



**Brussels, 8 February 2017
(OR. en)**

6074/17

CSC 42

'A' ITEM NOTE

From:	Permanent Representatives Committee
To:	Council
No. prev. doc.:	12940/15, 12940/1/15, 10746/16, 12913/16
Subject:	Common approach on sharing EU classified information with EU institutions, agencies, offices and bodies

1. A common approach on sharing EU classified information (EUCI) with EU institutions, agencies, offices and bodies was drafted jointly by the Security Directorates/Offices of the Council General Secretariat, the European Commission and the European External Action Service (EEAS) as a trilateral concept so as to ensure to maximum extent possible a unified practice in that respect, pursuant to Article 12 of the Council Security Rules (CSR)¹.
2. The common approach sets out conditions under which EUCI may be shared within the EU family (except the European Parliament and the Court of Justice, in respect of which specific arrangements apply). It ensures that EUCI is given protection appropriate to its classification level and according to basic principles and minimum standards equivalent to those laid down in the CSR, the Commission Security Rules² and the EEAS Security

¹ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p.1).

² Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

Rules³, respectively. Furthermore, the list of entities among which EUCI could be shared on the basis of the approach in question is listed in the Annex to the common approach. The catalogue is open and can be extended where a long-term need arises to share EUCI with another EU institution, agency, office or body.

3. The common approach outlines all necessary steps to be taken by the Council, the European Commission and the High Representative/EEAS in order to share EUCI with other EU entities.
4. On 2 December 2015 COREPER approved the common approach on sharing EUCI with EU institutions, agencies, offices and bodies (see Annex). COREPER also approved letters to the High Representative and to the President of the European Commission seeking their agreement to this common approach (12940/1/15).
5. On 20 June 2016 the European Commission replied expressing the agreement on the text of the common approach on EUCI sharing (10746/16). A similar reply was received from the EEAS (see 12913/16).
6. The abovementioned positive replies from the European Commission and the EEAS to the letters together with the Council's subsequent approval of the text will constitute formal agreement on the common approach on sharing EUCI with EU institutions, agencies, offices and bodies.
7. The Council is accordingly invited to approve the common approach on sharing EUCI with EU institutions, agencies, offices and bodies as set out in the Annex.

³ OJ C 190, 29.6.2013, p.1.

**Common approach on sharing EU classified information
with EU institutions, agencies, offices and bodies**

1. In order to develop activities in all areas which require handling classified information, the Council, the European Commission (EC) and the High Representative for Foreign Affairs and Security Policy (HR)/European External Action Service (EEAS) have established a comprehensive security system for protecting classified information, which also applies to the European Council. The rules established by each of these entities are based on equivalent standards and create a single security area for the protection of classified information. This has been confirmed most recently in the Declaration for the Council minutes by the Council, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy on the protection and handling of classified information⁴. A large number of classified documents are already shared among the Council, the Commission and the EEAS.

2. The European Parliament (EP) has also adopted its own security rules and taken the necessary internal measures to apply them. Due to the specific character of the EP as a co-legislator, an *Interinstitutional Agreement (IIA) between the EP and the Council on matters other than those in the area of common foreign and security policy*⁵ has been concluded and the Council has adopted implementing arrangements⁶. Furthermore, an *Interinstitutional Agreement of 20 November 2002 between the EP and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy* is in force⁷. In addition, Annex II of the *Framework Agreement on relations between the European Parliament and the European Commission*⁸ regulates forwarding of confidential information by the Commission to the EP. Consequently, the basis for sharing EUCI with the EP is described in the above mentioned agreements and arrangements.

⁴ See doc. 12433/13 ADD 1.

⁵ OJ C 95, 1.4.2014, p.1.

⁶ See doc. 14595/12.

⁷ OJ C 298, 30.11.2002, p.1. *Arrangement between the EP, the Council and the High Representative on the forwarding to and handling by the EP of classified information in the area of CFSP* is being negotiated.

⁸ OJ L 304, 20.11.2010, p.47.

3. EU classified information also has to be shared with various other EU institutions, agencies, offices and bodies, other than the EP and the Court of Justice⁹, as a part of the policymaking or implementation process. The Council¹⁰, the Commission and the HR/EEAS (the counterparts) have accordingly established a common approach for sharing EU classified information with other EU institutions, agencies, offices and bodies so as to ensure to the maximum extent possible that there is a unified practice in that respect.
4. The list of the entities with which EUCI could be shared on the basis of the common approach in question is in the Annex to the common approach. These entities meet point 7(c). The catalogue is open and can be extended where a long-term need arises to share EUCI with another EU institution, agency, office or body.
5. The common approach does not cover civilian or military CSDP operations where access to classified information is needed. The release of EUCI generated for the purposes of a specific operation continues to be authorised by the Council Decisions due to the individual character of operations and the fact that CSDP operations often involve participation of third States or international organisations.
6. The common approach ensures that EUCI is given protection appropriate to its classification level and according to basic principles and minimum standards equivalent to those laid down in the Council Security Rules¹¹, the Commission Security Rules¹² and the EEAS Security Rules¹³, respectively.

⁹ Given the distinct nature of the Court of Justice, it is not covered by the present common approach. The security rules of the General Court were adopted on 14 September 2016 and the security rules of the Court of Justice on 20 September 2016. Both were published in the Official Journal of the EU: OJ L 355, 24.12.2016, p. 5 and OJ L 355, 24.12.2016, p.18.

¹⁰ By virtue of Article 13(4) of the European Council's Rules of Procedure, the Council's Security Rules apply *mutatis mutandis* to the European Council. Therefore, the present common approach is extended to the European Council via the Council, also bearing in mind that the GSC serves both of these institutions.

¹¹ OJ L 274, 15.10.2013, p.1.

¹² OJ L 72, 17.3.2015, p.53.

¹³ OJ C 190, 29.6.2013, p.1.

7. As a general rule, EUCI may be shared with EU institutions, agencies, offices and bodies provided all the requirements below are fulfilled:
- (a) there is a justified need to share EUCI with the entity in question;
 - (b) the originator gives consent to share the EUCI;
 - (c) In accordance with an EU entity's founding act or other legal framework the entity in question applies basic principles and minimum standards equivalent to the Council's, the Commission's or the EEAS's security rules;
 - (d) the EU entity has effectively put in place its internal security rules for protecting classified information, as well as the physical and procedural measures which have been determined by means of an assessment visit to be equivalent to those either the Council, the Commission or the EEAS.
8. Whenever at least one counterpart envisages sharing EUCI with an EU entity beyond an *ad hoc* exceptional case, the other counterparts are informed and steps are taken to organise a joint assessment visit involving all three counterparts aimed at ascertaining the effectiveness of measures implemented for protecting EUCI. The counterparts will decide jointly who will lead the visit.
9. When one counterpart has already concluded an administrative arrangement with the entity in question or has inspected this entity, it shall be examined whether a further assessment visit is necessary or whether it is possible to draw on the findings of an inspection report regarding measures implemented for protecting EUCI by the entity in question.
10. After an assessment visit to the EU entity in question a report is drawn up and shared among the three counterparts. Each counterpart takes the internal necessary steps concerning the report. The counterparts coordinate on assessing equivalence of the protection of classified information with a view to achieving a uniform approach to the maximum extent possible prior to taking their respective decisions to share EUCI.

11. The level of EUCI shared will depend on the need and on the degree of confidence that may be placed on the EU agency or body arising from the level of security of EUCI that would be entrusted to it after performing all the checks listed above (e.g. restrictions regarding physical and/or electronic handling of EUCI will depend on the means of transmission).

 12. After the adoption of the respective decisions on EUCI sharing with another EU entity, the necessary joint modalities/arrangements should be agreed with that entity, where possible. The competent officials of the counterparts inform the competent Authority of the EU institution, agency, office or body in question about starting to share EUCI under these modalities/arrangements.
-

The list of entities (other than the European Council, the Council, the Commission and the EEAS)¹⁴ with whom EUCI could be shared on the basis of the common approach

The list is non-exhaustive. The catalogue can be extended where a long-term need arises to share EUCI with another EU institution, agency, office or body.

I. Other EU institutions

1. Court of Auditors (ECA)

II. EU Decentralised Agencies

1. European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)
2. European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)
3. European Asylum Support Office (EASO)
4. European GNSS Agency (GSA)
5. European Union Network and Information Security Agency (ENISA)

III. Agencies established under Title V, Chapter 2, TEU

1. European Union Satellite Centre (SatCen)
2. European Defence Agency (EDA)

IV. EU Bodies

1. European Police Office (EUROPOL)
2. The European Union's Judicial Cooperation Unit (EUROJUST)

¹⁴ With regard to the European Parliament, see paragraph 2 of the Common approach, and with regard to the Court of Justice, see paragraph 3 with its footnote.