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LIMITE

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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Access by the European Parliament to classified information in the area of the
Common Foreign and Security Policy

Delegations will find attached:

- in Annex I: a proposal of the High Representative to the Council for a draft Arrangement between the European Parliament, the Council and the European External Action Service concerning access by the European Parliament to classified information in the area of the Common Foreign and Security Policy;
- in Annex II: a draft Interinstitutional Agreement between the European Parliament and the Council repealing the Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy.

DRAFT

ARRANGEMENT of ...

between the European Parliament, the Council and the European External Action Service concerning access by the European Parliament to classified information in the area of the Common Foreign and Security Policy

THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN EXTERNAL ACTION SERVICE,

Whereas:

- (1) Article 36 of the Treaty on European Union (TEU) provides that the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy, and inform it of how these policies evolve. The High Representative is to ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament. Further, in accordance with that Article the European Parliament may address questions or make recommendations to the Council or the High Representative, and twice a year it is to hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.
- (2) Article 10 of Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (the EEAS Council Decision)¹ provides that the High Representative is to decide on the security rules for the EEAS and take all appropriate measures in order to ensure that the EEAS manages effectively the risks to its staff, physical assets and information, and that it fulfils its duty of care and responsibilities in this regard.

¹ OJ L 201, 3.8.2010, p. 30.

- (3) Article 218(10) of the Treaty on the Functioning of the European Union (TFEU) provides that the European Parliament is to be immediately and fully informed at all stages of the procedure for negotiating and concluding international agreements; that provision also applies to agreements relating to the Common Foreign and Security Policy.
- (4) The Declaration by the High Representative on political accountability¹, made upon the adoption of the EEAS Council Decision, states that the High Representative will review and where necessary propose to adjust the existing² provisions on access for Members of the European Parliament to classified documents and information in the field of security and defence policy.
- (5) Article 13(2) TEU provides that each institution act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. That provision also stipulates that the institutions are to practice mutual sincere cooperation. Article 295 TFEU provides that the European Parliament and the Council, inter alia, are to make arrangements for their cooperation and that, to that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature.
- (6) On 31 March 2011 the Council adopted Decision 2011/292/EU on the security rules for protecting EU classified information³.
- (7) On 6 June 2011, the Bureau of the European Parliament adopted a Decision concerning the rules governing the treatment of confidential information by the European Parliament⁴.

¹ C 210, 3.8.2010, p. 1

² Interinstitutional agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy (OJ C 298, 30.11.2002, p.1).

³ OJ L 141, 27.5.2011, p. 17.

⁴ OJ C 190, 30.6.2011, p. 2.

- (8) On 15 June 2011, the High Representative adopted a Decision on the security rules for the European External Action Service¹.
- (9) In view of the specific nature and the especially sensitive content of certain highly classified information in the area of the Common Foreign and Security Policy, and in particular the area of the Common Security and Defence Policy, appropriate arrangements governing access to and the handling of documents containing such information by the European Parliament should be put in place.
- (10) On [date], the European Parliament and the Council concluded an Interinstitutional Agreement concerning the forwarding to and the handling by the European Parliament of classified information held by the Council on matters others than those in the area of the Common Foreign and Security Policy².
- (11) The forwarding to and handling by the European Parliament of classified information relating to international agreements which do not relate exclusively to the common foreign and security policy are governed by the above-mentioned Interinstitutional Agreement between the European Parliament and the Council.
- (12) This Arrangement is without prejudice to rules on access to documents adopted in accordance with Article 15(3) TFEU, rules on the protection of personal data adopted in accordance with Article 39 TEU and Article 16(2) TFEU, rules on the European Parliament's right of inquiry adopted in accordance with Article 226 TFEU, and relevant provisions relating to the European Anti-Fraud Office (OLAF).
- (13) This Arrangement will replace the Interinstitutional agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy, which was repealed by the Interinstitutional agreement of [date] between the European Parliament and the Council [full title].

¹ OJ C 304, 15.10.2011, p. 7.

² OJ ...

HAVE CONCLUDED THIS ARRANGEMENT:

Article 1

Purpose and scope

This Arrangement sets out provisions governing access by the European Parliament to classified information held by the Council and the European External Action Service (EEAS) in the area of the Common Foreign and Security Policy, including the Common Security and Defence Policy.

Article 2

Definition of classified information

For the purposes of this Arrangement, "classified information" shall mean any or all of the following:

- (a) "EU classified information" (EUCI) as defined in the respective security rules of the signatories and bearing one of the following security classification markings:
 - RESTREINT UE/EU RESTRICTED;
 - CONFIDENTIEL UE/EU CONFIDENTIAL;
 - SECRET UE/EU SECRET;
 - TRES SECRET UE/EU TOP SECRET;
- (b) classified information provided to the Council or to the EEAS by Member States and bearing a national classification marking equivalent to one of the security classification markings used for EUCI listed in point (a);

- (c) classified information provided to the European Union by third States or international organisations which bears a security classification marking equivalent to one of the security classification markings used for EUCI listed in point (a), as provided for in the relevant security of information agreements or administrative arrangements.

Article 3

Protection of classified information

1. The European Parliament shall protect, in accordance with its security rules and with this Arrangement, any classified information provided to it under this Arrangement.
2. The Council, together with the European Parliament and the EEAS, shall determine that equivalence has been achieved between the basic principles and minimum standards for protecting classified information in the European Parliament's in the Council's and in the EEAS' security rules, on the one hand, and between the level of protection afforded to classified information in the premises of the European Parliament, of the Council and of the EEAS, on the other. In order to maintain this, the European Parliament shall ensure that the security measures in place in its premises afford a level of protection to classified information equivalent to that afforded to such information on Council or EEAS premises. The relevant services of the European Parliament, the Council and the EEAS shall cooperate closely to that effect.
3. The European Parliament shall take the appropriate measures to ensure that classified information provided to it under this Arrangement shall not:
 - (a) be used for purposes other than those for which access was provided;
 - (b) be disclosed to persons other than those to whom access has been granted in accordance with Articles 4, 5 and 6, or be made public;
 - (c) be released to other Union institutions, bodies, offices or agencies, or to Member States, third States or international organisations without the prior written consent of the Council or the EEAS.

4. The Council or the EEAS may grant the European Parliament access to classified information which originates in other Union institutions, bodies, offices or agencies, or in Member States, third States or international organisations only with the prior written consent of the originator.

Article 4

Personnel security

1. Access to classified information shall be granted to Members of the European Parliament in accordance with Articles 5 and 6.
2. Where the information concerned is classified at the level CONFIDENTIEL EU/EU CONFIDENTIAL, SECRET UE/EU SECRET or TRES SECRET UE/EU TOP SECRET or its equivalent, access may be granted only to Members of the European Parliament authorised by the President of the European Parliament:
 - (a) who have been security-cleared in accordance with the European Parliament's security rules; or
 - (b) for whom notification has been made by a competent national authority that they are duly authorised by virtue of their functions in accordance with national laws and regulations.
3. Before being granted access to classified information, Members of the European Parliament shall be briefed on and acknowledge their responsibilities to protect such information in accordance with the European Parliament's security rules, and briefed on the means of ensuring such protection.
4. Access to classified information shall be granted only to those officials of the European Parliament and other Parliament employees working for political groups who:

- (a) have been designated in advance as having a need-to-know by the relevant parliamentary body or office-holder determined in accordance with Article 5(4) and Article 6(3);
- (b) have been security-cleared to the appropriate level where the information is classified at the level CONFIDENTIEL UE/EU CONFIDENTIAL, SECRET UE/EU SECRET, TRES SECRET UE/EU TOP SECRET or its equivalent; and
- (c) have been briefed and received written instructions on their responsibilities for protecting such information as well as on the means of ensuring such protection, and have signed a declaration acknowledging receipt of those instructions and undertaking to comply with them in accordance with the European Parliament's security rules.

Article 5

Procedure for granting access to classified information in the area of Common Foreign and Security Policy except the Common Security and Defence Policy

1. This article sets out the procedure for granting access to classified information in the area of the Common Foreign and Security Policy except the Common Security and Defence Policy.
2. The Council or the EEAS may grant the European Parliament access to classified information in the area of the Common Foreign and Security Policy except the Common Security and Defence Policy either at their own initiative or upon written request from one of the parliamentary bodies or office-holders referred to in paragraph 3.
3. The following parliamentary bodies or office-holders may present written requests to the Council or the EEAS:
 - (a) the President;

- (b) the Conference of Presidents;
- (c) the Bureau;
- (d) the chair(s) of the committee(s) concerned or of the special committee referred to in Article 6(3);
- (e) the rapporteur(s) concerned.

Requests from other Members of the European Parliament shall be made via one of the parliamentary bodies or office-holders referred to in the first subparagraph.

The Council or the EEAS shall respond to such requests without delay.

4. Where the Council or the EEAS decide to grant the European Parliament access to classified information, they shall determine, together with the relevant body or office-holder listed in paragraph 3, the following in writing:

- (a) that such access may be granted to one or more of the following:

- (i) the President;
- (ii) the Conference of Presidents;
- (iii) the Bureau;
- (iv) the chair(s) of the committee(s) concerned;
- (v) the rapporteur(s) concerned;
- (vi) all or certain members of the committee(s) concerned;
- (vii) the special committee referred to in Article 6(3); and

- (b) whether the information in question may be forwarded to the European Parliament's premises and, if so, any specific handling arrangements for protecting such information.

Article 6

*Procedure for granting access to classified information in the area of
the Common Security and Defence Policy*

1. The Council or the EEAS may grant the European Parliament access to classified information in the area of the Common Security and Defence Policy either at its own initiative or on written request from one of the parliamentary bodies or office-holders referred to in paragraph 2.

2. In the area of the Common Security and Defence Policy, the following parliamentary bodies or office-holders may present written requests to the Council or the EEAS:
 - (a) the President;
 - (b) the Chair of the special committee referred to in paragraph 3.

3. Where the Council or the EEAS decide to grant the European Parliament access to classified information in the area of the Common Security and Defence Policy:
 - (a) the President of the European Parliament and/or members of a special committee chaired by the Chair of the Committee on Foreign Affairs and composed of [x] members designated by the Conference of Presidents, may be informed by the High Representative of the content of the classified information in a meeting. Arrangements shall be determined for each meeting;
 - (b) where appropriate and possible in the light of the nature and content of the classified information concerned, access to classified documents may be granted to the President of the European Parliament and/or to the members of the special committee referred to in point (a), including by forwarding such documents to the European Parliament's premises along with any specific handling arrangements for protecting them.

Article 7

Registration, storage, consultation and discussion of classified information in the European Parliament

1. Any classified information forwarded to the European Parliament in the area of the Common Foreign and Security Policy:
 - (a) shall be registered for security purposes to record its life-cycle and ensure its traceability at all times;
 - (b) shall be stored in a secure area which meets the minimum standards of physical security laid down in the respective security rules of the signatories, which shall be equivalent in accordance with Article 3(2);
 - (c) may be consulted by the relevant Members of the European Parliament, officials of the European Parliament and other Parliament employees working for political groups referred to in Article 4(4), Article 5(4) and Article 6(3) only in a secure reading room within the European Parliament's premises. In this case, the following conditions shall apply:
 - (i) the information shall not be copied by any means, such as photocopying or photographing;
 - (ii) no notes shall be taken; and
 - (iii) no electronic communication devices may be taken into the room; and
 - (d) shall be destroyed in accordance with the relevant security rules when no longer required.

2. Classified information may be handled only on communication and information systems which have been duly accredited or approved in accordance with standards equivalent to those laid down in the security rules of the Council and of the EEAS.
3. Classified information provided orally to recipients in the European Parliament shall be subject to the equivalent level of protection as that afforded to classified information in written form.
4. Notwithstanding point (c) of paragraph 1 of this Article, information classified up to the level of CONFIDENTIEL UE/EU CONFIDENTIAL or its equivalent provided to the European Parliament under this Arrangement, may be discussed at meetings held in camera and attended only by Members of the European Parliament and those officials of the European Parliament and other Parliament employees working for political groups who have been granted access to the information in accordance with Articles 4(4), 5(4) and 6(3). The following conditions shall apply:
 - documents shall be distributed at the beginning of the meeting and collected again at the end;
 - documents shall not be copied by any means, such as photocopying or photographing;
 - no notes shall be taken;
 - no electronic communication devices may be taken into the room; and
 - the minutes of the meeting shall make no mention of the discussion of the item containing classified information.
5. Where meetings are necessary to discuss information classified at the level SECRET UE/EU SECRET or TRES SECRET UE/EU TOP SECRET or its equivalent, specific arrangements shall be agreed on a case-by-case basis between the European Parliament and the Council or the EEAS.

Article 8

Breach of security, loss or compromise of classified information

1. In the case of a proven or suspected loss or compromise of classified information provided under this Arrangement, the Secretary-General of the European Parliament shall immediately inform the Secretary-General of the Council and the Director-General for budget and administration (Chief Operating Officer) of the EEAS thereof. The Secretary-General of the European Parliament shall conduct an investigation and shall inform the Secretary-General of the Council and the Director-General for budget and administration (Chief Operating Officer) of the EEAS of the results of the investigation and of measures taken to prevent a recurrence. Where a Member of the European Parliament is concerned, the President of the European Parliament shall act together with the Secretary-General of the European Parliament.
2. Any Member of the European Parliament who is responsible for a breach of the provisions laid down in the European Parliament's security rules or in this Arrangement may be liable to measures and penalties in accordance with Rules 9(2) and 152 to 154 of the European Parliament's Rules of Procedure.
3. Any official of the European Parliament or other Parliament employee working for a political group who is responsible for a breach of the provisions laid down in the European Parliament's security rules or in this Arrangement may be liable to the penalties set out in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) N° 259/68¹.
4. Persons responsible for losing or compromising classified information may be liable to disciplinary and/or legal action in accordance with the applicable laws, rules and regulations.

¹ OJ L 56, 4.3.1968, p. 1.

Article 9

Final provisions

1. The President of the European Parliament, the Secretary-General of the Council, and the High Representative of the Union for Foreign Affairs and Security Policy shall be responsible for implementing this arrangement.
2. This Arrangement shall apply from the date of signature.
3. Classified information shall be provided to the European Parliament under this Arrangement once it has been determined that equivalence has been achieved in accordance with Article 3.
4. This Arrangement may be reviewed at the request of any of the signatories in the light of experience in implementing it.

Done in ... on ...

For the European Parliament

The President

For the Council

The President

For the European External Action Service

The High Representative of the Union for Foreign Affairs and Security Policy

(a) **Draft Statement by the Council and the European External Action Service (EEAS)**

The Council and the EEAS will inform each other of any classified information provided orally or in written form to the European Parliament under the Arrangement concerning access by the European Parliament to classified information in the area of the Common Foreign and Security Policy.

DRAFT
INTERINSTITUTIONAL AGREEMENT

of ...

between the European Parliament and the Council repealing the Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy

THE EUROPEAN PARLIAMENT AND THE COUNCIL,

Whereas:

- (1) The Declaration by the High Representative of the Union for Foreign Affairs and Security Policy on political accountability, made upon the adoption of Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service¹, states that the High Representative will review and where necessary propose to adjust the existing provisions on access for Members of the European Parliament to classified documents and information in the field of security and defence policy (i.e. the Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy²).
- (2) The European Parliament, the Council and the European External Action Service have entered into an arrangement concerning access by the European Parliament to classified information in the area of the Common Foreign and Security Policy³.

¹ OJ L 201, 3.8.2010, p. 30.

² OJ C 298, 30.11.2002, p.1.

³ OJ ...

- (3) Article 295 of the Treaty on the Functioning of the European Union (TFEU) provides that the European Parliament and the Council, inter alia, are to make arrangements for their cooperation and that, to that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature

HAVE AGREED AS FOLLOWS:

Article 1

This Agreement shall repeal the Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy as of the date of signature of the arrangement between the European Parliament, the Council and the European External Action Service concerning access by the European Parliament to classified information in the area of the Common Foreign and Security Policy.

Article 2

This Agreement shall enter into force on the date of its signature.

Done in ... on ...

For the European Parliament
The President

For the Council
The President