

40 (2004) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2004 Nr. 312

A. TITEL

Notawisseling houdende een verdrag tussen het Koninkrijk der Nederlanden en de Republiek Malta inzake privileges en immuniteiten voor verbindingsofficieren die door Malta bij Europol te 's-Gravenhage gedetacheerd worden; Valletta, 24 augustus 2004

B. TEKST

Nr. I

AMBASSADE VAN HET
KONINKRIJK DER NEDERLANDEN

Valletta, 18 August 2004

Note No. NV021/2004

The Royal Netherlands Embassy presents its compliments to the Ministry of Foreign Affairs of the Republic of Malta and has the honour to propose, with reference to the Co-operation Agreement between the Republic of Malta and the European Police Office of 30 October 2003 (hereinafter "the Agreement"), and in view of Article 41, paragraph 2 of the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention, 26 July 1995), that the privileges and immunities necessary for the proper performance of the tasks of the liaison officers at Europol referred to in Article 14 and Annex 3 of the Agreement, be agreed upon as set out in the Attachment.

If this proposal is acceptable to the Ministry of Foreign Affairs of the Republic of Malta, the Embassy proposes that this note and the affirmative note of the Ministry of Foreign Affairs of the Republic of Malta shall constitute an Agreement between the Kingdom of the Netherlands

and the Republic of Malta, which shall be applied provisionally from the day on which this affirmative note has been received by the Embassy, and which shall enter into force on the first day of the second month following the date on which the Kingdom of the Netherlands and the Republic of Malta have informed each other that the formalities required for the entry into force have been complied with.

The Royal Netherlands Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Malta the assurances of its highest consideration.

*Ministry of Foreign Affairs
of the Republic of Malta
Valletta*

Attachment

1. Definitions

In this Agreement:

- a. "Liaison officer" means: any official stationed at Europol in accordance with Article 14 of the Agreement;
- b. "Government" means the Government of the Kingdom of the Netherlands;
- c. "Host State authorities" means such State, municipal or other authorities of the Kingdom of the Netherlands as may be appropriate in the context of and in accordance with the laws and customs applicable in the Kingdom of the Netherlands;
- d. "Sending State" means the Republic of Malta;
- e. "Archives of the liaison officer" means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by the liaison officer, and any other similar material which in the unanimous opinion of the Sending State and the Government forms part of the archives of the liaison officer.

2. Privileges and immunities

1. Subject to the provisions of this Agreement, the liaison officer and members of his family who form part of his household and do not possess Dutch nationality, shall enjoy in and vis-à-vis the Kingdom of the Netherlands the same privileges and immunities as are conferred on members of the diplomatic staff by the Vienna Convention on Diplomatic Relations of 18 April 1961.

2. The immunity granted to persons mentioned in paragraph 1 of this Article shall not extend to either:

- i) civil action by a third party for damages, including personal injury or death, arising from a traffic accident caused by any such person; or
- ii) criminal and civil jurisdiction over acts performed outside the course of their official duties.

3. The obligations of Sending States and their personnel that apply under the Vienna Convention to members of the diplomatic staff, shall apply to the persons referred to in paragraph 1 of this Article.

3. Entry, stay and departure

1. The Government shall facilitate, if necessary, the entry, stay and departure of the liaison officer and members of his family forming part of the household.

2. This Article shall not prevent the requirement of reasonable evidence to establish that persons claiming the treatment provided for under this Article come within the classes described in paragraph 1 of this Article.

3. Visas which may be required by persons referred to in this Article shall be granted without charge and as promptly as possible.

4. Employment

Members of the family forming part of the household of the liaison officer not having the nationality of an EU Sending State shall be exempt from the obligation to obtain working permits for the duration of the secondment of the liaison officer.

5. Inviolability of archives

The archives of the liaison officer wherever located and by whomsoever held shall be inviolable.

6. Personal Protection

The Host State authorities shall, if so requested by the Sending State, take all reasonable steps in accordance with their national laws to ensure the necessary safety and protection of the liaison officer, as well as members of his family who form part of his household, whose security is endangered due to the performance of the tasks of the liaison officer at Europol.

7. Facilities and immunities in respect of communication

1. The Government shall permit the liaison officer to communicate freely and without a need for special permission, for all official purposes, and shall protect the right of the liaison officer to do so. The liaison officer shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags which shall be subject to the same privileges and immunities as diplomatic couriers and bags.

2. The liaison officer shall, as far as may be compatible with the International Telecommunications Convention of 6 November 1982, for his official communications enjoy treatment not less favourable than that accorded by the Kingdom of the Netherlands to any international organisation or government, in the matter of priorities for communication by mail, cable, telegraph, telex, radio, television, telephone, fax, satellite, or other means.

8. Notification

1. The Sending State shall promptly notify the Government of the name of the liaison officer, his arrival and his final departure or the termination of his secondment as well as the arrival and final departure of the members of the family forming part of the household and, where appropriate, the fact that a person has ceased to form part of the household.

2. The Government shall issue to the liaison officer and members of his family forming part of the household, an identification card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all Host State authorities.

9. Settlement of Disputes

1. Any dispute between the Sending State and the Government concerning the interpretation or application of this Agreement, or any question affecting the liaison officer or the relationship between the Sending State and the Government which is not settled amicably, shall be referred for final decision to a tribunal of three arbitrators, at the request of the Sending State or the Government. Each party shall appoint one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.

2. If one of the parties fails to appoint an arbitrator within two months following a request from the other party to make such an appointment, the other party may request the President of the Court of Justice of the European Communities or in his absence the Vice-President, to make such an appointment.

3. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either party may request the President of the Court of Justice of the European Communities, or in his absence the Vice-President, to make such appointment.

4. Unless the parties agree otherwise, the tribunal shall determine its own procedure.

5. The tribunal shall reach its decision by a majority of votes. The Chairman shall have a casting vote. The decision shall be final and binding on the Parties to the dispute.

10. Territorial scope

With respect to the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

Nr. II

MINISTRY OF FOREIGN AFFAIRS
MALTA

Valletta, 24 August 2004

N V No 1498/04

The Ministry of Foreign Affairs presents its compliments to the Royal Netherlands Embassy and has the honour to refer to the latter's Note Verbale No 021/2004 dated 18 August 2004.

The Ministry of Foreign Affairs has the honour to inform the Royal Netherlands Embassy that the Government of the Republic of Malta agrees to the contents of the above-mentioned Note, and that the Embassy's Note and this Note, expressing the agreement of the Government of the Republic of Malta, shall constitute an Agreement between the Kingdom of the Netherlands and the Republic of Malta.

This Agreement shall be applied provisionally from the day on which the affirmative note has been received by the Embassy, and which shall enter into force on the first day of the second month following the day on which both Parties have informed each other in writing that the legal requirements for entry into force have been complied with.

The Ministry of Foreign Affairs avails itself of this opportunity to

renew to the Royal Netherlands Embassy the assurances of its highest consideration.

*Royal Netherlands Embassy
Ta'Xbiex*

D. PARLEMENT

Het in de nota's vervatte verdrag, met bijlage, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het verdrag kan worden gebonden.

De voorlopige toepassing van het in de nota's vervatte verdrag (zie rubriek F hieronder) is medegedeeld aan de Eerste en de Tweede Kamer der Staten-Generaal bij brieven van 3 december 2004.

F. VOORLOPIGE TOEPASSING

Het in de nota's vervatte verdrag, met bijlage, wordt ingevolge het in de één na laatste alinea van nota's Nr. I en II gestelde vanaf 25 augustus 2004 voorlopig toegepast.

Wat het Koninkrijk der Nederlanden betreft, geldt de voorlopige toepassing ingevolge punt 10 van de bijlage alleen voor Nederland.

G. INWERKINGTREDING

De bepalingen van het in de nota's vervatte verdrag, met bijlage, zullen ingevolge het in de tweede alinea van nota's nr. I en II gestelde in werking treden op de eerste dag van de tweede maand volgend op de dag waarop het Koninkrijk der Nederlanden en de Republiek Malta elkaar hebben medegedeeld dat aan de door de inwerkingtreding vereiste formaliteiten is voldaan.

J. VERWIJZINGEN

Overige verwijzingen

Titel : Overeenkomst op grond van Artikel K.3 van het Verdrag betreffende de Europese Unie tot oprichting van een Europese Politiedienst (Europol-Overeenkomst);
Brussel, 26 juli 1995
Tekst : *Trb.* 1995, 282 (Nederlands, Engels en Frans)
Laatste *Trb.* : *Trb.* 1998, 209

- Titel : Verdrag van Wenen inzake diplomatiek verkeer;
Wenen, 18 april 1961
- Tekst : *Trb.* 1962, 101 (Engels en Frans)
Trb. 1962, 159 (vertaling)
- Laatste *Trb.* : *Trb.* 1994, 212
- Titel : Internationaal Verdrag betreffende de Telecommuni-
catie;
Nairobi, 6 november 1982
- Tekst : *Trb.* 1983, 164 (Frans en vertaling)
- Laatste *Trb.* : *Trb.* 1996, 164
- Titel : Verdrag van Nice houdende wijziging van het
Verdrag betreffende de Europese Unie,
de Verdragen tot oprichting van de Europese
Gemeenschappen en sommige bijbehorende akten;
Nice, 26 februari 2001
- Tekst : *Trb.* 2001, 47 (Nederlands)
- Laatste *Trb.* : *Trb.* 2004, 10 (rubriek J: Besluit van 15 juli 2003 tot
wijziging Statuut Hof van Justitie)

Uitgegeven de *twintigste* december 2004.

De Minister van Buitenlandse Zaken,

B. R. BOT