



**Agreement
on Operational Cooperation
between the European Police Office ("EUROPOL") and the
European Agency for the Management of Operational
Cooperation at the External Borders of the Member States of
the European Union ("FRONTEX")**

the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ("Frontex") represented by Fabrice Leggeri, Executive Director, and

the European Police Office (Europol) represented by Rob Wainwright, Director,

Hereafter collectively referred to as "the Parties", or individually as the "Party",

Having regard to the Charter of the Fundamental Rights of the European Union, in particular Article 8;

Having regard to Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing Frontex, as last amended, in particular Articles 11a, 11b, 11c and 13;

Having regard to Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office, in particular Article 22;

Considering

- Both Agencies' awareness of the plurality of problems arising from international organized crime, especially terrorism;
- Both Agencies' commitment to a coordinated, integrated and effective co-operation in providing support to EU Member States in the maintenance of the Area of Freedom, Security and Justice;
- The approval of the Management Board of Europol for the terms and conditions of this Arrangement on 11 February 2015
- The EDPS approval for the terms and conditions of this agreement conveyed to Frontex on 24 March 2015.
- The European Council in its strategic guidelines for legislative and operational planning for the area of Freedom, Security and Justice of June 2014 emphasized the need for intensifying operational cooperation supporting the consistent transposition, effective implementation and consolidation of the legal instruments and policy measures in place

Have agreed as follows:

Chapter I General provisions

Article 1

Purpose

1. The purpose of this Agreement is to establish cooperative relations between Europol and Frontex within the existing limits of the respective legal frameworks in particular through the exchange of information between the Parties.
2. The cooperation between the Parties aims at supporting the Member States of the European Union in preventing and combating cross-border criminal activities in the areas of crime referred to in Article 3, improve integrated border management and facilitate the operational cooperation of Member States' authorities at the external borders.

Article 2

Definitions

For the purpose of this Agreement:

- a) "Europol Council Decision" shall mean the Council Decision of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009;
- b) "personal data" means any data 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;
- c) "processing of personal data" (hereafter referred to as "processing") means any operation or set of operations which is performed upon personal data, 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;
- d) "Eurosur Regulation" shall mean the Regulation of the European Parliament and the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), OJ L 295, 6.11.2013.

Article 3
Areas of crime

1. The cooperation as established in this Agreement shall, in line with the Parties' cooperation interest, relate to relevant areas of crime within the mandate of both Parties at the date of entry into force of this Agreement in particular facilitation of illegal migration, trafficking in human beings, terrorism, and other cross-border criminal activities.
2. The cooperation shall also cover related criminal offences deemed as the criminal offences committed in order to procure the means of perpetrating the criminal acts referred to in paragraph 1, criminal offences committed in order to facilitate or carry out such acts, and criminal offences committed to ensure the impunity of such acts.

Article 4
Areas of cooperation

1. The Parties agree to cooperate in the respective planning cycles, including planning, implementation and evaluation of operational activities.
2. The Parties agree to support each other in the setting up and implementation of operations that they coordinate.
3. Furthermore, the Parties agree to support each other under the framework of the EU multi-annual policy cycle established by the Council in particular as regards the operational activities.
4. The parties agree to exchange strategic and operational information in support of actions to suppress criminal activities and improve integrated border management including but not limited to *Modus operandi* used by criminal networks, threat assessments, risk analysis, results of strategic analysis and crime situation reports.
5. The areas of cooperation as outlined in this article shall not extend, and only take place in accordance with, the respective mandates of the Parties and is subject to the availability of resources.

Chapter II
Operational cooperation

Article 5
Exchange of information

1. Exchange of information between the Parties shall only take place for the purpose of and in the framework of the provisions of this Agreement.
2. Parties shall only supply information to each other which was collected, stored and transmitted in accordance with their respective legal framework and has not been obtained in obvious violation of fundamental rights. In this context Europol will in particular be bound by Article 20(4) of the Council Decision of 30 November 2009 adopting the implementing rules governing Europol's relations with partners including the exchange of personal data and classified information.
3. Should one of the Parties, under their public access rules, receive a request to disclose information transmitted on the basis of the present Agreement, the Party which provided this information shall be consulted as soon as possible.
4. Any processing of personal data will be governed fully by the respective rules applicable to the processing party.

Article 6
Use of the information

1. Information, if transmitted with a purpose, may be used only for the purpose for which it was transmitted and any restriction on its use, deletion or destruction, including possible access restrictions in general or specific terms must be respected by the Parties.
2. Use of information for a different purpose than the purpose for which the information was transmitted must be authorised by the transmitting Party.

Article 7
Onward transmission of the information received

Onward transmission of the information received shall take place in accordance with the respective legal framework and under the same conditions as those applying to the original transmission and must be consented to by the providing Party.

Article 8
Eurosur

1. Subject to Article 13(2) of the Eurosur Regulation, Frontex and Europol shall exchange information on cross border criminal activities to be included in the European Situational Picture.
2. A specific point of contact for the exchange of information under the framework of Eurosur shall be designated by both Parties.

Article 9

Transmission of personal data by Frontex to Europol

1. The transmission of personal data to Europol shall be limited to personal data regarding persons who are suspected, on reasonable grounds, by the competent authorities of the Member States of the European Union of involvement in cross-border criminal activities as referred to in Article 3(1).
2. The transmission of personal data to Europol shall be limited to personal data collected by the Member States of the European Union during joint operations, pilot projects and rapid interventions coordinated by Frontex.
3. Frontex shall indicate at the moment of transmission of the personal data or before, the provider of the personal data, purpose for which the data were transmitted, and any restriction on its use, deletion or destruction, including possible access restrictions in general or specific terms. Where the need for such restrictions becomes apparent after the supply, Frontex shall inform of such restrictions at a later stage.
4. Personal data transmitted to Europol shall be processed by Europol in accordance with its legal framework and for the purpose of prevention and combating criminal offences within its mandate.
5. Parties shall keep a record of all communications of personal data under this Agreement and of the grounds for such communications.
6. Europol may require the clarification of information or request additional information based on personal data previously communicated by Frontex.

Article 10

Retention, correction and deletion of personal data

1. Europol shall retain personal data only as long as it is necessary for the purpose for which it was transmitted.
2. Where Frontex has reason to believe that personal data previously transmitted by it is incorrect, inaccurate, no longer up to date or should not have been transmitted, it shall inform Europol, which shall correct or delete the personal data, and provide notification thereof.
3. Where Europol has reason to believe that personal data previously received by it is incorrect, inaccurate, and no longer up to date or should not have been transmitted, it shall inform Frontex. Frontex shall verify the data and inform Europol of the outcome of such verification.
4. In the event that Europol is notified of a correction or deletion of data received from Frontex, it may nonetheless decide not to delete the information if, based on the

information in its files that is more extensive than that possessed by Frontex, there is further need to process that information. Europol shall inform Frontex of the continued storage of such information.

Article 11

Data subject rights

Individuals shall have the right to access the information related to them transmitted on the basis of the present Agreement, and to have such information checked, corrected or deleted in line with the respective legal framework of the Parties. In cases where this right is exercised, the transmitting Party will be consulted before a final decision on the request is taken.

Article 12

Assessment of the source and of the information

1. When information is supplied by the Parties on the basis of this Agreement, the source of the information shall be indicated as far as possible using the following codes:
 - (A) Where there is no doubt of the authenticity, trustworthiness and competence of the source, or if the information is supplied 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;
 - (X) The reliability of the source cannot be assessed.
2. When information is supplied by the Parties on the basis of this Agreement, the reliability of the information shall be indicated as far as possible using the following codes:
 - (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 either of the Parties, on the basis of information already in its possession, comes to the conclusion that the assessment of information supplied by the other Party

needs correction, it shall inform the other Party and attempt to agree on an amendment to the assessment. Neither of the Parties shall change the assessment of information received without such agreement.

4. If a Party receives information without an assessment, it shall attempt as far as possible and in agreement with the transmitting Party to assess the reliability of the source or the information on the basis of information already in its possession.
5. If no reliable assessment can be made, or no agreement in general terms exists, the information shall be evaluated as at paragraph 1 (X) and paragraph 2 (4) above.

Article 13

Data security

The Parties shall ensure that the information exchanged or received is protected through technical and organisational measures. Such measures shall only be necessary where the effort they involve is proportionate to the objective they are designed to achieve in terms of protection, and will be designed to:

- 1) deny unauthorised persons access to data processing equipment used for processing personal data (equipment access control),
- 2) prevent the unauthorised reading, copying, modification or removal of data media (data media control),
- 3) prevent the unauthorised input of personal data and the unauthorised inspection, modification or deletion of stored personal data (storage control),
- 4) prevent the use of automated data- processing systems by unauthorised persons using data- communication equipment (user control),
- 5) ensure that persons authorised to use an automated data- processing system have access only to the personal data covered by their access authorisation (data access control),
- 6) ensure that it is possible to verify and establish to which bodies personal data may be or have been transmitted using data communication equipment (communication control),
- 7) ensure that it is possible to verify and establish which personal data have been input into automated data- processing systems and when and by whom the personal data were input (input control),
- 8) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control),

9) ensure that installed systems may, in the event of interruption, be restored immediately (recovery),

10) ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported (reliability) and that stored personal data cannot be corrupted by system malfunctions (integrity).

Chapter III

Horizontal provisions

Article 14

Consultations

The Parties agree that to further the cooperation and monitor the implementation of the provisions of this Agreement, the following regular mutual consultations will take place:

- a) High level meetings between Europol and Frontex shall take place at least once a year to discuss issues relating to this Agreement and the cooperation in general.
- b) Frontex and Europol shall appoint and exchange a contact point responsible for preparing, implementing and assessing the concrete projects or other cooperation activities within the framework of this arrangement. Where required, the Parties may decide to appoint more than one contact point.

Article 15

Liaison officers

The Parties may agree, through a Memorandum of Understanding, to the secondment of liaison officer(s).

Article 16

Exchange of specialised knowledge

The parties agree to support each other's initiatives aimed at exchanging of specialised knowledge, including the organisation of joint trainings, participation in seminars, trainings, and other programmes and mutual visits of experts with a view to increase awareness and exchange of knowledge.

Article 17
Secure communication line

1. For the purpose of exchange of information Europol and Frontex shall establish a secure communication line.
2. The costs of the establishment of the secure communication line shall be paid by Europol whereas the monthly running costs shall be shared between the Parties in proportions specified in the Memorandum of Understanding.
3. Without prejudice to Article 22 a Party shall be liable for damage caused to the other Party as a result of wrongful actions relating to the establishment, the implementation or the operation of the secure communication line.

Article 18
Feedback

Europol agrees to provide regular feedback subject to Article 6, to Frontex as regards:

- a) Statistical information, enabling an appropriate assessment of the cooperation as foreseen under Article 14, such as the amount of data input into Europol systems, and number of hits generated;
- b) General overview of the further utilisation of information received from Frontex, enabling an appropriate assessment of the cooperation as foreseen under Article 14, such as contributions resulting in new, or assisting ongoing investigations or joint investigation teams;
- c) Reports (not containing personal data) stemming from the analysis of the intelligence gathered in the investigations supported by Europol, assisting Frontex to enrich its knowledge on the threats to the internal security and facilitate a more targeted response at the external borders.

Chapter IV
Security of information

Article 19
Protection of classified information

Each Party shall ensure that classified information subject to this Agreement is given an equivalent level of protection applying the basic principles and minimum standards set out in the respective legal framework of the Party and the Memorandum of Understanding referred to in Article 21.

Article 20
Protection of unclassified information

Each party shall ensure that unclassified information subject to this Agreement is given an equivalent level of protection applying the basic principles and minimum standards set out in the respective legal framework of the Party and the Memorandum of Understanding referred to in Article 21, with the exception of information which is expressly marked or clearly recognisable as public information.

Article 21
Memorandum of Understanding on Security of Information

The protection of the information exchanged between the Parties shall be regulated in a Memorandum of Understanding on Security of Information agreed between the Parties implementing the principles outlined in this Chapter. Exchange of classified information is conditional upon the conclusion of the Memorandum of Understanding on Security of Information.

Chapter V
Final Provisions

Article 22
Liability

1. The Parties shall be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in information exchanged. In order to avoid its liability under their respective legal frameworks vis-à-vis an injured party, neither Party may plead that the other had transmitted inaccurate information.
2. If these legal or factual errors occurred as a result of information erroneously communicated or of failure on the part of the other Party to comply with their obligations, they shall be bound to repay, on request, any amounts paid as compensation under paragraph 1 above, unless the information was used by the other Party in breach of this Agreement.

3. The Parties shall not require each other to pay for punitive or non-compensatory damages under paragraph 2 above.

Article 23
Settlement of disputes

1. All disputes which may emerge in connection with the interpretation or application of the present Agreement shall be settled by means of consultations and negotiations between representatives of the Parties.
2. In the event of serious failings of either Party to comply with the provisions of this Agreement, or a Party is of the view that such a failing may occur in the near future, either Party may suspend the application of this Agreement temporarily, pending the settlement referred to in paragraph 1. Obligations inherent upon the Parties under the Agreement will nonetheless remain in force.

Article 24
Expenses

Without prejudice to Article 17, the Parties shall bear their own expenses which arise in the course of implementation of the present Agreement.

Article 25
Amendments and supplements

1. This Agreement may be amended in writing, at any time, by mutual consent between the Parties. Any amendments must receive the approval of the Europol Management Board.
2. The Parties shall enter into consultations with respect to the amendment of this Agreement or its Annexes at the request of either of them.

Article 26
Entry into force

This Agreement shall enter into force on the date of its signature.

Article 27
Termination of the Agreement

1. This Agreement may be terminated in writing by either of the Parties with three months' notice.
2. In case of termination, the Parties shall reach agreement on the continued use and storage of the 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 destroyed or returned to the transmitting Party.
3. Without prejudice to paragraph 1, the legal effects of this Agreement remain in force.

Article 28
Repeal

The Agreement between Europol and Frontex of 28 March 2008 shall be repealed with effect from the date of entry into force of this Agreement.

Done in Brussels, on the fourth of December two thousand and fifteen in two copies in the English language.

For Europol



Rob Wainwright
Director

For Frontex



Fabrice Leggeri
Executive Director