

Observer Statement – ACCC/2017/137 Germany

Independent Institute for Environmental Issues (UfU) e.V., Karl Stracke

Thank you very much, Mister Chairman, for the opportunity to speak in this hearing as an observer.

I represent the Independent Institute for Environmental Issues (UfU) e.V. from Berlin, Germany. We have been conducting projects on “Aarhus topics” in Germany and other European and non-European Countries for many years. We are part of the Network Justice and Environment as well.

Several of our studies have been cited in the written statements of both parties to this communication. Therefore with my intervention I want to shortly present some more facts of these studies which might be of importance in the context of this communication:

1. The Party concerned cited in its statement of 3rd January, page 10 one of our studies which can be translated with: “Environmental Organizations as important actors in sustainable transformation processes”. This study was evaluating the state of environmental organizations in Germany under different aspects, among them e.g. their legal structure and their fields of action.
2. The study came to the explicit conclusion¹ that four organizations play a special role among the environmental organizations in Germany - due to their number of supporters, their professional structure, their number of staff, their special knowledge, their diversity in actions and their perception in the public. These organizations are the BUND, NABU, WWF and Greenpeace.
3. Moreover it described - as a summary - a big gap between these four organizations and the other environmental organizations with regard to the criteria mentioned before. Even though some middle sized environmental organizations exist the big majority of the approximately 10000 environmental organizations in Germany was identified to be working completely on a pro bono basis, in local contexts and on specific and practical topics of nature and environmental protection.²
4. The study showed as well that the big majority of the recognized organizations³ has never used their right to bring legal action under the Environmental Appeals Act (EAA).
5. This result was confirmed during a study that UfU has conducted for the German Advisory Council on the Environment (SRU) this year.⁴ The empirical analysis of these data showed that from 2013 until 2016 only 6 environmental organizations used their right to bring legal action under the EAA. Among them only three - the NABU, the BUND (both with their respective “Länder divisions”), and the Deutsche Umwelthilfe (DUH) - regularly executed their standing rights and were responsible for the vast majority of these legal actions.
6. The study of 2014 evaluated as well the diversity of the legal structures in civil society organizations engaged in environmental protection and came to the result that their

¹Sperfeld/Zschiesche, Umweltverbände als relevante Akteure nachhaltiger Transformationsprozesse, p. 96.

²Sperfeld/Zschiesche, Umweltverbände als relevante Akteure nachhaltiger Transformationsprozesse, p. 98.

³Sperfeld/Zschiesche, Umweltverbände als relevante Akteure nachhaltiger Transformationsprozesse, p. 10.

⁴https://www.umweltrat.de/SharedDocs/Downloads/DE/03_Materialien/2016_2020/2018_04_Studie_Verband_sklagen.pdf?__blob=publicationFile&v=2

structure has changed since the beginning of the 1990s.⁵ It was especially stated that charitable environmental foundations have become much more important. The study concluded that many of the German environmental foundations work operational as well, meaning that they conduct own projects to support their environmental goals and hence in practice do not differ in their actions from environmental organizations structured e.g. as registered associations.⁶

7. Current statistics of 2018 show that the number of foundations has further increased: Today around 3000 foundations that only or partially engage in environmental matters are registered.⁷
8. In our comparative study on behalf of the German Environment Agency⁸, cited by the communicant in his last letter, UfU identified that in the jurisdictions of France, Italy, United Kingdom, Poland and Sweden the criterion of an “internal democratic structure” is unknown. However no evidence was found that organizations not fulfilling this criterion are acting in an abusive manner. In contrast it can be confirmed what the European Commission in its communication of April 2017⁹ has especially highlighted with the following wording: “It may be noted that not all NGOs that benefit from de lege standing in Member States are membership-based. Some are charitable foundations. Indeed, claims by such foundations have given rise to important CJEU case-law.”

Therefore I want to finalize my statement with the following summary and kindly ask the committee to take these facts into consideration when deciding on the communication:

1. It is indisputable that in practice the criterion of an “internal democratic structure” leads to the exclusion of many environmental organizations in Germany although they are free “to select the legal form which is legally most suitable for their organization.”¹⁰
2. Other parties to the convention face the same challenge to guarantee that recognized environmental organizations actually pursue environmental goals. However they address this common and legitimate interest in a democratic state based on the rule of law with less restrictive recognition criteria. They don't deem it necessary to request a democratic legal structure.
3. In Germany in practice out of the over 300 recognized environmental organizations only a very small number has ever brought legal action in environmental matters. Many of the recognized environmental organizations work fully “pro bono” and have very limited resources. However at the same time two of the four most important and competent environmental organizations of Germany - that indisputable meet all the other four recognition criteria of § 3 EAA - can not be recognized under the existing law.

⁵Sperfeld/Zschiesche, Umweltverbände als relevante Akteure nachhaltiger Transformationsprozesse, p. 31.

⁶Sperfeld/Zschiesche, Umweltverbände als relevante Akteure nachhaltiger Transformationsprozesse, p. 32.

⁷https://www.stiftungen.org/fileadmin/stiftungen_org/Stiftungen/Zahlen-Daten/2018/Verteilung-Stiftungszwecke-2017.pdf

⁸Letter of the Communicant of 17 April 2018, p. 5.

⁹ COMMUNICATION FROM THE COMMISSION of 28.4.2017, Commission Notice on Access to Justice in Environmental Matters, para. 80.

¹⁰Response by the Party Concerned of 3rd January 2017, p. 21.

If of help I will be happy to provide the committee with a written form of my statement.

Thank you very much for your attention.