

Communication PRE/ACCC/C/2017/155

Statement on behalf of Austria

The Bruck / Leitha station was rebuilt in the period 2014 - 2015 and the reception building, including the pedestrian underpass and the platform, were adapted to the current state of the art.

The purpose was to modernize an existing station to promote public transport for commuters, as well as to facilitate the accessibility of the Park & Ride area.

Before the construction there was a road show with a project presentation in the municipal office by the ÖBB, in the field of the building area an information board was set up during the entire construction period and a fact sheet was sent out to the households.

In compliance with the requirements stated in Article 36 of the Austrian Railway Law, no railway construction permit is required for new, extension, renewal and conversion work unless it requires extensive work to improve the total operating performance of the railway.

The term "Extensive work" is defined in Article 3 of the Austrian "Verordnung genehmigungsfreier Eisenbahn-Vorhaben", the "improvement of the total operating performance" in its Article 5.

Mr Milletich's home is around 60 meters from the train station. There are also a number of houses between his house and the station. Therefore, according to the provisions of the Austrian Railway Law, he would not even have a party position in any construction proceedings.

Regardless, Mr Milletich's concerns have been raised by the Federal Ministry of Transport, Innovation and Technology, and the Ombudsman's Office has also dealt with this issue several times.

In this context, the Testing, Monitoring and Certification Body of the City of Vienna (an authorized testing institute) carried out an illumination measurement at the station forecourt of Bruck an der Leitha on 17th of October 2016 as an independent expert. Mr Milletich had been informed of the measurement and had been asked in advance to grant access to the windows (so called "affected area") for the measurement, but he never was present. The result of the measurement showed that Mr Milletich did not have any inadmissible exceedances of the measured values and in the final assessment of the laboratory report of November 11th 2016 stated that all normative requirements are met and there is no impairment of road traffic and no reduction in the quality of living.

Unlike the Vienna Central Station - which was because of its size subject to review and approval in accordance with the Austrian Environmental Impact Assessment Law in conjunction with the Austrian Railway Law - in the present case neither the Aarhus Convention nor the Austrian Environmental Impact Assessment Law nor Article 31 and the following of the Austrian Railway Law are applicable for the following reasons:

- The reconstruction and modernization work at Bruck an der Leitha station covered work below the threshold in the sense of Article 3 of the Austrian "Verordnung genehmigungsfreier Eisenbahn-Vorhaben", the "improvement of the total operating performance" in its Article 5.

freier Eisenbahn-Vorhaben". Therefore, no building permit according to Article 31 and the following of the Austrian Railway Law was required for the construction project.

- These were rather pure extension measures of an existing station on an existing railway. The criteria for the scope of application on high-speed lines can be found in the third section of the EIA-Law, with which the requirements of Directive 2014/52 / EU were last adopted. These criteria are not met.
- The modernization measures can not be qualified as "long-distance railway construction" according to Annex I, paragraph 8, letter a of the Aarhus Convention.

The claim can not be accepted from a technical or legal point of view. The complaint is therefore unreasonable.