ACORD DE COOPERARE PENTRU PREVENIREA ȘI COMBATEREA INFRACȚIONALITĂȚII TRANSFRONTALIERE*

ADOPTAT LA BUCUREȘTI, LA 26 MAI 1999

AGREEMENT ON COOPERATION TO PREVENT AND COMBAT TRANS-BORDER CRIME

DONE AT BUCHAREST, ON 26 MAY 1999

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* *În vigoare pentru Republica Moldova din 1 februarie 2000.*

THE GOVERNMENTS SIGNING THE AGREEMENT, hereinafter referred to as "Parties",

DESIRING to enlarge and to diversify their cooperation within the framework of the Southeast European Cooperative Initiative,

CONSIDERING the importance of commercial links among the Parties and with other countries, and desirous of contributing to the harmonious development of those links;

RECOGNISING their mutual interest in combating Trans-border crime and developing closer regional law enforcement cooperation,

CONVINCED that crime conducted across the borders of the Parties is a serious threat to sovereignty and to legitimate commerce which can be effectively combated by cooperation among enforcement authorities,

BELIEVING that, in order to obtain this objective, there should be an undertaking to develop cooperation of the widest possible scope among enforcement authorities;

CONSIDERING that trans-border crimes are prejudicial to the economic, fiscal and commercial interest of their respective countries;

NOTING existing Agreements, arrangements or treaties on mutual assistance, and other international Agreements on law enforcement already accepted by the Parties;

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purpose of this Agreement:

(a) the term "trans-border law enforcement and customs authorities" means national competent authorities designated by the parties; this designation shall be confirmed with the SECI Secretariat and can be changed upon notification to the Secretariat;

(b) the term "trans-border crime" refers to all violations or attempted violations of national laws and regulations aimed at organizing, directing, aiding or facilitating international criminal activities;

(c) the term "customs laws" means the laws and regulations enforced by the customs administrations concerning the importation, exportation, and transit or circulation of goods as they relate to customs duties, charges, and other taxes or to prohibitions, restrictions, and other similar controls respecting the movement of controlled items across national boundaries;

(d) the term "information" means data in any form, documents, records, and reports or certified or authenticated copies thereof,

(e) the term "person" means any natural or legal person,

(f) the term "personal data" means all information relating to an identified or identifiable natural person;

(g) the term "property" means assets of every kind and legal documents or instruments evidencing title to or an interest in such assets;

(h) the term "provisional measures" means:

(i) temporarily prohibiting the conversion, disposition, movement, or transfer of property, or

(ii) temporarily assuming custody or control of property on the basis of an order issued by a court or competent authority, or other means;

(i) the term "forfeiture" means the deprivation of property by order of a court or competent authority and includes confiscation where applicable;

(j) the term "requesting authority" means the authority described in article 1(a) that requests assistance in conformity with article 8 point 1;

(k) the term "requested authority" means the authority described in article 1(a) from which assistance is requested in conformity with article 8 point 1.

Article 2

Scope of the Agreement

1. The Parties, through their designated authorities shall assist each other, in accordance with this Agreement, in preventing, detecting, investigating, prosecuting and repressing trans-border crime.

2. This Agreement shall not be interpreted as prejudicing or affecting the application of the Treaty on European Union, the Schengen Agreement of 14 June 1985 and the Convention for the application of the Schengen Agreement of 19 June 1990, international Agreements, Agreements on mutual assistance, and other international Agreements on law enforcement already accepted by the Parties, nor any mutual legal assistance, Agreement, arrangement or

treaty currently in force between any of the Parties to this Agreement, or which may subsequently be concluded by them.

3. Each Party shall execute requests for assistance made pursuant to the Agreement in accordance with its national law.

4. In order to improve the effectiveness of the prevention, detection, investigation and prosecution of trans-border criminal violations, and as active members of ICPO-Interpol for police matters, World Customs Organization for customs matters, the SECI participating countries shall exchange and develop criminal information in partnership with their law enforcement authorities and with the Interpol General Secretariat and WCO.

Article 3

Forms of Specific Assistance

1. Upon request or upon its own initiative, a Party shall provide assistance to another Party in the form of information concerning trans-border crime.

2. Upon request, a Party shall provide assistance in the form of information necessary to ensure the enforcement of national laws and regulations, and the accurate assessment of customs duties and other taxes by the Parties.

3. Upon request or upon its own initiative, a Party may provide assistance in the form of information, including but not limited to, information concerning:

(a) methods and techniques of processing passengers and cargo,

(b) the successful application of enforcement aids and techniques;

(c) enforcement actions that might be useful

(d) new methods used in committing offences.

4. The Parties shall cooperate in:

(a) facilitating effective coordination;

(b) establishing and maintaining channels of communication to facilitate the secure and rapid exchange of information;

(c) as appropriate, providing mutually any other kind of technical assistance through the exchange of professional, scientific and technical knowledge;

(d) the consideration and testing of new equipment or procedures; and

(e) any other general administrative matters that may from time to time require their joint action.

(f) the implementation of the methods of controlled deliveries in compliance with the national law of the parties concerned.

5. Upon request, the Parties shall inform each other whether goods exported from the territory of one Party have been lawfully imported into the territory of the other Party. If requested, the information shall contain the procedure used for clearing the goods.

6. Upon request, a requested Party shall provide, to the extent of its ability, within the limits of its available resources, and pursuant to national law, information relating to:

(a) persons known to the requesting authority to have committed a trans-border crime or suspected of doing so, particularly those moving into and out of its territory;

(b) goods either in transport or in storage identified by the requesting authority as giving rise to suspected illicit traffic toward its territory; and

(c) means of transport suspected of being used in offences within the territory of the requesting Party.

7. Upon request or on their own initiative, the Parties shall furnish to each other information regarding activities that may result in trans-border crimes. In situations that could involve substantial damage to the economy, public health, public security, or similar vital interest of another Party, a Party wherever possible, shall supply such information without being requested to do so.

8. In conformity with national law, the Parties shall provide assistance through the use of provisional measures and in proceedings involving property and proceeds, and/or instrumentalities of trans-border crime, subject to these provisional measures.

9. The Parties may, subject to their national law:

(a) dispose of property, proceeds, and instrumentalities forfeited as a result of assistance provided under this Agreement in control of the property, proceeds, and instrumentalities;

(b) transfer forfeited property, proceeds, or instrumentalities, or the proceeds of their sale, to the other Party upon such terms as may be agreed. c.

Article 4

Confidentiality of Information and protection of personal data

1. Information obtained under this Agreement shall be afforded the same degree of confidentiality by the requesting authority that applies to similar information in its custody.

2. Without prejudice to the previsions of the Convention for Protection of Individuals with Regard To Automatic Processing of Personal Data (Council of Europe, ETS No. 108 Strasbourg 28 Jan. 1981) personal data received under this Agreement will have protection at least equivalent to that afforded by the supplying Party.

3. Information obtained under this Agreement shall be used solely for the purposes of this Agreement. Where requesting authority asks for the use of such information for other purposes, including its dissemination to another state, it shall obtain the prior written consent of the requested authority, which furnished the information. Such use shall then be subject to any conditions established by that authority.

4. Unless the requested Party indicates otherwise, Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for commission a trans-border crime. The Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. The competent authority, which supplied that information, shall be notified before such use.

Article 5

Liability and legal protection for unauthorised or incorrect data processing

1. Each Party shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data transmitted at SECI Center.

2. Only the Party in which the event which gave rise to the damage occurred may be the subject of an action for compensation on the part of the injured party, who shall apply to the courts having jurisdiction under the national law of the SECI state involved.

3. A Party may not plead that another Party had transmitted inaccurate data in order to avoid its liability under its national legislation vis-a-vis an injured party. If these legal or factual errors occurred as a result of data erroneously communicated or of failure to comply with the obligations laid down in this Agreement on the part of one or more Parties or as a result of unauthorised or incorrect transmitted, the other Party in question shall be bound to repay, on request, the amounts paid as compensation unless the data were used by the party in the territory of which the damage was caused in breach of this Agreement.

Article 6

Files and Documents

1. Upon request, the requested authority shall provide properly authenticated copies of files, documents and other materials, relating to trans-border crimes.

2. Unless the requesting authority specifically requests originals or copies, the requested authority may transmit computer-based information in any form. The requested authority, at the same time, shall supply all information relevant for interpreting or utilising computer-based information.

3. If the requested authority agrees, officials designated by the requesting authority may examine, in the offices of the requested authority, information relevant to a trans-border crime, and make copies there of or extract information therefrom.

Article 7

Witnesses and experts

1. An official of a requested authority may be authorised to appear, within the limitation of the authorisation granted, as expert or witness in administrative or judicial proceedings in the requesting Party regarding the matters covered by the present Agreement, and provide files, documents, or other materials or copies thereof. The request for an appearance shall indicate specifically on what matter and by virtue of what title or qualification the official will appear as witness or as expert.

2. The requesting Party is duty bound to take all necessary measures for the protection of the personal security of the officials during their stay in the territory of its state, under Paragraph I of this article. The transport and daily expenses of these officials shall be borne by the requesting Party.

Article 8

Communication of Requests

1. Requests pursuant to this Agreement shall be made in writing directly by the designated authorities in English or in such other language acceptable to the requested authorities. Information deemed useful for the execution of requests shall accompany the request. In urgent situations, oral requests may be made and accepted, but shall be confirmed in writing within 48 hours. Each Party shall designate a national single point of first contact to transmit and receive requests, and disseminate its contact details via the Centre Secretariat.

2. Requests shall include:

(a) The name of the designated authorities and of the persons therein making the request;

(b) the nature of the matter or proceedings, including the laws, rules and other legal provisions involved

(c) a brief statement of the facts and trans-border crimes involved;

(d) the nature of the assistance sought;

(e) the reason for the request, and the use to which the information will be put;

(f) the names and addresses of the persons concerned in the matter written in accordance with their international identifying documents, if known.

Article 9

Execution of Requests

1. The requested authority shall take all reasonable measures to execute a request and shall endeavour to secure any measure necessary for that purpose.

2. If the requested authority can not itself execute the request, it shall take steps to obtain its execution as it were acting on its own behalf and in compliance with its national law, and so advise the requesting authority.

3. The requested authority shall conduct or, if feasible and in accordance with national law, permit the requesting authority to conduct such inspections, verifications, fact-finding inquiries, or other investigative steps, including the questioning of experts, witnesses, and persons suspected of having committed a trans-border crime, as are necessary to execute a request.

4. In order to facilitate concerted action, and upon request, the requesting authority shall be advised in advance of the time and place of any action to be taken in execution of a request.

5. Upon request, the requested authority shall authorise, if feasible and in accordance withits national law, to the fullest extent possible, officials of the requesting authority to be present in the territory of the requested authority to assist in execution of a request.

6. The requested authority shall comply with a request that a certain procedure be followed to the extent that the national law of the requested Party does not prohibit such procedure.

Article 10

Exemptions

1. Where a requested authority determines that granting assistance would infringe upon sovereignty, security, public policy or other substantive national interest, or would be inconsistent with national law and regulations, it may refuse or withhold assistance, or may grant it subject to the satisfaction of certain conditions or requirements.

2. If the requesting authority would be unable to comply if the requested authority made a similar request, it shall draw attention to the fact in its request. Compliance with such a request shall be at the discretion of the requested authority.

3. The requested authority may postpone assistance on the grounds that it will interfere with an ongoing investigation, prosecution, or proceeding. In such instance, the requested authority shall consult with the requesting authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

4. In the event that a request cannot be complied with, the requesting authority shall be promptly notified and provided with a statement of the reasons for postponement or denial of the request. Circumstances that might be of importance for the further pursuit of the case shall also be provided to the requesting authority.

Article 11

Costs

1. The Parties shall normally waive all claims for reimbursement of costs incurred in the implementation of this Agreement with the exception of expenses for witnesses, fees of experts, and the cost of translators and interpreters other than government employees.

2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the authorities shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the cost shall be borne.

Article 12

Implementation of the Agreement

1. A Joint Cooperation Committee is hereby established in Bucharest, consisting of representatives of the designated authorities of the Parties, with each Party having one vote in the Committee. A representative of ICPO-Interpol and World Customs Organization shall serve as a permanent adviser to the Joint Cooperation Committee. The Joint Cooperation Committee shall

meet at least once a year at place and on a date with an agenda fixed by mutual consent.

2. The Joint Cooperation Committee shall, *inter alia*:

(a) ensure the proper functioning of this Agreement;

(b) examine all issues arising from its application;

(c) take measures necessary for cooperation in accordance with the scope of this Agreement;

(d) exchange views on any points of common interest regarding cooperation, including future measures and the resources for them;

(e) recommend solutions aimed at attaining its objectives. f.

3. The Joint Cooperation Committee which is the highest institutional body of the SECI Center shall adopt its rules of procedure by consensus.

4. The Joint Cooperation Committee shall consult with other relevant international agencies, such as the United Nations Economic Commission for Europe (UNECE), the United Nations Office for Drug Control and Crime Prevention (UNODCCP), WCO, Interpol and Europol on the effective functioning of the Agreement and of the SECI Centre.

Article 13

Southeast European Cooperative Initiative Regional Center for Combating Trans-border Crime (SECI Centre)

1. The SECI Center will be established in Bucharest, Romania.

2. The SECI Center will operate in accordance with a Charter of Organisation and Operation of the SECI Center for Combating Trans-border Crime to be adopted by the Parties as soon as possible and annexed to and incorporated in this Agreement.

3. The activity of the SECI Center will be coordinated by the Joint Cooperation Committee.

Article 14

Application

This Agreement shall be applicable to the state territory of each Party.

Article 15

Settlement of Disputes

In case of a dispute between two or more Parties or between a Contracting Party and the Center concerning the interpretation or application of this

Agreement, the Parties concerned shall consult and, if necessary, they shall submit the dispute to the Joint Cooperation Committee for consideration and appropriate action.

Article 16

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the month following the date on which three Parties notify the depository of the completion of their national procedures required for the entry into force of the Agreement.

2. For each state participating in SECI, acceding to this Agreement after its entry into force, this Agreement shall enter into force on the first day of the month following the date on which that state notifies the depository of its instrument of ratification, acceptance, approval or accession.

For any state, other than a state participating in SECI, the decision to allow accession to this Agreement after its entry into force can be taken only by consensus of the SECI participating states. For those states, this Agreement shall enter into force on the first day of the month following the date on which that state notifies the depository of its instrument of ratification, acceptance, approval or accession.

3. The Government of Romania shall act as depository of this Agreement. The depository shall inform the Parties of the notification referred to in paragraphs I and 2 as well as the date of entry into force of the Agreement.

4. A Party may withdraw from this Agreement at any time by notification to the depository which shall transmit a certified copy to each party. Withdrawal shall take effect three months from the date of notification. Ongoing proceedings at the time of withdrawal shall nonetheless be completed in accordance with the provisions of this Agreement.

Article 17

Amendments

1. Amendments to this Agreement may be proposed by any Party. Any proposed amendment shall be sent to the depository who shall communicate it to the parties.

2. Parties shall notify the depository as soon as possible of their acceptance of proposed amendments to this Agreement.

3. Amendments adopted in accordance with paragraph 2 by consensus shall enter into force in accordance with article 16.

4.If an objection to the recommended amendment is notified to the

depository, the amendment shall be deemed not to have been accepted and shall be of no effect.

The original of this Agreement in a single copy in the English language shall be deposited with the Government of Romania, as depository, which shall transmit a certified copy to each party.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Bucharest, Romania on May 26, 1999