



HM Government

TECHNICAL NOTE: EXCHANGE AND PROTECTION OF CLASSIFIED INFORMATION

Introduction

1. The UK wants to build a new, deep and special partnership with the EU. Both the UK and the EU agree that arrangements allowing the exchange of classified information will be key to building this partnership. These arrangements should codify the depth of trust between the UK and the EU and facilitate common analysis, help inform operational planning and deliver cutting-edge capabilities.
2. The exchange of classified information is fundamental to cooperation across the future partnership, especially in relation to security, but also in the context of economic cooperation. An agreement on classified information should facilitate, but not mandate, the exchange of classified information. The level of cooperation and associated sharing of classified information will be subject to further negotiation. The presence of liaison officers and secondees could also play an important part in ensuring effective and timely sharing of information.
3. When the EU needs to exchange classified information with Third Countries on a regular basis they negotiate and conclude arrangements for exchanging and protecting classified information with the EU through a Security of Information Agreement (SoIA). SoIAs are legally binding agreements between the EU and the Third Country. They do not outline detailed technical provisions, but set the legal framework in order to facilitate such exchanges.
4. Both the UK and EU will also wish to explore appropriate arrangements covering the exchange and protection of sensitive non-classified information.
5. On 23 March 2018 the European Council (Art. 50) guidelines on the framework for the future EU-UK relationship stated:

"In view of our shared values and common challenges, there should be a strong EU-UK cooperation in the fields of foreign, security and defence policy. A future partnership should respect the autonomy of the Union's decision-making, taking into account that the UK will be a third country, and foresee appropriate dialogue, consultation, coordination, exchange of information, and cooperation mechanisms. As a prerequisite for the exchange of information in the framework of such cooperation a Security of Information Agreement would have to be put in place."

6. The UK presentation on the 'Framework for the UK-EU Security Partnership' published on 9 May 2018, set out the UK position on the exchange of information:

"The UK proposes a framework for sharing and protecting classified information with the EU institutions as soon as possible. The exchange of classified information is fundamental to cooperation across the future partnership. This agreement should codify the depth of trust between the UK and EU."

7. The UK has also set out that it recognises that in order to secure future participation of the UK in the Galileo programme, the UK and the EU will need to conclude all relevant agreements necessary to ensure that UK security requirements are met, and that there is no gap in legal capability for UK industry and nationals to participate in the programme. This includes, but is not limited to, a SoIA.

The importance of the exchange and protection of classified information

8. As a Member State, the UK voluntarily exchanges classified information with the EU. Likewise, the EU exchanges classified information with the UK. The ability to continue this exchange, taking into account our respective security interests, will be fundamental to cooperation across the future partnership. A SoIA between the UK and the EU to underpin the exchange of classified information should not prejudice any existing and future agreements and direct cooperation between the UK and Member States.
9. There is a wide range of areas where the effective and efficient sharing of classified and other information is essential, for example:
 - a. **Common Security and Defence Policy (CSDP) missions and operations** - Sharing classified information is necessary for the UK to continue participating in CSDP missions and operations. This cooperation helps the UK and EU attain shared strategic objectives. The classification of documents depends on the type of mission and the scope of its mandate. EU military CSDP missions and operations to which the UK contributes assets and personnel include: Op SOPHIA, which combats irregular migration in the Mediterranean; Op ALTHEA, which assures the Dayton Agreement in Bosnia and Herzegovina; and EUTM Somalia, which trains the Somali army. Without access to documents of this kind, the UK would not be able to manage the risk of deployments and would not be able to commit personnel or assets. This applies both to new, future missions and to ongoing commitments.
 - b. **The EU Intelligence and Situation Centre (INTCEN)** - The UK's intelligence contribution to the INTCEN¹ is significant, especially on counter terrorism, cyber and threats from hostile state actors. It is in the interests of both the UK and the EU to continue sharing assessments on foreign policy, defence and security issues where we will continue to have a wide range of shared priorities and objectives such as Iran, Russia and Syria.
 - c. **Cyber Threat Reporting** - The UK's National Cyber Security Centre (NCSC) regularly shares intelligence-based reporting on a variety of cyber threats and actors, including state actors, with the EU. The NCSC works closely with EU partners and contributes to the technical attribution of significant attacks across Europe. As the Prime Minister said in Munich, the 'NotPetya' cyber attack demonstrates why we need to continue working closely to help protect the UK and the EU from the common threat to our economies, democratic processes and critical infrastructure.

Precedents

10. When the EU is required to exchange classified information regularly with a Third Country they will negotiate and conclude arrangements for sharing and protecting classified information with the EU through a SoIA. SoIAs do not outline detailed technical provisions, but set the legal framework in order to facilitate such exchanges. If further detail is required on how classified exchanges occur between a Third Country and the EU, these can be covered by supporting Implementing Arrangements (IAs). There is precedent for at least one framework IA that sits beneath the SoIA to provide further detail, but other IAs can be concluded to address specific programmes/topics as and when they are needed.

¹ The EU Intelligence and Situation Centre (EU INTCEN) is part of the European External Action Service (EEAS). It provides intelligence analysis and assessment, early warning and situational awareness on Common Security and Foreign Policy and Common Security and Defence Policy issues to the EEAS and various EU decision making bodies as well as to the EU Member States.

11. The Agreement between Canada and the European Union on security procedures for exchanging and protecting Classified Information² and the Agreement between the European Union and the government of the United States of America on the security of classified information³ provide existing precedents upon which to base the type of future relationship we seek.

Objectives for the exchange and protection of classified information

12. The UK will look to build on the two examples outlined above, but potentially go further in some areas to reflect the breadth of the proposed future partnership and to facilitate real time exchanges of information where they help to protect the safety and security of Europe. The agreement should take into account the historic relationship between the UK and the EU, and enable effective and timely information sharing across the depth and breadth of the proposed future relationship. The UK seeks to discuss particular arrangements with the EU for the exchange and protection of classified information to reflect our unique position, including, but not limited to:

- a. Given the UK and the EU are already broadly aligned in our classified information protection systems and processes, the UK believes that this SoIA can, and should, take account of the use of existing mechanisms to ensure that the current standards of protection are maintained and that classified exchanges can continue to occur without delay, subject to appropriate and proportionate assurance measures including assessment visits;
- b. The SoIA should enable the UK to share its classified information with all the relevant EU Institutions, Agencies, Bodies and Offices, and enable the relevant EU entities to share their EU classified information with the UK;
- c. The SoIA should ensure appropriate originator control protocols, administrative arrangements and levels of protection are agreed depending on the content and sensitivity of information and the different entities with which it is being shared (e.g. with regard to the rules contained in Agencies' constituent acts). This should ensure that the HMG organisation providing the UK classified information will retain control of that information;
- d. The SoIA should ensure that the UK will be able to continue to use UK approved cryptographic products to secure all levels of EU classified information released to the UK in the future, and that the EU is able to continue to use EU approved cryptographic products to secure all levels of UK classified information released to the EU in the future;
- e. The timeframe for agreement on the exchange and protection of classified information should support the implementation of future arrangements in the area of Common Foreign and Security Policy and CSDP, as necessary, in accordance with Article 122.2 of the draft EU-UK Withdrawal Agreement⁴, and

² Agreement between Canada and the European Union on security procedures for exchanging and protecting Classified Information, 28 April 2017

³ Agreement between the European Union and the government of the United States of America on the security of classified information, 03 May 2007

⁴ Article 122.2 of the EU-UK draft Withdrawal Agreement: "Should the Union and the United Kingdom reach an agreement governing their future relationship in the area of the Common Foreign and Security Policy and the Common Security and Defence Policy which becomes applicable during the transition period, Chapter 2 of Title V of the TEU and the acts adopted on the basis of those provisions shall cease to apply to the United Kingdom from the date of application of that agreement."

- f. Negotiations should allow supporting framework IAs to be agreed in parallel with this agreement on classified information. The UK may seek to agree further IAs to address specific programmes and topics where further detail is needed to facilitate collaboration across the UK and EU future relationship.

13. As is the case now, the UK proposes that reaffirms the equivalent classification levels:

EU	UK
TRES SECRET UE / EU TOP SECRET	UK TOP SECRET
SECRET UE / EU SECRET	UK SECRET
CONFIDENTIEL UE / EU CONFIDENTIAL	No equivalent – see below*
RESTREINT UE / EU RESTRICTED	UK OFFICIAL-SENSITIVE

* Unless otherwise mutually agreed between the Parties, the UK shall afford EU Classified Information at the level of CONFIDENTIEL UE / EU CONFIDENTIAL the same degree of protection as for Classified Information at the level of UK SECRET.