



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 April 2010

8159/10

**EUROPOL 13
ENFOPOL 89
JAIEX 33
COWEB 95**

"I/A" ITEM NOTE

From:	Europol
To:	COREPER/Council
Subject:	Draft Agreement on Operational and Strategic Co-operation between the former Yugoslav Republic of Macedonia and the European Police Office

1. Article 23(2) of the Council Decision establishing the European Police Office (Europol)¹ provides that operational cooperation 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*".
2. Article 6 (3) of the Council Decision of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information² reads as follows:

¹ OJ L 121, 15.5.2009, p. 37.

² OJ L 325, 11.12.2009, p. 6.

"(3). *After finalising the negotiations to an agreement, the Director shall submit the draft agreement to the Management Board. In the case of the conclusion of an operational agreement, the Management Board shall obtain the opinion of the Joint Supervisory Body. The Management Board shall endorse the draft agreement before submitting it to the Council for approval.*

In case of endorsement of an operational agreement, that draft agreement and the opinion of the Joint Supervisory Body shall be submitted to the Council."

3. By letter dated 26 March 2010, the Chairman of the Europol Management Board transmitted, in accordance with Article 23(2) of the Europol Council Decision, the draft agreement on operational and strategic cooperation between the former Yugoslav Republic of Macedonia and the European Police Office (Europol), as endorsed by the Management Board at its meeting on 23-24 March 2010, to the Council for approval (annex I). The opinion of the Joint Supervisory Body (JSB) was also transmitted (annex II).
4. In its opinion dated 9 March 2010, the JSB concluded that, from a data protection perspective, no obstacles exist for the Council to allow Europol to conclude the agreement.
5. COREPER is requested to invite the Council to approve the draft Agreement on Operational and Strategic Co-operation between the former Yugoslav Republic of Macedonia and the European Police Office with a view to allowing Europol to conclude an operational cooperation agreement with the former Yugoslav Republic of Macedonia.



Management Board

The Hague, 23 March 2010

File no. 3710-639r2

Draft

**Agreement on Operational and Strategic Co-operation
between the former Yugoslav Republic of Macedonia and the
European Police Office**

The former Yugoslav Republic of Macedonia (hereafter referred to as the “Contracting Country”

and

the European Police Office (hereafter referred to as “Europol”, jointly referred to as “the Contracting Parties”)

Aware of the urgent problems arising from international organised crime, especially terrorism, trade in human beings and illegal immigrant smuggling, unlawful drug trafficking,

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 Contracting Country 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 Contracting Country in the present Agreement,

Considering that Europol and the Contracting Country have signed a Strategic cooperation agreement on 16 January 2007,

Considering that the Council of the European Union has on (date) given Europol the authorisation to agree to the present Agreement between the Contracting Country 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

The purpose of this Agreement is to regulate and extend the co-operation between Europol and the Contracting Country in order to support the Member States of the European Union and the Contracting Country 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 the Contracting Country 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 the Contracting Country in writing. In so doing, Europol shall inform the Contracting Country 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 the Contracting Country in accordance with its domestic procedures.
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 the Contracting Country 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 the Contracting Country. 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.

Article 5 **National contact point**

1. The Contracting Country designates Europol Unit within the Ministry of Interior to act as the national contact point between Europol and other competent authorities of the Contracting Country
2. High level meetings between Europol and the competent authorities of the Contracting Country shall take place regularly to discuss issues relating to this Agreement and the co-operation in general.
3. The point of contact designated by the Contracting Country 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 Europol Unit within the Ministry of Interior may be invited to attend the meetings of the Heads of Europol National Units and meetings of the Heads of the Europol National Contact Points.

Article 6

Competent authorities

1. The law enforcement authorities in the Contracting Country 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. The Contracting Country shall notify Europol of any changes to this list within three months after such changes come into effect.
2. The Contracting Country shall, through the Europol Unit within the Ministry of Interior, 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 its national law and regulations.
3. When appropriate, consultation shall be arranged at the required level between representatives of the competent authorities of the Contracting Country 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 Europol Unit within the Ministry of Interior and, as they consider appropriate, may include direct exchanges of information with the competent authorities identified pursuant to Article 6. The Europol Unit within the Ministry of Interior shall be informed thereof. The Contracting Parties shall ensure that exchange of information may take place on a 24/7 basis. The Europol Unit within the Ministry of Interior 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 the Contracting Country 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. The Contracting Country shall only supply information to Europol that was collected, stored and transmitted in accordance with its national legislation.
5. Individuals shall have the right to have access to personal data related to them processed under this agreement, or to have such personal data checked, corrected or deleted, in accordance with the Contracting Party's legal framework. In cases where this right is exercised, the transmitting Contracting Party which provided the personal data concerned 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.

Article 8

Supply of personal data by the Contracting Country

1. The Contracting Country shall notify Europol, at the moment of supply of personal data or before, of the purpose for which the personal data 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, the Contracting Country 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 the Contracting Country. Europol shall notify the Contracting Country 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 processing system within six months after receipt.
3. 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 system.
4. If Europol, after appraisal, has reason to assume that information supplied is not accurate or no longer up to date, it shall inform the Contracting Country thereof. The Contracting Country 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.

Article 9

Supply of personal data by Europol

1. Where personal data are transmitted at the request of the Contracting Country, 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 the Contracting Country of such restrictions at a later stage.
2. The Contracting Country shall comply with the following conditions for all transmissions of personal data by Europol to the Contracting Country:
 - 1) after receipt, the Contracting Country shall determine without undue delay, whenever possible within three 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 or transmitted by the Contracting Country 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 or transmitted;
 - 8) the data shall be corrected and deleted by the Contracting Country 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 when they are no longer necessary for the purpose for which they were transmitted.
3. The Contracting Country 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. No personal data shall be supplied where an adequate level of data protection is no longer guaranteed.
 6. 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 Europol Unit within the Ministry of Interior thereof forthwith. Europol shall also request the Europol Unit within the Ministry of Interior forthwith to confirm to Europol that the data will be corrected or deleted.
 7. Europol shall keep a record of all communications or transmissions of personal data under this Article and of the grounds for such communications or transmissions.
 8. 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

1. 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.
2. 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 one of the Contracting Parties 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 the Contracting Country 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 the Contracting Country

1. The Europol Unit within the Ministry of Interior shall inform Europol when information transmitted to Europol is corrected or deleted. The Europol Unit within the Ministry of Interior 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 Europol Unit within the Ministry of Interior informs Europol that it has corrected or deleted information transmitted to Europol, Europol shall correct or 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 the Contracting Country that a further need to process that information exists. Europol shall inform the Europol Unit within the Ministry of Interior of the continued storage of such information.
3. If Europol has reason to assume that information supplied is not accurate or no longer up to date, it shall inform the Europol Unit within the Ministry of Interior. The Europol Unit within the Ministry of Interior 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 Europol Unit within the Ministry of Interior of the correction or deletion.

Article 12

Association to Analysis Groups

The Contracting Country 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 the Contracting Country 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 the Contracting Country at Europol

1. The Contracting Parties agree to enhance the co-operation as laid down in this Agreement through the stationing of one or more liaison officers of the Contracting Country, representing it 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. .
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. The Contracting Country 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
Europol liaison officers in the Contracting Country

1. If required for a further enhancement of the co-operation as laid down in this Agreement, the Contracting Parties agree that one or more Europol liaison officer(s) can be stationed with the Europol Unit within the Ministry of Interior. The Europol liaison officers' tasks, rights and obligations as well as details regarding their stationing and the costs involved shall be laid down in a separate agreement.
2. The Europol Unit within the Ministry of Interior shall arrange for all necessary facilities, such as office space and telecommunications equipment to be provided to such liaison officers within the premises of the Europol Unit within the Ministry of Interior and at its expense.
3. Within the territory of the Contracting Country the Europol liaison officer will enjoy the same privileges and immunities as those accorded by the Contracting Country to members, having comparable rank, of staff of diplomatic missions established in the Contracting Country.

Article 16
Liability

1. The Contracting Country 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. The Contracting Country 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 the Contracting Country's failure to comply with its obligations under this Agreement, the Contracting Country 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.
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, increased or other non-compensatory damages.

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.

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 one of the 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 the Contracting Country and any Member State of the European Union.
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.

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 the Contracting Country 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 the Contracting Country and Europol on 16 January 2007 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, storage and protection of the information that has already been communicated and transmitted between them. If no agreement is reached, either of the two Contracting Parties is entitled to require that the information which it has communicated and transmitted be destroyed or returned to the transmitting Party.

Done at _____, this _____.

For the Contracting Country

For Europol

ANNEX 1

TO THE AGREEMENT ON OPERATIONAL AND STRATEGIC CO-OPERATION BETWEEN THE CONTRACTING COUNTRY 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 the Contracting Country 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 initiate disciplinary action and/or possible further legal action in accordance with their respective security regulations or provisions.
4. The Contracting Country 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

Determination of classification level

1. Each Contracting Party shall be responsible for the determination 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 determination 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 determination 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 the Contracting Country and classification levels used within Europol are equivalent and will provide equivalent protection to the information marked with such a classification level:

For the Contracting Country	For Europol
ИНТЕРНО	EUROPOL RESTREINT UE/ EU RESTRICTED
ДОВЕРЛИВО	EUROPOL CONFIDENTIEL UE/ EU CONFIDENTIAL
СТРОГО ДОВЕРЛИВО	EUROPOL SECRET UE/ EU SECRET

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 Confidential UE/ EU Confidential” and above or their equivalents in the Contracting Country, a copy number will be added.

Article 9 Marking

1. Classified information 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 the Contracting Country shall be marked as “Europol Restreint UE/ EU Restricted” or its equivalent in the Contracting Country by mechanical or electronic means.
3. Information which is subject to the classification level “Europol Confidential UE/ EU Confidential” and above or its equivalent in the Contracting Country shall be marked by mechanical means or by printing on pre-stamped paper.

Article 10 Storage

1. Documents containing classified information or their equivalents in the Contracting Country can be drafted on a workstation accredited to the appropriate level by the respective accreditation authority.
2. Europol classified information or its equivalent in the Contracting Country whether on paper or on any portable storage medium, may only be stored in authorised security zones.
3. Classified information whether on paper or on any portable storage medium must be securely stored in accordance with the respective security provisions.

Article 11 Reproduction

1. The number of copies of classified information 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 by the respective accreditation authority.
3. The copying or printing of documents containing information classified “Europol Confidential UE/ EU Confidential” and above or their equivalents in the Contracting Country can only be carried out by the registry.

Article 12

Transmission

1. Information classified “Europol Restreint UE/ EU Restricted” or their equivalents in the Contracting Country 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 information classified “Europol Confidentiel UE/ EU Confidential” and above and their equivalents in the Contracting Country 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 information classified “Europol Confidentiel UE/ EU Confidential” and above and their equivalents in the Contracting Country outside the organisation by diplomatic bag, or by a messenger authorised by the respective 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 respective 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 in the Contracting Country can be sent electronically via the internal electronic mail system if approved by the respective Security Authority.
7. Information classified “Europol Confidentiel UE/ EU Confidential” or its equivalent in the Contracting Country cannot be sent independently via the internal electronic mail system from the user’s workstation unless appropriately accredited by the respective accreditation authority.
8. “Europol Secret UE/ EU Secret” cannot be transmitted electronically unless appropriately accredited.
9. “Europol Restreint UE/ EU Restricted” and “Europol Confidentiel UE/EU Confidential” or its equivalent in the Contracting Country can only be transmitted externally using appropriately accredited secured communication links.
10. The external electronic transmission of information classified “Europol Confidentiel UE/ EU Confidential” and “Europol Secret UE/ EU Secret” or its equivalent in the Contracting Country shall be carried out by the registry.

Article 13

Destruction

1. Classified information no longer needed and surplus copies of classified information shall be destroyed after authorisation from the respective 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 Confidentiel UE/ EU Confidential” and above and its equivalent in the Contracting Country, the destruction shall be recorded in the register. For documents containing classified information “Europol Secret UE/ EU Secret” or the equivalent in the Contracting Country, a destruction certificate shall be issued and signed by two persons witnessing their destruction. The certificate shall be recorded in the destruction inventory.

Article 14

Visits

Each Contracting Party shall allow the respective Security Authority or any other designated security authority to visit its territory or premises upon written request and 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 respective 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 THE CONTRACTING COUNTRY AND EUROPOL

Forms of Crime

With regard to the forms of crime referred to in Article 3 (1) of the Agreement on Co-operation between the Contracting Country and the Europol, 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 the Contracting Country 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 THE CONTRACTING COUNTRY AND EUROPOL

Competent Authorities

The competent authorities in the Contracting Country 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 the Contracting Country and Europol are:

- The Ministry of Internal Affairs
- The Ministry of Finance- Customs Administration
- The Ministry of Finance- Financial Police Office
- The Ministry of Finance- Money Laundering and Financing of Terrorism Prevention Administration

ANNEX 4
TO THE AGREEMENT ON OPERATIONAL AND STRATEGIC CO-OPERATION
BETWEEN THE CONTRACTING COUNTRY AND EUROPOL

Liaison Officers

Article 1
Tasks of the Liaison Officer of the Contracting Country

It shall be the task of the liaison officer of the Contracting Country (hereafter referred to as the "liaison officer") to support and co-ordinate the co-operation between the Contracting Country and Europol. In particular, the liaison officer shall be responsible for supporting contacts between Europol and the Contracting Country 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 the Contracting Country with respect to Europol. Europol shall facilitate the liaison officer's stay within the Netherlands as far as this is within its possibilities; Europol 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 the Contracting Country responsible for preventing and combating criminal offences within the meaning of the Agreement on Operational and Strategic Cooperation between the Contracting Country and Europol (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. The liaison officer shall not have direct access to Europol processing systems.

Article 4
Confidentiality

1. The Contracting Country shall ensure that the liaison officer is security screened and vetted 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

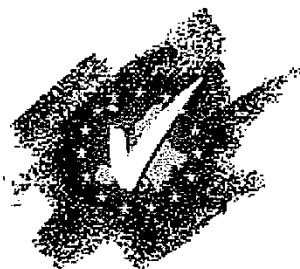
Administrative issues

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

Article 6

Liability and cases of conflict

1. The Contracting Country shall be liable for any damages caused by the liaison officer to Europol's property. Any such damages will be promptly repaid by the Contracting Country, 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 the Contracting Country 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 the Contracting Country for replacement.



JOINT SUPERVISORY BODY OF EUROPOL

**Opinion of the JSB in respect of the draft agreement
to be signed between Europol and Former Yugoslav Republic of Macedonia**

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 10/08

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 the Former Yugoslav Republic of Macedonia contained in document File n° 3710-639r1 as submitted by Europol on 5 February 2010.
2. Article 5 paragraph 4, Article 6, paragraphs 1 and 4, of the Council Decision 2009/934/JHA adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information¹ explicitly recognise that the JSB must give an opinion during the procedure in which the Council of the European Union has to decide whether to approve any agreement negotiated between Europol and third States such as the Former Yugoslav Republic of Macedonia.
3. The JSB points out that the present opinion is based on the report as contained in document File n° 3710-519, the JSB opinion on the data protection level in the Former Yugoslav Republic of Macedonia (document 09/34), the additional information on the data protection regime (Europol document File n° 3550-163) as well as the draft agreement between Europol and the Former Yugoslav Republic of Macedonia contained in document File n° 3710-639r1.

¹ OJ L 325, 11.12.2009, p. 6

4. The JSB underlines that its present opinion only relates to the draft agreement between Europol and the Former Yugoslav Republic of Macedonia. This opinion does in no way bind the JSB when drawing up its opinion in respect to draft agreements to be concluded between Europol and other third States.

B. JSB Opinion in respect to the draft agreement between Europol and the Former Yugoslav Republic of Macedonia

*The JSB is of the opinion that in respect to the draft agreement between Europol and the Former Yugoslav Republic of Macedonia as contained in document File n° 3710-639r1, from a data protection perspective **no obstacles** exist for the Council to allow Europol to conclude the agreement.*

C. Closing remarks

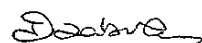
Pursuant to Article 16 paragraph 1 of the Council Decision 2009/934/JHA adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information, the JSB would like to be kept informed about the activities related to correction and deletion of personal data exchanged under the possible agreement between Europol and the Former Yugoslav Republic of Macedonia.

The JSB invites the Management Board to provide it with all memoranda of understanding and other texts adopted on the basis of a possible agreement between Europol and the Former Yugoslav Republic of Macedonia 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).

The JSB furthermore stresses again that its present opinion regarding the draft agreement between Europol and the Former Yugoslav Republic of Macedonia 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
9 March 2010*



Ms Isabel Cruz
Chair of the
Joint Supervisory Body
of Europol