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ENFOCUSTOM 199	COMIX 557
SIRIS 135	CODEC 1662
SCHENGEN 51	INST 366
DATAPROTECT 215	PARLNAT 214

**OPINION**

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From: The Irish Parliament

On: 11 October 2018

To: The President of the Council of the European Union

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Subject: Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) and amending [Regulation (EU) 2018/XX [the Eurodac Regulation],] Regulation (EU) 2018/XX [the Regulation on SIS in the field of law enforcement], Regulation (EU) 2018/XX [the ECRIS-TCN Regulation] and Regulation (EU) 2018/XX [the eu-LISA Regulation]

[10190/18 - COM(2018) 480 final]

Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399, Regulation (EU) 2017/2226, Regulation (EU) 2018/XX [the ETIAS Regulation], Regulation (EU) 2018/XX [the Regulation on SIS in the field of border checks] and Regulation (EU) 2018/XX [the eu-LISA Regulation]

[10178/18 - COM(2018) 478 final]

- Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality

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Delegations will find attached the Reasoned opinion of the Irish Parliament on the above.



**Tithe an Oireachtais**

An Comhchoiste um Dhlí agus Ceart agus Comhionannas

COM (2018) 478 agus 480

Togra leasaithe le haghaidh Rialachán ó Pharlaimint na hEorpa agus ón gComhairle maidir le creat le haghaidh comh-inoibritheacht idir córais faisnéise AE a bhunú (teorannacha agus víosaí) agus lena leasaítear Cinneadh 2004/512/CE ón gComhairle, Rialachán (CE) Uimh 767/2008, Cinneadh 2008/633/JHA ón gComhairle, Rialachán (AE) 2016/399, Rialachán (AE) 2017/2226, Rialachán (AE) 2018/XX [Rialachán ETIAS], Rialachán (AE) 2018/XX [Rialachán SIS i réimse na seiceálacha teorann] agus Rialachán (AE) 2018/XX [Rialachán eu-LISA] agus Togra leasaithe le haghaidh Rialachán ó Pharlaimint na hEorpa agus ón gComhairle maidir le creat le haghaidh comh-inoibritheacht idir córais faisnéise AE a bhunú (comhar póilíneachta agus breithiúnach, tearmann agus imirce) agus lena leasaítear [Rialachán (AE) 2018/XX [Rialachán Eurodac], Rialachán (AE) 2018/XX [Rialachán SIS i réimse fhorfheidhmiú an dlí], Rialachán (AE) 2018/XX [Rialachán ECRIS-TCN] agus Rialachán (AE) 2018/XX [Rialachán eu-LISA]

Deireadh Fómhair 2018

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**Houses of the Oireachtas**

Joint Committee on Justice and Equality

COM(2018) 478 & 480

Amended proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399, Regulation (EU) 2017/2226, Regulation (EU) 2018/XX [the ETIAS Regulation], Regulation (EU) 2018/XX [the Regulation on SIS in the field of border checks] and Regulation (EU) 2018/XX [the eu-LISA Regulation] & Amended proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) and amending [Regulation (EU) 2018/XX [the Eurodac Regulation],] Regulation (EU) 2018/XX [the Regulation on SIS in the field of law enforcement], Regulation (EU) 2018/XX [the ECRIS-TCN Regulation] and Regulation (EU) 2018/XX [the eu-LISA Regulation]

October 2018

**32/JAE/06**



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**Report under Dáil Standing Order 114 and Seanad Standing Order 101 on COM(2018)478 & 480 - Amended proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399, Regulation (EU) 2017/2226, Regulation (EU) 2018/XX [the ETIAS Regulation], Regulation (EU) 2018/XX [the Regulation on SIS in the field of border checks] and Regulation (EU) 2018/XX [the eu-LISA Regulation] & Amended proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) and amending [Regulation (EU) 2018/XX [the Eurodac Regulation], Regulation (EU) 2018/XX [the Regulation on SIS in the field of law enforcement], Regulation (EU) 2018/XX [the ECRIS-TCN Regulation] and Regulation (EU) 2018/XX [the eu-LISA Regulation]**

## 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") scrutinised this proposal its meeting of 3 October 2018, concluding with a decision to issue a reasoned opinion.

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 proportionality. 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 actions in this proposal do not sufficiently restrict themselves to those necessary to fulfil its stated objectives and, therefore, are not proportionate to the objectives of this proposal.
- 3.3 The Committee is of the opinion that the necessity of a consolidated database including biometric identifiers has not been adequately established by the Commission and is thus not proportionate. The Committee believes an evidential basis to justify the necessity of the proposals be provided by the Commission.
- 3.4 It also is of the opinion that the proposals as presented would greatly impact Fundamental Rights. The Committee has specific concerns in relation to the provisions proposed in Article 20 of the regulation which may give rise to concern for the rights of third country nationals in terms of privacy and data protection.

The Committee is satisfied that the above points, taken together, clearly demonstrate that the proposal does not comply with the principle of proportionality.

#### 4. Recommendation of the Joint Committee

The Committee agreed this Report under Dáil Standing Order 114 and Seanad Standing Order 101 on 3 October 2018.

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

3 October 2018

## Appendix 1 – Committee Membership

### Joint Committee on Justice and Equality

#### Deputies



Caoimhghin Ó Caoláin TD  
(SF) [Chair]



Colm Brophy TD  
(FG)

Jack Chambers TD  
(FF)

Clare Daly TD  
(I4C)

Peter Fitzpatrick 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 20<sup>th</sup> 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.