



Brussels, 20.12.2017
COM(2017) 809 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for an agreement between the European Union and the Arab Republic of Egypt on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Egyptian 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 Egypt, 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 protracted conflicts in Libya, 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.

Political context

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.

Egypt is a key partner for the EU, and could play a central role in promoting peace, prosperity and stability in the Southern Neighbourhood region. The general framework for cooperation between the EU and Egypt is provided by the Association Agreement in force since 2004⁹.

Within this framework and in line with the revised European Neighbourhood Policy¹⁰, the EU and Egypt agreed in 2017 on the priorities on which the cooperation between the partners will focus in the period 2017-2020¹¹. The Partnership Priorities include the reinforcement of the partnership in foreign policy and cooperation in the stabilisation process, notably in the fields of good governance, human rights, security and migration. Particular relevance is given to security and the fight against terrorism and violent extremism, as well as to prevention of radicalisation. Migration also falls under the priority areas for cooperation, with the aim of acting both on the root causes of illegal migration and on the strategies for migration management.

The EU and Egypt confirmed their common interest to strengthen cooperation in the field of security and the fight against terrorism, based on the follow-up of the first high-level counterterrorism consultation held in September 2016 which identified the prevention of radicalisation, law enforcement and judicial cooperation, border control, explosive detection, as well as aviation and airport security as potential areas of cooperation.

The EU and Egypt are also partners of the Global Counter Terrorism Forum (GCTF) and the Global Coalition against Daesh.

EU support has helped the Egyptian law enforcement and judicial authorities to implement the 2016 anti-smuggling legislation, with a detailed work plan agreed in March. The Egyptian authorities are also exploring future cooperation with the European Border and Coast Guard Agency.

Operational needs

Based on data available for the SOCTA 2017¹² and TE-SAT 2017¹³, the above discussions, as well as, inter alia, Europol's in-house expert knowledge, cooperation with Egypt is needed in particular to counter the following serious and organised crime phenomena:

Terrorism: The threat posed notably by Daesh and other terrorist groups constitutes a serious challenge for the security of Egypt and the EU, which have both been targeted by terrorist attacks. European and Egyptian terrorists have also travelled to conflict zones to train and fight. The ability of terrorist groups to operate across borders, including through Libya is a specific concern. 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), terrorist misuse of the Internet and terrorism financing (including the nexus with organised crime).

Migrant smuggling: Resolute action from the Egyptian authorities has significantly reduced the level of irregular arrivals into the EU from Egypt compared to the first half of 2016. The fragility of the situation in Libya highlights the need for continued close cooperation,

⁹ http://eeas.europa.eu/node/8200_en

¹⁰ http://eeas.europa.eu/node/8201_en

¹¹ <https://eeas.europa.eu/sites/eeas/files/eu-egypt-pps.pdf>

¹² <https://www.europol.europa.eu/socta/2017>

¹³ <https://www.europol.europa.eu/sites/default/files/documents/tesat2017.pdf>

including operational cooperation, which will be further supported by the EU-Egypt migration dialogue which will be launched in December. Efficient and coordinated smuggling networks in Egypt are used mainly by nationals from the Horn of Africa, Sudan and Egypt itself. Cooperation with Egyptian authorities would also be relevant to target organised crime groups involved in document fraud, which is particularly relevant in the context of migrant smuggling.

Drugs: While Egypt is not a major source country of illicit narcotics or precursor chemicals, there is a significant market for hashish and tramadol (a prescription opioid) within the country. Egypt continues to be regarded as a transit country and over the past two years, several major maritime seizures of heroin took place, mainly in the Middle East and in Egypt.

Illicit Trafficking of Firearms: Crime rates and the smuggling of weapons from Libya have risen dramatically following the 2011 uprising due to the state of disarray of the police force, political and security turmoil and mass prison breaks during the uprising. This creates a threat for the security both in the short and the long term. Cooperation with Egypt therefore constitutes a strategic priority, both to slow the flow of illicit firearms to its neighbours and prevent trafficking into the EU through container ships, ferries and smaller boats crossing the Mediterranean.

Counterfeit goods: Intellectual property rights (IPR) violations are a major source of illicit proceeds.

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 Egypt on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Egyptian 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 Council¹⁴ 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 Arab Republic of Egypt.
- (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,

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 Arab Republic of Egypt on the exchange of personal

¹⁴ Regulation (EU) 2016/794, of 11 May 2016, OJ L 135, 24.5.2016, p. 53.

data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Egyptian 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

Directives for the negotiation of an agreement between the European Union and the Arab Republic of Egypt on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Egyptian 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 Egypt 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 migrant smuggling, drug trafficking, illicit trafficking of firearms and counterfeit goods, 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 Egyptian 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 Egypt to other authorities in Egypt 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 Egypt 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 Egypt 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 Egypt 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.