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NOTE

From: Presidency
To: ANTICI Group

Subject: Process for the appointment of European Prosecutors - Involvement of the ANTICI Group

1. The Antici Group is invited to prepare the discussion of COREPER II on the appointment of European Prosecutors, which is scheduled for the meeting on 22 July 2020.

As provided for in Article 16(2) of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced co-operation on the establishment of the European Public Prosecutor's Office ('the EPPO') (hereafter 'the EPPO Regulation'), the Council will be invited to select and appoint one European Prosecutor for each of the Member States participating in the enhanced cooperation. The Council shall do so after having received a reasoned opinion and an order of preference expressed by an independent selection panel which had been set up by the Council for this purpose. The opinion expressed by the selection panel is binding on the Council only where the selection panel found a candidate not to be eligible. The order of preference expressed by the selection panel in respect of the eligible candidates is not binding on the Council (for further information on the background c.f. the Annex to this note).

2. At their meetings on 26 November and 12 December 2019 and on 1 July 2020, **JHA Counsellors** agreed to recommend to the Permanent Representatives Committee to follow the order of preference drawn up by the selection panel for the nominated candidates of most of the participating Member States. That process is expected to be finalised shortly in the same forum.
3. At these meetings **BE** and **PT** expressed their wish to deviate from the ranking by the selection panel. **BE** indicated its preference for the candidate that the selection panel had ranked on the third position of the order of preference. **PT** indicated its preference for the candidate that the selection panel had ranked on the second position of the order of preference¹.
4. In the same vein, **BG** stated at the meeting on 1 July 2020 that following the appointment of the candidate ranked on the first position in the order of preference drawn up by the selection panel to other functions in Bulgaria and taking note of the withdrawal of this candidate, **BG** would propose to deviate from the order of preference drawn-up by the selection panel². **BG** indicated its preference for the candidate that the selection panel had ranked on the third position of the order of preference.
5. **BE, PT** and **BG** have submitted written remarks in relation to the ranking and reasoned opinion of the selection panel with respect to the candidates nominated by them³.
6. In the discussions which led to the definition of the internal process for the appointment of the European Prosecutors it has been agreed that where a Member State presents reasons suggesting to deviate from the order of preference drawn up by the selection panel, the matter of choice of the candidate to be recommended for appointment has to be considered at ANTICI level (see 15191/19, point 5, RESTREINT UE/EU RESTRICTED).

¹ The ranking and reasoned opinion of the selection panel are set out: for **BE**, in 10530/19 RESTREINT UE/EU RESTRICTED and for **PT** in 14273/19 RESTREINT UE/EU RESTRICTED.

² The ranking and reasoned opinion of the selection panel for **BG** is set out in 9907/19 RESTREINT UE/EU RESTRICTED.

³ They are set out respectively for **BE** and **PT** in 6694/20 RESTREINT UE/EU RESTRICTED and, for **BG**, in 9348/20 RESTREINT UE/EU RESTRICTED.

7. The ANTICI Group hence is invited to consider the ranking and reasoned opinions drawn-up by the selection panel as well as the written remarks provided by BE, PT and BG in this respect.
8. On that basis, the ANTICI Group is invited to indicate for each of those three Member States, whether to follow the selection panel's order of preference or the preference expressed by the respective Member State and thus, to agree on the candidates for the position of European Prosecutor for those Member States that can be recommended to COREPER with a view to their appointment by the Council.
9. The voting rule which applies for the vote in the Council on the Decision appointing the European Prosecutors is simple majority of the participating Member States as provided for by Article 16(3) of the EPPO Regulation for the appointment of the European Prosecutors.

Since that Decision implements enhanced cooperation on the establishment of the European Public Prosecutor's Office in which Denmark, Hungary, Ireland, Poland and Sweden do not take part, those Member States are not taking part in its adoption and therefore do not participate in the vote.

1. The European Public Prosecutor's Office is an independent and decentralised prosecution office of the European Union, with the competence to investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud. The Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (hereafter 'the EPPO Regulation')⁴ was adopted on 12 October 2017 and entered into force on 20 November 2017. At this stage, 22 Member States participate in this enhanced cooperation. The EPPO is currently being set up⁵.
2. According to Article 9(1) of the EPPO Regulation, the College of the EPPO shall consist of the European Chief Prosecutor and one European Prosecutor per Member State.
3. According to Article 12 of the EPPO Regulation, the European Prosecutors shall supervise the investigations and prosecutions for which the European Delegated Prosecutors handling the case in their Member State of origin are responsible. Moreover, they shall function as liaisons and information channels between the Permanent Chambers and the European Delegated Prosecutors in their respective Member States of origin. They shall monitor the implementation of the tasks of the EPPO in their respective Member States, in close consultation with the European Delegated Prosecutors. They shall ensure that all relevant information from the Central Office is provided to European Delegated Prosecutors and vice versa.

⁴ OJ L 283 of 31.10.2017, p. 1.

⁵ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain.

4. According to Article 16(1) of the EPPO Regulation, each Member State shall nominate three candidates for the position of European Prosecutor from among candidates: (a) who are active members of the public prosecution service or judiciary of the relevant Member State; (b) whose independence is beyond doubt; and (c) who possess the qualifications required for appointment to high prosecutorial or judicial office in their respective Member States, and who have relevant practical experience of national legal systems, of financial investigations and of international judicial cooperation in criminal matters.
5. To assess the nominated candidates a selection panel has been established by Council Decision, comprising 12 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 competence⁶. One of the persons chosen has been proposed by the European Parliament.
6. According to its operating rules⁷, upon receipt of the nominations, the selection panel shall review and hear the candidates nominated by the Member States. Based on its findings during the review and hearing, the selection panel shall formulate an opinion on the candidates' qualifications to perform the duties of European Prosecutors and shall expressly state whether or not a candidate fulfils the conditions in Article 16(1) of the EPPO Regulation. The selection panel shall provide reasons for its opinion. The selection panel shall rank the candidates according to their qualifications and experience. The ranking shall indicate the selection panel's order of preference and shall not be binding on the Council.
7. On the basis of Article 16(2) and (3) of the EPPO Regulation, after having received the reasoned opinion of the selection panel, the Council shall select and appoint one of the candidates from each Member State as European Prosecutor. The Council, acting by simple majority, shall select and appoint the European Prosecutors for a non-renewable term of 6 years. The Council may decide to extend the mandate for a maximum of 3 years at the end of the 6-year period.

⁶ 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).

⁷ Council Implementing Decision (EU) 2018/1696 of 13 July 2018 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') (OJ L 282, of 12.11.2018, p. 8).

In accordance with the 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 the EPPO Regulation and following the drawing of lots on 20 May 2019, the term of office of the European Prosecutors from Austria, Cyprus, Greece, Italy, Lithuania, the Netherlands, Portugal and Spain shall be three years and this term shall not be renewable. This will be specified in the Council Decision appointing the European Prosecutors.

8. In September 2019 COREPER approved a note outlining the internal process for the appointment of the European Prosecutors (12175/19).

In accordance with that internal process, the technical preparatory work is conducted by the relevant Council bodies. The examination is done on the basis of the reasoned opinions sent by the selection panel, taking into account the selection panel's non-binding order of preference and the fact that the merits and the professional qualifications of the candidates included in the shortlist have already been carefully assessed by the selection panel. As a result of this examination, the relevant Council body (JHA Counsellors) suggests the selection of the European Prosecutors and recommends to the Permanent Representatives Committee to appoint them.
