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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. prev. doc.: 7377/21 + ADD 1; 9914/21; 9915/21
No. Cion doc.: COM(2021) 177 final + ANNEX

Subject: Council Decision authorising the opening of negotiations for a cooperation agreement between the European Union and the International Criminal Police Organisation (ICPO-INTERPOL)
- Adoption

1. On 14 April 2021, the Commission submitted a recommendation for a Council Decision authorising the opening of negotiations for a cooperation agreement between the European Union and the International Criminal Police Organisation (ICPO-INTERPOL)¹. It has three main objectives. First, to provide the safeguards and guarantees needed to give controlled access by Member States and EU agencies to Interpol databases via the European Search Portal. Second, to regulate cooperation between Europol and Interpol (since the current cooperation agreement is from 2001). Third, to provide access to Interpol databases to Frontex and EPPO and to allow Eurojust to exchange operational information with Interpol.

¹ 7377/21 + ADD 1

2. The proposal was presented at the informal videoconference of the members of the Working Party on JHA Information Exchange (IXIM) on 21 April 2021. The Presidency convened four JHA Counsellors meetings to discuss the proposal. They were held on 7, 20 and 27 May 2021 and on 17 June 2021.
3. Because the Commission proposal only included the procedural legal basis of Article 218(3) and (4) TFEU, the Council Legal Service advised to add substantive legal bases. The consequence thereof was that the texts would have to be split into a draft Council Decision covering frontiers issues - and Frontex - (fully Schengen) and another draft Council Decision covering police and judicial cooperation - and Europol, Eurojust and EPPO - (hybrid, partly Schengen and partly non-Schengen). That is the reason why two Council Decisions are referred to in this note, as well as two negotiating mandates.
4. The split of the texts allows for Ireland's participation to the 'hybrid' draft Council Decision only if Ireland elects to opt-in within 3 months of the presentation of the Commission proposal to the Council. In order to avoid delaying the adoption of the Council Decisions, Ireland notified the General Secretariat of the Council on 29 June 2021 of its intention to exceptionally waive its right to take three months to opt in².
5. As regards the content of the proposal, delegations broadly supported the rationale of the recommendation as well as the draft negotiating directives. Regarding the latter, requests for amendments were made, in particular to grant Eurojust access to the Interpol databases. Another amendment concerned the access to Interpol databases by security services of the Commission, the European External Action Service, the Council and the European Parliament and the possibility for the Commission to insert information on lost and/or stolen EU-Laissez- Passer documents into Interpol's Stolen and Lost Travel Document ('SLTD') database. The Council Legal Service advised that access by the EU institutions security services (and insertion of information in SLTD) could not be granted under Article 220 TFEU. If delegations were in favour of allowing such access, it should be covered in the cooperation agreement and therefore under Article 218 TFEU.

² 10261/21

6. The Presidency revised the texts after the first informal videoconference of the members of the JHA Counsellors (IXIM)³ and further changes were introduced after the second and third informal videoconferences⁴. Finally, changes outlined in paragraph 5 were circulated to delegations⁵ and agreed upon on 28 June 2021 through an informal silence procedure. Delegations agreed to grant Eurojust access to Interpol databases and refused that access to those databases be allowed for security services of the EU institutions (and the insertion of information in SLTD).
7. The draft Council Decisions have been revised by the legal-linguistic experts. They are set out in 10263/21 and 10264/21. The final versions of the negotiating directives are set out in the addendum to those documents.
8. The Permanent Representatives Committee is invited to recommend that the Council adopt, as an 'A' item on the agenda of one of its forthcoming sessions, the draft Council Decisions as set out in 10263/21 and 10264/21, which refer to the negotiating directives as set out in 10263/21 ADD 1 and 10264/21 ADD 1.
9. At the same time, the Permanent Representatives Committee is invited to decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430⁶, as further extended by Council Decision 2021/825⁷, that the Council uses the written procedure for its approval, due to the circumstances related to COVID-19, if no Council meeting with quorum takes place before 21 July 2021.

³ 8563/21 and 8565/21

⁴ 8896/21 and 8897/21; 9354/21 and 9355/21

⁵ 9914/21 and 9915/21

⁶ Council Decision (EU) 2020/430 of 23 March 2020 on a temporary derogation from the Council's Rules of Procedure in view of the travel difficulties caused by the COVID-19 pandemic in the Union (OJ L 88 I, 24.3.2020, p. 1).

⁷ Council Decision (EU) 2021/825 of 20 May 2021 further extending the temporary derogation from the Council's Rules of Procedure introduced by Decision (EU) 2020/430, and extended by Decisions (EU) 2020/556, (EU) 2020/702, (EU) 2020/970, (EU) 2020/1253, (EU) 2020/1659, (EU) 2021/26 and EU 2021/454, in view of the travel difficulties caused by the COVID-19 pandemic in the Union (OJ L 183, 25.5.2021, p. 40).