



I.P.R. F.T.T. Member State *de jure*
of the United Nations

International Provisional Representative of the FREE TERRITORY OF TRIESTE

Rappresentanza Internazionale Prowvisoria del Territorio Libero di Trieste
Začasno Mednarodno Predstavništvo Svobodnega Tržaškega Ozemlja
Provisorische Internationale Vertretung des Freien Territoriums Triest

SG/2019/05/10-en

21 May 2019

To Mr President of the European Commission

Jean-Claude Juncker

Subject: *legal ineffectiveness of the summoning of elections for the European Parliament within the present-day Free Territory of Trieste, sub-entrusted to the temporary civil administration of the Italian Government.*

Recalling our previous note SG/2018/05/02-en, this Representative has the honour and duty to inform the President and the other Members of the European Commission that, for the following reasons, the summoning of European elections within the present-day Free Territory of Trieste, sub-entrusted to the temporary civil administration of the Italian Government, cannot produce legal effects.

Under art. 234 TCEE, Community Law does not affect «*The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other [...]*».

This does also mean that those «*rights and obligations*» do also limit the possibility to apply European Treaties also to territories for whose external relations a signatory State is responsible (chronologically: article 79 ECSC Treaty, article 198 Euratom Treaty, article 227 TEC, article 299 paragraph 4 TEEC, article 355 paragraph 3 TFEU).

The Free Territory of Trieste is established as sovereign State with an international Free Port by virtue of the Treaty of Peace between the Allied and Associated Powers and Italy, signed at Paris on 10 February 1947 and in force since 15 September 1947 (UNTS vol. 49 No. 747).

The borders of the Free Territory of Trieste with Italy and with Slovenia are respectively established at art. 4 of the 1947 Treaty of Peace and by U.N. Resolutions S/RES/753(1992), A/RES/46/238, S/RES/754(1992), A/RES/46/236, S/RES/777(1992), A/RES/47/1, in compliance with art. 30.3 of the Vienna Convention on the law of Treaties.

None of these borders was established or changed by the bilateral Italian-Yugoslav Treaty of 10 November 1975, which, at art. 7, first paragraph, effectively limits its validity to the mutual relations of the two signatory States.

The 1947 Treaty of Peace, in compliance with art. 1, second paragraph of Annex VI, entrusts the temporary administration of the present-day Free Territory of Trieste to the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland on behalf of the U.N. Security Council.

With a Memorandum of Understanding signed at London on 5 October 1954 (UNTS v. 235 No. 3297) the two primary administering Governments have sub-entrusted the temporary civil administration of the present-day Free Territory of Trieste to the responsibility of the Italian Government.

It follows that the enforcement of Community Treaties, Regulations, and Directives that conflict with the rights and obligations established under the 1947 Treaty of Peace and the 1954 Memorandum of Understanding cannot have legal effects.

The European Parliament exercises legislative functions that are delegated to it by Member States through a limitation or a partial transfer of sovereignty, which is allowed by each Member's own domestic legislation (in Italy, art. 11 of the Constitution).

However, the present-day Free Territory of Trieste, sub-administered by the Italian Government, is not an E.U. Member State, it has no agreements or legal obligations respect to it, and its legal order does not envision, or allow, limitations or transfers of sovereignty.

Indeed, when it comes to sovereignty, independence, and foreign relations, the legislation of the Free Territory of Trieste is provided at art. 21 of the 1947 Treaty of Peace and at its Annex VI, art. 24, enforced by virtue of art. 2, fourth paragraph of Annex VII.

In particular, Annex VI, art. 24, point 3 establishes that *«The Free Territory may be or become a party to international conventions or become a member of international organizations provided the aim of such conventions or organizations is to settle economic, technical, cultural, social or health questions.»*

Furthermore, Community Law is incompatible with the rights of all States over the international Free Port of Trieste, established under Annex VI, art. 34 and regulated by Annex VIII of the 1947 Treaty of Peace.

This Representative has the duty to favour the conditions for a prompt negotiation to establish relations between the present-day Free Territory of Trieste and the European Union, respecting and satisfying the legitimate interests of all international parties involved.

However, the legal force of any agreement discussed or concluded on behalf of the Free Territory of Trieste by the sub-administering Italian Government depends on the consent of both the primary administering British and U.S. Governments as well as on the consent of the U.N. Security Council.

The International Provisional Representative of the Free Territory of Trieste avails itself of this opportunity to renew to the President and to the other Members of the European Commission the assurances of its highest consideration.



Paolo G. Parovel
I.P.R. F.T.T. Secretary General