



EUROPEAN COMMISSION

Brussels, 13.3.2014
C(2014) 1602 final

Dear President,

The Commission would like to thank the Kamra tad-Deputati 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 apologises for the delay in replying.

In its Communication of 27 November 2013 (COM (2013) 851) the Commission carefully analysed the arguments presented by the Kamra tad-Deputati 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 Kamra tad-Deputati 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 therefore of the Communication of the Commission.

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

1) The Kamra tad-Deputati does not consider that the proposed structure and the competences of the European Public Prosecutor's Office are the least intrusive and the best solutions to reach the Commission proposal's objectives to better protect the Union's financial interests. In particular, the Kamra tad-Deputati takes the view that a collegial structure, while preserving the added value of the Union action, would better contribute to the legitimacy of the Office.

As set out in the Communication, the Commission considered alternative 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 effective fashion.

*Mr Anglu FARRUGIA
President of the
Kamra tad-Deputati
The Palace
MT – VALLETTA CMR 2000*

With regard to the structure, the Kamra tad-Deputati favours a collective 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 above stated principles of independence, accountability and efficiency remain safeguarded.

2) The Kamra tad-Deputati is of the opinion that criminal investigations and prosecutions must be kept as close to the national level as possible, given that the matter affects penal legislation and therefore national sovereignty.

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 also be national prosecutors, familiar with their domestic jurisdiction and embedded in the national prosecutorial system, thereby ensuring close links to and cooperation with the national authorities. Enforcement of investigative measures as well as judicial review would remain at national level. 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 penal law and sovereignty.

3) The Kamra tad-Deputati has further stated that 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 response, the Commission would like to reiterate that the European Public Prosecutor's Office would not have powers to direct or control the Maltese Attorney General.

The Commission will take due account of the views expressed by the national Parliaments during the legislative process.

The Commission hopes that these explanations address the concerns raised by the Kamra tad-Deputati of the Republic of Malta and looks forward to continuing the fruitful political dialogue.

Yours faithfully,

*Maroš Šefčovič
Vice-President*