

DECISIONS

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')

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') ⁽¹⁾, and in particular Article 14(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EU) 2017/1939 provides that the European Parliament and the Council are to appoint the European Chief Prosecutor, by common accord, from a shortlist of qualified candidates drawn up by a selection panel. The selection panel is to be comprised of 12 persons that are to be chosen from 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 is to be proposed by the European Parliament. The Council is to establish the operating rules of the selection panel.
- (2) Regulation (EU) 2017/1939 also provides that the Council is to appoint each European Prosecutor from amongst three candidates nominated by each Member State after having received a reasoned opinion from the selection panel.
- (3) The procedure for the selection of the European Chief Prosecutor and of European Prosecutors should be a key element to ensure their independence.
- (4) The operating rules of the selection panel should ensure that the selection panel has the necessary independence and impartiality to carry out its work.
- (5) The operating rules of the selection panel should therefore be established,

HAS ADOPTED THIS DECISION:

Article 1

The operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 shall be set out in the Annex to this Decision.

⁽¹⁾ OJ L 283, 31.10.2017, p. 1.

Article 2

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

Done at Brussels, 13 July 2018.

For the Council
The President
H. LÖGER

ANNEX

OPERATING RULES OF THE SELECTION PANEL

I. Mission

The selection panel shall draw up a shortlist of qualified candidates for the position of European Chief Prosecutor, in accordance with Article 14(3) of Regulation (EU) 2017/1939 ⁽¹⁾, before the appointment of the European Chief Prosecutor by the European Parliament and the Council. It shall also provide a reasoned opinion on the qualifications of candidates nominated for the position of European Prosecutor in accordance with Article 16(2) of Regulation (EU) 2017/1939. The Council shall appoint the European Prosecutors after receipt of the reasoned opinion.

II. Composition and term of office

The selection panel shall be comprised of 12 persons who, at the time of their appointment, are 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 or lawyers of recognised competence. All members shall meet at least one of the abovementioned criteria at the time of their appointment.

The members of the selection panel shall be appointed by the Council, on a proposal by the Commission, for a period of four years. One of the persons chosen shall be proposed by the European Parliament. A person who is to replace a member before the expiry of that period shall be appointed for the remainder of their predecessor's term of office following the same procedure, as soon as possible after the termination of the membership of his/her predecessor. Members of the selection panel may be reappointed once.

III. Presidency and secretariat

The selection panel shall be chaired by one of its members, elected for that purpose by the members of the selection panel by a majority vote. The Commission shall be responsible for the selection panel's secretariat. The secretariat shall provide the administrative support necessary for the working of the selection panel, including the translation of documents. It shall also transmit the shortlist of qualified candidates for the post of European Chief Prosecutor to the European Parliament and the Council, and, respectively, the reasoned opinions on the candidates' qualifications to perform the duties of European Prosecutors to the Council.

IV. Deliberations and quorum

The deliberations of the selection panel shall be confidential and shall take place *in camera*. The meetings of the selection panel shall be only valid if at least nine members are present.

Decisions of the selection panel shall be taken by consensus. However, if a member asks for a vote, the decision shall be taken by a simple majority of the members present. In the event of a tie in the voting, the chair shall have the casting vote. The same rules shall also apply for the determination of the language regime as set out in Rule X.

V. Referral to the selection panel and requests for additional information

As soon as the applications for the position of European Chief Prosecutor have been received, the secretariat shall send them to all the members of the selection panel. The same applies to nominations for the position of European Prosecutor, including the accompanying documents submitted by the Member States.

The selection panel may ask applicants to provide additional information or other material which the selection panel considers necessary for its deliberations, and, in the case of nominations for the position of European Prosecutor, the selection panel may ask the government of the nominating Member State to provide such information or material.

VI. Review and hearing

1. Procedure for the appointment of the European Chief Prosecutor

Upon receipt of the candidates' applications, the selection panel shall review the applications with regard to the requirements set out in Article 14(2) of Regulation (EU) 2017/1939, as further specified in the vacancy notice.

⁽¹⁾ 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).

Candidates who do not meet the eligibility requirements shall be excluded from the next steps of the procedure. The selection panel shall rank candidates who fulfil the requirements according to their qualifications and experience, on the basis of the documentation and information provided in the application or produced following a request pursuant to Rule V. A sufficient number of the highest ranked candidates shall be heard by the selection panel to enable it to establish the shortlist referred to in Rule VII(1). The hearing shall take place in person.

Candidates who do not fulfil the eligibility requirements or who are not invited to be heard by the selection panel shall be informed of the reasons. A candidate may react to this decision stating the reasons why he/she does not agree with the selection panel's assessment. Subsequently, the selection panel will reassess the candidate's application and inform him/her of its conclusion in writing. Candidates who are excluded from the selection procedure may submit a complaint within the meaning of Article 90(2) of the Staff Regulations of Officials laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾ (the 'Staff Regulations') to the Council.

2. Procedure for the appointment of European Prosecutors

Upon receipt of the nominations, the selection panel shall review them with regard to the requirements set out in Article 16(1) of Regulation (EU) 2017/1939. The selection panel shall hear the candidates nominated. The hearing shall take place in person.

In the event that a nominated candidate withdraws his/her nomination before the hearing takes place, the selection panel shall, through its secretariat, request that the Member State concerned nominate a new candidate.

VII. Findings and statement of reasons

1. European Chief Prosecutor

Based on its findings during the review and hearing, the selection panel shall draw up a shortlist of three to five candidates to be submitted to the European Parliament and to the Council. It shall provide reasons for selecting the candidates on the shortlist. Candidates who are not placed on the shortlist shall be informed of the reasons.

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 European Parliament and the Council. Candidates who are not included in the shortlist of qualified candidates drawn up by the selection panel may submit a complaint within the meaning of Article 90(2) of the Staff Regulations to the Council.

2. European Prosecutors

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 Regulation (EU) 2017/1939. The selection panel shall provide reasons for its opinion.

In the event that nominated candidates do not fulfil the conditions set out in Article 16(1) of Regulation (EU) 2017/1939, the selection panel shall, through its secretariat, request that the Member State concerned nominate a corresponding number of new candidates.

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.

VIII. Financial provisions

Members of the selection panel required to travel away from their place of residence in order to carry out their duties shall be entitled to reimbursement of their expenses and an allowance in accordance with Article 9 of Council Regulation (EU) 2016/300 ⁽²⁾.

The corresponding expenditure shall be borne by the Council.

⁽¹⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

⁽²⁾ Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders (OJ L 58, 4.3.2016, p. 1).

IX. Personal data

The processing of personal data in the context of the work of the selection panel shall take place under the responsibility of the Commission in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾. The rules applicable to the security of and access to information processed in the context of the work of the selection panel shall be those applicable to the Commission.

X. Language regime

Upon the proposal of its chairperson, the selection panel shall determine the working language(s) of the selection panel in view of the common languages spoken by its members.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).