



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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From: The General Secretariat

To: The Antici Group

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Subject: Draft Council security rules  
- Draft declaration by the Council and the Commission on EU agencies and bodies

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1. Following previous discussions in the Antici Group on the basis of the report presented by the Security Committee to COREPER in September 2009 (doc. 13646/09), agreement was reached on the outstanding questions relating to the text of the draft Council Decision on the security rules for protecting EU classified information (EUCI), with the exception of one open issue relating to a proposed draft Council and Commission Declaration. The Declaration in question concerns the protection and handling of EU classified information (EUCI) by EU agencies, bodies or offices. For ease of reference, a copy is attached in the Annex to this note.
2. The open question relates to paragraph (c) of the attached draft. This paragraph was drafted as a factual statement aimed at clarifying the framework under which such agencies, bodies or offices may exchange classified information directly with third States or international organisations.

3. Two delegations continue to maintain a reservation. These delegations consider that the existence of a Security of Information Agreement between the EU and the third State or international organisation is a pre-condition for CFSP agencies (specifically EDA) to conclude an administrative arrangement involving the exchange of classified information with the third State or international organisation in question. They pointed out that in the case of the EDA-OCCAR administrative arrangement, the Council gave a political commitment to take forward work on establishing a Security of Information Agreement between the EU and OCCAR so that it would be available in time for approval of the EDA-OCCAR administrative arrangement (see doc. 10087/09, paragraph 53). In their view, this same commitment should therefore apply in all cases where EDA wishes to conclude an administrative arrangement with a third State or international organisation.
  
4. For the two delegations, this objective could be met by reformulating the last part of paragraph (c) as follows:

*"or, with the exception of CFSP agencies, alternatively provisions in the respective founding act allowing an agreement or arrangement to this effect to be put in place".*

It has been pointed out that the Joint Action establishing EDA allows it to enter into administrative arrangements on security matters (subject to prior approval by the Council, acting unanimously).

5. In view of the fact that discussion on the EDA-OCCAR administrative arrangement and the EU-OCCAR Security of Information Agreement is ongoing in Relex Counsellors, the Presidency proposed in the Antici Group in December that in order to avoid prejudging the outcome of that discussion, the draft Declaration be adopted with the deletion of the entire paragraph (c).

6. In these circumstances, the Antici Group is invited to examine this outstanding point with a view to finalising the draft declaration. This is now becoming urgent, as discussion on a number of matters are pending until the new security rules are approved. These include:
- a number of operational supporting policies;
  - the terms of reference of the Council Security Committee Information Assurance sub-area ; and
  - the formal notification the EU has to make to third States and international organisations with which it has already concluded Security of Information Agreements, as it would be desirable to cover in a single notification (a) the change in the definition of the EU for the purposes of such agreements following the entry into force of the Lisbon Treaty, and (b) the new EU security classification markings as set out in the new security rules.
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**Draft Declaration by the Council and the Commission  
on the protection and handling of EU classified information (EUCI)  
by EU agencies, bodies or offices**

The Council and the Commission will endeavour to ensure maximum consistency in the application of security rules regarding the protection of EUCI by them and by EU agencies, bodies or offices.

In particular, the Council and the Commission will ensure that, where such EU agencies, bodies or offices are established, the entity in question applies a level of protection for creating and managing classified information which is equivalent to that afforded by the security rules of the Council or the Commission, as appropriate. The GSC Security Office and the Commission's Security Directorate may provide guidance when requested regarding implementation of the Council's or the Commission's security rules in the internal organisation of such agencies, bodies or offices.

In particular, the Council and the Commission will take all possible steps, where necessary by entering into administrative arrangements, to the effect that:

- (a) classified information created by such entities in accordance with the applicable security rules is marked as EUCI. It may also bear an additional marking indicating the agency, body or office originating the information;
- (b) the exchange of EUCI originating in the Council or the Commission with any such entity, or between such entities, is contingent on the satisfactory outcome of an inspection visit led by either the GSC Security Office or the Commission Security Directorate, as appropriate, aimed at ascertaining the effectiveness of measures implemented for protecting EUCI.

- (c) when an EU agency, body or office wishes to exchange EUCI held by it directly with a third State or international organisation, it puts in place an agreement or administrative arrangement with that third State or international organisation to enable such a direct exchange. For this to be possible, there must be either a general framework in the form of a security of information agreement between the EU and the third State or international organisation in question[, or alternatively provisions in the respective founding act allowing an agreement or arrangement to this effect to be put in place]<sup>1</sup>. In this context, the principle of originator consent applies.

The Secretary-General of the Council and the Secretary-General of the Commission, as appropriate, will inform agencies, bodies or offices about the negotiation of any agreement or administrative arrangement with third States or international organisations regarding the exchange of classified information.

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<sup>1</sup> Reservation by two delegations.