

CO-OPERATION AGREEMENT

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE EUROPEAN POLICE OFFICE

Preamble

The Government of Canada and the European Police Office (Europol), hereinafter referred to as the "Parties":

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

Considering that under Europol' s legal framework co-operation between Europol and Third States must be covered by a binding Agreement under international law, and considering that normally exchanges of information on law enforcement and investigative matters by Canadian law enforcement and investigative agencies are made on an informal, non-treaty basis;

Considering that the Council of the European Union has given Europol the authorisation to

enter into negotiations on a co-operation agreement with the Government of Canada on 27 March 2000¹ and that the Council of the European Union has on 14 October 2002 concluded that there are no obstacles to include the transmission of personal data between Europol and the Government of Canada in the Agreement;

Considering that the Council of the European Union has given Europol the authorisation to agree to the following provisions between the Government of Canada and Europol,

Have agreed as follows:

Article 1

Purpose

The purpose of this Agreement is to establish the co-operation between Europol and Canada in order to support the Member States of the European Union and Canada in the detection, prevention, suppression and investigation of crime and terrorism in accordance with the provisions of this Agreement.

Article 2

Areas of co-operation

1. The Parties may co-operate under this Agreement in the exchange of strategic, technical and operational information consistent with the mandates and subject to the applicable laws and legal framework governing Europol and the Canadian competent authorities as referred to in Article 4.

2. Such co-operation may include the exchange of personal data, specialist knowledge,

¹ OJ 2000/C106/01

strategic intelligence, general situation reports, information on investigative procedures, information on crime prevention methods, participation in training activities as well as providing advice and support for law enforcement activities.

3. The Parties agree to advise the other Party's Point of contact as described in Article 3 of their respective mandates or jurisdictions with respect to crime, terrorism and related security threats, including wildlife and environment protection, immigration and customs matters, as they exist or any change that may affect the areas of co-operation as set out in paragraph 1.

Article 3

Point of contact

1. The Parties designate the following points of contact to co-ordinate the application of this Agreement:

a. The Government of Canada designates the Commissioner of the Royal Canadian Mounted Police (RCMP) or his or her designate as its Point of contact.

b. Europol designates the Director of Europol or his or her designate as its Point of contact.

2. The Points of contact designated in paragraph 1 of this Article may communicate directly with one another for the purposes of this Agreement, including on developing agreement on the forms and means of communication.

3. A Party may change the designated Point of contact upon written notification thereof to the other Party.

4. A representative from the RCMP or a representative designated by the RCMP may be invited to attend the meetings of the Heads of Europol National Units.

Article 4

Competent authorities

1. Within Canada, competent authorities are Canadian authorities responsible under Canadian law for the matters set out in Articles 1 and 2, including local, provincial and federal law enforcement agencies and such other agencies as advised by the Point of contact for Canada. The Point of contact for Canada will transmit to the Point of contact for Europol information as to whether a particular authority is to be considered a competent authority under this Agreement, as required.

2. Within the European Union, competent authorities means Europol and all public bodies existing in the Member States of the European Union which are responsible under national law for the matters set out in Articles 1 and 2. The Point of contact for Europol will transmit to the Point of contact for Canada information as to whether a particular authority is to be considered a competent authority under this Agreement, as required.

Article 5

Exchange of Information

1. The exchange of information as specified by this Agreement shall only take place in accordance with the terms of this Agreement.

2. The exchange of information as specified in this Agreement shall take place between the Points of contact designated under Article 3, or, if the Points of contact agree in writing, directly between Europol and designated Canadian competent authorities. The Parties

shall ensure that exchange of information between the Points of contact may take place on a 24-hour basis.

3. A request or a response to a request under this Agreement may be made in writing, by any means capable of producing a written record, or orally with written confirmation to follow if required by the requested Party. Subject to Articles 3 (2) and 10, where feasible and under the condition that appropriate security measures are provided for a particular matter, a written request may be transmitted through fax, e-mail, or other means for expediting communications.

4. A request for information from one Party to the other shall provide a concise statement that identifies the authority making the request, identifies the authorities to whom the request should be addressed, explains the reasons for the request and sets out the nature of the assistance sought.

5. A Party may, without prior request, transmit to the other Party information that it considers relevant to the other Party within the context of this Agreement and any information so transmitted shall be subject to the applicable provisions of this Agreement. A brief statement of the reasons for forwarding the information shall be provided.

6. Europol and Canada shall, when supplying information on the basis of this Agreement, indicate, as far as possible, the source of the information and its reliability.

Article 6

Usage and dissemination of information

1. Subject to the respective legal framework and laws of the Parties, and subject to any conditions imposed by the supplying Party, in accordance with this Article, the information

exchanged pursuant to this Agreement shall only be used for the matters set out in Articles 1 and 2.

2. Subject to the respective legal framework and laws of the Parties, where information is transmitted pursuant to a request, the information may only be used for the purposes stated in the request, and where information is transmitted without a specific request, the purpose for which the information is transmitted shall be stated, and the information may only be used for this purpose. For any transmission of information conditions may be placed on its use, deletion or destruction, including possible access restrictions in general or specific terms and any such condition must be respected. Where, due to changed circumstances, the need for further conditions becomes apparent following transmission of information, the Parties shall promptly discuss available remedies.

3. Neither Party shall use any information supplied under this Agreement that is subject to the basic level of security under Article 10 (1) in any proceedings or in any way that will result in the information becoming public without first verifying the accuracy of the information with the supplying Party and seeking the supplying Party's written consent for the use of the information. Such consent shall only be given in accordance with the supplying Party's legal framework

4. Subject to Article 10, further transmission of the data by the initial recipient shall be restricted to the competent authorities described in Article 4. Transmission to these competent authorities shall be restricted by and subject to the same conditions as those applying to the initial transmission.

5. Where a receiving Party wishes to use information exchanged pursuant to this Agreement for purposes other than those stated in the request or by the transmitting Party or to transmit the information to international institutions or third States, it must have the prior written consent of the Party that supplied the information.

Article 7
Personal Data

1. For the purposes of this Agreement and in accordance with the Parties' respective legal framework and laws that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, 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.

2. In addition to the provisions of Article 6, when personal data are exchanged, the provisions of this Article shall apply.

3. Personal data may only be transmitted if the supplying Party is satisfied that the information is necessary for a purpose of this Agreement.

4. Subject to their respective mandates and laws, each Party shall comply with the following requirements related to the transmission and use of personal data:
 - a. Upon request, the Party which has received the personal data shall confirm the personal data was received, inform the supplying Party of the use made of the personal data and the results achieved there from;

 - b. The Parties shall ensure that personal data received under this Agreement are protected through technical and organisational measures from unauthorised access, unauthorised alteration,

unauthorised copying and unauthorised publication in accordance with respective legal framework and laws of each Party.

- c. The Parties shall verify the accuracy and completeness of the personal data to the degree possible.
- d. If it appears that personal data was transmitted that should not have been, then the receiving Party shall be notified without delay. The receiving Party shall destroy or return the personal data or if not legally possible, take appropriate measures to prevent use of the information by its competent authorities.
- e. If it appears that incorrect personal data was transmitted, the receiving Party shall be notified without delay, in which case the receiving Party shall take the appropriate measures to prevent erroneous reliance on the information by its competent authorities which may include supplementing or deleting the personal data, or correcting any errors.
- f. If a Party becomes aware that the personal data it has supplied to or received from the other Party is not accurate or has doubt about its reliability, it shall advise the other Party and both Parties shall take the measures they consider appropriate to prevent erroneous reliance on the information by their respective competent authorities which may include supplementing, deleting or correcting any errors.

5. Each Party shall maintain a system of database and document control that provides for the orderly disposal, at intervals to be provided for by domestic law or administrative regulation, of information that has been received.

6. Personal data received under this Agreement should not be kept longer than the receiving Party has a relevant use for the information in accordance with Article 6, if not legally required to retain it for a longer period.

7. The Parties shall keep records in an appropriate form concerning the transmission and receipt of personal data and related information as referred to in Article 5 (4) and Article 5 (5).

8. The Parties note that Europol shall only supply personal data as referred to in the first sentence of Article 6 of the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data in absolutely necessary cases and in addition to other information.

Article 8

Refusal, postponement or conditions

1. A Party that receives a request for co-operation may refuse to comply if:
 - a. The request is not submitted in conformity with the provisions of the Agreement;
 - b. Compliance with the request would be contrary to its legal framework, domestic law or authority, be inconsistent with constitutional requirements, be prejudicial to national security, or contrary to other government interests;
 - c. Compliance would entail extraordinary or excessive costs.

2. Co-operation may be postponed by the requested Party on the grounds that the immediate granting of the co-operation may interfere with an ongoing investigation or proceeding in Canada or one of the Member States of the European Union.

3. Before refusing to grant a request for co-operation or before postponing the granting of such co-operation, the requested Party shall consider whether co-operation may be granted subject to such conditions as it deems necessary. If the requesting Party accepts co-operation subject to these conditions, it shall comply with them.

4. The requested Party shall promptly inform the requesting Party of a decision not to comply in whole or in part with a request for co-operation, or to postpone execution, and shall give reasons for that decision.

Article 9

Requests for access or disclosure

1. Each Party will consult the other, as soon as possible, concerning any application or demand made under its laws for access to or disclosure of information supplied under this Agreement, including personal data that is made by a private person or agency not intended to receive the information.

2. Where the supplying Party does not consent to the release of the information, the receiving Party shall, subject to its laws governing requirements to provide access to or disclosure of information, endeavour to maintain the confidentiality of the information. Should the receiving Party become subject to a final order that requires it to release the information that the supplying Party had not consented to be released, the receiving Party shall notify the supplying Party in advance of disclosure, or, in the exceptional case where advance notice is not possible, without delay after the disclosure.

3. This Article is without prejudice to any rights an individual may have under the respective law or legal framework of the Parties to seek release of information from that Party, or other appropriate relief, such as having his information checked, corrected or deleted.

Article 10

Classification and Security of Information

1. All information exchanged under this Agreement, except information that is expressly marked or is clearly recognisable as being public information, shall be subject to a basic level of security. Such information shall be considered by Canada as information transmitted or received in confidence. Information requiring additional security measures shall be subject to a security level, which is indicated by a specific marking. Information shall be assigned such a security level only where strictly necessary and for the time necessary.

2. The security levels of the Parties and their designations shall be specified between the Points of contact and refer to the specific security packages in accordance with the legal framework of the Parties. The Parties undertake to provide equivalent protection to information marked with a security level in accordance with the table of equivalence of the security levels as agreed between the Points of contact.

Article 11

Security Procedures

1. Each Party shall be responsible for the choice of the appropriate security level in accordance with Article 10 for information supplied to the other Party.

2. In choosing the security level, each Party shall adhere to the classification of the information under its national law or applicable regulations and take into account the need for operational flexibility.
3. If either Party - on the basis of information already in its possession - comes to the conclusion that the choice of security level needs amendment, it shall inform the other Party and attempt to agree on an appropriate security level. Neither Party shall specify nor change a security level of information supplied by the other Party without the consent of that Party.
4. Each Party may at any time request an amendment of the security level related to the information it has supplied, including a possible removal of such a level. The other Party shall amend the security level in accordance with its wishes. Each Party shall, as soon as circumstances allow this, ask for amendment of the security level to a lower one or its removal.
5. Each Party may specify the time period for which the choice of security level shall apply, and any possible amendments to the security level after such period.
6. Where the security level of information is amended in accordance with this Article and the information has already been transmitted to other competent authorities, the receiving Party shall, at the request of the Point of contact of the supplying Party, inform the recipients of the change of security level.
7. If any shared information is compromised while in the possession of a receiving Party, the receiving Party will immediately notify the supplying Party. The receiving Party will endeavour to limit the damage caused by the compromise of any shared information. The receiving Party will keep the supplying Party informed of any investigation into the

compromise and will advise the supplying Party of the findings on the extent of the damage caused by the compromise.

Article 12 Consultation

1. The Points of contact designated by the Government of Canada and Europol shall consult each other regularly on policy issues and matters of common interest for the purpose of realising their objectives and co-ordinating their respective activities.

2. When appropriate, consultation shall be arranged at the required level between representatives of the authorities of the Government of Canada and Europol responsible for the areas of co-operation to which this Agreement applies, to agree upon the most effective way in which to organise their particular activities. Points of contact shall be informed of such consultations.

3. The Parties shall consult promptly, at the request of either, concerning the interpretation and the application of this Agreement.

Article 13 Exchange of expertise

1. Representatives of the Points of contact described in Article 3, or designated representatives of the authorities responsible for the areas of co-operation to which this Agreement applies may, as appropriate:

- a. Participate in seminars, training courses, and other meetings; and

- b. Facilitate visits of experts, law enforcement authorities, and administrators, in the areas of co-operation covered by this Agreement.

Article 14

Liaison Officers

If both Parties agree that it is required for a further enhancement of the co-operation as laid down in this Agreement and that it is logistically feasible to accommodate the addition of Liaison Officer(s), the Parties may agree to the assignment of one or more Liaison Officers. The Liaison Officers' functions, tasks, and status shall be the subject of consultations with a view to concluding an Administrative Liaison Arrangement based on reciprocity.

Article 15

Expenses

A requested Party shall meet the normal cost of executing the request for assistance. If it becomes apparent that the execution of the request requires or generates expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 16

Saving clause

Notwithstanding Article 6 (5), nothing in this Agreement shall create limitations or impose obligations or have any prejudicial effect with respect to the provisions of any Mutual Legal Assistance Treaty, other Treaty containing mutual assistance provisions, working law enforcement relationship, or any other agreement or arrangement, currently existing or in

the future, for the exchange of information between Canada and any other country or international organisation.

Article 17

Settlement of Disputes

1. The Points of contact shall resolve, to the extent possible, any dispute, which may arise in interpreting or applying this Agreement.

2. The Parties shall consult promptly at the request of either concerning any dispute, which has not been resolved by the Points of contact.

Article 18

Liability

1. Subject to compliance with this Article, each Party shall indemnify the other, if one Party suffers damages due to the other's failure to comply with its obligations under this Agreement, and the damaged Party requests compensation for the amounts which it is obliged to pay a third party.

2. Each Party shall give notice as early as possible to the other of any potential claim that it becomes aware of, that could give rise to a claim for compensation against the other Party pursuant to this Article.

3. Each Party that intends to make a claim against the other pursuant to this Article shall not, without prior consultation and concurrence of the other Party, admit any liability on its behalf or allege liability on behalf of the other Party, nor shall it make any offer to settle a third party claim where the Party intends to claim compensation under this Article.

4. Any Party that intends to make a claim against the other shall permit the other Party, at its own cost, to make full legal representation and participation, in the defence of the third party claim, if the other Party so requests.

Article 19

Entry into force, Amendments to and termination of the Agreement

1. This Agreement shall enter into force on signature.
2. This Agreement may be amended by mutual consent between Europol and the Government of Canada at any time. Amendments shall only come into force after completion of applicable internal procedures by both Parties and written notification thereof.
3. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either of them.
4. This Agreement may be terminated by either Party by written notification. The termination shall take effect three months from the date on which it was notified to the other Party.
5. In case of termination, Europol and the Government of Canada shall reach agreement on the return or destruction, or continued use and storage of the information that has already been communicated between them.

IN WITNESS WHEREOF the undersigned, duly authorised to that effect, have signed this Agreement.

Done at _____ on _____ in duplicate, in the English and French languages, both versions being equally authentic.

For the Government of Canada:

For Europol:
