



Offices of the State Government of Lower  
Austria, 3109

Mr Alain Hutchinson  
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Enclosures  
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Our reference (please quote when replying)

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Reference	Case handler	Direct line	Date
	Dr. Johann Jedliczka	13589	06. July 2012

Subject:

EU subsidiarity and proportionality assessment; meeting of the Bundesrat's EU committee at the parliament in Vienna on 2 May 2012; here: response to questions asked by the CoR

Please find below our thoughts on the Monti II questionnaire and our attempts to answer the questions:

*1. Would you agree with the line taken in my working document (attached), i.e. that the legal basis of Article 352 TFEU chosen by the European Commission is not appropriate since "the right to strike is an inviolable principle enshrined in the Charter of Fundamental Rights and the provision governing this specific subject matter, Article 153 (5) of the Treaty on the Functioning of the EU, explicitly excludes the right to strike from the scope of EU legislation"?*

***Internally, we have expressed the view that the EC proposal, in the light of case law, is unnecessary. As a matter of principle, even within Lower Austria, we take the view that a "law" should only be used by policymakers as a last resort. Moreover, Article 352 should, in accordance with the intention behind it (see paragraphs 2 and 3) should only be used where necessary. Otherwise, this way of proceeding breaches the principle of conferred powers and that of subsidiarity.***

.../...

2. Although the right to strike is often regarded as a matter of national competence, in your view, which specific aspects are relevant at local and regional level and could justify an interest from local and regional authorities in this subject area?

**Experience, especially as regards transport/road blockades, has shown and documented the significant impact on local and regional authorities.**

3. Were you consulted by your national parliament during the elaboration phase of its position/reasoned opinion, when relevant?

**Lower Austria was informed (legislature and executive).**

4. In your opinion, does the use of Article 352 TFEU in itself entail a risk as far as respect of the subsidiarity principle is concerned? Do you believe that this provision should be revised/amended in the future?

**See answer to 1).**

**Article 352 should only be used if "necessary"; the Commission should interpret this strictly. As a matter of principle:**

- **the "legislative machinery" should be started up only if necessary;**
- **the Commission should not make the mistake of perceiving a need for European legislation wherever the Member States – probably on purpose – have left an area unregulated;**
- **the subsidiarity principle should not simply be preached on Sundays, but be applied every day!**

5. What lessons should be drawn for the future from the first "yellow card"?

- **with regard to the Commission: see answers to 1 and 4**
- **for MS and regional parliaments: pay attention to the need to coordinate their everyday work (applying the subsidiarity and proportionality principles means a lot of work for MS and regional parliaments and for the executives at national and regional level).**

6. What added value do you see in such a regulation in light of ECJ decisions on the matter?

**In our humble opinion, a learning process should also take place at the ECJ.**

Land government of Lower Austria

p.p.

Dr. Jedliczka



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