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European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION authorising the opening of negotiations for Agreements between the European Union and Algeria, Argentina, Armenia, Bosnia and Herzegovina, Brazil, Colombia, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those third States

- Negotiation directives

Delegations will find in the Annex the directives for the negotiation of the above mentioned agreements. The directives accompany the Council Decision set out in 6153/21 INIT.

Directives for the negotiation of Agreements between the European Union and Algeria, Argentina, Armenia, Bosnia and Herzegovina, Brazil, Colombia, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those third States for judicial cooperation in criminal matters

In the course of the negotiations the Commission should aim to achieve the objectives set out in detail below.

- (1) The objective of the Agreements shall be to provide the legal basis for the cooperation between Eurojust and the competent authorities of the third countries concerned respectively, including the exchange of operational personal data, in order to support and strengthen the action by the competent authorities of these countries and the Member States as well as their mutual cooperation in investigating and prosecuting the forms of crime for which Eurojust is competent in accordance with the Eurojust Regulation, while ensuring appropriate safeguards with respect to the protection of privacy, personal data and the fundamental rights and freedoms of individuals.

To guarantee purpose limitation, cooperation and exchange of personal data under the Agreements shall only relate to crimes and related offences falling within Eurojust's competence in accordance with Article 3 of Regulation (EU) 2018/1727 (together 'criminal offences'). In particular, cooperation should be aimed at investigating and prosecuting serious crime, notably terrorism, organised crime, illicit trafficking of firearms, drug trafficking, trafficking in human beings and migrant smuggling, and cybercrime. The Agreements shall specify their scope and the purposes for which Eurojust may transfer data to the competent authorities of the third countries concerned.

- (2) The Agreements 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 Eurojust and the competent authorities of the third countries involved. In addition to the safeguards set out below, these shall 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 Agreements shall contain definitions of key terms, including a definition of personal data compliant with Article 3(1) of Directive (EU) 2016/680.
- (b) The Agreements shall respect the principle of specificity, ensuring that the data will not be processed for other purpose 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 Agreements 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 the criminal offences to which the Agreements relate.

- (c) Personal data transferred by Eurojust in accordance with the Agreements shall be processed fairly, on a legitimate basis and only for the purposes for which they have been transferred. The Agreements shall provide the obligation for Eurojust to indicate, at the moment of transferring the data, any restrictions on access of use, including as regards its transfer, erasure, destruction or further processing. The Agreements shall oblige the competent authorities of the third countries concerned to respect these restrictions and specify how compliance with these restrictions will be enforced in practice. 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 it has been transferred. The Agreements shall provide for the periodic review of the need for further retention of the transferred personal data. The Agreements shall be accompanied by an annex containing an exhaustive list of the competent authorities of the third States concerned to which Eurojust may transfer 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 and sex life by Eurojust shall be allowed, only where it is strictly necessary and proportionate in individual cases for preventing or combating criminal offences covered by the Agreements and subject to appropriate safeguards. The Agreements should also contain specific safeguards relating to the transfer of personal data on victims of criminal offences, witnesses or other persons who can provide information concerning criminal offences, as well as minors.

- (e) The Agreements 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 Agreements shall also ensure enforceable rights of administrative and judicial redress for any person whose data are processed under the Agreements and guaranteeing effective remedies.
- (f) The Agreements 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. They should also provide for safeguards in respect to automated processing of personal data. The Agreements should also specify the criteria on the basis of which the accuracy of the data should be assessed.
- (g) The Agreements shall include the obligation to ensure the security of personal data through appropriate technical and organisational measures, including by allowing only authorised persons to have access to personal data. The Agreements shall also include the obligation of notification in the event of a personal data breach affecting data transferred under the Agreement.
- (h) Onwards transfers of information from the competent authorities of the third countries concerned to other authorities within their own country, including for use in judicial procedures, shall only be allowed for the original purposes of the transfer by Eurojust and shall be made subject to appropriate conditions and safeguards, including prior authorisation by Eurojust.

- (i) The same conditions as indicated under point (h) shall apply to onward transfers of information from the competent authorities of the third country concerned to authorities in another third country, with the additional requirement that such onward transfers shall be allowed only with to third countries to which Eurojust is entitled to transfer personal data on the basis of Article 56(2) of Regulation (EU) 2018/1727.
 - (j) The Agreements 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 the public authorities of the third countries concerned that use personal data and other information exchanged under the Agreements, and to engage in legal proceedings. In particular, the independent authorities shall have the 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.
- (3) The Agreements shall provide for an effective dispute settlement mechanism with respect to its interpretation and application to ensure that the parties observe mutually agreed rules.
- (4) The Agreements shall include provisions on the monitoring and periodic evaluation of the Agreements.
- (5) The Agreements shall include a provision on their entry into force and validity and a provision whereby a Party may terminate or suspend it, in particular where the third country concerned no longer effectively ensures the level of protection of fundamental rights and freedoms required under the Agreement. The Agreements shall 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, shall in any case be in accordance with the provisions of the Agreement at the time of suspension or termination.

- (6) The Agreements shall include a clause addressing its territorial application, if necessary.
- (7) The procedure for negotiations shall be as follows:
- a) The negotiations must be prepared for well in advance. To this end, the Commission shall inform the Council of the schedule anticipated and the issues to be negotiated and shall share the relevant information as early as possible.
 - b) Where necessary, or upon request of the Council, the negotiating sessions shall be preceded by a meeting of the COPEN Working Party in order to identify the key issues, formulate opinions and provide guidance, as appropriate.
 - c) The Commission shall report to the COPEN Working Party on the outcome of the negotiations after each negotiating session or, when a number of negotiations are conducted in parallel, after a series of negotiation sessions.
 - d) The Commission shall inform the Council and consult the COPEN Working Party on any important issue that may arise during the negotiations.
- (8) The Agreements 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.
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