

COUNCIL DECISION (EU) 2021/1313**of 19 July 2021****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, and in particular Article 16(2) and Article 77(1) and (2) thereof, in conjunction with Article 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 the International Criminal Police Organization ('Interpol'). The agreement will aim to regulate cooperation between the Union and Interpol in the area of law enforcement, judicial cooperation in criminal matters, and in the area of border security (as part of border management).
- (2) The Agreement should provide for 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 Member States and Union agencies, insofar as this is necessary for the performance of their tasks and in line with their access rights.
- (3) The Agreement should provide for the necessary safeguards and guarantees to authorise Member States and the ETIAS Central Unit established within the European Border and Coast Guard Agency as governed by Regulation (EU) 2019/1896 of the European Parliament and of the Council ⁽¹⁾ ('Frontex') pursuant to Regulation (EU) 2018/1240 of the European Parliament and of the Council ⁽²⁾ to access Interpol's SLTD and TDAWN databases via the ESP.
- (4) The Agreement should provide for the safeguards and guarantees needed to implement a revised Visa Information System Regulation that authorises Member States to access Interpol's databases via the ESP when examining applications for visas or residence permits.
- (5) Article 9(5) of Regulation (EU) 2019/817 of the European Parliament and of the Council ⁽³⁾ and Article 12 of Regulation (EU) 2018/1240 provide that queries of Interpol databases are to be performed in such a way that no information is revealed to the owner of the Interpol alert. Article 65 of Regulation (EU) 2018/1240 provides that personal data are not to be transferred or made available to a third country, to an international organisation or to any private party, with the exception of transfers to Interpol for the purpose of carrying out automated queries of Interpol's SLTD and TDAWN databases, and that such transfers are subject to Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁴⁾.
- (6) The Agreement should provide the legal basis for authorising Frontex statutory staff of the standing corps (category 1 staff) to access relevant Interpol databases for the performance of their tasks.

⁽¹⁾ 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).

⁽²⁾ 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).

⁽³⁾ 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).

⁽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).

- (7) Article 68(1) of Regulation (EU) 2019/1896 provides for the possibility of Frontex cooperating with international organisations, which specifically include Interpol. Under Article 82(1) of Regulation (EU) 2019/1896 the members of teams from the standing corps of Frontex are to 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 Council ⁽⁵⁾ ('the Schengen Borders Code'). Pursuant to Article 6(1), point (e), and to Article 8(3), points (a)(i) and (a)(ii) of Regulation (EU) 2016/399, this includes checking third-country nationals against Interpol databases (in particular Interpol's SLTD 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.
- (8) The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) established by Regulation (EU) 2018/1726 of the European Parliament and of the Council ⁽⁶⁾ should support the technical implementation of the access to Interpol's databases in the context of Regulation (EC) No 767/2008 of the European Parliament and of the Council ⁽⁷⁾ and Regulations (EU) 2018/1240 and (EU) 2019/817, in line with Regulation (EU) 2018/1726.
- (9) Article 94 of Regulation (EU) 2018/1725 sets out the conditions for the transfers of operational personal data to international organisations.
- (10) The Agreement should comply fully with the provisions on data protection set out in Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁸⁾, Regulation (EU) 2018/1725 and Directive (EU) 2016/680 of the European Parliament and of the Council ⁽⁹⁾.
- (11) 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 the respect for 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 an effective remedy and to a 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.
- (12) The Agreement should be without prejudice to the rights and obligations of the Member States in their relations with Interpol which fall outside the scope of the Agreement.
- (13) In accordance with Articles 1, 2 and 2a of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union 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.
- (14) 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/EC ⁽¹⁰⁾; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

⁽⁵⁾ 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).

⁽⁶⁾ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

⁽⁷⁾ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

⁽⁸⁾ 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).

⁽⁹⁾ 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).

⁽¹⁰⁾ 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).

- (15) The European Data Protection Supervisor was consulted in accordance with Article 41(2) of Regulation (EU) 2018/1725 and delivered an opinion on 25 May 2021 ⁽¹⁾,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to open negotiations, on behalf of the European Union, for a cooperation agreement between the European Union and the International Criminal Police Organization (ICPO-INTERPOL).
2. The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the Addendum to this Decision.

Article 2

The Commission is hereby nominated as the Union negotiator.

Article 3

The negotiations shall be conducted in consultation with the Working Party on JHA Information Exchange (IXIM Working Party), subject to any guidance which the Council may subsequently issue to the Commission.

The Commission shall report to the Council on the conduct and the outcome of the negotiations both on a regular basis and whenever requested by the Council. Where appropriate, or where requested by the Council, the Commission shall produce a written report.

Article 4

This Decision is addressed to the Commission.

Done at Brussels, 19 July 2021.

For the Council
The President
J. PODGORŠEK

⁽¹⁾ OJ C 251, 28.6.2021, p. 7.