

**HOUSE OF REPRESENTATIVES**

**Parliament of Malta**  
*Speaker's Chambers*

28 October 2013

To: **Jose Manuel Barroso, President of the European Commission**

To: **Martin Schultz, President of the European Parliament**

To: **Herman Van Rompuy, President of the European Council**

The Maltese Parliament has examined the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (COM(2013)534) and has concluded that it does not satisfy the principle of subsidiarity.

Accordingly, pursuant to Protocol No 2 to the Lisbon Treaty, please find attached to this letter a reasoned opinion, dated today, from the Maltese Parliament.

Yours sincerely,

Anglu Farrugia,  
Speaker

## **REASONED OPINION: PROPOSAL FOR A COUNCIL REGULATION ON THE ESTABLISHMENT OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE (COM(2013)534)**

### **1. Reasons**

Article 6 of Protocol No 2 on the application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty of Lisbon, states that any national Parliament may, within eight weeks from the date of transmission of a draft legislative act, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

### **2. Reasoned Opinion**

#### *2.1 The EU's power to act*

The Maltese Parliament considers that the Proposal fails to comply with the principle of subsidiarity. While it is in favour of the creation of some form of European Public Prosecutor's Office (EPPO), the Maltese Parliament does not consider that the structure and powers of the EPPO as proposed by the Commission are the only and best conceivable solution. It is precisely for this reason that the Maltese Parliament takes the view that there may be other alternatives for the structure of this Office that adhere more closely to the principle of subsidiarity.

In the Maltese Parliament's view, the principle of subsidiarity is somewhat subjective in nature and although there is no definition of the said principle, Article 5(2) of the Treaty on the Functioning of the European Union permits the European Union to act only if “the objectives of the proposed action cannot be sufficiently achieved by the Member States”.

#### *2.2 Measures in the proposal*

The establishment of the European Public Prosecutor's Office (EPPO) is intended to combat crimes affecting the financial interests of the Union, in accordance with Article 86 of the Treaty on the Functioning of the European Union: given that such crimes affect the budget of every Member State, this is a very positive move and the Maltese Parliament considers that the establishment of such an Office would provide added value. Article 86 states that this Office should be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, offences against the Union's financial interests, and should also exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

The Maltese Parliament takes the view that this proposal does not comply with the principle of subsidiarity. The Maltese Parliament feels that the manner in which this proposal on the functioning and competence of the European Public Prosecutor's Office has been drafted is not necessarily the least intrusive and not the best way of achieving the reasonable stated objectives.

Furthermore, the Constitution of Malta provides that the Attorney General should not be subject to the direction or control of any other person or authority. In fact, the Maltese Parliament is of the opinion that criminal investigations and prosecutions must be kept as close to national level as possible at all times, particularly when one takes into account that this matter is an integral part of our penal legislation and affects, *inter alia*, our national sovereignty.

### 2.3 Conclusion

The Maltese Parliament considers that the creation and establishment of the EPPO, *per se*, is not at variance with the principle of subsidiarity, given that this is an obligation on Malta arising from the Treaty and Malta has never opposed it. It is the structure and competence of this Office that the Parliament considers to be at variance with the principle of subsidiarity, as stated above.

The Parliament is of the opinion that the manner in which the EPPO is to be established, as proposed by the Commission, is not the best option and that there are other possible alternatives which, above all, respect the principle of subsidiarity. Moreover, the Parliament takes the view that the collegiate structure can, while also providing added value, protect the legitimacy of the structure itself, since the said legitimacy comes directly from the Member States.