

**Agreement
on Strategic Cooperation
between the European Centre for Disease Prevention
and Control and the European Police Office**

The European Centre for Disease Prevention and Control

and

the European Police Office (hereafter referred to as "the Parties")

Whereas

- The European Police Office (EUROPOL) and the European Centre for Disease Prevention and Control (ECDC) are both agencies of the European Union, tasked to support Member States in their activities with respect to assistance of law enforcement and public health, in particular, prevention and control of communicable disease activities, respectively;
- Both Parties from the information available to them may contribute greatly to the assessment of risk stemming from public health outbreaks or potentials thereto;
- The *Council Conclusions on strengthening Chemical, Biological, Radiological and Nuclear (CBRN) security in the EU – an EUCBRN Action Plan* adopted by Council in November 2009 highlight the need for an integrated approach and multidisciplinary cooperation preparing for the threats of the future;
- There is an acknowledged overlap between the field of law enforcement and public health, specifically in the field of biological threats to public health through terrorist or criminal activities;

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

Considering Article 22 of the Europol Council Decision, allowing for Europol to establish and maintain cooperative relations with the institutions, bodies, offices and agencies set up by, or on the basis of, the Treaty on European Union and the Treaties establishing the European Communities;

Considering that the Management Board of Europol on 19 May 2010 authorised the start of negotiations between Europol and ECDC;

Considering that the Management Board of Europol has on 29 September 2011 given Europol the authorisation to agree to the present Agreement between ECDC and Europol;

Considering that the Management Board of ECDC has on 19 September 2011 given ECDC the authorisation to agree to the present Agreement between Europol and ECDC,

Have agreed as follows:

Article 1 Definitions

For the purpose of this agreement:

- a. "ECDC Regulation" shall mean the Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control¹;
- b. "Europol Council Decision" shall mean the Council Decision of 6 April 2009 establishing the European Police Office (Europol)²;
- c. "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;
- d. "classified information" refers, for ECDC, to *EU classified information* as defined in Section 4(2)(a) of Part I of the rules on security of the European Commission³, and, for Europol, to *Europol classified information* as defined in Article 1(k) of the rules on the confidentiality of Europol information⁴.

Chapter I – Purpose and Scope

Article 2 Purpose of the cooperation

1. The purpose of the agreement is to establish and maintain cooperative relations between Europol and ECDC in order to increase their support to the Member States of the European Union and its Institutions, in their actions against threats to public health emanating from terrorist or criminal activity. This agreement does not cover the exchange of personal data. The cooperation will not extend or go beyond the Parties' respective mandates.

2. It will specifically have the purpose, by the provision and exchange of information between the Parties, and joint efforts, to:
 - a. Strengthen the preparedness and response capacities of the Member States;

¹ OJ L 142, 30.4.2004

² OJ L 121, 15.5.2009

³ Rules of security annexed to the Commission provisions on security annexed to Commission Decision of 29 November 2001 amending its internal Rules of Procedure (2001/844/EC, ECSC, Euratom), OJ L 317, 3.12.2001, p. 1.

⁴ Council Decision 2009/968/JHA of 30 November 2009, OJ L 332, 17.12.2009, p. 17.

- b. Assist in developing interagency contacts and cooperation between law enforcement and public health in the field of communicable diseases;
- c. Further improve the quality, detail and accuracy of reports issued by the respective Parties.

Article 3 Areas of cooperation

1. The areas of cooperation shall cover the tasks within Europol's mandate as provided for in Article 3 of the Europol Council Decision, and the annex attached to the Europol Council Decision. ECDC shall operate within its mandate provided for by Article 3 of the ECDC Regulation. Specifically, the areas of cooperation shall not exceed the area of threats to public health emanating from terrorist or criminal activity.
2. With these areas of cooperation, the following actions may be included, but not limited to:
 - a. Mutual assistance in risk/threat assessments and joint incident evaluation;
 - b. Joint trainings and advice on capacity building including needs assessment and training;
 - c. Mutual assistance in assessing and supporting crisis management including emergency operations;
 - d. Mutual assistance and coordination in risk communication.

Article 4 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 Agreement, regular exchanges, as appropriate, are integral. Specifically:
 - a. High level meetings between Europol and ECDC shall take place at an agreed frequency to discuss issues relating to this Agreement and the cooperation in general;
 - b. Representatives of ECDC and Europol shall consult each other at an agreed frequency on matters of common interest for the purpose of realising their objectives and coordinating their respective activities.
2. The Director of Europol and the Director of ECDC shall consult each other regularly to ensure that the provisions of the Agreement are implemented.

Chapter II - Information exchange

Article 5 General Provisions

1. Exchange of information between the Parties shall only take place for the purpose of and in accordance with the other 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.
3. Requests for public access by individuals to information transmitted on the basis of the present Agreement shall be submitted to the transmitting Party for their advice as soon as possible. The concerned information shall not be disclosed should the transmitting Party object to it.
4. The Parties shall, for the purpose of information exchange, designate contact points by means of an exchange of letters between the Director of Europol and the Director of ECDC.
5. Any information received by either Party under this agreement may only be transmitted onward to a third party with the prior consent of the transmitting party and subject to any conditions or restrictions indicated by that party. Such consent may only be given when allowed under the applicable legal framework of the transmitting party.

Article 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 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 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 Agreement, the reliability of the information shall be indicated as far as possible on the basis of the following criteria:
 - a. Information whose accuracy is not in doubt;
 - b. Information known personally to the source but not known personally to the official passing it on;
 - c. Information not known personally to the source but corroborated by other information already recorded;
 - d. 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 ECDC 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(d) above.

CHAPTER III – Confidentiality of information

Article 8

Principles of security and confidentiality

1. Each Party shall protect and safeguard unclassified information subject to this Agreement and Memorandum of Understanding referred to in Article 9, 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. In particular, Parties shall:
 - a. ensure that it has a security organisation, framework and measures in place;
 - b. ensure that the premises where information subject to this Agreement is kept have an appropriate level of physical security in accordance with the respective legal framework of the Party;
 - c. 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;

- d. ensure that any other security measures are taken, which, based on a risk assessment, are considered to be necessary so as to reduce the security risks which may jeopardize such information and its confidentiality, integrity or availability.
2. Notwithstanding Article 9 of this Agreement, each Party shall protect and safeguard classified information subject to this Agreement and the Memorandum of Understanding referred to in Article 9. The Parties 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 Agreement. In particular, Parties shall:
 - a. be responsible for the choice of the appropriate classification level for information supplied to the other Party;
 - b. ensure that classified information subject to this Agreement keeps the classification level given to it by the originating Party. The receiving Party shall protect and safeguard the classified information according to its legal framework for the protection of classified information holding an equivalent classification level;
 - c. not use or permit the use of classified information subject to this Agreement except for the purposes and within any limitations stated by or on behalf of the originator, without the written consent of the originator;
 - d. 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 shall have:
 - a need-to-know;
 - been security cleared to the relevant level, where appropriate; and
 - been briefed on their responsibilities.
 - e. ensure that for individuals who need to be security cleared, their loyalty, trustworthiness and reliability shall, for the purposes of being granted a personnel security clearance for access to classified information of the level CONFIDENTIEL UE/EU CONFIDENTIAL or above shall be determined by means of a security investigation conducted by the National Security Authority (NSA) or any other competent national authority of the EU Member State in accordance with its national laws and regulations;
 - f. not disclose or permit the disclosure of classified information subject to this Agreement to third parties, without the prior written consent of the originator.

Article 9

Memorandum of Understanding on Confidentiality and Information Assurance

1. The protection of the information exchanged between the Parties, shall be regulated in a Memorandum of Understanding on Confidentiality and Information assurance agreed between the Parties implementing the principles outlined in this Chapter. Such Memorandum shall include in particular provisions on the Parties' security organisation, education and training, standards of security screening, table of equivalence, handling of classified information and values of information assurance.

2. Exchange of classified information is conditional upon the establishment by ECDC of a regulatory framework on security in line with the Commission provisions on security⁵ as well as upon the conclusion of the Memorandum of Understanding on Confidentiality and Information Assurance as referred to in paragraph 1. Unclassified information can be exchanged prior to the adoption of such a regulatory framework by ECDC and the conclusion of such a Memorandum of Understanding.

CHAPTER IV - Disputes and Liability

Article 10 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 paragraphs 2 and 3 above.

Article 11 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 application of paragraph 1. Obligations inherent upon the Parties under the agreement will nonetheless remain in force.

⁵ Commission provisions on security annexed to Commission Decision of 29 November 2001 amending its internal Rules of Procedure (2001/844/EC, ECSC, Euratom), OJ L 317, 3.12.2001, p. 1.

Chapter VI - Final Provisions

Article 12 Secure communication line

1. The establishment, implementation and operation of a secure communication line for the purpose of exchange of information between Europol and ECDC shall be regulated in a Memorandum of Understanding agreed between the Parties.
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 10 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.
4. Any dispute 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 11.

Article 13 Expenses

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

Article 14 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 respective Management Boards.
2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either of them.

Article 15 Entry into force and validity

This Agreement shall enter into force on the day of the last signature.

Article 16
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.

Done at The Hague, the
25/10/11

For Europol



R. Wainwright
Director

Done at The Hague, the
21/10/2011

For the European Centre for Disease
Prevention and Control



M. Sprenger
Director