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COMMISSION

Brussels, 26.12.2020
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ANNEX 2

COM(2020) 856 final of 25.12.2020 downgraded on 26.12.2020.

ANNEX

to the

COUNCIL DECISION

on the conclusion, on behalf of the Union, of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information

AGREEMENT BETWEEN THE EUROPEAN UNION AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING SECURITY PROCEDURES FOR EXCHANGING AND PROTECTING CLASSIFIED INFORMATION

The European Union ('the Union')

and

The United Kingdom of Great Britain and Northern Ireland ('the United Kingdom'),

jointly referred to as 'the Parties',

CONSIDERING:

- that the Parties share the objectives of strengthening their own security in all ways,
- that the Parties agree that cooperation should be developed between them on questions of common interest in the field of security of information,
- 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 material of the Parties,

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

ACKNOWLEDGING that this Agreement constitutes a supplementing agreement to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, (hereinafter "Trade and Cooperation Agreement")

HAVE AGREED AS FOLLOWS:

Article 1

1. In order to fulfil the objectives of strengthening the security of each Party in all ways, this Agreement between the Union and the United Kingdom on security procedures for exchanging and protecting classified information (the 'Agreement') applies to classified information or material in any form either provided by one Party to the other Party or exchanged between the Parties.

2. Each Party shall protect classified information received from the other Party from unauthorised disclosure or loss in accordance with the terms set out in this Agreement and in accordance with the Parties' respective laws, rules and regulations.

3. This Agreement does not constitute a basis to compel the provision or exchange of classified information by the Parties.

Article 2

For the purposes of this Agreement, 'classified information' means any information or material, in any form, nature or method of transmission which is:

(a) determined by either Party to require protection against unauthorised disclosure or loss which could cause varying degrees of damage or harm to the interests of the United Kingdom, to the interests of the Union or to the interests of one or more of its Member States; and

(b) marked accordingly with a security classification as set out in Article 7.

Article 3

1. The Union institutions and entities to which this Agreement applies are the European Council, the Council, the High Representative of the Union for Foreign Affairs and Security Policy, the European External Action Service ('the EEAS'), the European Commission, and the General Secretariat of the Council.

2. Those Union institutions and entities may share classified information received under this Agreement with other Union institutions and entities, subject to the prior written consent of the providing Party and subject to appropriate assurances that the receiving institution or entity will protect the information adequately.

Article 4

Each Party 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 its respective laws, rules or regulations and reflected in the implementing arrangement referred to in Article 12, in order to ensure that an equivalent level of protection is applied to classified information subject to this Agreement.

Article 5

1. Each Party shall, in relation to classified information provided or exchanged under this Agreement:

(a) protect, in accordance with its own laws, rules and regulations, such classified information to an equivalent level of protection as it affords its own classified information at the corresponding security classification level, as set out in Article 7;

(b) ensure that such classified information 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 applicable laws, rules and 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, except where the providing Party has given its prior written consent;

(d) subject to the modalities in paragraph 2 of this Article, not disclose such classified information to a third party or make such classified information available to the public without the prior written approval of the providing Party;

(e) not allow access to such classified information by individuals unless they have a need to know and have been granted security clearance or are otherwise empowered or authorised in accordance with the applicable laws, rules and regulations of the receiving Party;

(f) ensure that such classified information is handled and stored in facilities which are appropriately secured, controlled, and protected in accordance with its laws, rules and regulations; and

(g) ensure that all individuals with access to such classified information are informed of their responsibility to protect it in accordance with the applicable laws, rules and regulations.

2. The receiving Party shall:

(a) take all necessary steps, in accordance with its laws and regulations to prevent classified information provided under this Agreement from being made available to the public or any third party; if there is any request to make any classified information provided under this Agreement available to the public or any third party, the receiving Party shall immediately notify the providing Party in writing, and both Parties shall consult each other in writing before a disclosure decision is taken;

(b) inform the providing Party of any request by a judicial authority, also as part of a judicial process, or by a legislative authority acting in an investigative capacity, to obtain classified information received from the providing Party under this Agreement; in assessing such a request, the receiving Party shall take the views of the providing Party into account to the maximum extent possible; if, by virtue of the receiving Party's laws and regulations, that request entails transmission of the said classified information to the requesting legislative authority or judicial authority, also as part of a judicial process, the receiving Party shall ensure, to the maximum extent possible, that the information is appropriately protected, including from any disclosure to other authorities or third parties.

Article 6

1. Classified information shall be disclosed or released in accordance with the principle of originator consent.

2. For the release to recipients other than the Parties, subject to point (d) of Article 5(1), a decision on disclosure or release of classified information shall 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. Classified information that is subject to this Agreement may be provided to a contractor or prospective contractor only with the prior written consent of the providing Party. Before disclosing any classified information to a contractor or prospective contractor, the receiving Party shall ensure that the contractor or prospective contractor has secured its facilities and is able to protect the classified information in accordance with applicable laws, rules and regulations, and that the contractor or prospective contractor has the required facility security clearance, where applicable, for itself and has the appropriate security clearances for its personnel who need access to classified information.

Article 7

1. 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	United Kingdom
TRES SECRET UE/EU TOP SECRET	UK TOP SECRET
SECRET UE/EU SECRET	UK SECRET
CONFIDENTIEL UE/EU CONFIDENTIAL	No equivalent – see paragraph 2
RESTREINT UE/EU RESTRICTED	UK OFFICIAL-SENSITIVE

2. Unless otherwise mutually agreed between the Parties, the United Kingdom shall afford CONFIDENTIEL UE/EU CONFIDENTIAL classified information an equivalent level of protection as for UK SECRET classified information.

3. Unless the United Kingdom has notified the Union in writing that it has downgraded or declassified its UK CONFIDENTIAL legacy classified information, the Union shall afford this information an equivalent level of protection as for CONFIDENTIEL UE/EU CONFIDENTIAL classified information and, unless the United Kingdom has notified the Union in writing that it has declassified its UK RESTRICTED legacy classified information, the Union shall afford any UK RESTRICTED legacy classified information an equivalent level of protection as for RESTREINT UE/EU RESTRICTED classified information.

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 at the level of CONFIDENTIEL UE/EU CONFIDENTIAL or UK SECRET or above that has been provided or exchanged under this Agreement, are security-cleared as appropriate or are otherwise empowered or authorised in accordance with the applicable laws, rules and regulations of the receiving Party, before those persons are granted access to such classified information in addition to the need-to-know requirement, as provided for in point (e) of Article 5(1).

2. Security clearance procedures shall be designed to determine whether an individual, taking into account the individual's loyalty, trustworthiness and reliability, may have access to classified information.

Article 9

For the purposes of this Agreement:

(a) all classified information released to the Union under this Agreement shall be sent through:

i. the Central Registry of the General Secretariat of the Council, if addressed to the European Council, the Council or the General Secretariat of the Council;

ii. the Secretariat-General Registry of the European Commission, if addressed to the European Commission;

iii. the European External Action Service Registry, if addressed to the High Representative of the Union for Foreign Affairs and Security Policy or the European External Action Service;

(b) all classified information released to the United Kingdom under this Agreement shall be sent to the United Kingdom via the Mission of the United Kingdom to the Union;

(c) the Parties may mutually agree appropriate methods to ensure the efficient exchange of classified information, in accordance with the arrangements set out in points (a) and (b).

Article 10

Electronic transmissions of classified information between the Union and the United Kingdom and electronic transmissions of classified information between the United Kingdom and the Union shall be encrypted in accordance with the releasing Party's requirements as set out in its laws, rules and regulations; the implementing arrangement referred to in Article 12 shall set out accordingly the conditions under which each Party can transmit, store or process classified information, provided by the other Party, in their internal networks.

Article 11

The Secretary-General of the Council, the Member of the European Commission responsible for security matters, the High Representative of the Union for Foreign Affairs and Security Policy and the UK National Security Authority, Cabinet Office, shall oversee the implementation of this Agreement.

Article 12

1. In order to implement this Agreement, an implementing arrangement shall be established between the competent security authorities of the Union institutions designated below, each acting on behalf of its organisational authority, and the UK National Security Authority, Cabinet Office, to lay down the standards for the reciprocal protection of classified information under this Agreement:

(a) the Directorate of Safety and Security of the General Secretariat of the Council;

(b) the Security Directorate of the Directorate-General Human Resources and Security of the European Commission (DG.HR.DS); and

(c) the Directorate Security and Infrastructure of the EEAS.

2. Before classified information is provided or exchanged 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 implementing arrangement.

Article 13

The Parties shall cooperate as far as reasonably practicable with regard to the security of classified information that is subject to this Agreement and may provide mutual assistance on matters of common interest in the field of security of information. Reciprocal security consultations and assessment visits shall be conducted by the competent security authorities referred to in Article 12(1) to assess the effectiveness of the security arrangements within their respective responsibilities. The Parties shall jointly decide on the frequency and timing of those consultations and assessment visits.

Article 14

1. The competent security authority of a Party as referred to in Article 12(1) shall immediately inform the competent security 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 security authority of the relevant Party shall conduct an investigation, with assistance from the other Party if required, and shall report the results to the other Party.

2. The competent security authorities referred to in Article 12(1) shall establish procedures to be followed in such cases.

Article 15

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

Article 16

1. Nothing in this Agreement shall alter agreements or arrangements between the Parties or agreements or arrangements between the United Kingdom and one or more Member States.

2. This Agreement shall not preclude the Parties from concluding other agreements relating to the provision or exchange of classified information that is subject to this Agreement, provided that those agreements are not incompatible with the obligations under this Agreement.

Article 17

Each Party shall notify the other Party in writing of any changes in its laws, rules and regulations that could affect the protection of classified information referred to in this Agreement.

Article 18

The Parties shall deal with any disputes arising from the interpretation or application of this Agreement through consultations.

Article 19

1. This Agreement shall enter into force on the same date as the date on which the Trade and Cooperation Agreement enters into force, provided that, prior to that date, the Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

2. This Agreement shall apply as from the date of application of the Trade and Cooperation Agreement or from the date the Parties have notified each other that they have completed their respective internal requirements and procedures to release classified information under this Agreement, whichever is the later. If the Parties have not notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound by this Agreement by the date on which provisional application of the Trade and Cooperation Agreement ceases, this Agreement shall cease to apply.

3. This Agreement may be reviewed for consideration of possible amendments at the request of either Party.

4. Any amendment to this Agreement shall be made in writing only and by mutual agreement of the Parties.

Article 20

1. Pursuant to Article FINPROV.8 of the Trade and Cooperation Agreement, this Agreement is terminated upon termination of the Trade and Cooperation Agreement.

2. The termination of this Agreement shall not affect obligations already entered into under this Agreement. In particular, all classified information provided or exchanged under this Agreement shall continue to be protected in accordance with the provisions of this Agreement.

Article 21

This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages. By 30 April 2021, all language versions of the Agreement shall be subject to a process of final legal revision. Notwithstanding the previous sentence, the process of final legal revision for the English version of the Agreement shall be finalised at the latest by the day referred to in Article 19(1) if that day is earlier than 30 April 2021.

The language versions resulting from the above process of final legal revision shall replace *ab initio* the signed versions of the Agreement and shall be established as authentic and definitive by exchange of diplomatic notes between the Parties.