



Brussels, 20.12.2017
COM(2017) 807 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for an agreement between the European Union and Tunisia on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Tunisian 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 Europol². 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 Security³, Council Conclusions⁴, and the Global Strategy⁵, 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 Union⁶.

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 partnerships⁷. 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 challenges⁸.

Europol does not have any agreements in place with any of the countries in this region. However, Tunisia's cooperation through Interpol demonstrates the country's willingness to share information with law enforcement partners.

This Recommendation specifically concerns negotiations with Tunisia, 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 crime⁹, 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.

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

² 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.

³ COM(2015) 185 final.

⁴ Council Document 10384/17, 19 June 2017.

⁵ *Shared Vision, Common Action: A Stronger Europe - A Global Strategy for the European Union's Foreign And Security Policy* <http://europa.eu/globalstrategy/en>

⁶ COM(2017) 608 final.

⁷ 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>

⁸ Europol External Strategy 2017-2020, Adopted by Europol Management Board on 13 December 2016, EDOC#865852v3.

⁹ According to Europol, relevant organised crime offences in the region include illicit trafficking of firearms, drug trafficking, financial crimes including money laundering, and cybercrime.

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 Tunisia a list of actions to enhance cooperation among relevant law enforcement agencies, ensure capacity-building assistance in relevant regional and/or bilateral programmes and develop operational actions under a commonly agreed framework¹⁰. This does not, however, cover the transfer of personal data.

Political context

EU-Tunisia relations date back to 1976 and gained significant momentum when Tunisia and the EU signed an Association Agreement in 1995, paving the way for two decades of mutually beneficial economic and trade relations.

EU support to the Tunisian people covers many policy areas, including accompanying the electoral process, promoting human rights, supporting democratic and socioeconomic reforms, improving security and strengthening civil society. In the context of the revision of the European Neighbourhood Policy (ENP) three additional areas for cooperation were identified: 1) economic development for stabilisation; 2) the security dimension and 3) migration and mobility¹¹. The EU has also offered Tunisia closer ties across the board, through enhanced economic and trade integration and a Mobility Partnership. In 2012, Tunisia and the EU agreed a 'Privileged Partnership' of strengthened relations and integration¹².

The EU has committed to strengthen the implementation of its extensive cooperation with Tunisia in the security sector, in the fight against terrorism and in preventing violent radicalisation and extremism¹³, including by strengthening Tunisia's cooperation with relevant EU agencies and bodies, including Europol¹⁴. In response, Tunisia has given high priority to the prevention of radicalisation and the fight against terrorism¹⁵, and is being supported, inter alia, by the European Radicalisation Awareness Network¹⁶.

The EU and Tunisia are in the process of agreeing their new strategic priorities, following the EU-Tunisia Association Council on 11 May 2017. At this meeting, both sides emphasized the progress achieved in their bilateral cooperation in the field of security and the fight against terrorism, and noted with satisfaction the marked improvement in the security situation in Tunisia, in particular due to the efforts of the national security forces.

¹⁰ 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.

¹¹ These pillars complement those already identified in 2003, when the first ENP was launched (good governance, democracy, rule of law and human rights). https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/overview_en.

¹² SEAE 'Relations Tunisie-Union européenne: Un partenariat privilégié. Plan d'Action 2013-2017. https://eeas.europa.eu/delegations/tunisia/documents/press_corner/plan_action_tunisie_ue_2013_2017_fr.pdf.

¹³ Council Conclusions of 17 October 2016, 13056/16.

¹⁴ "Strengthening EU support for Tunisia", JOIN(2016) 47 final.

¹⁵ Tunisia created in December 2016 an inter-ministerial "Platform for Alternative Discourse and the Fight against Violent Extremism".

¹⁶ The European Radicalisation Awareness Network (RAN) brings together practitioners from around Europe working on the prevention of radicalisation. It held a seminar in Tunisia on radicalisation in December 2016.

The 2nd session of the High-Level Dialogue on Security in Brussels on 19 January 2017 reflected the shared will to intensify cooperation in this field while promoting full respect for the rule of law, human rights and fundamental freedoms¹⁷.

A Counter-Terrorism and Security Dialogue is already ongoing with Tunisia, with an Action Plan covering law enforcement cooperation and referencing a future cooperation agreement with Europol. The conclusions of the meeting held on 19 January included cooperation between Europol and Tunisian authorities among the priorities for EU-Tunisia cooperation.

Operational needs

Based on data in the SOCTA 2017¹⁸ and TE-SAT 2017¹⁹, the above discussions, as well as, inter alia, Europol's in-house expert knowledge, cooperation with Tunisia is needed in particular to counter the following crime phenomena:

Terrorism: Terrorist groups operating in the region and across the borders (including in Libya and the Sahel) pose a threat to Tunisia and the EU, which have both been targeted by 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) and effectively detect, prevent and prosecute terrorism travel (including possible infiltration of migratory flows), terrorist misuse of the Internet, terrorism financing as well as the nexus with organised crime.

Firearms trafficking has drastically increased in the region as a result of protracted conflicts in Libya. Trafficking routes via Tunisia from Libya and the Sahel are a serious problem.

The EU and Tunisia have established cooperation on firearms and agreed a work programme including training and capacity-building. As cooperation increases, the need for improved information sharing and subsequent investigations becomes even more pressing.

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.

Tunisia appears an important transit country for Latin American cocaine bound for Europe. The country indicates unprecedented seizures of cocaine from South America and seems to be a transit as well as a destination country for cocaine. In 2016, the EU-funded Cocaine Route Programme (component AIRCOP) launched a Joint Airport Interdiction Task Force Legal Authority (JAITFs) in Tunisia.

Organised migrant smuggling activity has significantly increased in 2017, with Tunisian nationals in particular using organised smuggling networks to facilitate their irregular migration to the EU. The Tunisian government is having some success at tackling this increased threat however providing further specialist support from Europol would enhance their capabilities as well as improve information sharing. Cooperation with Tunisian authorities would also be relevant to address document fraud, a crime area linked to migrant smuggling.

¹⁷ https://eeas.europa.eu/headquarters/headquarters-homepage/19207/second-high-level-political-dialogue-security-and-counter-terrorism-european-union-and-tunisia_en

¹⁸ <https://www.europol.europa.eu/socta/2017/>

¹⁹ <https://www.europol.europa.eu/sites/default/files/documents/tesat2017.pdf>

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 Tunisia on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Tunisian 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 Council²⁰ 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 Tunisia.
- (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 Tunisia on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Tunisian competent authorities for fighting serious crime and terrorism.

²⁰ 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).

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 Tunisia on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Tunisian 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 Tunisia 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 of firearms, drug trafficking and migrant smuggling, 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 Tunisian 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 Tunisia to other authorities in Tunisia 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 Tunisia 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 Tunisia 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.