



EUROPEAN COMMISSION

Brussels, 19.03.2014
C(2014) 1783 final

Dear President,

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

The Commission agrees that the setting up of the European Public Prosecutor's Office must bring real added value and that it is essential that as many Member States as possible participate. This is indeed necessary in order to ensure that crimes against the EU financial interests are investigated and prosecuted in an efficient and coherent manner.

The Commission would like to provide the following comments:

As regards the structure, the Commission would like to point out that its proposal provides for the establishment of a college at central level with the competence to decide on the internal rules of procedure governing the organisation of the work of the European Public Prosecutor's Office. The Commission is open to carefully consider all options, including on structure, provided the principles of independence, accountability and efficiency remain safeguarded.

With regard to the ancillary competence of the Office according to the proposal, the Commission considers that there is a need for the provision on ancillary competences for certain, well defined cases. Ancillary competence is foreseen to comply with the "ne bis in idem" principle and prevent double prosecution. The European Public Prosecutor's Office would only be competent, if strict criteria are met, including the requirement that offences be based "on the same facts" and could only proceed in agreement with the national authorities. Where agreement cannot be reached the national judicial authorities would remain competent to decide on the attribution of competences at national level.

The Commission considers that sufficient safeguards are put in place to avoid that the competence of the European Public Prosecutor's Office would go beyond Article 86(1) of the Treaty on the Functioning of the European Union. Given the complexity of the matter, the Commission will carefully consider the issue further during the on-going legislative process.

*Mr Eero HEINÄLUOMA
President of the Eduskunta
Suomen Eduskunta
FI – 00102 HELSINKI*

In relation to the concerns expressed by the Eduskunta that pursuant to Article 18(1) it is the European Delegated Prosecutor who leads the prosecutions, while in Finland investigations are primarily led by the Police, Customs or Border Guard officials, the Commission would like to underline that the decentralised model as foreseen in the proposal to a great extent takes account of the national legal systems. The European Delegated Prosecutors would be also national prosecutors; investigative measures would be executed by national authorities, intrusive coercive measures would require an authorisation from a national judicial authority and the offences that are prosecuted by the European Public Prosecutor's Office. The proposal to establish a new body such as the European Public Prosecutor's Office to investigate and prosecute crimes affecting the financial interest of the Union throughout the European Union respects the national legal traditions and judicial systems of the Member States to the greatest extent possible.

With regard to the Eduskunta's concern that the investigative powers of the European Public Prosecutor's Office are too intrusive and may be also used for minor offences, the Commission would like to reiterate that according to the proposal the more intrusive investigative powers would need prior authorisation from a national court and may only be ordered if justified by reasonable grounds, if less intrusive measures are not sufficient. This would bring an improvement of the protection of procedural rights in those Member States where a prior judicial authorisation by a Court for this measure is not yet foreseen.

The Commission takes due note of the concerns raised with regard to the provision on the transaction in the proposed Regulation and will carefully consider the matter during the legislative process.

Concerning the view that further clarity on the relationship between the proposal and the principle of mutual recognition is needed, the Commission would like to recall that in principle the European Public Prosecutor's Office would not automatically replace the existing mechanisms of mutual recognition in all cases. The Commission will consider the matter further in the course of the legislative procedure and seek to establish greater clarity on this issue.

The Commission would like to stress that it will take due account of the views expressed and will consider all arguments put forward by the national Parliaments and Member States during legislative procedure.

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

Yours faithfully,

*Maroš Šefčovič
Vice-President*