

No. 4514

BELGIUM, LUXEMBOURG and NETHERLANDS

**Protocol concerning national treatment in the award of
public works contracts and the purchase of goods.
Signed at Brussels, on 6 July 1956**

Official texts: French and Dutch.

Registered by Belgium on 10 September 1958.

BELGIQUE, LUXEMBOURG et PAYS-BAS

**Protocole concernant le traitement national en matière
d'adjudications de travaux et d'achats de marchandises.
Signé à Bruxelles, le 6 juillet 1956**

Textes officiels français et néerlandais.

Enregistré par la Belgique le 10 septembre 1958.

[TRANSLATION — TRADUCTION]

No. 4514. PROTOCOL¹ BETWEEN BELGIUM, LUXEMBOURG AND THE NETHERLANDS CONCERNING NATIONAL TREATMENT IN THE AWARD OF PUBLIC WORKS CONTRACTS AND THE PURCHASE OF GOODS. SIGNED AT BRUSSELS, ON 6 JULY 1956

Preamble

The Governments of Belgium, Luxembourg and the Netherlands,

Having regard to chapter IV (3) of the Protocol of Ostend of 31 July 1950 concerning national treatment in the award of public contracts ;

Having regard to the principles set out in article VI of the Pre-Union Agreement of 15 October 1949 and point 5 of the Protocol of Signature to that Agreement ;

Desiring to achieve full application of the principle of national treatment within the framework of the Economic Union ;

Recognizing that this objective can only be attained gradually ;

In order to make a first step in that direction, have agreed as follows :

Article 1

The terms used in this Protocol shall mean as follows :

A. *Committee of Ministers* :

The Committee of Ministers established in accordance with article 12 of the Protocol concerning the co-ordination of economic and social policies, signed at The Hague on 24 July 1953.²

B. *Meeting of the Presidents of the Councils* :

The meeting of the Presidents of the Councils of the Customs Convention between the Netherlands, Belgium and Luxembourg.

C. *Public authorities* :

1. State agencies ;

¹ Came into force on 29 August 1958, the day after the deposit of the third instrument of ratification, in accordance with article 12. Is not applicable to the Territories of the Belgian Congo and Ruanda-Urundi. The instruments of ratification were deposited at Brussels on the following dates :

Netherlands	11 December	1957
Belgium	18 April	1958
Luxembourg	28 August	1958

² United Nations, *Treaty Series*, Vol. 250, p. 109.

2. The authorities referred to in (a) and (b) below as regards their awards of public works contracts and purchases of goods, to the extent that the State effectively influences such transactions :

(a) In Belgium and Luxembourg, the regional and local authorities and paraganovernmental bodies ;

(b) In the Netherlands, subordinate public authorities and semi-official bodies.

D. *Awards :*

All awards of public works contracts and purchases of goods by public authorities regardless of the manner in which they are made.

Article 2

With regard to awards, the public authorities may not discriminate in any way in favour of their nationals or national products and to the detriment of the nationals or products of the two other countries.

Article 3

A. Undertakings wishing to take part in restricted competitions by tender shall, at their request, be included in the lists of candidates by the public authorities. The selection of the candidates to be invited shall be made without discrimination between the undertakings of the three countries ;

B. To the extent that the parties concerned are not authorized to be present at the opening of the tenders, the public authorities shall announce the results of their awards in restricted competitions by tender whenever the value of the award exceeds 40,000 florins or 500,000 francs, unless the public authorities concerned have a compelling reason to avoid such announcement. The above-mentioned value may be modified by the Committee of Ministers.

The announcement shall state the sum for which the contract has been let and shall be made either through the press or in writing to the tenderers whose bids have not been accepted.

Article 4

A. Netherlands contractors wishing to carry out public works in Belgium or Luxembourg shall submit their applications for the necessary authorization to the competent Belgian or Luxembourg bodies through the Netherlands Ministry of Economic Affairs.

The applications shall be accompanied by a report prepared by the Netherlands Ministry of Economic Affairs after consultation with the competent professional organization. In preparing this report account shall be taken of Belgian or Luxembourg standards for the work to be carried out.

B. Belgian or Luxembourg contractors wishing to carry out public works in the Netherlands shall submit their applications for the necessary authorization to the Netherlands Ministry of Economic Affairs through the competent Belgian or Luxembourg Ministry.

Applications from Belgian contractors shall be accompanied by a report prepared by the Belgian Ministry of Economic Affairs on the basis of a certificate issued by the Belgian Ministry of Public Works.

Applications from Luxembourg contractors shall be accompanied by a report prepared by the Luxembourg Ministry of Economic Affairs.

These reports shall be prepared after consultation with the competent Belgian or Luxembourg organizations and taking into account Netherlands standards for the work to be carried out.

C. In the application of their national standards the competent authorities of each country shall take into account, as regards professional capacity and experience, the reports referred to in paragraphs A and B of this article.

D. Decisions concerning the applications referred to in paragraphs A and B of this article shall be taken within a period of one month from the date of their receipt by the national administrations and shall be communicated immediately to the parties concerned.

E. Each Government shall see to it that contractors of the partner countries receive treatment as favourable as that given national contractors in the application of any special regulations regarding competition.

Article 5

The contractors and suppliers of the partner countries shall not be required to furnish a bond before the award is made.

Article 6

The periods of time within which the tenderer is required to maintain his tender shall be harmonized in the three countries.

Article 7

The tender should be prepared in the currency of the country in which the award is made.

Article 8

The establishment of the Special Mixed Commission referred to in chapter IV (3) of the Protocol of Ostend of 31 July 1950 is confirmed.

This Commission, called the "Commission for Awards", shall be referred to hereafter as the Commission.

The Commission shall be under the direct authority of the Meeting of the Presidents of the Councils.

Its general function shall be to supervise the application of the provisions of this Protocol and it shall submit an annual report.

To this end it shall assemble the documentation necessary to provide a survey of the development of the situation with regard to awards and to establish the existence of any imbalance within the meaning of article 9 of this Protocol.

It shall be the Commission's responsibility to deal with requests for information and to investigate complaints.

It shall acknowledge the receipt of complaints to the parties concerned and shall transmit the conclusions of its investigations, the reasons therefor being stated, to the Ministry having jurisdiction over the public authorities making the award in question.

The addresses to which requests for information and complaints may be sent in each country shall be made public.

The Commission shall be required to treat as confidential any information of a special or private character obtained in the exercise of its functions.

Article 9

A. On the basis of the information collected, the Commission shall determine whether a serious imbalance exists between :

1. In the case of awards :

- (a) The total value of the awards made by the public authorities of one of the partner countries to the nationals of another partner country established in the latter country ; and
- (b) The total amount of the awards made by the public authorities of that other partner country to nationals of the first country established in that other country.

2. As regards purchases of goods :

- (a) The total value of the goods originating in one partner country purchased by the public authorities of another partner country ; and
- (b) The total value of the goods originating in that other country purchased by the public authorities of the first country.

This imbalance shall be deemed to exist when the difference between the above-mentioned values equals or exceeds an amount to be fixed by the Committee of Ministers.

Special amounts may, however, be established for sectors whose activity is preponderantly dependent on orders placed by the public authorities.

B. Special measures may be taken by the Committee of Ministers in order to take account of the special circumstances of Luxembourg and with regard to certain Luxembourg undertakings to be determined.

C. The amounts, sectors and undertakings referred to in this article and the base periods to be used in establishing the existence of an imbalance shall be fixed by the Committee of Ministers.

Article 10

A. Upon establishing the existence of a serious imbalance within the meaning of article 9, the Commission shall immediately so notify the Committee of Ministers. The Commission shall accompany or follow this notification with proposals concerning measures to be taken to rectify the imbalance.

If, during its examination of the information referred to in article 8, the Commission is unable to reach agreement regarding the existence of a serious imbalance or the measures to be taken, it shall immediately so notify the Committee of Ministers.

B. If the Government of one of the countries considers that such a serious imbalance exists and is prejudicial to its interests it may request the Commission to examine the matter.

The Commission shall meet without delay upon receipt of such a request. It shall submit a report to the Committee of Ministers within a period of thirty days from the date on which the request was made. This report shall state, *inter alia*, either :

- (a) That the Commission has established the existence of a serious imbalance, in which case the Commission shall accompany its report either with an opinion concerning the need for, nature and duration of remedial measures, or a statement that it has been unable to reach agreement regarding such measures ;
- (b) Or that there is disagreement within the Commission regarding the existence of a serious imbalance.

If its examination leads the Commission to conclude that a serious imbalance does not exist it shall so notify the Government concerned.

C. Within a period of thirty days from the receipt of the report referred to in paragraphs A and B of this article, the Committee of Ministers shall come to a decision regarding the existence of a serious imbalance and shall, if appropriate, decide on the need for, and nature and duration of remedial measures.

If the Committee of Ministers disagrees, or at the expiry of the time-limit established in the preceding paragraph, one of the Governments may submit the

dispute to arbitration. The matter to be arbitrated shall be the existence of a serious imbalance and, if the existence of such an imbalance is established, the need for, and nature and duration of remedial measures.

D. If the Commission has established the existence of a serious imbalance or if the Commission disagrees either as to the existence of such imbalance or the need for, and nature and duration of remedial measures, the Government which considers its interests prejudiced may take measures of conservation, that is, measures likely to prevent an aggravation of the imbalance. In such case, however, it must request that the Committee of Ministers or a limited Committee of Ministers appointed for that purpose by the Committee of Ministers meet within a period of not more than fifteen days in order to obtain that Committee's agreement to the maintenance of the measures taken.

If the Committee of Ministers or the limited Committee of Ministers disagrees, or after the expiry of the period of fifteen days, the Government of the country which has taken measures of conservation must either rescind them or resort to arbitration in order to maintain them.

E. The measures taken in conformity with the provisions of paragraphs C and D of this article must be rescinded immediately as soon as the serious imbalance has been corrected.

F. The Commission shall transmit to the meeting of the Presidents of the Councils copies of the reports submitted to the Committee of Ministers.

Article 11

An Arbitration Board of three persons shall be established. The composition of this Board and the arbitration procedure to be followed shall be established by the Committee of Ministers.

The arbitrators shall render their decision as mediators in the spirit of the agreements concluded by the three Governments. Their decisions shall be immediately enforceable.

Article 12

This Protocol shall be ratified and the instruments of ratification shall be deposited with the Government of Belgium.

It shall enter into force on the day after the deposit of the third instrument of ratification.

It shall remain in force for a period of two years from the date of its entry into force. Thereafter it shall be extended from year to year by tacit agreement unless notice of its termination is given by one of the three Governments at least two months before its expiry.

DONE at Brussels on 6 July 1956, in triplicate, in the French and Dutch languages, both texts being equally authentic.

For the Government of Belgium :

P. H. SPAAK

For the Government of Luxembourg :

L. SCHAUS

For the Government of the Netherlands :
(Kingdom in Europe)

VAN HARINXMA THOE SLOOTEN