

Agreement
on Operational and Strategic Cooperation
between Ukraine and the European Police Office

Ukraine

and

the European Police Office (hereafter referred to as "the Parties")

Aware of the urgent problems arising from international organised crime, especially terrorism, and other forms of serious crime,

Considering that the Europol Management Board has, following the inclusion of Ukraine in the Decision adopted by the Council of the European Union on 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements, given the European Police Office (hereafter referred to as "Europol") the authorisation to enter into negotiations on a cooperation agreement with Ukraine on 7 October 2015,

Considering that the Council of the European Union has on 24 November 2016 given Europol the authorisation to agree to the present Agreement between Ukraine and Europol,

Respectful of Europol's obligations under the Charter of Fundamental Rights of the European Union,

Have agreed as follows:

Article 1

Purpose

The purpose of this Agreement is to establish cooperative relations between Europol and Ukraine in order to support the Member States of the European Union and Ukraine in preventing and combating organised crime, terrorism and other forms of international crime in the areas of crime referred to in Article 3, in particular through the exchange of information between Europol and Ukraine.

Article 2

Definitions

For the purpose of this Agreement:

- a) "Europol Council Decision" shall mean the Council Decision of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009;
- b) "personal data" means any data relating to an identified or identifiable natural person: an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- 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.

Chapter I - Scope

Article 3

Areas of crime

1. The cooperation as established in this Agreement shall relate to all areas of crime within Europol's mandate as listed in Annex I, including related criminal offences.

2. Related criminal offences shall be the criminal offences committed in order to procure the means of perpetrating the criminal acts referred to in paragraph 1, criminal offences committed in order to facilitate or carry out such acts, and criminal offences committed to ensure the impunity of such acts.
3. Where Europol's mandate as listed in Annex I 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 Ukraine in writing in accordance with Article 25.

Article 4

Areas of cooperation

The cooperation may, additional to the exchange of information, in accordance with the tasks of Europol as outlined in the Europol Council Decision, in particular include the exchange of specialist knowledge, general situation reports, results of strategic analysis, information on criminal investigation procedures, information on crime prevention methods, participation in training activities as well as providing advice and support in individual criminal investigations.

Article 5

Relation to other international instruments

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

Chapter II – Mode of cooperation

Article 6

National contact point

1. Ukraine designates a national contact point to act as the central point of contact between Europol and other competent authorities of Ukraine.

2. The exchange of information between Europol and Ukraine as specified in this Agreement shall take place between Europol and the national contact point. This does not preclude however, direct exchanges of information between Europol and the competent authorities as defined in Article 7, if considered appropriate by both parties.
3. The national contact point will also be the central point of contact in respect of review, correction and/or deletion of personal data as mentioned in Article 14.
4. The national contact point shall equally be the central point of contact for the transmission of personal data from private parties established within Ukraine, as well as for information from individuals residing in Ukraine, to Europol.
5. Ukraine shall ensure the possibility for the national contact point to enable information exchange on a 24-hour basis. The national contact point shall ensure that information can be exchanged without delay with the competent authorities mentioned in Article 7.
6. The national contact point for Ukraine is designated in Annex II.

Article 7
Competent authorities

1. Competent authorities are all public bodies existing in Ukraine responsible under national law for preventing and combating criminal offences. They are listed in Annex II to this Agreement.
2. Without prejudice to Article 11, the transmission of information by Europol to Ukraine and transmission within Ukraine shall be restricted to the mentioned competent authorities.

Article 8
Consultations and closer cooperation

1. The Parties agree that to further the cooperation and enhance as well as monitor the development of the provisions of this Agreement, regular exchanges, as appropriate, are integral. Specifically:

- a. High level meetings between Europol and the competent authorities of Ukraine shall take place regularly to discuss issues relating to this Agreement and the cooperation in general.
 - b. A representative of the national contact point 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.
 - c. A representative of the national contact point may be invited to attend the meetings of the Heads of Europol National Units.
2. When appropriate, consultation shall be arranged at the required level between representatives of the competent authorities of Ukraine 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 9

Liaison officers

1. The Parties agree to enhance the cooperation as laid down in this Agreement through the secondment of liaison officer(s) of Ukraine. Europol may at its own discretion, equally consider the secondment of liaison officer(s) to Ukraine.
2. The liaison officers' tasks, rights and obligations, their number, and the costs involved, shall be governed by an exchange of letters.
3. The seconding authority shall ensure that its liaison officers have speedy and, where technically feasible, direct access to the national databases necessary for them to fulfil their respective tasks.
4. Europol will as far as possible assist Ukraine in respect of concluding an agreement with the Kingdom of the Netherlands concerning the privileges and immunities enjoyed by Ukraine's seconded liaison officers. Within the territory of Ukraine a Europol liaison officer will enjoy the same privileges and immunities as those accorded by Ukraine to members, having comparable rank, of staff of diplomatic missions established in Ukraine.

Chapter III - Information exchange

Article 10

General provisions

1. Exchange of information between the Parties shall only take place for the purpose of and in accordance with the provisions of this Agreement.
2. The transmission of personal data and classified information by Europol must be necessary in individual cases for the purpose of preventing or combating the criminal offences referred to in Article 3.
3. The personal data exchanged between Ukraine and Europol will not be regarded as a state secret.
4. Parties shall only supply information to each other which was collected, stored and transmitted in accordance with their respective legal framework and has not been obtained in violation of the respective applicable legislation on human rights. In this context Europol will in particular be bound by Article 20(4) 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 information.
5. Individuals shall have the right to access the information related to them transmitted on the basis of the present Agreement, and to have such information checked, corrected or deleted. In cases where this right is exercised, the transmitting Party will be consulted before a final decision on the request is taken.
6. Requests for public access to information transmitted on the basis of the present Agreement shall be submitted to the transmitting Party for their advice as soon as possible. The concerned information shall not be disclosed should the transmitting Party object to it.

Article 11

Transmission of personal data

1. Requests from the Parties for personal data must be accompanied by an indication of the purpose and reason for it.

2. In the absence of an indication as mentioned in paragraph 1, the Parties are not permitted to transmit personal data.
3. The Parties shall indicate at the moment of transmission of the personal data or before, the purpose for which the data were transmitted, 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, Parties shall inform of such restrictions at a later stage.
4. The Parties shall determine without undue delay, no later than six months after receipt, if and to what extent the personal data which have been supplied are necessary for the purpose for which they were supplied and inform the transmitting Party thereof. The personal data must be deleted when the data is not necessary for the purpose for which they were transmitted.
5. The Parties are only permitted to transmit personal data revealing racial or ethnic origin, political opinions or religious or philosophical beliefs, or trade union membership and data concerning a person's health or sexual life if strictly necessary.
6. The Parties shall keep a record of all communications of personal data under this Article and of the grounds for such communications.

Article 12

Use of the information

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

Article 13

Onward transmission of the information received

1. Onward transmission of the information received by Ukraine shall be restricted to the competent authorities of Ukraine mentioned in Article 7 and shall take place under the same conditions as those applying to the original transmission. Any other onward transmission, including to third States and international organisations, must be consented to by Europol.
2. Onward transmission of the information received by Europol shall be restricted to the authorities responsible in the Member States of the European Union for preventing and combating criminal offences and shall take place under the same conditions as those applying to the original transmission. Any other onward transmission, including to third States or international organisations must be consented to by Ukraine.

Article 14

Storage, review, correction and deletion of personal data

1. The Parties shall retain personal data only as long as it is necessary for the purpose for which it was transmitted. The need for continued storage shall be reviewed no later than three years after the transmission. During the review, the Parties may decide on the continued storage of data until the following review which shall take place after another period of three years if that is still necessary for the performance of its tasks. If no decision is taken on the continued storage of data, those data shall be deleted automatically.
2. Where a Party has reason to believe that personal data previously transmitted by it is incorrect, inaccurate, no longer up to date or should not have been transmitted, it shall inform the other Party, which shall correct or delete the personal data, and provide notification thereof.
3. Where a Party has reason to believe that personal data previously received by it is incorrect, inaccurate, no longer up to date or should not have been transmitted, it shall inform the other Party, which shall provide its position on the matter.

4. In the event that Europol is notified of the correction or deletion of data received from Ukraine, it may nonetheless decide not to delete the information if it, based on the information in its files that is more extensive than that possessed by Ukraine, has further need to process that information. Europol shall inform Ukraine of the continued storage of such information.

Article 15

Assessment of the source and of the information

1. When information is supplied by the Parties on the basis of this Agreement, the source of the information shall be indicated as far as possible on the basis of the following criteria:
 - a. Where there is no doubt of the authenticity, trustworthiness and competence of the source, or if the information is supplied by a source who, in the past, has proved to be reliable in all instances;
 - b. Source from whom information received has in most instances proved to be reliable;
 - c. Source from whom information received has in most instances proved to be unreliable;
 - X. The reliability of the source cannot be assessed.
2. When information is supplied by the Parties on the basis of this Agreement, the reliability of the information shall be indicated as far as possible on the basis of the following criteria:
 1. Information whose accuracy is not in doubt;
 2. Information known personally to the source but not known personally to the official passing it on;
 3. Information not known personally to the source but corroborated by other information already recorded;
 4. Information which is not known personally to the source and cannot be corroborated.
3. If either of the Parties, on the basis of information already in its possession, comes to the conclusion that the assessment of information supplied by the other Party needs correction, it shall inform the other Party and attempt to agree on an amendment to the assessment. Neither of the Parties shall change the assessment of information received without such agreement.

4. If a Party receives information without an assessment, it shall attempt as far as possible and in agreement with the transmitting Party to assess the reliability of the source or the information on the basis of information already in its possession.
5. The Parties may agree in general terms on the assessment of specified types of information and specified sources, which shall be laid down in a memorandum of understanding between Ukraine and Europol. If information has been supplied on the basis of such general agreements, this shall be noted with the information.
6. If no reliable assessment can be made, or no agreement in general terms exists, the information shall be evaluated as at paragraph 1 (X) and paragraph 2 (4) above.

Article 16

Data security

The Parties shall ensure that the information exchanged or received is 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 (equipment access control),
- 2) prevent the unauthorised reading, copying, modification or removal of data media (data media control),
- 3) prevent the unauthorised input of personal data and the unauthorised inspection, modification or deletion of stored personal data (storage control),
- 4) prevent the use of automated data processing systems by unauthorised persons using data- communication equipment (user control),
- 5) ensure that persons authorised to use an automated data- processing system have access only to the personal data covered by their access authorisation (data access control),
- 6) ensure that it is possible to verify and establish to which bodies personal data may be or have been transmitted using data communication equipment (communication control),
- 7) ensure that it is possible to verify and establish which personal data have been input into automated data processing systems and when and by whom the personal data were input (input control),

- 8) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control),
- 9) ensure that installed systems may, in the event of interruption, be restored immediately (recovery),
- 10) ensure that the functions of the system perform without fault, that the appearance of faults in the functions is immediately reported (reliability) and that stored personal data cannot be corrupted by system malfunctions (integrity).

Chapter IV - Other forms of cooperation

Article 17

Association to analysis groups

1. Europol may invite experts from Ukraine to be associated with the activities of an analysis group, and, under the conditions outlined in Article 14(8) Europol Council Decision conclude an association agreement for this purpose.
2. These association agreements will in particular permit the associated experts to
 - a. attend analysis group meetings, and
 - b. be informed by Europol, upon request, of the development of the concerned analysis work file, and
 - c. receive analysis results which concern Ukraine, respecting the conditions of Articles 19(2) and 24(1) of the Europol Council Decision, and in compliance with the provisions of this Agreement.

Article 18

Participation in joint investigation teams

Ukraine and Europol shall offer each other support in the facilitation of the setting up and operation of joint investigation teams.

Chapter V – Confidentiality of information

Article 19

Principles of security and confidentiality

Each Party shall:

1. protect and safeguard unclassified information subject to this Agreement and the Memorandum of Understanding referred to in Article 20, with the exception of information which is expressly marked or is clearly recognisable as being public information, by various measures including the obligation of discretion and confidentiality, limiting access to authorised personnel and general technical and procedural measures;
2. protect and safeguard classified information subject to this Agreement and the Memorandum of Understanding referred to in Article 20;
3. ensure that it has a security organisation, framework and measures in place. The Parties mutually accept and apply the basic principles and minimum standards implemented in their respective security systems and procedures to ensure that at least an equivalent level of protection is granted for classified information subject to this Agreement;
4. ensure that the premises where information subject to this Agreement is kept have an appropriate level of physical security in accordance with the respective legal framework of each Party;
5. ensure that access to and possession of information is restricted to those persons who by reason of their duties or obligations need to be acquainted with such information or need to handle it;
6. ensure that all persons who, in the conduct of their official duties require access or whose duties or functions may afford access to classified information shall be subject to a basic security screening in accordance with the respective legal framework of the Party;
7. be responsible for the choice of the appropriate classification level for information supplied to the other Party;

8. ensure that classified information subject to this Agreement keeps the classification level given to it by the originating Party. The receiving Party shall protect and safeguard the classified information according to its legal framework for the protection of classified information holding an equivalent classification level;
9. not use or permit the use of classified information subject to this Agreement except for the purposes and within any limitations stated by or on behalf of the originator, without the written consent of the originator;
10. not disclose or permit the disclosure of classified information subject to this Agreement to third parties, without the prior written consent of the originator.

Article 20

Memorandum of Understanding on Confidentiality and Information Assurance

The protection of the information exchanged between the Parties, shall be regulated in a Memorandum of Understanding on Confidentiality and Information assurance agreed between the Parties implementing the principles outlined in this Chapter. Such Memorandum shall include in particular provisions on the Parties' security organisation, education and training, standards of security screening, table of equivalence, handling of classified information and values of information assurance. Exchange of classified information is conditional upon the conclusion of the Memorandum of Understanding on Confidentiality and Information Assurance.

Chapter VI - Disputes and liability

Article 21

Liability

1. The Parties shall be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in information exchanged. In order to avoid its liability under their respective legal frameworks vis-à-vis an injured party, neither Party may plead that the other had transmitted inaccurate information.

2. If these legal or factual errors occurred as a result of information erroneously communicated or of failure on the part of the other Party to comply with their obligations, they shall be bound to repay, on request, any amounts paid as compensation under paragraph 1 above, unless the information was used by the other Party in breach of this Agreement.
3. The Parties shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2 above.

Article 22

Settlement of disputes

1. All disputes which may emerge in connection with the interpretation or application of the present Agreement shall be settled by means of consultations and negotiations between representatives of the Parties.
2. In the event of serious failings of either Party to comply with the provisions of this Agreement, or a Party is of the view that such a failing may occur in the near future, either Party may suspend the application of this Agreement temporarily, pending the application of paragraph 1. Obligations inherent upon the Parties under the Agreement will nonetheless remain in force.

Chapter VII - Final provisions

Article 23

Secure communication line

1. The establishment, implementation and operation of a secure communication line for the purpose of exchange of information between Europol and Ukraine are regulated in the Memorandum of Understanding on the establishment of a secure communication line agreed between the Parties.
2. The costs of the establishment of the secure communication line shall be covered by Europol whereas the monthly running costs shall be shared between the Parties in proportions specified in the Memorandum of Understanding, as referred to in paragraph 1 of this Article.

3. Without prejudice to Article 21 a Party shall be liable for damage caused to the other Party as a result of wrongful actions relating to the establishment, the implementation or the operation of the secure communication line.
4. Any dispute between the Parties concerning the interpretation or application of provisions relating to the establishment, implementation and operation of a secure communication line shall be settled in accordance with Article 22.

Article 24 **Expenses**

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

Article 25 **Amendments and supplements**

1. This Agreement may be amended in writing, at any time by mutual consent between the Parties. Any amendments must receive the approval by the Council of the European Union.
2. The Annexes to this Agreement, as well as the provisions of Article 3(3) may be amended through an Exchange of Notes between the Parties.
3. Without prejudice to paragraph 1, amendments to the Annexes of this Agreement may be agreed upon without the approval of the Council of the European Union.
4. The Parties shall enter into consultations with respect to the amendment of this Agreement or its Annexes at the request of either of them.

Article 26 **Entry into force and validity**

This Agreement shall enter into force on the date on which Europol notifies Ukraine in writing through diplomatic channels that it has received and accepted notification of Ukraine that its internal ratification procedures have been completed.

Article 27
Termination of the Strategic Agreement

The Agreement between the European Police Office and Ukraine on Strategic Co-operation signed between Ukraine and Europol on 4 December 2009 will be terminated upon entry into force of this Agreement. The legal effects of the implementation of the Agreement between the European Police Office and Ukraine on Strategic Co-operation will remain in force.

Article 28
Termination of this Agreement

1. This Agreement may be terminated by either of the Parties by sending written notification to another Party via diplomatic channels three months' prior to the date of termination.
2. In case of termination, the Parties shall reach agreement on the continued use and storage of the information that has already been communicated between them. If no agreement is reached, either of the two Parties is entitled to require that the information which it has communicated be destroyed or returned to the transmitting Party.
3. Without prejudice to paragraph 1, the legal effects of this Agreement remain in force.

Done at The Hague, on 14 December 2016 in duplicate in the Ukrainian and English languages, each text being equally authentic.

For **Ukraine**



Arsen Avakov
Minister of Internal Affairs

For **Europol**



Rob Wainwright
Director

Annex I – Areas of crime

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

The other forms of serious crime mentioned shall be:

- unlawful drug trafficking,
- illegal money-laundering activities,
- crime connected with nuclear and radioactive substances,
- illegal immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- organised robbery,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud,
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of money and means of payment,
- computer crime,
- corruption,
- illicit trafficking in arms, ammunition and explosives,
- illicit trafficking in endangered animal species,
- illicit trafficking in endangered plant species and varieties,
- environmental crime,
- illicit trafficking in hormonal substances and other growth promoters.

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

(a) 'crime connected with nuclear and radioactive substances' means the criminal offences listed in Article 7(1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear

and/or radioactive materials defined in Article 197 of the Treaty establishing the European Atomic Community and in Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation¹;

(b) 'illegal immigrant smuggling' means activities intended deliberately to facilitate, for financial gain, the entry into, residence or employment in the territory of the Member States, contrary to the rules and conditions applicable in the Member States;

(c) 'trafficking in human beings' means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, the production, sale or distribution of child-pornography material, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(d) 'motor vehicle crime' means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles and the spare parts for such vehicles, and the receiving and concealing of such objects;

(e) 'illegal money-laundering activities' means the criminal offences listed in Article 6(1) to (3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990;

(f) 'unlawful drug trafficking' means the criminal offences listed in Article 3(1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention.

The forms of crime referred to in Article 3 and in this Annex shall be assessed by the competent authorities in accordance with the law of the States.

¹ OJ L 159, 29.6.1996, p. 1.

Annex II - Competent authorities and national contact point

The national contact point for Ukraine, to act as the central point of contact between Europol and other competent authorities of Ukraine is hereby designated as:

The Europol Co-operation Unit of the National Police of Ukraine

The competent authorities in Ukraine responsible under national law for preventing and combating the criminal offences referred to in Article 3(1) of this Agreement are:

1. The National Police of Ukraine
2. The Ministry of Internal Affairs of Ukraine
3. The Administration of the State Border Guard Service of Ukraine
4. The Main Department of Combating Organized Crime and Corruption of the Security Service of Ukraine
5. The State Fiscal Service of Ukraine
6. The State Service for Financial Monitoring of Ukraine
7. The National Anti-Corruption Bureau of Ukraine
8. The General Prosecutor's Office of Ukraine