



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 May 2001

**8803/01
ADD 1**

LIMITE

EUROPOL 43

ADDENDUM

Subject : Council Decision of xx.xx.2001 authorising the Director of Europol to conclude a co-operation agreement between Europol and Interpol

Delegations please find enclosed in Annex the draft agreement between Europol and Interpol.

Draft Agreement

between Interpol and Europol

The International Criminal Police Organisation – Interpol

and

the European Police Office Europol;

hereinafter jointly referred to as «the Parties»,

or separately referred to as the «transmitting Party», the «receiving Party» or the «Party»;

- Considering that, within the European Union, the objective of Europol is to improve co-operation between the competent authorities in the Member States in preventing and combating serious forms of international organised crime, in accordance with Article 2 of the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention);

- Considering the provisions of Interpol’s Constitution, which stipulate that Interpol’s aims are to ensure and promote the widest possible mutual assistance between all criminal police authorities within the framework of Article 2 of Interpol’s Constitution and the limits of its Article 3 and the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights, and to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes ;

- Considering the complementarity of the tasks, objectives and responsibilities assigned and delegated to Interpol and Europol respectively ;

- Considering therefore that it is within their common interest to enhance their co-operation, and essential that their activities and their relations with third parties be co-ordinated in order to achieve their respective objectives, in an effort to make police co-operation more efficient and avoid duplication of effort wherever possible;

Have agreed as follows:

Chapter 1

Definitions and Scope

Article 1

Definitions

For the purpose of this Agreement :

- (a) The International Criminal Police Organisation – Interpol means the General Secretariat of Interpol;
- (b) Europol means the European Police Office;
- (c) personal data means any information relating to an identified or identifiable natural person: an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- (d) information means personal and non-personal data;
- (e) processing of information means any operation or set of operations which is performed upon information, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Article 2

Purpose of the Agreement

1. The purpose of this Agreement is to establish and maintain co-operation between the Parties in combating serious forms of organised international crime within the field of competence of each Party, according to their constitutional acts.
2. In particular, this will be achieved through the exchange of operational, strategic, and technical information, the co-ordination of activities, including the development of common standards, action plans, training and scientific research and the secondment of liaison officers.

Article 3

Co-operation, co-ordination and reciprocal representation

1. The Director of Europol and the Secretary General of Interpol shall consult each other to ensure that the provisions of this Agreement are implemented. Common policies and joint initiatives to this effect will be agreed between them whenever necessary.
2. They shall also consult each other on matters of common interest in order to achieve their respective objectives and co-ordinate their activities and to avoid duplication of efforts.
3. Consultation on the Parties' respective work programs shall take place at regular intervals, at least once a year.

4. Practical arrangements shall be made so that meetings organised by one Party may be attended by representatives of the other Party, when such meetings deal with matters of interest to that Party or in connection with which it has special technical expertise.

Article 4

Exchange of liaison officers

1. The Parties agree that the co-operation as laid down in this Agreement may be enhanced through either or both Parties stationing (one or more) liaison officer(s) with the other. The liaison officers' tasks, rights and obligations as well as details regarding their stationing will be laid down in a Memorandum of Understanding to be concluded between the Director of Europol and the Secretary General of Interpol.
2. The Parties will arrange for all necessary facilities, such as office space and telecommunications equipment to be provided to such liaison officers within their premises. The costs of telecommunication shall be borne by the sending Party.
3. The archives of the liaison officer shall be inviolable from any interference by the other Party's officials. These archives shall include all records, correspondence, documents, manuscripts, computer records, photographs, films and recordings belonging to or held by the liaison officer.
4. Each Party shall permit the liaison officer of the other Party within its own premises to communicate freely for all official purposes and protect his right to do so. The liaison officer(s) shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags, subject to the respective privileges and immunities applicable.

5. Each Party shall ensure that its liaison officer(s) has speedy access to its own information which is necessary to fulfil his tasks while stationed at the other Party.

Chapter 2

Processing of information

Article 5

General terms and conditions

1. Transmission of information between the Parties and further processing shall only take place for the purpose for which it was communicated and in accordance with the provisions of this Agreement.
2. In accordance with its respective legal framework neither Party may process information which has clearly been obtained in obvious violation of human rights.
3. When processing information on the basis of this Agreement, each Party shall indicate the source of the information concerned.
4. Notwithstanding paragraph 3 above, whenever an analysis product is partly based on information received from the other Party, this fact shall only be explicitly indicated with prior consent from that Party. In such cases, it shall be made clear which Party is responsible for any conclusions drawn from the information.

Article 6

Transmission of information

1. Information may be transmitted either spontaneously or on motivated request.
2. When a Party spontaneously transmits information to the other Party, it shall state the purpose for which the information is transmitted.
3. When a Party requests information from the other Party, it shall specify the purpose of and the reasons for the request.
4. Transmission of personal data revealing racial origin, political opinions or religious or other beliefs, or concerning health and sexual life shall be limited to absolutely necessary cases, and such data shall only be transmitted in addition to other data. However, the existence of such data may be indicated.
5. The transmitting Party shall indicate any restriction on use of the information, any access restrictions, as well as any condition of deletion or destruction of such information, before or at the moment of transmission, or where such restriction or condition becomes apparent later, after the transmission.
6. Any information received by either Party under this Agreement may only be transmitted onward to a third party with the prior consent of the transmitting Party and subject to any necessary conditions or restrictions imposed by that Party. Such consent may be given in general or specific terms, where allowed under the applicable legal framework of the transmitting Party.

7. Were information is made available through direct access to a database, such access shall in addition be governed by the specific rules and conditions applicable to the operation of that database.
8. No personal data shall be transmitted by a Party where an adequate level of data protection is no longer guaranteed by the other Party.

Article 7

Subjects' Right of Access

Subjects shall have the right to have access to data transmitted under this Agreement, or to have such data checked, in accordance with the applicable provisions of the Party to which the request is addressed. In cases where this right is exercised, the transmitting Party shall be consulted before a final decision is taken on the request.

Article 8

Decision to process the information received

1. After receipt, each Party shall determine without undue delay, but in any case within the period specified for each Party in its applicable regulations, if and to what extent information which has been transmitted may be included in its files, in accordance with the purpose for which it was transmitted. Whenever possible, this decision shall be taken within three months of receipt of the data.

2. If the receiving Party decides not to include an item of information in its databases or only include the information under specific conditions, it shall inform the transmitting Party of its decision, as soon as it is taken, and explain the reasons for this.
3. Information which has been transmitted will immediately be deleted, destroyed or returned, if such information is not necessary for the receiving Party's tasks or if no decision has been taken on its inclusion within the period referred to in paragraph 1.

Article 9

Assessment of the source and reliability of the information

1. When information is transmitted by a Party on the basis of this Agreement, an assessment of the source of the information shall be indicated, as far as possible, on the basis of the following criteria:
 - A. Where there is no doubt of the authenticity, trustworthiness and competence of the source, or if the information is transmitted by a source who, in the past, has proved to be reliable in all instances.
 - B. Source from whom information received has in most instances proved to be reliable.
 - C. Source from whom information received has in most instances proved to be unreliable.
 - D. The reliability of the source cannot be assessed.

2. When information is transmitted by a Party on the basis of this Agreement, the reliability of the information shall be indicated as far as possible on the basis of the following criteria:
 - (1) Information whose accuracy is not in doubt.
 - (2) Information known personally to the source but not known personally to the official passing it on.
 - (3) Information not known personally to the source but corroborated by other information already recorded.
 - (4) Information which is not known personally to the source and cannot be corroborated.
3. If a Party – on the basis of information already in its possession – comes to the conclusion that the assessment of information transmitted by the other Party needs correction, it will inform the other Party and attempt to agree on an amendment to the assessment. Neither Party will change the assessment of information received without such agreement.
4. The Parties may agree in general terms on the assessment of specified types of information and specified sources, which shall be laid down in a Memorandum of Understanding to be concluded between the Director of Europol and the Secretary-General of Interpol. If information has been transmitted to either Party on the basis of such general agreement, this shall be noted with the information.
5. If no reliable assessment can be made, or no agreement in general terms exists, the Parties shall evaluate the information as at paragraph 1 (D) and 2 (4) of this Article.

Article 10

Correction and deletion of information

1. Each Party shall immediately inform the other Party in all cases where information which has been transmitted to or received from that Party is corrected or deleted, stating the reasons. It shall also inform the other Party in cases where it emerges that the information should not have been transmitted.
2. When the transmitting Party informs the receiving Party that it has corrected or deleted information previously transmitted, or that the information should not have been transmitted, the receiving Party shall correct or delete the information accordingly.
3. Personal data shall be deleted when it is no longer necessary for the purposes for which it was transmitted.
4. When a Party has reasons to assume that information received from the other Party is not accurate, or no longer up to date, it shall inform that Party. This Party shall verify the data and inform the other Party on the outcome of such verification.
5. In cases where personal data received from a Party and transmitted onward to a third party is corrected or deleted afterwards, the onward transmitting Party shall inform that third party thereof.
6. In the event that one Party deems that an adequate level of data protection is no longer guaranteed by the other Party, the other Party shall, upon request by the first Party, delete all data already received from that Party under this Agreement.

Chapter 3

Confidentiality

Article 11

Confidentiality

1. Each Party shall ensure that information received on the basis of this Agreement shall be subject to its confidentiality and security standards for the processing of information.
2. Each Party shall ensure that information received from the other Party shall, within its organisation, receive a level of protection which is equivalent to the level of protection offered by the measures applied to that information by the other Party. In order to ensure the implementation of this principle, Parties shall establish a table of equivalence between their respective confidentiality and security standards, to be laid down in a Memorandum of Understanding to be concluded between the Director of Europol and the Secretary General of Interpol.
3. The transmitting Party shall be responsible for the choice of the appropriate confidentiality level for information transmitted and shall ensure that the level is clearly indicated.
4. In accordance with the principle of proportionality, confidentiality levels shall be attributed at the lowest appropriate level by each Party and amended accordingly wherever possible.
5. Both Parties may at any time request an amendment of the chosen confidentiality level for information they transmitted, including a possible removal of such a level. The receiving Party shall be obliged to amend the confidentiality level accordingly.

6. The transmitting Party may specify the time period for which the choice of confidentiality level shall apply, and any possible amendments to the confidentiality level after such period.
7. If the receiving Party – on the basis of information already in its possession – comes to the conclusion that the choice of confidentiality level needs amendment, it shall inform the transmitting Party and both Parties shall attempt to agree on an appropriate confidentiality level. The receiving Party shall not specify or change a confidentiality level without such agreement.
8. Where information of which the confidentiality level is amended in accordance with this Article has already been transmitted by the receiving Party to a third party, the receiving Party shall, at the request of the transmitting Party, inform the recipients of the change of confidentiality level.
9. The communication of information subject to the confidentiality and security standards referred to in the first paragraph may not begin until the regulations establishing these standards have entered into force for both Parties and the Memorandum of Understanding referred to in the second paragraph has been concluded.

Chapter 4

Liability and Settlement of Disputes

Article 12

Liability

1. If damage is caused to one Party as a result of unauthorised or incorrect data processing under this Agreement by the other Party, that Party shall be liable for such damage.
2. In such cases, or in cases where both Parties are responsible for unauthorised or incorrect data processing, the Parties shall endeavour to find an equitable solution for the compensation of damages suffered.

Article 13

Settlement of Disputes

Any dispute between the Parties concerning the interpretation or application of this Agreement, which can not be settled amicably between the Director of Europol and the Secretary General of Interpol, may be referred for advice to an *ad hoc* Committee at the request of the Director of Europol or the Secretary General of Interpol. The Committee, which shall comprise no more than 3 members of the Management Board of Europol and 3 members of the Executive Committee of Interpol, shall draw up its own rules of procedure. The Committee's advice will be submitted to the Director of Europol and the Secretary General of Interpol.

Chapter 5

Final Provisions

Article 14

Termination of the Agreement

1. This Agreement may be terminated by either Party with three months' notice.
2. In case of termination, Parties shall reach agreement on the continued use and storage of information that has already been communicated between them. If no agreement is reached, either of the two parties is entitled to require that the information, which it has communicated be deleted.

Article 15

Amendments

1. This Agreement may be amended by mutual consent between the Parties at any time in accordance with their respective statutory requirements.
2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either of them.

Article 16

Entry into force

The Parties shall inform each other of the approval of this Agreement in conformity with their internal constitutional procedures. The Agreement shall enter into force on the 30th day after receipt of the second such notification.

Done at on 2001, in two copies in the English language.

For Interpol

For Europol
