



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 November 2013

16356/13

**Interinstitutional File:
2013/0256 (COD)**

**EUROJUST 127
EPPO 31
CATS 89
COPEN 209
CODEC 2621
INST 616
PARLNAT 291**

OPINION

from: The Czech Senate
date of receipt: 14 October 2013
to: Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Criminal Justice Cooperation (Eurojust)
Doc. 12566/13 EUROJUST 59 EPPO 4 CATS 36 COPEN 109 CODEC 2163
[COM(2013) 535 final]
- Opinion¹ on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached the above mentioned Opinion.

Encl.

¹ This opinion is available in English on the interparliamentary EU information exchange site (IPEX) at the following address: <http://www.ipex.eu/IPEXL-WEB/search.do>



**THE SENATE
OF THE PARLIAMENT OF THE CZECH REPUBLIC
9TH TERM**

RESOLUTION OF THE SENATE

346th RESOLUTION

delivered on the 14th meeting held on 9th October 2013

**on the Proposal for a Regulation of the European Parliament and of the Council on
the European Union Agency for Criminal Justice Cooperation (Eurojust) (Senate
Press no. N 083/09)**

The Senate

I.

1. Has come to the conclusion

that the draft regulation does not comply with the principle of subsidiarity, as stipulated in Article 5(3) of the Treaty on European Union, because the Commission has substantiated neither the necessity, nor the actual added value of the proposed changes in the way of operation of Eurojust;

2. Adopts,

in accordance with Article 6 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality attached to the Treaties, a **reasoned opinion** on the incompatibility of the draft regulation with the principle of subsidiarity, on the grounds set out in Points II.2 to II.5 of this resolution;

II.

1. Appreciates

the role of Eurojust in the support of cooperation between the justice authorities of the member states;

2. Is of the opinion

that the current legal regulation of Eurojust as an institution supporting the cooperation between the member states is sufficient and that a more effective use of Eurojust may be achieved primarily by a correct setup of the member states' systems, which includes national authorities that are well-informed on the possibilities offered by Eurojust, and by ensuring good communication between the national authorities and National Members;

3. Points out

that the previous reform of Eurojust has not yet been fully implemented and, consequently, its results could not have been evaluated; an action at EU level is therefore not necessary at present, because the steps towards improving the effectiveness of Eurojust may and shall be taken at the member states' level;

4. Considers absolutely insufficient

the substantiation of the proposal's compliance with the principle of subsidiarity, which is limited to a statement that an entity operating at EU level may only be created by EU law; this ignores the fact the objective of the draft regulation is not the creation of Eurojust (which is an already existing entity), but rather the introduction of changes in the way Eurojust operates (especially the strengthening of the decision-making role of the Commission towards an institution intended primarily to facilitate cooperation between the national justice authorities and the weakening of the link between the National Members and the member states); considering that the Commission has not delivered a justification of these changes from the perspective of the principle of subsidiarity, the Commission is in breach of its obligation to justify the compliance of the draft legislative act with the principle of subsidiarity set in Article 5 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality;

5. Is of the opinion

that given the specific composition and tasks of Eurojust, the Commission should have clarified in detail especially the actual added value of adjusting the organisation of Eurojust to the Common Approach to EU decentralised agencies, in particular regarding the strengthening of the role of Commission towards Eurojust that is connected with this adjustment and that the Senate does not regard as appropriate;

6. Calls for

preserving the concept that the National Members of Eurojust act in their capacity of public authorities of member states and that the Eurojust regulation itself cannot confer competences upon them, request use of such competences independently on the decision-making procedures in the member state's system of criminal justice and establish their competence to undertake acts within a criminal procedure instead of bodies competent according to national laws, because the Senate is of the opinion that the proposed regulation departs from the function of Eurojust as a coordinator of cooperation between the member states;

7. Regards

certain other elements of the regulation as problematic as well, especially

- the limitation of control of member states' authorities over further transfers of personal data transferred to Eurojust;
- exemption of criminal offences falling under the competence of the European Public Prosecutor's Office from the competence of Eurojust that does not take into account possible cases of criminal activities of mixed character; and
- strengthening and making Eurojust independent in the area of cooperation with third countries, because in this respect, Eurojust should rather play the role of a coordinator;

8. Welcomes

the regulation of European Parliament and national parliaments' participation in the evaluation of the activities of Eurojust and agrees with its form and scope;

9. Points out

that if the Regulation on the establishment of European Public Prosecutor's Office is not adopted, the draft regulation on Eurojust will have to be revised; in such case, the Commission should publish an amended draft regulation and submit it again to the national parliaments for consideration;

III.

1. Requests

the Government to inform the Senate about the way this position was taken into account, and about further development of negotiations;

2. Authorises

the President of the Senate to forward this reasoned opinion to the presidents of the European Commission, the European Parliament and the Council.

Milan Štěch
sign manual
President of the Senate

Radko Martínek
sign manual
Senate Verifier
