



20.1.2017

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Swedish Parliament on the proposal for a European Parliament and Council directive on the establishment of a European Electronic Communications Code
(COM(2016)0590 – C8-0379/2016 – 2016/0288(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Swedish Parliament has sent the attached reasoned opinion on the aforementioned proposal for a directive.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

The Swedish Parliament (Riksdag)

Official Communication from the Riksdag 2016/17:130

The President of the European Parliament

The President of the Council of the European Union

The President of the European Commission

I hereby submit the Riksdag's reasoned opinion as shown in Annex 2 to the attached report and would inform you that the Riksdag has today approved the proposal of the Committee on Transport for a Riksdag decision in Report 2016/17:TU8, Assessment in the light of the principle of subsidiarity of the Commission proposal on the establishment of a European Electronic Communications Code

Stockholm, 16 December 2016

Reasoned opinion of the Swedish Parliament (Riksdag)

The Riksdag has examined the application of the principle of subsidiarity in the Commission's proposal for a regulation of the European Parliament and of the Council establishing the European Electronic Communications Code (COM(2016) 590).

The digital sector has developed considerably during the last few years, and the Riksdag therefore welcomes the Commission's review of the existing regulatory framework for electronic communication. A modernised and more uniform regulatory framework is necessary in this area to promote a smoothly functioning internal market, for the benefit of both consumers and companies. In the Riksdag's view, connectivity is an important driving force behind the digital society and the digital economy; the Riksdag is therefore positive about the high level of ambition that permeates the proposal and is reflected in the objective of ubiquitous and unconstrained connectivity.

As regards the principle of subsidiarity, the Riksdag considers that the proposal can be regarded as compliant with the principle at a general level. Like the government, the Riksdag is of the opinion that there is added value in the fact that matters such as access regulation, connectivity for all and protection of end users should continue to be coordinated at EU level. However, the Riksdag considers that certain parts of the proposal regarding harmonisation of spectrum-related matters conflict with the principle of subsidiarity.

In its subsidiarity justification, the Commission notes that radio spectrum is a scarce resource that belongs to the Member States and that national specificities and needs must be respected as regards management and assignment. Nevertheless, the Commission points to a need for a more convergent and consistent legislation in order to remove obstacles occurring as a result of improper differences in conditions for the assignment of individual user rights. The Riksdag shares the Commission's point of departure that the regulatory framework should continue to enable flexibility so that relevant national aspects can be taken into consideration, while at the same time there is scope for further coordination and cooperation. Like the government, the Riksdag considers it desirable to develop tools that will facilitate dissemination of experiences between Member States while at the same time making it more difficult for decisions to be taken that might go against the established common principles for the management of radio spectrum. The Riksdag, however, opposes a further transfer of formal competence to the EU level.

The Riksdag therefore has misgivings about some parts of the proposal that the Commission has prepared, more specifically in Articles 35, 49, 53 and 54. In short, these proposals would mean the introduction of a process of peer review in which national regulatory authorities are required to make available draft measures concerning spectrum management, for example selection procedures, competition and allocation times. BEREC will then issue a reasoned opinion stating whether the draft should be amended or withdrawn; the Commission and national regulatory authorities in other Member States will also be given the opportunity to express their opinion on the proposed measure. The proposals further indicate that the rights of use for harmonised radio spectrum shall be valid for a duration of at least 25 years, and that the Commission is to be given powers, by means of implementation provisions, to set common time limits for spectrum allocations, as well as criteria for limiting the number of rights of use to be granted for the use of radio spectrum. The Riksdag is aware of the fact that the process for peer review does not mean any veto per se, that there are exceptions to

allocation times and that the implementation provisions should be approved in accordance with prescribed scrutiny procedure and taking into consideration the comments from the Radio Spectrum Policy Group. Nevertheless, the Riksdag is concerned about the power shift that the proposals would entail when compared with the situation today when the Swedish Post and Telecom Authority has more flexibility in this area. In the opinion of the Riksdag it is important that the regulatory framework also continues to give the regulatory authorities the opportunity to meet national needs and take into consideration factors that lie outside the EU's competence and concern for example public order, security and defence. In this way, the benefit to society of radio spectrum will be maximised over time, and it will be ensured that the management of radio spectrum will take into account the needs of society as a whole, both today and in the future. The Riksdag considers that the Commission, in the abovementioned parts of the proposal, does not sufficiently take into account the need for national regulatory authorities to be given scope for action in order to be able to achieve important political objectives in the best way possible. The Riksdag therefore considers that they are not compatible with the principle of subsidiarity.

In summary, the Riksdag's assessment is that the proposal, in some of the parts applying to harmonisation of spectrum-related matters, conflicts with the principle of subsidiarity.