

No. 11096

NETHERLANDS, LUXEMBOURG and BELGIUM

Convention concerning administrative and judicial co-operation in respect of laws and regulations pertaining to the realization of the aims of the Benelux Economic Union (with additional protocols). Signed at The Hague on 29 April 1969

Authentic texts: Dutch and French.

Registered by the Netherlands on 28 May 1971.

PAYS-BAS, LUXEMBOURG et BELGIQUE

Convention concernant la coopération administrative et judiciaire dans le domaine des réglementations se rapportant à la réalisation des objectifs de l'Union économique Benelux (avec protocoles additionnels). Signée à La Haye le 29 avril 1969

Textes authentiques : néerlandais et français.

Enregistrée par les Pays-Bas le 28 mai 1971.

[TRANSLATION — TRADUCTION]

CONVENTION¹ CONCERNING ADMINISTRATIVE AND
 JUDICIAL CO-OPERATION IN RESPECT OF LAWS AND
 REGULATIONS PERTAINING TO THE REALIZATION
 OF THE AIMS OF THE BENELUX ECONOMIC UNION

The Government of the Kingdom of Belgium,
 The Government of the Grand Duchy of Luxembourg,
 The Government of the Kingdom of the Netherlands,

Desiring, with a view to realizing the aims of the Benelux Economic Union, to establish close co-operation among the three countries in administrative and judicial matters;

Considering that action to that end should be based on the principles underlying the Convention concerning Co-operation with regard to Customs and Excise of 5 September 1952,² the Convention concerning Co-operation in the Regulation of Imports, Exports and Transit Traffic of 16 March 1961³ and the Convention of Mutual Assistance in respect of the Collection of the Turnover Tax, the Purchase Tax and Other Similar Taxes of 25 May 1964;⁴

Believing that, with a view in particular to the abolition of administrative controls at Benelux internal frontiers, it is desirable to enable the system of co-operation established under the said Conventions to be extended to all matters pertaining to the realization of the aims of the Union;

Desiring to regulate administrative and judicial co-operation in a single Convention designed to form a coherent whole with the rules contained in the Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962⁵ and the Treaty on the Enforcement of Judicial Decisions in Criminal Matters of 26 September 1968;

¹ Came into force on 1 February 1971, i.e. the first day of the month following the date of the deposit of the third instrument of ratification with the Secretariat-General of the Benelux Economic Union, in accordance with article 34 (1) and (2), as follows:

<i>State</i>	<i>Date of Deposit</i>
Netherlands	30 November 1970
(For the Kingdom in Europe)	
Belgium	31 December 1970
Luxembourg	29 January 1971

² United Nations, *Treaty Series*, vol. 247, p. 329.

³ *Ibid.*, vol. 638, p. 235.

⁴ *Ibid.*, vol. 620, p. 149.

⁵ *Ibid.*, vol. 616, p. 79.

Having regard to the Treaty instituting the Benelux Economic Union of 3 February 1958,¹ particularly articles 3, 11, 76, 79 and 83;

Have agreed on the following provisions:

CHAPTER I

DEFINITIONS

Article 1

In this Convention:

- (a) The term “Treaty for the Union” means the Treaty instituting the Benelux Economic Union of 3 February 1958;
- (b) The term “Committee of Ministers” means the Committee of Ministers established under the Treaty instituting the Benelux Economic Union;
- (c) The term “Extradition Treaty” means the Treaty between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962.

CHAPTER II

SCOPE

Article 2

This Convention shall relate to the application of such laws and regulations of the three countries pertaining to the realization of the aims of the Benelux Economic Union as are designated by the Committee of Ministers.

CHAPTER III

DOCUMENTS, PERMITS, CERTIFICATIONS AND INSPECTION MARKINGS

Article 3

1. Documents, permits or certifications which, pursuant to laws and regulations designated as provided for in article 2, issued, authenticated

¹ United Nations, *Treaty Series*, vol. 381, p. 165.

or granted by an authority of one of the countries in the name of a person or in respect of a product shall, subject to the conditions governing their use, have in the other country in which they are used the same effect as documents, permits or certifications issued, authenticated or granted in similar cases by the competent authority of the last-mentioned country.

2. All documents other than those referred to in paragraph 1 which are prescribed in laws and regulations of one country designated as provided for in article 2 shall be deemed to conform to the corresponding laws and regulations of the other two countries.

3. Entries made on the documents referred to in paragraph 1 and 2 by the officials of one country responsible for supervising the use of the said documents shall have the same value in the other two countries as if they had been made by officials of those countries.

Article 4

Inspection markings affixed by the officials of one country to documents, means of transport, goods or packaging of goods in accordance with the laws and regulations of that country shall be deemed to have been likewise affixed in accordance with the laws and regulations of the other two countries.

Article 5

The provisions of article 3, paragraphs 1 and 2, and of article 4 shall be applicable only after the Committee of Ministers has so decided and within any limits and in any manner which the Committee may specify.

CHAPTER IV

ADMINISTRATIVE CO-OPERATION

Article 6

1. Without prejudice to the provisions of article 91 of the Treaty for the Union, the authorities designated for the purpose by the competent Ministers of each country shall, within the limits of their respective spheres of competence, transmit to each other, on their own initiative or upon request, the necessary information concerning the competent authorities and concerning documents, permits and certifications, as well as all information of value for the purpose of the application of laws and regulations designated as provided for in article 2.

2. In order to obtain the information requested of them, the authorities of the requested country may use the powers provided in similar cases under their national laws and regulations.

3. Officials of one country duly authorized by the competent authorities of their own country may, with the consent of the competent authorities of the requested country and on the same footing as corresponding officials of that country:

- (a) Obtain the information referred to in paragraph 1 from the administrative offices of that country;
- (b) Accompany officials of the requested country during investigations and inspections carried out pursuant to paragraph 2 and collaborate with them, under their direction, in such investigations and inspections.

4. Information obtained pursuant to paragraph 1 or paragraph 3 shall not be used for purposes other than those for which it was obtained and may be communicated by the authority receiving it only to those who have need of it for those purposes. However, such information may be communicated to other persons to be used for other purposes if the authority providing it has given its express consent in accordance with its national legislation and in so far as such communication is not prohibited by the national legislation of the authority receiving it.

5. The Committee of Ministers may specify the manner in which this article is to be applied.

Article 7

1. Without prejudice to the provisions of article 30 of the Extradition Treaty, at the direct request of the competent authorities of one country the competent authorities of the requested country may, in connexion with the application of laws and regulations designated as provided for in article 2, effect service of any legal documents and decisions, whether in civil or administrative matters, on any party to proceedings, any convicted person or any person liable for payment of a sum of money.

2. The authorities of the requested country shall inform the authorities of the requesting country of the action taken on the request for service.

3. The competent Ministers of each country shall designate the authorities and court officials who are empowered respectively to dispatch and to effect service of the documents and decisions referred to in article 1.

Article 8

Where, in the course of an administrative investigation or administrative inspection in connexion with the application of laws and regulations

designated as provided for in article 2, an official of one country seeks the collaboration of an official of another country, the last-mentioned official may provide such collaboration within the territory of the country of the requesting official. In that case, he shall act with the same powers as the official whom he is assisting and his acts shall have the same effects.

CHAPTER V

OFFENCES

Article 9

1. In each of the three countries, laws and regulations in force in that country which are designated as provided for in article 2 shall be applicable even where the acts declared therein to be punishable offences are committed in the territory of either of the other countries.

2. In each of the three countries, any of the laws and regulations referred to in the preceding paragraph which relate to acts connected with the crossing of the national frontier shall be applicable also to acts connected with the crossing of the frontiers of the other two countries.

3. Save as otherwise provided in or under this Convention, the laws and regulations applicable to an offence shall include domestic penal provisions.

CHAPTER VI

PROSECUTION AND PUNISHMENT OF OFFENDERS

Article 10

1. Proceedings in respect of offences shall be instituted in the country in which the offences were committed. If an offence is continued in a country other than that in which it was initiated, it shall be deemed to have been committed in the last-mentioned country.

2. However, where the accused is resident in a country other than that which has jurisdiction in accordance with paragraph 1, the competent authority of the country of residence may institute proceedings. In that case, it shall directly so inform the competent authority of the other country, and if, within 30 days of receiving the notification transmitted to it, the last-mentioned authority does not ask to assume jurisdiction or expressly waives its right to institute proceedings, the competent authority of the country of residence may dispose of the case.

3. Where it is impossible to determine with certainty in which country the offence was committed, proceedings shall be instituted in the country in which the accused is resident.

4. In the absence of circumstances determining jurisdiction as provided for in the preceding paragraphs, jurisdiction shall lie with the authorities of the country in which the offence was detected.

Article 11

1. A country which is competent to institute proceedings against an offender in accordance with the provisions of article 10 may, at any time, as provided for in article 42 of the Extradition Treaty, request another country to institute proceedings. Such a request may be made on the initiative of the requesting country or at the invitation of the other country.

2. If granted, such a request shall confer jurisdiction on the requested country.

Article 12

Where a number of persons have taken part in the same offence, jurisdiction in respect of one of them shall give rise to jurisdiction in respect of the others.

Article 13

Where in one country, a person has been acquitted or, having been convicted in that country has served his sentence or his sentence has been suspended or execution of the penalty has become barred by lapse of time, he shall not be liable to prosecution in either of the other countries for the same offence.

Article 14

A conviction in one country shall have the same penal consequences in the other two countries, in the event of a repetition of the offence, as if the judgement had been rendered in those countries.

Article 15

1. Reports concerning an offence drawn up by officials of one country in the form and under the conditions prescribed by the laws and regulations of their own country shall have the same evidential value in the other two countries as they would have if they were reports drawn up by the competent officials of those countries. However, where in one country

reports must be drawn up by a given number of officials if they are to have a specific evidential value, reports drawn up in the other two countries shall have such evidential value in the first-mentioned country only if they are drawn up by at least the same number of officials.

2. All other official acts performed in one country, in accordance with the laws and regulations in force in that country, with a view to instituting proceedings in respect of an offence and assembling evidence shall have the same value and the same effects in the other two countries as if they had been performed by the competent authorities of those countries in accordance with their national laws and regulations.

3. The reports and official acts referred to in paragraphs 1 and 2 shall have the effect, in particular, of interrupting the process of acquisition of immunity from prosecution by lapse of time, in the other two countries if such is the effect of comparable reports and acts in the said countries.

CHAPTER VII

MUTUAL ASSISTANCE IN CONNEXION WITH OFFENCES

1. GENERAL PROVISIONS

Article 16

1. The countries shall render each other mutual assistance for the prevention and punishment of offences.

2. To that end, the competent Ministers of each country shall designate from among the authorities and officials competent under their national law those empowered to co-operate with the authorities and officials of the other two countries in respect of each of the matters designated as provided for in article 2 and with a view to the implementation of each article of this chapter.

Article 17

1. Article 24, paragraphe 2, and article 27 of the Extradition Treaty shall be applicable even if the offence in question is not one in respect of which extradition may take place.

2. Notwithstanding the provisions of article 27, paragraph 4, of the Extradition Treaty, the powers referred to in that article may also be exercised by officials designated in accordance with article 16, paragraph 2, of this Convention.

3. Officials assigned, pursuant to article 26 of the Extradition Treaty, to render assistance in the investigation and detection of offences may,

together with the officials of the requested country, draw up reports of their findings. Such reports shall have the same value in each country as if they had been drawn up by officials of that country.

Article 18

The competent authorities of each country shall transmit to each other, on their own initiative or upon request, all information regarding acts or circumstances which give reason to believe that an offence has been or will be committed.

Article 19

1. Officials of one country competent to investigate offences who have been duly authorized by the competent authorities of their own country may, with the consent of the competent authorities of the requested country and on the same footing as corresponding officials of the last-mentioned country, obtain the information referred to in article 18 from the administrative offices of that country.

2. The requesting officials may make copies of documents and refer in their reports and depositions, and in judicial proceedings, to the information obtained and the documents consulted.

Article 20

1. Information obtained pursuant to articles 18 and 19 may be communicated to persons other than those who have need of it for use in the prevention or punishment of offences only to the extent that the authority providing it or permitting it to be collected has given its express consent in accordance with its national legislation and in so far as such communication is not prohibited by the national legislation of the authority receiving it.

2. Officials of one country duly authorized by their administrative departments may give evidence before the judicial authorities of another country concerning their findings in the course of the performance of their functions.

2. SPECIAL PROVISIONS

Article 21

The provisions of the following articles of this section shall be applicable only to certain fields to be specified by decision of the Committee of Ministers.

Article 22

The competent Ministers of each country may decide that the administrative authorities designated by them shall, within the limits of their national competence, be assimilated in their countries to judicial authorities for the purposes of:

- (a) The issue and execution of letters rogatory as referred to in articles 23 and 24 of the Extradition Treaty;
- (b) Assignments and granting of consent as referred to in article 26 of the Extradition Treaty;
- (c) The dispatch and service of documents as referred to in article 30 of the Extradition Treaty.

Article 23

Where, in the course of the investigation and detection of an offence, an official of one country seeks the collaboration of an official of another country, the last-mentioned official may provide such collaboration within the territory of the country of the requesting official. In that case, he shall act with the same power as the official whom he is assisting and his acts shall have the same effects.

Article 24

1. Officials of one country competent to investigate offences who have commenced a pursuit in the course of which they could lawfully detain, search and, if necessary, arrest the fugitive or search and, if necessary, seize goods and means of transport shall be entitled to enter the territory of another country in pursuit of the fugitive, goods or means of transport.

2. Such officials shall immediately summon the competent officials of the country whose territory they have entered. The last-mentioned officials shall provide them with all necessary collaboration and to that end may, within the limits of the laws and regulations of their own country, apprehend the fugitive in order to establish his identity, search him or have him arrested and inspect and seize the goods and means of transport.

3. However, if the pursuit is uninterrupted and the urgency of the operations makes it impossible to seek the collaboration of the competent officials of the country whose territory they have entered, the officials engaged in the pursuit may detain and apprehend the fugitive and inspect and seize the goods and means of transport. If they have apprehended the fugitive, they shall promptly conduct him to the local police authorities

for the purposes referred to in paragraph 2. If they have seized the goods and means of transport, they shall promptly deliver them to the officials of the country in which they were seized, who shall retain them until such time as a decision is taken regarding their disposal.

CHAPTER VIII

GENERAL PROVISIONS

Article 25

1. Officials of one country who, under the conditions specified in this Convention, perform their functions in another country shall enjoy, in the last-mentioned country, such protection and right to assistance as are granted to corresponding officials of that country under its laws and regulations. They shall be assimilated to the last-mentioned officials as regards any offences which are committed against them or which they themselves commit.

2. In performing their functions, they may wear their uniform or a visible distinctive badge and may carry their service weapons whenever this is justified by the circumstances. They must be able to prove their official status at any time.

3. They shall be entitled, where necessary, to use such measures of compulsion and defence as could lawfully be employed by the corresponding officials of the country in which they are operating.

Article 26

Motor vehicles, bicycles and other means of transport used by the officials referred to in article 25 in the performance of their functions in another country shall be exempt from taxes and other charges which would normally be payable in respect of such use.

Article 27

Costs arising from the implementation of this Convention shall be borne by the country which incurs them.

Article 28

1. With a view to the implementation of this Convention, a Special Committee shall be established in accordance with article 31 of the Treaty for the Union.

2. The Special Committee shall be responsible for:

- (a) Performing the tasks entrusted to Committees and Special Committees in article 30 of the Treaty for the Union;
- (b) Tendering advice on decisions to be taken by the Committee of Ministers;
- (c) Performing any other task may be entrusted to it by the Committee of Ministers.

3. The responsibilities conferred on the Special Committee in paragraph 2 shall be without prejudice to those of the Committees and Special Committees referred to in part 2, chapter 4, of the Treaty for the Union.

Article 29

The Government of each country shall arrange for any decision taken by the Committee of Ministers pursuant to articles 2, 5, 6, 21 or 31 to be given the necessary publicity prior to the date on which it takes effect.

CHAPTER IX

BENELUX COURT OF JUSTICE

Article 30

In accordance with article 1, paragraph 2, of the Treaty concerning the Establishment and the Statute of a Benelux Court of Justice of 31 March 1965, the provisions of this Convention and of the Additional Protocols annexed hereto shall be designated as common rules of law for the purpose of the application of chapters III, IV and V of the said Treaty.

CHAPTER X

EXCLUSION OF THE APPLICATION OF THE CONVENTION

Article 31

The Committee of Ministers may at any time, to such extent as it shall specify, exclude the application of the foregoing provisions of this Convention to laws and regulations designated as provided for in article 2. The exclusion may relate to all or part of this Convention and to all or some of the laws and regulations so designated, with the exception of the legislation referred to in article 6, paragraph 4.

CHAPTER XI

FINAL PROVISIONS

Article 32

This Convention shall apply only to the territories of the Contracting Parties in Europe.

Article 33

The special provisions relating exclusively to certain fields shall be incorporated in Additional Protocols which shall form an integral part of this Convention.

Article 34

1. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretariat-General of the Benelux Economic Union.

2. It shall enter into force on the first day of the month following the date of deposit of the third instrument of ratification.

3. It shall cease to have effect at the same time as the Treaty for the Union.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at The Hague, on 29 April 1969, in triplicate in the Dutch and French languages, both texts being equally authentic.

For the Government of the Kingdom of Belgium:

PIERRE HARMEL

For the Government of the Grand Duchy of Luxembourg:

GASTON THORN

For the Government of the Kingdom of the Netherlands:

J. LUNS

**ADDITIONAL PROTOCOL ESTABLISHING SPECIAL PROVISIONS
WITH RESPECT TO THE REGULATION OF IMPORTS, EX-
PORTS AND TRANSIT TRAFFIC**

The Contracting Parties to the Convention concerning Administrative and Judicial Co-operation in respect of Laws and Regulations Pertaining

to the Realization of the Aims of the Benelux Economic Union, signed this day,

Considering that special provisions should be established with respect to the regulation of imports, exports and transit traffic,

Having regard to article 33 of the said Convention,

Have decided for that purpose to conclude an Additional Protocol to the said Convention and have agreed on the following provisions:

Article 1

This Protocol shall relate to the application of laws and regulations which pertain to the regulation of imports, exports and transit traffic and which are designated as such by decision of the Committee of Ministers.

Article 2

In cases governed by this Protocol, article 5 of the Convention shall not be applicable.

Article 3

Notwithstanding the provisions of article 11 of the Treaty on the Enforcement of Judicial Decisions in Criminal Matters of 26 September 1968, a request as referred to in article 33 of the said Treaty may be made, and seizure may be effected, by the administrative authorities competent under their national legislation to effect seizures, provided that they have been designated for the purpose by the competent Ministers of each country.

On receipt of such a request, the administrative authorities of the requested country shall promptly inform the judicial authorities of the place where seizure is to be effected.

Article 4

In so far as a request for enforcement relates to a decision imposing fines or ordering confiscations, the provisions of article 3 of the Treaty on the Enforcement of Judicial Decisions in Criminal Matters of 26 September 1968 shall not be applicable.

Article 5

1. Judgements rendered in one of the three countries which relate to the recovery of sums due in respect of a charge imposed or drawback

improperly allowed in that country pursuant to laws and regulations as referred to in article 1 shall, provided that it is established that the party against whom the judgement was given appeared in court according to law or was declared in default after having been summoned or subpoenaed according to law, be rendered enforceable in accordance with the procedure established in articles 18 and 19 of the Convention Relating to Civil Procedure concluded at The Hague on 1 March 1954.¹

2. Where an enforcement order for the recovery of such sums has been issued by an administrative authority in one country the said order may, if it is no longer subject to appeal under the legislation of the country in which it was issued, be rendered enforceable in the other two countries upon request by the said administrative authority to the presiding judge of the civil court for the district in which enforcement is requested. The said judge shall determine whether the party against whom enforcement is sought has been given the opportunity to exercise the rights of appeal provided under the legislation of the country in which the order was issued. He may require that the enforcement order be accompanied by a translation in the language of the place at which the court has its seat.

3. The translation of documents submitted pursuant to the preceding paragraphs of this article shall be authenticated by a person duly empowered to do so in one of the countries concerned.

Article 6

Notwithstanding the provisions of article 21 of the Convention, the provisions of articles 22, 23 and 24 of the Convention are hereby declared to be applicable.

Article 7

The provisions of the Convention concerning Co-operation in the Regulation of Imports, Exports and Transit of 16 March 1961² shall be abrogated six months after the date of entry into force of the present Convention.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

¹ United Nations, *Treaty Series*, vol. 286, p. 265.

² *Ibid.*, vol. 790, No. A-9139.

DONE at The Hague, on 29 April 1969, in triplicate in the Dutch and French languages, both texts being equally authentic.

For the Government of the Kingdom of Belgium:

PIERRE HARMEL

For the Government of the Grand Duchy of Luxembourg:

GASTON THORN

For the Government of the Kingdom of the Netherlands:

J. LUNS

ADDITIONAL PROTOCOL ESTABLISHING SPECIAL PROVISIONS WITH RESPECT TO TAXATION

The Contracting Parties to the Convention concerning Administrative and Judicial Co-operation in respect of Laws and Regulations Pertaining to the Realization of the Aims of the Benelux Economic Union, signed this day,

Considering that special provisions should be established with respect to taxation,

Having regard to article 33 of the said Convention,

Have decided for that purpose to conclude an Additional Protocol to the said Convention and have agreed on the following provisions:

Article 1

1. With respect to taxation, the provisions of paragraph 2 of this article shall be substituted for the provisions of article 2 of the Convention.
2. The Convention shall relate to the application of:
 - (a) The laws and regulations in force in Belgium in respect of customs and excise and in respect of turnover taxes (at present: purchase tax, tax on invoices and on business contracts, tax on the rental of movable property and on transport, luxury tax);
 - (b) The laws and regulations in force in Luxembourg in respect of customs and excise and in respect of turnover tax (*impôts sur le chiffre d'affaires*);
 - (c) The laws and regulations in force in the Netherlands in respect of customs and excise and in respect of turnover tax (*omzetbelasting*).
3. The references in article 6, paragraph 1, article 7, paragraph 1, article 8, article 9, paragraph 1, and article 16, paragraph 2, of the Convention to laws and regulations designated as provided for in article 2 of the Convention shall be deemed to be references to the laws and regulations referred to in paragraph 2 of this article.

Article 2

1. As regards the laws and regulations referred to in article 1, paragraph 2, the provisions of the following paragraphs shall be substituted for the provisions of article 3 of the Convention; article 5 of the Convention shall not be applicable.

2. A document issued or authenticated in due form in one country shall have the same effect in the other two countries as if it had been issued or authenticated in accordance with the laws and regulations of those countries.

3. Entries made on a document by officials of one country shall have the same value in the other two countries as if they had been made by officials of those countries.

Article 3

Movements of goods subject to customs or excise duties of which the place of origin is in one country and the place of delivery in another shall be effected, and the documents relating thereto shall be issued or authenticated, and declamations made in order to obtain such documents shall be drawn up, all with due regard to the regulations of the customs offices and to the places of unloading in the country of delivery, as determined by the competent authority of that country.

Article 4

Where goods subject to customs and excise duties are conveyed from a place in one country to a destination in another country, the officials of the first-mentioned country who are responsible for supervising the consignment shall continue their supervision within the other country until they are relieved by officials of that country. During this period, they shall have, for the purpose of the performance of their duties, the same powers as officials of the last-mentioned country.

Article 5

1. Where a document issued or authenticated for use in more than one country lacks all or some of the necessary clearance entries, the goods to which the document relates shall be subject to such duties, excises, taxes and other charges as are payable by reason of the total or partial lack of clearance entries in the case of a comparable national document in that one of the countries for which the Benelux document is issued or authenticated in which the total amount of such charges is the greatest.

2. The duties, excises, taxes and other charges, as well as the fines, if any, payable by reason of the total or partial lack of clearance entries shall be recovered, for its own account, by the country in which the document was issued or authenticated.

3. Notwithstanding the provisions of paragraph 1, if it is established in which country the goods are in the same situation as goods on which the duties, excises, taxes and other charges applicable thereto have been paid, then the goods shall be subject to such duties, excises, taxes and other charges as are applicable in that country. Notwithstanding the provisions of paragraph 2, if the document was not issued or authenticated in that country the proceeds from non-unified charges shall accrue to that country.

Article 6

1. The provisions of article 6, paragraph 3 (a), of the Convention shall be applicable as regards the laws and regulations referred to in article 1, paragraph 2, only in so far as the said laws and regulations relate to customs and excise matters.

2. Notwithstanding the provisions of article 6, paragraph 4, of the Convention, information obtained pursuant to paragraph 1 or paragraph 3 of that article may also be used for the purpose of the application of laws and regulations in respect of taxation other than those referred to in article 1, paragraph 2.

3. The provisions of article 6, paragraph 5, of the Convention shall not be applicable to the laws and regulations referred to in article 1, paragraph 2.

Article 7

As regards the laws and regulations referred to in article 1, paragraph 2, the acts referred to in article 9, paragraphs 1 and 2, of the Convention shall not be punishable where the person performing them acted, in relation to the goods and documents to which the acts pertain, in accordance with the legislation of the country in which they were performed.

Article 8

1. A person established in one country who delivers goods to a person established in another country shall be jointly liable for the turnover tax or taxes payable by the last-mentioned person in respect of the importation of the goods into the last-mentioned country if he has in any way facilitated or made possible the inaccurate collection of the tax payable, in particular

by failing to issue the required invoice, by issuing an invoice with a false indication or no indication of the consignee's name or by making no entry or a false entry concerning the delivery in the accounts of his enterprise.

2. The provisions of paragraph 1 shall be applicable only if it can be shown that the person delivering the goods knew or ought reasonably to have assumed that the tax would not be paid or would be paid only partially.

Article 9

As regards the application of the laws and regulations in respect of turnover tax or taxes, the reports and other written statements drawn up by the competent officials of one country in the form and under the conditions prescribed by the laws and regulations of their own country shall have the same evidential value in another country as if they had been duly drawn up by competent officials of that country.

Article 10

In order to facilitate administrative co-operation with respect to taxation, the Ministers of Finance of the three countries shall, in matters related to the laws and regulations referred to in article 1, paragraph 2, jointly exercise the powers conferred on the Committee of Ministers in article 40 of the Treaty for the Union.

Article 11

The provisions of article 20 of the Convention shall also be applicable, as regards the laws and regulations referred to in article 1, paragraph 2, where officials are required to give evidence before judicial authorities in other than criminal matters.

Article 12

1. The provisions of articles 21, 28, 29 and 31 of the Convention shall not be applicable as regards the laws and regulations referred to in article 1, paragraph 2.

2. The provisions of articles 22, 23 and 24 of the Convention shall be applicable as regards the laws and regulations referred to in article 1, paragraph 2.

Article 13

As regards the laws and regulations in respect of customs and excise referred to in article 1, paragraph 2, notwithstanding the provisions of article 11 of the Treaty on the Enforcement of Judicial Decisions in Criminal Matters of 26 September 1968, a request as referred to in article 33 of the said Treaty may be made, and seizure may be effected, by the administrative authorities competent under their national legislation to effect seizures, provided that they have been designated for the purpose by the competent Ministers of each country.

On receipt of such a request, the administrative authorities of the requested country shall promptly inform the judicial authorities of the place where seizure is to be effected.

Article 14

In so far as a request for enforcement relates to a decision imposing fines or ordering confiscations for an offence under the laws and regulations referred to in article 1, paragraph 2, the provisions of article 3 of the Treaty on the Enforcement of Judicial Decisions in Criminal Matters of 26 September 1968 shall not be applicable.

Article 15

As regards the laws and regulations referred to in article 1, paragraph 2, the provisions of articles 6, 18 and 19 of the Convention shall not be construed as obliging officials of a requested country to furnish more or other information than could be provided by officials of the requesting country in the reverse case.

Article 16

The Convention concerning Co-operation with regard to Customs and Excise of 5 September 1952¹ and the Convention of Mutual Assistance in respect of the Collection of the Turnover Tax, the Purchase Tax and Other Similar Taxes of 25 May 1964² shall be abrogated.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

¹ United Nations, *Treaty Series*, vol. 790 No. A-3479.

² *Ibid.*, No. A-8953.

DONE at The Hague, on 29 April 1969, in triplicate in the Dutch and French languages both texts being equally authentic.

For the Government of the Kingdom of Belgium:

PIERRE HARMEL

For the Government of the Grand Duchy of Luxembourg:

GASTON THORN

For the Government of the Kingdom of the Netherlands:

J. LUNS

ADDITIONAL PROTOCOL ESTABLISHING SPECIAL PROVISIONS WITH RESPECT TO TRANSPORT

The Contracting Parties to the Convention concerning Administrative and Judicial Co-operation in respect of Laws and Regulations Pertaining to the Realization of the Aims of the Benelux Economic Union, signed this day,

Considering that special provisions should be established with respect to transport,

Having regard to article 33 of the said Convention,

Have decided for that purpose to conclude an Additional Protocol to the said Convention and have agreed on the following provisions:

Article 1

1. Where laws and regulations designated as provided for in article 2 of the Convention relate to tariff provisions concerning the transport of goods by road, this Protocol shall likewise be applicable to such provisions.

2. Where laws and regulations designated as provided for in article 2 of the Convention relate to tariff provisions concerning transport other than the transport of goods by road, the Committee of Ministers may decide that the articles of this Protocol, in whole or in part, shall also be applicable to such provisions.

3. Where laws and regulations designated as provided for in article 2 of the Convention relate to provisions concerning the transport of goods by road, other than those referred to in paragraph 1, established pursuant to article 85, 86 or 87 of the Treaty for the Union:

(a) The Committee of Ministers may decide that article 2 and section 1 of this Protocol shall be applicable to such provisions;

(b) The Committee of Ministers may, after obtaining an opinion from the Consultative Interparliamentary Council, decide that sections 2 to 4 of this Protocol shall also be applicable in so far as such provisions have as their purpose:

- To prohibit the holder of a transport permit from undertaking transport operations other than those covered by the permit;
- To impose on the holder of a transport permit the obligation to comply with the conditions attaching to the permit;
- To impose on the holder of a transport permit obligations relating to the control documents prescribed for the transport operations in question.

Article 2

1. There shall be established, in accordance with article 31 of the Treaty for the Union, a Special Committee composed of representatives of the Ministers of the three countries who are competent in respect of transport matters. Each Government shall have one vote in the Committee.

2. The Committee of Ministers shall establish the standing orders of the said Special Committee.

SECTION 1. CONTROL MEASURES

Article 3

The Special Committee shall act as a joint control body responsible for supervising compliance with the provisions to which this section is applicable for instituting to that end, either on its own initiative or upon submission of a complaint, all such control as may be necessary.

Article 4

The Special Committee shall, either on its own initiative or upon request by one of its members, specify the manner in which control measures are to be carried out.

Article 5

1. In the performance of their functions, the officials responsible for carrying out control measures shall have at least the following powers:

- (a) To halt any means of transport, enter vehicles and require the driver to produce such documents as are necessary in order to verify compliance with the provisions referred to in article 3;
- (b) To check the identity of the driver and of the carrier, and to verify the load of the means of transport;
- (c) To enter any of the premises, lands and means of transport used for the business activities of a carrier, his agent or his principal and to carry out therein the verifications provided for in this article;
- (d) To verify the books and other business documents of a carrier, his agent or his principal and to make copies of or extracts from such books and documents;
- (e) To demand further particulars concerning the books and other business documents of a carrier, his agent or his principal and concerning compliance with the provisions referred to in article 3.

2. The powers provided for in subparagraphs (c), (d) and (e) above shall be exercisable in respect of a principal only in case of a suspected offence.

Article 6

Persons who are subject to control measures must enable authorized officials performing their functions in accordance with articles 4 and 5 to carry out their duties. In case of refusal they shall, unless some other sanction is provided under the national legislation of the country in which prosecution must take place, be liable to the penalties provided under that legislation for an offence against the tariff provisions concerning the transport of goods by road.

Article 7

1. The officials responsible for carrying out control measures shall be accountable to the Special Committee for the performance of their duties.

2. If the Special Committee or one of the countries represented therein considers that an offence has been committed, it shall promptly transmit the findings of the officials, accompanied if necessary by a report, to the officer of the *Ministère public* (*Openbaar Ministerie*) who is competent to institute proceedings.

3. The Special Committee must furnish any information requested of it by the judicial authorities.

4. The Special Committee shall be informed of the result of the proceedings.

SECTION 2. PROVISIONAL JUDICIAL MEASURES

Article 8

1. The *Ministère public* competent to initiate proceedings, or the examining judge if he is competent under national law, as well as the trial court or appeal court before which the case is pending, may in any event, as a provisional measure, disqualify the carrier from undertaking transport operations if he refuses to submit to the control measures referred to in section 1 or if he has committed an offense under the provisions to which this section is applicable.

2. The provisional measure may be of limited duration. It may be modified or rescinded at any time by the judicial authority before which the case is pending. It shall cease to have effect when the carrier is acquitted or when a judicial decision against him has acquired the force of *res judicata*.

3. The provisional measure shall be subject to appeal in such cases on such conditions as are provided under national law. The appeal shall not have the effect of suspending the measure.

4. The Special Committee may, by at least a majority vote and subject to compliance with the provisions of article 10, transmit to the competent *Ministère public* an opinion advising that a provisional measure should be taken, and stating the reasons. The said opinion shall in any event be communicated by the *Ministère public* to the judicial authorities before which the case is pending. The Special Committee may, if it so requests, amplify its opinion either in writing or orally. It must elucidate its opinion, either in writing or orally, if the competent judicial authority so requests.

5. The *Ministère public* shall immediately inform the Special Committee of the action taken on an opinion tendered by it, and of any decision pursuant to which a provisional measure is taken, modified or rescinded.

SECTION 3. ADMINISTRATIVE MEASURES

Article 9

The Special Committee may, subject to compliance with the provisions of article 10, transmit to the competent Minister of the country in which the carrier is established an opinion advising that the carrier should be disqualified from undertaking transport operations, and stating the reasons, if the carrier:

(a) Refuses to submit to the control measures referred to in section 1;

- (b) Has been convicted by the competent judicial authorities of refusal to submit to the control measures referred to in section 1 or of an offence under the provisions referred to in article 8 and the conviction has acquired the force of *res judicata*.

Article 10

Where the Special Committee proposes to tender an opinion as aforementioned, it shall so inform the carrier concerned by registered letter, which must be posted at least seven days in advance. The file shall be kept available to the carrier during that period. The carrier shall be heard by the Special Committee if he so requests. He may be assisted or represented by legal counsel, or by an adviser to be approved by the Special Committee in respect of each individual case.

Article 11

1. The opinion referred to in article 9 shall within eight days be placed before the Minister competent to take a decision.

2. The Minister or his authorized representative shall take his decision within 30 days of receipt of the opinion. If he decides to disqualify the carrier from undertaking transport operations, he shall immediately so inform the carrier and the decision shall be enforceable as from the fifteenth day following the date of the decision.

3. The Minister or his authorized representative shall advise the Special Committee of his decision within eight days of the date on which it is taken.

Article 12

1. (a) The competent Minister or his authorized representative shall take his decision in accordance with the opinion provided for in article 9 (a) if the said opinion was approved by at least a majority vote.

(b) However, the Minister or his authorized representative may take a decision at variance with the said opinion, stating the reasons, in the following cases:

- (1) If, in the interim, the control measures have been carried out or the carrier has informed the competent Minister of his willingness to submit to them;
- (2) If a judgement has already been rendered in respect of the carrier's refusal to submit to the said control measures and has acquired the force of *res judicata*;

(3) In case of abuse of power or manifest error, if so advised by the competent *Ministère public* or, where applicable, by the examining judge.

(c) The Minister or his authorized representative shall immediately advise the competent *Ministère public* of his decision.

2. The Minister or his authorized representative shall take his decision in accordance with the opinion provided for in article 9 (b) if the said opinion was approved unanimously. If the opinion was approved by a majority vote, the Minister or his authorized representative may take his decision concerning disqualification at his discretion; however, if the decision is at variance with the opinion, it must state the reasons.

SECTION 4. DISQUALIFICATION

Article 13

1. Opinions as aforementioned, provisional judicial decisions and administrative decisions may relate to total or partial disqualification from undertaking transport operations.

2. Such opinions and decisions may relate to disqualification from undertaking transport operations between the three countries, between one of the three countries and third countries, and/or within a country other than that in which the carrier is established, in so far as carriers of the three countries are entitled, in accordance with the provisions of the Treaty for the Union, to participate in such transport operations.

The Committee of Ministers may also decide that disqualification may extend to other transport operations, after application of article 85, article 86, paragraph 1, and article 87, paragraph 1, of the said Treaty.

3. (a) Disqualification in accordance with the opinion provided for in article 9 (a) shall remain in force until the date on which the control measures are carried out, and at the latest until the fifth day following the date on which the carrier informs the competent Minister of his willingness to submit to the said control measures. The Minister or his authorized representative shall rescind the disqualification if a judgement has been rendered in respect of the carrier's refusal to submit to the said control measures and has acquired the force of *res judicata*. The decision shall cease to be valid four weeks after becoming enforceable, unless it has become invalid at an earlier date pursuant to the provisions of this paragraph; any previous periods of disqualification in respect of the case shall be deducted from the four-week period.

(b) The opinion provided for in article 9 (b) and disqualification in accordance with the said opinion may relate to a period of not less than

eight days and not more than six months; any previous periods of disqualification in respect of the case shall be deducted from that period.

Article 14

1. Decisions of the Minister or his authorized representative as referred to in article 12 shall be subject to appeal in such cases and on such conditions as are provided under national law. The sole object of the appeal shall be the quashing of the decision. It shall not have the effect of suspending the decision, unless the court before which the case is pending decides otherwise.

2. The Special Committee must furnish any information requested of it by the administrative tribunals.

3. The Special Committee shall be informed of the result of the appeal.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at The Hague, on 29 April 1969, in triplicate in the Dutch and French languages, both texts being equally authentic.

For the Government of the Kingdom of Belgium:

PIERRE HARMEL

For the Government of the Grand Duchy of Luxembourg:

GASTON THORN

For the Government of the Kingdom of the Netherlands:

J. LUNS