

II

(Information)

INTERINSTITUTIONAL AGREEMENTS

INTERINSTITUTIONAL AGREEMENT

of 12 March 2014

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

(2014/C 95/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL,

Whereas:

- (1) Article 14(1) of the Treaty on European Union (TEU) provides that the European Parliament jointly with the Council, is to exercise legislative and budgetary functions and that it is to exercise functions of political control and consultation as laid down in the Treaties.
- (2) Article 13(2) TEU provides that each institution is to 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 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.
- (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 is to consult or obtain the consent of the European Parliament before adopting a legal act. The Treaties also provide that, in certain cases, the European Parliament is to be informed about the progress or the results of a given procedure or be involved in the evaluation or the scrutiny of certain Union 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 is to adopt the decision concluding the agreement in question 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 is to be immediately and fully informed at all stages of the procedure; that 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 agreed upon 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 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 policy⁽¹⁾ (hereinafter 'the Interinstitutional Agreement of 20 November 2002'), as appropriate.

⁽¹⁾ OJ C 298, 30.11.2002, p. 1.

- (8) The Declaration by the High Representative on political accountability⁽¹⁾, made upon the adoption of Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service⁽²⁾, 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).
- (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) On 31 March 2011 the Council adopted Decision 2011/292/EU on the security rules for protecting EU classified information⁽³⁾ (hereinafter 'the Council's security rules').
- (11) 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 Parliament⁽⁴⁾ (hereinafter 'the European Parliament's security rules').
- (12) The security rules of Union institutions, bodies, offices or agencies should together constitute a comprehensive and coherent general framework within the European Union for protecting classified information, and should ensure equivalence of basic principles and minimum standards. The basic principles and minimum standards laid down in the European Parliament's security rules 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's 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.
- (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 third paragraph of Article 226 TFEU; and relevant provisions relating to the European Anti-Fraud Office (OLAF),

HAVE AGREED AS FOLLOWS:

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 in order 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 is required to give its consent;
- (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;

⁽¹⁾ OJ C 210, 3.8.2010, p. 1.

⁽²⁾ OJ L 201, 3.8.2010, p. 30.

⁽³⁾ OJ L 141, 27.5.2011, p. 17.

⁽⁴⁾ OJ C 190, 30.6.2011, p. 2.

- (c) negotiating directives for international agreements referred to in point (b);
- (d) activities, evaluation reports or other documents on which the European Parliament is to be informed; and
- (e) documents on the activities of those Union 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,
 - TRÈS SECRET UE/EU TOP SECRET;
- (b) classified information provided to the Council by Member States and bearing a national security 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 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, or 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.
4. The Council 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 Article 5(4).
2. Where the information concerned is classified at the level CONFIDENTIEL UE/EU CONFIDENTIAL, SECRET UE/EU SECRET or TRÈS 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.

Notwithstanding the first subparagraph, where the information concerned is classified at the level CONFIDENTIEL UE/EU CONFIDENTIAL or its equivalent, access may also be granted to those 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 of the European Parliament 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 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);
 - (b) have been security-cleared to the appropriate level in accordance with the European Parliament's security rules where the information is classified at the level CONFIDENTIEL UE/EU CONFIDENTIAL, SECRET UE/EU SECRET or TRÈS 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 accessing classified information

1. The Council shall provide classified information as referred to in Article 1 to the European Parliament 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 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 as 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:
 - (a) the President;
 - (b) the Conference of Presidents;
 - (c) the Bureau;
 - (d) the chair(s) of the committee(s) concerned;
 - (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 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 the following in writing before that information is forwarded, together with the relevant body or office-holder as listed in paragraph 3:

- (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; and
- (b) 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, SECRET UE/EU SECRET or TRÈS SECRET UE/EU TOP SECRET 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 security rules and the European Parliament's security rules, which shall be equivalent; and
- (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) and Article 5(4) 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.

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 first subparagraph, for a period of 12 months following the entry into force of this Agreement, information classified at the level RESTREINT UE/EU RESTRICTED or its equivalent shall be handled and stored in accordance with paragraph 1. Access to such classified information shall be governed by points (a) and (c) of Article 4(4) and by Article 5(4).

3. 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 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 point (c) of paragraph 1 of this Article, information classified up to the level of CONFIDENTIEL UE/EU CONFIDENTIAL or its equivalent provided by the Council to the European Parliament 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 Article 4(4) and Article 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, and
- 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 at the level SECRET UE/EU SECRET or TRÈS 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.

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 thereof. 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 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 Agreement 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 Agreement 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) No 259/68 ⁽¹⁾.

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 the implementation of the security-technical aspects of this Agreement.

2. The relevant services of the European Parliament's Secretariat and of the General Secretariat of 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.

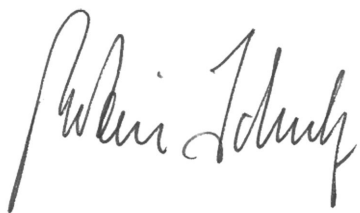
⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

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 premises of the European Parliament and of the Council, on the other.
4. This Agreement may be reviewed at the request of either institution in the light of experience in implementing it.
5. This Agreement shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at Brussels and at Strasbourg, 12 March 2014.

For the European Parliament

The President



For the Council

The President

