

HEADQUARTERS AGREEMENT

BETWEEN

THE EFTA COURT

AND

THE GRAND DUCHY OF LUXEMBOURG

The EFTA COURT
and
The Grand Duchy of Luxembourg

Having regard to the Agreement on the European Economic Area, signed in Oporto on 2 May 1992, as amended by the Protocol Adjusting the Agreement on the European Economic Area, signed in Brussels on 17 March 1993 and the Decision of the EEA Council on the entry into force of the Agreement on the European Economic Area for the Principality of Liechtenstein, done at Brussels 10 March 1995,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, signed in Oporto on 2 May 1992 and adjusted on 17 March 1993 by the Protocol Adjusting the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, as well as a Protocol Regarding the Application to Liechtenstein of Decisions and Other Measures taken under Certain Agreements between the EFTA States, done at Brussels 18 May 1995,

Having regard to Protocol 7 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, on the Legal Capacity, Privileges and Immunities of the EFTA Court,

Having regard to the decision of the participating Governments to move the EFTA Court's seat to Luxembourg,

Desirous to conclude an Agreement defining the privileges and immunities necessary for the exercise of the functions of the EFTA Court in Luxembourg,

Having appointed to this end as their representatives:

The EFTA Court:
Mr. Bjørn HAUG
President of the EFTA Court

The Grand Duchy of Luxembourg:
His Excellency Mr. Jacques F. POOS
*Minister of Foreign Affairs,
Foreign Trade and Co-operation*

who have agreed as follows:

I. Status, privileges and immunities of the Court

Article 1

Personality

The Grand Duchy of Luxembourg acknowledges the international legal personality and the legal capacity within Luxembourg of the EFTA Court, hereinafter referred to as "the Court".

Article 2

Inviolability of premises

1. The buildings or parts of buildings and surrounding land which, whoever may be the owner thereof, are used for the purposes of the Court shall be inviolable. No agent of the Luxembourg public authorities may enter therein without the express consent of the President of the Court or of a person designated by him.
2. However, this consent shall be presumed to have been given in the case of fire or another incident requiring immediate protective measures.
3. The Grand Duchy of Luxembourg shall take all appropriate measures to prevent the premises of the Court from being occupied or damaged, the peace of the Court being disturbed or its dignity diminished.

Article 3

Inviolability of the archives

The archives of the Court and, in general, all documents, including any data media belonging to the Court or in its possession, shall be inviolable at all times and in all places.

Article 4

Immunity from jurisdiction and execution

1. The Court shall enjoy immunity from jurisdiction and execution, except:
 - a) insofar as the Court has expressly waived such immunity in a particular case;
 - b) in respect of a civil action against the Court for damage caused by a vehicle belonging to or operated on behalf of the Court;
 - c) in respect of a counterclaim directly connected with judicial proceedings initiated by the Court.
2. The buildings or parts of buildings and surrounding land and the property of the Court or used for its purposes, wherever located and whoever may be the owner thereof, shall be immune:
 - a) from any form of requisition, confiscation or expropriation;
 - b) from any form of seizure and administrative or interim judicial constraint, except in the cases provided for in the first paragraph.

Article 5

Tax arrangements

1. The Court, its assets, income and other property shall be exempt from all direct national and municipal taxes. With regard to buildings however, such exemption shall apply only to those owned by the Court and occupied by its services and to income deriving therefrom.
2. The Court shall be exempt from all indirect taxes on sizeable purchases of immovable or movable property as well as on services, strictly necessary for its official activities, in accordance with the grand-ducal Regulation of 19 December 1969. The Court shall be exempt from all indirect taxes in relation to property imported, acquired or exported by it or in its name for its official use.

3. The Court shall be exempt from all national and municipal dues, except dues charged as the price of actual services rendered.

Article 6

Customs treatment

1. The Court shall be exempt from all customs duties or charges, as well as all indirect taxes, prohibitions and restrictions on imports and exports by the Court or in its name of articles intended for its official use. Articles so imported shall however not be disposed of in Luxembourg, whether or not in return for payment, except under conditions laid down by Luxembourg law.

2. The Court shall also be exempt from all customs duties, charges and taxes, as well as prohibitions and restrictions, in respect of official publications sent to the Court or published by the Court.

Article 7

Free disposal of funds

The Court may receive, hold, convert and transfer all funds, currency, cash and other transferable securities and dispose freely thereof, both within Luxembourg and in its relations with foreign countries, to the extent necessary for the execution of operations corresponding to its objectives.

Article 8

Communications

1. The Court shall benefit in respect of its official communications from treatment at least as favourable as that which is granted to international organisations in Luxembourg.

2. The Court shall have the right to use codes for its official communications. It shall also have the right to send and receive correspondence, including data media by duly identified couriers or bags enjoying the same privileges and immunities as diplomatic couriers or bags.
3. Official correspondence and other official communications of the Court, when duly identified, shall be inviolable.
4. The use of telecommunications equipment shall be co-ordinated at a technical level with Post and Telecommunications Luxembourg.

Article 9

Social security

The Court shall decide whether the Judges, the Registrar and the officials of the Court will be affiliated to the social security system in Luxembourg or to the social security system of the Court.

II. Privileges and immunities granted to persons who are called to the Court in an official capacity

Article 10

Privileges and immunities granted to the Judges and the Registrar

1. The Judges and the Registrar of the Court shall enjoy the privileges and immunities granted to diplomatic agents in conformity with the Vienna Convention of 18 April 1961 on diplomatic relations and benefit from the privileges provided for in the grand-ducal Regulation of 28 October 1981.

2. When ad hoc judges are called to the service of the Court, they shall, while performing their duties, enjoy all the same privileges and immunities in the Grand Duchy of Luxembourg as the Judges and the Registrar.

3. These ad hoc judges shall not be subject to immigration restrictions and formalities of aliens' registration.

Article 11

Special status

The officials of the Court that enjoyed diplomatic status in Geneva, shall enjoy diplomatic status on a personal basis in the Grand Duchy of Luxembourg, if they are transferred directly from Geneva to Luxembourg, and at the latest within three years of the date of signature of this Agreement, subject to consent of the Luxembourg Government.

Article 12

Privileges and immunities granted to officials

1. All officials of the Court shall:
 - a) enjoy immunity from jurisdiction, even after they have left the service of the Court, subject to Article 15 of this Agreement, in respect of acts, including words spoken or written, done by them in the exercise of their functions;
 - b) enjoy inviolability for all their official papers and documents;
 - c) together with dependent members of their families, not be subject to immigration restrictions and the formalities of aliens' registration;
 - d) enjoy, with respect to exchange facilities and facilities regarding the transfer of their assets and property in Luxembourg and abroad, the same privileges as those accorded to officials of international organisations in Luxembourg;

- e) together with dependent members of their families, benefit from the same repatriation facilities as officials of international organisations in Luxembourg;
- f) enjoy the privileges, exemptions and facilities granted to officials of international organisations in Luxembourg according to the grand-ducal Regulation of 19 December 1969, and
- g) enjoy the privileges granted to officials of international organisations concerning customs duties, taxes, fees and dues on articles imported at the time of their first installation.

Article 13

Tax exemption

1. The Judges, the Registrar and all officials of the Court shall be exempt in the Grand Duchy of Luxembourg from all national taxes on salaries, emoluments and indemnities paid to them by the Court. This income shall be subject to a tax in favour of the Court.
2. The Grand Duchy of Luxembourg reserves the possibility of taking these salaries, emoluments and indemnities into account for the purpose of determining the amount of tax payable on income from other sources.
3. Also exempt from all national taxes in the Grand Duchy of Luxembourg are capital payments due in whatever circumstances by the Court to the Judges, the Registrar and the officials and payments made to the Judges, the Registrar and officials of the Court, or their beneficiaries, by way of indemnity for sickness, accidents and the like.
4. The tax exemption is however not applicable to old-age pensions paid by the Court to former Judges, Registrars and officials, or to holders of those rights, in the Grand Duchy of Luxembourg. Nor does the tax exemption apply to salaries, emoluments and indemnities paid by the Court to its local agents.

Article 14

Privileges and immunities granted to parties, agents, lawyers, advisers, witnesses and experts

1. The parties, agents, lawyers, advisers, witnesses and experts shall:
 - a) enjoy immunity from jurisdiction, even after termination of their functions, subject to Article 15 of this Agreement in respect of acts, including words spoken or written, done by them in the exercise of their functions;
 - b) enjoy inviolability for all their papers and documents.

Article 15

Exceptions to the immunity from jurisdiction and execution

The persons referred to in Articles 12 and 14 shall not benefit from immunity from jurisdiction, nor, where applicable, from immunity from execution, in the event of civil proceedings against them with respect to damage caused by a vehicle in their ownership or control, or in the event of their contravening the laws in force regarding road traffic which may give rise to the imposition of a spot fine.

Article 16

Purpose of immunity

1. The privileges and immunities provided for in this Agreement are not established for the personal benefit of those persons in whose favour they are granted. Their purpose is solely to ensure, in all circumstances, the freedom of action of the Court and the complete independence of the persons concerned.
2. The Court shall not only have the right but also the duty to waive the immunity of a Judge, the Registrar or an official when it considers that such immunity would hinder the normal course of justice, and that it is possible to waive such immunity without prejudicing the interests of the Court.

Article 17

Access, residence and departure

1. Without prejudice to the Schengen Agreement, the Luxembourg authorities shall take all the necessary steps to facilitate the entry into, departure from and residence in Luxembourg territory of all persons who are called to or summoned by the Court in an official capacity, namely:

- a) the Judges of the Court, ad hoc judges and the Registrar, as well as the dependent members of their families;
- b) the officials of the Court and the dependent members of their families;
- c) the representatives of the EFTA States;
- d) the parties, agents, lawyers, advisers, witnesses and experts before the Court.

Article 18

Identity cards

1. The Judges, the Registrar and senior officials of the Court, as referred to in Articles 10 and 11, as well as members of their families forming part of their households, shall have the right to an identity card issued by the Ministry of Foreign Affairs.

2. The officials of the Court as referred to in Article 12 (except for nationals of Luxembourg) as well as members of their families forming part of their households, have a right to an identity card authenticated by the Ministry of Justice.

3. The identity cards shall serve as resident permits and identity cards for any purpose required by any national authority.

4. The Court shall notify the Ministry of Foreign Affairs of the arrival and departure of the Judges, the Registrar and all officials. The Court shall also notify the Ministry of Foreign Affairs the information specified hereafter in respect of the aforementioned persons:

- a) family name and forename;
- b) place and date of birth;
- c) sex;
- d) nationality;
- e) principal residence (commune, street, no.);
- f) civil status; and
- g) composition of household.

5. The Court shall notify the Ministry of any changes concerning this information when they occur.

Article 19

Prevention of abuse

The Court and the Luxembourg authorities shall co-operate at all times to facilitate the satisfactory administration of justice, to ensure the observance of police regulations and to prevent any abuse of the privileges, immunities, facilities and exemptions provided for in this Agreement.

Article 20

Respect for Luxembourg legislation

Without prejudice to their privileges and immunities it is the duty of the Judges, the Registrar and the officials of the Court, as well as all persons called to the Court in an official capacity, to respect the laws and regulations of Luxembourg.

III. Non-responsability and security of the Grand Duchy of Luxembourg

Article 21

Non-responsability of the Grand Duchy of Luxembourg

The Grand Duchy of Luxembourg shall not, on account of the Court's activities on its territory, assume any international responsibility for acts or omissions of the Court or for those of the Judges, the Registrar and officials of the Court.

Article 22

Security of the Grand Duchy of Luxembourg

1. Nothing in this Agreement shall affect the right of the Grand Duchy of Luxembourg to apply all appropriate safeguards in the interest of its own security.
2. Should the Grand Duchy of Luxembourg consider it necessary to apply the first paragraph, it shall, as promptly as circumstances permit, establish contact with the Court in order to decide jointly upon such measures as may be necessary to protect the interests of the Court.
3. The Court shall co-operate with the Luxembourg authorities to prevent any prejudice to the security of the Grand Duchy of Luxembourg on account of any activity of the Court.

IV. Final provisions

Article 23

Execution

The Ministry of Foreign Affairs is the Luxembourg authority responsible for the fulfilment of this Agreement.

Article 24

Settlement of disputes

1. Any difference of opinion concerning the application or interpretation of this Agreement which direct consultations between the Parties have failed to settle, may be referred, by either Party, to an arbitral tribunal composed of three members.
2. The Grand Duchy of Luxembourg and the Court shall each appoint one member of the arbitral tribunal.
3. The members so designated shall select a President.
4. In case of disagreement between the members with regard to who should be selected as President, he shall be appointed by the President of the International Court of Justice, at the request of the members of the arbitral tribunal.
5. The tribunal shall be seized at the request of either Party.
6. The tribunal shall lay down its own procedure.
7. The arbitral award shall be binding upon the Parties to the dispute.

Article 25

Amendments

1. This Agreement may be amended at the request of either Party.
2. In the event of such a request, the Parties shall jointly examine any appropriate changes in the provisions of this Agreement.

Article 26

Entry into force and termination

1. Each Party shall notify the other when it has complied with the procedure required by its legislation for the entry into force of the present Agreement.
2. The Agreement shall enter into force on the day following the date of receipt of the latter of the two notifications.
3. The Agreement shall remain in force either during the period of the validity of the Agreement on the European Economic Area or until the expiry of a period of one year calculated from the date when one Party informs the other Party of its intention to withdraw from the Agreement.

IN WITNESS WHEREOF the representatives of the EFTA COURT and the representatives of the Grand Duchy of Luxembourg have signed the present Agreement.

Done in Luxembourg, the *17 April 1996*, in duplicate, in the English and French languages, both texts being equally authentic.

For the EFTA Court,

Björn Åaug

For the Grand Duchy of Luxembourg,

[Signature]