



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 May 2009

10019/09

**CATS 52
EUROJUST 29
EUROPOL 30**

NOTE

from : Mrs Michelle Coninx, Vice-President of Eurojust
to Ministry of Justice, President of the Council (JHA Council)
Subject : Draft Revised Agreement between Eurojust and Europol

Dear Excellency,

Eurojust is pleased to be able to submit for your approval in accordance with Article 27(3) of the Eurojust Decision, the attached new Cooperation Agreement between Eurojust and Europol.

Eurojust is further pleased to state that full agreement has been reached with Europol on the attached document. This Agreement has been approved by the College of Eurojust by its decision of 15 May 2009. The Joint Supervisory Body of Eurojust issued a positive opinion regarding the agreement on 25 November 2008.

Eurojust would welcome the Council's approval of this Agreement which aims at further improving both the quantity and quality of co-operation between Eurojust and Europol.

Yours faithfully,

Michelle Coninx
Vice-President of Eurojust

**Draft Revised Agreement between
Eurojust and Europol**

EUROJUST AND EUROPOL,

hereinafter jointly referred to as “the Parties”,

or separately referred to as “the transmitting Party”, “the receiving Party” or “the Party”;

- Considering that Articles 29 and 30(2) of the Treaty on European Union, asks the Council within a period of five years after the date of entry into force of the Treaty of Amsterdam to enable Europol to facilitate and support the preparation of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;
- Considering that the European Council of Tampere held in October 1999 agreed to set up a unit called Eurojust to reinforce the fight against serious organised crime, to be composed of national prosecutors, magistrates or police officers of equivalent competence, detached from each Member State according to its legal system and that Eurojust should have the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases notably based on Europol’s analyses;
- Considering the Council Decision 2009/xxx/xx of 6 April 2009 establishing the European Police Office (EUROPOL)¹;
- Considering the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime², as amended by the Council Decision 2003/659/JHA of 18 June 2003³ and by Council Decision 2009/xxx/JHA of 16 December 2009⁴;
- Considering that Articles 29 and 31(2) of the Treaty on European Union confirm the task of Eurojust to support criminal investigations in cases of serious cross border crime, particularly organised crime, taking account, in particular, of analyses carried out by Europol;

¹ OJ XX, xx.xx.2009,p. xx.

² OJ L 63, 6.3.2002, p.1.

³ OJ L 245, 29.9.2003, p.44.

⁴ OJ L xxx, xx.xx.2009, p. xx.

- Considering that, within the European Union, the objective of Europol is to improve cooperation between the competent authorities of the Member States in preventing and combating serious forms of international organised crime;
- Considering that, within the European Union, the objectives of Eurojust include the stimulation and improvement of the coordination, between the competent authorities of the Member States, of investigations and prosecutions in the Member States of serious cross-border crime, particularly when it is organised;
- Considering the Council Framework Decision of 13 June 2002¹ on joint investigation teams and in particular the provision for the setting up of joint teams without delay;
- Considering the Council Decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP;²
- Considering the complementarities of the tasks, objectives and responsibilities assigned to Eurojust and Europol respectively;
- Considering therefore that it is in their common interest to enhance their cooperation, in order to make the investigation and prosecution of crimes within their respective mandates as efficient as possible and to avoid duplication of effort wherever possible;
- Considering Council Decision 2009/xxx/xx implementing the rules governing Europol's relations with partners, including the exchange of personal data and classified information of xx/xx/2009³;
- Considering that their cooperation should take place with due regard to the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union;⁴
- Considering that, on the basis of the JHA Council Statement of 5-6 June 2008 concerning the cooperation between Europol and Eurojust on the exchange of information⁵, the Agreement between Eurojust and Europol of 2004 should be replaced by the present agreement.

¹ OJ L 162, 20.6.2002, p.1

² OJ L 16, 22.01.2003, p. 68

³ OJ XX, xx.xx.2009, p. xx.

⁴ OJ C 346, 18.12.2000, p.1

⁵ Press Release of the Council of the EU, Doc. 9956/08 (Press 146)

Have agreed as follows:

Chapter 1

Definitions and Scope

Article 1

Definitions

For the purpose of this Agreement:

- (a) personal data means any information 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;
- (b) information means personal and non-personal data;
- (c) processing of information means any operation or set of operations which is performed upon information, 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.

Article 2

Purpose of the Agreement

The purpose of this Agreement is to establish and maintain close cooperation between the Parties in order to increase their effectiveness in combating serious forms of international crime which fall in the respective competence of both Parties and to avoid duplication of work. In particular, this will be achieved through the exchange of operational, strategic, and technical information, as well as the coordination of activities. The cooperation will take place with due regard to transparency, complementarity of tasks and coordination of efforts.

Chapter 2

Consultation and Cooperation

Article 3

Regular Consultations

1. The Director of Europol and the President of the College of Eurojust shall consult each other regularly to ensure that the provisions of this Agreement are implemented.
2. Having due regard to priorities established in accordance with the respective legal framework of both Parties, they will develop priorities and strategies, which are complementary to each other having regard to the overall objective of combating those forms of crime within their respective competencies. Common policies and joint initiatives to this effect will be agreed between them whenever necessary.
3. They shall also consult each other regularly on matters of common interest in order to attain their respective objectives and co-ordinate their activities and to avoid duplication of effort.
4. The regular consultation efforts referred to above shall take place in accordance with an agreed programme. This programme shall provide for quarterly consultation meetings preceded by a preparatory exchange of information and opinions in writing with a view to identification of issues and participants' preparation. Such meetings shall be chaired by a representative of each organisation in rotation, on the basis of an agenda agreed on beforehand.
5. The consultation process shall include a yearly joint evaluation of operational issues which concern both Parties.

Article 4

General Cooperation issues

1. Eurojust shall promote the coordination of and facilitate the cooperation between the competent judicial authorities and Europol shall promote the widest possible cooperation among the competent law enforcement authorities through the Europol National Units. Both Parties shall utilise their contacts with national authorities to ensure as far as possible early and complete acquisition by both Parties of information necessary and useful for the fulfilment of their tasks.

2. The Parties shall jointly lend support to the national authorities in selecting targets in the field of crime repression; such support shall take place through meetings with the national authorities of the Member States.
3. The Parties shall also co-ordinate requests addressed to the national authorities in the Member States to conduct or co-ordinate investigations in specific cases, in accordance with their respective mandates and competence. In particular, both Parties shall inform each other in those cases where, within their attributed tasks, they exercise their right to ask Member States to start investigations at the latest by the time they make such a formal request to the Member State concerned.
4. Each Party shall give the highest consideration to suggestions and views of the other Party and shall react to these when needed. Wherever possible and appropriate, each Party may actively seek the other Party's opinion on any matter in the determination of joint strategies against organised crime.
5. Practical arrangements shall be made so that meetings organised by one Party may be attended by representatives of the other Party, when such meetings deal with matters of interest to that Party or in connection with which it has special technical or operational expertise.
6. In issuing any annual report or other document in which priorities and strategies are discussed or propounded, each Party shall endeavour to give express recognition to the contribution of the other Party and where the two Parties have disagreed in some important respect, subject to not doing so in the interest of greater effectiveness, the report or document shall seek to include a discussion of the issue on which there was disagreement.
7. Both Parties shall seek to involve each other in opportunities to participate in academic and professional debate whether that be in formulating papers or reacting to papers in so far as that may contribute to generating priorities and strategies. In the same way, when the occasion arises, both Parties will give particular attention to the opportunity of associating the other Party with such occupational or academic conferences as may arise at national and international level.

8. The Parties shall designate contact points by means of an exchange of letters between the Director of Europol and the President of the College. Changes to the list of contact points may be agreed in writing by means of further correspondence.

Article 5

Temporary posting of representatives

If required for a further enhancement of the cooperation as laid down in this Agreement, the Parties may agree on the temporary posting of one or more representatives of one or both of the Parties in the other Party's premises. The purpose and administrative details of each posting shall be set out in a separate written agreement.

Article 6

Joint Investigation Teams

1. At the request of one or more Member States, the Parties may together participate in the setting up of a joint investigation team and in its actions in accordance with the legal framework which is in place at that time, and the agreement made to establish the joint investigation team, as well as bring their support and expertise to the national judicial and law enforcement authorities regarding the preliminary discussions about setting up of joint investigation teams.
2. When it is decided to participate in such a team, Eurojust shall endeavour to bring its support in order to facilitate coordination between the judicial authorities concerned and Europol shall endeavour to support the intelligence gathering and investigative efforts of the team.
3. If requested, the Parties shall help to facilitate the operational effectiveness of the team by providing practical support and assistance.
4. The Parties shall inform each other of their participation in a joint investigation team at the earliest opportunity.

Chapter 3

Exchange of information

Article 7

Communication of information by Europol

1. Europol shall, of its own motion, provide Eurojust with the findings of an analysis of a general nature and of a strategic type, including in particular, through the communication of reports drawn up by Europol.
2. If information provided by Eurojust matches information stored in Europol's information processing systems, Europol shall, of its own motion or upon a specific request of Eurojust, provide Eurojust with analysis data and analysis results, including interim analysis results, directly linked to the information provided.
3. Europol shall, of its own motion or upon a request of Eurojust related to a specific investigation, provide Eurojust with analysis data and analysis results, including interim analysis results for the exercise of its powers under the Eurojust Decision, in particular, if judicial follow-up is required. Judicial follow-up includes in particular, coordination between the competent national authorities concerned, the support of the execution of the European Arrest Warrant, other instruments giving effect to the principle of mutual recognition and mutual legal assistance requests and the coordination of simultaneous investigative and judicial activities. Such data and findings include in particular, hit notifications, cross-match reports, operational reports and strategic reports. Eurojust may, if so required for operational needs, ask Europol to seek permission from the supplier of the source document to provide Eurojust with it.

Article 8

Communication of information by Eurojust

1. Within its field of competence, Eurojust will actively support Europol by stimulating the flow of information to Europol from the competent national authorities and by providing it with opinions based on analysis carried out by Europol. Eurojust shall provide, of its own motion, Europol with the findings of an analysis of a general nature and of a strategic type.

2. If information provided by Europol matches information stored in Eurojust's information processing systems, Eurojust shall, of its own motion or upon a specific request of Europol, provide Europol with data directly linked to the information provided.

Eurojust shall on a regular basis and in a timely manner provide Europol with relevant data for the purpose of its analysis work files, as well as other information, including information on cases, provided that they fall within the competence of Europol and advice which may be required for the objectives and tasks of Europol. In particular, Eurojust shall provide Europol with information on mutual legal assistance requests related to cases which fall under the scope of Europol's analysis work files. Europol may, if so required for operational needs, ask Eurojust to seek permission from the National Members concerned to provide Europol with the source document contained in the Temporary Work File at Eurojust.

Article 9

Right of initiative of Eurojust

1. Europol shall inform Eurojust on the opening of an analysis work file.
2. Eurojust may present a motivated request to Europol to take the initiative to open an analysis work file or to establish a target group, if Eurojust is associated with the analysis work file concerned. Europol shall consider such requests carefully in accordance with the procedures outlined in Europol's establishing act and having regard to the Council Conclusions setting EU priorities for the fight against organised crime on the basis of the Europol Organised Crime Threat Assessment and the EU Counter Terrorism Strategy as adopted by the Council of the EU. In case Europol decides not to open the analysis work file, Europol shall inform Eurojust of its decision and the reasons thereof.

Article 10
Right of initiative of Europol

In cases where Europol believes that judicial cooperation between competent national authorities of the Member States is needed and where such cases fall within the scope of Eurojust's competence and objectives, Europol may present a motivated request to Eurojust to take the initiative to provide assistance, in particular through coordination with national authorities participating in the analysis work files, supporting the execution of European Arrest Warrants, other instruments giving effect to the principle of mutual recognition and mutual legal assistance requests and the coordination of simultaneous investigative and judicial activities. If Eurojust decides not to comply with the request, Eurojust shall inform Europol of its decisions and the reasons thereof.

Article 11
Association of Eurojust with Europol analysis work files

1. Europol may invite experts from Eurojust to be associated with the activities of a specific analysis group, subject to an association arrangement concluded between Europol and Eurojust, in particular when Eurojust initiated the opening of the respective analysis work file. Europol shall ensure on a regular basis that the Member States concerned are informed of the possibility of inviting Eurojust to be associated with the analysis work file.
2. Eurojust may request to be associated with the activities of a specific analysis group, subject to an association arrangement concluded between Europol and Eurojust. In case of refusal, Europol shall inform Eurojust of the refusal and the reasons thereof.
3. Without prejudice to Article 7, Eurojust experts associated with a Europol analysis work file shall:
 - a. be invited to attend the analysis group meetings;
 - b. be informed by Europol, of its own motion, of the development of the analysis work file concerned;
 - c. receive analysis data and analysis results, including interim analysis results which relate to a specific case of Eurojust which was notified by Eurojust to Europol;

- d. be entitled to transmit the analysis data and analysis results, including interim analysis results, onward only in accordance with Article 14 of this Agreement and only with the prior consent of the provider of the information.

Article 12

Association of Europol with Eurojust strategic and coordination meetings

1. Eurojust shall provide Europol with a detailed list of strategic and coordination meetings. Eurojust may invite Europol to such meetings.
2. Europol may in particular, request to be invited to strategic and coordination meetings which fall under the scope of analysis work files. In case of refusal, Eurojust shall inform Europol of the refusal and the reasons thereof.

Chapter 4

Processing of information

Article 13

General terms and conditions

1. Transmission of information between the Parties shall only take place in accordance with the establishing act of the transmitting Party and the provisions of this Agreement.
2. Further processing of information received under this Agreement shall be limited to the purposes for which the information was communicated.
3. When processing information on the basis of this Agreement, each Party shall indicate the source of the information concerned.
4. All communications of personal data under this Agreement, including the grounds for such communications, shall be recorded.

Article 14
Transmission of information

1. Information may be transmitted either spontaneously or on a motivated request.
2. When a Party spontaneously transmits information to the other Party, it shall state the purpose for which the information is transmitted.
3. When a Party requests information from the other Party, it shall specify the purpose of and the reasons for the request.
4. Transmission of personal data revealing racial origin, political opinions or religious or other beliefs, or concerning health and sexual life shall be limited to absolutely necessary cases, and such data shall only be transmitted in addition to other data.
5. The transmitting Party shall indicate any restriction on use of the information, any access restrictions, as well as any condition of deletion or destruction of such information, before or at the moment of transmission, or, where the need for such restriction or condition becomes apparent later, after the transmission. The receiving Party shall be bound to comply with the restrictions indicated under this paragraph, and may only deviate from these after consultation and with prior written consent from the other Party, if necessary.
6. Any information received by either Party under this Agreement may only be transmitted onward to a third party with the prior consent of the transmitting Party and subject to any conditions or restrictions indicated by that Party. Such consent may only be given when allowed under the applicable legal framework of the transmitting Party.

Article 15
Right of Access

Any individual shall have the right to have access to personal data concerning himself transmitted under this Agreement, to have his data corrected and deleted, or to have such data checked, in accordance with the applicable provisions of the Party to which the request is addressed. In cases where this right is exercised, the transmitting Party shall be consulted before a final decision is taken on the request. This Party shall also consult the Member State(s) which originally provided the personal data.

Article 16

Decision to process the information received

1. After receipt, each Party shall determine without undue delay, but in any case within the period specified for each Party in its applicable regulations, if and to what extent information which has been transmitted may be included in its files, in accordance with the purpose for which it was transmitted. Whenever possible, this decision shall be taken within three months of receipt of the data.
2. Both Parties shall be responsible for ensuring that personal data as mentioned in paragraph 1, until it has been included in a data file, may only be accessed by a Europol or Eurojust official duly authorised for the purpose of determining whether or not the personal data may be included in a data file of the Party involved.
3. If the receiving Party decides either not to include an item of information in its databases or only to include the information under specific conditions, it shall inform the transmitting Party of its decision, as soon as it is taken, and explain the reasons for this.
4. Information which has been transmitted will immediately be deleted, destroyed or returned, if such information is not necessary for the receiving Party's tasks or if no decision has been taken on its inclusion within the period referred to in paragraph 1.

Article 17

Assessment of the source and reliability of the information

1. When information is transmitted by Europol or Eurojust on the basis of this Agreement, an assessment of 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 transmitted 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.
 - D. The reliability of the source cannot be assessed.
2. When information is transmitted by Europol or Eurojust 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 a Party, on the basis of information already in its possession, concludes that the assessment of information transmitted by the other Party requires correction, it will inform the other Party and attempt to agree on an amendment of that assessment. Neither Party will change the assessment of information received without such agreement.
4. If no reliable assessment can be made, or no agreement in general terms exists, Europol shall evaluate the information as provided for in paragraph 1 (D) and 2 (4) of this Article.

Article 18

Correction and deletion of information

1. Each Party shall immediately inform the other Party in all cases where information which has been transmitted to or received from that Party is corrected or deleted, stating the reasons. It shall also inform the other Party in cases where it emerges that the information should not have been transmitted.
2. When the transmitting Party informs the receiving Party that it has corrected or deleted information previously transmitted, or that the information should not have been transmitted, the receiving Party shall correct or delete the information accordingly.

3. Personal data shall be deleted immediately when it is no longer necessary for the purposes for which it was transmitted. A retention review must take place within a maximum period of three years, and when prescribed under the regulations of the Party retaining the data. If the storage of data transmitted from one of the Parties exceeds a period of three years, the need for continued storage shall be reviewed annually.
4. When a Party has reasons to assume that information received from the other Party is not accurate, or no longer up to date, it shall inform that Party. That Party shall verify the data and inform the other Party of the outcome of such verification.
5. In cases where personal data received from a Party and transmitted onward to a third party is corrected or deleted afterwards, the onward transmitting Party shall inform that third party thereof.

Chapter 5

Confidentiality

Article 19

Confidentiality

1. Each Party shall ensure that information received on the basis of this Agreement shall be subject to its confidentiality and security standards for the processing of information.
2. Each Party shall ensure that information received from the other Party shall, within its organisation, receive a level of protection which is equivalent to the level of protection offered by the measures applied to that information by the other Party. In order to ensure the implementation of this principle, Parties shall establish a table of equivalence between their respective confidentiality and security standards, to be laid down in a Memorandum of Understanding to be concluded between the Director of Europol and the President of the College of Eurojust.
3. The transmitting Party shall be responsible for the choice of the appropriate confidentiality level for information transmitted and shall ensure that the level is clearly indicated.

4. Both Parties may at any time request an amendment of the chosen confidentiality level for information they transmitted, including a possible removal of such a level. The receiving Party shall be obliged to amend the confidentiality level accordingly.
5. The transmitting Party may specify the time period for which the choice of confidentiality level shall apply, and any possible amendments to the confidentiality level after such period.
6. If the receiving Party, on the basis of information already in its possession, comes to the conclusion that the choice of confidentiality level needs amendment, it shall inform the transmitting Party and both Parties shall attempt to agree on an appropriate confidentiality level. The receiving Party shall not specify or change a confidentiality level without such agreement.
7. Where the confidentiality level of information is amended in accordance with this Article and where such information has already been transmitted by the receiving Party to a third party, the receiving Party shall, at the request of the transmitting Party, inform the recipients of the change of confidentiality level.
8. The communication of information subject to the confidentiality and security standards referred to in the first paragraph may not begin until these standards have entered into force for both Parties and the Memorandum of Understanding referred to in the second paragraph has been concluded.

Chapter 6

Liability and Settlement of Disputes

Article 20

Liability and compensation

1. If damage is caused to one Party as a result of unauthorised or incorrect data processing under this Agreement by the other Party, that Party shall be liable for such damage.
2. In such cases, or in cases where both Parties are responsible for unauthorised or incorrect data processing, the Parties shall endeavour to find an equitable solution to the compensation of damages suffered.

Article 21

Settlement of Disputes

1. Any dispute between the Parties concerning the interpretation or application of this Agreement, which cannot be settled amicably between the Director of Europol and the President of the College of Eurojust, may be referred for advice to an *ad hoc* Committee at the request of the Director of Europol or the President of the College of Eurojust. The Committee, which shall comprise no more than 3 members of the Management Board of Europol and 3 members of the College of Eurojust, shall draw up its own rules of procedure. The Committee's advice will be submitted to the Director of Europol and the President of the College of Eurojust.
2. In cases where the dispute has not been resolved through the procedure outlined in paragraph 1, the dispute will be put to the Council for final resolution.

Chapter 7

Final Provisions

Article 22

Reporting to the Council and the Commission

Both parties shall report annually to the Council in accordance with point 2.3 of the Hague Programme and to the Commission on their cooperation. This Joint Annual Report will specifically address the cooperation under Articles 7 to 12 on the exchange of information between the Parties, in particular on the follow-up of requests made by either Party according to Articles 9(2), 10, 11(2) and 12(2).

Article 23

Amendments

1. This Agreement may be amended by mutual consent of the Parties at any time, provided that these amendments are approved in accordance with the procedures established for obtaining approval of this Agreement.

2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either of them.

Article 24

Repeal

The Agreement between Eurojust and Europol of 9 June 2004 shall be repealed with effect from the date of entry into force of this Agreement.

Article 25

References to the legal frameworks

In case the establishing act of a Party is amended or replaced, each Party will undertake to notify the other Party in writing.

Article 26

Entry into force

This Agreement shall enter into force on 1 January 2010.

Done at The Hague, this [...] day of [...] two thousand and nine, in two copies in the English language.

For Eurojust,

For Europol,

José Luís Lopes da Mota

Robert Wainwright

President of the College

Director
