



EUROPEAN COMMISSION

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*Mr William Cash MP
Chairman of the
European Scrutiny Committee
House of Commons
Palace of Westminster
UK – LONDON SW1A 0AA*

Dear Chairman,

The Commission would like to thank the House of Commons for its Opinion of 22 January 2014 assessing the Commission's Communication of 27 November 2013 on the review of the proposal on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No.2 to the EU Treaties {COM(2013) 851 final}.

The Commission trusts that its earlier reply to the House of Commons' Reasoned Opinion in relation to arguments not related to the subsidiarity principle already addressed a number of concerns. This letter provides further explanations.

The Commission's decision to maintain its proposal is the result of an in-depth review. The Communication on 27 November 2013 demonstrates that the Commission has treated the Reasoned Opinions issued by a number of national Parliaments as a matter of highest priority.

The Commission's decision to maintain the proposal does not prevent the Commission from taking account of arguments mentioned in the Reasoned Opinions during the ongoing legislative procedure. The Commission is engaging with an open attitude in the inter-institutional phase of the decision making process. In March 2014, the European Parliament adopted an interim-report on the draft regulation whereas the Council held an orientation debate at Ministerial level.

The Commission has undertaken a sound and detailed analysis of whether and how existing measures could have been strengthened or alternative measures developed. The information the Commission has used to assess the current situation stems from statistical material provided by Member States and OLAF, case studies and systematic surveys among practitioners¹. The data and information have been collected over long periods.

¹ See for example the Commission's "Communication on the protection of the financial interests of the European Union by criminal law and by administrative investigations, an integrated policy to safeguard taxpayers' money" – COM(2011)293 and SEC (2011) 621. These documents summarise the measures taken to protect the Union's financial interests and the studies undertaken to this end.

In this context see the "Comparative law study" by the University of Luxembourg on common features and differences between the legal systems and cultures within the EU in tackling crimes affecting the financial

The information shows that existing mechanisms like fraud prevention, mutual assistance tools, and activities of Union bodies and harmonisation of laws have an effect on crimes affecting the Union's financial interests but cannot satisfactorily address the problem, in particular in complex or cross-border cases.

In response to the House of Commons' request to receive an explanation as to why the Commission has made a distinction between arguments concerning subsidiarity and arguments that are not directly about subsidiarity, the Commission would like to point out that it has followed the procedure which was communicated to national Parliaments in the letter of President José Manuel Barroso of 1 December 2009. Whereas arguments raised by national Parliaments related to subsidiarity are dealt with in the Communication, the political dialogue replies cover all other aspects of the documents transmitted by national Parliaments.

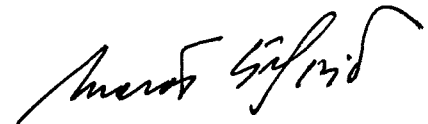
The House of Commons raises concerns that the Commission did not consider Member State action at regional or local level in its Impact Assessment. The Commission has assessed whether the objectives of a European Public Prosecutor's Office can be reached at Member State level and has found that this is not the case. The reasons underpinning this result are valid also for Member States acting at regional or local level. The 13th report of the Justice Committee of the Scottish Parliament, to which the House of Commons refers, does not suggest that the objectives of the Commission's proposal can be better reached at regional or local level as opposed to national level.

The Commission maintains its position that the impact on national judicial systems that the establishment of a European Public Prosecutor's Office would have, is not per se sufficient to invoke an infringement of the subsidiarity principle.

This is consistent with the Union legislator's decision to introduce a special legal basis for the establishment of a European Public Prosecutor's Office in the Treaty on the Functioning of the European Union and not only a general Union competence to act in the policy sector of judicial cooperation in criminal matters.

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

Yours faithfully,



*Maroš Šefčovič
Vice-President*

interests of the European Union. The study contains comprehensive reports on the details of investigation measures, prosecutorial measures, the use of evidence, procedural safeguards as well as information sharing between administrative and judicial authorities, which are of relevance for the offences affecting the EU financial interests. The analysis is complemented by several transversal and special reports on selected problems in this field.