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European Union

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'I' ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)

Subject: a) Draft declaration for the notification of the EPPO as a competent judicial authority in relation to the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols

b) Draft additional declarations

- endorsement
- launch of a written procedure

1. The subject of the relations of the EPPO with third countries and international organisations on the basis of Article 104 of Council Regulation (EU) 2017/1939 (the EPPO Regulation)¹ was discussed at the meetings of the Working Party on Judicial Cooperation in Criminal Matters (COPEN) on 23 October 2019 and of COPEN (Friends of Presidency) on 16 December 2019.

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)

2. Discussions pursued at technical level on this topic, with focus on the following subjects, on the basis of suggestions contained in Presidency note 15190/19:
 - a) the draft text of a declaration for the notification of the EPPO as a competent judicial authority in relation to the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols, complemented with explanations on its legal consequences;
 - b) the draft text of additional declarations.
3. At its meetings on 19 February 2020 and at its informal videoconference meetings on 16 July and 22 September 2020 the COPEN considered further compromise suggestions submitted by the Presidency with respect to the draft text of the declaration and the draft additional declaration as referred to in point 2.
4. At the informal videoconference meeting on 22 September 2020 delegations supported the text of the compromise suggestions of the Presidency as set out in 10396/20. Agreement at technical level on the text of the draft declaration and of the additional declarations, as set out in the Annex to this Note, was confirmed through silence procedure.
5. The Permanent Representatives Committee is invited:
 - to confirm the agreement reached at technical level and to endorse the draft model text of a declaration for the notification of the EPPO as a competent judicial authority in accordance with Article 24 of the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols, complemented with explanations on its legal consequences, as well as the draft model texts of additional declarations, as set out in the Annex to this Note;
 - to invite the Member States which participate in the enhanced cooperation on the establishment of the EPPO to use the model texts set out in the Annex to this Note when making the notification to the Council of Europe in accordance with Article 104(4) of the EPPO Regulation, with a view to ensuring that the declarations take effect by the time the EPPO assumes its investigative and prosecutorial tasks in accordance with Article 120(2) of the EPPO Regulation.

- 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 the endorsement of the model text of a declaration for the notification of the EPPO as a competent judicial authority in relation to the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols, complemented with explanations on its legal consequences, as well as the model text of additional declarations.

Draft model text of a declaration for the notification of the EPPO as a competent judicial authority in relation to the 1959 European Convention on Mutual Assistance in Criminal Matters and its Protocols

In accordance with Article 24 of the Convention [as amended by Article 6 of the Second Additional Protocol to the Convention² ...[name of the Member State]³, as a Member State of the European Union participating in the enhanced cooperation on the establishment of the European Public Prosecutor's Office, declares that the European Public Prosecutor's Office ("EPPO"), in the exercise of its competences, as provided for by Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, shall be deemed to be a judicial authority for the purpose of issuing requests for mutual assistance in accordance with the Convention and its protocols as well as for the purpose of providing, on request of another Contracting Party in accordance with the Convention and its protocols, information or evidence which the EPPO has obtained already or may obtain following the initiation of an investigation in the area of its competence. The EPPO shall also be deemed to be a judicial authority for the purpose of receipt of information in accordance with Article 21 of the Convention in respect of offences within its competence as provided for by Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939. This declaration is intended to supplement the previous declaration(s)⁴ made by...[name of the Member State] in accordance with Article 24 of the Convention.

² Text in square brackets to be used only by Member States that have ratified the Second Additional Protocol.

³ The intention is for each participating Member State to make its own declaration in the proper form to the Council of Europe. Thus each declaration will refer to the specific Member State.

⁴ This wording assumes that all Member States have made previous declarations in accordance with Article 24 of the Convention.

With reference to this declaration made in accordance with Article 24 of the Convention, ... [name of Member State] avails itself of the opportunity to interpret the legal effects of that declaration as follows:

- a) Where the Convention or its protocols refer to the requesting Party or the requested Party, this shall in case of requests issued by or addressed to the European Public Prosecutor's Office be interpreted as referring to the EU Member State of the competent European Delegated Prosecutor whose powers and functions are referred to in Article 13 of Council Regulation (EU) 2017/1939.
- b) Where the Convention or its protocols refer to the law of the requesting or the requested Party, this shall in case of requests issued by or addressed to the European Public Prosecutor's Office be interpreted as referring to Union law, in particular Council Regulation (EU) 2017/1939, as well as to the national law of the EU Member State of the competent European Delegated Prosecutor, to the extent applicable in accordance with Article 5(3) of that Regulation.
- c) Where the Convention or its protocols provide for the possibility for of a Party to make declarations or reservations, all such declarations and reservations made by [name of Member State] shall be deemed applicable in case of requests made by another Party to the European Public Prosecutor's Office whenever a European Delegated Prosecutor located in [name of Member State] is competent in accordance with Article 13(1) of Council Regulation (EU) 2017/1939.
- d) As a judicial requesting authority acting in accordance with Article 24 of the Convention [as amended by Article 6 of the Second Additional Protocol to the Convention]⁵, the European Public Prosecutor's Office shall comply with any conditions or restrictions on the use of information and evidence obtained, which may be imposed by the requested Party based on the Convention and its protocols.

⁵ Text in square brackets to be used only by Member States that have ratified the Second Additional Protocol.

- e) Obligations imposed upon the requesting Party by Article 12 of the Convention shall also be binding upon the judicial authorities of the EU Member State of the competent European Delegated Prosecutor. The same applies in case of obligations of the requesting Party under Article 11 of the Convention [as amended by Article 3 of the Second Additional Protocol and under Articles 13, 14 and 23 of the Second Additional Protocol]⁶ in respect of the EU Member State of the European Delegated Prosecutor competent in accordance with Article 13(1) of Council Regulation (EU) 2017/1939.

Draft model text of additional declarations

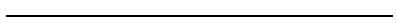
1. In accordance with Article 15 of the Convention [as amended by Article 4 of the Second Additional Protocol to the Convention]⁷, ... [name of Member State] declares that requests to the European Public Prosecutor's Office for mutual assistance as well as information laid by a Contracting Party in accordance with Article 21 of the Convention shall be addressed directly to the European Public Prosecutor's Office [and the declaration made in accordance with Article 15 (...) of the Convention [as amended by Article 4 of the Second Additional Protocol to the Convention] shall not apply in the case of the European Public Prosecutor's Office]⁸. Requests for mutual assistance shall be sent either to the Central Office of the European Public Prosecutor's Office or to the European Delegated Prosecutor's Office(s) of that Member State. The EPPO shall, where appropriate, forward such request to the competent national authorities if the EPPO either does not have or is not exercising its competence in a particular case.

⁶ Text in square brackets to be used only by Member States that have ratified the Second Additional Protocol.

⁷ Text in square brackets to be used only by Member States that have ratified the Second Additional Protocol.

⁸ Text in square brackets to be used only by Member States that have previously made declarations in accordance with Article 15 of the original Convention or Article 15 as amended by the Second Additional Protocol e.g. on the need to send a copy of the request to the Ministry of Justice or a central authority specified by the Member State and which should not apply in the case of the EPPO.

2. In accordance with Article 15 of the Convention [as amended by Article 4 of the Second Additional Protocol to the Convention]⁹, ... [name of Member State] furthermore declares that applications in accordance with Article 11 of the Convention [as amended by Article 3 of the Second Additional Protocol, and Articles 13 and 14 of the Second Additional Protocol as they refer to the above mentioned Article 11]¹⁰, initiated by one of the European Delegated Prosecutors in that EU Member State, shall be transmitted by [Ministry of Justice or other authority designated by the EU Member State].
3. In accordance with Article 33(2) of the Second Additional Protocol, [name of Member State] declares that the European Public Prosecutor's Office may, where a joint investigation team as referred to in Article 20 of that Protocol is intended to operate on the territory of ... [name of Member State], act in the capacity of "competent authority" in accordance with Article 20 of that Protocol [only with the prior consent of the judicial authorities of ... [name of Member State]] / [only after prior notification to.... [name of the authority]]¹¹ and in accordance with Council Regulation (EU) 2017/1939 and the applicable national law.



⁹ Text in square brackets to be used only by Member States that have ratified the Second Additional Protocol.

¹⁰ Text in square brackets to be used only by Member States that have ratified the Second Additional Protocol.

¹¹ Text in square brackets to be chosen by Member State as appropriate.