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NOTE

From: Presidency
To: Delegations

Subject: ADDENDUM to the draft COUNCIL DECISION authorising the opening of negotiations for an agreement between the European Union and the Republic of Turkey on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Turkish competent authorities for fighting serious crime and terrorism

Delegations will find attached a revised draft of the above Addendum to the draft Council Decision, amended in order to reflect changes made in the corresponding text used as a model (5964/18 ADD 1 REV 2).

Previously agreed changes to the initial Commission proposal are underlined. Changes reflecting the discussions at the meeting on 23 April 2018 are marked in **bold and underlined**.

ADDENDUM

to the

Council Decision

authorising the opening of negotiations for an agreement between the European Union and the Republic of Turkey on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Turkish competent authorities for fighting serious crime and terrorism

Directives for the negotiation of an agreement between the European Union and the Republic of Turkey on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Turkish competent authorities for fighting serious crime and terrorism

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

- (1) The objective of the Agreement shall be to provide the legal basis for the transfer of personal data between Europol and the competent authorities of Turkey respectively, in order to support and strengthen the action by the competent authorities of this country and Member States as well as their mutual cooperation in preventing and combatting serious transnational crime and terrorism, while ensuring appropriate safeguards with respect to the protection of privacy, personal data and fundamental rights and freedoms of individuals.
- (2) To guarantee purpose limitation, cooperation and exchange of data under the Agreement shall only relate to crimes and related criminal offences falling within Europol's competence in accordance with Article 3 of Regulation 2016/794 (together "criminal offences"). In particular, cooperation should be aimed at preventing and combating terrorism, disrupting organised crime notably illicit trafficking of firearms, drug trafficking, migrant smuggling and counterfeit goods, and fighting cybercrime. The Agreement shall (...) specify its scope and the purposes for which Europol will transfer data to the competent authorities of Turkey.

- (3) The Agreement 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 Europol and the Turkish competent authorities. The appropriate safeguards could in particular consist in requiring that the transfer of personal data will be subject to confidentiality obligations and to the principle of specificity, ensuring that the data will not be processed for other purposes than for the purposes of the transfer 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 Agreement shall contain a definition of personal data compliant with Article 3(1) of Directive (EU) 2016/680.
- (a) The purposes of the processing of personal data by the Parties in the context of the Agreement 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 terrorism and criminal offences referred to in the Agreement.
- (b) Personal data transferred by Europol in accordance with the Agreement shall be processed fairly, on a legitimate basis and only for the purposes for which they have been transferred. The Agreement shall provide the obligation for Europol to indicate, at the moment of transferring the data, any restriction on access or use, including as regards its transfer, erasure or destruction or the further processing of it. The Agreement shall oblige competent authorities of Turkey 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 they have been transferred. The Agreement shall be accompanied by an annex containing an exhaustive list of the competent authorities in Turkey to which Europol may transfer data as well as a short description of their competences.
- (c) The transfer of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, genetic data and data concerning a person's health and sex life by Europol shall be prohibited, unless it is strictly necessary and proportionate in individual cases for preventing or combating criminal offences as referred to in the Agreement and subject to appropriate safeguards. The Agreement should also contain specific safeguards relating to the transfer of personal data on victims of criminal offence, witnesses or other persons who can provide information concerning criminal offences, as well as minors. (...)

- (d) The Agreement 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 Agreement shall also ensure enforceable rights of administrative and judicial redress for any person whose data are processed under the agreement and guaranteeing effective remedies.
- (e) The Agreement 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. It should also provide for safeguards in respect to automated processing of personal data.
- (f) The Agreement shall specify the criteria on the basis of which the reliability of the source and accuracy of the data shall be indicated.
- (g) The Agreement shall 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. The Agreement shall also include the obligation of notification in the event of a personal data breach affecting data transferred under the Agreement.
- (h) Onward transfers of information from competent authorities of Turkey to other authorities in Turkey, including for use in judicial proceedings, shall only be allowed for the original purposes of the transfer by Europol and shall be made subject to appropriate conditions and safeguards, including prior authorization by Europol.
- (i) The same conditions as under (h) shall apply to onward transfers of information from competent authorities of Turkey to authorities in a third country, with the additional requirement that such onward transfers shall be allowed only with respect to third countries to which Europol is entitled to transfer personal data on the basis of Article 25(1) of Regulation (EU) 2016/794.
- (j) The Agreement 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 those public authorities of Turkey that use personal data/exchanged information, and to engage in legal proceedings. In particular, the independent authorities shall have 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.

- (4) The Agreement shall 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 Agreement shall include provisions on the monitoring and periodic evaluation of the Agreement.
 - (6) The Agreement shall include a provision on the entry into force and validity and a provision whereby a Party may terminate or suspend it, in particular where the third country no longer effectively ensures the level of protection of fundamental rights and freedoms required under this (...) Agreement. The Agreement shall also specify that personal data falling within its scope and transferred prior to its suspension or termination may continue to be processed in accordance with its provisions.
 - (7) The Agreement may include a clause addressing its territorial application, if necessary.
 - (8) The Agreement 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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