

**Agreement
between
the Republic of Austria
and
the European Agency for the Operational Management of Large-Scale
IT
Systems in the Area of Freedom, Security and Justice on the Seat of
the Backup Site of the Agency**

The Republic of Austria and the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (hereinafter referred to as "The Agency"),

Having regard to Regulation (EC) No 1077/2011 of the European Parliament and the Council of the European Union of 25 October 2011 establishing the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (hereinafter referred to as the Regulation) and in particular Article 22 thereof,

Having regard to the Protocol on the Privileges and Immunities of the European Union (hereinafter referred to as the Protocol),

Whereas Article 10 paragraph 4 of the Regulation provides that a backup site capable of ensuring the operation of a large-scale IT system in the event of a failure of such a system shall be installed in Sankt Johann im Pongau, Austria,

Whereas in the event of partial or total failure of the central system in Strasbourg the backup site in Sankt Johann im Pongau will ensure the operation of the large-scale IT system(s) affected,

Whereas Article 23 of the Regulation specifies that the Protocol on privileges and immunities of the European Union shall apply to the Agency,

Whereas Article 20 of the Regulation specifies that the statutory staff of the Agency and the Executive Director shall be subject to the Staff Regulations and to the Rules adopted jointly by the European Union institutions for the purpose of applying the Staff Regulations,

Whereas also the Modalities of Application of the Protocol on the Privileges and Immunities of the European Communities between the Austrian Federal Government and the Commission of the European Communities (hereinafter: Modalities of Application), done at Brussels on 20 January 2000, are applicable to the Agency,

Whereas further provisions must be made for the implementation of certain articles of the Protocol and of the Modalities of Application and for additional matters,

Intending to specify the means of effective cooperation between the Parties which are essential for the successful and effective operation of the Agency and the implementation of its tasks,

Wishing to conclude an agreement governing the premises of the Agency, the privileges and immunities and exemptions, conferred by the Government on the Agency, its Executive Director, the Staff of the Agency, the members of the family forming part of their household and the members and representatives of the Management Board and of the Advisory Groups of the Agency and to guarantee the exercise of functions and physical protection.

have agreed as follows:

Article 1 Definitions

1. For the purposes of the application of the Protocol to relations between the Republic of Austria and the Agency:

- (a) all references to the European Union shall be read as references to the Agency;
- (b) all references to officials and other servants of the European Union shall be read as references to the Statutory Staff of the Agency.

2. For the purpose of this Agreement:

- (a) "Austrian authorities" means such federal, state, municipal or other authorities in the Republic of Austria as may be competent in the context, and in accordance with the laws and customs applicable in the Republic of Austria;
- (b) "Staff" means the Statutory Staff, i.e. officials, temporary Staff or contract Staff of the Agency in accordance with Article 20 (4) of the Regulation and officials seconded by the Commission to the Agency, as well as the "seconded officials or national experts" from the Member States in accordance with Article 20 (6) of the Regulation;
- (c) "Premises" means the installations and offices used by the Agency in the Republic of Austria as backup site for the large-scale IT system of the Agency.

Article 2 Premises of the Agency

1. The description of the premises of the Agency shall be jointly defined between the Government of the Republic of Austria and the Agency in a separate arrangement.

2. The arrangement referred to under paragraph 1 will be updated if necessary if the Agency is entrusted with new systems in accordance with the relevant legislative instruments adopted as foreseen in Article 1 (3) of the Regulation.

3. Any building used with the agreement of the Government for meetings convened by the Agency shall be deemed temporarily to form part of the premises.
4. In accordance with Article 22 of the Regulation and as specified in a separate arrangement,
 - (a) the Republic of Austria shall provide the premises and use thereof to the Agency for the duration of this Agreement by way of perpetual lease. The Agency shall have an exclusive right to use the premises.
 - (b) the premises shall be provided in full operational working conditions for the purposes for which the Agency will use them;
 - (c) the Agency shall bear the costs of the lease of the premises and of the related services;
 - (d) the Republic of Austria shall bear the maintenance costs of the premises.

Article 3

Privileges and Immunities conferred on the Executive Director and the Statutory Staff in addition to the Protocol

Without prejudice to the provisions of Articles 11 to 14 of the Protocol and to Article 4 of the Modalities of Application, the Executive Director and the Statutory Staff of the Agency shall enjoy the following privileges and immunities:

- (a) in accordance with Article 11 subparagraph (c) of the Protocol, the freedom to acquire or maintain within the Republic of Austria foreign securities, foreign currency accounts, other movable property and, under the same conditions as Austrian nationals, immovable property, and upon termination of their employment with the Agency, the right to transfer out of the Republic of Austria, without interference, their funds in the same currency and up to the same amounts as they had brought into the Republic of Austria;
- (b) the same protection and repatriation facilities with respect to themselves and members of their families forming part of their household as are accorded in time of international crises to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria;
- (c) the right to import for personal use, free of duty and other charges, provided these are not simply charges for public utility services, and exempt from economic import prohibitions and restrictions on imports and exports one motor vehicle every four years.

Article 4

Seconded officials and national experts

1. Seconded officials and national experts from the Member States shall enjoy, within and with respect to the Republic of Austria, the privileges and immunities contained in Article 11 (a) and (b), 12 (2) and 13 of the Protocol.

2. The Government shall provide the same protection and repatriation facilities to seconded officials and experts of the Agency as well as the members of the family forming part of their household, other than nationals of the Republic of Austria, as are accorded in times of international crises to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria.

Article 5 Social Security

1. The Agency and the Staff members of the Agency shall be exempt from all compulsory contributions to any social security scheme in the Republic of Austria.

2. The Staff members of the Agency shall have the right to participate in any branch of the social insurance (health, accident and pension insurance) as well as in the unemployment insurance. This insurance shall have the same legal effect as a compulsory insurance.

3. The Staff members of the Agency may avail themselves of the right under paragraph 2 by submitting a written declaration within three months after entry into force of this Agreement or within three months after taking up their assignment with the Agency.

4. Insurance under paragraph 2 in the selected branch shall take effect with the date of taking up the assignment with the Agency, provided the declaration is submitted within seven business days after entry into force of this Agreement or after the date of taking up the assignment, otherwise on the day following the day of submission of the declaration.

5. Insurance shall cease on the date on which the assignment with the Agency terminates.

6. Throughout the duration of the insurance, Staff members of the Agency shall be responsible for the payment of the entire contributions to the competent Gebietskrankenkasse.

7. The declarations required to be made by the Staff member of the Agency under paragraph 3 shall be transmitted by the Agency on behalf of the Staff member of the Agency to the competent Gebietskrankenkasse. The Agency shall upon request provide the competent Gebietskrankenkasse with the information necessary for the implementation of the insurance.

Article 6

Privileges and Immunities conferred on the members of the Management Board and of the Advisory Groups of the Agency

1. Article 11 paragraphs (a) to (c) and Article 17 of the Protocol shall apply to the Members of the Management Board of the Agency and of the Advisory Groups of the Agency.

2. Where the incidence of any form of taxation depends upon residence, periods during which the Members of the Management Board of the Agency and of the Advisory Groups of the Agency are present in Austria for the discharge of their duties shall not be considered as periods of residence. In particular, such persons shall be exempt from taxation in respect of remuneration, honoraria and allowances paid by the Agency.

Article 7 Transaction taxes and fees

All transactions to which the Agency is a party, and all documents recording such transactions, shall be exempt from all taxes, recording fees and court fees.

Article 8 Entry and stay

1. The Republic of Austria shall take all necessary measures to facilitate, irrespective of nationality, the entry into, and stay in, the Republic of Austria of the persons listed below, shall allow them to leave the Republic of Austria without interference and shall ensure that they can travel unimpeded to or from the locality of the seat of the backup site, affording them any necessary protection when so travelling:

- (a) the members of the Management Board and of the Advisory Groups;
- (b) the Executive Director and the Staff;
- (c) the members of the family forming part of the household of the Executive Director and the Staff;
- (d) any experts invited by the Agency.

2. Visas which may be required by persons referred to in paragraph (1) shall be granted free of charge and as promptly as possible.

3. The Executive Director, the Staff as well as members of their families forming part of their household shall be exempt from immigration restrictions and from registration formalities.

4. The Agency shall communicate to the Austrian authorities a list of the Staff of the Agency and shall continually update such list.

5. The Republic of Austria shall issue, at their request, to the Staff of the Agency deployed or to be deployed to the back-up site in Sankt Johann im Pongau in accordance with the Austrian law an identity card bearing the photograph of the holder. Members of the families forming part of the household of the Staff deployed will be issued, at their request, with such an identity card upon arrival in Austria. This card shall serve to identify the holder vis-à-vis the Austrian authorities and entitles him or her to reside in Austria.

6. The Republic of Austria shall be entitled to require reasonable evidence to establish that persons claiming the rights granted by Article 11 subparagraph (b) of the Protocol and by this Article fall within the categories described in these provisions.

7. The provisions of paragraphs 3, 5 and 6 above shall be without prejudice to any rights under Directive 2004/38/EC on the rights of citizens of the European Union and their family members to move and reside freely within the territory of the Member States of the European Union.

Article 9 **Assistance and cooperation in case of a partial or complete failure of the Central System**

1. The detailed requirements for the activation of the Agency's back-up unit in Sankt Johann im Pongau shall be specified between the Government and the Agency in a separate arrangement.

2. In accordance with Article 22 of the Regulation and as specified in a separate arrangement, the Government shall provide office space and shall facilitate the accommodation of staff during the duration of the switchover in lodgings which are situated within a reasonable distance from the premises of the Agency.

Article 10 **Security**

1. The Agency shall be responsible for security and the preservation of order within the premises of the Agency. Subject to the Protocol, it shall also be responsible for compliance with European Union and Austrian law.

2. Persons empowered by Austrian laws to maintain security and order shall not be entitled to enter the premises of the Agency unless requested or authorized by the Agency, who shall in such event give them the assistance they require. However, the Agency shall be presumed to consent to access in the event of a fire or other emergency warranting immediate measures of protection.

3. The Government and Austrian authorities shall exercise due diligence to ensure that the tranquillity of the seat of the backup site of the Agency is not disturbed by any person or group of persons attempting unauthorized entry into or creating disturbances in the immediate vicinity of the premises of the Agency.

4. The Agency and the Austrian authorities shall closely co-operate regarding the interrelation of effective security within and in the immediate vicinity outside the seat of the backup site of the Agency. They shall ensure consistency between the Agency's and the Government's rules on security clearance to the seat area. Any change of the security rules on access to the premises shall be notified to the other Party. The Government shall duly coordinate the necessary adaptations in security layout and infrastructure with the Agency.

5. The Austrian authorities may be requested by the Agency to take such measures as may be needed to restore law and order within the premises of the Agency.

6. The Agency, in the establishment of its internal security rules and procedures, shall consult with the Austrian authorities with a view to achieving the most effective and efficient security functions.

7. The Agency and the Austrian authorities shall notify each other of all matters relating to the security of persons and seat area. They shall, in particular, notify each other of the name and status of any authority responsible for security matters. Where necessary they may create formalised co-ordination arrangements for this purpose.

8. Access to all or part of the premises of the Agency is subject to a prior written authorization by the Agency Security Officer. The Austrian authorities shall, in accordance with applicable Austrian law, grant to persons authorized by the Agency access to the military facilities as necessary for them to reach the premises of the Agency. This includes the issuance of access authorizations by the Austrian authorities. The Agency shall communicate to the Austrian authorities the data necessary for the access authorization and shall continually update these data.

Article 11

Communications of the Agency

1. The Agency may install and use telecommunications in their installations. This should include the necessary means to ensure the protection and confidentiality of personal data mentioned in Article 28 of the Regulation. The Austrian authorities shall take the appropriate administrative measures in order to facilitate the installation and use by the Agency of the said communications system in accordance with Austrian law and regulations, including the timely issuance of the necessary authorisations for the installation and use of fixed or mobile aerials for satellite communications and other equipment.

2. The Agency shall be entitled to use any code and encryption in its official communications and correspondence, as well as to dispatch and receive its official communications and correspondence by couriers or in sealed bags duly identified which shall enjoy the same privileges and immunities as diplomatic couriers and diplomatic bags.

3. In case of "force majeure" leading to a total or partial interruption of communications, the Agency shall enjoy the same priority treatment as accorded to the Austrian administration at state level. For the purpose of this Agreement and any regulation pertaining to it, the term "force majeure" shall mean any unforeseeable situation or event beyond the control of the Parties that was not attributable to error or negligence on their part and which proves insurmountable in spite of all due diligence and prevents them from fulfilling any or all their obligations under this Agreement and any regulation pertaining to it. Labour disputes, strikes or financial difficulties cannot be invoked as force majeure.

Article 12

Public Services in the Seat Premises

The Republic of Austria shall take all appropriate measures to ensure that the seat of the backup site is supplied with the necessary public services on equitable terms.

Article 13

Settlement of disputes

1. All disputes relating to the application of this Seat Agreement should be settled amicably by direct negotiations.
2. In the event of failure to settle a dispute amicably, the dispute shall be referred at the request of the Republic of Austria or of the Agency to the Court of Justice of the European Union.

Article 14

Amendments

This Agreement may be amended by mutual written agreement of the Parties. Each Party shall notify the other as soon its internal procedures necessary for the entry into force of the amendments have been completed. The amendments shall enter into force thirty days after the last such notification.

Article 15

Entry into force and duration

1. The Parties shall notify each other the completion of the procedures required, for each of them, to be bound by this Agreement. The Agreement shall enter into force thirty days after the last such notification.
2. The provisions of this Agreement shall take effect as of 1 December 2012.
3. Either Party can denounce the Agreement at any time with eighteen months' notice by means of written notification through diplomatic channels to the other Party.

Done in Tallinn on 27 May 2013 in two copies, in German and English, both texts being equally authentic.

For the Republic of Austria:

Renate Kobler m.p.

For the European Agency for the
Operational Management of Large-Scale IT
Systems in the Area of Freedom, Security
and Justice:

Krum Garkov m.p.