



Treaty Series No. 29 (2003)

# Agreement

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the Government of the Federal Republic of Germany

## concerning the Mutual Protection of Protectively Marked Information

London, 9 May 2003

[The Agreement entered into force on 9 May 2003]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
July 2003*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED  
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND  
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY  
CONCERNING THE MUTUAL PROTECTION OF PROTECTIVELY  
MARKED INFORMATION**

The Government of the United Kingdom of Great Britain and Northern Ireland, and The Government of the Federal Republic of Germany (hereinafter referred to as the "Parties"),

Desiring to guarantee the security protection of protectively marked information which is exchanged between the competent authorities of the United Kingdom of Great Britain and Northern Ireland and of the Federal Republic of Germany or their contractors,

Have agreed as follows:

ARTICLE 1

**Definitions**

(1) For the purposes of this Agreement

1. "protectively marked information" means any classified item, in the form of an oral or visual communication, a document of classified contents, the electrical or electronic transmission of a classified message, or in material form. The term "material form" includes machinery, equipment and weapons which have been manufactured or which are in the process of manufacture;
2. "contractor" means an individual or legal entity entering into or bound by a contract;
3. "contract" or "sub-contract" means a legally enforceable agreement under the terms of which the parties to it enter into mutual obligations;
4. "protectively marked contract" means a contract which contains classified (protectively marked) information or which involves the generation, use or transmission of protectively marked information;
5. "document" means any letter, note, minute, report, memorandum, signal/message, sketch, photograph, film,

map, chart, diagram, plan, notebook, carbon paper, typewriter ribbon etc. or any other form of recorded information (e.g. tape recording, magnetic recording, punched card, tape etc.);

6. "originating Government" means the Government or competent authority of the country in which the protectively marked information originates;

7. "receiving Government" means the Government or competent authority of the country to which the protectively marked information is transmitted.

(2) The Parties determine that the following protective markings and security classifications shall be comparable and covered by this Agreement:

United Kingdom of Great Britain and  
Northern Ireland

Federal Republic of Germany

TOP SECRET  
SECRET  
CONFIDENTIAL  
RESTRICTED

STRENG GEHEIM  
GEHEIM  
VS-VERTRAULICH  
VS-NUR FÜR DEN  
DIENSTGEBRAUCH

(3) This Agreement shall not cover the exchange of nuclear, biological or chemical information (NBC information) relating to equipment referred to as "weapons of mass destruction (WMD)".

## ARTICLE 2

### Security Measures

(1) Within the scope of their national laws, the Parties shall take all appropriate measures to ensure the security protection of protectively marked information transmitted between them or transmitted to, held by, or generated by a contractor or an establishment in connection with a protectively marked contract placed by one Party within the territory or jurisdiction of the other Party.

(2) Protectively marked information shall be afforded a level of security protection that is at least equal to that required for the receiving Government's own protectively marked information of the comparable level of security classification as provided under paragraph (2) of Article 1 of this Agreement.

(3) The receiving Government shall restrict access to protectively marked information to those persons having a need-to-know and - except in the case of protectively marked information at the RESTRICTED/VS-NUR FÜR

DEN DIENSTGEBRAUCH level - having been security-cleared and authorised to have access to protectively marked information of the comparable level of security classification in accordance with the national security regulations.

(4) Personal Security Clearances for nationals of the Parties residing, and requiring access to protectively marked information, in their own country shall be undertaken by their National Security Authorities (NSAs)/Designated Security Authorities (DSAs) or other competent national authorities.

(5) However, Personal Security Clearances for nationals of one Party who are legally resident in the country of the other Party and apply for a security-sensitive job in that country shall be undertaken by the competent security authority of that country, conducting overseas checks as appropriate.

(6) A Personal Security Clearance issued by the NSA/DSA or other competent national authority of one Party shall be accepted by the other Party for employment involving access to protectively marked information in its respective country.

(7) Unless express written consent is given to the contrary, the receiving Government shall not disclose or use, or permit the disclosure or use of, any protectively marked information except for the purposes and within any limitations stated by or on behalf of the originating Government.

(8) Subject to the provisions of paragraph (3) of this Article, the receiving Government shall not pass on any of the information transmitted under the provisions of this Agreement to any Government official or contractor resident in a third country or to any international organisation without the prior written consent of the originating Government.

(9) Access to protectively marked information at the TOP SECRET/STRENG GEHEIM level by a person holding the sole nationality of a Party shall be granted without prior authorisation of the originating Government.

(10) Access to protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH and SECRET/GEHEIM levels by a person holding the sole nationality of a Party to the Framework Agreement from 27 July 2000<sup>1</sup> between the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of Spain, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry shall be granted without prior authorisation of the originating Government.

(11) Access to protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH and SECRET/GEHEIM levels by a person holding the dual nationality of both a Party and a European Union or

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<sup>1</sup> Treaty Series No.33 (2001) Cm 5185

NATO country shall be granted without prior authorisation of the originating Government. Any other access not covered by the paragraphs of this Article shall follow the consultation process as described in paragraph (12) numbers (1) to (5).

(12) Access to protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH level or higher by a person not holding the nationality/nationalities described in paragraphs (9)-(11) above shall be subject to prior consultation with the originating Government. The consultation process concerning such persons shall be as described in numbers (1) to (5) below.

1. The Parties shall notify and consult each other when there is a need to grant access to protectively marked information related to a specific project/programme to non-Party nationals.
2. This process shall be initiated before the start or, as appropriate, in the course of a project/programme.
3. The information shall be limited to the nationality of the persons concerned.
4. A Party receiving such notification shall examine whether access to its protectively marked information by non-Party nationals is acceptable or not.
5. Such consultations shall be given urgent consideration with the objective of reaching consensus. Where this is not possible the originator's decision shall be accepted.

(13) However, in order to simplify access to protectively marked information, the Parties shall endeavour to agree in Programme Security Instructions (PSI) or other appropriate documentation approved by the NSAs/DSAs concerned that the access limitations specified in paragraph (12) numbers 1 to 5 of this Article may be less stringent or not required.

(14) Where the originating Government, for reasons of national security, requires access to protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH level or higher to be limited to only those persons holding the sole nationality of one of the two Parties, such information shall be marked with the corresponding security classification and an additional "For UK/German Eyes Only" caveat.

(15) The Parties shall, each within its territory, ensure that the necessary security inspections are carried out and that the national security regulations are complied with.

## ARTICLE 3

### **Protectively Marked Contracts**

A competent authority intending to place, or authorising a contractor in its country to place, a protectively marked contract with a contractor in the country of the other Party shall obtain prior assurance from the competent authority of the other Party that the proposed contractor is security-cleared to the appropriate level and also has taken appropriate security precautions to provide adequate protection for protectively marked information. This does not apply where the protectively marked contract exclusively contains protectively marked information at the RESTRICTED/VS-NUR FÜR DEN DIENSTGEBRAUCH level. The above-mentioned assurance shall contain an obligation to ensure that the security procedures of the cleared contractor are in conformity with the national security regulations and provisions and monitored by the Government of the contractor.

## ARTICLE 4

### **Performance of Protectively Marked Contracts**

Contracts placed following receipt of the assurance provided for in Article 3 of this Agreement shall contain a security requirement clause incorporating at least the following provisions:

1. the definition of the term "protectively marked information" and of the comparable levels of protective markings and security classifications of the two Parties in accordance with the provisions of this Agreement;
2. the names of the competent authority of each of the two Parties empowered to authorise the release and to coordinate the safeguarding of protectively marked information related to the contract;
3. the channels to be used for the transfer of the protectively marked information between the competent authorities and contractors involved;
4. the procedures and mechanisms for communicating changes that may arise in respect of protectively marked information either because of changes in its protective markings or because protection is no longer necessary;
5. the procedures for the approval of visits, or access, by personnel of the contractors;

6. the procedures for transmitting protectively marked information to contractors where such information is to be used or kept;
7. the requirement that the contractor shall disclose the protectively marked information only to a person who has a need-to-know and has been charged with, or contributes to, the performance of the contract and - except in the case of protectively marked information at the RESTRICTED/VSNUR FÜR DEN DIENSTGEBRAUCH level - has been security-cleared to the appropriate level in advance;
8. the requirement that, subject to the provisions specified in number 7 of this Article, the contractor shall not disclose, or permit the disclosure of, the protectively marked information to a person not expressly authorised by the originating Government;
9. the requirement that the contractor shall immediately notify his/its competent authority of any actual or suspected loss, leak or unauthorised disclosure of the protectively marked information covered by the contract.

## ARTICLE 5

### **Protective Marking of Information**

(1) The originating Government shall ensure that the receiving Government is informed of:

1. the protective marking assigned to information, ensuring it is properly marked, and of the conditions for disclosure and the restrictions on use, and
2. any subsequent changes to the assigned protective markings.

(2) The receiving Government shall ensure that:

1. protectively marked information is marked with the corresponding protective markings or national security classifications in accordance with the provisions of paragraph (2) of Article 1 of this Agreement;
2. the assigned protective markings shall not be altered unless written permission to this effect has been given by, or on behalf of, the originating Government.



(3) In order to achieve and maintain comparable security standards, each Party shall provide the other Party upon the latter's request with information on its security standards and on the procedures and practices for ensuring the protection of protectively marked information.

## ARTICLE 6

### **Transmission of Protectively Marked Information**

(1) Protectively marked information at the TOP SECRET/STRENG GEHEIM level shall only be transmitted between the Parties through Government-to-Government diplomatic bag channels.

(2) Protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH and SECRET/GEHEIM levels shall normally be transmitted between the Parties through Government-to-Government diplomatic bag channels or through channels approved by the NSAs/DSAs of the Parties. Such protectively marked information shall bear the level of security classification and denote the country of origin.

(3) Protectively marked information at the RESTRICTED/VS-NUR FÜR DEN DIENSTGEBRAUCH or CONFIDENTIAL/VS-VERTRAULICH level may also be transmitted through the channels specified in paragraphs (4) and (5) of this Article.

(4) In cases of urgency, i.e. only when the use of Government-to-Government diplomatic bag channels cannot meet the requirements, protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH level may be transmitted via private courier companies, provided that the following criteria are met:

1. The courier company is located within the territory of the Parties and has established a protective security programme for handling valuable items with a signature service, including a record of continuous accountability on custody through either a signature and tally record, or an electronic tracking/tracing system.
2. The courier company must obtain and provide to the sender proof of delivery on the signature and tally record, or it must obtain receipts against package numbers.
3. The courier company must guarantee that the consignment will be delivered to the recipient by a specific time and date within a 24-hour period.

4. The courier company may charge a commissioner or sub-contractor. However, the responsibility for fulfilling the above requirements must remain with the courier company.

(5) Protectively marked information at the RESTRICTED/VS-NUR FÜR DEN DIENSTGEBRAUCH level shall be transmitted between the Parties in accordance with the national regulations of the sender, which may include the use of private courier companies.

(6) Protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH level or higher must not be transmitted electronically in clear text. Only cryptographic systems approved by the NSAs/DSAs concerned shall be used for the encryption of protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH level or higher, irrespective of the method of transmission. Protectively marked information at the RESTRICTED/VS-NUR FÜR DEN DIENSTGEBRAUCH level shall be transmitted or accessed electronically (e.g. by means of point-to-point computer links) via a public network like the Internet, only using commercial encryption devices mutually accepted by the competent national authorities. However, telephone conversations, video conferencing or facsimile transmissions containing protectively marked information at the RESTRICTED/VS-NUR FÜR DEN DIENSTGEBRAUCH level may be in clear text, if an approved encryption system is not available.

(7) Where large volumes of protectively marked information are to be transmitted, the means of transport, the route and the escort (if any) shall be jointly determined on a case-by-case basis by the competent authorities of the Parties.

## ARTICLE 7

### Visits

(1) Each Party shall permit visits involving access to protectively marked information to its government establishments, agencies and laboratories and contractor industrial facilities, by civilian or military representatives of the other Party or by their contractor employees, provided that the visitor has an appropriate Personal Security Clearance and a need-to-know.

(2) All visiting personnel shall comply with security regulations of the host Party. Any protectively marked information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be protected accordingly.

(3) For visits in the context of protectively marked information to Government establishments of the other Party or to facilities of a contractor where access to protectively marked information at the TOP SECRET/STRENG

GEHEIM level is required, formal visit requests through Government-to-Government channels shall be submitted.

(4) For visits in the context of protectively marked information to Government establishments of the other Party or to facilities of a contractor where access to protectively marked information at the CONFIDENTIAL/VS-VERTRAULICH or SECRET/GEHEIM levels is required, the following procedure shall apply:

1. Subject to the following provisions, such visits shall be prepared directly between the sending facility and the facility to be visited.
2. For these visits the following prerequisites must also be met:
  - a) The visit shall be for an official purpose.
  - b) Any facility of a contractor to be visited shall have the appropriate Facility Security Clearance.
  - c) Prior to arrival, confirmation of the visitor's Personal Security Clearance must be provided directly to the facility to be visited, by the security official of the sending facility. To confirm identity the visitor must be in possession of an ID card or passport for presentation to the security authorities at the facility to be visited.
  - d) It is the responsibility of the security officials of:
    - aa) the sending facility to ensure with their NSA/DSA that any company facility to be visited is in possession of an appropriate Facility Security Clearance;
    - bb) both the sending facility and the facility to be visited to agree that there is a need for the visit.
  - e) The security official of a company facility to be visited or, where appropriate, a Government establishment must ensure that records are kept of all visitors, including their name, the organisation they represent, the date of expiry of the Personal Security Clearance, the date(s) of the visit(s) and the name(s) of the person(s) visited. Such records are to be retained for a period of no less than five years.

f) The NSA/DSA of the host Party has the right to require prior notification from their facilities to be visited for visits of more than 21 days' duration. This NSA/DSA may then grant approval, but should a security problem arise it shall consult with the NSA/DSA of the visitor.

(5) Visits relating to protectively marked information at the RESTRICTED/VS-NUR FÜR DEN DIENSTGEBRAUCH level shall also be arranged directly between the sending facility and the facility to be visited.

## ARTICLE 8

### **Violations of Provisions on the Protection of Protectively Marked Information**

(1) Violations of the provisions on the protection of protectively marked information, in respect of which unauthorised disclosure of such information has occurred or is suspected, shall be immediately notified to the originating Government by the competent authority of the receiving Government.

(2) In such cases, the competent authorities shall carry out investigations and, where appropriate, institute disciplinary and/or legal proceedings in accordance with the applicable national regulations. The other Party should, if so requested, support such investigations and shall be informed of the outcome.

## ARTICLE 9

### **Costs of Implementation of Security Measures**

Each Party shall bear the costs incurred by it in implementing the provisions of this Agreement.

## ARTICLE 10

### **Competent Authorities**

For the purpose of implementing this Agreement, the Parties shall inform each other of their respective competent authorities.

## ARTICLE 11

### **Relationship with other Agreements, Memoranda of Understanding and Arrangements**

Any existing Agreements, Memoranda of Understanding and Arrangements between the Parties or the competent authorities on the protection of protectively marked information shall be unaffected by this Agreement.

## ARTICLE 12

### **Application to Protectively Marked Information Already Transmitted**

Protectively marked information which has already been exchanged between the competent authorities shall continue to be handled in accordance with the national security regulations of the receiving Government.

## ARTICLE 13

### **Consultations**

Each Party shall allow security experts of the other Party to visit its territory from time to time, as mutually agreed, in order to discuss with its security authorities its procedures and facilities for the protection of protectively marked information made available to it by the other Party.

## ARTICLE 14

### **Entry into Force, Review and Termination**

- (1) This Agreement shall enter into force upon signature.
- (2) Either Party may at any time submit a written request for the amendment of this Agreement. If such a request is submitted by one of the Parties, the Parties shall initiate negotiations on the amendment of the Agreement. In any case, this Agreement shall be reviewed jointly by the Parties ten years after the date of its entry into force.
- (3) Either Party may, through diplomatic channels, terminate this Agreement by giving six months' written notice. In the event of termination of this Agreement by one Party, all items of protectively marked information transmitted or generated by the other Party on the basis of this Agreement shall continue to be treated in accordance with the provisions of this Agreement.

(4) Registration of this Agreement with the Secretariat of the United Nations, in accordance with Article 102 of the United Nations Charter, shall be initiated by the Government of the United Kingdom of Great Britain and Northern Ireland immediately following its entry into force. The other Party shall be informed of registration, and of the UN registration number, as soon as this has been confirmed by the Secretariat.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at London on 9<sup>th</sup> May 2003 in duplicate in the English and German languages, both texts being equally authentic.

For the Government  
of the United Kingdom of  
Great Britain and Northern Ireland:

DAVID OMAND

For the Government of the  
Federal Republic of Germany:

THOMAS MATUSSEK





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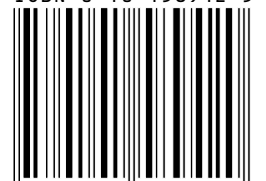
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