

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 16

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

**ON ADMINISTRATIVE PROCEDURES
AFFECTING A LARGE NUMBER OF PERSONS**

*(Adopted by the Committee of Ministers on 17 September 1987
at the 410th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that, in an increasing number of fields, administrative authorities are called upon to take decisions which affect in varying ways a large number of persons, especially in the fields of major installations, industrial plant and spatial planning;

Considering that it is desirable that common principles be laid down in respect of such decisions in all member states so as to ensure compatibility between the protection of a large number of persons and the requirements of efficient administration;

Considering, in addition, that some of these administrative decisions may also affect persons residing or having interests in the territories of neighbouring states;

Bearing in mind in this respect recent trends in international environmental law concerning the transborder effects of activities carried out within the jurisdiction or under the control of a state;

Considering that it is desirable that administrative authorities also take into consideration observations from such persons concerned relating to potential effects of proposed decisions in the territory of neighbouring states;

Having regard to the general principles laid down in Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities as well as to the relevant principles included in Recommendation No. R (80) 2 concerning the exercise of discretionary powers by administrative authorities;

Considering that these principles should be adapted and supplemented in order to ensure in a fair and effective manner the protection of a large number of persons, including, where appropriate, persons concerned by certain international effects of decisions,

Recommends the governments of member states to be guided in their law and administrative practice as well as in their mutual relations by the principles set out in the appendix to this recommendation;

Instructs the Secretary General of the Council of Europe to bring the terms of this recommendation to the notice of the Government of Finland.

Scope and definitions

The present recommendation applies to the protection of the rights, liberties and interests of persons in relation to non-normative administrative decisions (administrative acts) which concern a large number of persons, more specifically :

a. a large number of persons to whom the administrative act is addressed, hereafter referred to as persons of the first category ;

b. a large number of persons whose individual rights, liberties or interests are liable to be affected by the administrative act even though it is not addressed to them, hereafter referred to as persons of the second category ;

c. a large number of persons who, according to national law, have the right to claim a specific collective interest that is liable to be affected by the administrative act, hereafter referred to as persons of the third category.

Persons of the three categories are hereafter referred to as persons concerned.

Section I below sets out the principles applicable to the making of the above-mentioned administrative acts and to the control thereof.

Section II states additional principles designed to protect the persons concerned when an administrative act is liable to have effects in the territory of a neighbouring state.

In the implementation of these principles, due regard should be had to the requirements of sound, efficient administration as well as to major public interests and the interests of third parties, in particular with respect to the protection of personal data and of industrial or commercial secrecy. When the above requirements or interests make it necessary, one or more of these principles may be derogated from or excluded in specific areas of public administration or in duly justified circumstances.

The aims of this recommendation can be achieved :

- either through a single set of rules covering the whole subject,
- or through rules or practices specific to particular categories of decisions or particular fields.

Section I

Administrative procedure and control

The administrative act which concerns a large number of persons should be taken on completion of a participation procedure conforming to the principles set forth below.

I

When a competent authority proposes to take such administrative act, the persons concerned should be informed in such manner as may be appropriate and be provided with such factors as will enable them to judge its possible effects on their rights, liberties and interests.

II

Having regard to the object and effects of the proposed administrative act, the interests at stake, the status or number of the persons concerned or the need to ensure efficient administration, the competent authority may decide that at all or some stages of the procedure :

- a.* persons of the second category with common interests shall nominate one or more common representatives ;
- b.* persons of the third category shall be represented by associations or organisations.

III

At their request, persons of the first category and, subject to such representation arrangements as may be imposed on them in conformity with Principle II, persons of the other categories should have access in such manner as may be appropriate to all the available factors relevant to the taking of the act.

IV

Having regard to the object and effects of the proposed administrative act, the interests at stake, the status or number of the persons concerned or the need to ensure efficient administration, the competent authority should decide that the participation procedure continue under one or more of the following forms :

- a. written observations ;
- b. private or public hearing ;
- c. representation in an advisory body of the competent authority.

Where the procedure chosen is that of representation of the persons concerned in an advisory body, persons of the first category and, subject to such representation arrangements as may be imposed on them in conformity with Principle II, persons of the second category should also have the right to put forward facts and arguments and, in appropriate cases, present evidence.

V

The competent authority should take into account facts, arguments and evidence submitted by the persons concerned during the participation procedure.

VI

The administrative act should be notified to the public.

Without prejudice to any other way of communication, a public notification should specify, to the extent that it does not itself contain the information, how the persons concerned may gain access to the following :

- the main conclusions emerging from the procedure ;
- the reasons on which the administrative act is based ;
- information on normal remedies against the administrative act and the time-limit within which they must be utilised.

Persons of the first category should be personally informed of the administrative act and of the reasons on which it is based. The reasons may be included in the act itself or be communicated to these persons in writing, at their request, within a reasonable time. An indication of the normal remedies against the act, as well as of the time-limit for their utilisation, should also be given to the said persons.

VII

The administrative act should be subject to control by a court or other independent body. Such control does not exclude the possibility of a preliminary control by an administrative authority.

When the control procedure involves a large number of individuals, the court or other control body may, in accordance with fundamental principles and having due regard to the rights and interests of the parties, take various steps to rationalise the procedure, such as requiring participants with common interests to choose one or more common representatives, hearing and deciding test appeals and making notification by public announcement.

Section II

International aspects

VIII

When the administrative act is likely to affect rights, liberties or interests in the territory of a neighbouring state, the administrative participation procedure referred to in Section I should be accessible to the persons concerned in that state, on a non-discriminatory basis, according to the following indications :

a. The competent authority should provide these persons with the information mentioned in Principle I, at the same time as it informs the persons concerned on its territory. Such notification may be made either directly, by any appropriate means, provided the rules or practices governing relations between the states concerned so allow, or through the authorities of the neighbouring state.

b. Such representation arrangements as may be laid down by the competent authority should apply to the representation of these persons.

c. These persons may submit their observations either directly, in accordance with the procedure in the territory of the state where the act is being proposed, or through the authorities of the neighbouring state when these authorities have declared their readiness to perform such functions in their residents' interest.

d. The competent authority should inform these persons of the administrative act following the methods of communication mentioned in paragraph *a*.

e. The competent authority can provide the information mentioned in paragraphs *a* and *d* in its own language. It shall not be bound to take into account observations submitted in other languages.

IX

Access to the control procedure should be secured without discrimination on grounds of nationality or residence.

X

Access to the administrative participation procedure and to the control procedure may be subject to reciprocity.

XI

The application of the principles contained in this section may be subordinated to conventions concluded between the states concerned.

With due regard to the jurisdictions provided for by the internal law of each state as well as to the existing international agreements, the states and territorial communities or authorities concerned should further maintain liaison with one another with a view to ensuring an effective participation by all the persons concerned. They should endeavour to facilitate exchanges of information between the competent authority and the persons concerned. They may conclude either general or specific agreements or arrangements on a basis of reciprocity and equivalence for such purposes as :

a. designating the authorities of the neighbouring state which should be approached according to the kind of administrative act proposed ;

b. enabling the factors relevant to the taking of the administrative act to be made available to the persons concerned in the neighbouring state ;

c. enabling an authority of the neighbouring state to obtain the observations of the persons concerned residing in its territory and to forward them to the competent authority ;

d. stating the languages to be used.