

No. 19633

**AUSTRALIA
and
FEDERAL REPUBLIC OF GERMANY**

**Exchange of notes constituting an agreement for the
reciprocal safeguarding of classified material. Bonn,
27 November 1979**

Authentic texts: German and English.

Registered by Australia on 11 March 1981.

**AUSTRALIE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Échange de notes constituant un accord relatif à la
protection réciproque d'objets confidentiels. Bonn,
27 novembre 1979**

Textes authentiques : allemand et anglais.

Enregistré par l'Australie le 11 mars 1981.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹
BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
FOR THE RECIPROCAL SAFEGUARDING OF CLASSIFIED
MATERIAL

I

[GERMAN TEXT — TEXTE ALLEMAND]

AUSWÄRTIGES AMT

512-522.80/1 AUS

VERBALNOTE

Das Auswärtige Amt beehrt sich, auf Gespräche zwischen Vertretern des Auswärtigen Amts und der Australischen Botschaft über den gegenseitigen Schutz von Verschlusssachen Bezug zu nehmen, die zwischen der Bundesrepublik Deutschland und Australien ausgetauscht oder von der einen Vertragspartei für die andere freigegeben werden. In Anbetracht des gemeinsamen Wunsches, den Geheimschutz von Verschlusssachen sicherzustellen, die zwischen den zuständigen Regierungsdienststellen der Bundesrepublik Deutschland und Australiens oder im Rahmen von Regierungsaufträgen an deutsche oder australische Industriefirmen übermittelt werden, schlägt das Auswärtige Amt der Australischen Botschaft den Abschluß einer Vereinbarung zwischen der Regierung der Bundesrepublik Deutschland und der Regierung Australiens über den gegenseitigen Schutz von Verschlusssachen vor, die folgenden Wortlaut haben soll:

1. Im Sinne dieser Vereinbarung wird der Begriff „Verschlusssache“ im weitesten Sinne verstanden. Er umfaßt unter anderem Informationen, Dokumente und Materialien aller Art, die von einer der beiden Vertragsparteien oder auf ihre Veranlassung in einen Geheimhaltungsgrad eingestuft sind, ohne Rücksicht darauf, ob sie mündlich oder schriftlich oder durch Überlassung von Gegenständen übermittelt werden.

2. (1) Die beiden Regierungen treffen im Rahmen ihres innerstaatlichen Rechts alle geeigneten Maßnahmen, um Verschlusssachen, die nach dieser Vereinbarung übermittelt werden oder beim Auftragnehmer im Zusammenhang mit einem Verschlusssachen-Auftrag entstehen, zu schützen. Sie gewähren derartigen Verschlusssachen mindestens den gleichen Geheimschutz, wie er in den Bestimmungen oder Verfahren für eigene Verschlusssachen des entsprechenden Geheimhaltungsgrades gilt, und werden die Geheimhaltungsstufe der Verschlusssachen nur mit Zustimmung der Ursprungsregierung herabsetzen oder aufheben.

(2) Die beiden Regierungen werden die betreffenden Verschlusssachen nicht ohne Genehmigung der Ursprungsregierung der Regierung eines dritten Staates zugänglich machen und die Verschlusssachen nicht für einen anderen als den angegebenen Zweck verwenden. Die Verschlusssachen dürfen insbesondere nur solchen Personen zugänglich gemacht werden, deren dienstliche Aufgaben die Kenntnis notwendig machen und die

¹ Came into force on 27 November 1979, the date of the note in reply, in accordance with the provisions of the said notes.

12. Um eine enge Zusammenarbeit bei der Durchführung dieser Vereinbarung zu gewährleisten, konsultieren die zuständigen Regierungsdienststellen einander auf Antrag einer dieser Dienststellen (die zusätzliche Vorkehrungen treffen können, um die bei derartigen Konsultationen erzielten Absprachen aktenkundig zu machen).

13. (1) Jede Vertragspartei kann diese Vereinbarung außer Kraft setzen, indem sie der anderen Vertragspartei mindestens sechs Monate vor dem Tag des Außerkrafttretens schriftlich ihre diesbezügliche Absicht mitteilt.

(2) Im Falle des Außerkrafttretens sind die auf Grund dieser Vereinbarung an oder durch eine Vertragspartei übermittelten Verschlusssachen weiterhin nach den Bestimmungen dieser Vereinbarung zu behandeln.

Falls sich die Regierung Australiens mit dem Vorschlag der Regierung der Bundesrepublik Deutschland einverstanden erklärt, werden diese Verbalnote und die das Einverständnis ausdrückende Antwortnote der Australischen Botschaft eine Vereinbarung zwischen der Regierung der Bundesrepublik Deutschland und der Regierung Australiens bilden, die mit dem Datum der Antwortnote in Kraft tritt.

Das Auswärtige Amt benutzt diesen Anlaß, die Australische Botschaft erneut seiner ausgezeichnetsten Hochachtung zu versichern.

Bonn, den 27. November 1979

An die Australische Botschaft
Bonn-Bad Godesberg

[TRANSLATION — TRADUCTION]

MINISTRY OF FOREIGN AFFAIRS

512-522.80/1 AUS

NOTE VERBALE

[See note II]

Bonn, 27 November 1979

Australian Embassy
Bonn-Bad Godesberg

II

53/79

The Australian Embassy presents its compliments to the German Federal Foreign Office and has the honour to acknowledge the receipt of the Note Verbale 512-522 80/1 AUS of 27 November 1979 proposing the conclusion of an Agreement between the Government of Australia and the Government of the Federal Republic of Germany for the reciprocal safeguarding of classified material. The Embassy has translated the Note Verbale of 27 November 1979 and has been informed by

the Federal Foreign Office that the following translation of that Note is acceptable to the Federal Foreign Office:

“The German Federal Foreign Office presents its compliments to the Australian Embassy and has the honour to refer to discussions between officials of the Federal Foreign Office and the Australian Embassy concerning the mutual protection of classified material exchanged between the Federal Republic of Germany and Australia, or released by either party to the other. In view of the common desire to ensure the security protection of classified material transmitted between the competent government authorities of the Federal Republic of Germany and Australia or in connection with government contracts awarded to Australian or German companies, the Federal Foreign Office proposes to the Australian Embassy that an Agreement for the reciprocal safeguarding of classified material be concluded between the Government of Australia and the Government of the Federal Republic of Germany to read as follows:

1. For the purposes of this Agreement the term “classified material” means classified material in its widest sense. It comprises, *inter alia*, information, documents and material of all kinds having been given or caused to be given a security classification, irrespective of whether they are transmitted orally or in writing or in material form.

2. (1) Within the framework of their national laws, the two Governments shall take all appropriate measures to ensure the security protection of classified material transmitted pursuant to this Agreement or produced by the recipient of a contract involving the imposition of secrecy. They shall afford such classified material security protection at least equal to that applied under their own regulations or procedures to national material of the corresponding security classification and shall not downgrade or declassify such classified material without the approval of the originating Government.

(2) The two Governments shall not allow the Government of a third State access to the classified material concerned without permission from the originating Government, nor use such material for any purpose other than that stated. In particular, only such persons shall have access to classified material whose official duties necessitate knowledge thereof, and who have been authorised to have access after the requisite security screening, which must be as stringent as that for national material of the corresponding classification.

(3) The two Governments shall, each within its territory, ensure that the necessary security inspections are carried out and the appropriate security regulations or procedures complied with.

3. (1) The government authority competent for the granting of a contract shall inform the competent government authority of the other State in good time of the proposed award of a classified contract, stating the prospective recipient, the nature of the contract, and its classified parts.

(2) The government authority competent for the contract recipient shall inform the competent government authority of the other State of the “cleared facility status” of the contract recipient at the pre-contractual stage (readiness for negotiation).

4. (1) The two Governments shall ensure that no classified contract is awarded nor any work on its classified parts commenced until confirmation has been received from the security authority competent for the contract recipient that the necessary cleared facility status has been or can be granted by the competent government authority in good time (readiness for action).

(2) The government authority competent for the granting of the contract shall give a security classification to all material requiring security protection which is to be transmitted under the contract. It shall in addition communicate to the government authority competent for the contract recipient a summary in list form of its security classifications and any amendments thereto. It shall furthermore inform the competent government authority in the other State of the conclusion of the contract, its nature and the fact that the recipient has given an undertaking that he will observe the pertinent security regulations of his own Government as applying to the classified material entrusted to him, and that he will make statements to this effect to the competent authority of his country, if required ("secrecy observance clause" in the Federal Republic of Germany; in Australia the equivalent is the declaration of secrecy).

(3) The government authority competent for the contract recipient shall confirm in writing the receipt of the security classification list transmitted to it and forward the list to the recipient. It shall require the contract recipient in conformity with the secrecy observance clause (in Australia, official secrecy form) to treat the classified parts of the contract as material of his own Government properly classified according to the security classification list transmitted to him.

5. (1) Any classified material transmitted in connection with the contract shall, in addition, be marked or caused to be marked with the corresponding national classification by the competent government authority of the receiving State.

The following are corresponding classifications:

<i>Australia</i>	<i>Federal Republic of Germany</i>
Top secret	Streng geheim
Secret	Geheim
Confidential	VS-Vertraulich
Restricted	VS-Nur für den Dienstgebrauch (VS-NfD)

(2) The obligation to mark classified material shall also apply to such material received from the other State in connection with classified contracts which is reproduced or copied by the recipient.

(3) Unclassified business or company secrets shall be marked in a manner that is clearly distinct from the aforesaid classification.

6. (1) Classified material to be transmitted from either State to the other shall in principle be transmitted through the diplomatic courier service. The competent government authority shall confirm receipt of the classified material and forward it to the recipient through safe channels.

(2) Where classified material and documents of considerable volume are to be transmitted, the type of transport and the route as well as the escort shall be laid down in each individual case by the competent government authorities.

7. (1) Visitors from one State shall not have access in the other State to classified material or establishments where classified material is handled unless they have been previously authorised thereto by the competent government authorities of Australia and the Federal Republic of Germany. Permission shall only be granted to persons who have been security screened and authorised to deal with material of the security classification concerned.

(2) The competent government authority shall be notified of visitors at least two weeks in advance by the competent government authority of the dispatching State. The notification shall indicate the full name of the visitor, his date and place of birth, his designation and position, his national security clearance level, the cleared facility status of his employing firm where appropriate, the extent of his authorisation to act on, or discuss, certain matters and the place, purpose and time of the visit.

8. (1) If classified material has been lost or there is reason to believe it has been compromised, the competent government authority of the State of origin shall be informed without delay.

(2) Security offences shall be investigated and prosecuted under national laws or regulations by the competent authorities and courts of the State having jurisdiction. The government authority of the State of origin shall be informed of the outcome.

9. Expenses incurred by an authority in the implementation of security measures shall not be refunded as between the two Governments.

10. (1) The following are “competent government authorities” within the meaning of this Agreement:

(a) In Australia: The Minister for Defence or the authority designated by him;

(b) In the Federal Republic of Germany: The Federal Minister of Defence (Federal Armed Forces Security Section) or the authority designated by him *ad hoc*.

(2) The following are “competent security authorities” within the meaning of this Agreement:

(a) In Australia: The Department of Defence, Defence Security Branch (Government Security); Chief Security Adviser, Central Office of Industrial Security, Department of Defence (Industrial Security);

(b) In the Federal Republic of Germany: The Federal Minister of Economics (section ZB5).

11. This Agreement shall also apply to *Land Berlin*, subject to the rights and responsibilities of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, including those in the field of security, disarmament and demilitarisation, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of Australia within three months of the date of entry into force of this Agreement.

12. In order to ensure close co-operation in the implementation of this Agreement, the competent government authorities shall consult on request of either of those authorities (who may make supplementary arrangements to record understandings reached during consultations).

13. (1) Either party may terminate this Agreement by giving notice in writing to the other party of his intention to do so at least six months prior to the termination date.

(2) In the case of its termination, all classified material transmitted to or from either party on the basis of this Agreement shall continue to be treated in accordance with the provisions of this Agreement.

If the Government of Australia agrees to the proposals of the Government of the Federal Republic of Germany, this Note Verbale and the Australian Embassy's Note Verbale expressing agreement shall constitute an agreement between the Government of Australia and the Government of the Federal Republic of Germany, to enter into force on the date of the Note in reply.

The Federal Foreign Office avails itself of this opportunity to renew to the Australian Embassy the assurances of its highest consideration.

Bonn”

The Australian Embassy has the honour to inform the Federal Foreign Office that the Government of Australia agrees to the proposals of the Government of

the Federal Republic of Germany. Accordingly, the Note Verbale of the Federal Foreign Office of 27 November 1979 and this Note in reply thereto constitute an agreement between the Government of Australia and the Government of the Federal Republic of Germany, which enters into force on the date of this Note in reply.

The Australian Embassy avails itself of this opportunity to renew to the German Federal Foreign Office the assurances of its highest consideration.

Bonn-Bad Godesberg, 27 November 1979

The German Federal Foreign Office
Bonn