



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 December 2012

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**ENFOPOL 425
JAIEX 128**

COVER NOTE

From: Europol
To: Delegations
Subject: Draft Agreement on Operational and Strategic Co-operation between the
Principality of Liechtenstein and the European Police Office

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



The Hague, 14 December 2012

MBS 161.2012

Management Board

Mr Rafael Fernández-Pita y González
Director-General
Directorate-General D
Justice and Home Affairs
Council of the European Union

Draft agreement on operational and strategic co-operation between Liechtenstein and the European Police Office

Dear Mr Fernández-Pita,

In accordance with Article 23(2) of the Europol Council Decision, I am pleased to transmit to the Council, for approval, the draft agreement on operational and strategic cooperation between Liechtenstein and the European Police Office, which the Management Board endorsed at its 11-12 December 2012 meeting.

Please find also attached the relevant opinion of the Joint Supervisory Body (JSB) of Europol. The Management Board is grateful to the JSB and welcomes the amendments agreed by the parties in view of its comments.

Concerning the JSB's comments with regard to Article 12(1) and the mention of the national contact point in the agreement and not in its annex, as is currently the case, the Board concurred with Europol that no amendment was necessary.

I wish to thank you for your attention and remain at the disposal of the Council for any information you may require.

Kind regards,



Rafał Łysakowski
Chairperson of the Management Board

Attachments:

- *Agreement on operational and strategic cooperation between Liechtenstein and the European Police Office (#609423).*
- *Opinion of the Joint Supervisory Body of Europol in respect of the draft agreement (JSB 12/60).*



The Hague, 13 December 2012

EDOC# 609423v5

Draft Agreement
on Operational and Strategic Co-operation
between the Principality of Liechtenstein and the European Police Office

The Principality of Liechtenstein (hereafter referred to as “Liechtenstein”)

and

the European Police Office (hereafter referred to as “Europol”)

Hereafter jointly 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 Liechtenstein in the Council Decision of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements, given Europol the authorisation to enter into negotiations on a cooperation agreement with Liechtenstein on 20 February 2012,

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

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

Considering that Liechtenstein is already closely associated with the law enforcement co-operation of the European Union Members States through its association with the Schengen co-operation mechanisms,

Considering that Liechtenstein is a party to the Agreement on the European Economic Area,

Respectful of Liechtenstein’s obligations under the European Convention of Human Rights,

Have agreed as follows:

Article 1

Purpose

The purpose of this Agreement is to establish cooperative relations between Europol and Liechtenstein in order to support the Member States of the European Union and Liechtenstein 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 Liechtenstein.

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 co-operation as established in this Agreement shall relate to all areas of crime within Europol's mandate as listed in Annex 1, including related criminal offences.
2. Related criminal offences shall be the criminal offences committed in order to procure the means of perpetrating the criminal acts referred to in paragraph 1, criminal offences committed in order to facilitate or carry out such acts, and criminal offences committed to ensure the impunity of such acts.
3. Where Europol's mandate as listed in Annex 1 is changed in any way, Europol may, from the date when the change to Europol's mandate enters into force, suggest the applicability of this Agreement in relation to the new mandate to Liechtenstein in writing in accordance with Article 25.

Article 4

Areas of cooperation

The co-operation 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 Liechtenstein and any Member State of the European Union.

Chapter II – Mode of cooperation

Article 6
National contact point

1. Liechtenstein designates a national contact point to act as the central point of contact between Europol and other competent authorities of Liechtenstein.
2. The exchange of information between Europol and Liechtenstein 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 Europol and the national contact point.
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 Liechtenstein, as well as for information from private persons residing in Liechtenstein, to Europol.

5. Liechtenstein 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 Liechtenstein is designated in Annex 2.

Article 7

Competent authorities

1. Competent authorities are all public bodies existing in Liechtenstein responsible under national law for preventing and combating criminal offences. They are listed in Annex 2 to this Agreement.
2. Without prejudice to Article 11, the transmission of information by Europol to Liechtenstein and transmission within Liechtenstein 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 Liechtenstein 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 Liechtenstein 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 co-operation as laid down in this Agreement through the secondment of liaison officer(s) of Liechtenstein to Europol. Europol may at its own discretion, equally consider the secondment of liaison officer(s) to Liechtenstein, located at the national contact point.
2. The liaison officers' tasks, rights and obligations towards the hosting authority, their number, as well as details regarding their stationing and the costs involved are laid down in Annex 3.
3. The hosting authority shall arrange for all necessary facilities, such as office space and telecommunications equipment to be provided to such liaison officers within their premises, at their own cost. The costs of telecommunication shall however be borne by the seconding authority.

4. The archives of the liaison officer(s) shall be inviolable from any interference by officials of the hosting authority. These archives shall include all records, correspondence, documents, manuscripts, computer records, photographs, films and recordings belonging to or held by the liaison officer(s).
5. The seconding authority shall ensure that its liaison officer(s) have speedy and, where technically feasible, direct access to the national databases necessary for them to fulfil their respective tasks.
6. Europol will as far as possible assist Liechtenstein in respect of concluding an agreement with the Kingdom of the Netherlands concerning the privileges and immunities enjoyed by Liechtenstein's seconded liaison officer(s) to Europol. Within the territory of Liechtenstein, a Europol liaison officer will enjoy the same privileges and immunities as those accorded by Liechtenstein to members, having comparable rank, of staff of diplomatic missions established in Liechtenstein.

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. 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 manifestly obtained in violation of human rights. In this context Europol will in particular be bound by article 20(4) of the Council Decision adopting the implementing rules governing Europol's relations with partner, including the exchange of personal data and classified information.
4. 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.
5. 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, Europol is 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. The personal data must be deleted when the data is not necessary for the purpose for which they were transmitted, and the transmitting Party informed accordingly.
5. Europol is 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. Europol 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 Liechtenstein shall be restricted to the competent authorities of Liechtenstein 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 Liechtenstein.

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 their tasks. If no decision is taken on the continued storage of data, those data shall be deleted without delay.
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 Liechtenstein, 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 Liechtenstein, has further need to process that information. Europol shall inform Liechtenstein 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 Liechtenstein 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 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 (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 Liechtenstein to be associated with the activities of an analysis group and, under the conditions outlined in Article 14(8) of the 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 Liechtenstein, respecting the conditions of Articles 19(2) and 24(1) of the Europol Decision, and in compliance with the provisions of this Agreement.

Article 18

Participation in joint investigation teams

Liechtenstein 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 the Party.
5. ensure that access to and possession of information is restricted to those persons who by reason of their duties or obligations need to be acquainted with such information or need to handle it.
6. ensure that all persons who, in the conduct of their official duties require access or whose duties or functions may afford access to classified information, shall be subject to a basic security screening in accordance with the respective legal framework of the Party.
7. be responsible for the choice of the appropriate classification level for information supplied to the other Party.
8. ensure that classified information subject to this Agreement keeps the classification level given to it by the originating Party. The receiving Party shall protect and safeguard the classified information according to its legal framework for the protection of classified information holding an equivalent classification level.
9. not use or permit the use of classified information subject to this Agreement except for the purposes and within any limitations stated by or on behalf of the originator, without the written consent of the originator;
10. not disclose or permit the disclosure of classified information subject to this Agreement to third parties, without the prior written consent of the originator.

Article 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 2 and 3 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 Liechtenstein shall be regulated in a Memorandum of Understanding agreed between the Parties.
2. The costs of the establishment of the secure communication line shall be paid by Europol whereas the monthly running costs shall be shared between the Parties in proportions specified in the Memorandum of Understanding.
3. Without prejudice to Article 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 in accordance with their respective statutory requirements. 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 Art. 3(3) may be amended through an Exchange of Notes between the Parties.
3. Without prejudice to paragraph 1, amendments to the Annexes of this Agreement may be agreed upon 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 Liechtenstein in writing through diplomatic channels that it has received and accepted notification of Liechtenstein that its internal ratification process has been completed.

Article 27
Termination of the Agreement

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

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

For **Liechtenstein**

For **Europol**

Annex I – Areas of Crime

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

The other forms of serious crime mentioned shall be:

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

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

- (a) ‘crime connected with nuclear and radioactive substances’ means the criminal offences listed in Article 7(1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980;
- (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 4 and in this Annex shall be assessed by the competent authorities in accordance with the law of the States.

Annex II - Competent authorities and national contact point

The national contact point for Liechtenstein, to act as the central point of contact between Europol and other competent authorities of Liechtenstein is hereby designated as the Liechtenstein National Police.

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

1. The Liechtenstein National Police
2. The Migration and Passport Office
3. The Financial Intelligence Unit (FIU)

Annex III - Liaison Officers

Liaison Officers

Article 1

Tasks of the liaison officer of Liechtenstein

It shall be the task of the liaison officer of Liechtenstein (hereafter referred to as the “liaison officer”) to support and co-ordinate the co-operation between Liechtenstein, Europol and the Member States of the European Union. In particular, the liaison officer shall be responsible for supporting contacts between Europol, Liechtenstein and the Member States of the European Union and facilitating the exchange of information. Any exchange of information between Liechtenstein and the Europol National Units shall be in accordance with respective national law.

Article 2

Status of the liaison officer

1. The liaison officer shall be regarded as a formal representative of Liechtenstein with respect to Europol. Europol shall facilitate the liaison officer's stay within the Netherlands as far as this is within its possibilities; it 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 Liechtenstein responsible for preventing and combating criminal offences within the meaning of the Agreement on Operational and Strategic Co-operation between the Principality of Liechtenstein and the European Police Office (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 data files.

Article 4
Confidentiality

1. Liechtenstein shall ensure that the liaison officer is screened 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 Chapter V 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 their applicable national law. In performing his duties, the liaison officer shall proceed in accordance with his own national law on data protection.

2. The liaison officer shall keep Europol informed of their 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. Liechtenstein shall be liable for any damages caused by the liaison officer to Europol's property. Any such damages will be promptly repaid by Liechtenstein, on the basis of a duly substantiated request by Europol. In case of disagreement concerning a repayment, Article 22 of the Agreement may be followed.
2. In cases of conflict between Liechtenstein 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 Liechtenstein for his replacement.



JOINT SUPERVISORY BODY OF EUROPOL

**Opinion of the JSB in respect of the draft agreement
to be signed between Europol and the Principality of Liechtenstein**

To the attention of:

*The Chairman of the
Europol Management Board
Mr. Rafal Lysakowski
PO. Box 90850
NL - 2509 LW The Hague*

DOCUMENT 12/60

THE JOINT SUPERVISORY BODY OF EUROPOL,

A. Introductory remarks

The JSB has been called upon to draw up an opinion in respect to the draft agreement to be signed between Europol and the Principality of Liechtenstein contained in document File n° 2641-130, EDOC # 609423v2 as submitted by Europol.

Article 6, paragraphs 3 and 4, of 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 Principality of Liechtenstein.

The JSB points out that the present opinion is based on the data protection report as contained in Europol document File n° 2130-81, the JSB opinion on the data protection level in the Principality of Liechtenstein (document 12/09), as well as the draft agreement between Europol and the Principality of Liechtenstein.

The JSB underlines that its present opinion only relates to the draft agreement between Europol and the Principality of Liechtenstein. 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.

¹ *OJ L 325, 11.12.2009, p. 6*

B. Comments

The JSB has comments on the draft agreement. Some are of a technical nature, others are of a principal nature.

- i) A first comment concerns the designation of the national contact point of Liechtenstein. According to Article 6(6) the national contact point is designated in Annex 2. Such a designation should however be done by the agreement itself.
- ii) Europol may only transfer personal data when necessary in individual cases. This is mentioned in Article 10 (5), but should - in view of its principal character - be either included in paragraph 1 of that article or should be included in a new second paragraph.
- iii) Art. 10 (4) limits the right of public access to individuals. Europol's own transparency rules cover natural or legal persons residing or having its registration in a Member State. The operational agreement may not limit the addressees of these rights and should be brought in line with Europol's own rules on public access.
- iv) All operational agreements mention that Europol will keep record of the transmissions. The present draft agreement does not include such a provision. Although Europol will still be obliged to keep record - it is an obligation of the Europol Council Decision - it is suggested to include such a provision in the agreement.
- v) Article 10(1) and 11(3) only allow the transmission of data for a specific purpose. In view of this, the phrase in Article 12(1) "if transmitted with a purpose" is misleading and should be deleted.
- vi) According to Article 14 (4), Europol may process data (despite Liechtenstein's notification of the correction or deletion of the data) should Europol have a further interest in the data. In previous operational agreements a standard clause was used stating that Europol may decide not to delete when concluding - based on information in its files that is more extensive than that processed by the providing third state - that it needs to process the information further. The JSB agreed in the past with this condition for further processing since the condition that Europol has more extensive information might (of course depending on that information) justify the necessity of further processing of the data received from the third state. This condition is also in line with a similar condition when data is sent by a Member State (Article 20(3) Europol Decision). The present Article 14(1) simply referring to a further interest does not present a sufficient justified basis for further processing. Article 14(1) should be brought in line with the standard clause used in previous agreements stating that Europol may decide not to delete when concluding - based on information in its files that is more extensive than that processed by the providing third state - that it needs to process the information further.

C. JSB Opinion in respect to the draft agreement between Europol and the Principality of Liechtenstein

The JSB is of the opinion that in respect to the draft agreement between Europol and the Principality of Liechtenstein 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 **provided that** the comments made by the JSB - especially the comments made in chapter B, iii), v) and vi)- are taken into account and the draft agreement amended in line with these comments.

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D. 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 Principality of Liechtenstein.

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 Principality of Liechtenstein 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 22).

The JSB furthermore stresses again that its present opinion regarding the draft agreement between Europol and the Principality of Liechtenstein 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
3 October 2012*



*Isabel Cruz
Chair of the
Joint Supervisory Body of Europol
(Signed by the Data Protection Secretary)*