



Twinning project “Implementation of the best European practices with the aim of strengthening the institutional capacity of the apparatus of the Ukrainian Parliament Commissioner for human rights to protect human rights and freedoms (apparatus)”

No. EuropeAid/137673/DD/ACT/UA

2.3.4. Developing Recommendations as Regards Improving the Existing or Employing New Instruments for Restoring Human Rights, in the Spheres of Personal Data Protection, Access to Public Information and the Prevention of All Forms Of Discrimination in Particular

Document	Draft Code of Good Administrative Behaviour
Short description of the document	<p>During the earlier Twinning missions, it was agreed that the experts of the Twinning project will draft the Code of Good Administrative Behaviour for the use of the Commissioner and public administration entities and officials. In this document, this draft is presented.</p> <p>Based on the decision of the project beneficiary, the draft of the Code of Good Administrative Behaviour can be used as the typical codex or a framework for all state bodies as the legal binding order of the Government of Ukraine or it can be adopted as a “soft law” (recommendation) of the Ombudsperson.</p> <p>This draft Code takes account of the principles set in the documents developed within the framework of the Council of Europe, the European Union, the Organization for Security and Co-operation in Europe (OSCE), a joint initiative of the Organisation for Economic Co-operation and Development (OECD) and the EU called Support for Improvement in Governance and Management (SIGMA). It also draws inspiration from national laws and good practices of other European states.</p>
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Date	June 2018, Kyiv

DRAFT CODE OF GOOD ADMINISTRATIVE BEHAVIOUR

Good administration and good governance	2
Quality service	2
Purpose of the Code	2
Scope	3
1. General Principles of Good Administration	3
2. Procedural and substantive rules	4
3. Rules of ethical behaviour and good administrative service	7

Good administration and good governance

Good governance and good public administration are essential aspects of free and democratic political system leading to fair distribution of society's resources, control of the abuse of power and corruption, guarantee of the equality of all persons before the law and respect for their fundamental rights.

Good governance refers to the public administration process that maximizes public interest, i.e. the state has the capacity to function in the service of and commitment to the public good. According to UN concept¹, good governance is transparent, responsible, accountable, open for participation and responsive to the needs of the people.

Good administration covers not only administrative action, but also administrative behaviour. It is directly related to the rule of law and what it demands from administrative governance and behaviour where officials take the rule of law as their highest-order commitment.

A set of principles and procedural guarantees that structure good administrative practices, such as lawfulness, equality, impartiality, proportionality, transparency, legal certainty, taking action within a reasonable time limit, participation, respect for privacy, etc. are presented in this Code. Taking into account the ongoing administrative reform in Ukraine, the notion of good administration, and in particular good administrative behaviour, needs further clarification. This Code provides guidelines to implementation of these legal demands to public administration.

Quality service

The public legitimately expects quality service and an administration that is open, accessible and properly run. Thus, the key principles of good administrative behavior focus on legality, transparency, independence, accountability, service and efficiency. Quality service also calls for the public officials to be polite, honest and service-minded.

Public officials have a duty to serve the public interest. They must perform their official functions and duties, and exercise any discretionary powers, in ways that are consistent with matters of broad public concern.

Purpose of the Code

Ombudspersons, European-wide, are increasingly tasked with providing not only an independent critical appraisal of the quality of administration but also a stimulus for improvement of the quality of administration. On the level of the Council of Europe, Recommendation 1615 (2003)¹³ advises the Member States to establish a fundamental right to good administration as well as to adopt a code

¹ The concept of good governance has been clarified by the work of the Commission on Human Rights in its resolution 2000/64.

of good administrative behaviour. The adoption of code of good administrative behaviour is also encouraged by the Venice Commission².

The Recommendations of the Council of Europe and the Venice Commission as to protection of the right to good administration are echoed in EU law and national law of European States. The undisputable importance of the right to good administration and the need to clarify its content is evidenced by increasing number of codes of good administrative behaviour adopted within Europe. The new Law on Administrative Procedure of Ukraine and the Law on Administrative Services should be mentioned here. The new Law on Administrative Procedure lists the general principles of administrative procedure, such as ... [to be specified once the law is adopted]. The Law on Administrative Services [Article 4 of LAS (principles) will most probably be repealed, as LAP establishes all the principles in a comprehensive and exhaustive way. To be reviewed]. However, due to the clearly defined sphere of the said laws, part of the principles of good administrative behaviour are not covered therein, moreover, their content is not clearly defined.

In this context, the Ukrainian Parliament Commissioner for Human Rights considered it necessary to prepare and adopt this Code of Good Administrative Behaviour. It seeks to clarify the content of the right to good administration and set the rules to be followed by public officials.

This Code serves for several purposes. The Ombudsman uses the Code in examining whether there is maladministration, thereby relying on its provisions for his control function. For public administration bodies and officials, it is a useful guide and a resource, encouraging the highest standards of administration. For society, it is a source of information, informing the public of the standards of conduct that they have a right to expect in their dealings with the administration.

Scope

This Code of good administrative behaviour (hereafter referred to as “the Code”) shall apply to all public administration entities and officials, public servants, and other public sector employees in Ukraine, as well as agents of public administration, appointed on the basis of agreement with public administration body or by law to perform separate administrative actions (provide administrative services).

The public refers to natural and legal persons which are under jurisdiction of Ukraine. It equally applies to citizens, residents or other persons.

The Code takes account of the principles set in the documents developed within the framework of the Council of Europe, the European Union, the Organization for Security and Co-operation in Europe (OSCE), a joint initiative of the Organisation for Economic Co-operation and Development (OECD) and the EU called Support for Improvement in Governance and Management (SIGMA). It also draws inspiration from national laws of other European states.

In performing their functions, public administration entities and officials shall respect the principles which are laid down in this Code.

1. General Principles of Good Administration

1.1 Lawfulness

Officials shall act in accordance with the law and apply the rules and procedures laid down in national legislation and international law. Officials shall ensure that decisions, which affect the rights or interests of members of the public, have a basis in law and that their content complies with the law.

Public administration entities are responsible for the lawfulness of the provision of their services.

1.2. Non-discrimination and equal treatment

Public administration entities and officials shall respect the principle of non-discrimination and in particular, guarantee equal treatment for members of the public irrespective of race, skin

² The PACE Recommendation 1615 (2003) The institution of Ombudsman, Report, Doc. 9878, 2003, p. 9, see: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17133&lang=en>.

colour, political, religious and other beliefs, nationality, gender, sexual orientation, age, disability, ethnic and social origin, education, financial status, type of occupation, place of residence, language, or any other attributes.

1.3. Proportionality

Public administration entities and officials shall ensure that the measures taken are proportional and reasonable to the aim pursued, avoiding restricting the rights of members of the public or imposing burdens on them.

A fair balance between the interests of private persons and the general public interest must be respected.

1.4. Absence of abuse of power

Public administration entities and officials shall exercise their powers solely for the purposes for which they have been conferred by the relevant provisions and shall avoid using those powers for purposes which have no basis in the law or other regulatory legal acts or which are not motivated by any public interest.

1.5. Consistency and respect for legitimate expectations

Public administration entities and officials shall be consistent in their own administrative behaviour and shall follow its normal practice. Any exceptions to this principle must be duly justified.

Measures taken by public administration entities should not violate the legitimate expectations of members of the public.

1.6. Openness and transparency

The activities of public administration entities and officials shall be public, except in cases established by law.

Public administration entities and officials shall inform members of the public about their activities and services as well as of the rights and obligations of members of the public in matters related to their field.

Public administration entities and officials shall respect the rights of access to official documents according to the rules relating to personal data protection.

Public administration entities and officials shall provide reasons for their decision-making as well as keep full and accurate records of their official activities.

2. Procedural and substantive rules

2.1. Objectivity, impartiality and independence

Public administration entities and officials prior to making decisions shall carefully establish and review all the relevant factual and legal elements of a case and give each of them its proper weight in the decision.

Administrative entities and officials shall be impartial and independent. They shall not take into consideration anything that is not beforehand stipulated in the policy or the law and shall abstain from any arbitrary action or preferential treatment on any grounds.

Administrative entities shall prevent conflict of interest by not allowing participation of officials in processing a case if this is related or may be related to their personal interest, direct or indirect, in the outcome of a case, or to the interests of any close member of his or her family.

The conduct of the official shall never be guided by any direct or indirect personal interest.

2.2. Right to be heard and to make statements

At every stage in the decision-making procedure, the rights of defence are respected.

Every member of the public shall have the right to submit opinion, clarifications, explanations, additional information or objections in writing, orally or in any other appropriate form before a decision affecting his or her rights or interests is taken, except in cases established by law.

2.3. Access to one's file

Every member of the public has the right to have access to his or her file in every technically possible form with the exception of legitimate interests of national security, personal data protection, and of professional or business secrecy, also when disclosing information may might jeopardize the work of the administrative entity.

Members of the public are allowed to have copies (or printouts) of the file or part of it made at their own expense.

2.4. Requests for information (documents)

Public administration entities and officials shall provide members of the public with the information or documents that they request. If an oral request for information or documents is too complicated or too extensive to be dealt with, the requestor shall be advised to formulate his or her demand in writing.

Administrative entities and officials when processing requests for information shall take care that:

- 1) the information communicated is clear and understandable;
- 2) in cases of requests for information on matters for which the administrative entity or official have no responsibility, the requestor is directed to the competent person and notified of his or her contacts;
- 3) in cases the information requested cannot be disclosed due to exceptions established by law, the requestor is provided with the reasons for denying access to information and with the explanation, how the disclosure could specifically and actually undermine the interest protected by the exception upon which it is relying.

2.5. Submission of requests and complaints

Requests and complaints of members of public can be submitted in accordance with the procedure established by public administration entity. Public administration entities might provide that requests and complaints can be submitted in person upon arrival at the entity, by telephone or by means of audio and video remote transmission and recording (oral requests), by sending by post or by electronic means: electronically via a specially designed information system, by fax or by e-mail.

Written applications to a public administration entity should be submitted in state language. Taking into account the functions performed by the public administration entity and the competence of the officials of this entity, the head of the entity has the right to determine other languages in which written applications may be accepted.

Applications are accepted in languages other than state language when an institution of a foreign state or an international organization applies to a public administration entity in writing in accordance with international law.

The requirements for the form and content of requests and complaints are determined by legal acts. A request or complaint submitted in breach of the established requirements shall be returned to the person lodging the request or complaint or his representative within the prescribed time limit, indicating the reasons for the return and proposing to correct the deficiencies identified.

Received requests and complaints must be registered in the appropriate register of documents of the public administration entity in accordance with the requirements of the legal acts regulating document management.

Upon acceptance of the request or complaint, if the applicant asks so, notification of the receipt shall be sent to the address or email address indicated in the request within time-limit provided by legal acts.

2.6. Replies to requests and complaints

Replies to requests and complaints are prepared by the means requested by the applicant (i.e. electronically, in written or in other form that is requested by the applicant and that conforms to the requirements of the law).

Replies to requests and complaints are prepared and stored in accordance with the requirements of the legal acts regulating document management.

2.7. Promptness

Public administration entities and officials shall ensure that a decision on every request, letter or complaint is taken within a reasonable time limit, without delay, and in any case no later than in terms established by law.

If a request, letter or a complaint cannot, because of the complexity of the matters, which it raises, be decided upon within the above-mentioned time-limit, the official shall:

- 1) inform the applicant as soon as possible about the delay;
- 2) indicate the reason for failure to comply with the prescribed deadline;
- 3) provide an estimate of the time at which the decision is taken;
- 4) reply to inquiries concerning the progress of the proceedings;
- 5) communicate a decision in the shortest possible time.

2.8. Duty to justify decisions

A decision adopted by public administration entity or official should clearly state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

Full justification for decisions should be given, except in cases of the large number of persons concerned by similar decisions, where standard replies may be given including the principal reasons justifying the decision taken. An interested party who expressly requests a detailed justification shall be provided with it.

The statement of reasons should be disclosed in a clear and unequivocal fashion in such a way as to enable the persons concerned to understand the arguments of the decision and to appeal in case they do not agree.

2.9. Indication of the possibilities of appeal

An individual decision adopted by public administration entity or official which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, and the time-limits for exercising them.

Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman.

2.10. Notification of a decision

Persons whose rights or interests are affected by a decision must be informed of that decision in writing, as soon as it is taken.

The official shall abstain from communicating the decision to other sources until the person or persons concerned have been informed.

Decision enters into force from the moment it is brought to the notice of its addressees unless otherwise provided by law or an administrative act itself.

2.11. Accessibility

Accessibility of public services should be ensured and further developed.

Public administration entities that deal directly with the public should make sure that their offices and customer service staff are physically accessible. This includes taking into account, where possible, distribution of contact points territorially, arranging working time so that at least few hours a week public administration entity would be accessible in different hours than regular working hours, and using user-friendly electronic channels. Public administration entities, using the functions entrusted to them, use information technologies in accordance with the procedure established by laws and other legal acts.

In deciding where to locate offices, public administration entities should also consider where their customers live and how they might be likely to travel to those offices (for example, by foot, by public transport).

The possible needs of those whose mobility is restricted and those with a visual impairment should be considered.

Publications and websites should also comply with accessibility and usability standards.

2.12. Participation

Public administration entities, when taking decisions related to the common legitimate interests of the public, must consult with the organizations representing the public interest in a particular area (such as associations of representatives of trade unions, other non-governmental organizations) and, in the cases provided for by law, also with the population or groups thereof.

These views should be taken into account by the public administration entities and officials making decision.

2.13. Duty to document an administrative procedure and keep registers

Public administration entities shall keep adequate records of their incoming and outgoing mail, of the documents they receive or create, and of the measures they take.

Public administration entities have an obligation to ensure the file's proper management and safe storage as well as protection of personal data.

2.14. Cooperation between authorities

Officials should cooperate with each other so that the interests of individual applicants and public in general are fulfilled.

Public administration entities and officials provide each other with the necessary information and other assistance, if necessary.

3. Rules of ethical behaviour and good administrative service

3.1. Acting ethically

Officials are obliged to act in good faith, which requires them to act honestly, for the proper purpose, on relevant grounds, and without exceeding their powers. The powers should not be used for improper purpose, or for a purpose other than that for which it was conferred.

Officials should not engage in corrupt conduct. They must not take improper advantage or assert undue influence. Officials must not engage in conduct which involves the dishonest or partial exercise of their official functions, the misuse of official information or material, or which breaches public trust.

Officials should abide to standards of professional ethics and integrity of conduct. They should act reasonably, fairly and impartially in performing their duties.

Officials should not allow the pursuit of private interest to interfere with the proper discharge of their public duties.

3.2. Effective and quality delivery

Public services should be designed around the needs of the user and be simplified. All procedures and rules addressed to the public should be 'user friendly' and easy to understand. As far as possible, steps should be taken to increase possibilities of using e-services.

As far as possible, the "single window" principle should be followed. In particular, in case a person contacts proper public administration entity, information should be provided, application or complaint should be received and the answer should be given from the same public administration entity. In case additional documents are needed from other public administration entities, the public administration entity shall, on their own accord and without involvement of a person, make necessary arrangements for obtaining relevant documents and information. If a letter or a complaint to the public administration entity is addressed to a unit or official, which has no competence to deal with it, it should be transferred without delay to the competent

service of the public administration entity and the applicant informed about this transfer and the name and the telephone number of the official to whom the file has been passed. Also, the applicant should be alerted to any errors or omissions in documents and provided an opportunity to rectify them.

Official shall be service-minded and should strive to provide quality service. Services that are provided by officials should be easily accessible and helpful.

Information provided should be current, clear, understandable and accurate, and include adequate details about the person's rights as well as obligations.

Officials should carry out their official functions and duties in a reasonable timeframe without undue delay. In case legal acts set statutory deadlines, they should strictly be followed.

3.3. Citizen-oriented approach

Officials shall act in the public interest and following citizen-orientated approach. Officials should consider situation from the perspective of the members of the public and should be guided by the approach that the interests of a member of public should be fulfilled unless they are contrary to public interest.

Officials shall be correct and courteous. They shall treat members of the public with respect and sensitivity, in a non-discriminatory manner and with proper regard for their rights and obligations. When considering each case and adopting each decision the official should be fair and reasonable.

When answering correspondence, telephone calls and e-mails, the official shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked.

3.4. Service quality evaluation

The public administration entity should carry out an annual assessment of the quality of its service according to anonymous survey results or selected objective criteria.

During anonymous surveys, individuals may be asked to express their views on the quality aspects of service relevant to the institution: 1) whether individuals are adequately informed about the institution's working time; 2) whether the working hours fixed in the institution are convenient for the individuals; 3) whether individuals have to wait a long for admission; 4) whether individuals were carefully listened to by the officials who served them; 5) whether their questions were answered personally and clearly; 6) how promptly individuals received the answer to their question; 7) whether individuals were informed of the steps taken by the entity or the official to deal with their issues.

Service quality assessment can be carried out according to the chosen objective criteria: 1) how many requests and complaints were processed during the year faster than within the set deadline; 2) how many cases were there during the year when responses to requests and complaints were submitted later than established; 3) how many cases have been recorded during the year when individuals complained to the entity about the response to their request or complaint or about the official who served them; 4) how many cases have been recorded during the year when individuals turned to the higher authority or subordinate institutions by complaining about the entity's response or the official who served them.