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Implementation of laws on general administrative procedure in the Western Balkans

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List of abbreviations and acronyms

AMA	Agency for the Administrative Modernisation
CoE	Council of Europe
CSO	Civil society organisation
DT	Disposition time
EC	European Commission
EIF	European Interoperability Framework
EU	European Union
LAP	Laws on administrative procedures
OECD	Organisation for Economic Co-operation and Development
SIGMA	Support for Improvement in Governance and Management
VAT	Value Added Tax
WB	Western Balkans

The International Organization for Standardization (ISO) defines three letter codes for the names of countries, dependent territories and special areas of geographical interest. The table below presents the codes used for the geographical display of some figures in this publication in line with the ISO codes and, where there is not an official ISO code, the OECD practice:

Countries and territories of the Western Balkans	
Albania	ALB
Bosnia and Herzegovina	BIH
Kosovo[*]	XKV
Montenegro	MNE
North Macedonia	MKD
Serbia	SRB

[*] This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

Executive summary

The aim of this paper is to analyse the implementation of laws on administrative procedures (LAP) in the Western Balkan (WB) administrations that have recently reformed their LAPs – Albania, Kosovo, Montenegro, the Republic of North Macedonia (hereafter "North Macedonia") and Serbia. New LAPs entered into force in these administrations in 2016-2017, with the goal of reforming how administrative procedures are carried out. However, reports by the European Commission (EC) and from local civil society organisations refer to issues in their implementation, including slow progress in harmonising the special laws regulating administrative procedures with the general provisions of the LAPs.

The principles of good administration to be followed in conducting administrative procedures have been established in the recommendations and resolutions of the Committee of Ministers of the Council of Europe, the Charter of Fundamental Rights of the European Union, the Principles of Public Administration, and the EU Services Directive. If the new LAPs are expected to reform the administrative procedures of the WB according to these principles, their provisions should reflect them. This paper finds that the recently adopted LAPs of the WB are largely aligned with the principles of good administrative behaviour. They have been assessed according to the eight elements stemming from the abovementioned standards, which cover the key steps of the administrative process, as well as the main rights of the parties:

- ease of initiation of an administrative procedure (including the application of the Once Only Principle);
- possibility of electronic communication;
- right of the participants to be heard;
- duration of the procedure;
- requirements regarding the content of administrative acts;
- delegation of decision making within administrative authorities;
- balance between legal certainty and legality;
- functioning of the appeal process.

The new LAPs promote the implementation of relatively novel concepts, including the Once Only Principle, electronic communication, delegation of decision making, as well as ensure the need to comply with the classic requirements of good administrative behaviour (e.g. the right to be heard, and the requirement to substantiate administrative acts). The right to appeal is also ensured, although the efficiency of the appeal procedures can be reduced by vaguely formulated provisions. Such provisions can open the door for unnecessary repeal of administrative acts due to procedural errors that do not influence the outcome of the procedure (e.g. in Albania and Kosovo) or provisions that do not require the appeal organs to apply their reformatory powers and decide on the merits during the first review of the appeal (e.g. in Montenegro and North Macedonia). Nevertheless, the LAPs contain all the elements that allow the administrative authorities to manage administrative matters efficiently and according to the principles of good administrative behaviour and, if necessary, by applying common sense interpretation of the provisions.

In addition to the general requirements stemming from the LAPs, the rules for the functioning of administrative procedures are established by numerous other laws and sublegal acts (i.e. the special legislation), that stipulate more detailed requirements for the authorities conducting the individual procedures. The special legislation may provide for solutions different from the LAP (if necessary, because of the nature of the procedure), but must comply with the basic principles of the LAP and ensure an equal level of protection of the rights of the parties to the proceedings. It was thus important to review and, if necessary, to harmonise the special legislation with the general law after the adoption of the new LAPs. WB administrations have adopted a decentralised approach to harmonisation, leaving each line ministry in charge of harmonising the laws in its area of responsibility, while the ministry responsible for the LAP has the authority to provide recommendations and opinions on subsequent draft amendments. All WB LAPs allowed for an implementation period of least one year for the harmonisation process, but in none of the administrations was this process completed in time, and in most administrations, the progress to date has been limited. In each administration, the alignment of secondary legislation, which usually contains the detailed provisions followed by the officials conducting the procedures, was outside the scope of the review process.

Three sample administrative procedures were analysed in all five administrations, in relation to the eight elements of good administrative behaviour, to assess the level of alignment between the LAP and the respective special legislation and the application of the eight elements in practice. The three procedures include:

- the application for a construction permit for building a family house (construction permit);
- the application for general social benefit for anybody who does not meet the established minimum requirements regarding income or assets (social benefit);
- the procedure for determining the correct amount of value-added tax, potentially ending with a decision ordering the payment of additional tax (VAT audit).

Certain basic preconditions for good administrative behaviour are usually set out in the WB special legislation and also followed in practice, for example, the requirement to substantiate administrative acts and to provide the right to appeal. Still, many inconsistencies were noted between the LAP and the special legislation regulating the procedures, as well as in the practice of WB authorities. Most of the inconsistencies between the LAP and the special legislation could have been avoided. For example, the special legislation (law or sublegal act) for 12 of the 15 procedures analysed was adopted or amended after the LAP of the respective administration (i.e. providing an opportunity for harmonisation).

The most common issues that arose were related to the implementation of the novel features of the LAPs. For example, the Once Only Principle and electronic communication were functional in only three of the procedures analysed. Decision-making authority had been delegated below the level of the head of authority in five procedures. However, individual success stories – the Once Only Principle in Serbia's construction permit procedure, as well as in the social benefit procedure in North Macedonia and Montenegro; electronic communication in the construction permit procedures in Albania, North Macedonia and Serbia; and delegation of decision making in construction permit procedures in Kosovo, Montenegro and Serbia, as well as in the social benefit procedure in North Macedonia and in the VAT audit procedure in Montenegro, indicate that the application of novelties in practice is possible.

Inconsistencies in the application of more classical concepts of good administrative behaviour are fewer, but some still exist. The appeal deadlines established in special legislation for the social benefit procedures in Albania and Kosovo, and the construction permit procedure in Serbia, are shorter than in the respective LAP, which can undermine the effective right to appeal and, furthermore, cannot be justified by the specific nature of these procedures. The fees for construction permits in Albania and Kosovo differ widely from municipality to municipality, and are 10 to 20 times higher than in the rest of the region (exceeding the fees

in several EU Member States as well). This indicates that the fees for the service are not necessarily proportional to the cost, as explicitly required by the respective LAPs.

In addition to cases of the non-alignment of special legislation with the LAP, discrepancies between the requirements of good administrative behaviour and actual practice were also identified. Judging by the procedures reviewed, authorities throughout the region are having difficulty complying with the requirements for the statutory duration of the procedure. In Albania and Kosovo, the administrative acts of the analysed procedures do not always contain proper references to the legal remedies available. The effective right to be heard is undermined in practice by shortening the statutory time taxpayers should have for providing comments on the results of the VAT-audit procedure.

In none of the administrations are the legal remedies provided by the administrative appeal, as well as by the court, fully effective, due to the "ping-pong" effect of passing cases back and forth within the administration as well as between the administration and judiciary. A single administrative matter may be dealt with repeatedly by different instances within the administration and the judiciary. In the case of a successful appeal, the appeal organs rarely decide the case on the merits, which would enable them to conclude the administrative procedure rather than returning the matter to the first-instance authority for reconsideration. In addition, procedural errors can result in an overturning of the administrative act, even if the error could not have influenced the outcome of the procedure. The measures set out in the LAPs (and in acts regulating administrative court procedure in the majority of the WB administrations) designed to combat the ping-pong effect have not yet led to the desired results in practice.

While some success stories in reforming the functioning of the administrative procedures can be found, they can usually be attributed not to the adoption of the LAP, but to individual initiatives of the relevant authorities or in cases where donor support is forthcoming. Meanwhile, the systemic challenges that the LAP aimed to address have not been resolved, mainly due to limited or inconsistent progress in harmonisation of special legislation with the LAP, which has not allowed the LAP novelties to take effect in practice. For example, sublegal acts still require an applicant to submit data and documents that are already in the government's possession, and special legislation may retain rigid references to paper-based proceedings. Although the general principles of the LAP should prevail over non-aligned or contradictory provisions of the special legislation, the authorities conducting the procedure follow special legislation. Participants in the procedure could turn to appeal organs and to the judiciary to ensure the application of the LAP principles in such situations, but this would be cumbersome, particularly given the ineffectiveness of the legal remedies system, as described above, and could only at best ensure their application in an individual case.

The mechanisms for monitoring administrative procedures in the WB do not allow for analysis of the effectiveness of individual administrative procedures and their legality, or to capture challenges in implementation (for example, high share of successful appeals and their reasons, inability to comply with statutory duration, etc.). At best, data is collected at the institutional level, which provides aggregate data for all the procedures conducted within the responsibility area of a single ministry, but does not help identify actual procedures that are problematic. Finally, even though the LAP does not stipulate any preconditions for the implementation of such novelties as the Once Only Principle, it is evident that its application is hampered by the limited interoperability of key registers, and by problems with the quality of the data in these registers.

Based on experiences from the region and from EU Member States, the following steps could enhance implementation of the principles of good administrative behaviour, as provided for in the LAPs:

- harmonisation of the stock of special legislation (including secondary legislation) with the LAP, using a centralised, well-co-ordinated approach (e.g. by passing omnibus laws that harmonise all special laws in a single act), since the current decentralised approaches have not had the results anticipated;

- setting up responsibilities and procedures to maintain the alignment of the special legislation with the principles of the LAP, for example, by having the ministry in charge of LAP or a body co-ordinating the better regulation agenda review the relevant draft legislation (including new legislation and amendments and secondary legislation adopted by the Government and ministers), even after harmonisation of the stock of legislation;
- establishment of proper mechanisms for monitoring administrative procedures, including appeals, and identifying the most problematic procedures (for example, the ping-pong effect, excessive overturning of first-instance decisions for procedural reasons, and inability to respect the statutory deadlines, etc.) as well as the reasons for the challenges, and addressing them with suitable measures (the paper includes some references to practices in relevant EU Member States);
- enhancing the judicial appeal process, for example ensuring that the administrative judiciary applies its reformatory powers in judicial review, and that it provides adequate guidance to the administration to make a lawful administrative act, while also giving administrative judges the authority to sanction the administration in case of non-enforcement or non-compliance with court orders and decisions;
- capacity building and awareness raising, including the traditional training on applying the LAP, as well as additional measures, such as: organising round-table discussions involving administrative judges, the administrative appeal organs and officials conducting the procedures; training advocates and lawyers who represent participants in administrative procedures; and also conducting awareness-raising campaigns on the rights of participants in administrative procedure;
- enhancing application of the Once Only Principle and rolling out electronic communication, for example by improving the four layers of interoperability in the WB administrations, improving the data quality of state registers and addressing the obstacles for electronic communication (which mainly involve a lack of infrastructure for digital identity, and its low uptake due to its high cost).

Introduction

The aim of this paper is to analyse the implementation of laws on administrative procedures (LAP) in the Western Balkan (WB) administrations that have recently reformed the general laws regulating administrative procedures – Albania, Kosovo, Montenegro, North Macedonia and Serbia. Bosnia and Herzegovina was not included in the analysis, because a comprehensive reform of the legislation regulating administrative procedures has not been conducted in recent years. Four of the five administrations analysed have a long tradition of administrative procedures law, since the first law on general administrative procedures was adopted in the Kingdom of Yugoslavia as early as 1930[1]. All five administrations, however, recently adopted new LAPs, with the goal of improving implementation of general principles of good public administration stemming from the recommendations and resolutions of the Committee of Ministers of the Council of Europe[2] (CoE), the Charter of Fundamental Rights of the European Union (EU)[3], *The Principles of Public Administration*[4] and the EU Services Directive[5].

The adoption of the new LAPs was seen as a key element in the implementation of the public administration reform in the WB. As the LAPs contain the general principles that should apply in all administrative procedures, their role was to make the administration more citizen oriented, to adapt the procedures to the new organisational forms within the administration and to enable as well as promote the application of the developments in information and communication technologies in the provision of administrative services.

Still, the feedback from various stakeholders, including the reports of the European Commission (EC), the OECD and local civil service organisations (CSOs)[6], suggests that the effects of these legislative efforts are relatively limited, and in some cases, can even be counterproductive. The EC 2020 reports on the WB[7] refer to challenges and delays in the harmonisation of laws and bylaws with the recently adopted laws and codes on administrative procedures. The reports describe the administrative procedures in all five

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[1] One exception, the first Code of Administrative Procedure in Albania, was adopted in 1999. For a detailed overview of the history of laws on administrative procedures in the WB, see *Legal Remedies in Administrative Procedures in Western Balkans*, ReSPA (Regional School of Public Administration), Danilovgrad, Republic of Montenegro, 2016, pp. 9-53.

[2] Including Resolution (77) 31 on the Protection of the Individual in Relation to the Acts of Administrative Authorities, Recommendation CM/Rec (2007)7 on good administration.

[3] Charter of Fundamental Rights of the European Union, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT, Article 41, which is directly applicable only to the institutions and civil servants of the EU. Nonetheless, as the explanations that accompany the Charter make clear, the right to good administration is based on the case law of the Court of Justice concerning good administration as a general principle of EU law. Such general principles also bind the Member States when they are acting within the scope of EU law.

[4] OECD (2017), *The Principles of Public Administration*, OECD, Paris, http://www.sigmaweb.org/publications/Principlesof-Public-Administration-2017-edition-ENG.pdf.

[5] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123.

[6] See, for example, the Grey Book series from Serbia's National Alliance for Local Economic Development (NALED) (https://www.naled.rs/en/siva-knjiga) and publications by the Institut Alternativa in Montenegro (http://media.institut-alternativa.org/2018/04/study-new-law-on-administrative-procedures.pdf).

[7] EC Country Reports for the WB published in October 2020 at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1816.

administrations as bureaucratic, lengthy and burdensome. The reports on Albania, Kosovo and Serbia explicitly mention both citizens and businesses' lack of awareness of their rights under the new laws, which has led to legal uncertainty, and has meant that old practices persist.

The new laws on general administrative procedure in the WB

	Title of the law	Adoption	Entry into force	Challenges identified in 2019 and 2020 EC reports
Albania	Code of Administrative Procedures	30 April 2015	29 May 2016	Legal uncertainty for citizens and businesses, due to delays in adopting the necessary implementing and sectorial legislation.
Kosovo	Law on General Administrative Procedure	25 May 2016	21 June 2017	Delays in the adoption of special laws continue to cause legal uncertainty for citizens and businesses.
Montenegro	Law on Administrative Procedure	16 December 2014	1 July 2017	Implementation of the LAP has begun, but some secondary legislation has yet to be harmonised with it.
North Macedonia	Law on General Administrative Procedure (LGAP)	22 July 2015	31 July 2016	Simplifying administrative procedures has been difficult, as the LGAP has not yet been implemented systematically.
Serbia	Law on General Administrative Proceedings	29 February 2016	1 June 2017	Citizens are often not aware of their improved rights, allowing the administration to apply old procedures.

Source: EC country reports, https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status_en.

The introduction of the laws has been supported by training civil servants. Commentaries containing guidance on the application of the new laws have been prepared or are in preparation[8]. However, WB administrations have adopted a decentralised approach to harmonising special legislation with the new LAPs, leaving each line ministry in charge in its area of responsibility. Even if the list of laws for harmonisation is drawn up under the supervision of the ministry responsible for the LAPs (which also has the authority to provide recommendations and opinions on subsequent draft amendments), each line ministry still remains responsible for drafting the relevant amendments in individual pieces of legislation.

Overview of harmonisation of special legislation with the LAPs

	Number of laws to be harmonised	Number of secondary legislation to be harmonised	Progress by 2020
Albania	There has been no systematic review to determine which legal acts should be changed to comply with CAP.		Limited
Kosovo	About 200 laws	Not known	Limited
Montenegro	90 laws	Not known	85 laws harmonised as of 2019
North Macedonia	169 laws	Not known	Limited
Serbia	About 250 laws	Not known	About 150 laws harmonised

Source: Information provided by the ministries responsible for the LAPs.

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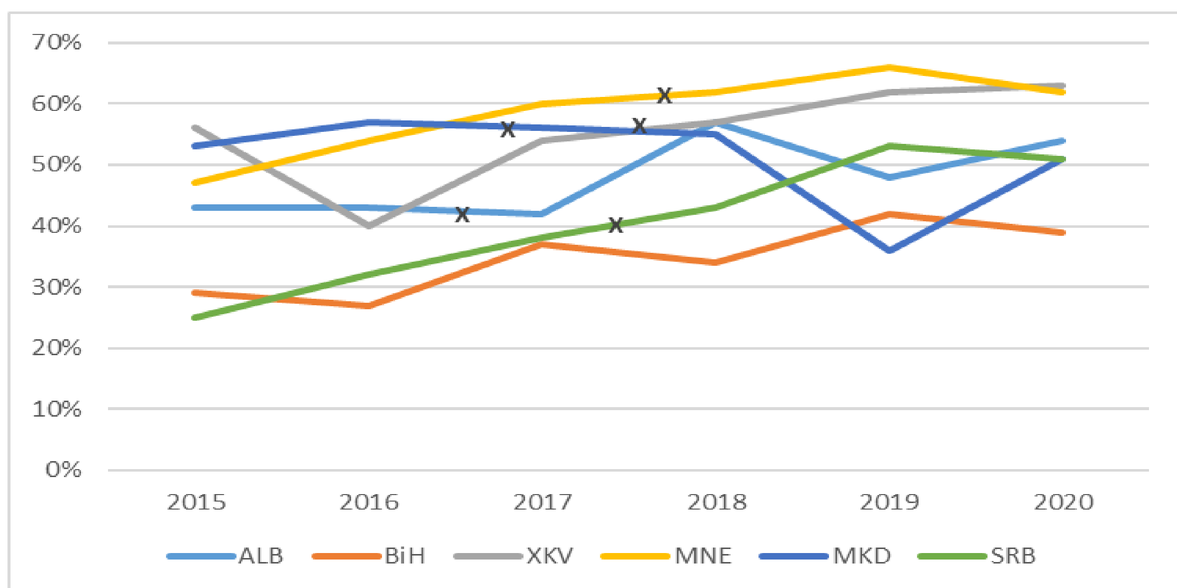
[8] For Albania, OECD (2018), "Legal Commentary on the Code of Administrative Procedures of the Republic of Albania", OECD, Paris (http://sigmaweb.org/publications/Legal-Commentary-by-SIGMA-on-the-Code-of-Administrative-Procedures-of-the-Republic-of-Albania-April-2018-edition.pdf); for Montenegro, Prof. Dr. Zoran R. Tomić, Prof. Dr. Đorđije Blažić (2017), "Komentar Zakona o Upravnom Postupku Crne Gore", Podgorica; also Sreten Ivanović, "Komentar na novi Zakon o upravnom postupku, Podgorica; for North Macedonia Zharko Hadzi Zafirov, Jugoslav Georgievski (2017), "Практични прашања & одговори за примена на законот за општата управна постапка", Skopje (http://arhiva.mioa.gov.mk/files/pdf/dokumenti/Primena-na-noviot-zakon-ZUOP_03.pdf); for Serbia, Prof. Dr. Zoran Tomić, Prof. Dr. Dobrosav Milovanović, Prof. Dr. Vuk Cucić, "Praktikum za Primenu Zakona O Opshtem Upravnom Postupku", Belgrade. The commentary for the Kosovo LAP is in preparation.

As is evident from the above table, in none of the administrations was the harmonisation process completed during the *vacatio legis* period of the LAP (in most administrations, progress to date has been limited). Secondary legislation, which usually contains the detailed provisions that are followed daily by the officials conducting the procedures, has been outside the scope of harmonisation.

Public perception regarding the efficiency of administrative procedures has in general slightly improved in recent years in the WB, but this does not seem to be a direct consequence of the adoption of the LAPs. Public perception has similarly improved in Bosnia and Herzegovina, which has not reformed its central legislation regulating administrative procedures. In addition, as is evident from the limited progress in the harmonisation of the special legislation with the LAPs, the potential positive impact of the general laws has simply not had time to take effect in the majority of proceedings (and consequently could not have affected the perception of the users of these services). Furthermore, in North Macedonia, public perception has slightly deteriorated since the LAP took effect.

Figure 1. Public perception of the efficiency of administrative procedures



Notes: The graph shows the share of respondents who totally agree or tend to agree with the statement that “The administrative procedures in public institutions are efficient”. An *x* indicates when the LAP took effect.

Source: Balkan Barometer survey results, https://www.rcc.int/balkanbarometer/publications.

The WB administrations have come in for some criticism, both over the slow progress in harmonising legislation and over continuing issues with the operation of administrative procedures. It was thus considered useful, before any further steps were taken, to obtain a systematic overview of what might be causing the issues that have arisen since the administrative reforms.

To better understand the challenges, the paper will first analyse the general compliance of the new LAPs with the selected general principles of good administrative behaviour, and then assess how three typical administrative procedures regulated by special laws and bylaws align with the respective LAP of each administration. For the purposes of this analysis, we have identified eight elements covering key steps in the administrative process, the main rights of the parties, as well as the issues that the new LAPs were intended to address.

Key elements of administrative procedure

Element	Main features and importance
Ease of initiation of an administrative procedure, including **the Once Only Principle, the proportionality of the fee** for the procedure and **the right to rectify formal deficiencies**	The Once Only Principle requires that citizens and businesses provide diverse data only once when they contact the public administration. The costs of an administrative procedure, if payable by private persons to public authorities for administrative decisions, should be fair and reasonable. If an application is incomplete, the applicant must be given the possibility of correcting it within a reasonable deadline.
Possibility of electronic communication	The legal framework should allow for electronic communication between the participant of the proceeding and the administrative authority.
Right to be heard	The party to the proceeding must be able to submit or propose evidence, to actively participate in the enquiry procedure, be notified about the outcomes of the procedure and be able to comment on them before the final decision is taken.
Duration of the procedure	A person has a right to have their affairs handled within a reasonable time.
Requirements regarding the content of administrative acts	The decision should contain the grounds/reasons, including the relevant facts and legal basis (the rationale) and indication of appeal possibilities, including the relevant bodies and time limits.
Delegation of decision-making within administrative authorities	The right level of delegation of responsibility and decision-making authority is associated with a higher level of efficiency and effectiveness within an organisation, also promoting higher level of professional and personal accountability.
Balance between legal certainty and legality	Procedural rules regulating the amendment, suspension and repeal of an administrative act should guarantee a fair balance between the public interest and the legitimate expectations of the individual regarding legal certainty.
Functioning of the appeal process, including **the appeal deadline, the mandate of the appeal authority and the duration of the appeal procedure.**	Adequate time should be allowed to submit the appeal after the recipient of the administrative act has learned of its contents. The second-instance authority should be able to conduct additional investigations in order to decide the appeal efficiently in substance and, if necessary, amend the reasoning of the administrative act or to decide the matter in full by itself with a new act. The right to have their affairs handled within a reasonable time applies also to the participants of the appeal procedure.

Source: SIGMA review of relevant international recommendations and laws regulating administrative procedures.

The analysis covers essential procedural rights, such as the right to be heard, adequate duration of the procedure, requirement to provide the rationale for the administrative act as well as the right to appeal, However, the list of these elements is not comprehensive. Other important elements (e.g. the right to judicial protection or legal aid) have not been included. The aim was to focus on basic elements specifically regulated by the LAPs, where the WB LAPs were intended to introduce significant reforms or areas that had been identified as challenges in the WB legal culture. As a result, some concepts that are usually not considered to be among the primary elements of good administrative behaviour (e.g. electronic communication, delegation of decision making) were included.

The aim of the analysis is first, to confirm whether the recently adopted LAPs contain provisions that allow for implementation of the general principles of good administrative behaviour, based on the eight elements listed above. Only then can the LAPs be expected to have the desired impact on modernising WB administrative procedures. The second aim of the analysis is to assess how far the principles of good administration and the novel elements of the LAPs have been applied in practice. This aspect of the analysis is based on the legal acts regulating the selected procedures (i.e. special legislation), on analysis of sample administrative acts collected from the authorities conducting the procedures, on information and feedback obtained in interviews and focus group discussions with the authorities conducting the procedures, as well as with the appeal authorities, representatives of academia and judiciary. The three administrative procedures analysed in all the WB jurisdictions, to understand how well the principles and concepts of the LAPs have been applied, include:

- the application process for a construction permit for building a family house (construction permit);

- the application process for general social benefit for those who do not meet the established minimum requirements for income or assets (social benefit);
- the procedure for monitoring the accuracy of the reports submitted on the need to pay value added tax, potentially ending with a decision calling for payment of additional tax (VAT audit).

The three special procedures were selected on the basis of their relevance for numerous potential parties to administrative procedures (from private persons to businesses) and in order to cover a wide range of aspects that could help to give some indication of how the administrative process functions. Both procedures initiated by applications (the construction permit and the social benefit) help to assess the "user friendliness" of the administration, based on the ease of submission process (including applying the Once Only Principle) and the duration of the procedure. In addition, the construction permit procedure makes it possible to analyse the proportionality of the established fee for the service. The right to be heard and to have access to the files kept by the administration is especially important for procedures usually initiated *ex officio*, like the VAT audit. All three procedures make it possible to analyse the compliance with the general requirements for the content of administrative acts, how the appeal process is carried out, the possibility for electronic communication and the delegation of decision making within an administration.

It is important to note that all the relevant LAPs are conceived as primary ("general") administrative procedural laws, applicable in all administrative procedures. Laws regulating specialised procedures may call for different solutions (in two cases[9] only if necessary, given the nature of the procedure), but must comply with the basic principles as defined by the primary, "general" law or ensure an equal level of protection of rights[10]. Regardless, such deviations from the general arrangements, especially if the exceptions are too numerous, must be considered a potential impediment to legal certainty, since they can easily constitute an inscrutable maze of specialised rules. Finally, it is clear from the table below that each of the administrations has had enough time to align the special procedures with the LAPs, which were adopted at least four years before this analysis was conducted.

The legal framework regulating the selected administrative procedures

	Construction permit	Social benefit	VAT audit
Albania	Law for Planning and Territory Development adopted in 2014, most recently amended in 2019; Council of Ministers Decision No. 408 on the Approval of the Territory Development Regulation adopted in 2015, most recently amended in 2019	Law on Social Assistance of 2019. Council of Ministers Decision No. 597 to establish Procedures, Documentation, and the Measure of Monthly Benefits for Economic Assistance and the Use of Extra Funds for Conditional Economic Support, of 2019	Tax Procedure Law of 2008, most recently amended in 2020; Ministry of Finance Instruction No. 24 for Tax Procedures in the Republic of Albania of 2008, most recently amended in 2020
Kosovo	Law on Construction of 2012. Administrative Instruction No. 06/2017 on Determination of Procedures for the Preparation and Review of Requirements for Construction Conditions, Construction Permits of 2017	Law on Social Assistance Scheme of 2003, amended in 2012; Administrative Instruction No. 04/2013 on the Procedures for Submitting Applications for Social Assistance of 2013	Law on Tax Administration and Procedures of 2010, most recently amended in 2013; Administrative Instruction No. 15/2010 on the Implementation of the Law on Tax Administration and Procedures, most recently amended in 2016
Montenegro	Law on Spatial Planning and Construction of Structures of 2017, amended four times, most recently in 2020; Rulebook on Application Forms, Applications and Declarations in Construction Procedure of Facilities of 2017, amended three times, most recently in 2020	Law on Social and Child Protection of 2013, most recently amended in 2017; Rulebook on Conditions for Achieving Basic Material Benefits from Social and Child Protection of 2020	Law on Tax Administration of 2001, most recently amended in 2019

[9] MNE: Article 4 (2); SRB: Article 3 (2).

[10] XKV: Article 2 (4); MNE: Article 4; MKD: Article 2; SRB: Article 3; ALB: Article 2 (1) – not explicitly, but interpreted in this way.

North Macedonia	Law on Construction of 2010, most recently amended in 2020; seven different sublegal acts of 2011 until 2016	Law on Social Protection of 2019. Rulebook on Guaranteed Minimum Assistance of 2019	Law on Tax Procedure of 2006, amended in 2019
Serbia	Law on Planning and Construction of 2009, most recently amended in 2020; Rulebook on the Procedure for Implementing the Unified Procedure Electronically, of 2019	Law on Social Protection of 2011. Rulebook on Forms in the Procedure of Exercising the Right to Monetary Social Assistance of 2011	Law on Tax Procedure and Tax Administration of 2002, most recently amended in 2019

Source: The laws and secondary legislation establishing the requirements for selected administrative procedures in the WB.

The working thesis for the analysis is that the new LAPs do include the main elements of what is considered to be good administrative behaviour in the EU. However, these elements are not consistently mirrored in the laws and sublegal acts regulating special administrative procedures and are effectively not put into practice. This means that the environment for the provision of administrative services is not substantially more accessible to citizens than it was before the current LAPs took effect. The findings described below should verify or refute this hypothesis. The final step of the analysis suggests options for a way forward on the basis of experiences of EU Member States that have undertaken similar reforms of administrative procedures and on the basis of other cross-sectorial and horizontal reforms in the WBs.

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1 Good administrative behaviour in the laws on general administrative procedure

Ease of initiating an administrative procedure

Administrative procedures are initiated upon the request of an applicant or *ex officio* by the administration. If an applicant initiates a procedure, the requirements for the initial submission should be clear, and should not create excessive financial or bureaucratic burdens. Access to administrative services can otherwise be significantly impeded. The following sub-chapters review the compliance of the WB LAPs with these elements of good administrative behaviour, as well as their application in practice:

- the application of the Once Only Principle;
- the proportionality of the fee for the service;
- the right to rectify formal deficiencies in submissions.

The Once Only Principle as regulated in the LAPs

The Once Only Principle requires citizens and businesses to provide diverse data only once in their contact with public administrations. It requires public administration bodies to share and reuse these data – even across borders – while respecting data protection regulations and other constraints[11]. In administrative procedures, this means that if input from another administrative body is required, whether in the form of a decision, an opinion, a consent, any other document or data extant within the administration as a whole, the procedures and organisation of the administration must furnish this input without requiring any further action on the part of the applicant (i.e. *ex officio* by the administration). The OECD has long acknowledged the importance of data sharing, standardisation and interoperability for reducing bureaucratic red tape[12]. *The Principles of Public Administration*[13] underline the importance of the legal framework in promoting interoperability of registries and digital services to simplify procedures for citizens. The Once Only Principle is an excellent indicator of a good, user-oriented administration, and its inclusion in the LAPs was one of the principal goals of the recent legislative reforms in the respective administrations[14].

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[11] https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/Once+Only+Principle.

[12] The reports from the OECD Cutting Red Tape series are available here: https://www.oecd-ilibrary.org/governance/cutting-red-tape_19976674.

[13] OECD (2017), *The Principles of Public Administration*, OECD, Paris, http://www.sigmaweb.org/publications/Principlesof-Public-Administration-2017-edition-ENG.pdf.

[14] According to the objectives listed in the explanatory memorandums of the LAPs.

The principle is thus enshrined in all the LAPs under consideration, albeit at differing levels of detail and ambition. The lowest common denominator is the duty of the administration to procure by its own motion the data kept in official registers and other extant evidence. In the LAPs of Montenegro, North Macedonia and Serbia, this duty is elevated to the level of a basic principle that applies automatically for all administrative procedures[15] and in other LAPs, it is defined as the right of an applicant to provide identification data only[16]. In some cases, this is complemented by the duty of the body that retains the required data to provide it without undue delay or within a predetermined deadline[17]. The transitional provisions of the Serbian LAP stipulate that all provisions of other laws that are contrary to the application of the Once Only Principle shall be repealed 90 days after the LAP enters into force, aiming to further ensure the application of the principle (even if there are delays in the harmonisation of special legislation)[18]. The North Macedonian LAP allows for the possibility that the administration may request a separate fee for obtaining evidence and data from another institution (i.e. for implementing *ex officio* data procurement)[19]. This can undermine the effectiveness of the Once Only Principle as a tool for simplifying administrative procedures.

As a supporting measure, the LAPs allow the administration to set up “one-stop-shops” to deliver administrative services that involve more than one authority[20]. The LAP provisions stipulate that the competent one-stop-shop should be the only contact point between the applicant and the administration, but the detailed rules on the operation of these contact points are to be established by special laws or governmental decisions[21].

In conclusion, the basic legislative preconditions for implementing the Once Only Principle are in place in all the WB LAPs. It must be added, though, that these provisions are perhaps the hardest test of the structural integrity of an administration. To implement them effectively, the administration must function as an integrated whole. Certain infrastructural elements, like the interoperability of the relevant databases, can significantly simplify its implementation, but it is important to note that under the LAPs, this is not a precondition for implementing the Once Only Principle. The administration is charged with observing the principle, regardless whether the interoperability is set up (e.g. through direct communication between the authorities that are keeping and using the data). In the case of Serbia, this is explicitly explained in a nonbinding instruction prepared by the Ministry of State Administration and Local Self-Government on the application of the relevant articles of the LAP[22].

The Once Only Principle according to special legislation and practice

The application process for a construction permit, as well as for the social benefit, provide a good opportunity to apply the Once Only Principle in practice, due to the additional documents and data that the responsible authority conducting the procedure needs to collect and review to decide upon the application.

[15] MNE: Article 13; SRB: Article 9 (3); MKD: Article 10 (2).

[16] ALB: Article 77; XKV: Article 86.

[17] MNE: Article 43; MKD: Article 57; SRB: Article 103.

[18] Article 215.

[19] Article 57 (6).

[20] ALB: Article 74; XKV: Article 33; MKD: Article 28; MNE: Article 43; SRB: Article 42.

[21] Law No. 13/2016 on the Public Service Delivery Approach at the Front Offices in the Republic of Albania; in MKD and MNE, the LAPs refer to the special laws regulating the respective administrative procedures. XKV: LAP Article 33 (8) and SRB: LAP Article 42 (6) refer to Government decisions.

[22] The instruction can be found at https://www.paragraf.rs/dnevne-vesti/070616/070616-vest3.html. It states: “The body obtains data from official records by electronic or direct inspection of the records or upon request”.

However, based on the requirements for additional documents that an applicant must provide under the reviewed special legislation in the WB, the concept is not usually fully implemented in practice. The sole example of full compliance with the Once Only Principle is the construction permit procedure in Serbia.

Table 1.1. Examples of data required from applicants that could be obtained *ex officio* from other public authorities

	Construction permit	Social benefit
Albania	Certificate of ownership of land, development permit issued prior by the same municipality, licences of involved professionals (topographer, designer), all other permits, licenses, authorisations or acts of approval, necessary for the exercise of the activity (e.g. related to use of utilities)	Certificate of ownership of real estate from the cadastre, certificate of the status of a student
Kosovo	Certificate of ownership or other notarised proof of the right to use the land, terms of construction issued prior by the same municipality, copies of university diplomas of involved designers	Numerous certificates on personal status (birth, marriage, divorce), on real estate ownership (cadastre), employment, tax, schooling, etc.
Montenegro	Certificate of ownership of land, report of the review of the final design (issued by the City Architect), proof of payment of fees for obtaining access to utilities	Data that is needed only in specific circumstances, e.g. proof that the spouse is serving a prison sentence, decisions from public executor, etc.
North Macedonia	Certificate of ownership of land, licences of involved professionals (designer)	Certificate on status of a student
Serbia	None	Certificate of ownership of real estate, certificate of unemployment from the National Employment Service, certificate of student status

Source: The laws and secondary legislation establishing the requirements for applications, and information from authorities about the actual practice.

Some positive developments are nevertheless evident in each administration. In Albania, Montenegro and North Macedonia, interoperable information systems are in place to support some of the data collection for the social benefit procedure. In North Macedonia, the special legislation explicitly requires the competent authority to obtain the necessary information (with minor exceptions, including the certificate of student status) from other authorities. This is furnished by the electronic data exchange provided by the Cash Benefits Management Information System, after receiving written consent from the applicant for the use of personal data. This process works in practice, as provided for in the regulations. In Montenegro, in the case of the Social Card system, most of the relevant registries are interoperable, to allow the administration to collect the information *ex officio*, except for really specific circumstances. However, issues related to the accuracy of data kept in the central registries and the overall reliability of the system have negatively affected the procedure so far.

In Albania, the competent authority for deciding on social benefits bizarrely uses the Economic Assistance Information Management System to verify the information provided by the applicant. However, it does not relieve the applicant of the obligation of submitting the information that originates from the same registries.

In the examples cited, the establishment of interoperable registers has not been the direct consequence of the LAP. Rather, they are a consequence of individual initiatives of the relevant authorities, sometimes with donor support. In North Macedonia, for example, the Cash Benefits Management Information System was supported by the World Bank. The Municipality of Pristina in Kosovo has established a one-stop shop for construction permits and collects the consents from the providers of some utility services (water, electricity), but does not yet collect them from the Cadastre, even though the relevant sublegal act explicitly prescribes it, as does the general requirement stemming from the LAP.

The positive developments are overshadowed by examples of fairly straightforward measures for simplifying submission requirements that have not been set up. In Albania, Kosovo and Montenegro, applicants for construction permits have to provide documents (the development permit, terms of construction) that have previously been issued as part of the same administrative procedure and, in some cases, even by the same municipality. In Montenegro, the Cadastre, which keeps data relevant for numerous administrative procedures, is available online for all, and the applicants should not be requested to submit certificates proving their ownership. Avoiding such unnecessary administrative burdens should be possible even without implementing complex IT systems that support online data exchange. Systemic challenges regarding the implementation of the Once Only Principle are consistently mentioned in the annual reports on implementation of the LAP in Montenegro[23].

Focus group discussions with representatives of the WB administrations suggest that the main reasons for difficulties with the implementation of the Once Only Principle can be grouped into institutional and legal-cultural. Institutional obstacles can arise when certain key data holders, like the Real Estate Cadastre, are fully or partially self-financed state institutions, as in Albania and North Macedonia. In such cases, the data holder has a clear financial incentive to maintain the *status quo* if issuing certificates from its registry to applicants that require them in administrative procedures is a direct source of its income. Legal-cultural obstacles include the need to ensure compliance with personal data protection rules during *ex officio* collection of personal information. The courts may also have specific requirements for proving the fact of obtaining the data from electronic registers during the administrative procedure, when the legality of the administrative act is contested in court. It should be possible to overcome both of these obstacles by communication and co-operation between the authorities, and, if needed, adjustment of working practices (e.g. by making sure of the purpose of obtaining the data and that the data obtained is properly stored). In focus groups and direct correspondence with authorities, some acknowledged the fact that *ex officio* data collection is possible, but explained that they do not apply it, because the relevant special legislation (including secondary legislation) requires the applicants to provide the information. This is a clear indication of the need for review and harmonisation of the special legislation with the LAP. Finally, the accuracy of the data in state registers was mentioned as an obstacle. This can only be overcome if the state registers are consistently used for obtaining the required data (which is the purpose of keeping the registries), and if needed, making the necessary corrections in the registers. Otherwise, the vicious circle of inaccurate data is difficult to break.

Application of the Once Only Principle

	Construction permit	Social benefit	VAT audit
Albania			Not applicable
Kosovo			Not applicable
Montenegro		✓	Not applicable
North Macedonia		✓	Not applicable
Serbia	✓		Not applicable

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. The analysed element is “not applicable” if, in the particular procedure, the element is not relevant or cannot be applied.

Source: SIGMA analysis of the legal framework and actual practice.

[23] Ministry of Public Administration report, dating from 2019, pp. 36-37, https://mju.gov.me/ResourceManager/FileDownload.aspx?rid=407476&rType=2&file=Izvjestaj%20o%20postupanju%20u%20upravnim%20stvarima%20za%20period%20od%2001.01.2019-31.12.2019_MC.doc.

Key findings

- Based on the procedures reviewed, the Once Only Principle, as enshrined in the respective LAPs, is working fully only in the Serbia's construction permit procedure (and partially in Montenegro's and North Macedonia's social benefit procedure).
- In all other procedures, the applicant is systemically required to submit at least some documents and data that the other public authorities already have and that, according to the LAPs, should be collected ex officio.
- Even where interconnected information systems support the process (e.g. the social benefit procedures in Albania), the special legislation does not provide for the implementation of the Once Only Principle and it is consequently not applied in practice.
- Key data holders like the Real Estate Cadastre can have financial incentives for not implementing the Once Only Principle, if key portion of their funding is currently coming from fees for issuing certificates on data kept at their registries.

The proportionality of the fee for the service as regulated in the LAPs

According to the CoE Recommendation (2007)7 Article 16, the costs, if payable by private persons to public authorities in respect of administrative decisions, should be fair and reasonable. Public authorities should not use the provision of administrative services as a revenue-making measure. The LAP is a relevant tool for establishing this principle for all administrative procedures provided by the state and municipalities. All WB LAPs contain the principle of the cost-effectiveness of the procedure. In Montenegro, North Macedonia and Serbia, the laws establish the requirement to conduct the proceedings at the lowest possible costs for the parties[24]. This requirement does not necessarily ensure that the fee for the service is proportional to the cost of providing the service. In Albania and Kosovo, the laws go even further, stipulating that the fee for the administrative procedure may not be greater than the average cost of completing the procedure[25].

The proportionality of the fee according to special legislation and practice

Of the selected administrative procedures, the construction permit procedure is the sole example of a service with a fee. In Albania, the fee for the construction permit depends on the estimated construction value of the planned house. A similar method for determining the fee is also used in other European countries (e.g. Slovenia). However, it is debatable, if for all construction types (e.g. family houses) the estimated construction value is the correct basis for calculating the cost of providing the administrative service, which should be the basis for the fee according to the Albanian LAP. The estimated construction value of a family house can vary widely, depending on the type and quality of the materials used.

In Kosovo, the fee is based on the total number of square metres that were provided for in the previous year in the construction permits issued by a municipality, and the budget of the competent authority in each municipality. While determining the fee on the size of planned construction project is not unknown in Europe (see Austria and Poland, for example), the Kosovar method is not fully compliant with its respective LAP. The actual cost of reviewing an application for a construction permit does not depend neither on the municipal budget nor on the total number of square metres of construction permits issued in the previous

[24] MNE: Article 10; MKD: Article 7; SRB: Article 9 (2).

[25] ALB: Article 19 (2); XKV: Article 12 (2).

year. (The number of applications for construction permits may vary from year to year, but that does not change the cost of the individual procedure). Finally, since the procedure is the same from municipality to municipality, the cost and subsequent fee for the service should also not differ significantly. However, in practice in Kosovo – and because of the method of calculating the fee for a construction permit – the fees vary 2-3 times from one municipality to the next[26].

The fees for obtaining a construction permit may vary from administration to administration, because the cost of the procedure may differ, as do the average salaries of the officials conducting the procedure. Still, the estimated fee levels for the construction permit of a family house in Albania and Kosovo are more than ten times higher than the fees in Montenegro, North Macedonia and Serbia. The differences in fee levels considerably exceed the differences in the average salary levels in the WB region and the differences in the maximum statutory duration for conducting the procedure, which may indicate differences in the costs of reviewing the construction permit application. The fees for construction permits in Albania and Kosovo are far more expensive than in several EU Member States with higher average salaries and a higher cost of living (e.g. the fee for a permit for building a similar house in Austria would be EUR 28, EUR 150 in Estonia, EUR 65 in Ireland, about EUR 33 in Poland, EUR 90 in Portugal, and about EUR 280 in Slovenia).

Focus group discussions with the Albanian authorities confirmed that the proportionality of the fees, i.e. the compliance with the LAP principle that is binding on all procedures, is not in practice monitored by any state authority. As a rule, the fees for other basic services in the region do not differ as much as the fees for construction permits, except for the fees for obtaining certain personal identification documents (e.g. passport, driver's licence), which are twice as high in Albania compared with the rest of the region. At the same time, the average monthly salary in Albania is among the lowest in the WB.

Table 1.2. Cost of construction permits for a family house in the capital and some other basic services, compared with average monthly salary

	Albania	Kosovo	Montenegro	North Macedonia	Serbia
Fee for a construction permit	1% of construction value, e.g. EUR 750 for a EUR 75 000 construction	EUR 6.5/m², e.g. EUR 650 for a 100m² house	EUR 50	EUR 24.29 MKD 1 500	EUR 33.32 RSD 3 920
Fee for an identity card	EUR 12.15 LEK 1 500	Not applicable	EUR 5	EUR 3.10 MKD 190	EUR 9.80 RSD 1 154
Fee for a passport (non-urgent)	EUR 60.75 LEK 7 500	EUR 10	EUR 33	EUR 29.23 MKD 1 800	EUR 30.60 RSD 3 600
Fee for driver's licences (non-urgent)	EUR 36.45 LEK 4 500	EUR 20	EUR 15	EUR 6.33 MKD 390	EUR 13.90 RSD 1 635
Fee for birth certificate	EUR 0.41 LEK 50	EUR 1 (a separate EUR 30 fee exists for registering a birth)	EUR 3	EUR 2.44 MKD 150	EUR 4.08 RSD 489
Confirmation of residence	Free of charge	EUR 2	EUR 3	EUR 3.10 MKD 190[27]	EUR 2.72 RSD 320
Average net salary in 2019 (gross in ALB)	EUR 424 LEK 52 380	EUR 537	EUR 3	EUR 409 MKD 25 213	EUR 467 RSD 54 919

Source: SIGMA review of national legislation and statistics from the national statistical offices.

[26] For instance, in the municipality of Pristina, the fee is EUR 6.5 per square metre, and in the municipality of Klina, the fee for a construction permit is EUR 2.13 per square metre.

[27] Fee for issuing a new identity card due to change of residence.

It is noteworthy that in Serbia, the usual fees associated with submitting construction permits include a designated EUR 8.5 fee for the submission of the application through the information system used for processing construction permit applications (i.e. the online tools). The proportionality of this fee is questionable, because effectively, online submissions should be cheaper for the administration to process, since the cost of entering the data in the information system (i.e. the working time of the official responsible for this step) can be avoided, among other advantages. The savings obtained by using an IT system should be one of the arguments justifying the investment, and applicants' additional fee payments should not be used to finance IT investments in administrative procedures. Problems with numerous individual fees and tariffs for obtaining the conditions for construction works that are disproportionate and not established transparently have also been noted in reports from the Serbian CSOs[28].

Application of the requirement of proportionality of fees for a service

	Construction permit	Social benefit	VAT audit
Albania		Not applicable	Not applicable
Kosovo*		Not applicable	Not applicable
Montenegro	✓	Not applicable	Not applicable
North Macedonia	✓	Not applicable	Not applicable
Serbia	✓	Not applicable	Not applicable

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. The analysed element is "not applicable", if in the particular procedure, the element is not relevant or cannot be applied.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- The methods for determining the fee levels of construction permits for a family house in Albania and Kosovo do not seem to ensure that the fee is proportional to the cost of providing the service, as envisaged in the LAPs.
- In Kosovo, fee levels differ widely from one municipality to another. This should not be the case if the application procedure is established with state-level legislation and is the same for all municipalities.
- By comparison with the fees in other WB administrations, the fees for construction permits in Albania and Kosovo are disproportionately higher. The compliance of fee levels of administrative services with the general principles of the LAPs is not centrally monitored, and typically, each line ministry or municipality in charge of the service can establish the fee

The right to rectify formal deficiencies in submissions as regulated in the LAPs

The requirement to submit an application in a certain format, especially using a form, can expedite the processing of an application by ensuring that all the data needed for the decision is submitted in an organised and legible manner. However, if such requirements are too rigid, are used in places where this is not necessary and/or if they are subject to disproportionately harsh sanctions (typically, with summary

[28] See NALED Grey Book 12 (p. 60), giving the 100 most significant recommendations by businesses, local government and civil society organisations for eliminating administrative obstacles to doing business in Serbia, https://www.naled.rs/htdocs/Files/04492/Siva_knjiga_12.pdf.

rejection of the application), they can impede access to the administrative procedure. A review of submission requirements, as well as the consequences of a failure to observe them, was thus included in this analysis.

The WB LAPs do not establish undue demands as regards the form and content of the application for initiating an administrative procedure. The laws in Albania and Kosovo allow the request to be submitted “in any appropriate form”, while other LAPs enumerate all the practicable methods of submitting a request and achieve virtually the same result[29]. In each case, the special legislation is allowed to regulate the matter in further detail.

The requirements for the content of the request in the LAPs are also limited to the basics, which allow for the clear identification of the applicant and the request[30]. Should the application fail to include this data, the LAPs require that the authority notify the party, who is allowed to correct the request without negative consequences. If the party fails to do so, the procedure is summarily concluded with an administrative act. Only the Albanian LAP leaves some ambiguity in this respect, since it appears to stipulate an informal conclusion of the procedure by the authority, which would simply return the incorrect or inaccurate application to the applicant without even registering it[31]. Because this return would not be formulated as an administrative act (and leave the applicant without the possibility of an appeal), a verbatim interpretation of the law could significantly reduce the level of protection afforded to the applicant. The legal commentary on the Albanian LAP has concluded, however, that completing a procedure in this way must always be formulated as an administrative act[32].

Following the important principle set out in the European Code of Good Administrative Behaviour[33], if an application is submitted to an incorrect or incompetent administrative authority, most LAPs (with the exception of Albania’s) require that the receiving authority forward the request to the correct recipient, rather than simply returning the application[34].

The right to rectify formal deficiencies in submissions according to the special legislation

The purpose of the following review is to determine whether there are any formal obstacles for an applicant attempting to initiate the selected administrative procedures according to the relevant special legislation, which may be at variance with the LAPs. Consequently, only the social benefit and construction permit procedures were reviewed, as the VAT audit procedure – as a rule – is not initiated by the applicant.

In the WB, the applications in both of the reviewed procedures must be submitted on a special form, as the LAPs allow. The forms are usually established by the sublegal acts regulating the procedures, thus ensuring their legality and preventing arbitrary demands by individual administrative bodies, and also ensuring public availability of the forms. As the sole exception, in Kosovo, the application form for the social benefit procedure is available only at the office dealing with the procedure, where it can also be submitted.

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[29] ALB: Article 58, detailed provisions for oral submissions in Article 63; XKV: Article 73; MKD: Article 39; MNE: Article 59 (3); SRB: Article 60 (2).

[30] ALB: Article 58 and 62; XKV: Article 73; MNE: Article 59/2 and 60; MKD: Article 39; SRB: Article 59 and 60 (2).

[31] Article 62 (5).

[32] OECD (2018), Legal Commentary by SIGMA on the Code of Administrative Procedures on the Republic of Albania, OECD, Paris, http://sigmaweb.org/publications/Legal-Commentary-by-SIGMA-on-the-Code-of-Administrative-Procedures-of-the-Republic-of-Albania-April-2018-edition.pdf.

[33] Article 15.

[34] XKV: Article 75; MKD: Article 40 (7); MNE: Article 62 (1); SRB: Article 62.

The relevant sublegal act does lay out the main documents to be submitted with the application, but not the content of the application form itself. If an application form is not available, the applicants may not be ready to provide all the necessary information for a successful submission, which may entail multiple visits to the competent authority. This can be avoided if the form is available online.

Another potential contradiction with the principle of legality is evident in the requirements for the application for the construction permit in Kosovo. The Law on Construction stipulates an exhaustive list of annexes to be attached to the application form, but the sublegal act appears to require additional documents that are not provided for by the law (including copies of professional licences of those who prepared the project)[35]. Based on information provided by the officials conducting the procedure in the municipality of Pristina, the copies of licences are not required in practice, although copies of university diplomas are (and these are also not listed in the law).

In all WB administrations' construction permit procedures, the applicant has the right to correct or complete a formally incomplete application without irreversible consequences. In Montenegro, where the LAP ensures this right in the absence of any relevant provisions in the special legislation, the deadline of eight days for submitting the correction has been established in administrative practice (the deadline is not regulated by the LAP). In Albania, Kosovo and North Macedonia, this right is determined by the special law, along with the deadline, without any deviations from the general principles set by the LAPs.

Table 1.3. Deadlines for correction of formally deficient applications

	Building permit	Social benefits
Albania	15 days (special legislation), no deadline in LAP	Not applicable, incomplete application not accepted without written explanation
Kosovo	8 days (special legislation), no deadline in LAP	Not possible, incomplete application not accepted
Montenegro	Not regulated – 8 days in practice (according to samples)	LAP applies, deadline of 8-10 days in practice (according to interviews)
North Macedonia	15 days (special legislation and LAP)	Not regulated in special legislation, 8 to15 days are given in practice (LAP stipulates 15 days)
Serbia	Not possible to correct, 30 days for submitting a new request without additional cost (special legislation)	Within 8 days, LAP applies

Source: The laws and secondary legislation establishing the requirements for the special procedures, as well as the LAPs.

In Serbia, the special law regulates the matter differently from the LAP, since it does not allow the applicant to correct a deficient application[36]. Such an application is rejected outright, but the applicant retains the right to submit a revised application within 30 days at no additional cost. Usually, the outcome can be the same, but in borderline situations (e.g. if the requirements for the application have been tightened during the 30-day period and the new application needs to be submitted according to the new rules), the rejection may have additional negative consequences for the applicant, quite apart from needing to pay the fees for a second time. In any case, it is difficult to recognise the necessity for this deviation (as well as the special arrangements foreseen in the special legislation of Albania, Kosovo and North Macedonia) from the general arrangements set by the LAP.

In social benefit procedures, applications are usually submitted in person at the office of the competent authority. The general provisions of the LAPs that apply in Montenegro, North Macedonia and Serbia allow for correction of errors and resubmission of the request. As an example of good practice, the officials of the Centre for Social Work in North Macedonia are planning an additional initiative in co-operation with the

[35] See form in Annex 2 to Administrative Instruction 06/2017 and Law on Construction, Article 20 (3).

[36] Rulebook on the Procedure for Implementing the Unified Procedure Electronically, Article 18 (1).

Association of Young Lawyers, where young lawyers assist the applicants in filling out the forms and providing the necessary documentation.

On the other hand, in Albania and Kosovo, the consequences of submitting an incomplete application and the possibilities for correcting it are not clear. In Kosovo, the sublegal act stipulates that an officer "should not accept an incomplete application"[37], without clarifying if this has to be formulated with an administrative act. However, according to additional information provided by the authorities, it usually is. In addition, the officials explained that they always try to assist the applicant as far as possible to correct the errors, before deciding to return the application with explanations. In Albania, the special legislation does not regulate the issue, but according to practice, an incomplete application is simply not accepted without the clear obligation to state the reasons in written form (following the verbatim interpretation of the LAP). This can complicate any subsequent correction attempts and prevent the effective use of legal remedies. While in-person submission can be the preferred mode of ensuring acceptable submissions, any deficiencies that cannot be corrected by the applicant on the spot should be formulated in writing, to ensure consistency in the behaviour of the administration and to protect the rights of the applicant.

Application of the right to rectify deficiencies in submissions

	Construction permit	Social benefit	VAT audit
Albania	✓		Not applicable
Kosovo*	✓	✓	Not applicable
Montenegro	✓	✓	Not applicable
North Macedonia	✓	✓	Not applicable
Serbia	✓	✓	Not applicable

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. The analysed element is "not applicable", if in the particular procedure, the element is not relevant or cannot be applied.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- In the majority of reviewed procedures, the requirements from special legislation or actual practice for dealing with incomplete submissions do not deviate from the respective LAPs and comply with good administrative behaviour.
- However, in Albania and Kosovo, the special legislation leaves room for arbitrary dismissals of social benefit applications, and this seems to be the case in practice in Albania as well.

Possibility of electronic communication

Electronic communication as regulated in the LAPs

The OECD Recommendation of the Council on Digital Government Strategies highlights the importance of general and sector-specific legal and regulatory frameworks in allowing digital opportunities to be

[37] Administrative Instruction No. 04/2013 on the Procedures for Submitting Applications for Social Assistance of 2013, Article 6.

seized[38]. All WB LAPs allow for and promote electronic communication between administrative authorities and the parties to the proceeding. In Albania and North Macedonia, this has been elevated to the status of a basic principle[39]. According to the LAPs, electronic communication is not mandatory, but it usually depends on the consent of the party of the proceedings, unless electronic communication is explicitly foreseen as the main form under the special laws. Here also, North Macedonia's LAP goes further than the others, since it mandates that all correspondence between administrative authorities be mandatorily in electronic form[40]. The LAPs usually do not comprehensively regulate all issues related to electronic communication, including issues related to electronic signatures, the details related to electronic delivery, etc., but leave this to be regulated by special laws covering electronic communication and e-governance in general. Electronic communication, according to most LAPs, does not necessarily presuppose the use of electronic signatures, simple communication by e-mail is also possible, if the sender and the request can be uniquely identified[41], but special laws can establish additional requirements. The LAPs expressly mandate the obligation of the administration to send electronic confirmation of the receipt of online submissions[42].

However, upon more detailed review of the laws, it becomes apparent that in Albania and Kosovo, the implementation of electronic communication in administrative proceedings as provided for by the LAPs depends on the Government decision, which in both cases has not been adopted yet[43]. In Montenegro, the participant in the proceeding can in principle require that all documents be delivered to him or her electronically, but the administrative authority is bound by such requests only if it has the technical capacity for such a delivery method[44].

Possibility of electronic communication according to special legislation and practice

The use of electronic communication in administrative procedures varies from administration to administration and from procedure to procedure. The most advanced in this regard is the online construction permit procedure in Albania, North Macedonia and Serbia. These three administrations use information systems that cover the procedure from submission to adoption of the administrative act. In Albania and North Macedonia, electronic communication is obligatory when applying for a construction permit, while in Serbia, paper-based submission is also allowed. In Montenegro, the special legislation foresees a similar electronic process, but it is not yet fully operational. (According to the authorities, however, the extent of electronic communication through e-mails has increased during the recent COVID-19 crisis). In Kosovo's construction permit procedure, all communication is paper based. The special legislation provides for submission of a digital copy of the schematic design, together with three hard copies. This indicates there is no electronic communication within the administration (or the relevant authorities to be consulted) in conducting the administrative procedure.

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[38] OECD (2014), Recommendation of the Council on Digital Government Strategies, OECD, Paris, https://www.oecd.org/gov/digital-government/Recommendation-digital-government-strategies.pdf.

[39] See ALB: Article 10 (2); MKD: Article 17 (2).

[40] Article 37 (4).

[41] ALB: Article 58 (3); XKV: Art 73 (2), MKD: Article 39 (2); MNE: Article 59 (2). Possible methods of unique identification without electronic signature can include electronic submission of scanned documents signed on paper. In addition, the communication can be conducted by e-mail without signatures, if, with the first submission, the applicant indicates a preference for using a personal e-mail address.

[42] ALB: Article 59 (7); XKV: Article 76 (4); MNE: Article 63 (2); MKD: Article 41 (4); SRB: Article 61 (2).

[43] ALB: Article 59 (7); XKV: Article 158.

[44] See Article 83 (1).

In most administrations, until recent developments caused by the COVID-19 pandemic, the application for social benefit was predominantly submitted in person, which, by default, meant paper-based communication. That is true even in Albania and Montenegro, where advanced information systems support the entire procedure. The application documents are still scanned and entered into the system by the official responsible when these are submitted by the applicant. If it were possible to submit applications electronically directly into the systems, the administration would be relieved of some of the workload associated with data entry and the submission would be less time-consuming for the applicant. As a result of social-distancing rules intended to prevent the spread of COVID-19, administrations have allowed other forms of submission, in addition to in-person submission. For example, the Albanian Ministry of Health and Social Protection ordered that during the pandemic, applications for economic assistance should be made exclusively either electronically or through the postal service[45]. The application of this somewhat inflexible rule proved problematic and was later amended to include in-person submission. An innovative approach towards authenticating the applicant of an electronic submission – in the absence of an electronic signature – was used in the Kosovo social benefit procedure during the pandemic. Applicants were required to submit a scan of their ID card with the application, when applying for the benefit electronically, and more than 700 families took advantage of this possibility.

The special legislation regulating the VAT audit procedure – with minor exceptions – allows for electronic communication – or at least does not contain any significant obstacles for electronic communication at the basic level. In Albania, the consent of the taxpayer for electronic communication is explicitly required by the Law on Tax Procedure. In Serbia, the law requires that each page of the minutes of the tax control be signed, indicating that at best, electronic communication can occur through scanning and e-mailing of the paper-based documents. The legal framework does not fully support the use of electronic signatures and communication through the portals used by the taxpayers to submit regular tax reports or similar. The second-instance authority for Kosovo tax procedures only accepts appeals on paper, because the special legislation does not allow the submission of the appeal electronically. This offers another example of the importance of reviewing special legislation to ensure consistent LAP implementation.

Actual application of electronic communication is a problem in the majority of administrative procedures (and not only in those analysed in detail here). According to the annual report on the implementation of the LAP in Montenegro in 2019, the rollout of electronic communication between administrative bodies and participants of the proceedings has not made sufficient progress[46]. Throughout the region, uptake of the infrastructure necessary for full electronic communication, including digital signatures, is lacking or limited. Kosovo does not use digital or electronic signatures. These exist in Albania, but the administrative fees associated with setting up the preconditions for using electronic signatures can be as much as EUR 150 (LEK 18 500). Only 5 493 certificates were issued by the National Information Society Agency in 2019. The high cost was for long an obstacle in Montenegro, where the cost of the certificate issued by the postal offices is EUR 110, and only approximately 30 000 certificates have been issued since 2010. From June 2020, the Ministry of Interior has provided the necessary certificate free of charge, in the form of a chip that is part of the ID card and nearly 70 000 certificates were issued in 2020 alone. Serbia's Ministry of the Interior provides a similar service free of charge, but the related software applications are reportedly more cumbersome to use than those from the other service providers that charge a fee[47]. In addition to problems with the uptake of digital signatures, the absence of uniform standards for electronic communication with the state, and the lack of a co-ordinated approach for online office operations in public authorities, were

[45] Order No. 213, dated 31 March 2020, "On taking measures to prevent COVID-2019 infection of applicants for economic assistance".

[46] https://mju.gov.me/ResourceManager/FileDownload.aspx?rid=407476&rType=2&file=Izvjestaj%20o%20postupanju%20u%20upravnim%20stvarima%20za%20period%20od%2001.01.2019-31.12.2019_MC.doc, p. 37.

[47] According to the SIGMA *Serbia Monitoring Report of 2019*, http://sigmaweb.org/publications/Monitoring-Report-2019-Serbia.pdf, p. 42.

referred to as an obstacle in the focus group discussions with representatives of authorities and other stakeholders in the WB.

Application of electronic communication

	Construction permit	Social benefit	VAT audit
Albania	✓		
Kosovo*			
Montenegro			
North Macedonia	✓		
Serbia	✓		

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or rarely occurring discrepancies.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- Electronic communication between the party/applicant and the authority is fully operational only in the construction permit procedure in Albania, North Macedonia and Serbia. In other procedures reviewed, paper-based or even personal communication predominates.
- Special legislation usually does not explicitly exclude the use of electronic communication, but certain provisions indicate that the procedures were predominantly designed and regulated for paper-based transmission (as in the requirement to submit several paper copies in Kosovo's construction permit procedure or the obligation in Serbia to sign every page of an official document in the VAT audit procedure).
- The secondary acts provided for in the LAP to support the implementation of electronic communication in Albania and Kosovo have still not been adopted.
- The high cost of obtaining electronic or digital signatures has been a key obstacle for wider application of electronic communication in Montenegro and is also true of Albania.

Right to be heard and access to the files

Right to be heard and access to the files as regulated in the LAPs

The right to be heard and to have access to an applicant's file is a key element in the right to good administration, according to the Charter on Fundamental Rights of the EU[48], Resolution (77) 31 of the Council of Europe Committee of Ministers[49] and *The Principles of Public Administration*. All WB LAPs establish this right. In Montenegro, North Macedonia and Serbia, it has been elevated to the level of a general principle[50]. The right to be heard includes the rights of the participant in the proceeding to submit

[48] See Article 41 (2).

[49] https://rm.coe.int/16804dec56.

[50] MNE: Article 14; MKD: Article 11; SRB: Article 11.

or propose evidence at any stage of the procedure, to actively participate in the enquiry procedure and to be notified of the outcomes of the procedure and to comment on them before the final decision is taken[51]. The right to be heard does not necessarily mean an oral hearing in front of the authority.

All WB laws contain a non-exhaustive list of grounds for exemptions to the right to be heard, but these generally mirror the grounds established in the legal frameworks of EU Member States. Exemptions are usually applied in the simpler procedures, if the decision can be based exclusively on the data provided by the applicant or data from public registers or if the applicant's request can clearly be granted in full. As all WB LAPs enable the special laws to stipulate specific procedures where these exemptions are to be applied, adherence to the right to be heard depends not only on the LAPs, but possibly even more on the provisions of special laws.

Table 1.4. Exceptions to the right to be heard

	ALB	XKV	MKD	MNE	SRB
Urgency, potential damage to public interest	Art. 89 (1) a	Art. 96 (1), 1.2.		Art. 113 (1), 1	
All information already provided during procedure	Art. 89 (1) b	Art. 96 (1), 1.3.		Art. 106, Art. 111 (1)	Art. 104 (1), 1
Decision entirely in favour of the participant	Art. 89 (1) c	Art. 96 (1), 1.1.	Art. 67 (3)	Art. 113 (1), 2	Art. 104 (1), 2
In public competitive proceedings	Art. 89 (1) c				
Expressly provided in special law	Art. 89 (1) d	Art. 96 (1), 1.4.	Art. 67 (3)	Art. 113 (1), 3	Art. 104 (1), 4

Source: The LAPs of the WB administrations.

Another right that is indispensable for active participation in the procedure and complementary to the right to be heard is the right to access and inspect the files in the case. All WB LAPs ensure full access to the files, and in Kosovo and Montenegro, this right is even elevated to the status of a basic principle[52]. Without exception, any deviation from these rules must be stipulated by a law. In this respect, it is possible to note two distinctly different approaches: the narrower, more tightly regulated and supposedly safer approach limits such exceptions to laws regulating official secrets and personal data[53], while the more general approach refers to laws in general[54], at least theoretically allowing for the possibility of a special procedural law limiting access to case files.

Right to be heard and access to the files according to the special legislation

The special legislation regulating selected procedures does not necessarily need to reconfirm the existence of the right, as stipulated by all WB LAPs, but the actual procedure should not undermine it. The purpose of the following analysis is to determine whether the selected procedures, as regulated by special legislation, allow for the effective use of the right to be heard, in situations where the exemptions provided in the LAPs do not apply.

The application procedure for the social benefit qualifies as one such exception, since the request is based on information provided by the applicant and – in most cases – submitted in person. In such a situation, the right to be heard is ensured automatically, at least as far as formal deficiencies of the application are concerned. On the other hand, if no formal decision is issued on the potential deficiencies, the right to be

[51] See the relevant provisions regulating the right to be heard in WB LAPs: ALB: Articles 47, 78 and 87; XKV: Article 87, 94 and 95; MNE Article 14 and 111-112; MKD Articles 63 and 67, SRB: Articles 65 and 106.

[52] ALB: Article 45; XKV: Article 9 (2); MNE: Articles 16 and 68; MKD: Article 42; SRB: Article 64.

[53] XKV: Article 92 (5); SRB: Article 64 (4).

[54] ALB: Article 46; MNE: Article 16; MKD: Article 43.

heard has no force (see sub-chapter above on the consequences of non-compliance with submission requirements). Interviews with the officials of Montenegro's Centre for Social Work on the right to be heard noted the importance of ensuring a coherent interpretation of the provisions of the LAP by the officials who conduct the procedure. They apply the provisions of the LAP regulating the inquiry procedure, which stipulate the right of the party to make statements on the outcome of the procedure. At the same time, in procedures based on information provided by the party or obtained from public registers, the LAP allows the administration to conduct the summary procedure, where the obligation to hear a party's statements on the outcome of the procedure is not mandatory[55]. This misapplication of the LAP unnecessarily complicates and draws out the processing of social benefit applications. In addition, according to the officials, it is a source of confusion for the applicants, who do not understand why they need to reconfirm the validity of data that they have already provided to the administration.

The construction permit procedure in Albania provides for steps that ensure communication with the applicant during the procedure, which can be used for guaranteeing the right to be heard (while also somewhat prolonging the duration of the procedure). For example, the applicant is required to be informed of the technical evaluation report on the application before the final decision on the application is taken. According to information provided by the competent authorities in Kosovo, in practice they inform the applicant of any obstacles to issuing the construction permit or of any need for corrections before a negative decision is issued. Other administrations do not seem to have a consistent practice of sharing draft negative decisions on construction permits with applicants, to obtain any final comments that may alter the decision (and thereby avoid an unnecessary appeal procedure).

The VAT audit procedure differs from the other two selected procedures in that it is usually initiated on the initiative of the competent authority, and because the participant in the proceeding may possess important information that is not available from public sources, to inform the eventual decision on the issue. Ensuring effective right to be heard before making a decision on whether to request the payment of additional VAT is thus of great importance to the participant in the proceeding. All the special laws provide for the right to comment on the draft audit report or the minutes of the audit (however the document has been defined in the special legislation). In addition to the description of the factual situation uncovered during the audit, this should contain the changes in the calculation of the tax liabilities. However, the deadline for submission of comments has not been clearly stipulated in the special legislation of North Macedonia (8 days in practice). In addition, the deadline provided by the competent authorities in Albania in practice is considerably shorter than the deadline provided for in the relevant secondary legislation (5 days, rather than 15 calendar days[56]), thereby directly undermining the legality of the proceedings. In Montenegro, the deadline for providing the comments is the shortest among all WB administrations (3 days, from delivery minutes). The deadlines stipulated in selected EU Member States are usually longer than in the WB – for example, 10 days in Estonia, 14 days in Austria and Poland, 20 days in Slovenia and 30 days in Portugal.

Based on the information obtained in focus-group discussions, Montenegro's Tax Administration offers two opportunities for the taxpayer to provide comments – 3 days for commenting on the minutes of the audit (which contain the "aggregate amount of the changes determined on tax liabilities," according to the special legislation) and 3 to 8 days to make statements on the outcome of the inquiry procedure (as required by the LAP). As both documents should (or at least could) contain the same information, it should be possible to merge the two stages to increase procedural efficiency, without limiting the right of the taxpayer to be heard. Such examples indicate that even where the harmonisation process between special laws and the LAP has formally been completed, all potential discrepancies or overlaps between the legal acts have not been addressed, and this, together with an overly formalistic interpretation of the provisions, can lead to inefficiencies that are cumbersome both for the administration and for the participants in proceedings.

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[55] See MNE LAP, Article 106.

[56] Instruction No. 24 (2 September 2008) on Tax Procedures in the Republic of Albania, Article 83 (4).

Table 1.5. Deadlines for submission of comments by taxpayers in VAT audit procedures

	Deadline	Calculated based on:
Albania	15 calendar days (special legislation), 5 calendar days in practice	Considered delivery of minutes (LAP)
Kosovo	5 working days (special legislation)	From delivery (LAP and practice)
Montenegro	3 days (special legislation)	Delivery of minutes (special legislation)
North Macedonia	8 days in practice (not stipulated in legislation, confirmed through samples)	Delivery of minutes (LAP)
Serbia	8 calendar days (special legislation)	Delivery of minutes (special legislation)

Source: The laws and secondary legislation establishing the requirements for the special procedure, as well as the LAPs.

Another feature specific to the VAT audit procedure and closely related to the right to be heard is the right to be informed of the upcoming audit. All the special laws stipulate this right, but in Serbia[57], it constitutes a simple notification directly before the start of the audit, with limited possibilities for appeal. In other administrations, taxpayers usually need to be notified 10 to 30 days in advance (exceptionally, in Kosovo, the requirement is at least 3 working days in advance, according to special legislation, and 5 to 7 days in practice), depending on the type of the audit and the size of the taxpayer[58]. The right to access the files of the case is stipulated in the special legislation regulating VAT audits in nearly all WB administrations, in addition to being well established in the LAPs. The only exception where the special legislation does not provide for this right is in Kosovo, where the administration follows the general provisions of the LAP.

Application of the right to be heard

	Construction permit	Social benefit	VAT audit
Albania	✓	✓	
Kosovo*	✓	✓	✓
Montenegro	✓		
North Macedonia	✓	✓	✓
Serbia	✓	✓	✓

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies.

Source: SIGMA analysis of the legal framework and actual practice.

[57] Law on Tax Procedure and Tax Administration, Article 124 (1).

[58] Ten to 30 days in Albania (Article 81 (1) of the Law on Tax Procedures); 15-30 days in Montenegro (Article 77 (1) of the Law on Tax Administration); 2 to 4 weeks in North Macedonia (Law on Tax Procedure, Article 92 (1)). In Kosovo, this is regulated by Administrative Instruction No. 15/2010 for the Implementation of the Law on Tax Administration and Procedures, Article 27 (2).

Key findings

- As a rule, the right to be heard is ensured in the analysed administrative procedures, according to the basic understanding of the right as established in the LAPs. In social benefit procedures, the usual in-person submission and direct communication with the representative of the administration allows the applicant to address any formal deficiencies of the application. In the construction permit procedure in Kosovo, the administration applies the good practice of sharing the draft negative decision before it is issued, to allow the applicant to address the causes.
- In VAT audit procedures, the Albanian Tax Administration allows a considerably shorter deadline for providing comments on the draft audit report than is provided for in the special legislation. This can undermine the effective use of the right to be heard.
- On the other hand, Montenegro's Tax Administration, and its Centre for Social Work, seem to apply the requirements on the right to be heard from the special legislation as well as from the LAP, which unnecessarily complicates and prolongs the procedure, and indicates a need for substantial harmonisation of legislation or for a less formalistic interpretation of the provisions.

Duration of the administrative procedure

Duration of the administrative procedure as regulated in the LAPs

According to the Charter of Fundamental Rights of the EU, every person has the right to have his or her affairs handled "within a reasonable time"[59]. Limiting the maximum duration of an administrative procedure is obviously one of the most efficient tools for ensuring timeliness of the procedure, especially if it is appropriately sanctioned. For example, the European Code of Good Administrative Behaviour stipulates that officials should ensure that a decision on every request or complaint be taken in any case no later than 2 months from the date of receipt[60]. All WB LAPs stipulate the maximum duration of the administrative procedure, with time limits ranging between 30 and 60 days[61]. However, all WB laws also include the possibility of extending the maximum duration of the procedure (e.g. for another 60 days in Albania) and all LAPs allow the special laws to stipulate a different deadline for deciding on the administrative matter. Compliance with the "reasonable time" principle can thus effectively be assessed only during the review of each relevant special legislation.

The practice of EU Member States in establishing the statutory deadline for administrative procedures in the LAP varies. The deadlines range from 1 month in Croatia, Italy, Slovenia and Poland, to 3 months in Portugal and Spain. The deadlines in Croatia, Italy, Poland and Spain can be further extended for more complex cases. However, countries like Austria, Denmark, Germany, France, Netherlands and Estonia have decided not to stipulate a general deadline explicitly in the LAP, given that the complexity of administrative procedures varies widely and a uniform deadline may not be necessary. The EU LAPs only contain instructive deadlines and allow special legislation to stipulate deadlines for specific procedures.

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[59] See Article 41.

[60] See Article 17. The Code is available here: https://www.ombudsman.europa.eu/en/publication/en/3510#/page/1. The Code is adopted by the European Ombudsman and directly applicable to the institutions and civil servants of the EU, but it is based on the case law of the Court of Justice concerning good administration as a general principle of EU law, which also binds the Member States.

[61] ALB: Articles 91 and 140; XKV: Articles 98 and 135; MNE: Articles 114 and 130; MKD: Articles 93 and 112; SRB: Articles 145 and 174.

Table 1.6. Maximum duration of administrative procedure according to the LAPs

	Max duration in first instance, according to LAP	Possibility for an extension	Silent consent	Remedies against administrative silence
Albania	60 days	Yes, up to 60 days	Only if provided by special law	Appeal/administrative dispute
Kosovo	45 days	Yes, up to 45 days	Yes, unless the special law states differently	Appeal/administrative dispute
Montenegro	30 days	Yes, up to 15 days	Only if provided by special law	Appeal/administrative dispute
North Macedonia	30 days	Yes, up to 30 days	No	Appeal/administrative dispute
Serbia	60 for general/30 for summary proceedings	Yes, up to 30 days by the second-instance authority	No	Appeal/administrative dispute

Source: LAPs of the WB administrations.

All WB LAPs provide for the possibility of submitting an appeal to the second-instance authority or to initiate an administrative dispute in case of administrative silence (just as in the case of a negative decision). In addition, in Albania, Kosovo and Montenegro, the LAPs have introduced the concept of silent consent, whereby the applicant's request is automatically approved if the administration fails to make a decision by the statutory deadline[62]. In Albania and Montenegro, this concept can be implemented only if the special law regulating the relevant administrative procedure explicitly allows it (as in Germany, Poland and Portugal, for example). In Kosovo, the opposite principle obtains: the silent consent rule applies in all administrative proceedings, unless the special law has stated otherwise. As silent consent clauses are usually used in relatively specific administrative proceedings (e.g. more straightforward licencing or registration procedures)[63], the introduction of such a concept as the default solution, without ensuring adequate capacity, can be counterproductive, reducing legal clarity for applicants and citizens in general.

Duration of the administrative procedure according to the special legislation and practice

All WB LAPs stipulate the maximum duration of the administrative procedure, ranging from 30 days to 60 days, with the possibility of extending the duration (for another 15 to 60 days). This range is wide, and the complexity of administrative procedures varies, therefore the purpose of the review of selected special administrative procedures under this element is threefold:

1) to determine compliance with the rather general provisions of the LAP of the respective country regarding maximum duration of the procedure;

2) where data is available, to check compliance between the stipulated duration of procedures and actual practice;

3) to compare the duration of the special administrative procedure among the WB administrations and with that of selected European countries.

On the basis of the nature of the selected administrative procedures, the review focused on the construction permit and the social benefit procedures. The maximum duration of the VAT audit procedure is usually not stipulated in legal acts and can depend on various factors. The review identified that in nearly all cases, the duration of the procedure was stipulated in the special law or bylaw and complied with the general requirements established by the LAP. The sole exception was North Macedonia, where the duration allowed for the social benefit procedure (60 days) exceeded the general requirement of the LAP

[62] ALB: Article 97; XKV: Article 100; MNE: Article 117.

[63] For example, see OECD (2006), *Cutting Red Tape: National Strategies for Administrative Simplification*, OECD, Paris, https://www.oecd.org/gov/regulatory-policy/cuttingredtapenationalstrategiesforadministrativesimplification.htm, pp. 76-77.

(30 days). However, the LAP allows the special legislation to deviate in this aspect. Still, given that the two reviewed procedures are similar in nature from administration to administration, the differences in the statutory duration are noteworthy – for construction permits, from 5 days in Serbia to 60 days in Albania; and for social benefits, from 15 days in Montenegro to 60 days in North Macedonia. It is important to note that in Montenegro[64] – due to the specificities of the procedure – the statutory deadline for the construction permit procedure referenced here only covers the process, which is concluded with an administrative act (the approval of the conceptual design). In addition, the applicant is required to obtain the approval of the final design from the licenced service provider.

In North Macedonia, no overall deadline is defined for the construction permit procedure, but rather specific deadlines for individual phases of the procedure apply. As various authorities are involved in these phases, this approach emphasises the individual responsibility of the delaying authority. In addition, the overall duration of the construction permit procedure in North Macedonia also depends on the applicant, who has 15 days to pay the fee for the permit, after the competent authority has reviewed the application and received positive opinions from the other relevant bodies. The statutory deadlines for construction permit procedures in selected EU Member States range from 1 month (e.g. Austria, Estonia, Portugal) to 2 months (Ireland, Slovenia) or 65 days (Poland). The deadlines can be extended in some countries (e.g. Austria, Slovenia) for more complex procedures.

Table 1.7. Statutory deadlines for completion of a procedure

	Construction permit	Social benefit	LAP standard
Albania	60 days	1 month	60 days
Kosovo	30 days	45 days	45 days
Montenegro	15 days (does not include the entire process)	15 days or 30 days (inquiry procedure is needed), incl. delivery; can be extended for another 15 days according to LAP	30 days
North Macedonia	5+5+2+5=17 days, excluding the time allowed for the payment of the fee	60 days	30 days
Serbia	5 days	30 days	30/60 days

Source: The laws and secondary legislation establishing the requirements for the special procedures, as well as the LAPs.

Comprehensive data on actual duration of the relevant procedures was not available for the preparation of this paper. However, according to information provided by the authorities in Kosovo, the actual average duration for the construction permit procedure was 91 days in 2019 (three times the statutory deadline) and 45 days in North Macedonia (also exceeding the statutory total duration for all steps combined, even with the inclusion of the time allowed for the payment of the fee by the applicant). The sample decisions on applications for construction permits from the city of Skopje confirmed this, as none of the four sample applications were resolved within the statutory deadline (the duration of the procedure ranged from 2 to 5 months). In Serbia, the average duration for issuing a construction permit is 9.8 days, according to the information provided by the authorities. This is considerably shorter than in the rest of the region, but longer than stipulated by the special legislation. In focus group discussions, the Albanian authorities reviewing the applications for permits for more complex constructions, where a collegial body decides, also indicated difficulties with complying with the statutory deadline of 60 days. Still, there are positive examples, as in the case of approval for the conceptual design in Montenegro's construction permit procedure (where the 15-day statutory deadline is observed, according to the samples reviewed).

The social benefit applications in Serbia are reviewed "in a few months" on average, according to responses from the authorities, although the statutory deadline is 30 days. The statutory deadline for completing the social benefit procedure, according to the special law in Montenegro, includes the time

[64] Law on Spatial Planning and Construction of Structures, Article 87 (6); Law on Social and Child Protection, Article 82.

needed to deliver the decision. In interviews, the responsible officials indicated difficulties in complying with the deadlines (partly due to the obligation to include the time for delivering the decision).

According to the legal framework (LAP and special laws) in Albania[65] and Kosovo[66], all applications for construction permits of family houses that have not been resolved within the statutory deadline are to be considered tacitly approved. Officials from the municipality of Pristina confirmed that the silent consent rule has proven problematic in the construction permit procedure, due to significant delays in dealing with the applications. An increasing number of applicants have informed the municipality of their intention to start construction without receiving a proper construction permit (since the application is considered tacitly approved). In Albania, the tacit approval rule does not apply for more complex construction permits. Montenegro, where the silent consent rule applies only if specifically provided for in the special legislation, has introduced it only for less complex proceedings (e.g. registration of business organisations, NGOs).

Application of the right to have affairs handled within a reasonable time

	Construction permit	Social benefit	VAT audit
Albania		✓	Not applicable
Kosovo*		✓	Not applicable
Montenegro	✓		Not applicable
North Macedonia		✓	Not applicable
Serbia			Not applicable

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. The analysed element is “not applicable” if, in the particular procedure, the element is not relevant or cannot be applied.

Source: SIGMA analysis of the legal framework and actual practice.

[65] Law 107/2014 on Territorial Planning and Development, Article 27 (3).

[66] Law 04/L-110 on Construction, Article 4 (1.6).

Key findings

- The deadlines for the completion of all reviewed procedures comply with general LAP requirements, except for the social benefit procedure in North Macedonia (where the LAP allows the special law to deviate from the deadlines).
- The statutory duration of the same procedure in different WB administrations differs widely (up to 12 times in construction permit procedures and up to 4 times in social benefit procedures).
- Comprehensive data on the duration of all procedures is not available, which makes it impossible to monitor this crucial element of the effectiveness of the procedure and to introduce appropriate measures in cases of systemic delays. There are several indications that authorities are not consistently able to observe the statutory deadlines.
- The silent consent rule has been introduced in construction permit procedures in Kosovo and for certain construction permits in Albania (as allowed in the respective LAPs and special laws). Due to delays in the adoption of the relevant administrative acts, the application of this rule can lead to the construction of buildings that do not meet the established requirements.

Requirements regarding the content of administrative acts

Requirements regarding the content of administrative acts as regulated in the LAPs

The main mandatory elements of the administrative act, according to Article 41 of the Charter of Fundamental Rights, the European Code of Good Administrative Behaviour, Resolution (77) 31 of the Council of Europe Committee of Ministers and *The Principles of Public Administration* include:

- the grounds/reasons for the decision, including the relevant facts and legal basis (the rationale);
- indication of appeal possibilities, including the relevant bodies and time limits.

All the relevant LAPs not only prescribe a rationale as a mandatory part of an act, but also specify its composition. The same applies for informing citizens of their right to appeal[67]. The laws allow the rationale to be completely or partially omitted in specific cases, e.g. in cases where the request of the applicant is fully granted and there is no party with an opposing interest[68]. The Albanian LAP provides further grounds for omitting the rationale, including for collective administrative acts or if "the body issues an administrative act following the practice followed for the resolution of objectively same cases". The European Code of Good Administrative Behaviour also allows for omitting the rationale and simply sending the standard reply, if a large number of persons are concerned by similar decisions and it is not possible to communicate the grounds for the decision in detail. However, the official should subsequently provide a citizen who expressly requests it with an individual reasoning. The Albania, Kosovo and Montenegro LAPs allow the special laws to provide for additional cases when the rationale is omitted, but under the Montenegrin LAP, such cases should only have the aim of protecting the public interest (the Albanian and Kosovo LAPs do not contain any such restrictions). In summary, all WB LAPs stipulate the following key requirements for the content of administrative acts:

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[67] ALB: Articles 99-100; XKV: Articles 47-48; MNE: Article 22; MKD: Article 88; SRB: Article 141.

[68] ALB: Article 101 (1), b; XKV: Article 49 (1.2); MNE: Article 23 (1-2) (not complete omission, but "summary rationale"); MKD: Article 90; SRB Article 142.

1) the introductory section, which should refer to the legal basis of the administrative act;

2) the rationale behind the decision and the decision itself;

3) and the description of possibilities for appeal (including the competent body, the appeal deadline; and where relevant, clarifications on the suspensive effect of the appeal or its absence).

Requirements regarding the content of administrative acts, according to the special legislation and practice

The purpose of the review of the requirements regarding the content of administrative acts is to check the alignment of the selected special legislation and – where possible – sample administrative acts with the rather universal requirements from the LAPs. It is evident on the basis of the review that in Montenegro, North Macedonia and Serbia, the special laws as a rule do not regulate the content-related requirements of administrative acts, but instead rely on the general provisions of the LAPs. The only exception are the laws regulating tax procedures, including VAT audit, which usually stipulate the requirements that mirror the ones from the LAPs. In Kosovo and especially Albania (the administration with the shortest experience of an LAP), the special laws do contain provisions regulating the contents of administrative acts. Usually, these requirements are aligned with the respective LAP requirements, but there are notable cases of non-alignment. In the Albanian construction permit[69] and social benefit procedures[70], the administrative acts are not required to specify the possibilities for appeal. The reference to legal basis is not required in Albania's construction permits, as well as in Albanian[71] and Kosovar[72] decisions on VAT audits. In addition, the decisions on VAT audits in Kosovo need only include "a brief explanation of the assessment", not a full rationale behind the decision that is usually the basis of a requirement to pay additional tax.

In practice, occasionally even when the specific content-related requirement is not explicitly stipulated in the special legislation, it is still followed in practice (e.g. the VAT audit decisions in Albania and North Macedonia include the reference to legal basis). As a general rule, actual practice complies with the established requirements (either with the LAP or special legislation). The only exceptions include the VAT audit decision in Albania, which does not provide all the required information on appeal possibilities. In addition, some of the sample social benefit decisions from Kosovo refer to appeal deadlines different from those provided for in the special legislation (but which would be aligned to the longer LAP appeal deadlines). Such inconsistencies in formulating administrative acts can create confusion and effectively lead to the loss of right to appeal, if the participants decide to follow the longer appeal deadline but the appeal authority follows the shorter deadline stipulated in the special legislation. Other discrepancies between the requirements and practice include the lack of explanations about the suspensive effect of appeal in procedures, where these would be relevant (e.g. construction permit procedures in Kosovo and North Macedonia. See also the sub-chapter below on "Admissibility of appeals on procedural decisions and consequences of appeal").

The finding – that practice usually complies with established rules – emphasises the need for clear rules on the content of administrative acts that comply with the European standards. These rules can be established in the LAPs and do not necessarily have to be repeated or mirrored in the special legislation. Compliance with requirements does not depend on which legal act stipulates the requirements – the LAP or special legislation. It is, however, important that special legislation does not stipulate requirements that

[69] Decision of the Council of Ministers No. 408, dated 13 May 2015, "On approval of the territorial development regulation."

[70] Decision of the Council of Ministers No. 597, dated 4 September 2019.

[71] Law 9920 of 19 May 2008, "On tax procedures in the Republic of Albania", Article 69.

[72] Law on Tax Administration and Procedures, Article 22 (2).

differ from the LAPs on these universal main requirements (regarding inclusion of legal basis, rationale and appeal possibilities).

Table 1.8. Compliance with LAP requirements in special legislation and samples

Administration	Procedure	Reference to legal basis	Rationale	Appeal possibilities
Albania	Construction permit	Not required, included in sample	Required for negative decisions, included in sample	Not required, includes reference to LAP
	Social benefit	Required and included in sample	Required and included in sample	**Not required, not included in sample**
	VAT audit	Not required, but included in sample	Required and included in sample	**Required, but the appeal organ is not included in sample**
Kosovo	Construction permit	Required and included in sample	Required and included in sample	Required and included in sample
	Social benefit	Not regulated, included in sample	Not regulated, included in sample	**Required, but some samples specify different appeal deadlines from those foreseen in the special legislation**
	VAT audit	Not required, included in sample decision from appeal organ	Only “a brief explanation of the assessment” is required, included in sample decision from appeal organ	Required, included in sample decision from appeal organ
Montenegro	Construction permit	Not regulated, included in sample	Not regulated, included in sample	Not regulated, included in sample
	Social benefit	Not regulated, included in sample	Not regulated, included in sample	Not regulated, included in sample
	VAT audit	Required, included in sample	Required, included in sample	Required, included in sample
North Macedonia	Construction permit	Not regulated, included in sample	Not regulated, included in sample	Not regulated, included in sample
	Social benefit	Not regulated, included in sample	Not regulated, included in sample	Not regulated, included in sample
	VAT audit	Not required, but included in sample	Required and included in sample	Required and included in sample
Serbia	Construction permit	Not regulated, included in sample	Not regulated, included in sample	Not regulated, included in sample
	Social benefit	Not regulated, included in sample	Not regulated, included in sample	Not regulated, included in sample
	VAT audit	Required, included in sample	Required, included in sample	Required, included in sample

Note: “Not required” means that the special legislation does not contain this specific requirement (while other requirements may be stipulated); “not regulated” means that the special legislation does not include any requirements for the content of the administrative act, which usually means that the LAP requirements apply (and all LAPs stipulate the above requirements).

Source: The laws and secondary legislation establishing the requirements for the special procedures as well as the LAPs, sample administrative acts.

The main shortcomings of the substance of administrative acts mentioned in the focus group discussions with the WB officials and representatives of appeal organs, as well as judges, include poor establishment of the factual situation and lack of explanation about why the referenced legal provisions apply to the particular circumstances. Such shortcomings do not indicate problems in the LAP or the special legislation, but can be addressed through systematic and targeted capacity building.

One additional indicator of the importance of the LAP in an administration’s legal framework, and the general awareness of its applicability to all administrative procedures, is whether the administrative acts refer to the LAP as part of the relevant legal basis. On the basis of the samples reviewed, this is the case in the majority of administrations and procedures. The only exceptions, which do not refer to the LAP, include the samples from all three procedures in Albania and North Macedonia.

Application of the mandatory elements of administrative acts

	Construction permit	Social benefit	VAT audit
Albania	✓		
Kosovo*	✓		✓
Montenegro	✓	✓	✓
North Macedonia	✓	✓	✓
Serbia	✓	✓	✓

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- The special legislation in Montenegro, North Macedonia and Serbia either does not regulate the content of administrative acts and relies on the LAP requirements or regulates the matter in a manner aligned with the LAP.
- The Kosovo and Albania special legislation usually stipulates the requirements, but not in full compliance with the LAP (in Albania, administrative acts for the social benefit and construction permits are not required to contain information on appeal possibilities, and in Kosovo, the VAT audit administrative act can omit the legal basis).
- In practice, the sample administrative acts analysed usually contain the main components, as required by LAPs or special legislation. The only exceptions include the social benefit and VAT audit administrative acts in Albania (which partially or in full omit references to appeal possibilities) and the social benefit administrative act in Kosovo (where different appeal deadlines are described from those in special legislation).
- Key shortcomings in the substance of administrative acts according to the appeal organs and judges include poor establishment of the factual situation and linking it to the relevant provisions of the legal framework.

Delegation of decision making within administrative authorities

Delegation of decision making as regulated in the LAPs

Delegation of decision making is usually not explicitly stipulated among the main principles of good administrative behaviour in the relevant European codes and charters. It deals with the internal functioning of the administration and not directly with the rights of citizens. The concept behind the delegation of decision making is that it need not always be the head of the responsible institution that is taking (i.e. signing) the decisions in the individual administrative proceedings. Instead, it may be the official who conducted the procedure or an immediate superior (e.g. a head of department). The right level of delegation of responsibility and decision-making authority is thus associated with a higher level of efficiency

and effectiveness in an organisation[73]. Delegation of authority to the relevant level can thus contribute to the efficient and effective functioning of the administration in dealing with administrative matters. Promoting delegation of decision making has also been listed as one of the goals or novelties of new LAPs[74], which justifies a review of the implementation of this concept, as part of the comparative analysis on implementation of the LAPs.

To allow for efficient, flexible organisation of work, nearly all the LAPs allow delegation of decision-making authority to the appropriate level in the responsible institution. In North Macedonia, this has even been elevated to a general principle[75]. As the sole exception, the Albanian LAP allows internal acts to further delegate the authority to conduct the procedure, while the authority to make decisions and sign administrative acts can only be derived from laws or bylaws[76]. In other administrations, the official authorised to make decisions can be designated by the acts of internal organisation of an authority or by the head of this authority[77]. The acts of internal organisation would seem to be the preferred tool for delegation, compared with *ad hoc* decisions by the head of the authority, allowing for the delegation of authority to be approached systematically, rather than by individual decisions. In acts of internal organisation, the delegation of authority would always be linked to a specific position, rather than to a person. Finally, *ad hoc* decisions can be more easily revoked, e.g. in cases where the responsible official does not follow instructions from above, which can effectively render the purpose of delegation meaningless. *Ad hoc* decisions on delegation of decision making may not always be publicly available, which, under the LAPs in Albania, Kosovo and Serbia, is a key requirement[78].

Delegation of decision making according to the special legislation and practice

Despite the adoption of the LAPs, which in most WB administrations provide for delegation of decision making from the head of the institution to other officials in an institution, in practice the delegation of decision making is still the exception, rather than the norm. Only in construction permit procedures in Kosovo[79], Montenegro and Serbia, VAT audit decisions in Montenegro, as well as in the social benefit procedures in North Macedonia, has the head of the responsible institution (municipality, regional social service/work centre, regional tax office) been relieved of the duty of signing the individual administrative acts. In all other procedures, the head of the institution still signs the decision, even if – quite logically – the procedure has been conducted by another official.

[73] Klaas, K., L. Marcinkowski and M. Lazarević (2018), "Managerial accountability in the Western Balkans: A comparative analysis of the barriers and opportunities faced by senior managers in delivering policy objectives", *SIGMA Papers*, No. 58, OECD Publishing, Paris, https://doi.org/10.1787/88be2112-en, p. 34.

[74] According to the explanatory memorandums of the Montenegrin and North Macedonian laws.

[75] Article 13.

[76] Article 43 (3) and (4).

[77] XKV: Articles 26-27; MNE: Article 46; MKD: Article 24; SRB: Article 39.

[78] ALB: Article 43 (2); XKV: Article 26 (2); SRB: Article 39 (4).

[79] While the fact of delegation of decision making is a positive example in itself, the act that empowers the Directorate of Urbanism to adopt construction permits in Pristina is not publicly available, as required by the Kosovo LAP.

Table 1.9. Delegation of decision-making authority in selected administrative procedures

	Construction permit	Social benefit	VAT audit
Albania	Not delegated, the mayor decides	Not delegated, the regional director of the State Social Service decides	Not delegated, the director of the Regional Tax Directorate decides
Kosovo	Delegated, the head of the Directorate of Urbanism in Pristina decides	Not delegated, the head of the Centre for Social Work decides	Not delegated, the director of the Regional Tax Directorate decides
Montenegro	Delegated, the city architect of Podgorica decides	Not delegated, the director of the Centre of Social Work decides	Delegated, the tax inspector, the person authorised to conduct the procedure, decides
North Macedonia	Not delegated, the mayor decides	Delegated, the official mandated by the director of the Social Welfare Centre decides	Not delegated, the head of the Regional Tax Directorate decides
Serbia	Delegated, the head of Department for Construction and Communal Affairs decides	Not delegated, the head of Centre for Social Work decides	Not delegated, Director of the Regional Tax Office decides

Source: The laws and secondary legislation establishing the requirements for special procedures, as well as sample administrative acts.

Challenges with the implementation of the concept of delegation of decision making have been noted in the annual reports on the implementation of the LAP in Montenegro[80]. Promotion of managerial accountability is one of the objectives of Montenegro's Public Administration Reform Strategy, but according to the most recent report on the implementation of the strategy, the share of the ministries that formally delegate responsibilities and authorities for decision making to the managers of organisational units was 12% in 2019, compared to 22% in 2016 (before the LAP took effect)[81]. The situation has also deteriorated in Albania, according to the SIGMA *Monitoring Report of 2019*[82]. One of the reasons for limited delegation of decision making mentioned in the focus group discussions in Montenegro referred to the lack of alignment between legislation regulating this area, most notably with the Law on Prevention of Corruption. According to Article 102 of that law, the head of authority can be fined up to EUR 2 000 for numerous violations, including situations where a subordinate official makes a decision on behalf of private interests, and the head of authority fails to abrogate it. In such circumstances, it is safer and potentially less costly for the head of the authority to retain the decision-making power.

[80] See p. 36 of the 2019 report, available here: https://mju.gov.me/ResourceManager/FileDownload.aspx?rid=407476&rType=2&file=Izvjestaj%20o%20postupanju%20u%20upravnim%20stvarima%20za%20period%20od%2001.01.2019-31.12.2019_MC.doc.

[81] See p. 24 of the report: https://srju.gov.me/ResourceManager/FileDownload.aspx?rId=408836&rType=2.

[82] See p. 28 of the report: http://sigmaweb.org/publications/Monitoring-Report-2019-Albania.pdf. The value for the sub-indicator "Delegation of decision-making authority within ministries" has decreased from 1/4 in 2017 to 0/4 in 2019.

Application of delegation of decision making

	Construction permit	Social benefit	VAT audit
Albania			
Kosovo*	✓		
Montenegro	✓		✓
North Macedonia		✓	
Serbia	✓		

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- Despite the emphasis on the delegation of decision-making authority in nearly all WB LAPs, it has been implemented only in the construction permit procedures of Kosovo, Montenegro and Serbia, the VAT audit procedure in Montenegro, and in social benefit procedures of North Macedonia.
- In all other procedures, the head of the authority responsible formally makes the decisions (i.e. signs the administrative act), even if the entire procedure has been conducted by another official.
- Challenges in the implementation of delegation of decision making at ministerial level in general, including in other administrative procedures, are also evident from other sources, e.g. reports on the implementation of Public Administration Reform Strategies.

The balance between legal certainty and legality

The balance between legal certainty and legality as regulated in the LAPs

According to the Principles of Public Administration, the procedural rules regulating the amendment, suspension and repeal of an administrative act should guarantee a fair balance between the public interest and the legitimate expectations of the individual. Historically, the administrative law in all the WBs favoured legality and protection of the public interest over legal certainty for the parties to procedures. This gave administrative bodies numerous opportunities to alter, revoke or nullify previously adopted decisions, regardless of the will of the parties, the finality of the decisions and in some cases, even regardless of their legality. An excess of poorly defined possibilities for *ex officio* interventions ("extraordinary legal remedies" in Yugoslav legal tradition), limiting legal certainty, were therefore recognised as an important problem of the region's earlier LAPs[83].

Righting this situation was a focus of the new LAPs, and some improvement has been noted. In nearly all the LAPs, the respective legal instruments are no longer classified as "legal remedies" and are

[83] For a detailed analysis and recommendations see: *Legal Remedies in Administrative Procedures in Western Balkans*, ReSPA (Regional School of Public Administration), Danilovgrad, Republic of Montenegro, 2016, pp. 111-132.

considerably fewer in number[84]. In all the analysed jurisdictions, the *ex officio* interventions to existing administrative acts are concluded in the form of a regular administrative decision. They are thus subject to legal remedies, like any other decisions issued by the respective body, whether on appeal or in an administrative dispute (in cases of second-instance bodies). In North Macedonia and Serbia, this is even stipulated in an explicit legal provision. As the right to appeal and the right to judicial review have been established in all of the jurisdictions, the legal protection against *ex officio* interventions can be considered adequate. Most of the laws under review[85] differentiate between the grounds for annulling and revoking lawful as well as unlawful decisions, albeit using different nomenclature and systematics.

As a rule, the grounds for annulment or revocation of a **lawful** administrative decision *ex officio* are strictly limited, for example, in cases where the party has not fulfilled its obligation, to eliminate serious harm to life or public safety or upon the request of the party. By way of example, the Serbian LAP limits the reasons for annulment or repeal either to extraordinary circumstances (e.g. to eliminate a serious and immediate threat to life and health and public safety, public peace and public order) or to the will of the parties[86]. The only major deviation from this trend can be found in the Kosovo LAP, which permits revocation of a lawful decision "because of the change of factual or legal situation or circumstances, or because of other reasons provided by law"[87]. This solution is not only incompatible with the concept of finality, but also completely open-ended, potentially leaving room to expand the reasons in other laws. The laws provide for the reimbursement of payments and contributions, including compensation of damages, in case of the revocation or annulment of a lawful administrative act. Limiting the options for *ex officio* reopening of the lawful decisions was also one of the specific goals of the new laws.

Grounds for annulment of an **unlawful** administrative act are wider, especially in Albania and Kosovo, including any defects of procedure and form. The respective laws do state that the administrative authority has discretion in deciding whether to annul or revoke an unlawful act (i.e. it is not automatic), but do not provide much guidance for the administration on how to exercise discretion in such matters (e.g. that only defects in procedure and form that have influenced the decision substantively should lead to annulment[88]). The North Macedonian LAP does not differentiate between the revocation of a lawful and an unlawful act, but at the same time, it is the most restrictive and methodologically consequent of all the laws under review in stipulating the reasons for it.

All the jurisdictions retain the concept of an "**absolutely null and void**" administrative act, reminiscent of the German concept of *Nichtigkeit* (albeit under different names) meaning that the act is burdened with such grave legal defects that it should be considered essentially non-existent[89]. However, in the departure from the strictly limited and sharply defined original concept, most[90] of the laws include either widely defined or numerous grounds for the administrative act to be null and void, diluting the absolute nature of this institution, probably in an attempt to compensate for the breadth of the former "extraordinary legal remedies". While most laws stipulate the list of grounds to be exhaustive, the Albanian LAP allows other laws to add additional grounds. The time limits for annulment or revocation of a decision vary widely, partly

[84] The exceptions are Kosovo and North Macedonia, where reopening of the procedure is still considered to be an exceptional legal remedy. XKV: Article 124 (4); MKD: Article 104 (2).

[85] ALB: Articles 109, 113; XKV: Articles 52-57; MNE: Article 140; SRB: Articles 183-184. MKD does not differentiate between revocation/annulment of lawful and unlawful acts: Articles 122-124.

[86] MKD: Article 122-123; SRB: Article 184.

[87] Article 57/1.

[88] See Germany's Administrative Procedure Act (*Verwaltungsverfahrensgesetz,* VwVfG), Article 46.

[89] ALB: Article 108; XKV: Article 54; MNE: Article 139; MKD: Article 124; SRB: Article 183.

[90] Except MKD: Article 124.

depending on the nature of the legal defect causing the intervention. The range is from 30 days to indefinite in the case of “absolutely null and void” acts.

In general, the new LAPs have introduced a more restrictive approach than their predecessors to *ex officio* reopening, annulment and revocation of the administrative acts. However, as the laws have at the same time considerable expanded the grounds for nullity and left the door open for special laws to further regulate the grounds and the procedure for reopening or for nullity[91], the impact of the reforms can only be analysed at the level of special legislation and procedures.

The balance between legal certainty and legality according to the special legislation

The three administrative procedures under review are slightly different in nature when identifying the right balance between legality and legal certainty, as well as regarding the need for reopening of procedures. In the construction permit procedure and the VAT audit procedure, the factual situation should not usually change considerably over time, in order to justify frequent reopening of administrative procedures (unless the administration was not aware of certain facts of the case at the time the decision was determined). When an applicant has been awarded a construction permit, the legitimate expectation of the applicant is that it will not be revoked (unless the applicant fails to fulfil certain known obligations). The costs associated with such uncertainty will otherwise act as a deterrent to developers and hamper economic growth. However, the grounds for awarding social benefits can frequently change (e.g. applicants’ economic situation may improve or they may find a job), which can lead to a legitimate need to reconsider a prior decision.

In general, the legislation regulating the special administrative procedures as well as the practice, reflects the particularity of these factors. Responses from authorities indicated that reopening a closed administrative procedure most often occurs in social benefit procedures, due to changes in the factual situation. Serbia’s Law on Social Protection[92] goes even further, where the second-instance body has been granted a wide right of “revision” (enabling the decision to be repealed or revoked), which does not derive from the LAP and appears to be formulated rather vaguely (i.e. is not linked to changes in the factual situation). No information was provided on actual practice during the drafting of this analysis. In other procedures, the grounds for reopening are limited. For example, decisions in North Macedonia’s VAT audit procedure can only be modified or abolished when all five clearly formulated conditions occur (including the consent of the taxpayer)[93]. The special laws also do not limit the legal protection against decisions made as result of reopening the procedures – all such decisions are subject to administrative appeal and/or judicial review.

According to information from Montenegro’s Tax Administration, the provisions of the new LAP have created an obstacle to conducting their work, since reopening a procedure is now only possible upon the request of the party. At the same time, new evidence may emerge that requires reassessment of the tax obligations established earlier, which, under the new LAP, appears to be impossible. Still, if in light of the new evidence it is apparent that the taxpayer has omitted to provide certain information and has misled the administration, it should be possible to cancel such an administrative act as unlawful under Article 140 of the LAP. The fact that such issues arise in discussions more than three years after the LAP took effect indicate that additional capacity building and roundtable discussions are necessary, with the involvement of the authors of the LAP and the authorities implementing the administrative procedures.

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[91] ALB: Article 108 (1) ç 113 (1); XKV: Article 53 (1); SRB: Article 184 (1) 3.

[92] Law on Social Protection, Article 104.

[93] Law on Tax Procedure, Article 82 (2).

Application of the requirement for avoiding excessive options for reopening of a procedure

	Construction permit	Social benefit	VAT audit
Albania	✓	✓	✓
Kosovo*	✓	✓	✓
Montenegro	✓	✓	✓
North Macedonia	✓	✓	✓
Serbia	✓		✓

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- The options for reopening closed administrative proceedings in the reviewed sample procedures are usually aligned with the ones foreseen in the LAPs.
- Only in Serbia's social benefit procedure does the second-instance authority have wide rights for revising the first-instance decision after audits that can be conducted ex officio, and the grounds for initiating the audit are not regulated.
- Still, in all procedures administrative acts issued as a result of the reopening are subject to the same legal protection as any other administrative act.

Functioning of the appeal process

The right to appeal – either to superior administrative authority or the judiciary – is an important precondition for any effective administrative process[94]. The significance of swift access to appeal procedures and their fast resolution for ensuring administrative integrity and promoting business growth has been highlighted by the OECD Recommendation on Regulatory Policy and Governance[95]. All the LAPs provide for the right to appeal to a superior administrative authority[96]. The effectiveness of the right to appeal depends on numerous elements of the legal framework, as well as on actual practice. The following key elements are reviewed as part of this analysis: 1) the deadline for submitting the appeal and the principles for its calculation; 2) the admissibility of appeals on procedural decisions and the consequences of appeal; 3) the impact of procedural errors on the appeal process; 4) the mandate of the second-instance authority; and 5) the maximum duration of the appeal process.

[94] CoE Recommendation (2007)7, Article 22.

[95] OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD, Paris, https://www.oecd.org/gov/regulatory-policy/49990817.pdf.

[96] ALB: Article 130; XKV: Article 125; MNE: Article 119; MKD: Article 105; SRB: Article 151.

Deadline for submitting an appeal and principles for its calculation, as regulated in the LAPs

One of the preconditions for exercising an effective right to appeal is that adequate time must be allowed to submit the appeal, after the recipient of the administrative act has learned of its contents. All the WB LAPs stipulate the starting point for calculating the deadline for submission of the appeal as the time of a formal notification[97]. The deadline in Albania and Kosovo (where also the deadlines for the administration for completing the procedure were slightly longer) is 30 days from notification, with 15 days in Montenegro, North Macedonia and Serbia. The LAPs in the latter three administrations allow the special laws to prescribe different deadlines, but – in combination with the general principle that the special laws should not decrease the level of protection to the parties and as explicitly stipulated in the North Macedonian law – these should not be shorter than the one in the respective LAP. The WB appeal deadlines are in general compliance with the deadlines in EU Member States – the deadline for submitting an administrative appeal is 2 weeks in Denmark and Poland, 15 days in Portugal, 30 days in Estonia and 6 weeks in the Netherlands.

The adequacy of the appeal deadline also depends upon how the fact and exact moment of being notified of the administrative act is determined. All LAPs contain comprehensive descriptions of the different possibilities for notifying parties of proceedings and for delivering documents to them, including personal delivery, delivery through a third party (e.g. relative), by post (registered and standard mail), public notification and through electronic means[98]. The laws stipulate the general conditions regarding the timeframes during which documents can be personally delivered (e.g. working days, not during the night) and when the interested parties can be considered to be notified in case personal delivery is not possible. In Albania and Kosovo, the laws even seem to over-regulate some aspects, by stipulating rules governing how to determine the moment when documents sent by registered mail should be considered delivered (while using registered mail should make it possible to determine the actual moment of delivery without additional rules or interpretations). Montenegrin and Serbian LAPs are explicit in requiring that personal delivery in case of a non-extendable deadline (e.g. deadline for appeal) depends on the exact moment of delivery[99]. This should mean that as a rule, final administrative acts are delivered in person or with registered mail. All LAPs allow the participant to contest the fact or moment of delivery initially determined by the administration.

Deadline for submitting an appeal, and its calculation according to special legislation

Under the WB LAPs, the special laws can establish different deadlines for the submission of appeals (from the ones stipulated in the LAPs), but they should not decrease the level of protection for the parties, that is, the different deadlines may not be shorter.

[97] ALB: Article 132 (1); XKV: Article 127; MNE: Article 121 (4); MKD: Article 106 (1); SRB: Article 153 (1).

[98] ALB: Article 155-163; XKV: Article 108-123; MNE: Article 70-87; MKD: Article 69-86; SRB: Article 66-78.

[99] MNE: Article 84 (1); SRB: Article 75 (1).

Table 1.10. Deadlines for submitting the appeal in selected special procedures

Administration	Construction permit	Social benefit	VAT audit
Albania	Not regulated, 30 days from LAP apply	20 days vs. 30 days in LAP	30 days (same as LAP)
Kosovo	30 days (reference to LAP)	5 days vs. 30 days in LAP	30 days (same as LAP)
Montenegro	Not regulated, 15 days from LAP apply	Not regulated, 15 days from LAP apply	Not regulated, 15 days from LAP apply
North Macedonia	15 days (same as LAP)	15 days (same as LAP)	No appeal within administration, 30 days to submit complaint to court
Serbia	8 days vs. 15 days in LAP	Not regulated, 15 days from LAP apply	15 days (same as LAP)

Source: The laws and secondary legislation establishing the requirements for the special procedures.

As is evident, the special legislation usually stipulates the same deadlines for the submission of appeal as the LAPs, or alternatively, does not regulate the matter, in which case the LAP provisions apply. There are, however, three notable exceptions that stipulate shorter appeal deadlines than the ones stipulated in the LAP: the social benefit procedures in Albania[100] and Kosovo[101] and the construction permit procedure in Serbia[102]. In all three cases, the existence of an effective right to appeal – as provided for in the LAP – is thus undermined by the special legislation and practice. The social benefit procedure in Kosovo requires some additional attention, as the respective special legislation provides for a mandatory two-step appeal process within the administration and the party to the proceedings has only 5 days to submit the first appeal request to the head of the Social Assistance Scheme (as compared with a 30-day appeal deadline in the LAP). After this review, the applicant can submit an appeal to the Complaint Commission at the Ministry for Labour and Social Welfare within 15 days of receiving the decision of the instance of first appeal. However, if the request to the appeal of first instance is not submitted within 5 days, the party may not turn to the second-instance appeal body in the administration, and the administrative act becomes final. A similar two-step appeal process applies in the Albanian social benefit procedure, but the appeal deadlines are slightly longer (20 days, which is still shorter than the LAP appeal deadline). In addition, some sample decisions of the Kosovo social benefit procedure also refer to a 30-day appeal deadline for the appeal of first instance, but not consistently (some still include the 5-day deadline). The practice is thus inconsistent and does not comply with either the special legislation or the LAP.

The appeal deadlines are calculated from the date on which the applicant is notified of the decision, or the date on which the decision is delivered to the participant in the proceeding. Even in Albania[103] and Kosovo's[104] VAT audit procedures, where the special legislation is somewhat ambiguous about the type of delivery method or the starting point for calculating the deadline (the date of the decision or estimated delivery of the decision), in practice, the deadlines are calculated upon the actual delivery, which is usually personal or by registered mail, according to the responses from authorities.

[100] Law 57/2019 on Social Assistance, Article 29.

[101] Law on Social Assistance Scheme (as amended by Law No.04/L-096 on amending and supplementing the Law on Social Assistance Scheme), Article 11.

[102] Regulation on the Process of Electronic Implementation of the Integrated Procedure, Article 22 (1).

[103] Tax Procedure Law, Article 106 (3).

[104] Administrative Instruction for the Implementation of the Law on Tax Administration and Procedures, Article 44 (6).

Application of the right to have sufficient time for submission of an appeal

	Construction permit	Social benefit	VAT audit
Albania	✓		✓
Kosovo*	✓		✓
Montenegro	✓	✓	✓
North Macedonia	✓	✓	Not applicable
Serbia		✓	✓

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. The analysed element is "not applicable" if, in the particular procedure, the element is not relevant or cannot be applied.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- The deadlines for the submission of the appeal in the reviewed procedures usually comply with respective LAPs.
- However, the appeal deadlines established in special legislation for the social benefit procedures in Albania and Kosovo, as well as the construction permit procedure in Serbia, are shorter than in the LAP, which can undermine the effective right to appeal and cannot be justified by the specific nature of these procedures.
- Appeal deadlines are calculated from actual delivery of the administrative act.

Admissibility of appeals on procedural decisions and consequences of appeal as regulated in the LAPs

All LAPs allow appeals to be submitted against administrative acts that affect the rights and interests of the appellant (*locus standi*, providing that the right for submitting an appeal exists) as well as against inaction by the administration (administrative silence)[105]. As a novelty, appeals in the form of objections can be filed against actions of the administration (not to be confused with procedural acts, see below). The grounds for appeal are explicitly listed only in the Serbian LAP and are not restrictive[106]. This applies to the reasons for declaring an appeal inadmissible as well. These include the absence of *locus standi*, and a failure to observe the appeal deadline, but in Albania and Kosovo, these reasons can be further expanded by special laws[107].

Historically, WB LAPs have allowed appeals on procedural decisions of the administration that are taken during an administrative procedure before issuing a final administrative act. Numerous procedural appeals were often the causes of delays in the administrative process, without significantly improving protection for the parties involved. To simplify and reduce the duration of the administrative procedures[108], the new LAPs are consequently much more restrictive in this respect. As a rule, all LAPs allow appeals only on final

[105] ALB: Article 128 (3); XKV: Article 125 (1); MNE: Article 119 (1); MKD: Article 104 (1); SRB: Article 151 (3).

[106] Article 158.

[107] ALB: Article 135; XKV: Article 129 (1); MNE: Article 125 (1); MKD: Article 107 (3); SRB: Article 162.

[108] The objective stated in the explanatory note of the North Macedonian LAP.

administrative acts or "material" administrative decisions. However, in Albania and Kosovo, the LAPs explicitly stipulate that special laws can allow appeals on procedural decisions as well, thereby significantly limiting the potential impact of the general law[109]. Serbia's LAP includes numerous grounds for submitting an appeal on procedural decisions; to a limited extent, such exceptions also exist in the North Macedonian law[110]. In this respect, the LAPs are not fully consistent with the overall objective of disallowing appeals on procedural decisions.

In all LAPs, an appeal generally has suspensive effect, although special legislation can of course regulate this differently. The general suspensive effect of the appeal also means that administrative acts cannot usually be enforced until the appeal deadline has passed.

According to the LAPs in Albania and Kosovo, appeals can be submitted both to the authority that made the initial decision (competent authority, first-instance authority) or its superior organ (the second-instance authority). In Montenegro and Serbia, appeals are to be submitted to the first-instance authority as a rule, and in North Macedonia to the second-instance authority. In all administrations, it is the first-instance authority that conducts the initial review and can even accept the appeal and amend its initial decision (which would effectively conclude the appeal process). The concept of submitting the appeal directly to the second-instance authority was introduced in North Macedonia with the current LAP to address situations in which the first-instance authorities fail to forward an appeal to the second instance in a timely manner. However, information received in focus group discussions suggests that this novelty has not fully resolved the problem. At present, the appeal authority receives the appeal, but because the first-instance authorities delay forwarding the relevant files after their initial review, it is not possible to begin to review the appeal and make a decision within the statutory deadline.

Admissibility of appeals on procedural decisions and consequences of appeal according to the special legislation

The special legislation and actual practice in the selected procedures generally comply with the approach of the LAPs to limit the options for appeals on procedural issues. In Serbia, minor terminological inconsistencies can be identified in the LAP and the VAT audit procedure. The Serbian LAP explicitly does not allow appeal on procedural decisions known as "conclusions"[111], but the Tax Procedure and Tax Administration Act offers a possibility to appeal certain administrative acts that are called "conclusions". Still, upon further review, it becomes evident that these administrative acts are effectively of material nature, because of the consequences for the party (e.g. a conclusion not to initiate a tax procedure, or a conclusion to reject an appeal[112]).

All WB LAPs stipulate that generally, an appeal suspends the effect of the administrative act, but special laws may regulate this differently, if needed. One such exception in WB (and also elsewhere) is the VAT audit procedure, where the appeal has no suspensive effect. This is logical, in order to avoid situations where the taxpayer would be able to extend the deadline for payment of the tax that is due by submitting an appeal or a complaint to the court. In other administrative procedures, the suspensive effect of the appeal generally helps to protect the rights of the interested parties, which could be disregarded (with potentially irreversible consequences) if the administrative act is implemented while its legality is being disputed. According to WB special legislation, in construction permit procedures, the submission of an appeal usually suspends the enforcement of the administrative act. For example, if a neighbour submits

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[109] ALB: Article 130 (2); XKV: Article 125 (2).

[110] See SRB: LAP Article 65 (3); MKD: LAP Article 53 (2).

[111] Article 146 (3).

[112] Tax Procedure and Tax Administration Act, Article 33 (3) and Article 144 (2).

an appeal against an issued construction permit, construction may not proceed before the dispute has been resolved and the act becomes final. However, in Kosovo, under the special legislation, an appeal does not have suspensive effect by default, but the authority can decide to suspend the effect on a case-by-case basis[113]. This can lead to situations where illegal buildings are constructed that later have to be torn down (potentially with additional costs to the public authority and other interested parties).

A peculiarity of North Macedonia's special legislation regulating the construction permit procedure allows for appeals against an issued permit to have suspensive effect, while permitting investors to continue with construction at their own risk. The law explicitly states that if the investor does not proceed and the appeal proves unsuccessful, the investor can claim damages for lost profit from the appellant[114]. The reason for such regulation is not known, but this approach can deter third-party appellants, given the potential for excessive costs, thus decreasing the effective options for exercising their right to appeal.

Application of the approach for avoiding excessive appeals on procedural decisions

	Construction permit	Social benefit	VAT audit
Albania	✓	✓	✓
Kosovo*	✓	✓	✓
Montenegro	✓	✓	✓
North Macedonia	✓	✓	Not applicable
Serbia	✓	✓	✓

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. The analysed element is "not applicable" if, in the particular procedure, the element is not relevant or cannot be applied.

Source: SIGMA analysis of the legal framework and actual practice.

[113] Law on Construction, Article 9 (2).

[114] Law on Construction, Articles 65a (2) and (3).

Key findings

- The special legislation is aligned with the respective LAPs, in that appeals are allowed only on final administrative acts or on decisions that have material consequences for the participants.
- WB LAPs generally allow appeals to trigger a suspensive effect in administrative procedures, but special laws can allow for exceptions, when they are required due to the nature of the procedure (e.g. a VAT audit procedure).
- In Kosovo, however, even in the construction permit procedure, the appeals do not by default have a suspensive effect, which can lead to the construction of buildings that are later declared illegal and that can undermine the effectiveness of an appeal. In addition, the provisions in North Macedonian special legislation, which allow the investor to claim damages from an unsuccessful appellant against a construction permit, can act as a deterrent to potential appellants.

Impact of procedural errors on the appeal process, as regulated in the LAPs

Before the new LAPs were adopted, legal precedent in most of the administrations covered in this analysis allowed for procedural errors that arose in the first-instance authority to have a strong influence on the outcome of the appeal procedure. If a procedural error was considered potentially serious enough to influence the legality of a decision, the decision could be annulled for this reason alone. Furthermore, certain procedural errors were considered serious enough to guarantee an annulment ("absolutely essential errors")[115]. Unfortunately, rather than a safeguard of basic procedural rights, this became a major cause of undue delay in administrative decision making, mostly due to the possibility of consecutive annulments in a single case (so-called "ping-pong effect" within the administration), often for trivial procedural errors. From the perspective of the party in the proceeding, such delays are unjustified, since the administration should be expected to function as a single entity and any procedural errors or internal disparities should be resolved quickly and efficiently. One of the objectives of the new LAP was to limit the extent of such delays within the administration[116].

None of the new LAPs recognise "absolutely essential" procedural errors that automatically lead to annulment of the administrative act by the second-instance authority. The North Macedonian and Serbian laws explicitly stipulate that procedural errors may only be considered the grounds for a successful appeal if they affected the final decision[117]. The Serbian and Montenegrin LAPs further clarify that procedural deficiencies can cause a first-instance decision to be annulled only if the second-instance authority is not able to correct the errors more efficiently[118]. However, the Albanian and Kosovo LAPs state somewhat laconically that procedural and formal errors constitute grounds for unlawfulness of an administrative act, without specifying that such deficiencies must have influenced the final decision. The effect of such provisions can only be reviewed through administrative practice, but lack of guidance from the LAP on how to address potential procedural errors could potentially mean that any procedural error could be cited as the cause of an annulment, specifically in Albania and Kosovo.

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[115] Law on General Administrative Procedure as published in the Federal Official Gazette No. 47/1986, Article 242; opinion of the extended General Assembly of the Supreme Court of Yugoslavia of 8 November 1967.

[116] As explicitly mentioned in the explanatory memorandum of Montenegro's LAP.

[117] MKD: Article 109/5, 7 and 8; SRB: Articles 170/2 and 171/3.

[118] MNE: Article 126/7.

Impact of procedural errors on the appeal process according to the special legislation and practice

The special legislation regulating the selected procedures does not usually contain specific provisions instructing the body of second instance how to deal with any procedural errors identified during the appeal process. This would mean that the respective LAPs apply. The exceptions are the legal acts regulating VAT audit procedure in Kosovo and Serbia, which explicitly state that a second-instance authority should return the case to the first instance only when it cannot correct the procedural errors itself; or that procedural errors of this kind can be a reason to uphold an appeal, if they influence the resolution of the administrative matter. In both cases, the goal of the special legislation is to avoid repetitive administrative procedures for correcting procedural errors and is aligned with the LAP approach. Responses from the second-instance authorities in Kosovo confirmed that such an approach is applied in conducting construction permit and social benefit procedures as well, but not in Serbia, where any procedural omission is still grounds for an appeal. The practice thus does not comply with the general approach prescribed in the LAP and explicitly stipulated in the special legislation[119].

A similar approach – to annul the first-instance decision in the case of any procedural errors – was adopted in North Macedonia's construction permit procedure. Its special legislation does not regulate the mandate of the second-instance authority in dealing with the appeals, but it does state that construction approval issued contrary to the provisions of this Law shall be null and void[120]. Interpretation of this rule, together with Article 109 (5) of the LAP, should enable the second-instance authority to evaluate the potential contradictions on the basis of their effect on the substantial decision in the matter, but it does not seem yet to be the practice. Representatives of judges from Montenegro also indicated difficulties in determining which procedural errors are significant enough to cause the annulment of the administrative act.

According to the responses from the Albanian second-instance authorities dealing with appeals on construction permit and VAT audit procedures, potential procedural errors by the first-instance authorities are not even analysed and are left to the subsequent court process. This can undermine the benefits of a second-instance administrative review procedure, which should, among other things, be used to eliminate any procedural errors that may have occurred in the first-instance decision making, in order to adopt a lawful administrative act. As the court cannot rectify procedural errors on behalf of the administration, all complaints about administrative acts where procedural errors had an influence on the outcome would have to be approved, which unnecessarily prolongs the dispute-resolution process for everybody involved (including the administrative authorities).

[119] Tax Procedure and Tax Administration Act, Article 151 (2).

[120] Law on Construction, Article 62 (3).

Application of the requirement to consider the impact of procedural errors on the outcome of a procedure before deciding the appeal

	Construction permit	Social benefit	VAT audit
Albania		✓	
Kosovo*	✓	✓	✓
Montenegro	✓	✓	✓
North Macedonia		✓	Not applicable
Serbia	✓	✓	

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. The analysed element is "not applicable" if, in the particular procedure, the element is not relevant or cannot be applied.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- Despite contrary approaches in most LAPs, procedural errors can still lead to the overturning of the disputed administrative act, regardless of the effect of these errors on the final outcome of the procedure (as is clear in VAT audit procedures in Serbia, as well as in the construction permit procedure in North Macedonia).
- The Albanian appeal authorities for construction permit and VAT audit procedures take a diametrically opposing approach and do not consider potential procedural errors of the first-instance authority, leaving them to be assessed at any subsequent court procedure.
- Both approaches – excessive focus on procedural errors and complete disregard for them – lead to unnecessary delays in solving a dispute.

The mandate of the appeal authority as regulated in the LAPs

In addition to simply accepting the appeal, quashing the administrative act and sending the case back for a new consideration at the first instance, all LAPs allow the second-instance authority to conduct additional investigations in order to decide the appeal efficiently in substance and, if necessary, to amend the reasoning of the administrative act or to decide the matter in full by itself with a new act[121]. In order to limit the ping-pong of the administrative matters between administrative authorities (in case the appeal is approved by the second-instance authority and the case sent back to first instance), the LAPs in Montenegro and North Macedonia obligate the second-instance authority to decide the matter itself in substance by issuing a new administrative act, if it has already once returned the case to the first instance[122]. However, there are no consequences if the appeal authority decides to return the case to the first instance repeatedly, and it is not clear why the second-instance authority should not be required to decide the matter during the first appeal, if possible.

[121] ALB: Articles 136-137; XKV: Article 131-132; MNE: Articles 125-126; MKD: Articles 107, 109; SRB: Articles 165, 169, 171.

[122] MNE: Article 126 (9); MKD: Articles 109 (11) and (12).

The mandate of the appeal authority according to the special legislation and practice

The special legislation does not regulate the mandate of the appeal authority (meaning that the LAP provisions apply) or provides the same mandate to the second-instance authority for deciding the case in full by itself (see Albania[123], Kosovo[124] and Serbia[125] VAT audit procedures). However, according to the responses from the authorities, in practice the second-instance bodies do not decide the case in full when they uphold the appeal, and instead send the matter back to the first instance. This can lead to the ping-pong of administrative cases within the administration, which the recently adopted LAPs were designed to eliminate.

The only exceptions where the second-instance authority itself adopts a new administrative act are the Serbian VAT procedure (where, according to responses from the Ministry of Finance, this has happened on a few occasions) and the Kosovo VAT procedure. In Kosovo, the Appeals Division of the Tax Authority even requests additional evidence from the Regional Directorates if needed, in order to decide the matter itself without returning the case to the first instance.

According to available statistics on the selected procedures, the share of successful complaints is around 20% to 30%, 26% in Albanian tax-related appeal procedures, 21% in Kosovo tax-related appeal procedures, and 19% in North Macedonia's social benefit procedure. Successful complaints are usually sent back to the first-instance administrative body for reconsideration (with the exception of the VAT audit procedure in Kosovo), as the second-instance bodies do not correct the mistakes of the first-instance bodies in order to adopt a lawful administrative act. In Montenegro, 64% of appealed first-instance decisions by all state authorities are upheld, as compared with only 37% of the appealed first-instance decisions of local authorities. The fact that two-thirds of the appeals of the decisions of local authorities are successful indicates serious issues with the quality of administrative procedures at the municipal level. In the tax procedures in Montenegro, the success rate of appeals was also higher than average (45%)[126].

The 2019 report on the implementation of the LAP in Montenegro indicated an overall increase in the number of meritorious decisions by the second-instance authorities in all administrative procedures, but these still amount to 7.25% of all appeal decisions, while 22.70% of the decisions (two-thirds of all approvals of appeals) are sent back to the first instance. Ping-pong between administrative authorities in dealing with the appeals was mentioned as a persistent problem in the focus group discussions with all WB administrations. This can be attributed to the high share of successful appeals (for example in the cases against local authorities in Montenegro), combined with a low share of meritorious decisions by the appeal organs.

In Montenegro, according to the appeal organs for the three administrative procedures analysed here, the most common causes for quashing the first-instance administrative act include procedural errors (failure to ensure the right to be heard), incomplete establishment of the factual situation, and wrongful application of the substantive regulation. The second-instance authority in the social benefit procedure referred to situations where the appeal has to be approved even if the procedural omissions of the first-instance authority can be attributed to the specificities of the social benefit procedure (in information provided by the applicant or *ex officio*). This indicates that the second-instance authority may have difficulty in determining the significance of procedural errors or that the procedural rules in the legislation should be simplified.

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[123] Law on Tax Procedures, Article 108 (3).

[124] Administrative Instruction for the Implementation of the Law on Tax Administration and Procedures, Article 44 (17).

[125] Tax Procedure and Tax Administration Act, Article 152.

[126] Of the 810 resolved appeals, 367 were successful. In 38 cases, the appeal authority made the new decision itself, and the rest were sent back to first instance (statistics provided by the Tax Administration).

Application of the reformatory powers of the appeal authorities

	Construction permit	Social benefit	VAT audit
Albania			
Kosovo*			✓
Montenegro			
North Macedonia			Not applicable
Serbia			

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. The analysed element is "not applicable" if, in the particular procedure, the element is not relevant or cannot be applied.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- The special legislation does not limit the mandate of the appeal authority to decide the case itself in full.
- However, responses from second-instance authorities indicated that they rarely adopt an amended or revised administrative act themselves when the appeal is approved (as explicitly allowed under all LAPs as well as some special legislation). Instead, they usually send the case back to the first-instance authority for reconsideration.
- The only exception where the second-instance authority itself consistently adopts new administrative acts is in Kosovo's VAT audit procedure.

Maximum duration of the appeal procedure, as regulated in the LAPs

All laws stipulate the maximum duration for the appeal process, which varies from administration to administration[127]. It is interesting to note that the maximum duration of the appeal process is shortest in the administrations where the maximum duration of the first-instance procedure was the longest (Albania and Kosovo). However, in the same administrations the deadline can also be extended. The Montenegrin and Serbian LAP stipulate that special laws can provide for a different deadline for reviewing the appeal, but only if it is shorter.

[127] ALB: Article 140 (1); XKV: Article 135 (1); MNE: Article 130; MKD: Articles 107, 112; SRB: Article 174.

Table 1.11. Maximum duration of the appeal process

	Maximum duration of the appeal process	Duration of possible extension
Albania	30 days	30 days
Kosovo	30 days	30 days
Montenegro	45 days	Not possible
North Macedonia	1 + 7 + 60 = 68 days	Not possible
Serbia	60 days	Not possible

Source: LAPs of the WB administrations.

According to the North Macedonian LAP, the appeal is submitted to the second-instance authority, which forwards it on the next day to the first-instance authority for initial review. This was introduced in the new LAP as a consequence of previous problems, whereby the first-instance authorities were not consistent in forwarding the appeals to the second-instance authorities and, as a result, the appeals remained unresolved in the first instance. According to the current LAP, the first-instance authority has 7 days from receiving the appeal to conduct the initial review and, unless it decides in favour of the appellant itself, must forward all materials of the case to the second-instance authority, which has another 60 days to decide on the appeal.

The statutory maximum duration of the appeal process in the EU Member States varies widely depending on the type of the procedure and the appeal body (e.g. a minimum of 10 plus 7 days in Estonia, 30 days in Portugal, 2 months in Poland and 6-16 weeks in the Netherlands). The maximum duration of the WB appeal procedures under the LAPs does not differ from timeframes stipulated elsewhere in Europe.

Maximum duration of the appeal procedure in the special legislation and practice

The purpose of the following review is to check whether the special legislation stipulates any deadlines that extend the duration of the appeal process as stipulated by the LAPs and, where possible, to check compliance between the statutory deadlines and actual practice.

Table 1.12. Deadlines for reviewing the appeal in selected administrative procedures

Administration	Construction permit	Social benefit	VAT audit
Albania	30 days + 30-day extension for additional investigation (LAP)	7 days for first appeal instance, 14 days for second-appeal instance (special law)	60 days
Kosovo	30 days + 30-day extension for additional investigation (LAP)	10 days for first-appeal instance, 21 days for second-appeal instance (special law)	60 days + 15- to 45-day extension/suspension in case additional information is needed (special law and bylaw)
Montenegro	45 days (LAP)	45 days (LAP)	45 days (LAP)
North Macedonia	68 days (LAP), including 60 days for the second instance	68 days (LAP), including 60 days for the second instance	No appeal, direct complaint to court
Serbia	60 days (LAP)	60 days (LAP)	60 days (LAP and special law)

Source: The laws and secondary legislation establishing the requirements for the special procedures, as well as the LAPs.

As is evident, most of the relevant special laws either do not regulate the maximum duration of the appeal procedure – meaning that the LAPs apply in this respect – or set deadlines, which generally correspond to those set by the respective LAPs. The only procedures where the special legislation stipulates longer deadlines for the review of the appeal than in the respective LAPs are the VAT audit procedures in Albania and Kosovo, but the respective LAPs allow the special legislation to deviate. For the appeal process in

social benefit procedures in Albania and Kosovo, on the other hand, the special legislation stipulates shorter deadlines. It is noteworthy that the appeal processes in both of these administrations go mandatorily through two instances of appeals. The combined statutory duration of the appeal processes in these instances is still slightly shorter in Albania and only slightly longer in Kosovo compared with the general deadline stipulated in the LAP, but the need for two appeal instances within the administration can be considered questionable. The administrative appeal does not replace judicial review, and establishing multiple appeal instances within the administration can become an obstacle to judicial protection[128], especially in case the statutory deadlines for the duration of the appeal process are not followed or where the case is batted back and forth between the responsible administrative authorities.

Comprehensive comparative data on the duration of appeal procedures was not available for all WB administrations. The responses to direct questions regarding the average duration of appeal procedures usually stated that the statutory deadlines are complied with (e.g. Kosovo's social benefit procedure). For some procedures, more detailed statistics on the number of incoming and resolved complaints, as well as the size of the backlog at the end of the year, enable the calculation of the disposition time (DT)[129]. For example, the DT of the Kosovo VAT audit appeal process in 2019 was 54 days, within the statutory duration of 60 days allowed in the LAP. At the same time, the DT of the North Macedonian Second Instance Commission for Administrative Procedures (which deals with appeals for the social benefit procedure among other issues) was slightly above the statutory deadline of 60 days provided for in the LAP in the last few years[130]. In 2019, 77% of appeal proceedings were resolved within the statutory deadline at the state level in Montenegro. The share of proceedings exceeding the statutory deadline was higher than the year before, when 94% of appeals were resolved on time[131]. The appeal body in the social benefit procedure indicated that one of the causes were delays in receiving the appeal and the files from the first-instance authority.

It is important to keep in mind that the statutory deadlines should apply to all relevant administrative procedures as maximum limits. If the average or DT already exceeds the statutory deadline, the share of individual proceedings that exceed the statutory deadline is likely to be considerable. The overall duration of the appeal process in the administration can be further extended by the current practice in most WB administrations, under which the second-instance bodies – when they approve the appeal – do not adopt corrected administrative acts, but rather send the case back to the first-instance body for corrections.

[128] *The Principle of Effective Legal Protection in Administrative Law: A European Perspective*, p. 21, first edition.

[129] "Disposition Time" indicator is the number of unresolved cases divided by the number of resolved cases at the end of a year, multiplied by 365 (days). It is a standard indicator defined by the Council of Europe's European Commission for the Efficiency of Justice: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp.

[130] For example, 67 days in 2019. See the annual reports of the Second Instance Commission for 2018 and 2019. The Commission has only had the mandate for dealing with appeals on social benefit cases since May 2019, and the DT for social benefit cases for 2019 cannot yet be calculated precisely. However, based on the large backlog at the end of the year (752 cases) compared to the cases resolved from June to December 2019, the estimated duration of the appeal procedure in social benefit cases was more than 220 days in 2019.

[131] The report on the implementation of the LAP in 2019: https://mju.gov.me/ResourceManager/FileDownload.aspx?rid=407476&rType=2&file=Izvjestaj%20o%20postupanju%20u%20upravnim%20stvarima%20za%20period%20od%2001.01.2019-31.12.2019_MC.doc.

Application of the right to have an appeal solved within a reasonable time

	Construction permit	Social benefit	VAT audit
Albania	No data	No data	No data
Kosovo*	No data	No data	✓
Montenegro	No data	No data	No data
North Macedonia	No data		Not applicable
Serbia	No data	No data	No data

Note: In order to be considered applied (√), the element of good administrative behaviour under review should be adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. "No data" refers to procedures where comprehensive information on the actual duration of the appeal procedures was not provided.

Source: SIGMA analysis of the legal framework and actual practice.

Key findings

- Special legislation either does not establish deadlines for the duration of the appeal process (as the LAP deadlines should apply) or stipulates deadlines aligned with those of the respective LAPs. The only exceptions are the VAT audit procedures in Albania and Kosovo, where special legislation provides for deadlines twice as long as in the respective LAPs, but the LAP allows the special legislation to deviate from these, if needed.
- Comprehensive data on the duration of appeal processes is not systematically collected and is thus not available for all procedures. It is evident from the data that exists that appeal organs are not always able to comply with statutory deadlines.
- It is also noteworthy that the appeal process in social benefit procedures in Albania and Kosovo goes through two appeal instances within the administration, which can also extend the duration of the appeal process and effectively limit access to court.

Conclusions

The alignment of LAP with the principles of good administrative behaviour

The recently adopted LAPs of the WB are largely aligned with the principles of good administrative behaviour as assessed according to the eight elements above. The requirements for applications are not restrictive, and all laws allow correction of erroneous or incomplete submissions (even if Albania's law does not stipulate explicitly whether or not the dismissal of the initial submission is an administrative act). The Once Only Principle and the proportionality of the costs of the procedures are general principles in nearly all laws, which means that all special administrative procedures should comply with them. The possibility of communicating with the administration through electronic means is guaranteed at the level of a general principle in Albania and North Macedonia, and at a more basic level in other administrations. Still, the LAPs in Albania, Kosovo and Montenegro include provisions that allow to postpone the actual implementation of electronic communication, if the administrative authorities are not ready.

The central principles for most administrative procedures – the right to be heard and access to the files, and the administrations obligation to justify its decisions – are properly embedded in all LAPs. The statutory maximum duration of administrative procedures according to the LAPs is aligned with the general requirements from the European Code of Good Administrative Behaviour and the actual duration of all

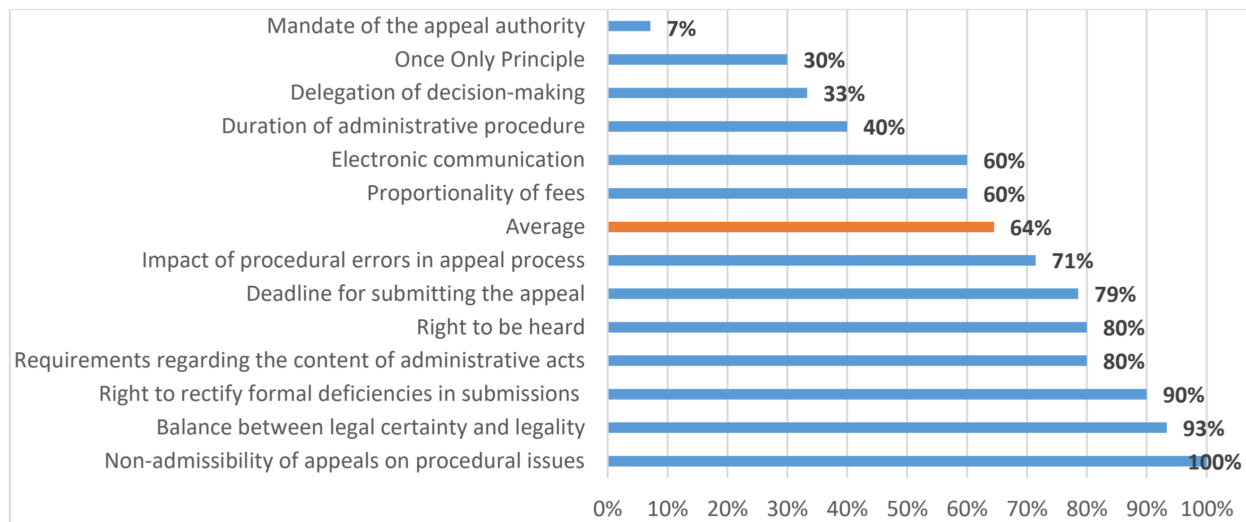
special administrative procedure depends on their complexity. The specific reform initiatives of most WB LAPs – promoting delegation of decision making and establishing a good balance between legal certainty and legality – are incorporated into all laws. Still, the laws leave the door open for different rules established under special laws.

The deadlines for the submission of appeals and for the review of appeals are comparable to the respective deadlines in the EU Member States. Appeals on procedural decisions are generally not allowed in order to avoid unnecessary delays, but in Albania and Kosovo, special laws are still permitted to regulate the matter differently, and in Montenegro, North Macedonia and Serbia, some exceptions still exist in the LAPs too. In Montenegro, North Macedonia and Serbia, procedural errors should nullify an administrative act in the appeal procedure if the errors influenced the outcome of the first-instance procedure. The LAPs in Albania and Kosovo are not as explicit and leave the door open for unnecessary reconsiderations of administrative matters in case of any procedural errors. The mandate of the second-instance authorities is widely formulated in all LAPs, including the authority to decide the matter itself in substance by issuing a new administrative act. However, in Montenegro and North Macedonia, the appeal organ is explicitly obligated to do so only when it is reviewing the same case for the second time. This can legitimise the return of all cases with successful appeals to the first instance at least once, even if the appeal organ could decide on the matter itself and avoid any ping-pong within the administration.

Alignment of special legislation with principles of good administration and LAP requirements

Based on the analysis of the three sample administrative procedures in the WB, it is evident that there are several elements of the administrative process, where the special legislation and practice is largely in line with the LAP principles. For example, appeals on procedural decisions are not allowed in any of the reviewed procedures, one of the objectives of the new LAPs. The special legislation usually does not deviate from the LAPs on the grounds for reopening closed administrative proceedings. The principles and procedures for handling incomplete or erroneous submissions are aligned to the *lex generali* in 90% of the analysed special procedures. Most of the reviewed administrative acts contain the mandatory information, including legal basis, rationale and references to appeal possibilities. The right of the participant of the procedure to be heard before making the decision in the administrative matter is ensured in 80% of the procedures. The fact that compliance with the more traditional elements of the good administrative behaviour (e.g. the right to be heard, the mandatory contents of the administrative act) is more advanced in WB compared to some of the novelties like delegation of decision making or the Once Only Principle, indicates that most of the administrations analysed had a long legislative tradition of adhering to the principles of good administrative behaviour, even before the new LAPs were adopted.

Figure 1.1. Overview of application of elements of good administrative behaviour in analysed procedures



Note: The percentage indicates the share of analysed procedures where the respective element of good administrative behaviour is adequately regulated in the applicable legal acts and functional in practice, with only minor or infrequent discrepancies. Only the procedures that are relevant for a particular requirement are taken into account in the calculation, so the number of procedures analysed for each procedure can differ. The requirement for the maximum duration of the appeal procedure was not included, given the lack of comprehensive data on actual practice.

Source: SIGMA analysis.

At the same time, there are elements that have not been yet embedded in the WB administrative procedures consistently on the basis of the analysed samples. The most significant discrepancy is in the application of the reformatory mandate of the appeal authority, which should enable the appeal organ to decide the appeal efficiently in substance and avoid the ping-pong effect within the administration. Most WB appeal organs tend to return the case to the first-instance authority, instead of amending the reasoning of the administrative act, if necessary, or deciding the matter in full by itself with a new act. In addition, the key reforms foreseen in the LAPs (e.g. implementing the Once Only Principle, electronic communication, delegation of decision-making authority) have not been consistently embedded in special administrative procedures and as such, have not been successfully implemented. The following factors have contributed to the challenges in LAP implementation.

- **Delays in harmonisation of special legislation with the LAP.** Each of the administrations has had ample time to align the special legislation with LAP requirements, but this has not happened consistently, if it has happened at all. It is of course important that the *vacatio legis* period for aligning the special legislation is realistic and based on actual capacities of the administration. However, the numerous examples of failure to comply with the LAP requirements should have been relatively easy to address during the amendments to the special legislation that have been adopted after the LAPs took effect. For example, in the appeal process, the deadlines for submitting an appeal should not be shorter than allowed in the LAP. The analysis identified procedures where the technical preconditions for applying the Once Only Principle are in place, but effective implementation is still pending as the special legislation (including the secondary legislation) has not been amended accordingly. In several administrations, mechanisms for ensuring that special legislation is comprehensively harmonised with the LAP and that the general principles of the LAP are fully implemented are not in place. For example, in Albania and Kosovo, there are no mechanisms for ensuring that the fees for administrative services are proportional to the actual costs, as is explicitly stipulated by the respective LAPs. The few procedures for which the new concepts, like the Once Only Principle or electronic communication, have been

implemented, are not the direct and co-ordinated consequences of the recent LAPs; rather they are the results of individual initiatives undertaken by the respective administrative authorities.

- **The role of the LAP is not clear.** The authorities who regulate and conduct the special administrative procedures tend to see the general law as a backup for special legislation used to fill the gaps in special legislation, and not as a definitive source of general requirements that all administrative procedures must comply with. At the same time, seeing the LAP in the role of a definitive source follows more logically from the formulation of the general principles in all of the LAPs, and the institutions behind the drafting of LAPs should view it as the foundation for all administrative procedures. Some differences between the WB administrations can be seen on this issue. Understandably, the role of the LAP is least established in Albania, where it was introduced most recently. The LAP's backup role is evident mainly in the numerous examples where its explicit principles (e.g. regarding the proportionality of the fee, electronic communication, Once Only Principle, etc.) or the mandatory minimum requirements are not complied with either under special legislation or subsequently, in practice (e.g. procedural deadlines for the parties, requirements regarding the content of administrative acts). It is also evident from the examples where the special legislation is still regulating the same issues – in a similar manner – already stipulated in the respective LAPs. Finally, the sample administrative acts that do not refer to LAP provisions as the legal basis also indicate that for the implementing administrative authorities, the LAP is not a definitive source of requirements. If the LAP is predominantly seen as a backup for special legislation, and its general principles are not effectively binding on special legislation, it cannot ensure the implementation of the reforms it is expected to deliver in all administrative procedures.
- **Ineffective appeal procedures.** The appeal process was one of the different elements analysed. Challenges in the application of the full reform mandate of the appeal authorities can limit the effectiveness of the appeal process. Subsequently, problems with the appeal procedures can negatively influence the application of the principles of good administrative behaviour in general. A functional appeal system should help ensure that general principles like Once Only are consistently implemented by the first-instance authorities, whether or not they are included in special legislation. Instead, the appeal organs have become part of the problem, thanks to the ping-pong effect and the inability to deal efficiently with the potential procedural errors of the first-instance authorities. The fact that appeal procedures – and administrative procedures in general – are not comprehensively monitored in the WB (e.g. from the perspective of duration, share of successful appeals and their causes, etc.) does not permit a proper overview of the extent of the problem and for steps to begin to address it.
- **Lack of capacity or commitment for effective implementation of the principles of good administrative behaviour.** One of the general conclusions of the review is that any law can only do so much, if the commitment or the capacity of the administration are not there to support it. The LAPs have mandated the second-instance authorities whenever possible to correct the mistakes of the first instance by themselves and to adopt a lawful administrative act, instead of sending the case back to the first instance and contributing to the ping-pong effect between administrative authorities. In practice, that rarely happens. The law cannot fully forbid the return of cases to the first instance, because in some cases, it is necessary (e.g. for collecting certain evidence that the second instance cannot). It also cannot stipulate exhaustive grounds establishing when the case should be sent back and when not. Instead, the first- and second-instance administrative authorities should function as a single administrative apparatus (which it is from the point of view of any outsider, including the participants of administrative proceedings) and deal with the administrative case as efficiently as possible. In addition, the analysis of the sample administrative procedures identified some challenges in the application of some the more traditional elements of the administrative process (e.g. repetitive application of the requirements regarding the right to be heard, which stem from the LAP as well as the special legislation). Some examples were also

noted of simple misapplication of the statutory requirements (e.g. shortening the statutory deadlines for submission of comments by the participants, referring to appeal deadlines different from those provided for in the law). Such examples indicate the need to continue improving the capacity and mind-set for applying the principles of good administrative behaviour in practice.

- **Lack of infrastructure for implementation of the LAP.** Lack of infrastructure includes both technical and legal infrastructure and chiefly affects the implementation of novel features of the LAP. The availability of functional, accessible infrastructure for digital authentication would undoubtedly enhance the rollout of electronic communication. Interoperable registries are not a precondition for implementing the Once Only Principle, but their existence would simplify its application for the administration. The anti-corruption legislation, according to which the head of an authority is responsible for all individual decisions of subordinates, does not encourage delegation of decision-making authority.

Despite the challenges, there are examples of procedures where the LAP novelties are applied. These include the Once Only Principle in Serbia’s construction permit procedure; electronic communication in the construction permit procedure of Albania, North Macedonia and Serbia; the delegation of decision making in construction permit procedures of Kosovo and Montenegro; the VAT audit procedure of Montenegro and social benefit procedures in North Macedonia. These examples are important, because they show that the application of the LAP and the principles of good administrative behaviour is indeed possible.

2 Implementation of the LAPs and reform of administrative services: the possible way forward

This chapter offers an overview of measures that could be undertaken in the WB to ensure more consistent implementation of the LAPs and effective reform of administrative procedures. The measures are proposed on the basis of the current challenges in implementing the LAPs, as identified in the previous chapter. They also draw on the experience of selected EU Member States that have reformed their administrative procedures in the last 15 to 20 years, as well as on the experiences of individual WB administrations. The measures are grouped based on the main challenge they address:

- review and harmonisation of the special legislation with the LAPs;
- solving problems involving the appeal procedures (within administrations and the judiciary);
- capacity building and awareness raising;
- enhancing implementation of the Once Only Principle and electronic communication.

Review and harmonisation of the special legislation with the LAPs

Four to five years since the LAPs took effect in the region, harmonising the special legislation with the LAPs has been a slow process. Even in Montenegro, where it has formally been completed, numerous examples remain of inconsistencies in the legal framework, or simply of procedural provisions that are not aligned and have proven cumbersome for participants of the proceedings and for the administration. Last but not least, the harmonisation process is mainly focusing on laws, but the secondary legislation that is often containing the detailed provisions, which the administrative authorities conducting the procedures follow daily, is excluded. Experience of similar reforms in EU Member States and the WB indicate that without a proper legal harmonisation process, inconsistencies between the new legal act containing the reform provisions and the existing legislation will not be ironed out and that the intended reform can remain illusory. Serbia's approach was for transitional provisions of the LAP to repeal automatically all norms in special legislation that conflict with LAP provisions mandating the application of the Once Only Principle[132]. This created a legal obligation to apply the principle, but as shown in the analysis in the previous chapter, it has not yet ensured effective implementation of the reforms. As long as the special legislation is not harmonised with the central law, participants in the proceeding who wish the administration to apply the principles or provisions of the general law are forced to turn to an appeal organ or court, because the authority conducting the administrative procedure usually follows the special legislation. Ineffective appeal procedures also undermine the reform provisions, if they are stipulated only as general principles in the

[132] For example, Article 215 of the Serbia's LAP repeals all provisions from special laws that conflict with the Once Only Principle. As is evident from current analysis, the Once Only Principle is still not fully applied in the Serbian administration.

LAP. Even if the conflicting provisions are considered to be repealed, an automatic repeal can leave gaps or uncertainties in the legal framework that could be avoided if the harmonisation is properly thought through.

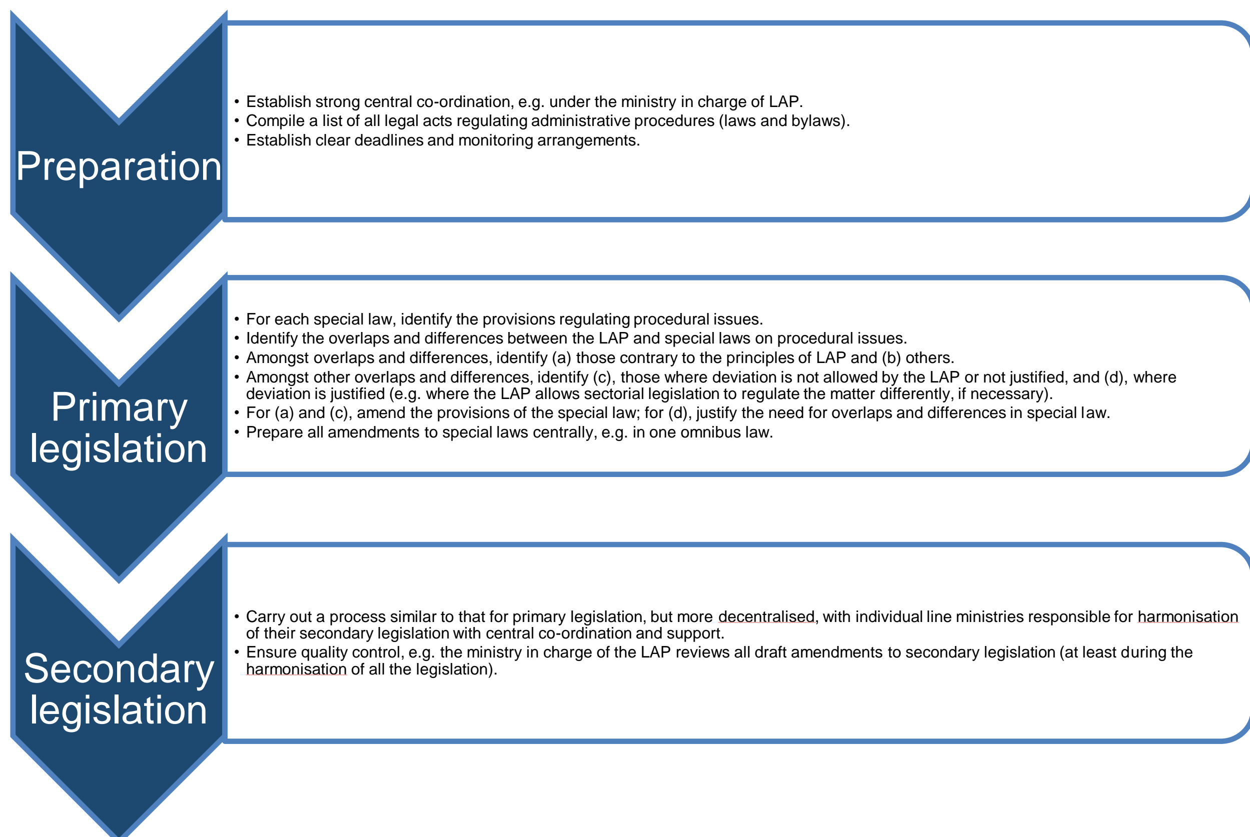
The following mechanisms and practices can be useful for 1) harmonising the existing stock of special legislation as well as for 2) ensuring consistent alignment between the LAPs and the special legislation in future.

Harmonising the existing special legislation

For efficient harmonisation of the existing legislation, it is necessary to:

- establish a complete overview of all administrative procedures as well as the legislation regulating their application (primary as well as secondary);
- harmonise all legislation under strong central co-ordination.

Figure 2.1. Key steps for harmonising all the legislation



Source: Findings from SIGMA research.

Certain elements of this process have already been implemented in the WB, but not consistently. The stock of primary legislation regulating administrative procedures has been established throughout the WB, except in Albania. However, this does not include the secondary legislation, where the important provisions establishing the rights and obligations of the participants of proceedings (e.g. the application forms and the data or documents an applicant is required to submit) are often stipulated. Primary legislation regulating special administrative procedures may not contain detailed provisions on these issues and could therefore

be considered as aligned with the LAP, while discrepancies with the LAP appear only at the level of requirements stemming from special legislation. In addition, secondary legislation usually provides the most detailed guidance, which is followed meticulously by the officials conducting the procedure. Ensuring its alignment with LAP is thus just as important as the alignment of primary legislation. Different kinds of co-ordination authorities and mechanisms or harmonisation help desks have been established in WB administrations, but they all share the same shortcomings, which have delayed the harmonisation process. Thus, even if harmonisation has been formally completed or is well advanced, it has not ensured compliance between the special legislation and the LAP, in these respects:

1) effectively all line ministries remain in charge of harmonising the legislation in their area of responsibility (the ministry responsible for LAP provides non-binding opinions or performs technical or administrative tasks for the co-ordination authority);

2) the end products of the harmonisation process are hundreds of draft laws containing amendments to special laws that need to be drafted and processed one by one (instead of one combined draft law containing amendments to all individual pieces of special legislation);

3) secondary legislation is wholly outside the scope of this softly co-ordinated approach.

A more detailed overview, showing how Estonia used an omnibus law to harmonise special legislation with the LAP can be read in the textbox below. The WB, however, also has some examples where several laws have been amended with one law at once. In Montenegro in 2011, implementation of the Law on Misdemeanours was ensured by the drafting and adoption of an omnibus law that adjusted the fines in 184 other laws. Recent legislative practice in Serbia recognises the Omnibus Law of Vojvodina[133]. If the approach for harmonising all special legislation with LAP with one omnibus law does not appear to be feasible, it is possible to harmonise all the special legislation in one sector with one omnibus law (for example, all the legislation regulating administrative procedures in the remit of the Ministry of Finance). In any case, the leading role in the preparation process of an omnibus law for harmonising special legislation with the LAP should be carried by the ministry responsible for the LAP, which in the WB, include the following ministries at the time of writing this analysis:

- Albania – Ministry of Justice;
- Kosovo – Ministry of Interior;
- Montenegro – Ministry of Public Administration, Digital Society and Media;
- North Macedonia – Ministry of Information Society and Administration;
- Serbia – Ministry of Public Administration and Local Self-Government.

Alternatively, the body co-ordinating the better regulation agenda can also have the leading role. The other line ministries naturally need to be closely involved in the process too, through bilateral discussions as well as horizontally (if the omnibus law covers all or several sectors).

The purpose of the harmonisation process is not to ensure total application of the LAP provisions in all elements of special administrative procedures. As is evident in the provisions of the WB LAPs, all general laws allow the special laws to regulate certain elements slightly differently. As a result, harmonisation has to be well considered. The special laws need to be aligned with the general principles of the LAPs, and it is important to avoid unnecessary repetitions. However, in other respects, it is possible to deviate from or

[133] Both examples are referred to in the book by Prof. Dr. Stevan Lilić, *Law on General Administrative Procedure: Anatomy of a Legislative Project with a Model for the General Reconstruction of LGAP*, p. 33. Law on Amendments to the Laws which Prescribe Fines for Misdemeanours, Official Gazette of Montenegro, No. 40/2011; Law Determining the Competencies of the Autonomous Province of Vojvodina, "Official Gazette of RS", No. 99/2009, 67/2012.

complement the LAP, if necessary. For example, the deadlines for the duration of the administrative process depend on the complexity of the procedure. A general 30-day deadline may be too long for simple procedures like responding to a request for public information, and too short to approve a building permit for a complex industrial construction. To determine the need for deviations or complementarities, the elements of the special procedures and their purpose need to be analysed, keeping in mind the purpose of the provisions of the LAP. Annex I of this paper includes a template for a tool that can be used to simplify and standardise the harmonisation process.

Box 2.1. Implementation of the LAP in Estonia

Estonia's LAP was adopted on 6 June 2001, with a *vacatio legis* period until 1 January 2002. On 17 June 2001, the Government tasked the Ministry of Justice (MoJ) with co-ordinating the revision of the special legislation to ensure alignment with the new LAP. The proposal for amendments to all relevant special legislation were to be submitted to the Government by 15 December 2001. As the ministry responsible for drafting the LAP, the MoJ established a working group including members from among its officials, the advisers of the Supreme Court and representatives of the non-governmental think tank that was supporting the MoJ in the harmonisation. The working group analysed all laws regulating administrative procedures, identifying conflicts, inconsistencies and potential ambiguities, as well as proposing concrete proposals to address these shortcomings. The proposals were discussed with the relevant line ministries bilaterally, and in two general round tables with all line ministries. The result of the work of the working group was a single draft law amending 131 special laws, which was submitted to the Government on 8 February 2002, and adopted by the Parliament on 19 June 2002. After completing the revision of the special laws, the working group continued in an advisory and co-ordinating capacity to support the line ministries in the revision of the secondary legislation. The work with secondary legislation was anticipated to be complete by the beginning of 2003, but took longer. According to feedback from the judges, the administrative court was occasionally required after 2003 to overturn administrative acts for failure to comply with the LAP (as a result of non-compliance between the sublegal acts regulating the specific procedures and the LAP). Nevertheless, although the *vacatio legis* period was six months too short to harmonise the primary legislation, and the harmonisation of the special secondary legislation took even longer, the alignment between the LAP and the special laws was ensured within a year of the adoption of the LAP. Strong central co-ordination at the administrative level and adequate political support were crucial in accomplishing this. Processing of all the amendments to special legislation in one legal act ensured greater procedural efficiency (by comparison with processing of 131 separate draft laws containing amendments) and ensured a uniform approach and higher degree of alignment, since a single ministry was responsible for developing the law.

Source: The draft law amending and implementing the LAP and its explanatory memorandum, https://www.riigikogu.ee/download/72b78f43-cd85-3957-b5d8-6e20cfc799d6.

Finally, if the administration is planning to undergo a review of legislation with the goal of administrative simplification (as is the case in Serbia and possibly also Kosovo), it is advisable to combine this initiative with the LAP harmonisation process or at least to co-ordinate the two initiatives closely (to avoid gaps in both process or to avoid double work, if the same piece of legislation needs to be reviewed and amended twice). Close co-ordination between the two initiatives makes sense because of similar objectives (e.g. the Once Only Principle stems from the LAP, but is also a key element for reducing the administrative burden). In this way, harmonisation with the LAP can benefit from a higher level of political support than the administrative simplification process usually receives. If the administrative simplification effort becomes part of the harmonisation initiative, the institutions in charge of reducing the administrative burden should be closely involved in the process.

Ensuring consistent alignment in future between the LAPs and special legislation

Consistent review of new draft special legislation (or its amendments) regulating administrative procedures is as important as ensuring that existing legislation is harmonised with the provisions of the LAPs. The risk otherwise is that even if the legislation is successfully harmonised, its impact will be temporary. The central ministry co-ordinating alignment of the legislation should also be able to review all new drafts and amendments regulating administrative procedures and to provide opinions on how they align with the LAP. It may also recommend how to ensure alignment, if needed. All WB administrations are running into difficulty ensuring that this is reviewed by the ministry responsible for the LAP, especially the review of draft secondary legislation adopted by the ministries.

Under normal circumstances, line ministries enjoy more autonomy in adopting secondary legislation regulating their area of responsibility than in preparing draft laws or draft secondary legislation adopted by the Government, both of which require inter-ministerial consultation. However, their freedom to adopt the secondary legislation is not absolute, and may require the approval of other ministries. For example, an opinion from the Ministry of Finance may be necessary for regulations adopted by other line ministries, if it affects public finances. Government rules of procedure or similar acts regulate the process of preparing the draft laws and regulations and their approval. All draft laws and secondary legislation on administrative procedures and their amendments should be submitted to the ministry responsible for LAP for its opinion. To make sure this is the case, the rules of procedure should explicitly state this, or include a general obligation to consult with other ministries if the draft act affects another ministry's area of responsibility. At least until all mapped secondary legislation is harmonised with the LAP, it is highly advisable that all ministerial secondary legislation regulating administrative procedures also go through this consultation process. At present, the requirement to consult on ministerial regulations with other ministries (for example, if the regulation affects another ministry's area of responsibility) is not made explicit in the rules of procedure of the WB governments of councils of ministers[134]. In Poland, for example, the Regulation on the Council of Ministers requires ministries to consult on the ministerial regulations with authorities whose scope of work is affected[135]. The ministry responsible for LAP can set up a help desk to assist other line ministries in drafting the relevant laws and regulations, as is done in North Macedonia.

A separate problem that interferes with consistent alignment between the LAP and special legislation regulating administrative procedures is the high percentage of draft laws adopted in urgent procedures in the WB. This is particularly acute if these draft laws are initiated by the Members of the Parliament and the Government has not been able to review them before adoption. For example, in 2017, 65.3% of laws adopted by the North Macedonian parliament were adopted in shortened or urgent proceedings. In Serbia, the percentage was 44.8% and in Montenegro 34.7%.

As a special element requiring attention, the WB administrations (especially Albania) need to establish and develop their capacity to ensure that the fees for administrative services comply with the general principles of the LAP (proportionality of the fees to the cost of conducting the procedure, lowest possible cost for the applicant, etc.). If the ministry responsible for LAP is not well positioned to undertake this review, it should be taken on by the Ministry of Finance.

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[134] The one exception is Albania. However, its requirement to consult ministerial regulations is limited to regulations dealing with transposition of the *acquis,* which involve consultation with the Minister responsible for European Integration (see p. 25 of the Rules of Procedure of the Council of Ministers).

[135] Regulation on the Council of Ministers, Resolution No. 190 of 29 October 2013, Articles 140-146 and Article 38. In Finland and Estonia, the inter-ministerial consultation requirement applies to ministerial regulations as well (in case these affect areas of responsibility of other ministries).

Solving the problems with appeal procedures

Comprehensive data on how the appeal process functions is not available throughout the WB. However, on the basis of the data available for the three procedures analysed in this paper and from additional sources[136], the following problems emerge in WB administrative appeal procedures:

- ping-pong between first-instance and second-instance authorities (caused by the frequent return of the case to the first-instance authority in the case of a successful appeal);
- inconsistencies in dealing with procedural errors committed by first-instance authorities – leading to annulment of the disputed administrative act due to procedural errors, without assessing the effect of these errors on the outcome of the procedure or without analysing at all the procedural compliance of first-instance authorities (as is evident in Albania);
- challenges with complying with the statutory deadlines for processing the appeals;
- excessive instances of appeal (as evident in Albania and Kosovo's social benefit procedures).

These problems contribute to the ineffectiveness of the administrative appeal process, reducing timely protection of participants' rights. All of the WB administrations also face problems ensuring the effectiveness of the judicial appeal in administrative matters. Existence of the ping-pong between the administration and the judiciary – indicating a situation where the administration and the judiciary are dealing with the same administrative matter and dispute repeatedly thereby delaying the end of the procedure for the participants – has been reported by various sources, including the case law of the European Court of Human Rights[137]. Low public trust in the judiciary is an indication of the severity of the WB problem. In most administrations, trust in the judiciary rates lower or on a par with trust in the government, the legality of whose decisions it is supposed to assess and ensure in the administrative courts. If trust in the judiciary is so low, participants in administrative proceedings may be deterred from turning to the courts, leaving them without the legal protection they are entitled to.

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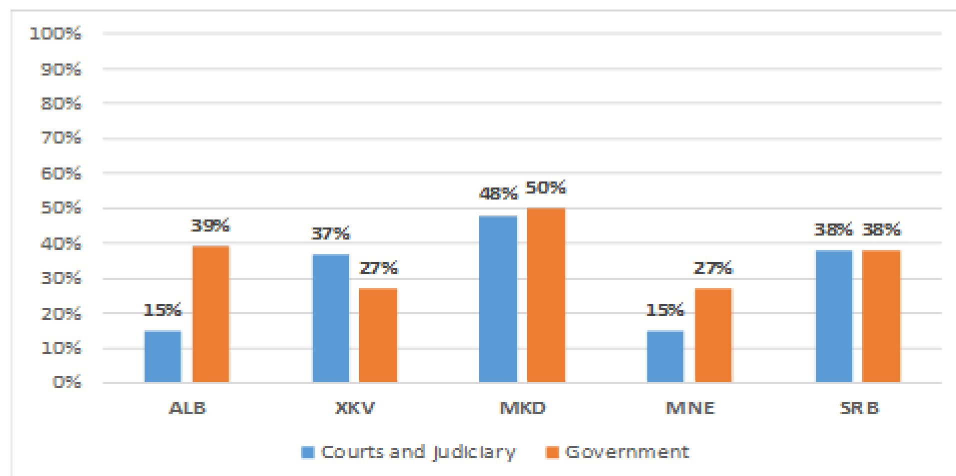
[136] See for example, *Legal Remedies in Administrative Procedures in Western Balkans*, ReSPA (Regional School of Public Administration), Danilovgrad, Republic of Montenegro, 2016; *Report on the Implementation of the Law on Administrative Procedures in 2019*, Ministry of Public Administration, Montenegro.

[137] For Kosovo, see "Administrative Justice in Kosovo, Law vs. Practice", Kosovo Law Institute, 2019, https://kli-ks.org/wp-content/uploads/2019/09/Drejt%C3%ABsia-Administrative_Final-19.09.2019-BM.pdf; for Montenegro, "Let's talk about effects! ...or gaps in reporting on public administration reform in Montenegro", Institut Alternativa, http://media.institut-alternativa.org/2018/06/praznine-u-izvjestavanju_eng.pdf, and "Analysis of the Legal Framework and Case-Law of Montenegrin Courts in the Implementation of Effective Remedies in Respect of a Trial within a Reasonable Time" by Mirjana Lazarova Trajkovska, Maja Velimirović, Council of Europe, 2019, https://rm.coe.int/eng-finalna-analiza-duzine-sudskih-postupaka-u-crnoj-gori/1680966dd7; for North Macedonia, see "Strategy for Reform of the Judicial Sector 2017-2022", Ministry of Justice, http://justice.gov.mk/Upload/Documents/Strategija%20i%20akciski%20plan_ANG-web.pdf; for Serbia, see "Analysis of Causes of Excessive Workload of the Administrative Court and Increase in Case Inflow" by: Aleksandar Stojanović, Biljana Braithwaite, Dobrosav Milovanović, Dušan Protić, Mirjana Lazarova Trajkovska, Vuk Cucić, Belgrade, February 2020.

Figure 2.2. Trust in judiciary and the government in the WB



Note: Percentage of respondents who "totally trust" or "tend to trust" the respective institutions.

Source: Balkan Barometer 2020.

Support of efficient, effective appeal organs and the judiciary has been crucial in ensuring the application of the novel regulations of the LAPs (or any other legal act intended to reform public administration) in EU Member States. If the administration does not follow the established legal framework, including its general principles, participants in the proceedings should have easy access to quick and effective remedies, which help ensure that the administration corrects any potential errors (including any inconsistencies in the legal framework) and avoids repeating them. However, the current challenges in the WB indicate that ineffective appeal procedures – in both administrative and judicial appeals – present obstacles to the implementation of the principles of good administration provided for in the LAPs (the Once Only Principle, electronic communication, administrative silence, etc.).

Improving the process of administrative appeal

Enhancing the process of the administrative appeal involves:

- establishing proper mechanisms to monitor administrative procedures, including appeal procedures;
- identifying the most problematic procedures on the basis of the data collected and analysed (including from the perspective of ping-pong, excessive quashing of first-instance decisions for procedural reasons, inability to comply with the statutory deadlines, etc.);
- identifying the specific reasons for these challenges in the problematic procedures;
- addressing them with appropriate measures (examples from other European countries are given below).

Establishing mechanisms for monitoring administrative procedures is important not only to enhance administrative appeal, but to ensure compliance with the statutory requirements on the duration of procedures, as well as the overall legality and efficiency of the administration. This measure is placed here – among the measures focusing on appeals – because the results of the appeal process can provide significant input on monitoring and analysis of administrative procedures in general. Proper monitoring mechanisms would help collect the data needed to analyse the extent and causes of problems affecting the effectiveness of the appeal (e.g. the ping-pong effect), and to address them. Montenegro is already

collecting, analysing and publishing annual reports on all administrative procedures at state and municipal level. Other countries, like North Macedonia, are preparing institutional reports on the proceedings of administrative appeal bodies. Monitoring how administrative procedures work is thus not unknown in the WB. However, the reports, whether comprehensive or institutional, should be made more informative and analytical by adding certain key information (see the table below). If necessary, the registries or IT systems used to manage the administrative procedures and disputes must be updated to assist in monitoring of this data (for example, introducing additional numerical identifiers to track a procedure from its inception until it is resolved, through several instances, if necessary). The ministry responsible for the LAP is best placed to collect the data and prepare comprehensive and centralised reports. If the decision is instead to prepare institutional reports, the ministry responsible for LAP should at a minimum establish uniform requirements for the content of these reports, so they contain all the relevant data and help identify potential challenges.

Table 2.1. Key data for monitoring administrative procedures

Data	Purpose/added value
Data on the number of procedures initiated and completed, their duration and backlog, the number of appeals and the time needed to review them, **by category of administrative procedures** (e.g. applications for construction permits, applications for personal identification documents, etc.), not only by the institutions conducting them.	Helps assess the efficacy of administrative procedures, in case one institution conducts numerous procedures with different features, including duration/complexity, the share of appeals, the reasons for successful appeals, etc. Helps identify problematic procedures – e.g. with a high number of successful appeals, excessive duration, etc.
Reasons for successful appeals for each category/type of administrative procedure, e.g. procedural errors, errors in applying the material law, errors in applying administrative discretion, administrative silence, etc.	This information can be used for developing training programmes and other capacity-building measures. These would be targeted to officials of the administrative authorities, based on the specific challenges indicated by the analysis of the data on the results of appeals and judicial review.
Information on the **results of the judicial review**, by categories of administrative procedures, including the number of complaints submitted to court, the results of the review and the reasons for quashing the administrative act.	
Information on the **number of procedures that are being conducted repeatedly** (i.e. returned by the appeal organ or judiciary).	Will help understand the extent of the ping-pong problem and the procedures in which this problem occurs the most, as well as the reasons for it.
Key performance indicators (KPIs) on the efficacy of administrative procedures over time, e.g. duration, percentage of successful appeals, etc.	The KPIs can be used for setting reform targets or for identifying potential problems in individual procedures.

Source: Findings from SIGMA research.

For addressing the problem of ping-pong within the administration, the second-instance authorities throughout the WB need to limit the number of cases that are returned to the first-instance authorities after successful appeals to a minimum and to decide upon the matter itself in as many cases as possible. Administrative authorities (regardless whether they are first or second instance) are part of the same apparatus and must work together to process administrative cases as efficiently as possible. Under the constitutional setup in the WB (as well as in the EU), individual administrative authorities are not separate or independent from each other in the same manner as the judiciary is independent from the executive. The basic preconditions for combating ping-pong (e.g. the wide mandate of the second-instance authorities, the flexible approach to procedural errors and assessment of their importance for the outcome of the procedure, etc.) exist throughout the WB LAPs, but if needed, they can be further strengthened in the LAPs and applied consistently in practice. For example, in Montenegro and North Macedonia, the appeal organs should already decide on the matter itself when reviewing the appeal for the first time (not just the second time as is currently the case). In Albania and Kosovo, the appeal organs should assess, before deciding on the appeal, the potential procedural errors of the first-instance authority in order to evaluate whether they could have influenced the outcome of the first-instance procedure. There should be a maximum of one administrative appeal instance in the social benefit procedures in Albania and Kosovo,

rather than the two consecutive mandatory appeal organs that effectively exist at the moment. To strengthen the appeal organ's authority to decide on the merits, an obligation could be introduced in the LAPs that the second-instance authority must decide on the merits in cases where only issues of material law are concerned (i.e. not the facts of the case or procedural errors that the appeal organ cannot remedy itself). If needed, additional measures can be considered to ensure cases are not returned to the first-instance authorities too often (see the example from Poland below).

Box 2.2. Objection – special measures against administrative 'ping-pong' in Poland

With the amendments to the Administrative Judicial Procedure Act that entered into force in 2017, the parties obtained new measures to tackle administrative "ping-pong", i.e. inefficiency of administrative appeal caused by second-instance decisions returning the cases to the first instance, instead of deciding them on the merits. According to the new measure, the party has the right to file an objection to the administrative court if the second-instance administrative authority repealed the first instance decision and sent the case back to the first instance. In considering the objection, the court cannot, however, decide the case on the merits, but may only assess whether the second-instance body had grounds to return the case to the first instance, rather than deciding it on the merits. The court may additionally impose a fine on the body that took the unfounded decision to return the case to the first-instance body. Any objection must be considered by the court within 30 days (the instructive deadline).

Source: Administrative Judicial Procedure Act, 30 August 2002.

In addition, the overall effectiveness of the administrative appeal organs needs to be evaluated regularly. The appeal process within the administration needs to function effectively (i.e. competently, and within a reasonable period). If the appeal organs fail to achieve this, they are not learning from their mistakes (as identified on the basis of successful appeals to the court) and if addressing internal problems does not bring the desired results, they could be abolished and the legal protection in administrative proceedings could be provided only through judicial review. For example, if the number of decisions of the appeal organ that are subsequently overturned by the Administrative Court is high, or if the appeal organ is not able to reduce the number of complaints to the court (as compared with the appeals it receives) or if the ping-pong between administrative bodies persists, then the appeal organ is not serving its original purpose as a filter before the judicial review. While in numerous European countries the administrative appeal is mandatory, in Austria, Belgium, Estonia, France, Hungary, Italy and Spain, it is optional or does not exist at all.

Improving the process of judicial appeal

Analysing the proceedings of the administrative judiciary is itself a separate, extensive area of review, which is not the main focus of this paper. However, the ping-pong between the administration and the administrative judiciary is a clear indication that the challenges in the proceedings of the administrative judiciary directly influence the effectiveness of the administration and the implementation of the LAP. If the judiciary is not able to provide effective protection against situations where the administration does not follow the principles of good administration stemming from the legal framework, the reforms undertaken within the same legal framework will not be consistently implemented. In addition, the ping-pong hinders participants' effective access to justice by increasing complexity, proceeding length and legal uncertainty. Unresolved legal problems prevent people, businesses and society as a whole from reaching their full potential[138]. The purpose of the following section is not to comprehensively describe measures for

[138] OECD (2019), Equal Access to Justice for Inclusive Growth: Putting People at the Centre, OECD Publishing, Paris, https://doi.org/10.1787/597f5b7f-en.

enhancing the proceedings of the administrative judiciary in the WB, but to suggest targeted instruments that could help reduce the ping-pong between the administration and the judiciary, including:

- ensuring that the administrative judiciary applies its reformatory powers in the judicial review or provides sufficient guidance to the administration to ensure that administrative acts conform to the law;
- providing the administrative judges with sanctioning powers against the administration in case of non-enforcement or non-compliance with the court orders and decisions;
- allowing the administration to appeal against the judgment of the first instance Administrative Court (to the Appeal or Supreme Court), to achieve a final court decision in the case as quickly as possible;
- applying measures for improving the general capacity of the administrative judiciary and increase trust in the administrative judges.

Judicial control over the administration can follow the cassation model (eliminating a defective decision by public authorities) or the reformatory model (entailing the possibility of a substantive adjudication by the court and the "replacement" of decisions issued by the administration with a court ruling). These models do not exist in absolute pure form. Countries have applied elements of both when establishing their legal systems (see box for a description of the mandate of Germany's Administrative Court).

Box 2.3. Examples of reformatory powers of Germany's Administrative Court and of the measures applied to limit 'ping-pong' between administration and judiciary

In Germany, if the applicant requests an amendment of an administrative act relating to establishing rights or obligations of a financial nature, the Administrative Court may establish an amount that is different than that cited in the administrative act appealed. When it is not possible for the court to ascertain the exact amount of the financial right or obligation, the court can state in its decision the factual or legal circumstances (which were wrongly considered or not considered), giving a sufficient level of detail to allow the authority itself to calculate the amount, on the basis of the court ruling.

The court cannot make discretionary decisions on behalf of the administration, but it can examine whether the statutory limits of discretion have been complied with. As a further example of measures for limiting the ping-pong, the administrative authority may supplement its discretionary considerations on the administrative act, even during proceedings before the administrative courts.

Source: Germany's Code of Administrative Court Procedure, Articles 113, 114.

In the WB, where ping-pong of administrative cases and disputes between the administration and the court is widespread, a preference for the reformatory approach would be logical, and according to the legal framework, this is the case in nearly all administrations, with the exception of Kosovo. The Albanian Administrative Court has the right to amend the administrative act either wholly or in part[139]. A similar mandate for adopting decisions in "full jurisdiction" has been granted to the administrative judiciaries in Montenegro, North Macedonia and Serbia[140], "if the nature of the matter allows". In practice, this mandate

[139] Law on the Organisation and Functioning of Administrative Courts in Albania, Article 40.

[140] Law on Administrative Dispute in Montenegro, Article 36; Law on Administrative Dispute, Article 60, in North Macedonia; and Law on Administrative Disputes, Article 43, Serbia.

for wide reformatory powers is used very rarely in the WB. For example, Montenegro's Administrative Court decided in full jurisdiction in 64 of the 6 808 cases it resolved in 2019 (i.e. less than 1%), according to its annual report, and in Serbia, the situation is reported to be analogous[141].

The problem is that the WB judges are not confident in applying the reformatory powers granted to them by the law and are not sure when "the nature of the matter" allows them to decide "in full jurisdiction". To correct this issue, the judiciary should develop clearer internal guidelines for situations where decisions "in full jurisdiction" can be made and where they cannot (e.g. replacing the administrative authority in discretionary decisions should probably be excluded). If it appears that the decisions "in full jurisdiction" cannot be made in areas where the ping-pong is most frequent, additional measures should be taken (e.g. the court judgment should provide enough detailed guidance to the administration to allow it to make a lawful decision itself on the basis of the court ruling, see the example from Germany above). These initiatives should not be understood as an over-step, but rather as a facilitation of complainant's access to an effective legal remedy. If it is currently not known in which areas the problem of ping-pong occurs most frequently, the judiciary should first analyse its current cases and go through case files one by one, to determine in which categories or types of cases the dispute already has been in front of the court (and how many times). To avoid such manual data collection on the extent of ping-pong in the future, the case management systems or simple registration books should be adjusted to allow the entry of data to identify repetitive disputes in the same administrative case. Even applying coloured stickers to the files of cases that are in court repeatedly should facilitate oversight of the extent of the ping-pong problem.

Secondly, administrative judges should have sanctioning powers against the administration in case of non-compliance with the court judgement, including in cases of clear non-enforcement of court orders, and they should apply these powers, if needed. Such powers exist in EU Member States (e.g. Germany, Estonia, and Poland) as well as in the legal framework regulating some of the WB judiciaries, e.g. Albania, North Macedonia and Serbia[142]. In the WB, the fines are to be imposed on the heads of the authority or the responsible official, whereas in the EU, the responsible institution receives the penalties (without a presupposition of personal responsibility or guilt). In addition, although the WB administrations have no comprehensive statistics on the application of these sanctioning powers, the WB courts, unlike courts in the EU, apparently do not apply their powers consistently[143]. Based on the example of Estonia, the sanctioning powers need not be applied frequently, but the threat of their possible application should be real and the consequences severe enough (penalties of up to EUR 32 000 may be imposed under Estonia's Administrative Court Procedure Act). If the current personal sanctions have proven difficult to apply in the WB, the laws should allow for sanctions against the responsible institutions instead (or additionally). Although the institutional fines would be paid from the budgets of the institution, it is unlikely that the head of the institution would allow significant portions of the budget to be spent on administrative fines, which would further reduce the institution's capacity to perform its functions.

Another aspect that may contribute[144] to the ping-pong between the administration and the judiciary is the doctrine under which the administration's rights of appeal against the decision of the first-instance Administrative Court are more limited than the complainant's right to appeal. This doctrine is rarely regulated in detail in the codes of court procedure. However, discussions with selected administrative

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141 According to "Analysis of Causes of Excessive Workload of the Administrative Court and Increase in Case Inflow", Aleksandar Stojanović, Biljana Braithwaite, Dobrosav Milovanović, Dušan Protić, Mirjana Lazarova Trajkovska, Vuk Cucić, Belgrade, February 2020, p. 26.

142 Law on Administrative Courts and Adjudication of Administrative Disputes, Article 68 (2), in Albania; Law on Administrative Disputes, Article 60 (7), in North Macedonia; and Law on Administrative Disputes, Article 75, in Serbia.

143 See "Analysis of Causes of Excessive Workload of the Administrative Court and Increase in Case Inflow", Aleksandar Stojanović Biljana Braithwaite, Dobrosav Milovanović, Dušan Protić, Mirjana Lazarova Trajkovska, Vuk Cucić, Belgrade, February 2020, pp. 25-26.

144 The issue emerged in discussions with administrative judges in Montenegro. No consistent evidence emerged of its relevance in other WB judiciaries, but given the similarities between the legal doctrines in the countries of the former Yugoslavia, it is likely that the practice is similar.

judges suggest that if the court decides in favour of the complainant (and against the administration), there can effectively be no appeal to the higher court instance (in which case the administrative organ against which the decision was made does not have appeal rights). The limitations on the appeal rights of the administration (against the decision of the Administrative Court) appear to have persisted from the former institutional set-up, where the administrative judges were considered part of the administration, not the judiciary, and appeals against another administrative authority were normally not permitted. In addition, at first glance, not allowing the administration to appeal against the court decision to the higher court instance should help to avoid ping-pong. However, a doctrine is applied that delays finalisation of the administrative procedure until all the disputes have been resolved and the relevant appeal deadlines have passed. This has given rise to the belief that a first-instance court decision quashing the administrative act and returning the case to the administration is not really "final" – and binding on the administration – because the procedure is still in progress. This concept means that the administration is not bound by the contents of the "non-final" court decision, and it also makes it impossible to apply the administrative sanctions provided for in the WB procedural codes (because no sanction can be imposed for non-enforcement of a non-final court order or decision). On the other hand, the doctrine creates a perverse incentive for the administrative judges to decide in favour of the complainant and to return the case to the administration instead of making a decision in full jurisdiction, which amends the administrative act if needed. This is because all decisions in favour of the complainant are not subject to appeal and enable the first-instance judge to avoid potential scrutiny of the higher courts. Widening the possibilities of appeal for administrative authorities – together with the court applying its reformatory powers – should make it possible to reach a "fully final" decision on the matter more quickly, if necessary with the involvement of the highest judicial authority, and would subsequently give the courts the authority to apply the sanctioning powers, if the administration does not comply with the "fully final" decision.

Finally, all measures for strengthening the general capacity of the administrative courts as well as their accessibility and effectiveness[145] should be applied. A strong, effective and efficient administrative judiciary is an important precondition for the application of the principles of good administration, but the WB administrative judiciaries suffer from lengthy proceedings, as well as from low public trust. The following measures could be considered with a view to enhancing their capacity.

- Appropriate specialisation in administrative matters would allow administrative judges to focus on adjudicating disputes that arise in the application of administrative procedure. This should exclude minor offences and misdemeanour cases (which are now part of the portfolio of administrative judges in Kosovo and North Macedonia) that follow the general principles of criminal procedure. Specialisation allows the judges to further increase their competencies, as well as to adjudicate disputes more efficiently.
- Developing or updating proper case management systems could provide full overview of ongoing procedures, both in order to process them more efficiently and to allow automation of certain technical steps of the process (e.g. automatic generation of the standard letters and court documents, automatic allocation of cases, publication of judgments, recording of hearings, etc.). The resources saved by automating technical steps should be reallocated to provide substantial support to the judges, e.g. additional judicial posts or posts for legal advisers.
- Widening the pool for new judges could appoint more administrative judges from the ranks of lawyers and academia, rather than from former officials conducting the administrative procedures. Again, comprehensive information about the professional background of administrative judges in the WB is not available, but reports from North Macedonia show that former civil servants seem to

[145] The OECD criteria for people-centred design and delivery of legal and justice services can be specifically useful source of inspiration in this regard: https://www.oecd.org/governance/global-roundtables-access-to-justice/oecd-criteria-for-people-centred-design-and-delivery-of-legal-and-justice-services.pdf.

predominate[146]. While civil servants experienced in conducting administrative procedures can make good judges, securing wider diversity in judicial appointments will help to ensure that the administrative judiciary does not become an extension of the appeal instances within the administration. If necessary, the qualification and examination requirements for administrative judges should be revised, to ensure that experienced lawyers from different professional and personal backgrounds have the incentive to become administrative judges.

- Increasing transparency in the judiciary could be achieved by consistently publishing all judgments online (while complying with the laws on personal data protection) and enabling systematic access to case law using thesauri and systems for categorising cases and judgments by topic or legal concept.

Capacity building and awareness raising

Statistics on successful appeals against first-instance administrative decisions (e.g. 63% against acts of local government in Montenegro), as well as issues in applying the requirements of the administrative procedure noted in the focus group discussions held for the drafting of this paper (e.g. issues relating to application of the right to be heard), indicate that the administration's capacity for implementing administrative procedures needs to be steadily increased. This paper will not elaborate on specific training programmes, but will simply describe four measures that, in addition to the usual training for civil servants on managing administrative procedures, could help enhance the quality of administration:

- organising round-table discussions involving administrative judges, administrative appeal organs and the officials conducting the procedures;
- establishing help desks and networks for the officials conducting the administrative procedures;
- training advocates and lawyers to represent participants in administrative procedures, as well as awareness-raising campaigns on the rights of participants in administrative procedures;
- training administrative judges, especially peer-to-peer exchanges with administrative judges from EU Member States.

One of the most efficient ways to resolve differences in the practices and interpretations of the different organs that implement and review administrative procedures are regular round-table discussions involving administrative judges, administrative appeal organs and the officials conducting the procedures. The round-table discussions can be initiated by a representative of the administrative authority or the judiciary, if either side identifies systematic differences in their interpretation of the legal provisions. The roundtables can also be initiated upon the request of the ministry that monitors administrative procedures, if this indicates the existence of such differences (e.g. a high percentage of successful complaints to the judiciary). The discussions should be well-prepared (i.e. addressing the most contentious issues leading to the most successful appeals and complaints). The topics may be proposed by the participants or identified in advance on the basis of analysis of administrative and judicial practice. This can give the judges the opportunity to explain the background of their judgments and further legitimise them, and allows the administration to make reasonable, systematic adjustments to its operations. Round-table discussions also give the administration an opportunity to ask for clarifications of certain court judgments, if needed. Peers from EU Member States can also be invited to participate in these discussions occasionally.

If systemic issues in administrative procedures emerge (e.g. as indicated by a high share of successful appeals or complaints to the court), help desks for managing administrative matters can be set up for

[146] "Functional Analysis of Capacities of the Administrative Judiciary in the Republic of Macedonia", 2018, p. 51, https://cpia.mk/media/files/funkcionalna-analiza-na-kapacitetite-na-upravnoto-sudstvo-vo-republika-makedonija.pdf.

certain procedures, if they are particularly problematic, or centrally, for the entire administration. Officials from appeal organs or from ministries responsible for the LAP can be designated to act in a supporting role, whether full- or part-time, depending on the volume of requests. One good example arose in North Macedonia. A central help desk was set up at the Ministry of Information Society and Administration after the adoption of the LAP, to provide guidance for the harmonisation of the special legislation and to respond to questions on the application of the LAP. If the challenges arise only in specific procedures, sectorial help desks can probably be more effective, because they can be more specialised. In addition, networks consisting of practitioners conducting administrative procedures can be established and maintained by the ministries responsible for the LAP. These networks could convene regularly to discuss implementation challenges as well as to share best practices, e.g. innovative approaches on how to effectively ensure the right to be heard, how to exchange data within the administration in the absence of advanced interoperability frameworks, etc.

In addition to training officials conducting the administrative procedures, participants in procedures may also benefit from centrally organised capacity building by the state. Awareness-raising campaigns (e.g. on key principles of good administrative behaviour, such as the Once Only Principle, the proportionality of fees as compared to the cost, the right to be heard, the statutory duration of procedures and legal remedies) can educate citizens so that they know what to demand from the administration. A more targeted approach would be for the ministries responsible for the LAP to organise trainings on LAP to lawyers and barristers. These can even be state-sponsored, to attract wider participation. This would give the legal representatives an incentive to identify shortcomings in the proceedings of the administration, because they would lead to successful appeals or court cases that result in financial or professional gain for the lawyer. Finally, offering targeted grants to civil society organisations that monitor public sector operations can also help identify problems with the application of the good administrative principles (as provided for in the LAPs).

Special attention should be paid to capacity building of the administrative judiciary, since a strong judiciary is an important precondition for a strong, effective public administration. This is currently not in place in the WB (as indicated by the low public trust in the judiciary). The judiciary itself is best positioned to identify and analyse potential training needs (e.g. on the basis of a large percentage of successful appeals to the higher court instance, and inconsistencies in the application of the law by the lower courts). Ministries responsible for the LAP can also recommend ways to improve the judiciary's training programmes, to ensure more consistent application of the LAP in special administrative procedures. The judges are the protectors of the individuals and the private sector against wrongdoing by the state. If they fail in this role, reforms in the legal framework may never be fully implemented by the administration. Judicial practice should guide the administrative practice and, if needed, can incentivise the review of special legislation for harmonisation with the LAP. Consistent case law will also help to clarify and emphasise the central role of the LAP as the beacon for all administrative procedures. Therefore trainings on the LAP and administrative procedures in general should have a regular place in the training curricula of the judicial training centres. In addition to training judges in the specificities of the legal framework (e.g. the LAP), equally important are trainings and exchanges with judges from EU Member State on judge-craft and the wider responsibility of a judge.

Enhancing implementation of the Once Only Principle and electronic communication

Other measures can also enhance implementation of the principles of good administration as established in the LAPs. The following examples do not aim to cover the full spectrum of elements of the LAP, but focus on measures that are most relevant to the Once Only Principle and electronic communication. These were key objectives of the WB LAPs, but in practice, progress has been limited or inconsistent. The obligation of the state to exchange data internally and the possibility of communicating electronically is

established in the LAPs and does not depend on fulfilling any additional preconditions. However, certain measures can enhance the efficiency and effectiveness of implementing these provisions, including:

- improving interoperability within the administration;
- improving the data quality of state registers;
- addressing the obstacles to electronic communication.

Improve interoperability within the administration

According to the European Interoperability Framework (EIF), four layers of interoperability exist: legal, organisational, semantical and technical[147]. The WB administrations need to focus on all four. Although the LAPs establish a general legal requirement for interoperability, the special legislation does not fully support it. Even where interoperability between selected state registers has technically been established, the special legislation may still require an applicant to provide the data, with the technical interoperability of registers used merely as backup (e.g. in Albania's social benefit procedure). To achieve legal interoperability in practice, the special legislation (including the sublegal acts establishing the submission requirements) needs to be reviewed and significantly simplified. This would lessen the burden on the applicant stemming from the obligation to submit data that the state already possesses. It is important to ensure that the legal basis exists for obtaining and managing the necessary data from other registries and that the working practices respect the requirements for personal data protection.

Interoperability does not necessarily imply two or more registries communicating with each other. It may relate to the ability of an administrative body to access data in a registry managed by another agency, or to integration of access to registries into information systems supporting administrative procedures. In Serbia, for example, the system for delivery of administrative services related to the birth of a baby incorporates instantaneous import of data from the relevant registries at the request of hospital staff, who serve as “one-stop-shop” officials[148].

To improve organisational interoperability, the services and procedures provided by the administration should be redesigned according to life events seen as a whole (e.g. the birth of a child, starting a business), not by the institution providing a particular service. A service provided by one institution can be a precondition to or a subservice of the service provided by another. It is important to grasp the entire process as seen by the individual or company when designing the governmental e-services or establishing one-stop-shops. The WB already has some success stories, like Serbia's e-baby child registration service, but usually the services are regulated and monitored according to the institution that provides them (as is evident from the annual reports on implementation of administrative procedures in Montenegro). If the budget of one of the key data holders for several administrative procedures (e.g. the Real Estate Cadastre) depends on the fees paid for issuing official certificates from its registry, the initiatives for improving interoperability need to be implemented in tandem with reforming the principles for funding the relevant institutions.

To improve semantic interoperability, all state registers should classify the key data elements in a similar way and store them in the same format. According to the EIF, agreements on reference data, in the form of taxonomies, controlled vocabularies, thesauri, code lists and reusable data structures/models, are a key prerequisite for achieving semantic interoperability[149]. In the WB, these agreements need to be made at first at state level, to ensure that key data used by several registries (e.g. names, identification and

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[147] https://ec.europa.eu/isa2/sites/isa/files/eif_brochure_final.pdf.

[148] https://www.srbija.gov.rs/tekst/en/129970/ebaby.php.

[149] European Commission (2017), *European Interoperability Framework: Promoting seamless services and data flows for European public administrations*, Luxembourg, https://ec.europa.eu/isa2/sites/isa/files/eif_brochure_final.pdf, p. 29.

registration codes, addresses, etc.) are always stored in the same format, and the data fields or elements in the different systems are compatible.

To improve technical interoperability, it is important to ensure that development of new IT systems (or replacement of existing ones) is planned and co-ordinated centrally, rather than from the bottom up. For each planned IT system, the data elements should be mapped and analysed before development, to analyse which other systems already contain the same data and which might be interested in using the data the new system is to manage. This can help plan which registries need to be connected in order to share data through web services, and to avoid asking repeatedly for the data from citizens or businesses.

Similar co-ordination mechanisms, as in Portugal's administrative modernisation or Estonia's X-Road (see Box 2.2. below), can help increase interoperability in the administration on all four levels. The institutions with the responsibility for ensuring harmonisation can be different, depending on the exact interoperability layer (e.g. for legal interoperability, the institution responsible for LAP would be well-positioned as a central co-ordinator, whereas for semantic and technical interoperability, the institution co-ordinating the Government's IT would be preferable). However, these institutions need to co-ordinate their activities and approaches, to achieve the best results in redesigning administrative procedures and delivery of services.

Box 2.4. Examples of country practices in promoting interoperability

Administrative modernisation review of legal and regulatory initiatives (Portugal)

In Portugal, the Agency for the Administrative Modernisation (AMA) provides input on new legal and regulatory initiatives coming before the Government for approval, to promote an approach to administrative modernisation throughout the Government. AMA reviews relevant regulations, decrees and resolutions of the Council of Ministers, and suggests the inclusion of digital instruments and principles considered critical to Portugal's administrative modernisation agenda. Examples include the reuse of data, application of the Once Only Principle, and use of the national interoperability platform and digital identity platform, Autenticação.gov. This transversal, cross-cutting approach benefits from high-level political support from the Minister of the Presidency and Administrative Modernisation. This can help the AMA improve alignment and secure a coherent digital by design policy throughout the national public administration.

X-Road (Estonia)

Estonia's X-Road is a government platform that supports data sharing between over 900 organisations and enterprises in Estonia. The platform secures the delivery of services to citizens and companies through access to databases, the creation and transmission of large datasets, and online searches. Platform security is ensured through digital identification, multi-level authorisation, a high-level log processing system and encrypted data transfers. The system provides an ingenious solution to the issue of data ownership – its decentralised nature allows participating institutions to retain ownership of their data, but allows them to share data or access the data of other institutions as necessary. Coupled with the Once Only Principle, the system has facilitated increased co-operation and data sharing between institutions, leading to cost-reductions and increased efficiency.

Source: OECD (2020), *The OECD Digital Government Policy Framework: Six dimensions of a Digital Government,* p. 12-13.

Improving data quality of state registers

The poor quality of the data and the frequent errors in the state registers were often referred to as the reason why applicants were asked to provide the data several times, even though the state already has it. Data quality is usually improved when the data is consistently and purposefully used and when its

inaccuracy has direct consequences (e.g. to the applicant). The EIF recommends setting up base registers to enhance the delivery of integrated public services. Base registry is a trusted, authoritative source of information that can and should be digitally reused by others, where one organisation is responsible and accountable for the collection, use, update and preservation of that information (e.g. about people, companies, vehicles, licences, buildings, locations and roads). “Authoritative” means that a base registry is considered to be the source of information, i.e. it shows the correct status, is up to date and is of the highest possible quality and integrity. In case of centralised registries, a single organisational entity is responsible for ensuring data quality and for having measures in place to ensure that the data is correct[150].

Most registers contain information on the contact addresses of the individuals that they contain. However, the Government should maintain a single base registry containing the authoritative contact data (e.g. the population registry) and the other registries should use the contact information stored in the base registry. Alternative contact addresses can be stored in other registries, but all registries should be informed (e.g. with the help of relevant web services) of the main contact address of the individual stored in the base registry. In addition, to improve data quality, the interoperability of registers should allow the individual to update his or her contact address in the base registry when using services that are based on other registries. For example, when the Tax Administration becomes aware of a contact address of the taxpayer that is not stored in the population registry, the tax official should be able – through interoperable registers – to update the contact address in the population registry after securing the consent of the taxpayer.

Addressing the obstacles to electronic communication

One of the key challenges limiting the possibilities for electronic communication between the private and public sectors (as well as within the public sector) is the limited uptake – or, in the case of Kosovo, the complete absence – of digital IDs. Central infrastructure is needed that is affordable and easy to access and use. Unless applicants can submit digitally signed documents and the administration can conclude and sign administrative acts in an electronic format, it is difficult to implement fully the provisions for electronic communication in the LAPs. It might be possible to switch to electronic communication while conducting the procedure after the first exchanges have been made through traditional channels and the relevant e-mail contacts have been confirmed. In addition, innovative *ad hoc* solutions (e.g. attaching a scan of an ID card to an e-mail to prove one’s identity) can provide a short-term solution, but this is not sustainable, and undercuts the advantages of electronic communication.

In Kosovo, the infrastructure for digital identity and authentication must be created as a first step. In Albania, digital identities must become much more affordable than they are now. Countries like Serbia and Montenegro need to increase the uptake of digital identities by making sure that they can be used effortlessly and by providing services that allow applicants to use electronic authentication and digital communication. Review of special legislation that includes holdovers from paper-based procedures (e.g. an obligation to sign each page of a document separately) may be necessary, as part of the general initiative for harmonising special legislation with the LAP, to allow for fully electronic communication.

Conclusions

Chapter 2 suggested options for overcoming the obstacles that have prevented full implementation of the principles of good administrative behaviour enshrined in the LAPs, as identified in Chapter 1. Such obstacles include delays in harmonising special legislation, ineffective appeal procedures, insufficient

[150] European Commission (2017), *European Interoperability Framework: Promoting seamless services and data flows for European public administrations*, Luxembourg, https://ec.europa.eu/isa2/sites/isa/files/eif_brochure_final.pdf, p. 37.

capacity and a lack of infrastructure to support consistent implementation of the LAPs. The following key measures were proposed.

- The decentralised approach to harmonising special legislation with the LAP has not ensured full compliance during the *vacatio legis* period. The central ministries responsible for LAP should thus centrally co-ordinate the review and harmonisation process, which should cover both primary and secondary legislation. Omnibus laws that make it possible to amend several laws with a single legal act can help make the harmonisation of primary legislation more efficient and consistent.
- In future, consistent compliance between LAP principles and special legislation should be ensured, after harmonising the legislation has been completed. Responsibilities and inter-ministerial consultation procedures should be established to enable ministries responsible for LAP to review and comment on all draft primary and secondary legislation regulating administrative procedures.
- To establish a comprehensive overview of the functioning of administrative procedures, including the appeal process, monitoring mechanisms should be set up under the leadership and co-ordination of the ministries responsible for LAP. These mechanisms should identify the most problematic procedures (from the perspective of ping-pong, excessive quashing of first-instance decisions for procedural reasons, inability to comply with the statutory deadlines, and so on), and the reasons for the challenges, to help determine suitable measures for addressing them.
- To improve the system of legal remedies within the administration, the appeal organs should limit the number of cases returned to the first-instance authorities after a successful appeal. They should itself decide on the matter in substance as often as possible (e.g. in matters where it is possible to correct the potential procedural errors of the first-instance authority, and when the dispute is related to the application of the material law).
- To avoid the ping-pong effect between the administration and the judiciary, the administrative judges should apply their reformatory powers in the judicial review or provide sufficient guidance to the administration to adopt a lawful administrative act. In addition, the administrative judges should have sanctioning powers against the administration in case of non-enforcement or non-compliance with the court orders and decisions.
- To increase the capacity of the administration in managing administrative procedures efficiently and lawfully, the traditional training on application of the LAP should be continued for the officials conducting the procedures. In addition, round-table discussions involving administrative judges, administrative appeal organs and the officials conducting the procedures should be organised by the respective authorities or on the initiative of the ministries responsible for LAP. Networks of practitioners and help desks provided by the ministries responsible for LAP can provide a useful forum for discussing implementation challenges and for sharing best practices.
- To increase understanding of participants' rights in administrative procedures', public awareness-raising campaigns can be held (e.g. on the application of the Once Only Principle). The training of advocates who represent participants in administrative procedures can be used to the same effect.
- To enhance implementation of the Once Only Principle, the services provided by the administration should be designed as life events (e.g. the birth of a child, or starting a business), rather than as the institutional responsibility of the administrative authorities involved. The financing arrangements of key data holders for several administrative procedures, like the Real Estate Cadastre, should avoid basing their funding on fees for issuing certificates on data kept at their registries. Data quality in state registries can be improved by ensuring that data gaps and errors can be identified and corrected.

- To roll out electronic communication, the infrastructure for digital identities should be introduced (if it is not yet available) and made accessible by lowering the costs associated with its uptake.

Annex I. Template supporting the harmonisation of the special laws with the LAP

This paper's main thesis is that some of the most important problems in the proceedings of the administrative systems under analysis can be attributed to the limited or, in some cases, non-existent alignment of specialised/sectoral laws with procedural features of the laws regulating administrative procedure on a general level. This thesis was confirmed by the examples provided in the paper, which indicated that aligning these two is not a trouble-free process. A model tool was thus prepared like one that was used during the development of the methodological framework of the paper. This could help those who draft the sectoral laws and the authorities responsible to perform alignment checks in a simple, efficient and transparent manner.

The tool can be used to conduct a quick comparison between the basic procedural principles as defined by the general procedural laws (LAPs) and solutions of the sectoral law under preparation or already adopted (when harmonising the stock of laws). As sometimes a highly technical or otherwise specialised nature of the matter regulated by the sectoral laws prevents a straightforward alignment, the differences (if not self-evident) should also be shortly noted. Because laws do not function in isolation, not only laws under development and the anticipated effects of their interaction with other laws should be included. Finally, inasmuch as LAPs allow deviations from their general principles, it is always under a condition of necessity. Where a deviation is detected, a short explanation of the reasons should thus also be included. This form of comparison does not allow for in-depth analysis, but it can identify possible disparities between the laws that might otherwise remain "buried" in the often lengthy texts of the laws, which make any other forms of comparison relatively difficult.

The tool consists of a table covering the main features of administrative procedures. The list of principles and elements is not exhaustive, and others can be added (e.g. all the general principles of the respective LAP, if not yet included in the table, as these mandatorily have to be complied with). The goal of the table is to capture the most important ones. The first column of the table should contain the exact provision of the LAP regulating the application of the general principle or element of any given country. The template contains selected references to some provisions from the WB LAPs as examples. The second column should contain the provision of the special law or draft regulating the same principle or element. Again, the template contains some selected examples from the WB special legislation, which stem from actual WB legislation, but which have been simplified as necessary to maintain the clarity and brevity of the example. Finally, the third column should contain a) the proposal to amend the special law (in case of contradiction with the LAP principles or unjustified deviation from the LAP); b) the explanation for any differences from the relevant LAP provisions, if they exist and deviations are allowed by LAP as well as can be justified, or c) a confirmation of compliance with the LAP.

General guidance for harmonising the special legislation with the LAP include the following principles.

- The special law should not deviate from the general principles of the LAP;
- In other aspects, differences from LAP can occur, but these have to be reasoned. If there is no particular need for deviations, uniform application of the administrative procedure as provided for in the LAP should be preferred, to simplify the participation of parties in different kinds of administrative procedures.

- In general, special legislation should not repeat general law, in order to avoid overlaps, but in some instances overlaps can exist (e.g. if the clarity of the legal framework will suffer without an overlap).
- The special law should include a clear and general reference to the LAP (since the principles of the LAP should apply in all administrative procedures).
- When harmonising the stock of existing special legislation, the use of omnibus laws for amending all relevant special legislation with one law helps to ensure consistency and process the amendments efficiently.

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The Once Only Principle requires that citizens and businesses provide diverse data only once when they contact the public administration. Public administration bodies should internally share and reuse data, while respecting data protection regulations and other constraints. As a rule, the Once Only Principle applies regardless of existence of certain preconditions (e.g. the interoperability of registers). In addition, the meaning of "state" here is used in its widest sense, also covering registries potentially kept by independent authorities or even other branches of government.		
For example, Article 23: *The party shall not be required to provide any data that is already available in public registers.*	*Some usual examples of discrepancies:* *Article 45:* • *The party has to provide a certificate of land ownership.* *Article 34 of the Law on Land Register:* • *A certificate of ownership can only be issued after a payment of a fee.*	
Proportionality of the Fee. The costs of an administrative procedure, if payable by private persons to public authorities for administrative decisions, should be fair and reasonable. Administrative services should not be seen as a revenue-making measure by the public authorities. There should not be significant differences in the fees for the same procedure, even if the procedure is conducted by different institutions (e.g. regional or municipal offices).		
Article 99: The procedure should be completed at the lowest possible cost to the party.	*Article 15 of the Law on Administrative Fees:* *EUR 40*	
Requirements for Applications and Consequences of Incomplete or Erroneous Submissions. Requirements regarding the format and content of an application should not be unduly rigid – especially if a form is required – as regards subject matter. If a specific form is required, it must be easily available to the interested public. If an application is incomplete, the applicant must be given the possibility of correcting it within a reasonable deadline.		
Article 67: • *May be submitted in writing or electronically* *Article 68:* • *Must contain identification data and request, plus any additional data required by a special law* *Article 69:*	*Article 76:* • *Must contain a certificate of land ownership* *Article 77:* • *Incomplete submission must be corrected within five days.*	

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• *If a submission is incomplete, parties must be allowed to correct it within a reasonable deadline*		
Notification and Delivery of Documents Parties should be appropriately notified of any relevant activities in the procedure. Any decision affecting their interest should be duly delivered to them.		
Article 65: *A party, interested authority and interested person shall be entitled to notification on the course of the proceedings. Notification shall mean the action through which an authority, in a suitable manner, notifies a party and another participant of actions taken during the administrative proceeding.* *Article 68:* *Personal service shall be obligatory when a non-extendable time limit begins to run from the date of service, unless otherwise provided for by law.*	*Article 77:* *All the events of the procedure shall be published on the authority's web pages. The parties shall not be additionally notified.*	
Possibility of Electronic Communication The legal framework should enable electronic communication between the participant of the proceeding and the administrative authority. As a rule, electronic communication is not mandatory, but usually depends on the consent of the party to the proceedings, unless electronic communication is explicitly provided for as the main form, under the special legislation. Between administrative authorities, electronic communication should be the preferred method of communication.		
Article 17: The public authority shall enable the party's access to the public authority		

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electronically.		
Jurisdiction. Administrative procedures can be conducted only by authorities with the legal competency to conduct them. Jurisdiction can be specified by subject matter or territory.		
Article 20: *Every public authority shall perform the administrative action within its area of jurisdiction.*	*Article 31:* *Any public authority of general jurisdiction in the country may decide the matter.*	
Parties and Their Representation. Determining the relevant parties is important, to engage them in the procedure. The parties also usually have wider rights than interested persons. The usual parties include the applicant, the recipient of the procedure (applicant and recipient can overlap), third person, approving authority (in case a prior approval by another authority is needed; the authority conducting the procedure is not a party). **Representation.** A possibility for the legally competent applicant to represent themselves or freely choose a representative should be ensured as widely as possible.		
Article 40: *A party with full legal capacity may undertake actions in the proceedings in person.* *Article 45:* *A party or their legal representative may authorise an advocate or any other person having full procedural capacity to represent them as a party in the procedure, save to make statements that can only be made by the party.*	*Article 68:* *The applicant must be represented by a patent attorney.*	
Interested parties/legal standing. If the decision might have adverse effects upon a person's legally based interests, this person should be given the possibility of participating in the procedure. Frequent requests to participate in procedures for purely speculative reasons – to maliciously delay the decision – require purely objective criteria for determination of legal standing.		
Article 3: *"Party" shall be taken to mean any natural person or legal entity at whose request the administrative procedure is initiated, against whom the*	*Article 58:* *The existence of the legal interest for participation in the procedure shall depend exclusively upon ownership of property within influence zone,*	

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administrative procedure is initiated, who is included in the procedure initiated ex officio*, or who, in order to protect his/her rights or legal interests, is entitled to participate in the administrative procedure.*	*determined by a formula set out by this provision.*	
Taking of Evidence. Alignment is only relevant in context of the consistency of the system.		
Article 101-105: *Detailed technical rules for hearing a witness or an expert, examination of documents and inspection on site*	*Article 157:* *Specific rules for technical expertise and examination of documents*	
The Right to be Heard. The party to the proceeding must be able to submit or propose evidence, to actively participate in the enquiry procedure, be notified about the outcomes of the procedure and be able to comment on them before the final decision is taken. The right to be heard does not necessarily mean an oral hearing in front of the authority. Exemptions to the right to be heard can be applied in the simpler procedures, if the decision can be based exclusively on the data provided by the applicant or data from public registers or if the applicant's request can evidently be granted in full.		
Article 10: *Prior to issuing an administrative act, the party must be given the opportunity to make a statement concerning the facts and circumstances relevant for taking the decision.* *The administrative act may be issued without prior hearing of the party only in cases stipulated by law.* *Article 99:* *If it is not a matter of generally known facts, a party shall propose evidence for his/her allegations and submit them to the authority, if possible.*		
The Right to Inspect Files The party to the proceeding must be able to access the files of the case, except if this is incompatible with other rights and		

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interests protected by a law and specifically prohibited by a law. Right to inspect files can also be ensured through access to an IT system/registry that is used for processing the administrative matter.		
Article 39: *The parties of an administrative proceeding shall be entitled to inspect the files of the proceeding. The right to inspect files includes the right to copy necessary documents.* Article 41: *The right of inspection of files may be limited only by special law for the purpose of protecting other legitimate interests stipulated by law.*	Article 47: *Inspection of files is possible only electronically, through use of a controlled access system requiring special authorisation.*	
Procedural Deadlines and Consequences. The procedural deadlines stemming from the law should be clearly established, including the method for calculating their duration (both start and end). There can also be deadlines not established in the law, where the administrative authority can determine the deadline based on the circumstances of the case and following the general principles of the LAP.		
Article 88: *The deadlines set by the authorised official may be extended upon the request of the interested party, if the request is submitted prior to the expiry of the time limit, provided that there are valid reasons for extension.*	Article 51: *The deadlines set by the authorised official may not be extended.*	
Bearing of the Costs. The arrangements regarding how the parties bear the costs should not discourage the parties from active participation in the procedure.		
Article 87: *In the proceedings where parties are involved with opposing interests, the party at whose request the proceedings ending in a decision against him/her has been instituted shall reimburse the opposing party for the reasonable*	Article 65: *In proceedings where parties with opposing interests are involved, the party at whose request the proceedings ending in a decision against him/her has been instituted shall be liable for all the damages of the opposing party that occurred*	Frequent requests to participate in procedures for purely speculative reasons – to maliciously delay a decision – may require appropriate sanctioning.

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expenses incurred, in proportion to the part of the request on which the party has failed.	*because of a delay in the procedure.*	
Stay of the Procedure. The applicant should have an effective remedy against a decision upon stay of the procedure, in order to prevent undue delays.		
Article 95: *An appeal filed against the ruling on stay of the procedure shall not suspend the enforcement of the ruling.*		
Delegation of Decision Making. The right level of delegation of responsibility and decision-making authority is associated with a higher level of efficiency and effectiveness within an organisation, also promoting higher level of professional and personal accountability.		
Article 37: *An authority shall proceed in administrative matter through an authorised officer. An authorised officer, within the meaning of this Law, shall be a person appointed to the position, which also entails the tasks relating to the conduct of the proceedings and decision making in the administrative matter, or only the tasks relating to the conduct of the proceedings or undertaking certain actions in the proceedings. If the officer is not appointed, the ruling in the administrative proceedings shall be issued by the head of authority.*	*Article 37:* *The city architect shall issue (sign) the decision.*	
The Content of the Decision. The decision should contain the grounds/reasons, including the relevant facts and legal basis (the rationale) and indication of appeal possibilities, including the relevant bodies and time limits. The reasoning can be shortened or even omitted, if the request of the applicant is fully approved and the rights of third persons are not restricted.		
Article 120: *Mandatory contents of the administrative act are:* *1) the introductory part, which should refer to the*	*Article 68:* *The rationale may be limited to drawing conclusions, with short comments and reference*	

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legal basis of the administrative act; *2) the rationale behind the decision and the decision itself;* *3) and the description of appeal possibilities (the competent body, the appeal deadline; where relevant, these may also include clarifications on the suspensive effect of the appeal or its absence).*	*to the legal basis.*	
Duration of the Administrative Procedure. A person has a right to have their affairs handled within a reasonable time. For example, the European Code of Good Administrative Behaviour stipulates that officials should ensure that a decision on every request or complaint is taken in any case no later than two months from the date of receipt. The special law can establish a shorter duration of the procedure than provided for in the LAP.		
Article 22: Must be completed within 30 days, in special cases prolongation of a further 30 days is possible.	*Article 33: Must be completed within 15 days, no further extension is provided for.*	
Administrative Silence. An adequate legal remedy should exist in cases where the administration is silent or refuses to take action.		
Article 100: *If the party has requested the issuance of a written administrative act and the public organ* *does not notify the party of its administrative act within the deadline and fails to notify* *of the extension, the request made by the party shall be considered to be fully granted.*	*Article 37:* *Exceeding the maximum duration prescribed for the procedure creates a legal presumption that the applicant's request has been granted.*	
The Right to Appeal and Corresponding Deadlines. Adequate time should be allowed to submit the appeal after the recipient of the administrative act has learned of its contents. If LAP allows shorter appeal deadlines, the special law can include them, but there has to be a reason (e.g. necessary due to the urgent nature of the procedure) that is proportional to the deadlines that are applied to the administration.		
Article 188:	*Article 39:*	

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The deadline for submission of an appeal shall be 15 days after service, unless stipulated otherwise by a law.	*The deadline for submission of an appeal shall be two weeks.*	
The Mandate of the Appeal Authority. The second-instance authority should be able to conduct additional investigations in order to decide the appeal efficiently in substance and, if necessary, amend the reasoning of the administrative act or to decide the matter in full by itself with a new act.		
Article 153: *If the appeal is not dismissed by the second-instance authority, the authority may reject the appeal, annul the ruling in full or in part and decide on the administrative matter itself, annul the ruling and return the case to the first-instance authority to reopen proceedings, or modify it.* *The second-instance authority shall decide an appeal on the basis of facts established by the first- or the second-instance authority.*		
Procedural Effects of an Appeal. The procedural effects of an appeal should ensure effectiveness of the appeal (suspensive effect), but not unduly prolong the procedure (impossibility of appeal against procedural decisions).		
Article 142: *Rulings cannot be enforced before the end of the time limit for appeal, unless otherwise provided by law.* *An appeal shall stay the enforcement of a ruling until the complainant has been informed of the ruling issued upon the appeal, unless otherwise provided for by law.*	*Article 53:* *The appeal does not delay legal effects of the decision.*	
Deadline for a Decision on Appeal. Participants in proceedings have a right to have their affairs handled within a reasonable time. The urgent nature of the matter at hand may dictate the stipulation of a shorter deadline than in the LAP.		

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Article 205: *The matter has to be decided in 30 days, and under exceptional circumstances, this may be extended by another 30 days.*	*Article 54:* *The matter must be decided within 15 days.*	
Reopening of a Procedure. Procedural rules regulating the amendment, suspension and repeal of an administrative act should guarantee a fair balance between the public interest and the legitimate expectations of the individual regarding legal certainty. Potential reasons for limiting options reopening can include the need to prevent malicious requests for reopening without reasonable possibilities of success, aimed exclusively at causing damage to the beneficiary.		
Article 235: *Nine narrowly defined, exceptional reasons for reopening.*	*Article 75:* *Additional condition for an applicant to demonstrate the possibility of a different outcome if reopening is granted.*	
Possibilities of Repealing or Annulling a Final Decision. Procedural rules regulating the amendment, suspension and repeal of an administrative act should guarantee a fair balance between the public interest and the legitimate expectations of the individual regarding legal certainty.		
Article 124: *If the party agrees.* *If necessary to eliminate a grave and direct danger to the life and health of people, public security, public order, provided that it cannot be eliminated successfully by other means.*		

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[1] Footnote by the European External Action Service and the European Commission: this designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the European Union Member States on this issue.