

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE EUROPEAN POLICE OFFICE

Preamble

The United States of America and the European Police Office (Europol):

considering that it is within their common interest to enhance their cooperation;

considering that the Council of the European Union has given Europol the authorization to enter into negotiations on a cooperation agreement and to agree to the following provisions with the United States of America;

Have agreed as follows:

Article 1

Purpose

The purpose of this Agreement is to enhance the cooperation of the Member States of the European Union, acting through Europol, and the United States of America in preventing, detecting, suppressing, and investigating serious forms of international crime in the areas mentioned in Article 3 of this Agreement, in particular through the exchange of strategic and technical information, as defined in Article 2. This Agreement does not authorise the transmission of data related to an identified individual or identifiable individuals.

Article 2

Definitions

1. "Strategic information" includes, but is not limited to:
 - a. enforcement actions that might be useful to suppress offences and, in particular, special means of combating offences;
 - b. new methods used in committing offences;
 - c. trends and developments in the methods used to commit offences;
 - d. observations and findings resulting from the successful application of new enforcement aids and techniques;
 - e. routes and changes in routes used by smugglers or those involved in illicit trafficking offences covered by this agreement.
 - f. prevention strategies and methods for management to select law enforcement priorities;
 - g. threat assessments and crime situation reports.
2. "Technical information" includes, but is not limited to:
 - a. means of strengthening administrative and enforcement structures in the fields covered by this agreement;
 - b. forensic police methods and investigative procedures;
 - c. methods of training the officials concerned;
 - d. criminal intelligence analytical methods;
 - e. identification of law enforcement expertise.

Article 3

Areas of criminality to which the Agreement applies

1. The co-operation as established in this Agreement shall relate to the following criminal activities impacting on the United States of America or the Member States of the European Union:
 - a. unlawful drug trafficking;
 - b. trafficking in nuclear and radioactive substances;
 - c. illegal immigrant smuggling;
 - d. trade in human beings;
 - e. motor vehicle crime;
 - f. crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property;
 - g. forgery of money and means of payment;

as well as to illegal money laundering activities in connection with these forms of crime or specific manifestations thereof and related criminal offences.

2. Related criminal offences shall be the criminal offences committed in order to procure the means for perpetrating the criminal acts mentioned in paragraph 1, criminal offences committed in order to facilitate or carry out such acts, and criminal offences to ensure the impunity of such acts.
3. Where Europol's mandate is changed to cover areas of crime in addition to those set forth in paragraph 1, Europol may, from the date when the change to Europol's mandate enters into force, submit to the United States of America in writing a proposal to extend the scope of application of this agreement in relation to the new mandate. In doing so, Europol shall inform the United States of America of all relevant issues related to the change of the mandate. This agreement shall apply in relation to the new mandate as of the date on which Europol receives the written acceptance by the United States of America in accordance with its internal procedures.
4. Europol's definitions of the forms of criminality mentioned in paragraph 1 a) to e) and g) are included in Annex 1 to this Agreement. Whenever a change to Europol's mandate referred to in paragraph 3 entails the acceptance of a definition of another form of crime, such a definition will also be applicable for Europol where this form of criminality becomes part of this Agreement in accordance with paragraph 3. Europol shall inform the United States of America if and when the definition of an area of criminality is amplified, amended or supplemented.

Article 4

Point of contact

1. Each contracting party shall identify a point of contact to coordinate the application of this agreement.
2. These points of contact shall communicate directly with one another for the purposes of this agreement.
3. A Party may change the designated point of contact upon written notification thereof to the other Party.
4. The point of contact for the United States shall keep Europol advised, in writing, of the U.S. law enforcement authorities responsible for the areas of criminality to which this agreement applies, and functions that are to be carried out directly by such authorities.

Article 5

Exchange of Information and Confidentiality

1. Exchange of information specified in this agreement shall only take place in accordance with the terms of this agreement.
2. The exchange of information as specified in this agreement will take place between the points of contact designated under Article 4 and, as the points of contact consider appropriate, may include direct exchanges of information with the law enforcement agencies identified pursuant to Article 4, paragraph 4.
3. Information exchanged pursuant to this agreement shall be used for the purposes of this agreement and in the investigation, prosecution and prevention of criminal offences, and in proceedings related to criminal matters. Where one of the Parties requests the use of such information for other purposes, it shall ask for the prior written consent of the Party that furnished the information.
4. Unless already in the public domain, information exchanged under this agreement will be treated as law enforcement information and afforded protections in accordance with domestic law and applicable regulations. Information marked as "Europol 1" to "Europol 3" shall be protected as "United States law enforcement sensitive material" and handled in the same manner as information of a similar sensitivity held by the United States of America. Europol shall treat "United States law enforcement sensitive

material” transmitted by the United States of America as equivalent to “Europol 1” for purposes of security, unless otherwise requested pursuant to paragraph 5 of this Article. It is the responsibility of the transmitting Party to ensure all appropriate marks are fixed to the materials so transmitted.

5. The Party providing information may request that it be used subject to conditions. If the receiving Party cannot comply with such request it shall notify the providing Party, which shall then determine whether the information shall nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them, without prejudice to imperative constitutional requirements.

Article 6

Mutual Consultation

1. The points of contact designated by the United States and Europol shall consult each other regularly on policy issues and matters of common interest for the purpose of realizing their objectives and coordinating their respective activities.
2. When appropriate, consultation shall be arranged at the required level between representatives of the law enforcement authorities of the United States and Europol responsible for the areas of criminality to which this agreement applies, to agree upon the most effective way in which to organize their particular activities.

Article 7

Exchange of expertise

Representatives of the points of contact described in Article 4, or designated representatives of the law enforcement authorities responsible for the areas of criminality to which this agreement applies shall, as appropriate:

- a. participate in seminars, training courses, and other meetings; and
- b. facilitate visits of experts, law enforcement authorities, and administrators, in the areas of criminality covered by this agreement.

Article 8

Liaison officers

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

Article 9

Savings clause

Nothing in this agreement shall prejudice or otherwise affect or impact upon the provisions of any Mutual Legal Assistance Treaty, working law enforcement relationship, or any other agreement or arrangement for the exchange of information between the United States of America and any Member State of the European Union.

Article 10

Amendments to and termination of the Agreement

1. This Agreement may be amended by mutual consent between Europol and the United States of America at any time. Europol may only give its consent to amendments after completion of its applicable internal procedures.
2. The United States of America and Europol shall enter into consultations with respect to the amendment of or additions to this Agreement at the request of either of them. In particular, additional provisions relating to the exchange of personal data will be considered.
3. This Agreement may be terminated by each party with three months' written notice.

Article 11

Entry into force

This Agreement shall enter into force on the first day following its signature.

Done at Brussels on the sixth of December 2001, in duplicate, in the English language.

For the United States of America:

For Europol:

Rockwell A. Schnabel
Ambassador of the United States
of America to the European Union

Jürgen Storbeck
Director

ANNEX 1

DEFINITION OF THE FORMS OF CRIME MENTIONED IN ARTICLE 3 OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND EUROPOL

With regard to the forms of crime listed in Article 3 (1) a) to e) and g) of this Agreement, Europol shall, for the purposes of this Agreement, use the following definitions:

- "unlawful drug trafficking" means the criminal offences listed in Article 3 (1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention;
- "crime connected with nuclear and radioactive substances" means the criminal offences listed in Article 7(1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear and/or radioactive materials defined in Article 197 of the Euratom Treaty and Directive 80/836 Euratom of 15 July 1980;
- "illegal immigrant smuggling" means activities intended deliberately to facilitate, for financial gain, the entry into, residence or employment in the territory of the Member States of the European Union and the United States of America, contrary to the rules and conditions applicable in their territories;
- "traffic in human beings" means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue, especially with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. These forms of exploitation also include the production, sale or distribution of child-pornography material;
- "motor vehicle crime" means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles, and the spare parts for such vehicles, and the receiving and concealing of such objects;
- "forgery of money and means of payment" means the acts defined in Article 3 of the Geneva Convention of 20 April 1929 on the Suppression of Counterfeiting Currency, which applies to both cash and other means of payments;
- "illegal money-laundering activities" means the criminal offences listed in Article 6 (1) to (3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed at Strasbourg on 8 November 1990.