



HM Government

Confidentiality and access to documents

POSITION PAPER

Position Paper by the United Kingdom

Confidentiality and access to documents

This paper outlines the United Kingdom's (UK) position on confidentiality and access to documents, relating to information obtained by the UK and the European Union (EU) whilst the UK was a Member State. On the matter of confidentiality and access to documents, the Government will continue to take into full account the interests of all parts of the UK, including Scotland, Wales and Northern Ireland, as well as considering the priorities of the governments of Gibraltar, the other Overseas Territories and the Crown Dependencies.

General principles on confidentiality and access to documents

1. The UK recognises the importance of continuing to respect obligations of confidentiality and to protect information exchanged while it was a Member State.
2. The UK considers that arrangements agreed with respect to confidentiality and the handling of information produced while it was a Member State should be reciprocal, affording an equivalent level of protection to the UK and the EU after the UK's withdrawal.
3. These protections should be equivalent to those set out in the existing regimes.

Confidentiality

4. At present, members of the institutions of the Union, the members of committees, and the officials and other servants of the Union are obliged not to disclose certain information obtained in the course of their duties. This obligation is presently set out in Article 339 Treaty on the Functioning of the European Union and Article 37 of Protocol 4 to the Treaties.
5. The UK recognises the importance to both parties of ensuring that the relevant individuals remain bound by this obligation after exit, in respect of information obtained while the UK was a Member State. It therefore considers that the Withdrawal Agreement should enable an equivalent level of protection to be maintained on a reciprocal basis, in relation to information obtained prior to the UK's withdrawal.
6. The UK considers that individuals (of any nationality) who are bound by Article 339, prior to the UK's withdrawal, should continue, after the UK's withdrawal, to respect their obligations in respect of information obtained through this work, and that information pertaining to UK individuals and interests should continue to be afforded the same protection.

Access to documents

7. At present, documents originating from the UK and held by the institutions, offices, agencies and bodies of the EU are subject to the disclosure regimes set out in Regulation (EC) 1049/2001 and related Union legal acts. These regimes include specific protection and obligations concerning such documents. Documents held by the UK but originating from the EU are governed by the disclosure regimes set out in UK law, subject to specific obligations arising under Regulation (EC) 1049/2001 and the related Union legal acts. The UK considers that both parties should agree how access to documents regimes will work after withdrawal. The aim would be for the UK and the EU to have equivalent protections and obligations after withdrawal to those in Regulation (EC) 1049/2001 and the related Union legal acts, in relation to documents received prior to the UK's withdrawal.

Classification of documents

8. Classified information exchanged in the interests of the EU is currently governed by an Agreement of 4 May 2011, between the Member States of the European Union meeting within the Council. The UK considers that there is a mutual interest in ensuring that information covered by this agreement, and in the possession of the relevant party prior to the UK's withdrawal from the EU, continues to enjoy an equivalent level of protection after exit.

Withdrawal/implementation measures

9. The UK considers that the approach set out above should apply, as far as possible, to documentation or information which may need to be, created, exchanged or obtained by the UK or the EU after the UK's withdrawal, pursuant to the Withdrawal Agreement.

