



EVERYTHING MATTERS

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

***Side-event to the Bonn Climate Change Talks April 2010  
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# 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!***

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