

GENERAL ASPECTS REGARDING OF THE EUROPOL CONVENTION IN ROMANIA

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Abstract: *Romania joined the EUROPOL with the entry into force of the Europol Convention, on 01 August 2007, after adoption and publication in the Official Gazette of the European Union, of the Decision adopted by the EU regarding the accession of Romania and Bulgaria to EUROPOL.*

According to Art 3 Para 3 of the Act of Accession of Romania and the adjustments to the Treaties on which the European Union is founded, which is an integral part of the Accession Treaty, ratified by Law no. 157/2005, Romania joined, officially, on 01 August 2007, the conventions and protocols listed in Annex I, and therefore, has taken the necessary measures to ensure the implementation of the conventions and protocols to which it is part, in this case the Convention on the establishment of a European Police Office and the Protocols thereto.

Key words: *EUROPOL, Convention*

1. Entry into force of the EUROPOL Convention in Romania

Entry into force of the EUROPOL Convention in Romania was done on 01 August 2007, with the issuance and publication of the European Union Council's decision in the Official Gazette of the EU, according to Art. 3 Para 3 of the Act of Accession, which is an integral part of the Accession Treaty.

For Romania, the publication of this Decision of the Council of the European Union is a natural continuation of the responsibilities assumed by signing on 25 November 2003 of the Agreement on Cooperation between Romania and the European Police Office – EUROPOL, legal instrument governing the cooperation with Europol.

Terms and conditions of the cooperation between the Romanian authorities and Europol are specified in this agreement.

Thus, as follows from Article 2 of Law no. 197/2004 the purpose of the agreement is to enhance the cooperation between EU Member States, acting through Europol and Romania to combat serious forms of international crime, in particular through the exchange of information and regular contacts between Europol and Romania, at all appropriate levels.

Article 3 of the same law specifies the areas of crime to which the agreement applies.

According to the article above mentioned, the cooperation will cover, according to the interest of cooperation of the Contracting Parties in special situations, all areas of crime included in the mandate of Europol on the date of entry into force of the Agreement as well as the related offenses.

Related offenses represents crime committed in order to obtain the means to commit acts in all areas of crime included in the mandate of Europol, crimes committed in order to facilitate or commit such acts and crimes committed to circumvention liability for such acts.

If the mandate of Europol is changed in any way, Europol may propose, in writing, from the date at the changes in the mandate of Europol entered into force, the implementation of the agreement under the new mandate.

In this respect, Romania will inform Europol on all relevant aspects of the change of the mandate.

The agreement will expand over the new mandate from the date on which Europol receives the written acceptance of the proposal from Romania, in accordance with its internal procedures.

Europol will advise Romania when definition of crime is developed, amended or completed.

The new definition of a crime area will become part of the agreement from the date on which Europol receives the written acceptance of Romania in connection with the definition.

Any amendment to the document referred to in the definition will be considered, also, an amendment thereof.

2. The cooperation ROMANIA - EUROPOL

Cooperation may involve - in addition to exchange of information - all the other tasks of Europol, in particular the exchange of expertise, reports on the overview, information on investigative procedures, information on methods of crime prevention, participation in training activities, such as and providing advice and support in individual criminal investigations.

Duties of the Europol may include:

a) The collection, storage, processing and analysis of information and exchange of information forwarded particularly by the Member States or third countries or authorities;

b) Coordinating, organizing and carrying out actions of investigative and operational character, conducted together with the competent authorities of the Member States or under joint investigation teams and, where appropriate, in cooperation with EUROJUST.

Any action of operational character of Europol must be carried out in cooperation with the state or states whose territory is concerned and with their agreement.

Implementation of measures of coercion is the sole responsibility of the competent national authorities¹.

Romania designates the “National Focal Point” of the Ministry of Administration and Interior, which act as national contact point between Europol and other Romanian competent authorities.

High-level meetings between Europol and the Romania competent authorities will be conducted at least once a year and whenever necessary to discuss issues relating to the agreement and cooperation in general.

3. Romanian authorities responsible for implementing the provisions of the Europol Convention

Law enforcement authorities in Romania, responsible under national law, for preventing and combating crimes covered by the agreement of cooperation are²:

★ **Ministry of Administration and Interior:**

- General Inspectorate of Romanian Police
- General Inspectorate of Romanian Border Police
- General Directorate for Intelligence & Internal Protection
- General Inspectorate of the Romanian Gendarmerie

★ **Ministry of Public Finance:**

- The National Customs Authority

★ **Romanian Intelligence Service:**

- General Directorate for Combating Terrorism

★ **Public Ministry:**

- Prosecutors

4. Processing data on the relationship EUROPOL - Romania

4.1 Information exchange and use of personal data

In Art 7 of Law no. 197/2004, is stated that information exchange of information will take place between Europol and the “National Focal Point”.

Israel - represented by the Minister of Interior and Administrative Reform - and the European Police Office will take the necessary measures to ensure that the exchange of information takes place at all times.

Romania will ensure the existence of a direct link between the “National Focal Point” and the competent authorities to prevent and combat crime.

Europol will provide to Romania only information obtained, stored and transmitted in accordance with the provisions of the Convention and rules of application.

Europol will provide only information that were obtained, stored and transmitted in accordance with the national legislation.

In this context, Europol will be based on Art 4, Para 4 of Council’s Decision of 3 November 1998, which sets rules on receipt of information by Europol.

Individuals will have access to information concerning them, transmitted based on the agreement, or will be able to verify this information, to correct or remove them, in accordance with the Romanian national law or applicable provisions of the Convention.

If this right is exercised, the transmitters will be consulted before taking a final decision regarding this request.

All communications between Romania and Europol will be made in English.

Article 8 of Law no. 197/2004 refers to providing information by Romania, such that Para 1 of this article states that “Romania will notify Europol, together with providing information or before, the purpose for which it was provided that information and any restrictions on the use,

¹ Reform Treaty in Lisbon in December 2007, Section 5, Article III-177

² Annex 1 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office.

removal or destruction of it, including possible access restrictions, in general or specific terms. If the need for such restrictions becomes obvious after the supply of information, Romania will further inform Europol in connection with such restrictions”³.

After receipt, Europol shall determine immediately but in any event within 6 months of receipt, if and to what extent personal data that were presented may be included in the databases of Europol, according to the purpose for which they were provided by Romania.

Europol will notify Romania as soon as possible after it was decided that personal data would not be included.

Personal data, which are transmitted, will be removed, destroyed or returned if these data are not or no longer needed for the tasks of Europol or where not taken any decision on their inclusion in the databases of Europol within 6 months of receiving them⁴.

Europol will be responsible for providing access to personal data, before their inclusion in the databases of Europol, for a Europol official duly authorized, in order to decide whether such personal data may or may not be included in Europol databases.

Where personal data are transmitted at the request of Romania, they can be used only for the purposes of accompanying the request⁵.

Where personal data are transmitted without a specific request, when transmitting the information on or before this time will be indicated the purpose for which these were transmitted, and any restriction on the use, removal or destruction, including any restrictions access in general or specific terms. If the need for such restrictions becomes obvious after the supply, Europol will then inform Romania about these restrictions.

For all transmissions of personal data by Europol, Romania should fulfil the following conditions⁶:

- after receipt, Romania will establish without delay, always when will be possible within 3 months of receipt, if and to what extent personal data that were provided are necessary for the purpose for which they were supplied;
- Personal data will not be submitted by Romania to third countries or bodies;
- Personal data will be provided only to the “National Focal Point”;

Further transmission of personal data by the recipient will initially be restricted to the competent authorities and will take place under the same conditions as those applicable to the initial transmission.

If personal data have been communicated to Europol by a Member State of the Union, they can be sent to Romania only with the consent of that State.

Any conditions of use of personal data specified by Europol must be respected if data were communicated to Europol by a Member State of the Union, which stipulated conditions of use of such data, these conditions must be met.

Where personal data are provided on request, the request for information must be the specific guidance on the purpose and reason for request, the personal data may be used only for the purpose for which it was communicated; personal data will be deleted when no longer necessary for the purpose for which they were transmitted.

Romania, in accordance with its national legislation, will ensure that personal data received from Europol are protected by technical and organizational measures.

Europol will keep track of all transmissions of personal data carried out, and the justifications for these transmissions.

³ Art 8, Para 1 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office.

⁴ Article 8, Para 2 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office

⁵ Article 8, Para 3 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office

⁶ Article 9, Para 2 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office

Keeping personal data transmitted by Europol will not exceed 3 years.

Each transmission of information to Europol must be accompanied by an indication of the exact source and accuracy of the information.

In addition, Romania, when it provides information, should indicate as precisely as possible, the source of information and its reliability.

4.2 The relationship between EUROPOL – “National Focal Point”

The “National Focal Point: will inform Europol when information transmitted to Europol is corrected or deleted.

The “National Focal Point” also, shall inform Europol, as far as possible, when there are grounds to assume that the information provided is not accurate or is no longer current⁷.

When the “National Focal Point” informs Europol that it has corrected or deleted information the transmitted to it, Europol will correct or delete such information. Europol may decide not to delete the information if, based on more comprehensive information than that held by Romania, it still needs it to process that information. Europol shall inform the “National Focal Point” about the fact that the information that is still stored.

If Europol has reason to assume that the information provided is not accurate or is no longer current shall inform the “National Focal Point”.

The “National Focal Point” will check the data and inform Europol on the outcome of those inquiries.

Where the information is corrected or deleted by Europol, it will inform the “National Focal Point” on the correction or cancelation⁸.

4.3 Privacy of information

Regarding the confidentiality of the information, Art 12 of Law no. 197/2004 surprises this aspect.

All information processed by or through Europol, except information marked expressly or clearly recognizable as public information, is the subject to a primary level of security within the organization Europol and EU Member States.

Information requiring additional security measures is subject to a security level in Romania and Europol, which is indicated by a specific bookmark.

To the information are assigned a security level only if it is strictly necessary and only for the necessary period.

Romania will ensure that permits access and protect the marked information to be respected by all competent authorities to whom it could be transmitted in accordance with the agreement⁹.

To achieve a more fruitful cooperation, Europol and Romania have agreed to each delegate and liaison officers¹⁰.

Romania will be responsible, under its national legislation, for any damage caused to individuals, resulting from errors of law or fact in the information exchanged with Europol¹¹.

Romania will not rely, for the purpose of exemption from liability to the injured party, according to the national legislation, that Europol has sent incorrect information.

If these errors of law or fact occurred as a result of data erroneously communicated or failure of the obligations undertaken by Europol or one of the EU Member States or another third

⁷ Article 11, Para 1 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office

⁸ Article 11, Para 2-3 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office.

⁹ Article 12, Para 5 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office.

¹⁰ Article 14-15 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office.

¹¹ Article 16 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office.

party, Europol will be bound to repay, on request, amounts paid as compensation only if the information were used in breach of the agreement.

Where Europol is obliged to reimburse the Member States of the European Union or a third party the amounts given to an injured party as compensation for damages, the damages being caused by the fact that Romania has not fulfilled its obligations under the Agreement, Romania will be obliged to reimburse, on request, the amounts that Europol had paid a European Union's Member State or a third party for covering the amounts paid as compensation by it.

The Contracting Parties shall not require payment of reciprocal compensation for the damages mentioned above, if the compensation of damages was imposed with a punitive character, was increased or refer to damage that cannot be compensated.

Any dispute between Contracting Parties concerning the interpretation or application of the agreement, or any other matter affecting the relationship between the contracting parties, which is not settled amicably, shall be subject to a final settlement by a court composed of 3 arbitrators, at the request of any of the Contracting Parties.

Each Contracting Party shall appoint one arbitrator.

The first two arbitrators will choose the third arbitrator, who will be chairperson of the court¹².

Any party contracting with a notice of 6 months may denounce the agreement on cooperation between Romania and the European Police Office, signed at Bucharest on 25 November 2003 in writing.

In the case of denunciation, the Contracting Parties will agree to preserve and use the information already transmitted between them.

If a consensus is not reached, either of the Contracting Parties may require the destruction of information that was sent.

¹² Article 17 Para 1 of Law no. 197/2004 for the ratification of the Agreement on cooperation between Romania and the European Police Office.