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'I' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Appointment of European Prosecutors – Internal process to be followed within the Council

The objective of the attached note is to define the internal process to be followed within the Council for the appointment of the European Prosecutors.

The Permanent Representatives Committee is invited to endorse the attached note, on which delegations reached agreement at technical level, following the JHA Counsellors meeting on 9 September 2019.

A. TASKS AND PROCEDURE FOR THE SELECTION OF THE EUROPEAN PROSECUTORS

1. The tasks of the European Prosecutors are defined in Article 12 of 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')¹.

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.

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 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.

¹ OJ L 283 of 31.10.2017, p. 1.

4. According to the operating rules of the selection panel², upon receipt of the nominations, the selection panel referred to in Article 14(3) of the EPPO Regulation 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.
5. 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 to be the European Prosecutor of the Member State in question. 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. 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 Regulation (EU) 2017/1939, 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.

² 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).

B. PROCEDURE TO BE FOLLOWED WITHIN THE COUNCIL

7. The selection panel referred to in paragraph 4 has started and continues to proceed to the examination of the nominated candidates, on the basis of the lists provided by Member States. It has already submitted the ranking and reasoned opinions of nominated candidates in relation to 9 Member States³.
8. The technical preparatory work will be conducted by the relevant Council bodies (COPEN Working Party and/or JHA Counsellors, as appropriate). The examination will be 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 will suggest the selection of the European Prosecutors and recommend to the Permanent Representatives Committee to appoint them. In accordance with Article 16(3) and (4) of the EPPO Regulation, the Council, acting by simple majority of the participating Member States, shall select and appoint the European Prosecutors for a non-renewable term of 6 years, except for the European Prosecutors from the 8 Member States mentioned in paragraph 6 above for which the non-renewable term will be 3 years.

C. CONCLUSION

9. On this basis, the Permanent Representatives Committee, acting by simple majority of the participating Member States, is invited to endorse the internal process to be followed in the Council, as outlined in paragraphs 7-8 above.

³ 9907/19 RESTREINT UE/EU RESTRICTED and 10530/19 RESTREINT UE/EU RESTRICTED. Additional RESTREINT UE/EU RESTRICTED documents will be released at a later stage, when the selection panel will define the ranking and the reasoned opinions of the nominated candidates of the other participating Member States.