

EUROPEAN UNION AND TRANSFER OF CLASSIFIED INFORMATION

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The security of information throughout this decay is said to be the most difficult task for the national security systems. So what can be said on the same topic, when it comes to the European Union ('EU') and the way it deals with that particular kind of information, considering the fact that it consists of 28 different countries?

It is vital for each government to cooperate effectively in its international affairs in order to obtain secure resources of information. This article shows the most eligible way of EU dealing with and providing the security of classified information for its Members through agreements with other state governments and international organizations.

First let us observe the differences in the definition of 'classified information' according to each of the agreements. In accordance with the agreement between the European Union and the government of the United States of America ('USG'), Article 2.2 provides that 'For the purpose of this Agreement "classified information" shall mean information and material subject to this agreement (i) the unauthorized disclosure of which could cause varying degrees of damage or harm to the interests of the USG, or of the EU or one or more of its Member States". Two things must be outlined from the cited statement in this Article. The first is that it stresses on possible harmful result in order to show how important the security of information is. The second is that, on one hand, it can damage European Union as whole structure and, on the other, it can infringe different Members States' interests. Moreover, Article 2.2 (iii) defines that the information can be in oral, visual, electronic, magnetic or documentary form, or in the form of material, including equipment or technology.

In the 'Agreement between the Organisation for Joint Armament Cooperation and the European Union on the protection of classified information' the last is described as any

information (namely, knowledge that can be communicated in any form) document or material which has been determined by either Party to require protection against unauthorised disclosure that could cause varying degrees of damage, harm or prejudice to the interests of both parties, or one or more of their respective Member States, and has been so designated by a security classification. Again we can see the outstanding importance of preclusive damages may that disclosure occur. But in this case the agreement is with the Organisation for Joint Armament Cooperation, which leads to the fact that designation of the information as 'security classification' relies on its use for the army's purposes such as armed forces' joint missions and dispatching units wherever in the world is needed. Having considered that, it is not surprising that this information must be protected as security classified due to its importance for life-saving operations and globally peace keeping through armed forces.

The definition due to the Agreement between the European Commission and the European GNSS Supervisory Authority on the security and exchange of classified information is almost the same as the one in the previously pointed agreement. But in this case it is pinpointed as the (a) of Article 1, which makes the comprehension of the meaning 'classified' essential for the whole agreement to be understand properly.

Having shown the importance of the term "classified information", we can proceed with the essence of the agreements that EU and EU Commission had signed to secure it. But first let us chronologically reverse the fact that Republic of Bulgaria is already a Member State and see how in 2005 it signed agreement with European Union on the security procedure for the exchange of classified information. It is adopted by European Union Council Decision 2005/365/CFSP of 14 April, the same institution having regarded to the Treaty on European Union, and in particular Articles 24 and 38 thereof and the recommendation of the Presidency and considered that the Republic of Bulgaria and the EU agree that consultations and cooperation should be developed between them on questions of common interest relating to security, permanent need therefore to exchange classified information and related material between the Republic of Bulgaria and the EU.

The indulges of this agreement for both parties are to protect and safeguard classified information subject provided or exchanged by the other Party and keeps the security classification given to it by the providing one. Pursuant to Articles 11 and 12, there are security arrangements to be established, such as each party to be responsible for developing security arrangements for the protection and safeguarding of classified information provided to the Republic of Bulgaria or the European Union under this Agreement. Another one is that the security arrangements to be established between the three Offices concerned (The European Commission Security Directorate, acting in the name of the European Commission and under its authority, The General Secretariat of the Council Security Office (hereinafter the 'GSC Security Office'), under the direction and on behalf of the Secretary General of the Council, acting in the name of the Council and under its authority and the State Commission on Security of Information of the Republic of Bulgaria, acting in the name of the Government of the Republic of Bulgaria and under its authority) shall lay down the standards of the reciprocal security protection for classified information subject to this Agreement. According to Article 13, the same authorities shall establish procedures to be followed in the case of proven or suspected compromise of classified information subject to this Agreement. Thus as we may see Article 11 defines the main authorities which are responsible for the security of classified information and the other articles show the conditions on which the classified information is dealt with and secured. And the last contracted obligation o is that all classified information provided or exchanged pursuant to this Agreement shall continue to be protected in accordance with the provisions set forth herein.

One of the most important agreements in the sphere of the security of classified information is between the European Union and the government of the United States of America. It describes the corresponding security classifications as: 1. In the European Union | In the United States of America |

2.TRES SECRET UE/EU TOP SECRET | TOP SECRET |

3.SECRET UE | SECRET |

4.CONFIDENTIEL UE | CONFIDENTIAL |

5. RESTREINT UE | (No US equivalent) |

One of the conditions for a certain information to be designated as ‘secured classified’ is that it shall be stamped, marked or designated with the name of the releasing Party. Next according to Article 4.1. there have to be minimum standards of security laid down in its respective laws and regulations, in order to ensure that an equivalent level of protection is applied to classified information. And for both Parties to be absolutely sure in the capacity of safeguarding the information, in the same Article it is stated that on request, each one shall provide the other with information about its security standards, procedures and practices, including training in the same matter. Another very crucial condition is that the recipient Party shall not use or permit the use of classified information for any other purpose than that for which it was provided without the prior written approval of the releasing Party. That is because for the information to be classified, it has to be pointed for what purpose it is given to the other Party. In the other case, receiving classified information without explanation why it is given or when to be used and how, can be precluded as a leaking in the security system and emergency measures ought to take place. This is the reason behind Article 4.4., which prohibits the recipient Party from releasing or disclosing classified information without such prior written approval. It is of vital importance for the rights of the originator of classified information provided or exchanged under this Agreement, as well as intellectual property rights such as patents, copyrights or trade secrets, to be adequately protected.

Article 7 of the same Agreement is solely for Security of facilities and establishments of the Parties where classified information is kept. It is stated that each Party shall ensure the security of facilities and establishments where classified information released to it by the other Party is kept, and shall ensure for each such facility or establishment that all necessary measures are taken to control and protect the information. In any other case, which suggests bad cooperation or dealing with classified information, there would be no sense in designating it ‘classify’ when it can be easily gained due to hacking the systems and low level of security to data bases. Absolutely the same is applied in the agreement to the recipient Party, which shall ensure that the contractor or prospective contractor and his facility have the capability to protect the information and have an appropriate clearance. One of the measures is that the electronic transmission of classified information up to the level CONFIDENTIAL/CONFIDENTIEL UE between the USG and the EU and between the EU and the USG shall be encrypted in accordance with the releasing Party’s requirements as

outlined in its security policies and regulations. Organs or services of the other Party can be specifically designated as recipients in order for the classified information to be accessible to only specific competent officials, which on the one hand brings its security of higher level and on the other, takes into account both their competences and the need-to-know principle. There is such position in the EU - the Chief Registry Officer of the Council, and when it is addressed to the European Commission it is the Chief Registry Officer of the European Commission Security Directorate.

For both Parties there are institutions that make oversight:

1. For the USG, the Secretaries of State and Defence and the Director of National Intelligence shall oversee the implementation of this Agreement.
2. For the EU, the Secretary-General of the Council and the Member of the Commission responsible for security matters shall oversee the implementation of this Agreement.

Article 14 describes the downgrading and declassification, which are applicable for certain classified information as soon as this information ceases to require that higher degree of protection or should be declassified as soon as the information no longer requires protection against unauthorised disclosure.

Investigation is initiated from the recipient Party to determine the circumstances and the releasing Party is to be informed upon discovery of any proven or suspected loss or compromise of second's classified information. It is of vital importance for the releasing Party to know in all detail the result of the investigation and also measures taken to prevent recurrence shall be given to it.

One of the last conditions to this Agreement is that each Party shall notify the other Party of any changes in its laws and regulations that could affect the protection of classified information referred to in this Agreement. Amendments are to be made to it after consultation between the parties. And the different period for denouncing by notifying the other Party, in writing, is stated in Article 20.4 – 90 days, which in other agreements is 180 days (6 months).

Now let us see an ANNEX Agreement between the European Commission and the European GNSS Supervisory Authority on the security and exchange of classified information. It is an agreement where the EU is directly involved, because it is essential for it to maintain high security for its main executive institution. The definitions included are almost the same as in the other agreements, but there is description of "security regulations", which in this case means Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001, to the extent that it is applicable to each party, and the internal procedures and regulations of each party. The purpose to this agreement according to Article 2 is to apply to classified information communicated by one party to the other party or exchanged between them in accordance with their respective security regulations for the purposes of the European satellite radio-navigation programmes (Galileo and EGNOS). In Article 3 (e) is vitally pinpointed that each party shall authorise access to such classified information only to persons who have a need to know that information and, where appropriate, have the required level of security clearance.

Article 4 shows the principle of controlling the classified information by the transmitting agency, which suggests that the information may be communicated or disclosed by the party from which it originates to the receiving party. 4.2. states that Disclosure or communication of classified information to third parties other than those referred to in paragraphs 4 and 5 (Commission to the European Space Agency ('ESA'), the Council and the Member States), shall be carried out by decision of the receiving party subject to the prior written consent of the party from which the information originates, in accordance with the principle of control by the transmitting agency, as defined in its security regulations. If there are special operational needs, automatic disclosure to third parties other than those referred to in paragraphs 4 and 5 shall be possible, but the producers must procedures have been established and adopted between the parties for certain categories of information.

In this harshly improving world of global information, there is such that needs to be protected and secure as 'classified'. Through means of the agreements between EU and EU Commission and other States, this information can be transferred and safeguard successfully. That is why it is very important to have mutual benefits of these agreements and equal terms for both parties, because it is often said that information, especially classified one, can be harmful for more than the original provider.

**ЕВРОПЕЙСКИЯТ СЪЮЗ И ПРЕНОСЪТ НА КЛАСИФИЦИРАНА
ИНФОРМАЦИЯ**

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РЕЗЮМЕ

Във времена като тези на бързо развиващи се нови технологии, запазването на класифицираната информация от нежелани посегателства може да се окаже доста тежка задача. Европейският съюз е избрал средството на двустранно договаряне със своите стратегически партньори, за да гарантира неприкосновеността на своята класифицирана информация, както и интересите на своите държави членки.

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