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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	ANNEX to the Recommendation for a COUNCIL DECISION authorising the opening of negotiations for an agreement between the European Union and Republic of Ecuador on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Ecuadorian authorities competent for fighting serious crime and terrorism

Delegations will find attached document COM(2023) 97 final - ANNEX.

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ANNEX

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to the

Recommendation for a COUNCIL DECISION

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

ANNEX

Directives for the negotiation of an agreement between the European Union and the Republic of Ecuador on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Ecuadorian authorities competent 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 will be to provide the legal basis for the transfer of personal data between Europol and the competent authorities of the Republic of Ecuador 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 and exchange of data under the Agreement will 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 preventing and combatting terrorism and , disrupting organised crime and fighting drug trafficking and cybercrime. The Agreement will specify its scope and the purposes for which Europol may transfer data to the competent authorities of the Republic of Ecuador.
- (3) The Agreement will 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 Ecuadorian competent authorities. In addition to the safeguards set out below, these will include requiring that the transfer of personal data will be subject to confidentiality obligations and that the personal data will not be used to request, hand down or execute a death penalty or any form of cruel and inhuman treatment, without prejudice to additional safeguards that may be required.

In particular:

- (a) The Agreement will contain definitions of key terms compliant with Article 3(1) of Regulation 2016/680.
- (b) The Agreement will respect the principle of specificity, ensuring that the data will not be processed for other purposes than for the purposes of the transfer. To this end, the purposes of the processing of personal data by the Parties in the context of the Agreement will be spelt out clearly and precisely, and will 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.
- (c) Personal data transferred by Europol in accordance with the Agreement will be processed fairly, on a legitimate basis and only for the purposes for which they have been transferred. The Agreement will provide the obligation 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 or the further processing of it. The Agreement will oblige competent authorities of the Republic of Ecuador to respect these restrictions and specify how compliance with these restrictions will be enforced in practice. Personal data will be adequate, relevant and limited to what is necessary in relation to that purpose. It will be accurate and kept up to date. It will not be retained for longer than is necessary for the purposes for which they have been transferred. The Agreement will be accompanied by an annex containing an exhaustive list of the competent authorities in the Republic of Ecuador to which Europol may transfer personal data as well as a short description of their competences.

- (d) The transfer of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, and data concerning a person's health or data concerning a natural person's sex life or sexual orientation by Europol will be allowed only where strictly necessary as well as reasonable and proportionate in individual cases for preventing or fighting a criminal offence, and if those data, except biometric data, supplement other personal data. 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.
- (e) The Agreement will 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 will also ensure enforceable rights of administrative and judicial redress for any person whose data are processed under the agreement and guaranteeing effective remedies.
- (f) The Agreement will 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.
- (g) The Agreement will specify the criteria on the basis of which the reliability of the source and accuracy of the data will be indicated.
- (h) The Agreement will 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 will also include the obligation of notification in the event of a personal data breach affecting data transferred under the Agreement.
- (i) Onward transfers of information from competent authorities of the Republic of Ecuador to other authorities in the Republic of Ecuador, including for use in judicial proceedings, will only be allowed subject to appropriate conditions and safeguards, including prior authorisation by Europol.

- (j) The same conditions as under (i) will apply to onward transfers of information from competent authorities of the Republic of Ecuador to authorities in a third country, with the additional requirement that such onward transfers will 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.
- (k) The Agreement will 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 the Republic of Ecuador that use personal data/exchanged information, and to engage in legal proceedings. In particular, the independent authorities will have powers to hear complaints from individuals about the use of their personal data. Public authorities that use personal data will be accountable for complying with the rules on the protection of personal data under the Agreement.
- (4) The Agreement will 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 will include provisions on the monitoring and periodic evaluation of the Agreement.
- (6) The Agreement will include a provision on the entry into force and application and a provision whereby a Party may terminate or suspend it, in particular where the third country no longer effectively ensures the level of protection of fundamental rights and freedoms required under this Agreement. The Agreement will also specify whether personal data falling within its scope and transferred prior to its suspension or termination may continue to be processed. Continued processing of personal data, if permitted, will in any case be in accordance with the provisions of the Agreement at the time of suspension or termination.
- (7) The Agreement will be equally authentic in the Bulgarian, Czech, Croatian, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages and will include a language clause to that effect.