



## EUROPEAN COMMISSION

Brussels, 14.3.2014  
C(2014) 1679 final

*Dear Chairman,*

*The Commission would like to thank the House of Lords 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 for the letter dated 10 January 2014, in which the House of Lords reacts to the Commission's Communication adopted on 27 November 2013.*

*In its Communication of 27 November 2013 {COM(2013) 851} the Commission carefully analysed the arguments presented by the House of Lords 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 the House of Lords is aware, as a result of the thorough and careful analyses 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 procedure, it would take due account of the Reasoned Opinions of the national Parliaments.*

*This letter addresses the arguments submitted by the House of Lords which do not relate to the principle of subsidiarity and hence fall outside the scope of the subsidiarity control mechanism and therefore of the Communication of the Commission of 27 November 2013.*

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

*1. According to the opinion of the House of Lords, the proposal creates disadvantages for participating and non-participating Member States, as the former lose the prerogative to prioritise prosecution activities within their own criminal justice systems, while the latter would face disadvantages from reduced competence and staffing of Eurojust and OLAF in relation to crimes affecting the financial interests of the Union.*

*The Commission would like to emphasise that one of the key objectives of the proposal is to increase the priority given to investigations and prosecutions of crimes affecting the Union's financial interests. In line with the obligations enshrined in the Treaty, Member States are expected to make available the necessary resources and means to effectively protect the*

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*Union's financial interests. This is without prejudice to the Member States' prerogative to prioritise prosecution activities in the areas unrelated to crimes affecting the financial interests of the Union. The Commission considers the successful fight against Union fraud to be of great advantage to both the Union and the Member States.*

*Reduced competences of Eurojust and OLAF would not lead to disadvantages for Member States that are not participating in the European Public Prosecutor's Office. After the establishment of the European Public Prosecutor's Office, OLAF would no longer conduct administrative investigations in the area of Union fraud in participating countries, but would remain competent with respect to non-participating countries. Similarly, the reform of Eurojust aims at improving the functionality of Eurojust and due care would be taken that Eurojust remains equipped to successfully continue its tasks going beyond the fight against crimes affecting the financial interests of the Union.*

*The Commission, accordingly, considers that the proposal, as part of a package of measures aimed at better protecting the Union's financial interests, would have no adverse impact on either Eurojust or OLAF and hence would not create disadvantages for the Member States that are not participating in the European Public Prosecutor's Office.*

*2. The House of Lords advances the opinion that the problem of fragmentation of national law enforcement efforts would not be addressed, as at least two Member States, Denmark and the United Kingdom, will not participate in the European Public Prosecutor's Office.*

*The position in relation to the non-participation of Denmark and the possible non-participation of the United Kingdom and Ireland applies to all initiatives in this policy area. The European Public Prosecutor's Office was conceived from the beginning on the basis that not all Member States may wish to participate. Article 86 of the Treaty on the Functioning of the European Union provides for adoption by enhanced cooperation in the absence of unanimity in the Council, if at least nine Member States express their wish to do so. Accordingly, the Commission is not of the view that partial participation of Member States per se is a valid argument against the establishment of the European Public Prosecutor's Office.*

*3. The House of Lords has argued in its Reasoned Opinion that the proposal would discourage Member States from fighting Union fraud.*

*The Commission does not share this view. As referred to above, one of the key objectives of the proposal is to increase the priority given to investigations and prosecutions of crimes affecting the Union's financial interests. The Member States would continue to play a fundamental role in the fight against crimes affecting the financial interests of the Union, hand in hand with the European Public Prosecutor's Office.*

*As set out above, the proposal is not only based on respect for the national legal traditions and judicial systems of the Member States but also depends on the national authorities. The European Delegated Prosecutor would be a national prosecutor and would be embedded in the national prosecutorial system; enforcement of investigative measures as well as judicial review would be in national hands.*

*4. The House of Lords is concerned that autonomous rules in respect of the admissibility of evidence create an unnecessary complication and expense in the operation of the national criminal law systems.*

*The proposal aims at improving and facilitating the proceedings on the admissibility of evidence. The proposal stipulates that evidence obtained lawfully in one Member State is*

*admissible in trial courts of all Member States, provided that the evidence was collected in a manner that respected the fairness of the procedure and the suspect's rights of defence under the EU Charter of Fundamental Rights. The trial court could not exclude the evidence presented by the European Public Prosecutor's Office as inadmissible on the ground alone that the conditions and rules for gathering that type of evidence are different under the national law applicable to it. In the Commission's view, these straight-forward provisions on the admissibility of evidence are therefore a considerable improvement compared with the current situation and hence not an unnecessary complication or expense.*

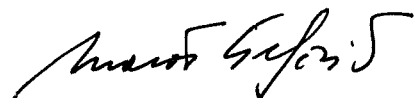
*5. The House of Lords is of the opinion that the proposal would create duplication and a "fault-line" between crimes affecting the financial interests of the Union and other crimes.*

*The Commission is of the view that the provisions in the proposed Regulation in conjunction with the proposed Directive on the fight against fraud to the Union's financial interest by means of criminal law {COM(2012) 363 final} clearly delineate the competences of the European Public Prosecutor's Office and the national authorities respectively. Crimes that are inextricably linked to offences affecting the financial interests of the Union may, under certain narrow conditions, be joined and prosecuted together, provided it is in the interest of an effective administration of justice. The use of such ancillary competence, pursuant to Article 13 of the proposed Regulation, would not only ensure efficiency of the prosecution and the court procedures, it would also prevent the impediment of a second prosecution in accordance with the "ne bis in idem" principle. The Commission would like to emphasise that the rule concerning ancillary competence does not exclusively favour the competence of the European Public Prosecutor's Office to the detriment of national competence, but works in both directions, depending on the factor of preponderance.*

*As said above, 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 House of Lords and looks forward to continuing our political dialogue.*

*Yours faithfully,*



*Maroš Šefčovič*  
Vice-President