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for the Environment, Nature Conservation,
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**PRE/ACCC/C/2023/203 new communication concerning the compliance
of Germany submitted on 10 July 2023 by the organization Deutsche
Umwelthilfe e.V.**

Consideration of preliminary admissibility

Berlin, 19 September 2023

Dear Ms Marshall,

We thank for the information on a communication concerning compliance by Germany submitted by the organization Deutsche Umwelthilfe e.V. and the information on the discussion of the preliminary admissibility by the Compliance Committee in its 80th session.

In addition to our participation during the discussion of preliminary admissibility in the Committees 80th session by virtual means, we would like to take the opportunity for some short, preliminary, non-exhaustive comments on the communication that might be of relevance for the consideration of the preliminary admissibility of communication PRE/ACCC/C/2023/203.



Seite 2

The Federal Republic of Germany has doubts concerning the admissibility of the communication in accordance with paragraphs 19 and 20 of the annex to decision I/7 (Review of Compliance) adopted at the first meeting of the Parties, especially as the communication does lack corroborating information to determine non-compliance.

1. The Federal Republic of Germany agrees with the communicant (para. 25), that public participation in decision-making is not a matter of good practice but a right of the public stipulated by article 8 of the Aarhus Convention. Public participation in decision-making improves the ability of authorities to carry out their responsibilities and the Federal Republic of Germany is therefore grateful for every comment on draft laws by non-governmental environmental organisations and other stakeholders.
2. Therefore, as the communicant points out (para. 17, 18), the Joint Rules of Procedure of the Federal Ministries (Gemeinsame Geschäftsordnung der Bundesministerien - GGO) stipulate in § 47 that public participation has to be in sufficient time and it is the self-image of the Federal Government to adhere to these procedures. The communicant itself provides the information, that the case of the KSG draft amendment is not a systemic deficit in the German law and practice:

“In response to a question about how the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection (Bundesministerium für Umwelt, Naturschutz, nukleare



Seite 3

Sicherheit und Verbraucherschutz – BMUV) practices public participation, the BMUV stated in 2022 that, as a rule, a comment period of 4 weeks is provided for public participation regarding draft legislation on environmental laws. Considering the scope and complexity of the respective draft legislation, this may be shortened to three or two weeks according to the BMUV. An additional curtailment of the participation period is possible as per the BMUV if there are exceptional reasons for faster processing in individual cases. This exemption clause corresponds to article 9 (4) RU Regulation (EC) No 1367/2006 which implements the Aarhus Convention.” (para. 19)

3. The compliance procedure of the Aarhus Convention is neither an institution to review individual cases of unsuccessful environmental litigation on the national stage, nor an individual redress mechanism, which was made clear by the Committee very early in case ACCC/C/2004/7 (Poland).
4. The communicant itself states in this regard: “This communication concerns the specific case of non-compliance of the Federal Government in its involvement of associations regarding the draft of the Climate Protection Act Amendment.” (para. 45)
5. The KSG Amendment Act has been passed by German Cabinet on 21st June 2023 and is currently passing through the mandatory parliamentary proceedings in the German Federal Parliament (Bundestag) and the Council of the constituent federal states (Bundesrat). In this course, the draft act is also scheduled for a public expert hearing in the Bundestag.



Seite 4

6. Regardless of the time frame, the communicant actually had been able to submit a statement to the German Government during the participation phase concerning the key aspects of the draft. It should be considered too, that well before the start of the legislative process and still ongoing today, there had been and still is an intensive political debate about the key aspects of the KSG Amendment. Civil society, especially environmental NGOs, successfully used opportunities to place their arguments prominently so that they in fact found their way into the decision-making process of the Federal Government.
7. Therefore, the Committee should take into account para. 20 (d) of the annex to decision I/7 (Review of Compliance) and consider the communication as to be “incompatible with the provisions of this decision or with the Convention”, because it does not refer to a systemic compliance deficit.
8. Furthermore, for the same reason, according to the established decision practice of the Committee, the communication seems inadmissible in accordance with para. 19 and 20 (d) of the annex to decision I/7 (Review of Compliance) due to a failure to provide corroborating information.

Yours sincerely,

For the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection

Josefine Betensted

