

HOUSE OF REPRESENTATIVES
PARLIAMENT OF MALTA

SPEAKER'S CHAMBERS

7 November 2013

José Manuel Barroso
President of the European Commission

Martin Schultz
President of the European Parliament

Herman Van Rompuy
President of the European Council

Reasoned Opinion: 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)

The Maltese Parliament has examined the abovementioned proposal (COM(2013)627), and has concluded that it does not satisfy the principle of subsidiarity.

Accordingly, pursuant to Protocol No 2 to the Lisbon Treaty, please find attached to this letter a reasoned opinion, dated today, from the Maltese Parliament.

Yours faithfully,

Anġlu Farrugia
Speaker

REASONED OPINION: 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)

1 Reasons

Article 6 of Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty of Lisbon states that any national Parliament may, within eight weeks from the date of transmission of a draft legislative act, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

2 Reasoned Opinion

The EU's power to act

The Maltese Parliament considers that the proposal fails to comply with the principle of subsidiarity because the Commission has failed to provide clear evidence that there is a need for legislative action on the part of the European Union that cannot be met by action at national level.

The Maltese Parliament shares the Commission's vision that the Union needs a strong, dynamic and competitive internal market for electronic communications. It also agrees that the European regulatory framework needs to promote competition, investment and innovation, as this will lead to greater benefits for both consumers and the economy. It also recognises that there may be room for greater coordination between the countries and their respective regulators for the good of the internal¹ market and in the interests of more effective implementation of the regulatory framework.

However, the Parliament is not convinced that this proposal has identified, and will effectively and efficiently address, specific problems that continue to create barriers to the achievement of those goals. The Maltese Parliament also has reservations concerning the manner in which the proposal actually protects the principle of subsidiarity, since a considerable number of the measures being proposed severely curtail the ability of the State and the Maltese regulator to address the special needs of the Maltese market. For various reasons, such as the size of the country, its geographical legislation and the level of competition based on infrastructure, the Maltese market is different from markets in other Member States, and thus may require different measures.

All legislative amendments must be the result of an in-depth analysis of the potential, weaknesses, opportunities and threats to the European single market and the national markets. Accordingly, the need for action from the Union must be supported by clear evidence that only measures at European level can address the problems identified. The Maltese Parliament considers that the explanations of the proposed amendments provided by the European Commission in the impact assessment published with the Proposal are not based on objective evidence that supports the need for intervention at this level. The Commission depicts the European telecommunications market as being in a very poor state and maintains that that state is the result of a fragmented regulatory framework. Moreover, the Commission gives the impression that market regulation is the solution to the problems facing the sector and does not consider other factors beyond the regulatory framework that could potentially be affecting the growth of this market. The Commission also fails to provide clear evidence of how the differences existing in the implementation of the current regulatory framework are weakening the foundations of a more complete internal market. This negative perception has led to the Commission proposing measures that the Maltese Parliament considers, in the main, disproportionate and not compliant with the principle of subsidiarity.

Measures in the proposal

In this proposal, the Maltese Parliament notes that the Commission is proposing that the Member States cede their sovereignty over a number of issues, including:

¹ Translator's note: although the proposal in question concerns the single market (*suq uniku*) the source text refers to the internal market (*suq intern*) throughout. – Zeta Field, DGT EN.3

- the spectrum, where the power of the Member States to determine the conditions (including the tariffs) of the licences they issue will be reduced because those conditions will be subject to the approval of the Commission;
- the power of the national regulator to stop operators found to be in serious and repeated breach of the law from continuing to operate, since for “European Providers” this can only be done by the national regulator of the country where the provider is established; and
- remedies imposed on “European Providers”, where the Commission proposes that it be granted the power to use its veto to stop national measures aimed at regulation of the markets where “European Providers” operate.

The Commission is also proposing that it be granted sweeping powers in terms of implementing acts and delegated acts. The Maltese Parliament is not convinced that these measures are necessary to enhance competitiveness and innovation on the market for electronic communications services, and even less so competitiveness and innovation on the internal market from the digital economy standpoint as the Commission states. The Maltese Parliament feels that this proposal reduces Malta's powers to take the necessary action at local level in situations where this is needed. This runs counter to the principle of proportionality and subsidiarity.

This proposal also weakens the development of a predictable regulatory environment, particularly in the event of a further amendment to the Roaming Regulation. It also appears that this proposal supports the consolidation of operators who are stronger and present in a number of Member States, without considering the impact on smaller operators who often make a very significant contribution to the development of the local market and economy and thus to the internal market.

Moreover, because the Commission has chosen a Regulation as the legal instrument, it is setting the highest possible level of rights and conditions that a Member State may impose. This applies to the text as a whole but in particular to provisions concerning consumer aspects. This is not acceptable because the proposal will limit the rights of consumers in Malta while leading to a situation where the Parliament will be unable to adopt amendments to the laws regulating the electronic communications market to strengthen the rights of users of such services in Malta as it did in the past.

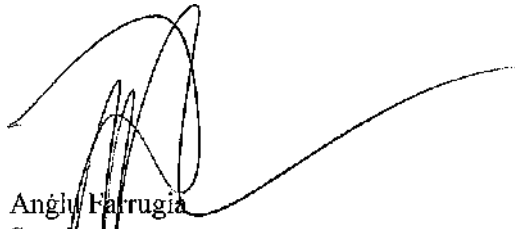
The Maltese Parliament takes the view that most of the objectives it is hoped that this Regulation will achieve can be attained through amendments to the existing Directive. This should lead to less administrative complexity, bureaucracy and expense associated with the regulation of the market, while not preventing Member States from introducing the regulatory regime in their countries to address the characteristics of the local market as required.

Lastly, the Maltese Parliament feels that a proposal to amend European law at this level must be subject to public consultation before being published by the Commission. Accordingly, the Maltese Parliament advises caution with regard to the urgency of adopting this measure, since this proposal addresses important and sensitive questions that require meticulous analysis and discussion.

Conclusion

The Maltese Parliament concludes that the Commission has failed to provide clear evidence of the need for legislative action of this type on the part of the European Union and of what will be achieved by this legislation as it is proposed. The Commission is proposing measures that may have a negative effect on the power of the Member States to act as most appropriate where there is a need for regulatory action at the national level. This is because the framework being proposed is too restrictive for the different circumstances that may prevail in a country.

Accordingly, the Maltese Parliament has decided to object to the proposal and submit this reasoned opinion in accordance with the procedure defined in Article 6 of Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty on the Functioning of the European Union.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Angelo Farrugia
Speaker
House of Representatives of Malta