

Third progress report by the Federal Government on the implementation of Decision V/9h concerning compliance by Germany with its obligations under the UN ECE Aarhus Convention

I. Introduction

Decision V/9h was adopted at the fifth session of the Meeting of the Parties to the UN ECE Aarhus Convention, which took place from 30 June to 2 July 2014 in Maastricht. This decision endorsed the findings of the Compliance Committee with regard to communication ACCC/C/2008/31 and recommended that Germany

"take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

- (a) NGOs promoting environmental protection can challenge both the substantive and procedural legality of any decision, act or omission subject to article 6 of the Convention, without having to assert that the challenged decision contravenes a legal provision "serving the environment";
- (b) Criteria for the standing of NGOs promoting environmental protection, including standing with respect to sectoral environmental laws, to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3 of the Convention are revised, in addition to any existing criteria for NGO standing in the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz), the Federal Nature Conservation Act (Bundesnaturschutzgesetz) and the Environmental Damage Act (Umwelt-schadensgesetz)."

In addition, Germany was invited to periodically submit reports on the progress of the implementation of these recommendations to the Compliance Committee (the first by 31 December 2014, with subsequent reports on 31 October 2015, and 31 October 2016), so that the Meeting of the Parties can review the situation at its sixth session in 2017.

The Federal Republic of Germany hereby submits the third progress report on the implementation of Decision V/9h in accordance with the deadline.

II. Current situation

1. In the reporting period, the Federal Government concluded the interministerial coordination of the draft act on adapting the Environmental Appeals Act and other provisions to European and international law. On 19 April 2016, a consultation on the draft act was initiated with the federal Länder, associations and the public. The Committee was informed of this in an e-mail from the Federal Environment Ministry dated 25 April 2016.

Another e-mail from the ministry dated 12 May 2016 contained the English translation of the consultation draft. On 13 June 2016, the Committee received – as the Secretariat previously requested – a copy of the Environmental Appeals Act in English for informational purposes that included the amendments as provided for in the consultation draft.

On 19 and 20 May 2016, draft act consultations were held. On 22 June 2016, the Federal Government adopted the draft act, incorporating the results of the consultations. The Committee was advised of this in an e-mail from the Federal Environment Ministry dated 23 June 2016. In an e-mail from the ministry dated 8 July 2016, the committee received an English translation of the revised government draft.

This draft contains proposals for legislative amendments to German law to implement the recommendations pursuant to paragraph (2), letters (a) and (b) of Decision V/9h. In addition, the draft act implements the judgment of the Court of Justice of the European Union of 15 October 2015 (Case C-137/14) in German law. Reference here is made to the explanatory memorandum of the government draft submitted to the Committee in English translation.

The draft act was classified by the Federal Government as particularly urgent. Thus, the first reading in the German Bundestag took place on 8 September 2016. The German Bundesrat (Federal Council) issued comments on the draft act on 23 September 2016 and adopted proposals and suggested revisions to six individual points. The Federal Government issued a response to the Bundesrat on 5 October 2016. A hearing of experts was held in the Bundestag on 26 September 2016. On 10 November 2016, the Bundestag will likely adopt the act in a second and third reading. The Federal Government will submit an English translation of the adopted version, including any amendments possibly introduced by the German Bundestag's Committee on the Environment at its session on 9 November 2016 and adopted by the German Bundestag at its session on 10 November 2016, at a later point. As the German Basic Law requires, the Bundesrat will deliberate on the adopted act on 16 December 2016. When the Bundesrat has approved the act, the legislation will enter into force following its promulgation and publication in the Federal Law Gazette (Bundesgesetzblatt) in December 2016 or January 2017.

2. Additional points to note:

- a) The last two reports also described a draft act aimed at transposing Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Seveso III Directive, Official Journal L 197 of 24 July 2012, p. 1) into German law.

This draft act was adopted by the Federal Government on 27 April 2016. Article 3 of the act, which amends the Environmental Appeals Act to extend the catalogue of the act's scope by two categories of possible subjects of appeal (c.f. English translation in e-mail from the Federal Environment Ministry dated 13 April 2016), remained unchanged. This planned amendment implements Article 23b of the Seveso III Directive.

The Bundesrat issued comments on the draft act on 17 June 2016; the Federal Government responded with a counterstatement on 17 August 2016. The draft act is currently in parliamentary channels, and legislative procedure is expected to be concluded by the end of 2016.

- b) Regarding the 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, mentioned in the second progress report, the Committee was informed of the act's entry into force on 26 November 2015 by the Federal Environment Ministry in an e-mail dated 13 April 2016. This e-mail also included an English translation.

3. The Federal Government will continue to report on the further progress in the legislative proceedings mentioned in 1) and 2a).

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