

OBJECTION, APPEAL AND PERSPECTIVES ACCORDING TO GENERAL ADMINISTRATIVE LAW ACT (AWB)

1 Introduction

CERTIFER HHC/DRS has a procedure in place that details its role as an administrative body in accordance with the General Administrative Law Act (Awb). The procedures shall at least address the following:

- the confidentiality to be observed by the institution (Art. 2:5 General Administrative Law Act; Awb).
- the language to be used by the institution (Section 2.2 of the General Administrative Law Act; Awb).
- processing applications and making decisions (Sections 3.2, 3.3, 3.6, 3.7 and Title 4.1 of the General Administrative Law Act; Awb).
- objections and appeals against decisions taken by the institution (Chapters 6 and 7 of the General Administrative Law Act; Awb).
- complaint handling by the institution (Chapter 9 of the General Administrative Law Act; Awb).
- having a procedure in place regarding the application of a perspective (Chapter. 3 of the General Administrative Law Act; Awb).

Under 2, further regulations are given for the processing of applications, the taking of decisions and the objection and appeal procedure, in accordance with the General Administrative Law Act (Awb).

2 Content of procedures General Administrative Law Act (Awb)

2.1 Procedure for processing applications and making decisions

This procedure shall include at least the following requirements.

The institution shall process the application within a reasonable period of time (within eight weeks). Should an eight-week period not be feasible, then the institution is to notify the applicant in writing, specifying a reasonable period within which a decision on the application can be expected.

If necessary information is missing from the application, the applicant shall be given the opportunity to supplement such information. In doing so, the institution shall set a reasonable time limit. The period for making a decision on the application shall be suspended with effect from the day on which the institution invites the applicant to complete the application.

If the applicant fails to complete the information, the institution may decide not to consider the application further. The institution shall make its decision within four weeks of the expiration of the deadline set by the institution.

The institution must state the reasons for its decisions and include an objection clause in accordance with the General Administrative Law Act (Awb).

2.2 Objection and appeal procedure

2.2.1 General

The decisions (e.g. issue, revocation or refusal of certificates) of the institution as a designated body are subject to the provisions of the General Administrative Law Act (Awb) relating to objections and appeals.

It is required of the institution to make this known in its public and internal documentation, such as in the dispute resolution section of the "General Terms and Conditions" or in the quality manual. Apart from that, the institution is to accompany any decision it takes with the applicable objection or appeal clause.

The institution should clearly distinguish in its public and internal documentation between:

- objections and appeals pursuant to the General Administrative Law Act (Awb) regarding decisions that arise from its statutory duties.
- appeals relating to acts under private law that do not fall within its statutory duties (i.e. to which the ministerial designation does not apply).

2.2.2 Specific regulations/texts

The institution shall include in its public and internal documentation specific regulations regarding the applicability of the objection and appeal procedure of the General Administrative Law Act (Awb). These should correspond in substance to what is stated in 2.2.2.1 and 2.2.2.2.

2.2.2.1 Standard text for the "General Terms and Conditions" or quality manual

The institution, within the framework of its statutory inspection and certification activities, uses the objection and appeal procedure for administrative bodies, as contained in Chapters 6 and 7 of the General Administrative Law Act (Awb).

2.2.2.2 Standard texts for the purpose of execution documents

As per the General Administrative Law Act (AwB), interested parties may object or appeal in writing against any decision (or measure) on the part of the institution, which concerns an inspection activity in accordance with legal provisions.

2.2.2.2a Objections

An interested party may lodge an objection should he find himself in disagreement with a written decision or refusal to make a decision. The institution shall inform the interested party of the possibility to object in its correspondence by means of the following clause:

Objection clause:

As per the General Administrative Law Act (AwB), an interested party may object to this decision. In order to do so, an objection must be submitted to..... (name and address of designated authority) within 6 weeks of the date this decision is sent. The notice of objection must state well-founded reasons as to why the given decision is not considered correct.

It is requested that a copy of that contested decision and any other documents pertaining to the case be attached to the objection.

2.2.2.2b Appeals

An interested party may file a notice of appeal with the District Court if he disagrees with a written decision or a refusal to make a decision on an objection.

The institution shall inform the interested party of the possibility to lodge an objection in its correspondence by means of the following clause:

Appeal clause:

As per the General Administrative Law Act (AwB), an interested party may lodge an appeal against this decision. In order to do so, a notice of appeal with a copy of that decision must be filed with the District Court of the place of residence of the person filing the appeal within 6 weeks after the date of dispatch of this decision. The notice of appeal must state why the decision of (name and address of the designated authority) is considered incorrect.

A court fee shall be payable for the hearing of the appeal."

NOTA BENE:

It is preferable that the appeal clause specifically mentions the location of the District Court.

2.3 Further requirements for the procedure of handling objections

The purpose of the appeals procedure is to give the institution an opportunity to reconsider a decision that has been made. An objection is to be handled by a person/group from within the institution who was not involved in the decision that is being objected to. Should the institution decide to establish an advisory committee to advise on objections, all incoming objections should be submitted to such a committee. Criteria for appointing members of the committee are their independence from the audit and certification decision. The person

lodging the objection or the institution may challenge the members of the advisory committee, giving their reasons.

An advisory committee takes over part of the handling process and then advises the responsible person or group of the institution.

The institution or the advisory committee shall hold a hearing at which the person lodging the objection and the person who made the contested decision shall be heard in each other's presence. A record of the hearing shall be made.

Following six (6) weeks of receipt of the objection, the institution will make a decision, which will then be communicated to the person objecting in writing and by registered mail. This period may be extended once by the institution by a time frame of four (4) weeks.

Where an advisory committee has been established, the time limit within which the institution must make a decision on the objection is ten (10) weeks. This period may also be extended by four (4) weeks.

The person who has filed the objection may lodge an appeal against the decision made on the objection with the District Court. The decision on the objection should make reference to this.

2.4 Application of perspective(s)

The inspection institution must give the applicant the opportunity to express its perspectives on a decision. For this purpose, the following applies pursuant to Chapter 3 of the General Administrative Law Act (Awb).

Art. 3:15.

-1. Interested parties may express their views on the decision in writing or orally to the administrative body of their choice.

-2. It may be stipulated by law or by the administrative body that others must also be given the opportunity to express their views.

-3. If it concerns a decision following an application, the administrative body shall, where appropriate, give the applicant the opportunity to respond to the views expressed.

-4. If it concerns a decision to amend or withdraw a decision, the administrative body shall give the person to whom the decision to amend or withdraw is addressed the opportunity to respond to the views expressed.

Art. 3:16.

-1. The period for submitting views shall be six weeks, unless a longer period is prescribed by law.

-2. The period shall commence on the date on which the decision is made available.

-3. Articles 6:9, 6:10 and 6:15 shall apply mutatis mutandis to views expressed in writing.

Art. 3:17.

An account shall be made of what has been submitted orally in accordance with Article 3:15.

Art. 3:18.

-1. If it concerns a decision following an application, the administrative body shall take the decision as soon as possible, but not later than six months after receipt of the application.

-2. Where the application concerns a very complicated or contentious issue, the administrative body may, within eight weeks of receiving the application, extend the period referred to in the first paragraph by a reasonable time. Prior to taking a decision on an extension, the administrative body shall give the applicant the opportunity to express his perspectives on the matter.

-3. In derogation from the first paragraph, the administrative body shall take the decision no later than twelve weeks after the decision if it concerns a decision:

a. regarding the withdrawal of a decision;

b. regarding the amendment of a decision and the petition was submitted by someone other than the person to whom the decision to be amended is addressed.

-4. If no perspectives have been expressed, the administrative body shall communicate this as soon as possible after the period for the presentation of perspectives has expired, in the manner referred to in Article 3:12, paragraphs 1 and 2. In derogation of the first or third paragraph, the administrative body shall in such a case take the decision within four weeks after the period for presenting perspectives has expired.

2.5 Registration

Appeals are recorded as a corrective measure in the digital quality system.

The following elements and methods are also recorded in this process:

- An overview of the process of receiving, validating and examining the appeal case, and of deciding on the measures to be taken as a result, bearing in mind the results of previous similar appeal cases.
- The follow-up and recording of the appeals, including the measures taken to resolve them.
- Ensuring that all appropriate corrections and corrective measures are applied.

2.6 Discriminatory measures

Submission of the appeal, its examination and the decision on it shall not result in discriminatory measures against the person submitting it.

3 ANNEXES

None

4 AMENDMENTS TO THE PREVIOUS VERSION

Fully adapted to a new way of working.

Layout