



Brussels, 20.12.2017  
COM(2017) 808 final

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations for an agreement between the European Union and the Kingdom of Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan 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 2017<sup>1</sup> 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 Security<sup>2</sup>, Council Conclusions<sup>3</sup>, and the Global Strategy<sup>4</sup>, 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 11<sup>th</sup> progress report towards a genuine and effective Security Union<sup>5</sup>.

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 partnerships<sup>6</sup>. 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 challenges<sup>7</sup>.

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

This Recommendation specifically concerns negotiations with Morocco, 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, 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 crime<sup>8</sup>, 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 Morocco a list of actions to enhance EU-MENA cooperation among relevant law enforcement agencies, ensure capacity-building assistance in relevant regional

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

<sup>2</sup> COM(2015) 185 final.

<sup>3</sup> Council Document 10384/17, 19 June 2017.

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

<sup>5</sup> COM(2017) 608 final.

<sup>6</sup> 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>

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

<sup>8</sup> 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 framework<sup>9</sup>. This does not, however, cover the transfer of personal data.

### *Political context*

The historic partnership between EU and the Kingdom of Morocco is underpinned by a number of political and economic agreements. Since 2000 the entry into force of the Euro-Mediterranean Association Agreement has marked the relations between the EU and Morocco.<sup>10</sup> Morocco has benefited from an advanced status with the European neighborhood policy since 2008. Among others, one objective relates to strengthening dialogue and cooperation in the areas of politics and security;

Political relations with Morocco, including talks on security and counter-terrorism, have been put on hold in the context surrounding the judgment of the General Court in December 2015<sup>11</sup>. However, following the appeal to the Court of Justice<sup>12</sup>, some political discussions took place, primarily focused on how to address the legal implications of the judgment on EU-Morocco bilateral relations. Morocco has informally indicated the importance it attaches to security cooperation with the EU. Morocco was the first MENA countries to be offered a CT dialogue, and preparations were well advanced already in mid-2015 before its eventual postponement.

Morocco has developed close bilateral CT cooperation with EU Member States, including Spain and France, and regularly dismantles terrorist networks. Morocco is the co-chair of the Global Counter Terrorism Forum (GCTF) and a member of the Global Coalition against Daesh. It hosts one of the EU-funded regional CBRN Centres of Excellence.

### *Operational needs*

Based on data in the SOCTA 2017<sup>13</sup> and TE-SAT 2017<sup>14</sup>, the above discussions, as well as, inter alia, Europol's in-house expert knowledge, cooperation with Morocco is needed in particular to counter the following crime phenomena:

Terrorism poses a serious threat to both Morocco and the EU, which have been the target of terrorist attacks. In addition to improving the threat picture and the identification of new trends, closer cooperation including the exchange of personal data is needed to address the phenomenon of foreign terrorist fighters (including on suspects holding dual citizenship or legal residence in the EU and Morocco) and effectively detect, prevent and prosecute terrorism travel, terrorist misuse of the Internet, terrorism financing as well as the nexus with organised crime.

Firearms trafficking: The ongoing instability in the MENA region, and in particular the conflicts in Libya, considerably increased firearms trafficking in the region. This creates a threat for the security both in the short and the long term. Morocco is a key partner to slow the

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<sup>9</sup> 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.

<sup>10</sup> Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, OJ L 070, 18.3.2000.

<sup>11</sup> Case T-512/12 Front Polisario v. Council.

<sup>12</sup> Case C-104/16 Council v Front Polisario.

<sup>13</sup> <https://www.europol.europa.eu/socta/2017>

<sup>14</sup> <https://www.europol.europa.eu/sites/default/files/documents/tesat2017.pdf>

flow of illicit firearms to its neighbours and prevent trafficking into the EU through container ships, ferries and smaller boats crossing the Mediterranean.

Migration-related challenges: Morocco remains an important partner for the EU to develop cooperation in preventing irregular migration, and flows into the EU have been increasing recently. Morocco is both a source country for irregular migration but also a significant route taken by nationals sub-Saharan African countries too. The 2017 European Border and Coast Guard's risk analysis report highlighted document fraud and migrant smuggling as important risks.

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, the Sahelian smuggling route to its south and the heroin route traversing it from east to west, the region both influences and is negatively influenced by illicit substance abuse and production. Morocco is a major producer of cannabis and a key source country for cannabis products entering the EU market. Production of synthetic drugs based on medicines is also an issue.

In 2016, the EU-funded Cocaine Route Programme (component AIRCOP) launched a Joint Airport Interdiction Task Force Legal Authority (JAITFs) in Morocco.

Cybercrime: Morocco is making progress in addressing cybercrime threats, thanks to the fact it is a priority country for EU-Council of Europe capacity-building programmes on cybercrime, including in the area of child sexual exploitation and travelling child sex offenders. The development of Morocco's capacity for cooperation is likely to lead to an increased need for information sharing to address transnational threats in the areas of cybercrime and child sexual exploitation.

## **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 conclusion of an agreement between the European Union and Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan competent authorities for fighting serious crime and terrorism.

Recommendation for a

## COUNCIL DECISION

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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 Council<sup>15</sup> 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 Kingdom of Morocco.
- (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,

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<sup>15</sup> 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 Kingdom of Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan 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

**ANNEX**

**to the**

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## ANNEX

### **Directives for the negotiation of an agreement between the European Union and the Kingdom of Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan 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 The Kingdom of Morocco 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, illicit trafficking of firearms 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 Moroccan 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 Morocco to other authorities in Morocco 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 Morocco 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 Morocco 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) 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.