



EUROPEAN COMMISSION

*Brussels, 28.7.2014
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Dear Chairman,

The Commission would like to thank the House of Commons for its Opinion in response to the Commission's reply of 14 March 2014 to the House of Commons' Reasoned Opinion concerning the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office {COM(2013) 534 final}.

The Commission would also like to address the comments made by the House of Commons in its Opinion from 7 May 2014 concerning the Commission Communication of 27 November 2013 on the review of the proposal for a Council Regulation on the establishment the European Public Prosecutor's Office with regard to the principle of subsidiarity {COM(2013) 851 final}.

The Commission maintains that the mandatory prosecution model foreseen in its proposal does not pose a risk to suspects' fundamental rights. The proposal does not intend to equate the mandatory prosecution model with the discretionary model. As outlined in earlier correspondence, the mandatory prosecution model, based on the principle of legality, takes into account all circumstances, including individual guilt, and provides the necessary margin of appreciation for public prosecutors before they form a decision on indicting a case or not, in line with the law. In addition, prosecutorial decisions are subject to judicial review.

With regard to the view expressed in the House of Commons' Opinion that the Commission's assumptions in relation to the impact on other areas of prosecutorial activity and priorities were unrealistic, the Commission notes that, in line with the obligations enshrined in the Treaty, Member States are expected, now and in the future, to make available the necessary resources and means to effectively protect the Union's financial interests. The establishment of the European Public Prosecutor's Office would complement the national capacity to fight EU fraud. Its impact on the prerogative of national authorities to prioritise investigations and prosecutions within their own criminal justice systems would be limited.

*Mr William Cash MP
Chairman of the European Scrutiny Committee
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Regarding the perceived lack of detail concerning judicial review arrangements, the Commission would like to stress that the European Public Prosecutor's Office would exercise the functions of prosecutor in the competent courts of the Member States. In line with Article 86 of the Treaty on the Functioning of the European Union (TFEU) and as highlighted in the Commission's reply of 14 March 2014, national courts would review all challengeable acts of investigation and prosecution, without prejudice to the possibility for preliminary rulings pursuant to Article 267 TFEU. Accordingly, detailed provisions on judicial review would follow from national law in conjunction with the proposed Regulation and the Treaty.

The Commission does not share the view that the establishment of the European Public Prosecutor's Office would pose a risk of non-participating states being disadvantaged by reduced resources for OLAF. In addition to the arguments provided in the Commission's reply of 14 March 2014, the Commission considers that the European Public Prosecutor's Office would substantially enhance the efforts in the fight against crimes affecting the Union's financial interests. This would be advantageous to all Member States, not only to those taking part in this initiative. The European Public Prosecutor's Office would reduce the workload of OLAF which would maintain the necessary staffing and resources to effectively carry out its tasks.

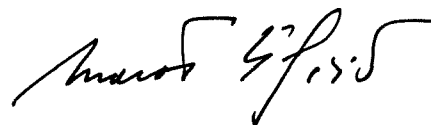
With regard to the term "single legal area", the Commission would like to underline that this expression reflects the approach taken in the fight against crimes affecting the financial interests of the Union, where the European Public Prosecutor's Office would operate on the territory of all participating Member States. It should not lead to the conclusion that all Member States participate. It is true, however, that the Commission's goal is that as many Member States as possible participate in this initiative.

With regard to the House of Commons' observation in its Opinion from 7 May 2014 that the Commission's reply to the yellow card on the proposal for the European Public Prosecutor's Office has undermined the faith in the yellow card procedure as a whole, the Commission would like to reiterate that its decision to maintain the proposal was the result of a detailed review of the subsidiarity-related arguments in the reasoned opinions from national Parliaments. The Communication addressed all arguments related to the principle of subsidiarity applying a broad interpretation of the notion of subsidiarity, in the spirit of openness. However, subsidiarity is distinct from the principles of conferral and proportionality and other issues of legality pursuant to Article 5 TEU.

As regards the yellow card procedure more generally, the Commission's role under Protocol 2 to the TFEU is to assess the arguments on subsidiarity raised by national Parliaments and decide whether to maintain, withdraw or amend the proposal. The Protocol leaves the choice among these three options to the appreciation of the Commission. As explained in the Communication, the Commission considered that its proposal complies with the principle of subsidiarity enshrined in Article 5(3) TEU. The Commission also announced that the reasoned opinions would be taken into account during the legislative process.

The Commission hopes that these comments address the concerns raised by the House of Commons and looks forward to continuing the political dialogue in the future.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Maroš Šefčovič', written in a cursive style.

*Maroš Šefčovič
Vice-President*