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Dear Sir or Madam

Plan approval for the construction of the Waldschlösschen Bridge in Dresden  
- Verdict of the Administrative Court of the City of Dresden of 30/10/2008, Ref. 3 K 923/04 -

In reply to your question whether the Administrative Court Dresden decided in its above mentioned verdict –as partly argued– that the construction of a tunnel would not be a considerable alternative to the planned bridge for nature conservation reasons, I am going to present you my opinion:

### **1. Summary**

The Administrative Court Dresden decided in its verdict of 30/10/2008 only about the question whether there was a legal basis for the lawsuits filed by nature conservation organisations against the presented plan approval order for the construction of the Waldschlösschen Bridge. The question whether planning a tunnel instead would be legally admissible was not part of that decision and not discussed here. Of course, the court had to examine, among other factors, whether the expected negative (considerable) impact of the bridge construction on the FFH area "Elbe Valley between Schöna and Mühlberg" could be prevented by an alternative tunnel.

However, the Administrative Court Dresden did not comply with requirements for such a comparison of alternatives according to Art.6 Par.4 FFH Directive because its assessment whether the habitat type 3270 could suffer from considerable adverse effects due to the construction of a tunnel was based on a different set of criteria than those applied by the plan approving authority for assessing the effects of a bridge. Thus, the assessments of the effects of the alternatives on the FFH area can not be compared because they are based on different criteria.

Therefore, the assessment of the bridge as the preferable variant with regard to the FFH area as expressed by the Administrative Court Dresden (verdict of 30/10/2008, p. 97ff.) is indefensible. Without a more detailed analysis of the effects according to similar criteria it is only possible to make a general assessment which, according to the standards set by the Federal Administrative Court, comes to the conclusion that the alternatives are of equal value regarding their effects on the FFH area.

After comparing the alternatives the planning of a tunnel instead of a bridge would therefore be possible. Since that would necessarily include the consideration of all public interests, one argument in favour of a tunnel is that it would not threaten the world heritage status of the Dresden Elbe Valley.