



**COUNCIL OF THE
EUROPEAN UNION**

Brussels, 16 February 2012

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LIMITE

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RELEX 125
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CSC 9**

NOTE

From : General Secretariat of the Council
To : Delegations

Subject: Draft Interinstitutional Agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the Common Foreign and Security Policy

1. Delegations will find attached:
 - in Annex I: the draft Interinstitutional Agreement (IIA) referred to above, on which agreement was reached between the European Parliament and the Council at the level of negotiators on 15 February 2012;
 - in Annex II: the draft statements accompanying the approval of the IIA;
 - in Annex III: a copy of a letter sent by the President of the Council, Mr Wammen, to Mr. Klaus Lehne, MEP on 16 February 2012.

2. The draft IIA will be subject to final approval by the Council in due course once the European Parliament's internal procedures are nearing completion (expected to take around three months).
 3. In the meantime work is continuing in the European Parliament in order to complete their security rules and put in place the necessary protective measures.
 4. When approving the IIA, the Council will also need to approve the Council's own internal arrangements for implementing it. The Presidency will table a proposal for such arrangements in the coming weeks.
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Draft

INTERINSTITUTIONAL AGREEMENT

of ...

between the European Parliament and the Council

concerning the forwarding to and handling by the European Parliament of
classified information held by the Council on matters other than those in the area of
the Common Foreign and Security Policy

THE EUROPEAN PARLIAMENT AND THE COUNCIL,

Whereas:

- (1) Article 14(1) of the Treaty on European Union (TEU) provides that the European Parliament shall, jointly with the Council, exercise legislative and budgetary functions and that it shall exercise functions of political control and consultation as laid down in the Treaties.
- (2) Article 13(2) TEU provides that each institution shall 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 and that the institutions shall practice mutual sincere cooperation. Article 295 of the Treaty on the functioning of the European Union (TFEU) provides that they shall 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.
- (3) The Treaties and, as appropriate, other relevant provisions provide that either in the context of a special legislative procedure or under other decision-making procedures, the Council shall consult or obtain the consent of the European Parliament before adopting a legal act. They also provide that, in certain cases, the European Parliament shall be informed about the progress or the results of a given procedure or be involved in the evaluation or the scrutiny of certain EU agencies.

- (4) In particular, Article 218(6) TFEU provides that, except where an international agreement relates exclusively to the common foreign and security policy, the Council shall adopt the decision concluding international agreements after obtaining the consent of or consulting the European Parliament; all such international agreements which do not relate exclusively to the common foreign and security policy are therefore covered by this Interinstitutional Agreement.
- (5) Article 218(10) of the TFEU provides that the European Parliament shall be immediately and fully informed at all stages of the procedure; this provision also applies to agreements relating to the Common Foreign and Security Policy.
- (6) In cases where implementation of the Treaties and, as appropriate, other relevant provisions, would require access by the European Parliament to classified information held by the Council, appropriate arrangements governing such access should be drawn up between the European Parliament and the Council.
- (7) Where the Council decides to grant the European Parliament access to classified information held by the Council in the area of the common foreign and security policy, it either takes *ad hoc* decisions to that effect, or it uses 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 policy¹ (hereinafter the "Interinstitutional Agreement of 20 November 2002"), as appropriate.
- (8) The Declaration by the High Representative on political accountability², made when Council Decision (2010/427/EU) establishing the organisation and functioning of the European External Action Service³ was adopted, 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).

¹ OJ C 298, 30.11.2002, p. 1.

² OJ C 210, 3.8.2010, p. 1.

³ OJ L 201, 3.8.2010, p. 30

- (9) It is important that the European Parliament be associated with the principles, standards and rules for protecting classified information which are necessary in order to protect the interests of the European Union and of the Member States. Moreover, the European Parliament will be in a position to provide classified information to the Council.
- (10) The Bureau of the European Parliament adopted on 6 June 2011 a Decision concerning the rules governing the treatment of confidential information by the European Parliament¹ (hereinafter the "European Parliament's security rules").
- (11) The Council adopted on 31 March 2011 a Decision on the security rules for protecting EU classified information² (hereinafter the "Council's security rules").
- (12) The security rules of EU institutions, bodies, agencies or offices should constitute together a comprehensive and coherent general framework within the European Union for protecting classified information and ensure equivalence of basic principles and minimum standards. The basic principles and minimum standards laid down in the European Parliament's and in the Council's security rules should accordingly be equivalent.
- (13) The level of protection afforded to classified information under the European Parliament's security rules should be equivalent to that afforded to classified information under the Council's security rules.
- (14) The relevant services of the European Parliament Secretariat and of the General Secretariat of the Council will cooperate closely to ensure that equivalent levels of protection are applied to classified information in both institutions.

¹ OJ C 190, 30.6.2011, p. 2.

² Council Decision 2011/292/EU, OJ L 141, 27.5.2011, p. 17.

- (15) This Agreement is without prejudice to: existing and future 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 16(2) TFEU; rules on the European Parliament's right of inquiry adopted in accordance with Article 226, third subparagraph, TFEU; and relevant provisions relating to the European Anti-Fraud Office (OLAF),

HAVE CONCLUDED THIS INTERINSTITUTIONAL AGREEMENT:

Article 1
Purpose and scope

This Agreement sets out arrangements governing the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the Common Foreign and Security Policy which is relevant for the European Parliament to exercise its powers and functions. It concerns all such matters, namely:

- (a) proposals subject to a special legislative procedure or to another decision-making procedure under which the European Parliament is to be consulted or required to give its consent; or
- (b) international agreements on which the European Parliament is to be consulted or is required to give its consent pursuant to Article 218(6) TFEU; or
- (c) negotiating directives for agreements referred to in subparagraph (b); or
- (d) activities, evaluation reports or other documents on which the European Parliament is to be informed; or
- (e) documents on the activities of those EU agencies in the evaluation or scrutiny of which the European Parliament is to be involved.

Article 2

Definition of "classified information"

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

- (a) "EU classified information" (EUCI) as defined in the European Parliament's security rules and in the Council's security rules 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 by Member States and bearing a national classification marking equivalent to one of those used for EUCI as set out in subparagraph (a);
- (c) classified information provided to the European Union by third States or international organisations which bears a classification marking equivalent to one of those used for EUCI as set out in subparagraph (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 Agreement, any classified information provided to it by the Council.
2. As equivalence is to be maintained between the basic principles and minimum standards for protecting classified information laid down by the European Parliament and by the Council in their respective security rules, 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 premises. The relevant services of the European Parliament and the Council shall cooperate closely to that effect.
3. The European Parliament shall take the appropriate measures to ensure that classified information provided to it by the Council 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 and 5, nor be made public;
 - (c) be released to other EU institutions, offices, bodies or agencies, or to Member States, third States or international organisations without the prior written consent of the Council.
4. The Council may grant the European Parliament access to classified information which originates in other EU institutions, offices, bodies 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 Article 5(4).
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:
 - who have been security-cleared in accordance with the European Parliament's security rules; or
 - 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.

Notwithstanding the previous subparagraph, where the information concerned is classified at the level CONFIDENTIEL EU/EU CONFIDENTIAL, or its equivalent, access may also be granted to Members of the European Parliament determined in accordance with Article 5(4) who have signed a solemn declaration of non-disclosure in accordance with the European Parliament's security rules. The Council shall be informed of the names of the Members granted access under this subparagraph.

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 on the means of ensuring such protection.

4. Access to classified information shall be granted only to European Parliament officials and those employees of the European Parliament working for political groups:
- (a) who have been designated in advance as having a need-to-know by the relevant parliamentary body/office-holder determined in accordance with Article 5(4);
 - (b) who, where the information is classified at the level CONFIDENTIEL UE/EU CONFIDENTIAL or above, or its equivalent, have been security-cleared to the appropriate level; and
 - (c) who 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 accessing classified information

1. Where it is under a legal obligation to do so pursuant to the Treaties or to legal acts adopted on the basis of the Treaties, the Council shall provide classified information referred to in Article 1 to the European Parliament. The parliamentary bodies or office-holders referred to in paragraph 3 may also present a written request for such information.

2. In other cases, the Council may provide classified information referred to in Article 1 to the European Parliament either at its own initiative or on 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:
 - the President;
 - the Conference of Presidents or the Bureau;
 - the Chair of the Committee concerned;
 - 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 above.

The Council shall respond to such requests without delay.

4. Where the Council is under a legal obligation to, or has decided to grant the European Parliament access to classified information, it shall determine in writing, before this information is forwarded, together with the relevant body or office-holder(s) as listed in paragraph 3:

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

- the President;
- the Conference of Presidents and/or the Bureau;
- the Chair of the Committee(s) concerned;
- the rapporteur(s) concerned;
- all or certain Members of the Committee(s) concerned.

(b) and any specific handling arrangements for protecting such information.

Article 6

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

1. Classified information provided by the Council to the European Parliament, where it is classified at the level CONFIDENTIEL UE/EU CONFIDENTIAL or above, or its equivalent:
 - (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 Council's and the European Parliament's security rules, which shall be equivalent;
 - (c) may be consulted by the relevant European Parliament Members, officials and those employees of the European Parliament working for political groups referred to in Articles 4(4) and 5(4) only in a secure reading room within the European Parliament's premises. In this case, the following conditions shall apply:
 - the information 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.

2. Classified information provided by the Council to the European Parliament, where it is classified at the level RESTREINT UE/EU RESTRICTED, or its equivalent, shall be handled and stored in accordance with the European Parliament's security rules which shall afford a level of protection for such classified information equivalent to that of the Council.

Notwithstanding the previous sub-paragraph, for a period of twelve months following the entry into force of this Agreement, information classified RESTREINT UE/EU RESTRICTED shall be handled and stored in accordance with paragraph 1. Access to such classified information shall be governed by Articles 4(4)(a) and (c) and 5(4).

3. Classified information may only be handled on communication and information systems which have been duly accredited or approved in accordance with standards equivalent to those laid down in the Council's security rules.
4. 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.
5. Notwithstanding paragraph 1(c), information classified up to the level of CONFIDENTIEL UE/EU CONFIDENTIAL or equivalent provided by the Council to the European Parliament may be discussed at meetings held *in camera* and attended only by European Parliament Members and those officials and other employees of the European Parliament working for political groups who have been granted access to the information in accordance with Articles 4(4) and 5(4). 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;
 - the minutes of the meeting shall make no mention of the discussion of the item containing classified information.
6. Where meetings are necessary to discuss information classified SECRET UE/EU SECRET or above, specific arrangements shall be agreed on a case-by-case basis between the European Parliament and the Council.

Article 7

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 by the Council, the Secretary-General of the European Parliament shall immediately inform the Secretary-General of the Council. The Secretary-General of the European Parliament shall conduct an investigation and shall inform the Secretary-General of the Council 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.
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 Agreement may be liable to the penalties set out in Rules 9(2) and 152-154 of the European Parliament's Rules of Procedure.
3. Any European Parliament official or other employee of the European Parliament 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 Agreement may be liable to the penalties set out in the Staff Regulations or the Conditions of Employment of Other Servants of the European Union.
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.

Article 8
Final provisions

1. The European Parliament and the Council, each for its own part, shall take all necessary measures to ensure implementation of this Agreement. They shall cooperate to that effect, in particular by organising visits to monitor implementation of the security-technical aspects of this Agreement.
2. The relevant services of the European Parliament and the Council shall consult each other before either institution modifies its respective security rules, in order to ensure that equivalence of basic principles and minimum standards for protecting classified information is maintained.
3. Classified information shall be provided to the European Parliament under this Agreement once the Council, together with the European Parliament, has determined that equivalence has been achieved between the basic principles and minimum standards for protecting classified information in the European Parliament's and in the Council's security rules, on the one hand, and between the level of protection afforded to classified information in the European Parliament's premises and in the Council's premises, on the other.
4. This Agreement may be reviewed at the request of either institution in the light of experience in implementing it.

Done in ... on ...

For the European Parliament
The President

For the Council
The President

STATEMENTS TO BE APPROVED ALONG WITH THE AGREEMENT

(a) Statement by the European Parliament and the Council on Article 8(3)

The European Parliament and the Council will cooperate so that the determination referred to in Article 8(3) can be made by the entry into force of the Interinstitutional Agreement on the forwarding to and handling by the European Parliament of classified information held by the Council, expected in Spring 2012.

(b) Statement by the European Parliament and the Council on classification of documents

The European Parliament and the Council recall that underclassification or overclassification of documents undermines the credibility of security rules.

The Council will continue to ensure that the correct level of classification is applied to information originating within the Council in accordance with its security rules. The Council will review the level of classification of any document before forwarding it to the European Parliament, in particular to verify whether such level of classification is still appropriate.

The European Parliament will protect any classified information provided to it in a manner commensurate with its level of classification. In the event of it requesting whether a classified document provided by the Council may be downgraded or declassified, such downgrading or declassification may only occur with the prior written consent of the Council.

(c) Statement by the European Parliament and the Council on access to classified information in the area of the Common Foreign and Security Policy

Recalling the Declaration by the High Representative on political accountability published in OJ C 210 of 3 August 2010, the European Parliament and the Council consider that a review of the Interinstitutional Agreement (IIA) of 20 November 2002 should begin in the course of 2012.

This review will be undertaken respecting the specific role of the European Parliament in the area of the CFSP, taking account of experience gained in implementing both the new IIA (on the forwarding to and handling by the European Parliament of classified information on matters other than those in the area of the Common Foreign and Security Policy), and the IIA of 20 November 2002 (concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy).

Pending completion of this review, where the Council decides to grant the European Parliament access to classified information held by the Council in the area of the Common Foreign and Security Policy, it proceeds as described in recital (7) of the new IIA referred to above and in accordance with paragraph 2 of the Declaration by the High Representative referred to above.

The European Parliament and the Council agree that implementation of the present statement will take duly into account the specific nature and the especially sensitive content of information in the area of the Common Foreign and Security Policy.

(d) Statement by the Council on unclassified Council documents

The Council confirms that the Interinstitutional Agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the Common Foreign and Security Policy does not apply to unclassified documents internal to the Council (i.e. those marked LIMITE).

(e) **Statement by the European Parliament on classified information held by the Commission**

The European Parliament underlines that classified information of which the European Commission is the originator and/or which is forwarded to the European Parliament by the European Commission shall be forwarded and handled according to the provisions set out in the Framework Agreement on relations between the European Parliament and the European Commission.

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 February 2012

THE PRESIDENT

Mr Klaus-Heiner LEHNE
Member of the European Parliament
Rue Wiertz 60
1047 Brussels

Dear Mr Lehne,

I would like to thank you for a constructive meeting yesterday at which we have resolved all outstanding open issues with regard to the draft Interinstitutional Agreement (IIA) between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the Common Foreign and Security Policy. I attach the text of the draft IIA and a number of draft statements on which we have reached agreement at the level of negotiators. In the light of our agreement, I would also like to provide some assurances on points arising during our discussions.

First of all, I would like to dispel any misunderstanding regarding the scope of the IIA with regard to CFSP. One of the European Parliament's concerns was that the title of the IIA might cast doubt on the fact that classified parts of international agreements subject to Article 218(6), and their negotiating mandates, where only part of them relates to CFSP, are covered by the IIA. I can confirm that classified parts of such international agreements are covered by the IIA, including any parts which fall under the CFSP. Article 1 (b) and (c) and recital (4) as now worded already make this sufficiently clear, without any need to amend the Title of the IIA or make further adjustments in Article 1.


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Access by the European Parliament to any classified information which relates exclusively to the CFSP (including any classified parts of international agreements which are exclusively CFSP, as well as their negotiating mandates) would be governed by arrangements under an *ad hoc* Council decision, or using the 2002 IIA until other arrangements are agreed. The European Parliament is not consulted on such agreements, nor does it give its consent. The European Parliament will be kept informed in accordance with Article 218(10), which applies to all international agreements, including those relating exclusively to the Common Foreign and Security Policy. This has been confirmed in the IIA in Recital (5). I would also add that over the past ten years, negotiating mandates and draft international agreements which relate to exclusive CFSP matters have in practice not been classified.

The joint statement on access to classified information in the area of the Common Foreign and Security Policy makes clear that pending the review of the 2002 IIA, where the Council decides to grant the Parliament access to classified information in the CFSP area, it will either take *ad hoc* decisions to that effect or it will use the existing 2002 IIA. Where the Council takes *ad hoc* decisions, these may, where appropriate, be implemented drawing on the practices used under our new IIA. All of the matters referred to in the Joint Statement on access to classified information in the area of the Common Foreign and Security Policy should be examined without prejudice to the final outcome.

I would like to thank you and your colleagues again for your constructive approach over the past four months which have enabled to conclude negotiations expeditiously. I trust that the new IIA, once in force, will prove to be an effective instrument in institutional cooperation between the European Parliament and the Council.

Yours sincerely,



Nicolai Wammen