

**DECISION
OF THE REPRESENTATIVES OF THE GOVERNMENTS
OF THE MEMBER STATES,
MEETING WITHIN THE COUNCIL,
of 10/11/2004**

on the privileges and immunities granted to the European Defence Agency
and to its staff members

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE
EUROPEAN UNION, MEETING WITHIN THE COUNCIL,

Whereas:

- (1) On 12 July 2004, the Council adopted Joint Action 2004/551/CFSP on the establishment of the European Defence Agency ¹ (hereafter referred to as "Agency").
- (2) In order to allow the Agency to start functioning, this Agency of the European Union and its staff members should be granted, solely in the interest of the Agency and of the European Union, the privileges, immunities and facilities necessary for this purpose,

HAVE DECIDED AS FOLLOWS:

¹ OJ L 245, 17.7.2004, p. 17.

Article 1

Immunity from legal process and immunity from search, seizure, requisition, confiscation or any other form of constraint

The premises and buildings of the Agency shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Agency shall not be subject to any administrative or legal measure of constraint.

Article 2

Inviolability of archives

The archives of the Agency shall be inviolable.

Article 3

Exemption from taxes and duties

1. The Agency, its assets, revenues and other property, shall be exempt from all direct taxes.

2. The governments of the Member States shall take, wherever possible, appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property and of services, where the Agency makes, for its official use to fulfil its mission, functions and tasks, substantial purchases, the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Community.
3. Purchases exempt from indirect taxes or sales taxes pursuant to paragraph 2 shall not be sold or otherwise disposed of except under conditions agreed upon with the Member State that granted the exemption.
4. No exemption shall be granted in respect of taxes and duties which constitute charges for public utility services.

Article 4

Transfer of defence goods for the official use of the Agency

In respect of the transfer between Member States of defence goods intended for the official use of the Agency to fulfil its mission, functions and tasks

- the Agency shall be exempt from payments and charges imposed by Member States except administration fees,

- Member States shall endeavour to facilitate such transfer, to the extent possible and in accordance with their laws and regulations, without prejudice to their obligations arising from international law.

Article 5

Facilities and immunities in respect of communication

Member States shall allow the Agency to communicate freely within their territories and without a need for permission, for all official purposes, and shall protect its right to do so. The Agency shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags which shall be subject to the same privileges and immunities as diplomatic couriers and bags.

Article 6

Entry, stay and departure

Member States shall facilitate, if necessary, the entry, stay and departure of the persons referred to in Article 7 for purposes of official business. However, evidence must be given to establish that persons claiming the treatment provided for in this Article come within the classes described in Article 7.

Article 7

Privileges and immunities of staff members of the Agency

1. In the territory of each Member State and whatever their nationality, staff engaged under contract by the Agency shall enjoy the following immunities:

- (a) immunity from legal proceedings of any kind in respect of words spoken or written, and of acts performed by them in the exercise of their official functions; they shall continue to enjoy this immunity even if they may have ceased to be staff members of the Agency;
- (b) inviolability of all their official papers, documents and other official materials;
- (c) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens.

2. Staff engaged under contract by the Agency whose salaries and allowances are subject to tax for the benefit of the Agency pursuant to Article 9 shall be exempt from national income tax on salaries and allowances paid by the Agency. However, such salaries and allowances may be taken into account when assessing the amount of tax payable on income from other sources. This paragraph does not apply to severance grants or other indemnities or allowances paid to former staff engaged under contract by the Agency and their dependants.

Article 8

Exclusions from immunities

The immunity granted to persons mentioned in Article 7 shall not extend to civil action by a third party for damages arising from a traffic accident, death or personal injury caused by the said persons.

Article 9

Taxation

1. Subject to the conditions and following the procedures laid down in the Staff Regulations of the Agency, staff engaged under contract by the Agency employed for a minimum period of one year shall be subject to taxation for the benefit of the Agency on the salaries and allowances paid by the Agency.
2. Every year the names and addresses of staff engaged under contract by the Agency referred to in this Article and of any other person who has concluded a contract of employment with the said Agency shall be communicated to the Member States. The Agency shall issue each staff member with a yearly statement indicating the total gross and net amounts of any remuneration paid by the Agency for the year in question, including the details and nature of payments and amounts withheld at source.

3. This Article does not apply to severance grants and other indemnities or allowances paid to former staff engaged under contract by the Agency and their dependants.

Article 10

Protection of staff

The Member States shall, if so requested by the Chief Executive of the Agency, take all necessary steps to ensure the safety and protection of the persons referred to in this Decision whose security is threatened by the fact of their employment at the Agency.

Article 11

Waiver of immunities

1. The privileges and immunities granted under this Decision shall be extended in the interests of the Agency and the European Union, and not for the benefit of the persons concerned. It is the duty of the Agency and all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the Member States.

2. Upon request by a competent authority or a judicial body in a Member State, the Head of the Agency, and in the case of national experts seconded to the Agency by Member States also the competent authority of that Member State, shall be required to waive the immunity enjoyed by the Agency, its Chief Executive and other staff members pursuant to Article 7, where such immunity would impede the course of justice and where he may do so without prejudice to the interests of the Agency.

If a dispute arises regarding such waiver and consultations with the competent authority or judicial body do not lead to a mutually satisfactory solution, the matter shall be settled in accordance with Article 12.

3. If the immunity of the Agency has been waived, any searches and seizures ordered by the Member States' judicial authorities shall be carried out in the presence of either the Chief Executive of the Agency or a person delegated by him, in compliance with the rules of confidentiality.

4. The Agency shall cooperate at all times with the competent authorities of the Member States in order to facilitate the smooth administration of justice and shall take action to prevent any abuse of the privileges and immunities granted under this Decision.

5. Should a competent authority or a judicial body in a Member State consider that an abuse of a privilege or immunity, conferred by this Decision, has occurred and submits a request to the Agency for waiving immunity, consultations shall take place between the Agency and the competent authority or judicial body to determine whether such abuse has occurred. The decision to waive shall be taken in accordance with paragraph 2. If consultations fail to achieve a result satisfactory to both parties, the matter shall be settled in accordance with the procedure laid down in Article 12.

Article 12

Settlement of disputes

Disputes concerning a refusal to waive immunity or concerning an abuse of immunity for the Agency or for a person who, by reason of his official position, enjoys immunity pursuant to Article 7(1) shall be examined by the Council with a view to reaching a settlement.

Article 13

Provisions applicable to national experts seconded to the Agency

The provisions of Article 6, Article 7(1), Article 8, Article 11 and Article 12 shall also be applicable to national experts seconded to the Agency pursuant to Article 11(3.2) of the Joint Action establishing the Agency.

Article 14

Cooperation with Member States' authorities

The Agency shall, for the purpose of applying this Decision, cooperate with the competent authorities of the Member States.

Article 15

Evaluation

Within two years after the entry into force of this Decision or upon the entry into force of the Treaty establishing a Constitution for Europe, whichever is the earlier, the Representatives of the Governments of the Member States meeting within the Council shall evaluate and amend the provisions of this Decision or take a decision on its expiration, as appropriate.

Article 16

Territorial application

1. This Decision shall apply only to the metropolitan territory of the Member States.
2. Any Member State may notify the Secretary-General of the Council of the European Union that this Decision shall also apply to other territories for whose international relations it is responsible.

Article 17

Entry into force

This Decision shall enter into force on the first day of the second month after ten Member States, as well as the Member State hosting the Agency, have notified the General Secretariat of the Council that the procedures required for the implementation of this Decision in their national legal orders have been completed, in respect of those Member States having made such a notification. Without prejudice to national law, this Decision shall be implemented in those Member States as of the date of its adoption.

This Decision shall enter into force in respect of each other Member State on the first day of the second month after notification to the General Secretariat of the Council that the procedures required for its implementation in its national legal order have been completed.

Article 18

Publication

This Decision shall be published in the Official Journal of the European Union.

Hecho en Bruselas, el diez de noviembre del dos mil cuatro.

V Bruselu dne desátého listopadu dva tisíce čtyři.

Udfærdiget i Bruxelles den tiende november to tusind og fire.

Geschehen zu Brüssel am zehnten November zweitausendundvier.

Kahe tuhande neljanda aasta novembrikuu kümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις δέκα Νοεμβρίου δύο χιλιάδες τέσσερα.

Done at Brussels on the tenth day November in the year two thousand and four.

Fait à Bruxelles, le dix novembre deux mille quatre.

Fatto a Bruxelles, addì dieci novembre duemilaquattro.

Briselē, divi tūkstoši ceturta gada desmitajā novembrī.

Priimta du tūkstančiai ketvirtą metų lapkričio dešimtą dieną Briuselyje.

Kelt Brüsszelben, a kétézer-negyedik év november havának tizedik napján.

Magħmul fi Brussel fl-ghaxar jum ta' Novembru tas-sena elfejn u erbgha.

Gedaan te Brussel, de tiende november tweeduizendvier.

Sporządzono w Brukseli dnia dziesiątego listopada roku dwutysięcznego czwartego.

Feito em Bruxelas, em dez de Novembro de dois mil e quatro.

V Bruseli desiateho novembra dvetisícčtyri.

V Bruslju, desetega novembra leta dva tisoč štiri

Tehty Brysselissä kymmenentenä päivänä marraskuuta vuonna kaksituhattaneljä.

Som skedde i Bryssel den tionde november tjugohundrafyra.