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Subject: COUNCIL DECISION (EU) authorising the opening of negotiations for a cooperation agreement between the European Union and the International Criminal Police Organization (ICPO-INTERPOL)

COUNCIL DECISION (EU) 2021/...

of ...

**authorising the opening of negotiations for a cooperation agreement
between the European Union and
the International Criminal Police Organization (ICPO-INTERPOL)**

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), Article 82(1) and Article 87(2) thereof, in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Negotiations should be opened with a view to concluding a cooperation agreement ('the Agreement') between the Union and the International Criminal Police Organization ('Interpol'). The agreement will aim to regulate cooperation between the Union and Interpol in the area of law enforcement, judicial cooperation in criminal matters, and in the area of border security (as part of border management).
- (2) The Agreement should provide for the necessary safeguards and guarantees to authorise controlled access to Interpol's Stolen and Lost Travel Document ('SLTD') and Travel Document Associated With Notices ('TDAWN') databases via the European Search Portal ('ESP'), by Member States and Union agencies, insofar as this is necessary for the performance of their tasks and in line with their access rights.
- (3) Article 9(5) of Regulation (EU) 2019/818 of the European Parliament and of the Council¹ provides that queries of Interpol databases are to be performed in such a way that no information is revealed to the owner of the Interpol alert.

¹ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

- (4) The Agreement should regulate the cooperation between the European Union Agency for Law Enforcement Cooperation established by Regulation (EU) 2016/794 of the European Parliament and of the Council¹ ('Europol') and Interpol, taking into account the latest developments in combating terrorism, cross-border and transnational serious organised crime, as well as current operational needs and Europol's mandate.
- (5) The Agreement should facilitate establishing and regulating cooperation between the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939² ('the EPPO') and Interpol.
- (6) The Agreement should provide the legal basis for authorising Europol, the European Union Agency for Criminal Justice Cooperation established by Regulation (EU) 2018/1727 of the European Parliament and of the Council³ ('Eurojust') and the EPPO to access relevant Interpol databases for the performance of their tasks.
- (7) The Agreement should provide the legal basis to authorise Eurojust and the EPPO to exchange operational information with Interpol.

¹ 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).

² Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

³ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).

- (8) Article 23(1), (2) and (5) of Regulation (EU) 2016/794 provides for the exchange of personal data between Europol and international organisations to the extent necessary for the accomplishment of Europol's tasks, as defined in Article 4 of that Regulation.
- (9) Articles 80, 99 and 104 of Regulation (EU) 2017/1939 set out in detail the relations between the EPPO and its partners and provide for the exchange of information between the EPPO and international organisations.
- (10) In view of the information contained in recital 33 of Regulation (EU) 2016/794 and recital 46 of Regulation (EU) 2018/1727, it is appropriate to strengthen cooperation between Europol and Interpol, and between Eurojust and Interpol, respectively, by promoting the efficient exchange of personal data.
- (11) Article 47(1), (5) and (6) and Articles 52 and 56 of Regulation (EU) 2018/1727 set out the relations between Eurojust and its partners, and provide for the exchange of personal data between Eurojust and international organisations.

- (12) The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) established by Regulation (EU) 2018/1726 of the European Parliament and of the Council¹ should support the technical implementation of the access to Interpol's databases in the context of Regulations (EC) No 767/2008², (EU) 2018/1240³ and (EU) 2019/817⁴ of the European Parliament and of the Council, in line with Regulation (EU) 2018/1726.
- (13) In view of the information contained in recital 96 of Regulation (EU) 2017/1939, it is appropriate to strengthen cooperation between the Union and Interpol by promoting the efficient exchange of personal data.

¹ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

² Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

³ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

⁴ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

- (14) Article 94 of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹ sets out the conditions for the transfers of operational personal data to international organisations.
- (15) The Agreement should comply fully with the provisions on data protection set out in Regulation (EU) 2016/679 of the European Parliament and of the Council², Regulation (EU) 2018/1725 and Directive 2016/680 of the European Parliament and of the Council³.
- (16) The Agreement should fully respect the fundamental rights, and observe the principles, recognised by the Charter of Fundamental Rights of the European Union ('the Charter'), in particular the right to the respect for 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 an effective remedy and to a fair trial, recognised by Article 47 of the Charter. The Agreement should be applied in line with all the rights and principles enshrined in the Charter.

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision wNo 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

- (17) The Agreement should be without prejudice to the rights and obligations of the Member States in their relations with Interpol which fall outside the scope of the Agreement.
- (18) In accordance with Articles 1, 2 and 2a of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU), Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (19) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (20) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 and delivered an opinion on 25 May 2021¹,

HAS ADOPTED THIS DECISION:

¹ OJ C 251, 28.6.2021, p. 7.

Article 1

1. The Commission is hereby authorised to open negotiations, on behalf of the European Union, for a cooperation agreement between the European Union and the International Criminal Police Organization (ICPO-INTERPOL).
2. The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the Addendum to this Decision.

Article 2

The Commission is hereby nominated as the Union negotiator.

Article 3

The negotiations shall be conducted in consultation with the Working Party on JHA Information Exchange (IXIM Working Party), subject to any guidance which the Council may subsequently issue to the Commission.

The Commission shall report to the Council on the conduct and the outcome of the negotiations both on a regular basis and whenever requested by the Council. Where appropriate, or where requested by the Council, the Commission shall produce a written report.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council

The President
