

EXPLANATORY MEMORANDUM (EM) ON JUSTICE AND HOME AFFAIRS MATTERS

COM (2017) 798 final 5033/18 ADD 1
COM (2017) 799 final 5034/18 ADD 1
COM (2017) 805 final 5035/18 ADD 1
COM (2017) 806 final 5036/18 ADD 1
COM (2017) 807 final 5037/18 ADD 1
COM (2017) 808 final 5038/18 ADD 1
COM (2017) 809 final 5039/18 ADD 1
COM (2017) 811 final 5040/18 ADD 1

Recommendation for COUNCIL DECISIONS authorising the opening of negotiations for an agreement between the European Union and the Hashemite Kingdom of Jordan (5033/18 + Add 1), between the European Union and the Republic of Turkey (5034/18 + Add 1), between the European Union and the Lebanese Republic (5035/18 + Add 1), between the European Union and the State of Israel (5036/18 + Add 1), between the European Union and Tunisia (5037/18 + Add 1), between the European Union and the Kingdom of Morocco (5038/18 + Add 1), between the European Union and the Arab Republic of Egypt (5039/18 + Add 1) and between the European Union and the People's Democratic Republic of Algeria (5040/18 + Add 1) on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the competent authorities of the named States for fighting serious crime and terrorism.

Submitted by Home Office on 26 January 2018

SUBJECT MATTER

1. These are recommendations for Council Decisions authorising the opening of negotiations for an agreement between the European Union and the following countries: the Hashemite Kingdom of Jordan, the Republic of Turkey, the Lebanese Republic, the State of Israel, Tunisia, the Kingdom of Morocco, the Arab Republic of Egypt and the People's Democratic Republic of Algeria on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the competent authorities of the named countries respectively.
2. These recommendations are a consequence of the entry into force of the Europol Regulation 2016/794 on 1 May 2017 and pursuant to the Lisbon 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.
3. 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 partnerships. 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 challenges. Europol does not currently have any agreements in place with any of the countries in this region.

4. The Commission's objective for these agreements is to provide the legal basis for the transfer of personal data between Europol and the competent authorities of the named countries respectively. The ability to transfer personal data will help to support and strengthen cooperation between the competent authorities of these countries and Member States. This includes their mutual cooperation in preventing and combating 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.
5. To guarantee purpose limitation, cooperation under these Agreements shall only relate to crimes and related criminal offences falling within Europol's competence. In particular, cooperation should be aimed at tackling terrorism and preventing radicalisation, disrupting organised crime notably migrant smuggling, illicit trafficking of firearms and drug trafficking, and fighting cybercrime.
6. 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 Europol and the competent authorities of states.

SCRUTINY HISTORY

7. N/A.

MINISTERIAL RESPONSIBILITY

8. The Home Secretary has responsibility for policy on policing and the fight against crime (except in Scotland), including mutual legal assistance and extradition. The Chancellor of the Exchequer also has an interest in respect of the budget of the European Union.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

9. While national security including counter-terrorism is a reserved matter, the Devolved Administrations have an interest in justice matters including transnational crime which these Agreements also aim to address through the transfer of data. Both the Scottish Government and the Northern Ireland Executive have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

i. Legal basis

The procedural legal base for the Council Decisions is Article 218 of the Treaty on the Functioning of the European Union. In line with existing practice, we will expect the Council to add a substantive legal base to these Decisions.

ii. European Parliament Procedure

The European Parliament is to be kept fully informed.

iii. Voting procedure

This is subject to a Qualified Majority Vote.

iv. Impact on United Kingdom Law

These Council Decisions agreeing negotiating mandates will not impact on UK law.

iv. Application to Gibraltar

These Council Decisions for a negotiating mandate, if adopted and if the UK opted in, would apply to Gibraltar.

vi. Fundamental rights analysis

The Agreements to be negotiated will provide for the processing and transfer of personal data and engage Article 7 (right to respect for private and family life) and Article 8 (right to protection of personal data) of the Charter of Fundamental Rights of the European Union.

Additionally because the Agreements to be negotiated will need to address the processing of sensitive data (any information that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or information about a person's health or sex life), Article 21 (right to non-discrimination) of the Charter of Fundamental Rights of the European Union is engaged.

Israel and Egypt are both identified by the government as Human Rights priority countries and there are also human right concerns regard several of the other countries Europol has identified. The Government will need to be fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights.

Any interference with, or limitation on the exercise of, these rights must be justified in accordance with Article 52 of the Charter; the interference must be provided for by law and respect the essence of the particular right in question. The interference must also comply with the requirements of necessity and proportionality.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

10. This recommendation does not apply to the EEA States.

SUBSIDIARITY

11. The Europol Regulation specifically provides for the EU reaching this type of agreement.

POLICY IMPLICATIONS

12. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

13. As the draft Council Decision relates to the Europol Regulation, which has a JHA legal basis, in accordance with Protocol No 21 on the position of the UK and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on the Functioning of the European Union, the UK's opt-in applies to this Decision. We will provide further advice to the Scrutiny Committees on when they will be expected to comment on the Decisions and when the UK has to opt in to the measure in accordance with Protocol 21 once the last language version has been published.

14. The Government is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision making process. As indicated above, the Government will need to be fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights. The Government is generally supportive of Europol exchanging data with third countries to maximise its potential in the fight against serious and organised crime.

CONSULTATION

15. Not applicable at present – this is a European Commission recommendation for a Council Decision authorising the opening of negotiations – if required we will provide an update in due course once the agreement has been initialled.

IMPACT ASSESSMENT

16. Not applicable at present – this is a European Commission recommendation for a Council Decision authorising the opening of negotiations – if required we will provide an update in due course once the agreement has been initialled.

FINANCIAL IMPLICATIONS

17. Not applicable at present – this is a European Commission recommendation for a Council Decision authorising the opening of negotiations – if required we will provide an update in due course

TIMETABLE

18. A timetable has not been published yet.



NICK HURD

**MINISTER OF STATE FOR POLICING AND THE FIRE SERVICE
HOME OFFICE**