

**National Interest Analysis [2017] ATNIA 5
with attachment on consultation**

**Agreement between the Government of Australia and the Government of the French
Republic regarding the Exchange and Reciprocal Protection of Classified Information**

(Paris, 7 December 2016)

[2017] ATNIF 5

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the French Republic Regarding the Exchange and Reciprocal Protection of Classified Information

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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of the French Republic regarding the Exchange and Reciprocal Protection of Classified Information* ('the proposed Agreement'), signed at Paris on 7 December 2016.
2. In accordance with Article 20, the proposed Agreement will enter into force on the date on which the Government of Australia and the Government of the French Republic ('the Parties') have notified each other that their respective internal procedures for entry into force of the proposed Agreement have been completed.
3. Australia will notify the Government of the French Republic of the completion of Australia's internal procedures as soon as practicable after the tabling period and consideration by the Joint Standing Committee on Treaties.
4. Upon its entry into force, the proposed Agreement will supersede the following:
 - a) the *Agreement between the Government of Australia and the Government of the French Republic relating to the Exchange and Communication of Classified Information* done in Paris on 15 July 1985; and
 - b) the *Arrangement between the Secretary of the Department of Defence of Australia and the Secretary General of National Defence of the French Republic relating to the Exchange and Communication of Classified Information* signed in Paris on 15 July 1985.

Overview and national interest summary

5. The proposed Agreement will strengthen the framework for the exchange of Classified Information between the Government of Australia and the Government of the French Republic, ensuring mutual protection of Classified Information exchanged under the proposed Agreement. The proposed Agreement will cover Australian and French government agencies, and contractors of either Party located in the territory of the other Party.

Reasons for Australia to take the proposed treaty action

6. Developing closer security cooperation with France is a strategic priority for the Australian Government. As that cooperation continues to develop, the potential and, in some cases, the need for greater information sharing with France will increase. The proposed Agreement affirms both Parties' mutual interest in the reciprocal protection of Classified Information exchanged between the Parties.

Obligations

7. The proposed Agreement provides a framework for protecting Classified Information exchanged between the Parties. It does not require the exchange of Classified Information. Under the proposed Agreement, Classified Information will be afforded a degree of protection equivalent to that afforded domestically.
8. The proposed Agreement reflects similar agreements Australia has in place with other countries and international organisations, including the United States of America, Japan, the European Union and the North Atlantic Treaty Organization.
9. 'Classified Information' is defined in Article 2 of the proposed Agreement as any information or material, regardless of the form, determined to require protection against unauthorised disclosure or compromise which has been designated with a security classification.
10. The Attorney-General's Department is designated under Article 4 of the proposed Agreement as Australia's National Security Authority responsible for the general control and implementation of the proposed Agreement. Other Australian agencies may be designated or authorised as Competent Security Authorities responsible for carrying out or implementing particular requirements under the proposed Agreement.
11. Article 5 lists the security classifications which the Parties will use to mark or otherwise designate Classified Information and obliges the receiving Party to mark or otherwise designate Classified Information at the equivalent level. It also sets out special handling arrangements for particular types of Classified Information and the circumstances in which those handling arrangements apply. Downgrading or declassifying information received is only permitted with the prior written consent of the originating Party.
12. Under Article 6, the Parties agree to apply the following rules for the protection and use of Classified Information exchanged or generated under the proposed Agreement:
 - a) Classified Information is to be given reciprocal protection in accordance with Article 5;
 - b) without written consent to the contrary, Classified Information provided by a Party is only to be disclosed or used for purposes specified by that Party;
 - c) access to Classified Information is strictly limited to individuals who have a need-to-know and hold an appropriate security clearance;
 - d) each Party is responsible for ensuring that areas and facilities in their jurisdiction comply with relevant laws and policies in relation to security;
 - e) Classified Information is not to be disclosed, released or provided to a third party without the prior written consent of the originating Party;

- f) the Parties will mutually determine the classification of any Classified Information developed jointly;
 - g) Classified Information generated jointly will not be disclosed, released or provided to a third party without the prior written consent of the other Party; and
 - h) appropriate accountability and control procedures will be maintained to manage the dissemination of, and access to, Classified Information.
13. Article 6 also provides that the receiving Party will destroy Classified Information as appropriate, and will notify the other Party of its destruction. Information classified TOP SECRET or TRÈS SECRET DÉFENSE will not be destroyed and will be returned to the originating Party.
14. Under Article 7, personnel security clearances issued by one Party will be accepted by the other Party for the purposes of access to Classified Information. If necessary, Australia will commence personnel security clearance processes for French nationals where they are resident in Australia (and vice versa). The Parties will notify each other if there is any significant change to the personnel security clearance of an individual having access to Classified Information exchanged under the proposed Agreement.
15. Article 8 requires that any translations or reproductions of Classified Information will receive the same level of protection as the originals. The Article prohibits each Party from translating or reproducing Classified Information provided by the other Party and marked as TRÈS SECRET DÉFENSE / TOP SECRET without the other Party's prior written consent.
16. Article 9 sets out security requirements for transferring Classified Information under the proposed Agreement. Classified Information may be transferred in physical or electronic form in accordance with the laws and policies of the transferring Party.
17. Under Article 10, information and communications technology networks, systems and infrastructure that will be used for handling Classified Information transferred under the proposed Agreement are to be protected in accordance with mutually recognised and agreed methods and standards.
18. In accordance with Article 11, each Party will:
- a) inform the other about its security standards and laws and policies for the protection of Classified Information; and
 - b) notify the other Party of any significant changes that affect the way in which Classified Information transferred or received under the proposed Agreement is protected.

Principles for security cooperation between the Parties are set out in Annex A of the proposed Agreement.

19. Article 12 obliges a Party, before entering into a contract involving Classified Information with a contractor in the territory of the other Party, to:
- a) obtain written confirmation of the security clearance held by the relevant contractor or its personnel;

- b) obtain information on whether the relevant contractor is owned or controlled by a third party to the extent that information is known; and
 - c) ensure that the classified contract contains, at a minimum, specific provisions for the protection of Classified Information (as outlined in Annex B of the proposed Agreement).
20. Article 12 also makes the relevant authorities of the Party in whose territory a contractor is located responsible for administering the relevant security requirements performed under a classified contract and ensuring the security conduct of contractors within its territory.
21. Under Article 13, each Party will ensure that areas, facilities, contractors and other organisations in their territory that handle Classified Information exchanged or generated under the proposed Agreement protect that Classified Information in accordance with the proposed Agreement. This includes ensuring security inspections are carried out as appropriate.
22. Under Article 14, personnel of one Party may only conduct visits that require access to Classified Information or areas and facilities of the other Party with the prior written consent of that other Party. Article 15 allows each Party to permit security inspection visits to areas and facilities within its territory where Classified Information is exchanged or generated under this Agreement, to be conducted by authorised security personnel of the other Party for the purposes of ensuring appropriate implementation of the proposed Agreement. Procedures for requesting and approving visits are set out in Annex C of the proposed Agreement.
23. Article 16 provides that the Parties will notify each other of the details and circumstances of any unauthorised disclosure, destruction, misappropriation, loss of or access to Classified Information. The Party in whose jurisdiction the violation occurs shall investigate the violation, institute disciplinary and/or legal proceedings where appropriate, and inform the other Party of the outcome and measures adopted to prevent reoccurrence.
24. Article 18 provides that disputes will be exclusively resolved through consultations between the two Parties.

Implementation

25. No amendment to Australian law is required to implement the proposed Agreement. The proposed Agreement is implemented by laws and policies in place relating to protective security. The Australian Government Protective Security Policy Framework (PSPF) requires agencies to adhere to the provisions of any international security of information agreements. The proposed Agreement will not require any change to the existing roles of the Australian Government or the State and Territory governments.

Costs

26. There are no anticipated costs to the Australian Government in the implementation of the proposed Agreement.

Regulation Impact Statement

27. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

28. Article 19 of the proposed Agreement allows the relevant authorities of the Parties to enter into instruments to support the implementation of the proposed Agreement.
29. Under Article 20, the proposed Agreement may be amended by the written agreement of both Parties. Unless otherwise provided for by the Parties, any amendment to the proposed Agreement will enter into force once the Parties notify each other that their respective internal procedures for entry into force have been completed. Any such amendment will be subject to Australia's domestic treaty-making requirements.

Withdrawal or denunciation

30. In accordance with Article 20, the proposed Agreement may be terminated by either Party giving the other written notice of the intention to terminate. The Agreement will terminate six months after receipt of the written notice.
31. Each Party's obligations under the Agreement in relation to the protection, disclosure and use of Classified Information continue to apply after termination.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

State and Territory Governments

32. States and Territories have been kept informed through the biannual meeting of the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). No comments were received from the States or Territories. No action will be required from States or Territories to implement the proposed Agreement.

Public Consultation

33. No public consultation has been undertaken as the proposed Agreement relates to internal government processes and procedures.