

Protocol on the privileges and immunities of the European Organization for Nuclear Research

Preamble

The States parties to this Protocol,

Considering the Convention for the Establishment of a European Organization for Nuclear Research (CERN) and the Financial Protocol annexed thereto, signed on 1st July 1953, entered into force on 29 September 1954 and amended on 17 January 1971;

Considering that the Organization has its seat in Geneva, Switzerland, and that its status in Switzerland is defined by the Agreement between the Swiss Federal Council and the Organization dated 11 June 1955;

Considering that the Organization is also established in France, where its status is defined by the Agreement between the Government of the French Republic and the Organization dated 13 September 1965, as revised on 16 June 1972;

Considering also the Convention between the Federal Council of the Swiss Confederation and the Government of the French Republic dated 13 September 1965 concerning the extension of the Organization's site to include French territory;

Considering that the Organization's activities are increasingly extending into the territory of all the States parties to the Convention, with a consequent substantial increase in the mobility of persons and goods assigned to and used for its research programmes;

Desiring to ensure the efficient performance of the Organization's functions assigned to it by the Convention, in particular Article II defining the Organization's purposes, and to guarantee it equal treatment on the territory of all the States parties to the Convention;

Having resolved to this end, in accordance with Article IX of the Convention, to grant to the Organization the privileges and immunities necessary for the exercise of its official activities;

Have agreed as follows:

Article 1

Definitions

For the purpose of this Protocol:

- a) the "Convention" refers to the Convention for the Establishment of a European Organization for Nuclear Research and the Financial Protocol annexed thereto, signed on 1st July 1953, entered into force on 29 September 1954 and amended on 17 January 1971;
- b) the "Organization" refers to the European Organization for Nuclear Research;
- c) "official activities" refers to the activities of the Organization set out in the Convention, in particular its Article II, including its activities of an administrative nature;
- d) "officials" refers to the "members of personnel" as defined in the Staff Rules and Regulations of the Organization;
- e) "Co-operation Agreement" refers to a bilateral agreement, concluded between the Organization and a non-Member State or a scientific institute established in that State, defining the conditions governing its participation in the activities of the Organization;

- f) "Association Agreement" refers to a bilateral agreement, concluded between the Organization and a State ineligible to become a Member State, establishing a close institutional partnership between that State and the Organization in order to allow it to be engaged more deeply in the activities of the Organization.

Article 2

International legal personality

1. The Organization shall have international legal personality and legal capacity on the respective territories of the States parties to this Protocol.
2. The Organization shall in particular have the capacity to contract, to acquire and to dispose of movable and immovable property and to participate in legal proceedings.

Article 3

Inviolability of grounds, buildings and premises

1. The grounds, buildings and premises of the Organization shall be inviolable.
2. No agent of the public authorities may enter them without the express consent of the Director-General or his duly authorised representative.
3. In case of fire or other disaster requiring prompt protective action, where the seeking of such express consent is not practicable, the authorization of the Director-General may be considered as granted.
4. The Organization shall not allow its buildings or premises to serve as a refuge to a person wanted for committing, attempting to commit or just having committed a crime or offence or for whom a warrant of arrest or deportation order has been issued or who has been convicted of a crime or offence by the competent authorities.

Article 4

Inviolability of archives and documents

The archives of the Organization and all documents in whatever form held by the Organization or belonging to it, wherever located and by whomsoever held, shall be inviolable.

Article 5

Immunity from legal process and from execution

1. In the exercise of its official activities, the Organization shall enjoy immunity from legal process, except:
 - a) in so far as such immunity is waived in a particular case by the Council of the Organization;
 - b) in respect of a claim by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organization, or in respect of a motor traffic offence involving such a vehicle;
 - c) in respect of the enforcement of an arbitration award made under Article 16 or 18 of this Protocol;
 - d) in respect of a counter-claim relating directly to and introduced in the procedural framework of a claim brought by the Organization.
2. The Organization's property and assets, wherever located, shall enjoy immunity from every form of requisition, confiscation, expropriation, sequestration and any other form of seizure or interference whether by executive, administrative, judicial or legislative action, except:
 - a) in so far as such immunity is waived in a particular case by the Council of the Organization;
 - b) in so far as may be temporarily necessary in connection with the prevention or investigation of accidents involving motor vehicles belonging to, or operated on behalf of, the Organization;

- c) in the event of an attachment of salary, enforced for a debt of an official of the Organization, provided that such attachment results from a final and enforceable decision in accordance with the rules and regulations in force on the territory of enforcement.

Article 6

Fiscal and customs arrangements

1. Within the scope of its official activities, the Organization, its property and income shall be exempt from direct taxes.
2. When, in the exercise of its official activities, the Organization makes purchases of, or uses, goods or services of substantial value, in the price of which taxes, duties or other charges are included, appropriate measures shall be taken by the State party to this Protocol which has levied the taxes, duties or other charges to remit or reimburse the amount of such taxes, duties or other charges where they are identifiable.
3. The importation and exportation by or on behalf of the Organization of goods and materials in the exercise of its official activities shall be exempt from all import and export taxes, duties and other charges.
4. No exemption or reimbursement shall be granted for duties, taxes or other charges of any kind which only constitute remuneration for services rendered.
5. The provisions of paragraphs 2 and 3 of this Article are not applicable to the purchase or use of goods or services or the import of goods intended for the personal use of the officials and of the Director-General of the Organization.
6. Goods and materials belonging to the Organization which have been acquired or imported in accordance with the provisions of paragraph 2 or 3 of this Article shall not be sold or donated on the territory of the State which has granted the exemption except under the conditions laid down by that State.

Article 7

Free disposal of funds

The Organization may freely receive, hold and transfer any kind of funds, currency and cash; it may dispose of them freely for its official activities and hold accounts in any currency to the extent required to meet its obligations.

Article 8

Official communications

The circulation of publications and other information material, received or sent by the Organization in whatever form in the exercise of its official activities, shall not be restricted in any way.

Article 9

Privileges and immunities of the States representatives

1. The representatives of the States parties to this Protocol shall enjoy, in the exercise of their functions and in the course of journeys to and from the place of meetings of the Organization, the following privileges and immunities:
 - a) immunity from personal arrest, detention and seizure of their personal effects;
 - b) immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor vehicle offence committed by a representative of a State party, nor in the case of damage caused by a motor vehicle belonging to or driven by her or him;
 - c) inviolability of all official documents in whatever form held;
 - d) the right to use codes and to receive documents and correspondence by courier or sealed luggage;
 - e) for them and their spouses, exemption from all measures restricting entry and aliens' registration formalities;
 - f) the same facilities concerning currency and exchange regulations as those granted to the representatives of foreign Governments on temporary official missions;

- g) the same customs facilities as regards their personal luggage as those granted to diplomatic agents.
2. No State party to this Protocol shall be obliged to accord the privileges and immunities set out in this Article to its own nationals or to persons who, at the moment of taking up their duties in that State party, are permanent residents thereof.

Article 10

Privileges and immunities of the officials of the Organization

1. The officials of the Organization shall enjoy immunity, even after the termination of their functions, from legal process in respect of acts, including words spoken or written done by them in the exercise of their functions and within the limits of their duties. This immunity shall not apply, however, in the case of a motor vehicle offence committed by an official of the Organization nor in the case of damage caused by a motor vehicle belonging to or driven by her or him.
2. The officials of the Organization shall enjoy the following privileges:
- a) the right to import free of duty their furniture and personal effects at the time of taking up their appointment with the Organization in the State concerned and the right, on the termination of their functions in that State, to export free of duty their furniture and personal effects, subject, in both cases, to the conditions imposed by the laws and regulations of the State where the right is exercised;
 - b)
 - i) Subject to the conditions and following the procedures laid down by the Council of the Organization, the officials and the Director-General of the Organization shall be subject to a tax, for the benefit of the Organization, on salaries and emoluments paid by the Organization. Such salaries and emoluments shall be exempt from national income tax.

- ii) The States Parties to this Protocol shall not be obliged to exempt from income tax pensions or annuities paid by the Organization to its former officials and Directors-General in respect of their service with the Organization.
 - c) for themselves and the family members forming part of their household, the same exemption from immigration restrictions and aliens' registration formalities as are normally granted to officials of international organizations;
 - d) inviolability of all official documents, in whatever form held;
 - e) for themselves and the family members forming part of their household, the same repatriation facilities in time of international crisis as the members of diplomatic missions;
 - f) in respect of transfers of funds and currency exchange and customs facilities, the privileges generally granted to the officials of international organizations.
3. No State party to this Protocol shall be obliged to accord the privileges and immunities referred to in paragraphs 2 a), c), e) and f) of this Article to its own nationals or to persons who, at the moment of taking up their duties in that State party, are permanent residents thereof.

Article 11

Social security

The Organization and the officials employed by the Organization shall be exempt from all compulsory contributions to national social security schemes, on the understanding that such persons are provided with equivalent social protection coverage by the Organization.

Article 12

Privileges and immunities of the Director-General

1. In addition to the privileges and immunities provided for in Articles 10 and 11 of this Protocol, the Director-General shall enjoy throughout the duration of her or his functions the privileges and immunities granted by the Vienna Convention on Diplomatic Relations of 18 April 1961 to diplomatic agents of comparable rank.

2. No State party to this Protocol shall be obliged to accord the privileges and immunities referred to in this Article to its own nationals or to persons who, at the moment of taking up their duties in that State party, are permanent residents thereof.

Article 13

Object and limits of the immunities

1. The privileges and immunities provided for in Articles 9, 10 and 12 of this Protocol are granted solely to ensure the unimpeded functioning of the Organization and the complete independence of the persons to whom they are accorded. They are not granted for the personal benefit of the individuals concerned.
2. Such immunities may be waived :
 - a) in the case of the Director-General, by the Council of the Organization;
 - b) in the case of officials, by the Director-General or the person acting in his stead as provided in Article VI, paragraph 1 b), of the Convention;
 - c) in the case of State representatives, by the State party concerned;

and there is a duty to do so in any particular case where they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

Article 14

Co-operation with the States parties to this Protocol

The Organization shall co-operate with the competent authorities of the States parties to this Protocol in order to facilitate the proper administration of justice, the observance of laws and regulations on police, public health, health and safety at work and on the environment, and to prevent any abuse of privileges, immunities and facilities provided for in this Protocol.

Article 15

Security and public order

1. The right of a State party to this Protocol to take precautionary measures in the interest of its security shall not be prejudiced by any provision in this Protocol.
2. If a State party to this Protocol considers it necessary to take measures for its security or for the maintenance of public order, it shall, except where this is not practicable, approach the Organization as rapidly as circumstances allow in order to determine, by mutual agreement, the measures necessary to protect the interests of the Organization.
3. The Organization shall co-operate with the Government of such State party to this Protocol to avoid any prejudice to the security or public order of such State party to this Protocol resulting from its activities.

Article 16

Disputes of a private nature

1. The Organization shall make provision for appropriate modes of settlement of:
 - a) disputes arising from contracts to which the Organization is a party;

the Organization shall include, in all written contracts into which it enters, other than those referred to in paragraph 1 d) of this Article, an arbitration clause under which any disputes arising out of the interpretation or execution of the contract shall, at the request of either party, be submitted to arbitration or, if so agreed by the parties, to another appropriate mode of settlement;
 - b) disputes arising out of damages caused by the Organization or involving any other non-contractual liability of the Organization;
 - c) disputes involving an official of the Organization who enjoys immunity from legal process, if such immunity has not been waived in accordance with the provisions of Article 5 of this Protocol;

- d) disputes arising between the Organization and its officials;

the Organization shall submit all disputes arising from the application and interpretation of contracts concluded with officials of the Organization on the basis of the Staff Rules and Regulations of the Organization to the jurisdiction of the International Labour Organization Administrative Tribunal (ILOAT) or to any other appropriate international administrative tribunal to the jurisdiction of which the Organization is submitted following a decision by the Council.

2. For disputes for which no particular mode of settlement is specified in paragraph 1 of this Article, the Organization may resort to any mode of settlement it deems appropriate, in particular to arbitration or to referral to a national tribunal.
3. Any mode of settlement selected under this Article shall be based on the principles of due process of law, with a view to the timely, fair, impartial and binding settlement of the dispute.

Article 17

Disputes between States parties to this Protocol

1. Any difference of opinion concerning the application or interpretation of this Protocol which is not settled amicably between the parties may be submitted by either party to an international Arbitration Tribunal, in accordance with Article 19 of this Protocol.
2. If a State party to this Protocol intends to submit a dispute to arbitration, it shall notify the Director-General, who shall immediately inform each State party to this Protocol of such notification.

Article 18

Disputes between States parties to this Protocol and the Organization

1. Any difference of opinion between one or more States parties to this Protocol and the Organization concerning the application or interpretation of this Protocol which is not settled amicably between the parties (one or more State(s) party(ies) to this Protocol constituting one party to the dispute and the

Organization constituting the other party) may be submitted by either party to an international Arbitration Tribunal, in accordance with Article 19 of this Protocol.

2. The Director-General shall immediately inform the other States parties to this Protocol of the notification given by the Party applying for arbitration.

Article 19

International Arbitration Tribunal

1. The international Arbitration Tribunal referred to in Articles 17 and 18 of this Protocol ("the Tribunal") shall be governed by the provisions of this Article.
2. Each party to the dispute shall appoint one member of the Tribunal. The members thus appointed shall jointly choose a third member, who shall be the Chairman of the Tribunal. In the event of disagreement between the members of the Tribunal on the choice of Chairman, the latter shall be appointed by the President of the International Court of Justice at the request of the members of the Tribunal.
3. If one of the parties to the dispute fails to appoint a member of the Tribunal and has not taken steps to do so within two months following a request by the other party, the other party may request the President of the International Court of Justice to make the appointment.
4. The Tribunal shall determine its own procedure.
5. There shall be no right of appeal against the award of the Tribunal, which shall be final and binding on the parties. In the event of a dispute concerning the import or scope of the award, it shall be incumbent upon the Tribunal to give an interpretation at the request of either party.

Article 20

Implementation of the Protocol

The Organization may, if the Council of the Organization so decides, conclude additional Agreements with one or more States parties to this Protocol in order to implement the provisions of this Protocol.

Article 21

Amendment Procedure

1. Amendments to this Protocol may be proposed by any State party to the Convention and shall be communicated by the Director-General of the Organization to the other States parties to this Protocol.
2. The Director-General shall convene a meeting of the States parties to this Protocol. If the meeting adopts, by a two-thirds majority of the States parties present and voting, the proposed text of the amendment, it shall be forwarded by the Director-General to States parties to this Protocol for acceptance in accordance with their respective constitutional requirements.
3. Any such amendment shall come into force on the thirtieth day after all States parties to this Protocol have notified the Director-General of their ratification, acceptance or approval thereof.

Article 22

Particular Agreements

1. The provisions of this Protocol shall not limit or prejudice the provisions of other international agreements concluded between the Organization and a State Party to this Protocol by reason of the location in the territory of that State party of its headquarters, regional offices, laboratories or other installations. In case of conflict between the provisions of this Protocol and those of such an international agreement, the provisions of that international agreement shall prevail.
2. Nothing in this Protocol shall preclude States parties to this Protocol from concluding other international agreements with the Organization confirming, supplementing, extending or amplifying the provisions of this Protocol.

Article 23

Signature, ratification and accession

1. This Protocol shall be open for signature from ... [date of the adoption by the Council] until ... [one year after the date of the adoption by the Council] by the States parties to the Convention and by the States which have concluded a Co-operation or an Association Agreement with the Organization.
2. This Protocol shall be subject to ratification, acceptance or approval by signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO).
3. This Protocol shall remain open for accession by the States parties to the Convention and by the States which have concluded a Co-operation or an Association Agreement with the Organization. The instruments of accession shall be deposited with the Director-General of UNESCO.

Article 24

Entry into force

1. This Protocol shall enter into force thirty days after the date on which the twelfth instrument of ratification, acceptance, approval or accession by a State party to the Convention is deposited.
2. For each State ratifying, accepting, approving or acceding to this Protocol after its entry into force, this Protocol shall enter into force on the thirtieth day following the deposit with the Director-General of UNESCO of its instrument of ratification, acceptance, approval or accession.

Article 25

Notification

The Director-General of UNESCO shall notify all signatory and acceding States of this Protocol and the Director-General of the Organization of the deposit of each instrument of ratification, acceptance, approval or accession, of the entry into force of this Protocol, as well as of any notification of its denunciation.

Article 26

Registration

The Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) shall, upon the entry into force of this Protocol, register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

Article 27

Denunciation

Any State party to this Protocol may, at any time, by written notification addressed to the Director-General of UNESCO, denounce this Protocol. The denunciation shall take effect on the date one year after the date of receipt of such notification, unless the notification specifies a later date.

IN WITNESS WHEREOF, the undersigned representatives, having been duly authorized thereto by their respective Governments, have signed this Protocol.

Done at Geneva, on 18 March 2004, in the English and French languages, both texts being equally authoritative and deposited in the archives of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Director-General of which shall transmit a certified copy to all signatory and acceding States.