



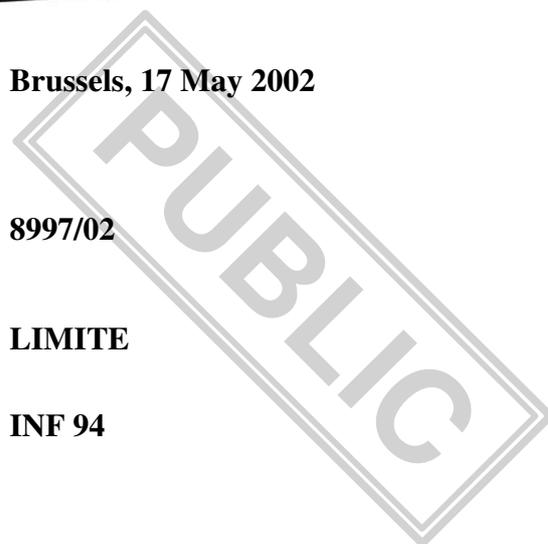
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 May 2002

8997/02

LIMITE

INF 94



INFORMATION NOTE

From : Presidency

To : COREPER

Subject : Draft Interinstitutional Agreement concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy

Delegations will find attached the draft text for an Interinstitutional Agreement concerning access by the EP to sensitive information of the Council reflecting the results of a meeting between Mr Ramón de Miguel, Secretary of State for European Affairs and Mr Elmar Brok, Chairman of the EP Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy in Strasbourg on 15 May 2002.

Modifications to the previous draft text, as contained in document SN 3154/01, are in bold.

Interinstitutional Agreement 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. Article 21 of the Treaty on European Union states that the Council Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. That Article also stipulates that the European Parliament shall be kept regularly informed by the Council Presidency and the Commission of the development of the common foreign and security policy. A mechanism should be introduced to ensure that these principles are implemented in this field.
2. In view of the specific nature and the especially sensitive content of certain highly classified information in the field of security and defence policy, special arrangements should be introduced for the handling of documents containing such information.
3. In conformity with Article 9(7) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, the Council is to inform the European Parliament regarding sensitive documents as defined in Article 9(1) of that Regulation in accordance with arrangements agreed between the institutions.
4. In most Member States there are specific mechanisms for the transmission and handling of classified information between governments and national parliaments. This Interinstitutional Agreement should provide the European Parliament with treatment inspired by best practices in Member States.

HAVE CONCLUDED THIS INTERINSTITUTIONAL AGREEMENT:

1. Scope

- 1.1. This Interinstitutional Agreement deals with access by the European Parliament to sensitive information, i.e. information classified as TRÈS SECRET/TOP SECRET, SECRET or CONFIDENTIEL, whatever its origin, medium or state of completion, held by the Council in the field of security and defence policy and the handling of documents so classified.
- 1.2. Information originating from a non-Community State or international organisation shall be transmitted with the agreement of that State or organisation.

Where information originating from a Member State is transmitted to the Council without explicit restriction on its dissemination to other institutions other than its classification, the rules in sections 2 and 3 of this Interinstitutional Agreement shall apply. Otherwise, such information shall be transmitted with the agreement of the Member State in question.

In the case of a refusal of the transmission of information originating from a non-Community State, an international organisation or a Member State, the Council shall give the reasons.

- 1.3. The provisions of this Interinstitutional Agreement shall apply in accordance with applicable law and without prejudice to the Decision of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry¹ and without prejudice to existing arrangements, especially the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure.

2. General rules

- 2.1. The two institutions shall act in accordance with their mutual duties of sincere cooperation and in a spirit of mutual trust as well as in conformity with the relevant Treaty provisions. Communication and handling of the information covered by this Interinstitutional Agreement must have due regard for the interests which classification is designed to protect, and in particular the public interest as regards the security and defence of the European Union or of one or more of its Member States or military and non-military crisis management.
- 2.2. At the request of one of the persons referred to in 3.1. below, the Presidency of the Council or the Secretary-General/High Representative shall inform them with all due despatch of the content of any sensitive information required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by the present Interinstitutional Agreement, taking into account the public interest in matters relating to the security and defence of the European Union or of one or more of its Member States or military and non-military crisis management, in accordance with the arrangements laid down in section 3 below.

¹ OJ L 113, 19.5.1995, p. 2.

3. Arrangements for access to and handling of sensitive information

- 3.1. In the context of this Interinstitutional Agreement, the President of the European Parliament or the Chairman of the European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy may request that the Presidency of the Council or the Secretary-General/High Representative convey information to this committee on developments in European security and defence policy, including sensitive information to which point 3.3 applies.
- 3.2. In the event of a crisis or at the request of the President of the European Parliament or of the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, such information shall be provided at the earliest opportunity.
- 3.3. In this framework, the President of the European Parliament and a special committee chaired by the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and composed of four members designated by the Conference of Presidents shall be informed by the Presidency of the Council or the Secretary-General/High Representative of the content of the sensitive information where it is required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by the present Interinstitutional Agreement. The President of the European Parliament and the special committee may ask to consult the documents in question on the premises of the Council.

~~Where this is appropriate and possible in the light of the nature and content of the information or documents concerned, these shall be made available to the President of the European Parliament, who shall select one of the following options:~~

- ~~• information intended for the chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy;~~
- ~~• access to information restricted to the members of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy only;~~
- ~~• discussion in the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, meeting in camera, in accordance with arrangements which may vary by virtue of the degree of confidentiality involved;~~
- ~~• communication of documents from which information has been expunged in the light of the degree of secrecy required.~~

The information or documents in question shall not be published or forwarded to any other addressee.

4. Final provisions

- 4.1. The European Parliament and the Council, each for its own part, shall take all necessary measures to ensure the implementation of this Interinstitutional Agreement, including the steps required for the security clearance of the persons involved.

- 4.2. The two institutions are willing to discuss comparable Interinstitutional Agreements covering classified information in other areas of the Council's activities, on the understanding that the provisions of this Interinstitutional Agreement do not constitute a precedent for the Union's or the Community's other areas of activity and shall not affect the substance of any other Interinstitutional Agreements.
- 4.3. This Interinstitutional Agreement may **shall** be reviewed **after two years** at the request of either of the two institutions in the light of experience gained in implementing it.

ANNEX

The IIA shall be implemented in conformity with the relevant applicable regulations and in particular with the principle according to which the consent of the originator is a necessary condition for the transmission of classified information as laid down in para.1.2.

Consultation of sensitive documents by the members of the Special Committee of the EP shall take place in a secured room at the Council premises.

The IIA shall enter into force after EP has adopted internal security regulations in accordance with the principles laid down in para 2.1 and comparable to those of the other institutions in order to guarantee the same level of protection of the sensitive information concerned.