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European Union

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NOTE

From: Europol
To: Law Enforcement Working Party

Subject: Draft Agreement on Strategic Co-operation between the Ministry of Public Security of the People's Republic of China and the European Police Office

Delegations will find enclosed a letter from the Chairperson of the Europol Management Board on the above-mentioned subject and its annexes.

The Hague, 15 April 2016

MBS 077.2016

Management Board

Ms Christine Roger

Director-General Justice and Home Affairs
General Secretariat of the Council of the European Union

Draft cooperation agreement with the People's Republic of China

Dear Ms Roger,

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 strategic cooperation between the People's Republic of China and Europol, as endorsed by the Management Board on 8 April 2016.

I remain at the disposal of the Council for any information you may require.

Yours sincerely,



Arie IJzerman

Chairperson

Enclosure:

- *Draft agreement on strategic cooperation between the People's Republic of China and Europol (#807562v8)*



Management Board written procedure

The Hague, 18 March 2016

**Agreement
on Strategic Co-operation
between the Ministry of Public Security of the People's Republic of China
and the European Police Office**

The Ministry of Public Security of the People's Republic of China

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,

Considering that the Council of the European Union has on (date) given Europol the authorisation to agree to the present Agreement with the Ministry of Public Security of the People's Republic of China,

Respectful of the Contracting Parties' obligations under international law,

Promoting the law enforcement cooperation, on the basis of mutual respect and equality and for mutual benefit,

Have agreed as follows:

Article 1

Purpose

The purpose of this Agreement is to establish cooperative relations between Europol and the Ministry of Public Security of the People's Republic of China in order to support the law enforcement authorities of the Member States of the European Union and the Ministry of Public Security of the People's Republic of China in preventing and combating organised crime, terrorism and other forms of international crime in the areas of crime referred to in Article 3, in particular through the exchange of operational, strategic and technical information between Europol and the Ministry of Public Security of the People's Republic of China. This agreement does not cover the exchange of personal data.

Article 2

Definitions

For the purpose of this agreement:

- a) "Europol Council Decision" shall mean the Council Decision of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009;
- 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;

CHAPTER I - Scope

Article 3

Areas of crime

1. The co-operation as established in this Agreement shall relate to all areas of crime within Europol's mandate as listed in Annex 1, including related criminal offences.
2. Related criminal offences shall be the criminal offences committed in order to procure the means of perpetrating the criminal acts referred to in paragraph 1, criminal offences committed in order to facilitate or carry out such acts, and criminal offences committed to ensure the impunity of such acts.
3. Where Europol's mandate as listed in Annex 1 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 the Ministry of Public Security of the People's Republic of China in writing in accordance with Article 18.

Article 4

Areas of cooperation

The co-operation may, additional to the exchange of information, in accordance with the responsibilities of the Contracting Parties for the crimes listed in Article 3, in particular include 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 and exchange activities as well as providing advice and support in individual criminal investigations.

Article 5

Relation to other international instruments

This Agreement shall not prejudice or otherwise affect or impact upon the legal provisions with regard to the exchange of information foreseen by any Mutual Legal Assistance Treaty, any other cooperation agreement or arrangement, or working law enforcement relationship for the exchange of information between the Ministry of Public Security of the People's Republic of China and any Member State of the European Union.

CHAPTER II - Mode of Cooperation

Article 6

Contact point

1. Contracting Parties designate a contact point to act as the central point of contact between them. These contact points shall be designated in Annex II. The exchange of information between Contracting Parties shall take place between these contact points.
2. Contracting parties shall ensure the possibility to enable information exchange on a 24-hour basis.

Article 7

Consultations and Closer Cooperation

1. The Parties agree that to further the cooperation and enhance as well as monitor the development of the provisions of this Agreement, regular exchanges, as appropriate, are integral. Specifically:
 - a. high level meetings between Europol and the competent authorities under the authority of the Ministry of Public Security of the People's Republic of China shall take place regularly to discuss issues relating to this Agreement and the co-operation in general.
 - b. representatives of contact points of contracting parties 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.
2. When appropriate, consultation shall be arranged at the required level between representatives of the Ministry of Public Security of the People's Republic of China 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.

CHAPTER III - Information exchange

Article 8

General Provisions

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

2. Parties shall only supply information to each other which was collected, stored and transmitted in accordance with their respective legal framework and other obligations under international law including in the field of protection of human rights. 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 data and classified information.
3. Requests for public access by individuals to information transmitted on the basis of the present Agreement shall be submitted to the transmitting Party for their advice as soon as possible. The concerned information shall not be disclosed should the transmitting Party object to it.

Article 9

Use of the information

1. Information if transmitted with a purpose may be used only for the purpose for which it was transmitted and any restriction on its use, deletion or destruction, including possible access restrictions in general or specific terms must be respected by the Parties.
2. Use of information for a different purpose than the purpose for which the information was transmitted must be authorised by the transmitting Party.

Article 10

Onward transmission of the information received

1. Onward transmission of the information which Europol provided to the Ministry of Public Security of the People's Republic of China on the basis of this Agreement shall be restricted to the authorities in charge of prevention and combating crime under the authority of the Ministry of Public Security of the People's Republic of China and shall take place under the same conditions as those applying to the original transmission. Any other onward transmission, including to third States and international organisations, must be consented to by Europol.
2. Onward transmission of the information which the Ministry of Public Security of People's Republic of China received by Europol shall be restricted to the authorities responsible in the Member States of European Union for preventing and combating criminal offences and shall take place under the same conditions as those applying to the original transmission. Any other onward transmission, including to third States or international organisations must be consented to by the Ministry of Public Security of the People's Republic of China.

Article 11

Assessment of the source and of the information

1. When information is supplied by the 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.

2. When information is supplied by the 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 Parties - on the basis of information already in its possession - comes to the conclusion that the assessment of information supplied by the other Party needs correction, it shall inform the other Party and attempt to agree on an amendment to the assessment. Neither of the Parties shall change the assessment of information received without such agreement.
4. If a Party receives information without an assessment, it shall attempt as far as possible and in agreement with the transmitting Party to assess the reliability of the source or the information on the basis of information already in its possession.
5. The 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 the Ministry of Public Security of the People's Republic of China and Europol. 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.

CHAPTER IV - Confidentiality of information

Article 12

Principles of security and confidentiality

Each Party shall:

1. protect and safeguard unclassified information subject to this Agreement and Memorandum of Understanding referred to in Article 15, with the exception of information which is expressly marked or is clearly recognisable as being public information, by various measures including the obligation of discretion and confidentiality, limiting access to authorised personnel and general technical and procedural measures.
2. protect and safeguard classified information subject to this Agreement and the Memorandum of Understanding referred to in Article 13.
3. ensure that it has a security organisation, framework and measures in place. The Parties mutually accept and apply the basic principles and minimum standards implemented in their respective security systems and procedures to ensure that at least an equivalent level of protection is granted for classified information subject to this Agreement.
4. ensure that the premises where information subject to this Agreement is kept have an appropriate level of physical security in accordance with the respective legal framework of the Party.
5. ensure that access to and possession of information is restricted to those persons who by reason of their duties or obligations need to be acquainted with such information or need to handle it.

6. 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 shall be subject to a basic security screening in accordance with the respective legal framework of the Party.
7. be responsible for the choice of the appropriate classification level for information supplied to the other Party.
8. ensure that classified information subject to this Agreement keeps the classification level given to it by the originating Party. The receiving Party shall protect and safeguard the classified information according to its legal framework for the protection of classified information holding an equivalent classification level.
9. not use or permit the use of classified 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.
10. not disclose or permit the disclosure of classified information subject to this Agreement to third parties, without the prior written consent of the originator.

Article 13

Memorandum of Understanding on Confidentiality and Information Assurance

The protection of the information exchanged between the Parties, shall be regulated in a Memorandum of Understanding on Confidentiality and Information assurance agreed between the Parties implementing the principles outlined in this Chapter. Exchange of classified information is conditional upon the conclusion of the Memorandum of Understanding on Confidentiality and Information Assurance.

CHAPTER V - Disputes and Liability

Article 14

Liability

1. The Parties shall be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in information exchanged. In order to avoid its liability under their respective legal frameworks vis-à-vis an injured party, neither Party may plead that the other had transmitted inaccurate information.
2. The Parties shall not require each other to pay for punitive or non-compensatory damages.

Article 15

Settlement of Disputes

1. 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.
2. In the event of serious failings of either Party to comply with the provisions of this Agreement, or a Party is of the view that such a failing may occur in the near future, either Party may suspend the application of this Agreement temporarily, pending the application of paragraph 1. Suspension shall become effective instantly once one party notifies the other party in written form through diplomatic channels. Obligations inherent upon the Parties under the agreement will nonetheless remain in force.

CHAPTER VI - Final Provisions

Article 16

Secure communication line

1. The establishment, implementation and operation of a secure communication line for the purpose of exchange of information between Europol and the Ministry of Public Security of the People's Republic of China shall be regulated in a Memorandum of Understanding agreed between the Parties.
2. The costs of the establishment of the secure communication line shall be paid by Europol whereas the monthly running costs shall be shared between the Parties in proportions specified in the Memorandum of Understanding.
3. Without prejudice to Article 14 a Party shall be liable for damage caused to the other Party as a result of wrongful actions relating to the establishment, the implementation or the operation of the secure communication line.
4. Any dispute between the Parties concerning the interpretation or application of provisions relating to the establishment, implementation and operation of a secure communication line shall be settled in accordance with Article 15.

Article 17

Expenses

The Parties shall bear their own expenses which arise in the course of implementation of the present Agreement, unless otherwise stipulated in this Agreement.

Article 18

Amendments and Supplements

1. This agreement may be amended in writing, at any time by mutual consent between the Parties.
2. The Annexes to this Agreement, as well as the provisions of Art. 3(3) may be amended through an Exchange of Notes between the Parties.
3. Without prejudice to paragraph 1, amendments to the Annexes of this Agreement may be agreed upon.

Article 19

Entry into force and validity

This agreement shall enter into force on the date on which Europol notifies the Ministry of Public Security of the People's Republic of China in writing through diplomatic channels that it has received and accepted notification of the Ministry of Public Security that its internal process has completed.

Article 20

Termination of the Agreement

1. This Agreement may be terminated in writing by either of the Parties with three months' notice.
2. In case of termination, the 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 Parties is entitled to require that the information which it has communicated be destroyed or returned to the transmitting Party.
3. Without prejudice to paragraph 1, the legal effects of this Agreement remain in force.

Done at _____, on the _____ in duplicate in the Chinese and English languages, each text being equally authentic.

For the Ministry of Public Security
of the People's Republic of China

For Europol

Annex I - Areas of Crime

Europol's competence shall cover organised crime, terrorism and other forms of serious crime, listed below, affecting two or more Member States in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences.

The other forms of serious crime mentioned shall be:

- unlawful drug trafficking,
- illegal money-laundering activities,
- crime connected with nuclear and radioactive substances,
- illegal immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- organised robbery,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud,
- racketeering and extortion,

- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of money and means of payment,
- computer crime,
- corruption,
- illicit trafficking in arms, ammunition and explosives,
- illicit trafficking in endangered animal species,
- illicit trafficking in endangered plant species and varieties,
- environmental crime,
- illicit trafficking in hormonal substances and other growth promoters.

With regard to the forms of crime listed above, for the purposes of this Agreement:

(a) ‘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 Treaty establishing the European Atomic Community and in Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation¹;

(b) ‘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, contrary to the rules and conditions applicable in the Member States;

¹ OJ L 159, 29.6.1996, p. 1.

(c) ‘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;

(d) ‘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;

(e) ‘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 in Strasbourg on 8 November 1990;

(f) ‘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.

The forms of crime referred to in Article 4 and in this Annex shall be assessed by the competent authorities in accordance with the law of the States.

Annex II - National Contact Point

The national contact point for the Ministry of Public Security of the People's Republic of China, to act as the central point of contact between the Contracting Parties is hereby designated as the International Cooperation Department of the Ministry of Public Security.

For Europol, the national contact point is hereby designated as the Europol Operations Department.
