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Proposal for a

COUNCIL IMPLEMENTING DECISION

**amending Implementing Decision (EU) 2018/1696, as regards using videoconference for
interviewing candidates**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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 EPPO Central Office consists of, amongst others, the European Chief Prosecutor and the European Prosecutors.

Article 14 of Regulation (EU) 2017/1939 regulates the appointment and dismissal of the European Chief Prosecutor, who is appointed by common accord of the European Parliament and the Council. In accordance with Article 14(3) of Regulation (EU) 2017/1939, the selection is based on an open call for candidates, following which a selection panel draws up a shortlist of qualified candidates to be submitted to the European Parliament and the Council. Article 14(3) of Regulation (EU) 2017/1939 also provides that the Council is to establish the selection panel's operating rules on a proposal from the Commission.

Article 16 of Regulation (EU) 2017/1939 regulates the appointment and dismissal of the European Prosecutors. Its first paragraph requires each Member State participating in the enhanced cooperation on the establishment of the EPPO to nominate three candidates who meet the requirements set out therein. Article 16(2) of Regulation (EU) 2017/1939 provides that the Council selects and appoints one of the candidates to be the European Prosecutor of the Member State in question, after having received the reasoned opinion of the selection panel referred to in Article 14(3) of Regulation (EU) 2017/1939.

On 13 July 2018, the Council adopted, upon proposal of the Commission, Council Implementing Decision (EU) 2018/1696 on the operating rules of the selection panel³, which were subsequently amended by Council Implementing Decision (EU) 2020/1008⁴. On 18 September 2018, the Council appointed the members of the selection panel⁵.

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) 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, 12.11.2018, p. 8–12

⁴ Council Implementing Decision (EU) 2020/1008 of 9 July 2020 amending Implementing Decision (EU) 2018/1696 on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939, OJ L 221I, 10.7.2020, p. 1–2

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

On 27 July 2020, the Council appointed the first European Prosecutors of the EPPO⁶. In accordance with Article 2 of Council Implementing Decision (EU) 2020/1117, eight European Prosecutors have been appointed for a non-renewable period of three years from 29 July 2020. They will therefore have to be replaced by eight new European Prosecutors in July 2023. The eight European Prosecutors will be appointed in accordance with the procedure set out in Article 16 of Regulation (EU) 2017/1939, which includes a hearing before the selection panel.

In accordance with Rule VI.2 of the operating rules of the selection panel, the selection panel should hear the candidates nominated by the Member States for the post of European Prosecutor. The hearing should take place in person. In the wake of the recent epidemiological situation related to the outbreak of COVID-19, it should be clarified that the hearing could also take place by videoconference upon decision of the selection panel, either *motu proprio* or at the request of the candidate. As the same rule on the hearing in person applies to the selection panel's hearing of the candidates for the post of European Chief Prosecutor pursuant to Rule VI.1, the latter rule should be amended as well for reasons of consistency. In both cases, if the hearing takes place via videoconference, the selection panel should be able to deliberate via the same means. To this end, a clarification in Rule IV on the deliberations of the selection panel is appropriate.

Therefore, the aim of this proposal is to clarify that the selection panel provided for by Article 14(3) of Regulation (EU) 2017/1939 can decide to conduct the interviews of the candidates by videoconference, which are necessary or more efficient when hearings in person are not allowed or advisable, and deliberate via the same means accordingly.

- **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. By submitting this proposal for an amendment of Council Implementing Decision (EU) 2018/1696, as amended by Council Implementing Decision (EU) 2020/1008, the Commission is complying with its obligations under Articles 14(3) and 16(2) of Regulation (EU) 2017/1939. This proposal will enable to carry out the selection and appointment procedures of the European Chief Prosecutor and the European Prosecutors in an efficient way. This proposal is therefore consistent with existing policy provisions in the policy area.

- **Consistency with other Union policies**

This initiative 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.

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

The amendment of the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 can only be done by the Council on a proposal from the

⁶ 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

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 the effectiveness and legality of the nomination and appointment procedures of the European Chief Prosecutor and the European Prosecutors.

- **Choice of the instrument**

Article 14(3) of Regulation (EU) 2017/1939 provides that the Council is to establish the selection panel's operating rules on a proposal from the Commission. The operating rules were adopted by means of Council Implementing Decision (EU) 2018/1696. 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

Given the technical nature of this proposal and its very limited impact, ex-post evaluations, stakeholder consultations and impact assessments were not carried out.

4. BUDGETARY IMPLICATIONS

The 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 would amend the operating rules so as to clarify that the selection panel provided for by Article 14(3) of Regulation (EU) 2017/1939 can decide to conduct the hearing of the candidates for the post of European Chief Prosecutor and European Prosecutors also via videoconference, either *motu proprio* or at the request of the candidate. Article 1 would further amend the operating rules with a view to clarifying that, whenever the hearing of a candidate takes place via videoconference, the selection panel can also deliberate via the same means.

In the wake of the recent epidemiological situation, hearings in person may be forbidden or unadvisable. Therefore, by clarifying that the selection panel can hear the candidates via videoconference and deliberate via the same means, this amendment aims to ensure the efficiency and legality of the selection and appointment procedures of the European Chief Prosecutor and the European Prosecutors.

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2018/1696, as regards using videoconference for interviewing candidates

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) Council Implementing Decision (EU) 2018/1696⁸ established the operating rules of the selection panel for appointing the European Chief Prosecutor and European Prosecutors.
- (2) Rule VI, points 1 and 2 of the operating rules provide that the hearing of the candidates for the post of European Chief Prosecutor and European Prosecutors is to take place in person.
- (3) In the wake of the recent epidemiological situation, it is necessary to clarify that the interviews of those candidates by the selection panel could also take place via videoconference upon decision of the selection panel, either *motu proprio* or at the request of the candidate.
- (4) The way in which the interviews are conducted, in person or via videoconference, may affect the performance of the candidates. The selection panel shall therefore aim to ensure equal treatment to candidates when deciding to conduct the interviews via videoconference.
- (5) Rule IV of the operating rules does not clarify whether the selection panel can deliberate via videoconference. It is therefore necessary to clarify that, when the interview of the candidates takes place via videoconference, the selection panel can deliberate via the same means.
- (6) Implementing Decision (EU) 2018/1696 should therefore be amended accordingly,

⁷ OJ L 283, 31.10.2017, p. 1.

⁸ 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, 12.11.2018, p. 8).

HAS ADOPTED THIS DECISION:

Article 1

Annex to Implementing Decision (EU) 2018/1696 is amended as follows:

(1) in Rule IV the first paragraph is replaced by the following:

‘The deliberations of the selection panel shall be confidential and shall take place in camera. When the hearing of the candidates takes place via videoconference, the selection panel may deliberate using the same means of communications. The meetings of the selection panel shall be only valid if at least nine members are present.’

(2) in Rule VI, point 1, the first subparagraph is replaced by the following:

‘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 selection 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 selection panel to enable it to establish the shortlist referred to in Rule VII(1). The hearing shall take place in person or, upon decision of the selection panel, *motu proprio* or at the request of the candidate, via videoconference. The selection panel shall aim to ensure equal treatment to candidates when deciding to conduct the interviews via videoconference.’

(3) in Rule VI, point 2, the first subparagraph is replaced by the following:

‘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 selection panel shall hear the candidates nominated. The hearing shall take place in person or, upon decision of the selection panel or request of the candidate, via videoconference. The selection panel shall aim to ensure equal treatment to candidates when deciding to conduct the interviews via videoconference.’

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