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NOTE

From: General Secretariat of the Council
On: 17 July 2014
To: Delegations

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on the Union legal framework for customs infringements
and sanction
[doc. 17949/13 UD 341 CODEC 3009 COM (2013) 884 final]
- Opinion of the Lithuanian Parliament

Delegations will find attached for information a copy of the above opinion¹.

¹ The translation can be found at the Interparliamentary EU information exchange site IPEX at the following address: <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20130884.do>



**LIETUVOS RESPUBLIKOS SEIMO PIRMININKAS
SPEAKER OF THE SEIMAS OF THE REPUBLIC OF LITHUANIA**

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P. Herman Van Rompuy
Pirmininkas
Europos Vadovų Taryba

2014 07 17 Nr. *S-2014-5836*

**DĖL EUROPOS SAJUNGOS TEISĖS AKTO PROJEKTO PRIEŠTARAVIMO
SUBSIDIARUMO PRINCIPUI**

Gerbiamas Pirmininke,

šių metų liepos 15 d. Lietuvos Respublikos Seimo plenariniame posėdyje buvo svarstytas klausimas „Dėl Europos Komisijos pasiūlymo Dėl Europos Parlamento ir Tarybos direktyvos dėl Sąjungos muitų teisės pažeidimų ir sankcijų teisinės sistemos, Nr. KOM (2013) 884 galimo prieštaravimo subsidiarumo principui“.

Norėčiau Jus informuoti, kad Lietuvos Respublikos Seimas šiuo klausimu priėmė Seimo rezoliuciją (pagristąją nuomonę), kurioje konstatuojama, kad pasiūlymas prieštarauja subsidiarumo principui.

PRIDEDAMA:

1. Lietuvos Respublikos Seimo Europos reikalų komiteto 2014 m. liepos 9 d. išvados ištrauka (anglų k.), 2 lapai.

2. Lietuvos Respublikos Seimo rezoliucija „Dėl pagrįstosios nuomonės dėl Europos Komisijos pasiūlymo dėl Europos Parlamento ir Tarybos direktyvos dėl Sąjungos muitų teisės pažeidimų ir sankcijų teisinės sistemos, Nr. KOM (2013) 884 prieštaravimo subsidiarumo principui“ (anglų k.), 1 lapas.

Pagarbiai

Seimo pirmininkė

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SEIMAS OF THE REPUBLIC OF LITHUANIA

RESOLUTION
REGARDING A REASONED OPINION ON BREACH OF
THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL OF
THE EUROPEAN COMMISSION FOR A DIRECTIVE OF
THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE UNION LEGAL FRAMEWORK FOR
CUSTOMS INFRINGEMENTS AND SANCTIONS COM(2013) 884

15 July 2014 No XII-1031
Vilnius

The Seimas of the Republic of Lithuania,
pursuant to Article 180⁶ of the Statute of the Seimas of the Republic of Lithuania,
having debated the Conclusion of the Seimas Committee on European Affairs on Possible
Breach of the Principle of Subsidiarity by the Proposal of the European Commission for a
Directive of the European Parliament and of the Council on the Union legal framework for
customs infringements and sanctions COM(2013) 884,

approves the Conclusion of the Seimas Committee on European Affairs on
Possible Breach of the Principle of Subsidiarity by the Proposal of the European
Commission for a Directive of the European Parliament and of the Council on the Union
legal framework for customs infringements and sanctions COM(2013) 884.



SPEAKER OF THE SEIMAS

LORETA GRAUŽINIENĖ



SEIMAS OF THE REPUBLIC OF LITHUANIA
COMMITTEE ON EUROPEAN AFFAIRS

CONCLUSION

ON POSSIBLE NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF
THE PROPOSAL OF THE EUROPEAN COMMISSION FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE UNION LEGAL FRAMEWORK FOR CUSTOMS INFRINGEMENTS AND SANCTIONS COM(2013) 884

Document No ES-14-51

9 July 2014 No 100-P-71
Vilnius

[...]

8. Decision of the Committee:
On possible non-compliance of
the legislative proposal of the
EU with the principle of
subsidiarity:

The Committee on European Affairs,

having considered the Proposal of the European Commission for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions COM(2013) 884 (hereinafter referred to as the Proposal) establishing a framework concerning the infringements of Union customs legislation and providing for sanctions for those infringements,

having examined the conclusion of the Committee on Legal Affairs of the Seimas on the Proposal, *sharing the Committee's view* that the proposed establishment of the level of sanctions, provision for the application of strict liability and definitions of the proposed liability infringements *per se imply elements of criminal liability irrespective of the chosen legal basis (Article 33 of the Treaty on the Functioning of the European Union (hereinafter referred to as the TFEU), which presupposes that it is the administrative responsibility that the Proposal aims to harmonise, as well as sharing the doubts about potential adverse impacts* of the Proposal, particularly of the level of sanctions and strict liability, *provided for therein, on fundamental rights* as enshrined, first and foremost, by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all EU Member States are parties and to which the EU itself is seeking to become a party, *and sharing the view* that the transposition of the Proposal, if adopted, into national law will have a significant impact on both national administrative law and criminal law,

having taken account of the conclusion of the Committee on Budget and Finance of the Seimas,

having assessed the conclusions of the Legal Department of the Office of the Seimas and the European Law

Department under the Ministry of Justice on the Proposal, **noting** that the Proposal is based on the strengthening of customs cooperation between Member States and between the latter and the Commission referred to in *Article 33 TFEU*, although in essence the Proposal aims to ensure the establishment of a framework concerning sanctions for infringements of certain obligations stemming from the Union customs legislation, thus implementing Union customs legislation and working towards their proper enforcement, i.e. to harmonise the Union customs legislation enforcement measures that have so far been lying within the ambit of Member States' national legislation, and

holding that Article 33 TFEU is an appropriate legal basis for the EU legislation the sole or main aim of which is to enhance customs cooperation between Member States and/or between the latter and the Commission, **having assessed** the following objectives specified by the Commission: 1) to ensure further compliance with the Union's international obligations; 2) to provide for a Union framework for uniform enforcement of customs legislation in terms of infringements and sanctions; 3) to enhance the level playing field for economic operators in the customs Union, **and concluding** that they are only indirectly related to customs cooperation between Member States and between the latter and the Commission, thus *the chosen legal basis (Article 33 TFEU) of the Proposal does not authorise the Union to take action in establishing a framework concerning the infringements of Union customs legislation and providing for sanctions for those infringements,*

considering that it cannot be claimed that the Proposal complies with the principle of subsidiarity, in particular when it fails to comply with the requirements of the principle of conferral providing that the Union acts only if the Treaties provide for a legal basis for action,

noting that the aim of the Proposal to achieve effective implementation and correct and uniform enforcement of Union customs legislation *will not be fulfilled*, because Recital 6 of the Proposal states that the "*Directive does not determine whether Member States should apply administrative or criminal law sanctions in respect of those customs infringements*", *therefore the treatment of breaches of customs legislation will remain substantially different throughout the Union*, i.e. the sanctions that may be imposed in each case by Member States will differ in nature and severity,

considering that the European Commission *has failed to adequately justify* that the establishment of a common list of infringements of customs legislation and the type and the level of sanctions for such infringements at the Union level *is an indispensable tool* to enhance the cooperation between the customs authorities in the Union and between the latter and the Commission,

hereby decides that:

the Proposal of the European Commission for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions (COM(2013) 884) **possibly fails to comply with the principle of subsidiarity.**



[...]

Chair of the Committee

Gediminas Kirkilas