

5 November 2013

Mr. Jose Manuel Barroso
President of the European Commission
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

Re: Reasoned opinion of Seanad Éireann on the Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012 - COM (2013) 627

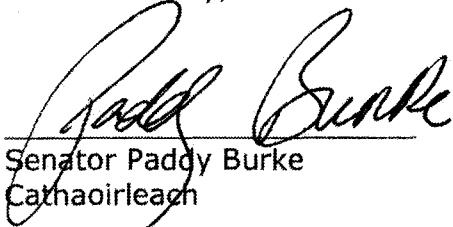
Dear President Barroso

I am writing to inform you that Seanad Éireann, at its meeting today, considered the Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012 - COM (2013) 627 under Article 5(3) of the Treaty on European Union and Protocol 2 on the application of the principles of subsidiarity and proportionality and is of the opinion that the proposal does not comply with the principle of subsidiarity.

Under Standing Orders of Seanad Éireann, a Select Committee was conferred with the power to consider the above Proposal for compliance with subsidiarity. The Committee was obliged under Standing Orders to report back to Seanad Éireann if it was of the opinion that the proposal did not comply with the principle of subsidiarity. The Committee duly reported to the Seanad and a motion on the Report of the Committee was considered and adopted by the Seanad at its meeting today.

In accordance with Standing Orders, I have enclosed a copy of the Resolution of Seanad Éireann together with the Reasoned Opinion and a copy of the Report of the Committee. I have also sent this letter to the Presidents of the European Parliament and the Council and the Irish Minister for Communications, Energy and Natural Resources.

Yours sincerely,



Senator Paddy Burke
Cathaoirleach





“Go ndéanann Seannad Éireann:

(1) a thabhairt dá haire Tuarascáil chomhaontaithe an Chomhchoiste um Iompar agus Cumarsáid faoi Bhuan-Ordú 105 ar Togra le haghaidh Rialacháin ó Pharlaimint na hEorpa agus ón gComhairle lena leagtar síos bearta maidir leis an margadh aonair Eorpach do chumarsáid leictreonach agus chun Ilchríoch Idirnasctha a bhaint amach, agus lena leasaítear Treoracha 2002/20/CE, 2002/21/CE agus 2002/22/CE agus Rialacháin (CE) Uimh. 1211/2009 agus (AE) Uimh. 531/2012, COM(2013)627 ar leagadh cóip de faoi bhráid Dháil Éireann an 23 Deireadh Fómhair, 2013 de bhun Bhuan-Ordú 101(3)(b);

(2) ag féachaint don Tuarascáil réamhráite, agus le linn a fheidhmeanna faoi alt 7(3) d’Acht an Aontais Eorpaigh, 2009 a fheidhmiú, an tuairim a shealbhú nach ndéanann an Togra le haghaidh Rialacháin ó Pharlaimint na hEorpa agus ón gComhairle lena leagtar síos bearta maidir leis an margadh aonair Eorpach do chumarsáid leictreonach agus chun Ilchríoch Idirnasctha a bhaint amach, agus lena leasaítear Treoracha 2002/20/CE, 2002/21/CE agus 2002/22/CE agus Rialacháin (CE) Uimh. 1211/2009 agus (AE) Uimh. 531/2012, COM (2013) 627, prionsabal na coimhdeachta a chomhlíonadh ar na cúiseanna atá leagtha amach i mír 5 den Tuarascáil, agus

(3) a thabhairt dá aire, de bhun Bhuan-Ordú 101(4), go gcuirfeadh cóip den Rún seo mar aon leis leis an Tuairim Réasúnaithe agus an Tuarascáil réamhráite chuig Uachtarán Pharlaimint na hEorpa, Uachtarán na Comhairle agus Uachtarán an Choimisiúin.

That Seannad Éireann:

(1) notes the agreed Report of the Joint Committee on Transport and Communications under Standing Order 101 on the Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No. 1211/2009 and (EU) No. 531/2012, COM (2013) 627 which was laid before Seannad Éireann on 23 October, 2013 in accordance with Standing Order 101(3)(b);

(2) having regard to the aforementioned Report, and in exercise of its functions under section 7(3) of the European Union Act 2009, is of the opinion that the Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No. 1211/2009 and (EU) No. 531/2012, COM (2013) 627, does not comply with the principle of subsidiarity for the reasons set out in paragraph 5 of the Report, and

(3) notes that, pursuant to Standing Order 101(4), a copy of this Resolution together with the reasoned opinion and the aforementioned Report shall be sent to the Presidents of the European Parliament, the Council and the Commission.”





Houses of the
Oireachtas
Tithe an Oireachtais

AN COMHCHOISTE UM IOMPAR AGUS CUMARSÁID

COM (2013) 627

Togra le haghaidh Rialacháin ó Pharlaimint na hEorpa agus ón gComhairle lena leagtar síos bearta maidir leis an margadh aonair Eorpach do chumarsáid leictreonach agus chun Ilchríoch Idirnasctha a bhaint amach, agus lena leasaítear Treoracha 2002/20/CE, 2002/21/CE agus 2002/22/CE agus Rialacháin (CE) Uimh. 1211/2009 agus (AE) Uimh. 531/2012

Deireadh Fómhair 2013

JOINT COMMITTEE ON TRANSPORT AND COMMUNICATIONS

COM (2013) 627

Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012

October 2013

JOINT COMMITTEE ON TRANSPORT AND COMMUNICATIONS

Report under Dáil Standing Order 105 and Seanad Standing Order 101 on COM (2013) 627 Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012.

Introduction

1. The principle of subsidiarity is defined in Article 5(3) TEU as follows:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar 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”.

Article 5(3) also gives specific responsibility to national parliaments to ensure that EU institutions apply the principle in accordance with Protocol 2 on the application of the principles of subsidiarity and proportionality.

2. The test established by Article 5(3) TEU is, in effect, a “comparative efficiency” exercise, involving a “necessity” test and a “greater benefits” test:

- (i) *Necessity* - Is action by the EU necessary to achieve the objective of the proposal? Can the objective of the proposal only be achieved, or achieved to a sufficient extent, by EU action?
- (ii) *Greater Benefits* - Would the objective be better achieved at EU level – i.e. would EU action provide greater benefits than action at Member States level?

3. To assist national parliaments in their evaluation of subsidiarity compliance, Article 5 of Protocol 2 provides explicitly that

“Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States...”

4. Therefore, any new draft legislative act,
 - must be supported by a sufficiently ‘detailed statement’ to allow a judgment to be made by national parliaments on its compliance with the principle of subsidiarity
 - must clearly satisfy both the *necessity* and *greater benefit* tests
 - must, under the principle of conferral set down in Article 5(2) of the TEU, show that the Union is acting ‘only within the limits of the

competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.'

5. Opinion of the Joint Committee

The Joint Committee on Transport and Communications has had specific regard to the Treaty provisions and is of the opinion that the proposal does not comply with the principle of subsidiarity. The reasons are set out in the following paragraphs

- A. While the Joint Committee is supportive of the Commission's proposal for a 'Connected Continent', it is concerned at the lack of public consultation in the drafting of the proposal. The Joint Committee is of the opinion that without the proper consultation process being undertaken the proposal may not deliver on its stated objectives.
- B. The Joint Committee also considers the management of spectrum to be primarily a national competence and that the broadening of the Commission's competence in this area would create a substantial shift in the balance of power from member states and national regulators.
- C. The Committee believes that the Commission has not adequately considered the option of strengthening existing Directives in place and expresses concern that Ireland as an island state could become further marginalised if this proposal is implemented in its current form.

Recommendation of the Joint Committee

The Joint Committee agreed this Report under Dáil Standing Order 105 and Seanad Standing Order 101 on 23 October 2013.

The Joint Committee, pursuant to Dáil Standing Order 105(3)(b) and Seanad Standing Order 101(3)(b) recommends the reasoned opinion contained in paragraph 5 above, for agreement by Dáil Éireann and Seanad Éireann.



John O'Mahony, T.D.
Chairman
23 October 2013

