



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

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PUBLIC

NOTE

from : Europol
to : Article 36 Committee/COREPER/Council

Subject : Draft Agreement on Co-operation between Moldova and the European Police Office

Delegations find enclosed the draft agreement between Moldova and the European Police Office (excluding the transmission of personal data).

**DRAFT STRATEGIC AGREEMENT BETWEEN THE REPUBLIC OF MOLDOVA
AND THE EUROPEAN POLICE OFFICE**

The Republic of Moldova and the European Police Office (Europol), hereinafter referred to as “the Parties”:

considering that it is within their common interest to enhance cooperation in combating serious forms of international crime;

considering that the Council of the European Union has given Europol the authorisation to enter into negotiations on a cooperation agreement and to agree to the following provisions with the Republic of Moldova;

Have agreed as follows:

Article 1

Purpose

The purpose of this Agreement is to enhance the cooperation of the Member States of the European Union, acting through Europol, and the Republic of Moldova in preventing, detecting, suppressing, and investigating serious forms of international crime in the areas mentioned in Article 3 of this Agreement, 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, in particular, special means of combating offences;
 - b. new methods used in committing offences;
 - 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 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 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. forensic police methods and investigative procedures;
 - 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 in the particular case, 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 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 the Republic of Moldova 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 the Republic of Moldova 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 the Republic of Moldova 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 the Republic of Moldova 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 the Republic of Moldova. Any amendment to the document to which the definition refers shall be considered an amendment of the definition as well.

Article 4

National Contact Point

1. The Republic of Moldova designates the National Contact Point of the Ministry of Internal Affairs to act as the national contact point between Europol and other competent authorities of the Republic of Moldova.
2. High level meetings between Europol and the competent authorities of the Republic of Moldova shall take place at least once a year and as necessary to discuss issues relating to this Agreement and the co-operation in general.
3. The point of contact designated by the Republic of Moldova 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

Competent authorities

1. The law enforcement authorities in the Republic of Moldova responsible under national law for preventing and combating the criminal offences referred to in Article 3 (1) (hereafter referred to as "competent authorities") are listed in Annex 2 to this Agreement. The Republic of Moldova shall notify Europol of any changes to this list within three months after such changes come into effect.
2. When appropriate, consultation shall be arranged at the required level between representatives of the law enforcement authorities of the Republic of Moldova 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 6

Exchange of Information

1. Exchange of information specified in this agreement shall only take place in accordance with the terms of this agreement.
2. The exchange of information as specified in this agreement will take place between the points of contact designated under Article 4 and, as the points of contact consider appropriate, may include direct exchanges of information with the law enforcement agencies identified pursuant to Article 5.
3. Information exchanged pursuant to this agreement shall only be used for the purposes of this agreement and in the investigation, prosecution and prevention of criminal offences, and in proceedings related to criminal matters.
4. Europol shall only supply information to the Republic of Moldova which was collected, stored and transmitted in accordance with the relevant provisions of the 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 shared with third parties other than Member States of the European Union without the prior consent of the providing Party.

Article 7

Requests for assistance

Co-operation within the framework of this Agreement will be carried out on the basis of written requests for assistance, or on the initiative of one of the Parties, if this Party presumes that such assistance is of interest to the other Party.

Article 8

Execution of requests

1. The requested Party shall take all necessary measures to ensure a prompt and complete execution of the request. The requesting Party shall be immediately notified about any circumstances that may hamper the execution of the request or considerably delay its execution.
2. The requested Party shall have the right to ask for any further data it considers necessary to duly execute the request.
3. The requesting Party may ask the requested Party to take all necessary measures to ensure confidentiality of the fact that the request was made, the contents of the request and any annexed documents, as well as the fact that it has provided assistance.
4. The requested Party shall inform the requesting Party if it is not possible to execute the request while preserving its confidentiality. The requesting Party shall decide whether it is acceptable to execute the request under these conditions.
5. The requested Party shall inform the requesting Party of the results of the execution of the request at its earliest convenience.

Article 9

Exchange of expertise

Representatives of the Parties shall, 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 criminality covered by this agreement.

Article 10

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, 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 the Republic of Moldova 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. The classification levels of the Parties and their designations are specified in Annex 3 to this Agreement and refer to the specific security packages in accordance with the national legislation of the Parties. The classification levels relate to specific security packages, which offer different levels of protection, depending on the content of the information, and take account of the detrimental effect non-authorized access, dissemination or use of the information might have on the interests of the Parties. The Parties undertake to provide equivalent protection to the information marked with a classification level in accordance with the table of equivalence of the classification levels contained in Annex 3 hereto.
5. The Republic of Moldova 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 11

Confidentiality Procedures

1. Each Party shall be responsible for the choice of the appropriate classification level in accordance with Article 10 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 national law or applicable regulations 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, Europol shall, at the request of the National Contact Point of the Ministry of Internal Affairs, inform the recipients of the change of classification level.

Article 12

Liaison officers

If required for a further enhancement of the co-operation as laid down in this Agreement, in view of concluding an operational agreement, the Republic of Moldova and Europol may agree to the assignment of one or more Liaison Officers. The liaison officers' functions, tasks, and status will be the subject of consultations with a view to concluding a liaison agreement.

Article 13

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 14

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 Europol 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 Republic of Moldova to comply with its obligations under this Agreement, the Republic of Moldova shall be bound to repay, on request, the amounts which Europol 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 15.

Article 15

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 16
Special Clause

Nothing in this agreement shall prejudice or otherwise affect or impact upon the provisions of any Mutual Legal Assistance Treaty, working law enforcement relationship, or any other agreement or arrangement for the exchange of information between the Republic of Moldova and any Member State of the European Union. The provisions regarding the processing of information as mentioned in this Agreement, however, shall be respected by the Parties with regard to all information exchanged under this Agreement.

Article 17
Termination of the Agreement

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

Article 18
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 may only give its consent to amendments after the approval of such amendments by the Council of the European Union.
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 19

Entry into force

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

Done at _____, this _____ of _____, in duplicate in the Moldavian and English languages, each text being equally authentic.

For the Republic of Moldova

For Europol

ANNEX 1

DEFINITION OF THE FORMS OF CRIME MENTIONED IN ARTICLE 3 OF THE AGREEMENT BETWEEN THE REPUBLIC OF MOLDOVA AND EUROPOL

With regard to the forms of crime covered by Article 3 (1) 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 and (XXX), contrary to the rules and conditions applicable in their territories;
- "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.

ANNEX 2

TO THE AGREEMENT ON CO-OPERATION BETWEEN THE REPUBLIC OF MOLDOVA AND THE EUROPEAN POLICE OFFICE

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

- Ministry of Internal Affairs;
- Information and Security Service;
- Customs Service;
- Center for Combating Economic Crime and Corruption.

ANNEX 3

TO THE AGREEMENT ON CO-OPERATION BETWEEN THE REPUBLIC OF MOLDOVA AND THE EUROPEAN POLICE OFFICE

The Parties, in conformity with Article 10 (4) of the Agreement on Co-operation between the Republic of Moldova and Europol, determine that the following classification levels under the national legislation of the Republic of Moldova and classification levels used within Europol are equivalent:

For the Republic of Moldova

"Pentru uz de serviciu"

This level is applicable to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the Republic of Moldova.

"Secret"

This level is applicable to information and material the unauthorised disclosure of which could harm the essential interests of the Republic of Moldova.

"Strict Secret"

This level is applicable only to information and material the unauthorised disclosure of which could seriously harm the essential interests of the Republic of Moldova.

"De o importanță deosebită"

This level is applicable only to information and material the unauthorised disclosure of which could cause exceptionally grave prejudice to the essential interests the Republic of Moldova.

For Europol

"Europol Restricted"

This level is 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.

"Europol Confidential"

This level is applicable to information and material the unauthorised disclosure of which could harm the essential interests of Europol or of one or more Member States.

"Europol Secret"

This level is applicable only to information and material the unauthorised disclosure of which could seriously harm the essential interests of Europol or of one or more Member States.

"Europol Top Secret"

This level is applicable only 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.