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from:	General Secretariat
to:	Delegations
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Subject:	Proposal for a COUNCIL REGULATION on the establishment of the European Public Prosecutor's Office (EPPO) - "Yellow card"

I. The European Commission proposal on the European Public Prosecutor's Office

On 18 July 2013, the European Commission published its Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (EPPO)¹ and forwarded it to the Union legislator and to national Parliaments, pursuant to Protocol 2 annexed to the Treaties.

In its explanatory memorandum, the Commission recalled that prosecuting **offences against the EU budget** was currently within the exclusive competence of Member States and no Union authority existed in this area. The Commission considered that, while their potential damage was very significant, these offences were not always investigated and prosecuted by the relevant national

¹ 12558/13.

authorities, as law enforcement resources were limited. The Commission concluded that, as Member States' criminal investigation and prosecution authorities were currently unable to achieve an equivalent level of protection and enforcement, the Union not only had the competence but also the obligation to act.

The proposal seeks to set up the European Public Prosecutor's Office and define its competences and procedures. It complements an earlier legislative proposal² which defines the criminal offences as well as the applicable sanctions.

On 28 October 2013, 14 national chambers, totalling 19 votes, issued "*reasoned opinions*" on the EPPO proposal, i.e. negative votes, stating that they found it in breach with the principle of subsidiarity. This was the second time the "*yellow card*" procedure was applied under the procedure provided for under Protocol 2 of the Treaty³.

II. The "*Yellow card*" procedure introduced by the Lisbon Treaty

The possibility for the so-called "*yellow card*" is foreseen in Protocol 2 annexed to the Treaties. Pursuant to Articles 6 and 7, where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity, sent within eight weeks from the date of their transmission, represent at least one third of all the votes allocated to the national Parliaments under Article 7(1), the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 TFEU on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

² Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, 11 July 2012, COM (2012) 363 final

³ The first "*yellow card*" had been issued in May 2012 on the "Monti II" proposal (Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, (COM (2012)130)). On 12 September 2012, the Commission withdrew its proposal.

III. The "Yellow card" procedure on the EPPO proposal

On the EPPO proposal 14 reasoned opinions⁴ were issued, totalling 19 votes (14 required), stating that they found it in breach with the principle of subsidiarity. These opinions were issued by the Dutch Senate, Czech Senate, Dutch House of Representatives, Cyprus House of Representatives, UK House of Commons, Hungarian Parliament, Swedish Parliament, Irish Parliament, Romanian Chamber of Deputies, Slovenian Parliament, French Senate, Maltese Parliament and the UK House of Lords.

Globally, national Parliaments considered in particular that the Commission had not adequately considered the option of strengthening existing (e.g. Eurojust, OLAF) or alternative mechanisms; that it had failed to substantiate the need and the added value of a EPPO; and that the protection of the EU financial interests could be better obtained by strengthening and deepening existing mechanisms of cross-border cooperation between criminal justice authorities.

In particular, the Irish Parliament stresses that criminal law is primarily a national competence, and indicates, together with the UK House of Commons and UK House of Lords, that the Commission has not adequately considered the option of strengthening existing or alternative mechanisms.

According to the Dutch Senate, Swedish Parliament, UK House of Commons, Cyprus Parliament, Slovenian Parliament and Czech Senate, the Commission has failed to substantiate the need and the added value of a European Public Prosecutor's Office (EPPO). They are of the opinion that the protection of the EU financial interests can be better obtained by strengthening and deepening existing mechanisms of cross-border cooperation between criminal justice authorities.

The Czech Senate points out that the proposal may violate the fundamental rights guaranteed by the Czech Republic and by the EU Charter of Fundamental Rights with regard to the right to a lawful judge and to a fair trial.

The Dutch Senate, French Senate and Hungarian Parliament also stress that the powers given to the EPPO are too far reaching. The French Senate, in particular, expresses its preference for a more

⁴ 16160/13.

"collegial" EPPO, and fears that the Commission's ambitious proposal would be met by a strong reluctance from Member States.

Delegations will find in the Annex to this note a list enumerating national Parliaments' opinions, issued by the GSC for information.

COM (2013) 534 final - EPPO- reasoned opinions received by GSC				
Country	Number of opinions received by DRI	No of opinions	Votes	Council Document
Czech	Czech Senate	1	1	16030/13
Netherlands	Dutch Senate	1	1	16042/13
Netherlands	Dutch House of Representatives	1	1	15266/13
Cyprus	Cyprus House of Representatives	1	2	16047/13
UK	House of Commons	1	1	16167/13
Hungary	Hungarian Parliament	1	2	16349/13
Sweden	Swedish Parliament	1	2	16033/13
Ireland	Irish Parliament	2	2	16023/13
Romania	Romanian Chamber of Deputies	1	1	16131/13
Slovenia	Slovenian Parliament	1	2	16010/13
France	French Senate	1	1	16020/13
Malta	Maltese Parliament	1	2	16006/13
UK	UK House of Lords	1	1	15656/13
Total		14	19	-

COM (2013) 534 final - EPPO-other (not reasoned) opinions received by GSC				
Country	Number of opinions received by DRI	No of opinions		Council Document
Poland	Polish Senate	1		16034/13
Portugal	Portuguese Parliament	1		16029/13
Romania	Romanian Senate	1		16013/13
Total		3		-