

INTERNATIONAL RENEWABLE ENERGY AGENCY

Third meeting of the Council
Abu Dhabi, 05 – 06 June 2012

**Decision on a draft Agreement on Privileges and Immunities
for the International Renewable Energy Agency**

The Council,

Recalling that Article XIII, paragraph B, of the Statute of IRENA provides that Members shall decide upon a separate agreement on privileges and immunities;

Emphasizing the need to ensure that IRENA enjoys privileges and immunities similar to those granted to other international organisations, in order to assist IRENA in promoting the widespread and increased adoption and the sustainable use of renewable energy;

Noting that, to this end, it is desirable that an agreement on privileges and immunities be approved as early as possible by the Assembly, so that the process of ratification, acceptance, approval or accession by Members can be conducted and the agreement can enter into force;

Recalling that the Assembly, at its second session, requested the Governance and Legal Committee to continue its consultations with Members in order to reach an agreement on section 41, and to submit a finalized text to the third meeting of the Council, for transmission to the Assembly for its consideration;

Recalling further that the Assembly also recommended that, after consideration by the Council, action could be taken by Members, in cooperating actively with the Secretariat, for the preparation of as many texts as possible in the official languages of the United Nations and in the language of the Depositary of the Statute, as this would facilitate subsequent ratification, approval, acceptance or accession by Members;

Noting with appreciation the effort of all interested parties to come to an agreement on section 41 prior to the third meeting of the Council;

Noting further that France, Spain, the United Arab Emirates, and the State of the Depositary of the Statute have informed the Council of their willingness to prepare the text of the draft Agreement on Privileges and Immunities in their respective languages, as well as their commitment to consult with countries that have raised issues with the language versions, starting as soon as the drafts are circulated and until documents are ready for Assembly consideration;

Emphasizing that, as a result, the preparation of additional language versions of the draft Agreement will be at no cost to the Secretariat;

Having considered the draft Agreement on Privileges and Immunities transmitted to the Council, as set out in Annex 1 to the present decision;

1. *Decides* to recommend that the text of the draft Agreement on Privileges and Immunities, as set out in Annex 1 to the present decision, be approved by the Assembly at its third session, subject to paragraph 2 below;
2. *Decides* that the Council, at its fourth meeting, further considers the matter to determine the versions that are ready to be submitted to the Assembly at its third session and, if necessary, to adjust accordingly the list of languages contained in the first sentence of section 41 of the draft Agreement;
3. *Urges* Members having undertaken to prepare the necessary language versions, other Members, Signatories of the Statute, and States in the process of accession to the Statute, to observe the timeline in Annex 2 to the present decision.

Draft

**Agreement on Privileges and Immunities for the
International Renewable Energy Agency**

PREAMBLE

Whereas Article XIII, paragraph A of the Statute of the International Renewable Energy Agency provides that the International Renewable Energy Agency shall enjoy in the territory of each Member such domestic legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes; and

Whereas Article XIII, paragraph B of the Statute of the International Renewable Energy Agency provides that Members shall decide upon a separate agreement on privileges and immunities.

Consequently the Assembly by a decision adopted on the (date) , approved the following Agreement and proposed it for ratification, acceptance, approval or accession by each Member of the International Renewable Energy Agency.

Article I

DEFINITIONS

Section 1

In this Agreement:

- (a) the word “Statute” means the Statute of the International Renewable Energy Agency, which was opened for signature at the Founding Conference of the International Renewable Energy Agency which took place in Bonn, Federal Republic of Germany, on 26 January 2009 and entered into force on 8 July 2010;
- (b) the word “Agency” means the International Renewable Energy Agency established by the Statute;
- (c) the word “Member” or “Members” means a member or members of the Agency according to Article VI of the Statute;
- (d) for the purposes of Article III of this Agreement, the words “property, funds and assets” shall include any property, funds and assets administered by the Agency in furtherance of its functions as laid down in the Statute;
- (e) for the purposes of Article V and Article VIII of this Agreement, the expression “representatives of Members” shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of Members’ delegations; and

(f) in sections 12, 13, 14 and 27 of this Agreement, the expression “meetings convened by the Agency” means meetings: (1) of the Assembly and of the Council, and (2) of any international conference convened by the Agency; and (3) of any committee, sub-committee or working group of any of the organs of the Agency.

Article II

LEGAL PERSONALITY

Section 2

The Agency shall possess legal personality. It shall have the capacity:

- (a) To contract;
- (b) To acquire and dispose of immovable and movable property; and
- (c) To institute legal proceedings.

Article III

PROPERTY, FUNDS AND ASSETS

Section 3

The Agency, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the Assembly has expressly waived the immunity of the Agency. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 4

The premises of the Agency shall be inviolable. The property and assets of the Agency, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 5

The archives of the Agency, and in general all documents belonging to it or held by it, shall be inviolable, wherever located.

Section 6

Without being restricted by financial controls, regulations or moratoria of any kind:

- (a) The Agency may hold funds, gold or currency of any kind and operate accounts in any currency;
- (b) The Agency may freely transfer its funds, gold or currency from one country to another or within any country and convert any currency held by it into any other currency.

Section 7

The Agency shall, in exercising its rights under section 6 above, pay due regard to any representations made by a Member party to this Agreement in so far as it is considered that effect can be given to such representations without detriment to the interests of the Agency.

Section 8

The Agency, its assets, income and other property shall be:

- (a) Exempt from all direct taxes; it is understood, however, that the Agency will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Agency for its official use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country;
- (c) Exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.

Section 9

While the Agency will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Agency is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members party to this Agreement will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article IV

FACILITIES IN RESPECT OF COMMUNICATIONS

Section 10

The Agency shall enjoy, in the territory of each State party to this Agreement, for its official communications, treatment not less favourable than that accorded by the Government of such State to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, including electronic communications, and press rates for information to the press and radio.

Section 11

No censorship shall be applied to the official correspondence and other official communications of the Agency. The Agency shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags. Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a Member and the Agency.

Article V

REPRESENTATIVES OF MEMBERS

Section 12

Representatives of Members at meetings convened by the Agency shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
- (b) Inviolability for all papers and documents;
- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State which they are visiting or through which they are passing in the exercise of their functions;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

Section 13

In order to secure for the representatives of Members at meetings convened by the Agency complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Section 14

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members are present at meetings convened by the Agency in the territory of a Member party to this Agreement for the discharge of their duties shall not be considered as periods of residence.

Section 15

Privileges and immunities are accorded to the representatives of Members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the Agency. Consequently, a Member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the Member, the

immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 16

The provisions of sections 12, 13 and 14 are not applicable in relation to the authorities of a Member of which the person is a national or of which he or she is or has been a representative.

Article VI

OFFICIALS

Section 17

The Agency will specify the categories of officials to which the provisions of this Article shall apply. It shall communicate them to Members. The names of the officials included in these categories shall from time to time be made known to Members.

Section 18

Officials of the Agency shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Enjoy exemptions from taxation in respect of the salaries and emoluments paid to them by the Agency;
- (c) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (d) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;
- (e) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;
- (f) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19

1. The officials of the Agency shall be exempt from national service obligations, provided that in relation to the Members of which they are nationals, such exemption shall be confined to officials of the Agency whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the Agency and approved by the Member concerned.
2. Should other officials of the Agency be called up for national service, the Member concerned shall, at the request of the Agency, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

Section 20

In addition to the immunities and privileges specified in sections 18 and 19, the Director-General of the Agency, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accordance with international law.

Section 21

Privileges and immunities are granted to officials in the interests of the Agency only and not for personal benefit of the individuals themselves. The Director-General shall have the right and the duty to waive the immunity of any official in any case where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency. In the case of the Director-General, the Assembly shall have the right to waive the immunity.

Section 22

The Agency shall co-operate at all times with the appropriate authorities of Members party to this Agreement in order to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connexion with the privileges, immunities and facilities mentioned in this Article.

Article VII

EXPERTS

Section 23

1. Experts (other than officials coming within the scope of Article VI) serving on committees or working groups of, or performing missions for, the Agency shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connexion with service on such committees, working groups or missions:

- (a) Immunity from personal arrest or seizure of their personal baggage;
- (b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees or working groups of, or employed on missions for, the Agency;
- (c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Government on temporary official missions;
- (d) Inviolability of their papers and documents relating to the work on which they are engaged for the Agency;
- (e) The right to use codes and to receive papers or correspondence by courier or in sealed bags for the purpose of their communications with the Agency.

2. For the purpose of paragraph 1, experts shall be given a certificate signed by the Director-General attesting that they are travelling on the business of the Agency.

Section 24

In connexion with section 23, paragraph 1(d), the principle contained in the last sentence of section 11 shall be applicable.

Section 25

Privileges and immunities are granted to the experts referred to in section 23, paragraph 1, in the interests of the Agency and not for the personal benefit of the individuals themselves. The Agency shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Agency.

Article VIII

ABUSES OF PRIVILEGE

Section 26

If any Member party to this Agreement considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between that Member and the Agency to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the Member and the Agency, the question whether an abuse of a privilege or immunity has occurred shall be submitted to arbitration in accordance with section 32. If the tribunal makes a finding that such an abuse has occurred, the Member party to this Agreement affected by such abuse shall have the right, after notification to the Agency, to withhold from the Agency the benefits of the privilege or immunity so abused and to request that the individual concerned leave the territory of the Member party to this Agreement affected by such abuse.

Section 27

Representatives of Members at meetings convened by the Agency, while exercising their functions and during their journeys to and from the place of meeting, and officials within the meaning of section 17, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his or her official functions, he or she may be required to leave by the Government of that country provided that:

- (a) Representatives of Members, or persons who are entitled to diplomatic immunity under section 20, shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic agents accredited to that country;
- (b) In the case of an official to whom section 20 is not applicable, no order to leave the country shall be issued other than with the approval of the Foreign Minister of the country in question, and such approval shall be given only after consultation with the Director-General of the Agency; and, if expulsion proceedings are taken against an official, the Director-General of the Agency shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

Article IX

TRAVEL AND VISAS

Section 28

Applications for visas, where required, from officials of the Agency, when accompanied by a certificate that they are travelling on the business of the Agency, shall be dealt with as speedily as possible by Members party to this Agreement. In addition, such persons shall be granted facilities for speedy travel.

Section 29

Similar facilities to those specified in section 28 shall be accorded to experts and other persons who have a certificate that they are travelling on the business of the Agency.

Section 30

The Director-General, the Deputy Director-General, and heads of departments travelling on the business of the Agency, shall be granted the same facilities for travel as are accorded to agents of comparable rank in diplomatic missions.

Article X

SETTLEMENT OF DISPUTES

Section 31

The Agency shall make provision for appropriate modes of settlement of:

- (a) Disputes arising out of contracts or other disputes of private character to which the Agency is a party, including disputes between the Agency and a staff member or another individual whose services have been retained by the Agency;
- (b) Disputes involving any official of the Agency who by reason of his or her official position enjoys immunity, if immunity has not been waived in accordance with the provisions of section 21.

Section 32

1. Any dispute between a Member party to this Agreement and the Agency or between Members party to this Agreement on the interpretation or application of this Agreement that cannot be settled by negotiation or other agreed mode of settlement shall be submitted for final decision to a tribunal of three arbitrators at the request of either party to the dispute. Each party shall appoint one arbitrator and advise the other party of the name of its arbitrator. The third arbitrator, who shall be the chairman of the tribunal, shall be appointed by the first two arbitrators. Should the first two arbitrators fail to agree upon the third arbitrator within thirty (30) days of the date of appointment of the second arbitrator, the third arbitrator shall be appointed by the President of the International Court of Justice.
2. The arbitration shall be held in a language and at a location agreed upon between the parties to the dispute. A majority vote of the arbitrators shall be sufficient to reach decisions, including those on procedural matters, which shall be final and binding.
3. The expenses of arbitration shall be borne by the parties to the dispute as assessed by the tribunal.

Article XI

GENERAL PROVISIONS

Section 33

The provisions of this Agreement in relation to the Agency shall be interpreted in the light of the functions with which the Agency is entrusted by the Statute.

Section 34

The provisions of this Agreement shall in no way be construed to limit or prejudice the privileges and immunities which have been, or may hereafter be, agreed between a Member and the Agency in any agreement concluded by reason of the location of the Agency's headquarters or offices in the territory of that Member. This Agreement shall not be deemed to prevent the conclusion between any Member party to this Agreement and the Agency of supplemental agreements adjusting the provisions of this Agreement or extending or curtailing the privileges and immunities thereby granted.

Section 35

This Agreement shall not be construed so as to abrogate, or derogate from, any provisions of the Statute or any rights or obligations which the Agency may otherwise have, acquire, or assume.

Article XII

FINAL PROVISIONS

Section 36

1. A Member's consent to be bound by this Agreement shall be effected by its deposit with the Director-General of an instrument of ratification, acceptance, approval or accession.
2. This Agreement shall enter into force thirty (30) days after the date of deposit of the first instrument of ratification, acceptance, approval or accession.

Section 37

It is understood that, when an instrument of ratification, acceptance, approval or accession is deposited on behalf of any Member, that Member will be in a position under its own laws or regulations to give effect to the terms of this Agreement.

Section 38

For each Member which ratifies, accepts, approves or accedes to this Agreement after the deposit of the first instrument of ratification, acceptance, approval or accession, this Agreement shall enter into force in respect of that Member on the thirtieth day following the deposit of its instrument of ratification, acceptance, approval or accession.

Section 39

1. Subject to the provisions of the following paragraphs of this section, each Member party to this Agreement undertakes to apply this Agreement until such time as a revised Agreement shall have become applicable and the said Member party shall have accepted the revised Agreement.
2. Each Member party to this Agreement, however, which has ceased to be a Member may address a written notification to the Director-General to the effect that it intends to withhold from the Agency the benefits of this Agreement as from a specified date, which shall not be earlier than three months from the date of receipt of the notification.
3. The Director-General shall inform all Members of any notification transmitted to him under the provisions of this section.

Section 40

At the request of one third of the Members party to this Agreement, the Director-General of the Agency shall convene a conference with a view to its revision.

Section 41

This Agreement is established by the Assembly in the Arabic, English, French and Spanish languages, as well as in the language of the State of the Depositary of the Statute, all being authentic. Official texts of other versions in any one of the official languages of the United Nations other than Arabic, English, French and Spanish, shall be authenticated on the request of one or more of the Members.

Timeline

The timeline set out below would apply primarily to Members having expressed at the Council their willingness to prepare the text of the draft Agreement on Privileges and Immunities in their respective languages (hereinafter referred to as “Concerned Members”). It would also affect other Members of the Agency, Signatories of the Statute, and States in the process of accession to the Statute (hereinafter “Members”) who would need to submit timely comments on the draft language versions transmitted by the Secretariat.

- By 06 July: Draft language versions transmitted to the Secretariat by the Concerned Members (**draft #1**).
- By 10 July: The Secretariat circulates the drafts to all Members.
- By 20 August: Members transmit their comments to the Secretariat. The Secretariat transmits those comments to the Concerned Members, copying all other Members for information.
- By 07 September: Concerned Members consult, as necessary, with Members having raised issues with the wording of the prepared language version, and revise the text as appropriate. Concerned Members transmit the revised drafts to the Secretariat (**draft #2**).
- By 11 September: The Secretariat circulates the revised drafts to Members.
- By 25 September: Concerned Members continue to consult with interested Members, as necessary. Members transmit their comments on revised drafts to the Secretariat.
- By 28 September: The Secretariat submits those comments to Concerned Members, copying all other Members for information.
- By 08 October: Concerned Members continue consulting with interested Members, as necessary, and amend drafts, as appropriate. Concerned Members transmit the latest drafts to the Secretariat (**draft #3**).
- By 11 October: The Secretariat circulates a Council Document containing the language versions of the draft Agreement received from Concerned Members.
- At the Council in November: The Council considers the Council Document.
- 30 days in advance of the third session of Assembly: The Secretariat circulates an Assembly Document containing the accepted language versions of the draft Agreement to all Members.