



EVERYTHING MATTERS

***General principles regarding a review of
administrative decisions
- Aspects of a CDM appeal process***

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Rechtsanwalt Dr. Ludger Giesberts LL.M. (LSE)

I. General principles of public law proceedings



- **Rule of law:** (state) organs must act in compliance with justice and the law
- **Types of proceedings:**
 - Inquisitorial system: investigation by administration on its own motion
 - Party system: principle of party presentation
- **Rights of the participants:**
 - Notice and hearing: acts imposing a burden or negative decisions must not be imposed/made without information about initiation of proceedings and giving the opportunity to make statements
 - Access to records: often restricted when the inspection of files may jeopardize the investigation; “in-camera proceeding” in judicial review
- **Decisions:**
 - Notification: administrative acts have no legal effects until notification
 - Duty to give reasons: decisions should include comprehensible reasons

II. Review of administrative decisions (1)



- **Review within the administration:**
 - Self control can be sufficient in a first step
 - Originating authority or inspective authority: higher acceptance of revision performed by a committee that is not identical with the body that made the challenged decision
- **Judicial Review:**
 - General requirement: independence of the judges; judges must not be accountable to legislative or executive power (separation of powers)
- **Determination of entitled appellants:**
 - System of individual rights: appellant must refer to the infringement of a law that also aims to protect him
 - System of general rights: appellant must refer to adverse effects on his legitimate interests
- **Temporal restriction:**
 - Administrative decisions can not be challenged after a specified period of time

II. Review of administrative decisions (2)



- **Different types of appeals depending on the appellants objective:**
 - Review of the administrative decision
 - Replacing the administrative decision with own decision of the reviewing body
 - Orders to the originating authority
 - Uniform type of appeal in some jurisdictions
- **Legal effects of challenged action:**
 - Suspensive effect or need for temporary injunction to obtain suspension
- **Scope of the review:**
 - System of individual rights: scope is limited to the infringement of public law that also aims to protect the appellant
 - Comprehensive examination of legality

Appeal against decisions of DOE and/or Executive Body

- **Relation between international level and national level (e.g.: Germany ProMechG)**
- **Which decisions (of whatever entity) can/should be reviewed?**
 - Validation and/or verification, certification, registration, etc.
- **Who should have the right to challenge decisions?**
 - Potential appellants must be clearly determined in advance
 - PP may wish to appeal against negative decisions of the DOE/EB
 - Competitors of PP may wish to challenge positive decisions
- **Who should be authorised to consider the appeal?**
 - CDM Executive Board or independent committee or arbitration court

III. Aspects of a CDM appeal process (2)



- **Should the appellant be obligated to complete preliminary proceedings before submission of the appeal?**
- **What is the scope of the appeal?**
 - Requirements of CDM projects, procedural errors in CDM validation/verification/registration, aspects concerning status or qualification of the DOE
- **Suspension of challenged decision**
- **Interaction between possible legal dispute on the basis of the contractual relation between PP and DOE/EB?**
- **Enforcement of review decision**
- **Costs of review**



Thank you for your attention!

Dr. Ludger Giesberts LL.M. (LSE)*

Rechtsanwalt / Partner

DLA Piper

Hohenzollernring 72

50672 Köln

T: +49 221 277 277 351

F: +49 221 277 277 80

E: ludger.giesberts@dlapiper.com

* Lecturer at University of Cologne