



Council of the
European Union

Brussels, 12 October 2015
(OR. en)

12940/15

CSC 218

"I/A" ITEM NOTE

From: The Security Committee
To: The Permanent Representatives Committee

Subject: Common approach on sharing EU classified information among EU institutions, agencies, offices and bodies - agreement on the text

1. The Council Security Committee (CSC) agreed at its meeting on 21 May 2014 to consider further the conditions to facilitate sharing of EU classified information (EUCI) among EU institutions, agencies, offices and bodies pursuant to Article 12 of the Council Security Rules (CSR)¹.
2. A common approach on sharing EUCI with EU institutions, agencies, offices and bodies has been drafted jointly with the Commission services and the European External Action Service (EEAS) as a trilateral concept so as to ensure to the maximum extent possible a unified practice in that respect (see Annex I).

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).

3. 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 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. This catalogue is open and can be extended where a long-term need arises to share EUCI with another EU institution, agency, office or body.
4. The common approach outlines all necessary steps to be taken by the Council, the Commission and the High Representative (HR)/EEAS in order to share EUCI with other EU entities.
5. This common approach would ensure not only a unified practice of sharing EUCI among the EU family, but would also simplify internal administration by avoiding the EU Council General Secretariat Security Office (GSCSO), the European Commission Security Directorate (ECSD) and the EEAS Security Directorate each having to draw up similar administrative arrangements with the same other EU entities.
6. After reaching technical agreement between the GSC, Commission and EEAS security directorates on the draft common approach, it was submitted to the Council Security Committee. At its meeting on 5 March 2015, the Committee endorsed the text set out in Annex I and recommended that the document should be submitted via Coreper to Council.

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).

³ OJ C 190, 29.6.2013, p.1.

7. In parallel, the Commission and EEAS services concerned indicated they would seek agreement from the Commission and the HR on this common approach on sharing EU classified information with EU institutions, agencies, offices and bodies.

 8. COREPER is accordingly invited to:
 - (a) approve the common approach on sharing EUCI among EU institutions, agencies, offices and bodies set out in Annex I;
 - (b) approve the letter to be sent to the HR (in Annex II) and to the President of the European Commission (in Annex III) seeking their agreement to this common approach;
 - (c) agree to recommend that the Council approve the common approach on sharing EUCI among EU institutions, agencies, offices and bodies set out in Annex I following notification by the Commission and the HR of their agreement.
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**Common approach on sharing EU classified information
among 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. An *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 Annex. 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. Efforts to put in place security rules for the General Court are in progress in the framework of modifications to its Rules of procedure.

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)

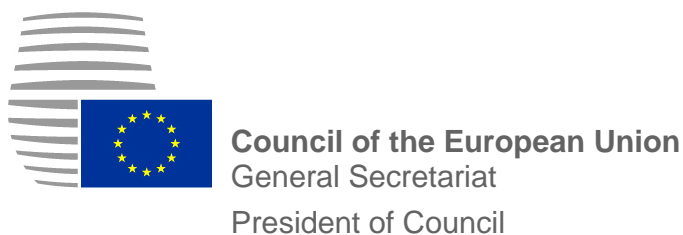
III. Agencies established under Title V, Chapter 2, TEU

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 cover note, and with regard to the Court of Justice, see footnote 6 on page 3.



Brussels, October 2015

Ms Federica Mogherini
High Representative of the Union
For Foreign Affairs and Security Policy
European External Action Service
1046 Brussels, Belgium

Subject: Common approach on sharing EU classified information with EU institutions, agencies, offices and bodies.

Dear Ms Mogherini,

A common approach on sharing EU classified information (EUCI) with other EU institutions, agencies, offices and bodies has been drafted jointly by the security Directorates/Offices of the Council General Secretariat, the Commission and the European External Action Service (EEAS) as a trilateral concept so as to ensure to the maximum extent possible that there would be a unified practice in that respect.

The common approach sets out all necessary elements and conditions under which EUCI may be shared within the EU family (except with 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 respective Council, Commission and EEAS Security Rules. Furthermore, the list of entities with which EUCI could be shared on the basis of the approach in question is listed in the Annex to the common approach itself. This catalogue is open and can be extended where a long-term need arises to share EUCI with other institution, agency, office or body.

The common approach outlines all necessary steps to be taken by the Council, the Commission and the High Representative/EEAS in order to share EUCI with other EU entities.

This common approach would ensure not only a unified practice of sharing EUCI among the EU family, but would also simplify internal administration by avoiding the EU Council General Secretariat Security Office (GSCSO), the European Commission Security Directorate (ECSD) and the EEAS Security Directorate having to each draw up similar administrative arrangements with the same other EU entities.

After having reached technical agreement on the text of the common approach at the level of the services concerned, COREPER approved it on [... 2015], while also agreeing to recommend that the Council approve it following notification by the Commission and the HR of their agreement on this text.

I would be grateful if you could give this issue appropriate consideration given the desire of not only the Council to apply a consistent approach to ensure effective information sharing within the EU family but also this would be consistent with the trilateral declaration aiming to have a coherent system. It is in our collective interest for the EU family to have a unified approach on sharing EUCI.

The HR positive reply to this letter agreeing to the text of the common approach together with the Council's subsequent approval of that text will constitute a formal agreement on Common approach on sharing EUCI with EU institutions, agencies, offices and bodies.

Yours sincerely,

The President of the Council

Enc.: Common approach on sharing EU classified information among EU institutions, agencies, offices and bodies.



Council of the European Union
General Secretariat
President of Council

Brussels, October 2015

Mr Jean-Claude Juncker
President
European Commission
Rue de la Loi/Wetstraat 200
1049 Brussels
Belgium

Subject: Common approach on sharing EU classified information with EU institutions, agencies, offices and bodies.

Dear Mr Juncker,

A common approach on sharing EU classified information (EUCI) with other EU institutions, agencies, offices and bodies has been drafted jointly by the security Directorates/Offices of the Council General Secretariat, the Commission and the European External Action Service (EEAS) as a trilateral concept so as to ensure to the maximum extent possible that there would be a unified practice in that respect.

The common approach sets out all necessary elements and conditions under which EUCI may be shared within the EU family (except with 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 respective Council, Commission and EEAS Security Rules. Furthermore, the list of entities with which EUCI could be shared on the basis of the approach in question is listed in the Annex to the common approach itself. This catalogue is open and can be extended where a long-term need arises to share EUCI with other institution, agency, office or body.

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After having reached technical agreement on the text of the common approach at the level of the services concerned, COREPER approved it on [... 2015], while also agreeing to recommend that the Council approve it following notification by the Commission and the HR of their agreement on this text.

I would be grateful if the Commission could give this issue appropriate consideration given the desire of not only the Council to apply a consistent approach to ensure effective information sharing within the EU family but also this would be consistent with the trilateral declaration aiming to have a coherent system. It is in our collective interest for the EU family to have a unified approach on sharing EUCI.

The Commission's positive reply to this letter agreeing to the text of the common approach together with the Council's subsequent approval of that text will constitute a formal agreement on Common approach on sharing EUCI with EU institutions, agencies, offices and bodies.

Yours sincerely,

The President of the Council

Enc.: Common approach on sharing EU classified information among EU institutions, agencies, offices and bodies.

cc: Ms Kristalina Georgieva
