prior to the deposit of the application for inspection. Only the substance of the order need be stated.

2. If the order is by an administrative authority forming part of central government the communication shall be placed in the Government Gazette, unless provided otherwise by statutory regulation.

3. The communication shall state where and when the documents are to be deposited for inspection, who is to be given the opportunity to state his views and how this can be done under article 3:13.

### **Article 3:13**

1. Interested parties may state their views on the application or the draft either orally or in writing, at their discretion.

2. It may be provided by statutory regulation or by the administrative authority that other persons are also to be given the opportunity to state their views either orally or in writing, at their discretion.

3. The time limit for stating a view shall not end earlier than the last day of the inspection period.

4. In the case of an order made on application, the applicant shall if necessary be given the opportunity to respond to the views stated.

5. A record shall be kept of views stated orally under the above subsections.

### *Division 3.5 Extensive public preparatory procedures*

#### Paragraph 3.5.1 Introduction

### **Article 3:14**

The procedures for the preparation of orders provided in paragraphs 3.5.2 to 3.5.5 and 3.5.6 shall be followed if this is required by statutory regulation or by order of the administrative authority.

### **Article 3:15**

By or pursuant to the statutory regulation referred to in article 3:14 or the order referred to therein administrative authorities may be designated which:

- (a) must be given the opportunity to deliver an opinion on the making of an order, or
- (b) must be involved in the preparatory procedures in some other way.

#### Paragraph 3.5.2 Filing of the application; admissibility

### **Article 3:16**

The provisions of division 4.1.1 regarding administrative decisions shall also apply to other orders which are made on application and prepared in accordance with this division.

### **Article 3:17**

1. The administrative authority shall note without delay the date of receipt on the application.
2. It shall send without delay the applicant an acknowledgement of receipt stating this date.
3. It shall send without delay the other administrative authorities involved a copy of the application and of the accompanying documents, stating the date of receipt.

### **Article 3:18**

1. The power regulated in article 4:5 not to process an application on the grounds that it is incomplete may be exercised only if the applicant has been given the opportunity to amplify the application within eight weeks of the application being received.
2. The other administrative authorities involved shall be informed of requests to amplify an application and orders not to process an application.
3. If an administrative authority processes an application despite its being incomplete, it shall make a note of this on the application. If the applicant has been given the opportunity to amplify the application, the administrative authority shall state in such note the time limit set for this under article 4:5.

#### Paragraph 3.5.3. The draft order

### **Article 3:19**

1. The administrative authority shall prepare a draft order as soon as possible. Unless article 3:29 has been applied, the administrative authority shall send the draft to the applicant and the other administrative authorities involved within twelve weeks of receiving the application.
2. No later than two weeks after the sending of the draft as referred to in subsection 1, information of the draft shall simultaneously be given by:
  - (a) deposit for inspection;
  - (b) a communication in one or more newspapers or free local papers such that the intended object is achieved as far as possible;
  - (c) a communication in the Government Gazette, in cases where an authority of the central or provincial government is the administrative authority.

### **Article 3:20**

1. In the communications referred to in article 3:19, subsection 2, the administrative authority shall state at least:
  - (a) the substance of the application and the purport of the draft order;
  - (b) where and when the documents may be inspected;
  - (c) who has been given the opportunity to submit reservations concerning the draft, and how and within what time limit this may be done;
  - (d) that a person who submits reservations in writing may request that his personal particulars are not stated.
2. The administrative authority shall also inform the applicant and the other administrative authorities involved of this information.

### **Article 3:21**

1. The following shall be deposited for inspection with the draft order:
  - (a) a copy of the application with the accompanying documents;
  - (b) if there has been prior consultation on the application, a report thereof;
  - (c) the reports produced and opinions delivered in connection with the draft, in so far as it can reasonably be assumed that they may be necessary for an assessment of the draft;
  - (d) a list of the reports and opinions not deposited for inspection and, in so far as it can reasonably be assumed that they are necessary for an assessment of the draft, of orders previously made on the same subject which are still in effect, together with a statement of where and when these documents may be inspected.

2. The administrative authority shall supplement the documents deposited for inspection with relevant new documents and information, including in any event the opinions and reservations submitted in accordance with paragraph 3.5.4 and the records of the reservations submitted orally and exchanges of views on the draft.

3. Article 10 of the Government Information (Public Access) Act shall apply *mutatis mutandis* unless provided otherwise by statutory regulation. If certain documents are not deposited for inspection, this shall be stated.

### **Article 3:22**

1. The documents may be inspected during working hours for four weeks from the date on which the draft order is deposited for inspection. During this period the documents may also be inspected on request during at least three consecutive hours per week outside working hours. On request an oral explanation shall be given free of charge within this period.

2. After the period of four weeks the documents shall be deposited for inspection at times determined by the administrative authority until the period for lodging an appeal against the order expires.

3. A copy of the documents deposited for inspection shall be provided at no more than cost price.

#### Paragraph 3.5.4 Opinions and reservations

### **Article 3:23**

1. The administrative authorities acting as advisers shall send their opinion to the administrative authority within four weeks of the date on which the draft is deposited for inspection.

2. The administrative authority shall send a copy of each opinion to the applicant and the other administrative authorities acting as advisers as soon as possible.

### **Article 3:24**

1. Anyone may submit written reservations to the administrative authority within four weeks of the date on which the draft is deposited for inspection.

2. The date of receipt shall be noted on the document.

3. The administrative authority shall send a copy of each reservation submitted to the applicant and the other administrative authorities acting as advisers as soon as possible.

4. The personal particulars of a person who has submitted written reservations shall not be disclosed if he so requests. The request shall be made in writing to the administrative authority, stating the particulars referred to in the first sentence.

### **Article 3:25**

1. During the period referred to in article 3:24, subsection 1, anyone shall, on request, be given the opportunity to exchange ideas on the draft order and submit reservations orally. The administrative authority shall give the applicant the opportunity to be present on such occasions.

2. A record shall be kept of reservations submitted orally and oral exchanges of ideas, including the substance of each reservation and the name and address of the person submitting it.

3. The record shall be sent to the applicant, the administrative authorities acting as advisers and those who have submitted oral reservations, as soon as possible, in any event within two weeks.

### **Article 3:26**

It may be provided in the statutory regulation or order referred to in article 3:14 that the right to submit reservations and engage in an exchange of ideas on the draft order may be exercised only by a category of persons designated therein, including in any event the interested parties.

### **Article 3:27**

When notifying the order the administrative authority shall state its considerations on the reservations submitted.

#### Paragraph 3.5.5 Decision on the application

### **Article 3:28**

The administrative authority shall make its order on the application as soon as possible, but at the latest within six months of receiving the application unless article 3:29 has been applied.

### **Article 3:29**

1. If the application concerns a very complicated or controversial subject, the administrative authority may, within eight weeks of receiving the application, extend the periods referred to in article 3:19, subsection 1, second sentence, and article 3:28 for a reasonable period to be determined by the administrative authority in each case. Before taking such a decision, it shall give the applicant the opportunity to state his views on this.

2. The other administrative authorities involved shall be informed of an extending order at the time of its notification .

3. The administrative authority shall give communication of the extending order and of the filed application within, at the latest, ten weeks of receiving the application, article 3:19, subsection 2, article 3:20, subsection 1, (a) en (b), and subsection 2 and articles 3:21 and 3:22 applying *mutatis mutandis*.

#### Paragraph 3.5.6 Altering or repealing orders and other orders made by the administrative authority on its own initiative

### **Article 3:30**

1. If an administrative authority intends to make on its own initiative an order altering or repealing a previous order, or to make another order, it shall draw up a draft order and give communication thereof, article 3:19, subsection 2, (b) and (c) applying *mutatis mutandis*. It may be provided in the statutory regulation or order referred to in article 3:14 that article 3:19, subsection 2, (a) and article 3:21 shall apply *mutatis mutandis*.

2. Before applying subsection 1, the administrative authority shall give written communication to the other administrative authorities involved and, in the case of an altering or repealing order, to the one to whom the order to be altered or repealed was addressed, unless provided otherwise by statutory regulation or by order as referred to in article 3:14. It shall at the same time give them the opportunity to deliver an opinion or state their views, as the case may be, on the intention, within a time limit to be determined by the authority.

3. If the intention is based on a request, the communication referred to in subsection 2 shall also be given to the petitioner. Article 3:44, subsections 3 and 5 shall apply *mutatis mutandis*.

### **Article 3:31**

1. In the communication referred to in article 3:30, subsection 1, the administrative authority shall at least state:

- (a) the substance of the draft order and a brief statement of the reasons for it;
- (b) who is to be given the opportunity to submit reservations concerning the draft, and how and within what time limit this may be done;
- (c) that a person who submits reservations in writing may request that his personal particulars are not disclosed;
- (d) if article 3:30, subsection 1, second sentence, has been applied: where and when the documents may be inspected.

2. In the case of an altering or repealing order, the administrative authority shall also give communication of this information to the one to whom the order to be altered or repealed was addressed, the other administrative authorities involved and, if a request for altering or repealing has been made, to the submitter of the request. Article 3:44, subsections 3 and 5, shall apply *mutatis mutandis*.

### **Article 3:32**

1. Anyone may submit written reservations concerning a draft order to the administrative authority within two weeks of the communication referred to in article 3:30, subsection 1. Article 3:24, subsections 2 and 4 and article 3:26 shall apply *mutatis mutandis*.

2. The administrative authority shall send a copy of every reservation submitted to the administrative authorities acting as advisers as soon as possible and, in the case of an altering or repealing order, to the one to whom the order to be altered or repealed was addressed.

### **Article 3:33**

1. The administrative authority shall make an altering or repealing order, or an order not to alter or repeal, as soon as possible, but at the latest within sixteen weeks of the date on which it gave the communication referred to in article 3:30, subsection 2 to the one to whom the order to be altered or repealed was addressed.

2. Notwithstanding the provisions of subsection 1, an order that is not preceded by a communication as referred to in article 3:30, subsection 2 shall be made within eight weeks of the communication referred to in subsection 1 of that article.

### *Division 3.6 Notification and communication*

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

An order shall not take effect until it has been notified. **Article 3:41**

1. Orders which are addressed to one or more interested parties shall be notified by being sent or issued to these, including the applicant.

2. If an order cannot be notified in the manner provided in subsection 1, it shall be notified in any other suitable way.

#### **Article 3:42**

1. Orders which are not addressed to one or more interested parties shall be notified by means of a notice of the order, or the substance thereof, placed in an official government publication, newspaper or free local paper, or in any other suitable way.

2. If notice is given only of the substance, the order shall at the same time be deposited for inspection. The notice shall state where and when the order will be deposited for inspection.

#### **Article 3:43**

1. When an order is notified, or as soon as possible thereafter, the ones who stated their views on it during the preparation shall be informed. An adviser as referred to in article 3:5 shall in any event be informed if the order departs from the opinion.

2. If division 3.4 has been applied in connection with the preparation of an order, the communication referred to in subsection 1 may be made in the same way as that in which communication is given of the application or draft order in accordance with article 3:12, subsections 1 and 2.

3. When communication is given of an order it shall also be stated when and how the order was notified.

#### **Article 3:44**

1. In the case of orders prepared in accordance with the procedures in division 3.5, the other administrative authorities involved shall be informed at the time of notification .

2. Within two weeks of notification the administrative authority shall give communication of the order:

(a) article 3:19, subsection 2 applying *mutatis mutandis*, and

(b) by sending a copy of the order to the ones who submitted reservations concerning the draft order.

3. Notwithstanding subsection 2 (b), the administrative authority may:

(a) if the volume of the order so warrants, merely communicate each of the ones referred to therein of the purport of the order and the considerations on his reservations;

(b) if a reservation has been submitted by more than five persons in the same document, merely send copies to the five persons whose names and addresses are listed first in that document;

(c) if a reservation has been submitted by more than five persons in the same document and the volume of the order so warrants, merely inform the five persons whose names and addresses are listed first in that document of the purport of the order and the considerations on their reservations;

(d) if more than 250 people would have to be informed, refrain from communication altogether.

4. When making the notification and giving the communications referred to in subsections 1, 2 and 3, the administrative authority shall also state:

(a) when a copy of the order was deposited for inspection and the times and place at which the documents are available for inspection;

(b) whether alterations to the draft are contained in the order;

(c) if subsection 3 has been applied, that this has happened and the reasons for this.

5. If subsection 3 has been applied, the ones who have submitted reservations concerning the draft order may request the administrative authority to send them a copy of the order. This option shall be stated in the communication of the order in accordance with subsections 2 and 3. This request shall be granted within two weeks, unless the administrative authority considers that such sending cannot reasonably be required.

6. The documents may be inspected during working hours for six weeks from the day on which a copy of the order is deposited for inspection. During this period the documents may also be inspected on request during at least three consecutive hours per week outside working hours. On request, an oral explanation shall be given free of charge within this period. A copy of the documents deposited for inspection shall be provided at no more than cost price.

7. Subsection 2 (a) - in so far as it concerns the application of article 3:19, subsection 2, (b) and (c) - and subsection 6, second sentence, shall not be applicable to an order refusing an application for an order as referred to in article 3:30, subsection 1 if the order was not preceded by a communication as referred to in that subsection.

### **Article 3:45**

1. If an objection may be made or an appeal may be lodged against an order, this shall be stated when notifying and giving communication of the order.

2. At the same time it shall be stated by whom, within what time limit and with which authority an objection may be made or an appeal may be lodged.

### *Division 3.7 Reasons for orders*

### **Article 3:46**

An order shall be based on proper reasons.

### **Article 3:47**

1. The reasons shall be stated when the order is notified.

2. If possible, the statutory regulation on which the order is based shall be stated at that same time.

3. If, in the interests of speed, the reasons cannot be stated immediately when the order is published, the administrative authority shall give communication of them as soon as possible thereafter.

4. In such a case, articles 3:41 to 3:43 inclusive shall apply *mutatis mutandis*.

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

1. The reasons need not be stated if it can reasonably be assumed that there is no need for this.

2. If, however, an interested party asks within a reasonable period to be informed of the reasons, they shall be communicated to him as quickly as possible.

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

To state the reasons of an order or part of an order, it is sufficient to refer to an opinion drawn up in this connection if the opinion itself contains the reasons and communication of the opinion has been or is given.

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

If the administrative authority makes an order which derogates from an opinion drawn up for this purpose pursuant to a statutory regulation, this fact and the reasons for it shall be stated in the reasons of the order.



## **CHAPTER 4 SPECIAL PROVISIONS CONCERNING ORDERS**

### **Title 4.1 Administrative decisions**

#### *Division 4.1.1 The application*

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

Unless provided otherwise by statutory regulation, an application for an administrative decision shall be lodged in writing with the administrative authority which is competent to decide on the application.

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

1. The application shall be signed and shall contain at least:
  - (a) the name and the address of the applicant;
  - (b) the date;
  - (c) a description of the administrative decision applied for.
2. The applicant shall also supply such information and documents as required for a decision on the application as it is reasonable to expect him to be able to obtain.

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

1. The applicant may refuse to supply information and documents in so far as their importance to the decision of the administrative authority is outweighed by the importance of protecting privacy, including the results of medical and psychological examinations, or by the importance of protecting business and manufacturing data.
2. Subsection 1 shall not apply to information and documents designated by statutory regulation as having to be supplied.

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

The administrative authority which is competent to decide on the application may specify a form to be used when lodging applications and supplying information, in so far as this is not provided by statutory regulation.

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

1. If the applicant has not complied with any requirement made by statutory regulation for the application to be dealt with, or if the information and documents supplied are insufficient to allow the application to be assessed or the administrative decision to be prepared, the administrative authority may decide not to deal with the application, provided the applicant has been given the opportunity to amplify the application within such time limit as set by the administrative authority.
2. If the application, or any of the information or documents pertaining to it, is in a foreign language, and a translation is necessary for the application to be assessed or the administrative decision to be prepared, the administrative authority may decide not to deal with the application, provided the applicant has been given the opportunity to amplify the application by means of a translation within such time limit as set by the administrative authority.

3. If the application, or any of the information or documents pertaining to it, is sizeable or complicated, and a summary is necessary for the application to be assessed or the administrative decision to be prepared, the administrative authority may decide not to deal with the application, provided the applicant has been given the opportunity to amplify the application by means of a summary within such time limit as set by the administrative authority.

4. An order not to process the application shall be notified to the applicant within four weeks of the application being amplified or the time limit set for this purpose expiring without being used.

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

1. If a new application is made after an administrative decision has been made rejecting all or part of an application, the applicant shall state any new facts that have emerged or circumstances that have altered.

2. If no new facts or altered circumstances are stated, the administrative authority may, without applying article 4:5, reject the application by referring to its administrative decision rejecting the previous application.

#### *Division 4.1.2 Preparation*

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

1. Before an administrative authority rejects all or part of an application for an administrative decision, it shall give the applicant the opportunity to state his views, if:

(a) the rejection is based on information about facts and interests relating to the applicant, and

(b) this information differs from information supplied by the applicant himself in the matter.

2. Subsection 1 shall not apply if the difference from the application can be of only minor importance to the applicant.

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

1. Before making an administrative decision about which an interested party who has not applied for the administrative decision may be expected to have reservations, an administrative authority shall give that interested party the opportunity to state his views, if:

(a) the administrative decision is based on information about facts and interests relating to the interested party, and

(b) this information was not supplied in the matter by the interested party himself.

2. Subsection 1 shall not apply if the interested party has not complied with a statutory obligation to supply information.

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

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

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

If division 3.4 or 3:5 is applied in implementation of articles 4:7 and 4:8, the administrative authority shall inform the applicant and the person to whom the administrative decision will be addressed.

#### **Article 4:11**

The administrative authority may refrain from applying articles 4:7 and 4:8 in so far as:

- (a) the need for expedition precludes this;
- (b) the interested party has already been given the opportunity to state his views in connection with a previous administrative decision, or to another administrative authority, and no new facts or circumstances have occurred since then, or
- (c) the purpose of the administrative decision can be achieved only if the interested party is not informed of it beforehand.

#### **Article 4:12**

The administrative authority may also refrain from applying articles 4:7 and 4:8 in the case of an administrative decision laying down a financial obligation or claim, if:

- (a) an objection may be made or an administrative appeal may be lodged against that administrative decision, and
- (b) the adverse consequences may be completely nullified after an objection or administrative appeal.

2. Subsection 1 shall not apply to an administrative decision:

- (a) refusing a subsidy under article 4:35 or in accordance with article 4:51;
- (b) fixing a subsidy at a lower amount under article 4:46, subsection 2, or
- (c) repealing the granting or fixing of a subsidy or altering it to the detriment of the recipient.

#### *Division 4.1.3 Time limit for decisions*

#### **Article 4:13**

1. An administrative decision shall be made within the time limit prescribed by statutory regulation, or, in the absence of such time limit, within a reasonable period after receiving the application.

2. The reasonable period referred to in subsection 1 shall in any event be deemed to have expired if the administrative authority has not made an administrative decision or given communication as referred to in article 4:14 within eight weeks of receiving the application.

#### **Article 4:14**

If, in the absence of a time limit prescribed by statutory regulation, an administrative decision cannot be made within eight weeks, the administrative authority shall inform the applicant, stating a reasonable time limit for the administrative decision to be made.

#### **Article 4:15**

The time limit for making an administrative decision shall be suspended with effect from the day on which the administrative authority requests the applicant to amplify the

application pursuant to article 4:5 until the day on which the application has been amplified or the time limit set for this purpose expires without being used.

## **Title 4.2 Subsidies**

### *Division 4.2.1 Introductory provisions*

#### **Article 4.21**

1. ‘Subsidy’ means the entitlement to financial resources provided by an administrative authority for the purpose of certain activities of the applicant, other than as payment for goods or services supplied to the administrative authority.

2. This title does not apply to entitlements or obligations which result from a statutory regulation pertaining to taxes or the levy of a contribution or a tax to replace a contribution under the National Insurance Financing Act.

3. This title does not apply to an entitlement to financial resources provided under a statutory regulation which provides for payment exclusively to legal entities established under public law.

4. This title applies *mutatis mutandis* to the funding of education and research.

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

‘Subsidy ceiling’ means the maximum amount available during a given period for the provision of subsidies under a given statutory regulation.

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

1. An administrative authority may provide subsidies only under a statutory regulation which specifies the activities for which a subsidy may be granted.

2. If such a statutory regulation has been included in an order in council not based on an act of Parliament, the regulation shall cease to have effect four years after it enters into force, unless before that moment a bill has been presented to Parliament in which the subsidy is regulated.

3. Subsection 1 shall not apply:

(a) pending the introduction of a statutory regulation for a maximum of one year or until a bill presented to Parliament within that year has been defeated or has been passed and entered into force;

(b) if the subsidy is provided directly on the basis of a program adopted by the Council of the European Union, 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 can be fixed, or

(d) in occasional cases, if the subsidy is provided for a maximum of four years.

4. The administrative authority shall publish annually a report of subsidies provided in accordance with subsection 3 (a) and (d).

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

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

#### *Division 4.2.2 The subsidy ceiling*

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

1. A subsidy ceiling may be fixed only by or pursuant to statutory regulation.
2. A subsidy shall be refused in so far as the subsidy ceiling would be exceeded by provision of the subsidy.
3. If a decision concerning the provision is made out of time, or on an objection or an appeal or pursuant to a judicial ruling, the obligation in subsection 2 , shall apply only in so far as it also applied at the time when the decision was made or should have been made at first instance.

#### **Article 4:26**

1. How the available amount is to be allocated shall be determined by or pursuant to statutory regulation.
2. When the subsidy ceiling is notified the manner of allocation shall be stated.

#### **Article 4:27**

1. The subsidy ceiling shall be notified before the start of the period for which it is fixed.
2. If the subsidy ceiling or a reduction in the ceiling is notified later, this notification shall not affect applications previously filed.

#### **Article 4:28**

- Article 4:27, subsection 2, shall not apply if:
- (a) it is provided by statutory regulation that the applications for the period for which the subsidy ceiling has been fixed must be filed on a date when the budget has not yet been adopted or approved;
  - (b) it concerns a reduction resulting from the adoption or approval of the budget;
  - (c) the possibility of a reduction and the effects thereof on applications already filed were mentioned when the subsidy ceiling was notified..

### *Division 4.2.3 The granting of subsidies*

#### **Article 4:29**

Unless provided otherwise by statutory regulation an administrative decision about the granting of subsidy may be made prior to the fixing of the subsidy if an application has been filed before the end of the activity or the period for which subsidy is requested.

#### **Article 4:30**

1. An administrative decision to grant a subsidy shall contain a description of the activities for which subsidy is granted.
2. The description may be elaborated later, in so far as this is stated in the decision to grant the subsidy.

#### **Article 4:31**

1. An administrative decision to grant a subsidy shall state the amount of the subsidy or the way in which this amount is to be determined.
2. If the administrative decision to grant a subsidy does not state the amount of the subsidy, it shall state the maximum amount for which the subsidy may be fixed, unless provided otherwise by statutory regulation.

#### **Article 4:32**

A subsidy in the form of a periodic entitlement to financial resources shall be granted for a particular period which is stated in the administrative decision granting the subsidy.

#### **Article 4:33**

A subsidy may not be granted on condition that a particular action is performed only by the administrative authority or only by the subsidy recipient, unless it is a condition that:

- (a) the subsidy recipient cooperates in the concluding of an agreement for implementation of the administrative decision to grant 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. In so far as a subsidy is granted out of a budget which has not yet been fixed or approved, it may be granted subject to the condition that sufficient funds are made available.
2. The condition may not be made in so far as this results from the statutory regulation on which the subsidy is based.
3. The condition shall cease to have effect if the administrative authority has not invoked it within four weeks of the date on which the budget is fixed or approved.
4. In the case of a subsidy for an activity which was also subsidized in the previous budget year, the condition shall be invoked by repeal owing to changed circumstances as referred to in article 4:50.

5. In other cases, the condition shall be invoked by repeal in accordance with article 4:48, subsection 1.

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

1. The granting of a subsidy may in any event be refused if there are good grounds for assuming that:

- (a) the activities will not take place or not take place in their entirety;
- (b) the applicant will not comply with the obligations attached to the subsidy;
- (c) the applicant will not render proper account in respect of the activities performed and the income and expenditure connected therewith, in so far as this may be important in fixing the subsidy.

2. The granting of a subsidy may also in any event be refused if the applicant:

(a) has provided incorrect or incomplete information for the application and the provision of this information would have led to an incorrect administrative decision on the application, or

(b) has been adjudged bankrupt or granted a suspension of payment of debts, or if the arrangement of purgation of debts of natural persons has been found applicable to him, or if a request to this effect has been submitted to the court.

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

1. An agreement may be concluded in order to implement the administrative decision to grant a subsidy.

2. Unless provided otherwise by statutory regulation or unless it would be contrary to the nature of the subsidy, it may be provided in the agreement that the subsidy recipient is obliged to perform the activities for which the subsidy has been granted.

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

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

1. The administrative authority may in any event impose obligations on the subsidy recipient relating to:

- (a) the nature and scope of the activities for which subsidy is granted;
- (b) the administration of the income and expenditure connected with the activities;
- (c) the provision of information and documents which are necessary for a decision concerning the subsidy before the subsidy is fixed;
- (d) the risks to be insured;
- (e) the provision of security for advances that have been granted;
- (f) the rendering of account in respect of the activities performed and the income and expenditure connected with it, in so far as this may be important in fixing the subsidy;
- (g) the mitigation or removal of the adverse consequences of the subsidy for third parties;
- (h) the inspection by an auditor as referred to in article 393, subsection 1, of Book 2 of the Civil Code of the financial management by the administrative authority and the financial account rendered. .

2. If an obligation as referred to in subsection 1 (c) is imposed, articles 4:3 and 4:4 shall apply *mutatis mutandis*.



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

1. The administrative authority may also attach to the subsidy other obligations which are intended to achieve the purpose of the subsidy.

2. If the subsidy is based on a statutory regulation, the obligations shall be imposed by statutory regulation or pursuant to statutory regulation when the subsidy is granted.

3. If the subsidy is not based on a statutory regulation, the obligations may be imposed when the subsidy is granted.

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

1. Obligations not intended to achieve the purpose of the subsidy may be attached to the subsidy only in so far as this is provided by statutory regulation.

2. Obligations as referred to in subsection 1 may relate only to the way in which or the means by which the subsidized activity is performed.

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

The obligations may be elaborated after the granting of the subsidy, in so far as the administrative decision to grant the subsidy states this.

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

1. In the cases referred to in subsection 2, the subsidy recipient shall, in so far as the granting of the subsidy has resulted in the accretion of capital, owe compensation to the administrative authority, provided that:

(a) this has been provided by statutory regulation or, if the subsidy is not based on a statutory regulation, when the subsidy was granted, and

(b) it was specified at that time how the amount of the compensation is to be determined.

2. The compensation shall be owed only if:

(a) the subsidy recipient alienates or encumbers goods used or intended for the performance of the subsidized activities or alters the use made of them;

(b) the subsidy recipient receives compensation for the loss of or damage to goods used or intended for the performance of the subsidized activities;

(c) the subsidized activities are ended in its entirety or partly;

(d) the decision granting or fixing the subsidy is repealed or the subsidy is ended, or

(e) the legal entity which received the subsidy is dissolved.

3. The compensation shall be fixed within a year of the date on which the administrative authority becomes aware or could have become aware of the event giving rise to the right to compensation, but in any event within five years of the notification of the last decision fixing the subsidy.

#### *Division 4.2.5 The fixing of the subsidy*

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

An administrative decision fixing a subsidy shall fix the amount of the subsidy and confers entitlement to payment of the fixed amount in accordance with division 4.2.7.

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

1. If no administrative decision to grant a subsidy has been given, the administrative decision to fix a subsidy shall contain a description of the activities for which the subsidy is provided.

2. Articles 4:32, 4:35, subsection 2, 4:38 and 4:39 shall apply *mutatis mutandis*.

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

1. If an administrative decision to grant a subsidy has been made, the subsidy recipient shall file an application for the fixing of the subsidy after completion of the activities or the expiry of the period for which the subsidy has been granted, unless:

(a) the subsidy is fixed by the administrative authority on its own initiative pursuant to article 4:47 (a);

(b) it has been provided by statutory regulation or when the subsidy is granted that the application should be filed on each occasion after the end of a part of the period for which the subsidy has been granted, or

(c) the fixing of the subsidy has been regulated differently under an agreement as referred to in article 4:36, subsection 1.

2. If no time limit has been provided by statutory regulation, the application to fix the subsidy shall be filed within a time limit to be determined when the subsidy is granted.

3. If no time limit has been provided for the filing of the application to fix the subsidy or the application has not been filed by the expiry of the time limit prescribed for this purpose, the administrative authority may impose to the recipient the time limit within which the application should be filed.

4. If, after the expiry of this time limit, no application has been filed, the subsidy may be fixed by the administrative authority on its own initiative.

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

1. When applying for a subsidy to be fixed, the applicant shall show that the activities have taken place in accordance with the obligations attached to the subsidy, unless the subsidy is fixed before the start of the activities.

2. When applying for a subsidy to be fixed, the applicant shall render account in respect of the income and expenditure connected with the activities in so far as they may be relevant for the fixing of the subsidy.

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

1. If an administrative decision to grant a subsidy has been made, the administrative authority shall fix the subsidy in accordance with the administrative decision granting the subsidy.

2. The subsidy may be fixed at a lower amount if:

(a) the activities for which subsidy has been granted have not taken place or have not taken place in their entirety;

(b) the subsidy recipient has not complied with the obligations attached to the subsidy;

(c) the subsidy recipient has provided incorrect or incomplete information and the provision of correct and complete information would have led to a different administrative decision on the application for the granting of subsidy, or

(d) the granting of the subsidy was otherwise incorrect and the subsidy recipient knew or should have known this.

3. In so far as the amount of the subsidy is dependent on the actual costs of the activities for which subsidy has been granted, costs which cannot reasonably be regarded as necessary shall not be taken into account in fixing the subsidy.

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

The administrative authority may fix the subsidy wholly or partly on its own initiative if:

(a) a time limit has been set by statutory regulation or when the subsidy is granted within which the subsidy will be fixed by the authority on its own initiative;

(b) article 4:44, subsection 4, is applied, or

(c) the administrative decision to grant a subsidy or the administrative decision to fix a subsidy is repealed or altered to the detriment of the recipient.

#### *Division 4.2.6 Repeal and alteration*

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

1. As long as the subsidy has not been fixed the administrative authority may repeal the decision granting the subsidy or alter it to the detriment of the subsidy recipient if:

(a) the activities for which subsidy has been granted have not taken place or have not taken place in their entirety or will not take place;

(b) the subsidy recipient has acted in breach of the obligations attached to the subsidy;

(c) the subsidy recipient has provided incorrect or incomplete information and the provision of correct and complete information would have led to a different administrative decision on the application for the granting of subsidy, or

(d) the subsidy was granted incorrectly otherwise and the subsidy recipient knew or should have known this, or

(e) the condition that sufficient funds are made available is cited, applying article 4:34, subsection 5.

2. The repeal or alteration shall have retroactive effect to the date when the subsidy was granted, unless provided otherwise at the time of repeal or alteration.

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

1. The administrative authority may repeal the decision fixing the subsidy or alter it to the detriment of the recipient:

(a) because of facts or circumstances of which it could not reasonably have been aware when the subsidy was fixed and on the basis of which the subsidy might have been fixed at a lower amount than that specified in the decision fixing the subsidy;

(b) if the subsidy was fixed incorrectly and the subsidy recipient knew or should have known this, or

(c) if, since the subsidy was fixed, the subsidy recipient has not complied with the obligations attached to the subsidy.

2. The repeal or alteration shall have retroactive effect to the time when the subsidy was fixed, unless provided otherwise at the time of repeal or alteration. .

3. The decision fixing the subsidy may no longer be repealed or altered to the detriment of the recipient if five years have passed since the date on which it was notified or, in the case referred to in subsection 1 (c), since the date on which the act in breach of the obligation was committed or the day on which the obligation should have been complied with.

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

1. As long as the subsidy has not been fixed the administrative authority may repeal the decision granting the subsidy or alter it to the detriment of the subsidy recipient, subject to observance of a reasonable period of communication:

(a) in so far as the subsidy was granted incorrectly;

(b) in so far as altered circumstances or changed views strongly oppose continuing the subsidy or continuing it unaltered, or

(c) in other cases provided by statutory regulation.

2. In the event of repeal or alteration under subsection 1 (a) or (b), the administrative authority shall pay compensation for the damage which the subsidy recipient suffers as a result of having acted differently from how he would have acted in reliance on the subsidy.

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

1. If subsidy has been provided to a subsidy recipient for three or more successive years for the same activities or for activities which are largely the same, the subsidy may only be refused, in its entirety or partly, for a following period on the ground that altered circumstances or changed views oppose continuing the subsidy or continuing it unaltered, if a reasonable period is given.

2. If, at the end of the period for which subsidy has been granted, a reasonable period has not expired since the notification of the intention to refuse subsidy for a following period, the subsidy shall be granted for the remaining part of that period, if necessary in derogation from article 4:25, subsection 2.

#### *Division 4.2.7 Payment and recovery*

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

1. The amount of subsidy shall be paid as specified in the administrative decision fixing the subsidy, after deduction of the advances paid.

2. The amount of the subsidy shall be paid within four weeks of the administrative decision fixing the subsidy, unless provided otherwise by statutory regulation.

3. If the subsidy is not based on a statutory regulation, a different time limit within which the amount of the subsidy must be paid may be determined when the subsidy is granted or, if there has been no administrative decision granting the subsidy, when the subsidy is fixed.

### **Article 4:53**

1. The amount of the subsidy may be paid in parts, provided that it has been determined by statutory regulation how the parts are to be calculated and at what times they are to be paid.

2. If the subsidy is not based on a statutory regulation, the amount of the subsidy may be paid in parts provided that it has been determined when the subsidy is granted or, if there has been no decision granting the subsidy, when the subsidy is fixed, how the parts are to be calculated and at what times they are to be paid.

### **Article 4:54**

1. The administrative authority may grant advances to the subsidy recipient in so far as this has been provided by statutory regulation or when the subsidy is granted.

2. An administrative decision granting an advance shall specify the amount of the advance or the way in which this amount is to be determined.

### **Article 4:55**

1. Advances shall be paid in accordance with the administrative decision granting the advance.

2. Advances shall be paid within four weeks of the date on which it is granted, unless provided otherwise by statutory regulation or when the advance is granted.

### **Article 4:56**

The obligation to pay an amount of subsidy or an advance shall be stayed with effect from the day on which the administrative authority communicates to the subsidy recipient in writing the existence of a grave suspicion that there are grounds for applying article 4:48 or 4:49 up to the date on which the administrative decision concerning repeal or alteration has been notified or the day on which thirteen weeks have expired since the communication concerning the grave suspicion.

### **Article 4:57**

Amounts of subsidy and advances that have been paid without being owed may be recovered in so far as five years have not expired since the date on which the subsidy was fixed or the act as referred to in article 4:49, subsection 1 (c), took place.

*Division 4.2.8 Subsidies granted per financial year to legal entities*

Paragraph 4.2.8.1 Introductory provisions

**Article 4:58**

1. This division applies to the subsidies provided per financial year if this has been provided by statutory regulation or by order of the administrative authority.

2. It may be provided by order in council that this division applies to subsidies designated by such order in council.

**Article 4:59**

1. An administrative authority that grants a subsidy in accordance with this division may designate one or more supervisors to be responsible for supervising observance of the obligations imposed on the recipient of the subsidy.

2. The supervisor shall not have the powers referred to in articles 5:18 and 5:19.

Paragraph 4.2.8.2 The application

**Article 4:60**

Unless provided otherwise by statutory regulation, the application for a subsidy shall be filed no later than thirteen weeks before the start of the financial year.

**Article 4:61**

1. The application for the subsidy shall in any event be accompanied by:

(a) a plan of activities, unless it can reasonably be assumed that there is no need for this, and

(b) a budget, unless this is not relevant to the calculation of the amount of the subsidy.

2. If the applicant has an equalization reserve as referred to in article 4:72, the application shall indicate the size thereof.

**Article 4:62**

The plan of activities shall include a survey of the activities for which subsidy is requested and the objectives thereof and shall specify the personnel and material resources needed for each separate activity.

**Article 4:63**

1. The budget shall include a survey of the income and expenditure of the applicant estimated for the financial year in so far as this relates to the activities for which subsidy has been requested.

2. Each of the budget items shall have its own separate notes to explain it.

3. Unless no subsidy has previously been provided for the activities to which the application relates, the budget shall include a comparison with the budget of the current

financial year and the actual income and expenditure of the year preceding the current financial year.

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

1. Unless the application is filed by a legal entity established under public law, it shall also be accompanied, if no subsidy was applied for in respect of the year preceding the subsidy year, by:

(a) a copy of the instrument of incorporation of the legal entity or of the articles of association as last altered, and

(b) the last annual accounts drawn up, as referred to in article 361 of Book 2 of the Civil Code, or the balance sheet and statement of income and expenditure (profit and loss account) and the notes to them, or, if such documents are not available, a report of the financial position of the applicant at the time of the application.

2. The documents referred to in subsection 1 (b) or the report on the financial position shall be accompanied by a written report of an auditor as referred to in article 393, subsection 1, of Book 2 of the Civil Code that the documents give a true and fair view or by a statement that there is no evidence of any incorrect statements.

3. Exemption or dispensation may be granted from the provisions of subsection 2 by statutory regulation or by order of the administrative authority.

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

In so far as the applicant has applied for subsidy in respect of the same budgeted expenditure to one or more other administrative authorities, he shall give communication of this in the application, specifying the position with regard to the assessment of such application or applications.

#### Paragraph 4.2.8.3 The granting of subsidies

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

The subsidy shall be granted only to a legal entity having full legal competence.

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

1. The subsidy shall be granted for a financial year or for a number of financial years.

2. If the subsidy is granted for two or more financial years, the subsidy shall be granted subject to the obligation to provide the administrative authority periodically with the information which is relevant to fixing the subsidy.

3. The administrative decision to grant subsidy shall specify the information which the subsidy recipient must supply pursuant to subsection 2 and at what times the information must be supplied.

#### Paragraph 4.2.8.4 Obligations of the subsidy recipient

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

Unless provided otherwise by statutory regulation or when the subsidy is granted, the subsidy recipient shall make the financial year coincide with the calendar year.



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

1. The subsidy recipient shall keep such accounting records that it is possible to determine from them at any time the rights and obligations that may be important to the fixing of the subsidy and the payment and receipts.

2. The accounts and the papers pertaining thereto shall be kept for seven years.

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

If significant differences occur or appear likely to occur during the financial year between the actual expenditure and income and the budgeted income and expenditure, the subsidy recipient shall give communication of this without delay to the administrative authority, specifying the cause of the differences.

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

1. If this has been provided by statutory regulation or when the subsidy is granted, the subsidy recipient shall require the consent of the administrative authority to:

(a) establish or participate in a legal entity;

(b) alter the articles of association;

(c) acquire, alienate or encumber the ownership of registered property if such property has been partly acquired by means of the subsidy moneys or the expenditure for this is met partly from the subsidy moneys;

(d) enter into and terminate agreements to acquire, alienate or encumber registered property or to take or grant tenancies thereof if all or part of such property has been acquired by means of the subsidy moneys or the expenditure for this is met partly from the subsidy moneys;

(e) enter into credit agreements and loan agreements;

(f) enter into agreements under which the subsidy recipient undertakes to provide security, including security for debts of third parties or in which it acts as surety or principal co-debtor or guarantees the debt of a third party;

(g) create funds and reserves;

(h) fix or alter tariffs for work to be performed by the subsidy recipient in the ordinary course of its subsidized activities;

(i) wind up the legal entity;

(j) petition for its bankruptcy or apply for a suspension of payment of debts.

2. The administrative authority shall decide on the consent within four weeks.

3. The decision may be postponed once for not more than four weeks.

4. If a decision on the consent has not been taken in time, the consent shall be deemed to have been granted.

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

1. If this has been provided by statutory regulation or when the subsidy is granted, the recipient shall create an equalization reserve.

2. The difference between the fixed subsidy and the actual cost of the activities for which the subsidy is granted shall be credited or, as the case may be, debited to the equalization reserve.

3. The equalization reserve shall be invested in such a way as to achieve the highest possible interest for the least risk that is 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, subsection 2 (c), (d) and (e), the subsidy recipient shall be liable to pay compensation in respect of the equalization reserve in proportion to the extent to which the subsidy has contributed to the equalization reserve.

#### Paragraph 4.2.8.5 The fixing of subsidy

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

The subsidy shall be fixed per financial year.

#### **Article 4:74**

The subsidy recipient shall file an application for the fixing of the subsidy within six months of the end of the financial year, unless provided otherwise by statutory regulation or the subsidy has been granted for two or more financial years pursuant to article 4:67, subsection 2.

#### **Article 4:75**

1. The application for the subsidy to be fixed shall be accompanied by a financial report and a report of activities.

2. If the subsidy recipient is obliged by statutory regulation to draw up annual accounts as referred to in article 361 of Book 2 of the Civil Code or if this has been provided when the subsidy is granted, it shall submit the annual accounts instead of the financial report, without prejudice to article 4:45, subsection 2.

#### **Article 4:76**

1. If the subsidy recipient derives its income entirely from the subsidy, the financial report shall contain the balance sheet and operating statement with notes, and subsections 2 to 5 inclusive shall apply.

2. The financial report shall provide such information in accordance with accepted business practice that it is possible to form a sound opinion about:

(a) the assets and liabilities and net operating result, and

(b) the solvency and liquidity of the subsidy recipient, in so far as the nature of the financial report permits this.

3. The balance sheet with notes shall show faithfully, clearly and systematically the amount and composition of the individual assets and liabilities at the end of the financial year.

4. The operating statement with notes shall show faithfully, clearly and systematically the amount of the net operating result of the financial year.

5. The financial report shall link up with the budget for which the subsidy has been granted and shall include a comparison with the actual income and expenditure figures of the year preceding the financial year.

#### **Article 4:77**

If the subsidy recipient derives its income largely from the subsidy, it may be provided by statutory regulation or when the subsidy is granted that article 4:76 shall apply *mutatis mutandis*.

#### **Article 4:78**

1. The subsidy recipient shall instruct an auditor as referred to in article 393, subsection 1, of Book 2 of the Civil Code to examine the financial report.

2. The auditor shall examine whether the financial report complies with the rules laid down by or pursuant to act of Parliament and whether the report of activities is compatible, in so far as he is able to judge, with the financial report.

3. The auditor shall publish 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 the fixing of the subsidy shall be accompanied by the statement referred to in subsection 3.

5. Exemption or dispensation may be granted from the provisions of subsection 1 to 4 inclusive by statutory regulation or when the subsidy is granted.

#### **Article 4:79**

1. It may be provided by statutory regulation or when the subsidy is granted that the instruction referred to in article 4:78, subsection 1, also contains an instruction to examine the observance of obligations attached to the subsidy.

2. If subsection 1 is applied, the instruction shall be accompanied by a direction about the scope and intensity of the examination to be determined by or pursuant to statutory regulation or when the subsidy is granted.

3. If subsection 1 is applied, the financial report shall also be accompanied by a written statement of the auditor concerning the observance by the subsidy recipient of the obligations attached to the subsidy.

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

The report of activities shall describe the nature and extent of the activities for which subsidy was granted and shall contain a comparison between the stated objectives and what has actually been achieved and notes on the differences.

### **Title 4.3 Policy rules**

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

1. An administrative authority may establish policy rules in respect of a power conferred to it, which is exercised under its responsibility or which has been delegated by it.

2. In other cases an administrative authority may establish policy rules only in so far as this is provided by statutory regulation.

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

To explain the reasons for an order it shall only be sufficient to refer to a fixed practice in so far as this practice is contained in a policy rule.

### **Article 4:83**

When a policy rule is notified, the statutory regulation on which the power to which the order containing a policy rule relates, is based, shall, if possible, be stated.

### **Article 4:84**

The administrative authority shall act in accordance with the policy rule unless, due to special circumstances, the consequences for one or more interested parties would be out of proportion to the purposes of the policy rule.

## **CHAPTER 5 ENFORCEMENT**

### *Division 5.2 Supervision of observance*

### **Article 5:11**

‘Supervisor’ means a person who by or pursuant to statutory regulation has been charged with supervising the observance of the provisions made by or pursuant to any statutory regulation.

### **Article 5:12**

1. When performing his duties a supervisor shall carry an identification card issued by the administrative authority under whose responsibility the supervisor works.
2. A supervisor shall immediately produce his identification card on request.
3. The identification card shall contain a photograph of the supervisor and shall in any event state his name and position. The model of the identification card shall be fixed by the Minister of Justice in a regulation.

### **Article 5:13**

A supervisor shall exercise his powers only in so far as this can reasonably be assumed to be necessary for the performance of his duties.

### **Article 5:14**

The powers to which the supervisor is entitled may be limited by statutory regulation or by order of the administrative authority which designates the supervisor as such.

### **Article 5:15**

1. A supervisor, taking with him the requisite equipment, shall be entitled to enter every place, with the exception of a dwelling without the consent of the occupant.
2. If necessary, he may gain entry with the assistance of the police.
3. He shall be entitled to take with him people designated by him for this purpose.

### **Article 5:16**

A supervisor shall be entitled to require the provision of information.

### **Article 5:17**

1. A supervisor shall be entitled to require inspection of business information and documents.
2. He shall be entitled to make copies of the information and documents.
3. If the copies cannot be made on the spot, he shall be entitled to take the information and documents away for this purpose for a short time in exchange for a written receipt issued by him.

### **Article 5:18**

1. A supervisor shall be entitled to inspect and measure goods and take samples of them.
2. He shall be entitled to open packages for this purpose.
3. At the request of the interested party, the supervisor shall, if possible, take a second sample, unless provided otherwise by or pursuant to statutory regulation.
4. If the things cannot be inspected, measured or sampled on the spot, he shall be entitled to take the things away for this purpose for a short time in exchange for a written receipt issued by him.
5. Wherever possible the samples taken shall be returned.
6. The interested party shall, at his request, be informed as quickly as possible of the results of the inspection, measuring or sampling.

### **Article 5:19**

1. A supervisor shall be entitled to inspect means of transport which are subject to his supervision.
2. He shall be entitled to inspect the cargo of means of transport which are reasonably assumed by him to be used for carrying things which are subject to his supervision.
3. He shall be entitled to require the driver of a means of transport to allow him to inspect the documents statutorily required which are subject to his supervision.
4. For the purpose of exercising these powers, he shall be entitled to require the driver of a vehicle or the master of a vessel to stop his means of transport and take it to a place designated by the supervisor.
5. How the demand to stop a vehicle or vessel is to be made shall be decided by the Minister of Justice in a regulation.

### **Article 5:20**

1. Everyone shall be obliged to cooperate fully with a supervisor, who may reasonably demand this in the exercise of his powers, within such reasonable time limit as he may specify.
2. Any person who is bound by a duty of secrecy by virtue of his office or profession or by statutory regulation may refuse to cooperate in so far as his duty of secrecy makes this necessary.

### *Division 5.3 Enforcement action*

### **Article 5:21**

‘Enforcement action’ means physical acts taken by or on behalf of an administrative authority against what has been or is being done, kept or omitted in breach of obligations laid down by or pursuant to any statutory regulations.

#### **Article 5:22**

The power to take enforcement action exists only if it has been granted by or pursuant to act of Parliament.

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

This division does not apply if action is taken for the immediate enforcement of public order.

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

1. A decision that enforcement action is to be taken shall be in writing. The written decision constitutes an administrative decision.

2. The administrative decision shall state what regulation has been or is being infringed.

3. It shall be notified to the offender, to the persons entitled to the use of the thing in respect of which enforcement action will be taken and to the applicant.

4. The administrative decision shall contain a time limit within which the interested parties may prevent such action by taking measures themselves. The administrative authority shall specify the measures to be taken.

5. No time limit need be granted if speed is of the essence.

6. If the situation is so urgent that the administrative authority cannot put the decision to take enforcement action in writing beforehand, it shall arrange for it to be recorded in writing and notified as quickly as possible thereafter.

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

1. An offender shall owe the costs incurred in connection with the taking of enforcement action, unless it would not be reasonable for these costs or all of these costs to be borne by him.

2. The administrative decision shall state that the enforcement action is taken at the expense of the offender.

3. If, however, all or part of the costs will not be charged to the offender this shall be stated in the administrative decision.

4. The costs referred to in subsection 1 shall include the costs connected with the preparation of enforcement action, in so far as these costs are incurred after the date on which the time limit referred to in article 5:24, subsection 4, expires.

5. The costs shall also be owed if the enforcement action is not taken or not taken in its entirety owing to the termination of the illegal situation.

6. The costs referred to in subsection 1 shall also include the costs resulting from the compensation for damage pursuant to article 5:27, subsection 6.

#### **Article 5:26**

1. An administrative authority which has taken enforcement action may collect the costs owed pursuant to article 5:25, plus the costs incurred in connection with the collection, from the offender by writ of execution.

2. The writ of execution shall be served by bailiff's communication at the expense of the offender and shall constitute an enforceable title within the meaning of Book 2 of the Code of Civil Procedure.

3. For six weeks after the day of service may be opposed against the writ of execution by writ of summons served on the legal entity to which the administrative authority belongs.

4. The opposition shall have the effect of staying the writ of execution. At the request of the legal entity the court may end the stay of the writ of execution.

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

1. In order to implement a decision to take enforcement action, persons designated for this purpose by the administrative authority taking enforcement action shall have access to every place, in so far as this may reasonably be deemed necessary for the performance of their duties.

2. An administrative authority taking enforcement action shall be entitled to issue an authorization as referred in article 2 of the Entry to Premises Act for gaining entry to a dwelling without the consent of the occupant.

3. A place which is not involved in the infringement shall not be entered until the administrative authority taking enforcement action has given the person entitled at least 48 hours' communication in writing.

4. Subsection 3 shall not apply if timely communication is not possible because speed is of the essence. The communication shall then be given as quickly as possible.

5. The communication shall specify the way in which entry will take place.

6. The legal entity to which the administrative authority belongs shall reimburse the damage which is caused by the entry of a place as referred to in subsection 3, in so far as it would not be reasonable for this to be borne by the person entitled, without prejudice to the right to recover this damage from the offender pursuant to article 5:25, subsection 6.



### **Article 5:28**

The power to take enforcement action shall include the power to seal off buildings and sites and anything which may be in or on them.

### **Article 5:29**

1. The power to take enforcement action shall include the removal and storage of goods suitable for this purpose, in so far as the use of enforcement action requires this.

2. If goods have been removed and stored, the administrative authority that has taken enforcement action shall draw up an official report of this and supply a copy to the person who had the goods under his control.

3. The administrative authority shall arrange for custody of the stored goods and shall return such goods to the person lawfully entitled to them.

4. The administrative authority shall be entitled to defer such return until the costs owed pursuant to article 5:25 have been paid. If the person lawfully entitled is not also the offender, the administrative authority shall be entitled to defer the return until the costs of custody have been paid.

### **Article 5:30**

1. An administrative authority which has taken enforcement action shall be entitled, if goods removed and stored pursuant to article 5:29, subsection 1, cannot be returned within thirteen weeks of the removal, to sell the same or, if sale is not possible in its opinion, to transfer the ownership of the goods free of charge to a third party or to have them destroyed.

2. The administrative authority shall have a similar power within the same period if the costs referred to in article 5:25 together with the costs estimated for the sale, transfer of ownership free of charge or destruction are so high that they are out of proportion to the value of the goods.

3. Sale, transfer of ownership or destruction shall not take place within two weeks of the provision of the copy referred to in article 5:29, subsection 2, unless it relates to a dangerous substance or a substance likely to perish beforehand.

4. For a period of three years after the date of sale, the one who was the owner at that time shall be entitled to the proceeds of the goods less the costs owed pursuant to article 5:25, subsection 1, and the costs of the sale. After the expiry of this period, any net proceeds of the sale shall pass to the legal entity to which the administrative authority belongs.

## **Article 5:31**

A decision to take enforcement action shall not be taken as long as an administrative decision, already taken in respect of the relevant infringement, to impose a duty backed by an *astreinte*<sup>2</sup> penalty has not been repealed.

### *Division 5.4 Astreinte*

## **Article 5:32**

1. An administrative authority which is entitled to take enforcement action may instead impose on the offender a duty backed by an *astreinte*.

2. The aim of a duty backed by an *astreinte* shall be to remedy the infringement or to prevent a further infringement or a repetition of the infringement.

3. The imposition of a duty backed by an *astreinte* shall not be chosen if this would be contrary to the interest intended to be protected by the regulation that has been infringed.

4. The administrative authority shall fix the *astreinte* as a lump sum, as a sum payable by unit of time during which a duty is not performed, or as a sum per infringement of the duty. The administrative authority shall also fix a sum above which no further penalty will be forfeited. The fixed amount shall be in reasonable proportion to the importance of the interest that has been infringed and the intended effect of the imposition of the *astreinte*.

5. An administrative decision imposing a duty backed by a *astreinte* which is intended to remedy an infringement or prevent a further infringement shall set a time limit within which the offender can perform the duty without the *astreinte* being forfeited.

## **Article 5:33**

1. Forfeited *astreintes* shall accrue to the legal entity to which the administrative authority that has fixed the *astreinte* belongs. The administrative authority may collect the sum concerned plus the costs incurred in connection with the collection, by writ of execution.

2. Article 5:26, subsections 2 to 4 inclusive, shall apply.

## **Article 5:34**

1. The administrative authority which has imposed a duty backed by an *astreinte* may, at the request of the offender, lift the *astreinte*, reduce it or stay its operation for a given period if it has become permanently or temporarily impossible for the offender to perform all or part of his obligations.

2. An administrative authority which has imposed a duty backed by an *astreinte* may, at the request of the offender, lift the *astreinte* if the decision has been in effect for a year without the *astreinte* being forfeited.

## **Article 5:35**

1. The power to collect forfeited sums shall be barred by prescription six months after the date on which they are forfeited.

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<sup>2</sup> The Dutch word "dwangsom" could be translated literally: "'coercive sum". It is an instrument of enforcement. In EC law the notion 'periodic penalty payment' is used.

2. The prescription shall be stayed by bankruptcy, application of the arrangement of purgation of debts of natural persons and every statutory impediment to collection of the astreinte.

#### **Article 5:36**

A duty backed by an astreinte shall not be imposed as long as a decision relating to the relevant infringement to take enforcement action has not been repealed.

## **CHAPTER 6 GENERAL PROVISIONS CONCERNING OBJECTIONS AND APPEALS**

### *Division 6.1 Introductory provisions*

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

Chapters 6 and 7 shall apply *mutatis mutandis* if provision has been made for objecting to or appealing against actions of administrative authorities other than orders.

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

For the purposes of statutory regulations governing objections and appeals, the following shall be equated with an order:

- (a) a written refusal to make an order, and
- (b) failure to make an order in due time.

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

No objection or appeal shall lie against a decision regarding the procedure for preparing an order unless this decision directly affects the interests of the interested party independently of the order being prepared.

### *Division 6.2 Other general provisions*

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

1. An objection shall be made by submitting a notice of objection to the administrative authority which made the order.
2. An administrative appeal shall be lodged by submitting a notice of appeal to the appeals authority.
3. An appeal to an administrative court shall be lodged by submitting a notice of appeal to that court.

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

1. The notice of objection or appeal shall be signed and shall contain at least:
  - (a) the name and the address of the submitter;

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3 I.e. the one who submits the notice of objection or appeal. The words 'petitioner' and 'applicant' cannot be used as these words have a specific meaning in this act of Parliament.

- (b) the date;
- (c) a description of the order against which the objection or appeal is addressed;
- (d) the grounds for the objection or appeal.

2. A copy of the order to which the dispute relates shall be submitted with the notice of appeal if possible.

3. If the notice of objection or appeal is in a foreign language and a translation is necessary for the objection or appeal to be properly dealt with, the submittant shall arrange for a translation.

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

If article 6:5 or any other requirement laid down by act of Parliament for the objection or appeal to be considered has not been complied with, the objection or appeal may be ruled inadmissible, provided the submittant has had the opportunity to remedy the omission within a time limit set for this purpose.

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

The time limit for submitting a notice of objection or appeal shall be six weeks.

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

1. The time limit shall start on the day after that on which the order is notified in the prescribed manner.

2. The time limit for submitting a notice of objection against an order against which administrative appeal might only be lodged by one or more specified interested parties, shall start on the day after that on which the time limit for appeal has expired without being used.

3. The time limit for submitting a notice of appeal against an order which is subject to approval shall start on the day after that on which the order approving that order is notified in the prescribed manner.

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

1. A notice of objection or appeal shall be deemed to have been submitted in due time if it has been received before the end of the time limit.

2. If it is sent by mail, a notice of objection or appeal shall be deemed to have been submitted in due time if it is posted before the end of the time limit, provided it is received no later than a week after the time limit has expired.

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

1. A notice of objection or appeal submitted before the start of the time limit shall not be ruled inadmissible on this ground if, at the time it was submitted:

(a) the order had already been made, or

(b) the order had not yet been made but it was reasonable for the submittant to suppose that it had been.

2. Consideration of the objection or appeal may be deferred until the start of the time limit.

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

A notice of objection or appeal submitted after the end of the time limit shall not be ruled inadmissible on this ground if it cannot reasonably be held that the submittant was in default.

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

1. If the notice of objection or appeal is brought against failure to make an order in due time it shall not be subject to any time limit.

2. A notice of objection or appeal may be submitted at such time as the administrative authority fails to make an order in due time.

3. The objection or appeal shall be ruled inadmissible if the notice of objection or appeal is submitted unreasonably late.

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

No appeal may be lodged against an order made in respect of an objection or administrative appeal by the interested party if he may reasonably be considered at fault in not having made an objection or lodged an administrative appeal against the original order.

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

1. The authority to which a notice of objection or appeal is submitted shall acknowledge the receipt thereof in writing.

2. The authority to which a notice of appeal is submitted shall inform the administrative authority which made the disputed order as soon as possible.

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

1. If a notice of objection or appeal is submitted to an incompetent administrative authority or administrative court, the date of receipt shall be noted thereon and it shall be transmitted as soon as possible to the competent authority or court, the sender being informed simultaneously.

2. Subsection 1 shall apply *mutatis mutandis* if a notice of appeal is submitted instead of a notice of objection or *vice versa*.

3. The date of submission to the incompetent authority shall determine whether the notice of objection or appeal has been submitted in due time, if:

(a) article 3:45 or article 6:23 has not been applied correctly;

(b) the objection or appeal is brought against failure to make an order in due time, or

(c) the incompetence of the authority could be unclear to the submittant for some other reason.

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

The objection or appeal shall not stay the operation of the order against which it is brought unless provided otherwise by or pursuant to statutory regulation.

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

If a person appoints someone to represent him, the authority competent to decide on the objection or appeal shall in any event send the documents relating to the case to the legal representative.

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

1. The fact that an objection or appeal is pending against an order shall not alter a power to repeal or alter the order which would also exist if no such objection or appeal were pending.

2. If an administrative authority repeals or alters a disputed order, it shall inform without delay the authority before which the objection or appeal is pending.

3. After the repeal or alteration the administrative authority may not, while the objection or appeal is pending, make any order corresponding to the original order in substance or purport, unless:

(a) this is justified by altered circumstances, and

(b) the administrative authority would also have been competent to do so if no such objection or appeal had been pending.

4. If an administrative authority makes an order as referred to in subsection 3 it shall inform without delay the authority before which the objection or appeal is pending.

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

1. If an administrative authority has made an order as referred to in article 6:18, the objection or appeal shall be deemed also to have been brought against the new order, unless this order completely satisfies the objection or appeal.

2. The decision on the objection or appeal against the new order may, however, be referred to another authority before which an objection or appeal against the new order is pending or can or could be made.

3. Repeal of the disputed order shall not be an obstacle to its annulment if this is in the interests of the submittant.

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

1. If the objection or appeal is brought against failure to make an order in due time, the administrative authority shall remain obliged to make an order in respect of the application.

2. The provisions of subsection 1 shall not apply:

(a) during the period that the objection is pending;

(b) after the decision on the objection or appeal, if as a result the applicant no longer has any interest in an order in respect of the application.

3. If the administrative authority makes an order in respect of the application, it shall inform without delay the authority before which the objection or appeal against failure to make an order in due time is pending.

4. The objection or appeal shall be deemed also to be brought against the order made in respect of the application, unless the order completely satisfies the objection or appeal.

5. The decision on the objection or appeal against the order made in respect of the application may, however, be referred to another authority before which an objection or appeal against the order in respect of the application is pending or can or could be made.

6. The objection or appeal against failure to decide on the application in due time may still be ruled well-founded allowed if this is in the interests of the submittant.

### **Article 6:21**

1. The objection or appeal may be withdrawn in writing.
2. It may also be withdrawn orally during the hearing.

### **Article 6:22**

An order against which an objection has been made or an appeal has been lodged may be upheld by the authority deciding on the objection or appeal, despite an infringement of a procedural rule, if it is found that the infringement has not prejudiced the interests of the interested parties.

### **Article 6:23**

1. If an appeal may be lodged against the decision on the objection or appeal, this shall be stated when the decision is notified.
2. At the same time it shall be stated by whom, within what time limit and with which authority an appeal may be lodged.

### **Article 6:24**

1. With the exception of article 6:12, this division shall apply *mutatis mutandis* if an appeal to a higher court or an appeal in cassation may be lodged.
2. Notwithstanding article 6:4, an appeal in cassation shall be instituted by submitting a notice of appeal with the court against whose judgment the appeal is brought.

## **CHAPTER 7 SPECIAL PROVISIONS CONCERNING OBJECTIONS AND ADMINISTRATIVE APPEALS**

### *Division 7.1 Notice of objection preceding appeal to an administrative court*

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

1. The one who has the right to appeal against an order to an administrative court shall lodge an objection against the order before lodging an appeal, unless the order:

- (a) has been made in respect of an objection or an administrative appeal;
- (b) is subject to approval;
- (c) is one approving another order or refusing such approval; or
- (d) was prepared in accordance with one of the procedures provided in division 3.5.

2. An appeal may be lodged against the decision on the objection in accordance with the regulations which govern the lodging of an appeal against the order against which the objection was made.

### *Division 7.2 Special provisions on objections*

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

1. Before an administrative authority decides on an objection, it shall give the interested parties the opportunity to be heard.

2. For this purpose the administrative authority shall in any event inform the petitioner and the interested parties who stated their views when the order was being prepared.

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

Interested parties need not be heard, 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 their right to be heard, or
- (d) the objection is completely satisfied and the interests of other interested parties cannot be prejudiced as a result.

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

1. Interested parties may submit further documents until ten days before the hearing.

2. The administrative authority shall deposit the notice of objection and all other documents relating to the case for inspection by interested parties for at least one week prior to the hearing.

3. The communication to attend the hearing shall draw the attention of interested parties to subsection 1 and state when and where the documents will be deposited for inspection.

4. Interested parties may obtain copies of these documents at no more than cost price.

5. Subsection 2 need not be applied in so far as the interested parties agree to this.



6. The administrative authority may also refrain from applying subsection 2, either at the request of an interested party or otherwise, in so far as there are compelling reasons for secrecy. Communication shall be given of the application of this provision.

7. Compelling reasons shall in any event be deemed not to exist in so far as there is an obligation under the Government Information (Public Access) Act to grant a request for information contained in such documents.

8. If the compelling reason is fear of damage to the physical or mental health of an interested party, inspection of the documents in question may be restricted to a legal 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 the chairman or a member thereof, the hearing shall be conducted by:

- (a) a person who was not involved in the preparation of the disputed order, or
- (b) two or more persons of whom the majority, including the person chairing the hearing, were not involved in the preparation of the disputed order.

2. Unless provided otherwise by statutory regulation, the administrative authority shall decide whether the hearing takes place in public.

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

1. Interested parties shall be heard in one another's presence.

2. Interested parties may be heard separately, either on the initiative of the administrative authority or on request, if it is reasonable to assume that a joint hearing would prejudice the proper conduct of the proceedings, or that facts or circumstances will become known during the hearing which should be kept secret for compelling reasons.

3. If interested parties are heard separately, each of them shall be informed of the matters dealt with during the hearing when he was not present.

4. The administrative authority may also refrain from applying subsection 3, either at the request of an interested party or otherwise, in so far as there are compelling reasons for secrecy. Article 7:4, subsection 6, second sentence, and subsections 7 and 8 shall apply *mutatis mutandis*.

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

A record shall be kept of the hearing.

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

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

2. The costs of witnesses and experts shall be borne by the interested party who has brought them with him.

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

If, after the hearing, facts or circumstances which may be of substantial importance to the decision to be made on the objection become known to the administrative authority, the interested parties shall be informed and given the opportunity to be heard on the subject.

## **Article 7:10**

1. The administrative authority shall decide within six weeks of receiving the notice of objection, or within ten weeks if a committee as referred to in article 7:13 has been established.

2. The time limit shall be suspended with effect from the day on which the petitioner 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 being used.

3. The administrative authority may defer the decision for a maximum of four weeks. Written communication shall be given of the deferral.

4. Further postponement shall be possible in so far as the petitioner agrees to this and the interests of other interested parties cannot be prejudiced by this or these parties have agreed to this.

## **Article 7:11**

1. If the objection is admissible, the disputed order shall be reviewed on the basis thereof.

2. In so far as the review provides grounds for so doing, the administrative authority shall rescind the disputed order and, in so far as necessary, make a new order replacing it.

## **Article 7:12**

1. The decision on the objection shall be based on proper reasons, which shall be stated when the decision is notified. If it has been decided not to have a hearing under article 7:3, it shall also be stated on what grounds.

2. The decision shall be notified by being sent or issued to the persons to whom it is addressed. If it concerns an order which is not addressed to one or more interested parties, the decision shall be notified in the same way as the order was notified.

3. As soon as possible after the decision is notified, the interested parties who stated their views in the objection procedure or when the disputed order was being prepared, shall be informed.

4. Article 6:23 shall apply *mutatis mutandis* to the communication referred to in subsection 3, which shall also state, with a view to the start of the time limit for appeal, as clearly as possible when the decision was notified in accordance with subsection 2.

## **Article 7:13**

1. This article shall apply if an advisory committee has been established for the decision on the objection:

(a) which consists of a chairman and at least two members,

(b) whose chairman is not part of, and not employed under the responsibility of, the administrative authority, and

(c) which complies with any other requirements which may be prescribed by statutory regulation.

2. The acknowledgement of receipt referred to in article 6:14 shall state that a committee will advise on the objection.

3. The hearing shall be conducted by the committee. The committee may direct that the hearing is to be conducted by the chairman or a member who is not part of, and not employed under the responsibility of, the administrative authority.

4. The committee shall decide on the application of article 7:4, subsection 6, article 7:5, subsection 2, and, in so far as not provided otherwise by statutory regulation, article 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 authority's position.

6. The opinion of the committee shall be made in writing and shall include a report of the hearing.

7. If the decision on the objection departs from the opinion of the committee, the reasons why the opinion was not followed shall be stated in the decision, and the opinion shall be sent with the decision.

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

Article 3:6, subsection 2, divisions 3.4 and 3.5, articles 3:41 to 3:45 inclusive, division 3.7, with the exception of article 3:49, and Chapter 4 shall not apply.

#### **Article 7:15**

No fee shall be payable for the processing of the objection.

#### *Division 7.3 Special provisions on administrative appeals*

#### **Article 7:16**

1. Before an appeals authority decides on an appeal it shall give the interested parties the opportunity to be heard.

2. The appeals authority shall in any event inform the submitter of the notice of appeal, as well as the administrative authority which made the order and the interested parties who stated their views when the order was being prepared or in the objection procedure.

#### **Article 7:17**

Interested parties need not be heard, 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 submit further documents until ten days before the hearing.

2. The appeals authority shall deposit the notice of appeal and all other documents relating to the case for inspection by interested parties for at least one week prior to the hearing.

3. The communication to attend the hearing shall draw the attention of interested parties to subsection 1 and shall state when and where the documents will be deposited for inspection.

4. Interested parties may obtain copies of these documents at no more than cost price.

5. Subsection 2 need not be applied in so far as the interested parties agree to this.

6. The appeals authority may also refrain from applying subsection 2, either at the request of an interested party or otherwise, in so far as there are compelling reasons for secrecy. Communication shall be given of the application of this provision.

7. Compelling reasons shall in any event be deemed not to exist in so far as there is an obligation under the Government Information (Public Access) Act to grant a request for information contained in such documents.

8. If the compelling reason is fear of damage to the physical or mental health of an interested party, inspection of the documents in question may be restricted to a legal representative who is either an attorney-at-law or a physician.

#### **Article 7:19**

1. The hearing shall be conducted by the appeals authority.

2. The conduct of the hearing may be assigned by or pursuant to act of Parliament to an advisory committee consisting of one or more members who are not part of, and not employed under the responsibility of, the appeals authority.

3. The hearing shall take place in public, unless the appeals authority decides otherwise at the request of an interested party or, if there are compelling reasons, on its own initiative.

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

1. Interested parties shall be heard in one another's presence.

2. Interested parties may be heard separately, either on the initiative of the administrative authority or on request, if it is reasonable to assume that a joint hearing would prejudice the proper conduct of the proceedings or that facts or circumstances will become known during the hearing which should be kept secret for compelling reasons.

3. If interested parties are heard separately, each of them shall be informed of the matters dealt with during the hearing when he was not present.

4. The appeals authority may also refrain from applying subsection 3, either at the request of an interested party or otherwise, in so far as there are compelling reasons for secrecy. Article 7:18, subsection 6, second sentence, and subsections 7 and 8, shall apply *mutatis mutandis*.

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

A record shall be kept of the hearing.

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

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

2. The costs of witnesses and experts shall be borne by the interested party who has brought them with him.

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

If, after the hearing, facts or circumstances which may be of substantial importance to the decision to be made on the appeal become known to the appeals authority, the interested parties shall be informed and given the opportunity to be heard on the subject.

## **Article 7:24**

1. The appeals authority shall decide within sixteen weeks of receiving the notice of appeal.

2. If, however, the appeals authority is part of the same legal entity as the administrative authority against whose order the appeal is brought, it shall decide within six weeks of receiving the appeal or, if a committee as referred to in article 7:19, subsection 2 is established, within ten weeks.

3. The time limit shall be suspended with effect from the day on which the submittant of 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 being used.

4. The appeals authority may defer the decision for a maximum of eight weeks.

5. In the case referred to in subsection 2, however, the appeals authority may defer the decision for a maximum of four weeks.

6. Written communication shall be given of the deferral.

7. Further postponement shall be possible in so far as the submittant agrees to this and the interests of other interested parties cannot be prejudiced by this or these parties have agreed to this.

## **Article 7:25**

In so far as the appeals authority considers that the appeal is admissible and well-founded, it shall annul the disputed order and, in so far as necessary, make a new order replacing it.

## **Article 7:26**

1. The decision on the appeal shall be based on proper reasons, which shall be stated when the decision is notified. If it has been decided not to have a hearing under article 7:17, it shall also be stated on what grounds.

2. If the decision departs from the opinion of a committee as referred to in article 7:19, subsection 2, the reasons why the opinion was not followed shall be stated in the decision and the opinion shall be sent with the decision.

3. The decision shall be notified by being sent or issued to the persons to whom it is addressed. If it concerns an order which is not addressed to one or more interested parties, the decision shall be notified in the same way as the order was notified.

4. As soon as possible after the decision is notified, the administrative authority against whose order the appeal was brought, the ones to whom the disputed order was addressed and the interested parties who have stated their views in the appeal procedure shall be informed.

5. Article 6:23 shall apply *mutatis mutandis* to the communication referred to in subsection 4, which shall also state, with a view to the start of the time limit for appeal, as clearly as possible, when the decision was notified in accordance with subsection 3.

## **Article 7:27**

Article 3:6, subsection 2, divisions 3.4 and 3.5, articles 3:41 to 3:45 inclusive, division 3.7, with the exception of article 3:49, and Chapter 4 shall not apply.

**Article 7:28**

No fee shall be payable for the processing of the appeal.

## **CHAPTER 8 SPECIAL PROVISIONS CONCERNING APPEALS TO THE DISTRICT COURT**

### **Title 8.1 General provisions**

#### *Division 8.1.1 Jurisdiction*

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

1. An interested party may appeal to the district court against an order.
2. With an order shall be equated an other act of an administrative authority in which a public servant as such as referred to in article 1 of the Central and Local Government Personnel Act, or a conscript as such as referred to in article 2 of the Conscripts (Legal Status) Act, their surviving relatives or their successors-in-title, have an interest.
3. The following shall be equated with an order:
  - (a) a written decision containing a refusal to approve an order, a generally binding regulation or a policy rule or repealing or laying down the entry into force of a generally binding regulation or policy rule, and
  - (b) a written decision containing a refusal to approve an order to prepare a legal act under private law.

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

- No appeal may be lodged against:
- (a) an order containing a generally binding regulation or a policy rule,
  - (b) an order repealing or laying down the entry into force of a generally binding regulation or policy rule,
  - (c) an order approving an order, containing a generally binding regulation or a policy rule or repealing or laying down the entry into force of a generally binding regulation or a policy rule.

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

No appeal may be lodged against an order in preparation of a legal act under private law.

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

- No appeal may be lodged against an order:
- (a) suspending or annulling an order of another administrative authority,
  - (b) based on a power conferred, or obligation imposed, under any statutory regulation in case of exceptional circumstances, made in these circumstances,
  - (c) made on the basis of a statutory regulation designed to protect the military interests of the Kingdom or its allies,
  - (d) appointing a person, unless an appeal is lodged by a public servant as such as referred to in article 1 of the Central and Local Government Personnel Act, or a conscript as such as referred to in article 1, (b) of the Conscripts (Legal Status) Act, their surviving relatives or their successors-in-title,

(e) assessing the knowledge or ability of a candidate or pupil examined on the matter or tested in any other way, or laying down tasks, assessment standards or rules for such examination or testing,

(f) a technical assessment of a vehicle or aircraft, or a measuring device, part thereof or auxiliary device therefore,

(g) made under a statutory regulation concerning taxation or the levying of a contribution, or tax replacing a contribution, under the National Insurance (Financing) Act,

(h) on the numbering of lists of candidates, the validity of electoral alliances, the voting procedure, the counting of votes and the establishment of results in elections of members of representative bodies, and the declaration of election to vacant seats, or

(i) made on the basis of a statutory regulation concerning compulsory military service, in so far as medical examination, re-examination, drafting, actual service, long furlough or discharge is concerned, unless the order relates to voluntary enlistment, extension of actual service or breadwinner's allowance, or the order was made on the basis of the Armed Forces (Reserves) Act 1985.

### **Article 8:5**

No appeal may be lodged against an order made on the basis of a statutory regulation listed in the schedule to this act.

### **Article 8:6**

1. No appeal may be lodged against an order against which an appeal can be or could have been lodged with another administrative court.

2. No appeal may be lodged against an order against which an administrative appeal can be lodged or could have been lodged by the interested party.

### **Article 8:7**

1. If an appeal is lodged against an order of a province, municipality, water control corporation, or a public corporation or joint authority established under the Joint Regulations Act, the district court within whose area the administrative authority has its seat shall have jurisdiction.

2. If an appeal is lodged against an order of another administrative authority, the district court within whose area the submittant of the notice of appeal has his residence in the Netherlands shall have jurisdiction. If the submittant is not resident in the Netherlands, the district court within whose area the administrative authority has its seat shall have jurisdiction.

### **Article 8:8**

1. If appeals have been lodged against the same order with more than one competent district court, the cases shall thenceforth be dealt with by the competent district court with which the appeal was first lodged. If appeal was first lodged simultaneously with two or more competent district courts, the cases shall thenceforth be dealt with by the competent district court mentioned first in the Judiciary (Territorial Division) Act.

2. The other district court or district courts shall refer the case or cases pending before them to the district court which will thenceforth deal with the cases. The documents relating



to the case or cases shall be sent to the district court which will thenceforth deal with the cases.

3. If an appeal has been lodged with more than one district court against the same order, the administrative authority shall inform those district courts without delay.

### **Article 8:9**

The Administrative Law Judicial Division of the Council of State or the Central Appeals Court, as the case may be, shall be the court of last instance for disputes between district courts on the application of article 8:7 in matters of which they are competent to take cognizance on appeal.

#### *Division 8.1.2 Proceedings by a single-judge or three-judge section*

### **Article 8:10**

1. Cases brought before the district court shall be dealt with by a single-judge section.

2. If the single-judge section considers that a case is unsuitable to be dealt with by a single judge it shall refer it to a three-judge section. The single-judge section may also refer a case to a three-judge section in other circumstances.

3. If the three-judge section considers that a case is suitable to be heard thenceforth by a single judge, it may refer it to a single-judge section.

4. Such referral may take place at any stage in the proceedings. A case that has been referred shall continue from where it left off.

### **Article 8:11**

1. The regulations concerning the proceedings of appeals shall apply to proceedings by both a single and a three-judge section.

2. A judge sitting as a single-judge section shall also have the powers and obligations of the presiding judge of a three-judge section.

### **Article 8:12**

The district court may instruct an examining magistrate to conduct the preliminary inquiry or part thereof.

#### *Division 8.1.3 Referral, consolidation and separation*

### **Article 8:13**

1. The district court may refer, for further proceeding, a case brought before it to a district court where another case has been brought, if it considers it desirable for the cases in question to be dealt with by one district court.

2. An request to this effect 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. The district court may consolidate cases which deal with the same or related subjects, and separate the proceedings of consolidated cases.
2. A request to this effect may be made until the end of the hearing.

#### *Division 8.1.4. Challenge and excusal*

#### **Article 8:15**

At the request of a party, any of the judges dealing with a case may be challenged on the ground of facts or circumstances which could prejudice the judicial impartiality.

#### **Article 8:16**

1. The request shall be made as soon as the facts or circumstances become known to the petitioner.
2. The request shall be made in writing, stating the grounds. After the start of the hearing, or after the start of the hearing of parties or witnesses in the preliminary inquiry, the request may also be made orally.
3. All the facts and circumstances must be presented together.
4. A subsequent challenge to the same judge shall not be dealt with unless facts or circumstances are adduced which did not become known to the petitioner until after the previous request.
5. If the request is made, the hearing shall be adjourned.

#### **Article 8:17**

A judge who has been challenged may acquiesce in the challenge.

#### **Article 8:18**

1. The challenge shall be dealt with as soon as possible by a three-judge section of which the judge who has been challenged is not a member.
2. The petitioner and the judge who has been challenged shall be given the opportunity to be heard. The district court may determine, on its own initiative or at the request of the petitioner or the judge who has been challenged, that they will not be heard in each other's presence.
3. The district court shall decide as soon as possible. The decision shall state the reasons and shall be communicated without delay to the petitioner, the other parties and the judge who has been challenged.
4. In the event of abuse, the district court may order that no subsequent requests shall be dealt with. This shall be stated in the decision.
5. The decision is final.

#### **Article 8:19**

1. Any of the judges dealing with a case may ask to be excused from dealing with it on the ground of facts or circumstances as referred to in article 8:15.
2. The request shall be in writing, stating the reasons. After the start of the hearing, or after the start of the hearing of parties or witnesses in the preliminary inquiry, the request may also be made orally.

3. If the request is made in court, the hearing shall be adjourned.

#### **Article 8:20**

1. The request to be excused from dealing with the case shall be heard as soon as possible by a three-judge section of which the judge who has asked to be excused is not a member.

2. The district court shall decide 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 is final.

#### *Division 8.1.5 The parties*

#### **Article 8:21**

1. Natural persons who are not competent to be parties to litigation shall be represented in the proceedings by their civil-law representatives. For a statutory representative the authorisation of the subdistrict court as referred to in article 349 of Book 1 of the Civil Code is not required.

2. The persons referred to in subsection 1 may represent themselves in the action if they may be deemed to have a reasonable understanding of their interests.

3. If no statutory representative is present, or he is not available and the case is urgent, the district court may appoint a provisional representative. The appointment shall cease to have effect as soon as a statutory representative is present or the statutory representative is available once again.

#### **Article 8:22**

1. In the event of bankruptcy or suspension of payment of debts or application of the arrangement of purgation of debts, articles 25, 27 and 31 of the Bankruptcy Act shall apply *mutatis mutandis*.

2. Article 25, subsection 2 and article 27 shall not apply if the parties are invited to appear in court before the declaration of bankruptcy.

#### **Article 8:23**

1. An administrative authority which is a body shall be represented in the action by one or more members designated by the administrative authority.

2. The Crown shall be represented in the proceedings by Our Minister whom it may concern or one or more of Our Ministers whom it may concern, as the case may be.

#### **Article 8:24**

1. The parties may be assisted or represented by a legal representative.

2. The district court may require a legal representative to produce a written authorisation.

3. Subsection 2 shall not apply to attorneys-at-law and procurators.

#### **Article 8:25**

1. The district court may refuse to allow assistance or representation by a person against whom there are serious objections.
2. The party concerned and the person referred to in subsection 1 shall be informed without delay of the refusal and the reason for it.
3. Subsection 1 shall not apply to attorneys-at-law and procurators.

#### **Article 8:26**

1. Until the end of the hearing the district court may allow interested parties to be joined as parties in the proceedings on its own initiative, at the request of a party or at their own request.
2. If the district court suspects that there are unknown interested parties, it may announce in the Government Gazette that a case is pending before it. The announcement may also be made by other means in addition to the announcement in the Government Gazette.

#### **Article 8:27**

1. Parties who have been summoned by the district court to appear in person, or to appear in person or represented by a legal representative, whether or not to provide information, are obliged to appear and provide the information required. The attention of the parties shall be drawn to this and to article 8:31.
2. In the case of a legal entity or an administrative authority which is a body the district court may summon one or more specified administrators or members.

#### **Article 8:28**

Parties who have been requested by the district court to provide written information shall provide the information required. The attention of the parties shall be drawn to this and to article 8:31.

#### **Article 8:29**

1. Parties who are obliged to provide information or submit documents may, if there are compelling reasons, refuse to provide such information or submit such documents, or inform the district court that it alone may take cognizance of the information or documents concerned.
2. Compelling reasons shall in any event be deemed not to exist for an administrative authority in so far as there is an obligation under the Government Information (Public Access) Act to grant a request for information contained in the documents to be submitted.
3. The district court shall decide whether the refusal or restriction on the cognizance referred to in subsection 1 is justified.
4. If the district court decides that the refusal is justified, the obligation shall cease to have effect.
5. If the district court decides that the restriction on the cognizance of the information is justified, it may not give judgment based wholly or partly on the information or documents without the consent of the other parties.

#### **Article 8:30**

The parties shall cooperate in an investigation as referred to in article 8:47, subsection 1. The attention of the parties shall be drawn to this and to article 8:31.

### **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, subsection 1, the district court may draw such conclusions from this as it sees fit.

### **Article 8:32**

1. The district court may, if it is feared that the physical or mental health of a party would be damaged if he or she were to take cognizance of documents, direct that this may be done only by a legal representative who is an attorney-at-law or physician or has been given special permission by the district court.

2. The district court may, if the privacy of a person would be disproportionately invaded by a party taking cognizance of the documents, determine that this may be done only by a legal representative who is an attorney-at-law or physician or has been given special permission by the district court.

#### *Division 8.1.6 Witnesses, experts and interpreters*

### **Article 8:33**

1. Any person summoned as a witness by the district court shall comply with the summons and give evidence.

2. The summons shall state the time and place at which the witness is to be heard, the facts to which the hearing will relate and the consequences of non-appearance.

3. Article 191, subsections 2 and 4, article 198, article 199, subsection 1, article 200, subsection 1, article 201, article 202, subsections 1 and 3, article 203, subsection 1, and article 204 of the Code of Civil Procedure shall apply *mutatis mutandis*.

4. The district court may determine that witnesses shall not be heard until they have taken the oath or made the promiss, in which case they shall swear on oath, or promiss, that they will tell the whole truth and nothing but the truth.

### **Article 8:34**

1. An expert who has accepted his appointment shall carry out his assignment impartially and to the best of his ability.

2. Article 191, subsections 2 (b) and subsection 4 of the Code of Civil Procedure shall apply *mutatis mutandis*.

### **Article 8:35**

1. An interpreter who has accepted his appointment and who is summoned by the district court shall comply with the summons and carry out his assignment impartially and to the best of his ability. Articles 198 and 204 of the Code of Civil Procedure shall apply *mutatis mutandis*.

2. The summons shall state the time and place at which 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, subsection 1, are entitled to a fee payable by the state. The provisions made by or pursuant to the Criminal Matters (Fees) Act shall apply *mutatis mutandis*.

2. A party who has brought with him or summoned a witness or expert, or to whom an expert's report has been made, shall pay him a fee. The provisions made by or pursuant to the Criminal Matters (Fees) Act shall apply *mutatis mutandis*.

#### *Division 8.1.7 Sending of documents*

### **Article 8:37**

1. Summonses and invitations to appear at a hearing of the district court, and copies of the judgment and of the record of the oral judgment, shall be sent by the registrar by registered mail or recorded delivery, unless the district court determines otherwise.

2. Other documents shall be sent by the registrar by ordinary mail, unless the district court determines otherwise.

3. The date of dispatch shall be stated in any letter.

### **Article 8:38**

1. If the registrar receives back a document sent by registered mail or recorded delivery and discovers that the addressee was registered in the municipal population records as resident at the address stated on the document on the date of dispatch or no later than one week thereafter, he shall send the document as soon as possible by ordinary mail.

2. In any other cases in which the registrar receives back a document sent by registered mail or recorded delivery he shall, if possible, rectify the address stated on the document and send it again by registered mail or recorded delivery.

### **Article 8:39**

1. The registrar shall send the documents relating to the case to the parties as soon as possible, in so far as the district court has not decided otherwise under articles 8:29 or 8:32.

2. The registrar may decide not to send very large documents or documents which are hard to copy. He shall inform the parties of this, stating that these documents will be deposited at the registry for inspection for such period as he may determine, with a minimum of one week.

3. The parties may obtain copies of, or extracts from, the documents referred to in subsection 2. As regards charges, the provisions made by and pursuant to the Criminal Matters (Fees) Act shall apply *mutatis mutandis*.

### **Article 8:40**

If the appeal has been lodged by two or more persons, it is sufficient if the summons, invitation to appear at a hearing, documents relating to the case and copy of the judgment, or of the record of the oral judgment, are sent to the first person listed on the notice of appeal.

## **Title 8.2      The hearing of appeals**

### *Division 8.2.1 Registry fee*

#### **Article 8:41**

1. A registry fee shall be levied by the registrar on the submittant of the notice of appeal. In the case of a notice of appeal concerning two or more related orders, or is submitted by two or more submittants against the same order, one registry fee shall be payable. In this case the registry fee shall be the highest amount due under subsection 3 for one of the orders or from one of the submittants respectively.

2. The registrar shall inform the submittant of the notice of appeal that the registry fee is payable and inform him that the amount due must be credited to the account of the district court or paid to the registry within four weeks of the date on which the communication is sent. If the amount has not been credited or paid within this period, the appeal shall be ruled inadmissible, unless the submittant cannot reasonably be held to have been in default.

3. The registry fee shall be:

(a) NLG 60 if the appeal has been lodged by a natural person against:

(1°) an order made under a statutory regulation included in parts B and C, 1 to 25 and 29 of the Schedule to the Appeals Act,

(2°) an order regarding unemployment or sickness benefit made in respect of a public servant as such as referred to in article 1 of the Central and Local Government Personnel Act, or a conscript as such as referred to in article 1 (b) of the Conscripts (Legal Status) Act, their surviving relatives or their successors-in-title, or

(3°) an order regarding benefit for permanent disability under a statutory regulation under which the natural person is insured for a state disability pension in respect of his disability, or an order made under article P9 of the Public Servants' Superannuation Act,

(4°) an order made under the Rent Rebate Act,

(b) NLG 225 if the appeal has been lodged by a natural person against an order other than an order as referred to at (a), unless provided otherwise by act of Parliament, and

(c) NLG 450 if the appeal has been lodged by another than a natural person.

4. If the appeal is withdrawn because the administrative authority has wholly or partly satisfied the wishes of the submittant of the notice of appeal, the legal entity in question shall reimburse him the registry fee paid by him. In other cases where the appeal is withdrawn the legal entity in question may reimburse him all or part of the registry fee.

5. The amounts referred to in subsection 3 may be altered by order in council in so far as this is warranted by the cost-of-living index.

### *Division 8.2.2 Preliminary inquiry*

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

1. Within four weeks of the date on which the notice of appeal is sent to the administrative authority the latter shall send the documents relating to the case to the district court and lodge a defence.

2. The district court may extend the time limit referred to in subsection 1.

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

1. The district court may give the submittant of the notice of 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 fix the time limits for reply and rejoinder.

2. The district court shall give parties other than those referred to in subsection 1 the opportunity at least once to state their views on the case in writing, 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 in person or represented by a legal representative, either for the purpose of giving information or otherwise. If not all the parties are summoned, the parties not summoned shall be given the opportunity to attend the hearing and give their views on the case.

2. A record of the information provided shall be drawn up by the registrar.

3. It shall be signed by the presiding judge of the three-judge section and the registrar. If the presiding judge or the registrar is unable to sign it, this shall be stated in the record.

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

1. The district court may request the parties and others to provide written information and send in documents in their possession within such time limit as it may set.

2. Administrative authorities shall comply with a request as referred to in subsection 1 even if they are not a party to the action. Article 8:29 shall apply *mutatis mutandis*.

3. Employers of parties shall comply with a request as referred to in subsection 1 even if they are not a party to the action. Section 8:29 shall apply *mutatis mutandis*.

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

1. The district court may summon witnesses.

2. The district court shall inform the parties at least one week in advance of the names and places of residence of the witnesses, the time and place at which they are to be heard and the facts to which the hearing will relate.

3. Article 205, subsections 1, 2 and 3, first sentence, and article 206, subsections 1 to 3 and 5 of the Code of Civil Procedure shall apply *mutatis mutandis*.

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

1. The district court may appoint an expert to conduct an investigation.

2. The assignment to be carried out and the time limit referred to in subsection 4 shall be stated when the appointment is made.

3. The parties shall be informed of the intention to appoint an expert as referred to in subsection 1. The district court may give the parties the opportunity to make known their wishes concerning the investigation in writing within such time limit as it may set.

4. The district court shall set a time limit for the expert to issue his written report of the investigation to the district court.

5. The parties may state their views on the report in writing within four weeks of the date on which the report is sent to them.

6. The district court may extend the time limit referred to in subsection 5.



### **Article 8:48**

1. A physician who is required to examine a person for the purpose of an investigation as referred to in article 8:47, subsection 1 may obtain information about this person which is relevant to the investigation from the attending physician or physicians, the insurance physician and the physician who acts as a consultant to the administrative authority.

2. They shall provide the information requested in so far as the privacy of the person concerned is not disproportionately invaded as a result.

### **Article 8:49**

The district court may appoint interpreters.

### **Article 8:50**

1. The district court may carry out an on-the-spot investigation. For this purpose it shall have access to any place in so far as this is reasonably necessary for the performance of its duties.

2. Administrative authorities shall cooperate as necessary in the interests of the investigation.

3. The parties shall be informed of the time and place of the investigation. They may be present at the investigation.

4. A record of the investigation shall be drawn up by the registrar.

5. It shall be signed by the presiding judge of the three-judge section and the registrar. If the presiding judge or the registrar is unable to sign it, this shall be stated in the record.

### **Article 8:51**

1. The district court may instruct a district court legal assistant designated by it or the registrar to carry out an on-the-spot investigation. This person shall have access to any place in so far as this is reasonably necessary for the performance of the duties with which he is charged. The district court shall have the power to issue a warrant to enter premises.

2. Article 8:50, subsections 2 and 3 shall apply *mutatis mutandis*.

3. A record of the investigation shall be drawn up and signed by the court legal assistant or the registrar.

### *Division 8.2.3 Expedited proceedings*

### **Article 8:52**

1. If the case is urgent the district court may order that the proceedings be expedited.

2. In this case the district court may:

(a) reduce the time limit referred to in article 8:41, subsection 2;

(b) reduce the time limit referred to in article 8:42, subsection 1;

(c) wholly or partly exclude the application of article 8:43, subsection 2;

(d) wholly or partly exclude the application of article 8:47, subsection 3;

(e) reduce the time limit referred to in article 8:47, subsection 5.

3. If the district court orders that the proceedings be expedited, it shall also as soon as possible set the time for the hearing to take place and inform the parties without delay. Article 8:56 shall not apply.

### **Article 8:53**

If the district court finds when proceeding the case that it is not sufficiently urgent to justify expedited proceedings, or that it requires an ordinary proceeding, it shall order that the case be further dealt with in the normal way.

#### *Division 8.2.4 Simplified proceedings*

### **Article 8:54**

1. Until the parties have been invited to appear in court, the district court may close the inquiry if continuation thereof is not necessary because:

- (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. If judgment is given with application of subsection 1, the attention of the parties shall be drawn to article 8:55, subsection 1.

### **Article 8:55**

1. An interested party and the administrative authority may oppose the judgment referred to in article 8:54, subsection 2 at the district court. The opposant may request the opportunity to be heard concerning the opposition. Article 6:4, subsection 3 and articles 6:5 to 6:9 inclusive, 6:11, 6:14, 6:15, 6:17 and 6:21 shall apply *mutatis mutandis*.

2. If the effect of a judgment is stayed by act of Parliament until the time limit for lodging an appeal to a higher court has passed, or, if an appeal to a higher court has been lodged, until the appeal has been ruled upon, the effect of the judgment referred to in article 8:54, subsection 2 shall be stayed in the same way.

3. Before giving judgment on the opposition, the district court shall give the opposant the opportunity to be heard in court if he so requests, unless it considers that the opposition is well-founded. The district court may give him the opportunity to be heard in court if he does not so request.

4. If the judgment against which has been opposed has been given by a three-judge section, judgment on the opposition shall be given by a three-judge section. No person who was part of the section of the district court which gave the judgment against which has been opposed shall be part of the section that gives judgment on the opposition.

5. The district court shall rule that:

- (a) the opposition is inadmissible,
- (b) the opposition is unfounded, or
- (c) the opposition is well-founded.

6. If the district court rules that the opposition is inadmissible or unfounded, the judgment against which the opposition was brought shall be upheld.

7. If the district court rules the opposition well-founded, the judgment against which was opposed shall become void and the inquiry shall continue from where it left off.

## *Division 8.2.5 Hearing*

### **Article 8:56**

After the end of the preliminary inquiry the parties shall be invited at least three weeks in advance to appear in court at the time and place specified in the invitation.

### **Article 8:57**

If the parties consent, the district court may order that there shall not be a hearing. In that case the district court shall close the inquiry.

### **Article 8:58**

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

### **Article 8:59**

The district court may summon a party to appear in person, or to appear in person or represented by a legal representative, either for the purpose of giving information or otherwise.

### **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 been summoned by the district court, shall comply with the summons. Articles 198 and 204 of the Code of Civil Procedure shall apply *mutatis mutandis*. The summons to the expert shall specify the assignment to be carried out, the time and place at which it is to be carried out and the consequences of non-appearance.
3. The parties shall be informed as far as possible in the invitation referred to in article 8:56 of the names and places of residence of the witnesses and experts who have been summoned and the facts to which the hearing relates or, as the case may be, the assignment which is to be carried out.
4. The parties may bring with them witnesses and experts, or summon them by registered mail or bailiff's communication, provided the district court and the other parties are informed not later than a week before the date of the hearing, stating the names and places of residence. The attention of the parties shall be drawn to this right in the invitation referred to in article 8:56.

### **Article 8:61**

1. The presiding judge of the three-judge section shall conduct the hearing.
2. The registrar shall keep notes of the proceedings during the hearing. in district court.
3. The registrar shall draw up a record of the hearing if the district court so orders, either on its own initiative or at the request of a party who has an interest in this, and if an appeal to a higher court is lodged.

4. It shall contain the names of the judge or judges hearing the case, the names of the parties and their representatives or legal representatives appearing at the hearing and those who assisted them, and the names of witnesses, experts and interpreters who appeared at the hearing.

5. It shall contain an account of the proceedings during the hearing relating to the case.

6. It shall be signed by the presiding judge of the three-judge section and the registrar. If the presiding judge or registrar is unable to sign it, this shall be stated in the record.

7. The written summaries of the argument submitted may be attached to the record.

8. The district court may order that a statement by a party, witness or expert shall be included in its entirety in the record, in which case the statement shall be recorded without delay in writing and read out to the party, witness or expert. He may then make amendments to it, which shall be recorded 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 public.

2. The district court may determine that the hearing shall take place wholly or partly behind closed doors:

(a) in the interests of public order or public morality,

(b) in the interests of State security,

(c) if this is necessary to safeguard the interests of minors or protect the privacy of the parties,

(d) if a public hearing would seriously prejudice the proper administration of justice.

#### **Article 8:63**

1. Article 205, subsections 2 and 3, first sentence of the Code of Civil Procedure shall apply *mutatis mutandis* to the hearing of witnesses and experts. Article 205, subsection 1 of the Code of Civil Procedure shall apply *mutatis mutandis* to the hearing of witnesses.

2. The district court may decide not to hear witnesses and experts brought in or summoned by a party if it considers that this testimony cannot reasonably be expected to contribute to the assessment of the case.

3. If a witness or an expert summoned by a party has not appeared, the district court may summon him, in which case the district court shall adjourn the hearing.

#### **Article 8:64**

1. The district court may adjourn the hearing. It may order in this connection that the preliminary inquiry be resumed.

2. If no time was set for a resumption of the hearing when it was adjourned, the district court shall set this as soon as possible. The registrar shall inform the parties of the time of resumption as soon as possible.

3. In cases in which the hearing has been adjourned, the proceedings shall be resumed from where they left off.

4. The district court may order that the hearing shall start afresh.

5. If the parties consent to this, the district court may order that the hearing shall not be resumed, in which case the district court shall close the inquiry.

### **Article 8:65**

1. The district court shall close the hearing if it considers that it has been completed.
2. Before the hearing is closed, the parties shall have the right to speak for the last time.
3. As soon as the hearing is closed, the presiding judge shall announce 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 hearing.
2. In special circumstances the district court may extend this time limit for a maximum of six weeks.
3. The parties shall be informed of such extension.

### **Article 8:67**

1. The district court may give judgment orally immediately after the closing of the hearing. Judgment may be deferred for a maximum of one week, in which case the parties shall be informed of the date of judgment.
2. The oral judgment shall consist of the decision and the grounds for the decision.
3. A record of the oral judgment shall be drawn up by the registrar.
4. It shall be signed by the presiding judge of the three-judge section and the registrar. If the presiding judge or the registrar is unable to sign it, this shall be stated in the record.
5. The district court shall deliver the decision referred to in subsection 2 in public, in the presence of the registrar, stating who is entitled to appeal, within what time limit and to which administrative court.
6. The statement referred to in subsection 5, second sentence, shall be included in the record.

### **Article 8:68**

1. If the district court considers that the inquiry has not been complete, it may reopen it. The district court shall determine in this connection how the inquiry is to be continued.
2. The registrar shall inform the parties thereof as soon as possible.

### **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 hearing.
2. The district court shall supplement the legal basis on its own initiative.
3. The district court may supplement the facts on its own initiative.

### **Article 8:70**

The district court shall rule 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 a claim may be brought only 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 rules the appeal well-founded, it shall annul all or part of the disputed order.

2. If an order or part of an order is annulled, the legal consequences of the order or the annulled part thereof shall be void.

3. The district court may determine that all or part of the legal consequences of the annulled order or the annulled part thereof shall be allowed to stand.

4. If the district court rules the appeal well-founded, it may direct the administrative authority to make a new order or to perform another act in accordance with its judgment, or it may determine that its judgment shall take the place of the annulled order or the annulled part thereof.

5. The district court may set the administrative authority a time limit for issuing a new order or performing another act.

6. The district court may determine that a provisional remedy shall cease to have effect at a later time than the time of judgment.

7. The district court may determine that, as long as the administrative authority does not comply with a judgment, an astreinte to be fixed in the judgment shall be payable by the legal entity designated by the district court to a party designated by the district court. Articles 611a to 611i of the Code of Civil Procedure shall apply *mutatis mutandis*.

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

1. If the district court rules the appeal well-founded, it may, at the request of a party and if there are grounds for doing so, order the legal entity designated by it to pay compensation for the damage suffered by that party.

2. If the district court is unable to fix, or fix in full, the amount of compensation, it shall direct in its judgment that the inquiry shall be reopened in preparation of a further judgment on this matter. At the same time the district court shall determine how the inquiry is to be continued.

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

1. If the district court rules the appeal well-founded, the judgment shall also order the legal entity designated by the district court to reimburse the submittant the registry fee paid by him.

2. In other cases the judgment may order that the legal entity designated by the district court shall reimburse all or part of the registry fee.

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

1. The district court shall have exclusive jurisdiction to order a party to pay the costs which another party has reasonably incurred in connection with the appeal proceedings at the district court. A natural person may be ordered to pay costs only in case of a manifestly unreasonable use of the right of appeal. Further rules shall be laid down by order in council concerning the costs to which an order as referred to in the first sentence may exclusively relate and how the amount of the costs is to be fixed in the judgment.

2. If costs are awarded to a party who has been granted legal aid pursuant to the Legal Aid Act, these shall be paid to the registrar. Article 57b of the Code of Civil Procedure shall apply *mutatis mutandis*.

3. If costs are awarded against an administrative authority, the district court shall designate the legal entity to whom they shall be paid.

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

1. In the event of the appeal being withdrawn because the administrative authority has wholly or partly satisfied the wishes of the submittant of the notice of appeal, the district court may award costs against the administrative authority, at the request of the submittant, in a separate judgment with application of article 8:75. The request shall be made at the same time as the appeal is withdrawn. If this requirement is not met, the application shall be ruled inadmissible.

2. The district court shall if necessary give the submittant the opportunity to explain his request in writing, and the administrative authority the opportunity to submit a defence. It shall set time limits for these. If the request is made orally, the district court may order that the request shall be explained, and the defence submitted, immediately and orally.

3. If the request has been explained and the defence submitted orally, the district court shall close the inquiry. In other cases divisions 8.2.4 and 8.2.5 shall apply *mutatis mutandis*.

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

In so far as a judgment provides for payment of a given sum of money, it may be executed in accordance with the provisions of the Second Book of the Code of Civil Procedure.

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

1. The written judgment shall state:

(a) the names of the parties and their representatives or legal representatives,

(b) the grounds for the decision,

(c) the decision,

(d) the name or names of the judge or judges hearing the case,

(e) the date on which the decision was delivered,

(f) who is entitled to a remedy, within what time limit and to which administrative district court.

2. If the district court rules the appeal well-founded, the judgment shall state what written or unwritten rule of law or general principle of law is considered to have been infringed.

3. The judgment shall be signed by the presiding judge of the three-judge section and the registrar. If the presiding judge or registrar is unable to sign it, this shall be stated in the judgment.

### **Article 8:78**

The district court shall deliver the decision referred to in article 8:77, subsection 1 (c), in public, in the presence of the registrar.

### **Article 8:79**

1. Within two weeks of the date of the judgment the registrar shall send 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. As regards costs, the provisions made by or pursuant to the Criminal Matters (Fees) Act shall apply *mutatis mutandis*.

### **Article 8:80**

If the district court directs that its judgment shall take the place of the annulled order, the judgment shall also be notified by the competent administrative authority in the same manner as that prescribed for the order.

## **Title 8.3      Provisional remedies and immediate judgment in the proceedings on the merits**

### **Article 8:81**

1. If an appeal against an order has been lodged with the district court or, prior to a possible appeal to the district court, an objection has been made or an administrative appeal has been lodged, the president of the district court which has or may have jurisdiction in the proceedings on the merits may, on request, grant a provisional remedy where speed is of the essence because of the interests involved.

2. If an appeal has been lodged with the district court, the request for a provisional remedy may be made by a party in the proceedings on the merits.

3. If, prior to a possible appeal to the district court, an objection has been made or an administrative appeal has been lodged, a request for a provisional remedy may be made by the submittant of the notice of objection or appeal, or by the interested party if he is not entitled to lodge an administrative appeal.

4. Article 6:4, subsection 3 and articles 6:5, 6:6, 6:14, 6:15, 6:17 and 6:21 shall apply *mutatis mutandis*. The submittant of the request who has made an objection or lodged an appeal shall at the same time submit a copy of the notice of objection or appeal.

### **Article 8:82**

1. A district court registry fee shall be levied on the petitioner by the registrar. Article 8:41, subsection 1, second sentence, and subsections 3 and 5 shall apply *mutatis mutandis*.

2. Article 8:41, subsection 2 shall apply *mutatis mutandis*, subject to the proviso that the time limit for the amount due to be credited or paid shall be two weeks. The president may set a shorter time limit.

3. If the request is withdrawn because the administrative authority or the interested party to whom the disputed order is addressed has informed the president in writing that execution of the disputed order is to be stayed pending the procedure on the merits or that the



provisional measures as asked will be taken, the registrar shall refund any registry fee paid. In other cases the legal entity in question may reimburse all or part of any registry fee paid if the request is withdrawn.

4. The judgment may order that all or part of the registry fee paid shall be reimbursed by the legal entity designated by the president.

### **Article 8:83**

1. The parties shall be invited as soon as possible to appear at a hearing at a time and place specified in the invitation. The administrative authority shall send the documents relating to the case to the president within such time limit as he may set. Article 8:58 shall apply *mutatis mutandis*, subject to the proviso that further documents may be submitted until one day before the hearing. Articles 8:59 to 8:65 shall apply *mutatis mutandis*, subject to the proviso that witnesses and experts may be brought in or summoned without making the communication referred to in article 8:60, subsection 4, first sentence.

2. If an administrative appeal has been lodged, the appeals authority shall also be invited to appear in court. The appeals authority shall be given the opportunity to state its views on the case at the hearing.

3. If the president manifestly lacks jurisdiction or the application is manifestly inadmissible, manifestly unfounded or manifestly well-founded, the president may give judgment without applying subsection 1.

4. Where speed is of the essence and the interests of the parties will not be prejudiced by it, the president may also give judgment without applying subsection 1 in other cases.

### **Article 8:84**

1. The president shall give judgment orally or in writing as soon as possible.

2. The district court shall rule that:

(a) the president lacks jurisdiction,

(b) the request is inadmissible,

(c) the request is rejected, or

(d) the request is granted in whole or in part.

3. The registrar shall send without delay the parties a copy of the judgment, or of the record of the oral judgment, free of charge.

4. Article 8:67, subsections 2 to 5 inclusive, articles 8:68 and 8:69, article 8:72, subsections 5 and 7, articles 8:75, 8:75(a) and 8:76, article 8:77, subsections 1 and 3, article 8:78, article 8:79, subsection 2 and article 8:80 shall apply *mutatis mutandis*.

### **Article 8:85**

1. The president may specify in his judgment when the provisional remedy shall cease to have effect.

2. The provisional remedy shall in any event cease to have effect as soon as:

(a) the time limit for lodging an appeal to the district court against the order made on the objection or the administrative appeal expires without being used,

(b) the objection or the appeal is withdrawn, or

(c) the district court gives judgment, unless a later date is laid down in the judgment.

### **Article 8:86**

1. If the request is made when an appeal has been lodged with the district court, and the president considers after the hearing referred to in article 8:83, subsection 1, that further inquiry cannot reasonably be expected to contribute to an assessment of the case, he may give immediate judgment on the merits.

2. The attention of the parties shall be drawn to this power of the president in the invitation referred to in article 8:83, subsection 1.

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

1. The president may terminate or alter a provisional remedy either on its own initiative or otherwise.

2. Article 8:81, subsections 2, 3 and 4 and articles 8:82 to 8:86 inclusive shall apply *mutatis mutandis*. If, prior to a possible appeal to the district court, an objection or an administrative appeal has been lodged, a request for termination or alteration may also be made by an interested party whose interests are directly affected by the provisional remedy, by the administrative authority or by the appeals authority.

3. If a request for termination or alteration is made by the administrative authority or the appeals authority and the request is granted in whole or in part, the judgment may provide that the registrar shall refund any registry fee paid to the legal entity in question.

#### **Title 8.4      Review**

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

1. At the request of a party the district court may review a final judgment on the grounds of facts or circumstances:

- (a) which took place before the judgment,
- (b) of which the one who asked for a review had no knowledge, and could not reasonably have had any knowledge, before the judgment, and
- (c) which, had they been known to the district court previously, might have led to a different judgment.

2. Chapter 6 and Titles 8.2 and 8.3 shall apply *mutatis mutandis* where necessary.

## **PART 10 PROVISIONS ON ADMINISTRATIVE AUTHORITIES**

### **Title 10.1 Mandate and Delegation**

#### *Division 10.1.1 Mandate*

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

‘Mandate’ means the power to make orders in the name of an administrative authority.

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

An order made by a mandatary within the limits of his power is deemed to be an order of the mandator.

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

1. An administrative authority may grant a mandate unless provided otherwise by statutory regulation or unless the nature of the power is incompatible with the granting of a mandate.

2. A mandate may in any event not be granted if it concerns a power:

(a) to adopt generally binding regulations, unless provision for the granting of a mandate was made when the power was conferred;

(b) to make an order which must be made by a qualified majority or by means of a prescribed procedure which is otherwise incompatible with the granting of a mandate;

(c) to decide on a notice of appeal;

(d) to annul or refrain from approving an order made by another administrative authority.

3. A mandate to rule on an objection shall not be granted to the person who has made the order, pursuant to a mandate, against which the objection is brought.

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

1. If the mandatary does not operate under the responsibility of the mandator, the granting of the mandate shall require the consent of the mandatary and, in appropriate cases, the person under whose responsibility he works.

2. Subsection 1 shall not apply if the power to grant the mandate has been conferred by statutory regulation.

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

1. An administrative authority may grant a general mandate or a mandate for a specific case.

2. A general mandate shall be granted in writing. A mandate for a specific case shall in any event be granted in writing if the mandatary does not work under the responsibility of the mandator.

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

1. The mandator may issue directions regarding the exercise of the mandated power either on a case-by-case basis or generally.

2. The mandator shall provide the mandatary at his request with information about the exercise of the power.

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

The mandator shall remain competent to exercise the mandated power.

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

1. The mandator may repeal the mandate at all times.

2. A general mandate shall be repealed in writing.

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

1. The mandator may allow a sub-mandate to be granted.

2. The other provisions of this division shall apply *mutatis mutandis* to a sub-mandate.

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

An order made pursuant to a mandate shall state on behalf of which administrative authority it was made.

#### **Article 10:11**

1. An administrative authority may determine that orders made by it may be signed on its behalf, unless provided otherwise by statutory regulation or unless this would be incompatible with the nature of the power.

2. In such a case the order shall show that it was made by the administrative authority itself.

#### **Article 10:12**

This division shall apply *mutatis mutandis* if an administrative authority grants a power of attorney to another person operating under its responsibility, to perform legal acts under private law, or grants an authorization for the performance of acts which constitute neither an order nor a legal act under private law.

*Division 10.1.2      Delegation*

**Article 10:13**

‘Delegation’ means the transfer by an administrative authority of its power to make orders to another one, who assumes responsibility for the exercise of this power.

**Article 10:14**

Delegation shall not occur to subordinates.

**Article 10:15**

Delegation may occur only if the power to delegate has been conferred by statutory regulation.

**Article 10:16**

1. An administrative authority may issue only policy rules concerning the exercise of a delegated power.
2. The one to whom the power has been delegated shall provide the administrative authority at its request with information about the exercise of the power.

**Article 10:17**

An administrative authority may no longer exercise a delegated power itself.

**Article 10:18**

An administrative authority may repeal the delegation of a power at any time.

**Article 10:19**

An order made pursuant to a delegated power shall cite the delegation order and its source..

**Article 10:20**

1. This division, with the exception of article 10:16, shall apply *mutatis mutandis* to the transfer by an administrative authority to a third party of the power of another administrative authority to make orders.
2. It may be provided by statutory regulation or by the order for transfer that the administrative authority whose power is transferred may issue policy rules concerning the exercise of the power.
3. The one to whom the power is transferred shall, at their request, provide the transferor and the administrative authority originally empowered, with information about the exercise of the power.

**Title 10.2      Supervision of administrative authorities**

**Article 10:25**

In this act ‘approval’ means the consent of another administrative authority required for the entry into force of an order of an administrative authority.

**Article 10:26**

Orders may be made subject to approval only in the cases specified by or pursuant to act of Parliament.

**Article 10:27**

Approval may be withheld only on account of conflict with the law or on another ground contained in the act of Parliament in or pursuant to which the requirement of approval is prescribed.

**Article 10:28**

Approval of an order on which a district court has given judgment or which implements the final judgment of a district court may not be withheld on legal grounds that conflict with those on which the judgment was based or partly based.

**Article 10:29**

1. An order may be partially approved only if partial entry into force is compatible with the nature and substance of the order.

2. Approval may not be granted for a determinate period or conditionally, nor may it be repealed.

**Article 10:30**

1. Approval shall not be granted partially or withheld until after the administrative authority which made the order has been given the opportunity for consultation.

2. The reasons for the order concerning approval shall refer to what has been dealt with in the consultations.

**Article 10:31**

1. Unless provided otherwise by statutory regulation, the order concerning approval shall be notified to the administrative authority that has made the order requiring approval within thirteen weeks of the date on which it was forwarded for approval.

2. The making of the order concerning approval may be deferred once for a maximum of thirteen weeks.

3. Notwithstanding subsection 2, the making of the order concerning approval may be deferred once for a maximum of six months if the opinion of an adviser as referred to in article 3:5 is required in respect of the approval.

4. Unless provided otherwise by statutory regulation, the approval shall be deemed to have been granted if no order concerning approval or an order for deferment, or,

within the period referred to in subsection 1, an order concerning approval has been notified to the administrative authority that has made the order that is subject to approval.

#### **Article 10:32**

1. This division shall apply *mutatis mutandis* if the consent of another administrative authority is required for the making of an order by an administrative authority.
2. The consent may specify a time limit within which the order should be made.

#### *Division 10.2.2      Annulment*

#### **Article 10:33**

This division shall apply if an administrative authority is competent to annul an order of another administrative authority other than in the course of an administrative appeal.

#### **Article 10:34**

The power to annul may be granted only by act of Parliament.

#### **Article 10:35**

An order may be annulled only on account of conflict with the law or the public interest.

#### **Article 10:36**

An order may be annulled partially only if its partial continuation in force would be consistent with the nature and substance of the order.

#### **Article 10:37**

An order which forms the subject of a district court judgment or implements the final judgment of a district court may not be annulled on legal grounds that conflict with those on which the judgment was based or partly based.

### **Article 10:38**

1. An order which still requires approval may not be annulled.
2. An order against which an objection may be made or an appeal may be lodged or is pending may not be annulled.

### **Article 10:39**

1. An order for the performance of a legal act under civil law may not be annulled if thirteen weeks have passed since it has been notified.

2. If a stay has been granted in accordance with article 10:43 within the time limit referred to in subsection 1, the order may still be annulled within the period of the stay.

3. If an order as referred to in subsection 1 is subject to approval, the period referred to in subsection 1 shall start after the approval order has been notified. Subsections 1 and 2 shall apply *mutatis mutandis* to the approval order.

### **Article 10:40**

An order which has been stayed in accordance with article 10:43 may no longer be annulled after the stay has ended.



#### **Article 10:41**

1. An order shall not be annulled until after the administrative authority which made the order has been given the opportunity for consultation.

2. The reasons for the annulling order shall refer to what has been dealt with in the consultations.

#### **Article 10:42**

1. The annulling of an order shall extend to all the legal consequences intended by the order.

2. The annulling order may provide that all or part of the legal consequences of the annulled order will continue to have effect.

3. If an order for the conclusion of an agreement is annulled, the agreement shall, if it has already been entered into and in so far as the annulling order does not provide otherwise, not be executed or continue to be executed, without prejudice to the other party's right to compensation.

*Division 10.2.3 Stay*

#### **Article 10:43**

Pending the investigation whether there are reasons to annul an order, the order may be stayed by the administrative authority competent to annul it.

#### **Article 10:44**

1. A staying order shall determine the duration of the stay.

2. The stay of an order may be extended once.

3. The stay may not exceed a year, even after extension.

4. If an objection is made or an appeal is lodged against a stayed order, the stay shall nonetheless continue until thirteen weeks after the final decision on the objection or appeal.

5. The stay may be lifted.

#### **Article 10:45**

Articles 10:36, 10:37, 10:38, subsection 1, 10:39, subsections 1 and 3, and 10:42, subsection 3, shall apply *mutatis mutandis* to a staying order.

### **CHAPTER 11 FINAL PROVISIONS**

#### **Article 11:1**

1. Within three years of the entry into force of this act and every five years thereafter Our Ministers of Justice and of Home Affairs shall submit a report to the States General on the way in which the act is being implemented.

2. Subsection 1 shall not apply to the provisions governing appeals to an administrative court.

**Article 11:2**

This act shall take effect on a date to be determined by Royal Decree.

**Article 11:3**

Prior to the notification of this act Our Minister of Justice shall renumber the articles, divisions, titles and Chapters of this act and adjust the references to articles, divisions, titles and Chapters in this act accordingly.

**Article 11:4**

This act shall be cited as the General Administrative Law Act.

## **SCHEDULE TO THE GENERAL ADMINISTRATIVE LAW ACT**

### **A MINISTRY OF JUSTICE**

1. Extradition Act
2. Traffic Regulations (Administrative Enforcement) Act.
3. Article 7, subsections 1 and 2 and division 4 of Title 14 of Book 1 of the Civil Code, and article 64, subsection 3, article 68, subsection 2, article 125, subsection 2, article 156, article 175, subsection 3, article 179, subsection 2, article 235, subsection 2, and article 266 of Book 2 of the Civil Code, in so far as the application is granted.
4. Article 29, subsections 1 and 2, article 32, subsections 1 and 2, article 34, subsection 3, en article 35, subsection 2 of the Police Act 1993.
5. Article 285 of the Bankruptcy Act.

### **B MINISTRY OF HOME AFFAIRS**

1. Article 9 of the Financial Relations Act.
2. Chapter 2 of the Equal Opportunities Act, with the exception of articles 16 and 17 and the rules under article 21, subsection 2.

### **C MINISTRY OF HOUSING, TOWN AND COUNTRY PLANNING AND ENVIRONMENTAL MANAGEMENT**

1. Compulsory Purchase Act.
2. Article 11, subsection 1, with the exception of an order which does not require approval under subsection 8 of that article, article 21, subsection 1, article 25, article 29, subsections 1 and 8, article 38, subsection 2, article 40b and article 37, as regards refusal to make an order as referred to in that article, and articles 40 and 41, as regards refusal to make an application as referred to in those articles, of the Town and Country Planning Act.
3. Articles 4.3 to 4.6 inclusive, 4.9 to 4.12 inclusive, 4.15a, 4.16 to 4.19 inclusive, 8.27, 8.36 and 8.39 of the Environmental Management Act.
4. Article 43 of the Soil Protection Act, as regards rejection of a request.

### **D MINISTRY OF TRANSPORT, PUBLIC WORKS AND WATER MANAGEMENT**

1. Article 7d of the Pollution of Surface Waters Act.
2. Article 3.4, subsection 1, (b), in so far as it regards an instruction, article 3.10 and article 18.9, subsections 1 and 2, of the Telecommunications Act.

### **E MINISTRY OF AGRICULTURE, NATURE MANAGEMENT AND FISHERIES**

1. Article 36, subsection 1, article 37, article 44, subsection 1 and article 70 of the Central Delfland Reconstruction Act.
2. Articles 20 to 22 inclusive, article 72, subsection 1, article 75 and article 101, subsection 3 of the East Groningen and Groningen-Drenthe Peat Districts Redevelopment Act.
3. Articles 18, 46, 51, 52, 81 and 82, article 84, subsections 1 and 7, and articles 85 and 88, in conjunction with articles 81, 90, 92, 108, 109, 111, 112, 114, 115, article 131,

subsection 3, articles 137, 161 and 167, article 189, subsection 1, article 196, subsection 1 and article 211 of the Land Development Act.

#### F MINISTRY OF SOCIAL AFFAIRS AND EMPLOYMENT

1. Article 6 of the Extra Ordinary Decree on Labour Relations 1945.
2. Article 45, subsection 1 of the National Assistance Act and articles 74 and 140 and Chapter VII of the National Assistance Act.
3. Article 42 of the Manpower Services Act 1996.

#### G MINISTRY OF DEFENCE

Article V2, subsection 2 and article W7 of the Military Personnel Superannuation Act.

#### H MINISTRY OF HEALTH, WELFARE AND SPORT

1. Article 20, subsection 1 and articles 38, 39 and 40 and Chapter IV of the Psychiatric Hospitals (Compulsory Admission) Act.
2. Articles 14 and 16 of the Infection Diseases Act.

#### I MINISTRY OF FINANCE