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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Recommendation for a 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 document COM(2017) 799 final.

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Brussels, 20.12.2017
COM(2017) 799 final

Recommendation for a

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

In the globalised world where serious crime and terrorism are increasingly transnational and polyvalent, law enforcement authorities should be fully equipped to cooperate with external partners to ensure the security of their citizens. Europol should therefore be able to exchange personal data with law enforcement authorities of third countries to the extent necessary for the accomplishment of its tasks.

Since the entry into application of Regulation 2016/794 on 1 May 2017¹ and pursuant to the Treaty, the Commission is responsible, on behalf of the Union, for negotiating international agreements with third countries for the exchange of personal data with Europol. In so far as necessary for the performance of its tasks, Europol may establish and maintain cooperative relations with external partners through working and administrative arrangements that cannot by themselves be a legal basis for the exchange of personal data.

Taking into account the political strategy as outlined in the European Agenda on Security², Council Conclusions³, and the Global Strategy⁴, the operational needs of law enforcement authorities across the EU, and the potential benefits of closer cooperation in this area, the Commission considers it necessary to start negotiations in the short-term with eight countries, as identified in the 11th progress report towards a genuine and effective Security Union⁵.

The Commission has made its assessment of priority countries taking into account Europol's operational needs. The Europol Strategy 2016-2020 identifies the Mediterranean region as priority for enhanced partnerships⁶. The Europol External Strategy 2017-2020 also stresses the need for closer cooperation between Europol and the Middle East/North Africa (MENA) due to the current terrorist threat and migration-related challenges⁷.

This Recommendation specifically concerns negotiations with Turkey, although cooperation with any country needs to be seen in the context of the region as a whole. The current instability in the region, especially the situation in Syria and Iraq, presents a significant long-term security threat to the EU that needs to be addressed urgently. This concerns both the effective fight against terrorism and related organised crime⁸, as well as the migration-related challenges being faced such as the facilitation of irregular migration and trafficking in human beings. Turkey has also demonstrated its interest in cooperating on counter terrorism with EU law enforcement, notably with the joint training organised by CEPOL. Cooperation with local law enforcement is critical to addressing these challenges.

¹ Regulation (EU) 2016/794 of 11 May 2016, OJ L 135, p. 53. 24.5.2016.

² COM(2015) 185 final.

³ Council Document 10384/17, 19 June 2017.

⁴ *Shared Vision, Common Action: A Stronger Europe - A Global Strategy for the European Union's Foreign And Security Policy* <http://europa.eu/globalstrategy/en>.

⁵ COM(2017) 608 final.

⁶ Europol Strategy 2016-2020, Adopted by Europol's Management Board on 1 December 2015, <https://www.europol.europa.eu/publications-documents/europol-strategy-2016-2020>.

⁷ Europol External Strategy 2017-2020, Adopted by Europol Management Board on 13 December 2016, EDOC#865852v3.

⁸ According to Europol, relevant organised crime offences in the region include illicit trafficking of firearms, drug trafficking, financial crimes including money laundering, and cybercrime.

Europol's current cooperation with Turkey is based on an *Agreement on Strategic Cooperation* concluded in 2004⁹. This agreement facilitates cooperation in exchange of strategic and technical information of mutual interest¹⁰, of law enforcement experience, of legislation, manuals, technical literature and other law enforcement material and training. The EU-Turkey Joint Action Plan of November 2015 agreed to further intensify cooperation with Europol through the deployment of a Turkish liaison officer. On 21 March 2016, Europol and Turkey signed a *Liaison Agreement* allowing for enhanced cooperation. As a result, a liaison officer representing the Turkish National Police was seconded to Europol in May 2016, which has resulted in some positive developments and contacts. However, these agreements do not authorise the exchange of data related to an identified individual or identifiable individuals¹¹.

Political context

Turkey is a key partner for the European Union. Since 1964, when it was linked to the EU by an Association Agreement, cooperation with Turkey has increased. In December 1999 the European Council granted the status of candidate country to Turkey and accession negotiations were launched in October 2005. Deepening cooperation with Europol is relevant in the context fulfilling all remaining benchmarks under the Visa Liberalisation Roadmap¹². At the EU-Turkey Summit held on 29 November 2015 it was agreed to expand and intensify the political dialogue across all areas, including foreign and security policy, migration and counter terrorism.

Turkey and the EU have reiterated their commitment to tackle the threat posed by Daesh and foreign terrorist fighters, as well as the threat posed and continues to pose by the PKK which the EU has designated as a terrorist organisation. At the EU-Turkey Counter-Terrorism Dialogue in June 2016, both sides agreed to explore ways of enhancing collaboration on information sharing, law enforcement and judicial cooperation, including in the field of terrorism-related deportations and the financing of terrorism. The interest in enhancing collaboration on information sharing was reiterated at the EU-Turkey Counter-terrorism Dialogue in November 2017; a high-level seminar on counter-terrorism cooperation and arms trafficking at Europol is envisaged.

Turkey and the EU have also reiterated their commitment to work together to drive forward international efforts such as the Global Counter Terrorism Forum (GCTF), the Global Coalition to Counter ISIL/Daesh and the Financial Action Task Force (FATF)¹³.

⁹ Agreement on Cooperation between Europol and The Republic of Turkey, 28.07.04, https://www.europol.europa.eu/sites/default/files/documents/agreement_on_cooperation_between_the_european_police_office_and_the_republic_of_turkey.pdf.

¹⁰ Turkey contributes regularly to Europol's *EU Terrorism Situation and Trend* report (TE-SAT).

¹¹ Turkey can send, but not receive data. Indirect transmission via Interpol is a useful channel but not the most effective or rapid solution to address cases requiring immediate reaction.

¹² The European Union launched the Visa Liberalisation Dialogue with Turkey on 16 December 2013. The Visa Liberalisation Dialogue is based on a Roadmap setting out the requirements that Turkey needs to meet in order to be put on the visa-free list. The seventh report on progress made in the implementation of the EU-Turkey Statement, presented by the Commission in September 2017, stated that seven out of 72 benchmarks still need to be fulfilled by Turkey.

¹³ Press release of EU-Turkey Counter-Terrorism Dialogue, 8 June 2016, https://eeas.europa.eu/headquarters/headquarters-homepage_en/5018/Turkey-EU%20Counter%20Terrorism%20Dialogue.

Cooperation in the area of migration was stepped up on the basis of a Joint Action Plan activated at the EU-Turkey Summit held on 29 November 2015 and the EU-Turkey Statement of 18 March 2016, with the aim to end irregular migration from Turkey to the EU, in full compliance with EU and international standards. The EU-Turkey Statement has been producing tangible results, despite the challenging circumstances. The number of irregular border crossings since activation of the Statement continues to be substantially reduced and the loss of lives has been stemmed.

Operational needs

Based on data in the SOCTA 2017¹⁴ and TE-SAT 2017¹⁵, the above discussions, as well as, inter alia, Europol's in-house expert knowledge, cooperation with Turkey is needed in particular to counter the following crime phenomena:

Terrorism: Recent terrorist attacks illustrate the terrorist threat faced by both Turkey and the EU. Islamist terrorism, in particular Daesh but also al-Qaeda, constitutes a common threat. As regards European foreign terrorist fighters, Turkey has been the main transit hub for travel to, and return from Syria and Iraq. Both Turkey and the EU have reiterated their commitment to stem this flow. Turkish authorities have made significant efforts in this regard but stressed the importance of receiving advance information on suspected travellers. Recent incidents have also shown that insufficient, delayed or uncoordinated exchange of information could allow arrested travellers to return undetected to Europe.

In addition, while the PKK is assessed to pose a low threat to Europe, the EU has recognised the grave threat it posed to Turkey. The PKK has been designated as a terrorist organisation by the EU.

The exchange of operational information will support joint work to counter this terrorist threat, including to address fundraising, propaganda and recruitment activities in the EU.

Migrant smuggling: Migrant smugglers are using Turkey to smuggle migrants from Asia, Africa and the Middle East into Europe. Irregular migrants enter Turkey through eastern Turkish land borders with Iran, Iraq and Syria and also via air borders, in particular by transiting through Istanbul airport. Istanbul itself operates as a hub for irregular migrants before they proceed to either the land borders with Bulgaria and Greece, or to the Aegean coastline.

Since the EU-Turkey Statement agreed on 18 March 2016, the numbers of irregular border crossings from Turkey to Greece have remained substantially reduced. However, despite patrolling exercised by the Turkish authorities in the coastal, land and airports areas, and the systematic interception of irregular migrants, organised smuggling networks still continue to operate. The *modi operandi* are constantly changing and routes are further diversifying.

The Turkish services have made significant efforts to dismantle criminal groups and taken effective actions against vessels to be used by smugglers using information provided by EU Member States. However, there is a clear need to further enhance investigation and prosecution capacity as well as operational cooperation with EU Member States.

¹⁴ <https://www.europol.europa.eu/socta/2017/>

¹⁵ <https://www.europol.europa.eu/sites/default/files/documents/tesat2017.pdf>

Despite improvements in setting up a framework for addressing trafficking in human beings, the migration pressure has exacerbated the challenges faced in this area.

Drug trafficking: Turkey has long been and remains a significant transit country for illicit drug trafficking. Heroin, opium, and cocaine are generally trafficked through Turkey to European markets, and methamphetamine and amphetamine-type stimulants are trafficked to markets in the Middle East and Southeast Asia. Large amounts of opiates and hashish continue to be seized in Turkey.

Illicit trafficking of firearms: crime rates and the smuggling of weapons from Syria represents a potential danger for the EU. This creates a threat for the security both in the short and the long term. The cooperation with Turkey therefore constitutes a strategic priority, both to slow the flow of illicit firearms to its neighbours and prevent trafficking into the EU.

Counter-terrorist financing / Money laundering: FATF highlighted in 2014 the potential benefits of cooperation in countering terrorism financing, building on Europol's specific instruments as well as Turkey significant progress in the area.

Turkey is an important regional financial centre, particularly for Central Asia and the Caucasus, the Middle East, and Eastern Europe. Turkey's rapid economic growth over the past 15 years, combined with its commercial relationships and geographical proximity to unstable, conflict-ridden areas, such as Iraq, Syria, and Crimea, makes Turkey vulnerable to money laundering risks.

Counterfeit goods: Turkey is a major source and transshipment point of counterfeit goods, especially to the EU.

Other significant sources of funding for organised crime include excise and MTIC (Missing Trader Intra Community) fraud and environmental crime.

2. LEGAL ELEMENTS OF THE RECOMMENDATION

Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol) sets out a legal framework for Europol, in particular its objectives, tasks, scope of competence, data protection safeguards and ways to cooperate with external partners.

This Recommendation is consistent with the provisions of the Europol Regulation.

The objective of this recommendation is to obtain from the Council the authorisation for the Commission to negotiate the future agreement on behalf of the EU. The legal basis for the Council to authorise the opening of negotiations is Article 218(3) and (4) TFEU.

In line with Article 218 of Treaty on the Functioning of the European Union, the Commission shall be nominated as the Union negotiator for the agreement between the European Union and 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.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Regulation (EU) 2016/794 of the European Parliament and of the Council¹⁶ was adopted on 11 May 2016 and is applicable as of 1 May 2017.
- (2) This Regulation, in particular its Article 25, sets out the rules for the transfer of personal data from the European Union Agency for Law Enforcement Cooperation (Europol) to third countries and international organisations. Europol may transfer personal data to an authority of a third country on the basis of an international agreement concluded between the Union and that third country pursuant to Article 218 TFEU adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.
- (3) Negotiations should be opened with a view to concluding such an Agreement between the European Union and Turkey.
- (4) The Agreement should respect the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to 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 accordance with those rights and principles.

¹⁶ Regulation (EU) 2016/794 of 11 May 2016, 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).

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, 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.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President
