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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2019) 2 final

Subject: Proposal for a COUNCIL IMPLEMENTING DECISION on the transitional
rules for the appointment of European Prosecutors for and during the first
mandate period, provided for in Article 16(4) of Regulation (EU) 2017/1939
implementing enhanced cooperation on the establishment of the European
Public Prosecutor's Office ("the EPPO")

Delegations will find attached document COM(2019) 2 final.

Encl.: COM(2019) 2 final



Brussels, 11.1.2019
COM(2019) 2 final

Proposal for a

COUNCIL IMPLEMENTING DECISION

on the transitional rules for the appointment of European Prosecutors for and during the first mandate period, provided for in Article 16(4) 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 16(3) of Council Regulation (EU) 2017/1939, the European Prosecutors shall be appointed for a non-renewable term of 6 years. This term may be extended by decision of the Council for a maximum of three years.

Article 16(4) of Council Regulation (EU) 2017/1939 states that every three years, one third of the European Prosecutors shall be partially replaced. The Council, acting by simple majority, shall adopt the transitional rules for the appointment of European Prosecutors for and during the first mandate period.

This proposal provides for transitional rules for the partial replacement of the first group of appointed European Prosecutors. According to the proposed rules, one third of these European Prosecutors shall serve for a three-year mandate, instead of the usual six-year mandate established by Regulation (EU) 2017/1939, and subsequently be replaced, in order to comply with the rule on partial renewal set out in Article 16(4).

In order to ensure an impartial, transparent and fair system for determining which European Prosecutors will be appointed for a shorter first mandate period, it is proposed to create a system based on drawing of lots. This system will ensure that the determination of the European Prosecutors concerned will not be biased, including by reason of their nationality. The geographical range of the Member States in the EPPO College is ensured by the continued presence of one European Prosecutor per participating Member State as part of the EPPO College, and by the use of a random system that is neutral in geographic terms. This is in keeping with the indication of Recital (42) of Regulation (EU) 2017/1939.

The creation of a system based on drawing of lots is also consistent with similar mechanisms adopted in other comparable EU policy areas¹.

The proposal further contains provisions on the procedure to be followed for the drawing of lots, including the indication of the responsible institutions.

These measures are required by Regulation (EU) 2017/1939 as a condition for the setting-up of the College of the EPPO.

¹ See e.g. Article 46 (2), Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union founded, OJ L236, 23.9. 2003, p.47; Article 21 (2), Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L248, 18.9. 2013, p. 16.

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

This implementing measure is a required step in the process for setting up the EPPO and is therefore fully in line with other existing provisions on this policy area. By submitting this proposal for a Council Implementing Decision, the Commission is complying with its obligation under Article 16(4) of Council Regulation (EU) 2017/1939. This proposal will allow for the establishment of appropriate transitional rules related to the first mandate of the European Prosecutors.

- **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 16(4) of Council Regulation (EU) 2017/1939.

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

In accordance with Council Regulation (EU) 2017/1939, the Council must adopt transitional rules for the appointment of European Prosecutors for and during the first mandate period. Action at Union level is therefore required by that Regulation.

- **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 implements the obligation on the Commission according to Article 16(4) of Council Regulation (EU) 2017/1939, ex-post evaluations, stakeholder consultations and an impact assessment were not carried out.

4. BUDGETARY IMPLICATIONS

There are no direct budgetary implications related to this proposal; the EU budget contribution to the running costs of the EPPO will cater for the salaries and allowances of the European Prosecutors.

5. OTHER ELEMENTS

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

Given the nature of this measure, there is no need for an implementation plan or implementation monitoring rules.

- **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 set out the objectives of the Council implementing Decision.

Article 2 provides for a procedure for a partial replacement of the European Prosecutors on the basis of drawing of lots. Paragraph 1 outlines the requirement set out in Article 16(4) of Regulation (EU) 2017/1939, where a group of European Prosecutors comprising one third of the number of the participating Member States at the time of application of these transitional rules shall be determined. Paragraph 2 clarifies the procedure to be followed should the number of participating Member States at the time of application of the transitional rules not be divisible by three. In this case, the number of European Prosecutors to be included in each group shall be rounded up to the higher integer number. Paragraph 3 tasks the General Secretariat of the Council with taking the necessary measures to implement this procedure, in cooperation with the Commission.

Article 3 provides that the non-renewable term of office of the European Prosecutors drawn in accordance with the procedure established in Article 2 will be of three years.

Proposal for a

COUNCIL IMPLEMENTING DECISION

on the transitional rules for the appointment of European Prosecutors for and during the first mandate period, provided for in Article 16(4) 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")², and in particular Article 16(4) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to Article 16(3) of the Regulation (EU) 2017/1939, the European Prosecutors should be appointed by the Council for a non-renewable mandate of six years, which may be extended for maximum three years, at the end of the six-year period.
- (2) According to Article 16(4), every three years there should be a partial replacement of one third of the European Prosecutors. The Council, acting by simple majority, should adopt transitional rules for the appointment of the European Prosecutors during the first mandate period.
- (3) These transitional rules should ensure the proper application of the principle of periodical replacement to the European Prosecutors appointed for the first time to the EPPO, with a view to ensuring continuity of the work of the College of European Prosecutors. They should at the same time take into consideration the special needs of the EPPO in the first years following its establishment and beginning of operations.
- (4) For these purposes, specific rules should be established on the duration of the term of office of the European Prosecutors appointed for the first time following the entry into force of Regulation (EU) 2017/1939.
- (5) To ensure full transparency and impartiality in the determination of those European Prosecutors in the first mandate period whose term of office will be three years instead of six years, a system based on drawing of lots should be followed. This system will also ensure that the selection of the European Prosecutors whose term of office will be shorter is neutral in geographic terms,

HAS ADOPTED THIS DECISION:

Article 1

This Decision sets out transitional rules for the appointment of European Prosecutors for and during the first mandate period following the entry into force of Regulation (EU) 2017/1939.

² OJ L 283, 31.10.2017, p. 1.

Article 2

1. Immediately following the appointment of European Prosecutors, a group of European Prosecutors comprising one third of the number of the participating Member States at the time of application of these transitional rules shall be determined by drawing of lots.
2. If the number of participating Member States at the time of application of these transitional rules is not divisible by three, the number of European Prosecutors to be included in the group shall be rounded up to the closest higher integer number.
3. The General Secretariat of the Council shall take the necessary measures to implement the procedure of drawing lots, in close cooperation with the Commission.

Article 3

The term of office of the European Prosecutors included in the group established in accordance with Article 2 shall be three years. The appointment of these European Prosecutors shall be non-renewable.

Article 4

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