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Subject: Non-paper from the Commission services and the European Public
Prosecutor's Office (EPPO) on the state of play of the EPPO's activities

In view of the meeting of the Justice Ministers on 13 October 2022, delegations will find in the Annex a non-paper from the Commission services /EPPO on the above-mentioned subject.

**Non-paper from the Commission services and the European Public Prosecutor's Office
(EPPO) on the state of play of the EPPO's activities**

This document presents an update on the activities of the EPPO up until 30 September 2022.

- **National measures:** All the Member States participating in the EPPO have informed the Commission of the adoption of legislation to adapt their national justice systems to Regulation (EU) 2017/1939. In order to ensure that Regulation (EU) 2017/1939 is respected and that the EPPO can exercise all the powers bestowed upon it by that Regulation, the Commission launched in April 2022 an in-depth external study. The study will provide a comprehensive and detailed assessment of the legal and administrative measures adopted by the Member States to adapt their systems to Regulation (EU) 2017/1939. The Commission has extended the study's scope to cover the effectiveness and efficiency of the EPPO and its working practices, as provided for by Article 119(1) of Regulation (EU) 2017/1939. The study will thus examine several issues raised by the European Chief Prosecutor in the letters addressed to the European Commission. The study will be completed in July 2023.
- **Appointment of the new European Prosecutors (EPs):** As 8 EPs have been appointed for a non-renewable term of three years from 29 July 2020, they will have to be replaced by July 2023, in accordance with the procedure set out in the Regulation (EU) 2017/1939. The selection process includes a hearing before a panel provided for by Article 14(3) of that Regulation. The Council is competent to appoint the selection panel's members on a proposal from the Commission. The Commission plans to adopt and submit its proposal for a Council Decision on appointing the members of the panel by the end of October 2022.
- **Appointment of the European Delegated Prosecutors (EDPs):** By 30 September 2022, 113 EDPs out of the initially foreseen 140 had been appointed. The EPPO is in negotiations with relevant national authorities in several Member States to increase the number of EDPs in line with the agreed common methodology.

- **Staff recruitment:** By 30 September 2022, 209 staff out of 248 were recruited in the Central Office. 23 more are expected to be recruited in 2022. By the end of the year, the EPPO expects to reach an occupancy rate of 92.3%.
- **Pending case before the Court of Justice (C-281/22):** A request for a preliminary ruling on the interpretation of Article 31(3) of Regulation (EU) 2017/1939 has been lodged before the Court of Justice. The Commission has sent its observations. The date of the hearing has not yet been set. The case pending before the referring Austrian court involves the execution of a cross-border investigative measure assigned by a German EDP to an Austrian EDP and which requires a judicial authorisation under Austrian law. The referral itself concerns the extent of the judicial review to be carried out by the competent judicial authorities of the assisting Member State (Austria). The EPPO also reported to the Commission some issues with regard to the collection of evidence in cross-border cases when a judicial authorisation is required by the national law of the assisting EDP (making it more cumbersome than applying mutual recognition instruments).
- **Working arrangements between the EPPO and EU bodies / national authorities:**
The EPPO signed a cooperation agreement with the Commission (18 June 2021).
On 23 September 2022, the Secretary-General of the Commission and the European Chief Prosecutor met to conduct the first annual review of the mutual cooperation between the Commission and the EPPO under the agreement. The EPPO also concluded bilateral working arrangements with Europol (18 January 2021), Eurojust (4 February 2021), OLAF (5 July 2021), the European Court of Auditors (3 September 2021) as well as the European Investment Bank and the European Investment Fund (7 December 2021). The EPPO signed working arrangements or cooperation agreements with competent authorities (e.g. customs authorities or Prosecutor General's Offices) of six Member States.

- **Cooperation with non-participating Member States (NPMS):** By 30 September 2022, all the Member States participating in the EPPO have notified the EPPO as a competent authority for the purposes of all, or at least some of, the Union acts on judicial cooperation in criminal matters as listed in the Presidency Report on the EPPO's relations with NPMS (Council doc. 13147/20), except for Cyprus, due to the specificities of its common law system. The EPPO cooperates smoothly with Denmark, Hungary and Sweden. The EPPO and the Office of the Prosecutor General of Hungary concluded a working arrangement in accordance with Article 99(3) of Regulation (EU) 2017/1939, while a similar arrangement with the Ministry of Justice of Denmark is close to being concluded. Sweden is expected to join the EPPO in 2023, to be confirmed by the new government. The EPPO informed the Commission of some problems in its cooperation with Poland; the matter is currently under assessment by the Commission also in light of the information provided by the Polish authorities concerning the amendment of their criminal procedure code to ensure effective cooperation with the EPPO. The EPPO also reported that there is no tangible progress yet on the cooperation agreement with Ireland.
- **Cooperation with third countries:** By 30 September 2022, 17 Member States participating in the EPPO notified the EPPO as a competent authority for the purposes of the 1959 European Convention on Mutual Assistance in Criminal Matters ('1959 MLA Convention') and its Protocols. Discussions within the Council of Europe with a view to concluding a new Protocol to the 1959 MLA Convention on the cooperation between the EPPO and the other Parties' competent authorities have for the moment been put on hold. The Commission has proposed to notify the EPPO as a competent and central authority for the purposes of the EU-Japan Agreement on Mutual Legal Assistance (COM(2022) 418 final). The EPPO has signed a working arrangement with the Prosecutor General's Offices of Ukraine, Albania, Moldova, Montenegro and Georgia, as well as a working arrangement and a memorandum of understanding with the United States Department of Justice and Department of Homeland Security.

- **PIF Directive:** With regard to Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law ('PIF Directive'), all Member States participating in the EPPO have notified its full transposition into national law.
The Commission issued two reports assessing the extent to which the Member States have taken the necessary measures in order to comply with the Directive, respectively on 6 September 2021 (COM(2021) 536 final) and 16 September 2022 (COM(2022) 466 final), and launched infringement procedures against 17 Member States, all of which are at the stage of the letter of formal notice.
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