



HOUSE OF LORDS
European Union Committee

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Vice-President Maroš Šefčovič
European Commission
B-1049 Brussels
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10 January 2013

Dear Maroš,

Communication from the Commission on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2 (COM (2013) 851).

The European Union Select Committee, which I chair, has considered¹ the Commission's Communication on the review of the proposal on the Establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity.

We regard this as an unsatisfactory response to our reasoned opinion, its superficiality giving the appearance of having been prepared in too much haste.

The Communication makes only three references to the specific objections raised by the House.

The first of these² is a matter which the House did not, in fact, raise.

The second is that the Regulation would create disadvantages for Member States in that they would lose the capacity to prioritise prosecution activities within their own criminal justice systems. This is considered by the Commission to fall outside the scope of the subsidiarity control mechanism. We find this a surprising conclusion, particularly in the light of the Commission's acknowledgement that "the limits of the principle of subsidiarity are not easy to trace" and therefore it has interpreted the arguments of national parliaments "insofar as possible, in the light of the principle of subsidiarity."

In fact, we consider that this point is clearly relevant to a subsidiarity assessment. As the Commission accepts, such assessment involves determining whether the EPPO brings sufficient added value. An important element of such assessment involves balancing the adverse effect of the proposal on national law enforcement regimes, as highlighted by this

¹ With the assistance of the Justice, Institutions and Consumer Protection Sub-Committee which prepared the reasoned opinion adopted by the House of Lords on the 28 October 2013.

² "The Regulation may violate the protection of fundamental rights guaranteed by ...the Charter."

argument in the reasoned opinion, against the claimed benefits of the proposal.

The third reference is to our argument that the assumptions of the Commission are overly optimistic. This is the only point raised by the House which is expressly and specifically addressed by the Commission as a subsidiarity objection. Even in this case, the focussed criticisms of the Commission's estimates of the costs and benefits of the proposal are met only by general assertions of the added value of the proposal.

We have been left to infer the Commission's response to most of our objections to the proposal. This in itself is unsatisfactory. It does not fulfil COSAC's request³ that the Commission address more specifically the concerns raised by national parliaments in their reasoned opinions. Furthermore, the exercise of seeking to match points raised in the Communication in response to other national chambers to those raised by the House of Lords reveals not only that the Commission has failed to bring forward any new points to support the proposal, but that one issue raised by us has not been addressed at all; namely the point that the proposal cannot address the problem of the fragmentation of national law enforcement efforts because it is clear that at least two (probably more) Member States will not be participating in the proposal.

We, therefore, request that the Commission specifically addresses those points raised by the House of Lords in its reasoned opinion which have not already been dealt with in its Communication.

I am copying this letter to Vice-Presidents Miguel Angel Martínez-Martínez MEP and Othmar Karas MEP; Juan Fernando López Aguilar MEP, Chair of the LIBE Committee; Klaus-Heiner Lehne MEP, Chair of the JURI Committee; Carlo Casini MEP Chair of the AFCO Committee; Salvatore Iacolini MEP, rapporteur for this proposal; Birgit Sippel MEP, Renate Weber MEP, Jan Philipp Albrecht MEP, Timothy Kirkhope MEP and Cornelis de Jong MEP, shadow rapporteurs for this proposal; William Cash MP Chair of the Commons Committee; Sarah Davies, Clerk to the Commons Committee, Paul Hardy, Legal Adviser to the Commons Committee; Les Saunders, Cabinet Office; Deborah Maggs, Home Office Departmental Scrutiny Coordinator.



The Lord Boswell
Chairman of the European Union Committee

³ Contribution to the XLIX COSAC, Dublin 23-25 June 2013.