*Proiect din 16.12.2016*

AGREEMENT

between

the Government of the Republic of Moldova and the Austrian Federal Government on the implementation of the Police Cooperation Convention for Southeast Europe

The Government of the Republic of Moldova and the Austrian Federal Government (hereinafter referred to as the „Contracting Parties“),

REAFFIRMING their will to intensify the cooperation in the fight against the threats against public safety and/or public order, as well as concerning prevention, discovery and police investigation of the crimes,

EXPRESSING the will to ensure within the bilateral cooperation a fast and comprehensive implementation of the Police Cooperation Convention for Southeast Europe, signed at Vienna on 5 May 2006 (hereinafter referred to as „Convention"),

FIRMLY COMMITTED to contribute to fully enforcement of the Convention by other Parties,

TAKING INTO CONSIDERATION the handbook developed in order to implement the Convention,

AIMED to increase the safety of the citizens of the Republic of Moldova and of the Republic of Austria,

ON THE BASIS of the Article 34 (1) of the Convention,

Have agreed as follows:

Article 1

Scope

 This Agreement is concluded in order to improve the cooperation in the field of national security and public order insurance, prevention and combating crimes and/or infringements whose impact breaks the border of a State, development and consolidation of the cooperation through the cross-border surveillance, controlled delivery, undercovered investigations, joint investigation teams, as well in the field of witness protection and of other participants within the criminal trial in order to implement the provisions of the Convention.

Article 2

Definitions

 The terms used in this Agreement have the following meaning:

Competent authorities - empowered institutions of the States of the Parties established in the Article 3 of this Agreement that ensure its implementation.

Territorial (regional) competent authorities (structural subunits) - structures subordinated to the competent authorities acting within the limit of their competences, in accordance to the provisions of the national legal frameworks of the Parties.

Cross-border surveillance - all the operative measures accomplished on the territory of the State of a Contracting Party against a person suspected of a crime, that makes possible an extradition or about whom there are serious reasons to believe that can help to the identification process or detection of such person.

Controlled deliveries - accompanied transporting of the objects related to a crime, as well as of the goods coming from an offence or are intended for an offence.

Undercovered investigations - special investigative measure which involves infiltration of the undercovered offices within the criminal group investigated, for a limited period, in order to discover the existence of the crime, to collect data and informations, which are fully delivered to the prosecutor which authorized the special investigative measure.

Joint investigation teams - team constituted by the competent authorities of or at least two States, by mutual agreement, with a specific purpose and for a limited time, that can be extended by agreement of the Parties, in order to develop criminal investigation in one or more of the States that constitutes the team. Joint investigation team composition is decided by mutual agreement.

Emergency assistance - any assistance that cannot be postponed and is granted within 24 hours.

Processing of personal data - represents any operation or set of operations which are done concerning the personal data, by automatic means or not, such as collection, recording, organization, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Witnesses and other participants protection in criminal proceedings - constitutes all the urgent measures, measures of protection and assistance applied separately or jointly by the empowered authority, with the consent of the protected person, in order to protect his/her life, physical integrity and health, under the terms provided by the national legal frameworks in force of the Parties, taking into consideration the personality of the witness, the hold information and the existing danger.

Article 3

Competent authorities

 The Contracting Parties have designated the following competent authorities (hereinafter referred to as „the Competent Authorities”) for the implementation thereof:

1. For the Republic of Moldova;
2. Ministry of Internal Affairs, through:

- General Police Inspectorate

Address: Chisinau, Tiraspol, 11/1 St.

Tel: +373 22 868 112/124

Fax: +373 22 868 114/116

E-mail: igp@igp.gov.md

- Border Police Department

Address: Chisinau, Petricani, 19 St.

Tel/Fax: +373 22 259 651

E-mail: politia.frontiera@border.gov.md

1. General Prosecutor’s Office

Address: Chisinau, Mitropolit Gavriil Bănulescu-Bodoni, 26 St.

Tel: +373 22 225 075

Fax: +373 22 212 032

1. The Ministry of Finances, through:

- Customs service.

1. For the Republic of Austria:

Federal Ministry of the Interior, through:

 - General Department for Public Safety - Criminal Federal Office (Office II/ВК/5.3);

 - Competent territorial (regional) authorities (structural units).

Article 4

Cross-border surveillance

1. The Officers of a Contracting Party that during the investigation of a crime supervise a person suspected to have taken part to a crime that constitutes ground for extradition, will be authorized to continue the surveillance on the territory of other Contracting Party in accordance to the Article 14 of the Convention, in the place where that Contracting Party authorized the cross-border surveillance, as a response to the request of assistance submitted in advance.
2. Officers empowered to develop activities regarding the cross-border surveillance, in accordance to the Article 14 (6) of the Convention:
3. For the Republic of Moldova:

 Ministry of Internal Affairs, through:

* General Police Inspectorate;
* Border Police Department.
1. For the Republic of Austria:

 Federal Ministry of the Interior, through:

* General Department for Public Safety.
1. Necessary technical means can be used by the employees of a Contracting Party on the territory of other Contracting Party, accordingly to their national legal framework, and when the Contracting Party on which territory will be used technical means, accepted their use in each individual case. The Parties inform each other in each individual case about their technical means that will be used.
2. Requests and answers shall be made in writing form, inclusively when transmitting personal data, using only secured channels for receiving and transmitting information of the police international cooperation units. In urgent cases will be possible the verbal requests, followed by a written request.
3. Contracting Parties, during the cross-border surveillance, will observe the following general conditions:
4. Officers which develop the surveillance will action accordingly to the provisions of this Article, as well as the provisions of the national legal framework of the Parties on whose territory the surveillance is done. The officers concerned will follow the instructions of the local competent authorities.
5. At express request, the surveillance will be transmitted to the Requested Party. The presence of the surveillance officers of the Requesting Party on the territory of the Requested Party can be allowed in case of the Requested Party approval.
6. Officers are obliged that during the surveillance to have a document which proves that the authorization was received.
7. Officers who develop the surveillance must be able to prove any time their official position.
8. Entry into private spaces and lands that are not publicly available is prohibited. Access to publicly accessible spaces is allowed during working hours, functioning and business. Officers carrying out the surveillance should neither provoke nor arrest the person under surveillance.
9. The authorities of the requesting Party shall issue a note of the measures taken in the requested Party. If necessary, authority representatives, who conducted surveillance personnel, will be present.
10. Vehicles, aviation or naval craft used by officers of the requested Party shall be subject to the same traffic rules that are binding for the other Party demanding officers. This applies also to the use of special rights and rights of way. The Contracting Parties shall inform each other on the respective legal situation.
11. Authorities of the requesting Party where originate officers carrying out surveillance on request, assist the authorities of the requested Party in whose territory the surveillance was carried out in investigations after the operation in which they took part, including the proceedings of court, provided that the identity officer concerned is protected.

Article 5

Undercover Investigation

1. Safeguards and legend undertaken by the requesting Party are recognized by the collaboration required under Article 16 and 17 of the Convention, in accordance with their national legislation.
2. Employees authorized to conduct undercover investigations in accordance with Articles 16 and 17 of the Convention are:
3. For the Republic of Moldova:

1. Ministry of Internal Affairs, through:

- General Police Inspectorate

-Border Police Department

b) For the Republic of Austria:

- Federal Ministry of the Interior - General Department for Public Safety - Criminal Federal Office (Office II/BK/5.3).

Article 6

Witness Protection

1. Where reference is made in the Convention on the protection of witnesses are taken into account people who are included in a national program for protection or to be taken in such a program.
2. Cooperation in witness protection includes administrative, methodical and technical support and exchange of experience, and relocation of the protected person in the requested country or acceptance of protected persons from the requesting country.

Article 7

Witness Protection

1. Parties can submit assistance requests in order to realize the controlled delivery of objects linked to the committing of a crime mentioned in the provisions of Article 4, as well as goods used in committing one crime or being intended to be used in committing a crime, when the requesting Party motivates that, without such measures, the identification of perpetrators or distribution channels would seem to be impossible or difficult.
2. The requested Party can refuse or partially accept a request of controlled delivery, if this may endanger the health or life of persons involved in the delivery or may even endanger public order.
3. Officers of the requested Party shall ensure the control on the delivery while border crossing or to any other destination agreed in the request. Officers of the requested Party shall subsequently ensure the secret control of delivery in such way allowing anytime the taking over or seizure thereof and to detain organizers and other persons involved in committing crimes, which are subject in the delivery.
4. When necessary, requesting Parties can agree on ensuring jointly the controlled delivery with respect of the provisions of paragraph (4), Article 15 of the Convention.

Article 8

Rights, powers and responsibilities of the Officers from the other

Contracting Party

1. The Officers involved in activities provided by the norms of this Agreement, if the national law of the requested Party does not prohibit, are authorized to:
2. wear uniform and special means, to use and apply special means within the limits set by the national legislation of the requested Party;
3. participate in preventive measures, only with the representatives of the requested Party, based on the authorization issued by the State in which they take place;
4. use fetter in accordance with this Agreement;
5. detain the prosecuted person for the necessary time in accordance with this Agreement;
6. conduct the secured perquisition of the person, means and vehicles in accordance with this Agreement;
7. entry the territory of the demanding Party under an official permit with photo and signature and to be present on the territory as long as necessary in order to fulfill the duties under this Agreement;
8. use official vehicles for cross-border operations;
9. use necessary technical means on the territory of the other requesting Party to implement the measures provided in this Agreement that are acceptable in accordance with the national legislation of the requesting Party.
10. When for the рurposes of this Agreement, the Officers of a contracting Party are operating on the territory of another requesting Party, the first requesting Party shall be liable for any damage caused by them during operations under the domestic laws of the requesting Party on the territory it acts.

Article 9

Liaison officers

 The requesting Parties may agree that their delegated Liaison Officers in a third state to represent the interests of the other Party on the basis of mutual written Agreement of the competent authorities. Through such an Agreement in writing form, the sent Liaison Officers on mission to third States shall supply information to other Parties when requested to do so or on their own initiative and within its powers, perform duties on behalf of that Party.

Article 10

Data protection

1. The data transmission under this Agreement shall be used by the parties in accordance with their national legislation, only for the purposes for which it was provided or to prevent an immediate and serious threat to public security or for preventing a serious crime. Any other use will be allowed only with prior permission of the transmitting Party;
2. During data transmission, the transmitting authority shall set deadlines for deleting and / or destruction of data (further the destruction), in accordance with its national law. Notwithstanding these deadlines, the data transmitted will be destroyed if no longer required to fulfill the tasks which constituted the reason for their transmission or for any other purposes in accordance with paragraph 1. The sent data shall be destroyed at the latest on termination of the present Agreement, if that will not be replaced by a new Agreement;
3. The recipient is bound to protect effectively the data transmitted by accidental or unauthorized destruction, accidental loss, accidental or unauthorized change, accidental or unauthorized dissemination, accidental or unauthorized access or accidental or unauthorized publication;
4. On request, the recipient shall inform the transmitting authority about each processing of the transmitted data and obtained results;
5. Parties shall ensure that each person in case of infringement of data protection can make a complaint to an independent court or another independent authority and request compensation;
6. The received information by the Parties will be forwarded to third countries only with prior permission of the Party who provided the information;
7. Parties shall respond, in accordance with their national legislation, for the caused damage to an individual as a result of processing of data concerned to this person, transmitted under this Agreement where the data transmitted were incorrect or unlawfully transmitted. When held responsible under their legislation, the Parties may not defend arguing that the transmitted data had been incorrect or unlawfully transmitted by another Party. If the receiving Party compensates the loss caused by use of incorrect or unlawfully transmitted data, the sending Party will refund the entire amount of guaranteed compensation.

Article 11

Cooperation within Joint Centers

1. The Contracting Parties may jointly delegate employees of a Contracting Party within the existing Joint Centers of other Contracting Party on the territory of the third states, provided that such third countries accept delegation, without prejudice to the provisions of Article 29 (2) of the Convention and other provisions of the Convention.
2. The competences of the delegates within the Joint Centers are regulated by the provisions of the Article 29 (2) of the Convention and other provisions of the Convention.

Article 12

Review of implementation and amendment of the Agreement

 At the request of a Party, a joint working group, composed of representatives of the Contracting Parties, will review the implementation of this Agreement and will determine whether it is necessary to supplement or amend it.

Article 13

Costs

 Each Contracting Party shall cover, in accordance with its respective national legal framework, the costs borne by their respective authorities in order to implement this Agreement.

Article 14

Settlement of divergences

1. Any divergences which may emerge in connection with the interpretation and/or application of this Agreement shall be settled by means of consultations between the Competent Authorities of the Contracting Parties through negotiations.
2. In case divergences cannot be settled in accordance with paragraph 1 of this Article, those will be settled by Contracting Parties through diplomatic channels.

Article 15

Relations to other international treaties

 The Agreement does not infringe any obligations of the Contracting Parties arising from other international treaties.

Article 16

Annexes

 The Annexes shall form an integral part of this Agreement.

Article 17

Final provisions

1. This Agreement shall enter into force on 1st day of the 2nd month following the date when the Contracting Parties inform each other that necessary procedures foreseen by the national legislation for the entry into force of this Agreement have been fulfilled.
2. This Agreement is concluded for an unlimited period of time.
3. This Agreement may be amended and completed by mutual written consent of the Contracting Parties at any time, in accordance to the paragraph 1 of this Article.
4. Each Contracting Party may terminate this Agreement by written notification sent through diplomatic channels to other Contracting Party. Termination enters into force six months following the date of receipt of the notification by other Contracting Party.

Signed at\_\_\_\_ on\_\_\_\_\_ in two original copies, each in Romanian, German and English languages, all text being equally authentic. In case of divergence in the interpretation or implementation of this Agreement, the English text shall prevail.

For the Government of For the Austrian Federal

the Republic of Moldova Government