

**Communication PRE/ACCC/C/2019/163**  
**Statement on behalf of Austria**

The communication submitted by the citizen's group from Liechtenstein „*mobil ohne Stadttunnel*“ mainly addresses a violation of the right to participate and the right to appeal in the EIA procedure on the construction of an underground road infrastructure in the city of Feldkirch located in the Austrian Province of Vorarlberg. As the communicant or correspondant has pointed out rightly, the Austrian Federal Act on Environmental Impact Assessment (EIA Act) is applicable with regard to the assessment of the environmental effects of the project in question. Therefore, Austria is represented at federal level by the Ministry for Sustainability and Tourism.

On the admissibility of this communication, Austria states that - to our knowledge - Liechtenstein is not a Party to the Aarhus Convention, a fact that has to be considered by the Aarhus Convention Compliance Committee (ACCC) accordingly. Because of this, Austria considers the communication as inadmissible. Nevertheless, we would like to make a few comments on the legal issues raised by the communicant/correspondant in its communication:

Article 19 of the EIA Act specifies inter alia which members of the public concerned are entitled to make use of legal remedies with a view to both content and procedure and thus have the right to launch an appeal against an EIA decision at the Federal Administrative Court (*Bundesverwaltungsgericht*), the Supreme Administrative Court (*Verwaltungsgerichtshof*) and/ or the Constitutional Court (*Verfassungsgerichtshof*). These are individuals/neighbours which are affected by the project in question, environmental organisations and citizens' groups provided that they comply with the legal requirements set out in the EIA Act.

According to the EIA Act citizen's groups have a special role in environmental impact assessment procedures and their involvement is not required or mentioned neither by the Aarhus Convention nor the EU EIA Directive. The participation of the citizen's group is a particular provision within the Austrian legal system, regardless whether they participate in

a normal or in a simplified EIA procedure. The same can be said about the Austrian institution of Environmental Ombudsmen who have legal standing in some environmental procedures but cannot be compared – according to the findings by the ACCC – with environmental NGOs and their general interest in promoting environmental protection under the Convention.

Citizen's groups mainly fulfil the function of bundling similar interests of individuals concerned by a project (mostly of a large scale) and in order to allow the local population to submit their comments in an aggregated way to the competent authority. Therefore, the competent authority has to check and control whether the citizens live in the relevant municipality or in the municipality nearby. According to Article 19 (4) of the EIA Act only persons who have the right to vote in municipal elections in accordance with the federal law on the registration of voters (*Wählerevidenzgesetz*) may establish a citizen's group with legal standing. Citizen's groups are often established in the rejection of an envisaged project but may also support a specific industrial or infrastructure project. Their main interest might not be to promote the protection of the environment but to promote a specific project, which is often the case for road construction.

When it comes to persons living abroad but who are affected by a project located in Austria, the EIA Act foresees two possibilities of involvement of the public concerned in a specific environmental impact assessment procedure: either as neighbour and individually affected by a given project or as environmental organisation.

According to Art. 19 (1) of the EIA Act every person who might be threatened or disturbed or whose rights *in rem* might be harmed - regardless whether in Austria or abroad - are granted legal standing and have the right of appeal. This means that also persons living in the EU or in the European Economic Area (where Liechtenstein is part of) legally have the right to participate and the right of appeal – independently of their citizenship.

With regard to the project in question, environmental NGOs from Liechtenstein participated in the environmental impact assessment procedure of the first instance, such as the *Liechtensteinische Gesellschaft für Umweltschutz* and the *Verkehrsclub Liechtenstein*.

Furthermore, as stated by the communicant/correspondant the citizen's group „*mobil ohne Stadttunnel*“ had been granted legal standing in the procedure at first instance. However, this decision was challenged by other Parties and these appeals lead to the judgement of the Federal Administrative Court and the Supreme Administrative Court as mentioned by the communicant/correspondant in its communication. Nevertheless, all comments by the public, also the comments by the citizen's group „*mobil ohne Stadttunnel*“, were taken into account by the EIA authority in its decision.

As the Supreme Administrative Court has stated, the citizen's group „*mobil ohne Stadttunnel*“ has not been lawfully established since the prerequisite of the voting right in municipal elections was not fulfilled.

Furthermore, in accordance with the provisions of the Espoo Convention on EIAs in a transboundary context Austria issued a notification of the project to Liechtenstein and Switzerland and consultations took place taking into account the obligations of the Alpine Convention as well.

To conclude, Austria does not see a violation of the Aarhus Convention, especially Art. 9(2) and Art. 3(9), since the Austrian EIA Act does allow for participation and the right to appeal for citizens from Liechtenstein as well environmental organizations from a foreign state such as Liechtenstein if the effects impact that part of the environment whose protection is pursued by that environmental NGO. Therefore, Austria considers the communication as inadmissible also given the fact that Liechtenstein is not a Party to the Aarhus Convention.