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To :	Head of Mission – Yves de Kermabon
Through :	Deputy Head of Mission – Roy Reeve Head of Private Office – Henrik Villadsen
From :	Thomas Busch– Office of DHoM
Date :	05 August 2009
Document Registration ID :	
Subject :	Systematization on how to react in case of political interference into the independence of the RoL services by local politicians

DECISION MEMORANDUM

ISSUE FOR DECISION

Whether to follow the proposed course of action in case of political interference into the independence of the respective RoL services.

BACKGROUND

There have been examples by local politicians recently of political interference with the independence of the Rule of Law services in Kosovo. The most prominent example has been the statement the Prime Minister of Kosovo made during a meeting of the Government, expressing his belief that Rustem Mustafa, Latif Gashi and Nazif Mehmeti, currently being on a EULEX led trial accused of having committed war crimes, are innocent.

Recognizing the Status of the judiciary as delineated in the OPLAN, an integrated EULEX Policy across all three components is required to clarify how the Mission shall react in such cases of blunt political interference. That the Mission reacts is of utmost importance for the following reasons:

In case of non-reaction, the RoL Mission EULEX Kosovo's credibility would be at stake. The EULEX Mission statement, as contained in the Joint Action clearly states: "EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practices. "

A reaction by EULEX in such cases is further warranted as the local RoL institutions in Kosovo are in most cases not ready yet to oppose political interference. Very often, these institutions are culturally and/or mentally not acquainted to the concept of independence of their services. EULEX certainly has a role here of leading by good example, thus

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gradually changing the culture/mentality. In addition, reactions by these services might, at this particular point in time, expose them too radically to their local politicians and thus opening the door for intimidation/vulnerability. Further, some institutions that could react, such as the Kosovo Judicial Council, are only just established. In the mid to long term, it could be considered that, once the KJC, as well as other institutions with similar mandates, are ready to do so, they will react with EULEX providing appropriate support one way or the other.

Reaction by EULEX opposing political interference will also make society acquainted with the concept of independent RoL services and thus make a contribution to the development of a civil society in Kosovo that could react itself in such cases through the media, NGOs, etc.

RECOMMENDED COURSE OF ACTION

- 1) The HoM or the DHoM will announce publicly, in line with EULEX's Mission Statement, its opposition to political interference and its intention to draw attention to any such breaches.
- 2) In case an incident of political interference arises on a senior local political/governmental/civil service level (i.e. President, PM, President of the Assembly, Minister, Head of Party, or Permanent Secretary level), then the EULEX Component concerned will prepare an internally coordinated press release in coordination with PPIO which, after approval by HoM/DHoM, will be issued by PPIO as EULEX press release to the media.
- 3) Where any component judges that an example of political interference on a level other than above is of a serious nature, it can recommend action under 2 above.
- 4) In cases of political interference on other than senior levels, EULEX will draw this to the attention of the respective Minister/Head of Party, etc., recommending that appropriate action is taken publicly against the individual concerned. Should this fail, actions under 2 above could be considered.
- 5) EULEX will draw every case of political interference, regardless of the level on which it occurred, to the ECLO, European Union Member States and Contributing States to EULEX in Pristina and Brussels, either through its regular reporting obligations or through special reports/briefings.

RECOMMENDED DECISION

That you approve the above outlined course of action

Approve _____ Disapprove _____

Drafted: Thomas Busch – Office DHoM, 17 July 2009, *as for*

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Clearances: Deputy Chief of Staff *[Signature]* 05 AUG 09
Head of Justice Component
for President of the Assembly of Judges *[Signature]*
Chief Prosecutor *[Signature]*
Head of Police Component
Head of Customs Component
Head of EULEX Policy Office *for [Signature]* 05/08/09
Head of PPIO *[Signature]* 05/08/09

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