

**AGREEMENT BETWEEN
THE STATES PARTIES TO THE CONVENTION FOR THE
ESTABLISHMENT OF A EUROPEAN SPACE AGENCY
AND THE EUROPEAN SPACE AGENCY
FOR THE PROTECTION AND THE EXCHANGE
OF CLASSIFIED INFORMATION**

The States Parties to the Convention for the establishment of a European Space Agency (ESA) and the European Space Agency, hereinafter referred to as “the Parties”;

- CONSIDERING the Convention for the establishment of a European Space Agency (hereinafter referred to as "the ESA Convention") entered into force on 30 October 1980 and in particular Article III and Article XI.5.m. of this Convention;
- CONSIDERING Chapter V of the Rules on Information, Data and Intellectual Property ESA/C/CLV/Rules 5 (Final) adopted by the Council on 19 December 2001;
- RECOGNISING that the activities aimed at achieving co-operation among the Member States in space research and technology and their space applications might require the exchange of classified information and related material among the Parties;
- NOTING the necessity to ensure an appropriate level of protection of classified information within the Agency and its Member States and the need therefore to set up an appropriate legal instrument, as stated in ESA Council's Resolution on the creation of a Working Group on the Security of Information adopted by the Council under ESA/C/CLI/Res.8 (final);

have agreed as follows:

Article 1

For the purpose of this Agreement, classified information means any information, document or material in whatever form whose unauthorised disclosure could damage the interests of one or more of the Parties and which has been so designated by security classification.

Article 2

The Parties shall:

1. Protect and safeguard according to agreed security principles and minimum standards:
 - (a) classified information, marked as such, which is originated by ESA or which is submitted to ESA by a Member State;

- (b) classified information, marked as such, of any Member State, submitted to another Member State in support of an ESA programme, project or contract;
- 2. Maintain the security classification of information as defined under (1) above and safeguard it accordingly;
- 3. Use classified information as defined under (1) above only for purposes laid down in the ESA Convention and the decisions and resolutions pertaining to that Convention;
- 4. Not disclose such information as defined under (1) above to non-ESA Member States or bodies under their jurisdiction or to any other international organisation without the prior written consent of the originator.

Article 3

The Parties shall implement ESA security standards to ensure a common degree of protection for classified information.

Article 4

- 1. The States Parties shall ensure that all persons of their respective nationality who, in the conduct of their official duties require access, or whose duties or function may afford access to classified information provided for or exchanged under this Agreement are appropriately security cleared before they are granted access to such information and material.
- 2. The Parties shall ensure that access to classified information exchanged under the present Agreement shall be authorised only for persons having a need to know for carrying out their duties or missions.
- 3. Security clearance procedures shall be designed to establish whether an individual can, taking into account his loyalty and trustworthiness, be granted access to classified information.
- 4. Upon request, each of the States Parties shall co-operate with the other States Parties in carrying out their respective security clearance procedures.

Article 5

The Director General of ESA shall ensure that the relevant provisions of this Agreement are applied in the headquarters, in the establishments and in the other facilities of the Agency.

Article 6

1. The Parties shall investigate all cases where it is acknowledged or suspected that classified information provided or generated under this Agreement has been compromised or lost.
2. Each Party shall inform quickly and thoroughly the others, where necessary, of any details related to the case and of the eventual results of the investigation as well as of any corrective measures taken to prevent the repetition of any such disclosure.

Article 7

In cases where a representative of a Member State or the Director General of ESA or a staff member or an expert of ESA is involved in a legal pursuit regarding the unauthorised disclosure of classified information, the Member State, the Council and the Director General respectively shall, in compliance with Articles XIV.2 and XXI.1 and 2 and XXIV of Annex 1 of the ESA Convention, have the duty to waive the immunity.

Article 8

The present Agreement in no way prevents the Parties from making other agreements relating to the exchange of classified information originated by them and not affecting the scope of the present Agreement.

Article 9

1. Each Party may recommend amendments to this Agreement.
2. Any amendment to the present Agreement shall enter into force thirty days after the Government of France has received notification of acceptance from all Parties. The Government of France shall notify all Parties of the date of entry into force of any such amendment.

Article 10

1. This Agreement shall be open for signature by the Parties to the ESA Convention and shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of France.

2. This Agreement shall enter into force thirty days after the date of deposit by two signatory States of their instruments of ratification, acceptance or approval. It shall enter into force for each of other signatory State thirty days after the deposit of its instrument of ratification, acceptance or approval.

Article 11

1. The accession to this Agreement by any new State Party to the ESA Convention shall be in accordance with Article XXII of the Convention. The Agreement shall enter into force in respect of each acceding State thirty days after the day of the deposit of its instrument of accession.
2. Instruments of accession shall be deposited with the Government of France.

Article 12

1. This Agreement may be denounced by written notice by any State Party given to the depository, which shall inform all the other Parties of such notice. Such denunciation shall take effect one year after the receipt of notification by the depository.
2. A State Party denouncing this Agreement shall remain to be bound by its obligation to protect and safeguard classified information to which it has gained access on the basis of this Agreement. The same applies to a State Party to the present Agreement denouncing the ESA Convention in accordance with its Article XXIV or in the case of dissolution of the European Space Agency in accordance with Article XXV of the Convention.

Article 13

The Government of France shall notify ESA and all signatory and acceding States of the deposit of each instrument of ratification, acceptance, approval, accession or denunciation.

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

Done in Paris, this 19 day of August 2002, in a single copy in the English and French languages, each text being equally authoritative, which shall be deposited with the Government of France and of which certified copies shall be transmitted by that Government to each of the signatories.

