

EUROPOL MANAGEMENT BOARD

The Hague, 13 August 1989
File n°: 3710-01r1

Draft Model-agreement co-operation with Third States

(Third State X) and Europol:

considering that it is within their common interest to enhance their co-operation;

considering that the Council of the European Union has given Europol the authorisation to enter into negotiations on a co-operation agreement with (Third State X) on...

considering that the Council of the European Union has given Europol the authorisation to agree to the following provisions between (Third State X) and itself on...

Have agreed as follows:

Article 1 Definitions

For the purpose of this agreement:

- (a) Convention means the Convention based on Article K.3 of the Treaty on European Union on the establishment of a European Police Office (Europol Convention);
- (b) 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;
- (c) processing of personal data (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) information means personal and non-personal data.

SEMDOC

Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

Article 2 Purpose of the Agreement

The purpose of this Agreement is to enhance the co-operation of the Member States of the European Union, acting through Europol, and (Third State X) in the combating of serious forms of international crime (...) in the areas mentioned in Article 3 of this Agreement, in particular through the exchange of both strategic and operational information.

Article 3 Areas of criminality to which the Agreement applies

1. The co-operation as established in this Agreement shall, in line with Europol's co-operation interest in the particular case, relate to:

- a) unlawful drug trafficking;
- b) trafficking in nuclear and radioactive substances;
- c) illegal immigrant smuggling;
- d) trade in human beings;
- e) motor vehicle crime,
- f) crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property,
- g) forgery of money and means of payment,

as well as to illegal money laundering activities in connection with these forms of crime or specific manifestations thereof and related criminal offences.

2. Related criminal offences shall be the criminal offences committed in order to procure the means for perpetrating the criminal acts mentioned in paragraph 1, criminal offences committed in order to facilitate or carry out such acts, and criminal offences to ensure the impunity of such acts.

3. Where Europol is instructed by the Council of the European Union to deal with other forms of criminality, Europol may, from the date when the change to Europol's mandate enters into force, suggest the applicability of this agreement in relation to the new mandate to (Third State X) in writing. In so doing, Europol shall inform (Third State X) of the definition of the new form of criminality if and when a new form of criminality has been included in the relevant Council decision. The agreement shall extend to the new area of criminality as of the date on which Europol receives the written acceptance of the proposal by (Third State X). Europol shall only be bound by its proposal for a period of three months following the dispatch of the proposal.

4. The forms of criminality mentioned in paragraph 1 b), c), d) and g) are defined in Annex (1) to this Agreement. Where the other forms of criminality with which Europol may be instructed are defined in the respective Council decision, such definitions will also be applicable where such forms of criminality become part of this Agreement in accordance with paragraph 3. Europol shall inform (Third State X) if and when the definition of an area of criminality is amplified, amended or supplemented. The new definition will be applicable unless (Third State X) gives written notice to the contrary within three months.¹

Article 3 (bis) Areas of co-operation

[Where necessary, further co-operation arrangements may be included here in line with Article 3 of the Convention besides those already mentioned, like the exchange of information (Article 2). Europol will consider any requests for further co-operation arrangements of the Convention by the co-operation partners provided it has the necessary resources.]²

Article 4 National contact point

(Third State X) designates (Central Service) to act as the national contact point between Europol and other competent authorities of (Third State X).

Article 5 Competent authorities

1. The law enforcement authorities in (Third State X) responsible under national law for preventing and combating the criminal offences specified under Article 3 (1) are listed in Annex (2) to this Agreement. (Third State X) will notify Europol of any changes to this list within three months after such changes come into effect, and will regularly inform Europol of any other competent authorities to whom data have been supplied in accordance with this Agreement.

¹ It is of course possible to delete some areas of crime from this article where this is felt appropriate.

² This is not intended to be the text of an Article, but as an *alide-memoire*.

2. (Third State X) shall, through the (Central Service), supply Europol, on its request, with all information concerning the internal organisation, tasks, and data protection arrangements of the authorities mentioned in this Article.

Article 6 Exchange of Information

1. Exchange of information between Europol and (Third State X) shall only take place for the purpose of and in accordance with the provisions of this agreement.
2. The exchange of information as specified in this agreement will in principle take place between Europol and (Central Service). (Third State X) shall ensure that the (Central Service) is available around the clock and that there is a direct link between the (Central Service) and the competent authorities as mentioned in Article 5, first paragraph, including the national bodies responsible for international police co-operation. Where in a particular case for reasons of urgency the information exchange takes place with another competent authority as mentioned in Article 5, first paragraph, (Central Service) will be informed by Europol as soon as possible if that information was sent by Europol.
3. Europol shall only supply information to (Third State X) which was collected, stored and transmitted in accordance with the relevant provisions of the Convention and its implementing regulations.
4. (Third State X) shall only supply information to Europol that was collected, stored and transmitted in accordance with its national legislation. Under Article 4, paragraph 4 of the Council Act of 3 November laying down rules concerning the receipt of information by Europol³, Europol is not allowed to store information which has clearly been obtained by a third State in obvious violation of human rights.⁴

³ (1999/C28/03)

⁴ [REDACTED]

Article 7 Supply of information to Europol¹

1. (Third State X) shall notify Europol of the purpose for which the information is supplied and of any restriction on its use, deletion or destruction, including possible access restrictions in general or specific terms. (Third State X) may also inform Europol of such restrictions at a later stage.
2. After receipt, Europol shall determine as soon as possible, but in any case within one year of receipt, if and to what extent personal data, which have been supplied may be included in Europol's data files, in accordance with the purpose for which they were supplied by (third State X). Personal data which have been transmitted will be deleted, destroyed or returned, if such data are not, or no longer, necessary for Europol's tasks or if no decision has been taken on their inclusion in a Europol data file within one year after receipt.
3. Europol shall be responsible for ensuring that the personal data as mentioned in paragraph 2, until they have been included in a Europol

[REDACTED]

As an alternative, the following stipulation could be integrated within this article:
*Data which, after appraisal, have not been selected for inclusion in a Europol data file, as well as paper files or documents containing data which have been included, shall remain under the responsibility of (Third State X) and subject to its national legislation, without prejudice to Europol's responsibility for the data as outlined in this article.
Europol will not accept any liability, nor any claim for compensation of damages, in respect of personal data which, in accordance with this article, remain under the responsibility of (Third State X) and subject to its national legislation, except where it is evident that Europol has not fulfilled its responsibilities with respect to such data as specified in this article.*

Furthermore, a provision on the responsibility of Europol for data which have not been included in a Europol data file could either be integrated within this article or be introduced as an internal general rule for Incoming Intelligence:
Europol shall be responsible for ensuring that data which, after appraisal, have not been selected for inclusion in a Europol data file, as well as paper files or documents containing data which have been included, are stored separately from the Europol data file, and may only be accessed by a duly authorised Europol official, for the purpose of:

- a) *their later inclusion in a Europol data file;*
- b) *verifying whether the data which already have been included in a data file are accurate and relevant;*
- c) *verifying whether the requirements contained in this Agreement or the Convention have been met.*

Such data may also be accessed in the interests of the data subject which require protection. In this case the data may only be used with the consent of the individual concerned.

data file, may only be accessed by a Europol official duly authorised for the purpose of determining whether or not the data may be included in a Europol data file.

If Europol, after appraisal, has reason to assume that data supplied are not accurate or no longer up to date, it shall inform (Third State X) thereof. (Third State X) shall verify the data and inform Europol on the outcome of such verification.

Article 8 Supply of personal data by Europol

1. Where personal data are transmitted at the request of (Third State X), the personal data may only be used for the purposes following the request. Where personal data are transmitted without a specific request, the purpose for which the data were transmitted shall be indicated, and any restriction on its use, deletion or destruction, including possible access restrictions in general or specific terms. Europol may also inform (Third State X) of such restrictions at a later time.
2. (Third State X) shall comply with the following conditions for all transmissions of personal data by Europol to (Third State X):
 - a) after receipt, (Third State X) shall determine as soon as possible if and to what extent the data which have been supplied are necessary for the purpose for which they were supplied;
 - b) the data will not be communicated by (Third State X) to third States or bodies;
 - c) the data shall only be supplied to the (Central Service), without prejudice to Article 6 (2);
 - d) onward transmission of the data by the initial recipient shall be restricted to the authorities mentioned in Article 5 and shall take place under the same conditions as those applying to the original transmission;
 - e) the supply must be necessary in individual cases for the purpose of preventing or combating the criminal offences outlined in Article 3;
 - f) if the data have been communicated to Europol by a Member State of the European Union, the data may only be transmitted with that Member State's consent;
 - g) any conditions on the use of the data specified by Europol must be respected; if the data have been communicated to Europol by a Member State of the European Union, and that Member State has stipulated any conditions on the use of such data, these conditions must be respected;

- h) when data are supplied on request, the request for the information must specify indications as to the purpose of and the reason for the request;
 - i) the data may be used only for the purpose for which they were communicated; this shall not apply to communication of data required for a Europol enquiry;
 - j) the data will be corrected and deleted by (Third State X) if it emerges that they are incorrect, inaccurate, no longer up to date or should not have been transmitted;
 - k) the data will be deleted when they are no longer necessary for the purposes for which they were transmitted.
3. Personal data revealing racial origin, political opinions or religious or other beliefs, or concerning health and sexual life as referred to in Article 6 of the Council of Europe Convention of 28 January 1981 shall only be supplied in absolutely necessary cases and in addition to other data.
4. No personal data will be supplied where an adequate level of data protection is no longer guaranteed.
5. Where Europol notes that the personal data transmitted are inaccurate, no longer up to date, or should not have been transmitted, it shall inform the (Central Service) thereof forthwith. Europol shall request the (Central Service) to confirm to Europol that the data will be corrected or deleted.
6. Europol shall keep a record of all communications of data under this article and of the grounds for such communications.

Article 9 Assessment of the source and of the information

1. When information is supplied by Europol on the basis of this Agreement, 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 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.
 - D. The reliability of the source cannot be assessed.
- 2. When information is supplied by Europol 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. (Third State X) shall, when supplying information on the basis of this agreement, indicate, as far as possible, the source of the information and its reliability on the basis of the criteria specified in paragraphs 1 and 2.
- 4. If Europol or (Third State X) - 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 will inform that other party and attempt to agree on an amendment to the assessment. Neither Europol nor (Third State X) will change the assessment of information received without such agreement.
- 5. If Europol receives data or information from (Third State X) without an assessment, Europol shall attempt as far as possible to assess the reliability of the source or the information on the basis of information already in its possession.
- 6. (Third State X) and Europol may agree in general terms on the assessment of specified types of data and specified sources, which shall be laid down in a Memorandum of Understanding between Europol and (Third State X). Such general agreements have to be approved by the Management Board. If data have been supplied to Europol on the basis of such general agreements, this shall be noted with the data.

7. If no reliable assessment can be made, or no agreement in general terms exists, Europol will evaluate the information as at paragraph 1 (D) and 2 (4) above.

Article 10 Correction and deletion of data supplied to Europol

1. The (Central Service) shall inform Europol when information transmitted to Europol is corrected or deleted. The (Central Service) shall also inform Europol as far as possible when it has reason to assume that the information supplied is not accurate or no longer up to date.
2. When the (Central Service) informs Europol that it has corrected or deleted information transmitted to Europol, Europol shall correct or delete the information accordingly. Europol shall not delete information if it has further need to process that information for the purpose of an analysis file or, in case the information is stored in another Europol data file, Europol has further interest in it, based on intelligence that is more extensive than that possessed by (Third State X). Europol shall inform the (Central Service) of the continued storage of such information.
3. If Europol has reason to assume that information supplied is not accurate or no longer up to date, it shall inform the (Central Service). The (Central Service) shall verify the data and inform Europol on the outcome of such verification. In case information is corrected or deleted by Europol in conformity with Article 20 (1) and 22 of the Convention, Europol shall inform the (Central Service) of the correction or deletion.

Article 11 Confidentiality of Europol information

1. All information processed by or through Europol, except information which is expressly marked or is clearly recognisable as being public information, is subject to a basic level of security within the Europol organisation as well as in the Member States. Information which is only subject to the basic level of security does not require a specific marking of a Europol security level, but will be designated as Europol information.
2. (Third State X) shall ensure the basic protection level mentioned in paragraph 1 for all information supplied by Europol, by a variety of measures in accordance with national legislation and regulations, including the obligation of discretion and confidentiality, limiting access

to information to authorised personnel, data protection requirements as far as personal data is concerned and general technical and procedural measures to safeguard the security of the information.

3. Information requiring additional security measures is subject to a Europol security level, which is indicated by a specific marking. Information is assigned such a security level only where strictly necessary and for the time necessary.
4. The Europol security levels are numbered "Europol level 1 to 3", and relate to a specific security package which is applied within the Europol organisation. The security packages offer different levels of protection, depending on the content of the information, and taking account of the detrimental effect authorised access, dissemination or use of the information might have on the interests of the Member States or Europol.^a
5. (Third State X) has taken note of the Confidentiality Regulations and Security Manual for Europol, and commits itself to ensuring that all information supplied to it by Europol which is marked "Europol level 1 to 3" will receive within its territory a level of protection which is equivalent to that specified for these levels in the Confidentiality Regulations and Security Manual for Europol. Europol shall inform (Third State X), as far as necessary, of the protection measures associated with the Europol security levels and packages.
6. (Third State X) guarantees that its national provisions on the protection of protectively marked information provide an adequate basis for ensuring a level of protection for information transmitted in accordance with this Agreement which is equivalent to that provided for in the Confidentiality Regulations and Security Manual.
7. The (Central Service) shall be responsible for ensuring that access authorisations to and protection of protectively marked information will also be complied with by other authorities to whom data may be transmitted in accordance with this Agreement.

Article 12

Confidentiality of information supplied to Europol

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1. Without prejudice to Article 6 (2), the (Central Service) shall be responsible for the choice of the appropriate security level in accordance with Article 11 for information supplied to Europol. The (Central Service) shall, where necessary, mark the information with a Europol security level as mentioned in Article 11 (4), when supplying it to Europol.
2. In choosing the security level, the (Central Service) shall take account of the classification of the information under its national regulations, as well as the need for the operational flexibility required for an adequate functioning of Europol.
3. If Europol - on the basis of information already in its possession - comes to the conclusion that the choice of security level needs amendment, it will inform the (Central Service) and attempt to agree on an appropriate security level. Europol will not specify or change a security level without such agreement.
4. The (Central Service) may at any time request an amendment of the chosen security level, including a possible removal of such a level. Europol shall be obliged to amend the security level in accordance with the wishes of the (Central Service). The (Central Service) shall, as soon as circumstances allow this, ask for amendment of the security level to a lower one or its removal.
5. The (Central Service) may specify the time period for which the choice of security level will apply, and any possible amendments to the security level after such period.
6. Where information of which the security level is amended in accordance with this Article has already been supplied to one or more of the Member States of the European Union, Europol shall, at the request of the (Central Service), inform the recipients of the change of security level.

Article 13

(Third State X) Liaison officers at Europol

1. (Third State X) and Europol agree to enhance the co-operation as laid down in this Agreement through the stationing of (one or more) liaison officer(s) representing (Third State X) at Europol. The liaison officers' tasks, rights and obligations as well as details regarding their stationing

1. [REDACTED]

with Europol and the costs involved are laid down in annex (3) which is part of this agreement.


2. Europol will arrange for all necessary facilities, such as office space and telecommunications equipment to be provided to such liaison officers within the premises of Europol, at the cost of Europol. The costs of telecommunication shall however be borne by (Third State X).
3. The archives of the liaison officer shall be inviolable from any interference by Europol officials. These archives shall include all records, correspondence, documents, manuscripts, computer records, photographs, films and recordings belonging to or held by the liaison officer.
3. (Third State X) shall ensure that its liaison officers have speedy and, where technically feasible, direct access to the national databases necessary for them to fulfil their task while stationed at Europol.

Article 14 Europol Liaison Officers in (Third State X)¹

1. (Third State X) and Europol agree to enhance the co-operation as laid down in this Agreement through the stationing of (one or more) Europol liaison officer(s) with the (Central Service) (or other competent authorities) indicated at Article 4 and 5. The liaison officers' tasks, rights and obligations as well as details regarding their stationing with the (Central Service) and the costs involved are laid down in Annex (3) which is part of this agreement.
 2. The (Central Service or other competent authority) will arrange for all necessary facilities, such as office space and telecommunications equipment to be provided to such liaison officers within the premises of the service, at the cost of the service. The costs of telecommunication shall however be borne by Europol.
 3. The property and assets of the Europol liaison officer, wherever located and by whomsoever held shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action.
- [REDACTED]

4. (Third State X) shall permit the liaison officer to communicate freely for all official purposes and protect his right to do so. The liaison officer shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags, which shall be subject to the same privileges and immunities as diplomatic couriers and bags.
5. The archives of the liaison officer shall be inviolable. These archives shall include all records, correspondence, documents, manuscripts, computer records, photographs, films and recordings belonging to or held by the liaison officer.
6. Within the territory of (Third State X) the Europol liaison officer will enjoy the same privileges and immunities as those accorded by (Third State X) to diplomatic agents of comparable rank of diplomatic missions established in (Third State X).

Article 15 Liability^a

1. (Third State X) shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data exchanged with Europol. (Third State X) shall not plead that Europol had transmitted inaccurate data in order to avoid its liability under its national legislation vis-à-vis an injured party.
 2. If these legal or factual errors occurred as a result of data erroneously communicated or of failure on the part of Europol or one of the Member States of the European Union or another third state or third body to comply with their obligations, Europol shall be bound to repay, on request, the amounts paid as compensations under paragraph 1 above, unless the data were used in breach of this Agreement.
 3. If the damage is due to (Third State X's) failure to comply with its obligations, (Third State X) shall be bound to repay, on request, the amounts which Europol paid to a Member State or to another third state to make up for the amounts it paid in compensation.
 4. (Third State X) and Europol shall not require each other to pay compensation for damages under paragraphs 2 and 3 above to the
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extent that the compensation for damages was enforced as punitive, increased or other non-compensatory damages.

Article 16

Settlement of Disputes¹⁰

1. Any dispute between Europol and (Third State X) concerning the interpretation or application of this Agreement, or any question affecting the relationship between Europol and (Third State X), which is not settled amicably, shall be referred for final decision to a tribunal of three arbitrators, at the request of either party to the dispute. Each party shall appoint one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.
2. If one of the parties fails to appoint an arbitrator within two months following a request from the other party to make such an appointment, the other party may request the President of the Court of Justice of the European Communities or in his absence the Vice-President to make such an appointment.
3. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either party may request the President of the Court of Justice of the European Communities, or in his absence the Vice-President, to make such appointment.
4. Unless the parties agree otherwise, the tribunal shall determine its own procedure.
5. The tribunal shall reach its decision by a majority of votes. The Chairman shall have a casting vote. The decision shall be final and binding on the parties to the dispute.
6. Each party reserves the right to suspend its obligations under this Agreement where the procedure laid down in this Article is applied or might be applied in accordance with paragraph 1, or in any other case where a party is of the opinion that the obligations incumbent on the other party under this Agreement have been breached.

Article 17 Termination of the Agreement

1. This Agreement may be terminated by each party with three months' notice.
2. Irrespective of paragraph 1, this Agreement shall cease to be in force upon the accession of (Third State X) to the European Union becoming legally effective."

Article 18 Amendments

1. This Agreement may be amended by mutual consent between Europol and (Third State X) at any time. Europol may only give its consent to amendments after the unanimous approval of such amendments by the Council of the European Union.
2. Europol and (Third State X) shall enter into consultations with respect to the amendment of this Agreement at the request of either of them.

Article 19 Entry Into force

This Agreement shall enter into force on

Done at ... on 19... , In two copies in the English language.

For (Third State X)

For Europol

" This clause is optional; i.e. it will only be included in agreements with potential candidate countries.