



EUROPEAN COMMISSION

Brussels,
C(2014)

final

Dear President,

The Commission would like to thank the Senát for its Reasoned Opinion concerning the Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) {COM(2013) 535 final} and apologises for the delay in replying.

The Commission shares the opinion expressed under point 2 that the effective use of Eurojust is largely dependent on the way in which Member States set up their national systems for interaction with the organisation. Nevertheless, adequate regulation of Eurojust's activities is equally necessary. Article 85 of the Treaty on the Functioning of the European Union provides a clear legal basis for regulating Eurojust's activities. Under this legal basis, it is only at the European level that regulation of Eurojust's activities can take place.

The Senát considers that the previous reform of Eurojust has not yet been fully implemented, and that therefore its results could not have been evaluated. Under the Eurojust Decision, Member States were under a legal obligation to implement the necessary changes by 4 June 2011. In the preparation of the proposal, the Commission has also contracted out a wide-ranging study on the functioning of Eurojust, which involved consulting national experts and Eurojust representatives. It became clear from these consultations that further action to strengthen Eurojust would be needed, in particular in terms of strengthening its management structures. In addition, the close links between Eurojust and the European Public Prosecutor's Office implied that the proposal to strengthen Eurojust and the proposal to establish a European Public Prosecutor's Office should be prepared and presented together.

The Senát further advanced the opinion under point 4 that the Commission has not delivered a substantiated justification for the proposal from the perspective of the principle of subsidiarity.

Pursuant to Article 5(3) of the Treaty on European Union, under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far 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.

The objective of the proposal is primarily to further increase the operational effectiveness of Eurojust. The proposal therefore limits itself to regulating aspects of Eurojust's functioning at the central level, not at the level of the Member State's authorities. The proposal thus

*Mr Milan ŠTĚCH
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1
Czech Republic*

concerns matters that have an intrinsic Union dimension and that can neither be regulated nor addressed through other means by individual Member States at the national level.

Contrary to the views raised in point 4 and 5 of the Opinion, the main aim of the proposal is not to strengthen the Commission's role in the functioning of Eurojust, but to increase its operational effectiveness for the benefit of the Member States. The fact that the Commission participates in the management structure of the agency is fully in line with the Common Approach on Agencies agreed between the European Parliament, the Council and the Commission in 2012. The Commission's role within Eurojust as proposed would be limited to College deliberations which are of an administrative nature. The operational deliberations of the College would only involve the national members.

With respect to the powers of national members, contrary to the views expressed under point 6 of the Opinion, the proposal does preserve the concept that the national members of Eurojust act in their capacity of public authorities of the Member States. The proposed Regulation would not confer competences on them, but it would require that the national authorities ensure that a national member who would have the powers as described in the proposed Regulation is appointed to Eurojust. In the Commission's view, the powers of national members which have been included in Article 8 of the proposed Regulation are the minimum powers necessary for national members to be able to effectively exercise their coordination and support functions.

The first of the three issues raised under point 7 appear to be based on a misreading of the proposal. No limitation of the control of Member State's authorities over further transfers of personal data transferred to Eurojust has been proposed – this principle is included in article 38(4) of the proposed Regulation.

Concerning the division of powers between the European Public Prosecutor's Office and Eurojust, it should be clarified that in accordance with the Commission's proposals, the European Public Prosecutor's Office would have exclusive competence for crimes affecting the Union's financial interests. In those cases, Eurojust would not be competent for such crimes either. However, in cases affecting the financial interests of the Union which also affect the Member State's interests, Article 13 of the proposal for the establishment of a Public Prosecutor's Office provides for the possibility that the competence for such crimes is in fact returned to the national authorities. In those cases Eurojust may have a coordinating role to play, which is why crimes affecting the Union's financial interests are included in Annex 1 listing the crimes for which Eurojust would be competent.

As regards the third issue raised under point 7 the Commission would like to point out that the proposal would not make Eurojust independent in the area of cooperation with third countries. In fact, the proposal aims to bring the international relations of Eurojust in line with the relevant provision of the Treaty on the Functioning of the European Union (Title V, Article 216 and further), which clearly provides an exclusive role for the Council and the Commission in the negotiation of international agreements which bind the Union, whereas the current Eurojust Decision allows Eurojust to enter into international agreements itself.

The Commission hopes that these clarifications address the issues raised by the Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*