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#### 'I/A' ITEM NOTE

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

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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  
= Statements by the Commission

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#### Statements by the Commission

##### Statement (1/3)

The Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

The Decision authorising the opening of negotiations is premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Its effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations. The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known.

The Commission reserves all its rights in this regard.

### Statement (2/3)

The Commission considers that Interpol, while not being a “competent authority” within the meaning of Article 3(7) of Directive 2016/680 (cf. judgment in case C 505/19, *WS v. Bundesrepublik Deutschland*, para 117), may be considered as an international organisation for certain matters within the scope of this Council decision and for the purpose and effects of Article 220 TFEU.

The Commission also considers that there is a clear dividing line between matters that fall within the scope of cooperation based on Article 220 TFEU and those that a sui generis international actor such as Interpol is entitled to enter into under an international agreement based on Article 218 TFEU. The establishment of all appropriate forms of cooperation with the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development and maintaining such relations as are appropriate with other international organisations allows the Commission to conclude legally-binding instruments that ensure that the EU legislation and norms applicable to the security of the EU institutions and on the exchange of personal data are fully respected by Interpol.

Statement (3/3)

The Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations gives the Council power to issue guidelines or instructions during the negotiations, while the Treaties and Court's jurisprudence reserves this right to the negotiator.

The Commission reserves all its rights in this regard.

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