

REASONED OPINION 2/2017 OF THE JOINT COMMITTEE FOR EU AFFAIRS, DATED DECEMBER 13, 2017, ON THE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) No 1073/2009 ON COMMON RULES FOR ACCESS TO THE INTERNATIONAL MARKET FOR COACH AND BUS SERVICES (TEXT WITH EEA RELEVANCE) [COM (2017) 647 FINAL] [2017/0288 (COD)] {SWD (2017) 358 FINAL} {SWD (2017) 359 FINAL} {SWD (2017) 360 FINAL} {SWD (2017) 361 FINAL}

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality attached to the Lisbon Treaty of 2007, in force since December 1st, 2009, establishes a procedure allowing national parliaments to verify European legislative initiatives' compliance with the subsidiarity principle. The said Protocol has been developed in Spain by Act 24/2009, of December 22, amending Act 8/1994, of May 19. In particular, new articles 3 j), 5 and 6 of Act 8/1994 are the legal basis for this reasoned opinion.

B. The Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009, on common rules for access to the international market for coach and bus services, has been adopted by the European Commission and conveyed to national parliaments, which have a deadline of eight weeks to verify the subsidiarity check of the initiative, being the deadline January 11, 2018.

C. The Bureau and the Spokespersons of the Joint Committee for EU Affairs, agreed on November 29, 2017, to examine the said European legislative initiative, appointing to that end as Rapporteur MP Mr. Antonio Gómez-Reino Varela, and requesting the Government the report envisaged in article 3 j) of Act 8/1994.

D. The Government has conveyed its report, indicating that this initiative does not comply with the principle of subsidiarity. The regional Assembly of Galicia has conveyed a report indicating the filing of the text.

E. The Joint Committee for EU Affairs, in its meeting held on December 13, 2017, adopted the following:

REASONED OPINION

1.- Article 5 (1) of the Treaty on the European Union indicates that *“the use of Union competences is governed by the principles of subsidiarity and proportionality”*, and adds in Article 5 (3) of the same Treaty that *“under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall only act 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”*.

2.- The legislative proposal under consideration is based on article 91 (1) of the Treaty on the Functioning of the European Union, which lays down the following:

“Article 91

1. For the purpose of implementing Article 90, and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;

(b) the conditions under which non-resident carriers may operate transport services within a Member State;

(c) measures to improve transport safety;

(d) any other appropriate provisions.”

3.- The legislative Proposal under consideration does not comply with the principle of subsidiarity given the incoherent extension to national services of a rule governing access to international services.

The Commission’s Proposal, which continues to fully respect the original wording of the title of Regulation 1073/2009 adopted years ago, and whose goal was to guarantee the free provision of international transport services by bus by means of common rules and a community licence, surprisingly extends its scope to national regular services. This interferes with national competences, poses limits to the organisational ability of

the relevant authorities in the field of public transport and seriously undermines an exemplary model of peoples' mobility.

3.1.- Noncompliance with the principle of subsidiarity

Apart from having ignored the “regional and local dimension” when drafting its Proposal before its adoption as laid down in Protocol No 2 on subsidiarity and proportionality of the Treaty on the Functioning of the European Union, the Commission has not proved the compliance of the following two criteria for the enforcement of this EU constitutional principle: first, the need for this initiative (indeed, the Spanish case clearly demonstrates the opposite, namely that States are able to efficiently regulate their citizens' mobility by bus) and, in the second, the added value of the EU adopting the initiative;

3.2.- Interference with national competences

Transport competences are shared by the European Union and the Member States (article 4 of the TFEU). According to article 91 of the TFEU, the EU may lay down common rules for international or cross border services, but the Commission's proposal goes beyond that and extends the scope of those common rules to purely domestic services, thus exceeding its competences and assuming others which are not within its remit or its exclusive realm.

Moreover, article 14 of the Treaty on the Functioning of the EU, Protocol No 26 (Services of General Interest), article 3 (1) of the Regulation (EC) No 1370/2007 and the case law of the Court of Justice of the EU clearly define national competences to organise its public transport services, which the Commission encroaches upon with its proposal of November 8.

Bearing in mind the incompatibility of the Proposal with article 3 (1) of Regulation (EC) 1370/2007, its adoption by the Council of the EU and the European Parliament would seriously undermine the philosophy on which the Spanish system is cemented, characterised by combining in a single contract profitable and non-profitable transport operations.

Thus, the regular transport system, considered globally as a public service and with temporary exclusivity as main means to compensate for the exploitation of the mandatory nature of public service imposed in each contract, would have to be modified. The network as a whole would collapse, with the subsequent isolation of rural population areas (currently there is no town with more than 50 inhabitants which does not have, at least, a regular inter urban bus service).

Public administrations would have to provide subsidies to compensate for the public service obligations, demographical dispersion would be aggravated and employment in this sector would be destroyed.

3.3.- Violation of the principle of non discrimination among Member States

With the establishment of the Kilometer (100 kms) as sole criterion to authorise new commercial services, regardless of the territorial size of each Member State, the Proposal amending Regulation 1073/2009 discriminates countries such as Spain given its geographical extension (*cuasi* subcontinental), including that of its Autonomous Regions. Moreover, the 100kms criterion could hardly be *de facto* implemented in many countries where distances between towns barely reach the said limit.

3.4.-The necessity criterion is not complied with: the goals of the Proposal are already reached in Spain.

The 4th system of public passengers transport by road in Spain already meets the goals set out by the new Proposal for a Regulation explained in its relevant clauses, such as the availability and quality of sustainable transport systems meeting the needs of its citizens (paying special attention to most disfavored groups), environmental sustainability or being a solid alternative to private cars in order to reduce accidents and traffic jams.

Thus, the need for the European Union to act in the market of a Member State which is capable on its own of solving the problems which the Proposal intends to correct or eliminate is certainly questionable.

For all these reasons, the opinion mechanism of the Spanish Parliament for the exercise of the subsidiarity check by national parliaments, as laid down in article 6 of Protocol No 2 of the TFEU, has to be activated.

CONCLUSION

For the aforementioned reasons, the Joint Committee for EU Affairs considers that the Proposal for a Regulation of the European Parliament and of the Council, amending Regulation (EC) No 1073/2009, on common rules for access to the international market for coach and bus services, does not comply with the principle of subsidiarity laid down in the Treaty on the European Union in force.