



Brussels, 20.12.2017
COM(2017) 806 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for an agreement between the European Union and the State of Israel on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Israeli 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 Israel, although cooperation with any MENA country needs to be seen in the context of the region as a whole.

Political context

The EU and Israel developed sound relations based on the 1995 Association agreement (into force since 2000). Both the EU and Israel are strongly focused on countering security threats, namely countering terrorism threats. Israel is very interested in intensifying cooperation with the EU on counter-terrorism (CT). The first EU-Israel Counter Terrorism and Security Dialogue took place in Brussels in March 2015, followed by a second in Israel in September 2016. Both parties agreed to cooperate in areas such as countering violent extremism, terrorism financing, non-conventional terrorism, aviation and transport security as well as cybercrime. Interest was expressed to enhance cooperation with EU agencies in the field of justice and home affairs, notably Europol.

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.

The Council has already previously authorised negotiations between Europol and Israel on an operational cooperation agreement⁸. The negotiations were started in 2010 but could not reach a conclusion under the old legal framework of Europol. In this context, some technical meetings already took place between Europol and Israeli authorities.

Operational needs

Based on data in the SOCTA 2017⁹ and TE-SAT 2017¹⁰, the above discussions, as well as, inter alia, Europol's in-house expert knowledge, cooperation with Israel is needed in particular to counter the following crime phenomena:

Terrorism: The EU and Israel face both a serious threat posed by terrorist groups operating in the region and globally. Closer cooperation, including the exchange of personal data, will aim at addressing the threat posed by terrorists (including foreign terrorist fighters) with a view to detect, prevent and prosecute terrorist travel, terrorism financing as well as terrorists' misuse of the Internet.

Cybercrime: Cooperation with Israel should be established in particular given their expertise in investigating/dealing with high tech cybercrime. The need for increased intelligence sharing would be beneficial for a range of transnational cybercrime or cyber-enabled crimes, including Distributed Denial of Service (DDoS) attacks, cryptocurrency laundering cases, e-commerce fraud, business email compromise and online 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 agreement between the European Union and Israel on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Israeli competent authorities for fighting serious crime and terrorism.

⁸ Council Decision 2009/371.

⁹ <https://www.europol.europa.eu/socta/2017>

¹⁰ <https://www.europol.europa.eu/sites/default/files/documents/tesat2017.pdf>.

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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 Council¹¹ 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 State of Israel.
- (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.

¹¹ 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 State of Israel on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Israeli 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 State of Israel on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Israeli 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 Israel 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 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 Israeli 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 Israel to other authorities in Israel 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 Israel 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 Israel 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) In accordance with EU policy, this agreement shall not apply to the geographic areas that came under the administration of the State of Israel after 5 June 1967. This position should not be construed as prejudicing Israel's principled position on this matter. Accordingly, the Parties agree that the application of this agreement is without prejudice to the status of those areas.
- (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 Israel 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.