



STATUTORY INSTRUMENTS.

S.I. No. 288 of 2019



EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH IN
THE SOUTHERN HEMISPHERE (PRIVILEGES AND IMMUNITIES)
ORDER 2019

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WHEREAS it is enacted by section 42A (amended by section 6 of the Diplomatic Relations (Miscellaneous Provisions) Act 2017 (No. 33 of 2017)) of the Diplomatic Relations and Immunities Act 1967 (No. 8 of 1967) that the Government may by order make provision to enable -

- (a) international organisations, communities or bodies, their institutions or organs and their property, and
- (b) persons,

to have and enjoy in the State any inviolability, exemptions, facilities, immunities, privileges or rights equivalent or having like effect to those conferred upon, or afforded in relation to, sending states, missions or international organisations under the Vienna Convention, the Convention on the Privileges and Immunities of the United Nations, or the Convention on the Privileges and Immunities of the Specialised Agencies or any other international agreement scheduled to the Diplomatic Relations and Immunities Act 1967 provided for in relation to them by an international agreement or arrangement to which the State or the Government is or intends to become a party;

AND WHEREAS the European Organisation for Astronomical Research in the Southern Hemisphere (otherwise known as the “European Southern Observatory”) is such an international organisation, community or body and the Protocol on the Privileges and Immunities of the European Organisation for Astronomical Research in the Southern Hemisphere, done at Paris on the 12 July 1974, is such an agreement;

NOW, the Government, in exercise of the powers conferred on them by the said section 42A, hereby order as follows:

1. This Order may be cited as the European Organisation for Astronomical Research in the Southern Hemisphere (Privileges and Immunities) Order 2019.

2. The Protocol on the Privileges and Immunities of the European Organisation for Astronomical Research in the Southern Hemisphere (the text of which is, for convenience of reference, set out in the Schedule) shall apply for the purposes of section 42A (amended by section 6 of the Diplomatic Relations (Miscellaneous Provisions) Act 2017 (No. 33 of 2017)) of the Diplomatic Relations and Immunities Act 1967 (No. 8 of 1967).

SCHEDULE

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN ORGANISATION FOR ASTRONOMICAL RESEARCH IN THE SOUTHERN HEMISPHERE,

done at Paris on 12 July 1974

Preamble

The States parties to the Convention establishing the European Organisation for Astronomical Research in the Southern Hemisphere signed at Paris on 5 October 1962, hereinafter called ‘the Convention’,

CONSIDERING that the said Organisation, hereinafter called ‘the Organisation’, should enjoy on the territory of its Member States a legal status defining the privileges and immunities necessary for the achievement of its mission,

CONSIDERING that the Organisation is established in Chile where its status is defined by the Agreement between the Government of Chile and the Organisation, dated 6 November 1963,

HAVE AGREED as follows:

Article 1

The Organisation shall have legal personality. It shall, in particular, have the capacity to contract, acquire and dispose of immovable and movable property and take part in legal proceedings.

Article 2

1. The buildings and premises of the Organisation shall be inviolable, subject to the provisions of paragraph 2 of the present Article and of Articles 5 and 6 below.
2. The Organisation shall not allow its buildings or premises to serve as a refuge to a person wanted in connection with a crime or who is caught in the act, or for whom a warrant of arrest or deportation order has been issued, or who has been convicted of a crime by the competent authorities of the territory.

Article 3

The archives of the Organisation and, in general, all documents belonging to it or in its possession shall be inviolable wherever they may be.

Article 4

1. Within the scope of its official activities, the Organisation shall enjoy immunity from legal process and execution, except:
 - a. in so far as such immunity is waived in a particular case by the Director-General of the Organisation, or the person acting in his stead as provided for by Article VI of the Convention;
 - b. in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organisation, or in respect of a road traffic offence involving such a vehicle;
 - c. in respect of the enforcement of an arbitration award made under either Article 23 or Article 24 of the present Protocol;
 - d. in the event of attachment of salary, enforced for a debt of a member of personnel of the Organisation, provided that such attachment results from a final and enforceable legal decision in accordance with the rules in force on the territory of enforcement;
 - e. in respect of a counter-claim relating directly to a main claim brought by the Organisation.
2. The Organisation's property and assets wherever they may be shall be immune from any form of requisition, confiscation, expropriation and sequestration. They shall also be immune from any form of administrative constraints or provisional judicial measures, except in so far as may be temporarily necessary in connection with the prevention of accidents involving motor vehicles belonging to, or operated on behalf of, the Organisation or enquiries to which such accidents may have given rise.

Article 5

1. The Organisation shall co-operate at all times with the competent authorities of States parties to the present Protocol, in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning public health and work, or other analogous legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in the present Protocol.

2. The procedure of co-operation mentioned in the preceding paragraph may be specified in the additional agreements referred to in Article 27 of the present Protocol.

Article 6

1. Each State party to the present Protocol reserves the right to take all precautionary measures necessary in the interests of its security and the maintenance of public order.
2. If the Government of the State party to the present Protocol concerned considers it necessary to exercise this right, it shall liaise with the Organisation as soon as circumstances allow, in order to determine by mutual agreement the steps necessary to protect the interests of the Organisation.
3. The Organisation shall collaborate with the authorities of the States parties to the present Protocol to avoid any prejudice to their safety and public order resulting from its activities.

Article 7

1. Within the scope of its official activities, the Organisation and its property and income shall be exempt from direct taxation.
2. When the Organisation makes major purchases of goods or services, including the issue of publications, which are strictly necessary for the exercise of its official activities, in the price of which duties or charges are included, appropriate measures shall be taken by the State party to the present Protocol which has levied the duties or charges to remit or reimburse the amount of such duties or charges where they are identifiable.
3. No exemption shall be accorded in respect of taxes and duties which only constitute remuneration for services rendered.

Article 8

Each State party to the present Protocol shall grant the Organisation exemption from or reimbursement of import and export duties and taxes, with the exception of those which only constitute remuneration for services rendered, on goods and materials for use in connection with its official activities, and on publications relating to its mission, that it imports or exports.

Such goods and materials shall be exempt from all prohibitions and restrictions on import or export.

Article 9

The provisions of Articles 7 and 8 of the present Protocol shall not apply to goods and services purchased and goods imported for the personal needs of the Director-General and the members of personnel of the Organisation.

Article 10

1. Goods belonging to the Organisation, which have been acquired in accordance with Article 7 or imported in accordance with Article 8, may not be sold, given away, lent or hired out on the territory of the State which has granted the aforementioned exemptions, except in accordance with the conditions laid down by that State.
2. The transfer of goods or services between the establishments of the Organisation shall be exempt from any charges or restrictions; if necessary, the Governments of the States parties to the present Protocol shall take all appropriate measures to remit or reimburse the amount of such charges or to lift such restrictions.

Article 11

For the purposes of the present Protocol, 'official activities of the Organisation' shall mean all the activities of the Organisation carried out in pursuance of its objectives as defined in the Convention, including its administrative activities.

Article 12

1. The circulation of publications and other information material sent by or to the Organisation, and in accordance with its purposes, shall not be restricted in any way.
2. For its official communications and the transfer of all its documents, the Organisation shall enjoy treatment which is at least as favourable as that granted to other similar international organisations by the Government of each State party to the present Protocol.

Article 13

1. The Organisation may receive, hold and transfer any 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.

2. In the exercise of the rights granted to it under the present Article, the Organisation shall take into account any representation made by the Government of a State party to the present Protocol and which is not prejudicial to its own interests.

Article 14

1. Representatives of States parties to the present Protocol attending meetings of the Organisation shall enjoy, while exercising their functions and in the course of their journeys to and from the place of meeting, immunity from arrest and detention, and from seizure of their personal luggage, except in the case of being caught in the act. In such an event, the competent authorities shall immediately inform the Director-General of the Organisation or his representative of the arrest or seizure.
2. The persons referred to in the present Article shall also enjoy immunity from legal process, even after the termination of their duties, in respect of acts, including words spoken or written, done by them in the exercise of their functions and within the limits of their remit. This immunity shall not apply in the case of a violation of the motor vehicle traffic regulations committed by the persons concerned nor in the case of damage caused by a motor vehicle belonging to or driven by them.

Article 15

In addition to the privileges and immunities provided for in Articles 16 and 17 below, the Director-General of the Organisation, or the person acting in his stead, shall enjoy throughout his term of office the privileges and immunities to which diplomatic representatives of comparable rank are entitled by virtue of the Vienna Convention of 18 April 1961 on diplomatic relations.

Article 16

1. Persons in the service of the Organisation shall enjoy immunity from any legal proceedings for acts, including words written or spoken, done by them in the exercise of their functions and within the limits of their remit, even after the end of their duties.
2. This immunity shall not apply, however, in the case of a violation of the motor vehicle traffic regulations committed by the persons mentioned in paragraph 1 above, nor in the case of damage caused by a motor vehicle belonging to or driven by them.

Article 17

The members of personnel of the Organisation who work professionally only for the Organisation:

- a. shall enjoy in respect of the transfer of funds the privileges generally accorded to members of personnel of international organisations in accordance with the respective national regulations;
- b. shall, provided that they hold a contract with the Organisation for a period of at least one year, have the right to import free of duty their furniture and personal effects at the time of first taking up their post in the State concerned and the right, on the termination of their duties in that State, to export free of duty their furniture and personal effects, subject, in either case, to the conditions and restrictions imposed by the laws and regulations of the State where the right is exercised;
- c. shall, together with members of their families forming part of their households, enjoy the same exemptions from measures restricting immigration and governing aliens' registration that are normally accorded to members of personnel of international organisations;
- d. shall enjoy inviolability for all their official papers and documents;
- e. shall be exempt from all obligations in respect of military service or any other compulsory service;
- f. shall, together with the members of their families forming part of their households, enjoy the same facilities with regard to repatriation as members of diplomatic missions in time of international crisis.

Article 18

The Organisation, its Director-General and members of personnel shall be exempt from all compulsory contributions to national social security systems in the event that it establishes its own social security system providing adequate benefits, subject to agreements to be concluded with the States concerned, parties to the present Protocol, in accordance with the provisions of Article 27 below, or to corresponding measures taken by these States.

Article 19

1. Subject to the conditions and following the procedure laid down by the Council, by the end of a period of one year at the latest from the date of the entry into force of the Protocol, the Director-General and the members of personnel of the Organisation referred to in Article 17 may be subject to a tax, for the benefit of the Organisation, on salaries and emoluments paid by the Organisation. From the date on which this tax is applied, such salaries and emoluments shall be exempt from national income tax; but the States parties to the present Protocol shall reserve the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.

2. The provisions of paragraph 1 of this Article shall not apply to annuities and pensions paid by the Organisation to its former Directors-General and former members of personnel in respect of their service with the Organisation.

Article 20

The names, titles and addresses of the members of personnel of the Organisation who are referred to in Article 17 of the present Protocol shall be communicated periodically to the Governments of the States parties to this Protocol.

Article 21

1. The privileges and immunities provided for in the present Protocol are not designed to give personal advantage to their beneficiaries. They are provided solely to ensure, in all circumstances, the unimpeded functioning of the Organisation and the complete independence of the personnel to whom they are accorded.
2. The Director-General or the person acting in his stead or, in the case of the representative of a State party to the present Protocol, the Government of the State concerned, or, in the case of the Director-General himself, the Council, shall have the right and the duty to waive such immunity in cases where they consider that such immunity would impede the normal course of justice and that it can be waived without prejudice to the purposes for which it was granted.

Article 22

1. No State party to the present Protocol shall be obliged to accord the privileges and immunities referred to in Articles 14, 15 and 17 a, b, c, e and f to its own nationals or to permanent residents on its own territory.

Article 23

1. The Organisation shall be obliged to include in all written contracts into which it enters, other than those concluded in accordance with personnel rules, an arbitration clause whereby any disputes arising out of the interpretation or execution of the contract may, at the request of either party, be submitted to private arbitration. This arbitration clause shall specify the manner in which the arbitrators are to be appointed, the law applicable and the State where the arbitrators shall sit. The arbitration procedure shall be that of the aforementioned State.

2. The enforcement of the award rendered in such arbitration shall be governed by the rules in force in the State in which it is to be executed.

Article 24

1. Any State party to the present Protocol may submit to an international arbitration Tribunal any dispute:
 - a. arising out of damage caused by the Organisation;
 - b. involving any non-contractual obligation of the Organisation;
 - c. involving any person who can claim immunity from legal process under Articles 15 and 16, if this immunity is not waived in accordance with the provisions of Article 21 of the present Protocol. In disputes where immunity from legal process is claimed under Articles 15 and 16, the liability of the Organisation shall be substituted for that of the individuals referred to in these Articles.
2. If a State party to the present Protocol intends to submit a dispute to arbitration, it shall notify the Director-General, who shall immediately inform each State party to the present Protocol of such notification.
3. The procedure laid down in paragraph 1 of this Article shall not apply to disputes between the Organisation and the Director-General, its members of personnel or experts in respect of their conditions of service.
4. There shall be no right of appeal against the award of the arbitration Tribunal which shall be final and binding on the parties. In the event of dispute concerning the meaning and scope of the award, it shall be the responsibility of the arbitration Tribunal to interpret it on request by either party.

Article 25

1. The arbitration Tribunal referred to in Article 24 above shall consist of three members, one arbitrator appointed by the State or States parties to the arbitration, one arbitrator appointed by the Organisation and a third arbitrator, who shall assume the Presidency, appointed by the first two arbitrators.
2. The arbitrators shall be chosen from a list comprising no more than six arbitrators appointed by each State party to the present Protocol and six arbitrators appointed by the Organisation.
3. If, within three months from the date of the notification referred to in paragraph 2 of Article 24, either party fails to make the appointment referred to in paragraph 1 of the present Article, the choice of the arbitrator shall, on request of the other party, be made by

the President of the International Court of Justice from among the persons included in the list. This shall also apply, when so requested by either party, if, within one month from the date of appointment of the second arbitrator, the first two arbitrators are unable to agree on the choice of the third arbitrator. However, a national of the State which is a claimant in the arbitration may not be chosen as an arbitrator when such appointment is to be made by the Organisation, nor may a person nominated to the list by the Organisation be chosen as arbitrator when such appointment is to be made by the State which is the claimant. Persons falling into either of these two categories may not be selected as President of the Tribunal.

4. The arbitration Tribunal shall establish its own rules of procedure.

Article 26

Any dispute which may arise between the Organisation and the Government of a State party to the present Protocol concerning the interpretation or application of the present Protocol and which cannot be settled by direct negotiation shall, unless the parties agree to another method of settlement, be submitted at the request of either one of them to an arbitration Tribunal composed of three members, an arbitrator appointed by the Director-General of the Organisation or the person acting in his stead, an arbitrator appointed by the Government of the State or States parties to the present Protocol concerned and a third arbitrator appointed jointly by the two others, who should be neither an official of the Organisation nor a national of the State or States concerned and who shall be President of the Tribunal.

The request for arbitration shall include the name of the arbitrator appointed by the claimant; the respondent shall appoint his arbitrator and inform the other party of that person's name within two months of receiving the request for arbitration. If the respondent fails to notify the name of his arbitrator within the above time or if the two arbitrators fail to agree on the choice of a third arbitrator within two months of the last arbitrator having been appointed, the arbitrator or the third arbitrator, as the case may be, shall be appointed by the President of the International Court of Justice, at the request of whichever party is first to apply to the Court.

The Tribunal shall establish its own rules of procedure. Its decisions shall be binding on the parties and shall not be subject to appeal.

Article 27

The Organisation may, if the Council so decides, conclude complementary agreements with one or more of the States party to the present Protocol in order to implement the provisions of the present Protocol.

Article 28

1. This Protocol shall be open for signature by States parties to the Convention Establishing the Organisation, dated 5 October 1962.

2. This Protocol shall be subject to ratification or approval. The instruments of ratification or approval shall be deposited in the archives of the Government of the French Republic.

Article 29

The present Protocol shall enter into force on the date of the deposit of the third instrument of ratification or approval.

Article 30

1. After entering into force, the present Protocol shall remain open for accession by any State party to the Convention Establishing the Organisation, dated 5 October 1962.
2. Instruments of accession shall be deposited in the archives of the Government of the French Republic.

Article 31

For any State which ratifies or approves the present Protocol after its entry into force, or for any State which accedes thereto, the present Protocol shall enter into force on the date of the deposit of the instrument of ratification, approval or accession.

Article 32

The Government of the French Republic shall notify all signatory and acceding States of this Protocol and the Director-General of the Organisation of the deposit of each instrument of ratification, approval or accession and of the entry into force of this Protocol.

Article 33

1. The present Protocol shall remain in force until the expiry of the Convention Establishing the Organisation, dated 5 October 1962.
2. Any State which withdraws from the Organisation or ceases to be a member thereof as provided for in Article XI of the Convention referred to in the preceding paragraph shall cease to be a party to the present Protocol.

Article 34

This Protocol shall be interpreted in the light of its primary objective, which is to allow the Organisation fully and efficiently to fulfil its purposes and exercise the functions assigned to it by the Convention.

Article 35

Upon the entry into force of this Protocol, the Government of the French Republic shall register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

Done at Paris, this 12th day of July 1974 in a single original in the German, Danish, French, Dutch and Swedish languages, the French text being authoritative in the event of dispute. This copy shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic, which shall transmit a certified copy thereof to all signatory and acceding States.



Given under the Official Seal of the Government,
25 June 2019.

LEO VARADKAR,
Taoiseach.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This order provides that privileges and immunities are afforded to the European Organisation for Astronomical Research in the Southern Hemisphere (otherwise known as the “European Southern Observatory”) in accordance with the Protocol on the Privileges and Immunities of the European Organisation for Astronomical Research in the Southern Hemisphere, done at Paris on 12 July 1974, pursuant to the Diplomatic Relations and Immunities Act 1967 (as amended).

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