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COTRA 5**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Agreement between Canada and the European Union on security procedures for exchanging and protecting Classified Information

AGREEMENT
BETWEEN CANADA AND THE EUROPEAN UNION
ON SECURITY PROCEDURES FOR EXCHANGING
AND PROTECTING CLASSIFIED INFORMATION

CANADA,

and

the EUROPEAN UNION (the "EU")

hereinafter referred to as the "Parties",

CONSIDERING that the Parties share the objective of strengthening all aspects of their security;

CONSIDERING that the Parties believe that they should consult and cooperate on matters of common interest;

CONSIDERING that, for these purposes, the Parties need to exchange information that they have designated by a security classification;

RECOGNISING that the Parties must take appropriate measures to protect the information that they exchange,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) "classified information" means any information that either Party has designated by a security classification and marked as such and which, if disclosed to unauthorised third parties, could cause varying degrees of damage or harm to the interests of that Party. This information may be in oral, visual, electronic, magnetic, or document form, or in the form of material, equipment or technology and includes reproductions, translations, and material in the process of development;
- (b) "protected information" means any information that Canada has so designated by means of an appropriate marking and which, if disclosed to unauthorised third parties, could cause injury to a Canadian person, entity or public interest. This information may be in oral, visual, electronic, magnetic, or document form, or in the form of material, equipment or technology and includes reproductions, translations, and material in the process of development;
- (c) "contractor" means an individual or legal entity possessing the legal capacity to enter into contracts; this term may also refer to a subcontractor, but does not include an individual engaged by Canada or the EU under a contract of employment;
- (d) "need-to-know" means that access to classified information is limited to authorised individuals who need to have access to that classified information in order to perform their official duties;

- (e) "Federal Government" means the federal government departments of Canada and all divisions and branches of the federal public administration of Canada;
- (f) "third party" means any person or entity other than the Parties.

ARTICLE 2

Scope

1. This Agreement applies to classified information provided or exchanged between the Parties.
2. This Agreement also contains provisions on the protection of Canadian protected information provided to the EU. Unless otherwise specified, all references in this Agreement to classified information shall be deemed to refer also to Canadian protected information.
3. The receiving Party shall protect classified information provided to it by the other Party from being lost, compromised or disclosed without authorisation, in accordance with this Agreement. Each Party shall, in accordance with its laws and regulations, take measures to implement its obligations under this Agreement.
4. The receiving Party shall use this classified information only for the purposes established by the providing Party or the purposes for which the classified information has been provided or exchanged.

5. This Agreement does not constitute a basis to compel the release of classified information by the Parties.

ARTICLE 3

Application

1. This Agreement applies to the following EU institutions and entities: the European Council, the Council of the European Union (the "Council"), the General Secretariat of the Council, the European Commission, the High Representative of the Union for Foreign Affairs and Security Policy, and the European External Action Service (the "EEAS").

2. For Canada, this Agreement applies to the Federal Government.

ARTICLE 4

Classified Information and Protected Information

1. Classified information provided by one Party to the other Party shall bear an appropriate classification marking in accordance with paragraph 2. Canadian protected information provided to the EU shall bear an appropriate marking in accordance with paragraph 4.

2. Each Party shall ensure that classified information received from the other Party is afforded the level of protection warranted by the corresponding security classification marking as set out in the following table:

EU	CANADA
TRÈS SECRET UE/EU TOP SECRET	TOP SECRET or TRÈS SECRET
SECRET UE/EU SECRET	SECRET
CONFIDENTIEL UE/EU CONFIDENTIAL	CONFIDENTIAL or CONFIDENTIEL
RESTREINT UE/EU RESTRICTED	No Canadian equivalent

3. Canada shall afford to information classified RESTREINT UE/EU RESTRICTED a level of protection which is at least equivalent to that afforded to it by the EU.

4. The EU shall handle and store Canadian PROTECTED A or PROTÉGÉ A information in the same manner as the EU information classified RESTREINT UE/EU RESTRICTED. The EU shall handle and store Canadian PROTECTED B or PROTÉGÉ B and PROTECTED C or PROTÉGÉ C in accordance with the implementing administrative arrangements referred to in Article 11.

5. The providing Party may also mark classified information to specify any limitations on its use, disclosure, transmittal or access, and additional security requirements for its protection by the receiving Party, including institutions or entities of the receiving Party. Canada may also mark protected information to specify any limitations on its use, disclosure, transmittal or access, and additional security requirements for its protection by the EU, including an institution or entity not mentioned in Article 3(1).

ARTICLE 5

Protection of Classified Information

1. The receiving Party shall ensure that classified information received from the providing Party:
 - (a) retains the marking affixed to it by the providing Party in accordance with Article 4;
 - (b) is not downgraded or declassified without the prior consent in writing of the providing Party;
 - (c) without prejudice to paragraph 2, is not disclosed or released to third parties, or to any institution or entity of the Parties not mentioned in Article 3 without the prior consent in writing of the providing Party;
 - (d) is handled in compliance with any limitations which the providing Party has marked on the classified information in accordance with Article 4(5);
 - (e) is safeguarded in accordance with this Agreement and the implementing administrative arrangements referred to in Article 11.

2. The receiving Party shall inform the providing Party of any request by a judicial authority or legislative authority acting in an investigative capacity, to obtain classified information received from the providing Party under this Agreement. In assessing such a request, the receiving Party shall take the views of the providing Party into account to the maximum extent possible. If, by virtue of the receiving Party's laws and regulations, that request entails transmission of the said classified information to the requesting judicial or legislative authority, the receiving Party shall ensure, to the maximum extent possible, that the information is appropriately protected, including from any subsequent disclosure.

ARTICLE 6

Personnel Security

1. The Parties shall ensure that classified information provided or exchanged under this Agreement is accessible only on a need-to-know basis.
2. The Parties shall ensure that any individual who is granted access to classified information provided or exchanged under this Agreement is briefed on the security rules and procedures relevant to the protection of that classified information and acknowledges the responsibility to protect that classified information.
3. The Parties shall ensure that access to classified information provided or exchanged under this Agreement is limited to individuals:
 - (a) who are authorised to access that classified information based on their functions; and

- (b) who have the required personnel security clearance or are specifically empowered or authorised in accordance with the Parties' respective laws and regulations.

ARTICLE 7

Security of Location

The receiving Party shall ensure that the classified information provided to it by the other Party is held in a location which is secure, controlled, and protected.

ARTICLE 8

Release or Disclosure of Classified Information to Contractors

1. Each Party may provide classified information to a contractor or prospective contractor, with the prior written consent of the providing Party. Before disclosing any classified information to a contractor or prospective contractor, the receiving Party shall ensure that the contractor or prospective contractor has secured its facilities and is able to protect the classified information in accordance with Article 7, and that the contractor or prospective contractor has the required facility security clearance for itself and the appropriate security clearances for its personnel who need access to classified information.
2. The provision of RESTREINT UE/EU RESTRICTED and Canadian PROTECTED A or PROTÉGÉ A information to a contractor or prospective contractor shall not require the issuance of a facility security clearance.

3. The EU shall not provide Canadian PROTECTED B or PROTÉGÉ B and PROTECTED C or PROTÉGÉ C to a contractor or prospective contractor, except in specific cases where Canada has given its prior written consent, including on the measures governing the protection of such information.

ARTICLE 9

Transmission of Classified Information

1. For the purposes of this Agreement:
 - (a) Canada shall send classified information in electronic, magnetic, or paper document form through the Central Registry of the Council, which will forward it to the EU Member States and to the EU institutions and entities referred to in Article 3(1);
 - (b) the EU shall address classified information in electronic, magnetic, or paper document form, to the registry office of the relevant Canadian Government agency or department, via the Mission of the Government of Canada to the European Union, in Brussels.

2. A Party may send classified information and require that it be made accessible only to specific competent officials, organs, or services of the institutions or entities referred to in Article 3. In sending this classified information, the Party shall designate the specific competent officials, organs, or services of the institutions or entities referred to in Article 3 as the only recipients. In this case, the following shall apply to the transmission of classified information:

- (a) Canada shall send classified information through the Central Registry of the Council, the Central Registry of the European Commission or the Central Registry of the EEAS, as appropriate;
- (b) the EU shall address classified information to the registry office of the relevant Canadian Government entity, agency or department, via the Mission of the Government of Canada to the European Union, in Brussels.

ARTICLE 10

Oversight

The Parties agree that the following entities oversee the implementation of this Agreement:

- (a) for Canada, the entity that is designated by the Government of Canada and whose name is transmitted by diplomatic channel to the EU;
- (b) for the EU, the High Representative of the Union for Foreign Affairs and Security Policy, the Member of the European Commission responsible for security matters, and the Secretary-General of the Council.

ARTICLE 11

Implementing Administrative Arrangements

1. In order to implement this Agreement, the Parties shall ensure that their competent authorities enter into implementing administrative arrangements, which shall set out the requirements for matters such as:

- (a) security clearances;
- (b) procedures for providing or exchanging classified information;
- (c) information on storage security;
- (d) procedures for instances in which classified information is lost, compromised, or disclosed without authorisation; and
- (e) procedures for the protection of classified information in electronic form.

2. The Parties shall conduct reciprocal security consultations and assessment visits to evaluate the effectiveness of the security measures applied by each Party to the classified information provided by the other Party under this Agreement and under the implementing administrative arrangements referred to in paragraph 1. The Parties shall jointly decide on the frequency and timing of those consultations and assessment visits.

3. Before a Party provides classified information to the other Party, the providing Party shall confirm in writing that the receiving Party is able to protect the classified information in a manner that is consistent with this Agreement and with the implementing administrative arrangements referred to in paragraph 1.

ARTICLE 12

Classified Information that is Lost, Compromised or Disclosed without Authorisation

1. The receiving Party shall immediately inform the providing Party if it discovers that classified information received under this Agreement may have been lost, compromised or disclosed without authorisation, and it shall initiate an investigation to determine how that information was lost, compromised or disclosed. Furthermore, the receiving Party shall forward to the providing Party the results of the investigation and information regarding measures taken to prevent recurrence.
2. The protection by the EU under this Agreement of Canadian protected information shall not oblige any EU Member State to treat any compromise of such information as a criminal offence under its criminal law.

ARTICLE 13

Costs

Each Party shall bear its own costs for the implementation of this Agreement.

ARTICLE 14

Other Agreements

This Agreement does not alter existing agreements or arrangements between the Parties, or agreements or arrangements between Canada and EU Member States. It is entirely without prejudice to the content of future agreements or arrangements between Canada and EU Member States. This Agreement does not preclude the Parties from concluding other agreements or arrangements relating to the provision or exchange of classified information.

ARTICLE 15

Dispute Settlement

The Parties shall deal with any differences arising from the interpretation or application of this Agreement through consultations.

ARTICLE 16

Entry into force, amendment and termination

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of their internal procedures necessary for this purpose.
2. Each Party shall notify the other Party of any changes in its laws and regulations that could affect the protection of classified information provided or exchanged under this Agreement.
3. At any time, either Party may request a review of this Agreement for consideration of possible amendments.
4. This Agreement may be amended by mutual agreement. The Party seeking to amend a provision of this Agreement shall notify the other Party in writing. An amendment shall enter into force in accordance with the procedure described in paragraph 1.
5. A Party may denounce this Agreement by notice in writing to the other Party. This Agreement shall terminate three months after the notification is received by the other Party. Both Parties shall continue to provide the protection described in this Agreement to any classified information provided prior to the termination of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Agreement.

Done in duplicate at , this day of year 2017 , in the English and French languages, each version being equally authentic.

For the European Union

For Canada