



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 April 2008

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REV 1**

**CSC 9
PESC 408
JAI 168**

NOTE

From : The General Secretariat of the Council
To : Delegations
Subject : Security arrangements for the protection of classified information exchanged between the EU and the ICC

Delegations will find attached in Annex I the security arrangements for the protection of classified information exchanged between the EU and the International Criminal Court (ICC) as required by point 4 of the Annex to the Agreement between the ICC and the EU on cooperation and assistance¹.

The arrangements were approved by the Council Security Committee on 15 January 2008 and by the ICC on 10 March 2008 (cf. exchange of letters in Annex II) and are in effect from 31 March 2008.

It should be noted that:

- the release of EU classified information to the ICC is allowed up to the level of RESTREINT UE in hard copy; and
- no EU classified information may be transmitted by electromagnetic means to the ICC pending agreement on specific provisions to that effect.

¹ OJ L 115, 28.4.2006, p. 50.

**SECURITY ARRANGEMENTS BETWEEN THE EU COUNCIL GENERAL
SECRETARIAT SECURITY OFFICE (GSCSO) AND
THE EUROPEAN COMMISSION SECURITY DIRECTORATE (ECSD) AND THE
INTERNATIONAL CRIMINAL COURT SECURITY AND SAFETY SECTION (ICC-SSS)
FOR THE PROTECTION OF CLASSIFIED INFORMATION EXCHANGED BETWEEN
THE EU AND THE ICC**

INTRODUCTION

1. Pursuant to paragraph 4 of the Annex to the Agreement between the International Criminal Court (ICC) and the European Union (EU) (hereafter referred to as "the Parties") on cooperation and assistance, standards for the reciprocal protection of classified information exchanged between the EU and the ICC are hereby agreed. The GSCSO, the ECSD and the ICC-SSS (hereafter referred to as "the participants") are responsible for implementation and oversight of these standards.
2. Each participant will notify the others in writing that the necessary security measures have been taken in accordance with these security arrangements before any classified information is exchanged. Moreover, as long as the Parties exchange classified information under the Agreement and these arrangements, the participants will submit to each other a summary report every year confirming that these arrangements have been complied with.

BASIC PRINCIPLES AND MINIMUM STANDARDS OF SECURITY

3. Subject to the detailed provisions set out below, the Parties will ensure that classified information exchanged with the other Party is protected to a level which is at least equivalent to the relevant minimum standards set out in the providing Party's security rules and regulations.
4. The Parties undertake to ensure that security measures implemented by them will:
 - apply to all persons with access to classified information, classified information-carrying media and all premises and installations containing such information;
 - be designed to detect persons who might endanger the security of classified information and provide for their exclusion from such access;
 - prevent any unauthorised person from having access to classified information or to installations which contain it;
 - ensure that classified information is disseminated on the basis of the 'need-to-know' principle which is fundamental to all aspects of security;
 - ensure that access to information classified CONFIDENTIEL UE / ICC CONFIDENTIAL or above is only granted to persons in possession of a valid personnel security clearance;
 - and ensure the integrity and confidentiality of all information, whether classified or unclassified.

PERSONNEL SECURITY

5. Positions in the respective administrations or organs of each party which may require access to classified information from the other party must be strictly limited, identified and recorded. Access to classified information will be authorised only for persons who have a 'need-to-know'. Furthermore, individuals occupying such positions which require access to information classified CONFIDENTIEL UE/ICC CONFIDENTIAL or above must, in addition to a 'need-to-know', have a valid personnel security clearance issued in accordance with the relevant provisions contained in the respective security rules of the ICC, the General Secretariat of the Council or the European Commission.
6. Such personnel security clearances are designed to determine whether or not such individuals:
 - are of unquestioned loyalty;
 - are of such character and discretion as to cast no doubt upon their integrity in the handling of classified information; or
 - may be vulnerable to pressure from foreign or other sources, e.g. due to former residence or past associations which might constitute a risk to security.
7. Before being given access to classified information, all individuals requiring such access must be briefed and trained on recognising threats to classified information and on the protective security regulations relevant to the classification of the information they are to access. Such briefings should be repeated at regular intervals, and at least annually, while the individual has access to classified information. Those individuals accessing classified information must be made aware that any breach of the protective security regulations will result in disciplinary action and/or possible further legal action in accordance with the respective security regulations or provisions prescribed for the recipient's classified information of the equivalent classification level.

REQUESTS FOR ACCESS TO EU CLASSIFIED INFORMATION

8. The content of requests for access to EU classified information will comply with the requirements of Article 96 of the Rome Statute.
9. Requests for access to EU classified information will be addressed in writing via the Chief Registry Officer of the Council to the Secretary-General/High Representative. The EU will inform the requesting organ of the ICC in writing as soon as possible whether it accedes to a request.
10. The request will, in particular, contain:
 - (a) a concise statement of the purpose of the request;
 - (b) a concise statement of the essential facts underlying the request;
 - (c) as much detailed information as possible about the identification of any classified information sought.

11. All requests, regardless of whether such requests are classified or not, for access to classified information and any supporting documentation will be handled in a manner consistent with the principle of strict confidentiality except to the extent that disclosure is necessary for the execution of the request. Steps will be taken to ensure that any persons handling requests and supporting documentation are fully aware of the obligation of strict confidentiality and that the materials are handled properly in accordance with that obligation. The requesting organ of the ICC may request that any request for information, and any information provided pursuant thereto, is not disclosed to any other organ of the ICC.

ACCESS TO EU CLASSIFIED INFORMATION BY THE ICC POINT OF CONTACT

12. For the purposes of implementing these arrangements, the EU will designate a Liaison Officer; the ICC will designate a Point of Contact.
13. Following a request by the ICC or an organ of the ICC under the procedure described in points 8 and 9 above, the EU Liaison Officer will ensure that documents are identified which may be relevant to the ICC based on the information set out in the ICC's request. If necessary he/she may clarify the scope of the request with the ICC organ making the request.
14. The originator's written consent will be sought before access is granted.
15. Where necessary, requests for access to documents may be referred to the appropriate Council preparatory body and the Council Security Committee before a decision is taken by the Permanent Representatives Committee.
16. The ICC Point of Contact will be invited by the EU Liaison Officer to consult at EU premises any documents identified as potentially relevant which are classified RESTREINT UE or have been downgraded to RESTREINT UE or declassified. Where appropriate, redactions may be applied to portions of documents that are deemed not to be relevant for the ICC request.
17. The ICC Point of Contact may divulge the contents of EU classified information which he/she has accessed in accordance with point 16 to other staff members of the ICC only if they have an established 'need-to-know'.

REQUESTS FOR RELEASE OF EU CLASSIFIED INFORMATION

18. Requests for release to the ICC of EU classified information which has been accessed by the ICC Point of Contact will be addressed in writing via the Chief Registry Officer of the Council to the Secretary-General/High Representative. Upon assessment of this classified information, the EU will inform the requesting organ of the ICC in writing whether it accedes to the request as soon as possible, and in any event within one month of its receipt; EU classified information will be released to the ICC if it is classified RESTREINT UE or has been downgraded to RESTREINT UE or declassified.
19. The originator's written consent will be sought before documents are released.

20. Where necessary, requests for release of documents may be referred to the appropriate Council preparatory body and the Council Security Committee before a decision is taken by the Permanent Representatives Committee.

CLASSIFICATION SYSTEM

21. Classification markings will be used to indicate the sensitivity of the classified information and thus the security procedures and regulations which will apply for its protection.

For ICC classified information released to the EU, the classification markings and their equivalence are as follows:

ICC	TO BE HANDLED BY THE EU AS:
ICC RESTRICTED	RESTREINT UE
ICC CONFIDENTIAL	CONFIDENTIEL UE
ICC SECRET	SECRET UE

EU information classified RESTREINT UE and released to the ICC must be protected in accordance with paragraphs 26 to 32 below.

22. The UE or the ICC marking in the classification line indicates ownership of the information and defines, *inter alia*, originator rights. All information originated by one of the Parties and provided to the other will include an express releasability marking, such as:

RESTREINT UE
RELEASABLE TO THE ICC

ICC RESTRICTED
RELEASABLE TO THE EU

REGISTRIES AND THE CONTROL OF CLASSIFIED INFORMATION

23. Registry systems are established within the ICC for the receipt, dispatch, control and storage of all classified information released to the ICC. The EU Council General Secretariat will be the Central Registry for classified information provided to the EU. At each organisation a designated registry will act as the point of entry and exit for classified information. Such registries are established as follows:

- (a) for the EU: at the EU Council General Secretariat;
- (b) for the ICC, the Information and Evidence Unit of the Office of the Prosecutor (OTP), and the Registry of the ICC for all other organs of the ICC.

24. Central and sub-registries will be responsible for:
- (a) distribution and control of classified information within their respective organisation(s);
 - (b) storage of classified information;
 - (c) final disposal and/or downgrading and/or declassification of classified information in agreement with the releasing authority; and
 - (d) the destruction of the classified information according to the instructions of the releasing authority.
25. The GSCSO, the ECSD and the ICC-SSS will be responsible for the oversight and control of registries within their respective organisation and will inform their counterparts of the establishment/disestablishment of registries containing each other's classified information.

PROTECTION OF RESTREINT UE INFORMATION RELEASED TO THE ICC

26. Documents containing information classified RESTREINT UE or derivatives and reproductions thereof containing such information will be marked to identify the EU classified information. Accordingly, reproductions of documents or material will be assigned the security classification and the marking of the original document or material.
27. No document containing information classified RESTREINT UE will be declassified without the prior written consent of the originator.
28. All received documents or materials classified as RESTREINT UE must be registered at an entry point for EU classified information. The logbook will contain the following information: date received, particulars of the document (date, reference and copy number), its classification, title, name and/or title of the recipient(s), signature of the recipient(s) and person responsible for registering the document.
29. Documents containing information classified RESTREINT UE must not be left unattended or handled in a manner that could result in unauthorised access. They must be stored in a locked security container. During travel the documents must remain under the permanent personal custody of the holder and must not be left unattended in hotel rooms or vehicles and not be displayed in public.
30. Reproductions of documents or material containing information classified RESTREINT UE will be produced under conditions that can prevent unauthorised persons from gaining access. Copies will be numbered and registered.
31. Documents/material containing information classified RESTREINT UE should be reviewed at regular intervals to determine whether they can be destroyed. To prevent unnecessary accumulation of RESTREINT UE classified information superseded or no longer needed, and provided there is no residual interest, documents should be destroyed as soon as practicable or returned to the originator. In the case of destruction of documents or material and their copies, a report on the destruction must be made and kept in the registry. Information classified RESTREINT UE must be destroyed in such a manner as to ensure that it cannot be reconstructed (e.g. by cross-cut shredder or incineration).
32. Information classified RESTREINT UE may only be processed on stand alone computers in designated areas. No EU classified information may be processed on ICC internal networks.

TRANSMISSION OF DOCUMENTS

33. Information classified RESTREINT UE/ICC RESTRICTED may be transmitted by registered mail in a double envelope and will be addressed to the correspondents mentioned in article 16 of the Agreement.
34. No classified information may be transmitted by electromagnetic means between the ICC and the EU and between the EU and the ICC pending agreement on specific provisions to that effect between the Parties.

BREACHES OR COMPROMISES OF SECURITY

35. For the purposes of these arrangements:
- a breach of security occurs as a result of an act or omission contrary to the security regulations of the providing Party which might endanger or compromise that information;
 - a compromise of classified information occurs when it has wholly or in part fallen into the hands of unauthorised persons (i.e. who do not have either the appropriate security clearance or the necessary 'need-to-know', or if there is a likelihood of such an event having occurred).
36. Whenever a compromise or breach of security affecting classified information is discovered or suspected:
- (a) a report giving details of the compromise or breach must be sent:
- by the ICC-SSS to the GSCSO or the ECSD, as appropriate, for EU classified information,
 - by the GSCSO or the ECSD, as appropriate, to the ICC-SSS for ICC classified information;
- (b) an investigation into the circumstances of the compromise or breach must be made. When completed, a full report must be submitted to the office to which the initial report was addressed. At the conclusion of the investigation, remedial or corrective action, where appropriate, must be taken.
37. Any breach of the protective security regulations will result in disciplinary action and/or possible further legal action in accordance with the respective security regulations or provisions prescribed for the recipient's classified information of the equivalent classification level.

INSPECTIONS

38. The GSCSO and the ECSD and the ICC-SSS will facilitate reciprocal inspections to ensure that information originated by their parent organisation is properly protected. Both Parties must agree upon such inspections.

39. The GSCSO, the ECSD and the ICC-SSS are responsible for the implementation of the standards described in these security arrangements. Each participant will conduct internally the necessary checks to verify that appropriate security measures have been taken in accordance with these arrangements.

REVIEW

40. The GSCSO and the ECSD and the ICC-SSS will maintain constant liaison to oversee the release and exchange of classified information under the Agreement and these security arrangements. These Offices will meet to discuss and review matters of common interest and assess the implementation of these security arrangements.
41. Any modifications to these security arrangements will be subject to agreement between the GSCSO and the ECSD and the ICC-SSS, and approval by the EU Council Security Committee.
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Exchange of letters between the Chief of Security and Safety of the International Criminal Court
and the Director of the Security Office of the General Secretariat of the
Council

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Le Greffe

The Registry

Mr A. Legein
Council of the European Union
General Secretariat
Rue de la Loi 175
B-1048 Brussels
Belgium

Reference: ICC/CPBAL/2008031001

Date: 10 March 2008

Dear Mr Legein,

On behalf of the Court, and in my capacity as Chief of the Security and Safety Section of the International Criminal Court, pursuant to paragraph 4 of the Annex to the 'Agreement between the International Criminal Court and the European Union on Cooperation and Assistance', and subject to what is said below, I am pleased to confirm the Court's acceptance of the 'Security Arrangements between the EU Council General Secretariat Security Office (GSCSO) and the European Commission Security Directorate (ECSD) and the International Criminal Court Security and Safety Section (ICC-SSS) for the Protection of Classified Information Exchanged between the EU and the ICC', the text of which is annexed to this letter.

I wish to note that our acceptance of the attached security arrangements is subject to the following understanding regarding the implementation of paragraphs 35-39 of the arrangement with respect to 'Breaches or Compromises of Security' and 'Inspections'. In view of the distribution of administrative responsibilities under the ICC Statute between the Registrar (article 43(1) ICC Statute) and the Prosecutor (article 42(2) ICC Statute), the Court shall implement the provisions of the security arrangements related to breaches or compromises of security and inspection through a division of competencies between the Security and Safety Section of the Registry and the Office of the Prosecutor.

I would be grateful if you could write back to me confirming that the security arrangements and the above understanding are agreeable to you. This letter and your response shall, thereby, constitute acceptance of the security arrangements in accordance with paragraph 4 of the Annex to the EU-ICC Agreement on Cooperation, and the security arrangement shall then enter into effect.

Yours Sincerely,

Phil Boskett
Chief of Security & Safety
International Criminal Court

Cc: Judge Philippe Kirsch, ICC President,
Mr Luis Moreno Ocampo, ICC Prosecutor
Mr Bruno Cathala, ICC Registrar

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Brussels, 31 March 2008

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Mr Phil Boskett
Chief of Security and Safety
International Criminal Court
Maanweg 174

NL - 2516 AB The Hague



Dear Mr Boskett,

Further to your letter dated 10 March 2008, in my capacity as Director of the EU Council General Secretariat Security Office, pursuant to paragraph 4 of the Annex to the 'Agreement between the International Criminal Court and the European Union on Cooperation and Assistance', I am pleased to confirm the Council Security Committee's acceptance of the 'Security Arrangements between the EU Council General Secretariat Security Office (GSCSO) and the European Commission Security Directorate (ECSD) and the International Criminal Court Security and Safety Section (ICC-SSS) for the Protection of Classified Information Exchanged between the EU and the ICC', the text of which is annexed to your letter.

I am also pleased to confirm acceptance of the understanding regarding the implementation of paragraphs 35-39 of the arrangement with respect to 'Breaches or Compromises of Security' and 'Inspections'. In view of the distribution of administrative responsibilities under the ICC Statute between the Registrar (article 43(1) ICC Statute) and the Prosecutor (article 42(2) ICC Statute), the Court shall implement the provisions of the security arrangements related to breaches or compromises of security and inspection

through a division of competencies between the Security and Safety Section of the Registry and the Office of the Prosecutor.

I hereby confirm that your letter and this response constitute acceptance of the security arrangements in accordance with paragraph 4 of the Annex to the EU-ICC Agreement on Cooperation, and that the security arrangement may enter into effect as from this date.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alexandro Legein', written in a cursive style.

Alexandro Legein
Private Office of the Secretary General/
High Representative
Director of Security