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CSC 44
COEST 33
CFSP/PESC 131
JAI 106**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Agreement between the European Union and the Republic of Moldova on security procedures for exchanging and protecting classified information

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE REPUBLIC OF MOLDOVA
ON SECURITY PROCEDURES
FOR EXCHANGING AND PROTECTING
CLASSIFIED INFORMATION

MD/EU/en 1

The European Union, hereafter referred to as “the EU”,

and

the Republic of Moldova;

hereafter referred to as “the Parties”;

CONSIDERING that the Parties share the objectives of strengthening their own security in all ways and of providing their citizens with a high level of safety within an area of security;

CONSIDERING that the Parties agree that cooperation should be developed between them on questions of common interest relating to security;

CONSIDERING that, in this context, a permanent need therefore exists to exchange classified information between the Parties;

RECOGNISING that full and effective cooperation and consultation may require access to and exchange of classified information and related material of the Parties;

AWARE that such access to and exchange of classified information and related material require that appropriate security measures be taken,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. In order to fulfill the objectives of strengthening the security of each of the Parties in all ways, this Agreement between the Republic of Moldova and the European Union on security procedures for exchanging and protecting classified information (hereafter the “Agreement”) shall apply to classified information or material in any form either provided or exchanged between the Parties.
2. Each Party shall protect classified information received from the other Party from loss or unauthorised disclosure in accordance with the terms set forth herein and in accordance with the Parties’ respective laws and regulations.

ARTICLE 2

For the purposes of this Agreement, “classified information” shall mean:

- (i) for the EU: any information or material,
 - (ii) for the Republic of Moldova: any information or material attributed to state secrets,
- in any form, which:
- (a) is determined by either of the Parties to require protection, as its loss or unauthorised disclosure could cause varying degrees of damage or harm to the interests of the Republic of Moldova, or of the EU or one or more of its Member States; and
 - (b) bears a security classification marking as set out in Article 7.

ARTICLE 3

1. The EU institutions and entities to which this Agreement applies shall be: the European Council, the Council of the European Union (hereafter “the Council”), the General Secretariat of the Council, the High Representative of the Union for Foreign Affairs and Security Policy, the European External Action Service (hereafter “the EEAS”) and the European Commission.
2. These EU institutions and entities may share classified information received under this Agreement with other EU institutions and entities, subject to the prior written consent of the providing party and to appropriate assurances that the receiving entity will protect the information adequately.

ARTICLE 4

Each of the Parties shall ensure that it has appropriate security systems and measures in place, based on the basic principles and minimum standards of security laid down in their respective laws or regulations, and reflected in the security arrangements to be established pursuant to Article 12, in order to ensure that an equivalent level of protection is applied to classified information subject to this Agreement.

ARTICLE 5

Each of the Parties shall:

- (a) protect classified information provided by or exchanged with the other Party under this Agreement to a level at least equivalent to that afforded by the providing Party;
- (b) ensure that classified information provided or exchanged under this Agreement keeps the security classification marking given to it by the providing Party, and that it is not downgraded or declassified without the prior written consent of the providing Party. The receiving Party shall protect the classified information according to the provisions set out in its own security regulations for information holding an equivalent security classification as specified in Article 7;
- (c) not use such classified information for purposes other than those established by the originator or those for which the information is provided or exchanged;
- (d) not disclose such classified information to third parties without the prior written consent of the providing Party;
- (e) not allow individuals access to such classified information unless they have a need to know and have been granted security clearance as appropriate in accordance with the applicable laws and regulations of the receiving Party;

- (f) ensure that facilities where classified information provided is handled and stored are appropriately security certified; and
- (g) ensure that all individuals with access to classified information are informed of their responsibility to protect it in accordance with the applicable laws and regulations.

ARTICLE 6

1. Classified information shall be disclosed or released in accordance with the principle of originator consent.
2. For release to recipients other than the Parties, a decision on disclosure or release of classified information will be made by the receiving Party on a case-by-case basis, subject to the prior written consent of the providing Party and in accordance with the principle of originator consent.
3. No generic release shall be possible unless procedures are agreed upon between the Parties regarding certain categories of information which are relevant to their specific requirements.
4. Nothing in this Agreement shall be regarded as a basis for mandatory release of classified information between the Parties.
5. Classified information subject to this Agreement may be provided to a contractor or prospective contractor only with the prior written consent of the providing Party. Prior to such release, the receiving Party shall ensure that the contractor or prospective contractor and the contractor's facility are able to protect the information and have an appropriate security clearance.

ARTICLE 7

In order to establish an equivalent level of protection for classified information provided by or exchanged between the Parties, the security classifications shall correspond as follows:

EU	The Republic of Moldova
TRES SECRET UE / EU TOP SECRET	STRICT SECRET
SECRET UE / EU SECRET	SECRET
CONFIDENTIEL UE / EU CONFIDENTIAL	CONFIDENȚIAL
RESTREINT UE / EU RESTRICTED	RESTRICȚIONAT

ARTICLE 8

1. The Parties shall ensure that all persons who, in the conduct of their official duties require access, or whose duties or functions may afford them access, to information classified CONFIDENTIEL UE / EU CONFIDENTIAL or CONFIDENȚIAL or above provided or exchanged under this Agreement are security-cleared as appropriate before they are granted access to such information.

2. Security clearance procedures shall be designed to determine whether an individual, taking into account his or her loyalty, trustworthiness and reliability, may have access to classified information in addition to the need-to-know requirement provided for in Article 5(e).

ARTICLE 9

The Parties shall provide mutual assistance with regard to the security of classified information subject to this Agreement and matters of common security interest. Reciprocal security consultations and assessment visits shall be conducted by the authorities referred to in Article 12 to assess the effectiveness of the security arrangements within their respective responsibility to be established pursuant to that Article.

ARTICLE 10

1. For the purpose of this Agreement:
 - (a) as regards the EU, all correspondence shall be sent through the Chief Registry Officer of the Council and shall be forwarded by him to the Member States and to the institutions or entities referred to in Article 3, subject to paragraph 2 of this Article;
 - (b) as regards the Republic of Moldova, all correspondence shall be sent to the Central Registry of the Ministry of Foreign Affairs and European Integration.

2. Exceptionally, correspondence from one Party which is accessible only to specific competent officials, organs or services of that Party may, for operational reasons, be addressed and be accessible only to specific competent officials, organs or services of the other Party specifically designated as recipients, taking into account their competencies and according to the need-to-know principle. As far as the EU is concerned, such correspondence shall be transmitted through the Chief Registry Officer of the Council, the Chief Registry Officer of the EEAS, or the Chief Registry of the European Commission, as appropriate. As far as the Republic of Moldova is concerned, such correspondence shall be transmitted through Ministry of Foreign Affairs and European Integration as appropriate.

ARTICLE 11

The Director of the Security and Intelligence Service of the Republic of Moldova, the Secretary-General of the Council, the Member of the European Commission responsible for security matters and the High Representative of the Union for Foreign Affairs and Security Policy shall oversee the implementation of this Agreement.

ARTICLE 12

1. In order to implement this Agreement, security arrangements shall be established between the competent security authorities designated below, each acting under the direction and on behalf of its organisational superiors and in coordination with the other relevant authorities, in order to lay down the standards for the reciprocal protection of classified information under this Agreement:

- on the one hand, the Security and Intelligence Service of the Republic of Moldova;
- and on the other:
 - (i) the Directorate of Safety and Security of the General Secretariat of the Council;
 - (ii) the Directorate HR.DS - Security Directorate of the European Commission;
 - (iii) the Directorate responsible for Security in the EEAS.

2. Before classified information is provided or exchanged between the Parties under this Agreement, the competent security authorities referred to in paragraph 1 shall agree that the receiving Party is able to protect the information in a way consistent with the security arrangements to be established pursuant to that paragraph.

ARTICLE 13

1. The competent authority of either of the Parties referred to in Article 12 shall immediately inform the competent authority of the other Party of any proven or suspected cases of unauthorised disclosure or loss of classified information provided by that Party. The competent authority shall conduct an investigation, with assistance from the other Party if required, and shall report the results to the other Party.
2. The authorities referred to in Article 12 shall establish procedures to be followed in such cases.

ARTICLE 14

Each Party shall bear its own costs incurred in implementing this Agreement.

ARTICLE 15

Nothing in this Agreement shall alter existing agreements or arrangements between the Parties nor agreements between the Republic of Moldova and Member States of the EU. This Agreement shall not preclude the Parties from concluding other agreements relating to the provision or exchange of classified information subject to this Agreement provided they are not incompatible with the obligations under this Agreement.

ARTICLE 16

Any disputes between the Parties arising out of the interpretation or application of this Agreement shall be addressed by negotiation between the Parties. During the negotiation both Parties shall continue to fulfil all of their obligations under this Agreement.

ARTICLE 17

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.
2. Each Party shall notify the other Party in writing of any changes in its laws and regulations that could affect the protection of classified information referred to in this Agreement.
3. This Agreement may be reviewed for consideration of possible amendments at the request of either of the Parties.
4. Any amendment to this Agreement shall be made in writing only and by common agreement of the Parties. It shall enter into force upon mutual notification as provided under paragraph 1.

ARTICLE 18

This Agreement may be terminated by one Party by written notice of termination given to the other Party. Such termination shall take effect six months after receipt of notification by the other Party, but shall not affect obligations already entered into under this Agreement. In particular, all classified information provided or exchanged pursuant to this Agreement shall continue to be protected in accordance with the provisions set forth herein.

In witness whereof the undersigned, respectively duly authorised, have signed this Agreement.

Done at ..., this ... day of ... in the year 20xx in two authentic copies: each in the English language.

For the Republic of Moldova

For the European Union