

ภาคผนวก

ภาคผนวก ก.**Administrative Procedure Act
(Verwaltungsverfahrensgesetz, VwVfG)****Section 48 Withdrawal of an unlawful administrative act**

(1) An unlawful administrative act may, even after it has become non-appealable, be withdrawn wholly or in part either retrospectively or with effect for the future. An administrative act which gives rise to a right or an advantage relevant in legal proceedings or confirms such a right or advantage (beneficial administrative act) may only be withdrawn subject to the restrictions of paragraphs 2 to 4.

(2) An unlawful administrative act which provides for a one-time or continuing payment of money or a divisible material benefit, or which is a prerequisite for these, may not be withdrawn so far as the beneficiary has relied upon the continued existence of the administrative act and his reliance deserves protection relative to the public interest in a withdrawal. Reliance is in general deserving of protection when the beneficiary has utilised the contributions made or has made financial arrangements which he can no longer cancel, or can cancel only by suffering a disadvantage which cannot reasonably be asked of him. The beneficiary cannot claim reliance when:

1. he obtained the administrative act by false pretences, threat or bribery;
2. he obtained the administrative act by giving information which was substantially incorrect or incomplete;
3. he was aware of the illegality of the administrative act or was unaware thereof due to gross negligence.

In the cases provided for in sentence 3, the administrative act shall in general be withdrawn with retrospective effect.

(3) If an unlawful administrative act not covered by paragraph 2 is withdrawn, the authority shall upon application make good the disadvantage to the person affected deriving from his reliance on the existence of the act to the extent that his reliance merits protection having regard to the public interest. Paragraph 2, third sentence shall apply. However, the disadvantage in financial terms shall be made good to an amount not to exceed the interest which the person affected has in the continuance of the administrative act. The financial disadvantage to be made good shall be determined by the authority. A claim may only be made within a year, which period shall commence as soon as the authority has informed the person affected thereof.

(4) If the authority learns of facts which justify the withdrawal of an unlawful administrative act, the withdrawal may only be made within one year from the date of gaining such knowledge. This shall not apply in the case of paragraph 2, third sentence, no. 1.

(5) Once the administrative act has become non-appealable, the decision concerning withdrawal shall be taken by the authority competent under section 3. This shall also apply when the administrative act to be withdrawn has been issued by another authority.

Section 49 Revocation of a legal administrative act

(1) A lawful, non-beneficial administrative act may, even after it has become non-appealable, be revoked wholly or in part with effect for the future, except when an administrative act of like content would have to be issued or when revocation is not allowable for other reasons.

(2) A lawful, beneficial administrative act may, even when it has become non-appealable, be revoked in whole or in part with effect for the future only when:

1. revocation is permitted by law or the right of revocation is reserved in the administrative act itself;
2. the administrative act is combined with an obligation which the beneficiary has not complied with fully or not within the time limit set;
3. the authority would be entitled, as a result of a subsequent change in circumstances, not to issue the administrative act and if failure to revoke it would be contrary to the public interest;
4. the authority would be entitled, as a result of an amendment to a legal provision, not to issue the administrative act where the beneficiary has not availed himself of the benefit or has not received any benefits derived from the administrative act and when failure to revoke would be contrary to the public interest, or
5. in order to prevent or eliminate serious harm to the common good. Section 48 paragraph 4 applies *mutatis mutandis*.

(3) A lawful administrative act which provides for a one-time or a continuing payment of money or a divisible material benefit for a particular purpose, or which is a prerequisite for these, may be revoked even after such time as it has become non-appealable, either wholly or in part and with retrospective effect,

1. if, once this payment is rendered, it is not put to use, or is not put to use either without undue delay or for the purpose for which it was intended in the administrative act;
2. if the administrative act had an obligation attached to it which the beneficiary either fails to satisfy or does not satisfy within the stipulated period. Section 48 paragraph 4 applies *mutatis mutandis*.

(4) The revoked administrative act shall become null and void with the coming into force of the revocation, except where the authority fixes some other date.

(5) Once the administrative act has become non-appealable, decisions as to revocation shall be taken by the authority competent under section 3. This shall also apply when the administrative act to be revoked has been issued by another authority.

(6) In the event of a beneficial administrative act being revoked in cases covered by paragraph 2, nos. 3 to 5, the authority shall upon application make good the disadvantage to the person affected deriving from his reliance on the continued existence of the act to the extent that his reliance merits protection. Section 48, paragraph 3, third to fifth sentences shall apply as appropriate. Disputes concerning compensation shall be settled by the ordinary courts.

Section 49a Reimbursement, interest

(1) Where an administrative act is either withdrawn or revoked with retrospective effect, or where it becomes invalid as a result of the occurrence of a condition which renders it null and void, any payments or contributions which have already been made shall be returned. The amount of such a reimbursement shall be stipulated in a written administrative act.

(2) The amount to be reimbursed, excepting interest, is governed by the relevant provisions of the Civil Code on surrendering undue enrichment. The beneficiary is not entitled to claim that enrichment no longer exists where he was either aware of the circumstances which led to the administrative act being withdrawn, revoked or becoming invalid, or failed as a result of gross negligence to be aware of this.

(3) Interest shall be due on the amount to be reimbursed from the date on which the administrative act becomes invalid at a rate of 5 (five) per cent per annum above the currently valid Discount Rate of the German Federal Bank [Deutsche Bundesbank]. The payment of interest may be waived where the beneficiary cannot be held responsible for the circumstances which led to the administrative act being withdrawn, revoked or becoming invalid and repays the amount in full within the time limit stipulated by the authority.

(4) If a reimbursement is not put to use upon receipt immediately and for the intended purpose, the payment of interest may be demanded at the level stated in paragraph 3, first sentence for the period up to the date at which it is put to its designated use. The same shall apply as far as a reimbursement is claimed, even when other funds are to be used proportionally or preferentially. The provisions of section 49, paragraph 3, first sentence, no. 1 remain unaffected.

ภาคผนวก ข.

Code des Relations Entre le Public et l'Administration (CRPA)

Titre IV : LA SORTIE DE VIGUEUR DES ACTES ADMINISTRATIFS

Article L 240-1

Au sens du présent titre, on entend par:

- 1° Abrogation d'un acte : sa disparition juridique pour l'avenir ;
- 2° Retrait d'un acte : sa disparition juridique pour l'avenir comme pour le passé.

Article L 240-2

Le présent titre est applicable, outre aux administrations mentionnées au 1° de l'article L 1003, aux organismes et personnes chargés d'une mission de service public industriel et commercial pour les actes qu'ils prennent au titre de cette mission.

Chapitre Ier : Règles générales

Article L 241-1

Sous réserve des exigences découlant du droit de l'Union européenne et de dispositions législatives et réglementaires spéciales, les règles applicables à l'abrogation et au retrait d'un acte administratif unilatéral pris par l'administration sont fixées par les dispositions du présent titre.

Article L 241-2

Par dérogation aux dispositions du présent titre, un acte administratif unilatéral obtenu par fraude peut être à tout moment abrogé ou retiré.

Chapitre II : Les décisions créatrices de droits

Section 1 : Abrogation et retrait à l'initiative de l'administration ou sur demande d'un tiers

Article L 242-1

L'administration ne peut abroger ou retirer une décision créatrice de droits de sa propre initiative ou sur la demande d'un tiers que si elle est illégale et si l'abrogation ou le retrait intervient dans le délai de quatre mois suivant la prise de cette décision.

Article L 242-2

Par dérogation à l'article L 242-1, l'administration peut, sans condition de délai :

1° Abroger une décision créatrice de droits dont le maintien est subordonné à une condition qui n'est plus remplie;

2° Retirer une décision attribuant une subvention lorsque les conditions mises à son octroi n'ont pas été respectées.

Section 2 : Abrogation et retrait sur demande du bénéficiaire**Article L 242-3**

Sur demande du bénéficiaire de la décision, l'administration est tenue de procéder, selon le cas, à l'abrogation ou au retrait d'une décision créatrice de droits si elle est illégale et si l'abrogation ou le retrait peut intervenir dans le délai de quatre mois suivant l'édition de la décision.

Article L 242-4

Sur demande du bénéficiaire de la décision, l'administration peut, selon le cas et sans condition de délai, abroger ou retirer une décision créatrice de droits, même légale, si son retrait ou son abrogation n'est pas susceptible de porter atteinte aux droits des tiers et s'il s'agit de la remplacer par une décision plus favorable au bénéficiaire.

Article L 242-5

Lorsque le recours contentieux à l'encontre d'une décision créatrice de droits est subordonné à l'exercice préalable d'un recours administratif et qu'un tel recours a été régulièrement présenté, le retrait ou l'abrogation, selon le cas, de la décision est possible jusqu'à l'expiration du délai imparti à l'administration pour se prononcer sur le recours administratif préalable obligatoire.