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Administrative
Procedure
(Administrative
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Section 1 Scope of
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#### Older versions

- July 1, 2022 version 2022.07
- Jan. 1, 2021 version 2021.01
- April 1, 2020 version 2020.04
- April 1, 2019 version 2019.04

Federal Act
on Administrative
Procedure
(Administrative

# **Section 1 Scope of Application and Definitions**

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- <sup>2</sup> Authorities in terms of paragraph 1 are:
  - a. 5 the Federal Council, its departments, the Federal Chancellery and the services subordinate to it, and businesses, institutions and other public offices of the Federal Administration;
  - b. 6 organs of the Federal Assembly and of the federal courts responsible for rulings in the first instance and appeal decisions in accordance with the Public Officials Act of 30 June 1927<sup>7</sup>:
  - c. autonomous federal institutions or businesses;
  - c<sup>bis</sup>. 8 the Federal Administrative Court;
  - d. the federal committees;
  - e. other authorities or organisations outside the Federal Administration, provided they are issuing an ruling in fulfilment of the federal public law duties assigned to them.
- <sup>3</sup> Only Articles 34–38 and 61 paragraphs 2 and 3 on the notification of rulings and Article 55 paragraphs 2 and 4 on the withdrawal of suspensive effect apply to the procedure of the cantonal authorities of final instance that issue rulings based on federal public law that are not final rulings. Article 97 of the Federal Act of 20 December 1946 on the Old-Age and Survivor's Insurance relating to the withdrawal of the suspensive effect of appeals against rulings issued by the compensation funds is reserved. <sup>10</sup> <sup>11</sup>

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education and training examinations.

- <sup>3</sup> Compulsory purchase procedures are governed by this Act unless the Federal Act of 20 June 1930<sup>12</sup> on Compulsory Purchase provides otherwise. 13
- <sup>4</sup> The procedure before the Federal Administrative Court is governed by this Act, unless the Federal Administrative Court Act of 17 June 2005 14 provides otherwise. 15

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- b. in relation to federal personnel, the procedure in the first instance relating to the establishment of an employment relationship, to the promotion of federal personnel, and to employment related directives to federal personnel and the procedure for the authorisation of the prosecution of federal personnel;
- c. administrative criminal proceedings and related criminal investigation proceedings;
- d. <sup>17</sup>the procedure for the administration of military justice including the administration of military discipline, the procedure in military command matters in terms of Article 37 as well as the procedure in terms of Articles 38 and 39 of the Armed Forces Act of 3 February 1995 <sup>18</sup>, <sup>19</sup> ... <sup>20</sup>;
- d<sup>bis</sup>. <sup>21</sup>the procedure in social insurance matters, provided the Federal Act of 6 October 2000 <sup>22</sup> on the General Provisions of Social Insurance law is applicable;
- e. <sup>23</sup>the procedure for customs clearance; e<sup>bis</sup>. <sup>24</sup>...
- f. proceedings in the first instance in other administrative matters, if due to their nature they must be dealt with by an immediately enforceable ruling.

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- a. the establishment, amendment or withdrawal of rights or obligations;
- a. a finding of the existence, non-existence or extent of rights or obligations;
- c. the rejection of applications for the establishment, amendment, withdrawal or finding of rights or obligations, or the dismissal of such applications without entering into the substance of the case.
- <sup>2</sup> Rulings are also enforcement measures (Art. 41 para. 1 let. and ), interim orders (Art. 45), decisions on objections (Art. 30 para. 2 let. 46 let. and 74 let. ), appeal decisions (Art. 61 and 70), decisions in a review (Art. 68) and on explanatory statements (Art. 69). <sup>25</sup>
- <sup>3</sup> Declarations made by authorities on the rejection or raising of claims that must be pursued by taking legal proceedings do not constitute rulings.

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# **Section 2 General Procedural Principles**

#### Art. 7

- A. Jurisdiction
- <sup>1</sup> The authority shall assess its jurisdiction.
- I. Assessment
- The establishment of jurisdiction by agreement between the authority and the party is not permitted.

## Art. 8

- exchange of views
- II. Referral and 1 An authority that regards itself as not having jurisdiction shall refer the matter without delay to the competent authority.
  - <sup>2</sup> If an authority regards its jurisdiction as doubtful, it shall immediately enter into an exchange of views with the authority which it considers to have jurisdiction.

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ing jurisdiction shall issue a ruling that the matter is inadmissible if a party claims that it has jurisdiction.

<sup>3</sup> Jurisdictional conflicts between authorities, with the exception of jurisdictional conflicts with the Federal Supreme Court, the Federal Administrative Court or with cantonal authorities, shall be decided by the joint supervisory authority, or in the absence of such, the Federal Council. <sup>26</sup>

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- b. Tare related to a party either by marriage or registered partnership or by being the cohabitee of that party;
- b<sup>bis</sup>. <sup>28</sup> are related to a party by blood or by marriage in a direct line or collaterally to the third degree;
- c. are the representative of a party or if they have acted for a party in the same matter;
- d. could be regarded for other reasons as lacking impartiality in the matter.
- <sup>2</sup> In the event of any dispute over with-drawal, the supervisory authority shall decide, or if the dispute relates to the recusal of a member of a collegial authority, then the board shall decide in the absence of the member concerned.

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it, or assisted by legal coulises.

- <sup>2</sup> The authority may require the representative to provide a written power of attorney.
- <sup>3</sup> As long as the party does not revoke the power of attorney, the authority shall address any communications to the representative.

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in the procedure.

- <sup>2</sup> If this demand is not complied with within a reasonable period, then the authority shall itself appoint one or more representatives.
- <sup>3</sup> The provisions on the reimbursement of the representation costs in appeal proceedings are applicable in an analogous manner to the costs of such representation. The party against whom the submissions are directed must make a payment to account towards the costs of official representation if ordered to do so by the authority.

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ternational law or the competent foreign body permits the authority to serve documents directly in the state concerned. 33

<sup>2</sup> The parties may also indicate an electronic mail address and declare that they consent to service by electronic mail. The Federal Council may provide that for electronic mail service further details of the parties are required.

# **Art. 12**

of the facts of the case

D. Establishing The authority shall establish the facts of the case and obtain evidence by means of the following:

I. Principles

- a. official documents;
- b. information from the parties;
- c. information or testimony from third parties;
- d. inspection;
- e. expert opinions.

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- they make their own independent applications;
- c. if they are subject to a more extensive duty to provide information or duty of disclosure under another federal act.

<sup>1bis</sup> The cooperation obligation does not extend to the handover of items and documents used in communications between a party and his or her lawyer provided the lawyer is entitled to represent clients before the Swiss courts in accordance with the Lawyers Act of 23 June 2000 <sup>34</sup>. <sup>35</sup>

<sup>2</sup> The authority shall not be required to consider an application in terms of paragraph 1 letter or if the parties refuse to provide the required and reasonable cooperation.

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- a. the rederal Council and its departments;
- b. the Federal Office of Justice <sup>36</sup> of the Federal Department of Justice and Police;
- c. <sup>37</sup>the Federal Administrative Court;
- d. 38 the competition authorities in terms of the Cartels Act of 6 October 1995 39:
- e. <sup>40</sup>the Swiss Financial Market Supervisory Authority;
- f. 41 the Federal Audit Oversight Authority;
- g. 42the Federal Tax Administration,
- h. 43 the Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights.
- <sup>2</sup> The authorities mentioned in paragraph 1 letters a, b, d–f and h shall instruct a suitably qualified public official to examine the witnesses. <sup>44</sup>
- <sup>3</sup> The authorities mentioned in paragraph 1 letter may authorise persons outside an authority that has been instructed to conduct an official investigation to examine the witnesses.

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# Art. 16

3. Right to refuse to testify

<sup>1</sup> The right to refuse to testify is governed by Article 42 paragraphs 1 and 3 of the Federal Act of 4 December 1947<sup>45</sup> on Federal Civil Procedure (FCP).

1bis The mediator is entitled to refuse to testify on matters that have come to his attention in the course of his activities in terms of Article 33.46

<sup>2</sup> A person who has knowledge of a professional or trade secret in terms of Article 42 paragraph 2 FCP may the refuse to testify unless he is required to testify by another federal act.

3 ... 47

# Art. 17

tions of witnesses

4. Other obliga- Any person who may be examined as a witness must also cooperate in the gathering of other evidence; in particular he must hand over any documents that are in his possession. Article 51 FCP 48 is reserved. 49

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interests, the witnesses may be examined in the absence of the parties, who may also be refused the right to inspect the transcript of the examination.

<sup>3</sup> If they are refused the right to inspect the transcript of the examination, Article 28 applies.

#### **Art. 19**

IV. Supplementary provisions

Articles 37, 39–41 and 43–61 FCP<sup>50</sup> also apply by analogy to the procedure for obtaining evidence; in place of the penalties that the FCP provides for defaulting parties or third parties, the penalties in Article 60 of this Act apply.

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<sup>2</sup> It no notice need be given to the parties, the period begins on the day following the day on which it is triggered.

<sup>2bis</sup> A notice that may only be served against the signature of the addressee or of another authorised person is deemed to have been served at the latest on the seventh day following the first unsuccessful attempt at service. <sup>51</sup>

<sup>3</sup> If the last day of the period is a Saturday, a Sunday or a public holiday recognised under federal or cantonal law, the period ends on the next working day. The law of the canton in which the party or its representative is resident or has its registered of-fice is authoritative. <sup>52</sup>

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sular mission at the latest on the last day of the period.

<sup>1bis</sup> Written submissions to the Federal Institute of Intellectual Property <sup>55</sup> may not be validly filed via a Swiss diplomatic or consular mission. <sup>56</sup>

- <sup>2</sup> If the party files the submission in time but with an authority that is not competent, the period is deemed to have been complied with.
- <sup>3</sup> The period allowed for an advance payment to be made is complied with if the payment in favour of the authority is made in time to Swiss Post or if a postal or bank account in Switzerland is debited. <sup>57</sup>

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its representative in accordance with the Federal Act of 18 March 2016<sup>59</sup> on Electronic Signatures.

- <sup>3</sup> For compliance with a deadline, the decisive time is that when the receipt was issued confirming that all procedural steps required of the party or its representative for transmission have been completed.
- <sup>4</sup> The Federal Council shall regulate:
  - a. the format of the submission and its accompanying documents;
  - b. the form and method of transmission;
  - c. the requirements by which documents may be re-submitted on paper in the event of technical problems.

#### Art. 22

III. Extension

- <sup>1</sup> A statutory period may not be extended.
- <sup>2</sup> A period fixed by an authority may be extended where there are reasonable grounds provided the party requests the extension before expiry of the period.

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- b. from 15 July up to and including 15 August;
- c. 61 from 18 December up to and including 2 January.
- <sup>2</sup> Paragraph 1 does not apply in proceedings relating to:
  - a. the granting of suspensive effect and other precautionary measures;
  - b. public procurement. 62

#### **Art. 23**

IV. Consequences of non-compliance

The authority that fixes a period shall at the same time indicate the consequences of the failure to comply with that period; in the event of non-compliance, only the consequences indicated shall apply.

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within 30 days of the discontinuation of the impediment and carries out the legal act required; Article 32 paragraph 2 is reserved.<sup>63</sup>

<sup>2</sup> Paragraph 1 does not apply to periods that must be complied with in patent cases before the Federal Institute of Intellectual Property. <sup>64</sup>

#### **Art. 25**

F. Declaratory procedure

- <sup>1</sup> The authority competent in the matter may, or on application, issue a declaratory ruling on the existence, the non-existence or the extent of public law rights or obligations.
- <sup>2</sup> The application for a declaratory ruling must be granted if the applicant demonstrates an interest that is worthy of protection.
- <sup>3</sup> No party may be prejudiced by acting in justified reliance on a declaratory ruling.

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- a. refrains from, discontinues or revokes unlawful acts;
- b. rectifies the consequences of unlawful acts;
- c. confirms the illegality of such acts.
- <sup>2</sup> The authority shall decide by way of a ruling.

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- a. submissions from parties and the comments made thereon by the authorities;
- b. any documents serving as evidence;
- c. copies of rulings already issued.

<sup>1bis</sup> The authority may make the documents available for inspection electronically provided the party or his representative is in agreement. 66

<sup>2</sup> The authority issuing the ruling may charge a fee for the inspection of the files of a case that has been concluded; the Federal Council shall regulate the assessment of the fee.

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- ity of the Confederation, require that secrecy be preserved;
- b. essential private interests, and in particular those of respondents, require that secrecy be preserved;
- c. the interests of an official investigation that has not yet been concluded so requires.
- <sup>2</sup> Any refusal to allow inspection may only extend to the documents that must remain confidential.
- <sup>3</sup> At no time may a party be refused the right to inspect his own submissions, the official documents he has submitted in evidence or rulings issued to him; he may be refused the right to inspect the transcripts of his own statements only if the investigation has not yet been concluded

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Art. 29

H. Right to be The parties shall have the right to be heard. heard

and to provide counter evidence.

and the party has been given the opportunity to state his position on the document

I. Principle

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- a. interim orders that cannot be contested separately by appeal;
- b. rulings that are contestable by objection;
- c. rulings in which the authority grants the application of the parties in full;
- d. enforcement measures;
- e. other rulings in proceedings of first instance if there is a risk in any delay, the parties have the right to appeal against the ruling and no other provision of federal law guarantees the right to preliminary hearing.

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- <sup>2</sup> It shall hear the parties, by allowing them an appropriate period to file their opposition.
- <sup>3</sup> The authority shall give notice in its publication of the obligation of the parties to appoint an agent where necessary and to pay procedural costs and legal costs.

#### **Art. 31**

the respondent

III. Hearing for In a case where several parties have conflicting interests, the authority shall hear each party on the arguments of a respondent that appear to be relevant and that do not exclusively favour the other parties.

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appear to be crucial may be considered despite the delay.

# **Art. 33**

V. Evidence

- <sup>1</sup> The authority shall admit the evidence offered if it appears reliable for determining the facts of the case.
- <sup>2</sup> If taking the evidence entails comparatively high costs, and if the party will be liable for costs if the ruling is not in his favour, the authority may make the taking of evidence dependent on the party making an advance payment, within a specific period, of the costs that may reasonably be incurred; a party without financial means shall be exempted from the obligation to make advance payment.

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- <sup>2</sup> In appeal proceedings, the language of the contested decision is decisive. If the parties use a different official language, the proceedings may be conducted in this language.
- <sup>3</sup> If a party files official documents that are not in an official language, the authority may with the consent of the other parties waive the requirement of a translation.
- <sup>4</sup> If necessary, the authority shall order a translation to be obtained.

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how the parties intend to allocate the costs.

- <sup>2</sup> In order to encourage an agreement, the authority may appoint a neutral and suitably qualified natural person to be a mediator.
- <sup>3</sup> The mediator shall be bound only by the law and his mandate from the authority. He may take evidence; for inspections, reports from experts and the examination of witnesses, he shall require prior authorisation from the authority.
- <sup>4</sup> The authority shall make the agreement the content of its ruling, unless the agreement is defective in terms of Article 49.
- <sup>5</sup> If an agreement is reached, the authority shall not charge any procedural fees. If no agreement is reached, the authority may dispense with imposing the costs of mediation on the parties, provided the interests involved justify this.
- <sup>6</sup> A party may at any time request that the suspension of the proceedings be revoked.

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means. The ruling must carry an electronic signature in accordance with the Federal Act of 18 March 2016<sup>71</sup> on Electronic Signatures. The Federal Council shall regulate:

- a. the form of signature to be used;
- b. the format of the ruling and its accompanying documents;
- c. the form and method of transmission:
- d. the time at which notification is deemed to have been given. <sup>72</sup>
- <sup>2</sup> The authority may verbally notify the parties present of interim orders, but it must confirm the ruling to them in writing if any party requests this at the time; the period allowed for applying for legal remedies in this case begins from the time of written confirmation. <sup>73</sup>

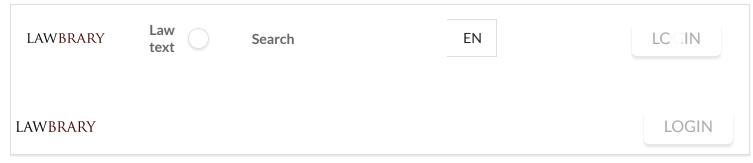
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- <sup>2</sup> The instructions on legal remedies must indicate the ordinary remedies, the competent authority and the period for applying for legal remedies.
- <sup>3</sup> The authority may dispense with stating the grounds for the ruling and providing instructions on legal remedies if it grants the applications of the parties in full and no party requests that the grounds be stated.

#### Art. 36

II. Official pub- The authority may notify its rulings by publication lication in an official gazette: 74

- a. to any party whose place of residence is unknown and who has no contactable representative;
- b. 75 to any party who resides abroad and has no contactable representative provided service at their place of residence is impossible or if the party, in contravention of Article 11 paragraph 1, has failed to indicate a domicile for service in Switzerland:
- c. <sup>76</sup>in any case with numerous parties;
- d. 77 in any case which the identification of all the parties would entail unreasonable expense.



Art. 38

IV. Defective notification

No party may be prejudiced by a defect in the notification procedure.

#### Art. 39

K. Enforcement The authority may enforce its rulings I. Requirements provided:

- a. the ruling may no longer be contested through legal remedies;
- b. the ruling may still be contested, but the permitted legal remedy does not have a suspensive effect;
- c. the suspensive effect of the legal remedy has been revoked.

## Art. 4079

measures

1. Debt collection procedures

II. Enforcement Rulings on the payment of money or the provision of security must be enforced by means of debt collection proceedings in accordance with the Federal Act of 11 April 1889<sup>80</sup> on Debt Collection and Bankruptcy.

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- of the party liable; the costs must be determined by special ruling;
- b. direct enforcement against the party liable in person or against his property;
- c. prosecution in the event that another federal act provides for a penalty;
- d. prosecution for contempt under Article 292 of the Criminal Code<sup>81</sup> if no other criminal law provision applies.
- <sup>2</sup> Before the authority takes any enforcement measure, it shall give notice thereof to the party liable and allow him a suitable period in which to comply, indicating the statutory penalties in the cases referred to in paragraph 1 letters c and d.
- <sup>3</sup> In the cases referred to in paragraph 1 letters a and b, it may dispense with giving notice of the enforcement measure and allowing a period for compliance if there is a risk in any delay.

# **Art. 42**

3. Proportional- The authority must not use a more rigorous ity enforcement measure than the circumstances require.

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# Section 3 Appeal Procedure in General

#### **Art. 44**

A. Principle Any ruling shall be subject to an appeal.

# Art. 4583

- B. Appeal against interim orders
- I. Interim orders on jurisdiction and recusal
- <sup>1</sup> An appeal is permitted against separately notified interim orders on jurisdiction and on requests for recusal.
- <sup>2</sup> These rulings may not be contested at a later date.

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- ately bring about a final decision and thus would obviate significant expenditure in time or money in prolonged evidentiary proceedings.
- <sup>2</sup> If an appeal under paragraph 1 is not permitted or if such right of appeal has not been exercised, the interim orders concerned shall be contestable by appeal against the final ruling, provided they have an effect on the content of the final ruling.

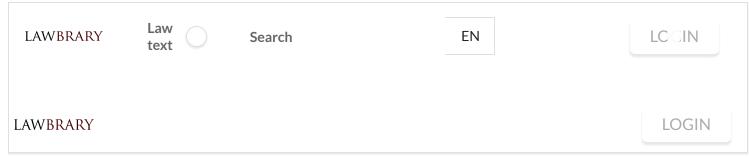
B<sup>bis</sup>. Denial of justice and unjustified delay

An appeal may be filed against the unlawful refusal of or delay in issuing a contestable ruling.

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trative Court Act of 17 June 2005 87;

- c. 88 other authorities that are designated as appellate authorities by a federal act;
- d. 89 the supervisory authority if an appeal to the Federal Administrative Court is incompetent and federal law does not designate any other appellate authority.
- <sup>2</sup> If an appellate authority not responsible for the final decision has issued an instruction in an individual case that a lower instance should decide or has issued that instance with instructions on the content of that decision, the ruling must be referred directly to the next highest appellate authority; attention must be drawn to the foregoing in the instructions on legal remedies. <sup>90</sup>
- 3 ... 91
- <sup>4</sup> Instructions that an appellate authority issues if it decides in the case and refers the same back to the lower instance are not regarded as instructions within the meaning of paragraph 2.



Art. 48<sup>93</sup>

- D. Locus standi <sup>1</sup> A right of appeal shall be accorded to anyone who:
  - a. has participated or has been refused the opportunity to participate in proceedings before the lower instance;
  - b. has been specifically affected by the contested ruling; and
  - c. has a interest that is worthy of protection in the revocation or amendment of the ruling.
  - <sup>2</sup> Persons, organisations and authorities who are granted a right of appeal by another federal act shall also be entitled to appeal.

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- b. there has been an incorrect or incomplete determination of the legally relevant facts of the case;
- c. the ruling is inadequate; a plea of inadequacy is inadmissible if a cantonal authority has ruled as the appellate authority.

F. Period for filing an appeal

- <sup>1</sup> The appeal must be filed within 30 days of notification of the ruling.
- <sup>2</sup> An appeal may be filed at any time against the unlawful refusal of or delay in issuing a ruling.

# Art. 5195

G. Appeal petition

I. ...

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evidence must be attached, provided they are in the appellant's possession.

- <sup>2</sup> If the appeal fails to satisfy these requirements, or if the application made by the appellant or the grounds therefor lack the required clarity but the appeal is not clearly inadmissible, the appellate authority shall grant the appellant a short additional period to revise the appeal petition.
- <sup>3</sup> It shall at the same time notify the appellant that if there is not response within the additional period, it shall decide on the basis of the case files or in the absence of an application, grounds or a signature, to declare the appeal inadmissible.

## Art. 53

III. Supplementary appeal petition

If the unusual complexity or special difficulty of an appeal case so requires, the appellate authority shall grant an appellant who so requests in his otherwise properly filed appeal a suitable additional period within which to supplement his grounds of appeal; in such cases, Article 32 paragraph 2 does not apply.

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- II. Precautionary measures
- 1. Suspensive effect
- <sup>1</sup> An appeal shall have a suspensive effect.
- <sup>2</sup> If the ruling does not relate to the payment of money, the lower instance may revoke the suspensive effect of any appeal in its ruling; once the appeal has been filed, the appellate authority, its president or the instructing judge has the same power. <sup>96</sup>
- <sup>3</sup> The appellate authority, its president or the instructing judge may reinstate the suspensive effect revoked by the lower instance; an application for the reinstatement of the suspensive effect must be decided immediately. <sup>97</sup>
- <sup>4</sup> If the suspensive effect is revoked arbitrarily or an application for the reinstatement of the suspensive effect is arbitrarily not granted or granted late, the public corporation or autonomous institution on whose behalf the authority has issued the ruling shall be liable for any loss or damage incurred thereby.
- <sup>5</sup> The provisions of other federal acts under which an appeal does not have a suspensive effect are reserved. <sup>98</sup>

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by a party, in ruling to preserve the current situation or to temporarily safeguard interests that are at risk.

## Art. 57

III. Exchange of written submissions

- <sup>1</sup> The appellate authority shall immediately notify the lower instance and any respondents or other parties involved of any appeal that is not fundamentally inadmissible or groundless, allow them a period within which to respond and at the same time request the lower instance to produce its case files. <sup>100</sup>
- <sup>2</sup> It may invite the parties to exchange written submissions at any stage of the proceedings or arrange an oral debate with them.

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any new ruling and inform the appellate authority of the same.

<sup>3</sup> The appellate authority shall proceed with the appeal unless it is rendered groundless by the new ruling of the lower instance; Article 57 applies if the new ruling is based on facts that are substantially different or creates a legal position that is substantially different.

## Art. 59

V. Recusal

The appellate authority may not appoint persons to hear the appeal who serve the lower instance or who participated in the drafting of the contested ruling; if the contested ruling is based on an instruction from the appellate authority, Article 47 paragraphs 2–4 also apply.

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or distupt the conduct of the proceedings.

- <sup>2</sup> In cases of vexatious or irresponsible litigation, the party and his representative may be issued with disciplinary fine of up to 1000 francs or of up to 3000 francs in the event of reoffending.
- <sup>3</sup> The person presiding over a hearing may have persons who refuse to comply with his instructions removed from the room and may impose a disciplinary fine of up to 500 francs.

## **Art. 61**

- J. Appeal decision
- I. Content and form
- <sup>1</sup> The appellate authority shall itself make the decision in the case or in exceptional cases shall refer the case back to the lower instance and issue binding instructions.
- <sup>2</sup> The appeal decision shall contain a summary of the relevant facts of the case, a statement of the grounds for the decision and the operative part of the decision.
- <sup>3</sup> Notification of the decision must be given to the parties and the lower instance.

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olates federal law or is based on an incorrect or incomplete determination of the facts of the case; the contested ruling may not be amended to the prejudice of a party on the grounds that it is inadequate, other than in the case of an amendment in favour of a respondent.

- <sup>3</sup> If the appellate authority intends to amend the contested ruling to the prejudice of a party, it shall notify the party of this intention and allow him the opportunity to respond.
- <sup>4</sup> In no event do the grounds for the application bind the appellate authority.

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unsuccessful, the procedural costs shall be reduced. In exceptional cases, they may be remitted.

- <sup>2</sup> No procedural costs shall be imposed on lower instances or appellant federal authorities that are unsuccessful; persons other than federal authorities that file an appeal and are unsuccessful shall be required to pay procedural costs provided the dispute relates to the pecuniary interests of public corporations or autonomous institutions.
- <sup>3</sup> Procedural costs may only be imposed on a successful party if the costs were incurred through a violation of procedural duties.
- <sup>4</sup> The appellate authority, its president or the instructing judge shall obtain from the appellant an advance payment to cover costs equivalent to the expected level of the costs. The appellant must be allowed a suitable period within which to make payment, subject to the case being dismissed without entering into its substance in the event of non-payment. If there are special reasons, the advance payment to cover costs may be waived in full or in part. <sup>102</sup>

<sup>4bis</sup> The authority's own fees are governed by the extent and difficulty of the matter in dispute, the form of the proceedings and the financial circumstances of the parties. They shall amount to:

- a. 100–5000 francs in non-pecuniary disputes;
- b. 100–50 000 francs in other dis-

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- <sup>2</sup> The award shall be quantified in the decision and imposed on the public corporation or autonomous institute in whose name the lower instance issued its ruling, unless it may be imposed on an unsuccessful respondent.
- <sup>3</sup> It may be imposed on an unsuccessful respondent, depending on his ability to pay, provided the party participated in the proceedings by filing an independent application.
- <sup>4</sup> The public corporation or autonomous institution in whose name the lower instance issued its ruling shall be liable for the payment of an award imposed on an unsuccessful respondent in the event that it is found to be unrecoverable.
- <sup>5</sup> The Federal Council shall regulate the calculation of the award. 108 Article 16 paragraph 1 letter a of the Administrative Court Act of 17 June 2005 109 and Article 73 of the Law Enforcement Authorities Act of 19 March 2010 110 are reserved. 111

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costs, unless his application appears to have no prospect of success. 112

- <sup>2</sup> If it is necessary in order to safeguard his rights, the appellate authority, its president or the instructing judge shall appoint a lawyer to represent the party. <sup>113</sup>
- <sup>3</sup> The liability for the lawyer's costs and fees is determined in accordance with Article 64 paragraphs 2–4.
- <sup>4</sup> If the party later acquires sufficient financial means, he shall be required to reimburse the public corporation or autonomous institution that has paid the lawyer's fees and costs.
- <sup>5</sup> The Federal Council shall regulate the assessment of fees and costs. <sup>114</sup> Article 16 paragraph 1 letter a of the Administrative Court Act of 17 June 2005 <sup>115</sup> and Article 73 of the Law Enforcement Authorities Act of 19 March 2010 <sup>116</sup> are reserved. <sup>117</sup>

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- <sup>2</sup> It shall also review its decision on the application of a party if:
  - a. the party introduces relevant new facts or evidence;
  - b. the party demonstrates that the appellate authority overlooked relevant facts that were on record or specific applications;
  - c. the party demonstrates that the appellate authority violated the provisions of Articles 10, 59 or 76 on recusal, Articles 26–28 on the inspection of files or the Articles 29–33 on the right to be heard; or
  - d. 119 the European Court of Human Rights has held in a final judgment that there has been a violation of the Convention of 4 November 1950 120 for the Protection of Human Rights and Fundamental Freedoms (ECHR) or of the protocols thereto, or if the case has been concluded by means of a friendly settlement (Art. 39 ECHR), provided an award of damages is not sufficient to remedy the consequences of the violation and the review is necessary in ruling to redress the violation.
- <sup>3</sup> The grounds referred to in paragraph 2 letters a—c are not regarded as grounds for a review if the party had the opportunity to invoke them in the course of proceedings prior to the appeal decision, or by means of an appeal that he was entitled to bring against the appeal decision.

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view, but at the latest within 10 years of receipt of written notification of the appeal decision. <sup>121</sup>

<sup>1bis</sup> In the case referred to in Article 66 paragraph 2 letter d, the application for a review must be filed within 90 days of the relevant judgment of the European Court of Human Rights under Article 44 the European Convention on Human Rights of 4 November 1950<sup>122</sup> taking full legal effect. <sup>123</sup>

- <sup>2</sup> If 10 years have elapsed since notification of the appeal decision, an application for a review is only admissible on the grounds cited in Article 66 paragraph 1.
- <sup>3</sup> The content, form, correction and amendment of the application for a review are governed by Articles 52 and 53; the statement of grounds must in particular indicate the grounds for the review and confirmation that the application for a review has been filed in time. This must also contain the application in the event that a new appeal decision is made.

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<sup>2</sup> Articles 56, 57 and 59–65 also apply to the consideration of the application for a review.

## Art. 69

L. Explanatory statement

- <sup>1</sup> The appellate authority shall at the request of any party explain the appeal decision if there are any inconsistencies or contradictions in the operative part of the decision or between the operative part and the statement of grounds.
- <sup>2</sup> A new period for filing an appeal begins from the date of the explanatory statement.
- <sup>3</sup> Typographical or arithmetical errors or administrative omissions that have no influence on the decision or on the essential content of the grounds may be corrected by the appellate authority at any time.

Art. 70 124

M. Special forms of appeal

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<sup>2</sup> The person making the report does not have the rights of a party.

# Section 4 Special Authorities 125

Art. 7171 126

A. ...

## Art. 72 127

- B. Federal Council
- I. As appellate authority
- 1. Admissibility of the appeal
- a. Subject matter
- An appeal to the Federal Council is admissible against:
  - a. rulings relating to the internal and external security of the country, neutrality, diplomatic protection and the other matters relating to external relations, unless international law confers the right to have the matter judged by a court;
  - b. first instance rulings on the performance-related element of the salaries of federal personnel.

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- of autonomous institutions and of businesses of the Confederation;
- c. issued by cantonal authorities of final instance.

# Art. 74 129

c. Subsidiarity An appeal to the Federal Council is inadmissible against rulings that may be contested by appeal to another federal authority or by objection.

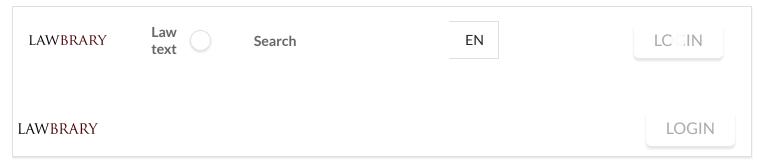
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peal briefing procedure in appeals against rulings of the Federal Department of Justice and Police to another department.

<sup>3</sup> The briefing department shall submit its proposals to the Federal Council and shall exercise the powers held by the Federal Council as appellate authority until the decision is made.

# Art. 76 132

- 3. Recusal
- <sup>1</sup> The member of the Federal Council against whose department the appeal is filed shall not participate in the decision of the Federal Council.
- <sup>2</sup> His department may participate in the proceedings before the Federal Council as if it were an appellant and also within the framework of the joint reporting procedure under Article 54 of the Administration Organisation Act of 19 September 1978 <sup>133</sup>.
- <sup>3</sup> If the joint reporting procedure leads to new factual or legal submissions being made, the appellant, any respondents or other parties involved must be heard on these submissions.



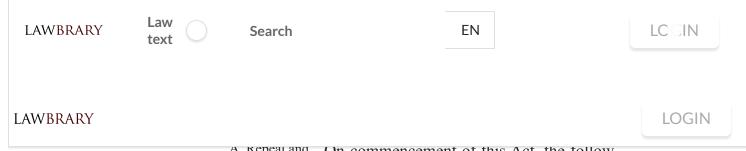
II. As sole or first instance

- <sup>1</sup> If the Federal Council issues a ruling as the sole or first instance, the department that is competent in the matter shall provide it with a proposal on the ruling.
- <sup>2</sup> The department shall exercise the powers held by the Federal Council until the ruling has been issued.
- <sup>3</sup> Articles 7–43 also apply.

# Art. 79

C. Federal Assembly

- <sup>1</sup> An appeal to the Federal Assembly is admissible against appeal decisions and rulings if a federal act so provides. <sup>137</sup>
- <sup>2</sup> The appeal must be filed with the Federal Assembly within 30 days of notification of the appeal decision or the ruling.
- <sup>3</sup> The appeal shall have no suspensive effect unless a related provisional ruling has been issued by the Federal Council.



A. Kepeai and amendment of legislation

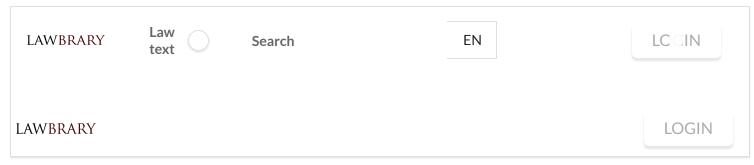
On commencement of this Act, the following are repealed:

- a. Article 23<sup>bis</sup> of the Federal Act of 26 March 1914<sup>138</sup> on the Organisation of the Federal Administration;
- b. Articles 124–134, 158 and 164 of the Federal Justice Act <sup>139</sup>;
- c. contradictory provisions of the federal law; supplementary provisions under Article 4 are reserved.

# **Art. 81**

B. Transitional provision

This Act does not apply to disputes before authorities of administrative justice at the time of its commencement and to appeals or objections against rulings issued before its commencement; in such cases, the previous provisions on procedure and provisions apply.



# Final Provision of the Amendment of 18 March 1994 141

The new law applies to all appeals that are filed with an appellate authority following the commencement of the Amendment of 18 March 1994.

# Final Provision to the Amendment of 17 June 2005 142

The Federal Council may for ten years following the commencement of the Amendment of 17 June 2005 limit the possibility of filing submissions electronically with authorities to proceedings before specific authorities.