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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 July 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 563 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION appointing the members of the panel provided for in Article 14(3) of Regulation (EU) 2017/1939

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Delegations will find attached document COM(2018) 563 final.

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Encl.: COM(2018) 563 final



Brussels, 31.7.2018  
COM(2018) 563 final

2018/0296 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**appointing the members of the panel provided for in Article 14(3) of Regulation (EU)  
2017/1939**

## **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<sup>1</sup>. 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 adopted a proposal for a Council Implementing Decision with an Annex establishing the selection panels' operating rules on 25 May 2018<sup>2</sup>.

In order to establish the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939, the Commission proposes a Council Implementing Decision for the appointment of the members of the panel. In accordance with Article 14(3) of Regulation (EU) 2017/1939, the Commission proposes twelve members for the selection panel, chosen from among 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. One of the persons chosen was proposed by the European Parliament on 31 May 2018. The Commission has taken into account the need to ensure balance in terms of geographical distribution, gender and knowledge of legal systems of the Member States participating in the EPPO.

#### **• Consistency with existing policy provisions in the policy area**

The establishment of the EPPO is foreseen by Article 86 of the Treaty on the Functioning of the European Union (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.

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<sup>1</sup> 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

<sup>2</sup> Commission 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") COM(2018) 318 final of 25 May 2018

By submitting this proposal for a Council Implementing Decision appointing the members of the panel selecting the European Chief Prosecutor and European Prosecutors of the EPPO, the Commission is complying with its obligation under Article 14(3) of Regulation (EU) 2017/1939. This proposal allows for the setting up of the selection panel, thus starting 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) of Council Regulation (EU) 2017/1939.

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

In accordance with Article 14(3) of Regulation (EU) 2017/1939, the Commission is legally required to submit a proposal for the appointment of the members of the selection panel by the Council. This proposal follows up on the Commission proposal for a Council Implementing Decision with an Annex establishing the selection panels' operating rules. This proposal is essential to ensure that the selection panel is set up 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 Regulation (EU) 2017/1939 and fundamental in ensuring a swift setting up of the EPPO.

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

- **Ex-post evaluations/fitness checks of existing legislation**

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 has no budgetary implications.

## **5. OTHER ELEMENTS**

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

Given the nature of this proposal, there is no implementation planning associated with this measure.

- **Explanatory documents (for directives)**

This proposal does not require Explanatory Documents on the transposition.

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

Article 1 stipulates that for a period of four years from the date of entry into force referred to in Article 2, the twelve persons enlisted shall be appointed members of the panel provided for in Article 14(3) of Regulation (EU) 2017/1939.

Proposal for a

## **COUNCIL IMPLEMENTING DECISION**

**appointing the members of the panel provided for in Article 14(3) of Regulation (EU) 2017/1939**

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) Pursuant to Article 14(3) of Regulation (EU) 2017/1939, a selection panel is to be set up in order to draw up a shortlist of qualified candidates for the position of European Chief Prosecutor and to provide a reasoned opinion on the qualifications of candidates for European Prosecutors.
- (2) Regulation (EU) 2017/1939 provides that the European Parliament and the Council appoint the European Chief Prosecutor, by common accord, from a shortlist of qualified candidates drawn up by the selection panel.
- (3) Regulation (EU) 2017/1939 also provides that the Council appoints each European Prosecutor from amongst three candidates nominated by each Member State after having received a reasoned opinion from the selection panel.
- (4) The selection panel should review the applications for the position of European Chief Prosecutor and for the positions of European Prosecutors with regard to the requirements set out in Articles 14(2) and 16(1) of Regulation (EU) 2017/1939, respectively, including whether the candidates' independence is beyond doubt.
- (5) The selection panel should comprise twelve persons chosen from among 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.
- (6) One of the panel members should be proposed by the European Parliament. On 31 May 2018, the Parliament nominated Mr Antonio Mura as the panel member to be proposed by it.
- (7) The Commission took into account the need for geographical balance, gender balance and due representation of the legal systems of the Member States participating in the EPPO for the membership in the selection panel.
- (8) Among the eleven persons proposed by the Commission, there is one former member of the Court of Justice, one former member of the Court of Auditors, one former national member of Eurojust, five high level prosecutors, two members of national

supreme courts and one lawyer of recognised competence, of which six men and five women.

- (9) Article 14(3) of Regulation (EU) 2017/1939 stipulates that the Council should adopt a decision appointing the members of the panel on a proposal from the Commission.
- (10) The members of the selection panel should therefore be appointed.

HAS ADOPTED THIS DECISION:

#### *Article 1*

For a period of four years from the date of entry into force referred to in Article 2 of this Decision, the following persons shall be appointed members of the panel provided for in Article 14(3) of Regulation (EU) 2017/1939:

Mr Peter FRANK

Ms Ulrike HABERL-SCHWARZ

Mr Theodoros IOANNIDES

Ms Saale LAOS

Mr Jean-Claude MARIN

Mr Ján MAZÁK

Ms María de los ÁNGELES GARRIDO LORENZO

Mr Marin MRČELA

Mr Antonio MURA

Mr Vítor Manuel DA SILVA CALDEIRA

Ms Martine SOLOVIEFF

Ms Raija TOIVIAINEN

#### *Article 2*

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*