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Mr Horst SEEHOFER
President of the German
Bundesrat
Leipziger Straße 3 - 4
D-10117 Berlin

Dear President,

The European Commission thanks the Bundesrat for its comments on its proposal concerning the protection of the financial interests of the EU by criminal law and by administrative investigations {COM(2011)293}.

The Commission reassures the Bundesrat that it will conduct a thorough analysis in accordance with the relevant Treaty requirements, including those contained in Article 5 TEU, for any legal initiative to protect the EU financial interests, in full respect of the principles of subsidiarity and proportionality. This analysis will cover the needs and possible ways in which the European law enforcement and judicial agencies could be reinforced to deal with fraud against the European Union's financial interests. The analysis will also concern the coordination of criminal investigative measures in this area including the possibility for the setting up of a European Public Prosecutor's Office. In the light of the new institutional set up under the Lisbon Treaty, as well as the binding character of the EU Charter of Fundamental Rights, the Commission will analyse with great care the legal requirements as regards accountability and judicial review mechanisms, in the run up to any legislative proposal on a prosecutorial authority at EU level and evaluate its potential impact.¹

The Commission shares the Bundesrat's opinion that the approximation of criminal law and criminal sanctions is sensitive as differences amongst the national systems in the EU remain substantial. However, EU criminal legislation can add, within the limits of EU competence, important value to the existing national criminal law systems, increase the standards for protection of procedural guarantees in any case of transnational investigations and prosecution throughout Europe and help national competences to be exercised more effectively. In line with the principles established in its Communication "Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law" {COM(2011)573 final}, the Commission will carefully consider the need for EU criminal law legislation to achieve the legitimate purpose of fighting fraud and other illegal activities affecting EU financial interests.

¹ See Commission Staff Working Paper, *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*, SEC(2011)567 final of 6.5.2011.

The Commission will pay particular attention to the added value that approximation in the field of criminal law may bring to the protection of EU financial interests, as well as to the various points raised by the Bundestag, in particular on the choice of legal basis, the question of direct effect of any EU criminal law provision in the Member States, the types of liability and the 'principle of guilt' in German law.

Yours faithfully,

*Maroš Šefčovič
Vice-President*