ENERGY CHARTER SECRETARIAT

CCDEC 1995

18 GEN

Brussels, 21-22 September 1995

Related documents:
CC 34, CC 42, RD 10 (ProvECC of 21-22 09 1995), RD 11 (ProvECC of 21-22 09 1995)

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: **Terms of the Headquarters Agreement**

'In accordance with Article 34(4) (f) of the Energy Charter Treaty, the Provisional Charter Conference approved the terms of the headquarters agreement with the Kingdom of Belgium, and instructed the Chairman of the Conference and the Secretary-General to sign the agreement on its behalf.'

All delegations agreed that the headquarters agreement should continue to apply after the entry into force of the Energy Charter Treaty.

It was agreed that technical changes to the wording of the draft headquarters agreement would nevertheless be necessary to allow for the fact that the Treaty had not yet entered into force, taking account of Article 45 of the Treaty.

The Conference authorised the Secretary-General to agree with the Belgian government before signature the necessary technical changes to the text of the headquarters agreement to take account of this last point.

The Norwegian delegation proposed that such changes could include the following addition to the headquarters agreement:

'Upon the entry into force of the European Energy Charter Treaty signed in Lisbon on 17 December 1994, the Energy Charter Conference referred to in that Treaty shall enter into all rights and obligations accruing to the provisional Energy Charter Conference pursuant to this Agreement.'

Keywords: Headquarters Agreement

[Attached is the Draft Headquarters Agreement as presented in CC 34.]

DRAFT

VERSION 29.8.95

AGREEMENT

BETWEEN THE KINGDOM OF BELGIUM

AND

The Energy Charter Conference

THE KINGDOM OF BELGIUM

and

The Energy Charter Conference, represented by and acting through the Energy Charter Secretariat,

Having regard to the Energy Charter Treaty, signed in Lisbon on 17 th December 1994

Having regard to the decision to establish the Energy Charter Secretariat in Brussels,

Desirous to conclude an Agreement defining the privileges and immunities necessary for the exercise of the functions of the Energy Charter Conference in Belgium,

Have agreed as follows :

CHAPTER I

Privileges and immunities of the Energy Charter Conference

Article 1

The Energy Charter Conference shall possess the widest juridical personality accorded to legal persons. Its property and assets, used exclusively for the exercise of its official functions, shall enjoy immunity from jurisdiction, except insofar as it has expressly waived such immunity in a particular case. A separate waiver is necessary for each measure of enforcement.

Article 2

The premises used for the exercise of the official functions of the Energy Charter Conference shall be inviolable.

The consent of the Energy Charter Conference shall be required for access to its premises.

However, this consent shall be presumed to have been given in the case of fire or another incident requiring immediate protective measures.

Belgium shall take all appropriate measures to prevent the premises of the Energy Charter Conference from being occupied or damaged, the peace of the Energy Charter Conference being disturbed or its dignity diminished.

Article 3

Except to the extent that a measure is necessary for investigations which may be called for following an accident caused by a vehicle belonging to the Energy Charter Conference or being used on its behalf, or in the case of infringement of traffic rules or accidents caused by that vehicle, the property and assets of the Energy Charter Conference shall not be subject to any kind of requisition, confiscation, seizure or other form of interference, even for the purpose of national defence or in the public interest.

Should an expropriation be necessary for these purposes, all appropriate measures shall be taken in order to prevent any obstacle to the functioning of the Energy Charter Conference and to ensure that a prompt and full indemnity be awarded to it.

Belgium shall accord its assistance for the installation or reinstallation of the Energy Charter Conference.

Article 4

The archives of the Energy Charter Conference and, in general, all the documents belonging to the Energy Charter Conference or held by it or by one of its officials shall be inviolable wherever located.

Article 5

1. The Energy Charter Conference may hold funds, and keep accounts, in all currencies, to the extent necessary for the execution of operations corresponding to its objectives.

2. Belgium undertakes to accord to the Energy Charter Conference the authorization necessary to realize, according to the modalities laid down in national rules and international agreements, any transfer of funds in connection with the establishment and activities of the Energy Charter Conference, including the issuing of loans if this has been authorized by Belgium.

Article 6

The Energy Charter Conference, its assets, income and other property intended for its official use shall be exempt from all direct taxes.

No direct tax exemption shall be granted on the Energy Charter Conference income arising out of industrial or commercial activity engaged in by the Energy Charter Conference or by one of its members on behalf of the Energy Charter Conference or on behalf of one of its Contracting Parties.

Article 7

When the Energy Charter Conference makes sizeable purchases of immovable or movable property or has sizeable work, strictly necessary for the exercise of its official activities, carried out for it, and when the price thereof includes indirect taxes or purchase tax, appropriate measures shall be taken, whenever possible, to deduct or reimburse the amount of these taxes.

Article 8

Without prejudice to the obligations incumbent on Belgium under Community law and the application of rules and regulations of a prohibitive or restrictive character concerning public order or security, public health or morality, the Energy Charter Conference shall be allowed to import all property and publications for its official use.

Article 9

The Energy Charter Conference shall be exempt from all indirect taxes including the import duties in relation to property imported, acquired or exported by it or in its name for its official use.

Article 10

The Energy Charter Conference shall be exempt from all indirect taxes in relation to official publications which are addressed to it or sent abroad by it.

Article 11

Property belonging to the Energy Charter Conference shall not be transferred in Belgium, except under conditions laid down by Belgian Law and by the Minister of Finance.

Article 12

The Energy Charter Conference shall not request exemption from taxes and charges that constitute merely the remuneration for the provision of services by the public utilities.

Article 13

Belgium guarantees the Energy Charter Conference freedom of communication for its official purposes.

The official correspondence of the Energy Charter Conference shall be inviolable.

CHAPTER II

Representatives participating in the work of the Energy Charter Conference

Article 14

The representatives of the Contracting Parties to the Energy Charter Conference participating in the work of the Energy Charter Conference, their advisers and technical experts, the official participants as well as the officials of the Energy Charter Conference residing or having their centre of activity outside Belgium, shall enjoy the customary privileges, immunities and facilities during the exercise of their duties.

CHAPTER III

Statute of the staff

Article 15

The Secretary General of the Energy Charter Conference and his Deputy shall enjoy diplomatic privileges and immunities.

Article 16

1. All the officials of the Energy Charter Conference shall enjoy :

   (a) exemption from all taxes on the salaries, emoluments and indemnities paid to them by the Energy Charter Conference, from the day when this income is subject to a tax in favour of the Energy Charter Conference, provided that Belgium recognizes the internal tax system.

   Belgium 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;

   (b) the facilities granted to officials of international organizations in respect of monetary or exchange regulations.

2. The officials of the Energy Charter Conference who do not enjoy the privileges and immunities of Article 15 shall enjoy :

   (a) immunity from legal process in respect of acts carried out by them in the performance of their official duties, including words spoken or written; this immunity shall continue even after the completion of their functions;

   (b) inviolability for all their official papers and documents.

3. The officials of the Energy Charter Conference as well as the dependant members of their families shall not be subject to rules limiting immigration, or to the registration formalities applied to aliens.

4. The Energy Charter Conference shall notify the arrival and departure of its officials to the Ministry of Foreign Affairs. The Energy Charter Conference shall also notify the information specified hereafter in respect of its officials :

   1. name and forename
   2. place and date of birth
   3. sex
   4. nationality
   5. principal residence (municipality, street, number)
   6. civil status
   7. composition of household.

   Any changes concerning that information shall be notified monthly. The officials and dependant members of their families shall have the right to a special identity card.

Article 17

The provisions of Article 16(1)(a) are not applicable to pensions paid by the Energy Charter Conference to former officials in Belgium or to holders of those rights, or to salaries, emoluments and indemnities paid by the Energy Charter Conference to its local agents.

Article 18

The officials of the Energy Charter Conference who do not exercise any gainful occupation in Belgium other than the one resulting from their functions in the Energy Charter Conference, as well as their dependant family members who do not exercise any private gainful occupation in Belgium, are not subject to Belgian legislation in the field of foreign labour and in the field of independent professional activities of foreigners.

Article 19

As far as social security is concerned, officials of the the Energy Charter Conference in Belgium who are neither nationals nor permanent residents in Belgium and who are not engaged in Belgium in a gainful private occupation other than that involved in their official duties may choose, with the previous agreement of the Energy Charter Conference, to be subject to Belgian law.

This choice may be exercised only once and must be made within three months from the date on which duties are taken up in Belgium.

The Energy Charter Conference shall apply the Belgian social security regulations to those persons who have opted in favour of the Belgian social security scheme.

The Energy Charter Conference must ensure that persons who have chosen not to opt in favour of the Belgian scheme are actually covered by an adequate social security scheme and Belgium may obtain from the Energy Charter Conference the reimbursement of the costs incurred in respect of any assistance of a social nature.

Article 20

1. Without prejudice to the obligations incumbent upon Belgium arising from the provisions of the treaty establishing the European Economic Community and the application of legal provisions, the officials of the Energy Charter Conference enjoy the right, during a period of twelve months following their first taking up employment in Belgium, to import or acquire, free of duties, furniture and a car for their personal use.

2. The Minister of Finance of the Government of Belgium shall determine the limits on and conditions of the application of the present Article.

Article 21

Belgium is not required to accord to its own nationals or permanent residents the advantages, benefits, privileges and immunities, with the exception of those mentioned in Article 16.1.(a) of this Agreement.

However, they shall enjoy immunity from jurisdiction for acts carried out in the performance of their official duties, including words spoken and written.

CHAPTER IV

General provisions

Article 22

The above privileges and immunities are accorded to officials solely in the interests of the Energy Charter Conference and not for their personal benefit. The Secretary General of the Energy Charter Conference shall have the right and duty to waive immunity in all cases where this immunity would hinder the course of justice and where it is possible to waive such immunity without prejudice to the interests of the Energy Charter Conference.

Article 23

Belgium shall reserve the right to take all appropriate measures in the interests of its own security.

Article 24

The persons mentioned in Article 16 shall not enjoy any immunity from jurisdiction in the case of infringement of regulations concerning the circulation of motor vehicles or damage caused by such vehicles.

Article 25

The Energy Charter Conference and the officials of the Energy Charter Conference in Belgium are required to comply with all obligations imposed by Belgian Law with respect to civil liability insurance for the use of motor vehicles.

Article 26

The officials of the Energy Charter Conference shall co-operate at all times with the competent Belgian authorities with a view to facilitating the dispensing of justice, to ensuring the observance of police regulations and to preventing any abuse of privileges, immunities and facilities provided for in the present Agreement.

Article 27

The Energy Charter Conference shall provide all beneficiaries before the first of March of every year with a certificate mentioning their name and address as well as the amount of the salaries, emoluments, indemnities, pensions or annuities paid during the previous year. With regard to salary, emoluments and indemnities subject to tax in favour of The Energy Charter Conference, the statement shall also mention the amount of this tax.

A certificate duplicate shall be handed over directly by the Energy Charter Conference before the same date to the competent Belgian fiscal administration.

Article 28

The Energy Charter Conference, its officials and its local agents shall be required to respect Belgian Law.

Article 29

Belgium shall not, on account of the Energy Charter Conference activities on its territory, assume any international responsibility for the acts or omissions of the Energy Charter Conference or for those of its officials in their particular fields.

Article 30

1. Any difference of opinion concerning the application or interpretation of this Agreement which cannot be settled by direct consultations between the Parties may be referred by either Party to an arbitration tribunal composed of three members.

2. The Belgian Government and the Energy Charter Conference shall each designate one member of the arbitration tribunal.

3. The members so designated shall choose their President.

4. In the case of disagreement between the members with regard to the choice of the President, the latter shall be designated by the President of the International Court of Justice, at the request of the members of the arbitration tribunal.

5. The arbitration tribunal shall be seized on the request of either Party.

6. The arbitration tribunal shall lay down its own procedure.

CHAPTER V

Final provisions

Article 31

Each Party shall notify the other when it has complied with the procedures required by its legislation or statutes for the entry into force of the present Agreement.

The Agreement shall remain in force either during the period of the validity of the Energy Charter Conference 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 respective representatives of Belgium and the Energy Charter Conference have signed the present Agreement.

Done at
in the English, French and Dutch languages,
all three languages being equally authentic.

For the Kingdom of Belgium :

For the Energy Charter Conference