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From:	General Secretariat of the Council
To:	Delegations
Subject:	Draft I Note in relation to the draft Council Implementing Decision appointing the European prosecutors of the European Public Prosecutor' Office

Delegations will find attached the above-mentioned draft I Note.

This Note builds on the text of the draft Decision and provides information on the process followed within the Council, with the invitation to COREPER to endorse it and to authorise the launch of the written procedure for its adoption by the Council.

1. The European Public Prosecutor's Office (EPPO) was established by Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')¹
2. The European Prosecutors are to supervise investigations and prosecutions in accordance with Article 12 of Regulation (EU) 2017/1939.
3. The European Chief Prosecutor was appointed by Decision (EU) 2019/1798 of the European Parliament and of the Council². To establish the EPPO College, which consists of the European Chief Prosecutor and one European Prosecutor per participating Member State, the Council needs to appoint the European Prosecutors.

¹ OJ L 283, 31.10.2017, p. 1.

² Decision (EU) 2019/1798 of the European Parliament and of the Council of 23 October 2019 appointing the European Chief Prosecutor of the European Public Prosecutor's Office (OJ L 274, 28.10.2019, p. 1).

4. Pursuant to Article 16(1) of Regulation (EU) 2017/1939, each participating Member State shall nominate three candidates for the position of European Prosecutor from among candidates who are active members of the public prosecution service or judiciary of the relevant Member State, whose independence is beyond doubt and 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. Implementing Decision (EU) 2018/1696 lays down the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 (the 'operating rules of the selection panel'). The selection panel drew up the reasoned opinions and the ranking for each of the nominated candidates who fulfilled the conditions set out in Article 16(1) of Regulation (EU) 2017/1939, and submitted them to the Council, which received them on 6 June, 21 June, 15 October, 19 November, 10 December 2019 and 16 July 2020³.
6. Pursuant to the fourth paragraph of Rule VII.2 of the operating rules of the selection panel, the selection panel ranked the candidates according to their qualifications and experience. The ranking indicates the selection panel's order of preference and is not binding on the Council.

³ They are set out respectively in 9907/19 RESTREINT UE/EU RESTRICTED, 10530 RESTREINT UE/EU RESTRICTED, 13105/19 RESTREINT UE/EU RESTRICTED, 14273/19 RESTREINT UE/EU RESTRICTED, 14822/19 RESTREINT UE/EU RESTRICTED and 9670/20 REV 1 RESTREINT UE/EU RESTRICTED.

7. In accordance with Article 16(2) of Regulation (EU) 2017/1939, after having received the reasoned opinions of the selection panel, the Council selects and appoints one of the candidates to be the European Prosecutor of the participating Member State in question.
8. In accordance with Article 16(3) of Regulation (EU) 2017/1939, the Council, acting by simple majority, selects and appoints 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.
9. Implementing Decision (EU) 2019/598 lays down transitional rules for the appointment of European Prosecutors for and during the first mandate period following the entry into force of Regulation (EU) 2017/1939⁴. In accordance with Article 2(1) of Implementing Decision (EU) 2019/598, before the appointment of European Prosecutors, a group comprising one third of the number of participating Member States at the time of application of those transitional rules is to be determined by drawing lots. The drawing of lots was held on 20 May 2019 and the Member States in that group are Greece, Spain, Italy, Cyprus, Lithuania, the Netherlands, Austria and Portugal. Article 3 of that Implementing Decision provides that the term of office of the European Prosecutors from the Member States included in that group is to be three years and not renewable.

⁴ OJ L 103, 12.4.2019, p. 29.

10. The Council defined in September 2019 the internal process for the appointment of the European Prosecutors⁵. The technical preparatory work has been conducted by the JHA Counsellors. The examination was 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 JHA Counsellors should suggest the selection of the European Prosecutors and recommend them to the Permanent Representatives Committee in view of their appointment by the Council to appoint them.
11. [JHA Counsellors proceeded to that examination at their meetings on 26 November and 12 December 2019, as well as on 1 July 2020 and 22 July 2020].
12. [During the JHA Counsellors meeting on 22 July 2020, the reasoned opinion concerning the candidates nominated by Malta, issued by the selection panel on 16 July 2020⁶, has been considered. Malta provided detailed explanations as to the proceedings pertaining to the selection procedure at national level. It was considered that the grounds put forward by the selection panel and the interested Member State sufficiently establish that, given the exceptional circumstances in that Member State, it is objectively impossible for that Member State to find further eligible candidates within a reasonable time, in spite of the fact that that Member State has deployed all necessary efforts to do so. Therefore, the conditions set out in the third paragraph of Rule VII.2. of the operating rules of the selection panel are met. In the light of the above-mentioned specific circumstances, there was an agreement that the reasoned opinion submitted with regard to candidates nominated by Malta offers to the Council sufficient choice of suitable candidates. It was also considered that any further delay in the appointment of the European Prosecutors would have serious adverse consequences on the effectiveness of European Union law. On the basis of those elements, the Council could be invited to proceed to the adoption of the Appointing Decision on that basis.]

⁵ 12175/19

⁶ 9670/20 REV 1 RESTREINT UE/EU RESTRICTED

13. [As a result of those examinations, held at their meetings on 26 November, 12 December, 1st and 22 July 2020 JHA Counsellors suggested to the Permanent Representatives Committee to follow the non-binding order of preference indicated by the selection panel for the candidates nominated by Czechia, Germany, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Austria, Romania, Slovenia, Slovakia and Finland].
14. With respect to the candidates nominated by Belgium, Bulgaria and Portugal, which proposed not to follow the non-binding order of preference of the selection panel, the question was referred to the ANTICI Group. At their meeting on 13 July 2020, the ANTICI Group proceeded to the examination of the candidates nominated by those Member States in the light of the reasoned opinions and additional material with regard to the merits of those candidates submitted by those Member States⁷. As a result, on the basis of a different assessment of the merits of those candidates, the Antici Group suggested to the Permanent Representatives Committee to recommend for appointment the candidates indicated by the three Member States concerned.
15. [The draft Council Implementing Decision appointing the European Prosecutors of the European has been examined by JHA Counsellors at their meetings on 12 December 2019 and 22 July 2020. An agreement at technical has been reached on the text set out in document 9747/20 REV 1].
16. In view of the above, the Permanent Representatives Committee is invited:
- to confirm its agreement on the text of the Council Implementing Decision appointing the European Prosecutors, as set out in document 14830/19 (text finalised by the Legal-Linguistic experts) and

to decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430, that the Council should use the written procedure for its adoption.

⁷ Such additional materials are set out in 6694/20 RESTREINT UE/EU RESTRICTED and 9348/20 RESTREINT UE/EU RESTRICTED