



*Brussels, 10.4.2014
C(2014) 2482 final*

Dear President,

The Commission would like to thank the Assemblée nationale for its Opinion concerning the Commission's proposal to establish a European Public Prosecutor's Office {COM (2013) 534 final} and express its gratitude for its long-standing support in this regard.

The Commission would like to provide the following comments on the issues raised by the Assemblée nationale.

The Assemblée nationale suggests that the competences of the European Public Prosecutor's Office be extended so as to include serious crimes having a cross-border dimension in the meaning of Article 86 (4) of the Treaty of the Functioning of the European Union. The Commission would like to draw the attention to its Communication of 17 July 2013 {COM (2013) 532} accompanying the proposal which underlines that the Commission will re-examine the mandate of the European Public Prosecutor's Office after it has been established. For the time being, the competences of the European Public Prosecutor's Office would be limited to crimes affecting the financial interests of the Union, in accordance with Article 86 (1) of the Treaty of the Functioning of the European Union.

As regards the preference expressed by the Assemblée nationale that the European Public Prosecutor's Office possesses concurrent rather than exclusive competences, the Commission is of the view that the proposal as drafted clearly delineates the tasks between the Office and the national authorities so as to avoid loopholes or overlaps and to guarantee legal certainty. The rationale is that crimes affecting the financial interests of the Union would be dealt with by an office that has its focus on such crimes and deals with them as its main priority. The issue of the right balance between the tasks of the EPPO and the efficient handling of its workload is under active consideration in the current phase of the decision-making process. The Commission takes note of the view expressed by the Assemblée nationale on this point and will consider it further.

The Assemblée nationale further states that in view of Article 86 (1) of the Treaty on the Functioning of the European Union, which stipulates that the European Public Prosecutor's Office is to be established from Eurojust, a certain geographical proximity between these two entities is needed. The Commission would like to underline that there would be a special relationship between the European Public Prosecutor's Office and Eurojust, based on close

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cooperation and close operational, administrative and management links. Article 57 of the proposal foresees detailed provisions on this special relationship. In its proposal the Commission referred – in recital 49 – to the decision taken by the Representatives of the Member States, meeting at Head of State or Government level in Brussels on 13 December 2003 regarding the seat of the European Public Prosecutor's Office.

Concerning the preference expressed by the Assemblée nationale for a college model, in which all participating Member States are represented, the Commission proposal already foresees the establishment of a collegial forum at central level with the competence to decide on internal rules of procedure governing the organisation of the work of the European Public Prosecutor's Office. The options regarding structure are carefully examined during the current phase of the decision-making process. In that context, the Commission attaches particular importance to safeguarding the principles of independence, accountability and efficiency of the European Public Prosecutor's Office.

In relation to the appointment and dismissal of the European Public Prosecutor and his/her Deputies, the Commission considers, in principle, that the European institutions, notably the Council and the European Parliament, should select and appoint the prosecutors of this new European entity, following an open competition and transparent procedure, and that the Court of Justice should have the power to dismiss them.

The Commission welcomes the support expressed by the Assemblée nationale with regard to the provisions on procedural safeguards. Creating a minimum set of rights, directly applicable to suspects and accused, is fundamental in order to ensure a sound balance with the investigation and prosecution powers of the European Public Prosecutor's Office.

With regard to the scope of judicial review, which the Assemblée nationale considers insufficient, the Commission would like to underline that the European Public Prosecutor's Office would have to respect the rights enshrined in the Charter of Fundamental Rights of the European Union, as laid out in Article 11 (1) of the proposal. All challengeable acts of investigation and prosecution of the European Public Prosecutor's Office would be reviewed by the national courts, without prejudice to the possibility of preliminary rulings pursuant to Article 267 of the Treaty on the Functioning of the European Union. The 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 a uniform application of the proposed Regulation throughout the Union. This system of judicial review would also apply to the choice of jurisdiction, an issue which only arises in cross-border cases. If national law so provides, the court to which the prosecution file is submitted, may review also the choice of jurisdiction. This review by the national court may precede, or be part of, the main trial on the merits of the case. The court may come to the conclusion, after such review, that it is not competent to try the case. Modalities on judicial review are under consideration during the continuing decision making process.

The Commission takes note of the view expressed by the Assemblée nationale that further harmonisation efforts need to be undertaken, including in the area of the admissibility of evidence and the statute of limitations. The Commission would like to underline that it would like as many Member States to participate in the European Public Prosecutor's Office as possible. The Commission's key objective is to establish an independent and efficient prosecution office that would bring the greatest added value in the fight against criminal activity affecting the financial interests of the Union.

Finally, the Commission would like to reiterate its appreciation for the support by the Assemblée nationale in the establishment of the European Public Prosecutor's Office.

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

Yours faithfully,

*Maroš Šefčovič
Vice-President*