

EUROPEAN CENTRAL BANK

AGREEMENT BETWEEN THE EUROPEAN POLICE OFFICE (EUROPOL) AND THE EUROPEAN CENTRAL BANK (ECB)

(2002/C 23/07)

THIS AGREEMENT is made

BETWEEN

the European Police Office (Europol), which has its seat at Raamweg 47, 2509 The Hague, the Netherlands, represented by its Director, Mr. Jürgen Storbeck

AND

the European Central Bank (ECB), which has its seat at Kaiserstraße 29, D-60311 Frankfurt am Main, represented by its President, Mr Willem Duisenberg

(hereinafter also, jointly the 'Parties' and each of them, individually, the 'Party').

Whereas:

The Parties share a joint determination to combat the threats arising from counterfeiting of the euro and to play a central role in this fight; and in this context they cooperate, within their respective competencies, with the national central banks, the Europol National Units, the National Analysis Centres, the Coin National Analysis Centres, the European Technical and Scientific Centre, the European Commission and other national and European authorities and international organisations.

The Parties wish to enhance their cooperation in this field since it is in their common interest and in the interest of all participants in the fight against counterfeiting.

Article 3(3) of Council Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting ⁽¹⁾ provides that Europol and the ECB will enter into an agreement by means of which Europol has access to the technical and statistical data held by the ECB relating to counterfeit banknotes and coins discovered both in Member States and in non-member countries; also Council Regulation (EC) No 1339/2001 extends the application of Regulation 1338/2001 to those Member States which have not adopted the euro as their single currency ⁽²⁾.

The ECB has adopted on 8 November 2001 Decision ECB/2001/11 on certain conditions regarding access to the Counterfeiting Monitoring System (CMS), which is the ECB-managed system containing technical and statistical

information on counterfeiting of euro banknotes and coins, whether originating in Member States or in third countries; that Decision refers to entering into an agreement between the Parties in connection with the access of Europol to the CMS.

Europol will provide the ECB with information related to counterfeiting of the euro, including information received from law enforcement agencies, international organisations and other third parties, but excluding personal data.

The Management Board of Europol authorised Europol on 5 December 2000 to enter into negotiations on an agreement with the ECB and authorised the signing of this Agreement on 23 October 2001.

The Governing Council of the ECB agreed on the contents of this Agreement on 25 October 2001 and on that date authorised the President of the ECB to sign it on behalf of the ECB,

The Parties have agreed as follows:

Article 1

Purpose of the Agreement

The purpose of this Agreement is to provide for effective cooperation between the Parties in relation to measures to combat the threats arising from counterfeiting of the euro, and to enhance and coordinate any assistance in this area provided by both Parties to the national and European authorities and to international organisations.

Article 2

Consultation and coordination

1. The Parties, acting in accordance with their respective competencies, shall consult each other regularly on policies to be adopted and implemented on matters of common interest as indicated in Article 1 in order to achieve their objectives, coordinate their activities and avoid duplication of effort. The President of the ECB and the Director of Europol, or the persons designated by them, shall meet at least once a year to review the implementation of this Agreement.

2. In particular, the Parties shall undertake to coordinate their policies, training activities, public information campaigns and publications relating to counterfeiting of the euro. Whenever possible, they shall also consult each other on their public statements and external communication policy in connection therewith.

⁽¹⁾ OJ L 181, 4.7.2001, p. 6.

⁽²⁾ OJ L 181, 4.7.2001, p. 11.

*Article 3***Exchange of information**

1. Exchange of information between the Parties shall take place for the purpose of and in accordance with the provisions of this Agreement, and will not include data related to an identified individual or identifiable individuals.
2. The Parties shall provide each other promptly and regularly with information regarding counterfeiting of the euro banknotes and of other currencies. Such information shall include, in the case of the information to be provided by Europol to the ECB, information originating from national, European and international law enforcement authorities, and in the case of the information to be provided by the ECB to Europol, information obtained from national, European and international authorities.
3. Europol shall assist the ECB in any relationship with national, European and international law enforcement organisations in matters related to the counterfeiting of euro banknotes.
4. The Parties shall ensure coordination of their early warning system messages.

*Article 4***Access to the CMS database and related provisions**

1. The ECB shall grant online read-only access to the CMS database to the officials of Europol designated as contact persons for this purpose under Article 7, which access shall not allow Europol to directly introduce data into the CMS. The modalities of access, including the necessary systems-related arrangements, shall be further specified by means of an exchange of letters between the President of the ECB and the Director of Europol.
2. A specific file with information on euro counterfeit discoveries and technical descriptions of the classes captured and introduced into the CMS database shall be produced regularly by the ECB and sent to Europol.
3. In addition, Europol shall be promptly informed by the ECB of the creation of every new class of counterfeit within the CMS and of the discovery of any large quantity of counterfeit euro banknotes.
4. The ECB shall provide Europol with one sample of each counterfeit euro banknote that has been assigned a new class indicative in the CMS. This provision shall be implemented in such a way that it does not prevent suspected counterfeit banknotes from being used or retained as evidence in criminal procedures.

*Article 5***Requests for assistance**

1. The Parties shall communicate to each other all requests for the provision of technical expertise or evidence in judicial proceedings with regard to counterfeiting of the euro and establish appropriate procedures for coordinating their respective responses to each such request.
2. The Parties shall cooperate to establish a clear channel of communication for requests for law enforcement assistance through Europol.

*Article 6***Requests for technical analysis**

1. Europol may send to the ECB any relevant request for technical analysis needed in the context of Europol's activities on counterfeit euro banknotes. Europol shall collect and forward any such requests originating outside Europol.
2. The ECB shall decide on the scope of the analysis, including the need for technical examination of samples of counterfeits and the nature of such examination. In order to facilitate this decision of the ECB, Europol shall inform the ECB when submitting the request of any appropriate background information of the case and also of the reasons justifying the request for examination. The existence of any ongoing examination shall be reflected on the CMS.
3. The results of each technical analysis shall be made directly available by the ECB to Europol.

*Article 7***Contact persons**

1. The Parties shall designate contact persons by means of an exchange of letters between the Director of Europol and the President of the ECB. Changes to the list of contact persons may be agreed in writing by means of further correspondence.
2. Both Parties may, in accordance with their respective legal framework, designate representatives who will be based at the premises of the other Party (liaison officers) for the purpose of implementation of this Agreement.

*Article 8***Confidentiality**

1. Each Party shall ensure that information received on the basis of this Agreement from the other Party will be subject to its confidentiality and security standards for the processing of information, and will receive a level of protection which is at least equivalent to the level of protection offered by the measures applied to that information by the other Party.

2. The Parties shall establish an equivalence between their respective confidentiality and security used standards by means of an exchange of letters.

3. The Party supplying the information shall be responsible for the choice of the appropriate confidentiality level for information supplied and shall ensure that the level is clearly indicated. In accordance with the principle of proportionality, confidentiality levels shall be attributed at the lowest possible level by each Party and amended accordingly wherever possible.

4. Both Parties may at any time request an amendment of the chosen confidentiality level for information supplied, including the possible removal of confidentiality. The receiving Party shall be obliged to amend the confidentiality level accordingly.

5. Either Party may, for reasons of confidentiality, specify restrictions on the usage of data supplied to the other Party. The receiving Party shall comply with any such restrictions.

Article 9

Liability

If damage is caused to one Party or to an individual as a result of unauthorised or incorrect information processing under this Agreement by the other Party, that Party shall be liable for such damage. The determination and compensation of damage between the Parties under this Article shall be established in accordance with the procedure laid down in Article 10.

Article 10

Settlement of disputes

Any dispute between the Parties arising out of or in connection with this Agreement which is not settled amicably shall be

referred for a definitive decision to one or more arbitrators, as the Parties may agree. Should they not agree, the arbitrators shall be three (3) arbitrators, one appointed by Europol, one other by the ECB and the third, unless the Parties otherwise agree, by the President of the Court of Justice of the European Communities. A majority vote of the arbitrators shall be sufficient to reach a binding decision. The third arbitrator shall have full power to settle all questions of procedure in any case where the Parties are in disagreement on such questions.

Article 11

Final provisions

1. This Agreement may be amended by mutual consent between the Parties.

2. Either party may terminate this Agreement with 12 months' prior notice.

3. This Agreement shall enter into force on the day after its signature.

4. This Agreement shall be published in the C series of the *Official Journal of the European Communities*.

Done at Frankfurt am Main on 13 December 2001, in two copies in the English language.

For the ECB

Willem F. DUISENBERG

For Europol

Jürgen STORBECK
