

# Rechtsanwälte Günther

Partnerschaft

---

Rechtsanwälte Günther • Postfach 130473 • 20104 Hamburg

Ms. Fiona Marshall  
Environmental Affairs Officer –  
Secretary to the Compliance Committee  
Aarhus Convention secretariat  
United Nations Economic Commission for Europe

Email: aarhus.compliance@un.org

Michael Günther \*  
Hans-Gerd Heidel \* (bis 30.06.2020)  
Dr. Ulrich Wollenteit \*<sup>1</sup>  
Martin Hack LL.M. (Stockholm) \*<sup>1</sup>  
Clara Goldmann LL.M. (Sydney) \*  
Dr. Michéle John \*  
Dr. Dirk Legler LL.M. (Cape Town) \*  
Dr. Roda Verheyen LL.M. (London) \*  
Dr. Davina Bruhn \*  
André Horenburg

<sup>1</sup> Fachanwalt für Verwaltungsrecht  
\* Partner der Partnerschaft  
AG Hamburg PR 582

Mittelweg 150  
20148 Hamburg  
Tel.: 040-278494-0  
Fax: 040-278494-99  
www.rae-guenther.de

**15.07.2021**  
00161/16 /R /dr  
Mitarbeiterin: Jule Drzewiecki  
Durchwahl: 040-278494-11  
Email: drzewiecki@rae-guenther.de

**ACCC/C/2016/137 Germany**  
**Draft Findings and recommendation**  
**Comments on the draft by the communicant**

Dear Fiona Marshall,

I acknowledge receipt of the Draft Findings in the matter brought before the committee by us in February 2016 on June 8<sup>th</sup> 2021. We wish to thank the Committee for the thorough analysis and consideration of the matter.

In substance, we make the concise comments contained in the Annex to this letter in the order of the paras. set out in the draft recommendation.

We sincerely hope the Party concerned will be able to agree with the Committee making recommendations in accordance with paragraph 36(b) of the annex to Decision I/7. The Communicant believes that there are plans to review the EAA in any case given the expected decision of the European Court of Justice in another matter, so that a revision of the standing requirements in § 3 (1) Nr. 5 EAA would be timely.

Sincerely yours

Attorney at Law

---

Buslinie 19, Haltestelle Böttgerstraße • Fern- und S-Bahnhof Dammtor • Parkhaus Brodersweg

Hamburger Sparkasse  
IBAN DE84 2005 0550 1022 2503 83  
BIC HASPDEHHXXX

Commerzbank AG  
IBAN DE22 2008 0000 0400 0262 00  
BIC DRESDEFF200

GLS Bank  
IBAN DE61 4306 0967 2033 2109 00  
BIC GENODEM1GLS

Dr. Roda Verheyen

**Draft Findings ACCC/C/2016/137**

**Comments by the Communicant**

1. Para. 13 contains a potential misunderstanding. To establish a “Verein” which is meant to be officially registered (as is the overwhelming number of environmental NGOs in Germany), seven members are necessary. Two is the minimum number for a non-registered Verein.
2. It is suggested that para. 22 et. seq. mention the fact that the scope of the 2006 EAA until its revision in 2017 covered – with respect to the third pillar of the Convention – only Art 9.2. Also, the Communicant considers that there should be a short section summarising the following:

There was extensive oral debate over whether and why the complaint should be allowed to cover Art 9.3 of the Convention at the hearing in Geneva. The Communicant had only formally mentioned Art 9.2 in its Communication due to the fact that the EAA did not cover Art 9.3 type actions at all. This was only changed with the EAA revision 2017 and thus after the time of the submission.

This clarification will be helpful in implementing the decision in a revision of the EAA.

3. Para. 26 is conducive to a misunderstanding. Art. 19 (4) of the Basic Law is the constitutional guarantee of access to justice in matters with subjective rights relevance to a natural or legal person only. It does not guarantee access to justice in “legal proceedings concerning the environment” in the sense of guaranteeing the enforcement and implementation of objective environmental law.
4. Para 31 could be clarified: “the promotional members do not qualify as members in the sense of Section 3(1) No. 5 EAA since they have no voting rights”. The Communicant had 702.000 promotional members in 2020.
5. Para 34.: Greenpeace e.V. had 608.000 promotional members in 2019 on the basis of the annual report 2019, and its membership is steadily increasing.
6. Para 37: The judicial review is still pending to date.
7. Para. 53. Refer if needed to the up to date numbers, see above.

8. Para. 70 might mention the fact that the Communicant argued at the oral hearing that Art. 9.3 was equally violated.
9. Para. 119: Supplementing the recommendation, the Communicant stresses the following:

Since 2016 when this communication was submitted, the application of numbers 1-4 of Section 3 (1) EAA have provided the Party concerned and specifically the Environment Agency (Umweltbundesamt) and the *Länder* equivalents with many opportunities to ensure that only “serious” *Vereinigungen* obtain recognition under the EAA. In particular, No. (1) has provided grounds to reject recognition in cases where an association is focused on one particular issue (eg an infrastructure project) and No. (3) is increasingly used to reject small associations with respect to “effectiveness”. There seems to be no statistical evidence of recognition practice since 2016 in particular, but this is the experience of a network of environmental lawyers of which the undersigned professional is a party. The overall number of recognised *Vereinigungen* has increased slightly.

This practice also excludes the recognition of a *Förderverein* as suggested by the Party concerned (para. 65).

This further underpins the finding that Section 3 (1) number (5) EAA is not needed to ensure effectiveness in the representation of the public concerned and thus to ensure effective implementation of the Convention.

The Communicant stresses that swift implementation of the recommendations is essential. The Communicant as well as Greenpeace e.V. have been barred from their rights in accordance with the Convention with respect to access to justice since the Convention was ratified by the Party concerned.

End.