



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