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European Union

Brussels, 20 December 2017  
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| From:            | Irish Houses of Oireachtas   |
| date of receipt: | 19 December 2017   |
| To:              | General Secretariat of the Council   |
| Subject:         | Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services<br><b>[doc. 14184/17 - COM(2017) 647 final]</b><br>– Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality |

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Delegations will find, attached, a copy of the above-mentioned opinion, together with the letter from the Ceann Comhairle (Speaker) of Dáil Éireann, the resolution agreed by Dáil Éireann and the letter and enclosed resolution from the Cathaoirleach (President) of Seanad Éireann.

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Ceann Comhairle



Speaker of Dáil Éireann

Mr. Donald Tusk  
President of the Council of the European Union  
Council of the European Union  
Rue de la Loi 175  
1048 Brussels, Belgium

14 December 2017

**Re: Reasoned opinion of Dáil Éireann on Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services - COM (2017) 647**

Dear President Tusk,

I am writing to inform you that Dáil Éireann, at its meeting today, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services – COM(2017)647*, and is of the opinion that the proposal does not comply with the principle of subsidiarity.

Under Standing Orders of Dáil Éireann, a Joint Committee was conferred with the power to consider the above Proposal for compliance with subsidiarity. The Committee was obliged under Standing Orders to report back to Dáil Éireann if it was of the opinion that the proposal did not comply with the principle of subsidiarity. The Committee duly reported to the Dáil and a motion on the Report of the Committee was considered and adopted by the Dáil at its meeting today.

In accordance with Standing Orders, I have enclosed a copy of the Resolution of Dáil Éireann and a copy of the Report of the Committee with the Reasoned Opinion. I have also sent this letter to the Presidents of the European Commission, the Parliament and the Irish Minister for Transport, Tourism and Sport.

Yours sincerely,

Seán Ó Fearghaíl, TD  
Ceann Comhairle, Dáil Éireann

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## DÁIL ÉIREANN

TUARASCÁIL CHOMHAONTAITHE A THABHAIRT DÁ HAIRE ÓN gCOMHCHOISTE UM IOMPAR, TURASÓIREACHT AGUS SPÓRT FAOI BHUAN-ORDÚ 114 AR AN TOGRA LE HAGHAIDH RIALACHÁN Ó PHARLAIMINT NA hEORPA AGUS ÓN gCOMHAIRLE LENA LEASAÍTEAR RIALACHÁN (CE) UIMH. 1073/2009 MAIDIR LE COMHRIALACHA LE HAGHAIDH ROCHTAIN AR AN MARGADH IDIRNÁISIÚNTA DO SHEIRBHÍSÍ CÓISTE AGUS BUS - COM (2017) 647.

Rith Dáil Éireann an Rún seo istigh ag an gCruinniú de Dháil Éireann a bhí ann an 14ú lá seo de Nollaig, 2017.

REPORT OF THE JOINT COMMITTEE ON TRANSPORT, TOURISM AND SPORT UNDER STANDING ORDER 114 ON THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) No 1073/2009 ON COMMON RULES FOR ACCESS TO THE INTERNATIONAL MARKET FOR COACH AND BUS SERVICES - COM (2017) 647.

The within Resolution was passed by Dáil Éireann at its Meeting on this 14th day of December, 2017.

Cathaoirleach Dháil Éireann

Le cur go dtí:  
For transmission to:

*President of the Council of the European Union*

Go ndéanann Dáil Éireann:

- (1) an Tuarascáil chomhaontaithe a thabhairt dá haire ón gComhchoiste um Iompar, Turasóireacht agus Spórt faoi Bhuan-Ordú 114 ar an Togra le haghaidh Rialachán ó Pharlaimint na hEorpa agus ón gComhairle lena leasaítear Rialachán (CE) Uimh. 1073/2009 maidir le comhrialacha le haghaidh rochtain ar an margadh idirnáisiúnta do sheirbhísí cóiste agus bus - COM (2017) 647, a leagadh faoi bhráid Dháil Éireann an 13 Nollaig 2017, de réir Bhuan-Ordú 114(3) (b);
- (2) ag féachaint don Tuarascáil réamhráite, agus le linn a feidhmeanna faoi alt 7(3) d'Acht an Aontais Eorpaigh, 2009 a fheidmiú, an tuairim a shealbhú nach ndéanann an Togra le haghaidh Rialachán ó Pharlaimint na hEorpa agus ón gComhairle lena leasaítear Rialachán (CE) Uimh. 1073/2009 maidir le comhrialacha le haghaidh rochtain ar an margadh idirnáisiúnta do sheirbhísí cóiste agus bus - COM (2017) 647 prionsabal na coimhdeachta a chomhlíonadh ar na cúiseanna atá leagtha amach in alt 4 den Tuarascáil; agus
- (3) a thabhairt dá haire, de bhun Bhuan-Ordú 114(4), go gcuirfear cóip den Rún seo mar aon leis an tuairim réasúnaithe agus an Tuarascáil réamhráite chuig Uachtarán Pharlaimint na hEorpa, Uachtarán na Comhairle agus Uachtarán an Choimisiúin.

That Dáil Éireann:

- (1) notes the agreed Report of the Joint Committee on Transport, Tourism and Sport under Standing Order 114 on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 1073/2009 on common rules for access to the international market for coach and bus services - COM (2017) 647, which was laid before Dáil Éireann on 13 December, 2017, in accordance with Standing Order 114(3)(b);
- (2) having regard to the aforementioned Report, and in exercise of its functions under section 7(3) of the European Union Act 2009, is of the opinion that the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 1073/2009 on common rules for access to the international market for coach and bus services - COM (2017) 647 does not comply with the principle of subsidiarity for the reasons set out in section 4 of the Report; and
- (3) notes that, pursuant to Standing Order 114(4), a copy of this Resolution together with the reasoned opinion and the aforementioned Report shall be sent to the Presidents of the European Parliament, the Council and the Commission.

Cathaoirleach Sheanad Éireann



Chairman of Seanad Éireann

14 December 2017

Mr. Donald Tusk  
President of the Council of the European Union  
Council of the European Union  
Rue de la Loi 175  
1048 Brussels  
Belgium

**Re: Reasoned opinion of Seanad Éireann on Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services - COM (2017) 647**

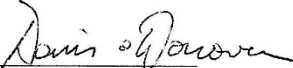
Dear President Tusk,

I am writing to inform you that Seanad Éireann, at its meeting today, considered the *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services – COM(2017)647*, and is of the opinion that the proposal does not comply with the principle of subsidiarity.

Under Standing Orders of Seanad Éireann, a Joint Committee was conferred with the power to consider the above Proposal for compliance with subsidiarity. The Committee was obliged under Standing Orders to report back to Seanad Éireann if it was of the opinion that the proposal did not comply with the principle of subsidiarity. The Committee duly reported to the Seanad and a motion on the Report of the Committee was considered and adopted by the Seanad at its meeting today.

In accordance with Standing Orders, I have enclosed a copy of the Resolution of Seanad Éireann and a copy of the Report of the Committee with the Reasoned Opinion. I have also sent this letter to the Presidents of the European Commission, the Parliament and the Irish Minister for Transport, Tourism and Sport.

Yours sincerely,

  
Denis O'Donovan  
Cathaoirleach  
Seanad Éireann

Seanad Éireann  
Teach Laighean  
Shráid Chill Dara  
Baile Átha Cliath 2

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Seanad Éireann  
Leinster House  
Kildare Street  
Dublin 2

## RESOLUTION OF SEANAD ÉIREANN OF 14<sup>th</sup> December, 2017

“Go ndéanann Seanad Éireann:

- (1) an Tuarascáil chomhaontaithe a thabhairt dá haire ón gComhchoiste um Iompar, Turasóireacht agus Spórt faoi Bhuan-Ordú 114 ar an Togra le haghaidh Rialachán ó Pharlaimint na hEorpa agus ón gComhairle lena leasaítear Rialachán (CE) Uimh. 1073/2009 maidir le comhrialacha le haghaidh rochtain ar an margadh idirnáisiúnta do sheirbhísí cóiste agus bus - COM (2017) 647, a leagadh faoi bhráid Sheanad Éireann an 13 Nollaig 2017, de réir Bhuan-Ordú 116(3)(b);
- (2) ag féachaint don Tuarascáil réamhráite, agus le linn a feidhmeanna faoi alt 7(3) d’Acht an Aontais Eorpaigh, 2009 a fheidhmiú, an tuairim a shealbhú nach ndéanann an Togra le haghaidh Rialachán ó Pharlaimint na hEorpa agus ón gComhairle lena leasaítear Rialachán (CE) Uimh. 1073/2009 maidir le comhrialacha le haghaidh rochtain ar an margadh idirnáisiúnta do sheirbhísí cóiste agus bus - COM (2017) 647 prionsabal na coimhdeachta a chomhlíonadh ar na cúiseanna atá leagtha amach in Alt 4 den Tuarascáil; agus
- (3) a thabhairt dá haire, de bhun Bhuan-Ordú 116(4), go gcuirfear cóip den Rún seo mar aon leis an tuairim réasúnaithe agus an Tuarascáil réamhráite chuig Uachtarán Parlaimint na hEorpa, Uachtarán na Comhairle agus Uachtarán an Choimisiúin.

That Seanad Éireann:

- (1) notes the agreed Report of the Joint Committee on Transport, Tourism and Sport under Standing Order 116 on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services - COM (2017) 647, which was laid before Seanad Éireann on 13 December 2017 in accordance with Standing Order 116(3)(b);
- (2) having regard to the aforementioned Report, and in exercise of its functions under section 7(3) of the European Union Act 2009, is of the opinion that Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services - COM (2017) 647, does not comply with the principle of subsidiarity for the reasons set out in Section 4 of the Report; and
- (3) notes that, pursuant to Standing Order 116(4), a copy of this Resolution together with the reasoned opinion and the aforementioned Report shall be sent to the Presidents of the European Parliament, the Council and the Commission.”

*Denis O'Donnell*  
14<sup>th</sup> Dec. 2017



**An Comhchoiste um Iompar, Turasóireacht agus Spórt**

**COM (2017) 647**

**Togra le haghaidh Rialachán ó Pharlaimint na hEorpa agus ón gComhairle lena leasaítear Rialachán (CE) Uimh. 1073/2009 maidir le comhrialacha le haghaidh rochtain ar an margadh idirnáisiúnta do sheirbhísí cóiste agus bus**

**Nollaig 2017**

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**Joint Committee on Transport, Tourism and Sport**

**COM (2017) 647**

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 1073/2009 on common rules for access to the international market for coach and bus services**

**December 2017**

## JOINT COMMITTEE ON TRANSPORT, TOURISM AND SPORT

Report under Dáil Standing Order 114 and Seanad Standing Order 116 on:

COM (2017) 647 - Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services.

### 1. Introduction

1.1 The principle of subsidiarity is defined in Article 5(3) of the Treaty on European Union (TEU) as follows:

*“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar 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.”*

Article 5(3) also gives specific responsibility to national parliaments to ensure that EU institutions apply the principle in accordance with Protocol 2 on the application of the principles of subsidiarity and proportionality.

1.2 The test established by Article 5(3) TEU is, in effect, a “comparative efficiency” exercise, involving a “necessity” test and a “greater benefits” test:

- (i) **Necessity** - Is action by the EU necessary to achieve the objective of the proposal? Can the objective of the proposal only be achieved, or achieved to a sufficient extent, by EU action?
- (ii) **Greater Benefits** - Would the objective be better achieved at EU level – i.e. would EU action provide greater benefits than action at Member States level?

1.3 To assist national parliaments in their evaluation of subsidiarity compliance, Article 5 of Protocol 2 provides explicitly that

*“Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States...”*

1.4 Therefore, any new draft legislative act

- must be supported by a sufficiently ‘detailed statement’ to allow a judgment to be made by national parliaments on its compliance with the principle of subsidiarity



- must clearly satisfy both the *necessity* and *greater benefit* tests
- must, under the principle of conferral set down in Article 5(2) of the TEU, show that the Union is acting ‘*only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein*’.

## 2. Scrutiny by the Committee

The Joint Committee on Transport, Tourism and Sport (“the Committee”) scrutinised this proposal at its meeting of 13 December 2017, concluding with a decision to issue a reasoned opinion.

## 3. Background to the Proposal

Regulation (EC) No. 1073/2009 sets down rules with which undertakings intending to operate on the international road passenger transport market and on national markets other than the market of their Member State of establishment must comply. An evaluation of this Regulation noted the following:

“..the Regulation is only partly effective in achieving its original objective of promoting coach and bus services as a sustainable alternative to individual car transport. It found that the opening of national markets for regular services by coach and bus creates a critical mass of operators who then also introduce international services, resulting in a greater impact on the number of international routes and service frequencies than pan-European legislation alone. Further opening of national markets will strengthen the development of the international market for regular services...” (European Commission, 2017)

## 4. Opinion of the Committee

The Committee has had specific regard to the Treaty provisions and is of the opinion that the proposal does not comply with the principle of subsidiarity. The reasons are set out in the following paragraphs.

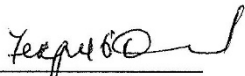
- The Committee considers the choice of instrument in this proposal problematic as it believes that amending an existing Regulation in this manner, as opposed to achieving the objective of this proposal through other means, unnecessarily limits the provision for national decision-making. Consequently, the scope for Member States to choose how to implement the proposal’s objectives at national level, and in accordance with established national systems, is constrained.

- The Committee believes that the actions in this proposal do not sufficiently restrict themselves to those necessary to fulfil its stated objectives and, therefore, are not proportionate to the objectives of this proposal.
- The Committee is of the opinion that the Commission has not adequately considered the option of strengthening existing or alternative mechanisms, which could be enforced at national and EU level, but has proceeded with a measure that involves significant modifications at the level of national markets in order to effect change at the level of the international market.
- The Committee is further of the opinion that this measure, which seeks to amend Regulation (EC) No. 1073/2009 on common rules for access to the international market for coach and bus services, has the potential to have far reaching implications on well-established national arrangements in place in Ireland's public transport sector.
- The Committee is satisfied that the above points, taken together, clearly demonstrate that the proposal does not comply with the principle of subsidiarity.

#### 5. Recommendation of the Committee

The Committee agreed this Report under Dáil Standing Order 114 and Seanad Standing Order 116 on 13 December 2017.

The Committee, pursuant to Dáil Standing Order 114(3)(b) and Seanad Standing Order 116(3)(b), recommends the reasoned opinion contained in section 4 above, for agreement by Dáil Éireann and Seanad Éireann.



**Fergus O'Dowd, T.D.**

Chairman

Joint Committee Transport, Tourism and Sport

13 December 2017