

REASONED OPINION

of the European Affairs Committee of the Federal Council

of 6 November 2013

pursuant to Article 23g (1) of the Austrian Constitution in conjunction with Article 6 of Protocol No.2 on the application of the principles of subsidiarity and proportionality

COM (2013) 627 final

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

A. Reasoned Opinion

The project under consideration is incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

On 11 September 2013, the Commission published its 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. First presentations have already been made in the Council Working Group, but information on the schedule planned by the Presidency is still outstanding. The objective of the proposal is to create a single market for electronic communications in which citizens can access electronic communication services without additional costs or cross-border restrictions and in which companies can and should provide their services wherever they are established in the EU. In the past, public consultations used to be conducted among a broad range of groups concerned to identify concrete needs for regulation (including reasonable instruments of regulation) in the individual areas of interest prior to the submission of proposals for amendments to the European legal framework for telecommunication and electronic communication services. This has not been the case with the proposal now on the table. The proposal contains numerous details and definitions which – for whatever reason – are worded ambiguously and therefore need to be clarified as quickly as possible. The most substantial

concerns arise from the consumer's point of view, as the Members of the Federal Council are not convinced that the intention to reduce the costs of communication for the individual consumer will actually be fulfilled. On the contrary, these concerns were corroborated during the first round of discussions on this proposal. Given the fact that the services will have to be offered at the same price on a cross-border basis, the probability of an increase in national communication costs rises significantly. There is a considerable risk of the costs being passed on to the consumers, a development which we strongly object to. Moreover, the numerous EU rules for electronic communication proposed in the draft regulation are likely to result in disadvantages not only for users, but also for the companies operating in this sector, which the Union expects to continuously invest substantial amounts in high-quality infrastructure, while proposals like the one submitted will impose a heavy regulatory burden on market operators and, thus, considerably restrict their economic freedom of action.

The idea of a European regulatory regime is to be welcomed. However, we doubt whether the proposal in its current wording will indeed ensure net neutrality. After a first analysis, we tend to think that the text is going too far and that possibilities of intervention are unreasonably left to the contractual discretion of operators and content providers.

Another issue relates to the allocation of frequencies, an area in which the proposed stronger rights of intervention of the European Commission would weaken the position of the Member States. Apart from the fact that a shift of competence from the Member States to the European Commission is to be rejected, the related effort of coordination and the resulting increase in bureaucracy need to be taken into consideration. Looking at the proposal as whole, we regret to note that the regulatory objective of intensifying competition among providers for the benefit of the users appears to be no longer a matter of priority. The Federal Council therefore rejects the Commission's proposal for a regulation, as it violates the principles of proportionality and subsidiarity.