

External letter

Dated 15 December 2010
Ref. 431/OC [? – partially illegible]
From The President of the Italian Senate
To José Manuel Barroso (President of the European Commission)
Encls. 1

Please find enclosed the text of the resolution adopted by the Italian Senate's Committee on Industry, Trade and Tourism, following its examination of the proposal for a Decision of the European Parliament and of the Council on the detailed rules for access to the public regulated service offered by the global navigation satellite system established under the Galileo programme (COM (2010) 550 final).

The resolution contains comments concerning the proposal's compliance with the subsidiarity and proportionality principles.

(closing formula and signature)

ITALIAN SENATE

16th PARLIAMENTARY TERM

Doc. XVIII

No 69

RESOLUTION OF THE 10th STANDING COMMITTEE

(Industry, Trade, Tourism)

(Rapporteur: CURSI)

adopted at the sitting of 6 December 2010

ON THE

**PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL ON THE DETAILED RULES FOR ACCESS
TO THE PUBLIC REGULATED SERVICE OFFERED BY THE
GLOBAL NAVIGATION SATELLITE SYSTEM ESTABLISHED
UNDER THE GALILEO PROGRAMME (COM (2010) 550 FINAL)**

pursuant to Article 144(1) and (6) of the Rules of Procedure

Sent to the Prime Minister's Office on 7 December 2010

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Having examined the European Commission's document COM (2010) 550 final, and

whereas the document lays down the detailed rules for access to the public regulated service (PRS) offered by the Global Navigation Satellite System (GNSS) established under the GALILEO Programme;

whereas the security requirements relating to the use of the PRS have a direct bearing on the security of the European Union and its Member States and require a supervisory framework to be established before the service comes into operation in 2014;

whereas the proposal for a decision is not intended to regulate the potential applications of the PRS but, rather, the detailed rules for access to the service;

whereas the potential benefits of GNSS applications extend to many activity sectors;

whereas Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008 established a new basis for the EU's operation of its satellite-navigation programmes, laying down the terms and conditions for the further pursuit of the GALILEO and EGNOS programmes and defining the objectives thereof;

whereas the proposal for a decision complies with the subsidiarity principle, in so far as the common rules governing access to the service by PRS users such as the Member States, the Council and the Commission may be laid down solely at EU level. The proposal is not concerned with the nature of the various uses of the PRS, which will be decided upon independently by each Member State,

the Committee expresses – within the terms of its remit – a favourable opinion, with the following comments:

1. With reference to Article 4, responsibility for protecting classified information relating to the PRS lies with the Member States, for the obvious reasons that they are the ones empowered to impose penalties and that only if national provisions are infringed are the Member States required to apply a penalty pursuant to Article 5. However, when establishing ways of protecting confidentiality, Member States shall adopt specific provisions (and shall notify them to the Commission) only downstream of a multi-level regulatory system, whilst the Commission shall operate upstream by laying down appropriate rules by delegation, pursuant to Articles 12, 13 and 14.

The confidentiality of the data relating to the functioning of the system constitutes justification – including from the point of view of the subsidiarity principle – for making the Commission responsible for issuing rules on the protection of what is first and foremost an industrial secret. This type of concern is certainly voiced in the text, since it was mentioned back in Article 14 of Regulation (EC) No 683/2008 and since the proposal for a decision provides for the possibility – if it transpires that data relating to the PRS have been disclosed to third parties which are not authorised to receive them – whereby the Commission will launch an investigation, notify the Council and the European Parliament of the outcome and take appropriate remedial action.

However, the possibility of the Commission's regulating 'a natural or legal person's need for access to classified information in order to be able to perform a specific function or task' could be interpreted as meaning that data of an individual nature acquired and stored by the system could also be released. Although in the performance of this task the Commission is nonetheless constrained by Article 20 of Regulation (EC) No 683/2008, and if management of the data concerning traffic and the physical location of the user of a PRS receiver were to be placed under that Article, it could be worth pointing out that rules laid down by the Commission pursuant to Article 4(2):

a) may not affect the individual Member States' penal procedures for investigating offences and related activities involving the gathering of evidence;

b) have an impact on the rules designed to protect personal and sensitive data, which are already subject to a 'cascade' of legislation where much of the regulatory activity is the responsibility of the individual Member States (in the case of Italy, the relevant law is the Code on the Protection of Personal Data, which is the subject of Legislative Decree No 196 of 30 June 2003); in this regard, consideration must be given (not least in view of the margin of discretion enjoyed by the Member States in the establishment of user categories) to whether (and in what sections of the Code) any discrepancy between the rules laid down by the Commission and those generally applied to the data of Italian citizens would pass a 'reasonableness' test, given that the PRS is not publicly accessible.

2. With reference to Article 5, however, the fact that there is no EU body of law applicable to penalties means that the latter (to be imposed in the event of any infringement of the national provisions adopted pursuant to the decision) are regulated by the Member States (which, in so doing, must ensure that penalties are effective, proportionate and dissuasive).

3. With reference, lastly, to Article 8, the proposal for a decision sets out a fairly clear alternative where the manufacture of receivers and security modules is concerned: a Member State which uses the PRS either manufactures such items itself or assigns the task to undertakings established on the territory of a Member State which uses the PRS. The former case would appear to be covered in Italian law by Article 125 of the Code on Public Procurement relating to Works, Services and Supplies (the subject of Legislative Decree No 163 of 12 April 2006), since it

relates to low-value supplies which may be made through direct administration or through a piece-work procedure: the proposed decision – presumably by virtue of a *ius speciale* [special law] – overrides the ceilings laid down in EU law for activating this procedure. In the latter case, however, there must be equality of access for all EU undertakings – hence only the contractor-selection procedures which meet this requirement (in accordance with the principles laid down in Article 17 of Regulation (EC) No 683/2008) are eligible.

In both cases, however, a body which produces receivers must have been authorised in advance by the EU's GNSS agency and will be required to abide by the rules laid down by the accreditation authority to be set up within that agency. Hence it may be presumed that prior to the selection procedures the undertakings due to compete for EU contracts (or to be awarded piecework) will have to be entered on a central register in Brussels, or that the body selected will be 'authorised in advance' at EU level (13th recital of the proposed decision).

Consideration should be given to whether or not compliance with the subsidiarity principle means that, with the minimum common standards having been laid down on the basis of the Annex, the level at which compliance with that principle is verified can be lowered to include the Member States' authorities responsible for the PRS; as the Commission itself admits, account must in this connection be taken of the fact that the state of the market is such that encryption capabilities are concentrated 'in a small number of Member States' (as confirmed in the report), for which reason the creation of oligopolies under the cloak of the accreditation procedure must be avoided. The possible emergence of multinational consortia or business networks or of temporary groupings of undertakings from various Member States – called upon to contribute a range of components to a single Member State's bid in an EU invitation to tender – could cause technology to be scattered across all the Member States. Akin to this are the proposals for the shared management of the authority responsible for the PRS, which certain Member States would have to take a combined decision to join.

Although there should be provision for the European GNSS agency to decide at any time to withdraw a body's authorisation to manufacture PRS receivers and associated security modules in the event of non-compliance with the standards set out in the Annex, the risk of differing national decisions must be regarded as minimal, given the professionalism of the pre-selected contactors in a field with fairly strict approval requirements. If further technical requirements are to be laid down, the Commission – acting by delegation – could amend the Annex as referred to in Article 6(6); if reliability assessments are called for, they can be provided through competition by means of greater access to contractor-selection procedures rather than by means of prior accreditations.

In any case, the assessments contained in the Action Plan on Global Navigation Satellite System (GNSS) Applications (COM (2010) 308; proposed by the Commission on 14 June 2010) apply to this type of commercial spin-off as well: it is stated in the Action Plan that European

industry (in particular SMEs) must be given a way of securing an ever-greater share of the market in downstream GNSS applications (at least 33%). Similarly, it is also stated in the Action Plan (Action 16) that the Commission wishes to finance research and development activities designed to reduce the cost of receivers (in order to promote the use of chips and terminals compatible with Galileo and EGNOS through industrial cooperation with GNSS-holding countries and with receiver manufacturers): despite the non-commercial nature of the PRS, manufacturing companies must not cease their research activities, and must also benefit from the effect created by this Action Plan objective.

OPINION OF THE 14th STANDING COMMITTEE
(EUROPEAN UNION POLICIES)

(Rapporteur: De Eccher)

Rome, 3 November 2010

Having examined the European Commission's document COM (2010) 550 final, and

whereas the document lays down the detailed rules for access to the public regulated service (PRS) offered by the Global Navigation Satellite System (GNSS) established under the GALILEO Programme;

whereas the security requirements relating to the use of the PRS have a direct bearing on the security of the European Union and its Member States and require a supervisory framework to be established before the service comes into operation in 2014;

whereas the proposal for a decision is not intended to regulate the potential applications of the PRS but, rather, the detailed rules for access to the service;

whereas the potential benefits of GNSS applications extend to many activity sectors coordinated at EU level, including the Europe 2020 Strategy, transport safety, the environment and the implementation of the Common Agricultural Policy, and whereas EU action is needed in order to prevent needless waste at Member State level;

having regard to Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008, which established a new basis for the EU's operation of its satellite-navigation programmes, laying down the terms and conditions for the further pursuit of the GALILEO and EGNOS programmes and defining the objectives thereof,

the Committee expresses – within the terms of its remit – a favourable opinion, with the following comments:

the legal basis is correctly identified as Article 172 of the Treaty on the Functioning of the European Union, concerning trans-European networks;

the proposal for a decision complies with the subsidiarity principle, in so far as the common rules governing access to the service by PRS users such as the Member States, the Council and the Commission may be laid down solely at EU level. The proposal is not concerned with the nature of the various uses of the PRS, which will be decided upon independently by each Member State;

the proposal for a decision complies with the proportionality principle, in so far as it merely lays down the rules governing access by the Member States to the PRS provided by the GALILEO programme.