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COVER NOTE

From:	The Irish Houses of the Oireachtas
date of receipt:	11 March 2024
To:	The President of the Council of the European Union
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937 [doc. 16889/23 + ADD1 - COM(2023)637] - Opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached the opinion[1] of the Irish Houses of the Oireachtas on the above.

[1] Translation(s) of the opinion may be available on the Interparliamentary EU Information Exchange website (IPEX) at the following address: https://secure.ipex.eu/IPEXL-WEB/document/COM-2023-0637

Dáil Éireann
Leinster House
Kildare Street
Dublin 2

Dáil Éireann
Teach Laighean
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Baile Átha Cliath 2

For the attention of:

President of Council of the European Union
Email: natparl@consilium.europa.eu

6 March 2024

Reasoned opinion of Dáil Éireann

COM (2023)637

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937

Dear President,

I am writing to inform you that Dáil Éireann today considered COM (2023)637, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937* and is of the opinion that the Proposal does not comply with the principle of subsidiarity.

Under Standing Orders of Dáil Éireann, the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach 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 of Dáil Éireann, I enclose a copy of the Resolution of Dáil Éireann and a copy of the Report of the Committee with the Reasoned Opinion.

Yours sincerely,

Catherine Connolly, TD

Catherine Connolly, TD,

An Leas-Cheann Comhairle,

Dáil Éireann

DÁIL ÉIREANN

TUARASCÁIL ÓN GCOMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH FAOI BHUAN-ORDÚ 133 DE CHUID NA DÁLA MAIDIR LE TOGRA LE HAGHAIDH TREOIR LENA MBUNAÍTEAR CEANGLAIS CHOMHCHUIBHITHE SA MHARGADH INMHEÁNACH MAIDIR LE TRÉDHEARCACHT NA HIONADAÍOCHTA LEASA A DHÉANTAR THAR CEANN TRÍÚ TÍORTHA AGUS LENA LEASAÍTEAR TREOIR (AE) 2019/1937.

REPORT OF THE JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH UNDER DÁIL STANDING ORDER 133 ON A PROPOSAL FOR A DIRECTIVE ESTABLISHING HARMONISED REQUIREMENTS IN THE INTERNAL MARKET ON TRANSPARENCY OF INTEREST REPRESENTATION CARRIED OUT ON BEHALF OF THIRD COUNTRIES AND AMENDING DIRECTIVE (EU) 2019/1937.

Rith Dáil Éireann an Rún seo istigh ag an gCruinniú de Dháil Éireann a bhí ann an 6ú lá seo de Mhárta, 2024.

The within Resolution was passed by Dáil Éireann at its Meeting on this 6th day of March, 2024.

An Leas-Cheann Comhairle

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 Airgeadas, Caiteachas Poiblí agus Athchóiriú, agus an Taoiseach faoi Bhuan-Ordú 133 maidir leis an togra seo a leanas:

Togra le haghaidh TREOIR Ó PHARLAIMINT NA hEORPA AGUS ÓN gCOMHAIRLE lena mbunaítear ceanglais chomhchuibhithe sa mhargadh inmheánach maidir le trédhearcacht na hionadaíochta leasa a dhéantar thar ceann tríú tíortha agus lena leasaítear Treoir (AE) 2019/1937,

a leagadh faoi bhráid Dháil Éireann an 28 Feabhra 2024 de réir Bhuan-Ordú 133(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 prionsabal na coimhdeachta a chomhlíonadh ar na cúiseanna atá leagtha amach i mír 4 den Tuarascáil; agus

(3) a thabhairt dá haire, de bhun Bhuan-Ordú 133(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 Finance, Public Expenditure and Reform, and Taoiseach under Standing Order 133 on the following proposal:

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937,

which was laid before Dáil Éireann on 28th February, 2024 in accordance with Standing Order 133(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 does not comply with the principle of subsidiarity for the reasons set out in paragraph 4 of the Report; and

(3) notes that, pursuant to Standing Order 133(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

For the attention of:

President of the European Commission
Email: SG-NATIONAL-PARLIAMENTS@ec.europa.eu

President of the European Parliament
Email: documentsreception@europarl.europa.eu

President of Council of the European Union
Email: natparl@consilium.europa.eu

6 March 2024

Reasoned opinion of Seanad Éireann

COM (2023)637

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937

Dear President,

I am writing to inform you that Seanad Éireann today considered COM (2023)637, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937* and is of the opinion that the Proposal does not comply with the principle of subsidiarity.

Under Standing Orders of Seanad Éireann, the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach was conferred with the power to consider the above proposal for compliance with subsidiarity and proportionality. 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 Seanad Éireann 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 of Seanad Éireann, I enclose a copy of the Resolution of Seanad Éireann and a copy of the Report of the Committee with the Reasoned Opinion.

Yours sincerely,

Jerry Buttimer

Jerry Buttimer,
Cathaoirleach,
Seanad Éireann

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Teach Laighean
Shráid Chill Dara
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"Go ndéanann Seanad Éireann:

(1) a thabhairt dá aire an Tuarascáil chomhaontaithe ón gComhchoiste um Airgeadas, Caiteachas Poiblí agus Athchóiriú, agus an Taoiseach faoi Bhuan-Ordú 116 maidir leis an togra seo a leanas:

- Togra le haghaidh TREOIR Ó PHARLAIMINT NA hEORPA AGUS ÓN gCOMHAIRLE lena mbunaítear riachtanais chomhchuibhithe sa mhargadh inmheánach maidir le trédhearcacht ionadaíochta leasa a dhéantar ar son tríú tíortha agus lena leasaítear Treoir (AE) 2019/1937,

a leagadh faoi bhráid Sheanad Éireann an 28 Feabhra 2024 de réir Bhuan-Ordú 116(3)(*b*);

(2) ag féachaint don Tuarascáil réamhráite, agus le linn a fheidhmeanna faoi alt 7(3) d'Acht an Aontais Eorpaigh, 2009 a fheidhmiú, an tuairim a shealbhú nach ndéanann an togra prionsabal na coimhdeachta a chomhlionadh ar na cúiseanna atá leagtha amach i mír 4 den Tuarascáil; agus

(3) a thabhairt dá aire, de bhun Bhuan-Ordú 116(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 Seanad Éireann:

(1) notes the agreed Report of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach under Standing Order 116 on the following proposal:

- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937,

which was laid before Seanad Éireann on 28th February, 2024 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 the proposal does not comply with the principle of subsidiarity for the reasons set out in paragraph 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."



An Comhchoiste Um Airgeadas, Caiteachas Poibli Agus Athchóiriú, Agus Taoiseach

Tuairim Réasúnaithe

COM(2023)637 Togra le haghaidh TREOIR Ó PHARLAIMINT NA hEORPA AGUS ÓN gCOMHAIRLE lena mbunaítear ceanglais chomhchuibhithe sa mhargadh inmheánach maidir le trédhearcacht na hionadaíochta leasa a dhéantar thar ceann tríú tíortha agus lena leasaítear Treoir (AE) 2019/1937

Feabhra

2024

Joint Committee on Finance, Public Expenditure And Reform, And Taoiseach

Reasoned Opinion on

COM(2023)637 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937

February 2024

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1. Introduction

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.

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?

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..."*

4. Therefore, any new draft legislative act:

   i. 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;
   ii. must clearly satisfy both the *necessity* and *greater benefit* tests; and
   iii. 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

5. The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach ("the Committee") scrutinised the following proposal at one meeting, on 21 February 2024:

   Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937

6. At its meeting on 21 February 2024, the Committee agreed that COM(2023)637 warranted further scrutiny. It was subsequently agreed to invite further detailed briefing from the Department of Public Expenditure, National Development Plan Delivery and Reform, outlining any potential issues of subsidiarity in order to ascertain the implications of this proposal for Ireland.

3. Decision of the Committee

7. Following the Committee's consideration of these matters, it agreed to submit a Reasoned Opinion on this proposal as listed above at its meeting on the 28 February 2024.
8. *Due to the time constraints imposed by the subsidiarity deadline, the Committee have not had the opportunity to hold public briefings on the matter prior to the deadline but reserve the right to carry out further scrutiny outside of this timeframe and may submit further contributions on this package of proposals.*

4. Opinion of the Joint Committee

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

10. The Committee at the outset, would like to express its support of the general Defence of Democracy Package, of which this proposal is part.

11. However, the Committee considers that any legislative proposals must be practical, feasible and compatible with Member State current provisions on lobbying regulation, where these apply.

12. The Committee would draw attention to the recent domestic review of current lobbying legislation Regulation of Lobbying Act 2015,1 and recently enacted legislation which deals with this matter.2

13. Further, the Committee notes that the proposed Directive explicitly excludes criminal sanctions. While the Irish system currently operates an administrative

[1] Second Statutory Review of the Regulation of Lobbying Act 2015 (January 2020)
[2] Regulation of Lobbying and Oireachtas (Allowances to Members) (Amendment) Act 2023 (irishstatutebook.ie)

sanctions system, there is also provision for criminal sanctions in existing Irish legislation.

14. The Committee has carried out an initial examination as to whether the provisions of the proposed Directive could be accommodated within existing legislation, and it appears that this would not be possible.

15. Indeed, it appears as though the establishment of a separate register with different requirements would most likely be required, which would run in parallel to the current Register of Lobbying.

16. The Committee is of the view that any attempt to change the Register of Lobbying to accommodate many of the provisions of the proposed Directive would fundamentally change and diminish the transparency and effectiveness of lobbying regulation in Ireland.

17. As such, the Committee has strong concerns that the full harmonisation as proposed in the Directive would potentially involve a **reduction of the standards** which are already applied domestically in relation to lobbying and the registering of lobbying interests.

18. In light of the potential reduction of standards and diminishing of sanctions, the Committee believes that this Directive does not meet the greater benefit test.

19. Greater benefit with regard to lobbying should be construed as that which is of greatest benefit to democracy, accountability and transparency not in terms of competitiveness or market dynamics.

20. In addition, the Committee would also raise concern with regard to the legal basis, Article 114 TFEU, for this proposed Directive. It is unclear as to whether this Directive is necessary to improve the functioning of the internal market.

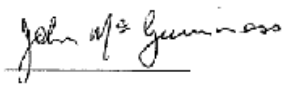
21. The Committee considers that the factors as outlined above call into question the case for the proposal, and its accordance with the principle of subsidiarity.

5. Recommendation of the Committee

The Committee agreed this Report under Dáil Standing Order 133 and Seanad Standing Order 116 on 28 February 2024.

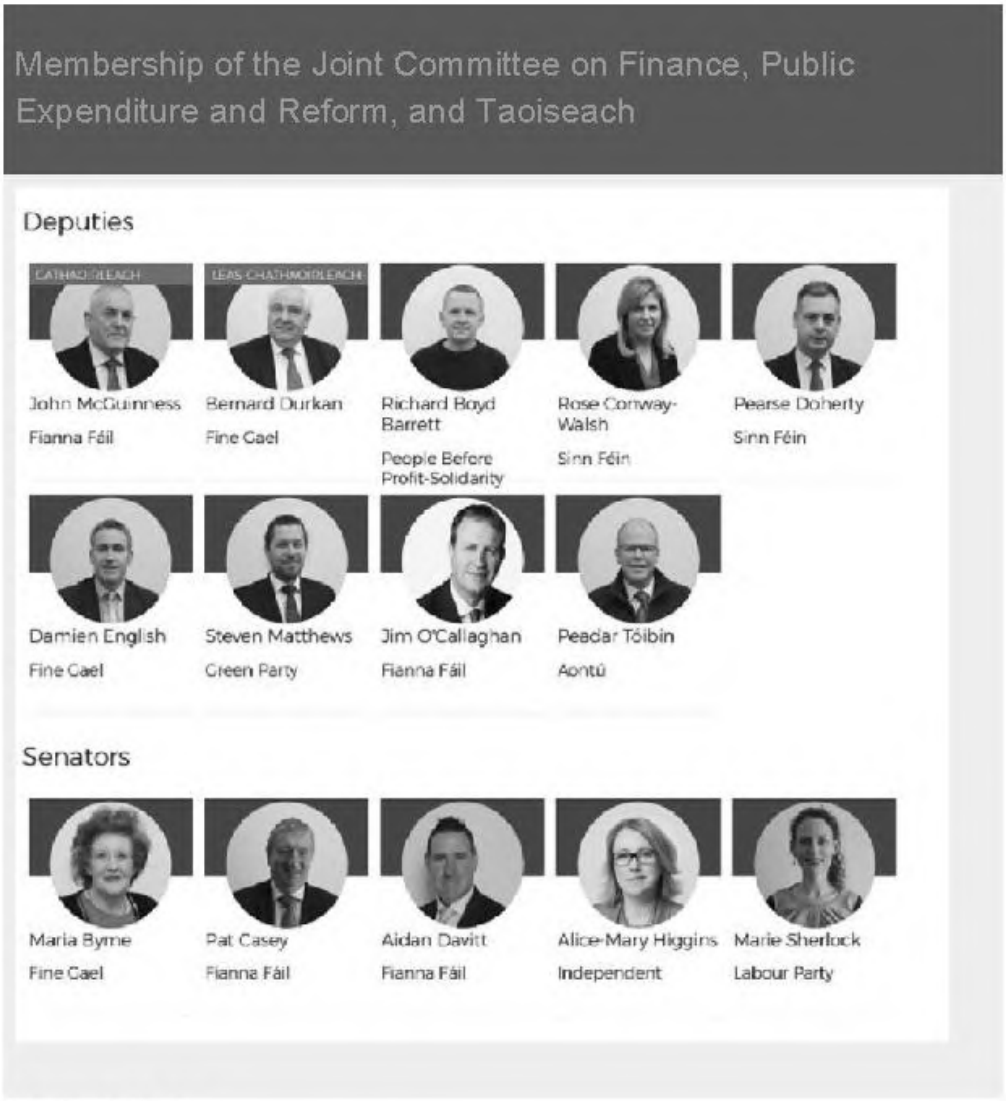
The Committee, pursuant to Standing Orders recommends the reasoned opinion contained in Section 3 above for agreement by Dáil and Seanad Éireann.

Yours sincerely,



John McGuinness, T.D.
Chair to the Committee
28 February 2024

APPENDIX 1 - Membership



Membership History:

- Mick Barry, Sep 2020 – May 2023
- Michael D'Arcy, Sep 2020 – Sep 2020
- Mairéad Farrell, Sep 2020 – April 2023
- Neale Richmond, Sep 2020 – Jan 2023

APPENDIX 2 – Terms of Reference of the Committee

Functions of the Committee – derived from Standing Orders [DSO 95; SSO 71]

(1) The Select Committee shall consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) The Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) The Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where the Select Committee proposes to consider—

(*a*) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,

(*b*) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(*c*) non-legislative documents published by any EU institution in relation to EU policy matters, or

(*d*) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

(i) members of the European Parliament elected from constituencies in Ireland,

(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(iii) at the invitation of the Committee, other members of the European Parliament.

(9) The Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

(a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(*b*) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman

report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 94; SSO 70]

(1) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)1; and

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(2) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.