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European Union

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COVER NOTE

From: The Irish Parliament
date of receipt: 2 March 2017
To: Donald Tusk, President of the Council of the European Union

Subject: Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU
[doc. 14875/16 JUSTCIV 310 EJUSTICE 191 ECOFIN 1120 COMPET 617 EMPL 500 SOC 823 CODEC 1744 - COM(2016) 723 final]
- Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached a copy of the above-mentioned opinion.



28 February, 2017

Mr. Donald Tusk
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 Proposal for a *Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - COM(2016)723*

Dear President Tusk,

I am writing to inform you that Seanad Éireann, at its meeting today, considered the Proposal for a *Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - COM(2016)723*, and is of the opinion that the proposal does not comply with the principle of subsidiarity.

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

Yours sincerely,

Denis O'Donovan.
Cathaoirleach.

Seanad Éireann
Teach Laighean
Shráid Chill Dara
Baile Átha Cliath 2

Tel: 353-1-618 3227 Fax: 353-1-618 4101
E-mail: cathaoirleach@oireachtas.ie Web: www.cathaoirleach.ie

Seanad Éireann
Leinster House
Kildare Street
Dublin 2

That Seanad Éireann:

- (1) notes the agreed Report of the Joint Committee on Justice and Equality under Standing Order 107 on the Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - *COM(2016)723* which was laid before Seanad Éireann on 16 February 2017 in accordance with Standing Order 107(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 Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - *COM(2016)723* do not comply with the principle of subsidiarity for the reasons set out in paragraph 3 of the Report, and
- (3) notes that, pursuant to Standing Order 107(3)(d), 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."

Senator Jerry Buttimer.

MOTION FOR INCLUSION ON SEANAD ORDER PAPER

“Go ndéanann Seanad Éireann:

- (1) an Tuarascáil chomhaontaithe a thabhairt dá aire ón gComhchoiste um Dhlí agus Ceart agus Comhionannas faoi Bhuan-Ordú 107 maidir leis an Togra le haghaidh Treoir ó Pharlaimint na hEorpa agus ón gComhairle maidir le creatha coisctheacha athstruchtúrúcháin, dara deis agus bearta chun éifeachtacht nósanna imeachta athstruchtúrúcháin, dócmhainneachta agus urscaoilte a mhéadú agus lena leasaítear Treoir 2012/30/AE - COM(2016)723 a leagadh faoi bhráid Dháil Éireann ar an 16 Feabhra 2017 de réir Seanad Bhuan-Ordú 107(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 le haghaidh Treoir ó Pharlaimint na hEorpa agus ón gComhairle maidir le creatha coisctheacha athstruchtúrúcháin, dara deis agus bearta chun éifeachtacht nósanna imeachta athstruchtúrúcháin, dócmhainneachta agus urscaoilte a mhéadú agus lena leasaítear Treoir 2012/30/AE - COM(2016)723 prionsabal na coimhdeachta a chomhlíonadh ar na cúiseanna atá leagtha amach i mír 3 den Tuarascáil; agus
- (3) a thabhairt dá aire, de bhun Bhuan-Ordú 107(3)(d), 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.”.

An Seanadóir Jerry Buttimer.



Mr. Donald Tusk
President of the Council of the European Union
Council of the European Union
Rue de la Loi 175
1048 Brussels
Belgium

28 February 2017

Re: Reasoned opinion of Dáil Éireann on Proposal for a *Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - COM(2016)723*

Dear President Tusk,

I am writing to inform you that Dáil Éireann, at its meeting today, considered the Proposal for a *Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - COM(2016)723*, and is of the opinion that the proposal does not comply with the principle of subsidiarity.

Under Standing Orders of Dáil Éireann, a Joint 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 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 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 Dáil Éireann and a copy of the Report of the Committee with the Reasoned Opinion. I have also sent this letter to the Presidents of the European Parliament, the Council and the Irish Minister for Finance.

Yours sincerely,

Seán Ó Fearghail, TD
Ceann Comhairle

Dáil Éireann
Dublin 2
Tel: 01 618 3343
Fax: 01 618 4100

Email:
ceann.comhairle@oireachtas.ie
Website:
www.ceanncomhairle.ie

“That Dáil Éireann:

- (1) notes the agreed Report of the Joint Committee on Justice and Equality under Standing Order 114 on the Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - COM(2016)723 which was laid before Dáil Éireann on 16 February 2017 in accordance with Standing Order 114(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 Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - COM(2016)723 do not comply with the principle of subsidiarity for the reasons set out in paragraph 3 of the Report, and
- (3) notes that, pursuant to Standing Order 114(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.”.

Deputy Caoimhghín Ó Caoláin, Chairman of the Committee.

MOTION FOR INCLUSION ON DÁIL ORDER PAPER

“Go ndéanann Dáil Éireann:

- (4) an Tuarascáil chomhaontaithe a thabhairt dá aire ón gComhchoiste um Dhlí agus Ceart agus Comhionannas faoi Bhuan-Ordú 114 maidir leis an Togra le haghaidh Treoir ó Pharlaimint na hEorpa agus ón gComhairle maidir le creatha coisctheacha athstruchtúrúcháin, dara deis agus bearta chun éifeachtacht níosanna imeachta athstruchtúrúcháin, dócmhainneachta agus urscaoilte a mhéadú agus lena leasaítear Treoir 2012/30/AE - COM(2016)723a leagadh faoi bhráid Dháil Éireann ar an 16 Feabhra 2017 de réir Bhuan-Ordú 114(3)(b);
- (5) 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 le haghaidh Treoir ó Pharlaimint na hEorpa agus ón gComhairle maidir le creatha coisctheacha athstruchtúrúcháin, dara deis agus bearta chun éifeachtacht níosanna imeachta athstruchtúrúcháin, dócmhainneachta agus urscaoilte a mhéadú agus lena leasaítear Treoir 2012/30/AE - COM(2016)723 prionsabal na coimhdeachta a chomhlíonadh ar na cúiseanna atá leagtha amach i mír 3 den Tuarascáil; agus
- (6) a thabhairt dá aire, de bhun Bhuan-Ordú 114(3)(d), 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.”.

An Teachta Caoimghín Ó Caoláin, Cathaoirleach an Choiste.



**Tithe an
Oireachtais**
Houses of the
Oireachtas

Tithe an Oireachtais

An Comhchoiste um Dhlí agus Ceart agus Comhionannas

COM (2016) 723 Togra le haghaidh Treoir ó Pharlaimint na hEorpa agus ón gComhairle maidir le creatha coisctheacha athstruchtúrúcháin, dara deis, agus bearta chun éifeacht níos anna imeachta athstruchtúrúcháin, dócmhainneachta agus urscaoilte a mhéadú agus lena leasaítear Treoir 2012/30/EU

Feabhra 2017

Houses of the Oireachtas

Joint Committee on Justice and Equality

Report on COM (2016) 723 - Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU

February 2017

32/JAE/06

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Report under Dáil Standing Order 114 and Seanad Standing Order 101 on COM (2016) 723 - Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU

1. Introduction

1.1 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.

1.2 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?

1.3 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..."

1.4 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; and
- 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 Joint Committee on Justice and Equality

The Joint Committee (hereinafter referred to as the "Committee") has scrutinised this proposal at two meetings, on 18 January 2017 and 1 February 2017.

2.1 At its meeting of 18 January, the Committee agreed that COM(2016)723 warranted further scrutiny, and it was subsequently agreed to invite officials from the Department of Justice and Equality and the Department of Jobs, Enterprise & Innovation to a meeting of the Committee on 1 February to further discuss and to be briefed on the technical aspects of the proposals. The Committee also agreed to invite submissions from stakeholders/experts to discuss the wider implications of the proposals on Ireland's existing corporate and personal insolvency structures.

2.2 Following the Committee's consideration of these matters, it agreed a reasoned opinion on the proposal at its meeting on 15 February.

3. Opinion of the Joint Committee

The Committee 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:-

3.1 The Committee is of the opinion that the EU Commission has not adequately met the procedural requirements (in Protocol 2, Article 5) to provide a *detailed statement* with sufficient quantitative and qualitative indicators, to allow national parliaments to fully assess all the implications of a cross-border proposal of this nature.

3.2 The Committee believes that the draft proposal is in breach of the principles of subsidiarity and proportionality in seeking to harmonise the substantive law of Member States in relation to insolvency for the first time. A Directive normally sets general principles and gives Member States discretion as to how achieve them. However, the draft proposal is not confined to establishing general principles. It adopts a detailed and, at times, prescriptive approach on both substantive and procedural aspects. For example, it requires Member States to introduce an "early warning" mechanism (Art 3); and provide for preventive restructuring frameworks (Art 4); sets out detailed conditions for Member States to fix a stay on enforcement actions pending restructuring (Art 6); prescribes very detailed and extensive information to be contained in a restructuring plan

(Art 8); and proposes substantive minimum conditions for cross-class cram down (Art 11).

- 3.3 While Irish law already provides for much of what is proposed as regards restructuring and second chance, some of the detailed requirements do not appear, as currently drafted, to fit with important provisions of Irish law which are working well. Some of the very prescriptive conditions set out in the draft Directive may affect the balance currently struck in Irish law between debtors and creditors - a balance which must be struck with reference to specific cultural, social and economic factors within an individual Member State.
- 3.4 The Committee has specific concerns in relation to Articles 4, 9-11, and 24, which contain provisions regulating access to the courts and access to the courts in insolvency cases. Articles 4 and 5 oblige Member States to limit the involvement of a judicial or administrative authority in a manner that is necessary and proportionate so that the rights of any affected parties are safeguarded. This is very loosely drafted and the words "necessary" and "proportionate" could be the subject of range of interpretations.
- 3.5 The procedures envisaged by the proposed Directive could have a significant impact on the property rights of creditors and shareholders which, if there is a low level of judicial oversight in the process, might give rise to concerns as to whether it would be consistent with the Irish Constitution, which explicitly safeguards property rights. The Committee would be concerned for constitutional reasons about any attempt to remove or limit the role of the courts in a process where decisions are being made affecting rights to private property.
- 3.6 Within Irish law currently, the entrepreneurial debts of a sole trader are co-mingled with personal debts. Distinguishing the two has implications, some of which may touch upon constitutional property rights. Currently, for example, a lending institution which advances a loan to an entrepreneur sole trader would have full recourse against both entrepreneurial and non-entrepreneurial assets of that sole trader in the event of default. The draft Directive may restrict the right of recourse, thereby affecting the current property rights of the lending institution.
- 3.7 Other provisions of the draft Directive also concern the Committee in that they may impact upon the independence of the judiciary, which is enshrined in the Irish Constitution. Article 24 provides that members of the judiciary dealing with restructuring and insolvency matters "receive initial and further training to a level appropriate to their responsibilities." It also obliges Member States to ensure that these matters "are dealt with in an efficient manner which ensures expeditious treatment of the procedures and that members of the judiciary in charge have the necessary expertise and specialisation." Irish legislation does not contain provisions requiring members of the judiciary to have specific training, or directing the courts as to how to organise their business. This would not be considered consistent with the constitutionally safeguarded independence of the judiciary. Ireland's common law model differs to the European civil code in this respect, where judges are effectively officials of the Government.
- 3.8 Article 11 provides that a restructuring plan must comply with the "absolute priority rule" - a dissenting class of creditors has to be satisfied

in full before a more junior class can receive any distribution or keep any interest under the restructuring plan. This rule is not a feature of Irish law currently. The Committee is concerned that the imposition of this rule on our current arrangements would change the nature of creditor engagement with personal insolvency practitioners and could lead to a secured creditor absenting itself from the arrangement process in the knowledge that, if a court approved the arrangement, the secured creditor would receive the entire dividend ahead of all unsecured creditors.

- 3.9 The Committee believes that the data collection requirements imposed on Member States under Article 29 of the draft proposal are onerous. It heard evidence that a significant number of informal arrangements are made each year between debtors and creditors, no details of which are maintained. The requirements set out in Article 29 are unduly burdensome and disproportionate.
- 3.10 The Committee is of the view that the proposals are not compliant with the principle of proportionality and exceed what is necessary to achieve its objectives. Under the principle of proportionality, "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."¹
- 3.11 It also believes that these proposals are in breach of the principle of subsidiarity. The Committee affirms the principle stated within the document *Testing European legislation for subsidiarity and proportionality – Dutch list of points for action* presented by then-foreign minister Frans Timmermans to the Dutch Parliament, which proposes that action be taken "at a European level only when necessary, at national level whenever possible."²
- 3.12 The Committee is concerned that the infringement of the principle of proportionality creates problems in terms of subsidiarity as "under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."³ As a consequence of the proposals being deemed disproportionate, a legitimate question arises as to whether action at EU level is appropriate. It is the conclusion of the Committee that the European Commission has not demonstrated why action at Union level is required.
- 3.13 The Committee is satisfied that the above points, taken together, demonstrate that the proposed Directives breach the principle of subsidiarity.

¹ Article 5(4) TEU.

² Ministerie van Buitenlandse Zaken, *Testing European legislation for subsidiarity and proportionality – Dutch list of points for action*. Available at: <http://www.government.nl/news/2013/06/21/european-where-necessary-national-where-possible.html>

³ Art 5(4) TEU.

4. Recommendation of the Joint Committee

The Committee agreed this Report under Dáil Standing Order 114 and Seanad Standing Order 101 on 15 February 2017.

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



Caoimhghín Ó Caoláin, T.D.
Chairman

15 February 2017

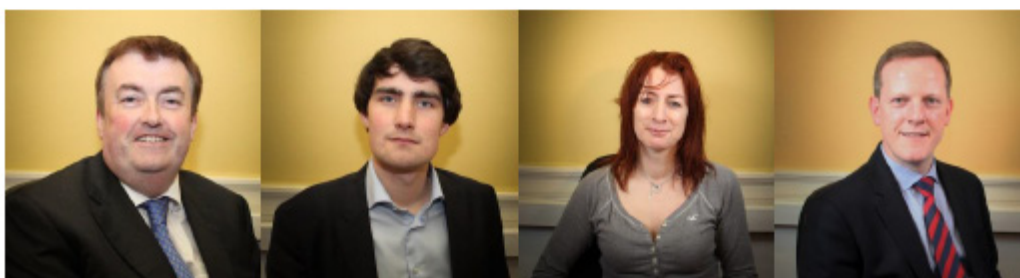
Appendix 1 – Committee Membership

Joint Committee on Justice and Equality

Deputies



Caoimhghín Ó Caoláin TD
(SF) [Chair]

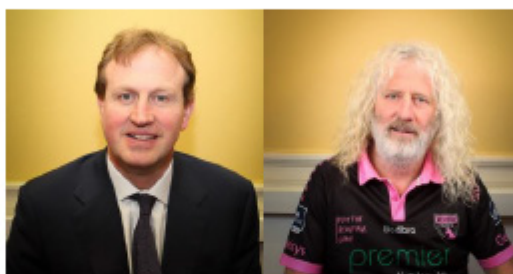


Colm Brophy TD
(FG)

Jack Chambers TD
(FF)

Clare Daly TD
(I4C)

Alan Farrell TD
(FG)



Jim O'Callaghan TD
(FF)

Mick Wallace TD
(I4C)

Senators



Frances Black
(CEG)



Lorraine Clifford-Lee
(FF)



Martin Conway
(FG)



Niall Ó Donnghaile
(SF)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 16th June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 20th July 2016.

Appendix 2 – Terms of Reference of the Committee

JOINT COMMITTEE ON JUSTICE AND EQUALITY

TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of

the relevant Department or Departments and associated public bodies:

- (a) matters of policy and governance for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill,
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, 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, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders)
[DSO 84; SSO 70]**

- (1) The Joint Committee 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; and
- (2) 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 and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) 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 Orders [DSO 111A and SSO 104A].
- (5) The Joint Committee 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—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.
- (6) 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 given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.