



**Working Arrangement
establishing cooperative relations
between the Kosovo¹ Specialist Chambers and Specialist
Prosecutor's Office and the European Union Agency for
Law Enforcement Cooperation**

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence.

The Kosovo Specialist Chambers and Specialist Prosecutor's Office (hereafter referred to as "KSC-SPO")

and

the European Union Agency for Law Enforcement Cooperation (hereafter referred to as "Europol"),

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 determined the list of third countries and organisations with which Europol may conclude Working Arrangements, thereby having given Europol the authorisation to enter into negotiations on a Working Arrangement with KSC-SPO,

Considering Article 23(4) of the Europol Regulation as well as that the Europol Management Board has on 10 June 2020 approved the present Working Arrangement between KSC-SPO and Europol,

Considering that this Working Arrangement does not provide for the legal basis for the transfer of personal data by Europol to KSC-SPO,

Whereas on the occasion that transfers of personal data are authorized in accordance with Articles 25(5) or 25(6) of the Europol Regulation by the Executive Director of Europol or the Europol Management Board respectively, the cooperation mechanisms, procedures and conditions as established by this Arrangement shall be used to facilitate and be applicable to these transfers, without prejudice to the implementation of additional safeguards, where necessary, under Article 25(6),

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 Working Arrangement (hereafter referred to as "Arrangement") is to establish cooperative relations between Europol and KSC-SPO in order to support the Member States of the European Union and KSC-SPO in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, within the limits of the Parties' mandate as referred to in Article 3, in particular through the exchange of information between Europol and KSC-SPO, consisting of the Specialist Chambers and the Specialist Prosecutor's Office. The Parties shall in particular cooperate in relation to the investigation of, and proceedings relevant to, allegations of grave trans-boundary and international crimes committed during and in the aftermath of the conflict in Kosovo.

Article 2

Definitions

For the purpose of this Arrangement:

- a) "Europol Regulation" shall mean Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA;
- b) "personal data" means any information relating to an identified or identifiable natural person, an identifiable person being a person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;
- c) "information" means non-personal data and personal data.

Chapter I - Scope

Article 3

Areas of crime

The cooperation as established in this Working Arrangement shall relate to the relevant areas of crime within the mandate of both Parties.

Article 4

Areas of cooperation

The cooperation may, additional to the exchange of information under the conditions laid down in this Arrangement, in accordance with the tasks of Europol as outlined in the Europol Regulation, 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, the participation in training activities as well as providing advice and support in individual criminal investigations.

Article 5

Relation to other international instruments

This Arrangement 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 KSC-SPO and the Union or any Member State of the European Union.

Chapter II – Mode of cooperation

Article 6

Point of Contact

1. The Parties will designate a single point for official contact in order to maintain institutionally coordinated cooperation while affording technical experts the freedom to exchange information in accordance with the terms of this document.

2. The point of contact designated by KSC-SPO shall act as the point of contact for any of the components of KSC-SPO as referred to in Article 1.
3. The 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.

Article 7

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 Arrangement, regular exchanges, as appropriate, are integral. Specifically:
 - a. High level meetings between Europol and KSC-SPO shall take place regularly to discuss issues relating to this Arrangement and the cooperation in general.
 - b. KSC-SPO 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 KSC-SPO may be invited to attend the meetings of the Heads of Europol National Units, at their discretion.
2. When appropriate, consultation shall be arranged at the required level between KSC-SPO and Europol, responsible for the areas of criminality to which this Arrangement applies, to agree upon the most effective way in which to organise their particular activities.

Chapter III - Information exchange

Article 8

General provisions

1. Exchange of information between the Parties shall only take place in accordance with their respective legal framework and for the purpose of and in accordance with the provisions of this Arrangement.

2. 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 clearly obtained in obvious violation of human rights.
3. Requests for public access to information transmitted on the basis of the present Arrangement shall be submitted to the transmitting Party for their advice as soon as possible.

Article 9

Use of the information

1. Information if transmitted with a purpose, notwithstanding the obligation to do so as per Article 14(1), 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 shall 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 10

Onward transmission of information received

1. Onward transmission of the information provided by Europol to other international organisations or third states shall take place under the same conditions as those applying to the original transmission and shall receive the prior explicit authorisation by Europol. Information provided by Europol to KSC-SPO, on the basis of this Arrangement, may be transmitted internally by KSC-SPO, in line with its mandate, to the Specialist Chambers or the Specialist Prosecutor's Office under the same conditions as those applying to the original transmission without prior authorisation 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 shall be consented to by KSC-SPO.

Article 11
Assessment of the source and of the information

1. When information is supplied by the Parties on the basis of this Arrangement, the reliability 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 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 Arrangement, the accuracy 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 KSC-SPO 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.

Chapter IV – Exchange of personal data

Article 12

General provision

When personal data exchanges are authorised under the respective legal frameworks of the Parties, the additional safeguards contained in the provisions of this Chapter shall apply.

Article 13

Legal basis for the transfer of personal data by Europol

1. This Arrangement does not provide for the legal basis for the transfer of personal data by Europol to the KSC-SPO.
2. The legal possibilities to exceptionally transfer personal data by Europol as foreseen in Articles 25(5) and 25(6) of the Europol Regulation are not affected or constituted by this Arrangement.

Article 14

Additional conditions for the exchange of personal data

1. Parties shall determine at the moment of transmission of the personal data or before, the purpose for which the data is 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.
2. 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 shall be deleted when the data is not necessary for the purpose for which it was transmitted.

3. Parties shall retain personal data only as long as it is necessary and proportionate 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, 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.
4. 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.
5. 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.

Article 15

Security of processing of personal data

The Parties shall ensure that the personal data 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 personal 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 what personal data have been accessed by which member of personnel and at what time (access log),
8. 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),
9. prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control),
10. ensure that installed systems may, in the event of interruption, be restored immediately (recovery),
11. 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 V – Security of information

Article 16

Protection of information

Each Party shall:

1. protect information subject to this Arrangement, regardless of its form, until it has reached its end of life and is securely destroyed. This obligation shall not apply to information which is expressly marked or clearly recognisable as public information,
2. ensure that it has a security organisation, policies and measures in place to comply with the requirements set out in this Arrangement,
3. manage information security risks for all systems processing information exchanged under this Arrangement and assess these risks on a regular basis and whenever there is a significant change to any of the risk components,

4. ensure that all persons handling information exchanged under this Arrangement are subject to a security screening in accordance with the legal framework of the receiving Party,
5. ensure that access to information is limited to authorised persons who need to have access to it in order to perform their official duties,
6. ensure that all persons handling information exchanged under this Arrangement are appropriately trained and familiar with the relevant security rules, policies and procedures,
7. ensure that all staff handling information exchanged under this Arrangement are made aware of their obligation to protect the information and acknowledge the obligation in writing,
8. ensure that the premises where information exchanged under this Arrangement is stored or handled have an appropriate level of physical security in accordance with the legal framework of the receiving Party,
9. ensure that it has a framework in place for reporting, managing and resolving security incidents and breaches.

Article 17

Arrangement on the exchange and protection of classified information

1. The security procedures for exchanging and protecting classified information exchanged between the Parties shall be set out in an arrangement on the exchange and protection of classified information agreed between the Parties.
2. Exchange of classified information is conditional upon the conclusion of the arrangement on the exchange and protection of classified information.

Chapter VI - Disputes and liability

Article 18

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 Arrangement.
3. The Parties shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2 above.

Article 19

Settlement of disputes

1. All disputes which may emerge in connection with the interpretation or application of the present Arrangement 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 Arrangement, 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 Arrangement temporarily, pending the application of paragraph 1. Obligations inherent upon the Parties under the Arrangement will nonetheless remain in force.

Chapter VII - Final provisions

Article 20

Secure communication line

1. The establishment, implementation and operation of a secure communication line for the purpose of exchange of information between Europol and KSC-SPO may be agreed upon between the Parties. In such a case, it shall be regulated in a Memorandum of Understanding agreed between the Parties.
2. Without prejudice to Article 18, 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.

3. 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 19.

Article 21

Expenses

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

Article 22

Amendments and supplements

1. This Arrangement may be amended in writing, at any time by mutual consent between the Parties. Any amendments shall receive the approval of the Europol Management Board.
2. The Parties shall enter into consultations with respect to the amendment of this Arrangement at the request of either of them.

Article 23

Entry into force and validity

This Arrangement shall enter into force on the first day following the date of the last signature.

Article 24

Termination of the Arrangement

1. This Arrangement may be terminated in writing by either of the Parties with 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 Party 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 Arrangement remain in force.

Done in duplicate in the English language.

For **KSC-SPO**



Dr Fidelma Donlon
Registrar

Done at The Hague
on **3** / **07** / 2020

For **Europol**



Catherine De Bolle
Executive Director

Done at The Hague
on **29** / **06** / 2020