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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	8750/17
Subject:	Draft Regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office - General approach

The proposal to establish the European Public Prosecutor's Office was presented on 17 July 2013.

On 7 February 2017, after three and a half years of negotiations, the Council registered the absence of unanimity on the draft Regulation. The lack of unanimous agreement was confirmed on 9 March 2017 by the European Council. In accordance with the applicable procedure, on 3 April 2017, 16 Member States notified their wish to establish enhanced cooperation. In accordance with the third subparagraph of Article 86(1) TFEU, the authorisation to proceed with enhanced cooperation was thereby deemed to be granted and the provisions on enhanced cooperation applied as from 3 April 2017. A seventeenth Member State (Latvia) joined the enhanced cooperation at a later date.

The Maltese Presidency triggered negotiations in Council at technical level on the draft Regulation implementing enhanced cooperation in the competent Working Party (COPEN) in April.

Throughout these COPEN meetings, the Presidency tried to find solutions to outstanding issues, thereby facilitating the process for the current non-participating Member States to join this project. In particular, certain adjustments of the rules relating to the material competence of the EPPO and the exercise of its competence (Articles 17, 19 and 20 respectively) have thereby been amended and subsequently agreed upon at Working Party level. In addition, a new rule on the relations between the EPPO and non-participating Member States has been added in the third paragraph of Article 59a. However, two issues in Article 17 remain open:

- Article 17(1): the issue of whether the reference to the so called PIF-Directive shall be of a static or a dynamic character.
- Article 17(3): the issue of whether the words '*including offences inextricably linked thereto*' should be retained in the provision.

In the draft text included in document 9545/17, the Presidency proposes a balanced compromise on the full text of the draft Regulation, including on the two issues cited above. The draft text also incorporates a number of modifications aiming at improving the quality of the text, to make it internally coherent and to adapt it to the enhanced cooperation, as has been agreed at expert level.

The Presidency is convinced that the current text of the draft Regulation constitutes a balanced compromise between the positions of all the Member States, and that it should be acceptable to all.

Coreper is invited to agree to submit the draft text of the Regulation, as set out in document 9545/17, to the June 2017 Council, for the purpose of attaining a General Approach.