

STRATEGIC CO-OPERATION AGREEMENT

BETWEEN

**THE EUROPEAN AGENCY FOR THE MANAGEMENT OF
OPERATIONAL COOPERATION AT THE EXTERNAL
BORDERS OF THE MEMBER STATES OF THE
EUROPEAN UNION**

AND

THE EUROPEAN POLICE OFFICE

Preamble

The European Agency for the management of the operational cooperation at the external border of the Member States of the European Union (Frontex) and the European Police Office (Europol):

considering that it is within their common interest to enhance their cooperation;

considering that the Europol Management Board has given Europol the authorisation to enter into negotiations on a cooperation agreement and to agree to the following provisions with Frontex;

considering that Article 13 of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union¹ authorises cooperation between Frontex and Europol;

considering that the Management Board of Frontex has approved the following provisions with Europol;

Have agreed as follows:

¹ OJ L 349, 25.11.2004, p. 1.

Article 1 Purpose

The purpose of this Agreement is to enhance the cooperation between Europol and Frontex, in particular through the exchange of strategic and technical information, as defined in Article 2. This Agreement does not authorise the transmission of data related to an identified individual or identifiable individuals.

Article 2 Strategic and Technical Information

1. "Strategic information" includes, but is not limited to:
 - a. enforcement actions that might be useful to suppress offences and improve the integrated border management of the Member States of the European Union;
 - b. new methods used in committing offences, in particular, those threatening the security of external borders or facilitating illegal immigration;
 - c. trends and developments in the methods used to commit offences;
 - d. observations and findings resulting from the successful application of new enforcement aids and techniques;
 - e. routes and changes in routes used by smugglers, illegal immigrants or those involved in illicit trafficking offences covered by this agreement;
 - f. prevention strategies and methods for management to select law enforcement priorities;
 - g. threat assessments, risk analysis and crime situation reports.

2. "Technical information" includes, but is not limited to:
 - a. means of strengthening administrative and enforcement structures in the fields covered by this agreement;
 - b. police working methods as well as investigative procedures and results;
 - c. methods of training the officials concerned;
 - d. criminal intelligence analytical methods;
 - e. identification of law enforcement expertise.

Article 3
Areas of criminality to which the Agreement applies

1. The co-operation as established in this Agreement shall, in line with the Parties' co-operation interest, relate to the performing of the tasks of Frontex and to relevant areas of crime within Europol's mandate at the date of entry into force of this Agreement, including related criminal offences, and in particular to traffic in human beings and illegal immigrant smuggling.
2. Related criminal offences shall be the criminal offences committed in order to procure the means for perpetrating the criminal acts mentioned in paragraph 1, criminal offences committed in order to facilitate or carry out such acts, and criminal offences to ensure the impunity of such acts.
3. Where Europol's mandate is changed to cover areas of crime in addition to those set forth in paragraph 1, Europol may, from the date when the change to Europol's mandate enters into force, submit to Frontex in writing a proposal to extend the scope of application of this agreement in relation to the new mandate. In doing so, Europol shall inform Frontex of all relevant issues related to the change of the mandate. This agreement shall apply in relation to the new mandate as of the date on which Europol receives the written acceptance by Frontex in accordance with its internal procedures.
4. For the specific forms of criminality referred to in paragraph 1 and listed in Annex 1 to this Agreement, the definitions included in that Annex shall be applicable. Whenever a change to the mandate referred to in paragraph 3 entails the acceptance of a definition of another form of crime, such a definition shall also be applicable where this form of criminality becomes part of this Agreement in accordance with paragraph 3. Europol shall inform Frontex if and when the definition of an area of criminality is amplified, amended or supplemented. The new definition shall become part of this Agreement as of the date on which Europol receives the written acceptance of the definition by Frontex. Any amendment to the document to which the definition refers shall be considered an amendment of the definition as well.

Article 4
Contacts

1. High level meetings between Europol and Frontex shall take place as often as necessary to discuss issues relating to this agreement and the co-operation in general, in particular with the aim of avoiding duplication of activities and efforts.

2. The competent units of Frontex and Europol shall consult each other regularly on policy issues and matters of common interest for the purpose of realising their objectives and coordinating their respective activities.

Article 5

Exchange of Information

1. The information exchanged under this agreement shall exclusively relate to the tasks and activities of Frontex and Europol.
2. The exchange of information as specified in this agreement shall take place in accordance with the terms of this agreement.
3. Information exchanged pursuant to this agreement shall only be used for the purposes of this agreement, as specified in Article 1.
4. Europol shall only supply information to Frontex which was collected, stored and transmitted in accordance with the relevant provisions of the Europol Convention and its implementing regulations.
5. The Party providing the information may stipulate conditions on its further use. Such conditions on the usage of information may only be eliminated with the written consent of the providing Party.
6. Information received in accordance with the present Agreement shall not be used without the consent of the providing Party for purposes other than those for which it was provided.
7. Information received in accordance with the present Agreement may not be transmitted to third parties other than Member States of the European Union without the prior consent of the providing Party.
8. Should a request to disclose information transmitted on the basis of the present Agreement be submitted to a Party, under its public access rules, by an individual, the Party which provided this information shall be consulted as soon as possible. The consulting Party shall, pursuant to its public access rules, endeavour not to disclose the concerned information should the consulted Party object to its disclosure.

Article 6
Exchange and use of expertise

Representatives of the Parties shall, as appropriate:

- a. participate in seminars, training courses, and/or other meetings organised by either of the Parties;
- b. facilitate mutual visits of experts, as well as law enforcement and other authorities' officials, in the areas of cooperation covered by this agreement;
- c. organise joint training and other activities, at different levels, for the staff of the Parties as well as for officers of the Member States and of relevant third parties.

Article 7
Confidentiality

1. All information processed by or through Europol, except information which is expressly marked or is clearly recognisable as being public information, is subject to a basic protection level within the Europol organisation as well as in the Member States of the European Union. Information which is only subject to the basic protection level does not require a specific marking of a Europol classification level, but shall be designated as Europol information.
2. The Parties shall ensure the basic protection level mentioned in paragraph 1 for all information exchanged under this Agreement, by a variety of measures, including the obligation of discretion and confidentiality, limiting access to information to authorised personnel within the Parties, and general technical and procedural measures to safeguard the security of the information.
3. Information requiring additional security measures is subject to a classification level of Frontex or Europol, which is indicated by a specific marking. Information is assigned such a classification level only where strictly necessary and for the time necessary.
4. Each Party shall ensure that information received from the other Party shall, within its organization, receive a level of protection which is equivalent to the level of protection offered by the measures applied to that information by the other Party. In order to ensure the implementation of this principle, the Parties shall establish a table of equivalence between their respective confidentiality and security standards, to be laid down in a Memorandum of Understanding, to be concluded between the Director of Europol and the Director of Frontex.

5. Both Parties shall ensure that access authorisations to and protection of protectively marked information will be complied with by all competent authorities to whom information may be transmitted in accordance with this Agreement.

Article 8 Confidentiality Procedures

1. Each Party shall be responsible for the choice of the appropriate classification level in accordance with Article 7 for information supplied to the other Party.
2. In choosing the classification level, each Party shall adhere to the classification of the information under its applicable rules and take into account the need for flexibility and the requirement that classification of law enforcement information should be the exception and that, if such information has to be classified, the lowest possible level should be assigned.
3. If either Party - on the basis of information already in its possession - comes to the conclusion that the choice of classification level needs amendment, it shall inform the other Party and attempt to agree on an appropriate classification level. Neither Party shall specify or change a classification 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 classification level related to the information it has supplied, including a possible removal of such a level. The other Party shall amend the classification level in accordance with such requests. Each Party shall, as soon as circumstances allow this, ask for amendment of the classification level to a lower one or its removal.
5. Each Party may specify the time period for which the choice of classification level shall apply, and any possible amendments to the classification level after such period.
6. Where information of which the classification level is amended in accordance with this Article has already been supplied to one or more of the Member States of the European Union or third parties, each Party shall, at the request of the other Party, inform the recipients of the change of classification level.

7. Until the Memorandum of Understanding referred to in Article 7, paragraph 4 above has been signed, the exchange of classified information between Europol and Frontex for the purpose of this agreement is limited to the classification level Europol RESTRICTED. Europol information protected at the level Europol RESTRICTED will be protected by Frontex as EU classified information (EUCI) at the level RESTREINT UE in accordance with the security regulations of the Council of the European Union. EUCI sent by Frontex at the level RESTREINT UE will be protected by Europol as Europol information at the level Europol RESTRICTED.

Article 9 Expenses

The Parties shall bear their own expenses which arise in the course of implementation of the present Agreement, unless otherwise agreed on a case-by-case basis.

Article 10 Liability

1. If damage is caused to one Party or to an individual as a result of unauthorised or incorrect information processing under this Agreement by the other Party, that Party shall be liable for such damage.
2. In cases where either of the Parties is obliged to repay to Member States of the European Union or another third State or third body amounts awarded as compensation for damages to an injured party, and the damages are due to the failure of the other Party to comply with its obligations under this Agreement, that Party shall be bound to repay, on request, the amounts paid to a Member State or another third State or third body to make up for the amounts it paid in compensation.
3. In case no agreement can be found on the determination and compensation of damage between the Parties under this Article, the issue shall be settled in accordance with the procedure laid down in Article 11.

Article 11 Settlement of disputes

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.

Article 12
Termination of the Agreement

This Agreement may be terminated in writing by either of the Parties with six months' notice.

Article 13
Amendments and Supplements

1. This Agreement may be amended at any time by mutual consent between the Parties. All the amendments and supplements must be in writing. Europol and Frontex may only give their consent to amendments after the approval of such amendments by their respective Management Boards.
2. The Annexes to this Agreement may be amended through an Exchange of Notes between the Parties.
3. The Parties shall enter into consultations with respect to the amendment of this Agreement or its Annexes at the request of either of them.

Article 14
Entry into force

This Agreement shall enter into force on the first day following its signature.

Done at Warsaw, this twenty-eighth day of March two thousand and eight, in duplicate, in the English language.

For Frontex

For Europol

Ilkka Laitinen
Executive Director

Max-Peter Ratzel
Director

ANNEX 1

DEFINITION OF THE FORMS OF CRIME MENTIONED IN ARTICLE 3 OF THE STRATEGIC COOPERATION AGREEMENT BETWEEN THE EUROPEAN AGENCY FOR THE MANAGEMENT OF THE OPERATIONAL COOPERATION AT THE EXTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION (FRONTEX) AND EUROPOL

With regard to the forms of crime referred to in Article 3 (4) of this Agreement, Europol shall, for the purposes of this Agreement, use the following definitions:

- "unlawful drug trafficking" means the criminal offences listed in Article 3 (1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention;
- "crime connected with nuclear and radioactive substances" means the criminal offences listed in Article 7(1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear and/or radioactive materials defined in Article 197 of the Euratom Treaty and Directive 80/836 Euratom of 15 July 1980;
- "illegal immigrant smuggling" means activities intended deliberately to facilitate, for financial gain, the entry into, residence or employment in the territory of the Member States of the European Union, contrary to the rules and conditions applicable in the Member States;
- "traffic in human beings" means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue, especially with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. These forms of exploitation also include the production, sale or distribution of child-pornography material;
- "motor vehicle crime" means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles, and the spare parts for such vehicles, and the receiving and concealing of such objects;
- "forgery of money and means of payment" means the acts defined in Article 3 of the Geneva Convention of 20 April 1929 on the Suppression of Counterfeiting Currency, which applies to both cash and other means of payments;
- "illegal money-laundering activities" means the criminal offences listed in Article 6 (1) to (3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed at Strasbourg on 8 November 1990.