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Non-binding translation for information purposes

Act amending the Environmental Appeals Act to implement the judgment of the European Court of Justice of 7 November 2013 on case C-72/12*

As of 20 November 2015

The Bundestag has adopted the following Act:

Article 1

Amending the Environmental Appeals Act

The Environmental Appeals Act in the version promulgated on 8 April 2013 (Federal Law Gazette I, p. 753) amended by Article 2 subsection (52) of the Act of 7 August 2013 (Federal Law Gazette I, p. 3154) shall be amended as follows:

1. Section 4 shall be amended as follows:

a) Subsection (1) shall be replaced by the following subsections (1) to (1b):

“(1) The reversal of a decision on the admissibility of a project pursuant to section 1 subsection (1), numbers 1 and 2, can be requested if:

1. a) an environmental impact assessment or

b) a preliminary assessment of the individual case concerning the requirement for an environmental impact assessment

required in accordance with the Environmental Impact Assessment Act, the Ordinance on the Assessment of the Environmental Impacts of Mining Projects, or the corresponding statutory provisions of the Länder was not carried out, and was not carried out at a later stage,

2. the necessary public participation within the meaning of section 9 of the Environmental Impact Assessment Act or within the meaning of section 10 of the Federal Immission Control Act was not carried out, and was not carried out at a later stage, or

3. another procedural error occurs that

a) has not been remedied,

b) is comparable in type and scale with the cases listed in numbers 1 and 2 and

c) has denied the affected public the opportunity for legally prescribed participation in the decision-making process; participation in the decision-making process also includes access to documentation that has to be made available to the public.

A preliminary assessment of the individual case concerning the requirement for an environmental impact assessment that does not satisfy the benchmark of section 3a, fourth sentence, of the Environmental Impact Assessment Act shall be equivalent to not carrying out a preliminary assessment pursuant to the first sentence, number 1, letter b.

* The act serves to implement Directive 2011/92/EC of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codified text) (O J L 26, 28.1.2012, p. 1), to implement Articles 3 and 4 of the Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC of the Council (O J L 156, 25.6.2003, p.17) and to implement Article 25 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast) (O J L 334, 17.12.2010, p. 17).

(1a) Section 46 of the Administrative Procedures Act shall apply to procedural errors that do not fall within the scope of subsection (1). Where it is not possible for a court to ascertain whether a procedural error pursuant to the first sentence influenced the decision, such influence shall be assumed.

(1b) The following provisions shall remain unaffected:

1. section 45 subsection (2) of the Administrative Procedures Act,
2. section 75 subsection (1a) of the Administrative Procedures Act and other corresponding provisions having the effect of maintaining plans in force.

Upon application, the court can order that the proceeding be suspended until the procedural errors are remedied within the meaning of subsections (1) and (1a), as long as this is useful in terms of concentrating procedures.”

b) In subsection (2), the words “notwithstanding subsection (1)” shall be replaced by the words “notwithstanding subsection (1) to (1b)”.

c) Subsection (3) shall be amended as follows:

aa) The words “subsection (1) and (2)” shall be replaced by the words “subsections (1) to (2)”.

bb) The following sentence shall be inserted:

“Subsection (1), first sentence, number 3, shall be applied subject to the proviso that the reversal of a decision may only be requested if the procedural error has denied the parties concerned the opportunity for legally prescribed participation in the decision-making process.”

2. Section 5 shall be amended as follows:

a) Subsection (1) shall read as follows:

“(1) This act shall apply to appeals against decisions pursuant to section 1 subsection (1) first sentence, numbers 1 and 2, that were taken or should have been taken after 25 June 2005. Notwithstanding the first sentence, section 4a subsection (1) shall only be applied to such appeals referred to in the first sentence that are brought after 28 January 2013.”

b) Subsection (4) shall be repealed.

Article 2

Entry into force

This Act shall enter into force on the day after its promulgation.