



Diplomatic Privileges (EC) Order 2004

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 15th day of March 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to sections 9 and 9AB of the Diplomatic Privileges and Immunities Act 1968, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

Contents

1	Title	11	Exemption from restrictions on importation or exportation of goods for official use
2	Commencement	12	Facilities in respect of telegraphic communications
	<i>Interpretation</i>		<i>Privileges and immunities of certain high officers of EC</i>
3	EC and other terms defined	13	President and Commissioner for External Relations
	<i>Declaration as to specified organisations</i>		<i>Privileges and immunities of members of EC delegations</i>
4	Declaration as to specified organisations	14	Members whose functions equivalent to diplomatic agent
	<i>Body corporate</i>	15	Administrative and technical staff
5	Body corporate	16	Service staff
	<i>EC's privileges and immunities</i>		
6	Immunity from suit		
7	Inviolability of premises and archives		
8	Immunity of property		
9	Exemption from taxes and rates		
10	Exemption from taxes on importation of goods for official use		

	<i>Privileges and immunities of private servants of members of EC delegations</i>		<i>Order not in force in Tokelau</i>
17	Exemption from taxes in respect of emoluments	19	Order not in force in Tokelau
	<i>Waiver</i>		
18	Privileges and immunities may be waived by EC		

Order

1 Title

This order is the Diplomatic Privileges (EC) Order 2004.

2 Commencement

This order comes into force on 19 March 2004.

Interpretation

3 EC and other terms defined

(1) In this order, unless the context otherwise requires,—

EC means the Commission (commonly known as the European Commission or the Commission of the European Communities) established by Section 3 of Chapter 1 of Title I of Part Five of the Treaty establishing the European Community

EC delegation has the meaning given to it by section 9AB(1) of the Diplomatic Privileges and Immunities Act 1968

European Atomic Energy Community means the Community (commonly known as Euratom) established by the Treaty establishing the European Atomic Energy Community signed in Rome on 25 March 1957 as amended by—

- (a) Title IV of TEU; and
- (b) the Treaty of Amsterdam; and
- (c) the Treaty of Nice

European Communities means—

- (a) the European Atomic Energy Community; and
- (b) the European Community

European Community means the Community established by the Treaty establishing the European Community as amended by—

- (a) the Treaty of Amsterdam; and
- (b) the Treaty of Nice

New Zealand national means a person who is—

- (a) a New Zealand citizen or permanent resident; and
- (b) ordinarily resident in New Zealand at the time of appointment

ordinarily resident in New Zealand has the meaning given to it in subclause (2)

permanent resident means a person—

- (a) who is, or who is deemed to be, the holder of a residence permit under the Immigration Act 1987; or
- (b) who, under section 12(1) or (2) of that Act, has been exempted from the requirement to hold a permit by regulations made under section 150 of that Act or by a special direction (as defined in section 2(1) of that Act)

specified organisations means the following organisations:

- (a) EC; and
- (b) the European Atomic Energy Community; and
- (c) the European Community

TEU means the Treaty on European Union signed in Maastricht on 7 February 1992

Treaty establishing the European Community means the Treaty establishing the European Economic Community signed in Rome on 25 March 1957 as amended by Title II of TEU

Treaty of Amsterdam means the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed in Amsterdam on 2 October 1997

Treaty of Nice means the Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed in Nice on 26 February 2001.

- (2) For the purposes of this order, a person must be treated as being ordinarily resident in New Zealand if—
 - (a) the person's home is in New Zealand; or
 - (b) the person is residing in New Zealand with the intention of residing in New Zealand indefinitely; or
 - (c) having resided in New Zealand with the intention of establishing his or her home in New Zealand, or with the intention of residing in New Zealand indefinitely, the person is outside New Zealand but has an intention

to return to establish his or her home in New Zealand or to reside in New Zealand indefinitely.

Declaration as to specified organisations

4 Declaration as to specified organisations

Each of the specified organisations is an organisation of which the Governments of 2 or more States are members.

Body corporate

5 Body corporate

Each of the specified organisations has the legal capacities of a body corporate.

EC's privileges and immunities

6 Immunity from suit

EC has immunity from suit and legal process, except in so far as in any particular case it has expressly waived its immunity.

7 Inviolability of premises and archives

EC has the like inviolability of official premises and archives as is accorded in respect of official premises and archives of a diplomatic mission.

8 Immunity of property

EC has immunity in relation to its property and assets from search, requisition, confiscation, expropriation, or any other form of interference.

9 Exemption from taxes and rates

EC is exempt from taxes and rates other than—

- (a) taxes on the importation of goods; and
- (b) taxes and rates that are charges for public utility services; and
- (c) goods and services tax under the Goods and Services Tax Act 1985.

10 Exemption from taxes on importation of goods for official use

- (1) EC is exempt from taxes on the importation of goods directly imported by EC for its official use in New Zealand or for exportation, or on the importation of any publications of EC directly imported by it.
- (2) The exemption is subject to compliance with any conditions the Minister of Customs determines for the protection of the revenue.

11 Exemption from restrictions on importation or exportation of goods for official use

- (1) EC is exempt from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by EC for its official use, and in the case of any publications of EC directly imported or exported by it.
- (2) The exemption is subject to compliance with any conditions the Minister of Customs determines for the protection of public health, the prevention of diseases in plants and animals, and otherwise in the public interest.

12 Facilities in respect of telegraphic communications

EC has the right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or dispatched from places outside New Zealand), of any reduced rates applicable for the corresponding service in the case of press telegrams.

*Privileges and immunities of certain high officers of EC***13 President and Commissioner for External Relations**

The President of EC, and the Commissioner for External Relations of EC, enjoy—

- (a) the like immunity from suit and legal process as is accorded to a diplomatic agent:
- (b) the like inviolability of residence, official premises, and official archives as is accorded to a diplomatic agent:
- (c) the like exemption from taxes and rates as is accorded to a diplomatic agent.

*Privileges and immunities of members of EC delegations***14 Members whose functions equivalent to diplomatic agent**

- (1) Members of an EC delegation whose functions are equivalent to those of a diplomatic agent enjoy—
 - (a) the like immunity from suit and legal process as is accorded to a diplomatic agent:
 - (b) the like inviolability of residence, official premises, and official archives as is accorded to a diplomatic agent:
 - (c) the like exemption from taxes and rates as is accorded to a diplomatic agent.
- (2) Examples of members of an EC delegation whose functions are equivalent to those of a diplomatic agent are Ambassadors, High Commissioners, Heads of Mission, Deputy or Assistant Heads of Mission, Ministers, Counsellors, First or Second Secretaries, and Attachés.
- (3) Despite subclause (1), if those members are New Zealand nationals,—
 - (a) they enjoy the immunity conferred by subclause (1)(a), and the inviolability conferred by subclause (1)(b), only in respect of things done or omitted to be done by them in the course of the performance of their official duties; and
 - (b) they do not enjoy the exemption conferred by subclause (1)(c); and
 - (c) members of their families forming part of their households do not enjoy the privileges and immunities conferred on them by subclause (1).
- (4) Despite subclause (1), if those members are not New Zealand nationals, members of their families forming part of their households do not enjoy the privileges and immunities conferred on them by subclause (1) if those members of their families are New Zealand citizens or permanent residents.

15 Administrative and technical staff

- (1) Members of an EC delegation who are administrative or technical staff enjoy—
 - (a) the like immunity from suit and legal process as is accorded to a diplomatic agent:
 - (b) the like inviolability of residence, official premises, and official archives as is accorded to a diplomatic agent:

- (c) the like exemption from taxes and rates as is accorded to a diplomatic agent.
- (2) Despite subclause (1)(a), those members enjoy immunity from civil and administrative jurisdiction only in respect of things done or omitted to be done by them in the course of the performance of their official duties.
- (3) Despite subclause (1)(c), those members enjoy an exemption from taxes on the importation of goods only in respect of furniture and effects imported at the time of first taking up post in New Zealand.
- (4) Despite subclauses (1) to (3), if those members are New Zealand nationals,—
 - (a) they enjoy the immunity conferred by subclauses (1)(a) and (2), and the inviolability conferred by subclause (1)(b), only in respect of things done or omitted to be done by them in the course of the performance of their official duties; and
 - (b) they do not enjoy the exemption conferred by subclause (1)(c); and
 - (c) members of their families forming part of their households do not enjoy the privileges and immunities conferred on them by subclauses (1) to (3).
- (5) Despite subclauses (1) to (3), if those members are not New Zealand nationals, members of their families forming part of their households do not enjoy the privileges and immunities conferred on them by subclauses (1) to (3) if those members of their families are New Zealand citizens or permanent residents.

16 Service staff

- (1) Members of an EC delegation who are service staff enjoy—
 - (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the course of the performance of their official duties;
 - (b) exemption from taxes in respect of emoluments received as an officer or servant of EC.
- (2) Despite subclause (1)(b), if those members are New Zealand nationals, they do not enjoy the exemption conferred by subclause (1)(b).

Privileges and immunities of private servants of members of EC delegations

17 Exemption from taxes in respect of emoluments

- (1) Private servants of members of EC delegations enjoy exemption from taxes in respect of emoluments received as a private servant of a member of an EC delegation.
- (2) Despite subclause (1), if those private servants are New Zealand nationals, they do not enjoy the exemption conferred by subclause (1).

Waiver

18 Privileges and immunities may be waived by EC

The privileges and immunities conferred by clauses 13 to 17 do not apply in so far as in any particular case any privilege or immunity is waived by EC.

Order not in force in Tokelau

19 Order not in force in Tokelau

This order is not in force in Tokelau.

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order relates to 3 organisations (the **specified organisations**):

- the European Commission or the Commission of the European Communities (**EC**); and
- these 2 organisations (called the **European Communities**):
 - the European Atomic Energy Community (Euratom);
 - the European Community.

The order, which comes into force on 19 March 2004 and is not in force in Tokelau,—

- declares each of the specified organisations to be an organisation of which the Governments of 2 or more States are members; and
 - provides that each of the specified organisations has the legal capacities of a body corporate; and
 - confers certain privileges and immunities on EC, on certain high officers of EC, and on members, and private servants of members, of EC delegations.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 18 March 2004.

This order is administered in the Ministry of Foreign Affairs and Trade.
