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Proposal for a

COUNCIL IMPLEMENTING DECISION

on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO")

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('EPPO') was adopted on 12 October 2017 and entered into force on 20 November 2017. In accordance with Article 20 of that Regulation, the Commission is responsible for the establishment and initial administrative operation of the EPPO, until the EPPO has the capacity to implement its own budget. The Commission is undertaking all necessary efforts to ensure a swift setting up of the EPPO. In line with Article 120 of the Regulation and following a build-up phase of three years, the Commission aims at having the EPPO operational by the end of 2020.

A key aspect in getting the EPPO up and running concerns the selection and appointment of its staff, in particular the European Chief Prosecutor and European Prosecutors. In order to select the European Chief Prosecutor and European Prosecutors of the EPPO, Article 14(3) of Regulation (EU) 2017/1939 provides that the Council shall establish the selection panel's operating rules and shall adopt a decision appointing its members on a proposal from the Commission. For this purpose, the Commission is proposing a Council Implementing Decision with in Annex the selection panels' operating rules.

The selection panel will have the main task to draw up a shortlist of qualified candidates for the position of European Chief Prosecutor before his/her appointment by the European Parliament and Council and to provide a reasoned opinion on the qualifications of candidates for European Prosecutors before their appointment by the Council. The operating rules proposed by the Commission ensure that the selection panel will be able to perform its tasks as efficiently as possible. The Annex therefore includes rules on the tasks, composition, secretariat and decision-making procedures of the selection panel, as well as rules on the ranking of candidates, financial provisions, the processing of personal data and the language regime of the selection panel.

- **Consistency with existing policy provisions in the policy area**

The establishment of the EPPO is foreseen by Article 86 TFEU. The EPPO will be the first EU body with criminal investigation and prosecution powers into crimes affecting the financial interests of the Union and will be a completely new actor in the European judicial landscape. The EPPO is expected to lead to a more consistent and effective prosecution policy for crimes affecting the EU budget, resulting in a greater number of prosecutions, convictions and a higher level of recovery of fraudulently lost Union funds.

By submitting this proposal for a Council Implementing Decision with in Annex, the selection panel's operating rules, the Commission is complying with its obligation under Article 14(3) of Council Regulation 2017/1939. This proposal will allow for commencing with the required selection and appointment procedures of the EPPO's European Chief Prosecutor and European Prosecutors. This proposal is therefore fully consistent with existing policy provisions in the respective policy area.

- **Consistency with other Union policies**

This initiative is consistent with other Union policies and legislative developments aimed at strengthening the protection of the Union's financial interests.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 291 TFEU in conjunction with Article 14(3) and 16(2) of Council Regulation (EU) 2017/1939.

- **Subsidiarity (for non-exclusive competence)**

In accordance with Article 14(3) of Council Regulation 2017/1939, the Commission is legally required to submit a proposal for the selection panel's operating rules. This proposal is essential to ensure that the selection panel will be able to perform its tasks as efficiently as possible in order to swiftly select and appoint the European Chief Prosecutor and European Prosecutors of the EPPO.

- **Proportionality**

This proposal is limited to what is necessary in order to attain the proposed objectives, and is therefore compliant with the principle of proportionality. This proposal is directly linked to the entry into force of Council Regulation (EU) 2017/1939 and essential in ensuring a swift setting up of the EPPO.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Given the targeted and limited nature of this proposal, and the fact that it complies with the obligation put on the Commission in Article 14(3) of Council Regulation 2017/1939, ex-post evaluations, stakeholder consultations and an impact assessment were not carried out.

4. BUDGETARY IMPLICATIONS

This proposal outlines in point VIII of the Annex that the Members of the selection panel required to travel away from their place of residence in order to carry out their duties shall be entitled to reimbursement of their expenses and an allowance in accordance with Article 9 of Council Regulation 2016/300. The corresponding expenditure shall be borne by the Council.

The Commission will be responsible for the panel's secretariat and provide for the necessary administrative support for the working of the panel. These tasks will not have financial implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Given the nature of this measure, there is no need for implementation.

- **Explanatory documents (for directives)**

This proposal does not require Explanatory Documents on the transposition.

- **Detailed explanation of the specific provisions of the proposal**

Point I sets out the tasks of the selection panel, in line with Article 14(3) and 16(2) of Council Regulation 2017/1939.

Point II describes the composition of the selection panel and the term of office of the members of the panel. In accordance with Article 14(3) of Council Regulation 2017/1939, the selection panel will be comprised of former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts, high level prosecutors and lawyers of recognised competence. This point clarifies that the members of the selection panel shall at least meet one of the abovementioned criteria at the time of their appointment. Point 2 further explains that the members of the selection panel shall be appointed by the Council for a period of four years. In addition, this point provides for rules on the replacement of members before expiry of their term.

Point III foresees rules on the chair and secretariat of the selection panel. This point explains that the Commission is responsible for the panel's secretariat and sets out the tasks of the secretariat.

Point IV provides for rules on the deliberations of the selection panel.

Point V explains that all applications for the position of European Chief Prosecutor and nominations for the position of European Prosecutors will be referred to the selection panel. In addition, point V foresees the possibility for the selection panel to request applicants or governments of nominating Member States for additional information.

Point VI sets out the applicable appointment procedures for the European Chief Prosecutor as well as the European Prosecutors. As regards the European Chief Prosecutor, this point outlines that the selection panel will review the applications with regard to the requirements set out in Article 14(2) of Regulation 2017/1939, as further specified in the vacancy notice. The selection panel will rank the candidates who fulfil the requirements and will hear a sufficient number of the highest ranked candidates. Applicants who do not fulfil the eligibility requirements or who are not invited to be heard by the panel will be informed of the reasons. As regards the European Prosecutors, this point describes that the panel will review the nominations with regard to the requirements set out in Article 16(1) of Council Regulation 2017/1939 and hear the candidates nominated.

Point VII follows up on the procedure laid down in Point VI and includes that the selection panel will draw up a shortlist of three to five candidates for the position of the European Chief Prosecutor, which will be submitted to the European Parliament and the Council. The candidates who are not placed on the shortlist will be informed of the reasons and may submit a complaint to the Council in accordance with Article 90(2) of the Staff Regulations. While the selection panel will rank the candidates according to their qualifications and experience, this ranking will not be binding on the European Parliament and the Council. As regards the position of European Prosecutor, the selection panel will formulate an opinion on the candidates' qualifications to perform the duties of European Prosecutors and expressly state whether or not a candidate fulfils the conditions in Article 16(1) of Regulation 2017/1939. While the selection panel will rank the candidates according to their qualifications and experience, this ranking will not be binding on the Council. This point also provides for rules in the situation that nominated candidates for the position of European Prosecutor do not fulfil the required conditions.

Point VIII sets out the financial provisions. The members of the selection panel who are required to travel away from their place of residence in order to carry out their tasks will be entitled to reimbursement of their expenses and an allowance in accordance with Article 9 of Council Regulation (EU) 2016/300. The corresponding expenditure is to be borne by the Council.

Point IX regulates that the processing of personal data in the context of the work of the selection panel shall take place under the responsibility of the Commission in accordance with Regulation (EC) No 45/2001. This point further ensures that the rules applicable to the security of and access to information processed in the context of the work of the selection panel shall be those applicable to the Commission.

Point X sets out the language regime of the selection panel and stipulates that the panel, upon proposal of its chair, will determine the language regime for its deliberations.

Proposal for a

COUNCIL IMPLEMENTING DECISION

on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO")

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), and in particular Article 14(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EU) 2017/1939 provides that the European Parliament and the Council are to appoint the European Chief Prosecutor, by common accord, from a shortlist of qualified candidates drawn up by a selection panel, comprised of former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts, high level prosecutors and lawyers of recognised competence, as well as one member proposed by the European Parliament.
- (2) Regulation (EU) 2017/1939 also provides that the Council is to appoint each European Prosecutor from amongst three candidates nominated by each Member State after having received a reasoned opinion from that selection panel.
- (3) The procedure for the selection of the European Chief Prosecutor and of European Prosecutors should be a key element to ensure their independence as required by Article 6 of Regulation (EU) 2017/1939.
- (4) The rules of the selection panel should ensure that the panel itself has the necessary independence and impartiality to carry out its work;
- (5) The operating rules of the selection panel should therefore be established.

HAS ADOPTED THIS DECISION:

Article 1

The operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 shall be set out in the Annex to this Decision.

Article 2

This Decision shall enter into force upon signature.

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*



Brussels, 25.5.2018
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ANNEX

ANNEX

to the

Proposal for a Council Implementing Decision

on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO")

ANNEX

I. Mission

The selection panel shall draw up a shortlist of qualified candidates for the position of European Chief Prosecutor, in accordance with Article 14(3) of Regulation (EU) 2017/1939¹. It shall also provide a reasoned opinion on the qualifications of candidates nominated for the position of European Prosecutor, in accordance with Article 16(2) of Regulation (EU) 2017/1939, before their appointment by the European Parliament and Council in the former case and by the Council in the latter.

II. Composition and term of office

The selection panel shall comprise twelve persons who, at the time of their appointment, are former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts, high-level prosecutors or lawyers of recognised competence. All members shall meet at least one of the abovementioned criteria at the time of their appointment.

The members of the selection panel shall be appointed by the Council, on a proposal from the Commission, for a period of four years. One of the persons chosen shall be proposed by the European Parliament. A person who is to replace a member before the expiry of that period shall be appointed for the remainder of their predecessor's term. Members of the panel may be reappointed once.

III. Presidency and secretariat

The selection panel shall be chaired by one of its members, elected for that purpose by the members of the panel by a majority vote. The Commission shall be responsible for the panel's secretariat. It shall provide the administrative support necessary for the working of the panel, including the translation of documents. The secretariat shall also transmit the shortlist of candidates for the post as European Chief Prosecutor to the European Parliament and the Council, and, respectively, the reasoned opinions on the candidates' qualifications to perform the duties of European Prosecutors to the Council.

IV. Deliberations and quorum

The deliberations of the selection panel shall be confidential and shall take place *in camera*. The meetings of the panel shall be valid only if at least nine members are present.

Decisions of the selection panel shall be taken by consensus. However, if a member asks for a vote, the decision shall be taken by a simple majority of the members present. In the event of a tie in the voting, the chair shall have the casting vote.

V. Referral to the panel and requests for additional information

As soon as the applications for the position of European Chief Prosecutor are received, the secretariat shall send them to the chair of the panel. The same applies to nominations for the position of European Prosecutor, including the accompanying documents submitted by the Member States.

The selection panel may ask applicants and, in the case of nominations for the position of European Prosecutor, the government of the nominating Member State to provide additional information or other material which the panel considers necessary for its deliberations.

¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') OJ L 283, 31.10.2017, p. 1

VI. Review and hearing

1. Procedure for the appointment of the European Chief Prosecutor

Upon receipt of the candidates' applications, the selection panel shall review the applications with regard to the requirements set out in Article 14(2) of Regulation (EU) 2017/1939, as further specified in the vacancy notice. Candidates who do not meet the eligibility requirements shall be excluded from the next steps of the procedure. The panel shall rank candidates who fulfil the requirements according to their qualifications and experience, on the basis of the documentation and information provided in the application or produced following a request pursuant to Rule V. A sufficient number of the highest ranked candidates shall be heard by the panel to enable it to establish the shortlist referred to in Rule VII. The hearing shall take place in person.

Candidates who do not fulfil the eligibility requirements or who are not invited to be heard by the panel shall be informed of the reasons. A candidate may react to this decision stating the reasons why he/she does not agree with the panel's assessment. Subsequently, the panel will reassess the candidate's application and inform him/her of its conclusion in writing. Candidates who are excluded from the selection procedure may submit to the Council a complaint within the meaning of Article 90(2) of the Staff Regulations.

2. Procedure for the appointment of European Prosecutors

Upon receipt of the nominations, the selection panel shall review them with regard to the requirements set out in Article 16(1) of Regulation (EU) 2017/1939. The panel shall hear the candidates nominated. The hearing shall take place in person.

VII. Findings and statement of reasons

1. European Chief Prosecutor

Based on its findings during the review and hearing, the selection panel shall draw up a shortlist of three to five candidates to be submitted to the European Parliament and the Council. It shall provide reasons for selecting the candidates on the shortlist. Candidates who are not placed on the shortlist shall be informed of the reasons.

The selection panel shall rank the candidates according to their qualifications and experience. The ranking shall indicate the panel's order of preference and shall not be binding on the European Parliament and the Council. Candidates who are not included in the shortlist of qualified candidates drawn up by the panel may submit to the Council a complaint within the meaning of Article 90(2) of the Staff Regulations.

2. European Prosecutors

Based on its findings during the review and hearing, the panel shall formulate an opinion on the candidates' qualifications to perform the duties of European Prosecutors and expressly state whether or not a candidate fulfils the conditions in Article 16(1) of Regulation (EU) 2017/1939. The panel shall provide reasons for its opinion.

In the event that nominated candidates do not fulfil the conditions set out in Article 16(1) of Regulation (EU) 2017/1939, the selection panel shall, through its secretariat, request the Member State concerned to nominate a corresponding number of new candidates.

The panel shall rank the candidates according to their qualifications and experience. The ranking shall indicate the panel's order of preference and shall not be binding on the Council.

VIII. Financial provisions

Members of the selection panel required to travel away from their place of residence in order to carry out their duties shall be entitled to reimbursement of their expenses and an allowance in accordance with Article 9 of Council Regulation (EU) 2016/300².

The corresponding expenditure shall be borne by the Council.

IX. Personal data

The processing of personal data in the context of the work of the selection panel shall take place under the responsibility of the Commission in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council³. The rules applicable to the security of and access to information processed in the context of the work of the selection panel shall be those applicable to the Commission.

X. Language regime

The selection panel shall, upon proposal of its chairperson, determine the working language(s) of the panel in view of the common languages spoken by its members.

² Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders (OJ L58, 4.3.2016, p.1).

³ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).