



**Cour
Pénale
Internationale**

**International
Criminal
Court**



**Working Arrangement
establishing cooperative relations
between the International Criminal Court and the
European Union Agency for Law Enforcement
Cooperation**

The International Criminal Court (hereafter referred to as the "ICC" or the "Court"),

and

the European Union Agency for Law Enforcement Cooperation (hereafter referred to as "Europol"),

hereinafter each indistinctly referred to as "Party" and jointly referred to as "Parties",

Aware of the urgent problems arising from international organised crime, terrorism, and from the commission of war crimes, crimes against humanity, genocide, the crime of aggression and other forms of serious crime within the mandates of both Parties;

Noting the aims and purposes of the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries (hereinafter referred to as the "Rome Statute"), that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation;

Recalling that under Article 87(6) of the Rome Statute, the ICC may ask any intergovernmental organisation to provide such forms of cooperation and assistance which may be agreed upon with such an organisation and which are in accordance with its competence or mandate;

Considering that under Article 93(10) of the Rome Statute, the Court may, upon request, cooperate with and provide assistance to a State conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State;

Recalling the *Agreement between the International Criminal Court and the European Union on Cooperation and Assistance* and the *Security arrangements for the protection of classified information exchanged between the EU and the ICC*;

Considering that the Europol Management Board has determined the list of third countries and organisations with which Europol may conclude Working Arrangements, thereby having given Europol the authorisation to enter into negotiations on a Working Arrangement with the ICC;

Considering Article 23(4) of the Europol Regulation as well as that the Europol Management Board has on 22 March 2023 approved the present Working Arrangement between the ICC and Europol;

Considering that this Working Arrangement does not provide for the legal basis for the transfer of personal data by Europol to the ICC;

Whereas on the occasion that transfers of personal data are authorized in accordance with Articles 25(5) or 25(6) of the Europol Regulation by the Executive Director of Europol or the Europol Management Board respectively, the cooperation mechanisms, procedures and conditions as established by this Arrangement shall be used to facilitate

and be applicable to these transfers, without prejudice to the implementation of additional safeguards, where necessary, under Article 25(6);

Respectful of Europol's obligations under the Charter of Fundamental Rights of the European Union;

Desiring to establish close relations between the ICC and the Europol in order to enhance cooperation and encourage the exchange of information, knowledge, experience and expertise,

Have agreed as follows:

Article 1

Purpose

The purpose of this Working Arrangement (hereafter referred to as "Arrangement") is to establish cooperative relations between Europol and the ICC in order to support the Member States of the European Union and the ICC in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, as referred to in Article 3, and in their efforts to put an end to impunity for the perpetrators of international crimes and contributing to the prevention of such crimes, through enhanced cooperation. This cooperation will involve in particular the exchange of information, knowledge, experience and expertise inherent to the respective mandates, subject to observance of the respective legal framework of Europol and the ICC. The Parties shall in particular cooperate in relation to the investigation of, and proceedings relevant to, such crimes.

Article 2

Definitions

For the purpose of this Arrangement:

- a) "ICC" or the "Court" means the Court established in Article 1 of the Rome Statute, without prejudice to the independence of the Office of the Prosecutor as a separate organ of the Court;
- b) "OTP" means the Office of the Prosecutor of the ICC established by Article 42 of the Rome Statute;
- c) "Registry" means the Registry of the ICC established by Article 43 of the Rome Statute;
- d) "third country" is a country that is not a Member State of the European Union taking part in the Europol Regulation, as defined in sub-paragraph e);
- e) "Europol Regulation" shall mean Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, as amended;
- f) "personal data" means any information relating to an identified or identifiable natural person, an identifiable person being a person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier or to one or more

factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

- g) "information" means non-personal data and personal data;
- h) "non-personal data", means data other than personal data, as defined in subparagraph f);
- i) "classified information" means any information (namely, knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure and which has been so designated by a security classification.

Chapter I - Scope

Article 3

Areas of crime

The cooperation as established in this Working Arrangement shall relate to the relevant areas of crime within the mandate of both Parties.

Article 4

Areas of cooperation

The cooperation may, additional to the exchange of information under the conditions laid down in this Arrangement, in accordance with the tasks of Europol as outlined in the Europol Regulation and the mandate of the ICC, in particular include without limitation the exchange of specialist knowledge, evidence gathering, general situation reports, results of strategic analysis, information on criminal investigation procedures, information on crime prevention methods, the participation in training activities as well as providing advice and support in individual criminal investigations.

Article 5

Relation to other international instruments and the respective legal frameworks of the parties

1. This Arrangement shall not prejudice or otherwise affect or impact upon the legal provisions with regard to the exchange of information foreseen by any Mutual Legal Assistance Treaty, the Agreement between the International Criminal Court and the European Union on Cooperation and Assistance of 10 April 2006, the Security arrangements for the protection of classified information exchanged between the EU

and the ICC of 15 April 2008, any other cooperation agreement or arrangement, or working law enforcement relationship for the exchange of information between the ICC and the Union or any Member State of the European Union.

2. This Arrangement and any obligations set out herein shall not entail that either Party would have to act in breach of its respective legal framework.

Chapter II – Mode of cooperation

Article 6

Point of Contact

1. The Parties will designate points for official contact, in order to maintain institutionally coordinated cooperation while affording technical experts the freedom to exchange information in accordance with the terms of this document. The ICC will designate two points of contact, one for the OTP and one in the Registry for all non-OTP related matters.
2. The contact points will also be the central point of contact in respect of review, correction and/or deletion of personal data as mentioned in Article 15.

Article 7

Consultations and closer cooperation

1. The Parties agree that to further the cooperation and enhance as well as monitor the development of the provisions of this Arrangement, regular exchanges, as appropriate, are integral. Specifically:
 - a. High level meetings between Europol and the ICC shall take place regularly to discuss issues relating to this Arrangement and the cooperation in general.
 - b. Agree to cooperate closely and consult each other on matters of mutual interest, pursuant to the provisions of this Arrangement, and in conformity with their respective applicable legal frameworks.
 - c. Representatives of the ICC may be invited to attend the meetings of the Heads of Europol National Units, at their discretion.

2. When appropriate, consultation shall be arranged at the required level between the ICC and Europol, responsible for the areas of criminality to which this Arrangement applies, to agree upon the most effective way in which to organise their particular activities.

Article 8

Liaison officers

1. The Parties may agree to enhance the cooperation as laid down in this Arrangement through the deployment of liaison officer(s) to Europol.
2. The liaison officers' legal status, tasks, rights and obligations, their number, and the costs involved, as well as the obligations of both Parties, if any, shall be governed by an exchange of letters.
3. The deploying authority shall ensure that its liaison officers have speedy and, where technically feasible, direct access to the institutional databases necessary for them to fulfil their respective tasks.

Chapter III - Information exchange

Article 9

General provisions

1. Exchange of information between the Parties shall only take place in accordance with their respective legal framework and for the purpose of, and in accordance with, the provisions of this Arrangement.
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 clearly obtained in obvious violation of human rights.
3. Requests for public access to information transmitted on the basis of the present Arrangement shall be submitted to the transmitting Party for their advice as soon as possible.

Article 10
Use of the information

1. Information if transmitted with a purpose, notwithstanding the obligation to do so as per Article 15(1), 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 shall 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 11
Onward transmission of information received

1. Onward transmission of the information provided by Europol to other international organisations or third country shall take place under the same conditions as those applying to the original transmission and shall receive the prior explicit authorisation by Europol.
2. Onward transmission of the information received by Europol shall be restricted to the authorities responsible in the Member States of the European Union for preventing and combating criminal offences and shall take place under the same conditions as those applying to the original transmission. Any other onward transmission, including to third country or international organisations shall be consented to by the ICC in accordance with its applicable legal framework.

Article 12
Assessment of the source and of the information

1. When information is supplied by the Parties on the basis of this Arrangement, the reliability 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 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 Arrangement, the accuracy 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 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. 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 between the ICC and Europol. If information has been supplied on the basis of such general agreements, this shall be noted with the information.
6. 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.

Chapter IV – Exchange of personal data

Article 13

General provision

When personal data exchanges are authorised under the respective legal frameworks of the Parties, the additional safeguards contained in the provisions of this Chapter shall apply.

Article 14

Legal basis for the transfer of personal data by Europol

1. This Arrangement does not provide for the legal basis for the transfer of personal data by Europol to the ICC.
2. The legal possibilities to exceptionally transfer personal data by Europol as foreseen in Articles 25(5) and 25(6) of the Europol Regulation are not affected or constituted by this Arrangement.

Article 15

Additional conditions for the exchange of personal data

1. Parties shall determine at the moment of transmission of the personal data or before, the purpose for which the personal data is 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, Parties shall inform of such restrictions at a later stage.
2. Parties shall determine without undue delay, no later than six months after receipt, if and to what extent the personal data which have been supplied are necessary for the purpose for which they were supplied and inform the transmitting Party thereof. The personal data shall be deleted when the data is no longer necessary for the purpose for which it was transmitted.
3. Parties shall retain personal data only as long as it is necessary and proportionate for the purpose for which it was transmitted, as determined by the receiving Party. The need for continued storage shall be reviewed no later than three years after the transmission. During the review, Parties may decide on the continued storage of data until the following review which shall take place after another period of three years if that is still necessary for the performance of its tasks. If no decision is taken on the continued storage of data, those data shall be deleted automatically.
4. Where a Party 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 the other Party, which shall correct or delete the personal data, and provide notification thereof.

5. Where a Party has reason to believe that personal data previously received by it is incorrect, inaccurate, no longer up to date or should not have been transmitted, it shall inform the other Party, which shall provide its position on the matter.

Article 16

Security of processing of personal data

The Parties shall ensure that the personal data exchanged or received is protected through technical and organisational measures. Such measures shall be in line with the concerned Party's respective legal framework and 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 personal 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 what personal data have been accessed by which member of personnel and at what time (access log),
8. 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),
9. prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control),
10. ensure that installed systems may, in the event of interruption, be restored immediately (recovery),

11. 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 V – Security of information

Article 17

Protection of information

Each Party shall, in line with their respective legal framework, ensure the following principles:

1. to protect information subject to this Arrangement, regardless of its form, until it has reached its end of life and is securely destroyed. This obligation shall not apply to information which is expressly marked or clearly recognisable as public information,
2. to ensure that it has a security organisation, policies and measures in place to comply with the requirements set out in this Arrangement,
3. to manage information security risks for all systems processing information exchanged under this Arrangement and assess these risks on a regular basis and whenever there is a significant change to any of the risk components,
4. to ensure that all persons handling information exchanged under this Arrangement are subject to a security screening,
5. to ensure that access to information is limited to authorised persons who need to have access to it in order to perform their official duties,
6. to ensure that all persons handling information exchanged under this Arrangement are appropriately trained and familiar with the relevant security rules, policies and procedures,
7. to ensure that all persons handling information exchanged under this Arrangement are made aware of their obligation to protect the information and acknowledge the obligation in writing,
8. to ensure that the premises where information exchanged under this Arrangement is stored or handled have an appropriate level of physical security in accordance with the legal framework of the receiving Party,

9. to ensure that it has a framework in place for reporting, managing and resolving security incidents and breaches.

Article 18

Arrangement on the exchange and protection of classified information

1. The security procedures for exchanging and protecting classified information exchanged between the Parties shall be set out in an arrangement on the exchange and protection of classified information agreed between the Parties.
2. Exchange of classified information is conditional upon the conclusion of the arrangement on the exchange and protection of classified information.

Chapter VI - Disputes and liability

Article 19

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 any action or omission taken on the basis of legal or factual errors in personal data 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 personal data, without prejudice to that Party's right to seek compensation under paragraph 2 below.
2. If these legal or factual errors occurred as a result of personal data erroneously communicated or of failure on the part of the other Party to comply with their obligations, the transmitting Party shall be bound to repay, on request, in accordance with its respective legal framework, any amounts paid as compensation under paragraph 1 above, unless the personal data was used by the receiving Party in breach of this Arrangement.
3. The Parties shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2 above.

Article 20
Settlement of disputes

1. All disputes, controversies or claims which may emerge in connection with the interpretation or application of the present Arrangement 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 Arrangement, 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 Arrangement temporarily, pending the application of paragraph 1. Obligations inherent upon the Parties under the Arrangement will nonetheless remain in force.

Chapter VII - Final provisions

Article 21
Secure communication line

1. The establishment, implementation and operation of a secure communication line for the purpose of exchange of information between Europol and the ICC may be agreed upon between the Parties. In such a case, it shall be regulated in a Memorandum of Understanding agreed between the Parties.
2. Without prejudice to Article 19, a Party shall be liable for damage caused to the other Party as a result of wrongful actions or omissions relating to the establishment, the implementation or the operation of the secure communication line.
3. Any dispute, controversy or claim between the Parties concerning the interpretation or application of provisions relating to the establishment, implementation and operation of a secure communication line shall be settled in accordance with Article 20.

Article 22
Expenses

The Parties shall bear their own expenses which arise in the course of implementation of the present Arrangement, unless otherwise stipulated in this Arrangement.

Article 23
Privileges and immunities

Nothing in or relating to this Arrangement constitutes a waiver, express or implied, of any of the privileges and immunities of the Parties.

Article 24
Status of personnel

The Parties acknowledge and accept that each Party is a separate and distinct entity. The staff members, elected officials, counsel, representatives, agents, consultants, contractors, affiliates, interns and visiting professionals ("personnel") of the Party acting under this Arrangement shall not be considered in any respect or for any purpose whatsoever to be personnel of the other Party.

Article 25
Amendments and supplements

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

Article 26
Entry into force and validity

This Arrangement shall enter into force on the first day following the date of signature.

Article 27
Termination of the Arrangement

1. This Arrangement 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 Party 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 Arrangement remain in force.


Done at The Hague, on 25 April 2023 in duplicate in the English language.

For **The International Criminal Court**



Judge Piotr Hofmański
President

For **Europol**



Catherine De Bolle
Executive Director