



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR EXTERNAL RELATIONS

ACTING DIRECTOR-GENERAL

Brussels,
ARES D(2010)

MEMO TO THE BUDGETARY AUTHORITY

Subject: Information from the European External Action Service (EEAS) to the budgetary authority in accordance with Article 179(3) of the Financial Regulation regarding the occupation under a usufruct contract of “The Capital” complex (except the “Paris” building) for the purpose of housing its departments

1. Description and grounds for the project:

Brief project description:

“The Capital” complex comprises six separate but interconnected office units. It should be pointed out that one of the six (“Paris”) is already occupied by EPSO. The complex is bounded by the following roads: rond-point Schuman, rue de la Loi, avenue de Cortenbergh and avenue de la Joyeuse Entrée - 1000 Brussels.

The complex was formally handed over to the owner in July 2009. It is, then, a brand new building.

The five remaining units of “The Capital” have the capacity to accommodate somewhere between 1,560 and 1,750 people, depending on how the space available is fitted out. The building belongs to the insurance company AXA.

The EEAS would like to conclude a 23-year usufruct contract.

Grounds for the project:

The establishment of the European External Action Service (EEAS) in Brussels poses specific property needs in order for it to house its staff.

“The Capital” complex will make it possible to accommodate most EEAS staff in a single location. In addition, specialised EEAS staff (whose tasks require facilities with a high security level) will remain in the current buildings (two buildings at avenue de Cortenbergh 150 and 158). This will make it possible, at least initially, to avoid having to

move and/or refit high-security areas while providing a linked set of buildings very close to one another.

The EEAS needs to be located in the European quarter near the other institutions, in particular near the Council in the "Justus Lipsius" building and the Commission in the "Berlaymont". This is warranted above all by operational requirements (ease and security of contacts and efficiency in terms of travel). At present, no other building in the European quarter is unoccupied and capable of accommodating the Service.

2. Current situation

Some of the staff to be transferred to the EEAS are currently housed in certain Commission and Council buildings.

A total of 1,048 people (755 from the Commission and 293 from the Council) will be moved to "The Capital" complex, freeing up some 38,000 m² of office space (28,000 m² in the Commission on the basis of the current ratio of 37 m²/person and 10,000 m² in the Council on the basis of a ratio of 34 m²/person).

In Letter of amendment 1/2011, the corresponding appropriations for the space currently occupied by persons transferred to the EEAS were also transferred from the Commission and Council budgets to the EEAS budget. In the case of the Commission, this involves some of the charges for the "Charlemagne", "Loi-56" and "Science-15" buildings (€ 8,955,000), while in the Council's case there is the rent for a building in the rue Froissart (housing some of the teams of the EUSR), the "Cortenbergh" building and the "École Royale Militaire" (housing the other human resources working in the CFSP/ESDP field) (€ 3,535,000).

Under the usufruct contract for the Loi 56 building, there was a supplementary charge to cover tenant alterations. In 2007, the remaining balance due was paid in advance.

As regards the Commission, the current standard rate for routine running costs (electricity, gas and water) is roughly € 18 per m².

Other fixed annual expenses are:

- security guards: as an indicative figure, the cost of security guard services for the three buildings in 2009 was € 2,292,000,
- maintenance (standard Commission rate: € 43 per m²).

Regarding taxation, since the Commission holds a right in rem on the three buildings, it pays no charges or taxes. At present, it is not planned to give these buildings up before the contract runs out. The three buildings are entirely occupied by the Commission (i.e. there is no other occupant sharing any of these buildings). Moreover, the contracts do not contain an early termination clause.

Only the "Charlemagne" building is equipped with specific security facilities: one floor is protected mainly by a secure double-door access point. This floor houses in particular

a high-security area and a crisis room that is also used for communications with Commission delegations.

3. Conditions of the project submitted for information

3.1. General information

The official address of the property complex is as follows: rond-point Schuman 9A - 1000 Brussels.

Following the merger of “AXA” and “Royal Belge” (owner of the complex since the early 1960s) in 1999, the complex became the property of “AXA Belgium”.

Since 24 June 2010, EPSO has been occupying an area of 8,334 m² above ground in one of the six buildings of the complex (“Paris”). The usufruct agreement runs for 20 years.

The building is new (handed over in July 2009). There is no contamination in the building.

Apart from EPSO, which occupies an entirely separate unit of the complex, no other institution or Community body occupies the complex. However, some retail outlets are already present or planned on the ground floor:

- Avenue de Cortenbergh: approximately 350 m² for a small “supermarket”. This business will be entirely autonomous. There is, however, a right-of-way to reach the compressors installed in the car park.
- Rue de la Loi: approximately 350 m² divided into 4 units (“Exki” - fast food; “Cornet Royal” - chocolates; “Kazan” - hairdresser; one unit still not allocated). These businesses have a separate emergency exit in the basement, floor -2. There also is a right-of-way to reach the compressors installed in the car park.
- Corner Loi/Joyeuse Entrée: approximately 250 m² for a brasserie, which is fully autonomous.
- Corner Joyeuse Entrée/Cortenbergh: approximately 580 m² are planned for a sports club, which will be fully autonomous.

It should be noted that the presence of these businesses will require additional security work and tighter security measures, the cost of which will be determined in a more detailed study. In addition, provision should be made for other security costs in view of the diplomatic nature of the activities which will take place in the building.

3.2. Office areas

The complex (excluding the “Paris” building) comprises the following areas:

| Area in m² | Intended use |
|------------------------------|---|
| 45,945 | Offices, conference rooms (above ground) |
| 1,730 | Area intended for a restaurant (above ground) |
| 4,961 | Files (basement) |
| 270 spaces | Car park (basement) |

Depending on the fitting out scheme selected, the capacity could be between 1 560 and 1 750 people. This represents a ratio of 31–27 m² floor space above ground/person. In this respect, it should be noted that it has not yet been possible to draw up allocation plans, as the Service’s organisation chart has not been finalised.

The office area currently occupied by staff due to move to “The Capital” totals 38,000 m² (28,000 m² in Commission property in Brussels and 10,000 m² in Council property). The difference between this figure and the floor space of the building envisaged would leave room for specific requirements or the future regrouping of all EEAS departments.

3.3. Planning and organisation

It is planned to sign the contract during December 2010.

The owner has undertaken to complete the standard rental alteration work (installation of traditional offices) within six months from the signature date of the agreement. On this assumption, staff will be able to move into the building at a rate of 50 people per day. With these standard alterations, it is estimated that the building could be fully occupied by the autumn of 2011.

A study is under way to determine how the gradual move into each of the five buildings should proceed.

It must be noted that the security level applicable to the building has not been formally decided yet. Depending on what level is decided, the building may have to be fitted out with special technical facilities and specific alteration work may have to be done, but no precise figure has yet been worked out. This will be communicated in the near future. Carrying out the security work could involve additional deadlines compared with those for the normal specific alterations. In view of this, it is planned to fit out the complex in several phases (one phase for units to be fitted out in the standard way and a second phase for units to be equipped with special security facilities).

3.4. Terms of the contract

The EEAS will have the usufruct for 23 years. The contract contains no option to buy the building.

The main terms of the contract are:

Purpose of the contract:

The contract will set out an agreement on the terms and conditions whereby AXA undertakes to place the building at the disposal of the EEAS after completion of the specific installation work and whereby AXA will grant the EEAS usufruct of the building (including the specific installations) from the provisional acceptance date of the building and of the specific installations subject to payment of a fee.

Technical guarantee given by the owner:

During the total guarantee period (period between provisional acceptance and final acceptance), AXA will, at its own expense and risk, have to repair, alter, or replace, as soon as possible (depending on the nature of the work to be carried out), any defective component or any part of the building work showing a defect. This obligation covers all the work required, in particular transport, dismantling, assembly and putting back into operation.

Specific installations:

AXA will be solely and exclusively responsible to the EEAS for the perfect implementation of the specific installations to allow delivery of the building in compliance with the delivery deadline, the provisions of the Urban Planning Permit and the Environmental Permit, and in accordance with the quality agreed upon in the Technical Specifications, the whole in compliance with the relevant regulations. AXA gives a binding commitment to achieve this result.

On expiry of the contract, the EEAS will have to remove any constructions and installations it has made after provisional acceptance and to rectify any deterioration which removal may produce at its own expense. The EEAS will hand back the building and specific installations in a good state of repair, making allowance for obsolescence and fair wear and tear, in respect of which there will be no obligation to hand it back in its pristine state.

3.5. Selection procedure and award of rental and works contracts

The prospecting procedure followed for the building was a negotiated procedure under Article 126(1)(h) of the Implementing Rules for the Financial Regulation. This involves a building contract within the meaning of Article 116 of the Rules.

Given the urgency of finding a building that meets the needs of the EEAS (unoccupied, high-quality, located in the European quarter and near the other institutions), there was no publication. However, to the best knowledge of the Commission departments responsible for buildings policy and its implementation, there was no other unoccupied building available in the short term among the Commission's properties or on the market that would have satisfied the needs of the EEAS. Indeed, no other building met the following criteria:

- capable of accommodating some 1,500 people in order to cope with the immediate and medium-term requirements;
- located in the European quarter and near the other institutions, in particular the Council and the Commission;

- available and ready to be fitted out;
- possessing the right image and visibility to reflect the political role of the EEAS and in particular its position between the Commission and the Council.

The standard alteration work will be completed by and under the full responsibility of the owner. However, provision should be made for some supplementary work, in particular relating to the security of the building.

The main grounds for requesting the owner to carry out standard installations are:

- the contract covers a fitted-out building; thus, payment is due only from the date of provisional acceptance of this work;
- if, on the other hand, the contracting authority were to have the work carried out, it would involve paying for an unoccupied and unequipped building during the time it took to issue calls for tenders for the work and carry it out. This is all the more important bearing in mind the size of the building and the time limits involved (at least 15 to 20 months for a call for tenders and completion of the work);
- in the event of defects in the alteration work or the building itself, this approach enables the contracting authority to exercise its rights of recourse vis-à-vis a single party (the owner).

3.6. *Costs/Taxation*

The nominal annual fee negotiated for the building is € 12,501,335, which is broken down as follows:

| | |
|---|--------------|
| Office space: 45,945 m ² of fitted-out offices at € 245 per m ² /year | € 11,256,525 |
| Multi-purpose rooms: 1,730 m ² fitted out at € 170 per m ² | € 294,100 |
| Archives: 4,961 m ² at € 110 per m ² /year, | € 545,710 |
| Car parking: 270 spaces at € 1,500 space/year | € 405,000 |

Besides these terms, occupancy will be free of charge for 25 months: the first two years will be free. The 25th free month will be deducted from the 21st annual fee.

These terms are equivalent to a value of € 195 per m² for office areas, plus € 25 per m² for alterations. This does not take account of index-linking and discounted cash flow (in this case the fee for office areas would amount to € 186 per m²).

It has to be stressed that the price negotiated is 5% lower than that estimated by an independent expert. Because of the building's unique and exceptional location, the negotiated price is considered acceptable and in line with normal market conditions.

Indexing will be carried out annually in line with the HCPI (harmonised consumer price index for Belgium). It should be noted that, for office areas, only the part of the nominal fee corresponding to office area excluding alteration work (€ 220 per m²) will be indexed. The part of the fee representing payment for this work (€ 25 per m²/year) will not be subject to indexing.

The EEAS will enjoy the full benefit of the Protocol on Privileges and Immunities in the planned operation. In particular, as a holder of a right in rem (usufruct), the occupant will be exempt from regional taxes and the tax on income from immovable assets. These taxes are estimated at a total of € 38/m²/year, which represents about € 1,745,000 a year. The occupant will also be exempt from VAT on the usufruct fee, which represents some € 2,625,000. In addition, the negotiated fee takes account of the fact that, since the building is new for the purposes of VAT, the owner will be able to recover the VAT paid to suppliers for its construction.

Under the Protocol on Privileges and Immunities (PPI), the EEAS is exempt from registration duty, stamp duty and VAT on the fees. The informal agreement will generate no specific costs. Notary's fees will have to be paid for the notarial act (around € 30,000).

The usufruct fee includes specific installations for an estimated cost of € 20,675,250, including fees (project manager, specialist engineering (stability, HVAC) and design bureaux) amounting to 9% of the cost of the work. This figure was determined on the basis of fitting out with individual offices. However, this figure will have to be adjusted depending on the final decisions on how the building should be fitted out in the light of the organisation chart of the new service. Once the precise functional organisation chart is drawn up, it will be possible to determine how the space will be organised and hence what costs/savings are associated with open-plan offices.

It is also important to stress that usufruct (and hence liability for the fees) will enter into force at the time of provisional acceptance of the building and specific installations (six months after the signature of the contract). However, thanks to the negotiated free period, actual payment will begin two years after provisional acceptance. The first payments are therefore planned for the financial year 2013.

Because the environment requires security facilities, it will be important to obtain the Belgian authorities' approval of the work to be carried out (road works and work in front of the Cinquanteaire park) and of the financial arrangements.

Routine running expenses (electricity, gas and water) are estimated at the same level as the Commission rate (€ 18 per m²). Other fixed annual expenses to be taken into account are: maintenance (estimated at € 43 per m²), security guards: € 1,835,000 on the basis of two entrances manned 24 hours a day.

Regarding the cost of other work and equipment related to fitting out the building not included under the heading of standard installation (security, technical facilities, furniture, etc.), the departments responsible will draw up an estimate which will be notified to the budgetary authority in due course.

To compare the transaction negotiated (fee of € 195 per m² excluding alteration work) with other market prices, the following table shows the costs of other new and/or substantially modernised buildings in the same district or in other areas of Brussels. However, the points of comparison are difficult (different surface areas or different locations). Account also has to be taken of the differences between renting and usufruct. There is a price difference between the two types of contract (usufruct cheaper than renting) because the tenant takes on additional responsibilities in the case of usufruct and because of the possible impact of VAT in the case of a new building.

| Buildings for RENT | Brussels district | Surface area above ground in m² | €/m² | Difference compared with “The Capital” |
|-----------------------------------|--------------------------|---|------------------------|---|
| Rue Montoyer 51 | Leopold | 1,123 | 295 | + 51% |
| Avenue des Arts 35 | Leopold | 6,997 | 235 | + 20% |
| Rond-point Schuman 6 | Leopold | 1,100 | 250 | + 28% |
| Cortenbergh 4 | Leopold | 7,230 | 240 | + 23% |
| Buildings in USUFRUCT | | | | |
| “Paris” (EPSO) | Leopold | 8,334 | 199 | + 2.1% |
| Rue Joseph II 59 (Commission) | Leopold | 9,054 | 163 | - 16% |
| Rue du Luxembourg 40 (Commission) | Leopold | 7,606 | 166 | - 15% |
| Bld du Roi Albert II | Nord | 30,372 | 169 | - 13% |
| Cité Administrative | Pentagone | 70,000 | 156 | - 20% |

It should be noted that the Commission negotiated lower usufruct fees in the Leopold district, but this was for buildings in a less prestigious and visible location than the “The Capital”. In addition, there is a difference of about 20% compared with the cost of buildings in the Nord district, where large areas of office space are available either immediately (Zenith with 30,372 m²) or in the longer term (WTC with 231,000 m² by 2015); but this is quite far from rond-point Schuman, so that the criterion of proximity to the other institutions was not met.

Concerning other alternatives, two buildings were considered: the Commission’s “Charlemagne” building and the “Lex” building of the Council’s General Secretariat. Installation in the “Charlemagne” building was not feasible because that would have involved the removal of other departments currently housed in this building and the Commission would not have sufficient space for these movements. Taking over the “Lex” building would also have involved the removal of the translation services, with the same constraint of immediate space being unavailable.

3.7. Financing / Budgetary impact

The usufruct fees and related expenditure for the building will be covered by the appropriations of the EEAS budget lines.

In view of the time required to carry out the alteration work and the negotiated period free of charge, payment of the first usufruct fee will fall due in the financial year 2013.

In Letter of amendment LR 1/2011 the amount transferred from the Commission's headquarters budget concerns that portion of the cost of the Charlemagne building and the Loi-56 and Science-15 buildings accounted for by EEAS staff. The amount transferred from the Council's budget covers the rental cost of the buildings for which the contract will be transferred to the EEAS (Rue Froissart, Cortenbergh and École Militaire Royale).

In addition, the Letter of amendment included a provision of at least € 3.3 m for security in the EEAS's final buildings, in order to cover the most urgent alteration work necessary to prepare the installation of heavy technical platforms, secure meeting facilities and secure communications rooms. It was also announced that the high representative would take a Decision on the EEAS's buildings by the end of October and that *"on this basis and in the light of decisions to be taken on the organisational structure, current estimates will have to be adjusted. That may entail the need for corresponding additional appropriations, which would then be requested in an amending budget"*.

Consequently, if other expenditure on fitting out the building that is not included in the standard installation (security, technical facilities, furniture, etc.) exceeds the € 3.3 m provided for in the Letter of amendment, the EEAS will request the necessary additional appropriations through an amending budget.

Lastly, when occupancy of "The Capital" building is taken up in 2011, retrocession to the Commission should be requested for that part of the appropriations relating to the Charlemagne, Loi-56 and Science-15 buildings for the corresponding period until the end of the financial year 2011.

4. Buildings programme

"The Capital" complex will make it possible to accommodate most of the EEAS staff in a single location and in the medium term it may be possible at a later date to accommodate all or part of the specialised EEAS staff who would remain in the current buildings (rue Froissart, avenue de Cortenbergh 150 and 158, École Royale Militaire).

As far as the Commission's buildings programme is concerned, the current level of office space programmed in Brussels (850,000 m²) will be reduced by the area currently occupied by the staff transferred to the EEAS (28,000 m²). The Commission plans to effect this reduction, which will in any event have to take account of the expiry of the current building contracts, during the financial years 2011 and 2012.

It should be noted that the project would be budget-neutral overall since the impact of the first payment for usufruct of "The Capital" building (in 2013) would be offset by rent savings in respect of office space that the Commission would give up as part of the adjustment of its buildings programme as described above.