N° 3824.

BELGIQUE ET PAYS-BAS

Convention d'établissement et de travail, signée à Genève, le 20 février 1933, protocole, signé à Bruxelles, le 7 janvier 1936, et échange de notes de la même date.

BELGIUM
AND THE NETHERLANDS

Convention regarding Establishment and Labour, signed at Geneva, February 20th, 1933, Protocol, signed at Brussels, January 7th, 1936, and Exchange of Notes of the same Date.
ZIJNE MAJESTEIT DE KONING DER BELGEN,

en

HARE MAJESTEIT DE KONINGIN DER NEDERLANDEN,

beziend met den wensch de vestigings- en arbeidsvoorwaarden van Nederlandsch onderdanen in België en van Belgische onderdanen in Nederland te regelen, hebben besloten te dien einde een verdrag te sluiten en hebben als Hun gevolmachtigden benoemd, te weten:

ZIJNE MAJESTEIT DE KONING DER BELGEN:

Den heer Paul Hymans, Hoogsteszelfs Minister van Buitenlandsche Zaken;

HARE MAJESTEIT DE KONINGIN DER NEDERLANDEN:

Jonkheer Frans Beelaerts van Blokland, Hoogstselfer Minister van Buitenland che Zaken;

die, na elkander mededeeling te hebben gedaan van hun volmachten, welke in goeden en behoorlijken vorm werden bevonden, over de volgende artikelen tot overeenstemming zijn gekomen:

AFDEELING I.

Vestiging.

Artikel I.

§ 1. De onderdanen van ieder der Hooge Verdragsluitende Partijen zullen de bevoegdheid hebben zich naar het grondgebied van de andere Partij te begeven, zich daar te vestigen, zich te verplaatsen, een verblijfplaats te kiezen en het land te verlaten, mits zij zich gedragen naar de daar te lande geldende wetten en verordeningen, in het bijzonder wat betreft het toezicht op vreemdelingen.

Het is wel te verstaan, dat ieder der Hooge Verdragsluitende Partijen zich het recht voorbehoudt den toegang tot en het verblijf op Haar grondgebied te verbieden aan elken onderdanen van de andere Partij, die als ongewenscht zou moeten worden aangemerkt, zij het uit een oogpunt van handhaving der openbare orde en openbare zedelijkheid, gezondheid of veiligheid, of omdat hij geen middelen van bestaan bezit.

1 The exchange of ratifications took place at Brussels, January 7th, 1936.
1 Traduction. — Translation.


His Majesty the King of the Belgians
and
Her Majesty the Queen of the Netherlands,
Being desirous of regulating the conditions of establishment and labour for Netherlands nationals in Belgium and Belgian nationals in the Netherlands, have resolved to conclude a Convention for that purpose and have appointed as their Plenipotentiaries:

His Majesty the King of the Belgians:
Monsieur Paul Hyman, His Minister for Foreign Affairs;

Her Majesty the Queen of the Netherlands:
Jonkheer Frans Beelaerts van Blokland, Her Minister for Foreign Affairs;

Who, having communicated their full powers, found in good and due form, have agreed on the following Articles:

SECTION I.
Establishment.

Article 1.

§ 1. Nationals of each of the High Contracting Parties shall have the right to enter the territory of the other Contracting Party, to establish themselves, move about, and select a place of residence therein, and to leave the territory, provided they observe the laws and regulations in force in the country, particularly as regards the police supervision of foreigners.

It is agreed that each of the High Contracting Parties reserves the right to withhold permission to enter or reside in its territory from any national of the other Party who may be deemed to be undesirable, either as regards the maintenance of order, public morals, public health or public security, or because he is without means of subsistence.

Furthermore, while sub-paragraph 1 of § 1 exempts nationals of the High Contracting Parties from the provisions of the laws and regulations restricting or prohibiting the right of unhindered departure as such, it shall not stand in the way of the application of ordinary general legislation, the effect of which may be to prevent departure in special cases.

§ 2. If, in conformity with the provisions of the laws and regulations regarding police supervision of foreigners, certain conditions or restrictions are laid down for the entry, stay, activities or establishment of a national of one of the High Contracting Parties within the territory of the other, such restrictions or conditions shall automatically cease to apply should the person

1 Traduction du Bureau international du Travail. 1 Translation of the International Labour Office.
concerned continue to reside in this territory, and at latest after he has resided therein for five years without a break.

§ 3. It is agreed that even in the case of persons who benefit by the provisions of § 2 of the present Article, each High Contracting Party shall be entitled to avail itself, in respect of the nationals of the other Party, of the right of expulsion and the right to subject the said nationals to its police regulations, such as those concerning passports, identity cards, and declarations required for the purpose of supervising foreigners.

§ 4. The charges payable in connection with the various formalities referred to in § 3 of the present Article shall not exceed the charges payable by foreigners who are nationals of the nation most favoured in this respect.

Article 2.

§ 1. The nationals of each of the High Contracting Parties shall be placed in the territory of the other Party on the same footing in every respect, both in law and in fact, as the nationals of that Party as regards the exercise of all commercial, industrial and financial activities and in general all activities of an economic nature, without any distinction in this respect between undertakings which are independent and undertakings which operate as branches or agencies.

§ 2. The nationals of each of the High Contracting Parties shall be entitled to engage in every trade and occupation not especially mentioned in § 3 of this Article, in the territory of the other Party, provided that they comply with the laws and regulations in force in that country, including those relating to the protection of the national labour market.

It is agreed that the application of the laws and regulations relating to the protection of the national labour market shall not prevent nationals of either of the High Contracting Parties established in the territory of the other Party from engaging such persons as they may choose for posts of management.

§ 3. The provisions of § 1 and § 2 of this Article shall not apply to engagement in the territory of either High Contracting Party in the following occupations, trades, industries and branches of commerce:

(a) Public functions, offices or employments, including the offices of notary, solicitor and bailiff;
(b) The functions of an advocate and the business of a stockbroker;
(c) Hawking and itinerant trades;
(d) Fishing in inland and territorial waters, the coasting trade, pilotage in general, and interior service in ports.

§ 4. The provisions of this Article shall not affect the legislative provisions in force in either country respecting the crews of vessels or boats flying the flag of that country and of aircraft registered in that country.

Article 3.

§ 1. The nationals of each High Contracting Party, whether within the territory of the other Party or not, may undertake any commercial transactions therein and engage in any publicity or advertising to that end in the same conditions as nationals. They shall not be subject, provided such operations are conducted in conformity with the laws and regulations of the country, to any conditions, to the obtaining of a licence or of permission, or to any requirement other or more onerous than those to which nationals of the country are or may hereafter be subject in respect of the same operations.

§ 2. It is agreed that the provisions of § 1 of the present Article shall be subject to any special conditions either High Contracting Party may lay down in respect of public contracts concluded by public services.

§ 3. Should the effect of the legislation of either High Contracting Party be such that the granting in its territory of licences, authorisations or permits to ensure the supervision of imports

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or exports is subject, in law or in fact, to conditions in respect of establishment, residence and registration applicable to nationals of the country, the same conditions shall also apply to the nationals of the other Party.

Article 4.

The nationals of each High Contracting Party shall not be prevented from participating within the territory of the other Party and in conformity with the laws and regulations of that Party as exhibitors, vendors or purchasers, under the same conditions as nationals of the country, in such markets and fairs as are not expressly reserved for nationals of the country or, on account of the nature of the goods exhibited, for nationals of the country or nationals of certain other States.

Article 5.

§ 1. The nationals of each High Contracting Party may, in the territory of the other Party and subject if necessary to the production of an identity card, purchase, either in person or through commercial travellers in their employ, such goods as they trade in from wholesalers, at business premises, or from producers. They may solicit orders from wholesalers and producers who are engaged in trade or who employ in their establishments goods of the same nature as those offered to them. They shall not require a special authorisation for any of these transactions, nor shall they be subject in connection therewith to any charge or special duty not payable by national undertakings and their representatives, provided always that they carry with them samples only, and not goods intended for sale.

§ 2. The High Contracting Parties shall comply, as regards the application of the provisions of the present Article, with the provisions of Article 10 of the Geneva Convention of November 3rd, 1923, concerning identity cards for commercial travellers and the rules for the importation of samples.

§ 3. The provisions of the present Article shall not apply to itinerant trading, hawking, canvassing for orders, or purchases from persons not engaged in trade or industry, each High Contracting Party reserving to itself entire freedom to enact such legislation as it thinks fit in this respect.

Article 6.

§ 1. The nationals of each of the High Contracting Parties shall enjoy, in the territory of the other Party, the same treatment as nationals in so far as concerns the right of succession, the right to acquire, possess or rent movable and immovable property and the right to dispose thereof, either by gift or for payment.

§ 2. Each of the High Contracting Parties shall permit the nationals of the other Party to export such movable objects as belong to them, together with the proceeds of the sale of their property, both movable and immovable, in the same conditions as nationals of the country. It is agreed that each of the High Contracting Parties shall have the right to make such export conditional upon the payment beforehand of the taxes or charges to which the property in question is subject. Nevertheless, no special tax may be levied on the said property or the proceeds of the sale thereof on account of its export.

§ 3. It is agreed that in the event of the departure of the owner or the sale of inherited movable or immovable property no foreign exchange regulations subsequently laid down shall stand in the way of the free exportation of the proceeds of the sale of such property.

§ 4. Notwithstanding the provisions of the present Article, each High Contracting Party reserves the right, in the interests of the safety of the State, to require nationals of the other Party to obtain permission in advance to acquire or occupy immovable property in certain districts. Persons inheriting immovable property situated in the said districts may be required, on the same ground, to sell it within a reasonable period.
§ 5. In exceptional cases, such in particular as monetary crises, when the acquisition by foreigners of immovable property or transferable securities would lead to the taking over or jeopardising of vital resources of the country, each High Contracting Party shall have the right to prohibit such acquisition. Nevertheless, it shall only avail itself of this right provided the interests of the country cannot be safeguarded effectively by measures placing the nationals of both countries on a footing of equality. This prohibition shall only remain in force for such time as the reasons for which it was imposed continue to exist.

§ 6. Notwithstanding the provisions of the present Article, it is agreed that each of the High Contracting Parties shall have the right to impose such restrictions as it may think fit in respect of the acquisition of ships or boats flying the national flag, or aeroplanes registered in the country, or of shares in the ownership of such vessels or aeroplanes.

Article 7.

§ 1. The nationals of each of the High Contracting Parties shall be treated in the territory of the other Party on the same footing as nationals of the country in respect of the legal and judicial protection of their persons, property, rights and interests.

§ 2. Accordingly, they shall have free and unhindered access to the courts, both as plaintiffs and defendants, and shall have the right to go to law in the same conditions as nationals of the country. They shall also have the right to appear before the competent administrative authorities and to have recourse to the said authorities for the safeguarding of their rights and interests in all cases in which nationals of the country enjoy such a right. They may choose, for the defence of their interests before the courts and before all judicial and administrative authorities, counsel, attorneys, notaries and other persons authorised by the national laws of the country.

§ 3. Judicial matters settled by special conventions or treaties in force between the High Contracting Parties, in particular by the Hague Convention of July 17th, 1905, on civil procedure, shall continue to be subject solely to these conventions or treaties. It is understood that even in the event of the denunciation of the said conventions or treaties, the present Convention shall not be applicable in respect of such matters.

§ 4. The right of nationals of each of the High Contracting Parties to appear before the competent administrative authorities of the other Party for the safeguarding of their rights or interests, in conformity with the laws in force in the territory in question, covers the right to appear before the Customs authorities and to proceed in person to clear their goods through the Customs in the same conditions as nationals of the country. In this respect they shall not be subject, as foreigners, to any formalities or regulations other or more onerous than those to which nationals of the country are subject.

Article 8.

§ 1. The nationals of each of the High Contracting Parties shall be exempt, in the territory of the other Party, from all judicial or administrative functions of any kind.

§ 2. In the same way they shall be exempt, both in time of peace and in time of war, in the territory of the other Party, from compulsory military service, whether in the land Army, the Navy, the Air Force, the National Guard or the Militia, as well as from compulsory personal services connected either directly or indirectly with national defence. The same shall apply to such contributions in money or in kind as may be substituted for these personal services.

§ 3. The nationals of each High Contracting Party shall, however, be liable to charges in respect of the ownership of landed and movable property, compulsory billeting and other special military contributions or requisitions to which nationals of the country may be liable, in virtue of legal provisions, as possessors or owners of buildings and landed or movable property. In no case shall any such charges be imposed by either High Contracting Party that would not also be imposed on its nationals.
§ 4. The property of nationals of either High Contracting Party may not be expropriated in the territory of the other Party, nor may they be deprived, even temporarily, of the use of their property except in the public interest and in accordance with the procedure laid down in the domestic legislation applicable to nationals of the country.

§ 5. The treatment accorded by either High Contracting Party to nationals of the other Party in the matter of compensation for such contributions, requisitions, expropriation and temporary deprivation as are referred to in § 3 and § 4 above shall be not less favourable than that accorded to its own nationals or to nationals of the most-favoured nation.

§ 6. The provisions of § 3 of the present Article shall not apply to ships and their cargoes.

Article 9.

In the matter of taxes and charges of all kinds, as well as of any other fiscal charges, regardless of the purpose for which they are levied, the nationals of each High Contracting Party shall in all respects enjoy the same treatment and protection at the hands of the fiscal and legal authorities, in the territory of the other Party, as is enjoyed by nationals of the country who are in an identical situation.

Article 10.

§ 1. Joint stock companies and other non-trading, commercial, industrial or financial companies, including insurance companies, shipping and other transport companies and companies responsible for communications, which are regularly constituted in conformity with the legislation of either High Contracting Party and have their headquarters in the territory of that Party, shall be legally recognised as such in the territory of the other Party, and shall be entitled to appear before the courts of that country, provided that nothing in their constitution or aims is contrary to public order in the latter country.

§ 2. The question whether the companies referred to in § 1 of the present Article, together with their branches and agencies, are legally constituted and are entitled to appear before the courts shall be decided in accordance with the law of the country in which these companies were formed.

§ 3. The activities engaged in by the companies of either High Contracting Party in the territory of the other Party, either directly or through branches or agencies, shall be subject to the laws and regulations in force in the latter country.

§ 4. Should either High Contracting Party require foreign companies to obtain an authorisation in advance to operate in its territory, the granting of such an authorisation to the companies of the other Party may not be subject to rules other than those imposed in similar circumstances on the companies of the most-favoured nation.

§ 5. The companies of either High Contracting Party shall, as regards judicial matters and the possession, acquisition, occupation, renting and alienation of movable or immovable property, enjoy in the territory of the other Party the treatment laid down in Articles 6, 7 and 8 of the present Convention in respect of natural persons. The said companies may acquire such premises or landed property as they require for the purpose of carrying on their operations. Nevertheless, the acquisition of premises or landed property may not constitute the real object of their activities.

§ 6. The companies of either High Contracting Party domiciled for fiscal purposes in the territory of that Party, together with their branches and agencies, shall not be liable, in the territory of the other Party, to higher charges as regards direct taxation than the charges payable, as the case may be, by national companies in an identical situation.

§ 7. The companies of each High Contracting Party shall enjoy the same treatment as companies of the most-favoured nation in the territory of the other Party in all matters not covered by the present Article.
SECTION II.

LABOUR.

Article II.

§ 1. The High Contracting Parties agree not to place any obstacles in the way of the departure of their respective nationals desiring to travel from either of the two countries into the other in order to take up employment there; for this purpose, they shall give all administrative facilities to such workers and their families.

§ 2. Subject to the conditions laid down in Articles 1 and 2 of Section I of this Convention, workers who are nationals of either of the two countries shall be allowed to take up employment in the territory of the other country.

Article 12.

Each of the High Contracting Parties may take the measures necessary to ensure that immigrant workers shall receive for equal work remuneration equal to that received by its nationals of the same category employed in the same undertaking, or in default of national workers of the same category employed in the same undertaking, the standard wages currently paid to workers of the same category in the same region.

Article 13.

§ 1. The workers of each of the High Contracting Parties shall enjoy in the territory of the other Party the same protection as is granted to its nationals by the laws and customs of the country in respect of conditions of employment and standards of living.

§ 2. All complaints made by the workers of either of the High Contracting Parties respecting the conditions of employment and the standard of living offered to them by employers in the territory of the other Party, or difficulties of any kind which necessitate the intervention of public authorities, shall be addressed or transmitted either directly or through the diplomatic or consular authorities to the competent authorities of the latter Party; the competent administrative department of the said Party shall proceed to make the requisite inquiries and shall have the sole right to intervene.

Article 14.

§ 1. If the condition of the labour market at certain times, in certain regions and in certain occupations renders it impossible to find employment for emigrants and frontier workers who come separately and on their own initiative to seek employment, the High Contracting Party concerned shall at once notify the other Party through diplomatic channels in order to enable it to take the necessary steps.

§ 2. If either of the High Contracting Parties deems it necessary to adopt restrictive measures with respect to the workers concerned, it undertakes not to apply such measures to the nationals of the other Party until it has opened negotiations with that Party with a view to limiting as far as possible the prejudicial effects which such measures may entail.

Article 15.

Subject to the reservations laid down in § 4 and § 5 of Article 6 of Section I of this Convention, the workers of each of the High Contracting Parties shall have in the territory of the other Party
the same rights and advantages as nationals of that Party in matters relating to the acquisition, ownership, tenancy and conveyance (whether gratuitously or for a consideration) of real property and in particular of small urban and rural holdings. Nevertheless, they shall not be entitled to the bonuses or advantages which are granted in the said territory to builders and purchasers of cheap dwellings.

Article 16.

The nationals of each of the High Contracting Parties shall have the benefit in the territory of the other Party of the grants payable to the mutual unemployment benefits societies, of public unemployment relief and of public labour relief organisations under the same conditions as the nationals of that Party.

Article 17.

The nationals of each of the High Contracting Parties when in the territory of the other Party shall enjoy equality of treatment with the nationals of that country in all matters relating to the administration of the laws regulating conditions of employment and ensuring the health and safety of workers.

Article 18.

§ 1. Frontier workers who are nationals of both countries, i.e., workers who are employed in industrial, commercial or agricultural establishments situated in one of the two countries but retain their domicile in the other country and return thereto every day or every week, shall comply with the following formalities:

A. The frontier worker shall procure from the mayor of his commune of domicile an identity card, which shall be issued to him by the mayor on production of:

(1) A certificate of good conduct and good character;

(2) A certificate of the head of the establishment which employs him or undertakes to employ him; this certificate shall be countersigned by the competent Belgian intercommunal unemployment fund in the case of an establishment situated in Belgium, and by the competent Netherlands employment exchange in the case of an establishment situated in the Netherlands.

B. The frontier worker shall then be bound to cause his identity card to be countersigned within eight days by the said intercommunal unemployment fund or employment exchange, as the case may be.

§ 2. The identity card issued in virtue of this Convention shall be valid for two years.

Article 19.

§ 1. Frontier workers' cards shall be issued and countersigned free of charge.

§ 2. The cards of frontier workers of either of the High Contracting Parties who prove by a certificate from their employer that at the time of the signature of this Convention they were employed in an industrial, commercial or agricultural establishment situated in the territory of the other Party shall be countersigned without further formality.

Article 20.

§ 1. If a misdemeanour is committed by the holder of a frontier worker's card, the competent administrative authority of either High Contracting Party shall withdraw from him the said card.
§ 2. Cards which have been withdrawn shall be returned to the Party which issued them together with a statement of the reason for the withdrawal.

Article 21.

The competent administrative departments of the two countries shall by agreement issue the detailed rules and regulations necessary for the execution of the provisions of this Convention which necessitate the co-operation of their administrative services. They shall likewise specify the cases and conditions in which the services shall communicate directly.

SECTION III.

MISCELLANEOUS PROVISIONS COMMON TO THE FIRST TWO SECTIONS.

Article 22.

The benefit of the advantages already granted or to be granted hereafter by either of the High Contracting Parties to a third country in virtue of an economic union shall not be claimed by the other Party in virtue of this Convention.

Article 23.

This Convention shall apply only to the European territories of the High Contracting Parties.

Article 24.

Any disputes with respect to the interpretation, application or execution of this Convention which cannot be settled through diplomatic channels by the High Contracting Parties shall be referred to the Permanent Court of International Justice.

Article 25.

This Convention shall be drawn up in the Dutch and French languages, and both texts shall be equally authentic. It shall be ratified and the instruments of ratification shall be exchanged at Brussels as soon as possible. It shall come into operation thirty days after the exchange of the instruments of ratification. It may be denounced at any time subject to one year's notice.

In faith whereof the above-named Plenipotentiaries have signed the present Convention and have thereto affixed their seals.

Done in duplicate at Geneva, this 20th day of February, 1933.

(L. S.) Paul Hymans.              (L. S.) Beelaerts van Blokland.
PROTOCOL.

On proceeding to exchange the ratifications of the present Convention regarding Establishment and Labour, the undersigned representatives of Belgium and the Netherlands declare, on behalf of their respective Governments, that the principle of equality of wages laid down in Article 12 of the said Convention applies to both frontier and resident workers; they also agree that where necessary all the provisions of Articles 11, 13, 14 and 17 of the said Convention shall apply to both categories of workers alike.

Done in duplicate at Brussels, this 7th day of January, 1936.

(L. S.) (Signed) VAN ZEELAND,
Prime Minister,
Minister for Foreign Affairs
and Foreign Trade.

(L. S.) (Signed) VAN LENNEP,
Chargé d'Affaires of the
Netherlands at Brussels.

EXCHANGE OF NOTES.

I.

MINISTRY OF FOREIGN AFFAIRS
AND FOREIGN TRADE.

General Directorate C.
2nd Section, 5th Bureau.
No. 76.600/41.

BRUSSELS, January 7th, 1936.

Sir,

In order to make clear the scope of Article 2, § 1, of the Convention between Belgium and the Netherlands regarding Establishment and Labour, signed at Geneva on February 20th, 1933, the ratifications of which were exchanged to-day, I have the honour to inform you that the Belgian Government will raise no objection to the application to Belgian nationals established in the Netherlands of the provisions of the Netherlands legislation under which foreigners may engage in professional and industrial occupations on their own account.

Accordingly, Belgian nationals, like all other foreigners, may be required to obtain an authorisation in advance in the Netherlands to engage in professional or industrial occupations on their own account.

I would add that the Belgian Government considers that by way of reciprocity Netherlands nationals established in Belgium may be subjected in the same circumstances to any provisions which may be enacted by Belgium with a view to regulating the conditions in which foreigners who are nationals of countries with which Belgium is not bound by a treaty of economic union may engage, in the Kingdom, in professional or industrial occupations on their own account.

I have the honour to be, etc.

(Signed) VAN ZEELAND,
Minister for Foreign Affairs
and Foreign Trade.

Jonkheer van Lennep,
Chargé d'Affaires
of the Netherlands,
Brussels.

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II.

Netherlands Legation, Brussels.
No. 8.

Brussels, January 7th, 1936.

Monsieur le Ministre,

I have the honour to acknowledge the receipt of Your Excellency’s letter of to-day’s date in which you point out that the Belgian Government would raise no objection to the application to Belgian nationals established in the Netherlands of the provisions of the Netherlands legislation under which foreigners may engage in professional and industrial occupations on their own account.

Accordingly, Belgian nationals, like all other foreigners, may be required to obtain an authorisation in advance in the Netherlands to engage in professional or industrial occupations on their own account.

I would add that my Government concurs in the view of the Belgian Government that by way of reciprocity Netherlands nationals established in Belgium may be subjected in the same circumstances to any provisions which may be enacted by Belgium with a view to regulating the conditions in which foreigners who are nationals of countries with which Belgium is not bound by a treaty of economic union may engage, in the Kingdom, in a professional or industrial occupation on their own account.

I avail myself of this opportunity, etc.

(Signed) Van Lennep.

His Excellency
Monsieur van Zeeland,
Prime Minister,
Minister for Foreign Affairs
and Foreign Trade,
Brussels.