

Letter from: Mr Reisenberger, President of the Austrian Parliament, Vienna

To: Mr Barroso, President of the European Commission, Brussels

Date: 8 May 2009

Reference: GZ.27000.0040/15-L2.1/2009

In its meeting on 6 May 2009 the EU-Committee, further to deliberations concerning

EU document COM/2008/400/FINAL/2 of 24 July 2008: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Public procurement for a better environment

has decided the following:

Opinion to the European Commission

The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Public procurement for a better environment - does not place enough value on the principles of subsidiarity.

The EU Committee of the Austrian Parliament welcomes the objective of the Communication which is to provide general guidelines on how to reduce the effects of public sector consumption on the environment and how GPP ('Green Public Procurement') can be used to introduce greater innovation into environmental technologies and environmentally-friendly products and services. Furthermore, Austria plays a leading role in this area (according to an EU study) and the current Austrian government programme includes the following action regarding GPP: *"The public sector can, as one of the largest purchasers/requesters of products and services, in particular when erecting buildings and procuring vehicles, use its purchasing power to create a significant stimulus for the development of environmentally-friendly products and services and their penetration onto the market, and act as a role model. The Government, Länder and local governments are drawing up joint criteria for improving sustainability in public procurement and concrete targets, and placing increased attention on energy efficiency and sustainability. The aim is to set binding purchase quotas for ecological products on the basis of the current pilot phase."*

Measures which are being considered in the Communication from the European Commission (establishing common environmental criteria to be taken into account by the Member States in their national action plans) are also being planned in Austria as part of the national action plan which is being drawn up. The latter should also - to the extent that it is practicable and applicable in Austria - take into account the jointly formulated criteria.

In this Communication the Member States are requested to formulate, further to a consultation process, environmentally-friendly criteria, and to implement them by working them into the relevant national action plans and by means of guidelines for environmentally-friendly procurement, and in this way to make them binding. The European Commission recommends drawing up national action plans to gain the

necessary political support and to facilitate a consistent strategy for action in the Member States.

In the view of the EU Committee of the Austrian Parliament it must nevertheless be guaranteed that the application of these or other criteria is a matter to be decided by the Member States. The Communication contains no legally-binding obligation. However, there is political agreement amongst the Member States to promote GPP within the EU and also to implement the indicative political overall target of 50% per Member State for GPP, which was stated in the Council conclusions.

The Commission does not deal explicitly with questions of subsidiarity. However, as the Member States have a duty to initially formulate GPP criteria jointly, Community action in principle takes place with adequate consideration of the Member States' jurisdiction. The EU-wide uniform approach for public tendering is undoubtedly an acceptable method and therefore does not necessarily contradict the principle of proportionality.

The EU Committee of the Austrian Parliament explicitly requests that it be guaranteed that these guidelines are not legally binding on the Member States and that they can also not serve as an interpretation indicator for the European Court of Justice. A final assessment can only be made when the end result of the consultations is known.

A general comment is that it is politically questionable whether the EU is acting outside its sphere of competence.

As the Communication does not contain any draft directive neither can any suggestions for improvements be made. However the anchoring of GPP in private procurement (as discussed in Point 9 of the Communication) appears to be problematic. In contrast to public procurement, where unified European action is welcomed, regulation of private procurement measures should be left to the Member State, if they are regulated at all. Greater awareness and guidelines for private consumers in terms of green products can and should be enhanced, as is already being successfully managed by the well established programmes in Austria.”

(Complimentary close)