



EUROPEAN COMMISSION

Brussels, 13.3.2014
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Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion on the Commission's proposal to establish a European Public Prosecutor's Office {COM(2013) 534 final}. The Senato della Repubblica points out that Article 8 (appointment and dismissal of the European Public Prosecutor) does not lay down any criteria for determining who is competent to draw up the list of candidates which the Commission should present to the Parliament and Council.

The Commission considers that the criteria for the choice of the European Public Prosecutor are clearly laid down in its proposal. As set out in Article 8(2) of the proposal, the European Public Prosecutor's independence must be beyond doubt; he must possess the qualifications required for appointment to a high judicial office and must have relevant prosecution experience. In addition, the selection process for fulfilling these conditions is based on an open call for tender published in the Official Journal of the European Union. The Commission considers that clear criteria and a transparent and lawful procedure are the best safeguards to exclude arbitrary decision making. Moreover, the rules of the appointment of the European Public Prosecutor are in line with the procedure to be followed for comparable posts within the European Institutions.

The Senato della Repubblica also points out that the criterion "serious misconduct" to justify the dismissal of the European Public Prosecutor is vague. The Commission would like to point out that the decision to dismiss the European Public Prosecutor would ultimately have to be taken by the European Court of Justice, which will interpret this legal notion, which is also used in comparable provisions of the Treaty.

With regard to the definition of ancillary competences of the European Public Prosecutor's Office, the Commission wishes to clarify that the criteria in the proposal are similar to those established by the European Court of Justice to define situations in which the principle of "ne bis in idem" applies. The term "preponderance" is explained in more detail in recital 22 of the draft regulation. The Commission has, however, taken due note of the comments made and will take them into account during the legislative procedure. Regarding Article 14, this provision is in line with similar provisions in recent EU Directives, for example Article 10(1) of the Directive on trafficking in human beings, adopted on 21 March 2011.

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With regard to the judicial authorisation required for investigative measures of the European Public Prosecutor, it should be noted that measures listed under Article 26(1) a) – j) of the proposal would always have to be authorised by a competent national court. This is explicitly stated in Article 26(4).

With regard to Article 27, the Commission has taken note of the suggestion of the Senato della Repubblica to indicate an order of priority of the criteria determining the jurisdiction of trial, and will take it into account in the ongoing legislative procedure.

The compulsory dismissal of a case on the grounds of the expiry of the national statutory limitation to prosecute (Article 28(1) d)) refers to the law of each Member State. It does not apply to cases to be prosecuted in Italy, if in Italy such a limitation does not exist.

Regarding the rules on transactions and the calculation of fines to be imposed, these should – according to recital 31 – be clarified in the administrative rules of the European Public Prosecutor's Office. It would only be possible to undertake transaction with the agreement of the suspected person and after the damage has been compensated.

With regard to Article 30 of the proposal, the Commission would like to make clear that this provision aims at facilitating the admissibility of evidence within the limited material scope of the Regulation (offences affecting the financial interests of the Union), by providing that evidence collected lawfully in one Member State is admissible in a trial court of any participating Member State, if the principles of a fair procedure as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union are respected. The idea behind this provision is that, in so far as the action of the European Public Prosecutor's Office is concerned, the Member States should in principle recognise each other's procedural criminal law regarding the collection of evidence, unless the fairness of the procedure is affected. The Commission considers that this provision strikes an adequate balance between the effectiveness of the action of the Office and the rights of the suspects.

In the proposal, the expression that national courts can "freely assess" the admissible evidence is a legal term in many Member States and means that the court would not be bound by rules when evaluating and assessing the value of evidence presented to it.

The Commission would like to underline that it will take due account of the arguments submitted by the national Parliaments during the legislative procedure. The Commission hopes that these clarifications address the concerns raised by the Senato della Repubblica and looks forward to continuing the political dialogue.

Yours faithfully,

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Vice-President*