

Agreement
between
Eurojust and Europol

EUROJUST AND EUROPOL,

hereinafter jointly referred to as “the Parties”,

or separately referred to as the “transmitting Party”, the “receiving Party” or the “Party”;

- Considering that the Treaty of Amsterdam, signed on 2 October 1997, asks the Council within five years of its entry into force to enable Europol to facilitate and support the preparation of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams composing representatives of Europol in a support capacity;
- Considering that the European Council of Tampere held in October 1999 agreed to set up a unit to reinforce the fight against serious organised crime, Eurojust, composed of national prosecutors, magistrates or police officers of equivalent competence, detached from each Member State according to its legal system and that Eurojust should have the task of facilitating the proper co-ordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases notably based on Europol’s analyses;
- Considering that the Treaty of Nice, signed on 26 February 2001, provides for changes to Articles 29, 31 and 32 (2)(b) of the Treaty on European Union confirming the task of Eurojust to support criminal investigations in cases of serious crossborder crime, particularly organised crime, taking account, in particular, of analyses carried out by Europol;
- 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)¹;
- Considering that, within the European Union, the objectives of Eurojust are to stimulate and improve the coordination, between the competent authorities of the Member States, of investigations and prosecutions in the Member States of criminal

¹ OJ C 316/1, 27.11.1995

behaviour in relation to serious crime, particularly when it is organised, in accordance with Article 3 of the Council decision establishing Eurojust²;

- Considering the Council Framework Decision of 13 June 2002³ on investigation teams and in particular the provision for the setting up of joint teams without delay;
- Considering the Council decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP;⁴
- Considering that Article 26 of the Council decision establishing Eurojust stipulates that Eurojust shall establish and maintain close co-operation with Europol, in so far as is relevant for the performance of the tasks of Eurojust and for achieving its objectives, taking account of the need to avoid duplication of effort and that the essential elements of such cooperation shall be determined by an agreement to be approved by the Council, after consultation of the Joint Supervisory Body concerning the provisions on data protection;
- Considering the complementarities of the tasks, objectives and responsibilities assigned to Eurojust and Europol respectively;
- Considering therefore that it is within their common interest to enhance their co-operation, in an effort to make investigation and prosecution of those areas of criminal behaviour within their respective mandates as efficient as possible and avoid duplication of effort wherever possible;
- Considering the Act of the Management Board of Europol of 15 October 1998 laying down the rules governing Europol's external relations with European Union-related bodies;⁵ and its subsequent decision of 28 May 2002 allowing Europol to start negotiations with Eurojust;
- Considering that their co-operation should take place with due respect to the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union;⁶

Have agreed as follows:

² OJ L 63/5, 6.3.2002

³ OJ L 162/1, 20.6.2002

⁴ OJ L 016, 22.01.2003

⁵ OJ C 26/89, 30.1.1999

⁶ OJ C 346/1, 18.12.2000

Chapter 1

Definitions and Scope

Article 1

Definitions

For the purpose of this Agreement:

- (a) Eurojust Decision means the Council decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime⁷;
- (b) Eurojust means the unit set up by the Eurojust Decision;
- (c) Europol Convention means the Convention based on Article K 3 of the Treaty on European Union, on the establishment of a European Police Office⁸;
- (d) Europol means the European Police Office;
- (e) 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;
- (f) information means personal and non-personal data;
- (g) 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

The purpose of this Agreement is to establish and maintain close co-operation between the Parties in order to increase their effectiveness in combating serious forms of international crime which fall in the respective competence of both Parties and to avoid duplication of work. In particular, this will be achieved through the exchange of operational, strategic, and technical information, as well as the co-ordination of activities. The co-operation will take place with due regard to transparency, complementarity of tasks and co-ordination of efforts.

⁷ OJ L 63/1, 6.3.2002

⁸ OJ C 316/3, 27.11.1995

Chapter 2

Consultation and Co-operation

Article 3

Regular Consultations

1. The Director of Europol and the President of the College of Eurojust shall consult each other regularly to ensure that the provisions of this Agreement are implemented.
2. Having due regard to priorities established in accordance with the respective legal framework of both Parties, they will develop priorities and strategies, which are complementary to each other having regard to the overall objective of combating those forms of crime within their respective competencies. Common policies and joint initiatives to this effect will be agreed between them whenever necessary.
3. They shall also consult each other regularly on matters of common interest in order to achieve their respective objectives and co-ordinate their activities and to avoid duplication of effort.
4. The regular consultation efforts referred to above shall take place in accordance with an agreed programme. This programme shall provide for quarterly consultation meetings preceded by a preparatory exchange of information and opinions in writing with a view to identification of issues and participants' preparation. Such meetings shall be chaired by a representative of each organisation in rotation, on the basis of an agenda agreed on beforehand.
5. The consultation process shall include a yearly joint evaluation of operational issues which concern both Parties.

Article 4

General Co-operation issues

1. Eurojust shall promote the co-ordination of and facilitate the co-operation between the competent judicial authorities and Europol shall promote the widest possible co-operation among the competent law enforcement authorities through the Europol National Units. Both Parties shall utilise their contacts with national authorities to ensure as far as possible early and complete acquisition by both Parties of information necessary and useful for the fulfilment of their tasks.
2. The Parties shall jointly lend support to the national authorities in selecting targets in the field of crime repression; such support shall take place through meetings with the national authorities of the Member States.
3. The Parties shall also co-ordinate requests addressed to the national authorities in the Member States to conduct or co-ordinate investigations in specific cases, in accordance with their respective mandate and competence. In particular, both

Parties shall inform each other in those cases where, within their attributed tasks, they exercise their right to ask Member States to start investigations.

4. Each Party shall give the highest consideration to suggestions and views from the other Party and shall react to these when needed. Wherever possible and appropriate each Party may actively seek the other Party's opinion on any matter in the determination of joint strategies against organised crime.
5. 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 or operational expertise.
6. In issuing any annual report or other document in which priorities and strategies are discussed or propounded each Party shall endeavour to give express recognition to the contribution of the other Party and where the two Parties have disagreed in some important respect, subject to not doing so in the interest of greater effectiveness, the report or document shall seek to include a discussion of the issue on which there was disagreement.
7. Both Parties shall seek to involve each other in opportunities to associate in academic and professional debate whether that be in formulating papers or reacting to papers insofar as that may contribute to generating priorities and strategies. In the same way when the occasion arises both will give particular attention to the opportunity of associating the other Party with such occupational or academic conferences as may arise at national and international level.
8. The Parties shall designate contact points by means of an exchange of letters between the Director of Europol and the President of the College. Changes to the list of contact points may be agreed in writing by means of further correspondence.

Article 5

Analysis Work Files and exchange of information

1. Eurojust may present a duly motivated request to Europol to take the initiative to open an Analysis Work File to support its tasks. Europol shall consider all such requests carefully, taking into account its resources and having due regard to the priorities established. In case Europol is of the opinion that the request should be granted, it shall submit the findings of its evaluation to the Management Board, together with the opening order, in accordance with the existing procedures. Eurojust will support Europol by providing it with opinions based on analyses carried out by Europol.
2. As far as allowed under its legal framework and this Agreement, Europol shall, when appropriate, supply analysis data and analysis results to Eurojust, as well as other information which may be required for the tasks of Eurojust. This entails that direct access by Eurojust to Europol's analysis files is excluded.

3. As far as allowed under its legal framework, in particular under Article 27 of the Eurojust Decision, and this Agreement, Eurojust shall, when appropriate, provide Europol with information for the purpose of its Analysis Work Files, as well as other information and advice which may be required for the tasks of Europol. This entails that direct access by Europol to Eurojust files is excluded.
4. Within its field of competence, Eurojust will actively support Europol through stimulating the flow of information to Europol from the competent national authorities.

Article 6

Joint Investigation Teams

1. At the request of one or more Member States, the Parties may together participate in the setting up of joint investigation teams and in their action in accordance with the legal framework which is in place at that time, and the agreement made to establish the joint investigation team, as well as bring their support and expertise to the national judicial and law enforcement authorities with respect to the preliminary discussions concerning the setting up of joint investigation teams.
2. When it is decided to participate in such a team, Eurojust shall endeavour to bring its support in order to facilitate co-ordination between the judicial authorities concerned and Europol shall endeavour to support the intelligence gathering and investigative efforts of the team.
3. If requested, the Parties shall help to facilitate the operational effectiveness of the team by providing practical support and assistance.

Chapter 3

Processing of information

Article 7

General terms and conditions

1. Transmission of information between the Parties shall only take place in accordance with the Eurojust Decision or the Europol Convention and the provisions of this Agreement.
2. Further processing of information received under this Agreement shall be limited to the purposes for which the information was communicated.
3. When processing information on the basis of this Agreement, each Party shall indicate the source of the information concerned.
4. All communications of personal data under this Agreement, including the grounds for such communications, shall be recorded.

Article 8

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.
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 the need for such restriction or condition becomes apparent later, after the transmission. The receiving Party shall be bound to comply with the restrictions indicated under this paragraph, and may only deviate from these after consultation and with prior written consent from the other Party if necessary.
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 conditions or restrictions indicated by that Party. Such consent may only be given when allowed under the applicable legal framework of the transmitting Party.

Article 9

Right of Access

Any individual shall have the right to have access to personal data concerning him 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. This Party shall also consult the Member State(s) which originally provided the personal data.

Article 10

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. Both Parties shall be responsible for ensuring that personal data as mentioned in paragraph 1, until they have been included in a data file, may only be accessed by a Europol or Eurojust official duly authorised for the purpose of determining whether or not the personal data may be included in a data file of the Party involved.
3. 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.
4. 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 11

Assessment of the source and reliability of the information

1. When information is transmitted by Europol or Eurojust 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 Europol or Eurojust 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. If no reliable assessment can be made, or no agreement in general terms exists, Europol shall evaluate the information as at paragraph 1 (D) and 2 (4) of this Article.

Article 12

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 immediately when it is no longer necessary for the purposes for which it was transmitted. A retention review must take place within a period of maximum three years, and when prescribed under the regulations of the Party retaining the data. If the storage of data transmitted from one of the Parties exceeds three years, the need for continued storage shall be reviewed annually.
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.

Chapter 4

Confidentiality

Article 13

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 President of the College of Eurojust.
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. 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.
5. 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.
6. 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.
7. 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.
8. The communication of information subject to the confidentiality and security standards referred to in the first paragraph may not begin until these standards have entered into force for both Parties and the Memorandum of Understanding referred to in the second paragraph has been concluded.

Chapter 5

Liability and Settlement of Disputes

Article 14

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 15

Settlement of Disputes

1. 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 President of the College of Eurojust, may be referred for advice to an *ad hoc* Committee at the request of the Director of Europol or the President of the College of Eurojust. The Committee, which shall comprise no more than 3 members of the Management Board of Europol and 3 members of the College of Eurojust, shall draw up its own rules of procedure. The Committee's advice will be submitted to the Director of Europol and the President of the College of Eurojust.
2. In cases where the dispute has not been resolved through the procedure outlined in paragraph 1, the dispute will be put to the Council for final resolution.

Chapter 6

Final Provisions

Article 16

Amendments

1. This Agreement may be amended by mutual consent between the Parties at any time, provided that these amendments are approved in accordance with the procedures established for obtaining approval for this Agreement.

2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either of them.

Article 17
Entry into force

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

Done at The Hague, this ninth day of June, two thousand and four in two copies in the English language.

For Eurojust,

For Europol,

Michael G. Kennedy
President of the College

Jürgen Storbeck
Director
