

**AGREEMENT BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT
ON POLICE COOPERATION AND THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

PREAMBLE

The Austrian Federal Government and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Parties" and separately as a "Party");

WISHING to consolidate and develop the cordial relations between the Republic of Austria and the Republic of South Africa;

WISHING FURTHER to promote peace, stability, security and prosperity in their respective countries;

RECOGNIZING the importance of the promotion and development of cooperation in the field of combating crime;

TAKING INTO ACCOUNT the objectives and principles of international agreements to which they are parties, as well as resolutions of the United Nations and its specialized agencies on combating crime;

HEREBY AGREE as follows:

Article 1

COMPETENT AUTHORITIES AND OBLIGATION TO COOPERATE

- (1) The competent authorities responsible for the implementation of this Agreement shall be –
 - (a) on the South African part, the Department of Safety and Security; and
 - (b) on the Austrian part, the Federal Ministry of Interior.
- (2) Exchange of information between the Parties within the International Criminal Police Organisation ICPO – Interpol may be complemented by direct contact between representatives of the competent authorities.
- (3) Cooperation between the Parties may also be carried out through liaison officers. The liaison officer shall provide information and advice, and shall not have any executive powers. The tasks and duties of the liaison officer shall be determined by the competent authorities in conformity with their domestic law. Liaison officers need not be appointed on a reciprocal basis.
- (4) The competent authorities shall cooperate in accordance with the provisions of this Agreement, acting under their jurisdiction and subject to the international obligations and domestic law of the Parties.

Article 2

AREAS OF COOPERATION

- (1) The competent authorities, within their means, undertake to cooperate in preventing, combating and investigating crime, including, but not limited to –
 - (a) organized crime and corruption;
 - (b) the illicit production of and traffic in narcotic drugs and psychotropic substances, including those materials which are used in their production;
 - (c) trafficking in firearms, ammunition, explosives and poisonous substances, including radioactive materials;
 - (d) trafficking in stolen goods;
 - (e) trafficking in persons;
 - (f) economic crimes, including money laundering;
 - (g) the production and sale of forged banknotes, securities and other fraudulent documents; and
 - (h) high-tech crime.
- (2) The competent authorities further undertake to cooperate in the field of public order policing.
- (3) The competent authorities shall also cooperate in preventing and suppressing terrorist acts in accordance with domestic law and international obligations, including the relevant international conventions and United Nations Security Council Resolutions 1373 (2001) and 1390 (2001).
- (4) This Agreement does not apply to extradition and mutual legal assistance in criminal matters.

Article 3

MANNER OF COOPERATION

In order to give effect to the provisions of Article 2, the competent Authorities shall cooperate in the following manner:

- (a) The exchange of information on working experience in respect of police and criminal sciences, including personnel training courses as well as victim support programmes;
- (b) the exchange of information of interest relating to crimes which are being planned or have been committed and to persons and organizations involved in these crimes;
- (c) the exchange of information of interest relating to the maintenance of public order;
- (d) the exchange of information, including operational and forensic information about narcotic drugs and psychotropic substances;

- (e) the exchange of information to aid in the control and supervision of the trade in precursors and essential chemicals, thus preventing the diversion thereof;
- (f) the exchange of legislation;
- (g) the exchange of scientific and technical literature and data on the functions of the competent authorities;
- (h) taking the necessary measures to coordinate the implementation of special investigative techniques, such as controlled deliveries, surveillance and undercover operations, for the purpose of gathering evidence so that legal action may be taken against persons involved in offences targeted by these techniques.
- (i) searching for persons who are evading criminal prosecution or execution of a sentence and also for persons who are reported missing;
- (j) the execution of requests as contemplated in Article 4.

Article 4

REQUESTS FOR ASSISTANCE

- (1) Cooperation within the framework of this Agreement shall take place on the basis of requests for assistance from the interested competent authority or on the initiative of the competent authority which deems such assistance to be of interest to the other competent authority.
- (2) Requests for assistance shall be made in writing. In cases of emergency, requests may be made orally, but shall be confirmed in writing within seven days.
- (3) Should there be any doubt about the authenticity or the content of the request, further confirmation may be requested.
- (4) Requests for assistance shall contain –
 - (a) the name of the agency of the competent authority which applies for assistance and the name of the agency of the competent authority to which application has been made for assistance;
 - (b) details of the case;
 - (c) the purpose of and grounds for the request;
 - (d) a description of the assistance requested; and
 - (e) any other information which may assist in the effective execution of the request.

Article 5

REFUSAL OF ASSISTANCE

- (1) Assistance contemplated in this Agreement may be refused wholly or partially if the requested competent authority deems the execution of the request to be detrimental to the sovereignty, se-

curity, public order or other essential interests of its State, or deems it to be in conflict with its domestic law or international obligations.

- (2) Assistance may also be refused if execution of the request imposes an excessive burden on the resources of the requested competent authority.
- (3) If possible, the requested competent authority shall, before taking a decision to refuse the assistance requested in accordance with subArticle (1), consult with the requesting competent authority in order to establish whether the assistance may be granted on the conditions which the requested competent authority may impose. If the requesting competent authority agrees to receive Assistance under the suggested conditions, it shall comply with these conditions.
- (4) The requesting competent authority shall be notified in writing about full or partial refusal to execute the request together with an explanation of the reasons for such refusal.

Article 6

EXECUTION OF REQUESTS

- (1) The requested competent authority shall take all measures to ensure the prompt and full execution of requests.
- (2) The requesting competent authority shall be notified immediately of any circumstances hampering the execution of the request or causing considerable delay in its execution.
- (3) If the execution of the request does not fall within the jurisdiction of the requested competent authority, it shall immediately notify the requesting competent authority accordingly.
- (4) The requested competent authority may request such further information as it deems necessary to duly execute the request.
- (5) If the requested competent authority considers that the immediate execution of the request may hamper criminal prosecution, other proceedings or investigations being carried out in its State, it may suspend the execution of the request or allow the execution under conditions which were set as necessary after consultations with the requesting competent authority. If the requesting competent authority agrees to receive assistance under the suggested conditions, it shall comply with these conditions.
- (6) On receipt of the application made by the requesting competent authority, the requested competent authority shall take all necessary measures to ensure the confidentiality of the fact that the request was made, its contents and annexed documents, as well as the fact of providing assistance. If it is not possible to execute the request without preserving its confidentiality, the requested competent authority shall inform the requesting competent authority accordingly, after which the latter may decide as to whether it will be acceptable to execute the request under such conditions.
- (7) The requested competent authority shall, at its earliest convenience, inform the requesting competent authority about the results of the execution of the request.

Article 7

LIMITATIONS RELATING TO THE USE OF INFORMATION AND DOCUMENTS

- (1) Each competent authority shall ensure the confidentiality of information and documents received from the other competent authority, if they are restricted or the latter competent authority disapproves of its disclosure. The degree of such a restriction shall be determined by the providing competent authority.
- (2) Information and documents received in accordance with this Agreement are not to be used without the consent of the Providing competent authority for purposes other than those for which they were requested and provided.
- (3) Information and documents received from a competent authority in accordance with this Agreement shall not be disclosed to a third party, except with the prior written consent of the providing authority.

Article 8

PROTECTION OF PERSONAL DATA

Mutual exchange of personal data between the Parties' competent authorities shall be made in compliance with the conditions laid down by the transmitting authority and on the basis of the following principles to be applied to both computer-assisted and non-computer-assisted data processing:

- (1) The data transmitted shall not be used for any purposes other than those indicated in the message without consent of the transmitting authorities;
- (2) The data transmitted shall be deleted and/or corrected, if –
 - (a) found to be incorrect; or
 - (b) the transmitting authority advises that the data was unlawfully obtained or transmitted; or
 - (c) the data is no longer needed for fulfilment of the task stated by the requesting authority, unless explicit permission was given to use the transmitted data for any other purpose.
- (3) Upon request of the transmitting authority the receiving authority shall furnish information about the use of the data received;
- (4) The transmitting authority shall guarantee that the data transmitted is correct and up-to-date. In case of the transmission of incorrect data or data which should not have been transmitted or in case that data which has been lawfully transmitted has to be deleted at a later date pursuant to the domestic law in force in the State of the transmitting authority, the receiving authority shall be informed thereof without undue delay in order to carry out the Necessary deletion or correction of the data pursuant to SubArticle (2);
- (5) If the receiving authority has any reason to believe that transmitted data might be incorrect or should be deleted, this authority shall immediately inform the transmitting authority thereof;

- (6) The receiving authority shall be obliged to effectively protect the received data from unauthorised access, unauthorised modification and unauthorised publication;
- (7) Both the transmitting and the receiving authority shall be obliged to log or to place the transmission and receipt of data on record;
- (8) The persons concerned shall have the right to have access to the data relating to them transmitted under this agreement, as well as the right to correction and/or deletion of this data in cases pursuant to subArticle (2) or to verification of this data, in conformity with the relevant domestic legal provisions. In case of a request for assertion of this right, prior to deciding on the request, the authority holding the data shall afford the transmitting authority the opportunity to furnish an opinion.

Article 9

EXPENSES

Ordinary expenses incurred in processing a request in terms of this Agreement shall be borne by the requested Party, unless otherwise Agreed upon by the Parties. Should the request involve high or extraordinary expenses, the Parties shall consult each other in order to establish the terms and conditions under which the request shall be processed, and the way in which the expenses shall be borne.

Article 10

LANGUAGE

The competent authorities, in the course of their cooperation in accordance with this Agreement, shall use English as the medium of communication.

Article 11

MEETINGS AND CONSULTATIONS

In order to facilitate the execution of this Agreement, representatives of the competent authorities shall, when necessary, have bilateral meetings and consultations with a view to discussing and improving cooperation.

Article 12

SETTLEMENT OF DISPUTES

Any dispute arising from the interpretation or implementation of this Agreement shall be settled amicably in a spirit of mutual understanding through consultation or negotiation between the Parties.

Article 13

RELATION TO OTHER INTERNATIONAL TREATIES

The provisions of this Agreement shall not affect the rights and obligations arising out of other international treaties to which the Parties are signatories.

Article 14

ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force on the first day of the second month following the date on which the Parties have notified each other in an exchange of diplomatic notes that their constitutional and other internal legal requirements have been fulfilled.
- (2) This Agreement shall remain in force until terminated by either Party giving six months written notification in advance to the other Party through the diplomatic channel.
- (3) The Agreement may be amended by mutual consent of the Parties in accordance with their constitutional requirements.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed and sealed this Agreement in two originals in the German and English languages, all texts being equally authentic.

Done at Cape Town on this 26th day of May in this year 2003.

Dr. Ernst STRASSER
FOR THE AUSTRIAN
FEDERAL GOVERNMENT

Charles NQAKULA
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA