

**Agreement
between
the Republic of Estonia
and
the Grand Duchy of Luxembourg
on the hosting of data and information systems**

The Republic of Estonia and the Grand Duchy of Luxembourg, together referred to as “the Parties”,

HAVING REGARD to the Memorandum of Understanding (MoU) between the Ministry of Economic Affairs and Communications of the Republic of Estonia and the Ministry of Media and Communications of the Grand Duchy of Luxembourg, signed on the 14 of November 2016,

WHEREAS this Agreement is in the spirit of the Vienna Convention on Diplomatic Relations,

WHEREAS the Vienna Convention on Diplomatic Relations is not sufficient to set a legal framework for the hosting of data and information systems,

WHEREAS this Agreement is concluded within the framework of the diplomatic relations between the Republic of Estonia and the Grand Duchy of Luxembourg,

INTENDING to specify the means for effective cooperation between the Parties and support by the Parties which are essential for the successful and effective operation of the premises hosting the Estonian data and information systems,

WISHING to conclude an agreement governing the legal status of the premises hosting the Estonian data and information systems, with the necessary guarantees of immunities and privileges on the basis of existing international and national law,

HAVE AGREED as follows:

**Article 1
Definitions**

For the purposes of this Agreement:

(a) “the data centre” shall mean a facility used to host the data and information systems, the equipment and licences and associated components, such as telecommunications and storage systems;

(b) “the premises” shall mean a dedicated data centre space provided by the Grand Duchy of Luxembourg and meant for the purpose of hosting Estonian data and information systems and equipment;

(c) “the data and information systems” shall mean assets that are stored on the equipment by the Republic of Estonia in the premises;

(d) “the equipment and licences” shall mean the assets owned by the Republic of Estonia and used for the storage of data and information systems which will be agreed upon by the competent authorities of the Parties;

(e) “the competent authorities” shall mean the Ministry of Economic Affairs and Communications for the Republic of Estonia and the “Centre des technologies de l’information de l’État (CTIE)” for the Grand Duchy of Luxembourg;

(f) “force majeure” shall mean any unforeseeable situation or event beyond the control of the Parties that was not attributable to error or negligence on their part, and which prevents them from fulfilling any or all of their obligations under this Agreement and any regulation pertaining to it.

Article 2 **Functioning of premises**

(1) The premises shall be provided in full working condition for the purpose of hosting Estonian data and information systems.

(2) The Grand Duchy of Luxembourg shall make available the premises to the Republic of Estonia for the lease cost as set out in the conditions agreed upon by the competent authorities of the Parties.

(3) The Grand Duchy of Luxembourg shall provide access to the premises to the authorised representative of the Republic of Estonia.

Article 3 **Inviolability**

(1) The premises shall be inviolable and thus exempt from search, requisition, attachment or execution.

(2) No official or person exercising any public authority, whether administrative, judicial, military or police of Luxembourg shall enter the premises without the prior approval of the authorised representative of the Republic of Estonia. Such approval shall be presumed in case of fire or other emergencies which require immediate protective measures and could constitute a danger for safety.

Article 4 **Protection of the premises**

The Grand Duchy of Luxembourg shall take all appropriate measures to protect the premises against any intrusion or damage within the territory of Luxembourg. The measures are considered appropriate if they meet the same level of protection as the protection offered to the Grand Duchy of Luxembourg.

Article 5

Immunity

The equipment and licenses required to operate the data centre and put in place on the premises by the Republic of Estonia shall be regarded as assets of the Republic of Estonia and shall enjoy immunity from every form of legal process.

Article 6

Archives and communications

(1) All data and information systems stored by the Republic of Estonia in the premises shall be regarded as archives of the Republic of Estonia.

(2) The archives of the premises shall be inviolable and thus exempt from search, requisition, attachment or execution.

(3) The Grand Duchy of Luxembourg shall grant the premises the same treatment as granted to diplomatic missions in respect of its official communications and the transmission of all its documents.

(4) The Republic of Estonia shall be entitled to use any code and encryption in its official communications, as well as to dispatch and receive its official communications by diplomatic couriers authorised by the Republic of Estonia and diplomatic correspondence.

(5) No communication of the premises shall be subject to censorship or may be subject to any restriction of any kind, nor may its confidential nature be prejudiced. This protection extends in particular to data storage devices (e.g. publications, magnetic tapes, optical disks, diskettes, still pictures and films and visual or sound recordings).

(6) In case of force majeure leading to a total or partial interruption of communications, the premises shall enjoy the same priority treatment as accorded to the diplomatic missions.

Article 7

Compatibility with international law

The premises must not be used in any manner incompatible with the purpose laid down in this Agreement or by other rules of international law.

Article 8

Applicable law and settlement of disputes

(1) This Agreement shall be governed by and interpreted under international and European Union law supplemented, where applicable, by the laws and regulations of the Grand Duchy of Luxembourg.

(2) Any dispute arising between the Parties resulting from the interpretation or application of this Agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to an arbitral tribunal of three arbitrators, to be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. The two members so appointed

shall then select a third arbitrator who is not a national of either Party. That third arbitrator shall be the President of the tribunal.

(3) If within three months from the date of notification of the request for arbitration, the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Party, or if he or she is prevented from discharging the said function, the Vice-president shall be invited to make the necessary appointments. If the Vice-president is a national of either Party or if he or she too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of Estonia nor of Luxembourg shall be invited to make the necessary appointments.

(4) The decisions of the tribunal shall be final and binding. The tribunal shall adopt its own rules of procedure.

(5) The costs of the tribunal shall be shared equally between the Parties, unless the tribunal decides otherwise.

Article 9 Amendments

This Agreement may be amended by mutual written agreement of the Parties. Each Party shall notify the other as soon its constitutional requirements necessary for the entry into force of the amendments have been completed. The amendments shall enter into force thirty days after the last such notification.

Article 10 Entry into force and termination

(1) This Agreement shall enter into force when the Parties have notified each other of the completion of the respective constitutional requirements necessary for the entry into force of this Agreement. The Agreement shall enter into force thirty days after the receipt of the last such notification.

(2) The Republic of Estonia shall notify the Grand Duchy of Luxembourg, through diplomatic channels, of its authorised representative for the implementation of this Agreement and any subsequent amendments thereto.

(3) Either Party may terminate this Agreement by means of a written notice to the other Party. Termination shall take effect 24 months following the date of the notifications.

(4) After the termination of the Agreement the archives and the equipment and the licences of the Republic of Estonia shall only be handed over to the authorised representative of the Republic of Estonia. If the authorised representative of the Republic of Estonia is not possible to identify, the Grand Duchy of Luxembourg shall treat the archives and the equipment and the licences of the Republic of Estonia with the same level of protection as the archives of the Grand Duchy of Luxembourg and shall only hand them on to a legal representative of the Republic of Estonia.

Done in duplicate, at Luxembourg, on the 20th of June 2017 in the English language.

For the Republic of Estonia,

For the Grand Duchy of Luxembourg,

Jüri RATAS
Prime Minister
of the Republic of Estonia

Xavier BETTEL
Prime Minister
of the Grand Duchy of Luxembourg