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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 746 final
Subject:	Amended proposal for a COUNCIL DECISION appointing the members of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939

Delegations will find attached document COM(2022) 746 final.

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Brussels, 16.12.2022
COM(2022) 746 final

2022/0350 (NLE)

Amended proposal for a

COUNCIL DECISION

**appointing the members of the selection 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 2017¹. The EPPO assumed the investigative and prosecutorial tasks conferred on it by such Regulation on 1 June 2021. The EPPO is responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the Union's financial interests which are provided for in Directive (EU) 2017/1371² and determined by Regulation (EU) 2017/1939.

In accordance with Article 8 of Regulation (EU) 2017/1939, the European Prosecutors are part of the central level of the EPPO. Together with the European Chief Prosecutor, all European Prosecutors, that is, one European Prosecutor per Member State participating in the enhanced cooperation on the establishment of the EPPO, form the College of the EPPO. The Council appointed the first 22 European Prosecutors of the EPPO in July 2020³.

The mandate of the European Prosecutors is of six years and the Council may decide to extend it for a maximum of three years (Article 16(3) of Regulation (EU) 2017/1939). Article 16(4) of Regulation (EU) 2017/1939 provides that every three years there should be a partial replacement of one third of the European Prosecutors and requires the Council to adopt transitional rules for the appointment of the European Prosecutors for and during the first mandate period. On this basis, the Council adopted Council Implementing Decision (EU) 2019/598 of 9 April 2019⁴, which provides that the mandate of the European Prosecutors from eight Member States, determined by drawing lots, should be of three years and should not be renewable. The mandate of these European Prosecutors will thus expire in July 2023.

Article 16(2) of Regulation (EU) 2017/1939 provides that the Council should select and appoint one of the candidates nominated by the Member States for the post of European Prosecutors after having received the reasoned opinion of the selection panel referred to in Article 14(3) of the same Regulation. In accordance with the latter provision, the selection panel should comprise twelve persons, to be appointed by the Council on a proposal from the Commission, and 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 should be proposed by the European Parliament. The mandate of the current members of the selection

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 – 71

² Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29–41

³ Council Implementing Decision (EU) 2020/1117 of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office, OJ L 244, 29.7.2020, p. 18–20

⁴ Council Implementing Decision (EU) 2019/598 of 9 April 2019 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, OJ L 103, 12.4.2019, p. 29–30

panel expired⁵ on 9 October 2022, in accordance with Article 1 of Council Decision (EU) 2018/1275⁵.

As the selection panel needs to be renewed in order to carry out the interviews of the candidates nominated by the Member States for the replacement of eight European Prosecutors, the Commission proposed⁶ a Council Decision for the appointment of the members of the panel **on 28 October 2022⁶. After the adoption of the proposal, one of the members proposed by the Commission and chosen from among high level prosecutors took up new functions at the Ministry of Justice. As a consequence, he ceased to qualify as a ‘high level prosecutor’, as required by Article 14(3) of Regulation (EU) 2017/1939. In order to replace the proposed member who has become ineligible, the Commission proposes another candidate chosen from among high level prosecutors.** All the members proposed **with this amended proposal** meet the above-mentioned requirements set out in Article 14(3) of Regulation (EU) 2017/1939. One of the persons chosen was proposed by the European Parliament on 7 June 2022. When proposing the twelve members of the selection panel, 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 EPPO was established by means of Regulation (EU) 2017/1939, which was adopted on the basis of Article 86 TFEU. The EPPO has been exercising the functions attributed to it by Regulation (EU) 2017/1939 since 1 June 2021. By submitting this proposal for a Council Decision appointing the members of the selection panel, the Commission is complying with its obligation under Article 14(3) of Regulation (EU) 2017/1939. This proposal allows for the appointment of the new members of the selection panel, as the mandate of the current members is ~~due to expire~~ on 9 October 2022, in accordance with Article 1 of Council Decision (EU) 2018/1275. The appointment of the selection panel by the Council would then allow for the launch of the necessary procedures to replace eight European Prosecutors in 2023 and, when appropriate, other European Prosecutors and the European Chief Prosecutor. This proposal is therefore consistent with the existing policy provisions in the respective policy area.

- **Consistency with other Union policies**

This proposal is consistent with other Union policies 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 14(3) of Regulation (EU) 2017/1939.

⁵ Council Decision (EU) 2018/1275 of 18 September 2018 appointing the members of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939, OJ L 238, 21.9.2018, p. 92–93

⁶ Proposal for a Council Decision appointing the members of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939, COM(2022) 564 final

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

The proposal for the appointment of the members of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 can only be made by the Commission and is thus an exclusive competence by nature, which is not subject to the principle of subsidiarity.

- **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 essential in ensuring that the European Prosecutors and the European Chief Prosecutor can be replaced at the end of their mandate, thus ensuring continuity in the operational activities of the EPPO.

- **Choice of the instrument**

Article 14(3) of Regulation (EU) 2017/1939 provides that the Council is to adopt a decision appointing the members of the selection panel on a proposal from the Commission. The choice of the proposed instrument is therefore required by the existing legislation on the matter.

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

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

Given the technical nature of this proposal and the absence of discretion on the Commission, which is complying with the obligation set out in Article 14(3) of Regulation (EU) 2017/1939, ex-post evaluations, stakeholder consultations and impact assessments 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 measure, there is no need for implementation plans and monitoring nor for evaluation and reporting arrangements.

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

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

Amended proposal for a

COUNCIL DECISION

appointing the members of the selection 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')⁷, and in particular Article 14(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Chief Prosecutor is appointed by the European Parliament and the Council from among candidates selected by the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939. The European Prosecutors are appointed by the Council from amongst three qualified candidates nominated by each Member State after having received a reasoned opinion from that selection panel.
- (2) Pursuant to Article 3 of Council Implementing Decision (EU) 2019/598⁸, the mandate of the European Prosecutors from eight Member States, determined by drawing lots, should be of three years and should not be renewable. The mandate of these European Prosecutors will thus expire in July 2023.
- (3) The mandate of the current members of the selection panel expires on 9 October 2022, in accordance with Article 1 of Council Decision (EU) 2018/1275⁹. New members are therefore to be appointed.
- (4) The selection panel is to 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.

⁷ OJ L 283, 31.10.2017, p. 1.

⁸ Council Implementing Decision (EU) 2019/598 of 9 April 2019 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, OJ L 103, 12.4.2019, p. 29–30.

⁹ Council Decision (EU) 2018/1275 of 18 September 2018 appointing the members of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939, OJ L 238, 21.9.2018, p. 92–93.

- (5) One of the selection panel members is to be proposed by the European Parliament. On 7 June 2022, the European Parliament nominated Ms Margreet Fröberg as the selection panel member.
- (6) 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 enhanced cooperation on the establishment of the EPPO for the membership in the selection panel.
- (7) 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, six high level prosecutors and two members of national supreme courts, of which six men and five women.
- (8) 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 selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939:

Mr Jean-François BOHNERT

Mr Vítor Manuel DA SILVA CALDEIRA

Mr Peter FRANK

Ms Margreet FRÖBERG

Ms Ulrike HABERL-SCHWARZ

Ms María Ángeles GARRIDO LORENZO

Ms Saale LAOS

Mr Ján MAZÁK

Mr Marin MRČELA

Mr **Lorenzo SALAZAR** ~~Antonio MURA~~

Ms Martine SOLOVIEFF

Ms Tuire TAMMINIEMI.

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*