

**Guidelines with standard provisions
for headquarters agreements of EU decentralised agencies**

EXECUTIVE SUMMARY

- According to the Common Approach on EU decentralised agencies, *"all agencies should have headquarters agreements, which should be concluded before the agency starts its operational phase. Agencies still lacking headquarters agreement and the host country in question should reach an agreement in accordance with the legal order of the relevant Member State. The Commission will put together a set of provisions on the basis of existing best practices, to serve as a good orientation tool for future headquarters agreements."*
- A headquarters agreement concluded in a timely manner would contribute to the transparency of relations between the agency and the host Member State. The agency would have better information on the working and living conditions that it could offer to its staff and this factor could increase its capacity to attract highly qualified staff.
- Nearly one third of the 32 EU decentralised agencies still lack a proper headquarters agreement. All agencies, with or without a headquarters agreement, benefit from the provisions of the Protocol on Privileges and Immunities as it is applicable in all Member States.
- Most of the existing headquarters agreements include provisions on the inviolability of the agency's headquarters, its assets and archives, as well as on the privileges and immunities of the officials and other servants of the agencies in compliance with the Protocol on the privileges and immunities of the European Union.
- However, the conditions in which agencies operate differ significantly not only from one Member State to another, but sometimes within the same host Member State.
- These Guidelines aim at supporting agencies, as well as the host Member States, by providing a model that they should consider upon negotiating a new headquarters agreement or upon revising an existing one.
- All decentralised EU agencies falling under the scope of the Common Approach – as well as any other future decentralised agency – are concerned. Other EU decentralised bodies, such as the Joint Undertakings may also use these Guidelines as reference to negotiate their headquarters agreements.
- While these Guidelines aim to provide a common framework, agencies are legally independent and they alone are responsible for the way they handle this issue in practice. The Network of EU Agencies should also continue to serve as an important channel for discussion and sharing of best practices in this area.

Background

The Common Approach endorsed by the Inter-institutional Working Group on EU decentralised agencies in July 2012 concludes that *"all agencies should have headquarters agreements, which should be concluded before the agency starts its operational phase. Agencies still lacking headquarters agreement and the host country in question should reach an agreement in accordance with the legal order of the relevant Member State."*

Furthermore, the Common Approach mandates the Commission to *"put together a set of provisions on the basis of existing best practices, to serve as a good orientation tool for future headquarters agreements."*

Therefore, as part of the Roadmap on the follow-up to the Common Approach, adopted by the Commission on 19th December 2012 the Commission committed itself to elaborate *"Guidelines with standard provisions for headquarters agreements on the basis of existing best practices"*.

Preparation of these Guidelines

In preparation of these Guidelines, the Commission pursued an inventory of existing headquarters agreements, to identify the current state of play, as well as good practices. This inventory shows that 22 out of the 32 existing EU decentralised agencies concluded headquarters agreements or similar agreements with host countries. Negotiations are under way for 4 other agencies. For 2 of them the negotiations are blocked, whereas for the remaining 4 there is no perspective for a headquarters agreement (see annex for detailed overview).

The Commission worked closely with the agencies during the preparation of these Guidelines, through the network of Heads of EU Agencies. As they had already gathered very valuable information, experiences and examples of best practices, this served as a useful contribution to the process. Agencies are encouraged to continue sharing new developments/experiences, with the support and guidance of the network of Heads of EU Agencies and/or one of its specialised sub-networks.

Objective and scope of the Guidelines

The objective of these Guidelines is to give support to agencies, as well as to host Member States, by providing a model that they should consider upon negotiating a new headquarters agreement or upon revising an existing one.

All decentralised EU agencies falling under the scope of the Common Approach – as well as any other future decentralised agency – are concerned.

Other EU decentralised bodies, such as the Joint Undertakings and the European Institute for Innovation and Technology, may also use these Guidelines as reference to negotiate their headquarters agreements.

**SUGGESTED STANDARD PROVISIONS
FOR HEADQUARTERS AGREEMENTS OF EU DECENTRALISED AGENCIES**

Protocol between the Government of [Host Member State] and the European Agency for [xxx]

The Government of [Host Member State], hereinafter referred to as [Host Member State], and the [European Union Agency for xxx], hereinafter referred to as 'the Agency':

HAVING REGARD to Council Regulation EC No. xxxx/xxxx establishing the Agency;

HAVING REGARD to the Decision of the Council of the European Union of xx.xx.xxxx that the headquarters of the Agency shall be in [city], [Host Member State];

WHEREAS Article x of Regulation EC No.xxxx/xxxx provides that the Staff Regulations of officials of the European Union, the Conditions of employment of other servants of the European Union and the rules adopted jointly by the institutions of the European Union for the purposes of the application of those Staff Regulations and conditions of Employment shall apply to the statutory staff of the Agency;

WHEREAS Article x of Regulation EC No.xxxx/xxxx provides that the Protocol No. 7 on the Privileges and Immunities of the European Union, hereinafter referred to as 'the Protocol', shall apply to the Agency and to its statutory staff;

WHEREAS further administrative provisions must be agreed for the implementation of the Protocol;

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

(1) All references in the Protocol to the European Union shall be understood as references to the Agency.

(2) All references in the Protocol to officials and other servants of the European Union should be understood as references to officials and other servants of the Agency.

(3) The staff of the Agency consists of:

a) Statutory staff subject to the Staff Regulations of Officials of the European Union or to the Conditions of employment of other servants of the European Union

b) External staff

i) Seconded national experts

ii) Experts under contract

(4) Statutory staff shall mean the personnel of the Agency subject to the Staff Regulations of Officials of the European Union or to the Conditions of employment of other servants of the European Union: officials, temporary agents and contract agents.

(5) Seconded national experts shall mean the personnel seconded to the Agency by participating States or xxx.

(6) External experts shall mean persons with which the agency has concluded a service contract or who are invited to provide advisory services to the Agency.

(7) Household shall have the same meaning as described under articles 1 and 2 of Annex VII of the Staff Regulations.

Article 2

Legal status

(1) According to Article X of Regulation EC No.xxx/xxxx the Agency is a Body of the European Union. It enjoys the most extensive legal capacity accorded to legal persons under the laws of [Host Member State]. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings. The Agency is represented by its Executive Director.

(2) The Agency shall take its seat in [City, Host Member State].

Article 3

Immunity, Inviolability and Communications

(1) The premises and buildings of the Agency shall be inviolable. They shall be exempt from search, requisition, confiscation, expropriation or any form of seizure.

(2) The property and assets of the Agency shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice of the European Union.

(3) The archives of the Agency as well as all documents and data belonging to the Agency or held by it shall be inviolable.

(4) For its official communications and the transmission of all its documents, the Agency shall enjoy the treatment accorded by [Host Member State] to diplomatic missions. No official communication addressed to the Agency or any member of its staff, or any communication emanating from the Agency, in whatever form or by whatever means of transmission, may be subject of any restriction of any kind, nor may its confidential nature be prejudiced. This protection extends in particular to publications, internet content, magnetic and optical tapes and disks, pictures, films or any other visual or sound recording

Article 4

Exemption from taxes

(1) The Agency is exempt from any national, regional or municipal direct taxes and all administrative fees with regard to the premises it owns or rents, its assets, revenues and other property.

(2) The Agency is exempt from the payment of any national, regional or municipal indirect taxes and sales taxes on the supply of goods and services (including those on the consumption of gas, electricity and any type of fuel) for official use by the Agency, provided that the value including tax is not less than [300] €.

(3) The Agency shall submit all invoices paid that include such tax to the Ministry of Finance which shall repay the amount of taxes received within no more than two calendar months after receiving the duly substantiated request for tax recovery.

OR

(3) The authorities of [Host Member State] shall provide the Agency with the relevant forms and documents to be issued to the providers of goods and services to justify the delivery of goods and services free of tax.

(4) No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 5

Customs duties, imports and exports

(1) The Agency shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use.

(2) Articles so imported shall not be disposed of, whether or not in return for payment, in [Host Member State] or the internal market without prior approval of the Government of [Host Member State].

(3) The Agency shall also be exempt from any customs duties and any prohibitions and restrictions on imports and exports in respect of its publications.

Article 6

Diplomatic bags

Documents and articles for official use of the Agency may be imported, exported or transferred in the form of luggage in line with the established procedures for diplomatic luggage of diplomatic representations of other countries in [Host Member State].

Article 7

Vehicles of the Agency

(1) The Agency is exempt from any taxes, duties and any import restrictions on vehicles and other technical equipment intended for the official use of the Agency and on spare parts for these.

(2) [Vehicles intended for the official use of the Agency shall be registered under a special series similar to the registration of vehicles used by the diplomatic missions accredited to [Host Member State]¹.

(3) The Agency may freely dispose of these vehicles [four] years after they were purchased without any prohibition or restriction and without any customs or other duty and taxes.

Article 8

Entry and stay

(1) The authorities of the [Host Member State] shall take appropriate measures to facilitate the entry into, stay in and exit from its territory of the following persons, irrespective of their nationality: members of the Governing Board and other bodies² of the Agency, the Director, statutory staff, seconded experts, external experts, as well as the members of the family forming part of the household of the Director, the statutory staff and the seconded experts.

(2) Visas, when needed by the persons referred to in paragraph 1 and any other necessary authorisations shall be issued to such persons free of charge and as promptly as possible. The Agency shall notify the competent authority of [the Host State] about visa applications prior to lodging them at the respective [Host State] consulates.

(3) The Director, statutory staff and seconded experts, as well as the members of their family forming part of their household shall be exempt from any immigration restrictions or formalities for the registration of aliens.

Article 9

Seat of the Agency

(1) The Government of [Host Member State] supports the establishment of the Agency in [City, Host Member State] by providing a suitable location in [the centre of] xxxx free of charge [for X years?]; The premises shall respond to the requirements, conditions and specifications listed in Annex X, which also specifies the respective responsibilities agreed between the Agency and the [Host Member State] in relation to the upkeep of the premises.

(2) The Agency may fly the flags of the Union, the flags of [Host Member State and Host City] and its own flag on its premises.

¹ This should not be an obligation for the Host Member State

² The concerned bodies should be specified in the text of the agreement

(3) The agency shall be exclusively entitled to display its emblem on the premises of the Agency and on its means of transport.

(4) The relevant authorities of [Host Member State] and the bodies which are under their control shall do everything within their remit to provide the Agency, at its request, with all necessary services including electricity, water, sewerage, gas, post, telephone, data transmission lines, telegraph, local transport, drainage, refuse collection and fire protection. This list shall not be regarded as exhaustive. The said services shall be provided under fair conditions in such a way that the Agency benefits from similar conditions to those which are granted in analogous circumstances to the public administration of [Host Member State]. In case of any interruption or threatened interruption of any such services [the Host Member State] authorities shall consider the needs of the Agency as being of equal importance as those of essential departments of the Government and shall take steps accordingly to ensure that the work of the Agency is not prejudiced.

(5) The Agency may install and use telecommunications in their installations. The [Host Member State] authorities shall take the appropriate administrative measures in order to facilitate the installation and use by the Agency of the said telecommunications systems, in accordance with national law and regulations, and ensure that the necessary authorisations for the installation and use of fixed or mobile aerials for satellite telecommunications and other equipment are issued in due time.

(6) The Agency shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other government including its diplomatic missions or to other governmental organisations in the matter of priorities, tariffs and charges on mail, cablegrams, telephotos, telephone, telegraph, telex and other communications.

(7) The Agency shall have the right to use codes and to dispatch and receive correspondence and other official materials by courier on in sealed bags which shall have the same privilege and immunities as diplomatic couriers and bags.

Article 10

Security of the Agency

(1) The Agency adopts its internal rules and procedures necessary to ensure security and maintenance of good order inside the buildings and other premises used by it. The Agency may, in particular, refuse access to its buildings or other premises or expel any persons considered undesirable.

(2) The Agency may appoint security guards and bodyguards to protect its premises, staff and visitors. The bearing of firearms by security guards or bodyguards falls within the application of the laws of [Host Member State] and requires the prior authorisation by the [Ministry of Interior].

(3) No official of the [Host Member State] authorities shall enter the premises of the Agency without prior approval of the Director of the Agency or his/her authorized representative. Such approval shall be presumed in case of fire or other disasters which could constitute a danger for public health and safety.

(4) The authorities of [Host Member State] shall provide assistance to the Agency, upon request by the Director, in order to maintain security and good order inside the buildings and other premises used by it. The Agency may, in particular, request the relevant authorities of [Host Member State] to

take the measures necessary to assure or re-establish security and good order inside the buildings and other premises used by it and in the areas surrounding the premises of the building in order to ensure safe access to its premises for its staff and visitors.

(5) The relevant authorities of [Host Member State] and the Agency shall keep each other informed of all matters that affect the security of the Agency staff, visitors and its buildings and other premises. They shall, in particular, nominate and communicate to each other the names and functions of the persons responsible to establish and maintain such cooperation.

Article 11

Officials and other agents of the Agency

(1) In accordance with the provisions of Articles 11 to 15 of the Protocol, it has been agreed in particular that the statutory staff of the Agency:

- (i) Enjoy immunity from jurisdiction as regards acts carried out by them in their official capacity, including their spoken and written statements. This immunity shall continue after cessation of their functions;
- (ii) Are exempt from national taxes on salaries, wages and emoluments paid by the Agency;
- (iii) Are exempt from any compulsory contribution to the national social security system, without prejudice to the provisions laid down in the conditions of Employment of other servants of the European Union. Consequently, they shall not be covered by the national social security regulations, unless they voluntarily join the national social security system. The same provision applies to the members of the family forming part of the household of the statutory staff, unless they are employed in the Host State by an employer other than the Agency or receive social security benefits from [the Host State];
- (iv) Enjoy the facilities usually granted to officials of international organizations as regards exchange regulations;
- (v) Have the right to import from their last country of residence or from the country of which they are nationals, free of duty and without prohibitions or restrictions, in respect of initial establishment, within two years of taking up their appointment with the Agency furniture and personal effects, including motor vehicles, which shall be registered under a special series;
- (vi) Have the right to export, during a period of [three] years as from the date of cessation of functions at the Agency, without prohibitions or restrictions, furniture and personal effects, including vehicles they use and which are in their possession. The [three] years referred to in this paragraph shall be a maximum limit and are only to be used exceptionally.

(2) In addition to the privileges and immunities specified in paragraph 1, the Director and the members of his/her family forming part of his household, provided they are not [Host Member State] nationals or have held permanent residence status before being employed by the Agency, shall be accorded, in [Host Member State], the privileges and immunities, exemptions and facilities

accorded to the heads of diplomatic missions and the members of their family in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961. This applies also to persons fulfilling the functions of the Director on a temporary basis for a period of at least two months.

(3) Statutory staff of the Agency, their spouses, registered partners and dependent family members shall have access to all the public services provided by [Host Member State], including medical services, schooling services, child care services and rental rights without discrimination in relation to nationals of [Host Member State].

(4) The Government of [Host Member State] shall cooperate with the Agency in order to establish schooling facilities for children of the statutory staff of the Agency similar to the European Schools as established at other seats of EU institutions and bodies or otherwise facilitate access to other equivalent educational systems.

Article 12

Seconded national experts

(1) Any emoluments, allowances and other payments that are paid by the Agency shall be exempt from national taxes.

(2) For as long as they remain covered by the social security system in the country from which they are seconded to the Agency, the seconded national experts shall be exempt from all compulsory contributions to the social security organisations of [Host Member State]. Consequently, during that time they shall not be covered by the social security regulations of [Host Member State], unless they voluntarily join the [Host Member State] Social Security System.

(3) The provisions of paragraph 2 of this article shall apply, *mutatis mutandis*, to the members of the family forming part of the household of the seconded experts, unless they are employed in [Host Member State] by an employer other than the Agency or receive social security benefits from [Host Member State].

Article 13

Management Board

Remuneration, honoraria and allowances paid by the Agency shall be exempt from national taxes and social security contributions.

Article 14

Notification of appointments, identity cards

(1) The Agency shall inform the Ministry of Foreign Affairs of [Host Member State] when the Director, a member of the statutory staff or a seconded national expert takes up or relinquishes his/her duties. Each year the Agency shall send a list of the names and addresses of the Director, the

statutory staff, as well as the seconded national experts to the Ministry of Foreign Affairs of [Host Member State].

(2) Statutory staff of the Agency and the members of their household shall be issued [a special identity card].

Article 15

Social Security

(1) The Agency shall be exempt from all compulsory contributions to social security schemes in [Host Member State] in respect of the Director, the statutory staff, the seconded national experts, as well as the members of the Management Board.

(2) The Director and the statutory staff shall have the social security coverage according to the Regulations and Rules applicable to officials and other servants of the European Union.

(3) The Government of [Host Member State] recognizes the medical insurance provided by the Joint Sickness Insurance Scheme (JSIS) for officials of the European Union.

Article 16

Waiver of immunities

(1) The privileges and immunities granted by the Protocol are conferred solely in the interest of the Agency and the Union, and not for the personal benefit of the individuals themselves.

(2) The [Director of] the Agency shall waive the immunity accorded to a member of the statutory staff of the Agency wherever [the Director] considers that the waiver of such immunity is not contrary to the interests of the Agency or the Union.

(3) The Governing Board of the Agency shall waive the immunity accorded to the Director of the Agency wherever it considers that the waiver of such immunity is not contrary to the interests of the Agency or the Union.

Article 17

Resolutions of disputes

(1) Any dispute with regard to the interpretation or application of this agreement shall be examined by an *ad hoc* group consisting of four members, two of whom shall be appointed by each of the two contracting parties at the request of the party initiating the dispute resolution. The appointment of members shall take place no later than 20 calendar days following the request. The *ad hoc* group shall hear the dispute no later than [20] calendar days after its appointment and deliver its opinion in writing no later than [20] calendar days after the hearing.

(2) Disputes not resolved in this way shall be referred to the Court of Justice of the European Union by the Agency or by the Host State after having given the other party two month notice in advance of its intention of referring the matter to the Court.

Article 18

Interpretation of the Agreement

(1) This Agreement is signed in [four] copies, two in [Host Member State official language] [and two in English], one version [of each language version] for each party.

(2) [Should in a dispute concerning its interpretation appear that the two language versions may be interpreted in a different manner the interpretation of the English language version shall prevail].

Article 19

Entering into force

(1) This agreement shall enter into force on the date of signature by both parties.

(2) This agreement shall remain in force until the completion of the winding up of the Agency, unless agreed otherwise by the parties.

(3) This agreement may be amended by mutual consent of the parties. Such amendments shall enter into force in accordance with paragraph 1 of the present article.

(4) Either Party may terminate the present agreement by means of a written notice to the other party. Termination shall take effect six months following the date of the notification.

Decentralised agencies falling under the scope of the Common Approach

Agencies	Seat and year of creation	Headquarters agreement?
ACER (Agency for the Cooperation of Energy Regulators)	Ljubljana/SL 2009	2010
BEREC Office (The Office for the Body of European Regulators for Electronic Communications)	Riga / LV 2009	2011
CdT (Translation Centre for the bodies of the EU)	Luxembourg/LU 1994	None (signature suspended until definitive premises are found)
CEDEFOP (European Centre for the Development of Vocational Training)	Thessaloniki/GR 1975	1995
CEPOL (European Police College)	Bramshill/UK 2005	2004
CPVO (Community Plant Variety Office)	Angers/FR 1994	None
EFCA (EU Fisheries Control Agency)	Vigo/ES 2005	2008
EASA (European Aviation Safety Agency)	Köln/DE 2002	None
EASO (European Asylum Support Office)	La Valletta (MT) 2010	2011
EBA (European Banking Authority)	London/UK 2010	2012
ECDC (European Centre for Disease Prevention and Control)	Stockholm/ SE 2004	2010

ECHA (European Chemicals Agency)	Helsinki/FI 2006	2007
EEA (European Environment Agency)	Copenhagen/D 1990	1995 + corrigendum from 2005
EFSA (European Food Safety Authority)	Parma/IT 2002	2004
EIGE (European Institute for Gender Equality)	Vilnius/LT 2006	2012
EIOPA (European Insurance and Occupational Pensions Authority)	Frankfurt/DE 2010	2011
EMCDDA (European Monitoring Centre for Drugs and Drug Addiction)	Lisbon/PT 1993	1998 + 2004
EMA (European Medicines Agency)	London/GB 1993	None
EMSA (European Maritime Safety Agency)	Lisbon/PT 2002	2004
ENISA (European Network and Information Security Agency)	Heraklion/GR 2004	2005
ERA (European Railway Agency)	Lille-Valenciennes/FR 2004	None
ESMA (European Securities and Markets Authority)	Paris/FR 2010	Under discussion
ETF (European Training Foundation)	Turin/IT 1990	1994 and 2010
eu-LISA (European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice)	Tallinn/ET, Strasbourg /FR, and Sankt Johann im Pongau/AT 2011	Under discussion (3 separate agreements)
EU-OSHA (European Agency for Occupational Safety and Health)	Bilbao/ES 1994	Under discussion
EUROFOUND (European Foundation for the	Dublin/IE	Agreement on

Improvement of Living and Working Conditions)	1975	the application of the PPI from 1981 but upcoming discussions to review this (in 2013)
EUROJUST	The Hague/NL 2002	2006
EUROPOL	The Hague/NL 1995	2006
FRA (Fundamental Rights Agency- European Monitoring Centre on racism and Xenophobia)	Vienna/AT 2007	2010
FRONTEX (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU)	Warsaw/PL 2004	None (negotiations blocked)
GSA (European GNSS Supervisory Authority)	Prague/CZ 2004	2011
OHIM (Office for Harmonisation in the Internal Market)	Alicante/ES 1993	2011