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OPINION

from: The Czech Senate

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to: Council

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

345th RESOLUTION

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

**on the Proposal for a Council Regulation on the establishment of the European Public
Prosecutor's Office (Senate Press no. N 082/09)**

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 of an action at EU level in the form of establishment of the European Public Prosecutor's Office, nor the actual added value of its establishment, especially considering the problems that would be connected with its establishment and functioning;

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.1 to II.5 of this resolution;

II.

1. Does not agree

with the Commission's assertion that the prosecution of criminal offences against the financial interests of the Union is insufficient and fragmentary in the member states, which is used as an argument supporting the establishment of the Office, because the Senate is of the opinion that this assertion may, in general, be related to any area of criminal activities and that the establishment of the Office cannot resolve the causes of the described situation:

- the differences between the member states are caused mainly by their different laws and also generally by the functioning of their judicial and administrative systems, including the economic and administrative conditions; this cannot be eliminated by the regulation;
- the effectiveness of prosecution of criminal offences against the financial interests of the Union is influenced, first and foremost, by the general difficulties with uncovering various types of financial criminality, which, however, do not relate specifically and solely to the treatment of financial means flowing from or into the EU budget;

2. Questions

the actual added value of the establishment of the Office, especially with regard to the following:

- the Office will be fully dependent on the existing sources of information and the effectiveness of its activities will continue to be conditioned by the effective operation of the member state authorities;
- although the regulation strives to respect the member states' laws to the greatest possible extent, its application will complicate and protract the criminal proceedings, e.g. by the necessity to submit questions for preliminary ruling on the interpretation of the regulation to the Court of Justice or the necessity to draw up translations for the purpose of direction and decision-making of the central European Public Prosecutor;
- the legal ambiguities regarding the functioning of the Office may lead to a higher number of procedural errors that may prevent the punishment of the culprits;
- the increased effectiveness of prosecution may eventually follow from the lowering of procedural standards (e.g. the duty to admit evidence even if it has not been collected in accordance with the national law of the member state where the court conducting the proceeding is located);

3. Admits

that in case of a prosecution taking place in more than one member state, the cooperation of European Delegated Prosecutors from the respective member states as parts of one office may be more effective and swifter than the existing instruments; however, the Commission proposes to establish a competence of the Office also for criminal offences related to a sole member state and does not provide the information on how frequent the prosecution of criminal offences against the financial interests of the Union in more than one member state actually is;

4. Considers

the strengthening and deepening of existing mechanisms of cross-border cooperation of criminal justice authorities of the member states to be a more effective instrument for the protection of financial interests of the Union, because these mechanisms, some of which have been established only recently, may be used more effectively; this may be facilitated, among other things, by strengthening their administrative capacities and broadening of the information and analytical support provided to the member states' authorities;

5. Finds,

therefore, the draft regulation premature; in this respect, the Senate draws attention to the fact that the last reform of Eurojust has not yet been fully implemented and evaluated and, consequently, the conclusion that it is insufficient cannot be drawn;

6. Points out

that the regulation may violate the level of protection of fundamental rights guaranteed by the constitutional order of the Czech Republic and by the Convention on the Protection of Human Rights and Fundamental Freedoms (which may, as a result, constitute a violation of the Charter of Fundamental Rights of the European Union), especially regarding the right to a lawful judge, which may be touched upon by the broad discretion of the European prosecutor in the choice of the competent national court, and the right to a fair trial, which may be touched upon by the single-instance decision-making of the Office, the absence of appellate procedures against decisions regulated in detail in the proposal, as well as the absence of any procedure for adjudication on the objection of prejudice of the European prosecutor, with the exception of judicial review;

7. Therefore calls upon

the Commission to carry out a more detailed analysis of the impacts of the regulation upon the constitutional law of individual member states and revise the proposal accordingly;

8. Considers advisable

that, when carrying out the detailed analysis, the possible establishment of the Office and its form should be thoroughly debated with the utmost regard to the member states' remarks stemming from their experience in the area of justice in criminal matters;

9. Recommends,

in order to minimise uncertainties regarding the applicability of national penal laws, that the questions of linking of the substantive provisions of the regulation with the national law should be either addressed in the regulation itself, or expressly left upon the member states;

10. Demands

that the Office act vis-à-vis third countries only via member states authorities;

11. Remarks

that the regulation of protection of personal data processed by the Office must be in accord with the ongoing reform of personal data protection at the Union level;

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



**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.

3. 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;

4. 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.

3. Requests

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

4. Authorises

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

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