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Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Protocol to the Vaduz Agreement of 30 April 1999

between the Association of Constitutional Courts
using the French Language (ACCPUF)

and the European Commission for Democracy through Law
(Venice Commission)

Protocol to the Agreement signed in Vaduz on 30 April 1999

between the Association of Constitutional Courts using the French Language (ACCPUF)

and

the European Commission for Democracy through Law of the Council of Europe

Having regard to the Agreement signed in Vaduz on 30 April 1999 between the Association of Constitutional Courts using the French Language (hereinafter “the Association”) and the European Commission for Democracy through Law (the Venice Commission - hereinafter “the Commission”), being the Parties to that Agreement (hereinafter “the Parties”),

Whereas the Association and the Commission, being aware of the complementary nature of the fields they cover and the similarity of their goals, reiterate their commitment to closer co-operation in the field of documentation,

Having regard to the exchanges set up in accordance with Article 7 of the Agreement of 30 April 1999,

Having regard to the training provided, with the support of the Commission, to the national correspondents of the Association’s member courts for the purpose of indexing of their constitutional case-law in accordance with the Systematic Thesaurus compiled by the Commission,

Welcoming the progress made since the signing of the Agreement on 30 April 1999 and wishing to rationalise their work further, particularly by the following means:

- extending the CODICES database to include documents produced by French-speaking constitutional courts which do not take part in the Commission’s work on constitutional justice;

- providing the Association with access to a dynamic computerised data management tool comprising advanced search engines and means of consulting data both on CD-ROM and via the Internet;

- offering CODICES users the opportunity to consult a source of comparative constitutional case-law enriched by the combined work of more than seventy courts, and to conduct searches on this collection using a single indexing system and a single tool.

Section I. Scope of the amendment

Article 1

The principal decisions of the constitutional courts which are members of the Association shall be added to the CODICES database.

The Association and the Commission reserve the right to extend this agreement subsequently to the texts of constitutions and of implementing acts and regulations governing the organisation and functioning of French-speaking constitutional courts.

Section II. Effects of the amendment

Article 2

The ACCPUF's logo shall be included on the entry page of the Commission's database so as to indicate clearly that the Association is contributing to the latter.

The book "Introduction" of the database shall be amended to present the new features of the base to users.

Decisions of French-speaking constitutional courts shall be accessed in the same way as decisions compiled by the Commission and using the various existing search masks.

Section III. Obligations of the Parties

Article 3

The Association undertakes to:

- a- ensure, with the assistance of its member courts, that decisions on leading constitutional cases, including electoral case-law, are collected from them;
- b- provide a thematic indexing of these decisions according to the Commission's Systematic Thesaurus and the alphabetical index under the conditions set out in Articles 3 et seq of the aforementioned Agreement, it being essential that the index meets the quality standards set by the Commission;
- c- send the Commission the full texts of decisions in their original language and their indexing, in digital form in a format specified by the Commission;
- d- number decisions sent to the Commission according to the formula laid down by the Commission: – IOC country code - year (4 digits) – A – serial number (3 digits);
- e- send this information to the Commission every 4 months.

Article 4

The Commission undertakes to:

- a- ensure that the principal decisions of French-speaking constitutional courts are regularly incorporated into the CODICES database;
- b- consult the Association before making any changes liable to restrict or adversely affect the functioning of the base;
- c- ensure the technical maintenance of the base for the duration of the agreement;
- d- prepare a new CODICES user's guide including the changes made.

Article 5

The Parties undertake to ensure the follow-up of regular updating of documents intended for the database.

Section IV. Copyright**Article 6**

As its designer and constructor, the Commission has exclusive copyright in the database.

Section V. Compensation for the technical services provided to the Association by the Commission**Article 7**

In return for the technical services provided by the Commission to extend the CODICES database to the Association's French-language resources and the technical maintenance costs borne by the Commission, the Association undertakes to propose an appropriate financial arrangement to the Commission including, in particular, the purchase of a number of CODICES CD-ROMs at a preferential rate and in a quantity to be decided. This arrangement shall be confirmed by the competent bodies of the Parties by 31 December 2001 at the latest.

Section VI. Dissemination of data**Article 8**

The CODICES database is disseminated via the Internet, with unrestricted access. It is housed exclusively on the Commission's server. A direct link shall be set up between the Association's web site and the Commission's server.

Article 9

The Commission and the Association shall publish, at their own expense, in paper form and with respecting the Commission's copyright, extracts from the CODICES database relating to their partner courts.

Article 10

CODICES shall also be made available on CD-ROM. CD-ROMs shall be produced exclusively by the Commission.

Section VII. Promotion of the CODICES database and the partnership between the Association and the Commission

Article 11

The Commission undertakes to refer explicitly on the CD-ROMs produced under its auspices (disc and accompanying booklet) to its partnership with the Association, and in particular to include the ACCPUF logo.

Article 12

The Association and the Commission undertake, wherever possible, to include the logo of the other Party whenever any data from the CODICES base is distributed in hard copy, and in any event to provide a direct hyperlink to the home page of their respective Internet sites. A direct link to the home page of the ACCPUF Internet site (www.accpuf.org) shall be placed on the home page of the CODICES database. A similar link to the CODICES home page shall be placed on the Association's home page.

Article 13

The Parties also undertake to mention their partnership in any communications regarding the data base and on the corresponding materials.

Section VIII. Final provisions

Article 14

The principal decisions of the Association's member courts shall be communicated to the Secretariat of the Commission in accordance with Article 3 of this agreement and be made available on the CODICES database during the first quarter of 2002.

Article 15

The amendment is agreed to for an unspecified period.

Article 16

Either of the Parties may renounce this amendment by giving notice in writing.

In this case, the rights and obligations based on this agreement shall cease to exist, and the Venice Commission shall restitute all data sent by the Association.

Article 17

In accordance with Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe, any dispute concerning the application of this Agreement that cannot be settled amicably between the Parties shall be submitted to arbitration under Rule No. 481 of the Secretary General, approved by the Committee of Ministers, which is appended to and forms part of this Agreement.

Article 18

This amendment shall come into force after it has been approved by the competent authorities of both Parties and signed by the representatives of the Association and the Commission.

Done in two copies in on 2001.

For the Association
of Constitutional Courts
using the French Language
(ACCPUF)

For the European Commission
for Democracy through Law
of the Council of Europe
(Venice Commission)

A N N E X I

RULE No. 481

The Secretary General of the Council of Europe,

Having regard to the Statute of the Council of Europe, of 5 May 1949, and in particular its Articles 11 and 40,

Having regard to the General Agreement on Privileges and Immunities of the Council of Europe signed on 2 September 1949, and in particular its Articles 1, 3, 4 and 21, as well as the Special Agreement relating to the seat of the Council of Europe signed on 2 September 1949,

Considering that it is appropriate to determine the arbitration procedures for any disputes between the Council and private persons regarding supplies furnished, services rendered or immovable property purchased on behalf of the Council,

Having regard to the decision of the Committee of Ministers of the Council of Europe at the 253rd meeting of the Deputies,

Decides

Article 1

Any dispute relating to the execution or application of a contract covered by Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe shall be submitted, failing a friendly settlement between the parties, for decision to an Arbitration Board composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators ; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.

Article 2

However, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.

Article 3

The Board referred to in Article 1 or, where appropriate, the arbitrator referred to in Article 2 shall determine the procedure to be followed.

Article 4

If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide *ex aequo et bono* having regard to the general principles of law and to commercial usage.

Article 5

The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

Strasbourg, 27 February 1976

Georg KAHN-ACKERMANN
Secretary General

A N N E X II**13 June 2001**

Financial proposal submitted by the ACCPUF

1. Article 7 of the draft amendment to the Vaduz Agreement of 30 April 1999 between the Association of Constitutional Courts using the French Language and the European Commission for Democracy through Law of the Council of Europe, according to which:

“In return for the technical services provided by the Commission to extend the CODICES database to the Association’s French-language resources and the technical maintenance costs borne by the Commission, the Association undertakes to propose an appropriate financial arrangement to the Commission including, in particular, the purchase of a number of CODICES CD-ROMs at a preferential rate and in a quantity to be decided. This arrangement shall be confirmed by the competent bodies of the Parties by 31 December 2001 at the latest.”

2. Factors taken into account in the financial arrangement proposed to the Commission:

- the ACCPUF’s 2001 budget for developing the website, photo library database and case-law database, in other words a fixed sum of FF 400,000 to be shared between the different budget items;
- estimates supplied by outside contractors relating to the cost of designing a case-law database offering sophisticated search functionalities but where, in this case, the ACCPUF would be the database’s **sole owner** (estimates ranging from FF 100,000 to FF 200,000.00, ie a mean estimated cost of FF 150,000),
- the cost of the *folio* software (for CD Rom use and Internet distribution) for the CODICES database,
- yearly technical maintenance costs
- lost income for the Commission as a result of allowing free access to the database (approximately FF 15,000 per annum),
- above all, the fact that the cost to the ACCPUF of extending the database will not entitle it to any ownership claim. Indeed, in spite of the financial arrangement proposed below, which constitutes a substantial investment on the part of the ACCPUF insofar as it corresponds to half the cost of commissioning an outside contractor to design a database, the ACCPUF will still only **“rent”** the CODICES database according to the new system. Consequently, given the initial outlay proposed by the ACCPUF (see below), this “rental” arrangement needs to be accompanied by guarantees in respect of the conditions under which the Amendment may be rescinded.

3. Financial proposal:

The ACCPUF proposes to:

- make an annual contribution of **FF 30,000 for five years** to the initial work on extending the database,
- pay **an annual sum of FF 15,000, from the sixth year onwards**, to cover maintenance costs and to compensate for the Commission’s loss of income as a result of allowing free access to the database.