



26.4.2019

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the United Kingdom House of Lords on the proposal for a directive of the European Parliament and of the Council discontinuing seasonal changes of time and repealing Directive 2000/84/EC (COM(2018)0639 – C8-0408/2018 – 2018/0332(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 United Kingdom House of Lords 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 compliance with the subsidiarity principle.

Subsidiarity Assessment: discontinuing seasonal changes of time

Proposal for a Directive of the European Parliament and of the Council discontinuing seasonal changes of time and repealing Directive 2000/84/EC

Recommendation

1. We recommend that the House of Lords should issue the reasoned opinion set out below (in paragraphs 14–26) concluding that the European Commission’s proposal for a Directive ending seasonal changes of time¹ does not comply with the principle of subsidiarity; and should send it to the Presidents of the European Parliament, the Council and the Commission, in accordance with the provisions of the EU Treaties.²

This report

2. This report was prepared by the Internal Market Sub-Committee of the EU Select Committee. Its members are listed in the appendix.

3. Seasonal time changes have been the subject of much domestic and parliamentary debate in recent years, and we do not seek to pass judgement on their desirability. Nor are we concerned in this reasoned opinion with the merits of the present proposal, but with its compliance with the principle of subsidiarity, as defined in the EU Treaties.³

Time arrangements in the EU

4. Summertime arrangements for EU Member States are governed by Directive 2000/84/EC, also known as the ‘9th Summertime Directive’—the latest in a series of Directives, beginning in 1980. The initial purpose of EU intervention was to unify established Member State summertime schedules.⁴

5. The cumulative effect of the succession of EU summertime legislation is that Member States are obliged to begin their summertime arrangements on the last Sunday of March and end them on the last Sunday of October. In the Commission’s view, summertime arrangements must not merely be harmonised, but are compulsory:

“Directive 2000/84/EC (also called Summertime Directive) obliges all Member States to switch from winter- to summer-time and vice-versa, at the precise points in time specified

¹ Proposal for a Directive of the European Parliament and of the Council discontinuing seasonal changes of time and repealing Directive 2000/84/EC, COM(2018) 639

² Under Protocol No 2 annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, national parliaments can challenge EU legislation for any failure to comply with the principle of subsidiarity within eight weeks from the date that the proposed legislation is transmitted to them in the official languages of the Union.

³ Article 5(3), Treaty on European Union, OJ C 326 (consolidated version of 26 October 2012)

⁴ Many Member State summertime arrangements predate the Community, going back to the First and Second World Wars.

therein. The aim is to ensure the proper operation of the internal market, notably (but not exclusively) in the areas of transport and communications. Omission by a Member State of those changes would amount to a breach of the Summertime Directive.”⁵

6. The decision on which standard time (time zone) to observe rests with each Member State individually and is independent of EU summertime arrangements. Member States are currently grouped into three standard times:⁶

- Western European Time or Greenwich Mean Time (GMT)
- Central European Time (GMT+1)
- Eastern European Time (GMT+2)

The European Commission’s Proposal

7. The Commission’s proposal for a Directive would replace the obligation to apply seasonal changes of time with an obligation to discontinue this practice. Member States would retain the discretion to decide which standard time to observe—albeit ‘permanent winter-time’ or ‘permanent summer-time’.

8. Member States would be required to transpose the Directive by 1 April 2019 (Article 4). Member States opting to retain ‘permanent summer-time’ would observe a final seasonal clock change on 31 March 2019. Member States choosing to apply ‘permanent winter-time’ would be permitted to make their final change on 27 October 2019 (Article 1).

9. Should a Member State decide to change its standard time at a later point for reasons not linked to seasonal arrangements, it would be required to notify the Commission at least six months in advance (Article 2).

Brexit implications

10. Should the UK and EU reach an agreement according to the terms of the draft Withdrawal Agreement, the UK would be required to implement the proposed Directive during the transition period.⁷

11. Time is a reserved matter in respect of Scotland and Wales but there is no equivalent reservation or exception for Northern Ireland. The Northern Ireland Act 1998 currently provides that obligations under EU law are an excepted matter,⁸ but under a no-deal scenario this would fall away. If the UK then decided to maintain summertime arrangements, Northern Ireland (assuming the devolved institutions have been re-established) would have to choose

⁵ European Parliament, Parliamentary questions, (3 February 2016):

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-015476&language=EN> [accessed 28 September 2016]

⁶ The UK, Ireland and Portugal observe GMT as standard time. 17 Member States apply GMT+1: Austria, Belgium, Croatia, Czech Republic, Denmark, France, Germany, Hungary, Italy, Luxembourg, Malta, the Netherlands, Poland, Slovak Republic, Slovenia, Spain and Sweden. Eight Member States observe GMT+2: Bulgaria, Cyprus, Estonia, Finland, Greece, Latvia, Lithuania and Romania.

⁷ Under Article 122 of the draft Withdrawal Agreement (19 March 2018), Union law shall be applicable to and in the United Kingdom during the transition period. In the Government’s view, the proposed Directive would also apply to Gibraltar under the terms of the draft Withdrawal Agreement.

⁸ Northern Ireland Act 1998, Schedule 2, section 6 and section 24

between having a one-hour time difference for half the year either with the Republic of Ireland or with the rest of the UK.

The Government's Explanatory Memorandum

12. The Government submitted an Explanatory Memorandum (EM) for the proposal on 11 October 2018.⁹ In its EM, the Government recognised that uncoordinated time changes in the EU “could be detrimental to the internal market”. However, its subsidiarity assessment argued: “The existing Directive 2000/84/EC already ensures harmonisation of time across the Union and the Commission does not demonstrate how the proposal would enhance this”. The Government therefore concluded that the proposal could not be justified on the grounds of harmonisation alone and that “strong evidence” was not provided for other benefits to the Union, Member States or citizens.

13. The EM also highlighted that the proposal would require public consultation and an assessment of how a permanent switch to summer-time or winter-time would affect all sectors of the UK's economy. We note that if the Directive were to take effect from 1 April 2019, there would be little time for such a large exercise.

Reasoned opinion

14. While the UK is still a member of the EU, the House of Lords remains committed to fulfilling its duty to scrutinise EU documents. In doing so, we have examined the European Commission's proposal for a Directive discontinuing seasonal changes of time for compliance with the principle of subsidiarity. The principle of subsidiarity provides that, in policy areas which do not fall within the exclusive competence of the European Union, but where competence is shared with the Member States, the Union can act “only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States”.¹⁰ Therefore, to comply with the principle of subsidiarity, EU action must ‘add value’ as compared to action at Member State level. The subsidiarity principle relates closely to the principle of proportionality, which requires that EU action does not exceed what is ‘necessary’.¹¹

The proposal's subsidiarity statement

15. Protocol No 2 on the application of the principles of subsidiarity (Protocol No 2), states that draft legislation “should contain a detailed statement making it possible to appraise compliance with the principle of subsidiarity”.¹²

16. The proposal's subsidiarity statement is limited, and “increased questioning” of the current summertime arrangements is cited as a reason for action in this area. We do not accept that there is substantial evidence of this. The 4.6 million respondents to the Commission's

⁹ Department for Business, Energy and Industrial Strategy, Proposal for a Directive of the European Parliament and of the Council discontinuing seasonal changes of time and repealing Directive 2000/84/EC (11 October 2018): <http://europeanmemoranda.cabinetoffice.gov.uk/memorandum/proposal-for-directive-of-the-european-parliament-of-the-council-discontinuing-seasonal-changes-of-time> [accessed on 15 October 2018]

¹⁰ Article 5(3), Treaty on European Union

¹¹ Article 5(4), Treaty on European Union

¹² Article 5, Protocol (No 2) annexed to the TEU and TFEU

consultation exercise represented less than 1% of all EU citizens, and response rates varied drastically between Member States. This is evident in the fact that 84.6% of replies came from only three Member States, including 70% from Germany.¹³ We note that the consultation does not appear to have received responses from Member State governments.

17. The subsidiarity statement also refers to evidence of the importance of Union rules for the harmonisation of time arrangements—various studies and reports on the application of summer-time are cited elsewhere in the text. For example, Commission reports in 2007 and 2014, a February 2016 report by the German Bundestag and an October 2017 report by the European Parliamentary Research Service.¹⁴ None of the cited reports recommend abandoning the current summertime arrangements.

18. We conclude that the subsidiarity statement given in the proposal falls short of the requirements set out under Protocol No 2.

Regional and local dimensions

19. The third recital of the Commission’s proposal states that evidence is inconclusive as to whether the benefits of biannual clock changes outweigh the inconveniences. The corollary to this argument is that it is also inconclusive that the inconveniences linked to biannual changes outweigh the benefits. Indeed, these considerations vary considerably between Member States, thanks to the interplay between longitude, latitude and time zone in determining daylight hours.

20. For these reasons, seasonal clock changes may be an inconvenience for some Member States, but for others play a role in counterbalancing the variation in sunlight hours between regions. The geographical position of the UK, for instance, means that the benefits and drawbacks of ‘permanent summer-time’ or ‘permanent winter-time’ differ significantly between its northern and southern regions. The potential implications for the UK are exacerbated by the devolution settlement with Northern Ireland, under which time is a devolved matter.

21. We thus do not believe that the Commission’s consultation has met its obligation under Protocol No 2 to “take into account the regional and local dimension of the action envisaged”.¹⁵ Moreover, we consider that Member States are best-placed to determine the

¹³ Commission Staff Working Document, public consultation on EU summertime arrangements, report of results, COM(2018) 639. The United Kingdom response rate was the lowest among the 28 Member States.

¹⁴ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee under Article 5 of Directive 2000/84/EC on summer-time arrangements, COM(2007) 739 ICF International, The application of summertime in Europe: a report to the European Commission Directorate-General for Mobility and Transport (DG MOVE), (September 2014): <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/studies/doc/2014-09-19-the-application-of-summertime-in-europe.pdf> [accessed 28 September 2018] Büro für Technikfolgen-Abschätzung beim Deutschen Bundestag, Bilanz der Sommerzeit, (February 2016): <https://www.tab-beim-bundestag.de/de/pdf/publikationen/berichte/TAB-Arbeitsbericht-ab165.pdf> [accessed 28 September 2018] European Parliamentary Research Service, EU summer-time arrangements under Directive 2000/84/ EC, Ex-post impact assessment, (October 2017): [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/611006/EPRS_STU\(2017\)611006_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/611006/EPRS_STU(2017)611006_EN.pdf) [accessed 28 September 2018]

¹⁵ Article 2, Protocol (No 2) annexed to the TEU and TFEU

necessity of seasonal time changes within their own territories.

The internal market objective

22. The first recital of the proposal points to the importance of harmonised summertime arrangements for the functioning of the internal market. We recognise the benefits of harmonising the dates of seasonal clock changes, but this is not in itself an argument for EU intervention to remove the ability for Member States to observe such arrangements.

23. The proposal presents a binary choice between the obligation to observe seasonal clock changes or an obligation not to. This limitation of choices is premised on the need for harmonisation. In our view, the Commission has not adequately explored (or consulted on) an additional option: the possibility of allowing Member States to choose whether or not to observe seasonal clock changes but requiring coordinated arrangements for those that do. The Commission does not present any evidence that such an approach would represent a greater threat to internal market harmonisation than its proposal, which allows Member States to choose which standard time to apply.

24. We conclude that the principles of subsidiarity and proportionality as well as the scope of competence conferred upon the EU by Article 114 TFEU warrant the investigation of this alternative approach.

Conclusion

25. We recognise that the harmonisation of Member States' seasonal time changes is beneficial to the proper functioning of the EU internal market. However, we do not believe that the Commission has adequately explained or justified the need for EU intervention to replace the obligation to apply seasonal changes of time with an obligation to discontinue this practice, nor has it explored possible alternatives.

26. We consider that geographical and other specificities leave Member States best-placed to determine whether seasonal time changes remain appropriate within their jurisdiction. The House of Lords therefore concludes that the Commission's proposed Directive ending seasonal changes of time does not comply with the principle of subsidiarity.