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**NOTE**

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from:	The Presidency
to:	The Working Party on General Affairs
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Subject:	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
	– Council implementing arrangements

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Following the discussion at the meeting of the Working Party on General Affairs on 11 May 2012, delegations will find attached revised draft internal arrangements under which the Council will implement the IIA.

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**Draft**

**Council implementing arrangements for the 2012 "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"**

**I. Introduction**

1. This document sets out the arrangements within the Council governing the forwarding of classified information to the European Parliament (EP) within the scope of the abovementioned Interinstitutional Agreement (IIA).

**II. Scope**

2. The IIA applies to 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.
3. 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.

### **III. Procedure for transmitting classified information**

4. A distinction is made between cases where:

- (a) the Council is under a legal obligation to provide classified information to the EP (Article 5(1));
- (b) the Council takes the initiative to provide classified information or receives a request from the EP (Article 5(2)).

5. In both cases, the principles of need-to-know and of originator consent will be applied. The level of classification of any document to be forwarded to the EP will be systematically reviewed in order to determine whether such level of classification is still appropriate. Any classified document forwarded to the EP will be registered for security purposes. Implementation of these aspects is explained in section (c) below.

**(a) Where the Council is under a legal obligation to provide classified information to the EP (Article 5(1))**

6. The Council is under a legal obligation to provide classified information to the EP where the Treaties or other legal acts provide for the EP to give its consent, to be consulted or to be informed in the context of a decision-making process. The determination that the Council is under a legal obligation to provide classified information to the EP will be made by the Presidency, together with the General Secretariat of the Council (GSC)

7. In the case of consent and consultation procedures, the Secretary-General will forward<sup>1</sup> the relevant documents to the EP as early as possible. Where a parliamentary body or office-holder requests access to the classified information before the Council has forwarded it (under Article 5(1) *in fine*), the Secretary-General will forward<sup>1</sup> the information without delay.
8. Where the Treaties or other legal acts contain a legal obligation to inform the EP about any activities, evaluation reports or any other documents, the relevant Council preparatory body will decide on the form in which the Council should inform the EP (e.g. oral briefing, forwarding of documents). If the recommendation is to forward documents, the Secretary-General will forward<sup>1</sup> them.
- (b) Where the Council takes the initiative to provide classified information or receives a request from the EP (Article 5(2))**
9. In the absence of a legal obligation for the Council, the Presidency, together with the GSC, may in some cases determine that the Council should take the initiative to provide classified information to the EP. One of the office-holders or Members of the European Parliament (MEPs) listed in Article 5(3) of the IIA may also request access to classified information which the Council is not under a legal obligation to provide.
10. In both cases, the relevant Council preparatory body will be consulted. If the recommendation is to forward classified information to the EP, a procedural decision will be taken by COREPER, on a case-by-case basis, under Article 19(7)(k) of the Council's Rules of Procedure. The Secretary-General will then forward<sup>1</sup> the information to the EP.
11. Where a request comes from the EP in this context, the Council's response should be sent as soon as practicable.

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<sup>1</sup> But only after determination of "need-to-know" within the EP (see section (c)(ii) below).

**(c) Common principles to a) and b)**

**(i) Originator consent (Article 3(4))**

12. Where the classified information in question or parts thereof originates in other EU institutions, offices, bodies or agencies, or in Member States, third States or international organisations, the prior written consent of the originator must be sought. This will be done through contacts between the GSC and the third party in question.

**(ii) Determining need-to-know (Article 5(4))**

13. Before classified information is forwarded to the EP under Article 5(1) or (2), the Secretary-General will send a letter to the President of the EP (or to the office-holder or MEP who has made a request) giving preliminary notice that classified information is about to be sent and inviting him to indicate which of the parliamentary bodies and office-holders listed in Article 5(4)(a) will need access to the information.
14. In case the information is classified CONFIDENTIEL UE/EU CONFIDENTIAL or above, only the following persons are eligible for access :
- (a) MEPs who meet the conditions set out in Article 4(2), first subparagraph of the IIA; and
  - (b) European Parliament officials and other employees working for a political group who meet the conditions set out in Article 4(4) of the IIA.
15. In the specific case of CONFIDENTIEL UE/EU CONFIDENTIAL, if an MEP who needs to have access does not meet the condition set out in Article 4(2), first subparagraph, the procedure laid down in Article 4(2), second subparagraph of the IIA will be followed. The relevant Working Party will be informed of the names of MEPs who have been granted access under such procedure.

16. Where necessary, contacts with the EP on determination of need-to-know within the EP will be made by the Presidency, together with the GSC. The relevant Council preparatory body may be consulted.

**(iii) Transmission**

17. Once agreement has been reached on which MEPs are eligible for access to the classified information in question, the Secretary-General will forward the information and address it to the President of the EP (or to the office-holder or MEP who has made a request). The cover letter will contain a distribution list indicating who in the EP is to be given access to the information (Article 5(4)(a)) as well as any specific handling instructions (Article 5(4)(b)). The cover letter and the classified documents will be transmitted in hard copy by the central registry of the GSC (i.e. the BIC, *Bureau des informations classifiées*) to the central registry of the EP (i.e. the Classified Information Unit).

**(iv) Registration**

18. Documents forwarded to the EP will be recorded in a special logbook by the Central Registry of the GSC.

**(v) Downgrading or declassification of Council documents before or after they have been forwarded to the EP (Statement (b))**

19. The Council will review the level of classification of any document before forwarding it to the EP, in particular to verify whether such level of classification is still appropriate or whether the document in question may be downgraded or declassified. It will also review the level of classification of a document if a request to that effect has been made by the EP. In both cases, the Council will follow the "Guidelines on downgrading and declassification of official Council documents" approved by the Council Security Committee (doc. 14845/11), which state the principle of originator consent for such downgrading or declassification.

#### **IV. Other elements**

##### **(a) Obligation of certain Member States to notify the EP in accordance with Article 4(2)**

20. Those Member States whose MEPs are duly authorised by virtue of their functions, in accordance with national laws and regulations, to access information classified CONFIDENTIEL UE/EU CONFIDENTIAL and above without undergoing a security-clearance procedure, will notify the European Parliament thereof. The form that such notification will take (e.g. a "blanket"/"one-off" notification or a notification for each individual MEP) and the notifying entity or authority is for each Member State to determine as appropriate.

##### **(b) Specific arrangements for meetings to discuss SECRET UE/EU SECRET information (Article 6(6))**

21. In the unlikely event that the EP needs to discuss information classified SECRET UE/EU SECRET at a meeting, specific arrangements will be agreed on a case-by-case basis between the EP and the Council. In order to ensure equivalence with the Council's security rules, such meetings can only be held in a technically secure area (i.e. protected against eavesdropping). In practice, the Council could propose that the meeting be held on Council premises (which have appropriately equipped meeting rooms) until such time as the EP has the capacity to implement a technically secure area in its own premises.

##### **(c) Loss or compromise of classified information provided by the Council (Article 7(1))**

22. In accordance with the principle of originator control, the Secretary-General will inform the relevant security authorities of Member States of any case of proven or suspected loss or compromise of classified information provided by the Council as reported by the Secretary-General of the EP, as well as of the results of any investigation. The Council Security Committee will be informed about any proven or suspected loss or compromise.

**(d) Consultation of the EP before modification of the Council security rules (Article 8(2))**

23. The services in the GSC in charge of security matters will inform and consult with their counterparts in the EP before modifications to the Council security rules are adopted. This will take place in the course of the Council Security Committee's work on any draft amendments, before their submission to the Council for approval.

**(e) Information to the Working Party on General Affairs**

24. The GSC will inform the Working Party on General Affairs and the Council Security Committee of :

- (a) classified documents forwarded to the EP; and
- (b) the names of MEPs who have been granted access to such documents under the procedure laid down in Article 4(2), second subparagraph of the IIA.

25. In the first year following the entry into force of the IIA, such information will be supplied quarterly and thereafter at intervals to be determined by the Working Party on General Affairs.

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