



# REPUBLIC OF SAN MARINO

## **We the Captains Regent of the Most Serene Republic of San Marino**

*Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;*

*Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 29 September 2011:*

### **LAW NO. 160 OF 5 OCTOBER 2011**

#### **LAW ON ADMINISTRATIVE PROCEDURE AND ACCESS TO ADMINISTRATIVE DOCUMENTS**

##### **TITLE I PRINCIPLES AND GENERAL PROVISIONS**

##### **Article 1 (Scope)**

1. The bodies, offices, services and autonomous companies of the State shall perform public interest functions established by law in respect for the rights and taking into account the interests of private individuals according to the programmes and guidelines decided by the Congress of State for the achievement of the objectives fixed by the latter. To this end, administrative activities, besides respecting the criteria of legitimacy, impartiality and efficiency, shall be carried out on the basis of operational autonomy and management responsibility according to the criteria of publicity, efficiency and cost-effectiveness. In particular, this Law shall implement the principles and provisions contained in:

a) Article 3, paragraphs 14 and 15 and Article 14 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, approved with Law no. 59 of 8 July 1974 and amended and integrated with Laws no. 95 of 19 September 2000 and no. 36 of 26 February 2002;

b) Article 2, paragraph 1, letter b of Constitutional Law no. 183 of 15 December 2005;

c) Article 16 of Qualified Law no. 184 of 15 December 2005;

d) Articles 1 and 5 of Law no. 105 of 31 July 2009.

2. This Law shall apply:

a) to the Public Administration intended as the entire system of bodies, offices, services, autonomous companies and entities of the State, also called Administration;

b) to "interested" parties, that is to say the subjects of administrative measures involving their individual legal rights.

3. The provisions of this Law shall also apply to the Administration and to public or private persons providing a public service, in so far as they are compatible and without prejudice to special provisions.
4. The Administration, in case it is not requested to comply with specific provisions regulating individual procedures, shall carry out its activities according to the provisions of this Law. However, the provisions of this Law shall supplement, if necessary and in so far as they are compatible, the provisions of individual procedures.
5. The provisions contained in this Law shall not apply:
  - a) to jurisdictional procedures;
  - b) to non authoritative acts, which are governed by private law;
  - c) to acts deriving from specific procedures governed by special provisions;
  - d) to legislative acts;
  - e) to acts having a political content;
  - f) to acts having a general content concerning planning.

## **Article 2**

*(General principles)*

1. In its relations with citizens, the Administration, besides respecting the criteria referred to in Article 1 above, shall comply with the principles of good faith and transparency, by abstaining from any arbitrary act and undue formalism, which can make procedures needlessly more complicated.
2. The Administration shall exercise discretionary power in the cases and within the limits established by law, according to criteria of objectivity, reasonableness and proportionality, as well as in conformity with the aim for which discretionary power has been conferred upon it, by adopting the most appropriate measures in consideration of the circumstances. The activities of the Administration shall be intended to fulfil the general interest, by abstaining from conducts aimed at guaranteeing undue advantages to any person.
3. Whenever, due to the number of interested parties, personal communications, publications and notifications are not possible or are particularly complicated, the Administration shall make public the necessary elements through adequate instruments, which are established from time to time by the Administration itself.

## **Article 3**

*(Cooperation and collaboration among the Administrations)*

The relations among the bodies, offices, services, companies and entities of the State shall be based on the principles of cooperation and collaboration in the respect for the respective fields of competence, with a view to performing functions in the most effective way and to providing services to citizens in the most cost-effective and efficient way.

## **Article 4**

*(Use of information technology and telematic instruments)*

In the exercise of its functions, in order to carry out its activities more efficiently, the Administration shall rely on electronic, information technology and telematic techniques and means both in its internal relations among the various Offices, entities and companies and with private individuals, within the limits established by the laws in force.

## **Article 5**

### *(Obligation to adopt a measure)*

1. The Administration shall be required to conclude a procedure with the adoption of an explicit measure in case of a mandatory act, i.e. prescribed by the law. These procedures may be:
  - a) commenced upon request of the “interested” parties, as defined in Article 1, paragraph 2, letter b) above;
  - b) commenced ex officio.
2. Whenever a procedure is terminated due to the withdrawal or lapse of the initial act, to relinquishment by the requesting party or to any other cause provided for by the law, the measure shall consist of a declaration of termination with indication of the fact, act or circumstance determining such termination, as well as of applicable provisions.

## **Article 6**

### *(Time-limits)*

1. The time-limit within which the measure shall be adopted under Article 5, paragraph 1 shall be established by the law or by the provisions regulating each procedure.
2. Whenever such time-limit is not established in advance under paragraph 1 above, the time-limit within which the measure shall be adopted under Article 5, paragraph 1 shall be ninety days. Such time-limit shall run from the date notified upon commencement of procedures by the competent Administration.
3. The time-limit referred to in paragraph 1 or paragraph 2 shall be suspended in the following cases:
  - a) when the office executing the procedure, in order to adopt the measure, shall mandatorily receive, even from another office of the Administration or from specific entities, opinions, reports, technical assessments or information reports;
  - b) when the office executing the procedure deems it appropriate to obtain certificates related to facts, situations or qualities not included in the documents already in its possession or not directly obtainable at other Offices of the Administration;
  - c) when it is necessary or appropriate to ask the interested parties for documents, information, clarifications or considerations in order to determine the content of the measure;
  - d) when it is necessary to request the interested parties to supplement the request or the documents submitted in order to correct formal irregularities, which do not lead to their inadmissibility.
4. The time-limit referred to in paragraph 1 or paragraph 2 shall be suspended until what requested in the cases provided for in paragraph 3, letters a, b, c and d has been obtained, or until the expiry of the time-limit established for the interested parties in the cases provided for in paragraph 3, letters c and d. In any case, the suspension shall not exceed three months since the date of transmission of the requests under paragraph 3. The violation of the time-limit concerning the correction of formal irregularities referred to in letter d of paragraph 3 shall lead to the lapse of the request, without prejudice to the right to submit a new request, provided that any mandatory time-limits have not expired.

## **Article 7**

### *(Failure to reply)*

Except for cases where, in procedures commenced upon request of a party, the Administration’s failure to reply after the expiry of the time-limits indicated in Article 6 is deemed to constitute, under an explicit law provision, a decision to accept the request, Article 10, paragraph 2 of Law no. 68 of 28 June 1989 shall apply against the Administration’s failure to reply after the expiry of such time-limits.

**TITLE II**  
**COMMENCEMENT OF PROCEDURES. PARTICIPATION**

**Article 8**  
*(Ways of commencing procedures)*

1. According to Article 1, paragraph 2, letter b), administrative procedures may be commenced ex officio or upon request of one of the “interested” parties.
2. The request shall commence administrative procedures regulated by the provisions of this Law only when the requesting party has a subjective right or a legitimate interest and only in case a measure is adopted.

**Article 9**  
*(Commencement of procedures)*

1. The Administration shall decide when to commence an administrative procedure ex officio on the basis of an appropriate discretionary assessment.
2. In any case, the Administration shall be required to proceed ex officio whenever it needs to adopt a measure in application of a law provision or regulation.

**Article 10**  
*(Submission of the requests)*

1. Any request addressed to the Public Administration shall be submitted or transmitted in written form, unless a different form is envisaged by specific provisions, to the body responsible for adopting the measure.
2. Except where the law requires the production of an ad hoc verbatim record, requests shall be taken note of and a receipt thereof shall be given to the requesting party directly in his/her hands or transmitted by registered mail, return receipt requested, if requests are transmitted by ordinary mail.
3. A receipt shall not be issued:
  - a) when the requested measure is immediately adopted;
  - b) when the request is notified through a judicial officer.
4. When requests are transmitted in the form and manner referred to in paragraph 5 hereunder, the issuance of a receipt shall be mandatory.
5. Except where the law requires otherwise, the transmission of the requests referred to in paragraph 1 may be made by registered mail, return receipt requested, by e-mail or by fax, according to the provisions in force. The electronic transmission shall be equal to the transmission by mail if it is made in the form and manner referred to in Article 3 of Law no. 115 of 20 July 2005, taking into account Decree no. 156 of 8 September 2005 and in any case in conformity with the provisions in force concerning electronic transmission.

**Article 11**  
*(Representatives)*

1. The interested parties may submit their requests also through one or more representatives. In this case, the power of proxy shall be granted in writing.
2. The power of proxy shall give the representative the power to represent the interested party during negotiations in all respects, unless otherwise provided for by the law.

## **Article 12**

### *(Notification of commencement of procedures)*

1. Except for the cases provided for in Article 14, paragraph 3, the Administration that proceeds ex officio or upon request of another authority shall be required to notify the “interested” parties referred to in Article 1, paragraph 2, letter b) and the parties referred to in Article 14, paragraph 2 thereof, in case they have been identified or are easily identifiable.
2. In case of procedures started upon request of a party, the delivery or transmission of the receipt of the request under Article 10 shall constitute a notification of commencement of procedures.

## **Article 13**

### *(Form and content of the notification)*

1. The Administration shall notify the commencement of procedures by registered mail, return receipt requested.
2. Notifications shall indicate:
  - a) the competent Administration;
  - b) the subject matter of the procedure commenced;
  - c) the office and person responsible for the procedure;
  - d) the date from which the time-limit for the conclusion of the procedure runs and the remedies available against the Administration’s failure to act;
  - e) in case of procedures commenced upon request of a party, the date of submission of the relevant request;
  - f) the office in which the documents are available for consultation.
3. The total or partial omission of notification under this Article can be asserted exclusively by the interested parties.
4. The indications referred to in paragraph 2 may be included in the receipt of the request.
5. When a receipt is not issued under Article 10, paragraph 3, except for the case envisaged in letter a) of the same paragraph, the Administration shall in any case transmit as soon as possible a notification containing the indications referred to in paragraph 2 of this Article.

## **Article 14**

### *(Participation)*

1. Unless otherwise provided for, in case of procedures commenced ex officio, the provisions contained in this Title shall apply only when procedures imply the adoption of measures affecting a right or legitimate interest of the relevant addressees.
2. The Administration shall adopt all necessary measures to enable the “interested” parties, under Article 1, paragraph 2, letter b), to participate in the relevant procedures, so that their subjective rights and legitimate interests may be fully protected. It shall adopt similar measures in procedures commenced ex officio vis-à-vis the parties referred to in paragraph 1 of this Article. Moreover, the Administration shall allow the participation of other stakeholders, including public and other categories of people, to whom the measure may be prejudicial. In any case, any lack of participation shall not affect the continuation of procedures.
3. The provision envisaged in paragraph 2 shall not apply in the following cases:
  - a) for reasons related to specific needs to speed up procedures;
  - b) when procedures are connected with investigation activities aimed at assessing and combating criminal, administrative, tax, customs or currency offences, and in any case offences related to the violation of law provisions or regulations;
  - c) when its application is susceptible of undermining the effectiveness of controls, inspections and the imposition of sanctions.

- d) when its application is susceptible of undermining domestic public order or international relations;
  - e) in all procedures where participation is specifically regulated by special provisions.
4. In any case, the Administration shall have the power to adopt precautionary measures even before notifying the interested parties of the commencement of procedures.
5. Private individuals participating in procedures shall behave in good faith and in a correct manner and in any case they shall not hinder or delay the proper functioning and efficiency of administrative activities.

**Article 15**  
*(Rights of participating parties)*

1. The parties that may participate in conformity with Article 14 shall have the right:
- a) to know the status of the procedure;
  - b) to consult the documents of the procedure and to take copies thereof, except for what provided for in Article 30;
  - c) to submit comments or proposals either in writing or through hearings, as well as to attach documents.
2. The Administration shall not be required to accept requests for hearings, which are explicitly based on pretexts, dilatory or repetitive.
3. The Administration shall be obliged to take into account the documents referred to in paragraph 1, letter c by assessing their relevance. Article 18 shall apply.

**TITLE III**  
**COMPETENCE AND RESPONSIBILITY FOR THE PROCEDURE AND THE MEASURE**

**Article 16**  
*(Competence, responsibility and identification of procedures)*

1. Unless otherwise provided for in specific law provisions regulating individual procedures, each Director of the Overall Public Sector shall be responsible for the adoption of administrative measures necessary for the performance of the functions of protection and pursuit of public interests by the Organisational Unit he/she directs. Moreover, each Director shall be responsible for the investigation stage of the relevant procedures and for any other relevant task.
2. The individual Organisational Units of the Administration and the individual bodies shall be required to identify the measures and the relevant procedures falling within their competence. The Directorate General of Public Function and the Directors General of the Bodies shall prepare and keep updated a specific table indicating such measures and the relevant procedures on the basis of indications provided by the individual Organisational Units/Bodies.
3. This duly updated table shall be made public and available to the general public at each Organisational Unit and Body and on the relevant web sites, as well as on the website of the Directorate General of Public Function.

**Article 17**  
*(Responsibility of procedures)*

1. The Directors of the Overall Public Sector and the active staff, entrusted with the adoption of administrative measures or contributing, in any way, by virtue of the exercise of their official duties, to the running of the relevant procedures, shall be personally responsible for the actions or omissions relevant to the proper handling of the issues falling within their competence or entrusted to them; they shall adopt adequate measures to eliminate the obstacles hindering, complicating or delaying the full exercise of the interested parties' rights or the protection of their legitimate

interests, by taking any action necessary to avoid or eliminate any irregularities in the handling of procedures. They shall abstain from acting to favour their personal interest and from using the prerogatives connected with their official duties in the interest of specific individuals or groups of individuals, with a view to obtaining a direct or indirect personal advantage; in particular, they shall abstain from any kind of behaviour aimed at obtaining an undue advantage to perform or fail to perform acts in compliance with their duties or to perform acts contrary to their official duties.

2. The competent Director under paragraph 1 of Article 16 shall assign, as soon as possible, within the Organisational Unit falling within his/her competence, the responsibility for the investigation stage of each procedure and for any measure to be adopted. The Director may at any time withdraw such assignment.

3. The assignment referred to in paragraph 2 or any withdrawal thereof shall be immediately notified to the interested parties provided for in Article 14, paragraph 2.

### **Article 18**

*(Functions of the person responsible for the procedure)*

1. The person responsible for the procedure:

a) shall assess the conditions of admissibility, entitlement requirements and relevant conditions for the adoption of the measure;

b) shall carry out, either ex officio or upon request of the interested party, the initiatives necessary to assess the facts at the basis of the request, by ordering useful investigations. While assessing the facts, he/she shall take into account and examine all circumstances relevant to the handling of the procedure, without distinguishing between those in favour of and those against the interested parties;

c) may request that statements be made and that incorrect or incomplete statements and requests be rectified;

d) shall carry out, whenever necessary, technical assessments or controls and shall request that documents be submitted;

e) shall hear participating parties on facts relevant for the purpose of adopting a decision, whenever this is deemed appropriate taking into account the nature of the measure to be adopted;

f) shall take care of relations with all parties involved in the measure and shall make the communications, publications and notifications provided for in the laws and regulations;

g) shall adopt the final measure if this falls within his/her competence or he/she shall propose the measure with his/her own assessments and shall transmit the preparatory acts to the competent authority responsible for the adoption.

2. In case the final measure differs from the outcome of the investigations and from the proposed measure under letter g of paragraph 1, the competent authority responsible for the adoption of such final measure, if other than that responsible for the procedure, shall provide a reason thereof in the final measure itself. In any case, this authority may request that further investigations be carried out taking into account the time-limits within which the measure shall be adopted under Article 6.

### **Article 19**

*(Documents owned by the Administration)*

1. The person responsible for the procedure shall obtain ex officio the documents attesting acts, facts, conditions and personal qualities necessary for the investigation stage of the procedure when these are owned by the office executing the procedure or by other offices of the Administration. The persons managing public services shall have access to the data of the Administration on the basis of the rules established with a Delegated Decree. The office executing the procedure may request that the interested parties submit only the elements necessary to look for the documents.

2. The person responsible for the procedure shall assess ex officio the facts, acts, conditions and personal qualities that the office executing the procedure or another office of the Administration is required to certify.
3. The provisions in force on administrative documents shall apply mutatis mutandis.

## **Article 20**

### *(Opinions and technical assessments)*

1. When an office of the Administration is competent to express an opinion on a mandatory basis, it shall be required to express such opinion within 30 days at the latest following the date of receipt of the request, or less in urgent cases.
2. In case the opinion is requested on an optional basis, the requested office of the Administration shall immediately inform the requesting office of the time-limits within which the opinion will be expressed.
3. If the time-limits referred to in paragraphs 1 and 2 have expired, the requesting office may proceed even in the absence of the requested opinion, unless the office expected to express the opinion requests, only once, an extension of the time-limits not exceeding 15 days for investigation needs.
4. If an office of the Administration is competent to express a technical assessment, which needs to be obtained in order to adopt a measure, such office shall be required to make the assessment within 30 days following the date of receipt of the request.
5. The office expected to make a technical assessment under paragraph 4 may request, only once, an extension of the time-limits not exceeding 15 days for investigation needs. If the time-limits referred to in paragraph 4, or the extended time-limits provided for in this paragraph, have expired, the office executing the procedure may request that the technical assessment be made by a public or private body, preferably at a university level, including not from San Marino, which is equivalent to the office previously requested in terms of qualification and technical skills.

## **Article 21**

### *(Reasons for the measures)*

1. The competent authority responsible for adopting the final measure shall ensure that the measures adopted are adequately reasoned under Article 22.
2. The reasons shall include legal and factual considerations, as well as the administrative or technical assessments leading to the decision of the Administration.
3. If the decision is based on reasons resulting from another administrative document referred to in the measure, the notification of the latter shall also indicate the document to which reference is made and such document shall be made available according to the provisions of this Law.

## **Article 22**

### *(Obligation to state reasons)*

1. The “interested” parties under Article 1, paragraph 2, letter b) shall have the right to immediately know the reasons for administrative measures involving them when these measures limit their legal rights. The persons entitled to participate in the administrative procedure under Article 14, paragraph 2 may request the reasons for an act from the competent Administration.
2. According to Article 21, the administrative measures referred to in this Law shall be reasoned in writing.
3. In case of tied acts it is enough to indicate the provisions in application of which the measure is adopted and the conditions creating the need for the adoption of the measure.
4. A measure that cannot be reasoned due to urgency shall exceptionally be valid, provided that the reasons for the urgency are indicated in the measure itself. In this case, the office adopting the



measure shall transmit to the interested party the reasons for the measure within thirty days following its adoption. The time-limit to appeal against the measure shall remain suspended until the date of receipt by the interested party of the reasons, and in any case for a period not exceeding 30 days.

### **Article 23**

*(Obligations of the Administration relative to measures granting economic benefits)*

1. The granting of benefits, contributions, subsidies and financial aid and the attribution of any kind of economic advantages shall be subject to the establishment by the competent administrations of the criteria and procedures to be applied to the granting of these benefits.
2. The effective compliance with the criteria and procedures referred to in paragraph 1 shall result from the individual measures granting the economic advantages provided for in this Article.

### **Article 24**

*(Formal requirements)*

1. The measures shall be notified to the interested parties referred to in Article 1, paragraph 2, letter b) and shall indicate the time-limit within which they may be appealed against, as well as the authority to which the appeal may be filed.
2. Unless otherwise provided for by the law, the notification referred to in paragraph 1 shall be made by registered mail, return receipt requested. Upon agreement of the interested party, the electronic transmission of the notification is equal to the transmission by registered mail if this transmission is made in the form and manner provided for in Article 3 of Law no. 115 of 20 July 2005, taking into account Decree no. 156 of 8 September 2005 and in any case in conformity with the legislation in force on electronic transmission.

## **TITLE IV**

### **ACCESS TO ADMINISTRATIVE DOCUMENTS – SANCTIONS**

### **Article 25**

*(Access to administrative documents)*

1. “Interested” parties under Article 1, paragraph 2, letter b) may access administrative documents held by the Administration with a view to protecting their subjective rights and legitimate interests. Access to administrative documents shall also be allowed to anyone authorised by the Administration to participate in the procedures under Article 14, paragraph 2. The exercise of access rights shall be guaranteed and regulated by the provisions contained in the following Articles, without prejudice to special provisions.
2. The Directorate General of Public Function shall supervise over the correct implementation of the provisions on access and shall verify, upon request of the interested Administrations, the legitimacy of requests, compliance of access procedures and application of the any restrictions on the exercise of access rights.

### **Article 26**

*(Scope of the access)*

1. All documents or groups of documents in any case produced or received by the Administration in the fulfilment of tasks and functions concerning public interest protection and public service provision, shall be considered administrative documents, irrespective of their date, form and medium.

2 The provisions contained in this Title shall apply also to administrative documents produced or received by the Great and General Council and by the Congress of State, unless otherwise established by the Council or the Congress by regulation.

### **Article 27**

*(Provisions concerning access)*

1. Without prejudice to the exceptions referred to in Article 30, the requested Offices of the Administration shall be required to provide the documents held by them to anyone requesting them under Article 25 for consultation purposes.

2. The consultation of documents under this Law shall be allowed only if these documents are complete and final. Without prejudice to the request for access provided for in Article 15, paragraph 1, letter b), the consultation of preliminary documents preparing administrative measures shall not be allowed while such measures are being drafted.

3. The publication of a document on an official medium of the Administration or on a web site managed by a State body or office shall be fully compliant with the requirements laid down in this Article.

4. The request for access to documents shall be submitted to the Administration producing or permanently holding the relevant document. The Administration shall cooperate as far as possible with the interested party with a view to identifying the requested document. If the requested office does not possess the requested document or has not the power to authorise the access, it shall direct, as far as possible, the applicant to the competent office.

5. If an office of the Administration receives a request for access concerning a document no longer in its possession, since it has transmitted it to another office or to the Archive of the Administration, the requested office shall transmit the request to the office holding the document and shall inform the interested party thereof.

### **Article 28**

*(Exercise of access rights)*

1. Taking into account the technical possibilities of the Administration, and without prejudice to specific access procedures provided for by special provisions, the applicant shall choose one of the following ways to exercise access rights:

a) through consultation, free of charge, at the premises of the office holding the document, as long as its state of conservation allows this to be done;

b) by making a copy of the document, as long as this does not damage it or is not prohibited for some acts and documents by special provisions. The expenses incurred for the copy shall be borne by the applicant and shall not exceed the cost of reproduction. Upon request of the interested party, copies may be certified;

c) via e-mail, free of charge, if the document is available in electronic form, if it is guaranteed that the content of the document will not be modified.

2. The documents shall be consulted by the applicant or by a person authorised by the applicant, also with the assistance of any other person, whose personal details shall be indicated in the request. The person consulting the documents may take notes and transcribe, totally or partially, the documents consulted, unless this is prohibited by special provisions.

3. An ad hoc regulation will establish the fees to reproduce and copy the documents referred to in paragraph 1, letter b), as well as, if applicable, to certify them.

## **Article 29**

### *(Procedures to exercise access rights)*

1. The requested Administration shall execute the requests within 30 days following the date of receipt, after which Article 10, paragraph 2 of Law no. 68 of 28 June 1989 shall apply.
2. The Administration shall not be required to execute requests for access if:
  - a) they are not adequately reasoned under Article 25;
  - b) they are not sufficiently precise or are formulated in such a way as to prevent the identification of the requested document;
  - c) they are manifestly unreasonable, abusive, pretentious and quantitatively excessive.
3. The exercise of access rights shall be limited, deferred or denied in the cases provided for in Article 30.
4. The measure with which the Administration declares that it cannot examine the request for access under paragraph 2, or with which it limits, defers or denies access under paragraph 3, shall be in writing and reasoned.
5. The measure referred to in paragraph 4 may be appealed against to the administrative judicial authorities according to common principles.
6. The measure with which a request is accepted shall indicate the office where the relevant access is allowed.
7. The acceptance of a request for access to a document shall imply the right to access other documents indicated in such document and belonging to the same procedure, without prejudice to the exceptions provided for by law and by Article 30.

## **Article 30**

### *(Limitations on the exercise of access rights)*

1. Access to all acts and documents expressly declared as confidential by the law shall not be allowed.
2. Access shall be limited, deferred or denied if it can undermine:
  - a) the exercise of the sovereignty and the Republic's national defence;
  - b) the Republic's foreign policy or international relations;
  - c) the security of the State, public order and security or the security of individuals;
  - d) the appropriate implementation of effective measures by an authority;
  - e) the prevention of crimes and investigations aimed at identifying and countering criminal, administrative, tax, customs or currency offences, or in any case resulting from the violation of law provisions or regulations;
  - f) the Republic's economic and financial policy;
  - g) the carrying out of all investigation, control and supervision activities.
3. Access shall be limited, deferred or denied also in the following cases:
  - a) if it can lead to the dissemination of information freely provided by third parties to an authority bound by the obligation of secrecy;
  - b) if it can lead to the disclosure of professional secrets or of secrets relative to productive, commercial or industrial activities;
  - c) if it can damage the privacy of third parties.
4. Only interested parties may have access to the following:
  - a) documents relative to persons containing confidential data and information, such as personal data that may reveal the racial and ethnic origin, religious, philosophic or other belief, political opinions, membership in parties, associations or religious, philosophic and political organisations;
  - b) documents containing personal data that may reveal the health conditions or in any case health data or information;

c) documents containing personal data that may reveal the sex life or confidential family relations;

d) administrative documents relative to selection procedures for the staff containing information on the psychological aptitude.

5. Both the interested parties and, at their choice, the practitioner or practitioners designated to this end shall have the right to access health documents.

6. When the request for access concerns a document containing references or information that cannot be accessed in application of this Article, but that can be concealed or eliminated, the consultation shall be allowed only once the relevant reference or information has been concealed or eliminated.

7. The existing specific law provisions limiting access to administrative documents shall in any case apply.

8. The limitations provided for in this Article shall cease to apply once the documents have been opened for consultation in conformity with the provisions regulating the consultation of the documents kept at the State Archive.

### **Article 31**

*(Obligations of the Administration relative to the publication and dissemination of documents)*

1. Without prejudice to the provisions regulating the official publication of the acts and measures of the State, the Administration shall always be required to adequately make public the directives, circulars, instructions and provisions, however denominated, which contain interpretations or explanatory notes relative to law provisions or the description of administrative procedures or provisions concerning administrative organisation.

2. On its own initiative, the Administration shall adopt the measures necessary for the publication and dissemination of administrative documents produced or received by it, with a view to promoting the transparency and efficiency of administrative activities, as well as the participation of citizens in the protection of public interest, also by using electronic and telematic instruments.

3. In any case, administrative documents referred to in Article 30 or containing personal data, references or information shall not be made public before these data, references or information have been concealed or before they have been processed so as to make it impossible to identify the persons mentioned herein, unless these persons have agreed thereto.

### **Article 32**

*(Limitations on the use of data deriving from access to administrative documents)*

1. Anyone acceding to administrative documents under Article 25 shall be responsible for the use of data and information collected.

2. Data and public information collected following access to administrative documents as allowed in conformity with this Law shall be used within the limits of the protection of legally relevant situations under Article 25.

3. Any use for commercial purposes of data and information collected following access to administrative documents as allowed under this Law shall be in any case prohibited.

### **Article 33**

*(Use of public documents)*

1. Data and information contained in the documents made public under Article 31 may be freely used, unless this is expressly prohibited by special provisions, also for purposes other than the protection of public interest or the provision of a public service, for which the documents have been produced or received.

2. Any use of the consulted documents in breach of their literary property rights and of copyright rules shall be prohibited.

**Article 34**  
*(Sanctions)*

1. Unless the fact constitutes a more serious crime, the violation of the prohibition referred to in Article 32, paragraph 3 shall be punished with first degree imprisonment and with second degree daily fine.

2. Unless the fact constitutes a more serious crime, the violation of the prohibition referred to in Article 33, paragraph 2 shall be punished with second degree imprisonment and daily fine.

**TITLE V**  
**EFFECTIVENESS OF ADMINISTRATIVE MEASURES**

**Article 35**  
*(Effectiveness and enforceability of measures)*

1. Effective administrative measures shall be enforced immediately, unless otherwise provided for by the law of by the same measure and without prejudice to the provisions on preventive legitimacy control.

2. The measure limiting the legal rights of private individuals shall become effective vis-à-vis any addressee with the notification made to the latter also in the forms provided for in Article 2, paragraph 3. The measure limiting the legal rights of private individuals other than a sanction may contain a reasoned clause of immediate enforceability. Precautionary and urgent measures limiting the legal rights of private individuals shall be immediately enforceable.

**Article 36**  
*(Suspension)*

The effectiveness or enforceability of an administrative measure may be suspended, for well-founded reasons and for no longer than necessary, by the same body adopting it or by another body provided for by the law. The suspension shall temporarily interrupt, although not retroactively, the effects of the measure until the expiry of the relevant time-limit, if applicable, or until the occurrence of the event, upon which the duration is conditioned. The time-limit of the suspension may be extended or deferred only once, as well as reduced for unexpected needs.

**Article 37**  
*(Enforceability)*

1. In the cases and under the conditions provided for by the law, the Administration may force private individuals to fulfil obligations. The measure providing for the obligations shall indicate the time-limit and the procedures relative to the fulfilment of the obligations by the obliged party. If the interested party fails to fulfil the obligations, the Administration, after warning, may force the interested party to fulfil the obligations in the cases and under the conditions provided for by the law.

2. With regard to the fulfilment of obligations relative to sums of money, the provisions concerning the enforcement of State claims shall apply.

### **Article 38**

*(Withdrawal of the measure before control)*

1. The Administration adopting the measure may withdraw such measure forwarded to the control body for legitimacy control purposes by means of a written and reasoned request transmitted to such control body.
2. The withdrawn measure shall not be enforceable.

## **TITLE VI**

### **INVALIDITY AND IRREGULARITY OF THE ADMINISTRATIVE MEASURE**

### **Article 39**

*(Corrigenda in case of clerical errors)*

The competent Administration shall correct clearly identifiable clerical errors which have occurred in the drafting of the act or measure by means of corrigenda, that is to say by drafting a subsequent document correcting the errors identified in the first document.

### **Article 40**

*(Rectification or reform of the measure)*

In case of substantial or clerical error which cannot be corrected by means of corrigenda, the competent Administration shall rectify the act or measure with another act or measure that modifies, supplements or replaces part of the preceding one.

### **Article 41**

*(Validation of the measure)*

1. Validation is a declaration of intention by the authority that has adopted the measure or, in case of lack of competence, by the authority competent to adopt the measure, which is aimed at identifying any irregularities of the act and at eliminating them.
2. The Administration may proceed to a regularisation, in the cases provided for by the law, with a view to validating measures adopted when the conditions are not met.

### **Article 42**

*(Nullity of the measure)*

1. Administrative measures that lack the essential elements, are tainted with absolute lack of competence and have been adopted in violation or in avoidance of res judicata, as well as in the other cases provided for by the law, shall be null.
2. Appeals relative to the nullity of administrative measures in violation or in avoidance of res judicata shall fall within the exclusive jurisdiction of the Administrative Judge.

### **Article 43**

*(Annulment of the measure)*

1. The administrative measure adopted in violation of the law or tainted with abuse of powers or lack of competence may be annulled.
2. The measure adopted in violation of provisions governing procedures or the form of acts may not be annulled if, on account of the tied nature of the measure, it is evident that the content of the measure could not be different from that effectively adopted. In any case, the administrative

measure may not be annulled for failure to notify the commencement of the procedure if the Administration proves before a court that the content of the measure could not be different from that effectively adopted.

3. The provisions relative to appeals filed to the Administrative Judge under Law no. 68 of 28 June 1989 and relative to the objection under Article 12 of the same Law shall apply.

#### **Article 44**

*(Ex officio annulment)*

1. An unlawful administrative measure tainted with violation of the law, abuse of powers or lack of competence may be annulled ex officio, for reasons of public interest, by the body that has adopted it or by another body provided for by the law, within a reasonable time-limit and taking into account the interests of the addressees.

2. The possibility to validate a measure that may be annulled for reasons of public interests and within a reasonable time shall not be affected.

#### **Article 45**

*(Revocation of the measure)*

1. For unexpected reasons of public interest, if factual circumstances change or in case of a new assessment of the original public interest, the administrative measure with a long-lasting effectiveness may be revoked by the body that has adopted it or by another body provided for by the law. Following revocation, the relevant measure shall cease to produce its effects.

2. The provisions relative to appeals filed to the Administrative Judge under Law no. 68 of 28 June 1989 and relative to the objection under Article 12 of the same Law shall apply.

### **TITLE VII**

#### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 46**

*(Transitional provisions)*

1. The interested offices shall carry out an inventory of the measures falling within their competence and shall prepare what is necessary to commence the respective procedures and to fully apply this Law within a maximum of 180 days following its entry into force.

2. The procedures already commenced as of the date of application referred to in the preceding paragraph shall be regulated by the legislation in force on the date of commencement of such procedures.

3. Until the establishment of the bodies of the Directorate General of Public Function, the directives, coordination and technical support shall be a responsibility of the bodies and offices of the Administration identified with a Congress of State decision.

4. Duties, taxes and charges, as well as rights envisaged for measures and procedures shall be reviewed with a delegated decree, which shall take into account the inventory referred to in paragraph 1, and possibly replaced by rights proportional to the kind of procedure to which they refer.

#### **Article 47**

*(Repeal)*

Any provision contrary to this Law shall be repealed.

**Article 48**  
*(Entry into force)*

This Law shall enter into force on the 15th day following that of its legal publication.

*Done at Our Residence, on 5 October 2011/1711 since the Foundation of the Republic.*

THE CAPTAINS REGENT  
*Gabriele Gatti – Matteo Fiorini*

THE MINISTER OF  
INTERNAL AFFAIRS  
*Valeria Ciavatta*