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# Brussels International

An Update on Legal Developments for the International Organizations in Brussels

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## **Officials of International Organizations having Belgian Nationality or Permanent Residence in Belgium**

In this article we provide a brief overview of the situation of agents of international organizations having Belgian nationality or permanent residence in Belgium, in terms of privileges and immunities.

**Principle: Excluding Privileges and**

## **Immunities**

It is a common feature of virtually all headquarters agreements concluded by Belgium that Belgium "is not required" to accord to its nationals or permanent residents the privileges and immunities set forth in the agreement. Moreover, the practice of inserting such a provision has been codified in the "[Model Headquarters Agreement](#)" on the basis of which the Belgian Interministerial Committee for Headquarters Policy (CIPS – ICZ) usually negotiates the terms and conditions of the installation of international organizations on the Belgian territory (see Article 23 of the model headquarters agreement).

While the words "is not required" do not directly lead to the conclusion that Belgium effectively refuses to grant privileges and immunities to its nationals or permanent residents, [the Royal Decree of October 30, 1991 relating to residence documents of certain foreigners](#) does not leave any doubt in this respect. Article 6 of the Royal Decree provides that only foreigners residing in Belgium are entitled to receive a special residence document (D, P or S identity card) according to the Royal Decree. As in Belgian practice the issuance of such special residence documents is closely linked to the recognition of a privileged status, Article 6 of the Royal Decree implies that Belgian nationals cannot claim privileges and immunities.

Furthermore, this rule – the exclusion of privileges and immunities for Belgian nationals – is explicitly confirmed by the [Protocol Directorate's Circular Note of June 19, 2012](#) on registration of staff of international organizations. The Circular Note also specifies that:

- there will be no exception to the rule even where the agent concerned has dual nationality including Belgian nationality;
- the rule extends to members of the family of the agent living under the same roof;
- the rule applies not only to Belgian nationals but also to agents having permanent residence in Belgium at the time of taking up their post (which already results from the wording of the headquarters agreements, yet not clearly from the 1991 Royal Decree). However, the agent with permanent residence in Belgium may have themselves removed from the population register of the municipality where they live, and register themselves with the Protocol Directorate. Then they become subject to the normal regime of privileges and immunities. The Protocol Directorate nevertheless requires the person concerned to make a personal statement – covered by a note verbale of the international organization – in which they acknowledge that they cannot invoke their immunity for acts in the period preceding their registration with the Protocol Directorate.

### **Exceptions: Maintaining Certain Privileges and Immunities**

Under the above Model Headquarters Agreement (Article 23), there are two exceptions to the exclusion of privileges and immunities for Belgian nationals and permanent residents in Belgium: (i) the agent's tax exemption on salaries paid by the international organization, and (ii) the agent's immunity from jurisdiction in respect of acts performed in their official capacity.

In the actual headquarters agreements concluded by Belgium, the first exception – maintaining the agent’s tax exemption on salaries – is normally provided for. Belgium accordingly remains under the obligation to recognize this specific privilege to every agent of the international organization, irrespective of their citizenship or place of permanent residence. This exception is meant to ensure (salary) equality among all officials of the international organization, regardless of their country of origin. Therefore its implementation in Belgium’s headquarters agreements has to be approved.

On the other hand, the second exception – maintaining the agent’s immunity from jurisdiction – is enshrined in many – but not all – headquarters agreements. Where it is not provided for, agents having Belgian nationality or permanent residence in Belgium will not enjoy immunity from jurisdiction before the Belgian courts. The failure to provide systematically for this second exception has to be regretted, at least as far as the immunity from criminal jurisdiction is concerned. Indeed, the immunity from jurisdiction of agents of international organizations is intended to protect the independence of the agent and, hence, to ensure the proper functioning of the organization itself. Therefore, as indicated by the International Court of Justice in its 1989 advisory opinion on the [Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations](#) (para. 51), as well as the Belgian Court of Cassation in a 2010 judgment (Procureur général près la Cour de cassation et Chr. Schurmans c. G. Delvoie et al., January 19, 2010, *J.T.*, 2010, p. 142), the immunity should be respected by all States

including the agent's national State and State of permanent residence – where the agent may be particularly exposed to various forms of pressure.

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## **Publication – Nouveau traité sur le droit des organisations internationales**

Un nouvel ouvrage général consacré au droit des organisations internationales est récemment paru aux éditions LGDJ. Le *Traité de droit des organisations internationales* rassemble, sous la direction de Evelyne Lagrange et Jean-Marc Sorel, professeurs à l'Université Paris 1 Panthéon-Sorbonne, les contributions de divers auteurs, spécialistes et praticiens de la matière.

Il s'agit, dans la littérature juridique de langue française, du manuel le plus complet et le plus à jour dans le domaine du droit des organisations internationales. Les principes et questions théoriques, mais aussi les aspects pratiques de la vie des organisations internationales, y sont étudiés en profondeur.

L'ouvrage inclut un chapitre rédigé par Frédéric Dopagne, Senior Associate au cabinet Lorenz, sur le règlement des différends opposant l'organisation internationale à un État ou à une autre organisation internationale.

Pour commander l'ouvrage en ligne, suivre le lien suivant :

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