

Letter from: Edgar Mayer, President of the Bundesrat, Republic of Austria
Date: 14 March 2013
To: José Manuel Barroso, European Commission
Ref.: GZ. 27000.0040/7-L2.1/2013

At its meeting on 13 March 2013, the EU Committee of the Bundesrat, during the course of its discussions concerning the EU document

COM(2013) 28 final

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 on the opening of the market for domestic passenger transport services by rail,

adopted the enclosed reasoned opinion pursuant to Article 23g(1) of the Federal Constitutional Law (B-VG) in conjunction with Article 6 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

Enc.

REASONED OPINION

of the EU Committee of the Bundesrat of 13 March 2013

pursuant to Article 23g(1) of the Federal Constitutional Law (B-VG) in conjunction with Article 6 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality

COM(2013) 28 final

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 on the opening of the market for domestic passenger transport services by rail

A. Reasoned opinion

The project in question does not comply with the principle of subsidiarity.

B. Justification

On 30 January 2013 the European Commission published the fourth railway package, which consists of six legislative proposals. In addition to far-reaching proposals aimed at restructuring European rail markets, the Commission proposed substantial amendments (in respect of public service obligations (PSO)) to Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

The ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 on the opening of the market for domestic passenger transport services by rail’ is intended to encourage competitive tendering of regional passenger transport services by rail and in the local public transport sector.

Reference is made to Article 5 TEU which states that the European Union can only act if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The special role of the public services was enshrined and safeguarded in primary legislation under the Lisbon Treaty. These services are generally organised at local and regional level, as reflected in the corresponding basic provisions to that effect, in particular the explicit references in Article 4(2) TEU to respect for regional and local self-government, and the fundamental recognition of the commitment to the freedom of the Member States to decide how public services are provided and funded (Article 14 TFEU).

In Protocol (No 26) to the Lisbon Treaty it is explicitly stated that the values of the Union include, in particular, the essential role and the wide discretion of national, regional and local authorities ‘in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users.’

The current PSO Regulation is a balanced compromise which, on the basis of the experience gained so far, should be maintained. For it is the local and regional authorities which are best able to provide local public transport which meets the needs and

preferences of passengers whilst taking into account geographical, social and cultural factors. In terms of public procurement law, the EU-wide tendering of local and regional rail transport services is unnecessary given the geographical limitations of the jurisdiction and would therefore be disproportionate.

The version of the PSO Regulation which is currently in force guarantees, under certain conditions, freedom of choice at national, region and local level. Through the application of numerous practical thresholds, the PSO Regulation therefore regulates direct awards in both the rail sector and other areas. The competent authorities can decide whether to award public service contracts directly or put them out to tender. These authorities are best able to provide local public transport which meets the needs and preferences of passengers whilst taking into account geographical, social and cultural factors. This practical element, particularly with regard to the thresholds, has not been incorporated into the proposal for the rail sector. A partial abandonment of this essential principle, which was further reinforced by the Treaty of Lisbon, is both unnecessary and counter-productive. Furthermore, it cannot be justified given the safeguards afforded to public services under primary legislation in the European Treaties.

For this reason, no obvious benefit can be derived from the proposed amendments to the PSO Regulation which would justify a new European Regulation.