



EUROPEAN COMMISSION

Brussels, 13.3.2014
C(2014) 1598 final

Dear President,

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

In its Communication of 27 November 2013 {COM(2013) 851 final} the Commission carefully analysed the arguments presented by the Senát from the perspective of the principle of subsidiarity, taking an open attitude and interpreting arguments, insofar as possible, as based on the subsidiarity principle. As a result of the analysis of the different arguments, the Commission concluded that its proposal of 17 July 2013 complies with the principle of subsidiarity and decided to maintain it. The Commission stressed, however, that during the legislative process, it will take due account of the Reasoned Opinions of the national Parliaments.

This letter addresses the arguments submitted by the Senát which according to the Commission's assessment do not relate to the principle of subsidiarity and hence fall outside the scope of the subsidiarity control mechanism and of the Commission's Communication.

In respect of these issues, the Commission would like to provide the following comments:

1) The Senát expressed the concern that the proposal may violate the protection of fundamental rights guaranteed by the Czech Constitution and the Charter of Fundamental Rights. The Senát states that the right to a lawful judge may be touched upon by the broad discretion of the European prosecutor in the choice of the competent national court, furthermore, that the right to a fair trial may be violated by one-instance decision-making of the Office, and finally that the absence of a procedure governing conflicts of interests may touch upon the Czech Constitution and the Charter of Fundamental Rights.

The Commission does not share this concern. The Commission would firstly point to Article 11(1) of the proposal, according to which the European Public Prosecutor's Office shall

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ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union.

Article 86 of the Treaty stipulates that the European Public Prosecutor's Office shall exercise the functions of prosecutor in the competent courts of the Member States. The proposal foresees that the Office is considered a national authority for the purpose of judicial review of its acts of investigation and prosecution. Accordingly, all challengeable acts of investigation and prosecution of the European Public Prosecutor's Office would be reviewed by the national courts. This is complemented with the preliminary reference procedure pursuant to Article 267 of the Treaty on the Functioning of the European Union, which would allow the Court of Justice to interpret the proposed Regulation and ensure that it is applied uniformly throughout the Union.

The Commission considers that judicial review by national courts and the preliminary reference procedure ensure a comprehensive level of judicial scrutiny and hence ensure compliance with the law.

This system of judicial review shall also apply to the choice of jurisdiction, an issue which only arises in cross-border cases. Article 27 of the proposed Regulation provides the criteria on the basis of which the jurisdiction of trial shall be chosen by the European Public Prosecutor's Office, such as the place of the crime or the residence of the defendant. These criteria are strict and objective, so that the European Public Prosecutor's Office would only have a limited margin of discretion. The choice would have to be made, in any case, in close consultation with the competent European Delegated Prosecutor. In addition, this choice may be challenged in accordance with national law. If national law so provides, the court to which the prosecution file is submitted may review the choice of jurisdiction. Such review by the national court may precede, or be part of, the main trial on the merits of the case. The court may come to the conclusion, after such review, that it is not competent to try the case.

With regard to the possibility of a conflict of interests involving one of the European Delegated Prosecutors, such concerns may be brought before the European Public Prosecutor who may decide to reassign a case in accordance with Article 18(5) of the proposal. Furthermore, Articles 8 to 10 provide for the possibility of dismissal of the European Delegated Prosecutors, the European Public Prosecutor, or his Deputies

The Commission understands that the concerns expressed in relation to fundamental rights do not constitute arguments challenging the conformity of the proposed Regulation with the principle of subsidiarity. The arguments expressed by the Sénat in relation to the subsidiarity principle are covered in chapters 2.3, 2.4 and 2.6. of the Communication.

The Commission's proposal states explicitly that the execution of investigative measures and procedural guarantees is subject to national law. With regard to decisions taken by the European Public Prosecutor – such as the decisions to indict, to dismiss a case or to determine jurisdiction – these decisions would have to be reasoned by the European Public Prosecutor according to the conditions set out in the Regulation. These decisions could be challenged before the competent national courts. The Commission will during the legislative procedure consider whether further to clarification is required.

2) The Sénat further underlined in its Reasoned Opinion that the European Public Prosecutor's Office should act with third countries only through the Member States authorities.

In this regard the Commission would like to highlight that pursuant to Article 59 of the proposed Regulation, the Member States shall recognise the European Public Prosecutor's Office as a competent authority for the purpose of the implementation of their international agreements on legal assistance in criminal matters and extradition, or, where necessary, alter those agreements on legal assistance to ensure that the European Public Prosecutor's Office can exercise its functions on the basis of such agreements.

Furthermore, the European Public Prosecutor's Office may request Eurojust to provide support in the transmission of its decisions or requests for mutual legal assistance to, and for execution in, States that are members of Eurojust but do not take part in the establishment of the European Public Prosecutor's Office, or in third countries.

With regard to data protection, recital 42 of the Commission's proposal states that Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data would apply to the European Public Prosecutor's Office. This would include future amendments of this regulation.

The Commission will take due account of the views expressed by the national Parliaments during the legislative process.

The Commission hopes that these comments address the concerns raised by the Senát and looks forward to continuing our political dialogue.

Yours faithfully,

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Vice-President*