



Ms. Fiona Marshall
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Via E-Mail: Aarhus.compliance@un.org

**New communication concerning the compliance of Germany submitted
on 25 April 2024 by the organization Green Legal Impact Germany e.V.
- PRE/ACCC/C/2024/208**

Consideration of preliminary admissibility

Berlin, 11.06.2024

Dear Ms Marshall,

We thank for the information on the communication concerning compliance by Germany submitted by the organization Green Legal Impact Germany e.V. and the information on the discussion of the preliminary admissibility by the Compliance Committee in its 83th session.

In addition to our participation during the discussion of preliminary admissibility in the Committees 83th session by virtual means, we would like to take the opportunity for some short, preliminary, non-exhaustive written comments on the communication that might be of relevance for the consideration of the preliminary admissibility of communication PRE/ACCC/C/2024/208.



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The Federal Republic of Germany has doubts concerning the admissibility of the communication.

1. Background to the LNG Acceleration Act

At the outset, the Federal Republic of Germany would like to recall the situation in which the so-called LNG Acceleration Act (Gesetz zur Beschleunigung des Einsatzes verflüssigten Erdgases, LNG-Beschleunigungsgesetz – LGG) was enacted.

The Russian war of aggression on the Ukraine has fundamentally changed the parameters of the security architecture and, along with it, the parameters of the energy security structure. Due to the aggressor's actions, the federal government of Germany had to prepare for disruptions to and a stop of Russian gas deliveries (which eventually occurred). On 23 June 2022 the Federal Ministry for Economic Affairs and Climate Action in coordination with the regulating authority Bundesnetzagentur announced the second level of the Emergency Plan for Gas, the alert level, which shows the critical situation of security of supply at the time. Due to the stop of Russian gas deliveries, alternative gas supply options had to be created under high pressure and very quickly in order to ensure security of supply. Accordingly, the LNG infrastructure had to be planned with sufficient security buffers in order to be prepared for critical situations and to be able to act flexibly in changing situations.

Shortly after the start of the Russian war of aggression in February 2022, the demand for LNG to supply German and European gas increased. Until then, Germany did not have any LNG terminals. It was also clear that the land-based LNG terminals in Brunsbüttel and Stade, which were already planned at the time and would take around 3.5 years to build, would not be able to contribute to short-term compensation for Russian gas deliveries, which



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thus far accounted for more than 50% of German gas demand. The only option to quickly import LNG directly into Germany was to install immediately usable floating LNG terminals, so-called Floating Storage and Regasification Units (FSRU), on the German coast. In order to achieve the necessary gas distributions within the German and European networks, LNG (FSRU) Terminals had to be installed on both the coast of the North Sea and the Baltic Sea.

The LNG Acceleration Act served the purpose of ensuring the LNG infrastructure's swift construction. The Act proposed new regulations to allow the quick construction of land-based and floating LNG terminals as well as necessary connections. This involved swifter approval and tendering procedures. The Bundestag passed the Act on 19 May, and the Bundesrat gave its approval on 20 May 2022. The Act came into force on 1 June 2022.

Finally, it has to be emphasised that the LNG Acceleration Act only applies to floating and land-based LNG terminals that are exhaustively listed in the Annex of the Act. Most of the Act's provisions, including those on the shortened duration of the procedure for public participation and on the option of the preliminary permits, will cease to be in force by 30 June 2025. That means, in a good year's time from now these provisions will no longer be applicable. In the view of the Federal Republic of Germany, these facts – the limited scope of application of the LNG Acceleration Act as well as its time limit – prove all the more that the intention was to modify the regimes for public participation and access to justice as little as possible, namely only to overcome the crisis.



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2. Admissibility in accordance with decision I/7

The admissibility of the communication is to be determined by the Compliance Committee of the Aarhus Convention, inter alia, in accordance with paragraph 21 of the annex to decision I/7 (Review of Compliance) adopted at the first meeting of the Parties. According to paragraph 21, the Committee “*should at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress*”.

Contrary to what the communicant claims, domestic remedies are available in the context of the subject matter of the complaint that can bring effective and sufficient means of redress for the communicant.

As the communicant states, legal action against LNG projects is being taken by other environmental organisations in Germany. However, the communicant itself has not made use of it. These lawsuits allow for an incidental judicial review of the regulations of the LNG Acceleration Act, which provides a sufficient domestic remedy. Insofar as the communicant states that even if the court did consider the regulations of LNG Acceleration Act to be incompatible with the AC, the Federal Administrative Court (Bundesverwaltungsgericht – BVerwG) could not decide to set aside or not apply the LNG Acceleration Act, this does not argue against the assumption of a sufficient domestic remedy. The complaint is not suitable to provide a more effective remedy. Even if the Compliance Committee and finally the MOP were to find that the regulations set out in the LNG Acceleration Act were incompatible with the AC – which is highly questioned by the Federal Republic of Germany in view of the unfounded allegations of the complaint – this would not mean that the regulations would not be applicable. Just as in



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the case of a finding by the court, a legislative amendment would first be required, because, in the German legal system, international law has the same status as other federal law.

The fact that lawsuits are still pending does not mean that the application of the remedies is unreasonably prolonged in such cases. To the knowledge of the Federal Republic of Germany there are no indications that these proceedings take longer than the average proceedings before German courts do. On the contrary, it should be noted that the LNG Acceleration Act itself contributes to accelerate court proceedings by establishing the first instance jurisdiction of the Federal Administrative Court for cases under the Act. Additionally, it is not clear for the Federal Republic of Germany, what the fact, presented by the communicant, that most of the lawsuits of the other organisations concern interim injunctive relief should change about the fact that timely, effective and sufficient remedies are available for the compliant. That principal proceedings may follow to a court decision of granting interim injunctive relief also gives no reason to assume any other.

Finally, it is correct that the communicant cannot appeal to the Court of Justice of the European Union (CJEU) or require a domestic court to request a preliminary ruling. However, the communicant does have the option of lodging a complaint to the European Commission in a formalised procedure questioning the compliance of the LNG Acceleration Act with the Directives of the European Union transposing the Aarhus Convention into European Union Law. If the European Commission finds an infringement of these provisions it can initiate infringement proceedings, which possibly lead to proceedings before the CJEU.

In summary, based on the circumstances above, the admissibility of the complaint has to be questioned in the light of paragraph 21 of the annex to



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decision I/7. Moreover, we ask the Compliance Committee to bear in mind the background to the LNG Acceleration Act as described at the outset, with the gas crisis in general on the one hand and the limited scope of application and the time limit of that Act on the other hand.

Yours sincerely,

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

Betensted