

Documents tabled on 13 June 2007:

National Interest Analysis [2007] ATNIA 19

with attachment on consultation

Agreement on Operational and Strategic Cooperation between

Australia and the European Police Office (Europol)

(The Hague, 20 February 2007)

[2007] ATNIF 9

Background information:

EUROPOL political brief

List of treaties with the European Union and

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NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement on Operational and Strategic Cooperation between Australia and the European Police Office (Europol) (The Hague, 20 February 2007) [2007] ATNIF 9

Nature and timing of proposed treaty action

1. The Agreement between Australia and the European Police Office (Europol) on Operational and Strategic Cooperation (Agreement), was signed for Australia by Commissioner Mick Keelty, Australian Federal Police, on 20 February 2007. It is proposed that it be brought into force by Australia notifying Europol in writing as soon as practicable after completion of its domestic procedures.
2. The Agreement does not terminate nor amend an existing treaty.

Overview and national interest summary

3. For some time it has been recognised that national borders are not an obstacle for organised crime. On the contrary, borders can be a hindrance to police activities and can actually provide organised criminal groups with an advantage in situations where they are active in one country and use another country as a retreat.
4. Europol has improved its international law enforcement cooperation by negotiating bilateral operational or strategic agreements with other States and international organisations as follows: Bulgaria, Canada, Colombia, the European Union's Judicial Cooperation Unit (Eurojust), European Central Bank, European Commission, including the European Anti-Fraud office (OLAF), European Monitoring Centre for Drugs and Drug Addiction, Iceland, Interpol, Norway, Romania, Russia, Switzerland, Turkey, United Nations Office on Drugs and Crime, United States of America, and World Customs Organisation.
5. The Agreement is important to Australia. It is a significant pillar in Australian's strategic approach to strengthening its international capacity to fight all forms of transnational crime, including terrorism. It will also provide a platform for participation in training activities, and advisory support in relation to individual criminal investigations.
6. The Australian Federal Police (as the national contact point under the Agreement) is the first policing agency in the Asia-Pacific - and only one in the Southern Hemisphere - to sign an Agreement with Europol.

Reasons for Australia to take the proposed treaty action

7. Europol is the European Law Enforcement Organisation which aims at improving the effectiveness and cooperation of the law enforcement authorities in the Member States of the European Union and other law enforcement authorities in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organised crime such as:

- illicit drug trafficking;
- illicit immigration networks;
- terrorism;
- forgery of money (counterfeiting of the Euro) and other means of payment;
- trafficking in human beings including child pornography;
- illicit vehicle trafficking; and
- money-laundering.

8. In the global crime environment, no one can afford to operate as a single agency - or as a single country. Collaborative partnerships need to be entered into to combat the challenges of modern-day transnational crime.

9. Therefore, the advantages in Australia cooperating with Europol are important. The Agreement will facilitate the exchange of criminal intelligence between Europol and Australian law enforcement agencies, providing significant operational benefits to Australian agencies in terms of combating serious forms of international crime. At a strategic level, the Agreement will provide an intelligence overview not otherwise available from a national perspective, while at the operational level, it will provide direct assistance to investigators. Material from different agencies and countries is combined, in conditions of utmost secrecy, to identify links between suspects and crime.

10. The Agreement will also enable Australia to share specialist knowledge, information on criminal investigation procedures and crime prevention methods and to be able to participate in training activities and provide advice and support for individual criminal investigations if required. This support and information exchange may not otherwise be available to Australia.

11. The Agreement also provides Australia with the opportunity for a permanent liaison officer to be seconded to Europol. The liaison officer will be seconded under section 40F of the *Australian Federal Police Act 1979*. This will:

- increase and improve the exchange of information between Australia and the European Union relating to criminal intelligence, including terrorism related matters;
- expand the collection capabilities relating to strategic and tactical intelligence within Europe and globally; and

- secure a major strategic partner in combating serious forms of international crime.

Obligations

12. The Agreement facilitates cooperation between Europol and Australia in order to support the Member States of the European Union and Australia combat serious forms of international crime, particularly through the exchange of information and regular contact between Australia and Europol (Article 2).

13. The Agreement contains a range of provisions dealing with the exchange and confidentiality of information and the integrity, accuracy and protection of the exchanged information (articles 7 to 12). The parties shall only exchange information in accordance with the provisions of the Agreement and shall consult if a third party seeks access to information supplied under the Agreement (Article 7). Both parties are obliged to take measures to protect personal data (Article 8 and 9) and to respect the confidentiality of the information, other than public information (Article 12). Both parties shall, when providing information, provide an assessment of the reliability of the information and of its source (Article 10). Australia shall inform Europol when information which has been transmitted is corrected or deleted (Article 11).

14. In addition to the exchange of information, cooperation under the Agreement may also involve other tasks such as 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 4).

15. The Agreement designates the Australian Federal Police as the national contact point between Europol and the other competent authorities in Australia, namely all the State and Territory Police Forces, and in addition the Australian Crime Commission and the Australian Customs Service (article 5 and Annex 2).

Implementation

16. The Agreement can be implemented under existing domestic legislation. The Australian Federal Police already facilitates the exchange of relevant information with other law enforcement, security and regulatory agencies in accordance with existing domestic laws. State and Territory authorities advise they can implement the Agreement under their existing legislative and policy frameworks.

Costs

17. Article 14 of the Europol Agreement makes provisions for the assignment of one or more Australian Federal Police liaison officers to Europol to enhance the cooperation laid down in the Agreement. The Australian Federal Police and Europol have mutually determined to assign an Australian Federal Police liaison officer to Europol. The seconding of the liaison officer represents a financial cost to the Australian Federal Police of approximately \$500,000 per annum and is being met from within the current AFP budget allocations.

18. Australia has provided an indemnity to Europol (Article 15) which was approved by the Minister for Finance and Administration following a risk assessment. The indemnity, that each party shall indemnify the other in respect of damage suffered due to the party's failure to comply with the obligations under the Agreement, is uncapped. The Commonwealth has been advised by the Europol Legal Affairs Bureau that neither Europol – nor its counterparts – have ever been held liable for unauthorised disclosure or incorrect data processing, nor has the question ever arisen. It follows that there has never been an incident where Europol - or its counterparts - have invoked an indemnity. Providing obligations under the Treaty are observed, it is unlikely such costs will arise.

Regulation Impact Statement

19. The Office of Regulation Best Practice, Productivity Commission, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

20. The Agreement may be amended at any time in writing by mutual consent between Australia and Europol (Article 21).

21. Europol may consent to amendments to the Annexes to the Agreement; however Europol may give its consent to amendments to the Articles of the Agreement only after the approval of such amendments has been given by the Council of the European Union (Article 21).

22. Australia may give its consent to amendments of the Agreement or the Annexes only after completion of its domestic procedures (Article 21).

23. It is possible that further amendments may expand or contract Australia's obligations under the treaty. These amendments would be subject to the Australian treaty process.

Withdrawal or denunciation

24. The Agreement may be terminated in writing either by Europol or Australia with three months notice (Article 20). Termination by Australia would be subject to the Australian treaty process.

25. In the case of termination, Europol and Australia will reach agreement on the continued use and storage of the information that has already been communicated between them. If no agreement is reached, either Europol or Australia is entitled to require that the information which it has communicated be destroyed.

Contact details

Coordinator America Europe Middle East
Border and International
Australian Federal Police.

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Australia and the European Police Office (Europol)**

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CONSULTATION

1. The Minister for Justice and Customs and the Australian Federal Police (AFP) Commissioner consulted with State and Territory Police Ministers and police services about the proposed Agreement. In December 2005, the Minister for Justice and Customs and the AFP Commissioner sought advice as to whether State and Territory police forces wished to be listed as “competent authorities” for the purposes of the Agreement (enabling them to participate in the arrangements with Europol), and if so, whether the legislative and administrative framework governing data protection and security in their respective jurisdictions meets the obligations imposed under the Agreement. Each jurisdiction advised they wished to be designated as competent authorities under the Agreement and were in the position to meet the obligations under the Agreement. Consequently, each State and Territory police service is included in the list of competent authorities in Annex 2.
2. In April 2006 the Minister for Finance and Administration wrote to the Minister for Justice and Customs providing authorisation under Regulation 10 of the Financial Management and Accountability Regulations (FMA) for officials within the AFP to consider approving a proposal related to the Treaty / Agreement and containing an unquantifiable indemnity on behalf of the Australian Government.
3. In September 2006 the AFP provided a briefing to the Commonwealth-State/Territory Standing Committee on Treaties (SCOT). This treaty has been included since February 2005 in each of the six monthly schedules provided to SCOT members.
4. In November 2006 the Minister for Justice and Customs and the AFP Commissioner, consulted via official correspondence, with State and Territory Police Ministers and police services surrounding the issues of indemnity and liability, also at that time providing an update on the status of the Agreement. Each of the States and Territories has responded to those letters, and we are now finalising the details on indemnity and liability.

Consultation has occurred with the following:

- The Prime Minister
- The Minister for Justice and Customs
- The Minister for Foreign Affairs
- The Attorney-General
- The Minister for Finance and Administration
- Department of Foreign Affairs and Trade

- Attorney-General's Department
- Department of Prime Minister and Cabinet
- Australian Ministers for Police:
 - Australian Capital Territory
 - Queensland
 - New South Wales
 - Victoria
 - Northern Territory
 - South Australia
 - Western Australia; and
 - Tasmania

- Australian Crime Commission
- Australian Customs Service
- NSW Police
- Victoria Police
- Queensland Police Service
- South Australia Police
- Western Australia Police
- Tasmania Police
- Northern Territory Police
- ACT Policing

Political Brief on EUROPOL

1. Europol is the European Union law enforcement organisation that handles criminal intelligence. Its aim is to improve the effectiveness and cooperation between the competent authorities of the Member States in preventing and combating serious international organised crime and terrorism. The mission of Europol is to make a significant contribution to the European Union's law enforcement action against organised crime and terrorism, with an emphasis on targeting criminal organisations.
2. The establishment of Europol was agreed in the Maastricht Treaty on European Union of 7 February 1992. Based in The Hague, Netherlands, Europol started limited operations on 3 January 1994 in the form of the Europol Drugs Unit (EDU) fighting against illicit drugs. Progressively, other important areas of criminality were added. As of 1 January 2002, the mandate of Europol was extended to deal with all serious forms of international crime as listed in the annex to the Europol Convention. The Europol Convention was ratified by all Member States and came into force on 1 October 1998. Following a number of legal acts related to the Convention, Europol commenced its full activities on 1 July 1999.
3. Since international organised crime does not stop at national borders, Europol has, in addition, improved its international law enforcement cooperation by negotiating bilateral operational or strategic agreements with other States and international organisations as follows: Bulgaria, Canada, Colombia, Eurojust, European Central Bank, European Commission (including OLAF), European Monitoring Centre for Drugs and Drug Addiction, Iceland, Interpol, Norway, Romania, Russia, Switzerland, Turkey, United Nations Office on Drugs and Crime, United States of America, World Customs Organisation.
4. Europol is accountable at EU level to the Council of Ministers for Justice and Home Affairs. The Council is responsible for the main control and guidance functions of Europol. It appoints the Director and the Deputy Directors and approves the budget. It also adopts a number of important implementing regulations related to Europol's work. Each year the Council forwards a special report to the European Parliament on the work of Europol. The European Parliament is also consulted if the Europol Convention, or other Europol regulations, have to be amended.
5. Europol has a Management Board which is composed of one representative of each Member State. Each member has one vote. The Commission of the European Communities is also invited to attend the meetings of the Management Board with non-voting status. The Management Board meets at least twice a year to discuss a wide range of Europol issues which relate to its current activities and its future developments. It also unanimously adopts a general report on the Europol activities of the previous year. The Management Board should also approve a report on Europol's future activities taking into account the Member States' operational requirements as well as the budgetary and staffing implications for Europol. These reports are then submitted to the Council of Ministers of Justice and Home Affairs for their approval.
6. Since October 1999 the Australian Federal Police (AFP) and Europol have been corresponding regarding a strategic operational agreement for third party states. During this time, meetings have been held between Europol management and AFP representatives to discuss the

roadmap to reaching the agreement. On 3 December 2004 the European Union (EU), Justice and Home Affairs Council (JHAC) in Brussels formally approved Europol to commence procedures with Australia to enter into an agreement, in the form of a treaty, between Australia and the EU.

June 2007

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There are no other Australian treaties with EUROPOL. Below is a list of Australian treaties with the European Community.

Bilateral treaties between Australia and the European Community and its agencies:

- Agreement between the Government of Australia and the European Atomic Energy Community [EURATOM] concerning Transfers of Nuclear Material from Australia to EURATOM, and two exchanges of letters
[1982] ATS 26
- Exchange of Notes constituting an Implementing Arrangement, concerning Plutonium Transfers, to the Agreement with the European Atomic Energy Community [EURATOM] concerning Transfers of Nuclear Material of 21 September 1981
[1993] ATS 27
- Exchange of Notes constituting an Implementing Arrangement, concerning International Obligation Exchanges, to the Agreement with the European Atomic Energy Community [EURATOM] concerning Transfers of Nuclear Material of 21 September 1981
[1993] ATS 27
- Agreement with the European Community on Trade in Wine, Protocol, and six Exchanges of Letters
[1994] ATS 6
- Agreement relating to Scientific and Technical Co-operation with the European Community
[1994] ATS 24
- Agreement on Mutual Recognition in Relation to Conformity Assessments, Certificates and Markings with the European Community
[1999] ATS 2
- Agreement with the European Community amending the Agreement relating to Scientific and Technical Co-operation of 23 February 1994
[1999] ATS 29
- Exchange of Notes constituting an Implementing Arrangement with the European Atomic Energy Community [EURATOM] concerning Plutonium Transfers under the Agreement concerning Transfers of Nuclear Material from Australia to EURATOM, and accompanying Side Letter No. 2, of 21 September 1981, and the Implementing Arrangement concerning Plutonium Transfers of 8 September 1993
[1999] ATS 8

Council of Europe multilateral treaties to which Australia is a party:

CETS 135 Anti-Doping Convention
(Strasbourg, 19 November 1989)
[1994] ATS 33

and amendments to its Appendices

CETS 141 Convention on Laundering, Seizure and Confiscation of the Proceeds from Crime
(8 November 1999)
[1997] ATS 21

CETS 165 Convention on the Recognition of Qualifications concerning Higher Education in the
European Region
(Lisbon, 11 April 1997)
[2003] ATS 5

CETS 112 Convention on the Transfer of Sentenced Persons
(Strasbourg, 21 March 1993)
[2003] ATS 6

There are no treaties of the same type with other international organisations or countries.

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