



**COUNCIL OF
THE EUROPEAN UNION**

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CSC 71
CAB 36
PESC 990**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Agreement between the International Criminal Court and the European Union on
cooperation and assistance

AGREEMENT
BETWEEN THE INTERNATIONAL CRIMINAL COURT
AND THE EUROPEAN UNION
ON COOPERATION AND ASSISTANCE

THE INTERNATIONAL CRIMINAL COURT,

Hereinafter "the Court",

of the one part, and

THE EUROPEAN UNION,

hereinafter "the EU", represented by the Presidency of the Council of the European Union,

of the other part,

hereinafter referred to as the Parties,

CONSIDERING the fundamental importance and the priority that must be given to the consolidation of the rule of law and respect for human rights and humanitarian law, as well as the preservation of peace and the strengthening of international security, in conformity with the United Nations Charter and as provided for in Article 11 of the Treaty on European Union;

NOTING that the principles of the Rome Statute of the International Criminal Court, as well as those governing its functioning, are fully in line with the principles and objectives of the European Union;

EMPHASISING the importance of the administration of justice in accordance with the rule of law and procedural fairness with particular reference to the rights of the accused provided in the Rome Statute;

NOTING the special role of victims and witnesses in proceedings before the Court and the need for specific measures aimed at ensuring their security and effective participation in accordance with the Rome Statute;

RECALLING that the European security strategy, adopted by the European Council on 12 December 2003, supports an international order based on effective multilateralism;

BEARING IN MIND Council Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court as well as the Council's Action Plan to follow-up on such Common Position and particularly the essential role of the International Criminal Court for the purpose of preventing and curbing the commission of the serious crimes falling within its jurisdiction;

CONSIDERING that the European Union is committed to supporting the effective functioning of the International Criminal Court and to advance universal support for it by promoting the widest possible participation in the Rome Statute;

RECALLING THAT this Agreement must be read in conjunction with and subject to the Rome Statute of the International Criminal Court and the Rules of Procedure and Evidence;

RECALLING THAT Article 87(6), of the Rome Statute provides that the Court may ask any intergovernmental organisation to provide information or documents, and that the Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organisation and which are in accordance with its competence or mandate;

CONSIDERING THAT this Agreement covers terms of cooperation and assistance between the International Criminal Court and the European Union and not between the International Criminal Court and the Member States of the European Union;

CONSIDERING THAT, to that effect, the International Criminal Court and the European Union should agree on terms of cooperation and assistance in addition to Common Position 2003/444/CFSP, as well as to the EU Action Plan in follow-up to that Common Position,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Purpose of the Agreement

This Agreement, which is entered into by the European Union ("EU") and the International Criminal Court ("the Court") pursuant to the provisions of the Treaty on European Union ("EU Treaty") and the Rome Statute of the International Criminal Court ("the Statute") respectively, defines the terms of cooperation and assistance between the EU and the Court.

ARTICLE 2

Definition of terms

For the purposes of this Agreement, "EU" shall mean the Council of the European Union (hereinafter "Council"), the Secretary General/High Representative and the General Secretariat of the Council, and the Commission of the European Communities (hereinafter "European Commission"). "EU" shall not mean the Member States in their own right.

For the purposes of this Agreement, "the Court" shall mean:

- (a) the Presidency,
- (b) an Appeals Division, a Trial Division and a Pre-Trial Division,
- (c) the Prosecutor 's Office,
- (d) the Registry,
- (e) the Secretariat of the Assembly of States Parties.

ARTICLE 3

Member State Agreements

1. This Agreement, including any agreements or arrangements concluded under Article 11, shall not apply to requests for information from the Court which relate to information, other than EU documents including EU classified information, originating from an individual Member State. In such circumstances, any request shall be made directly to the relevant Member State.
2. Article 73 of the Statute shall be applied, *mutatis mutandis*, to requests made by the Court to the EU under this Agreement.

ARTICLE 4

Obligation of cooperation and assistance

The EU and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, as appropriate, with each other and consult each other on matters of mutual interest, pursuant to the provisions of this Agreement while fully respecting the respective provisions of the EU Treaty and the Statute. In order to facilitate this obligation of cooperation and assistance, the Parties agree on the establishing of appropriate regular contacts between the Court and the EU Focal Point for the Court.

ARTICLE 5

Attendance at meetings

The EU may invite the Court to attend meetings and conferences arranged under its auspices at which matters of interest to the Court are under discussion in order to give assistance with regard to matters within the jurisdiction of the Court.

ARTICLE 6

Promotion of the values underpinning the Statute

The EU and the Court shall cooperate, whenever appropriate, by adopting initiatives to promote the dissemination of the principles, values and provisions of the Statute and related instruments.

ARTICLE 7

Exchange of information

1. The EU and the Court shall, to the fullest extent possible and practicable, ensure the regular exchange of information and documents of mutual interest in accordance with the Statute and the Rules of Procedure and Evidence.

2. With due regard to its responsibilities and competence under the EU Treaty, the EU undertakes to cooperate with the Court and to provide the Court with such information or documents in its possession as the Court may request pursuant to Article 87(6), of the Statute.
3. The EU may, at its own initiative and in accordance with the EU Treaty, provide information or documents, which may be relevant to the work of the Court.
4. The Registrar of the Court shall, in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation relating to pleadings, oral proceedings, judgements and orders of the Court, which may be of interest to the EU.

ARTICLE 8

Protection of safety or security

Should the cooperation, including the disclosure of information or documents, provided for in this Agreement endanger the safety or security of current or former staff of the EU or otherwise prejudice the security or proper conduct of any operation or activity of the EU, the Court may order, particularly at the request of the EU, appropriate measures of protection.

ARTICLE 9

Classified information

Provisions relating to the release of EU classified information by the EU to an organ of the Court are set out in the Annex to this Agreement, which is an integral part thereof.

ARTICLE 10

Testimony of staff of the European Union

1. If the Court requests the testimony of an official or other staff of the EU, the EU undertakes to cooperate fully with the Court and, if necessary and with due regard to its responsibilities and competencies under the EU Treaty and the relevant rules thereunder, to take all necessary measures to enable the Court to hear that person's testimony, in particular by waiving that person's obligation of confidentiality.
2. With reference to Article 8, the Parties recognise that measures of protection might be required should an official or other staff of the EU be requested to provide the Court with testimony.

3. Subject to the Statute and the Rules of Procedure and Evidence, the EU shall be authorised to appoint a representative to assist any official or other staff of the EU who appears as a witness before the Court.

ARTICLE 11

Cooperation between the European Union and the Prosecutor

1. While fully respecting the EU Treaty:
 - (i) the EU undertakes to cooperate with the Prosecutor, in accordance with the Statute and the Rules of Procedure and Evidence, in providing additional information held by the EU that he or she may seek;
 - (ii) the EU undertakes to cooperate with the Prosecutor, in accordance with Article 54(3)(c) of the Statute;
 - (iii) the EU shall, in accordance with Article 54(3)(d) of the Statute, enter into such arrangements or agreements, not inconsistent with the Statute, as may be necessary to facilitate the cooperation of the EU with the Prosecutor.

2. The Prosecutor shall address requests for information in writing to the Secretary General/High Representative. The Secretary General/High Representative shall provide a written reply no later than one month.

3. The EU and the Prosecutor may agree that the EU provide the Prosecutor with documents or information on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or third parties, at any stage of the proceedings or thereafter, without the consent of the EU. The rules on classified information of Article 9 shall apply.

ARTICLE 12

Privileges and immunities

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if such person enjoys, according to the relevant rules of international law, any privileges and immunities, the relevant institution of the EU undertakes to cooperate fully with the Court and, with due regard to its responsibilities and competencies under the EU Treaty and the relevant rules thereunder, to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities in accordance with all relevant rules of international law.

ARTICLE 13

Personnel arrangements

Pursuant to Article 44(4) of the Statute, the EU and the Court agree to determine, on a case by case basis, under which exceptional circumstances the Court may employ the expertise of gratis personnel offered by the EU, to assist with the work of any of the organs of the Court.

ARTICLE 14

Services and facilities

Upon request of the Court, the EU shall, subject to availability, provide for the purposes of the Court, such facilities and services as may be required, including, where appropriate, support at the field level. The terms and conditions on which any such facilities, services or support of the EU may be provided shall be, as appropriate, the subject of prior supplementary arrangements.

ARTICLE 15

Training

The EU shall endeavour to support, as appropriate and in consultation with the Court, the development of training and assistance for judges, prosecutors, officials and counsel in work related to the Court.

ARTICLE 16

Correspondence

1. For the purpose of this Agreement:

(a) as regards the EU:

all correspondence shall be sent to the Council at the following address:

Council of the European Union

Chief Registry Officer

Rue de la Loi/Wetstraat, 175

B-1048 Brussels;

all correspondence shall be forwarded by the Chief Registry Officer of the Council to the Member States, to the European Commission and to the EU Focal Point for the Court subject to paragraph 2;

(b) as regards the Court,

all correspondence shall be addressed to the Registrar or the Prosecutor, as appropriate.

2. Exceptionally, correspondence from one Party which is only accessible to specific competent officials, organs or services of that Party may, for operational reasons, be addressed and only be accessible to specific competent officials, organs or services of the other Party specifically designated as recipients, taking into account their competencies and according to the need to know principle. As far as the EU is concerned, this correspondence shall be transmitted through the Chief Registry Officer of the Council.

ARTICLE 17

Implementation

1. The Office of the Prosecutor and the Registry of the Court and the Secretary-General of the Council and of the European Commission shall oversee the implementation of this Agreement, in accordance with their respective competencies.

2. The Court and the EU may, for the purposes of implementing this Agreement, enter into such arrangements as may be found appropriate.

ARTICLE 18

Settlement of Disputes

All differences between the EU and the Court arising out of the interpretation or application of this Agreement shall be dealt with through consultation between the Parties.

ARTICLE 19

Entry into force and review

1. This Agreement shall enter into force on the first day of the first month after the Parties have signed to it.
2. This Agreement may be reviewed for consideration of possible amendments at the request of either Party. It shall be reviewed no later than five years after its entry into force.
3. Any amendment to this Agreement shall only be made in writing and by common agreement of the Parties.

ARTICLE 20

Denunciation

One Party may denounce this Agreement by written notice of denunciation given to the other Party. Such denunciation shall take effect six months after receipt of notification by the other Party, but shall not affect obligations already contracted under the provisions of this Agreement. In particular, all classified information provided or exchanged pursuant to this Agreement shall continue to be protected in accordance with the provisions set forth herein.

IN WITNESS WHEREOF the undersigned, respectively duly authorised, have signed this Agreement.

Done at Brussels, this ... day of ... 2005

FOR THE EUROPEAN UNION

FOR THE INTERNATIONAL CRIMINAL COURT

1. Should EU classified information be requested by an organ of the Court within the meaning of Article 34 of the Statute, it may be released only in accordance with the Council's security regulations ¹.

For the purposes of this Agreement, classified information shall mean any information (namely, knowledge that can be communicated in any form) or material determined to require protection against unauthorised disclosure and which has been so designated by a security classification (hereinafter referred to as "classified information").

In particular:

- (i) the Court shall ensure that EU classified information released to it keeps the security classification given to it by the EU and shall safeguard such information, in accordance with an equivalent level of protection to that foreseen in the Council's security regulations. In this respect, the Court shall ensure that it provides the protection required by the EU in accordance with the rules, measures and procedures to be established pursuant to paragraph 4;

¹ Council Decision 2001/264/EC of 19 March 2001, adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 1)

- (ii) the Court shall not use the released EU classified information for purposes other than those for which those EU classified information and documents have been released to the Court;
- (iii) the Court shall not disclose such information and documents to third parties without the prior written consent of the EU in accordance with the principle of originator consent as defined in the Council's security regulations;
- (iv) the Court shall ensure that access to EU classified information released to it will be authorised only for individuals who have a "need to know";
- (v) the Court shall ensure that all persons who, in the conduct of their official duties require access, or whose duties or functions may afford access to information classified CONFIDENTIEL UE and above, are appropriately security cleared before they are granted access to such information, in accordance with arrangements to be established on the basis of objective criteria pursuant to paragraph 4;
- (vi) the Court shall ensure that, before being given access to EU classified information, all individuals who require access to such information are briefed on and comply with the requirements of the protective security regulations relevant to the classification of the information they are to access;

- (vii) taking into account their level of classification, EU classified information shall be forwarded to the Court by diplomatic bag, military mail services, secure mail services, secure telecommunications or personal carriage. The Court shall notify in advance to the General Secretariat of the Council of the EU the name and address of the body responsible for the security of classified information and the precise addresses to which the information must be forwarded and will ensure that the addressees are security cleared;
- (viii) the Court shall ensure that all premises, areas, buildings, offices, rooms, communication and information systems, and the like, in which EU classified information is stored and/or handled, is protected by appropriate physical security measures, in accordance with the arrangements to be established pursuant to paragraph 4;
- (ix) the Court shall ensure that EU classified documents released to it are, on their receipt, recorded in a special register. The Court shall ensure that copies of EU classified documents released to it, which may be made by the recipient body, their number and distribution, are recorded in this special register. The Court shall notify to the EU the date of return of those documents to the EU or provide a certificate of their destruction;

(x) the Court shall notify to the General Secretariat of the Council of the EU any case of compromise of EU classified information released to it. In such a case, the Court shall initiate investigations and take appropriate measures to prevent a recurrence, in accordance with the arrangements to be established pursuant to paragraph 4.

2. In implementing paragraph 1, no generic release shall be possible unless procedures are established and agreed between the Parties regarding certain categories of information.

3. EU classified information may be downgraded or declassified in accordance with Council's security regulations before being released to the Court.

Any EU classified document containing national classified information may be consulted only by appropriately cleared Court staff or downgraded or declassified and released to the Court with the express written consent of the originator.

4. In order to implement this Agreement, security arrangements shall be established between the three authorities designated below in order to lay down the standards of the reciprocal security protection for classified information subject to this Agreement:

- (a) the Security Office of the Court shall be responsible for developing security arrangements for the protection and safeguarding of classified information provided to the Court under this Agreement;
- (b) the Security Office of the General Secretariat of the Council, under the direction and on behalf of the Secretary General of the Council, acting in the name of the Council and under its authority, shall be responsible for developing security arrangements for the protection and safeguarding of classified information provided to the EU under this Agreement;
- (c) the European Commission Security Directorate, acting in the name of the European Commission and under its authority, shall be responsible for developing security arrangements for the protection of classified information provided or exchanged under this Agreement within the European Commission and its premises;
- (d) for the EU, these standards shall be subject to approval by the Council Security Committee.

5. The Parties shall provide mutual assistance with regard to security of classified information subject to this Agreement and matters of common interest. Reciprocal security consultations and inspections shall be conducted by the authorities defined in paragraph 4 to assess the effectiveness of the security arrangements within their respective responsibility to be established pursuant to paragraph 4.
6. The 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 Parties to be established pursuant to paragraph 4, to ensure that an equivalent level of protection is applied to classified information subject to this Agreement.
7. Prior to the initial provision of classified information subject to this Agreement, the responsible security authorities referred to in paragraph 4 must have agreed that the receiving party is able to protect and safeguard the information subject to this Agreement in a way consistent with the arrangements to be established pursuant to paragraph 4.
8. Nothing in this Agreement shall prejudice the possibility of the EU making available to the Court information with the highest level of classification subject to the Court ensuring an equivalent level of protection to that foreseen in the Council's security regulations.
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