

## Annex to the Luxembourg Government memorandum on the seat of the institutions (4 December 1983)

**Caption:** Annex to the memorandum presented on 4 December 1983, in Athens, by the Government of the Grand Duchy of Luxembourg to the governments of the Member States of the European Community. The annex focuses on the question of the seat of the Community institutions: the development of the legal framework until 1981 and the unstable situation resulting therefrom, heightened by the initiatives of the European Parliament concerning its places of work which the Luxembourg Government is seeking to thwart.

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## Annex to the memorandum presented by the Government of the Grand Duchy of Luxembourg to the Governments of the Member States of the European Communities in Athens on 4 December 1983

### (A) The legal situation

1. Article 77 of the ECSC Treaty, Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty provide that ‘the seat of the institutions of the Community will be determined by common accord of the governments of the Member States.’

2. In application of a declaration made by the Ministers for Foreign Affairs, meeting on 24 and 25 July 1952 on the occasion of the entry into force of the ECSC Treaty, the High Authority and the Court of Justice began their work in Luxembourg, and the Assembly held its sessions (save two) in Strasbourg, whilst its Secretariat began working in Luxembourg, where the Council met and the High Authority and its departments and the Council Secretariat were located.

As regards the final decision on the seat, the ministers envisaged that it would be taken in the light of the outcome of the negotiations to be held on the Statute of the Saar, thereby leaving open the ‘Saar option’, should the Saar population decide in favour of a statute affording a large degree of autonomy.

3. On 7 January 1958, following the entry into force of the EEC and EAEC Treaties, the Ministers for Foreign Affairs declared in a press release entitled ‘Seat’ that they had ‘agreed to group all the European organisations of the six countries together in a single place as soon as this becomes practically feasible and in accordance with the provisions of the Treaties’. Until such time, and while still leaving the Presidents of the various institutions a wide margin of discretion, they recommended that the committees held their meetings either in Brussels or Luxembourg ‘for practical reasons and reasons relating to physical amenities’. The Assembly continued to hold its plenary meetings in Strasbourg, and its Secretariat continued to operate in Luxembourg.

Subsequently, its committees began meeting more and more frequently in Brussels, where the members of the Councils and Commissions of the two Communities and their administrative structures were located.

4. On 8 April 1965, on the occasion of the signing of the Treaty establishing a Single Council and Single Commission of the European Communities, the first of the agreements on the seat of the institutions, which was duly negotiated and concluded and therefore contrasts with all previous arrangements, was confirmed by the ‘Decision of the Representatives of the Governments of the Member States on the provisional location of certain institutions and departments of the Communities’.

It provides, *inter alia*, as follows:

‘Article 1: Luxembourg, Brussels and Strasbourg shall remain the provisional places of work of the institutions of the Communities.’

‘Article 4: The General Secretariat of the Assembly and its departments shall remain in Luxembourg.’

In addition to these provisions, this decision concerns, *inter alia*, meetings of the Council, the location of the Court of Justice and judicial and quasi-judicial bodies, the location of the European Investment Bank, the financial departments of the High Authority of the ECSC and other Community bodies and departments, the transfer of the Commission’s departments which manage the coal and steel markets, and the transfer to or retention in Luxembourg of some of the Commission’s departments. Its aim was to settle, without prejudice to the determination of the seat of the institutions, certain problems peculiar to the Grand Duchy of Luxembourg which arose out of the creation of a single Council and a single Commission.

5. On the basis of the Decision of 8 April 1965, and, in particular, Article 10(1) thereof which provides that ‘the Governments of the Member States are willing to locate in Luxembourg, or to transfer thereto, other Community bodies and departments, particularly those concerned with finance, provided that their proper

functioning can be ensured,' the Representatives of the Governments of the Member States established, by their Decision of 24 July 1973 that Luxembourg would be the provisional place of work of the European Monetary Cooperation Fund. By their decision of 5 April 1977, they did likewise as regards the provisional place of work of the Court of Auditors.

6. The substance of the 1965 decision, the subsequent decisions adopted pursuant thereto and the practice which followed from it were confirmed on several occasions and, in particular, by the Heads of State or Government who, meeting at the European Council in Maastricht on 23 and 24 March 1981, decided unanimously 'to confirm the status quo in regard to the provisional places of work of the European institutions'.

7. Scarcely three months later, the Conference of Governments of the Member States, which was convened in response to a memorandum presented on 16 October 1980 by the French Government to the Governments of the other Member States with a view to 'entering into discussions without delay in order to bring about, pursuant to Article 77 of the ECSC Treaty, Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty, a satisfactory solution to this question' of the seat of the institutions of the Community, ended with the following conclusions:

'1. The governments of the Member States note that, pursuant to Article 216 of the Treaty, the decision on the seat of the institutions of the Community falls within their exclusive competence.

2. The decision of the governments of the Member States, meeting in Maastricht on 23 and 24 March 1981, to retain the *status quo* in regard to the provisional places of work, falls within the exercise of this competence. It shall be without prejudice to the decision fixing the seat of the institutions'.

## **(B) Uncertainty**

8. However, this notion of '*status quo*', the scope of which has never been specified in an overall text, has given rise in practice to different interpretations which have caused great uncertainty that even the judgment of the Court of Justice of 10 February 1983 appears unable to dispel. The uncertainty stems from the Commission's practices in relation to branch offices and liaison offices located in Brussels, some of which tend to assume proportions which are not justified by their basic purpose, from the discussions concerning the place for meetings of the ministers and from the failure to apply Article 1(2) of the Decision of 24 July 1973 on the provisional location of the European Monetary Cooperation Fund, whose Board of Governors meetings are not generally held at the provisional place of work of the Fund and whose administrative functions are performed by a body outside the European Community. The uncertainty stems also, and above all, from the attitude of the European Parliament.

9. On 19 July 1967, in response to a decision adopted by its enlarged Bureau, the European Parliament, which had previously held all its part-sessions in Strasbourg (with the exception of two — one in Brussels in 1956 and one in Rome in 1957), sat for the first time in Luxembourg in order to conduct urgent consultations with the Council.

10. Thereafter, it generally held its short part-sessions in Luxembourg. In 1970, the Luxembourg authorities began constructing a new administrative building for the departments of the Parliament which included, at the request of the Parliament itself, all the facilities required for the holding of meetings of the plenary assembly and of its committees and political groups. Nor did they hesitate to comply with the subsequent requests of the European Parliament, in particular those drawn up with a view to the holding of the first elections by direct universal suffrage in 1979 and the resultant substantial increase in the number of its members. Thus, the European Parliament was, between June 1980 and February 1981, able to hold four part-sessions in Luxembourg, where construction had just been completed on the new large Chamber which, moreover, is now the only building which will be capable of accommodating all the MEPs once the Community has been enlarged to include 12 countries.

11. A practice has thus developed on the basis of the 1965 Decision which has led to the Grand Duchy of

Luxembourg being faced with regular requests to improve and expand the infrastructure required for the smooth running of these part-sessions, thereby placing on it obligations which it has fulfilled in strict accordance with its historic vocation as a place of work of the European institutions. It has legitimately been able to believe that it can derive therefrom rights corresponding to the efforts that it has made.

12. Consequently, the Luxembourg Government has observed very carefully the change in the attitude of the European Parliament in this matter, particularly since it risked encroaching significantly on the prerogatives which the Treaties expressly reserved to the governments of the Member States.

13. On 15 December 1980, the European Parliament adopted a resolution ‘on the seat of the European Parliament’ in which it expressed its determination to take the place of the governments of the Member States if they did not put an end to the provisional arrangement concerning its places of work by 15 June 1981. Before that date, on 12 January 1981, it rejected the calendar of part-sessions drawn up by its Bureau, which included two part-sessions in Luxembourg in 1981 and, on 13 March 1981, it adopted a resolution which included only part-sessions in Strasbourg during the second half of 1981. Since then, the European Parliament has not held a part-session in Luxembourg.

14. After rejecting a preliminary ruling asking it ‘not to assume the responsibilities which remain reserved to the Governments of the Member States’, the European Parliament adopted, on 7 July 1981, a resolution on ‘the seat of the institutions of the European Community and, in particular, of the European Parliament’ in which it decided that the operation of its Secretariat and its technical departments should be reviewed so as to meet the demands that all its part-sessions be held in Strasbourg and the meetings of its committees and political groups generally be held in Brussels.

15. In an action for annulment of this resolution brought before it by the Luxembourg Government, the Court of Justice delivered a judgment on 10 February 1983 which, although providing clarification on a certain number of points at issue (in particular the exclusive competence of the governments of the Member States in relation to the establishment of the seat and the provisional places of work of the Community institutions), leaves open various interpretations in respect of a fundamental question, that is to say, the exact extent of the powers over the internal organisation of the European Parliament whose legal limits are defined by the prohibition on transferring the General Secretariat or its departments in full or in part de jure or de facto.

16. On the same day as the judgment of the Court of Justice handed down its judgment, the European Parliament decided to hold the special part-session on unemployment in Brussels, thereby undermining the balance of the existing decisions and arrangements relating to the seat and places of work of the institutions.

17. Less than one month later, on 9 March 1983, the MEP Kai Uwe von Hassel tabled a draft resolution which can now be regarded as adopted by virtue of the special procedure laid down in Rule 49 of the Rules of Procedure of the European Parliament and which, on the basis of the resolution of 7 July 1981, decided to assign the staff of the Secretariat in the most rational manner between Brussels and Strasbourg, thereby implicitly excluding Luxembourg. As it considered that, with this resolution, the European Parliament was once again challenging the exclusive competence of the governments of the Member States in this respect and, hence, flouting the principles set out in the judgment of 10 February 1983, the Luxembourg Government lodged a new application for annulment with the Court of Justice on 10 June 1983.

18. Since then, other initiatives have been launched, and new motions for resolutions and draft reports continue to be drawn up in the European Parliament in connection with the seat and places of work.