

## NON-JUDICIAL CONTROL OF ADMINISTRATIVE ACTION IN GERMANY

**Legal provisions  
in English translation****Basic Law for the Federal Republic of Germany (excerpts)**Art. 19(4)

Should any person's rights be violated by public authority, he may have recourse to the courts. If no other jurisdiction has been established, recourse shall be to the ordinary courts...

Art. 114(2)

The Federal Court of Auditors whose Members shall enjoy judicial independence shall audit the accounts and examine the performance, regularity and compliance of financial management. It shall report annually to both Houses of Parliament and to the Federal Government. In all other respects, the powers of the Federal Court of Auditors shall be determined by federal legislation.

**Code of Administrative Court Procedure (excerpts)**Sect. 68

(1) Prior to lodging a rescissory action, the lawfulness and expedience of the administrative act shall be reviewed in preliminary proceedings. Such a review shall not be required if a statute so determines, or if

1. the administrative act has been handed down by a supreme federal authority or by a supreme Land authority, unless a statute prescribes the review, or
2. the remedial notice or the ruling on an objection contains a grievance for the first time.

(2) Subsection 1 shall apply mutatis mutandis to the enforcement action if the motion to carry out the administrative act has been rejected.

Sect. 69

The preliminary proceedings shall begin on the lodging of the objection.

Sect. 70

(1) The objection shall be lodged in writing within one month after the administrative act has been announced to the aggrieved party, in writing or for the record of the authority which has carried out the administrative act. ...

Sect. 72

If the authority considers the objection to be well-founded, it shall remedy it and rule on the costs.

Sect. 73

(1) If the authority does not remedy the objection, a ruling on the objection shall be handed down. This shall be issued by

1. the next higher authority unless another higher authority is determined by law,
2. if the next higher authority is a federal or supreme Land authority, the authority which has issued the administrative act,
3. in self-administration matters the self-administration authority unless otherwise determined by law.

...

(3) The ruling on an objection shall be reasoned, supplemented with a notice on appeals and served. ...

#### Sect. 80(1)

An objection and a rescissory action shall have suspensive effect. This shall also apply to constitutive and declaratory administrative acts, as well as to administrative acts with a double effect (section 80a).

### **Federal Court of Auditors Act**

#### Sect. 1

The Federal Court of Auditors shall be a supreme federal authority and as an independent institution of government audit shall be subject only to the law. Within the scope of its statutory functions, the Federal Court of Auditors shall provide assistance to the Federal Parliament and the Federal Government in their decision making procedure.

More information on this lecture at [www.thomas-schmitz-hanoi.vn](http://www.thomas-schmitz-hanoi.vn). For any questions please contact me at the Trung tâm pháp luật Đức / Zentrum für deutsches Recht (room A.603) or via e-mail at [tschmit1@gwdg.de](mailto:tschmit1@gwdg.de).