

Bürgerinitiative „mobil ohne Stadttunnel“  
Postfach 105  
LI-9493 Mauren

Liechtenstein

E-Mail [REDACTED]

Mauren, 23.07.2014

Amt der Vorarlberger Landesregierung  
Abteilung Ib – Verkehrsrecht  
Römerstrasse 22  
  
6901 Bregenz

Subject: Application for a declaratory decision  
Number: Ib-314-2013/0001 dated 13.05.2014

Dear MMag Berger,

Thank you for the opportunity to personally hand over the statements of the citizens' initiative "mobil ohne Stadttunnel", which were signed by 708 people, last Thursday, 17 July 2014. During the conversation, you informed us that you would subsequently send us a simple notification in the sense of a confirmation of the handover of the signatures, but not a decision on the recognition as a citizens' initiative and the further position in the EIA procedure.

With this letter we are therefore submitting an application for a declaratory decision. We request that it be decided whether the citizens' initiative "mobil ohne Stadttunnel" has been validly established and what rights it has in the ongoing EIA procedure "Stadttunnel Feldkirch" (status as a participant or party, participation in the oral proceedings).

The determination of the disputed legal status is in the public interest so that the EIA procedure can be carried out "without encumbrances" and there is legal certainty with regard to the position of the citizens' initiative in the ongoing procedure. According to the case law, upon application by a person with a legal interest, there is a legal entitlement to this determination even without a specific legal basis. The citizens' initiative cannot reasonably be expected to seek judicial clarification of the legal question at issue only in the appeal proceedings against the decision, which is expected to conclude the EIA procedure in January 2015, as otherwise it would not be entitled to any rights as a party or even as a participant in the proceedings and would therefore not even be entitled to inspect the files.

The right to inspect files is of particular importance in this specific case, as this is the only way to gain timely insight into the expert opinions, because in the simplified EIA procedure

according to § 3 para 1 UVP-G 2000, § 12 and § 13 para 2 are not applicable. Therefore, an environmental impact assessment does not have to be prepared and made publicly available.

As explained below, the citizens' initiative is part of the public concerned within the meaning of Art 1 (2) EIA Directive 2011/92. The present restriction of § 19 (2) EIA-G 2000 deprives it of the access to a review decision by an independent court required under Art 11 EIA Directive 2011/92 in conjunction with Art 47 CFR and Art 13 ECHR.

As already explained orally at the handover, the two citizens' initiatives "mobil ohne Stadttunnel" and "statt Tunnel" only differ in the point that the persons reside in different states. The status of a group of persons in the procedure may not be denied solely on the basis of this purely territorial distinction, as this would constitute unjustified unequal treatment. The status in the procedure may only be made dependent on whether the group of persons belongs to the "public concerned", i.e. according to the definition in Art 1(2)(e) EIA Directive 2011/92, whether it is a public concerned or likely to be concerned or the public with an interest. Since it is undisputed that the project could have significant negative transboundary impacts, the citizens' initiative is part of the "public concerned". Thus, the citizens' initiative "mobil ohne Stadttunnel" is to be given a position in the EIA procedure equivalent to the citizens' initiative "statt Tunnel".

The provision under § 17 (4) UVP-G 2000, according to which a citizens' initiative may only be supported by persons who, at the time of the support, were entitled to vote in municipal elections in the municipality in which the site is located or in a municipality directly adjacent to it, is not compatible with Union law and therefore does not apply.

Austria (Federal Law Gazette III No. 88/2005) and the EU have ratified the Aarhus Convention. According to Art 3 (9) of the Aarhus Convention, the public shall have access to justice in environmental matters within the framework of the relevant provisions, without being discriminated against on grounds of nationality, ethnicity or residence.

The EU adopted the Aarhus Convention's provisions on access to justice in Art 11 EIA Directive 2011/92. This must be taken into account when transposing the Directive into national law and when applying the UVP-G 2000 (primacy of application).

Since the right to vote in municipal elections is dependent on residence and nationality, and thus on conditions that constitute inadmissible discrimination under the Aarhus Convention and the EIA Directive, persons who reside in a municipality where the project is located or in a municipality directly adjacent to it, but who are not entitled to vote in municipal elections, must also be able to support a citizens' initiative. It is therefore requested that these persons also be admitted as supporting persons in the citizens' initiatives.

The Convention on Environmental Impact Assessment in a Transboundary Context, known as the Espoo Convention, has been ratified by Austria (Federal Law Gazette III No 201/1997), Liechtenstein and the EU.

According to Art 2 para 6 Espoo Convention, the Party of origin shall give the public in the areas likely to be affected the opportunity to participate in the relevant environmental impact assessment procedures of the proposed project and shall ensure that the public of the affected Party is given equivalent opportunities to do so as the public of the Party of origin.

That the project may have transboundary impacts is undisputed. According to the EIS summary, the municipalities of Eschen-Nendeln, Mauren-Schaanwald, Ruggell, Schaan and Schellenberg are adjacent to the siting municipalities (Technical Report UV\_01.01-04a, point 5.1.1).

In the EIA procedure "Stadttunnel Feldkirch", the public in Liechtenstein thus has to have the same participation opportunities as the public in Austria. Since citizens' initiatives can participate in the procedure in Austria, a citizens' initiative formed by persons who live in a municipality directly adjacent to the siting municipality and who may be affected by significant negative impacts must be given an equivalent opportunity to participate in the procedure. It is therefore requested that the citizens' initiative "mobil ohne Stadttunnel" be involved in the EIA procedure in the same way as the citizens' initiative "statt Tunnel".

Treating the statement of the citizens' initiative "mobil ohne Stadttunnel" as a statement of individual persons, as announced in the letter of the Office of the Vorarlberg Provincial Government by MMag Berger of 16 June 2014, does not correctly implement the requirements of Union law and international law, since individual persons, unlike citizens' initiatives, cannot assert and enforce compliance with (objective) environmental law. Therefore, such an approach does not enable an "equivalent possibility" of participation in the procedure.

With kind regards

Andrea Matt

Representative citizens' initiative "mobil ohne Stadttunnel"