

## Terms of References to evaluate compliance of business processes with the PAJA

### I. Background

The Constitution as well as Good Governance and Batho Pele Principles require that the Public Service at all levels must apply the Promotion of Administrative Justice Act (PAJA). Therefore, the objective of the implementation of PAJA may be

**'To improve the administrative processes in a manner that all decisions taken by a Department or Municipality are in compliance with the PAJA'.**

As an entry point of any PAJA implementation it is crucial to know the actual state of PAJA implementation within the respective Department or Municipality. Here, it is suggested to collect data applicable to certain administrative actions undertaken by the respective administration, to shift assumptions on PAJA compliance to knowledge.

### II. Objectives of the Evaluation

The evaluation serves to identify strengths and weaknesses of the decision-making procedures and policies applied by Department of the Municipality in relation to selected administrative decisions, in order

- To capacitate the Department's or Municipality's project management in conducting evaluation exercises on PAJA compliance,
- To provide the operational planning with a foundation,
- To enable project management to assess the impact of project interventions and
- To provide reliable data to the project management for project steering.

### III. Activities

To implement the evaluation process, the required activities can be described through a '5 Step approach' (The questionnaires that the following notes refer to, are also available on this website):

#### Step 1

The first step relates to the empowering legislation in terms of which the sample administrative action is taken. The data relating to the empowering legislation needs to be collected once only, in respect of the sample of selected administrative actions undertaken by the Department or the Municipality. The questions pertaining to the empowering legislation can be gathered from the statute (regulations and by-laws) itself. The questions seek to establish what the statutory requirements are for administrative decision-making, and the precise legal source thereof.

#### What is required?

The evaluators will suggest administrative actions to be analysed on the basis of the 'Audit of Legislation' (Project tool). The decision will be made by the Department or Municipality in consultation with the evaluators via e-mail or telephon. Subsequently the Department or Municipality should provide all relevant empowering provisions in respect of the making the administrative action which has been selected to the evaluators several days in advance.

#### Activities

- Suggest suitable Administrative Actions to the Department or Municipality.
- Agree on the proposed Administrative Action with the Department or Municipality (to be done by evaluators and the Department or Municipality).
- Communicate selected Administrative Actions to the Department or Municipality to be evaluated (to be done by the evaluators)
- Send all the empowering legislation in terms of which the administrative action of the Department or Municipality is taken to the evaluators (to be done by the Department or Municipality).
- Analyse the legal material (to be done by the evaluators).

#### Step 2

This step relates to internal departmental or municipal measures that may or may not exist, and which serve to assist administrators in applying the empowering legislation in practice. Responses to these questions will have to be collected from officials.

Thus, the questions can be answered only if there is access to an administrator that is prepared to assist in completion of the questionnaire (see questionnaire 'Step 2'). This part of the checklist is designed to elicit substantive information regarding the internal / departmental requirements of the administrative decision-making process, and the source thereof.

#### What is required?

An appointment with an administrator furnished with a good routine of producing that type of administrative action which has been selected through 'Step 1', should be arranged with the evaluators. The administrator may prepare the answers in advance. This would increase the efficiency. During the interview the evaluators would go along with the questionnaire and gather the information obtained from the administrator. This requires approx. 2 hours.

#### Activity

- Prepare for the answering of the second questionnaire before the evaluator's visits at the Department or Municipality ('Step 2') (to be done by the administrator of the respective Department or Municipality.)

#### **Step 3, 4 and 5**

This step is dedicated to the file documents reflecting the making of the administrative action and containing the note of the administrative action. This step aims to establish whether and to what extent the actual administrative decision-making process complies with the constitutional right to lawful, reasonable and procedurally fair administrative action, as given effect to in the PAJA.

#### What is required?

The Department or Municipality should provide **randomly selected files containing administrative actions that adversely affect rights** (ie decisions that went against a member of the public) to the evaluators in a working room at its offices to be able to go through the files. That can be done immediately after 'Step 2'. The information from the files will be collected through the questionnaire. In the event of availability, the dedicated project manager of the Department or Municipality in charge should attend and share the exercise to gain experience on how to apply this tool. After some exercises the colleague from the the Department or Municipality may apply the tool on his own and by doing so increase the capacity of the evaluation team. At a later stage the respective offices would be able to conduct their own evaluations, based on the tool.

## Activities

- Randomly select files covering the making of administrative decisions in respect of the agreed administrative actions. **Caution!** The administrative decisions must result in an administrative action which is **adversely affecting the right** of the applicant. In this regard the selection should not entirely be randomly. (to be done by the Department or Municipality)
- Reserve working room (to be done by the Department or Municipality)
- Conduct interview according to 'Step 2' with administrator in charge (to be done by the evaluators)
- Analyse the files (to be done by the evaluators and administrators)
- Report the findings in a summarizing form (to be done by the evaluators).

## IV. Operational planning

After the mapping process has been finished the findings are compiled in the tabular reporting form. One row of the table is dedicated to document measures which are appropriately addressing the findings. These measure would be the starting point for PAJA implementation and would be tailor-made related to the strengths and the weaknesses of the business process evaluated.

## V. Timeframe

The interviews, the file assessment, and the elaboration of the operational plan for the business processes will need approx. 1 to 2 working days depending on the number of files and business processes to be mapped.