



Tithe an
Oireachtais
Houses of the
Oireachtas

An Comhchoiste um Iompar agus Cumarsáide

Tuarascáil faoi Bhuan-Ordú 133 de chuid na Dála agus faoi Bhuan-Ordú 116 de chuid an tSeanaid maidir le COM (2021) 552, 556, 559, 561, 562, 567 – Tograí reachtaíochta de chuid phacáiste “Oiriúnach do 55” AE

Deireadh Fómhair 2021

Joint Committee on Transport and Communications

Report under Dáil Standing Order 133 and Seanad Standing Order 116 on COM (2021) 552, 556, 559, 561, 562, 567 – Legislative proposals of the EU “Fit for 55” package

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1. Introduction

1. The principle of subsidiarity is defined in Article 5(3) of the Treaty on European Union (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:
 - i. 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;
 - ii. must clearly satisfy both the *necessity* and *greater benefit* tests; and
 - iii. 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.*’

2. Scrutiny of the Joint Committee on Transport and Communications

5. The Joint Committee on Transport and Communications (hereafter referred to as the “Committee”) scrutinised the following six proposals at two meetings, on 13 October 2021 and 21 October 2021
 - COM(2021)552: Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure
 - COM(2021)556: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition
 - COM(2021)559: Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council

- COM(2021)561: Proposal for a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport
- COM(2021)562: Proposal for a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC
- COM(2021)567: Proposal for a Decision of the European Parliament and of the Council amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union

6. Following the Committee’s consideration of these matters, it agreed a reasoned opinion on the proposals listed above at its meeting on the 21 October 2021.

3. Opinion of the Joint Committee

7. The Committee has had specific regard to the Treaty provisions and is of the opinion that these proposals do not comply with the principles of subsidiarity. The reasons are set out in the following paragraph:
8. The Committee is of the opinion that the European Commission has not adequately met the procedural requirements (in Protocol 2, Article 5) to provide a detailed statement with sufficient quantitative and qualitative indicators, to allow national parliaments to fully assess all the implications of EU-wide proposals of this nature.

Recommendations of the Joint Committee

9. The Committee agreed this Report under Dáil Standing Order 133 and Seanad Standing Order 116 on 21 October 2021.

10. The Committee, pursuant to Standing Orders, recommends the Reasoned Opinion contained in section 3 above for agreement by Dáil and Seanad Éireann.



Kieran O'Donnell TD

Cathaoirleach

21 October 2021

APPENDIX I- Committee Membership

Joint Committee on Transport and Communications



Joe Carey TD
Fine Gael



Cathal Crowe TD
Fianna Fáil



Michael Lowry TD
Regional Group



Steven Matthews TD
Green Party



Ruairí Ó Murchú TD
Sinn Féin



James O'Connor TD
Fianna Fáil



Kieran O'Donnell TD
(Cathaoirleach)
Fine Gael



Darren O'Rourke TD
Sinn Féin



Duncan Smith TD
Labour Party



Senator Lynn Boylan
Sinn Féin



Senator Jerry Buttimer
Fine Gael



Senator Gerard Craughwell
Independent



Senator Timmy Dooley
Fianna Fáil



Senator Gerry Horkan
Fianna Fáil

APPENDIX II – Orders of Reference

Standing Orders 94, 95 and 96

Scope and context of activities of Select Committees

94. (1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)1; and

1 Retained pending review of the Joint Committee on Public Petitions.

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, or

(d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

(i) members of the European Parliament elected from constituencies in Ireland,

(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

(a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.²

² Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit; 6

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil, and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197; 7

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).

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