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Dear President,

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

The Commission would like to express its appreciation for the support by the Bundesrat which in its opinion has presented its views on a wide range of aspects concerning the European Public Prosecutor's Office. It would like to provide the following comments:

The Commission agrees with the Bundesrat that as many Member States as possible should participate in the European Public Prosecutor's Office in order to ensure that crimes against the EU financial interests are investigated and prosecuted in a coherent manner.

With respect to the number of European Delegated Prosecutors, the Commission agrees that there should be a sufficient number of them in each Member State. The Commission's proposal leaves it to the Member States to determine the number of the European Delegated Prosecutors. Article 6 of the proposal merely states that there should be at least one European Delegated Prosecutor in each Member State. The Commission notes the concern regarding the instructions in relation to national prosecution services. However, for the functioning of the Office it is necessary that European Delegated Prosecutors should instruct national law enforcement authorities in their respective Member State (Article 18(1)). These would remain prosecutors under national law ("double-hatted" functions).

The Commission takes due note of the Bundesrat's suggestion to define PIF-crimes in the Regulation itself. PIF-crimes are defined in a draft Directive proposed by the Commission pursuant to Article 325 of the Treaty on the Functioning of the European Union, which is considered to be the appropriate legal basis.

As regards the competences of the European Public Prosecutor's Office and its relationship with national authorities, the proposal is based on a clear distribution of tasks to create neither loopholes nor overlaps for the sake of legal certainty. The Commission will take due account of the position of the Bundesrat in the cause of the ongoing negotiation.

With regard to the Bundesrat's concern of the investigative powers of the European Public Prosecutor's Office being too intrusive, the Commission would like to emphasise that

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according to the proposal the more intrusive investigative powers need prior authorisation from a national court. This will 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. Moreover, investigative measures may only be ordered if justified by reasonable grounds and if less intrusive measures are not enough.

With regard to the admissibility of evidence, the Commission has taken due note of the Bundesrat's concern that references to the Charter of Fundamental Rights of the European Union might not be enough to exclude the admissibility of evidence that was collected in breach of the applicable national law. The Commission agrees that evidence presented to the trial court must have been collected lawfully in the respective Member State. Member States have presented different views on the details of Article 30 of the proposal during the legislative procedure. The Commission is listening to all suggestions on this issue.

With regard to the relationship of the Office with third countries and international organisations pursuant to Article 59 of the proposed regulation, the Commission takes note of the comments raised by the Bundesrat. It is important that the proposal contains rules on the relationship of the European Public Prosecutor's Office with non EU-members.

This is also true as regards the European Public Prosecutor's Data Protection rules. It is important to agree on effective and robust rules in the specific context of the European Public Prosecutor's Office to complement the Union legislation applicable to processing of personal data. The Commission will look in detail into the comprehensive comment made by the Bundesrat.

On the general regime of liability of the European Public Prosecutor's Office, the Commission points out that, in particular when it comes to making good any damage caused by the Office, the rights of compensation must be consistent throughout the Union in accordance with Article 340 of the Treaty on the Functioning of the European Union.

In response to the Bundesrat's remark that the proposal needs to contain rules on the competent authority to execute court orders, the Commission did not consider that this was necessary, but it will listen to all suggestions put forward in the ongoing negotiations.

Regarding the costs for court and lawyers' fees, the Commission considers that such expenses must be met by Member States whereas the Office's operational expenditure shall be covered by its own budget.

The Commission hopes that these comments address the points raised in the Bundesrat's Opinion.

The Commission will take due account of the views expressed by the national Parliaments and looks forward to continuing our political dialogue.

Yours faithfully,

*Maroš Šefčovič
Vice-President*