



Treaty Series No. 55 (1967)

Exchanges of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Commission of the
European Atomic Energy Community (Euratom)
for the Settlement of a Dispute
concerning the Taxation Liability of
EURATOM Employees working in the
United Kingdom on the Dragon Project

Brussels, 11 July 1966

*Presented to Parliament by the Secretary of State for Foreign Affairs
by Command of Her Majesty
June 1967*

LONDON
HER MAJESTY'S STATIONERY OFFICE

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**EXCHANGES OF NOTES
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
COMMISSION OF THE EUROPEAN ATOMIC ENERGY
COMMUNITY (EURATOM) FOR THE SETTLEMENT OF A
~~DISPUTE CONCERNING THE TAXATION LIABILITY OF~~
EURATOM EMPLOYEES WORKING IN THE UNITED KINGDOM
ON THE DRAGON PROJECT**

*The Commission of the European Atomic Energy Community to the United
Kingdom Delegation to the European Communities*

No. 1

Note A

Your Excellency,

Brussels, 11th July, 1966.

I have the honour to refer to the Note Verbale addressed to the Commission of the European Atomic Energy Community by the United Kingdom Delegation to the European Communities on the 5th of July, 1965, about the taxation liability of Euratom employees working in the United Kingdom on the Dragon Project, and to discussions which took place in Brussels on the 26th of July, 1965, about the possibility of settling the dispute by arbitration, and now have the honour to propose that this matter be settled by an arbitration between the Commission of the European Atomic Energy Community (hereinafter referred to as "the Commission") and the United Kingdom Atomic Energy Authority (hereinafter referred to as "the Authority") in accordance with the following provisions:

- (a) The Arbitrator shall be H.E. Mr. Edvard Hambro, Ambassador.
- (b) (i) The arbitrator is requested to determine whether employees of the Commission who have been seconded by the Commission to work on the high temperature gas cooled reactor project (known as, and hereinafter referred to as, "The Dragon Project") in the United Kingdom are entitled, under the terms of the Agreement concerning the Dragon Project signed at Paris on the 18th of December, 1962, (hereinafter referred to as "The Dragon Agreement, 1962") to exemption from liability to pay United Kingdom income tax.
- (ii) The arbitrator is further requested to advise the Commission and the Authority whether, under Section 151 of the Report of the Preparatory Committee of the Conference on the Reorganisation of the Organisation for European Economic Co-operation adopted by the Conference on the 14th of December, 1960, the Government of the United Kingdom of Great Britain and Northern Ireland are under a legal obligation to negotiate an agreement with the Commission providing for those employees

the exemptions from liability to pay United Kingdom income tax included within the terms of Articles 9 and 12 of Supplementary Protocol No. 1 to the Convention for European Economic Co-operation on the Legal Capacity, Privileges and Immunities of the Organisation for European Economic Co-operation signed at Paris on the 16th of April, 1948,⁽¹⁾ as given continued effect in relation to the Organisation for Economic Co-operation and Development by Supplementary Protocol No. 2 to the Convention establishing that Organisation signed at Paris on the 14th of December, 1960.⁽²⁾

- (iii) If the answers to the questions set out in sub-paragraphs (i) and (ii) above are in the negative, the arbitrator is also requested to determine whether the Authority is under any obligation, under Article 5 (d) of the Dragon Agreement, 1962 to meet the cost of the United Kingdom income tax due from those employees.
 - (iv) If the answer to the question set out in sub-paragraph (iii) above is in the negative, the arbitrator is further requested to determine whether, assuming that the Commission reimburses its employees for the cost of the United Kingdom income tax due from those employees, the Commission may, in accordance with Article 5 (c) of the Dragon Agreement, 1962 reclaim from the Budget of the Dragon Project the costs to the Commission of such reimbursement.
- (c) The Authority and the Commission shall each, within fourteen days of today's date, appoint an Agent for the purposes of the arbitration and shall communicate his name and address to the arbitrator and to the other party.
- (d) *Annex A* to this Note sets out a statement of facts which has been agreed by the Commission and the Authority, and which shall be submitted to the arbitrator.
- (e) (i) The proceedings shall be in writing only.
- (ii) Within three months of today's date the Commission shall submit to the arbitrator and to the Authority a Memorial, setting out its case including all supporting arguments. Within three months of the submission of the Memorial the Authority shall submit to the arbitrator and to the Commission a Counter-Memorial. Within two months of the submission of the Counter-Memorial the Commission may submit to the arbitrator and to the Authority a Reply. Within two months of the submission of the Reply, the Authority may submit to the arbitrator and to the Commission a Rejoinder.
- (f) The arbitrator may request from either party any supplementary information he may need. Any such supplementary information given to the arbitrator shall be furnished to the other party.

(1) "Treaty Series No. 59 (1949)", Cmd. 7796.

(2) "Treaty Series No. 21 (1962)", Cmd. 1646.

- (g) Written statements to be submitted to the arbitrator shall be submitted in the English language or in one of the official languages of the Community.
- (h) All other questions on procedure arising shall be decided by the arbitrator.
- (i) The arbitrator shall as soon as possible deliver his award in writing giving the reasons therefor, and shall transmit one signed copy to each Agent.
- (j) All general costs of the arbitration shall be borne equally by the Authority and the Commission, but each of them shall bear its own expenses incurred in or for the preparation of its case.

If the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to suggest that this Note and Your Excellency's reply in that sense shall constitute an Agreement between that Government and the Commission in this matter, which shall enter into force on this day's date.

I have the honour to be,

with the highest consideration,

Your Excellency's obedient Servant,

J. SASSEN.

Member of the Euratom Commission.

ANNEX TO NOTE A

Agreed Statement of Facts

Part I : The Dragon Project

1. The Dragon Project is a joint European project for the design, construction and operation in the United Kingdom of a high temperature gas-cooled reactor. The Project was conceived under the auspices of the European Nuclear Energy Agency of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development.

2. The Dragon Project was established by an Agreement which was signed in March, 1959, and concluded for a period of five years. A copy of this Agreement is attached at Annex 1⁽³⁾; this Agreement will be referred to as "The Dragon Agreement, 1959". On 18 December, 1962 a new Dragon Agreement was concluded (between the same signatories as had signed the Dragon Agreement(1959) which revised and replaced the Dragon Agreement, 1959, and remains in force until 31 March, 1967. A copy of this Agreement is at Annex 2⁽³⁾; this Agreement will be referred to as "The

⁽³⁾ Not reproduced.

Dragon Agreement, 1962". In both Agreements the United Kingdom Atomic Energy Authority (the Authority) and the Commission of the European Atomic Energy Community (the Commission) were among the signatories.

3. Article 5 (a) of the Dragon Agreement, 1959, and of the Dragon Agreement, 1962, provide that "the personnel necessary for carrying out the joint programme shall be seconded by the signatories. . . ."; accordingly, employees of the Commission were seconded to the Project by the Commission.

4. From the beginning of the Project until 1 April, 1964, the Commission's employees seconded to the Project paid no United Kingdom income tax in respect of their salaries or other emoluments paid or remitted to them in the United Kingdom, the Authority deciding to make composite annual payments in lieu thereof to the United Kingdom Board of Inland Revenue.

5. With effect from 1 April, 1964, the Euratom employees have been requested to pay, and have paid, United Kingdom income tax on their salaries and other emoluments paid or remitted to them in the United Kingdom. They are reimbursed by the Commission for the amounts so paid by them in tax.

Part II : The OEEC and OECD Agreements

6. When the Organisation for European Economic Co-operation was established by a Convention signed in Paris on 16 April, 1948, Supplementary Protocol No. 1 to the Convention was concluded at the same time on the Legal Capacity, Privileges and Immunities of the Organisation. Articles 9 and 12 of this Protocol, which appear in Part IV headed "The Representatives of Members", read as follows:

"Article 9. Representatives of Members to the principal and subsidiary organs of the Organisation shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the privileges, immunities and facilities normally enjoyed by the diplomatic envoys of comparable rank."

"Article 12. In this Part IV the expression "representatives" shall be deemed to include all delegates, alternates, advisers, technical experts and secretaries of delegations."

7. In 1960 the Organisation for European Economic Co-operation was reorganised, and a Convention was concluded replacing it by the Organisation for Economic Co-operation and Development, signed at Paris on 14 December, 1960. Supplementary Protocol No. 2 to that Convention dealt with the question of privileges and immunities. So far as is relevant here, this Protocol reads as follows:

"The Organisation shall have legal capacity and the Organisation, its officials, and representatives to it of the Members shall be entitled to privileges, exemptions, and immunities as follows:

(a) In the territory of the Contracting Parties to the Convention for European Economic Co-operation of 16th April, 1948, the legal capacity, privileges, exemptions, and immunities provided for in Supplementary Protocol No. 1 to that Convention.”

8. Supplementary Protocol No. 1 to that Convention provided that:

“1. Representation in the Organisation for Economic Co-operation and Development of the European Communities established by the Treaties of Paris and Rome of 18th April, 1951, and 25th March, 1957, shall be determined in accordance with the institutional provisions of those Treaties.

2. The Commissions of the European Economic Community and of the European Atomic Energy Community as well as the High Authority of the European Coal and Steel Community shall take part in the work of that Organisation.”

9. The Conference which drew up the Convention effecting this reorganisation of the Organisation for European Economic Co-operation established a Preparatory Committee. Paragraph 151 of the Report of the Committee, which was adopted by the Conference on 14 December, 1960, reads as follows:

“The question of privileges and immunities which might be accorded to the representatives of the Commissions of the European Economic Community and the European Atomic Energy Community, of the High Authority of the European Coal and Steel Community, and of the European Free Trade Association, which will participate in the work of the Organisation, has been raised in the Preparatory Committee. The Committee consider that this question will have to be settled by agreements or arrangements concluded for the purpose.”

No. 2

*The United Kingdom Delegation to the European Communities to the
Commission of the European Atomic Energy Community*

Your Excellency,

*Brussels,
11 July, 1966.*

I have the honour to acknowledge receipt of Your Excellency's Note A of today's date, which reads as follows:

[As in No. 1]

I have the honour to inform Your Excellency that the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, who therefore agree that Your Excellency's Note and the present reply shall constitute an Agreement between them and the Commission, which shall enter into force on this day's date.

I have the honour to be,

with the highest consideration,

Your Excellency's obedient Servant,

J. A. M. MARJORIBANKS.

[Enclosure as in No. 1]

No. 3

*The Commission of the European Atomic Energy Community to the
United Kingdom Delegation to the European Communities*

Note B

Your Excellency,

Brussels, 11th July, 1966.

I have the honour to refer to my Note A of today's date about the taxation liability of Euratom employees working in the United Kingdom on the Dragon Project, and to Your Excellency's Note of the same date in reply.

I have the honour to inform you that the Commission will accept the arbitrator's determination of the questions set out in sub-paragraphs (b) (i), (b) (iii), and (b) (iv) of my Note under reference as final and binding upon the Commission for purpose of the present dispute only. With regard to the arbitrator's advice on the question set out in sub-paragraph (b) (ii) of that Note, the Commission will accept that advice. The Commission will accordingly take all steps open to it to give effect to the determination and advice of the arbitrator.

With regard to the arbitrator's decision on the question set out in sub-paragraph (b) (iv) of my Note under reference I have the honour to record my understanding that, should the arbitrator decide that the Commission is entitled to reclaim from the budget of the Dragon Project the costs of the reimbursement, the sum in question will not in fact be charged to the budget of the Dragon Project but will be paid by the Commission and the Authority in equal proportions.

I have the honour to be,

with the highest consideration,

Your Excellency's obedient Servant,

J. SASSEN.

Member of the Euratom Commission.

No. 4

*The United Kingdom Delegation to the European Communities to the
Commission of the European Atomic Energy Community*

Your Excellency,

*Brussels,
11 July, 1966.*

I have the honour to refer to Your Excellency's Note B of today's date, referring to Your Excellency's Note A of today's date about the Dragon Income Tax dispute and to my Note of the same date in reply.

I have the honour to inform you that the Authority will accept the arbitrator's determination of the questions set out in sub-paragraphs (b) (i), (b) (iii), and (b) (iv) of Your Excellency's Note A as final and binding upon the Authority for purposes of the present dispute only. With regard to the arbitrator's advice on the question set out in sub-paragraph (b) (ii) of that

Note, the Authority will accept that advice. The Authority will accordingly take all steps open to it to give effect to the determination and advice of the arbitrator including any financial payments which may be necessary in order that the determination and advice may have effect as regulating the position regarding the payment of Income Tax as from the 1st of April, 1964.

With regard to the arbitrator's decision on the question set out in sub-paragraph (b) (iv) of Your Excellency's Note A I have the honour to record the Authority's understanding that, should the arbitrator decide that the Commission is entitled to reclaim from the Budget of the Dragon Project the costs of the reimbursement, the sum in question will not in fact be charged to the Budget of the Dragon Project, but will be paid by the Commission and the Authority in equal proportions.

I should like to take this opportunity of recording that since the proposed arbitration is not one to which Her Majesty's Government are a party, the determination and advice of the arbitrator will not be legally binding upon, nor give rise to any legal obligations for, nor constitute any precedent against, Her Majesty's Government, particularly insofar as concerns the Protocols and Conventions concerning the Organisation for European Economic Co-operation and the Organisation for Economic Co-operation and Development referred to in sub-paragraph (b) (ii) of Your Excellency's Note A. However, notwithstanding this, I wish to assure Your Excellency that Her Majesty's Government will, so far as concerns the liability to United Kingdom Tax of the Commission's employees seconded to work on the Dragon Project, take the necessary action in order to give effect as from 1 April, 1964, by administrative means to any determination or advice by the arbitrator that the employees in question are entitled to, or should be the subject of negotiations for an agreement providing for, exemption from liability to pay United Kingdom income tax.

I have the honour to be,

with the highest consideration,

Your Excellency's obedient Servant,

J. A. M. MARJORIBANKS.

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