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Proposal for a

## **COUNCIL DECISION**

**amending Decision (EU) 2023/133 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 2017<sup>1</sup>. 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) 2017/1371<sup>2</sup>, as implemented into national law, and determined by Regulation (EU) 2017/1939.

In accordance with Article 8 of Regulation (EU) 2017/1939, the EPPO is organised at a central and at a decentralised level. The European Chief Prosecutor and the European Prosecutors – one per Member State participating in the enhanced cooperation on the establishment of the EPPO – are part of the central level of the EPPO and form the College of the EPPO. The European Parliament and the Council appointed by common accord the first European Chief Prosecutor in October 2019<sup>3</sup>. The Council appointed the first 22 European Prosecutors of the EPPO in July 2020.

The mandate of the European Chief Prosecutor is of seven years and is not renewable (Article 14(1) of Regulation (EU) 2017/1939). 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 2019, 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 thus expired in July 2023.

Article 14(3) of Regulation (EU) 2017/1939 provides that the selection of the European Chief Prosecutor should be based on an open call for candidates, to be published in the Official Journal of the European Union, following which a selection panel should draw up a shortlist of qualified candidates to be submitted to the European Parliament and to the Council. 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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. 1–2.

In accordance with the latter provision, the selection panel should comprise 12 persons, to be appointed by the Council on a proposal from the Commission, 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 12 members of the first selection panel were appointed by the Council, on a proposal from the Commission, in October 2018<sup>4</sup>, while the 12 members of the current selection panel were appointed in January 2023 for a period of four years from 20 January 2023<sup>5</sup>. Mr Marin MRČELA, Justice of the Supreme Court of the Republic of Croatia, was one of the members of the selection panel appointed in January 2023. On 8 April 2024, Mr MRČELA informed the European Commission that he could no longer serve as member of the selection panel and therefore decided to resign. The Council was informed accordingly.

To ensure the continuity of the selection panel, Mr MRČELA should be replaced. In accordance with the operating rules of the selection panel<sup>6</sup>, his replacement should be appointed for the remainder of Mr MRČELA's term of office (i.e., until 20 January 2027). With the present proposal, the Commission therefore proposes the Council to appoint Mr Dražen JELENIĆ, Deputy State Attorney General of the Republic of Croatia, as member of the selection panel in replacement of Mr MRČELA. Mr Dražen JELENIĆ meets the requirements set out in Article 14(3) of Regulation (EU) 2017/1939. In proposing his appointment, the Commission took 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 on the replacement of one of the current 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 replacement of one member of the current selection panel, whose mandate is due to expire on 20 January 2027. The full functioning of the selection panel is important to allow for the orderly finalisation of the procedures to select and appoint the European Prosecutor from Poland<sup>7</sup> as well as the European Prosecutors who will have to be replaced in 2026 and the new European Chief Prosecutor, who will also have to be appointed in 2026.

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<sup>4</sup> 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.

<sup>5</sup> Council Decision (EU) 2023/133 of 17 January 2023 appointing the members of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939, OJ L 17, 19.1.2023, p. 90–91.

<sup>6</sup> 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.

<sup>7</sup> Poland joined the enhanced cooperation on the establishment of the EPPO in February 2024 (Commission Decision (EU) 2024/807 of 29 February 2024 confirming the participation of Poland in the enhanced cooperation on the establishment of the European Public Prosecutor's Office, OJ L, 2024/807, 29.2.2024). The European Prosecutor from Poland should thus be appointed. Furthermore, Sweden is likely to notify the Commission of its intention to join the enhanced cooperation soon.

- **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.

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

The appointment of members of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 can only be decided by the Council, on the basis of a Commission proposal, 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 Chief Prosecutor and the European Prosecutors can be replaced at the end of their mandate, and that the European Prosecutors from the Member States that have recently joined or will soon join the enhanced cooperation on the EPPO are appointed, thus ensuring full deployment and continuity of 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. Rule II of the operating rules of the selection panel further provides that a person who is to replace a member of the selection panel should be appointed for the remainder of the predecessor's term of office following the same procedure. 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 Mr Dražen JELENIĆ replaces Mr Marin MRČELA as member of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939.

Article 2 provides for the entry into force of the Decision.

Proposal for a

## **COUNCIL DECISION**

### **amending Decision (EU) 2023/133 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')<sup>1</sup>, 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 common accord of the European Parliament and the Council from among a shortlist of qualified candidates drawn up 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) The current members of the selection panel were appointed for a period of four years from 20 January 2023, by means of Council Decision (EU) 2023/133<sup>2</sup>.
- (3) Mr Marin MRČELA is currently a member of the selection panel. On 8 April 2024, Mr MRČELA informed the Commission that he could no longer serve as a member of the selection panel and had therefore decided to resign. The Council was informed accordingly.
- (4) A new member of the selection panel should be appointed as soon as possible to replace Mr MRČELA, in order to ensure the continuity of the selection panel's activities. Mr Dražen JELENIĆ, Deputy State Attorney General of the Republic of Croatia, should therefore be appointed as a new member of the selection panel. In proposing this person, 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 the enhanced cooperation on the establishment of the EPPO.
- (5) In accordance with Rule II of the operating rules of the selection panel set out in the Annex to Council Implementing Decision (EU) 2018/1696<sup>3</sup>, Mr JELENIĆ should be appointed for the remainder of his predecessor's term of office.

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<sup>1</sup> OJ L 283, 31.10.2017, p. 1, ELI: <http://data.europa.eu/eli/reg/2017/1939/oj>.

<sup>2</sup> Council Decision (EU) 2023/133 of 17 January 2023 appointing the members of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 (OJ L 17, 19.1.2023, p. 90, ELI: <http://data.europa.eu/eli/dec/2023/133/oj>).

<sup>3</sup> 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

- (6) Decision (EU) 2023/133 should therefore be amended accordingly.
- (7) In order to ensure that Mr JELENIĆ can immediately take up his functions and participate in the ongoing activities of the selection panel, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

*Article 1*

In Article 1 of Decision (EU) 2023/133, the name ‘Mr Marin MRČELA’ is replaced by the name ‘Mr Dražen JELENIĆ’.

*Article 2*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*