



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 June 2010**

**10358/10**

**EUROPOL 23**

**"I/A" ITEM NOTE**

---

From: General Secretariat  
To: COREPER/Council

---

No prev. doc.: 12973/09 EUROPOL 64 JAIEX 61 AMLAT 84

---

Subject: Draft operational cooperation agreement between Colombia and the European Police Office (Europol)

---

1. A strategic cooperation agreement between Europol and the Republic of Colombia was signed on 9 February 2004.
2. At its meeting on 23 October 2009, the Council, after having taken note of the data protection report and the opinion of the Joint Supervisory Body (JSB) on Colombia as set out in doc. 12088/09, decided, by unanimity, that no obstacles existed for the Europol Director to start the negotiations with Colombia with a view to concluding an operational cooperation agreement.

3. Article 23(2) of the Council Decision establishing the European Police Office<sup>1</sup> reads as follows;
- (2). *Europol shall conclude agreements with the entities referred to in paragraph 1 which have been put on the list referred to in Article 26(1)(a). Such agreements may concern the exchange of operational, strategic or technical information, including personal data and classified information, if transmitted via a designated contact point identified by the agreement referred to in paragraph 6(b) of this Article. Such agreements may be concluded only after the approval by the Council, which shall previously have consulted the Management Board and, as far as it concerns the exchange of personal data, obtained the opinion of the Joint Supervisory Body via the Management Board.*
4. The Europol Management Board endorsed the draft agreement on operational and strategic cooperation with Colombia at its meeting on 19-20 May 2010. The draft agreement was submitted on 21 May 2010 to the Council together with the opinion of the JSB, as set out in annex II to the annex.
5. The JSB concluded that "from a data protection perspective no obstacles exist for the Council to allow Europol to conclude the agreement with Colombia".
6. On this basis COREPER is requested to invite the Council to approve, on the basis of the report submitted to it by the Europol Management Board and the opinion of the JSB that the Director of Europol concludes the operational cooperation agreement with Colombia.

---

<sup>1</sup> OJ L 121, 15.5.2009, p. 37.



The Hague, 21 May 2010

MBS 080.2010

**Management Board**

Mr P. de Boissieu  
Secretary-General  
Council of the European Union

**Transmission of the draft operational cooperation agreement between Colombia and the  
European Police Office**

Dear Secretary-General,

In accordance with Article 23(2) of the Europol Council Decision, I am pleased to transmit to the Council, for approval, the draft agreement on operational and strategic cooperation between Colombia and the European Police Office (Europol), as endorsed by the Management Board at its 19-20 May 2010 meeting.

Please find also attached the relevant opinion of the Joint Supervisory Body.

I wish to thank you for your attention and remain at the disposal of the Council for any information you may require.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'FJA', enclosed in a blue oval.

Francisco José Aranda  
Chairperson of the Management Board

*Attachments:*

- *Agreement on operational and strategic cooperation between Colombia and the European Police Office (3710-638r1).*
- *Opinion of the Joint Supervisory Body of Europol in respect of the draft agreement (JSB 10/20).*



The Hague, 22 April 2010

File no. 3710-638r1

**Draft**

**Agreement on Operational and Strategic Co-operation  
between Colombia and the European Police Office**

**The Republic of Colombia**

**and**

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

Aware of the urgent problems arising from international organised crime, especially terrorism, and other forms of serious crime as listed in the Annex 2 of this Agreement,

Considering that the Council of the European Union has given the European Police Office (hereafter referred to as "Europol") the authorisation to enter into negotiations on a co-operation agreement with the Republic of Colombia on 23 October 2009),

Considering that the Council of the European Union has on 23 October 2009 concluded that there are no obstacles to include the transmission of personal data between Europol and the Republic of Colombia in the present Agreement,

Considering that Europol and the Republic of Colombia have signed a strategic cooperation agreement on 9 February 2004,

Considering that the Council of the European Union has on (date) given Europol the authorisation to agree to the present Agreement between the Republic of Colombia and Europol,

Have agreed as follows:

## **Article 1**

### **Definitions**

For the purpose of this Agreement:

- a) “Europol Council Decision” means the Council Decision of 06 April 2009 establishing the European Police Office (Europol);
- b) ”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;
- c) ”processing of personal data” (hereafter referred to as ”processing”) means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- d) ”information” means personal and non-personal data.

## **Article 2**

### **Purpose of the Agreement**

The purpose of this Agreement is to regulate the co-operation between Europol and the Republic of Colombia (hereafter referred to as “Colombia”) in order to support the Member States of the European Union and Colombia in the combating of serious forms of international crime in the areas mentioned in Article 3 of this Agreement, in particular through the exchange of information and regular contacts between Europol and Colombia at all appropriate levels.

### Article 3

#### Areas of criminality to which the Agreement applies

1. The co-operation as established in this Agreement shall, in line with the Contracting Parties' co-operation interest, relate to all areas of crime within Europol's mandate at the date of entry into force of this Agreement, including related criminal offences.
2. Related criminal offences shall be the criminal offences committed in order to procure the means for perpetrating the criminal acts referred to 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 in any way, Europol may, from the date when the change to Europol's mandate enters into force, suggest the applicability of this Agreement in relation to the new mandate to Colombia in writing. In so doing, Europol shall inform Colombia of all relevant issues related to the change of the mandate. The Agreement shall extend to the new mandate as of the date on which Europol receives the written acceptance of the proposal by Colombia.
4. For the specific forms of criminality, listed in Annex 2 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 Colombia if and when the definition of an area of criminality is amplified, amended or supplemented. The new definition of an area of criminality shall become part of this Agreement as of the date on which Europol receives the written acceptance of the definition by Colombia. Any amendment to the instrument to which the definition refers shall be considered an amendment of the definition as well.

**Article 4**  
**Areas of co-operation**

The co-operation may - in addition to the exchange of information related to specific investigations - involve all other tasks of Europol mentioned in the Europol Council Decision, in particular the exchange of specialist knowledge, general situation reports, results of strategic analysis, information on criminal investigation procedures, information on crime prevention methods, participation in training activities as well as providing advice and support in individual criminal investigations among others.

**Article 5**  
**National contact point**

1. Colombia designates the Colombian National Police to act as the national contact point between Europol and other competent authorities of Colombia.
2. High level meetings between Europol and the Colombian National Police shall take place regularly to discuss issues relating to this Agreement and the co-operation in general.
3. The point of contact designated by Colombia 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.
4. A representative of the Colombian National Police may be invited to attend the meetings of the Heads of Europol National Units.

**Article 6**  
**Competent authorities**

1. For the purpose of this Agreement, the law enforcement authorities in Colombia responsible under national law for preventing and combating the criminal offences referred to in Article 3 (hereafter referred to as "competent authorities") are listed in Annex 3 to this Agreement. Colombia shall notify Europol of any changes to this list within three months after such changes come into effect.
2. Colombia shall, through the Colombian National Police, supply Europol, on its request, with all information concerning the internal organisation, tasks and arrangements for the protection of personal data of the competent authorities mentioned in paragraph 1, in accordance with Colombian Constitution and law.
3. When appropriate, consultation shall be arranged at the required level between representatives of the competent authorities of Colombia and Europol responsible for the areas of criminality to which this agreement applies, to agree upon the most effective way in which to organise their particular activities.

**Article 7**  
**General provisions concerning the exchange of information**

1. Exchange of information between the Contracting Parties shall only take place for the purpose of and in accordance with the provisions of this Agreement.

2. The exchange of information as specified in this Agreement shall take place between Europol and the Colombian National Police and, as they consider appropriate, may include direct exchanges of information with the competent authorities identified pursuant to Article 6. The Contracting Parties shall ensure that exchange of information may take place on a 24-hour basis. The Colombian National Police shall ensure that information can be exchanged without delay with the competent authorities as mentioned in Article 6 (1).
3. Europol shall only supply information to Colombia which was collected, stored and transmitted in accordance with the relevant provisions of the Europol Council Decision and its implementing decisions. In this context Europol will in particular be bound by Article 20 (4) of the Council Decision adopting the implementing rules governing Europol's relations with partners, including the exchange of personal and classified information.
4. Colombia shall only supply information to Europol that was collected, stored and transmitted in accordance with its national legislation.
5. Each individual shall have the right to have access to information related to them processed under this agreement, or to have such information checked, corrected or deleted. In cases where this right is exercised, the transmitting Contracting Party will be consulted before a final decision on the request is taken.
6. Should a request to disclose information transmitted on the basis of the present Agreement be submitted to a Contracting Party by an individual, the Contracting Party which provided this information shall be consulted as soon as possible. The concerned information shall not be disclosed should the Contracting Party which supplied it object.
7. No personal data shall be supplied where an adequate level of data protection is no longer guaranteed.
8. The Inspector General of Colombia (Procurador General) will supervise the application of the Colombia Data Protection legislation.

**Article 8**  
**Supply of information by Colombia**

1. Colombia shall notify Europol, at the moment of supply of information or before, of the purpose for which the information is supplied and of 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, Colombia shall inform Europol of such restrictions at a later stage.
2. After receipt, Europol shall determine without undue delay, but in any case within six months of receipt, if and to what extent personal data, which have been supplied, may be included in Europol's processing systems, in accordance with the purpose for which they were supplied by Colombia. Europol shall notify Colombia as soon as possible after it has been decided that personal data will not be included. Personal data which have been transmitted shall be deleted, destroyed or returned, if such data are not, or no longer, necessary for Europol's tasks or if no decision has been taken on their inclusion in a Europol data file within six months after receipt.
3. Where information is transmitted by Colombia to Europol, including at the request of Europol, the information may only be used for the purposes for which it was communicated or for which the request was made.
4. Europol shall be responsible for ensuring that the personal data as mentioned in paragraph 2, until they have been included in a Europol processing systems, may only be accessed by a Europol official duly authorised for the purpose of determining whether or not the personal data may be included in a Europol processing systems.

5. If Europol, after appraisal, has reason to assume that information supplied is not accurate or no longer up to date, it shall inform Colombia thereof. Colombia shall verify the information and inform Europol on the outcome of such verification, following which Europol will take appropriate action in accordance with Article 11.
6. Onward transmission of the information by Europol shall be restricted to the authorities responsible in the Member States of European Union for the areas of criminality to which this Agreement applies and shall take place under the same conditions as those applying to the original transmission. The data shall not be communicated by Europol to third States or bodies, except with the prior consent of Colombia.
7. When data are supplied on Europol's request, the request for the data must specify indications as to the purpose of and the reason for the request. In the absence of such indications, the data shall not be transmitted.
8. Europol shall ensure that the personal data received from Colombia are protected through technical and organisational measures in line with Article 35 of the Europol Council Decision.
9. Europol shall hold data received from Colombia in processing systems only for as long as is necessary for the performance of its tasks. The need for continued storage shall be reviewed no later than three years after the input. During the review, Europol 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.

## Article 9

### Supply of personal data by Europol

1. Where personal data are transmitted at the request of Colombia, the personal data may only be used for the purposes for which the request has been made. Where personal data are transmitted without a specific request, at the moment of transmission of the data or before, the purpose for which the data were transmitted shall be indicated, 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, Europol shall inform Colombia of such restrictions at a later stage.
2. Colombia shall comply with the following conditions for all transmissions of personal data by Europol to Colombia:
  - 1) after receipt, Colombia shall determine without undue delay, whenever possible within six months of receipt if and to what extent the data which have been supplied are necessary for the purpose for which they were supplied;
  - 2) the data shall not be communicated by Colombia to third States or bodies, except with the prior consent of Europol;
  - 3) onward transmission of the data by the initial recipient shall be restricted to the competent authorities mentioned in Article 6 and shall take place under the same conditions as those applying to the original transmission;
  - 4) the supply must be necessary in individual cases for the purpose of preventing or combating the criminal offences referred to in Article 3 (1);
  - 5) any conditions on the use of the data specified by Europol must be respected;
  - 6) when data are supplied on request, the request for the data must specify indications as to the purpose of and the reason for the request. In the absence of such indications, the data shall not be transmitted;
  - 7) the data may be used only for the purpose for which they were communicated;

- 8) the data shall be corrected and deleted by Colombia if it emerges that they are incorrect, inaccurate, no longer up to date or should not have been transmitted;
  - 9) the data shall be deleted by Colombia when they are no longer necessary for the purpose for which they were transmitted;
  - 10) when Europol informs Colombia that it has deleted information transmitted to Colombia, Colombia shall delete the information accordingly. Notwithstanding article 9 (7), the Colombian National Police may decide not to delete the information if it concludes, based on information in its files that is more extensive than that possessed by Europol, that a further need to process that information exists. The Colombian National Police shall inform Europol of the reasons for continued storage of such information.
3. Colombia shall ensure that the personal data received from Europol are protected through technical and organisational measures. Such measures 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;
  - 2) prevent the unauthorised reading, copying, modification or erasure of data media;
  - 3) prevent the unauthorised input of personal data and the unauthorised inspection, modification or deletion of stored personal data;
  - 4) prevent the use of automated data processing systems by unauthorised persons using data communication equipment;
  - 5) ensure that persons authorised to use an automated data processing system only have access to the personal data covered by their access authorisation;
  - 6) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment;
  - 7) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data or processing systems and when and by whom the personal data were input;

- 8) prevent unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media;
  - 9) ensure that installed systems may, in case of interruption, be immediately restored;
  - 10) ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported and that stored personal data cannot be corrupted by means of a malfunctioning of the system.
4. Personal data revealing racial origin, political opinions or religious or other beliefs, or concerning health and sexual life 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 shall only be supplied in absolutely necessary cases and in addition to other information.
  5. Where Europol notes that the transmitted personal data are inaccurate, no longer up to date, or should not have been transmitted, it shall inform the Colombian National Police thereof forthwith. Europol shall also request the Colombian National Police forthwith to confirm to Europol that the data will be corrected or deleted.
  6. Europol shall keep a record of all communications of personal data under this Article and of the grounds for such communications.
  7. Notwithstanding Article 9(2) subparagraph 9, storage of personal data transmitted from Europol may not exceed a total of three years. Each time limit shall begin to run afresh on the date on which an event leading to the storage of that data occurs. If through the application of this paragraph the total storage period of personal data transmitted from Europol exceeds three years, the need for continued storage shall be reviewed annually and the review documented.

## Article 10

### Assessment of the source and of the information

When information is supplied by the Contracting 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.

When information is supplied by the Contracting 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:

- (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 Contracting Parties - on the basis of information already in its possession - comes to the conclusion that the assessment of information supplied by the other Contracting Party needs correction, it shall inform the other Contracting Party and attempt to agree on an amendment to the assessment. Neither of the Contracting Parties shall change the assessment of information received without such agreement.

4. If a Contracting Party receives information without an assessment, it shall attempt as far as possible and in agreement with the transmitting Contracting Party to assess the reliability of the source or the information on the basis of information already in its possession.
5. The Contracting 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 Colombia and Europol. Such general agreements have to be approved by each of the Contracting Parties in accordance with their respective internal procedures. 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.

#### **Article 11**

##### **Correction and deletion of information supplied by Colombia**

1. The Colombian National Police shall inform Europol when information transmitted to Europol is corrected or deleted. The Colombian National Police shall also inform Europol as far as possible when it has reason to assume that the information supplied is not accurate or no longer up to date.
2. When the Colombian National Police informs Europol that it has corrected information transmitted to Europol, Europol shall correct the information accordingly.

3. When the Colombian National Police informs Europol that it has deleted information transmitted to Europol, Europol shall delete the information accordingly. Europol may decide not to delete the information if it concludes, based on information in its files that is more extensive than that possessed by Colombia, that a further need to process that information exists. Europol shall inform the Colombian National Police of the continued storage of such information.
4. If Europol has reason to assume that information supplied is not accurate or no longer up to date, it shall inform the Colombian National Police. The Colombian National Police shall verify the information and inform Europol on the outcome of such verification. In case information is corrected or deleted by Europol, Europol shall inform the Colombian National Police of the correction or deletion.

## **Article 12**

### **Association to Analysis Groups**

Colombia may be invited by Europol to be associated to the activities of analysis groups set up on the basis of Article 14(8) of the Europol Council Decision.

## **Article 13**

### **Confidentiality of information**

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 Contracting Parties shall ensure the basic protection level mentioned in paragraph 1 for all information, with the exception of public information, exchanged under this Agreement, by all necessary measures, including the obligation of discretion and confidentiality, limiting access to information to authorised personnel, protection of personal data 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 Colombia or of Europol, which is indicated by a specific marking. The exchange of classified information between the Contracting Parties shall take place in accordance with Annex I. The level of classified information to be exchanged is determined by the corresponding classification levels as outlined by the Table of Equivalence in Article 7 (3) of Annex I.

#### **Article 14**

##### **Liaison officers representing Colombia at Europol**

1. The Contracting Parties agree to enhance the co-operation as laid down in this Agreement through the stationing of an agreed number of liaison officer(s) of the Colombian National Police representing Colombia at Europol. The liaison officers' tasks, rights and obligations towards Europol as well as details regarding their stationing and the costs involved are laid down in Annex 4.
2. Europol shall arrange for all necessary facilities, such as office space and telecommunications equipment to be provided to such liaison officers within the premises of Europol, at the cost of Europol. The costs of telecommunication shall however be borne by Colombia.
3. The archives of the liaison officer shall be inviolable from any interference by Europol officials. These archives shall include all records, correspondence, documents, manuscripts, computer records, photographs, films and recordings belonging to or held by the liaison officer.

4. Colombia shall ensure that its liaison officers have speedy and, where technically feasible, direct access to the national databases necessary for them to fulfil their task while stationed at Europol.

## **Article 15**

### **Liability**

1. Colombia shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in information exchanged with Europol. Colombia shall not plead that Europol had transmitted inaccurate information in order to avoid its liability under its national legislation vis-à-vis an injured party.
2. If these legal or factual errors occurred as a result of information erroneously communicated or of failure on the part of Europol or one of the Member States of the European Union or another third party to comply with their obligations, Europol shall be bound to repay, on request, the amounts paid as compensations under paragraph 1 above, unless the information was used in breach of this Agreement.
3. In cases where Europol is obliged to repay to Member States of the European Union or another third party amounts awarded as compensation for damages to an injured party, and the damages are due to Colombia's failure to comply with its obligations under this Agreement, Colombia, shall be bound to repay, on request, the amounts which Europol paid to a Member State or to another third party to make up for the amounts it paid in compensation. Colombia's failure to comply with its obligations shall be the decision of an arbitrator in accordance with article 18 of this agreement.
4. The Contracting Parties shall not require each other to pay compensation for damages under paragraphs 2 and 3 above to the extent that the compensation for damages was enforced as punitive or other non-compensatory damages.

**Article 16**  
**Media Arrangements**

Neither Party will comment publicly on the role, actions or conduct of the other Party in any investigation or matter involving information exchanged under this Agreement without prior consultation

**Article 17**  
**Expenses**

The Contracting 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 18**  
**Settlement of Disputes**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement, or any question affecting the relationship between the Contracting Parties which is not settled amicably, shall be referred for final decision to a tribunal of three arbitrators, at the request of either Contracting Party. Each Contracting Party shall appoint one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.
2. If one of the Contracting Parties fails to appoint an arbitrator within two months following a request from the other Contracting Party to make such an appointment, the other Contracting Party may request the President of the International Court of Justice, or in his absence the Vice-President, to make such an appointment.
3. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either Contracting Party may request the President of the International Court of Justice, or in his absence the Vice-President, to make such an appointment.

4. Unless the Contracting Parties agree otherwise, the tribunal shall determine its own procedure. The language of the tribunal shall be one of the languages of this Agreement.
5. The tribunal shall reach its decision by a majority of votes. In case of equality of votes the Chairman shall have a casting vote. The decision shall be final and binding on the Contracting Parties to the dispute.
6. Each Contracting Party reserves the right to suspend its obligations under this Agreement where the procedure laid down in this Article is applied or might be applied in accordance with paragraph 1, or in any other case where a Contracting Party is of the opinion that the obligations incumbent on the other Contracting Party under this Agreement has been breached.

## **Article 19**

### **Saving Clause**

1. The exchange of information under this Agreement does not cover mutual legal assistance in criminal matters. Consequently, nothing in this Agreement shall prejudice or otherwise affect or impact upon the general right or obligation with regard to the exchange of information foreseen by any Mutual Legal Assistance Treaty, working law enforcement relationship, or any other agreement or arrangement for the exchange of information between Colombia and any Member State of the European Union.<sup>1</sup>
2. The provisions regarding the processing of information as mentioned in this Agreement, however, shall be respected by the Contracting Parties with regard to all information exchanged under this Agreement.

---

<sup>1</sup> Article amended to clarify that mutual legal assistance in criminal matters is not affected by this model Agreement.

**Article 20**  
**Amendments and Supplements**

1. This Agreement may be amended at any time by mutual consent between the Contracting Parties. All the amendments and supplements must be in writing. Europol may only give its consent to amendments after the approval of such amendments by the Council of the European Union.
2. The Table of Equivalence in Article 7 (3) of Annex I and the Annexes 2, 3 and 4 to this Agreement may be amended through an Exchange of Notes between the Contracting Parties.
3. The Contracting Parties shall enter into consultations with respect to the amendment of this Agreement or its Annexes at the request of either of them.

**Article 21**  
**Entry into force and validity**

This Agreement shall enter into force on the date on which Colombia notifies Europol in writing through diplomatic channels that it has ratified this Agreement.

**Article 22**  
**Termination of the Strategic Cooperation Agreement**

The Strategic Cooperation Agreement signed between Europol and Colombia on 9 February 2004 will be terminated immediately after the entry into force of this Agreement. The legal effects of the Strategic cooperation agreement shall remain in force.

**Article 23**  
**Termination of the Agreement**

1. This Agreement may be terminated in writing by either of the Contracting Parties with three months' notice.
  
2. In case of termination, the Contracting 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 Contracting Parties is entitled to require that the information which it has communicated be destroyed or returned to the transmitting Party.

Done at \_\_\_\_\_, this \_\_\_\_\_ in duplicate in the Spanish and English languages, each text being equally authentic.

For Colombia

For Europol

## ANNEX 1

### TO THE AGREEMENT ON OPERATIONAL AND STRATEGIC CO-OPERATION BETWEEN COLOMBIA AND THE EUROPEAN POLICE OFFICE

#### Exchange of classified information

##### Article 1

##### Definitions

For the purpose of this Annex:

- a) “information” means knowledge that may be communicated in any form and which can include personal and/or non-personal data;
- b) “classified information” means any information or material determined to require protection against unauthorised disclosure, which has been so designated by a classification marking;
- c) “confidentiality” means the level of protection attached to information by security measures;
- d) “classification level” means a security marking assigned to a document indicating the security measures that need to be applied to the information;
- e) “security package” means a specified combination of security measures to be applied to information subject to a security level;
- f) “need to know principle” means that information may only be distributed or made accessible to persons who need to be acquainted with such documents in the course of their duties;
- g) “secure communication links” means communication links for which special measures are implemented to protect the confidentiality, integrity and availability of the transmission in order to prevent detection and interception of information and data (e.g. via cryptographic methods);

- h) “Europol Restreint UE/ EU Restricted” means the classification level applicable to information and material the unauthorised disclosure of which could be disadvantageous to the interests of Europol or of one or more Member States;
- i) “Europol Confidentiel UE/ EU Confidential” means the classification level applicable to information and material the unauthorised disclosure of which could harm the essential interests of Europol or of one or more Member States;
- j) “Europol Secret UE/ EU Secret” means the classification level applicable to information and material the unauthorised disclosure of which could seriously harm the essential interests of Europol or of one or more Member States;
- k) “Europol Très Secret UE/ EU Top Secret” means the classification level applicable to information and material the unauthorised disclosure of which could cause exceptionally grave prejudice to the essential interests of Europol or of one or more Member States.

## **Article 2**

### **Purpose**

Each Contracting Party shall:

- 1) protect and safeguard classified information subject to this Agreement;
- 2) ensure that classified information subject to this Agreement keeps the security classification given to it by the originating Party. The receiving Party shall protect and safeguard the classified information according to the provisions set out in the security packages for the respective classification levels as agreed between the Contracting Parties;
- 3) not use or permit the use of such 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;
- 4) not disclose or permit the disclosure of such information subject to this Agreement to third parties, without the written consent of the originator.

**Article 3**  
**Protective measures**

Each of the Contracting Parties shall have a security organisation and security programmes, based upon such basic principles and minimum standards of security which shall be implemented in the security systems of the Contracting Parties, to ensure that at least an equivalent level of protection is applied to classified information subject to this Agreement. The basic principles and minimum standards of security are set out in Articles 4 to 15 of this Annex.

**Article 4**  
**Need to know principle**

Access to and possession of information shall be restricted within the Europol organisation and within the competent authorities of Colombia to those persons who by reason of their duties or obligations, need to be acquainted with such information or need to handle it.

**Article 5**  
**Security clearance and authorisation for access**

1. In addition to the need to know principle, the Contracting Parties shall 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 subject to this Agreement are appropriately security cleared and authorised before they are granted access to such information.
2. The security clearance procedures shall be designed to determine whether an individual can, taking into account his or her loyalty, trustworthiness and reliability, have access to classified information.

3. Before being given access to classified information, all individuals who require access to classified information must be briefed on the security procedures specific for the handling of classified information. Those individuals accessing classified information must be made aware that any breach of the security regulations will result in disciplinary action and/or possible further legal action in accordance with their respective security regulations or provisions.
4. Colombia shall ensure that access authorisations to and protection of classified information will be complied with by all competent authorities to whom information may be transmitted in accordance with this Agreement.
5. The granting of a personnel security clearance should not be considered as the final step in the personnel security process: an individual's continuing eligibility for access to classified information must also be ensured.

## **Article 6**

### **Choice of classification level**

1. Each Contracting Party shall be responsible for the choice of the appropriate classification level for information supplied to the other Contracting Party taking 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.
2. Each Contracting Party shall mark the information with its own classification level and the corresponding equivalent as mentioned in the table of equivalence.
3. If either Contracting Party – on the basis of information already in its possession – concludes that the choice of classification level needs amendment, it shall inform the other Contracting Party and attempt to agree on an appropriate classification level. Neither Contracting Party shall specify or change a classification level of information supplied by the other Contracting Party without the written consent of that Contracting Party.

4. Each Contracting 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 Contracting Party shall amend the classification level in accordance with such requests. Each Contracting Party shall, as soon as circumstances allow, request that the classification level be downgraded or removed altogether.
5. Each Contracting 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, all recipients shall be informed of the change of classification level.
7. The translation of protectively marked documents shall be subject to the same protection as the originals.

## **Article 7**

### **Table of equivalence**

1. The classification levels of the Contracting Parties and their designations are specified in the table of equivalence below.
2. The classification levels relate to specific security packages as outlined in Articles 9 to 16, which offer different levels of protection in addition to the obligation of discretion and confidentiality, limiting access to information to authorised personnel, protection of personal data and general technical and procedural measures to safeguard the security of the information. The levels of protection depend on the content of the information and take account of the detrimental effect non-authorised access, dissemination or use of the information might have on the interests of the Contracting Parties.

3. The Contracting Parties determine that the following classification levels under the national legislation of Colombia/ under the regulations of Colombia and classification levels used within Europol are equivalent and will provide equivalent protection to the information marked with such a classification level:

<b>For Europol</b>	<b>For Colombia</b>
Europol RESTREINT UE/EU RESTRICTED	Colombia RESTRINGIDO
Europol CONFIDENTIEL UE/EU CONFIDENTIAL	Colombia CONFIDENCIAL <sup>1</sup> Colombia RESERVADO
Europol SECRET UE/EU SECRET	Colombia SECRETO
Europol TRES SECRET UE/EU TOP SECRET	Colombia ULTRASECRETO

### **Article 8**

#### **Registration**

1. In both Contracting Parties a registry shall record information classified “Europol Confidential UE/ EU Confidential” and above in a special register with columns for the date received, particulars of the document (date, reference and copy number), its classification, title, the recipient’s name, the date of return of the receipt and the date the document is returned to the originator or is destroyed.
2. These documents shall bear a file number. In the case of documents classified “Europol Secret UE/ EU Secret” and “Europol Très Secret UE/ EU Top Secret” or their equivalents in Colombia, a copy number will be added.

---

<sup>1</sup> Indicates the equivalent to Europol information classified at the level Europol CONFIDENTIEL UE/EU CONFIDENTIAL.

**Article 9**  
**Marking**

1. Classified documents shall be marked at the centre top and centre bottom of each page and each page shall be numbered.
2. Information which is subject to the “Europol Restreint UE/ EU Restricted” level or its equivalent in Colombia shall be marked as “Europol Restreint UE/ EU Restricted” or its equivalent in Colombia by mechanical or electronic means.
3. Information which is subject to the classification level Europol Confidentiel UE/ EU Confidential and above or its equivalent in Colombia shall be marked as “Europol Confidentiel UE/ EU Confidential”, “Europol Secret UE/ EU Secret” or “Europol Très Secret UE/ EU Top Secret” or its equivalent in Colombia by mechanical means or by printing on pre-stamped paper.

**Article 10**  
**Storage**

1. Documents containing classified information can be drafted on a workstation accredited to the appropriate level.
2. Europol classified information or its equivalent in Colombia whether on paper or on any portable storage medium, may only be stored in authorised security zones.
3. Information classified “Europol Restreint UE/ EU Restricted” or its equivalent in Colombia whether on paper or on any portable storage medium must at least be stored in locked office furniture.
4. Information classified “Europol Confidentiel UE/ EU Confidential” and above or its equivalent in Colombia whether on paper or on any portable storage medium, may only be stored in secured cabinets.

**Article 11**  
**Reproduction**

1. The number of copies of classified documents shall be limited to what is strictly necessary to meet essential requirements. The security measures applicable to the original document shall also be applicable to reproductions thereof.
2. Classified information may be copied or printed on a copying machine or printer connected to a network accredited to the appropriate level.
3. Reproductions in whole or in part of documents classified “Europol Très Secret UE/ EU Top Secret” or its equivalent in Colombia may only be made after authorisation of the originator, who will specify the number of copies authorised.
4. The copying or printing of documents containing information classified “Europol Confidentiel UE/ EU Confidential” and above or their equivalents in Colombia can only be carried out by the registry.
5. Analogue provisions apply for the electronic reproductions of classified information.

**Article 12**  
**Transmission**

1. Documents classified “Europol Restreint UE/ EU Restricted” or their equivalents in Colombia shall be dispatched within the organisation by internal mail, in a single sealed envelope and outside the organisation by normal mail, in double sealed envelopes, in which case only the inner envelope shall be marked with the appropriate classification level.
2. The registry shall dispatch documents classified “Europol Confidentiel UE/ EU Confidential” and above and their equivalents in Colombia within the organisation in double sealed envelopes. Only the inner envelope shall be marked with the appropriate classification level. The dispatch shall be recorded in the register kept for that purpose.

3. The registry shall dispatch documents classified “Europol Confidentiel UE/ EU Confidential” and above and their equivalents in Colombia outside the organisation by diplomatic bag, or by a messenger authorised by the competent Security Authority, in double sealed envelopes. Only the inner envelope shall be marked with the appropriate classification level. The outer envelope shall bear a package number for receipting purposes. The dispatch shall be recorded in the register kept for that purpose.
4. Receipt of classified information, whether dispatched internally or externally, shall be confirmed.
5. All internal and external communication links (such as fax, e-mail, telephone, data, and video) used to process Europol classified information must be approved by the competent Security Authority.
6. Notwithstanding the need to know principle and the need for an appropriate security clearance, information classified “Europol Restreint UE/ EU Restricted” or its equivalent can be sent electronically via the internal electronic mail system if approved by the relevant Security Authority.
7. Information classified “Europol Confidentiel UE/ EU Confidential” or its equivalent cannot be sent independently via the internal electronic mail system from the user’s workstation, unless appropriately accredited.
8. “Europol Secret UE/ EU Secret” and “Europol Très Secret UE/ EU Top Secret” cannot be transmitted electronically, unless appropriately accredited.
9. “Europol Restreint UE/ EU Restricted” and “Europol Confidentiel UE/ EU Confidential” or its equivalent can only be transmitted externally using appropriately accredited secured communication links.
10. The transmission of information classified “Europol Confidentiel UE/ EU Confidential” shall be carried out by the registry.

**Article 13**  
**Destruction**

1. Classified documents no longer needed and surplus copies of classified information shall be destroyed after authorisation from the relevant Security Authority in a manner sufficient to preclude recognition or reconstruction of the classified information.
2. Classified waste resulting from the preparation of classified information such as spoiled copies, working drafts, typed notes and carbon paper, shall be destroyed by burning, pulping, shredding or otherwise reducing into an unrecognisable and non-reconstitutable form.
3. For classified information “Europol Confidenciel UE/ EU Confidential” and above and its equivalent in Colombia, the destruction shall be recorded.

**Article 14**  
**Assessments**

Each Contracting Party shall allow the other Contracting Party to visit its territory or premises upon receipt of a written permit in order to assess its procedures and facilities for the protection of classified information received from the other Contracting Party. The arrangements for such visit will be agreed bilaterally. Each Contracting Party shall assist the other Contracting Party in ascertaining whether such classified information which has been made available by the other Contracting Party is adequately protected.

**Article 15**  
**Compromise of classified information**

1. Compromise of information occurs when it has wholly or in part fallen into the hands of unauthorised persons.
2. Violations of provisions governing the protection of classified information shall be investigated, and pertinent legal action shall be taken, by the competent authorities and courts of the Contracting Party having jurisdiction, according to that Contracting Party's law and/or regulations.
3. The Security Authority of either Contracting Party shall notify immediately the Security Authority of the other Contracting Party of any unauthorized disclosure of classified information and of the result of actions referred to in paragraph 2. When an unauthorized disclosure has occurred, both Contracting Parties shall cooperate duly in the investigation.

**ANNEX 2**  
**TO THE AGREEMENT ON OPERATIONAL AND STRATEGIC CO-OPERATION**  
**BETWEEN COLOMBIA AND THE EUROPEAN POLICE OFFICE**

**Forms of Crime**

With regard to the forms of crime referred to in Article 3 (1) of the Agreement on Co-operation between Colombia and the European Police Office, for the purposes of this Agreement:

- 1) "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;
- 2) "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;
- 3) "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 their territories and in Colombia contrary to its national legislation;
- 4) "trafficking in human beings" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, the production, sale or distribution of child-pornography material, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- 5) "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;
- 6) "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;
- 7) "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.

## **ANNEX 3**

# **TO THE AGREEMENT ON OPERATIONAL AND STRATEGIC CO-OPERATION BETWEEN COLOMBIA AND THE EUROPEAN POLICE OFFICE**

### **Competent Authorities**

The competent authorities in Colombia responsible under national law for preventing and combating the criminal offences referred to in Article 3 (1) of the Agreement on Operational and Strategic Cooperation between Colombia and the European Police Office are:

The Colombian National Police

**ANNEX 4**  
**TO THE AGREEMENT ON OPERATIONAL AND STRATEGIC CO-OPERATION**  
**BETWEEN COLOMBIA AND THE EUROPEAN POLICE OFFICE**

**Liaison Officers**

**Article 1**

**Tasks of the Liaison Officer of Colombia**

It shall be the task of the liaison officer of Colombia (hereafter referred to as the “liaison officer”) to support and co-ordinate the co-operation between Colombia and Europol. In particular, the liaison officer shall be responsible for supporting contacts between Europol and Colombia and facilitating the exchange of information.

**Article 2**

**Status of the liaison officer**

1. The liaison officer shall be regarded as a formal representative of Colombia with respect to Europol and as a Police Attaché of the Colombian Embassy in The Netherlands, subject to the privileges and immunities of such condition. Europol shall facilitate the liaison officer's stay within the Netherlands as far as this is within its possibilities; it shall in particular co-operate with the appropriate Dutch authorities in matters of privileges and immunities as far as necessary.
2. The liaison officer shall be a representative of the authorities in Colombia responsible for preventing and combating criminal offences within the meaning of the Agreement on Operational and Strategic Cooperation between Colombia and European Police Office (hereafter referred to as "Agreement").

**Article 3**  
**Working methods**

1. Any exchange of information between Europol and the liaison officer shall only take place in accordance with the provisions of the Agreement.
2. When exchanging information, the liaison officer shall normally communicate directly with Europol through representatives appointed for this purpose by Europol. He shall not have direct access to Europol processing systems.

**Article 4**  
**Confidentiality**

1. Colombia shall ensure that the liaison officer is screened at the appropriate national level for the liaison officer to be able to handle information supplied by or through Europol which is subject to a particular requirement of confidentiality, in accordance with Annex 1 of the Agreement.
2. Europol shall assist the liaison officer in providing for adequate resources to fulfil any requirements relating to the protection of the confidentiality of information exchanged with Europol.

**Article 5**  
**Administrative issues**

1. The liaison officer shall comply with Europol's internal rules, without prejudice to his national law. In performing his duties, he shall proceed in accordance with his own national law on data protection.

2. The liaison officer shall keep Europol informed of his working hours and contact details in cases of emergency. He shall also inform Europol of any extended stay away from Europol's Headquarters.

## **Article 6**

### **Liability and cases of conflict**

1. Colombia shall be liable for any damages caused by the liaison officer to Europol's property. Any such damages will be promptly repaid by Colombia, on the basis of a duly substantiated request by Europol. In case of disagreement concerning a repayment. Article 18 of the Agreement may be followed.
2. In cases of conflict between Colombia and Europol, or between the Liaison Officer and Europol, the Director of Europol will be entitled to prohibit access to the Europol building by the Liaison Officer, or to grant such access only under particular conditions or restrictions.
3. Where there is a serious conflict between Europol and the Liaison Officer, the Director of Europol is entitled to submit a request to Colombia for his replacement.



JOINT SUPERVISORY BODY OF EUROPOL

**Opinion of the JSB in respect of the draft agreement  
to be signed between Europol and Colombia**

To the attention of:  
*The Chairman of the  
Europol Management Board  
Mr. Francisco José Aranda  
P.O. Box 90850  
NL - 2509 LW The Hague*

DOCUMENT 10/20

THE JOINT SUPERVISORY BODY OF EUROPOL,

A. Introductory remarks

1. The JSB has been called upon to draw up an opinion in respect to the draft agreement to be signed between Europol and Colombia.
2. In its opinion of 9 March 2010<sup>1</sup> on the draft agreement, the JSB informed the Chairman of the Management Board that it was not in a position to give a positive opinion on that agreement. The JSB mentioned four areas in which it still had concerns about the adequacy of the data protection arrangements and asked for further clarification and for two amendments of the draft agreement.
3. The Chairman of the Management Board requested the JSB on 15 April 2010 to consider additional information made available by Europol. That information was presented in a letter from the Director of Europol of 15 April 2010 to the Chairman of the Management Board and in an Aide-Memoire of the Embassy of Colombia in The Hague.
4. The letter of the Director of Europol and the Aide-Memoire deal with the issues raised by the JSB. The letter confirms that the amendments proposed by the JSB in its opinion of 9 March 2010 are accepted by Europol and Colombia.
5. The Aide-Memoire of the Embassy of Colombia clearly describes the scope of the Colombian law and especially how the right of access can be ensured with the draft

<sup>1</sup> *JSB Europol opinion 10/09*

agreement. In this respect it is duly noted that the Europol-Colombia agreement will be directly applicable after adoption by a national law by the National Congress of Colombia.

**B. JSB Opinion in respect to the draft agreement between Europol and Colombia**

6. Having analysed the draft agreement and the received additional information, the JSB is satisfied that the necessary data protection requirements are sufficiently dealt with in the draft agreement. The JSB welcomes the approach taken by both negotiating Parties. In particular, the information provided by the Embassy of Colombia was valuable while assessing the draft agreement.

*In respect to the draft agreement between Europol and Colombia as contained in document File n° 3710-638 and amended according to the suggestions of the JSB, from a data protection perspective **no obstacles** exist for the Council to allow Europol to conclude the agreement.*

**C. Closing remarks**


Pursuant to Article 16 paragraph 1 of the Council Decision adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information, the JSB would like to be kept informed about the activities related to correction and deletion of personal data exchanged under the possible agreement between Europol and Colombia.

The JSB invites the Management Board to provide it with all memoranda of understanding and other texts adopted on the basis of the agreement between Europol and Colombia in order to allow the JSB to form its opinion about these texts.

The JSB requests Europol to be informed of all data protection relevant cases in which the settlement of disputes clause is used (Article 18 of the draft agreement).

The JSB furthermore stresses again that its present opinion regarding the draft agreement between Europol and Colombia in no way binds the JSB when drawing up an opinion in respect to other draft agreements to be concluded between Europol and third States.

*Done at Brussels  
10 May 2010*



Ms Isabel Cruz  
Chair of the  
Joint Supervisory Body  
of Europol  
(Signed by the Data Protection Secretary)

2

Rue de la Loi 175 - Bureau : 0070FL59 - B-1048 Brussels  
Phone : +32(0)2281 50 26 - Fax : +32(0)2281 51 26