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OPINION

from: Slovenian Parliament

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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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[COM(2013) 534 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>



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Številka: 008-09/13-7112 EPA 1399-VI, EU SUBS 2
Datum: 28. 10. 2013

COM(2013) 534 final

Predsednik Evropskega parlamenta
Gospod Martin SCHULZ

Predsednika Sveta Evropske unije za pravosodje in notranje zadeve
Gospod Juozas BERNATONIS
Minister za pravosodje Litve
Gospod Dailis Alfonsas BARAKAUSKAS
Minister za notranje zadeve Litve

Predsednik Evropske komisije
Gospod José Manuel BARROSO

Spoštovani,

v skladu s členom 6(1) Protokola o uporabi načel subsidiarnosti in sorazmernosti, ki je priložen Pogodbi o Evropski uniji in Pogodbi o delovanju Evropske unije, vas obveščam, da je Odbor za zadeve Evropske unije Državnega zbora Republike Slovenije na 79. seji 25. 10. 2013 ugotovil, da Predlog uredbe Sveta o ustanovitvi Evropskega javnega tožilstva, COM(2013) 534 final, krši načelo subsidiarnosti, kot je določeno v členu 5 Pogodbe o Evropski uniji ter v Protokolu o uporabi načel subsidiarnosti in sorazmernosti. Državni zbor Republike Slovenije s tem prispeva dva glasova.

S spoštovanjem!

Janko Veber
predsednik Državnega zbora



Priloga:
- obrazloženo mnenje



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Številka: 008-09/13-7/ , EPA 1399-VI, EU SUBS 2
Datum: 25. 10. 2013

COM(2013) 534 final

Janko Veber
predsednik Državnega zbora

Odbor za zadeve Evropske unije je na podlagi šestega odstavka 154.m člena Poslovnika Državnega zbora na 79. seji 25. 10. 2013 sprejel naslednji

SKLEP:

Odbor za zadeve Evropske unije ugotavlja, da Predlog uredbe Sveta o ustanovitvi Evropskega javnega tožilstva, COM(2013) 534 final, krši načelo subsidiarnosti, kot je določeno v členu 5 Pogodbe o Evropski uniji in v Protokolu o uporabi načel subsidiarnosti in sorazmernosti, ki je priložen Pogodbi o Evropski uniji in Pogodbi o delovanju Evropske unije.

Obrazložitev:

Kot izhaja iz Predloga uredbe Sveta o ustanovitvi Evropskega javnega tožilstva, Komisija svoj predlog v smislu spoštovanja načela subsidiarnosti utemeljuje s tem, da je predvideni ukrep ustanovitve Evropskega javnega tožilstva kot novega organa Unije za preiskavo in pregon kaznivih dejanj, ki škodijo finančnim interesom Unije, za Unijo bistvenega pomena, saj je treba na ravni Unije usmerjati in usklajevati preiskave in pregon kaznivih dejanj, ki škodijo njenim finančnim interesom, katerih zaščito zahtevajo Unija in države članice na podlagi člena 310(6) in člena 325 Pogodbe o delovanju Evropske unije (PDEU). Komisija utemeljuje, da se v skladu z načelom subsidiarnosti zaradi obsega in učinkov ta cilj lahko doseže le na ravni Unije, saj sedanje stanje, ko so za pregon kaznivih dejanj, ki škodijo finančnim interesom Unije, izključno pristojni organi držav članic Unije, ni zadovoljivo in ne omogoča zadostnega doseganja cilja učinkovitega boja proti kaznivim dejanjem, ki škodijo proračunu Unije.

Odbor za zadeve Evropske unije se je seznanil z vsebino predlagane uredbe. Odbor poudarja, da ustanovitev Evropskega javnega tožilstva sama po sebi ne pomeni kršitve načela subsidiarnosti, saj možnost njegove ustanovitve določa člen 86 PDEU. Odbor se strinja, da je treba zagotoviti čim bolj učinkovit boj proti kaznivim dejanjem, ki škodijo finančnim interesom Unije v vseh državah članicah, vendar pa meni, da je ta cilj

mogoče doseči z drugimi ukrepi in ne z ustanovitvijo Evropskega javnega tožilstva kot novega organa Unije. Glede na to Odbor meni, da vsebina predlagane uredbe ni v skladu z načelom subsidiarnosti.

Odbor ugotavlja, da Komisija ni zadovoljivo obrazložila dejstva, da cilja, tj. učinkovitega boja proti kaznivim dejanjem, ki škodijo finančnim interesom Unije, ni mogoče zagotoviti z ukrepi na nacionalni ravni in ob sodelovanju že obstoječih organov Unije (kot na primer Eurojust, Europol in Olaf). Odbor ugotavlja, da trditev Komisije, ki je osnovna predpostavka za predlagani ukrep, tj. neučinkovito ukrepanje držav članic v boju proti kaznivim dejanjem, ki škodijo finančnim interesom Unije, za Slovenijo ne drži, saj slovenski pristojni organi uspešno izvajajo preiskave in pregon tovrstnih kaznivih dejanj. Upoštevati je treba, da so tudi rezultati nekaterih drugih držav članic Unije glede preiskave in pregona teh kaznivih dejanj uspešni, zato Odbor meni, da vprašanja, ki se nanašajo le na nekatere države članice, ni mogoče reševati s tako pomembnim ukrepom na ravni Unije, ki se nanaša na vse države članice. Odbor meni, da je treba cilj doseči z drugimi ukrepi (na primer z rednim poročanjem držav članic institucijam Unije), večjo pozornost pa je treba nameniti boljšemu sodelovanju med pristojnimi organi držav članic ter zagotoviti čim bolj učinkovito delovanje že obstoječih organov Unije in boljše sodelovanje nacionalnih organov s temi organi Unije.

Odbor ugotavlja, da bi imela ustanovitev Evropskega javnega tožilstva z izključno pristojnostjo preiskave in pregona kaznivih dejanj, ki škodijo finančnim interesom Unije, daljnosežne posledice za slovensko ustavno in zakonsko ureditev ter delo pristojnih slovenskih organov.

Odbor tudi meni, da je treba počakati na zaključek pogajanj in sprejem Predloga direktive Evropskega parlamenta in Sveta o boju proti goljufijam, ki škodijo finančnim interesom Unije, z uporabo kazenskega prava, COM(2012) 363, saj bodo šele takrat znana vsa kazniva dejanja iz pristojnosti Evropskega javnega tožilstva, poleg tega pa bodo države članice sprejeto direktivo dolžne implementirati v nacionalne pravne sisteme in jo izvajati.

Odbor torej meni, da je treba učinkovit boj proti kaznivim dejanjem, ki škodijo finančnim interesom Unije, zagotoviti z že obstoječimi mehanizmi tako na nacionalni kot tudi na ravni Unije.

Jožef Horvat
predsednik

V vednost:

- Državnemu svetu
- Kolegiju predsednika Državnega zbora
- Odboru za pravosodje
- Odboru za zadeve Evropske unije



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COURTESY TRANSLATION
28 October 2013

President of the European Parliament
Mr Martin SCHULZ

Presidents of the Justice and Home Affairs Council
Mr Juozas BERNATONIS
Minister for Justice of Lithuania
Mr Dailis Alfonsas BARAKAUSKAS
Minister for the Interior of Lithuania

President of the European Commission
Mr José Manuel BARROSO

Dear Sirs,

in accordance with Article 6(1) of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and Treaty on the Functioning of the European Union, I hereby inform you that the Committee on EU Affairs of the National Assembly of the Republic of Slovenia established, at its 79th meeting of 25 October 2013, that the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, COM(2013) 534 final, violates the principle of subsidiarity as laid down in Article 5 of the Treaty on European Union and the Protocol on the application of the principles of subsidiarity and proportionality. The National Assembly of the Republic of Slovenia thereby contributes two votes.

Yours sincerely,

Janko Veber
President of the National Assembly

Enclosure:
- reasoned opinion



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COURTESY TRANSLATION
25 October 2013

Janko Veber
President of the National Assembly

In accordance with paragraph 6 of Article 154m of the Rules of Procedure of the National Assembly, the Committee on EU Affairs, at its 79th meeting of 25 October 2013, adopted the following

DECISION:

The Committee on EU Affairs establishes that the Proposal for a Council Regulation on the Establishment of the European Public Prosecutor's Office, COM(2013) 534 final, violates the principle of subsidiarity as laid down in Article 5 of the Treaty on European Union and the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and Treaty on the Functioning of the European Union.

Explanation:

As specified in the Proposal for a Council Regulation on the Establishment of the European Public Prosecutor's Office, the Commission justifies its proposal – in terms of complying with the principle of subsidiarity – by determining that the envisaged measure of establishing the European Prosecutor's Office, as a new European Union body for investigation and prosecution of offences affecting the Union's financial interests, is of major importance for the Union, since steering and coordination of investigation and prosecution affecting its own financial interests, the protection of which is required both from the Union and the Member States by Articles 310 (6) and 325 TFEU, should be conducted at the Union level. The Commission argues that in accordance with the subsidiarity principle, this objective can only be achieved at Union level by reason of its scale and effects, since the present situation in which the prosecution of offences against the Union's financial interests is exclusively in the hands of the authorities of the Member States is not satisfactory and does not sufficiently achieve the objective of fighting effectively against offences affecting the Union budget.

The Committee on EU Affairs took note of the proposed Regulation. The Committee stresses that the establishment of the European Public Prosecutor's Office per se does

not constitute a violation of the principle of subsidiarity, since the possibility of its establishment is provided by Article 86 of TFEU. The Committee agrees that it is necessary to achieve the objective of fighting effectively against offences affecting the Union's financial interests in all Member States; however, it believes that this objective could be achieved with other measures and not with the establishment of the European Public Prosecutor's Office as a new European Union body. In view of the above, the Committee believes that the content of the proposed Regulation does not comply with the principle of subsidiarity.

The Committee establishes that the Commission did not sufficiently explain the fact that the objective – the effective fight against offences affecting the Union's financial interests – cannot be ensured by measures at the national level and with the participation of the already existing bodies of the Union (such as Eurojust, Europol and Olaf). The Committee notes that the Commission's statement – which is the underlying assumption of the proposed measure – saying that actions taken by Member States to fight against offences affecting the Union's financial interests are not effective, does not hold true for Slovenia, since the competent Slovenian prosecuting authorities are already successfully investigating and prosecuting such offences. It should also be noted that certain other EU Member States have also proved successful as regards the investigation and prosecution of these offences, therefore the Committee believes that the issues relating only to some of the Member States cannot be tackled with such a significant measure at the Union level, thus applying to all Member States. The Committee believes that the objective should be achieved with other measures (e.g. by Member States regularly reporting to Union's institutions), whereas greater attention should be devoted to an increased cooperation between the competent authorities of the Member States and an effective functioning of the existing bodies of the Union and better cooperation between them and the national bodies should be ensured.

The Committee notes that the establishment of the European Prosecutor's Office with exclusive competence to investigate and prosecute the offences against the Union's financial interests could imply a far-reaching impact on the Slovenian constitutional and legal arrangement and on the work of the competent Slovenian bodies.

The Committee also believes that it is necessary to wait until the conclusion of negotiations and the adoption of the Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, COM(2012) 363, since only then all the criminal offences within the competence of the European Public Prosecutor's Office will be known, and in addition, Member States will be obliged to transpose the adopted directive into their national legal systems and implement it.

Therefore, the Committee considers that an effective fight against offences affecting the Union's financial interests should be ensured by mechanisms that already exist at the national level as well as at the level of the Union.

Jožef Horvat
President