

## Administrative Silence in Comparative European Law

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### Research proposal for 2018 and 2019 EGPA conferences and future publication

This research proposal follows the EGPA's PSG X annual efforts to research and analyse comparatively topical issues from both a legal and empirical perspective. After ADR and Transparency, we propose for **2018 and 2019 EGPA conferences** the topic Administrative silence in comparative, i.e. European law.

Administrative silence occurs when administrative authority does not reply to an application in the legally prescribed time or does not take action when such action is legally prescribed. The legal fiction may be negative or positive. **Negative** fiction means that the law considers the silence as tacit rejection of the application and the interested parties have the possibility of a legal challenge in administrative or judicial venues. In the second instance, **positive** fiction, the presumption is that the silence means approval (the silent consent procedure or tacit agreement). The application is considered approved and the applicant can perform an activity. No legal system is exclusively working with just one of the legal assumptions. Both negative and positive assumptions are used, with different legal consequences.

At the European level several initiatives were adopted that mainly address the issue of administrative silence by principally enacting positive fiction – see Directive 2006/123/EC on services in the internal market, a certain source of Europeanisation of national legal systems as well.

Our proposal is to comparatively discuss national profiles as conference papers at the 2018 EGPA conference in Lausanne, addressing the following research questions from a legal and empirical perspective:

#### 1. **The legal and administrative context:**

- a) The distribution of administrative competence in the context of the legal-administrative tradition of the country – short introduction.
- b) Broader societal/cultural context of understanding timeliness of administrative procedure – if the case.
- c) The main principles of administrative law regarding timeliness of administrative procedures: lawfulness, legitimate expectations, efficiency, proportionality, reasonableness, etc.

#### 2. **Regarding the deadlines:**

- a) What is the length of deadlines in general law and in special laws? Possibilities of prolongation.
- b) Deadlines at first instance administrative bodies v. deadlines in administrative appeal, extraordinary and enforcement proceedings.
- c) Legal character of prescribed deadlines (instructive or preclusions).
- d) The concept of “reasonable” deadline.
- e) Counting deadlines: when does a proceeding begin and what are rules about deadlines' expiry?
- f) Empirical evidence:
  - Data on average deadlines in practice of various specific procedures (building permits, environment, tax, social benefits, etc.). Select the fields that are most interesting in practice. If no relevant data available, please conduct interviews with relevant officials and public servants.
- g) Supervision of the timeliness: administrative control, judicial review, etc. Responsibility for backlogs. Does the law prescribe sanctions? What type of sanctions?
  - Are there data available? If not, please conduct interviews with relevant officials and public servants.

#### 3. **Legal framework of administrative silence:**

- a) The regulation of administrative silence:
  - Constitutional basis (if applicable).
  - Administrative Procedure Act or other general laws.
  - Sector-specific legislation (special laws).
- b) Is administrative silence restricted to procedures based on application? Is there an administrative silence for procedures initiated *ex officio*?

- c) Specific regimes in the fields of environment and entrepreneurship.
- d) National doctrine on the issue of administrative silence. Advantages and side effects of the negative and positive model in each country.

**4. Responses to administrative silence:**

- a) The prevailing model: positive or negative.
- b) Legal consequences/fictions. Finality and enforceability of administrative acts issued because of administrative silence.
- c) Legal remedies entitled to a party. Administrative v. judicial protection/enforceability. Right to compensation.
- d) Empirical evidences:
  - Data on usage of legal remedies and actions to courts in practice and case law.
  - Data on officials and authorities' heads being held accountable for delays.
- e) Governmental strategies, actions and effects of tackling excessive length of procedures (legal novelties, training of officials, public awareness actions, etc.).
- f) Role of the Ombudsman – if applicable.
- g) The EU influence over national rules practices: the process of "Europeanization" of national administrative procedures.

**5. Overall assessment of the rules and practices around administrative silence:**

- a) Law by the book – the regulation and its legal challenges.
- b) Law in action – the practice of administrative inactivity.

The main research **sources are to be normative acts, white papers, inter/national literature overview, national statistics, case law, surveys and interviews** (with law drafters, officials, judges). Each sub-topic should be addressed from both regulatory and empirical perspective.

**Proposed timeline of the project:**

<i>Deadlines</i>	<i>Activity</i>	<i>Responsible</i>
20 Nov 2017	Feed-back to the draft proposal and application of interest	Participants/authors
31 Jan 2018	The call for the 2018 EGPA conference (web publication)	PSG co-directors, EGPA secretariat
10 April 2018	Applications to the 2018 EGPA conference (Lausanne)	Participants/authors
1 Aug 2018	Full papers for the 2018 EGPA conference	Participants/authors
Aug/Sep 2018	Papers' presentation and feed-back to upgrade in 2019	All
30 Nov 2018	A book proposal to EGPA/Palgrave Macmillan (based on the insofar papers and additional needs/interest)	PSG co-directors
20 Jan 2019	Reviews/recommendations to the book proposal	EGPA/ Palgrave M.
31 Jan 2019	The call for the 2019 EGPA conference	PSG co-directors
10 April 2019	Applications to the 2019 EGPA conference (Belfast)	Participants/authors
1 Aug 2019	Full papers for the 2019 EGPA conference	Participants/authors
Aug/Sep 2019	Papers' presentation and feed-back to upgrade	All
30 Sep 2019	Papers' revisions for the book, language editing, editorial review	Participants/authors Co-directors/editors
31 Oct 2019	Finalisation of the national chapters	Participants/authors
31 Oct 2019	Preparation of comparative chapters	Co-directors/editors+
30 Nov 2019	Final fine-tunings and formalities	All
1 Dec 2019	Submission to the publisher	PSG co-directors
Spring 2020?	Publication of the book	Palgrave Macmillan

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