

**Working Arrangement
establishing cooperative relations
between New Zealand Police and the European Union
Agency for Law Enforcement Cooperation**

New Zealand Police (hereafter referred to as "NZP")

and

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

Aware of the urgent problems arising from international organised crime, especially terrorism, and other forms of serious crime,

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 NZP,

Considering Article 23(4) of the Europol Regulation as well as that the Europol Management Board has on 3 April 2019 approved the present Working Arrangement between NZP and Europol,

Considering that this Working Arrangement does not provide for the legal basis for the transfer of personal data by Europol to the law enforcement authorities of New Zealand and should not be considered as an international treaty under the law of New Zealand,

Whereas the law enforcement functions of NZP, include, but are not limited to maintaining public safety, law enforcement, preventing crime and providing national security and whereas the objective of Europol is to support law enforcement authorities throughout the European Union in crime fighting activities in all of its mandated areas, the sharing of information between NZP and Europol is necessary to respectively perform these functions of NZP or to achieve the objective of Europol,

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

Have decided as follows:

Article 1

Purpose

The purpose of this Working Arrangement (hereafter referred to as "Arrangement") is to establish cooperative relations between Europol and NZP in order to support the Member States of the European Union and the law enforcement authorities as mentioned in Article 7 in preventing and combating serious crime, terrorism and forms of crime which affect a common interest covered by a Union policy, as referred to in Article 3 of this Arrangement, in particular through the exchange of non personal data between Europol and NZP and the transfer of personal data to Europol by NZP.

Article 2

Definitions

For the purpose of this Arrangement:

- a) "Europol Regulation" means 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;
- b) "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, but not limited 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;
- c) "Information" as regards information being sent by Europol to NZP under this Arrangement, means non-personal data. As regards information being sent by NZP to Europol, it means non-personal data and personal data.

Chapter I - Scope

Article 3

Areas of crime

1. The cooperation as established in this Arrangement relates to all areas of crime within Europol's mandate as listed in Annex I, including related criminal offences.
2. Related criminal offences are 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 perpetrate such acts, and criminal offences committed to ensure the impunity of such acts.
3. Where Europol's mandate as listed in Annex I is changed in any way, Europol may, from the date when the change to Europol's mandate enters into effect, suggest the applicability of this Arrangement in relation to the new mandate to NZP in writing in accordance with Article 22.

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, in particular include the exchange of specialist knowledge, 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

This Arrangement does 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, any other cooperation agreement or arrangement, or working law enforcement relationship for the exchange of information between NZP and the Union or any Member State of the European Union.

Chapter II – Mode of cooperation

Article 6

National contact point

1. NZP designates a national contact point to act as the central point of contact between Europol and the NZP.
2. The exchange of information between Europol and the law enforcement authorities of New Zealand will take place between Europol and the national contact point.
3. The national contact point will also be the central point of contact in respect of review, correction and/or deletion of personal data as mentioned in Article 11 of this Arrangement.
4. NZP will ensure the possibility for the national contact point to enable information exchange on a 24-hour basis. The national contact point will ensure that information can be exchanged promptly and in accordance with NZP's policies and procedures.
5. The national contact point is designated in Annex II.

Article 7

National law enforcement authorities

1. The law enforcement authorities are law enforcement services existing in New Zealand which are responsible under national law for preventing and combating criminal offences. The law enforcement authorities may also comprise other public authorities which are responsible under national law for preventing and combating criminal offences in respect of which Europol is competent.
2. The transmission of information will be restricted to those law enforcement authorities.

Article 8

Consultations and closer cooperation

1. NZP and Europol 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 NZP and Europol will take place regularly to discuss issues relating to this Arrangement and the cooperation in general.

- b. A representative of the national contact point and Europol will consult each other regularly on policy issues and matters of common interest for the purpose of realising their objectives and coordinating their respective activities.
 - c. A representative of the national contact point may be invited to attend the meetings of the Heads of Europol National Units, at their discretion.
 2. When appropriate, consultation will be arranged at the required level between representatives of NZP 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 9 **Liaison officers**

1. NZP and Europol may agree to enhance the cooperation as laid down in this Arrangement through the secondment of liaison officer(s) of NZP. Europol may at its own discretion, equally consider the secondment of liaison officer(s) to NZP.
2. The liaison officers' tasks, rights and obligations, their number, and the costs involved, will be governed by a separate instrument.
3. The seconding authority will ensure that its liaison officers have speedy and, where technically feasible, direct access to the national databases necessary for them to fulfil their respective tasks.

Chapter III - Information exchange

Article 10 **General provisions**

1. Exchange of information between NZP and Europol can only take place in accordance with their respective national and international legal frameworks and for the purpose of and in accordance with the provisions of this Arrangement.

2. NZP and Europol will 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. NZP will only transmit personal data where it is reasonably necessary to enable Europol to perform, in accordance with its legal framework, a function that NZP perform in New Zealand.
4. This Arrangement does not provide for the legal basis for the transfer of personal data by Europol to the law enforcement authorities of New Zealand.
5. Requests for public access to information transmitted on the basis of the present Arrangement will be submitted to the transmitting party for their advice as soon as possible.
6. Where a privacy or security breach is identified with respect to information transmitted under this Arrangement, the identifying party will inform, in accordance with its legal framework, the other party promptly on becoming aware of it. Upon notification, NZP and Europol will work collaboratively to address or resolve the issue. As regards potentially informing data subjects as a result of those breaches, NZP and Europol will consult each other as soon as possible.

Article 11

Transmission of personal data to Europol

1. NZP will determine at the moment of transmission of the personal data or before, the 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, NZP will promptly inform of such restrictions.
2. Europol will 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 must be deleted when the data is not necessary for the purpose for which they were transmitted.
3. Europol will retain personal data only as long as it is necessary and proportionate for the purpose for which it was transmitted. The need for continued storage will be reviewed no later than three years after the transmission. During the review,

Europol may decide on the continued storage of data until the following review which will 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 will be deleted automatically.

4. Where NZP 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 will inform the other party, which will correct or delete the personal data, and provide notification thereof.
5. Where Europol 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 will inform the other party, which will provide its position on the matter.
6. NZP will keep detailed and auditable records of all transfers of personal data made on the basis of this Arrangement.

Article 12

Use of the information

1. Information if transmitted with a purpose, notwithstanding the obligation to do so as per Article 11(1) of this Arrangement, 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 NZP and Europol.
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 13

Onward transmission of the information received

1. Onward transmission of the information provided by Europol will be restricted to law enforcement authorities in New Zealand and will take place, at the initiative of NZP or at the request of Europol, under the same conditions as those applying to the original transmission. Any other onward transmission, including to third States and international organisations, must receive the prior explicit authorisation by Europol.

2. Onward transmission of the information received by Europol will be restricted to the authorities responsible in the Member States of the European Union for preventing and combating criminal offences and will take place under the same conditions as those applying to the original transmission. Any other onward transmission, including to third States or international organisations must be consented to by NZP.

Article 14

Assessment of the source and of the information

1. When information is supplied by NZP or Europol on the basis of this Arrangement, the reliability of the source of the information will 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 NZP or Europol on the basis of this Arrangement, the accuracy of the information will 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 NZP or Europol, 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 the other party and attempt to agree on an

amendment to the assessment. Neither NZP or Europol will change the assessment of information received without such agreement.

4. If NZP or Europol receives information without an assessment, it will 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 will be evaluated as at paragraph 1 (X) and paragraph 2 (4) above.

Article 15

Data security

NZP and Europol will ensure that the information exchanged or received is protected through technical and organisational measures. Such measures will 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 what 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 IV – Confidentiality of information

Article 16

Principles of security and confidentiality

NZP and Europol will:

1. protect and safeguard unclassified information subject to this Arrangement and the Memorandum of Understanding on Confidentiality referred to in Article 17, with the exception of information which is expressly marked or is clearly recognisable as being public information, by various measures including the obligation of discretion and confidentiality, limiting access to authorised personnel and general technical and procedural measures.
2. protect and safeguard classified information subject to this Arrangement and the Memorandum of Understanding on Confidentiality referred to in Article 17.
3. ensure that it has a security organisation, framework and measures in place. NZP and Europol mutually accept and apply the basic principles and minimum standards implemented in their respective security systems and procedures to ensure that at least an equivalent level of protection is granted for classified information subject to this Arrangement.
4. ensure that the premises where information subject to this Arrangement is kept have an appropriate level of physical security in accordance with the respective legal framework of the party.

5. ensure that access to and possession of information is restricted to those persons who by reason of their duties or obligations need to be acquainted with such information or need to handle it.
6. ensure that all persons who, in the conduct of their official duties require access or whose duties or functions may afford access to classified information will be subject to a basic security screening in accordance with the respective legal framework of the party.
7. be responsible for the choice of the appropriate classification level for information supplied to the other party.
8. ensure that classified information subject to this Arrangement keeps the classification level given to it by the originating party. The receiving party will protect and safeguard the classified information according to its legal framework for the protection of classified information holding an equivalent classification level.
9. not use or permit the use of classified information subject to this Arrangement except for the purposes and within any limitations stated by or on behalf of the originator, without the written consent of the originator.
10. not disclose or permit the disclosure of classified information subject to this Arrangement to third parties, without the prior written consent of the originator.

Article 17

Memorandum of Understanding on Confidentiality

1. The protection of the information exchanged between the NZP and Europol, will be regulated in a Memorandum of Understanding on Confidentiality agreed between NZP and Europol implementing the principles outlined in this Chapter. The Memorandum of Understanding on Confidentiality will include in particular provisions on NZP's and Europol's security organisation, education and training, standards of security screening, table of equivalence, handling of classified information and values of information assurance. Exchange of classified information is conditional upon the conclusion of the Memorandum of Understanding on Confidentiality.
2. In so far as an Agreement on Confidentiality exists between a Union Body and New Zealand, Europol will use that Agreement.

Chapter V - Disputes and liability

Article 18

Liability

1. NZP and Europol will 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 individual, 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 will be bound to repay, on request, within the financial and legal limits, and under the conditions in accordance with the other party's applicable laws and regulations, agreed between the parties in line with Article 19, any amounts paid as compensation under paragraph 1 above to the injured individual, unless the information was used by the other party in breach of this Arrangement.
3. NZP and Europol will not require each other to pay for punitive or non-compensatory damages under paragraph 2 above.
4. Each party will advise as early as possible of any potential claim for compensation that may arise pursuant to this Article. Upon such advice, NZP and Europol will work collaboratively and cooperatively to address the issues arising as necessary.

Article 19

Settlement of disputes

1. All disputes which may emerge in connection with the interpretation or application of the present Arrangement will be settled by means of consultations and negotiations between representatives of NZP and Europol.
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 effect.

Chapter VI - Final provisions

Article 20

Secure communication line

1. The establishment, implementation and operation of a secure communication line for the purpose of exchange of information between NZP and Europol may be agreed upon between NZP and Europol. In such a case, it will be regulated in a Memorandum of Understanding agreed between NZP and Europol.
2. Any dispute between the NZP and Europol concerning the interpretation or application of provisions relating to the establishment, implementation and operation of a secure communication line will be settled in accordance with Article 19 of this Arrangement.

Article 21

Expenses

NZP and Europol will bear their own expenses which arise in the course of implementation of the present Arrangement, unless otherwise stipulated in this Arrangement.

Article 22

Amendments and supplements

1. This Arrangement may be amended in writing, at any time by mutual consent between NZP and Europol. Any amendments must receive the approval of the Europol Management Board.
2. The Annexes to this Arrangement may be amended through an Exchange of Notes between NZP and Europol.
3. Without prejudice to paragraph 1, amendments to the Annexes of this Arrangement may be agreed upon without the approval of the Europol Management Board.
4. NZP and Europol will enter into consultations with respect to the amendment of this Arrangement or its Annexes at the request of either of them.

Article 23
Entry into effect and validity

This Arrangement will enter into effect on the date of the last signature.

Article 24
Termination of the Arrangement

1. This Arrangement may be terminated in writing by either NZP or Europol with three months' notice.
2. In case of termination, NZP and Europol will reach agreement on the continued use and storage of the information that has already been communicated between them. If no agreement is reached, either NZP or Europol is entitled to require that the information which it has communicated be destroyed, or returned where possible, to the transmitting party.
3. Without prejudice to paragraph 1, the legal effects of this Arrangement remain valid.

Signed in duplicate in the English language.

For **New Zealand Police**

Michael Dennis Bush, MNZM
Commissioner, New Zealand Police

Done at *Wklinga* on *17.4.19*.


For **Europol**

Catherine De Bolle
Executive Director

Done at *The Hague* on *12.4.2019*


Annex I – Areas of crime

Europol will support and strengthen action by the law enforcement authorities of the Member States and their mutual cooperation 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 listed below:

- terrorism,
- organised crime,
- drug trafficking,
- money-laundering activities,
- crime connected with nuclear and radioactive substances,
- immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder and grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- robbery and aggravated theft,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud,
- crime against the financial interests of the Union,
- insider dealing and financial market manipulation,
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of money and means of payment,
- computer crime,
- corruption,
- illicit trafficking in arms, ammunition and explosives,
- illicit trafficking in endangered animal species,
- illicit trafficking in endangered plant species and varieties,
- environmental crime, including ship source pollution,
- illicit trafficking in hormonal substances and other growth promoters,
- sexual abuse and sexual exploitation, including child abuse material and solicitation of children for sexual purposes,
- genocide, crimes against humanity and war crimes.

The forms of crime referred to in Article 3 and in this Annex will be assessed by NZP in accordance with the law of New Zealand.

Annex II – National contact point

NZP designates the National Intelligence Centre at Police National Headquarters, Wellington to act as the central point of contact between Europol and NZP.