



EUROPEAN COMMISSION

Brussels, 13.3.2014
C(2014) 1592 final

Dear President,

The Commission would like to thank the Vouli ton Antiprosopon 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}.

In its Communication of 27 November 2013 {COM(2013) 851 final} the Commission carefully analysed the arguments presented by the Vouli ton Antiprosopon from the perspective of the principle of subsidiarity. 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 Vouli ton Antiprosopon 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 the Communication.

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

1) The Vouli ton Antiprosopon is of the opinion that the proposal goes beyond what is necessary to achieve the objective of the Treaty to effectively combat crimes affecting the financial interests of the Union.

As set out in the Communication, the Commission considered alternative and less intrusive measures, such as efforts undertaken at national level or the strengthening of existing mechanisms at Union level, leading to the conclusion that they would not achieve the objectives in an equally effective fashion.

With regard to the structure, the Vouli ton Antiprosopon favours a collegiate model. The Commission proposal already foresees the establishment of a college at central level with the competence to decide on internal rules of procedure governing the organisation of the work of the European Public Prosecutor's Office. The Commission is open to carefully consider all options, including on structure, provided the independence, accountability and efficiency of the European Public Prosecutor's Office remain safeguarded.

The proposed decentralised and integrated model is based on respect for the national legal traditions and judicial systems of the Member States. This is reflected in particular in the fact that the proposed European Delegated Prosecutors would be national prosecutors, familiar with their domestic jurisdiction and embedded in the national prosecutorial system thereby

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ensuring close links to and cooperation with the national authorities. Enforcement of investigative measures as well as judicial review would remain at national level in national hands. Equally, accused persons would be tried on the basis of national substantive law by national judges.

Accordingly, the Commission considers that its proposal strikes a fair balance between the objective to have a more efficient protection of the Union's financial interests by creating the European Public Prosecutor's Office and the impact this may have on national jurisdictions. The proposal is therefore fully respectful of the principle of proportionality.

2) The Vouli ton Antiprosopon further expressed the opinion that the proposal does not provide for the necessary level of protection of the rights of suspects since not all investigative measures listed are available under the national law of all the Member States.

The Commission does not share this opinion. In the Commission's model, the European Public Prosecutor should be able to take all investigative measures that are necessary to ensure effective investigation and prosecution of offences affecting the Union's financial interests.

The Commission would firstly point to Article 11(1) of the proposal, which stipulates that the European Public Prosecutor's Office shall ensure that its activities respect the rights enshrined in the Charter of Fundamental Rights of the European Union.

Furthermore, the provision of an exhaustive list of investigative measures in the proposal aims at establishing a uniform catalogue of instruments available to the European Public Prosecutor's Office and applicable in all participating Member States. This is to establish legal certainty, ensure coherent investigation and prosecution by the European Public Prosecutor's Office and to end the fragmented use of investigative powers in the investigation and prosecution of crimes having a Union dimension at the level of the Member States.

The most intrusive investigative measures would require prior judicial authorisation, even if such an authorisation would not have been necessary when the measure was executed in the context of a national investigation.

The proposal would thus create a uniform level of procedural guarantees that exceeds the level of protection in some Member States.

The proposed Regulation foresees a comprehensive set of procedural rights applicable to suspects and accused persons, such as the right to interpretation and translation, the right of access to a lawyer, the right to remain silent, the right to be presumed innocent and the right to legal aid.

The Commission would like to underline that it will take due account of the arguments submitted by the national Parliaments during the legislative procedure. The Commission hopes that these comments address the concerns raised by the Vouli ton Antiprosopon the Republic of Cyprus and looks forward to continuing our political dialogue.

Yours faithfully,

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Vice-President*