

House of Representatives

OF THE STATES GENERAL

Standing Committee for Security & Justice (V&J)

To the President of the European Commission
B-1049 Brussels
BELGIUM

Place and date: The Hague, 16 April 2014
Subject: Reply to your letter of 14 March regarding the reasoned opinion (subsidiarity) issued by the House of Representatives of the States General regarding the EU proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (COM(2013) 534)
Our reference: 2014Z07029/2014D13834

Dear Mr Barroso,

Thank you for your letter of 14 March 2014. The House of Representatives of the States General much appreciates the extra information relating to the subsidiarity objection.

The House of Representatives regrets the European Commission's decision not to consider the yellow card sufficient reason to review the commission proposal. This decision is based on the finding that many of the arguments put forward by the national parliaments do not concern the subsidiarity of the proposal to establish the European Public Prosecutor's Office. Your conclusion that the proposal is consistent with the subsidiarity principle, and should therefore remain in place and unaltered, means that the European Commission does not consider the arguments that *do* relate to subsidiarity to be grounded.

Having heard this line of argumentation, the House of Representatives invited European Commissioner Reding to come to the Netherlands to explain the decision. The House of Representatives was disappointed that this invitation was turned down, particularly in view of the fact that she has since been to the Netherlands. A visit to the House of Representatives could have been arranged during this trip; this is a question of priorities. Alternatively, a delegation from the House of Representatives would have been more than willing to meet the European Commissioner in Brussels.

The House of Representatives thinks that the refusal to take action on the yellow card is based on a misinterpretation of the articles and protocols regarding the role of national parliaments in European policymaking, as laid down in the Treaty of the Functioning of the European Union, and is not consistent with the letter from the President of the European Commission Barroso of 1 December 2009 regarding the implementation of these Treaty provisions. The House of Representatives is of the opinion that a yellow card can be used to start a dialogue between the European Commission and national parliaments, thereby strengthening the ties and boosting mutual trust within the

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European Union. We therefore consider this a missed opportunity on the part of the European Commission.

The House of Representatives had the impression that the European Commission's initial reaction to the yellow card was hasty and barely considered. The indignation of the parliaments concerned is therefore entirely understandable. A more substantial response was not received until after the European Commission had decided to ignore the yellow card. It is hard not to conclude that you made the decision to ignore the yellow card before setting out the reasons to do so. We would kindly ask you to communicate both decisions simultaneously in future. It goes without saying that any refusal to act on a yellow card, even if considered appropriate, should be based on arguments and substantiated considerations of these arguments. Creating the impression that things may have proceeded differently in this case does not do the European Commission any credit.

We do not share your interpretation of subsidiarity and the subsidiarity objection, and consider this a matter of some concern. The principle that criminal prosecution is primarily within the power of the member states means that the details of the proposal are important in order to determine the extent of the breach of subsidiarity.

It is our view that the way in which the European Commission has handled this particular yellow card may have undermined faith in the yellow card procedure as a whole, and therefore in cooperation within the European Union.

European Commissioner Reding intends to negotiate with the member states, paying particular attention to the possibility of establishing a European Public Prosecutor's Office with intensified cooperation. In effect, the message that is hereby sent is that the member states whose national parliaments filed a subsidiarity objection are excluded from the negotiation process. At the same time, we have read interesting proposals made by the Greek EU Presidency. The European Commission should perhaps see the fact that the Presidency has felt obliged to formulate a new proposal as a sign that it is not constructive to ignore the subsidiarity objections.

We are now asking you to reconsider your refusal to review the proposal and allow us to explain our wishes regarding said proposal. In view of the yellow card and the motion passed in the House of Representatives, we firmly assume that the Dutch government will be included in the negotiations.

We look forward to your reply to this letter.

A copy of this letter has been sent to the Vice President of the European Commission, the President of the Council, the President of the European Parliament and the Dutch Minister of Foreign Affairs.

On behalf of the House of Representatives of the States General

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