ANNEX VIII

Confidential and sensitive documents and information

A. Consideration of confidential documents communicated to Parliament

Procedure for the consideration of confidential documents communicated to the European Parliament

1. Confidential documents shall mean documents and information to which public access may be refused in accordance with Article 4 of European Parliament and Council Regulation (EC) No 1049/2001 and shall include sensitive documents as defined in Article 9 of that Regulation.

Where the confidential nature of documents received by Parliament is questioned by one of the institutions, the matter shall be referred to the interinstitutional committee established pursuant to Article 15(2) of Regulation (EC) No 1049/2001.

When confidential documents are communicated to Parliament under cover of confidentiality, the chair of Parliament's committee responsible shall automatically apply the confidential procedure laid down in paragraph 3 below.

Further rules concerning the protection of confidential documents shall be adopted by the plenary on the basis of a proposal from the Bureau and shall be annexed to the Rules of Procedure. These rules shall take account of contacts with the Commission and Council.

2. Any committee of the European Parliament shall be entitled to apply the confidential procedure to an item of information or a document indicated by one of its members in a written or oral request. A majority of two thirds of the members present shall be required for a decision to apply the confidential procedure.

3. Once the chair of the committee has declared that proceedings are confidential, they may be attended only by members of the committee and by officials and experts who have been designated in advance by the chair and whose presence is strictly necessary.

The documents, which shall be numbered, shall be distributed at the beginning of the meeting and collected again at the end. No notes of these, and certainly no photocopies, may be taken.

The minutes of the meeting shall make no mention of the discussion of the item taken under the confidential procedure. Only the relevant decision, if any, may be recorded.

4. Three members of a committee which has applied the confidential procedure may request consideration of a breach of confidentiality, and this may be placed on the agenda. By a majority of its members, the committee may decide that consideration of the breach of confidentiality shall be placed on the agenda for the first meeting following the submission of the request to its chair.

5. Penalties: In cases of infringement, the chair of the committee shall, after consulting the vice-chairs, lay down in a reasoned decision the penalties to be applied (reprimand, exclusion from the committee for a shorter or longer period or permanently).

The member concerned may lodge an appeal without suspensory effect against this decision. This appeal shall be considered jointly by the Conference of Presidents of the European Parliament and the bureau of the committee concerned. Their majority decision shall be final.

If it is proved that an official has failed to respect confidentiality, the penalties for which the Staff Regulations provide shall apply.

B. Access by Parliament to sensitive information in the field of security and defence policy

Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy

THE EUROPEAN PARLIAMENT AND THE COUNCIL,

Whereas:

(1) Article 21 of the Treaty on European Union states that the Council Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. That Article also stipulates that the European Parliament shall be kept regularly informed by the Council Presidency and the Commission of the development of the common foreign and security policy. A mechanism should be introduced to ensure that these principles are implemented in this field.

(2) In view of the specific nature and the especially sensitive content of certain highly classified information in the field of security and defence policy, special arrangements should be introduced for the handling of documents containing such information.

(3) In conformity with Article 9(7) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, the Council is to inform the European Parliament regarding sensitive documents as defined in Article 9(1) of that Regulation in accordance with arrangements agreed between the institutions.

(4) In most Member States there are specific mechanisms for the transmission and handling of classified information between national governments and parliaments. This Interinstitutional Agreement should provide the European Parliament with treatment inspired by best practices in Member States,

HAVE CONCLUDED THIS INTERINSTITUTIONAL AGREEMENT:

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1. Scope

1.1 This Interinstitutional Agreement deals with access by the European Parliament to sensitive information, i.e. information classified as "TRÈS SECRET/TOP SECRET", "SECRET" or "CONFIDENTIAL", whatever its origin, medium or state of completion, held by the Council in the field of security and defence policy and the handling of documents so classified.

1.2 Information originating from a third State or international organisation shall be transmitted with the agreement of that State or organisation.

Where information originating from a Member State is transmitted to the Council without explicit restriction on its dissemination to other institutions other than its classification, the rules in sections 2 and 3 of this Interinstitutional Agreement shall apply. Otherwise, such information shall be transmitted with the agreement of the Member State in question.

In the case of a refusal of the transmission of information originating from a third State, an international organisation or a Member State, the Council shall give the reasons.

1.3 The provisions of this Interinstitutional Agreement shall apply in accordance with applicable law and without prejudice to Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry⁴ and without prejudice to existing arrangements, especially the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure⁵.

2. General rules

2.1 The two institutions shall act in accordance with their mutual duties of sincere cooperation and in a spirit of mutual trust as well as in conformity with the relevant Treaty provisions. Transmission and handling of the information covered by this Interinstitutional Agreement must have due regard for the interests which classification is designed to protect, and in particular the public interest as regards the security and defence of the European Union or of one or more of its Member States or military and non-military crisis management.

2.2 At the request of one of the persons referred to in point 3.1, the Presidency of the Council or the Secretary-General/High Representative shall inform them with all due despatch of the content of any sensitive information required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by this Interinstitutional Agreement, taking into account the public interest in matters relating to the security and defence of the European Union or of one or more of its Member States or military and non-military crisis management, in accordance with the arrangements laid down in section 3.

3. Arrangements for access to and handling of sensitive information

3.1 In the context of this Interinstitutional Agreement, the President of the European Parliament or the Chairman of the European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy may request that the Presidency of the Council or the Secretary-General/High Representative convey information to this committee on developments in European security and defence policy, including sensitive information to which point 3.3 applies.

3.2 In the event of a crisis or at the request of the President of the European Parliament or of the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, such information shall be provided at the earliest opportunity.

3.3 In this framework, the President of the European Parliament and a special committee chaired by the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and composed of four members designated by the Conference of Presidents shall be informed by the Presidency of the Council or the Secretary-General/High Representative of the content of the sensitive information where it is required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by this Interinstitutional Agreement. The President of the European Parliament and the special committee may ask to consult the documents in question on the premises of the Council.

Where this is appropriate and possible in the light of the nature and content of the information or documents concerned, these shall be made available to the President of the European Parliament, who shall select one of the following options:

(a) information intended for the chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy;

(b) access to information restricted to the members of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy only;

(c) discussion in the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, meeting in camera, in accordance with arrangements which may vary by virtue of the degree of confidentiality involved;

(d) communication of documents from which information has been expunged in the light of the degree of secrecy required.

These options are not applicable if sensitive information is classified as "TRÈS SECRET/TOP SECRET".

As to information or documents classified as "SECRET" or "CONFIDENTIAL", the selection by the President of the European Parliament of one of these options shall be previously agreed with the Council.

The information or documents in question shall not be published or forwarded to any other addressee.
4. Final provisions

4.1 The European Parliament and the Council, each for its own part, shall take all necessary measures to ensure the implementation of this Interinstitutional Agreement, including the steps required for the security clearance of the persons involved.

4.2 The two institutions are willing to discuss comparable Interinstitutional Agreements covering classified information in other areas of the Council's activities, on the understanding that the provisions of this Interinstitutional Agreement do not constitute a precedent for the Union's or the Community's other areas of activity and shall not affect the substance of any other Interinstitutional Agreements.

4.3 This Interinstitutional Agreement shall be reviewed after two years at the request of either of the two institutions in the light of experience gained in implementing it.

Annex

This Interinstitutional Agreement shall be implemented in conformity with the relevant applicable regulations and in particular with the principle according to which the consent of the originator is a necessary condition for the transmission of classified information as laid down in point 1.2.

Consultation of sensitive documents by the members of the Special Committee of the European Parliament shall take place in a secured room at the Council premises.

This Interinstitutional Agreement shall enter into force after the European Parliament has adopted internal security measures which are in accordance with the principles laid down in point 2.1 and comparable to those of the other institutions in order to guarantee an equivalent level of protection of the sensitive information concerned.

C. Implementation of the Interinstitutional Agreement governing Parliament access to sensitive information in the sphere of security and defence policy

European Parliament decision of 23 October 2002 on the implementation of the Interinstitutional Agreement governing European Parliament access to sensitive Council information in the sphere of security and defence policy

THE EUROPEAN PARLIAMENT,

having regard to Article 9, and in particular paragraphs 6 and 7 thereof, of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents,

having regard to point 1 of Annex VIII, part A of its Rules of Procedure,

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having regard to Article 20 of the Bureau Decision of 28 November 2001 on public access to Parliament documents,

having regard to the Interinstitutional Agreement between the European Parliament and the Council on European Parliament access to sensitive Council information in the sphere of security and defence policy,

having regard to the Bureau proposal,

having regard to the specific nature and the particularly sensitive substance of some highly confidential items of information in the sphere of security and defence policy,

whereas, in accordance with the provisions agreed between the institutions, the Council is required to make information about sensitive documents available to Parliament,

whereas the Members of the European Parliament who sit on the special committee set up by the Interinstitutional Agreement must be cleared for access to sensitive information in accordance with the ‘need-to-know’ principle,

having regard to the need to lay down specific arrangements for receiving, dealing with and safeguarding sensitive information forwarded by the Council, Member States, third States or international organisations,

HAS DECIDED:

Article 1

This Decision adopts the additional measures required to implement the Interinstitutional Agreement governing European Parliament access to sensitive Council information in the sphere of security and defence policy.

Article 2

Parliament’s requests for access to sensitive Council information shall be dealt with by the latter in a manner consistent with its relevant rules. If the documents requested have been drawn up by other institutions, Member States, third countries or international organisations, they shall be forwarded only with the agreement of the institutions, States or organisations concerned.

Article 3

The President of Parliament shall be responsible for the implementation of the Interinstitutional Agreement within the Institution.

In that connection, he/she shall take all the measures required to guarantee that information received directly from the President of the Council or the Secretary-General/High Representative, or information obtained in the course of the consultation of sensitive documents on the Council’s premises, is dealt with in a confidential manner.

**Article 4**

When the President of Parliament or the chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy asks the Council Presidency or the Secretary-General/High Representative to supply sensitive information to the special committee set up by the Interinstitutional Agreement, that information shall be provided as soon as possible. In that connection, Parliament shall fit out a room specially designed for the holding of meetings to deal with sensitive information. The room shall be chosen with a view to guaranteeing a level of protection equivalent to that laid down for this type of meeting by Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations.

**Article 5**

The information meeting chaired by the President of Parliament or by the chairman of the above-mentioned committee shall be held in camera.

With the exception of the four Members appointed by the Conference of Presidents, only those officials who, by virtue of their duties or in accordance with operational requirements, have been cleared and authorised to enter it subject to the ‘need-to-know’ principle shall have access to the meeting room.

**Article 6**

Pursuant to paragraph 3.3 of the above-mentioned Interinstitutional Agreement, when the President of Parliament or the chairman of the above-mentioned committee decides to request authorisation to consult documents containing sensitive information, that consultation shall be carried out on the Council’s premises.

Documents shall be consulted on the spot in whatever version they are available.

**Article 7**

The Members of Parliament who are to attend information meetings or have access to sensitive documents shall be the subject of a clearance procedure similar to that undergone by Members of the Council and Members of the Commission. In that connection, the President of Parliament shall take the requisite steps vis-à-vis the competent national authorities.

**Article 8**

Officials who are to have access to sensitive information shall be cleared in accordance with the provisions laid down for the other institutions. Officials cleared in this way subject to the ‘need-to-know’ principle shall be invited to attend the above-mentioned information meetings or to peruse the documents in question. In that connection, the Secretary-General, after consulting the competent Member State authorities, shall grant clearance on the basis of the security inquiry carried out by those same authorities.

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Article 9
The information obtained at such meetings or during the consultation of such documents on the Council’s premises shall not be disclosed, disseminated or reproduced, either in full or in part, in any form. By the same token, no recording of particulars relating to the sensitive information provided by the Council shall be authorised.

Article 10
The Members of Parliament designated by the Conference of Presidents to have access to the sensitive information shall be bound by the requirement to maintain confidentiality. Any Member who breaches that requirement shall be replaced on the special committee by another Member designated by the Conference of Presidents. In that connection, the Member guilty of a breach of the requirement may, prior to his/her exclusion from the special committee, be heard by the Conference of Presidents, which shall hold a special meeting in camera. In addition to his/her exclusion from the special committee, the Member responsible for leaking information may, if appropriate, be the subject of judicial proceedings pursuant to the relevant legislation in force.

Article 11
Officials duly cleared to have access to sensitive information in accordance with the ‘need-to-know’ principle shall be bound by the requirement to maintain confidentiality. Any official who breaches that rule shall be the subject of an inquiry conducted under the authority of the President and, if appropriate, disciplinary proceedings in accordance with the Staff Regulations (statut des fonctionnaires). Should judicial proceedings be initiated, the President shall take all the measures required to enable the competent national authorities to implement the appropriate procedures.

Article 12
The Bureau shall be competent to undertake any revision, amendment or interpretation necessitated by the implementation of this Decision.

Article 13
This Decision shall be annexed to Parliament’s Rules of Procedure and shall enter into force on the day of its publication in the Official Journal of the European Communities.

D. Personal conflicts of interest
With the approval of the Bureau, a Member may, on the basis of a reasoned decision, be denied the right to inspect a Parliament document if, after having heard the Member concerned, the Bureau comes to the conclusion that such inspection would cause unacceptable damage to Parliament’s institutional interests or to the public interest, and that the Member concerned is seeking to inspect the document for private and personal reasons. The Member may lodge a written appeal, which must include reasons, against such a decision within one month of notification thereof. Parliament
shall reach a decision on the appeal without debate during the part-session that follows its being lodged.