



Brussels, 20.12.2017
COM(2017) 805 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for an agreement between the European Union and the Lebanese Republic on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Lebanese competent authorities for fighting serious crime and terrorism

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

In the globalised world where serious crime and terrorism are increasingly transnational and polyvalent, law enforcement authorities should be fully equipped to cooperate with external partners to ensure the security of their citizens. Europol should therefore be able to exchange personal data with law enforcement authorities of third countries to the extent necessary for the accomplishment of its tasks.

Since the entry into application of Regulation 2016/794 on 1 May 2017¹ and pursuant to the Treaty, the Commission is responsible, on behalf of the Union, for negotiating international agreements with third countries for the exchange of personal data with Europol. In so far as necessary for the performance of its tasks, Europol may establish and maintain cooperative relations with external partners through working and administrative arrangements that cannot by themselves be a legal basis for the exchange of personal data.

Taking into account the political strategy as outlined in the European Agenda on Security², Council Conclusions³, and the Global Strategy⁴, the operational needs of law enforcement authorities across the EU, and the potential benefits of closer cooperation in this area, the Commission considers it necessary to start negotiations in the short-term with eight countries, as identified in the 11th progress report towards a genuine and effective Security Union⁵.

The Commission has made its assessment of priority countries taking into account Europol's operational needs. The Europol Strategy 2016-2020 identifies the Mediterranean region as priority for enhanced partnerships⁶. The Europol External Strategy 2017-2020 also stresses the need for closer cooperation between Europol and the Middle East/North Africa (MENA) due to the current terrorist threat and migration-related challenges⁷.

Europol does not have any agreements in place with any of the countries in this region.

This Recommendation specifically concerns negotiations with Lebanon, although cooperation with any MENA country needs to be seen in the context of the region as a whole. The current instability in the region, especially the situation in Syria and Iraq, presents a significant long-term security threat to the EU that needs to be addressed urgently. This concerns both the effective fight against terrorism and related organised crime⁸, and migration-related challenges such as the facilitation of irregular migration and trafficking in human beings. Cooperation with local law enforcement is critical to addressing these challenges.

On the basis of technical dialogues to define common actions to improve exchange of information and joint law enforcement operational action against firearms trafficking, the EU has already agreed with Lebanon a list of actions to enhance EU-MENA cooperation among relevant law enforcement agencies, ensure capacity-building assistance in relevant regional

¹ Regulation (EU) 2016/794 of 11 May 2016, OJ L 135, 24.5.2016, p. 53.

² COM(2015) 185 final.

³ Council Document 10384/17, 19 June 2017.

⁴ *Shared Vision, Common Action: A Stronger Europe - A Global Strategy for the European Union's Foreign And Security Policy* <http://europa.eu/globalstrategy/en>

⁵ COM(2017) 608 final.

⁶ Europol Strategy 2016-2020, Adopted by Europol's Management Board on 1 December 2015, <https://www.europol.europa.eu/publications-documents/europol-strategy-2016-2020>

⁷ Europol External Strategy 2017-2020, Adopted by Europol Management Board on 13 December 2016, EDOC#865852v3.

⁸ According to Europol, relevant organised crime offences in the region include illicit trafficking of firearms, drug trafficking, financial crimes including money laundering, and cybercrime.

and/or bilateral programmes and develop operational actions under a commonly agreed framework⁹. Lebanon has also demonstrated its interest in cooperating on counter terrorism with EU law enforcement, notably with the training provided by CEPOL. This does not, however, cover the transfer of personal data.

Political context

The EU and Lebanon are key partners that face common challenges linked to protracted crises and instability in the neighbourhood. The EU-Lebanon partnership is strong and across many sectors as defined by the Association Agreement which is in force since 2006. Lebanon is facing difficult economic, social and security challenges. Adding to pre-existing weaknesses, the conflict in Syria intensified pressure on Lebanon's institutions, infrastructure and environment and affected its socio-economic stability. Lebanon hosts more than one million registered Syrian refugees in addition to the approximately 300,000 Palestinian refugees that were already in the country.

On 11 November 2016, the EU and Lebanon adopted Partnership Priorities for the years 2016-2020 setting an ambitious strategic agenda for deepening ties and achieving the stabilisation of the country and the wider region as outlined by the revised European Neighbourhood Policy and the EU Global Strategy. The priorities identified are: security and countering terrorism, governance and the rule of law, fostering growth and job opportunities, and migration and mobility.

The EU and Lebanon also agreed on a Compact containing mutual commitments and priority actions in line with the Statement of Intent made at last year's London Conference (Feb 2016) The renewed commitments taken on the occasion of Brussels Conference (5th April 2017) on supporting the future of Syria and the region reinforced these shared responsibilities on addressing the impact of the Syrian crisis.

Lebanon has already expressed interest in negotiating an agreement with Europol on several occasions, notably in the context of the Counter-Terrorism (CT) Dialogue on 26 January 2016 and the agreed roadmap.

CT/Security dialogue is ongoing with Lebanon, with an Action Plan covering the development of a national CT strategy, law enforcement and judicial cooperation, countering the financing of terrorism, border management, airport and aviation security as well as countering violent extremism.

Operational needs

Based on data in the SOCTA 2017¹⁰ and TE-SAT 2017¹¹, the above discussions, as well as, inter alia, Europol's in-house expert knowledge, cooperation with Lebanon is needed in particular to counter the following crime phenomena:

Terrorism: The destabilisation of Syria (and its potential spill-over), the spread of Da'esh and other designated terrorist groups pose a direct security threat to Lebanon and the EU, which have both been targeted by terrorist groups. European and Lebanese terrorists have notably travelled to Syria, Iraq and other conflict zones to train and fight.

⁹ Several initiatives in this context have been included in the firearms priority as part of the EU Policy Cycle on serious and organised crime, as well as in the Communication from the Commission to the EP and the Council Implementing the European Agenda on Security: EU action plan against illicit trafficking in and use of firearms and explosives, of 2.12.2015 COM(2015) 624 final.

¹⁰ <https://www.europol.europa.eu/socta/2017>

¹¹ <https://www.europol.europa.eu/sites/default/files/documents/tesat2017.pdf>

Closer law enforcement cooperation, including the exchange of personal data, will contribute to detect and prosecute terrorist suspects, prevent terrorism travel (including the risk of infiltration of migratory flows or relocation to other conflict areas) and terrorism financing (including the nexus with organised crime).

Firearms trafficking: The EU and Lebanon have established cooperation on firearms and agreed a work programme including exchange of best practices, training and capacity-building. As cooperation increases, the need for improved information sharing and subsequent investigations becomes even more pressing. Bordering Syria, Lebanon can play a major role in preventing the entry of firearms into theatres of armed conflict, and making sure illicit shipments are intercepted, in particular on their way back to the EU.

Migration-related challenges: Lebanon is host to a significantly large population of irregular migrants and through an EU funded Integrated Border Management programme is being assisted in securing and controlling its borders. Cooperation with Lebanese authorities would also be relevant to address document fraud, a crime area linked to migrant smuggling.

Drug trafficking: The Middle East and North Africa (MENA) is a major source, transit point, and consumer of illicit drugs. With a steady base of clientele to the north, and the heroin route traversing it from east to west, the region both influences and is negatively influenced by illicit substance abuse and production. The second main producer of cannabis and resin of cannabis in the MENA region is Lebanon, while the extent of Captagon production in the country remain unclear. In 2016, the EU-funded Cocaine Route Programme (component AIRCOP) launched a Joint Airport Interdiction Task Force Legal Authority (JAITFs) in Lebanon.

Organised crime can make considerable profits from the Lebanese black market for cigarettes, cars, counterfeit goods, pirated software, CDs, and DVDs.

2. LEGAL ELEMENTS OF THE RECOMMENDATION

Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol) sets out a legal framework for Europol, in particular its objectives, tasks, scope of competence, data protection safeguards and ways to cooperate with external partners.

This Recommendation is consistent with the provisions of the Europol Regulation.

The objective of this recommendation is to obtain from the Council the authorisation for the Commission to negotiate the future agreement on behalf of the EU. The legal basis for the Council to authorise the opening of negotiations is Article 218(3) and (4) TFEU.

In line with Article 218 of Treaty on the Functioning of the European Union, the Commission shall be nominated as the Union negotiator for the agreement between the European Union and Lebanon on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Lebanese competent authorities for fighting serious crime and terrorism.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Regulation (EU) 2016/794 of the European Parliament and of the Council¹² was adopted on 11 May 2016 and is applicable as of 1 May 2017.
- (2) This Regulation, in particular its Article 25, sets out the rules for the transfer of personal data from the European Union Agency for Law Enforcement Cooperation (Europol) to third countries and international organisations. Europol may transfer personal data to an authority of a third country on the basis of an international agreement concluded between the Union and that third country pursuant to Article 218 TFEU adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.
- (3) Negotiations should be opened with a view to concluding such an Agreement between the European Union and the Lebanese Republic.
- (4) The Agreement should respect the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to private and family life, recognised in Article 7 of the Charter, the right to the protection of personal data, recognised in Article 8 of the Charter and the right to effective remedy and fair trial recognised by Article 47 of the Charter. The Agreement should be applied in accordance with those rights and principles,

¹² Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, an agreement between the European Union and the Lebanese Republic on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Lebanese competent authorities for fighting serious crime and terrorism.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President



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ANNEX

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to the

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ANNEX

Directives for the negotiation of an agreement between the European Union and the Lebanese Republic on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Lebanese competent authorities for fighting serious crime and terrorism

In the course of the negotiations the Commission should aim to achieve the objectives set out in detail below.

- (1) The objective of the Agreement shall be to provide the legal basis for the transfer of personal data between Europol and the competent authorities of Lebanon respectively, in order to support and strengthen the action by the competent authorities of this country and Member States as well as their mutual cooperation in preventing and combatting serious transnational crime and terrorism, while ensuring appropriate safeguards with respect to the protection of privacy, personal data and fundamental rights and freedoms of individuals.
- (2) To guarantee purpose limitation, cooperation under the Agreement shall only relate to crimes and related criminal offences falling within Europol's competence in accordance with Article 3 of Regulation 2016/794 (together "criminal offences"). In particular, cooperation should be aimed at tackling terrorism and preventing radicalisation, disrupting organised crime notably illicit trafficking in firearms, migrant smuggling and drug trafficking, and fighting cybercrime.
- (3) The Agreement shall spell out clearly and precisely the necessary safeguards and controls with respect to the protection of personal data, fundamental rights and freedoms of individuals, irrespective of nationality and place of residence, in the exchange of personal data between Europol and the Lebanese competent authorities.

In particular:

- (a) The purposes of the processing of personal data by the Parties in the context of the Agreement shall be spelt out clearly and precisely, and shall be no wider than what is necessary in individual cases for the purpose of preventing and combating terrorism and criminal offences referred to in the Agreement.
- (b) Personal data transferred by Europol in accordance with the Agreement shall be processed fairly, on a legitimate basis and only for the purposes for which they have been transferred. The Agreement shall provide the possibility for Europol to indicate, at the moment of transferring the data, any restriction on access or use, including as regards its transfer, erasure or destruction. Personal data shall be adequate, relevant and limited to what is necessary in relation to that purpose. It shall be accurate and kept up to date. It shall not be retained for longer than is necessary for the purposes for which they have been transferred.
- (c) The transfer of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, genetic data and data concerning a person's health and sex life by Europol shall be prohibited, unless it is strictly necessary and proportionate in individual cases for preventing or combating criminal offences as referred to in the Agreement and subject to appropriate safeguards. The Agreement should also contain specific safeguards relating to the transfer of personal data on victims of criminal offence, witnesses or other persons who can provide information concerning criminal offences, as well as minors.

- (d) The Agreement shall ensure enforceable rights of individuals whose personal data are processed by laying down rules on the right of access, rectification and erasure, including the specific grounds which may allow any necessary and proportionate restrictions. The Agreement shall also ensure enforceable rights of administrative and judicial redress for any person whose data are processed under the agreement and guaranteeing effective remedies.
- (e) The Agreement shall lay down the rules on storage, review, correction and deletion of personal data as well as on keeping records for the purposes of logging and documentation as well as on information to be made available to individuals. It should also provide for safeguards in respect to automated processing of personal data.
- (f) The Agreement shall specify the criteria on the basis of which the reliability of the source and accuracy of the data shall be indicated.
- (g) The Agreement shall include the obligation to ensure security of personal data through appropriate technical and organisational measures, including by allowing only authorised persons to have access to personal data. The Agreement shall also include the obligation of notification in the event of a personal data breach affecting data transferred under the Agreement.
- (h) Onward transfers of information from competent authorities of Lebanon to other authorities in Lebanon shall only be allowed for the purposes of the Agreement and shall be made subject to appropriate conditions and safeguards.
- (i) The same conditions as under (h) shall apply to onward transfers of information from competent authorities of Lebanon to authorities in a third country, with the additional requirement that such onward transfers shall be allowed only with respect to third countries to which Europol is entitled to transfer personal data on the basis of Article 25(1) of Regulation (EU) 2016/794.
- (j) The Agreement shall ensure a system of oversight by one or more independent public authorities responsible for data protection with effective powers of investigation and intervention to exercise oversight over those public authorities of Lebanon that use personal data/exchanged information, and to engage in legal proceedings. In particular, the independent authorities shall have powers to hear complaints from individuals about the use of their personal data. Public authorities that use personal data shall be accountable for complying with the rules on the protection of personal data under the Agreement.
- (4) The Agreement shall provide for an effective dispute settlement mechanism with respect to its interpretation and application to ensure that the parties observe mutually agreed rules.
- (5) The Agreement shall include a provision on the entry into force and validity and a provision whereby a Party may terminate or suspend it.
- (6) The Agreement may include a clause addressing its territorial application, if necessary.
- (7) The Agreement may include provisions on the monitoring and periodic evaluation of the Agreement.

- (8) In the context of these negotiations, the Commission shall promote accession of Lebanon to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ("Convention 108").
- (9) The Agreement shall be equally authentic in the Bulgarian, Czech, Croatian, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages and shall include a language clause to that effect.