



## **European Convention on the Establishment of Companies**

Strasbourg, 20.I.1966

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The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to safeguard and realise the ideals and principles which are the common heritage of its members and to facilitate their economic and social progress;

Recognising the special nature of the links between the member States of the Council of Europe as affirmed in conventions and agreements already concluded within the framework of the Council, for example the Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4th November 1950, the Protocol to this Convention signed on 20<sup>th</sup> March 1952, the European Convention on Establishment, signed on 13th December 1955, and the European Convention for the Peaceful Settlement of Disputes signed on 29<sup>th</sup> April 1957;

Being convinced that the adoption, by the conclusion of a regional convention, of common rules for the treatment to be accorded to companies and other bodies of each member State in the territory of the others may promote the process of unification;

Affirming that the rights and privileges which they grant to each other's companies and other bodies are conceded expressly by virtue of the close association uniting the member States of the Council of Europe by means of its Statute;

Being satisfied that the general plan of the Convention is consonant with the structure of the Council of Europe,

Have agreed as follows:

### **Chapter I – Beneficiaries of the Convention**

#### **Article 1**

- 1 For the purposes of this Convention the expression "companies and other bodies of a Contracting Party" shall apply to any company or other body, which, having for object the acquisition of gain and possessing either legal personality, or the capacity to be a litigant and to enter into legal relations, has been constituted in the territory of one of the Contracting Parties in conformity with its law and which has its registered office in the territory of that Party.
- 2 The companies and other bodies of a Contracting Party shall receive the benefit of this Convention. A Contracting Party may, however, make the application of Chapters III and IV dependent on the existence of a genuine and continuing connection between the company or other body and the economy of the Contracting Parties.

## **Chapter II – Immediate measures**

### **Article 2**

The companies and other bodies of a Contracting Party shall be accorded, in the territory of any other Contracting Party, the same treatment as that received by that Party's companies and other bodies, in respect of the enjoyment and exercise of private rights, whether rights of a personal nature or rights relating to property.

### **Article 3**

The companies and other bodies of a Contracting Party shall be accorded in the territory of any other Contracting Party, on the same terms as the companies and other bodies of that Party, the full protection of the law and the courts with regard to their property, rights and interests. They shall, in particular, enjoy full and unrestricted access to the judicial tribunals and administrative authorities and, for this purpose, have the right to receive the assistance of and be represented by any person of their choice who is eligible under the law in force in the territory.

### **Article 4**

- 1 The subsidiaries, branches, agencies, offices and other establishments of companies and of other bodies of a Contracting Party may, in the territory of any other Contracting Party, employ, irrespective of nationality, such personnel as are necessary by virtue of their special ability for the installation of the enterprise or for the effective conduct thereof.
- 2 The personnel in question shall not be denied permission to enter, reside and enjoy freedom of movement except for reasons of ordre public, national security, public health or morality. Subject to the fulfilment of any formalities regulating their admission to the activities concerned, they shall be granted all necessary permits and authorisations.
- 3 Nothing in the provisions of the preceding paragraphs shall derogate from those of paragraph 1 of Article 15 of the European Convention on Establishment.

### **Article 5**

The companies and other bodies of a Contracting Party shall not be subjected, in the territory of any other Contracting Party, to any taxation or any requirement connected therewith other or more burdensome than that to which companies and other bodies of the latter Party are or may be, in the same circumstances, subjected.

### **Article 6**

Without prejudice to the principles and guarantees recognised by international law for the protection of their interests, companies and other bodies of a Contracting Party shall be entitled, in the event of expropriation or nationalisation by any other Contracting Party, to treatment at least as favourable as that accorded to the companies and other bodies of the latter Party.

### **Article 7**

- 1 Any member State of the Council of Europe may, at the time of signature of this Convention or at the deposit of its instrument of ratification or acceptance, make a reservation in respect of any provision of this chapter, to the extent that the said provision is not consistent with its law. Reservations of a general nature shall not be permitted.

- 2 Any such reservation shall include a brief statement of the provisions of law on which it is based.
- 3 Any such reservation shall be withdrawn as soon as circumstances permit. Such withdrawal shall be made by notification addressed to the Secretary General of the Council of Europe who shall transmit the text of this notification to all the signatories of the Convention.
- 4 A Contracting Party which has made a reservation in respect of any provision of this chapter may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted the provision.

### **Chapter III**

#### **Article 8**

- 1 Over and above the matters dealt with in Chapter II and as a step towards the achievement of the objectives referred to in Chapter IV, each Contracting Party shall, as from the date of entry into force of this Convention in relation to itself, refrain from:
  - a taking any new measures which accord to companies and other bodies of other Contracting Parties less favourable treatment than that received by its companies and other bodies;
  - b intensifying the application of any existing measures which accord to companies and other bodies of other Contracting Parties less favourable treatment than that received by its companies and other bodies.
- 2 Each Contracting Party shall, at the time of signature of this Convention, send to the Secretary General of the Council of Europe, for information, a list of the measures which accord to companies and other bodies of other Contracting Parties treatment different from that received by its companies and other bodies; it shall likewise communicate to him any subsequent modification to these measures. The Secretary General shall communicate these lists and modifications to the other Contracting Parties.

### **Chapter IV – Progressive measures**

#### **Article 9**

- 1 Subject to the conditions and following the course set out in the following articles, each Contracting Party shall adopt as its objective to grant progressively to the companies and other bodies of other Contracting Parties – whether or not they maintain establishments in its territory – treatment not less favourable than that received by its companies and other bodies, especially with regard to the conduct of their activities, and to the creation of subsidiaries, branches, agencies, offices and other establishments.
- 2 This treatment may involve conditions, guarantees and formalities which, provided that they are not more burdensome, may be other than those required by a Contracting Party of its companies and other bodies.

### **Chapter V – Standing committee**

#### **Article 10**

- 1 A Standing Committee shall be set up within twelve months of the entry into force of this Convention.

- 2 The Standing Committee shall be composed of one representative of each of the member States of the Council of Europe which have ratified or approved the Convention. Any other member State may be represented by an observer with the right to speak.
- 3 The first session of the Standing Committee shall be convened by the Secretary General of the Council of Europe within three months of the date of its establishment. It will subsequently meet on its own initiative or at the behest of the Committee of Ministers. In all cases, the Standing Committee shall be convened by the Secretary General.
- 4 The Standing Committee shall elect its Chairman and draw up its own Rules of Procedure. It may set up sub-committees.

#### **Article 11**

- 1 The Standing Committee shall make proposals with a view to the progressive elimination of the measures referred to in paragraph 1.b of Article 8.
- 2 The Standing Committee shall, in formulating its proposals, take into account the situation existing in the various spheres of activity. If a disparity between legislative or administrative provisions of the Contracting Parties in practice prevents the liberalisation of access to a sphere of activity, the Standing Committee may put forward proposals for ensuring the equivalence of national treatments.
- 3 The Standing Committee may formulate proposals with a view to removing the restrictions imposed by a Contracting Party upon its companies and other bodies in respect of the nationality of founders, administrators, shareholders or associates who are nationals of another Contracting Party.
- 4 The Standing Committee may also make proposals designed to:
  - a improve the practical implementation of the Convention;
  - b amend or supplement its provisions.
- 5 All proposals of the Standing Committee shall be adopted by majority vote of its members and shall be submitted to the Committee of Ministers.

#### **Article 12**

In the event of any difference of opinion which may arise between two or more Contracting Parties concerning the interpretation or application of the provisions of this Convention the Standing Committee shall, without prejudice to the provisions of Article 19, at the request of any one of the Parties involved, endeavour to settle such differences.

### **Chapter VI – Committee of Ministers**

#### **Article 13**

- 1 For the purposes of this Convention except for paragraph 4 of Article 19 the term "Committee of Ministers" shall mean the Committee of Ministers of the Council of Europe at meetings limited to the representatives of member States which have ratified or approved the Convention.
- 2 The Committee of Ministers shall, on the basis of the proposals of the Standing Committee, make recommendations to the governments of the Contracting Parties, in particular with a view to achieving the objectives set out in Chapter IV.

- 3 These recommendations shall require the unanimous vote of the representatives casting a vote, and of a majority of the representatives. However, after three years have elapsed from the date of constitution of the Standing Committee, the recommendations based on paragraphs 1 to 3 of Article 11 shall require a two-thirds majority of the representatives casting a vote, being a majority of the representatives.

## **Chapter VII – General provisions**

### **Article 14**

Any Contracting Party may withhold or withdraw from companies or other bodies of any other Contracting Party the benefit of any provision of this Convention:

- a if the former Party has good reason for believing that the activities of these companies or other bodies are directed towards ends not genuinely economic;
- b if it considers such action necessary in order to guarantee the interests of its essential security or to safeguard public health or morality;
- c if it considers such action necessary in order to guarantee or safeguard other national interests which are of imperative nature. In such case, it shall keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. The Secretary General shall communicate this information to the other Contracting Parties.

### **Article 15**

- 1 In time of war or other public emergency threatening the life of the nation, any Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation and provided that such measures are not inconsistent with its other obligations under international law.
- 2 Any Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures taken and the reasons therefor. It shall also inform him when such measures have ceased to operate. The Secretary General shall communicate all such information to the other Contracting Parties.

### **Article 16**

Without prejudice to the enjoyment of the immediate measures provided for in Chapter II of this Convention, companies and other bodies of a Contracting Party, to the extent that they carry on an activity of:

- a transport of persons or goods;
- b fishing or hunting in territorial waters;

shall not benefit from the provisions of Chapters III and IV, pending the conclusion of such supplementary protocols in this sense as may be drawn up.

### **Article 17**

Nothing in the provisions of this Convention shall prejudice the provisions of municipal law, bilateral or multilateral treaties, conventions or agreements, including both those already in force and those which come into force hereafter, providing for more favourable treatment for companies and other bodies of one or more of the other Contracting Parties.

## **Chapter VIII – Territorial application clause**

### **Article 18**

- 1 This Convention shall apply to the metropolitan territories of the Contracting Parties.
- 2 Any member State of the Council of Europe may, at the time of the signature, ratification or acceptance of this Convention or at any later date, declare by means of a notification to the Secretary General of the Council of Europe that this Convention shall apply to the territory or territories specified in that notification and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any notification in pursuance of the preceding paragraph may be withdrawn in respect of any territory specified, in conformity with the procedure laid down in Article 22 of this Convention.
- 4 The Secretary General shall communicate to the other member States of the Council of Europe any notification transmitted to him in accordance with paragraph 2 or paragraph 3 of this article.

## **Chapter IX – Settlement of disputes**

### **Article 19**

- 1 Any disputes which may arise between the Contracting Parties concerning the interpretation or the application of this Convention shall be submitted to the International Court of Justice by special agreement or on the application by one of the parties to the dispute, unless a different method of peaceful settlement is agreed by them.
- 2 The Parties to the European Convention for the Peaceful Settlement of Disputes shall apply those of its provisions which are binding upon them to all disputes which may arise between them concerning the present Convention.
- 3 Any dispute subjected to a procedure referred to in the preceding paragraphs shall be immediately reported by the Parties concerned to the Secretary General of the Council of Europe who shall inform the other Contracting Parties.
- 4 If one of the parties to a dispute fails to carry out its obligations laid down in a decision of the International Court of Justice or the award of an arbitral tribunal, the other party may appeal to the Committee of Ministers of the Council of Europe. The latter may, if it deems necessary, make recommendations by a majority of two thirds of the representatives entitled to sit on the Committee with a view to ensuring the execution of the said decision or award.

## **Chapter X – Final clauses**

### **Article 20**

The Protocol attached to this Convention shall form an integral part of it.

### **Article 21**

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be ratified or accepted. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall come into force one month after the date of deposit of the fifth instrument of ratification or of acceptance.

- 3 As regards any signatory ratifying or accepting subsequently, the Convention shall come into force one month after the date of deposit of its instrument of ratification or of acceptance.
- 4 The Secretary General shall notify all the member States of the Council of Europe of the entry into force of the Convention, the names of the Contracting Parties which have ratified or accepted it, any reservations made and the subsequent deposit of any instruments of ratification or of acceptance.

#### **Article 22**

- 1 This Convention may be denounced by a Contracting Party only at the end of four years from the date on which it became a party thereto; six months' prior notice of denunciation shall be given by means of a notification to the Secretary General of the Council of Europe who shall inform the other Parties. If a Contracting Party does not make such a notification of denunciation it will remain bound for further successive periods of two years; in this event it may denounce this Convention at the end of any such period, subject to six months' prior notice.
- 2 In the event of denunciation the Contracting Party concerned shall remain bound by this Convention in so far as concerns any act performed by it before the date upon which the denunciation became effective.
- 3 Any Contracting Party which ceases to be a member State of the Council of Europe shall thereby cease to be a Party to this Convention.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 20th day of January 1966, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified true copies to each of the signatory States.

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## **Protocol**

#### **Article 5**

The Contracting Parties agree, with a view to the interpretation of Article 5 of this Convention, to refer to the content of Article 24 of the Model Convention entitled "Draft Convention on Double Taxation" embodied in the Annex to the Recommendation of the OECD Council of 30th July 1963, as this article was interpreted in the comments in the report of the OECD Fiscal Committee which served as a basis for this recommendation.

#### **Article 11, paragraph 4.a**

It is understood that the Standing Committee may make proposals concerning the withdrawal of reservations made in accordance with the provisions of Article 7. The Committee may, however, not make any proposals concerning the withdrawal of measures taken by a Contracting Party in pursuance of Articles 14 and 15.

**Article 16**

It is understood that this Convention shall not apply to industrial, literary and artistic property, rights in respect of new vegetable products or to the rights of performers, producers of phonograms and broadcasting organisations, as these subjects are reserved for international conventions or other international agreements relating thereto which are already in force or will come into force.

**Article 18**

Any member State of the Council of Europe which makes a declaration in accordance with Article 18, paragraph 2, of this Convention shall, at the same time and in respect of any territory mentioned in such declaration, transmit to the Secretary General the lists of measures specified in Article 8, paragraph 2, any reservation made in accordance with Article 7, and any notification made in accordance with Article 14.

The Federal Republic of Germany may extend the application of this Convention to the *Land* Berlin by a declaration addressed to the Secretary General who shall notify the other Contracting Parties thereof.