



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

11.11.2013

NOTICE TO MEMBERS

(96/2013)

Subject: Reasoned opinion by the Maltese Parliament on the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (COM(2013)0534 – 2013/0255(APP))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send 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.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion by the Maltese Parliament on the above-mentioned proposal.

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

1. Grounds

Article 6 of the Protocol (Nr 2) on the application of the principles of subsidiarity and proportionality, annexed to the Treaty of Lisbon, lays down that any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send 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 power of the Union to act

The Maltese Parliament considers that the proposal does not comply with the principle of subsidiarity. While it is in favour of creating some form of European Public Prosecutor's Office (EPPO), the Maltese Parliament does not judge that the structure and competences of the EPPO, as proposed by the Commission, represent the only and best solution conceivable, and it is precisely because of this fact that the Maltese Parliament takes the view that other, alternative structures for this Office, which better respect the principle of subsidiarity, are possible.

The Maltese Parliament takes the view that the principle of subsidiarity, by its very nature, is rather subjective and, although no definition of this principle is given, Article 5(3) of the Treaty on European Union permits the Union to act 'only if and in so far as 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), which is intended to combat crimes affecting the financial interests of the European Union, as laid down in Article 86 of the Treaty on the Functioning of the European Union, is a very positive development as these crimes affect the budgets of all the Member States, and the Maltese Parliament considers that establishing this Office will add value. Article 86 lays down that the Office shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, offences against the Union's financial interests, and that it shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

The Maltese Parliament is of the opinion that this provision does not comply with the principle of subsidiarity. It feels that the drafting of this proposal on the functions and competences of the EPPO is not necessarily the least intrusive and best method of achieving the rightful objectives of this proposal.

In addition, the Constitution of Malta stipulates that the Attorney General shall not be subject

to the direction or control of any other person or authority. In fact, the Maltese Parliament takes the view that criminal investigations and prosecutions should always be kept as close as possible to the national level, especially considering that this matter is an integral part of our criminal law and that, *inter alia*, it affects our national sovereignty.

2.3 *Conclusion*

The Maltese Parliament considers that the creation and establishment of the EPPO does not, *per se*, violate the principle of subsidiarity, as this is an obligation on Malta deriving from the Treaty, and Malta has never opposed it. It is the structure and competences of this Office that Parliament believes do not comply with the principle, as stated above.

The Maltese Parliament takes the view that the Commission's proposal regarding the manner in which the EPPO is to be established is not the best option, and that there are other alternatives which, above all, comply with the principle of subsidiarity. Furthermore, Parliament takes the view that a Collegial structure could, while contributing added value, preserve the legitimacy of the structure in and of itself, as this legitimacy would come directly from the Member States.