

Justice Committee

Letter from the Cabinet Secretary for Justice to the Convener

Proposed EU legislation proposal

I understand your Committee is seeking the views of the Scottish Government on the following proposed European instruments:-

- Proposal for Council Regulation of the European Parliament and of the Council on the establishment of the European Public Prosecutor's Office (EPPO); and
- Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Co-operation (Eurojust)

Specifically, I understand you are seeking our views on whether these instruments may breach the principle of subsidiarity.

Our view is that they may.

In the case of the EPPO proposal, there is little or no evidence that consideration has been given to possibilities short of the creation of a new supra-national agency with extensive and harmonised powers. Given the emphasis placed in the Scottish system of the position of the Lord Advocate as the sole source of authority within the prosecution system, this is a matter of concern.

In the case of the Eurojust proposal, we acknowledge that Eurojust already exists and that in that sense the argument for its necessity has been established. However, the proposed reform could lead to National Members having powers which would not be subject to the discretion provided by the current arrangements, which enable certain powers not to be applied where they would be contrary to fundamental aspects of the criminal justice system. This is a matter of particular concern in a Member States such as the UK, where the National member would enjoy powers over three separate criminal justice systems, with no guarantee that he or she would be familiar with all of them.

For these reasons the Scottish Government is concerned that the principle of subsidiarity may not have been properly observed in either of the proposals.

I hope this information is helpful.

Kenny MacAskill MSP
Cabinet Secretary for Justice
26 August 2013