Commission Decision (EU, Euratom) 2019/1961 of 17 October 2019 on implementing rules for handling CONFIDENTIEL UE/ EU CONFIDENTIAL and SECRET UE/EU SECRET information

COMMISSION DECISION (EU, Euratom) 2019/1961

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on implementing rules for handling CONFIDENTIEL UE/EU CONFIDENTIAL and SECRET UE/EU SECRET information

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 249 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106 thereof,

Having regard to Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on security in the Commission[(1)],

Having regard to Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information[(2)],

Having regard to Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission[(3)],

Whereas:

(1) Decision (EU, Euratom) 2015/444 applies to all Commission departments and in all premises of the Commission.

(2) Security measures for protecting EU classified information (EUCI) throughout its life-cycle are to be commensurate in particular with its security classification.

(3) Articles 4(3), 19(1)(c) and 22 of Decision (EU, Euratom) 2015/444 provide that more detailed provisions to supplement and support implementation of the Decision are to be laid down in implementing rules, governing issues such as a classification guide, compensatory measures for handling EUCI outside a Secured Area or an Administrative Area, and originator responsibilities.

(4) Where necessary, implementing rules to supplement or support Decision (EU, Euratom) 2015/444 are to be adopted in accordance with Article 60 of that Decision.

(5) Security measures taken to implement this Decision are to comply with the principles for security in the Commission set out in Article 3 of Decision (EU, Euratom) 2015/443.

(6) The Council, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy have agreed to ensure maximum consistency in the application of security rules regarding their protection of EUCI while taking into

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU, Euratom) 2019/1961. (See end of Document for details)*

account their specific institutional and organisational needs, in accordance with the declarations attached to the minutes of the Council session at which Council Decision 2013/488/EU[(4)].

(7) On 4 May 2016 the Commission adopted a decision[(5)] empowering the Member of the Commission responsible for security matters to adopt, on behalf of the Commission and under its responsibility, the implementing rules provided for in Article 60 of Decision (EU, Euratom) 2015/444,

HAS ADOPTED THIS DECISION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter and scope

1 This Decision sets out the handling conditions for EU classified information (EUCI) of CONFIDENTIEL UE/EU CONFIDENTIAL[(6)] and SECRET UE/EU SECRET[(7)] level in compliance with Decision (EU, Euratom) 2015/444.

2 This Decision shall apply to all Commission departments and in all premises of the Commission.

Article 2

Criteria for access to CONFIDENTIEL UE/EU CONFIDENTIAL and SECRET UE/EU SECRET information

1 Access to information classified as CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET may be granted after:

a The need for an individual to have access to certain CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET information in order to be able to perform a professional function or task for the European Commission has been determined;

b The individual has been briefed on the rules and the relevant security standards and guidelines for protecting CONFIDENTIEL UE/EU CONFIDENTIAL and SECRET UE/EU SECRET information;

c The individual has acknowledged their responsibilities for protecting the information concerned; and

d The individual has been authorised by the Commission security authority to access EUCI up to the relevant level and until a specified date in accordance with Article 10(1)3 of Decision (EU, Euratom) 2015/444.

2 Commission trainees shall not be given duties that require them to have access to CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET information.

3 Access shall be withheld or permitted for other categories of staff in accordance with the table set out in the Annex.

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CHAPTER 2

CREATING CONFIDENTIEL UE/EU CONFIDENTIAL AND SECRET UE/EU SECRET INFORMATION

Article 3

Originator

While the originator within the meaning of Article 1 of Decision (EU, Euratom) 2015/444 is the Union institution, agency or body, Member State, third state or international organisation under whose authority classified information has been created and/or introduced into the Union's structures, the drafter of CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET information will not necessarily be the same.

Article 4

Assigning a classification level

1 Staff drafting a document on the basis of information within the meaning of Article 1 shall always consider whether their document needs to be classified. Classifying a document as EUCI shall involve an assessment and a decision by the originator as to whether the disclosure of the document to unauthorised persons would cause prejudice to the interests of the European Union or of one or more of the Member States. If drafters are in any doubt as to whether the document they are drafting warrants being classified as CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET they should consult the Head of Unit or Director responsible.

2 A document shall be classified as at least CONFIDENTIEL UE/EU CONFIDENTIAL if its unauthorised disclosure could, inter alia:

- a materially damage diplomatic relations, i.e. cause formal protest or other sanctions;
- b prejudice individual security or liberty;
- c cause damage to the operational effectiveness or security of Member States' or other contributors' deployed personnel, or to the effectiveness of valuable security or intelligence operations;
- d substantially undermine the financial viability of major organisations;
- e impede the investigation of or facilitate serious crime;
- f work substantially against the Union's or Member States' financial, monetary, economic and commercial interests;
- g seriously impede the development or operation of major Union policies;
- h shut down or otherwise substantially disrupt significant Union activities;
- i lead to the discovery of information classified at a higher level.

3 Information shall be classified as at least SECRET UE/EU SECRET if its unauthorised disclosure could, inter alia:

- a raise international tensions;
- b seriously damage relations with third countries or international organisations;
- c threaten life directly or seriously prejudice public order or individual security or liberty;

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d cause serious damage to the operational effectiveness or security of Member States' or other contributors' deployed personnel, or to the continuing effectiveness of highly valuable security or intelligence operations;

e cause substantial material damage to the Union's or Member States' financial, monetary, economic or commercial interests;

f lead to the discovery of information classified at a higher level.

4 Originators may decide to attribute a standard classification level to categories of information that they create on a regular basis. However, they shall ensure that individual pieces of information are given the appropriate classification level.

Article 5

Working with drafts

1 Information shall be classified as soon as it is produced. Personal notes, preliminary drafts or messages containing information that warrants classification at the level of CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET shall be marked as such from the outset and shall be produced and handled in accordance with this Decision.

2 If the final document no longer warrants the initial classification level it shall be downgraded or declassified.

Article 6

Record of source material

In order to enable the exercise of originator control in accordance with Article 14, originators of CONFIDENTIEL UE/EU CONFIDENTIAL and SECRET UE/EU SECRET documents shall keep a record of any classified sources used for producing classified documents, including details of sources originally from EU Member States, international organisations or third countries. Where appropriate, aggregated classified information shall be marked in such a way as to preserve the identification of the originators of the classified source materials used.

Article 7

Classifying parts of a document

1 In accordance with Article 22(6) of Decision (EU, Euratom) 2015/444, the overall classification level of a document shall be at least as high as that of its most highly classified component. When information from various sources is collated, the final aggregated document shall be reviewed to determine its overall security classification level, since it may warrant a higher classification than its component parts.

2 Documents containing classified and non-classified parts shall be structured and marked so that components with different classification and/or sensitivity levels can be easily identified and detached if necessary. This shall enable each part to be handled appropriately when detached from the other components.

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Article 8

Full classification marking

1 Information that warrants classification shall be marked and handled as such regardless of its physical form. The classification level shall be clearly communicated to recipients, either by a classification marking, if the information is delivered in written form, whether this is on paper, on removable storage media or in a Communication and Information System (CIS), or by an announcement, if the information is delivered in oral form, such as in a conversation or a presentation. Classified material shall be physically marked so as to allow for easy identification of its security classification.

2 On documents, the full classification marking CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET shall be written in block capitals, in full in French and English (French first), in accordance with paragraph 3. The marking shall not be translated into other languages.

3 The CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET classification marking shall be affixed as follows:

a centred at the top and bottom of every page of the document;

b the complete classification marking on one line, with no spaces either side of the forward slash;

c in capitals, black, font Times New Roman 16 (when possible, but at least 14), bold and surrounded by a border on each side.

4 When creating a CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET document:

a each page shall be marked clearly with the classification level;

b each page shall be numbered;

c the document shall bear a reference number, a registration number and a subject, which itself shall not be classified information unless it is marked as such;

d all the annexes and enclosures shall be listed, whenever possible on the first page; and

e the document shall have the date of its creation on it.

5 When possible, the SECRET UE/EU SECRET marking shall appear in red.

Article 9

Abbreviated C-UE/EU-C and S-UE/EU-S classification markings

The abbreviations C-UE/EU-C and S-UE/EU-S may be used to indicate the classification level of individual parts respectively of a CONFIDENTIEL UE/ EU CONFIDENTIAL or SECRET UE/EU SECRET document or where the full classification marking cannot be inserted, for example on a small removable storage medium. It may be used in the body of text where repeated use of the full classification markings is cumbersome. The abbreviation shall not be used instead of the full classification markings in the header and footer of the document.