

RAPPREŻENTANZA PERMANENTI
GHALL-UNJONI EWROPEA



PERMANENT REPRESENTATION
TO THE EUROPEAN UNION

Ir-Rappreżentant Permanenti

The Permanent Representative

MEP Petr JEŽEK
European Parliament
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PR 796/18

20 December 2018

Dear Mr Jezek,

Thank you for your letter of the 07th of December 2018.

Once again, I reaffirm my commitment to maintain contact and engage in discussions and exchange of views on matters related to Malta.

Attached please find an annex in response to your statements and questions.

Best Regards,



Daniel Azzopardi
Ambassador
Permanent Representative of Malta to the EU

ANNEX

Firstly, I would like to refer to the statements and questions in your original letter to the Permanent Representation, which I am herewith taking the occasion to reply in order to set the record straight in an open and transparent way.

At this stage there are two developments which should be brought to your attention:

Recently the National Audit Office of Malta (NAO) published an investigation into the procurement procedures relating to the new gas-fired Power Station. (Link to the reports officially published by the NAO: <http://nao.gov.mt/en/press-releases/4/211/an-investigation-of-matters-relating-to-the-c>). The NAO report, which you quote, highlights certain administrative improvements that could have been adopted to ensure a more efficient public procurement process. The NAO's deep scrutiny of the procurement process made did not, however, find any wrongdoing and did not confirm any of the allegations made.

Secondly, the Government of Malta has undertaken a suggestion made by the European Parliament to appoint the Venice Commission to conduct an overview of Malta's Constitution and legal system. The report published on 17 December 2018 can be found here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)028-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)028-e) .

The Government of Malta has already announced that it agrees with the bulk of the proposals by the Venice Commission, and noted also that the Commission acknowledged a number of measures already taken by government, particularly with regard to the appointment of an independent committee, known as the Judiciary Appointments Committee, to oversee judicial appointments. The Government said it will seek the advice of the Constitutional Convention committee, chaired by the President of the Republic of Malta with representation from the Opposition and Government, to take forward such proposals.

With regard to your questions:

I would like to begin by underlining that, in terms of the Criminal Code of Malta, the Court of Magistrates has jurisdiction to act as a court of inquiry. The powers of the inquiring Magistrate are outlined in the Criminal Code. The inquiring Magistrate acts independently of government, and may appoint experts to assist in the investigation, and give directions as s/he deems fit in terms of law. In fact, such inquiries are currently underway. Moreover, there is nothing in any Maltese law precluding investigation, and indeed prosecution if the case so requires, of alleged money laundering committed by PEPs, even if they currently hold office.

Concerning the inquiries themselves, it would be imprudent to comment further until said inquiries are duly concluded. Moreover, Government of Malta is, as a matter of fundamental due process, not made aware of any possible on-going criminal investigations. We also submit that in order for the rule of law to prevail, the institutions need to be allowed to operate without undue interference or pressure, and any premature speculation would be inappropriate.

Having said that, the individuals you mention in your letter have made public statements explaining the background to the setting up of the structures referred to. In this regard, and in view of the pending Magisterial inquiries mentioned above, any speculation would be inappropriate.

Concerning the operations of Malta's FIAU, it is also worth noting that the actions and functioning of the FIAU are legally bound by confidentiality and secrecy laws, and the FIAU operates independently from Government intervention. All sanctions which exceed 10,000 Euros are duly published on the FIAU's website and made known to the public. Government is not in a position to respond in the definitive as such information is not made available to it. Moreover, we submit that Government should under no circumstance be privy to the investigations and/or inquiries being led by the FIAU.

It is relevant to point out, however, that the FIAU has stated that the published document mentioned in your letter is "not an FIAU report and nor is it a faithful reproduction of any FIAU document." It has also stated that the document you refer to had been "re-typed, contained several discrepancies, omissions and inaccurate reproductions of text." Any speculation on such a document would therefore be inappropriate.

With regard to actions on Nexia BT, with specific reference to Mr Karl Cini, the Government does not, and cannot, impose any measures which can be taken by the Accountancy Board. The Accountancy Board is an autonomous body made up of practitioners of the accountancy profession. The latter Board may take any disciplinary action against any of its members according to established procedures.

Concerning the murder of Daphne Caruana Galizia, specifically question number 8, the question and assertions made are highly speculative, and not based on any form of basis. The question itself indicates a high level of prejudice and preformed bias that is not conducive to an honest exchange of views.

As regards the appointment of an independent inquiry, Government's position is that, based on past experience, and case law, the appointment of an independent inquiry running concurrently yet independently from the ongoing criminal proceedings may seriously prejudice the latter, since such independent inquiry may hamper the fundamental right to a fair hearing of the persons currently standing trial for the crime in question.

Government has committed itself to appoint an independent inquiry once judicial proceedings have been concluded. The issue is one of timing, not whether or not an inquiry is happening.

As regards Commissioners of Police, in line with the constitution, Commissioners have been appointed by sitting Prime Ministers since Malta's Independence. That being said, Government believes that Police Commissioners have always been appointed on merit and not on any other consideration.