

No. 24028

**NETHERLANDS
and
FEDERAL REPUBLIC OF GERMANY**

Agreement on the reciprocal protection of classified material. Signed at The Hague on 4 March 1985

Authentic texts: Dutch and German.

Registered by the Netherlands on 27 March 1986.

**PAYS-BAS
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Accord relatif à la protection réciproque des objets confidentiels. Signé à La Haye le 4 mars 1985

Textes authentiques : néerlandais et allemand.

Enregistré par les Pays-Bas le 27 mars 1986.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY ON THE RECIPROCAL PROTECTION OF CLASSIFIED MATERIAL

The Government of the Kingdom of the Netherlands and the Government of the Federal Republic of Germany,

Desirous of ensuring the protection of classified material which is exchanged between the competent authorities of the two States or transmitted by German or Netherlands industrial undertakings or institutions within the framework of Government contracts,

Have agreed as follows:

Article 1. DEFINITION OF TERMS

For the purpose of this Agreement, the term “classified material” shall mean information, documents and articles of all kinds to which the competent authorities have given, or have caused to be given, a security classification, irrespective of whether they are transmitted orally or in writing or in material form.

Article 2. RECIPROCAL SECRECY PROTECTION

(1) The Contracting Parties shall, within the framework of their national law, take all appropriate measures for the protection of classified material which is transmitted pursuant to this Agreement or produced by a contractor under a contract involving classified material. They shall afford such classified material security protection at least equal to that prescribed for their own material of the corresponding security classification. Where more stringent security regulations are in force for classified material of the North Atlantic Treaty Organization, they shall apply those regulations. The competent authorities of the Contracting Parties shall take note of the security regulations in force in the territory of the other Contracting Party.

(2) The Contracting Parties shall not afford third countries access to the classified material concerned without the prior consent of the authority responsible for having classified it, and shall use it exclusively for the purpose stated. In particular, access to classified material may be granted only to persons whose official duties necessitate knowledge thereof and who are authorized to have such access by virtue of the prescribed security screening, which must be at least as thorough as that for access to national classified material. The competent authorities may in respect of a clearly defined project agree generally or subject to certain limitations, that citizens of third countries shall not be afforded access to

¹ Came into force on 1 October 1985, i.e., the first day of the second month following the date (2 August 1985) on which the Contracting Parties had informed each other of the completion of their constitutional requirements, in accordance with article 12.

the classified material concerned without the prior consent of the authority responsible for having classified it.

(3) The Contracting Parties shall ensure compliance with the security regulations within their respective territories.

Article 3. PREPARATION OF CLASSIFIED CONTRACTS

(1) The authority competent in respect of the awarder of the contract shall inform the competent authority of the other Contracting Party in good time of the proposed award of a classified contract, indicating the prospective contractor, the object of the contract, and the parts requiring security protection, as well as the highest security classification assigned to those parts.

(2) The authority competent for the recipient of the contract shall inform the competent authority of the other Contracting Party that the requisite security measures have been taken or, as the case may be, that those measures can be taken in good time.

Article 4. EXECUTION OF CONTRACTS INVOLVING CLASSIFIED MATERIAL

(1) The authority competent in respect of the awarder of the contract shall ensure that each item of classified material transmitted or produced within the framework of the contract is assigned a security classification; it shall transmit to the authority competent in respect of the recipient of the contract, in list form, a schedule of the security classifications of all classified material. At the same time, it shall inform the authority competent in respect of the recipient of the contract, that the recipient has given the awarder an undertaking that he will treat the classified material in accordance with the security regulations of his own country and will submit the necessary declarations to that effect to his country's competent authorities (secrecy protection clause).

(2) The authority competent in respect of the recipient of the contract shall acknowledge in writing the receipt of the list of security classifications of classified material transmitted to it and shall forward the list to the recipient of the contract. This authority shall ensure that classified material appearing in the list of security classifications is treated in accordance with the relevant security regulations in force in its country.

(3) Insofar as the authority competent in respect of the awarder of the contract shall authorize the award of sub-contracts, paragraphs 1 and 2 shall apply accordingly.

(4) The Contracting Parties shall ensure that the execution of those parts of a contract involving classified material which require security protection is embarked upon only when the authority competent in respect of the recipient of the contract has confirmed that the requisite security measures have been taken by the recipient.

Article 5. MARKING

(1) The classified material conveyed shall, in addition, be marked or caused to be marked by the competent authorities of the receiving State with the cor-

responding national security classification. The corresponding security classifications are as follows:

	<i>Federal Republic of Germany</i>	<i>Kingdom of the Netherlands</i>
TOP SECRET	STRENG GEHEIM	ZEER GEHEIM
SECRET	GEHEIM	GEHEIM
CONFIDENTIAL	VS-VERTRAULICH	VERTROUWELIJK/ CONFIDENTIEEL
RESTRICTED	VS-NUR FÜR DEN DIENSTGEBRAUCH	DIENSTGEHEIM

(2) The obligation to mark classified material shall also apply to such material produced by the recipient in connection with the execution of contracts involving classified material, and also to classified material which is duplicated in the course of such execution.

(3) Markings used to identify items whose secrecy is deemed necessary for reasons other than those covered by this Agreement (e.g., trade secrets, company secrets) shall be clearly distinct from the above-mentioned security classifications.

(4) Classifications shall be changed or rescinded in the receiving State only upon the request of the competent authority of the State of origin. The competent authority of the State of origin shall inform the competent authority of the receiving State six weeks in advance of its intention to change or rescind the classification.

Article 6. CONVEYANCE OF CLASSIFIED MATERIAL

(1) Classified material shall as a rule be conveyed from the one State to the other by diplomatic or military courier service. The competent authority shall acknowledge receipt and ensure safe forwarding to the addressee.

(2) The competent authorities may in respect of a clearly defined project agree, generally or subject to certain limitations, that classified material up to and including the SECRET category may be conveyed by means other than by diplomatic courier; this shall apply in cases where conveyance by diplomatic courier would excessively delay, or render unduly difficult, the delivery of an item or the execution of a contract. In such cases, the following conditions must be met:

The individual conveying the item must be authorized to have access to classified material of the security classification concerned;

A list of the items of classified material must be deposited with the sending office; a copy of the list shall be transmitted to the addressee for forwarding to the competent authority;

The item of classified material must be packaged in accordance with the regulations in force for conveyance within the country;

Delivery of the classified material must be effected against a certificate of receipt.

The security authority competent for the sending office shall issue a courier's pass which the individual entrusted with conveying the classified material must carry upon his or her person.

(3) Where the classified material to be conveyed is of considerable bulk, the method of transport, the transport route and the type of escort shall be decided upon in each individual case by the competent authorities.

Article 7. VISITS

(1) Visitors from one State shall have access in the other State to classified material or to installations where classified material is handled only with the prior permission of the competent authority of the State to be visited. Permission to visit shall be given only to persons authorized to have access to the classified material concerned.

(2) Notification of a visit shall be given to the competent authority of the State to be visited, through the competent authority of the sending State, at least four weeks before the starting date of the visit. The notification shall indicate the visitor's personal data, the extent of his authorization, the place to be visited and the purpose and date of the visit.

(3) The competent authorities may, by mutual consent, grant permission to visit for a certain period of time, which, however, may not exceed 12 months.

Article 8. BREACHES OF SECURITY

(1) Breaches of security where disclosure cannot be ruled out, or is suspected or discovered, shall be reported to the other Contracting Party without delay.

(2) Breaches shall be investigated and prosecuted in accordance with national regulations by the competent authorities and courts of the State in which they are committed.

Article 9. SECURITY COSTS

Costs incurred by the competent authorities in connection with the implementation of security measures shall not be refunded as between the Contracting Parties.

Article 10. COMPETENT AUTHORITIES

The competent authorities within the meaning of this Agreement in each of the two States shall be designated separately by or on behalf of the two Governments.

Article 11. RELATIONSHIP WITH OTHER ARRANGEMENTS

Arrangements existing between the Contracting Parties to regulate the protection of classified material shall remain in force, provided that they do not conflict with this Agreement.

Article 12. ENTRY INTO FORCE OF THE AGREEMENT

This Agreement shall enter into force on the first day of the second month following the date on which both Contracting Parties have informed one another

in writing that the constitutional requirements for the entry into force of the Agreement have been met.

Article 13. SCOPE OF THE AGREEMENT

As regards the Kingdom of the Netherlands, this Agreement shall apply only in respect of that part of the Kingdom which is situated in Europe.

Article 14. BERLIN CLAUSE

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 to which they are entitled in the fields of security, disarmament and demilitarization, this Agreement shall also apply to *Land Berlin* unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the Kingdom of the Netherlands within three months of the Agreement's entry into force.

Article 15. TERMINATION OF THE AGREEMENT

Either Contracting Party may terminate this Agreement in writing subject to a time-limit of six months. In the event of termination, classified material transmitted to the contractor or produced by him under this Agreement shall continue to be treated in accordance with the provisions of this Agreement.

DONE at The Hague on 4 March 1985 in two original copies, each in the Dutch and German languages, both texts being equally authentic.

For the Government of the Kingdom of the Netherlands:
H. VAN DEN BROEK

For the Government of the Federal Republic of Germany:
OTTO GABLENTZ
