



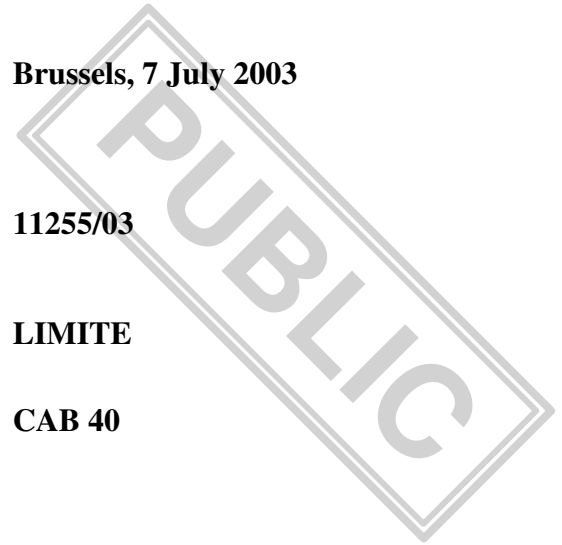
**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

CAB 40



WORKING DOCUMENT

From : The Secretariat

To : The Antici Group

Subject : *Policy orientation for negotiating security arrangements with third parties for the protection of EU Classified Information (EUCI)*

The issue at stake

1. A policy orientation is required from COREPER on negotiating security agreements with certain third countries and international organisations, so that work can be taken forward at technical level. This paper sets out the background and seeks the Group's views on a number of questions in order to prepare an orientation for COREPER.

2. Under the Council's security regulations (Part II, Section XII), once the Council has decided that there is a permanent or long-term need for the exchange of classified information between the EU and third States and international organisations, it should do two things:
 - determine the *level of security cooperation* which is possible;
 - and *draw up agreements* on security procedures for the exchange of classified information with them, defining the purpose of cooperation and the reciprocal rules on the protection of the information exchanged.

3. The Council has already approved levels of security co-operation with a number of third States and international organisations with which it is called upon the exchange EU classified information on a regular basis (doc. 7592/03 – see list attached in the Annex). Steps should therefore be taken to enter into arrangements or agreements on security with States and organisations for the exchange of classified information with which no such arrangements yet exist.
4. A number of security agreements and arrangements are already in place. Security arrangements exist with each of the acceding States, under which they undertake to protect EU classified information in accordance with the standards laid down in the Council's security regulations.¹ An EU inspection programme is currently being undertaken on the basis of these arrangements. Similarly, the Union has already concluded a Security Agreement with NATO (doc. 5652/03) as far as the exchange of classified information with NATO is concerned.

Agreements/arrangements with other third parties

5. Given the increasing operational need to exchange EU classified information on a regular basis with certain third parties in many different areas of EU business (not only on security and defence matters), agreements or arrangements would appear warranted with the following third parties:
 - (i) *candidate States*: a permanent need exists to exchange classified information with States with which the Union is currently engaged in accession negotiations (Bulgaria and Romania), which will in any case be required to implement the Council's security regulations as part of the Union *acquis*. Such a need also exists with Turkey.
 - (ii) *States likely to be closely involved in EU crisis management operations*, including at the pre-operational stage, or with which classified information is likely to be exchanged, i.e.: non-EU European NATO Allies² Iceland, Norway, and Turkey (which is also a candidate State); "recognised" potential contributors to EU operations (i.e. Canada, the Russian Federation and Ukraine)³; and the United States of America.
 - (iii) *certain international organisations*: the United Nations, the OSCE and ESA. These would cover the exchange of EUCI up to RESTREINT UE, given the fact that these organisations have no developed security policies and structures.

¹ This applies for the interim period until these States become members of the Union.

² Cf. Presidency Conclusions of the European Councils in Helsinki (12/1999, Annex 1 to Annex IV) and Brussels (10/2002, Annex II).

³ Cf. Seville European Council conclusions, Annexes 4, 5 and 6 to the Presidency Report on PESD (doc 10160/2/02 REV2).

Does the Group agree that Article 24 agreements on security should be sought with the States listed under (i) and (ii) above?

Does the Group consider that an arrangement should be entered into between the SG/HR and the Secretaries-General of the organisations under (iii)?

Does the Group consider that agreements or arrangements should be sought with any other third States or organisations?

Institutional scope of security agreements

6. While the Commission has its own security provisions which mirror those of the Council, steps have been taken to ensure coordination between the two institutions in security matters within a single security area covering the Council and the Commission by means of an exchange of letters approved by the Council in April 2003 (doc. 7594/03). One of the objectives of this text is to harmonise security related matters with respect to external action.

7. The Commission has indicated that it considers that agreements and arrangements entered into by the Council with third parties should only cover EUCI originating in the Council. Under existing joint actions for crisis management operations where authority to release EUCI has been conferred on the SG/HR, no distinction has been made between EUCI originating in the Commission (very few instances) and that originating in the Council. On the other hand, given that Article 24 TEU is the appropriate legal basis under the Treaty for negotiating a security agreement covering all Union matters, and is the basis on which the agreement has been concluded with NATO, this enables a single agreement to be negotiated with third parties covering the Council and the Commission. In any case, Article 24 TEU provides that international agreements concluded by the Union bind all the institutions.

Do delegations agree that it is desirable for the Union should conclude a single agreement or arrangement with third parties covering all security matters, on the understanding that such agreements should cover in an appropriate way the needs of the Commission as in the case of the EU-NATO Security Agreement?

Special case of crisis management operations

8. Experience has shown that in the case of crisis management operations, the Union may be required to exchange classified information at very short notice with the host country or third countries involved in the operation. Current procedures need to be streamlined to enable EUCI to be released to associated third parties with which no agreements or arrangements have been concluded beforehand. Given the limited time available, conclusion of Article 24 agreements at short notice is not a viable option. Often such information needs to be exchanged for operational reasons in the preparatory phase of an operation. In these circumstances, the following approach is suggested:

- (i) Before the Joint Action is finalised in the relevant Council preparatory bodies, the Security Committee would be consulted on the following three elements:
 - any provision to be included in the joint action giving release authority to the SG/HR;
 - proposed security cooperation levels for the third states or organisations concerned;
 - and appropriate arrangements to be entered into with the relevant authorities of the third State or organisation concerned regarding the exchange of EUCI.
- (ii) The Council should normally approve all three elements at the same time.

Does the Group share this approach?

Follow-up

9. With a view to COREPER endorsing a policy orientation, on the basis of which the necessary work could be taken forward in the Council's Security Committee, the Group is invited give its views on the questions put in points 5, 6 and 7 above.

**SECURITY COOPERATION LEVELS
WITH THIRD STATES AND INTERNATIONAL ORGANISATIONS**

Acceding and Candidate States	
Bulgaria	Level 1
Cyprus	Level 1
Czech Republic	Level 1
Estonia	Level 1
Hungary	Level 1
Latvia	Level 1
Lithuania	Level 1
Malta	Level 1*
Poland	Level 1
Romania	Level 1
Slovakia	Level 1
Slovenia	Level 1
Turkey	Level 1

Other States (NATO Members)	
Canada	Level 1
Iceland	Level 1
Norway	Level 1
United States	Level 1

Other States (non NATO Members)	
Russia	Level 2
Ukraine	Level 2
Switzerland	Level 2
BiH	Level 3
FYROM	Level 2

International Organisations	
NATO	Level 1
OSCE	Level 3
UN	Level 3
ESA	Level 3

* This co-operation level is subject to the caveat that no EUCI above RESTREINT UE may be transmitted electronically to or within Malta until the INFOSEC recommendation contained in the EU inspection report are fully implemented.