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From: Presidency
To: Delegations

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Subject: 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)

With a view to the informal videoconference of the members of the JHA Counsellors (IXIM) on 20 May 2021, delegations will find hereafter compromise text proposals by the Presidency on the above issue.

Changes to the Commission proposal are marked in **bold** and ~~striketrough~~.

Recommendation for a

COUNCIL DECISION

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 (TFEU), and in particular **Article 16(2), Article 82(1) and Article 87(2), in conjunction with** Articles 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 Interpol. The agreement will aim to regulate cooperation between the Union and Interpol in the area of law enforcement ~~in accordance with Articles 87 and 88 TFEU~~, judicial cooperation in criminal matters ~~in accordance with Article 82, 85 and 86 TFEU~~, and in the area of border security (as part of border management) ~~in accordance with Article 77 TFEU~~.
- ~~(2)~~⁽³⁾ The Agreement should provide 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 Union Member States and Union agencies, in so far this is necessary for the performance of their tasks, in line with their access rights, with Union or national law covering such access.

~~(3)(10)~~ In accordance with ~~Article 5(9) of Regulation (EU) 2019/817 of the European Parliament and of the Council¹, Article 5(9) 9(5) of Regulation (EU) 2019/818 of the European Parliament and of the Council² and Article 12 of Regulation (EU) 2018/1240 of the European Parliament and of the Council³~~, queries of Interpol databases should be performed in such a way that no information is revealed to the owner of the Interpol alert. ~~In accordance with Article 65 of Regulation (EU) 2018/1240 personal data shall not be transferred or made available to a third country, to an international organisation or to any private parties, with the exception of transfers to Interpol for the purpose of carrying out automated processing against Interpol Stolen and Lost Travel Documents and Travel Documents Associated with Notices databases, and provides that such transfers are subject to Regulation (EU) 2018/1725⁴.~~

~~(4)(2)~~ The Agreement should regulate the cooperation between the European Union Agency for Law Enforcement Cooperation ('Europol') and Interpol, taking into account the latest developments in combating terrorism, cross-border and transnational serious, organised crime, current operational needs and Europol's mandate.

[Recital 3 moved after recital 1]

¹ ~~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).~~

² 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).

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) 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 No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.~~

- ~~(4)~~ The Agreement should provide the necessary safeguards and guarantees to authorise Union Member States and the Central Unit of the European Travel Information and Authorisation System ('ETIAS') of the European Border and Coast Guard Agency ('Frontex') to access Interpol's Stolen and Lost Travel Documents and the Travel Documents Associated with Notices databases via the European Search Portal.
- ~~(5)~~ The Agreement should provide the safeguards and guarantees needed to implement a revised Visa Information System Regulation that authorises Union Member States to access Interpol's databases via the European Search Portal when examining applications for visas or residence permits.
- ~~(5)~~~~(6)~~ The Agreement should facilitate establishing and regulating cooperation between the European Public Prosecutor's Office ('the EPPO') and Interpol.
- ~~(6)~~~~(7)~~ The Agreement should provide the legal basis to authorise Europol, ~~Frontex~~ statutory staff of the standing corps (category 1 staff) and the ~~European Public Prosecutor's Office~~ **EPPO** to access relevant Interpol databases for the performance of their tasks.
- ~~(7)~~~~(8)~~ The Agreement should provide the legal basis to authorise the European Union Agency for Criminal Justice Cooperation ('Eurojust') and the ~~European Public Prosecutor's Office~~ **EPPO** to exchange operational information with Interpol.
- ~~(8)~~~~(9)~~ Article 23(1), (2) and (5) of Regulation (EU) 2016/794 of the European Parliament and of the Council⁵ provide 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 Regulation (EU) 2016/794.

[Recital 10 moved as third recital]

⁵ 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).

~~(9)(11)~~ Articles 80, 99 and 104 of Council Regulation (EU) 2017/1939⁶ set out in particular the relations and provide for the exchange of information between the ~~European Public Prosecutor's Office~~ **EPPO** and international organisations.

~~(10)(12)~~ In view of recital 33 of Regulation (EU) 2016/794 and recital 46 of Regulation (EU) 2018/1727 of the European Parliament and of the Council⁷, it is appropriate to strengthen cooperation between Europol and Interpol, and Eurojust and Interpol respectively, by promoting the efficient exchange of personal data.

⁶ 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).

⁷ 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).

~~(13) Article 68(1) of Regulation (EU) 2019/1896 of the European Parliament and of the Council⁸ provides for the possibility of Frontex to cooperate with international organisations, which specifically include Interpol. In accordance with Article 82(1) of Regulation (EU) 2019/1896 the members of teams from the standing corps of Frontex must have the capacity to perform tasks and exercise powers for border control set out in Regulation (EU) 2016/399 of the European Parliament and of the Council⁹ (the Schengen Borders Code). Pursuant to Article 8(3)(a)(i)¹⁰, Article 8(3)(a)(ii)¹¹ and Article 6(1)(e)¹² of Regulation (EU) 2016/399, this includes checking third country nationals against Interpol databases (in particular Interpol's Stolen and Lost Travel Documents database) at the external borders of the Member States and third countries associated with the implementation, application and development of the Schengen acquis in relation to control on persons at the external borders.~~

~~(11)(14) Article 47(1), Article 47(5) and (6), Article 52 and Article 56 of Regulation (EU) 2018/1727 set out the relations, and provide for the exchange of personal data, between Eurojust and international organisations.~~

~~(12)(15) In view of recital 96 of Council Regulation (EU) 2017/1939, it is appropriate to strengthen cooperation between the Union and Interpol by promoting an efficient exchange of personal data.~~

⁸—~~Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).~~

⁹—~~Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).~~

¹⁰—~~On entry and exit, third country nationals shall be subject to thorough checks, which includes verifying the identity and the nationality of the third country national and of the authenticity and validity of the travel document for crossing the border. This involves consulting the relevant databases, in particular (but not only) Interpol's SLTD database.~~

¹¹—~~The above check includes verifying that the travel document is accompanied, where applicable, by the requisite visa or residence permit.~~

¹²—~~The entry conditions of the third country nationals include that they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national databases for the purposes of refusing entry on the same grounds.~~

- ~~(13)~~(16) Article 94 of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹³, sets out the conditions for the transfers of operational personal data to international organisations.
- ~~(14)~~(17) The Agreement should be in full compliance with European Union provisions on data protection set out in Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁴, Regulation (EU) 2018/1725 and Directive 2016/680¹⁵ of the European Parliament and of the Council.
- ~~(15)~~(18) 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 a 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 effective remedy and 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.

¹³ 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 No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

¹⁴ 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).

¹⁵ 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) (Data Protection Law Enforcement Directive).

- (16) 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.
- (17) 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. Insofar as its provisions relate to interoperability as governed by Regulation (EU) 2019/818, this Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹⁶; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- ~~(18)(19) The Commission should consult the European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 during the negotiation of the agreement or, in any event, before the agreement is concluded.~~
- ~~(20) The Commission should be nominated as the Union negotiator.~~

HAS ADOPTED THIS DECISION:

¹⁶ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

Article 1

The Commission is hereby authorised to negotiate, on behalf of the European Union, **a cooperation agreement between the European Union and the International Criminal Police Organization (ICPO-INTERPOL)** ~~an Agreement between the European Union and the International Criminal Police Organization on cooperation and coordination in preventing and combating terrorism and serious crime and in ensuring a European integrated border management at the external borders of the Member States and third countries associated with the implementation, application and development of the Schengen acquis in relation to control on persons at the external borders, including on the necessary safeguards for the protection of personal data.~~ **The Commission is hereby nominated as the Union negotiator.**

Article 2

The negotiations shall be conducted on the basis of the Council negotiating directives set out in Annex to this Decision. ~~The negotiating directives are set out in the Annex.~~

Article 3

The negotiations shall be conducted in consultation with the **Working Party on JHA Information Exchange (IXIM Working Party)** ~~[name of the special committee to be inserted by the Council]~~ **in accordance with the negotiating directives set out in Annex to this Decision, subject to any directives which the Council may subsequently issue to the Commission.**

The Commission shall report to the Council on the conduct and the outcome of each negotiating session. Where appropriate, or upon request of 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

Annex to the Council Decision

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

I. OBJECTIVES

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

- (1) To regulate cooperation between Europol and Interpol, taking into account the latest developments in combating terrorism, cross-border and transnational serious, organised crime, current operational needs, Europol's mandate, in full respect of the EU data protection and fundamental rights requirements;
- (2) To provide the safeguards and guarantees needed 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) for EU Member States and EU agencies, as necessary to carry out their tasks, in line with their access rights, ~~with EU or national law covering such access~~ and in full compliance with the EU data protection requirements and with fundamental rights;
- (3) To provide the safeguards and guarantees needed to authorise EU Member States ~~and Frontex (its European Travel Information and Authorisation System (ETIAS) Central Unit)~~ to access Interpol's ~~Stolen and Lost Travel Document and Travel Document~~ **SLTD** Associated With Notices databases via the ~~ESP European Search Portal~~, in compliance with EU data protection requirements and with fundamental rights;
- (4) To provide the safeguards and guarantees needed to implement a revised Visa Information System Regulation that authorises EU Member States to access Interpol's ~~Stolen and Lost Travel Document~~ **SLTD** and ~~Travel Document Associated With Notices~~ **TDAWN** databases via the ~~ESP European Search Portal~~ when examining applications for visas or residence permits, in full compliance with EU data protection requirements and with fundamental rights;

- (5) To set up and regulate cooperation between the European Public Prosecutor's Office (EPPO) ~~as established under Regulation (EU) 2017/1939~~ and Interpol, in line with their mandates, and in full compliance with EU data protection requirements and with fundamental rights;
- (6) To provide the legal basis to authorise Europol, ~~Frontex category 1 staff (statutory staff of the standing corps)~~ and the ~~European Public Prosecutor's Office~~ **EPPO** to access relevant Interpol databases to carry out their tasks, in full compliance with EU data protection requirements and with fundamental rights;
- (7) To provide the legal basis to authorise Eurojust and the ~~European Public Prosecutor's Office~~ **EPPO** to exchange operational information with Interpol, in full compliance with EU data protection requirements and with fundamental rights;

II. SPECIFIC ISSUES

Specifically, the ~~cooperation~~ Agreement should:

- (1) Establish agreed definitions of key terms, including on personal data, compliant with Regulations (EU) 2016/679 and 2018/1725, and ~~Article 3(1) of Directive (EU) 2016/680~~;
- (2) Provide that any automated queries of Interpol's ~~Stolen and Lost Travel Document SLTD~~ and ~~Travel Document Associated With Notices TDAWN~~ databases **in particular via the ESP** in the context of ~~European Travel Information and Authorisation System~~, interoperability and a ~~revised Visa Information System Regulations~~ must be ~~carried out~~ **performed** in such a way that no information is revealed to the State owner of the Interpol alert;
- (3) Spell out clearly and precisely the safeguards and ~~controls~~ **guarantees** needed on the protection of personal data, fundamental rights and freedoms of individuals, irrespective of **their** nationality and place of residence, in the exchange of personal data with Interpol. In particular:
 - (a) The purposes of processing personal data in the context of the Agreement must be spelt out clearly and precisely by the Parties, and be no wider than what is necessary in individual cases ~~for the purposes of the Agreement~~;

- (b) Personal data transferred to Interpol by EU Justice and Home Affairs agencies and bodies in line with their mandates under the Agreement must be processed fairly, on a legitimate basis and only for the purposes for which they have been transferred. Any further data processing incompatible with the initial ~~data processing~~ **purpose** must be prohibited (purpose limitation). The Agreement must provide scope to indicate, when the data is transferred, any restriction on access or use, including a restriction on data transfer, erasure or destruction;
- (c) Transferred personal data must be adequate, relevant and limited to what is necessary for the purpose for which it has been transferred. It must be accurate and kept up to date. It must not be retained for longer than is necessary for the purpose for which it has been transferred. The Agreement must lay down rules on storage, including storage limitation, on review, correction and deletion of personal data;
- (d) The Agreement must specify the criteria on the basis of which the reliability **and accountability** of the source and accuracy of the data shall be indicated;
- (e) 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 or sexual orientation, must be allowed only where **strictly** necessary and proportionate in individual cases for preventing or combating criminal offences as referred to in the Agreement, and subject to appropriate safeguards addressing the specific risks of processing. The Agreement should contain specific safeguards governing the transfer of personal data on minors and on victims of criminal offences, witnesses or other persons who can provide information concerning criminal offences;
- (f) The Agreement must lay down rules on the information to be made available to individuals and must ensure enforceable rights of individuals whose personal data are processed, in the form of rules on the right of information, access, rectification and erasure, including the specific grounds that may allow any necessary and proportionate restrictions. The Agreement must also ensure enforceable rights of administrative and judicial redress for any person whose data are processed under the Agreement and guaranteeing effective remedies;

- (g) The Agreement must lay down the rules on keeping records for the purposes of logging and documentation;
- (h) The Agreement must provide for safeguards in respect to automated processing of personal data including on profiling, and to prohibit decisions based solely on the automated processing of personal information without human involvement;
- (i) The Agreement must 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. It must also include the obligation to notify the competent authorities and, wherever necessary, data subjects, in the event of a personal data breach affecting data transferred under the Agreement. The Agreement must also include the obligation to implement data protection by default and by design measures designed to implement data protection principles in an effective manner;
- (j) Onward transfers of information from Interpol to other international organisations or third countries must only be allowed for the purposes of the Agreement, must be made subject to appropriate conditions and must be allowed only with respect to third countries or international organisations ensuring an essentially equivalent level of protection of personal data as ensured under this Agreement, unless the onward transfer is necessary for the prevention and investigation of a serious and imminent threat to public security or to protect the vital interests of any natural person. In particular, such onward transfers may be allowed in case the international organisation or third country is covered by an adequacy decision of the Commission under Article 36 of Directive (EU) 2016/680 or by appropriate safeguards for the protection of personal data ensured by an international Agreement pursuant to Article 218 TFEU concluded between the Union and that international organisation or third country or by a cooperation Agreement allowing for the exchange of operational personal data between the Agency and the third country or international organisation in question that cover onward transfers and concluded before the date of application of the legal act establishing the Agency concerned.

- (k) The Agreement must ensure a system of oversight over the use by Interpol of that personal data by one or more independent bodies responsible for data protection with effective powers of investigation and intervention. In particular, the body or bodies shall have powers to hear complaints from individuals about the use of their personal data. The Agreement must provide for the duty of cooperation between the oversight bodies for Interpol, on the one hand, and the relevant EU agency or Member States authority, on the other hand.
- (4) The ~~cooperation~~ Agreement must 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 ~~cooperation~~ Agreement must include a provision on the entry into force and validity and a provision whereby a party may terminate or suspend it.
- (6) The ~~cooperation~~ Agreement must include provisions on the monitoring and periodic evaluation of the Agreement.
- ~~(7) The cooperation Agreement must 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 should include a language clause to that effect.~~

III. PROCEDURE FOR NEGOTIATIONS

- (1) 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.**
- (2) Where necessary or upon request of the Council the negotiating sessions shall be preceded by a meeting of the IXIM Working Party in order to identify the key issues, formulate opinions and establish guidance, as appropriate.**
- (3) The Commission shall report to the IXIM Working Party on the outcome of the negotiations after each negotiating session.**
- (4) The Commission shall inform the Council and consult the IXIM Working Party on any important issue that may arise during the negotiations.**
