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# Brussels International

An Update on Legal Developments for the International Organizations in Brussels

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### **Belgian Government Issues Note on Policy Towards International Organizations**

The Belgian Ministry of Foreign Affairs recently issued a detailed note dealing with Belgium's policy towards international organizations. It is currently only available in French and in Dutch, on the Ministry's new webpages dedicated to the Belgian "Interministerial Committee for the Headquarters Policy" (the so-called "CIPS", i.e. the body in charge of implementing Belgium's headquarters policy). This interesting note is a reminder of the leading international role played by Belgium as a host country for many international

organizations, and provides relevant information on the missions and objectives of the CIPS.

The general policy of the CIPS has two aspects: (i) the formal respect by Belgium of its obligations as host country towards international organizations, including awarding privileges and immunities; and (ii) the practical aspects related to the actual reception of many international organizations. The note also states that Belgium's objective in the future is to have a standardized and strict application of the privileges and immunities granted to international organizations. In this respect, Belgium clearly acknowledges that it intends to take a restrictive approach to awarding privileges and immunities to international organizations (as well as to diplomatic missions of foreign states). As explained in the note, this is a consequence of several judgments rendered by Belgian courts in recent years, which have declared that the privileges and immunities awarded to states, international organizations and/or their staff members cannot, as a rule, always supersede the right of individuals to have their own rights fully respected. The result of this jurisprudential evolution is that international organizations that have been present in Belgium for a long time can expect Belgium to request a modification of their Headquarters Agreement in order to adjust to the current (stricter) standards of privileges and immunities set forth in new Headquarters Agreements.

When it comes to practical issues related to the reception of international organizations and of their staff, Belgium wishes to offer technical and administrative assistance, for example with respect to building, purchasing or renting premises, or to provide information to newly arrived staff members, for example in terms of administrative procedures, tax issues, accommodation, teaching, mobility, public services, etc. Another important responsibility incumbent upon the Belgian authorities concerns the security of the international

organizations located on Belgian territory. The level of protection awarded to the premises and/or staff members of an international organization will of course depend on the potential threats this organization is facing. The note moreover explains that issues such as spatial planning and mobility are very important in Belgium, considering the high number of international organizations established in Brussels. It is in this respect that substantial works are ongoing in the Léopold-Schuman area where many European and international institutions are located.

The last point developed in the note describes in detail the mission and tasks of the CIPS in the framework of Belgium's global policy towards international organizations. In this respect, the most important task of the CIPS is to act as the unique representative of all Belgian authorities in the dialogue between international organizations and their host country, for example for the negotiation of headquarters agreements. It is also reiterated that, in addition to the federal authorities (to which the CIPS belongs), Belgian federate entities (the Communities and the Regions) have their own exclusive competences. Therefore, a certain degree of collaboration and dialogue between the different Belgian levels of government is sometimes necessary. In fact, even the local authorities (municipalities) have a role to play in fields such as spatial planning, mobility and public order.

With the publication of this note, Belgium made a gesture of transparency and revealed the objectives of its general policy towards international organizations already established in Belgium or those so interested in basing themselves here.

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## À propos de l'exemption de TVA applicable aux organisations internationales

La Cour d'appel de Bruxelles a rendu un arrêt, le 12 décembre 2012, dans lequel elle pose une question préjudicielle à la Cour constitutionnelle concernant l'article 42, § 3, alinéa 2, du Code belge de la TVA.

Cette disposition légale prévoit que le ministre belge des Finances, ou son délégué (c'est-à-dire l'administration fiscale fédérale), sont autorisés à fixer les « limites » et « conditions d'application » des exemptions de TVA prévues à l'article 42, § 3, alinéa 1er du Code. Parmi ces exemptions figure celle accordée aux organisations internationales pour leurs acquisitions de biens et de services, dans la mesure où une telle exemption est prévue par une convention internationale (accord de siège, etc.) liant la Belgique (article 42, § 3, alinéa 1er, 4°).

La Cour d'appel demande à la Cour constitutionnelle de se prononcer sur la compatibilité de la délégation de pouvoir octroyée au ministre des Finances (et de la sous-délégation de pouvoir octroyée à l'administration fiscale) avec le principe constitutionnel de la légalité de l'impôt (articles 170, § 1er, et 172, alinéa 2, de la Constitution).

La réponse de la Cour constitutionnelle sera sans doute connue d'ici un an environ. De cette réponse dépend le pouvoir du ministre des Finances (et, ce qui en pratique est plus important encore, de l'administration fiscale agissant par voie de circulaires) de déterminer, en lieu et place du législateur, les limites et conditions d'application de l'exemption de TVA accordée aux organisations internationales présentes en Belgique.

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