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ISSUE

03

Brussels International

An Update on Legal Developments for the International Organizations in Brussels

June 2012

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When do Headquarters Agreements with Belgium Become Applicable?

Headquarters agreements concluded between international organizations and the Belgian State enter into force in the international legal order on the date agreed upon by the parties in the agreement itself. In Belgian practice, headquarters agreements usually provide for their entry into force on the first day of the second month following the last

notification that the internal approval procedures have been completed.

As far as Belgium is concerned, headquarters agreements must be submitted, prior to the ratification by the King (with the countersignature of the federal government), to each of the national parliaments, since they deal with matters falling within the scope of competence of both the federal State and the federated entities. The legislation passed by national parliaments on this occasion will ensure the applicability of the headquarters agreements in the Belgian domestic legal order (Art. 167 of the Belgian Constitution). This procedure involving all Belgian parliamentary assemblies may take a significant time, which explains why in most cases headquarters agreements concluded by Belgium do not enter into force until several years after their signature.

Meanwhile, the international organization has often already started functioning on the Belgian territory. With a view to ensuring that the organization and its agents enjoy, as from the beginning of their effective activity, the privileges and immunities granted in the headquarters agreement, the federal Act approving the headquarters agreement regularly provides for its own retroactive application from the date of signature of the headquarters agreement.

However, as long as it is not binding on the Belgian State in the international legal order, the headquarters agreement, whilst being duly approved by national parliaments, cannot produce any effect in the Belgian domestic legal order, as confirmed by the Belgian Supreme Court in a judgment of March 12, 2001. Therefore, providing for the retroactive application of the Act approving the headquarters agreement does not seem, as such, to solve any problem, since at the time of its signature the headquarters agreement is by definition not in force yet on the international plane, hence cannot in any event be applicable within the Belgian legal

order.

A more comprehensive solution might be, further to the retroactive effect of the Act approving the headquarters agreement, to insert in the headquarters agreement itself (i.e. with the consent of the international organization concerned) a clause providing for its own retroactivity, or its (partial) provisional application.



Invitations of Family Members for a Short Stay in Belgium

As announced in the Circular Note of April 16, 2012, a new procedure is applicable since May 1, 2012 to short stays in Belgium of members of the family of officials and agents of international organizations having their headquarters or a representation in Belgium. This new procedure, based on a declaration of honour, replaces the former procedure of "prise en charge".

It concerns:

- parents of the first and second degrees of officials and agents registered with the Protocol Directorate;
- who are invited in Belgium for a short stay (maximum 3 months/semester);
- in a purely private framework (hence not for a visit to friends or for professional/tourist/medical/study purposes);
- who are subject to a visa obligation; and
- do not show that they avail of adequate means of subsistence for the duration of their stay in Belgium.

These family members have to establish that they are invited, within the meaning of the above Circular Note. To that effect, the official shall, in essence, send the invited person a form to be attached to the visa application, signed by both the official inviting and the delegated official of the international organization concerned, and whereby the official inviting declares on his/her word of honour:

- to accept liability for all costs (including medical expenses) related to the stay of the invited person;
- to guarantee that this person will leave the Belgian territory before the expiration date of his/her visa;
- to allow the Belgian State to recover any unpaid costs from him/her by any legal means.

The form is attached to the Circular Note.

It must be underscored that submitting the declaration of honour does not entail that the visa will be issued automatically. The final decision to grant the visa lies with the competent authorities.

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