



16.12.2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion by the Riksdag of the Kingdom of Sweden on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities
(COM(2016)0589 – C8-0378/2016 – 2016/0287(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 regulation.

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

**Opinion of the Committee on Transport
2016/17:TU7**

**Examination, in the light of the subsidiarity principle, of
the Commission proposal on the promotion of
Internet connectivity in local communities**

Summary

In this opinion, the committee examines the European Commission's proposal for a regulation amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities (COM(2016) 589).

As there are aspects of the proposal which are unclear, due to the absence of a long-term impact assessment of, for example, the proposal's impact on competition and future financing needs, and it therefore raises concerns about the Commission's reasoning, the committee considers it incompatible with the principles of subsidiarity and proportionality.

The committee therefore proposes that the Riksdag decide to deliver a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission in accordance with Rule 10(3) of the Riksdag's Rules of Procedure.

Proposal considered

Commission proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities (COM(2016)589).

Presentation of the subject

The subject and its consideration

The Riksdag has been given the opportunity to deliver a reasoned opinion on the Commission proposal for a Regulation amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities (COM(2016)589). The Chamber referred the Commission proposal to the Committee on Transport on 6 October 2016. The deadline for the delivery of a reasoned opinion is 30 November 2016.

On 19 October 2016, the Ministry of Enterprise, Energy and Communications submitted an explanatory memorandum (2016/17:FPM15) presenting the government's view of the proposal's compatibility with the subsidiarity principle, and it provided further information about the subject at the committee's meeting of 10 November. The Ministry of Enterprise, Energy and Communications submitted a further memorandum on 11 November, providing supplementary information about the subsidiarity and proportionality aspects of the proposal.

Background

In the light of the ongoing paradigm shift within the digital sector, the Commission proposed in the communication 'A Digital Single Market Strategy for Europe' (COM(2015) 192) a thorough overhaul of the legislation on electronic communications during 2016. The overview resulted in a proposal for a European Electronic Communications Code (COM(2016) 590), which establishes a new objective of ubiquitous and unconstrained connectivity. The proposal stipulates that all EU citizens have a right to a functioning Internet connection, at least at a fixed location, at an affordable price. The proposal is accompanied by the communication 'Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society' (COM(2016) 587), in which the Commission identifies three strategic connectivity objectives to be attained in 2025 at the latest. One of the objectives is that all main socio-economic drivers, providers of public services and digitally intensive enterprises should have access to an Internet connection with a gigabit capacity. In the communication, the Commission refers to the ongoing digital transformation and states that the full economic and social benefits of this transformation can only be achieved if Europe can ensure widespread deployment and take-up of very high capacity networks in both rural and urban areas.

The proposal on the promotion of Internet connectivity in local communities which is under consideration in this opinion should be regarded as a complement to the proposal on a European Electronic Communications Code and is one among many measures intended to achieve the stated connectivity objective. The proposal seeks to amend the legal framework for telecommunications in the Connecting Europe Facility (CEF) by means of amendments to Regulation (EU) No 1316/2013 and Regulation (EU) No 283/2014 in order to promote Internet connectivity in local communities.

As things currently stand, the legal framework for telecommunications in the CEF only permits limited measures to support broadband networks. Together with the European Investment Bank, the CEF funds a small contribution to the establishment of financing instruments at EU level. However, the CEF Regulation and the Regulation on guidelines do not cover support for the installation of local wireless access points for public bodies. The Commission observes that, as public services become increasingly Internet-based, public administrations require gigabit connectivity in order to be able to provide seamless services to the public and to businesses. Gigabit connectivity is also important for transport hubs, as

innovative applications facilitate intermodal transport. Furthermore, wireless access to the Internet at various access points such as libraries, hospitals and schools could promote knowledge of, and demand for, gigabit connections.

The main substance of the proposal for a regulation

The proposal provides for changes to the legal framework for telecommunications in the CEF to facilitate financial support for the installation of local wireless access points in locations vital to society. Examples of such places, in the Commission's view, are primary and secondary schools, railway stations, ports and airports, local government buildings, universities, research centres, doctors' practices, hospitals and stadiums. More specifically, the proposal provides for a funding mechanism under which bodies with a public-service remit would be given financial support to provide free wireless Internet (WiFi). Funding would be limited to situations where there are no access points to very high-speed broadband. To ensure that even communities with limited resources are integrated into the digital market, the eligible costs amount to 100% of the total costs. Since the aid for each measure is less than EUR 60 000 (i.e. the threshold for low-value grants under the Financial Regulation), the proposal is not expected to adversely affect competition. The Commission also believes that the limited coverage of each access point will act as a guarantee that competition will not be distorted. The regulation is intended to apply for a limited period, between 2017 and 2020. Altogether, EUR 70 million would be reallocated within the amounts programmed in the CEF for the telecommunications sector for 2017-2019, and a further EUR 50 million would be transferred to the financial allocation for the telecommunications sector.

The purpose of the proposal is to promote internet connectivity in local communities and to integrate them into the digital market more effectively. The Commission hopes that the proposal will create connectivity in thousands of locations, and ultimately help to make it possible for public agencies to offer a wider range of services, applications and products to their users. In addition to supplementing the public services offered, the proposal is expected to give users a first insight into the gigabit society and improve their IT skills. The Commission also believes that the proposal will lead to increased demand for broadband connectivity.

The committee's consideration of the proposal

The basis for the assessment in the light of the subsidiarity principle

The principle of subsidiarity is set out in Article 5 of the Treaty on European Union. Under that Article, in areas which do not fall within its exclusive competence, the Union is to act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. Under the Protocol to the Lisbon Treaty on the application of the principles of subsidiarity and proportionality, the European Commission, the European Parliament and the Council and are required to send their draft legislative acts to national parliaments so that they can consider whether a proposal complies with the principle of subsidiarity. Under Rule 10(3) of the Riksdag's Rules of Procedure, the Riksdag is required to consider whether the legislative act infringes that principle.

If the national parliament considers that the draft in question does not comply with the principle, it may deliver a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission. Such an opinion must be delivered within eight weeks of the date on which the proposal becomes available in all official languages of the EU.

Application of the subsidiarity principle

The Commission's assessment

The Commission considers that the proposal complies with the principles of subsidiarity and proportionality and confines itself to the field of trans-European telecommunications networks, as defined in Article 170 of the Treaty on the Functioning of the Union.

In the Commission's opinion, the proposal will contribute to the establishment of an internal market for electronic communication in which everyone – including local communities – will be included. The Commission points out that Member States themselves cannot sufficiently establish an area that includes the entire EU with access to high-quality wireless connectivity. That is because there is no overall strategy to promote access to free wireless connectivity, to the detriment of local communities' needs. Those projects which do exist are fragmented and inefficient. The Commission considers that the proposal will optimise costs and promote economic, social and territorial cohesion within the EU. European added value is also increased by the fact that the expanded infrastructure will facilitate access to trans-European interoperable services.

The Commission also stresses that the proposed measure is proportionate. It only provides for support for small-scale projects to establish limited networks in public areas. Because of the limited nature of the support, it is not expected to impair competition. On the other hand, the Commission expects that the proposal will have positive spillover effects and ultimately contribute to increased access to commercial offers.

The government's assessment

The government has doubts about the Commission's assessment of the proposal's compatibility with the principles of subsidiarity and proportionality. The government considers that the question of access to electronic communications is important from a democratic perspective, but considers it problematic that the Commission has not carried out

an impact assessment of the long-term effects and scope of the proposed measure. Instead, the Commission states that, during the public consultation that preceded the review of the regulatory framework for electronic communications, it emerged that there is support from public authorities and individuals for the development of WiFi networks in public places. According to the government, the Commission ought to have investigated in more detail the proposal's impact on future funding needs, as well as competition and the propensity for investment of market operators. The lack of an impact assessment therefore makes it difficult for the government to assess the accuracy of the Commission's assessments of compliance with the subsidiarity and proportionality principles. As the proposal is limited, the government also has doubts as whether it will be able to achieve the desired effect.

The committee's position

The committee considers that the Commission proposal has a positive purpose, namely to promote Internet connectivity in local communities. Like the Commission, the committee believes that access to high-quality connectivity is of great importance, not least for local communities, because it contributes to participation and thus fulfils an important democratic function. Furthermore, the committee considers that digital progress should be welcomed so as to give local authorities and companies the opportunity to develop a greater range of digital services, applications and products for the benefit of their users and customers.

Regarding the proposal's compatibility with the principles of subsidiarity and proportionality, however, the committee finds it difficult to assess the accuracy of the Commission's reasoning. The committee queries the Commission's decision not to perform an impact assessment of the long-term effects and scope of the proposed measure. In the committee's opinion, it is not enough to rely merely on the impact assessment and the public consultation carried out in connection with the preparation of the separate legislative proposal on the establishment of a European Electronic Communications Code and the Communication on a European gigabit society.

As the proposal is intended to apply for a limited period, the committee considers that the Commission should have investigated in more detail the proposal's possible long-term impact on future funding needs. Like the government, the committee also has doubts as to whether the funds to be allocated, and hence the proposal, can fulfil the purpose relating to an internal market for electronic communications to which the Commission refers in its subsidiarity assessment.

The committee also considers that the Commission's assumption that the proposal will not adversely affect competition ought to have been investigated more fully. The proposal makes it possible for bodies with a public-service remit to receive financial report to fund projects in places even where mobile broadband cover already exists which can be accessed by means of subscriptions with market operators. In the Commission's view, the small scale of the projects means that the measure can be regarded as proportional to its purpose. Nonetheless, the committee fears that, if too much use is made of the support, it could potentially distort competition and impair the propensity of market operators to invest. In this context, the committee would also observe that the preconditions for competition and the degree of broadband cover differ among the various Member States. In order for the proposal to be regarded as complying with the proportionality principle, the committee considers that the Commission should make a thorough impact assessment, taking into account the Member States' various market situations.

To sum up, as there are aspects of the proposal which are unclear, due to the absence of a long-term impact assessment, and it therefore raises concerns about the Commission's

reasoning, the committee considers it incompatible with the principles of subsidiarity and proportionality.

ANNEX 1

List of proposals considered

Commission proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities (COM(2016)589).

ANNEX 2

Reasoned opinion of the Swedish Riksdag

The Riksdag considers that the Commission proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities (COM(2016)589) has a positive purpose, namely to promote high-quality wireless connectivity in places vital to society. Like the Commission, the Riksdag believes that access to connectivity is of great importance, not least for local communities, because it contributes to participation and thus fulfils an important democratic function. Furthermore, the Riksdag considers that digital progress should be welcomed so as to give local authorities and companies the opportunity to develop a greater range of digital services, applications and products for the benefit of their users and customers.

Regarding the proposal's compatibility with the principles of subsidiarity and proportionality, however, the Riksdag finds it difficult to assess the accuracy of the Commission's reasoning. The Riksdag queries the Commission's decision not to perform an impact assessment of the long-term effects and scope of the proposed measure. In the Riksdag's opinion, it is not enough to rely merely on the impact assessment and the public consultation carried out in connection with the preparation of the separate legislative proposal on the establishment of a European Electronic Communications Code and the Communication on a European gigabit society. As the proposal is intended to apply for a limited period, the Riksdag considers that the Commission should have investigated in more detail the proposal's possible long-term impact on future funding needs. Like the government, the Riksdag also has doubts as to whether the funds to be allocated, and hence the proposal, can fulfil the purpose relating to an internal market for electronic communications to which the Commission refers in its subsidiarity assessment.

The Riksdag also considers that the Commission's assumption that the proposal will not adversely affect competition ought to have been investigated more fully. The proposal makes it possible for bodies with a public-service remit to receive financial report to fund projects in places even where mobile broadband cover already exists which can be accessed by means of subscriptions with market operators. In the Commission's view, the small scale of the projects means that the measure can be regarded as proportional to its purpose. Nonetheless, the Riksdag fears that, if too much use is made of the support, it could potentially distort competition and impair the propensity of market operators to invest. In this context, the Riksdag would also observe that the preconditions for competition and the degree of broadband cover differ among the various Member States. In order for the proposal to be regarded as complying with the proportionality principle, the Riksdag considers that the Commission should make a thorough impact assessment, taking into account the Member States' various market situations.

To sum up, as there are aspects of the proposal which are unclear, due to the absence of a long-term impact assessment, and it therefore raises concerns about the Commission's

reasoning, the Riksdag considers it incompatible with the principles of subsidiarity and proportionality.