

GERMAN ACT ON THE ACCELERATION OF SIGNIFICANT INFRASTRUCTURE PROJECTS

15th meeting of the Task Force on Access to Justice under the
Aarhus Convention, 4-5 April, 2023, GENEVA

Important ECJ preliminary judgement (21 March 2023, C-100/21)

- Art. 5 para. 2 EC Regulation 715/2007 and Art. 18 EC Directive 2007/46 protect individual car-purchasers interests against manufacturers if an impermissible defeat device has been used
- Manufacturers are liable even in cases of mere negligence
- EU states have to provide that the purchaser of such a vehicle has a claim for damages against the manufacturer of that vehicle
- According to estimate, nearly 10 million diesel cars with illegal thermal windows are on the roads in Germany and Europe.
- Background: Strategic climate claim by environmental NGO Deutsche Umwelthilfe at Administrative Court of Schleswig (judgement of 20 February 2023, 3 A 113/18; ECJ preliminary judgement of 8 November 2022, C-873/19)

Modernization package for climate protection and planning acceleration from 28 March 2023

- Massive reduction of legally binding responsibility of all ministries
- Amendment to the Federal Climate Protection Act which is the centre of climate protection in germany
- Exceeding permissible emission control in two instead of one consecutive years
- Sector-specific emission reduction targets are no longer legally binding
- Legal protection against Autobahn, federal roads and bridge expansion projects is significantly weakened because german government is intent to grant overriding public interest for this projects (in part and for a limited time)

A2j relevant changes in recent planning acceleration

Substantive law	Public participation	Legal protection
Renewables and federal roads/Autobahn/bridge expansion projects with overriding public and serving public health and safety Renewable Energy Act Emergency Regulation (+ grids) Modernization package	Project-related EIA transferred to the planning stage preceding the project level within the SEA; Emergency Regulation/Spatial-Planning-Act/Red-IV Direction	Limited scope Go-to-areas; Federal Transport Infrastructure Plan; Legislative planning, Fiction of approval
More space available for Offshore and Onshore wind power (Wind-Power-On/Off-Shore Act)	Short interpretation periods & objection deadlines; EIA Exemptions f LNG-Acceleration-ACT	<ul style="list-style-type: none"> • Limitation of interim protection • Procedural Bar • SoC & SoD deadlines unequal • Scope of Application
Shift from an individual specimen focus to a population-based approach (Federal Nature Conservation Act)	Digitization: Discussion dates and application conferences cannot take place customary Covid-19-Planning-Security-Act	Act on the Acceleration of Significant Infrastructure Projects

A2J relevant changes in German Administrative Court Order

- Limitation of interim injunction
- Procedural bar
- SoC & SoD deadlines
- Levels of appeal

Limited interim legal protection I

Reduces legal protection against Autobahn, federal roads and bridge expansion projects

- Very broad Scope including climate-damaging projects such as road construction
- Court “may” disregard a defect, if it finds it “obvious”, that the defect will be repaired in the “foreseeable future”.
- The court has to set a deadline until the defect has to be repaired.
- Provisional Suspension is limited to the scope of the defect

Limited interim legal protection II

Slowdown potential for energy transition in Germany

- In principle this does not apply to absolute procedural errors (omission of EIA or Habitat Directive Assessment)
- Does apply to serious violations of substantive law; Habitat-Directive compatibility assessment and Water Framework Directive
- Violation of the principle of separation of powers
- NGOs and private claimants will no longer seek interim legal protection
- Legal Uncertainty may slowdown energy transition

Procedural Bar

- No court discretion to reject evidence/information submitted by the claimant/applicant after SoC or other deadline
- Courts are obliged to disregard even serious breaches of EU law if claimant fails to raise it within SoC deadline
- Breach of the principle of official investigation and violation of procedural Equality

SoC and SoD deadline

- SoC deadline = 10 weeks
- Neither defendant nor the intervener are subject to a deadline
- Often several month pass by, until SoD/Sol are submitted
- Slows down planning procedure, which is the reason for short SoC deadline & procedural bar
- Violation of Art. 6 (1) ECHR (fair trial: procedural equality of arms)

At last something positive

- If applicant loses, because court considers a defect to be irrelevant, respondent must bear the cost
- Authorities must present electronic records as digitally searchable documents to the extent that this is technically possible
- Both changes were included into draft after expert hearing

Thank you for your attention!

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