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COM(2023) 132 final

Recommendation for a

COUNCIL DECISION

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

EXPLANATORY MEMORANDUM

1. PURPOSE

The EU should open negotiations with the Federative Republic of Brazil with the purpose of signing and concluding an Agreement enabling the exchange of personal data between Europol and the Brazilian authorities competent for fighting serious crime and terrorism.

2. 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. In line with the EU Security Union Strategy¹, Europol can play a key role in expanding cooperation with third countries to counter crime and terrorism in coherence with other EU external policies and tools. The April 2021 EU Strategy to tackle Organised Crime highlights an urgent need to further develop Europol's serious and organised crime intelligence and to enhance information exchange and investigative actions with (additional) third countries and regions constituting major hubs for high-risk organised crime affecting EU Member States².

For Europol, cooperation with third countries and international organisations is essential to support Member States in countering serious crime and terrorism. The need to strengthen the cooperation with third countries is even more important in light of the Serious and Organised Threat Assessment 2021 prepared by Europol. As an example, the main findings of this threat assessment recognises that Latin America criminal networks will continue to cooperate with organised criminal groups based in the European Union to traffic drugs.

In so far as necessary for the performance of its tasks, Europol may establish and maintain cooperative relations with international partners through working and administrative arrangements, which however do not by themselves provide a legal basis for the exchange of personal data. Unlike an international agreement, those arrangements are concluded by Europol and they do not bind the EU or its Member States³.

Regulation 2016/794⁴ of the European Parliament and of the Council of 11 May 2016 changed the legal framework for the exchange of personal data between Europol and third countries. Since the entry into force of this Regulation on 1 May 2017, the competence to conclude international agreements between Europol and third countries has been transferred to the Union acting pursuant to Article 218 of the Treaty on the Functioning of the European Union (TFEU)⁵. Following a proposal from the Commission, the Council has already adopted nine negotiation authorisations with third countries⁶ and an authorisation to negotiate a

¹ COM(2020) 605 final (24.7.2020), p. 21.

² COM(2021) 170 final (14.4.2021), p. 9.

³ See Article 23(4) of 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. 53-114), hereinafter referred to as 'Regulation (EU) 2016/794'.

⁴ See Article 25 of Regulation (EU) 2016/794.

⁵ See Article 25(1)(b) of Regulation (EU) 2016/794, allowing as for the transfer of personal data on the basis of international agreement concluded between EU and the third country or international organisation.

⁶ Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia, Turkey, and New Zealand.

comprehensive agreement with Interpol that also covers the exchange of personal data with Europol⁷. The first Agreement was recently signed with New Zealand⁸.

While this Recommendation specifically concerns negotiations with Brazil, it should be seen as part of a broader effort to enhance law enforcement cooperation between the EU and Latin American countries of interest. In that regard, the European Commission is recommending in parallel to open negotiations for similar international agreements with Bolivia, Ecuador, Mexico and Peru, with the ultimate aim to enhance the fight against terrorism and serious crime.

3. OBJECTIVES OF THE RECOMMENDATION

Latin American's organised crime groups pose a serious threat to the EU internal security as their actions are increasingly linked to a series of crimes within the Union, particularly in the realm of drug trafficking. The 2021 EU Serious and Organised Crime Threat Assessment (SOCTA) highlights that unprecedented quantities of illicit drugs are trafficked to the EU from Latin America, generating multi-billion-euro profits, which are used to finance a diverse range of criminal organisations (international and EU-based) and to weaken the rule of law in the EU⁹.

Recent reports confirm that cocaine availability in Europe is at an all-time high and the drug is more affordable and accessible for consumers than in the past¹⁰. Most of the product seized in the EU is transported by sea, primarily in maritime shipping containers¹¹, and shipped to the EU directly from the countries of production as well as from neighbouring countries of departure in Latin America, including the Federative Republic of Brazil¹². Brazilian organised crime organisations have become partners of Colombian criminal networks and also purchase cocaine produced in Bolivia and Peru. In addition to their trafficking activities, these networks are service providers for globally operating criminal networks that use Brazilian ports to traffic cocaine¹³. Based on quantities of cocaine seized in European ports and in ports elsewhere destined for Europe, Brazil (with a cocaine seizure of about 71 tonnes) was one of the main departure points in 2020, as it has been for some years.¹⁴ Official data from the Federative Republic from Brazil confirm that Europe is the largest destination for cocaine shipped from Brazil¹⁵.

Organised crime organisations based in that continent are well established and also active in other crime areas that fall within Europol's mandate, such as cybercrimes, money laundering, and environmental crimes.

In its Programming Document 2022-2024, Europol has flagged that, among others, the growing demand for drugs and increased drug trafficking routes into the EU justify the need

⁷ Council Decision (EU) 1312/21 of 19 July 2021, p. 2–5.

⁸ Council Decision (EU) 1090/22 of 27 June 2022.

⁹ European Union Serious and Organised Crime Threat Assessment: A corrupt Influence: The infiltration and undermining of Europe's economy and society by organised crime.

¹⁰ EU Drug Market: Cocaine, available at EU Drug Market: Cocaine | www.emcdda.europa.eu.

¹¹ Europol and the global cocaine trade, available at https://www.emcdda.europa.eu/publications/eu-drug-markets/cocaine/europe-and-global-cocaine-trade_en.

¹² Europol and the global cocaine trade, available at https://www.emcdda.europa.eu/publications/eu-drug-markets/cocaine/europe-and-global-cocaine-trade_en.

¹³ EU Drug Market: Cocaine, p. 47, available at EU Drug Market: Cocaine | www.emcdda.europa.eu.

¹⁴ EU Drug Market: Cocaine, p. 24, available at EU Drug Market: Cocaine. | www.emcdda.europa.eu.

¹⁵ EU Drug Market: Cocaine, p. 52, available at EU Drug Market: Cocaine. | www.emcdda.europa.eu.

for enhanced cooperation with Latin American countries¹⁶.

Cooperation between Europol and the Federative Republic of Brazil began with the signing of an Agreement on Strategic Cooperation in April 2017¹⁷. The results achieved following the implementation of this Agreement and the establishment of the Brazilian Liaison Bureau at Europol, including the subsequent deployment of the Brazilian Liaison Officers to Europol in September 2020, have led to the enhancement of cooperation at a strategic operational level with Member States and third parties that are represented at Europol.

Since then, the Federal Police of Brazil has effectively cooperated and engaged with the EU Member States and with Europol to fight transnational organized crime and terrorism, making Europe and the rest of the world safer. Many positive results have already been achieved¹⁸, from the daily exchange of information through Europol's Secure Information Exchange Network Application (SIENA) to the participation in European Multidisciplinary Platform Against Criminal Threats (EMPACT) meetings, and joint investigations with Member States¹⁹.

Brazil is participating in the Community of Latin American and Caribbean States (CELAC) Coordination and Cooperation Mechanism on Drugs. Moreover, the Federative Republic of Brazil is member of the Police Community of the Americas (Ameripol) and has been committed to contributing to the dismantling of organised crime groups involved in drug production and trafficking. In fact, Brazil has been identified as a key international partner to reduce the global supply of cocaine by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)²⁰.

Increased operational cooperation and the sharing of relevant information between Europol and the Federative Republic of Brazil would be important in countering serious offences in many crime areas of common interest, such as drug trafficking and environmental crimes, particularly taking into consideration the prominent role of Brazilian criminal networks in the global drug market.

Due to the lack of a valid legal basis under Union law, however, Brazilian law enforcement authorities competent for fighting serious crime and terrorism cannot receive any personal data from Europol. This represents thus a hindrance for further developing the cooperation between both parties.

For these reasons and taking into account the EU's political strategy as outlined in the EU Security Union Strategy²¹, the EU Drugs Strategy 2021-2025²², and the EU Drugs Action Plan 2021-2025²³, the Commission considers it necessary to add Brazil as a priority country to start negotiations on an agreement enabling the exchange of personal data between Europol and the Brazilian competent authorities in the short term.

¹⁶ Europol Programming Document 2022-2024, p. 150.

¹⁷ <https://www.europol.europa.eu/partners-agreements/strategic-agreements>.

¹⁸ One example of the aforementioned positive results of this cooperation is the Operation Chameleon/Enterprise, available at <https://www.europol.europa.eu/newsroom/news/over-40-arrested-in-biggest-ever-crackdown-against-drug-ring-smuggling-cocaine-brazil-europe>.

¹⁹ Investigation that has resulted in the apprehension of six tons of cocaine by the French navy (<https://maoc.eu/french-authorities-seize-6-tons-of-cocaine-in-the-gulf-of-guinea-with-the-support-of-maoc-n/>).

²⁰ EU Drug Market: Cocaine, available at EU Drug Market: Cocaine | www.emcdda.europa.eu.

²¹ COM(2020) 605 final, 24 July 2020.

²² Council Document (EU) 14178/20 of 18 December 2020.

²³ Official Journal of the European Union C 272/02, 8 July 2021.

4. LEGAL ELEMENTS

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 an international 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 TFEU, the Commission shall be authorised to negotiate on behalf of the EU an Agreement with the Federative Republic of Brazil on the exchange of personal data between the Europol and the Brazilian competent authorities competent for fighting serious crime and terrorism.

The Union has already exercised its competence in this field and has established rules in this respect by adopting a framework of rules regulating Europol activities, including on processing personal data.

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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 Council was adopted on 11 May 2016 and is applicable as of 1 May 2017²⁴. It was amended by Regulation 2022/991 of 27 June 2022²⁵.
- (2) The provisions of Regulation (EU) 2016/794, in particular those concerning the transfer of personal data from the European Union Agency for Law Enforcement Cooperation (Europol) to third countries and international organisations, provide that 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 an agreement between the European Union and the Federative Republic of Brazil on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Brazilian authorities competent for fighting serious crime and terrorism (the ‘Agreement’).
- (4) As also recalled in Recital 35 of Regulation (EU) 2016/794, the Commission should be able to consult the European Data Protection Supervisor (EDPS) also during the negotiations of the Agreement and, in any event, before the Agreement is concluded.
- (5) 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,

²⁴ 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. 53-114).

²⁵ Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol’s cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol’s role in research and innovation (OJ L 169, 27.6.2022, p. 1–42).

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.

- (6) The Agreement should not affect, and should be without prejudice to, the transfer of personal data or other forms of cooperation between the authorities responsible for safeguarding national security.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorized to negotiate, on behalf of the Union, an agreement between the European Union and the Federative Republic of Brazil on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Brazilian authorities competent for fighting serious crime and terrorism.

The negotiating directives are set out in the Annex.

Article 2

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

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*