



2024/807

29.2.2024

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 328(1) and 331(1) thereof,

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⁾,

Having regard to the notification by Poland of its intention to participate in the enhanced cooperation on the establishment of the EPPO by letter dated 5 January 2024, supplemented by a letter of 6 February 2024,

Whereas:

- (1) On 3 April 2017, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain notified the European Parliament, the Council and the Commission that they wished to establish an enhanced cooperation regarding the setting up of the EPPO. In addition, by letters of 19 April 2017, 1 June 2017, 9 June 2017 and 22 June 2017 respectively, Latvia, Estonia, Austria and Italy indicated their wish to participate in the establishment of that enhanced cooperation.
- (2) On 3 April 2017, the authorisation to proceed with an enhanced cooperation referred to in Article 20(2) of the Treaty on European Union (TEU) and Article 329(1) of the Treaty on the Functioning of the European Union (TFEU) was deemed to be granted in accordance with the third subparagraph of Article 86(1) TFEU.
- (3) On 12 October 2017, the Council adopted Regulation (EU) 2017/1939 implementing an enhanced cooperation on the establishment of the EPPO.
- (4) On 20 November 2017, Regulation (EU) 2017/1939 entered into force.
- (5) Commission Decision (EU) 2018/1094 ⁽²⁾ of 1 August 2018 confirmed the participation of the Netherlands in the enhanced cooperation on the establishment of the EPPO.
- (6) Commission Decision (EU) 2018/1103 ⁽³⁾ of 7 August 2018 confirmed the participation of Malta in the enhanced cooperation on the establishment of the EPPO.
- (7) In accordance with Article 1 of Commission Implementing Decision (EU) 2021/856 ⁽⁴⁾ of 26 May 2021, the EPPO assumed its investigative and prosecutorial tasks on 1 June 2021.
- (8) On 5 January 2024, Poland notified the Commission of its intention to participate in the enhanced cooperation on the establishment of the EPPO.
- (9) Regulation (EU) 2017/1939 does not prescribe any particular conditions of participation in the enhanced cooperation on the establishment of the EPPO.

⁽¹⁾ OJ L 283, 31.10.2017, p. 1.

⁽²⁾ Commission Decision (EU) 2018/1094 of 1 August 2018 confirming the participation of the Netherlands in the enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ L 196, 2.8.2018, p. 1).

⁽³⁾ Commission Decision (EU) 2018/1103 of 7 August 2018 confirming the participation of Malta in the enhanced cooperation on the establishment of the European Public Prosecutor's Office (OJ L 201, 8.8.2018, p. 2).

⁽⁴⁾ Commission Implementing Decision (EU) 2021/856 of 26 May 2021 determining the date on which the European Public Prosecutor's Office assumes its investigative and prosecutorial tasks (OJ L 188, 28.5.2021, p. 100).

- (10) In accordance with the first subparagraph of Article 120(2) of Regulation (EU) 2017/1939, the EPPO is to exercise its competence with regard to any offence within its competence committed after the date on which Regulation (EU) 2017/1939 has entered into force. In accordance with the fourth subparagraph of Article 120(2) of Regulation (EU) 2017/1939, for those Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU, Regulation (EU) 2017/1939 shall apply as from the date indicated in the decision concerned.
- (11) In accordance with Article 331 of the Treaty on the Functioning of the European Union, the Commission, when confirming the participation of a Member State in an enhanced cooperation, should adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of that enhanced cooperation.
- (12) On 6 February 2024, Poland supplemented its letter of 5 January 2024 by a request so that Regulation (EU) 2017/1939 apply in Poland as from 20 November 2017, the date on which Regulation (EU) 2017/1939 entered into force. According to Poland, such application would better achieve the goals of effective and impartial prosecution of crimes affecting the Union's financial interests. Poland also clarified that most of the offences that would fall within the competence of the EPPO are not yet time barred.
- (13) As underlined in the case-law of the Court of Justice, although in general the principle of legal certainty precludes a Union measure from taking effect from a point in time before its publication, it may be exceptionally otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.
- (14) The effective protection of the Union's financial interests pursuant to Article 325 of the Treaty on the Functioning of the European Union and the enhancement of the fight against criminal offences affecting the Union's financial interests, which is the main objective of Regulation (EU) 2017/1939, are best achieved if Regulation (EU) 2017/1939 applies in Poland as from 1 June 2021, the date on which the EPPO assumed its investigative and prosecutorial tasks.
- (15) The application of Regulation (EU) 2017/1939 in Poland as from 20 November 2017 would require the EPPO to exercise its competence for criminal offences that were committed several years before the start of the operations in Poland. This would have limited added value in terms of effectiveness, as it can be expected that the relevant investigations and proceedings will be closed or quite advanced.
- (16) The application of Regulation (EU) 2017/1939 in Poland as from 1 June 2021 will concern more recent cases that the EPPO may consider evoking, if the conditions for doing so are met. In addition, it will ensure a more effective start of the operations of the EPPO in Poland, since the EPPO will also be in a position to investigate and prosecute offences affecting the Union's financial interests committed in Poland after 1 June 2021, being therefore operational from the start.
- (17) For offences referred to in Articles 22 and 23 of Regulation (EU) 2017/1939 that are not already subject to the competence of the EPPO since the initial entry into force of that Regulation, the EPPO should therefore exercise its competence, as regards the territory or nationals of Poland, provided that these offences be committed after 1 June 2021. This date represents a clear and appropriate starting point for the exercise of the competence of the EPPO in Poland and ensures legal certainty.
- (18) The exercise of the competence of the EPPO in Poland for criminal offences affecting the Union's financial interests committed after 1 June 2021 is subject to the relevant provisions of Regulation (EU) 2017/1939, including Article 26 on the initiation of investigations and Article 27 on the right of evocation.
- (19) In principle, judicial decisions that have acquired the force of *res judicata*, including those adopted because of the expiry of the limitation periods, should not be affected by that competence, unless the applicable national law allows, in particular circumstances, to reopen closed cases and investigations.

- (20) This Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and in the Charter of Fundamental Rights of the European Union, in particular Article 49 thereof. As underlined in the case-law of the Court of Justice, the principle that offences and penalties must be defined by law requires provisions of criminal law to ensure accessibility and foreseeability as regards both the definition of the offence and the determination of the penalty. In addition, the law should clearly define offences and the penalties which they attract. However, the rules in accordance with which the prosecution services investigate, prosecute and bring cases to judgment are rules of a procedural nature that concern the organisation of these bodies and the relevant proceedings, and do not concern the definition of offences and penalties. They therefore fall outside the scope of Article 49 of the Charter. The relevant substantive rules of criminal law, contained in Directive (EU) 2017/1371 of the European Parliament and of the Council ^(⁹) of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, as transposed in Polish law, remain unchanged and are not affected by this Decision.
- (21) The Polish authorities, the Council and the EPPO should have sufficient time to finalise the preparatory work that is strictly necessary to enable the EPPO to operate effectively in Poland. In particular, the EPPO should be able to swiftly start its operational activities in Poland, including in the context of cross-border investigations, notably by initiating investigations, if need be upon reporting from institutions, bodies, offices and agencies of the Union and the competent authorities of the Member States in accordance with Article 24(1) of Regulation (EU) 2017/1939, or by exercising its right of evocation. This requires at least the appointment of the European Prosecutor from Poland, who could, in exceptional cases, take a reasoned decision to conduct the investigation personally, in accordance with Article 28(4) of Regulation (EU) 2017/1939. To avoid that notifications are made to the EPPO while it is not able to deal with them or that time limits elapse, Articles 24 to 27 and 31 of Regulation (EU) 2017/1939 should apply in Poland as from the twentieth day of the appointment of the European Prosecutor from Poland in accordance with Article 16 of that Regulation.

HAS ADOPTED THIS DECISION:

Article 1

The participation of Poland in the enhanced cooperation on the establishment of the EPPO is confirmed.

Article 2

- (1) Regulation (EU) 2017/1939 shall apply in Poland with regard to any offence within the competence of the EPPO committed after 1 June 2021.
- (2) Articles 24 to 27 and 31 of Regulation (EU) 2017/1939 shall apply in Poland as from the twentieth day of the appointment of the European Prosecutor from Poland in accordance with Article 16 of that Regulation.

Article 3

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, 29 February 2024.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁹⁾ 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).