

Agreement with the European Union on the Security of Classified Information

Introduction

- 4.1 The *Agreement between Australia and the European Union on the Security of Classified Information* establishes procedures for the exchange of classified information between Australia and the European Union (EU).¹
- 4.2 Classified information is defined by the agreement as information that is subject to a security classification assigned by either party, the unauthorised disclosure of which might cause damage or harm to the interests of either party.²
- 4.3 The agreement is substantially similar to other legally binding information-sharing agreements entered into by Australia.³
- 4.4 The Committee was informed that the agreement will strengthen relations between Australia and the EU. Specifically:

Concluding the [agreement] is an immediate action item under Objective 1, dealing with foreign policy and security interests, of the 2009 iteration of the Australia-European Union Partnership

1 *National Interest Analysis (NIA)* [2010] ATNIA 19, Agreement between Australia and the European Union on the Security of Classified Information, done at Brussels, 13 January 2010 [2010] ATNIF 2, para. 4.

2 NIA, para. 7.

3 Australia has also concluded agreements with Germany, Republic of Korea, NATO, Denmark, New Zealand, Singapore, South Africa, United States of America, Sweden, France and Canada. Mr John Griffin, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 21 June 2010, pp. 18 and 19.

Framework. The [agreement] will provide the opportunity to influence EU thinking on issues of importance to Australia. The [agreement] will also provide Australia with access to EU information, broadening our pool of data available for consideration when making policy decisions.⁴

Obligations

- 4.5 Under the agreement, each party will be obliged to protect classified information received from the other party, particularly from unauthorised disclosure. Protection will be afforded by giving the information an equivalent level of security classification to that which applied for the providing party. The agreement establishes the security classification levels for each party and the equivalent level of security classification that applies for the other party.⁵ In Australia, the security levels used are those contained in the Commonwealth's protective security policy.⁶
- 4.6 The agreement is based on the principle of originator control. Originator control means that the originator of the classified information must consent to its use or disclosure.⁷
- 4.7 In terms of the handling of classified material, the agreement requires each party to:
- ensure the security of the facilities in which the information provided by the other party is secured;
 - ensure that the material released by the other party retains the level of security assigned to it by the providing party; and
 - afford protection to the classified material provided by the other party at least equivalent to its own material of the same classification.⁸
- 4.8 The agreement requires that parties only use the classified information provided by the other party for the specific purpose for which it was released.⁹

4 Mr Griffin, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 21 June 2010, p. 19.

5 NIA, para. 7.

6 NIA, para. 17.

7 NIA, para. 8.

8 NIA, para. 9.

9 NIA, para. 10.

4.9 In addition, parties are not permitted to disclose the information to third parties without the express permission of the providing party.¹⁰ For Australian classified information, the EU:

...shall mean the Council of the European Union (hereafter referred to as "the Council"), the Secretary-General/High Representative and the General Secretariat of the Council, and the Commission of the European Communities (hereafter referred to as "the European Commission").¹¹

4.10 All other EU institutions or entities are considered third parties for the purposes of this provision.¹²

4.11 Individuals who access the information must have:

- a need to know the information to perform their official functions;
- a security clearance of an appropriate level; and
- been informed by the relevant party of their obligations in relation to the information.¹³

4.12 The agreement requires the parties to agree on a set of standards for the reciprocal protection of classified information and a set of standards where there is a suspected loss or compromise of the material.¹⁴

4.13 Departmental representatives emphasised to the Committee that while the agreement formalises the exchange of classified information:

...the decision-making process of what to pass is entirely an Australian Government prerogative.¹⁵

Implementation

4.14 No new legislation is required for implementation of the agreement.

4.15 The relevant security authorities of both parties are obliged however to conclude implementing arrangements. The Attorney-General's

10 NIA, para. 11.

11 Article 2.

12 NIA, para. 10.

13 NIA, para. 11.

14 NIA, para. 15.

15 Mr Griffin, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 21 June 2010, p. 23; Mr Alex Webling, Attorney-General's Department, *Transcript of Evidence*, 21 June 2010, p. 24.

Department has responsibility for developing these arrangements under the agreement.¹⁶ Implementation of the agreement will be overseen by the Minister for Foreign Affairs, the Minister for Defence and the Attorney-General.¹⁷

- 4.16 The Committee noted at the time of hearing that implementation arrangements, such as security standards, were still under negotiation.¹⁸

Conclusion

- 4.17 The Committee notes that this agreement is substantially similar to a number of agreements Australia has concluded with other countries relating to the exchange of security information. The agreement will allow Australia and the EU to exchange information that is subject to a security classification and establishes procedures for the protection of this material. The Committee supports binding treaty action being taken.

Recommendation 6

The Committee supports the *Agreement between Australia and the European Union on the Security of Classified Information* and recommends that binding treaty action be taken.

16 Mr Griffin, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 21 June 2010, p. 19.

17 NIA, para. 18.

18 Mr Webling, Attorney-General's Department, *Transcript of Evidence*, 21 June 2010, pp. 20–21; Mr Griffin, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 21 June 2010, p. 24.