



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 November 2013**

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EUROJUST 112  
CATS 75  
FIN 732  
COPEN 189  
INST 595  
PARLNAT 271**

**OPINION**

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from: The Seanad Éireann (Irish Senate)

date of receipt: 25 October 2013

to: Council

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Subject: Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office

Doc. 12558/13 EPPO 3 EUROJUST 58 CATS 35 FIN 467 COPEN 108

[COM(2013) 534 final]

- *Opinion<sup>1</sup> on the application of the Principles of Subsidiarity and Proportionality*

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Delegations will find attached the above mentioned Opinion.

Encl.

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<sup>1</sup> 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>

Cathaoirleach Seanad Éireann



Chairman of Seanad Éireann

24 October 2013

Mr. Herman Van Rompuy  
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 the Proposal for a Council Regulation on the Establishment of the European Prosecutor's Office – COM (2013) 534**


Dear President Van Rompuy

I am writing to inform you that Seanad Éireann, at its meeting today, considered the Proposal for a Council Regulation on the Establishment of the European Prosecutor's Office – COM (2013) 534 under Article 5(3) of the Treaty on European Union and Protocol 2 on the application of the principles of subsidiarity and proportionality and is of the opinion that the proposal does not comply with the principle of subsidiarity.

Under Standing Orders of Seanad Éireann, a Select 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 together with the Reasoned Opinion and a copy of the Report of the Committee. I have also sent this letter to the Presidents of the European Parliament and the Council and the Irish Minister for Justice and Equality.

Yours sincerely,



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Senator Paddy Burke  
Cathaoirleach

Seanad Éireann  
Teach Laighean  
Sráid Chill Dara  
Baile Átha Cliath 2

Tel: 353-1-618 3227 Fax: 353-1-618 4101  
Email: [cathaoirleach@oireachtas.ie](mailto:cathaoirleach@oireachtas.ie) Web: [www.cathaoirleach.ie](http://www.cathaoirleach.ie)

Seanad Éireann  
Leinster House  
Kildare Street  
Dublin 2



## DÁIL ÉIREANN

TUARASCÁIL ÓN gCOMHCHOISTE UM DHLI AGUS CEART, COSAINT AGUS COMHIONANNAS MAIDIR LEIS AN TOGRA LE HAGHAIDH RIALACHÁIN ÓN gCOMHAIRLE MAIDIR LE HOIFIG AN IONCHÚISITHEORA PHOIBLÍ EORPAIGH A BHUNÚ (COM (2013) 534).

Rith Dáil Éireann an Rún seo istigh ag an gCruinniú de Dháil Éireann a bhí ann an 23ú lá seo de Dheireadh Fómhair, 2013.

REPORT OF THE JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY ON THE PROPOSAL FOR A COUNCIL REGULATION ON THE ESTABLISHMENT OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE (COM (2013) 534).

The within Resolution was passed by Dáil Éireann at its Meeting on this 23rd day of October, 2013.

Cathaoirleach Dháil Éireann

Le cur go dtí:  
For transmission to:

*An Taoiseach*

Go ndéanann Dáil Éireann:

- (1) an Tuarascáil chomhaontaithe a thabhairt dá haire ón gComhchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas faoi Bhuan-Ordú 105 maidir leis an Togra le haghaidh Rialacháin ón gComhairle maidir le hOifig an Ionchúisitheora Phoiblí Eorpaigh a bhunú (COM (2013) 534) a leagadh faoi bhráid Dháil Éireann an 17 Deireadh Fómhair, 2013 de réir Bhuan-Ordú 105(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, a mheas nach ndéanann an Togra le haghaidh Rialacháin ón gComhairle maidir le hOifig an Ionchúisitheora Phoiblí Eorpaigh a bhunú (COM (2013) 534), prionsabal na coimhdeachta a chomhlíonadh ar na cúiseanna atá leagtha amach i mír 5 den Tuarascáil; agus
- (3) a thabhairt dá haire, de bhun Bhuan-Ordú 105(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 Justice, Defence and Equality under Standing Order 105 on the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (COM (2013) 534) which was laid before Dáil Éireann on 17th October, 2013 in accordance with Standing Order 105(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 Council Regulation on the establishment of the European Public Prosecutor's Office (COM (2013) 534), does not comply with the principle of subsidiarity for the reasons set out in paragraph 5 of the Report; and
- (3) notes that, pursuant to Standing Order 105(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.



Houses of the  
**Oireachtas**  
Tithe an Oireachtais

**An Comhchoiste um Dhlí  
agus Ceart, Cosaint agus Comhionannas**

**COM (2013) 534**

**Togra le haghaidh Rialacháin ón gComhairle maidir le hOifig an  
Ionchúisitheora Phoiblí Eorpaigh a bhunú**

**Deireadh Fómhair 2013**

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**Joint Committee on Justice, Defence and Equality**

**COM(2013)534**

**Proposal for a Council Regulation on the establishment of the  
European Public Prosecutor's Office**

**October 2013**

## JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Report under Dáil Standing Order 105 and Seanad Standing Order 101 on COM (2013) Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office.

### Introduction

1. The principle of subsidiarity is defined in Article 5(3) 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,

- 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.'

#### Opinion of the Joint Committee

5. The Joint Committee on Justice, Defence and Equality 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.
- a) While the Joint Committee agrees that effectively combatting all fraud, including fraud related to the EU's financial interests, is of vital importance, nevertheless, it considers criminal law to be primarily a national competence. Therefore the investigation and prosecution of all fraud related offences, including offences against the financial interests of the EU, is primarily a duty of national authorities.
  - b) The Joint Committee believes that the Commission has not adequately explored whether action short of a supranational agency would be capable of delivering effective protection against EU financial fraud. The Committee believes that the Commission has not adequately considered the option of strengthening existing or alternative mechanisms, which could be enforced at national level and EU level, but has assumed that the establishment of a supranational prosecution and investigative agency is the only way that EU budget related fraud can be addressed.
  - c) The Joint Committee believes that more emphasis should be placed on the value of improving the effectiveness of better cooperation between Eurojust, OLAF and member states. While the Commission, in its impact assessment, argues that member states undertake inadequate action against EU-fraud, this argument lacks a solid basis, and the Commission has failed to demonstrate that member states take fraud against the financial interests of the EU any less seriously than fraud committed against anyone else.

#### Recommendation of the Joint Committee

The Joint Committee agreed this Report under Dáil Standing Order 105 and Seanad Standing Order 101 on 16 October 2013.

The Joint Committee, pursuant to Dáil Standing Order 105(3)(b) and Seanad Standing Order 101(3)(b) recommends the reasoned opinion contained in paragraph 5 above, for agreement by Dáil Éireann and Seanad Éireann.



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David Stanton, T.D.  
Chairman  
16 October 2013