



EUROPEAN COMMISSION

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C(2014) 1596 final*

Dear Chairman,

The Commission would like to thank the House of Commons for its Reasoned Opinion concerning the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office {COM(2013) 534 final}.

In its Communication of 27 November 2013 {COM(2013) 851 final} the Commission carefully analysed the arguments presented by the House of Commons from the perspective of the principle of subsidiarity. As a result of the analysis of the different arguments, the Commission concluded that its proposal of 17 July 2013 complies with the principle of subsidiarity and decided to maintain it. The Commission stressed, however, that during the legislative procedure it will take due account of the Reasoned Opinions of the national Parliaments.

This letter addresses the arguments submitted by the House of Commons which according to the Commission's assessment do not relate to the principle of subsidiarity and hence fall outside the scope of the subsidiarity control mechanism and therefore of the Communication of the Commission.

In respect of these issues, the Commission would like to provide the following comments:

1) The House of Commons stated that there is a risk that the proposal violates fundamental rights, e.g. that suspects' rights are violated as a result of the proposed mandatory prosecution model in contrast to the discretionary prosecution model, or because the prioritised, target-driven prosecution of crimes affecting the financial interests of the Union may lead to inequality before the law. Also, victims of other crimes may be adversely affected by the prioritisation of national resources to crimes affecting the financial interests of the Union.

The Commission would firstly point to Article 11(1) of the proposal, which stipulates that the European Public Prosecutor's Office shall ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union.

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While the Commission shares the concern of the House of Commons to ensure respect for the rights of suspects, as evidenced by the recently agreed and on-going EU legislation on procedural rights for suspects in criminal proceedings, it does not agree that this is determined or affected by the choice of prosecution model, be it mandatory or discretionary.

The mandatory prosecution model aims at ensuring legal certainty and zero tolerance towards offences affecting the Union's financial interests. This is in line with the obligations as set out in the Treaty, for both the Member States and the Union to effectively combat crimes affecting the financial interests of the Union.

In principle, where there is solid evidence and no legal grounds barring prosecution, a case must be brought before the competent court. The mandatory prosecution model as proposed would not mandate that prosecution must happen in all circumstances. This would e.g. be the case for minor offences that may be dismissed. In the interests of the proper administration of justice and under certain conditions governed by the proposal, the European Public Prosecutor's Office would also have the possibility to propose to the suspect a conditional dismissal of the case.

The European Public Prosecutor's Office would have a certain leeway to form a decision on bringing a case before the competent court or not, balanced against the obligations following from the Treaty to effectively combat crimes against the financial interests of the Union. It is not evident that the discretionary prosecution model would lead to any other outcome or a more favourable situation as regards the rights of the suspects.

Furthermore, the Commission does not share the view that a prioritised, target-driven prosecution of crimes affecting the financial interest of the Union would lead to a greater risk of convictions and hence to a violation of the principle of equality before the law because such effort is not made in relation to other crimes.

One of the key objectives of the proposal is to increase the priority given to investigations and prosecutions of crimes affecting the Union's financial interests and to substantially enhance its effectiveness. In view of the distinct areas of competence, the proposal does not prejudice the efficiency and the effectiveness of investigations or prosecutions of crimes other than those affecting the financial interests of the Union at national level, nor the risk of conviction.

Similar considerations apply to the view that the rights of victims of other crimes may be adversely affected by the prioritisation of national resources for crimes affecting the financial interests of the Union.

2) The House of Commons further stated that the lack of detail on arrangements for judicial review undermines the proposal's compliance with the rule of law.

Article 86 of the Treaty on the Functioning of the European Union stipulates that the European Public Prosecutor's Office shall exercise the functions of prosecutor in the competent courts of the Member States. The proposal foresees that the Office is considered a national authority for the purpose of judicial review of its acts of investigation and prosecution. Accordingly, all challengeable acts of investigation and prosecution of the European Public Prosecutor's Office would be reviewed by the national courts. This is without prejudice to the possibility of preliminary rulings pursuant to Article 267 of the

Treaty, which will ensure that the proposed Regulation is applied uniformly throughout the Union.

The Commission considers that judicial review by national courts and the possibility of preliminary rulings by the Court of Justice would ensure a comprehensive level of judicial scrutiny and hence ensure compliance with the law.

3) The House of Commons further expressed the view that the proposal creates disadvantages for participating and non-participating Member States, as the former lose the prerogative to prioritise prosecution activities within their own criminal justice systems, while the latter will face disadvantages from the reduced competence of Eurojust and OLAF in relation to crimes affecting the financial interest of the Union.

The Commission would like to emphasise that one of the key objectives of the proposal is to increase the priority given to investigations and prosecutions of crimes affecting the Union's financial interests. In line with the obligations enshrined in the Treaty, Member States would be expected to make available the necessary resources and means to effectively protect the Union's financial interests. This would be without prejudice to the Member States' prerogative to prioritise prosecution activities in the areas unrelated to crimes affecting the financial interests of the Union. The Commission considers the successful fight against Union fraud to the advantage of both the Union and the Member States.

Reduced competences and staffing of Eurojust and OLAF would not lead to disadvantages for Member States that are not participating in the European Public Prosecutor's Office. After the establishment of the European Public Prosecutor's Office, OLAF would no longer conduct administrative investigations in the area of Union fraud in participating countries, but would remain competent with respect to non-participating countries. Similarly, the reform of Eurojust aims at rendering Eurojust more operational and due care would be taken that Eurojust remains sufficiently staffed to successfully continue its tasks which go beyond the fight against crimes affecting the financial interests of the Union.

The Commission, accordingly, considers that the proposal, as part of a package of measures aimed at better protecting the Union's financial interests, has no adverse impact on either Eurojust or OLAF.

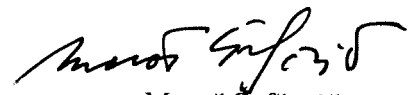
4) The House of Commons further advances the opinion that partial participation and an incomplete single legal area across the Union will not achieve an equivalent level of enforcement throughout the Union.

Article 86 provides for adoption by enhanced cooperation in the absence of unanimity in the Council, if at least nine Member States express their wish to do so. Accordingly, the Commission is not of the view that partial participation of Member States per se is a valid argument against the establishment of the European Public Prosecutor's Office.

It is the Commission's aim that as many Member States participate in the European Public Prosecutor's Office as possible, as, coming from the current position of twenty eight different regimes, this would address the existing fragmentation of national law enforcement efforts and would, in respect of the participating Member States, allow for the establishment of a single legal area with the greatest added value in the fight against offences affecting the Union's financial interests.

The Commission hopes that these comments address the concerns raised by the House of Commons and looks forward to continuing our political dialogue.

Yours faithfully,



*Maroš Šefčovič
Vice-President*