

Translation of letter

From: Francisco Javier Rojo García, President of the Spanish Senate

To: President Barroso

Dated: 16 June 2011

Ref.: Ares(2011)686833 - 27.6.2011

I hereby inform you that, at its meeting of 14 June 2011, the Joint Committee on the European Union approved an opinion explaining why it considers that the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity [COM (2011) 169 final] [2011/0092 (CNS)] {SEC(2011) 409 final} {SEC(2011) 410 final}(file No 282/98) does not comply with the principle of subsidiarity.

Consequently, pursuant to Article 5 of Law 8/1994 of 19 May 1994 governing the Joint Committee on the European Union, I enclose the aforementioned reasoned opinion in accordance with Articles 6 and 7 of the Protocol on the application of the principles of subsidiarity and proportionality.

Translation of letter

From: José Bono Martínez, President of the Lower House of the Spanish Parliament

To: President Barroso

Dated: 15 June 2011

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Consequently, pursuant to Article 5 of Law 8/1994 of 19 May 1994 governing the Joint Committee on the European Union, I enclose the aforementioned reasoned opinion in accordance with Articles 6 and 7 of the Protocol on the application of the principles of subsidiarity and proportionality.

OPINION 1/2011 OF THE JOINT COMMITTEE ON THE EUROPEAN UNION CONCERNING THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY TO THE PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 2003/96/EC RESTRUCTURING THE COMMUNITY FRAMEWORK FOR THE TAXATION OF ENERGY PRODUCTS AND ELECTRICITY [COM (2011) 169 FINAL] [2011/0092 (CNS)] {SEC(2011) 409 FINAL} {SEC(2011) 410 FINAL}

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty of Lisbon of 2007, which has been in force since 1 December 2009, established a procedure whereby national parliaments can check whether draft European legislative acts comply with the principle of subsidiarity. The Protocol was transposed in Spain by Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. In particular, the new Articles 3(j), 5 and 6 of Law 8/1994 constitute the legal basis for this opinion.

B. The proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity was approved by the European Commission and sent to national parliaments, which have a period of eight weeks to check its compliance with the principle of subsidiarity. This period expires on 14 June 2011.

C. On 10 May 2011, the members and spokespersons of the Joint Committee on the European Union agreed to examine the European legislative act in question and appointed Eva Parera Escrichs as rapporteur. The Committee also asked the Government for the report under Article 3(j) of Law 8/1994.

D. A report drawn up by the Ministry of Economic Affairs and Finance and forwarded by the State Secretary for Constitutional and Parliamentary Affairs was received, as well as letters from the parliaments of the Basque country and the Canary Islands. The letters from the autonomous parliaments do not cast doubt on the proposal's compliance with the principle of subsidiarity. The report by the Ministry of Economic Affairs and Finance criticises the lack of an appropriate impact assessment.

E. At its meeting on 14 June 2011, the Joint Committee on the European Union adopted the following

OPINION

1.- Article 5 of the Treaty on European Union states that 'the use of Union competences is governed by the principles of subsidiarity and proportionality.'

Paragraph 3 of Article 5 stipulates ‘Under the principle of subsidiarity... the Union shall act only if and 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.’ The Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty of Lisbon of 2007 explains the purpose, procedure and effects of the subsidiarity check that national parliaments in Member States should now carry out (Articles 5(3) and 12(b) of the Treaty on European Union).

2.- The legal basis for the proposal in question is Article 113 of the Treaty on the Functioning of the European Union, which states ‘The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.’

3.- Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (the ‘ETD’) governs several key aspects of energy taxation at EU level. However, since 2003 the underlying policy framework has changed radically as concrete and ambitious policy objectives have been defined for the period until 2020 in the areas of energy and climate change. The current proposal seeks to bring about the necessary adaptations to some of the basic provisions of the 2003 ETD, ensuring a higher degree of consistency in the way energy taxes contribute to the objectives of less and cleaner energy consumption in the EU.

In the opinion of the Council, the current wording of the ETD creates certain problems, which could be resolved by approving the proposal in question. Specifically, the proposal seeks to: 1) ensure consistent treatment of energy sources within the ETD in order to provide a genuine level playing field between energy consumers irrespective of the energy source used; 2) provide an adapted framework for the taxation of renewable energies; and 3) provide a framework for the use of CO₂ taxation to complement the carbon price signal established by the EU Emission Trading Scheme (ETS) while avoiding overlaps between the two instruments.

4.- The proposal falls within an area of shared competence between the European Union and the Member States. Therefore, the principle of subsidiarity applies. However, the proposal does not include the ‘detailed statement’ on subsidiarity referred to in Article 5 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality. For this reason, it has not been

possible to obtain detailed information as to why the EU legislative authority considers that the proposal respects the principle of subsidiarity, i.e. the reasons for concluding that the proposal's objectives can be better achieved at Union level rather than individually by the Member States. Nor are there any qualitative or quantitative indicators or any indication of the potential administrative or financial burdens resulting from the proposal.

The proposal merely says that 'The ETD revision and its timing need to be seen in the broader context of the EU energy and climate change agenda', since 'the EU is currently setting the framework of legislation which should enable the ambitious 2020 targets to be reached.' On the basis of these arguments, the proposal concludes that 'The objective of bringing the ETD more closely in line with the objectives and goals can only be implemented by means of an act adopted by the Union, amending the ETD.'

The Ministry of Economic Affairs and Finance, for its part, has issued a report on the proposal for a directive, which we are analysing, in which it states:

'The measures to ensure equal national taxation rates on certain product families will limit the scope for promoting the use of certain products. The impact assessment accompanying the proposal explains why differences between the national gas and diesel taxation rates are causing certain problems. However, the assessment is not extended to the other motor fuel products or to other product families. Without such an assessment, it is not possible to judge whether the obligation concerning national taxation rates is justified from the point of view of subsidiarity.'

The lack of justification makes it difficult for the Joint Committee on the European Union to establish whether or not this proposal for Union action complies with the principle of subsidiarity.

The Committee believes that the European Commission should explain why the exercise of shared competence by the Union is justified in this case. As no such explanation is provided, the Joint Committee cannot give a positive opinion on the compliance of the act with the principle of subsidiarity.

CONCLUSION

For the above reasons, the Joint Committee on the European Union considers that, with regard to its proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, the European Commission has not complied with the provisions of Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality, which requires draft legislative acts to contain a detailed statement making it

possible to appraise compliance with the principles of subsidiarity and proportionality.

Since such a document is essential for assessing compliance with the principles of subsidiarity and proportionality, the fact that it is lacking means that the Joint Committee does not have grounds for considering that the European Commission has respected the principles of subsidiarity and proportionality in its proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity.