



Hungarian National Assembly
Committee on European Affairs

ANNEX

The principles of subsidiarity and proportionality in the proposal on European Electronic Communications Market Authority

Arguments supporting the opinion that the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Electronic Communications Market Authority (COM (2007) 699; 2007/0249/COD) **does not comply with the principles of subsidiarity** and proportionality, can be summarized as follows:¹

1. The Commission, assisted by the Authority, shall be authorised to take over the analysis of a specific relevant market in a Member State if the national regulatory authority is significantly late in performing its duties. Consequently, a domestic market analysis would be carried out on the European level, which is contrary to the principle of subsidiarity;

The proposal states as follows:

“Article 6

Reviews of national markets by the Authority

1. If the **Authority** receives a request from the Commission pursuant to Article 16(7) of Directive 2002/21/EC (Framework Directive) to analyse a specific relevant market within a Member State, it **shall deliver** an opinion and provide the Commission with the necessary information, including the results of the public consultation and **the analysis of the market**. If the Authority finds that competition on that market is not effective, its opinion shall, following a public consultation, include a draft measure specifying the undertaking(s) it considers should be designated as having significant market power on that market and the appropriate obligations to be imposed.”

The referred Article 16(7) of Directive 2002/21/EC (Framework Directive) shall be worded as follows (according to the proposal COM(2007)697 of the telecommunication package):

- “7. **Where a national regulatory authority has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in Article 16(6), the Commission may request the Authority to issue an opinion, including a draft measure, on the analysis of the specific market and the specific obligations to be imposed.** The Authority shall carry out a public consultation on the draft measure concerned.

¹ Based on the findings of the Committee on Cultural Affairs and the Media

2. The provisions on the collection and redistribution of usage fees for rights of use of radio frequencies and numbers would disproportionately restrict the current exclusive rights of the Member States in order to finance the new Market Authority;

The proposal states as follows:

*“Article 36
Budget of the Authority*

1. The revenues of the Authority shall consist of: (...)
 - (b) a proportion of **usage fees** paid by applicants in accordance with the provisions of Article 17;”
3. The largely advisory and consultative role of the new Market Authority does not demonstrate added value compared to the role the European Network Security Agency (ENISA) and the European Regulators Group (ERG) is fulfilling. Consequently, setting up a new European body with a relatively high budget burden is unjustifiable.

According to the legislative financial statement of the proposal, the Total indicative financial cost of intervention will be

	(EUR million)			
Years	2010	2011	2012	2013
TOTAL	10,164	23,098	27,500	27,500

4. Contrary to the unanimity decision-making rule of the existing European Regulators Group (ERG), the board of regulators of the Market Authority would adopt decisions and opinions only with simple majority.

The proposal states as follows:

*“Article 27
The Board of Regulators*

4. The Board of Regulators **shall act by a simple majority of its members**. Each member or alternate other than the Director and the representative of the Commission shall have one vote.”