

No. 18360

BELGIUM, LUXEMBOURG and NETHERLANDS

**Benelux Convention containing a uniform law relating to
penal sums (with annex). Concluded at The Hague on
26 November 1973**

Authentic texts: French and Dutch.

*Registered by the Belgo-Luxembourg Economic Union, acting on behalf of
the Parties, on 24 March 1980.*

BELGIQUE, LUXEMBOURG et PAYS-BAS

**Convention Benelux portant loi uniforme relative à
l'astreinte (avec annexe). Conclue à La Haye le 26 no-
vembre 1973**

Textes authentiques : français et néerlandais.

*Enregistré par l'Union économique belgo-luxembourgeoise, agissant au nom
des parties, le 24 mars 1980.*

[TRANSLATION — TRADUCTION]

BENELUX CONVENTION¹ CONTAINING A UNIFORM LAW RELATING TO PENAL SUMS

The Government of the Kingdom of Belgium,
 The Government of the Grand Duchy of Luxembourg,
 The Government of the Kingdom of the Netherlands,
 Desiring to make provision in the three countries for uniform legislation in the matter of penal sums,

Considering that such unification can help to strengthen the legal security which has become necessary in connection with the development of the Benelux Economic Union,

In view of the opinion expressed on 16 June 1972 by the Benelux Consultative Interparliamentary Council,

Have decided, for that purpose, to conclude a Convention concerning the introduction in Belgium, Luxembourg and the Netherlands of a Uniform Law relating to Penal Sums and have agreed as follows:

Article 1. Each of the Contracting Parties pledges that on the date of the entry into force of this Convention it will incorporate into its legislation, in either one or both of the two original texts, the Uniform Law relating to Penal Sums which is annexed to this Convention.

Article 2. Each of the Contracting Parties shall have the right, in its legislation, to supplement the Uniform Law with provisions intended to regulate problems for which solutions have not been provided, on condition that such provisions shall not be incompatible with the Convention and the said Law.

Article 3. 1. Each of the Contracting Parties shall be free to exclude from the field of application of the Uniform Law any or all actions brought for compliance with employment contracts.

2. Without prejudice to the provisions of paragraph 1, no reservation may be made with regard to this Convention and the Uniform Law.

¹ Came into force on 1 October 1978, i.e., the first day of the second month following the date of deposit of the second instrument of ratification with the Secretary-General of the Benelux Economic Union, in accordance with article 6(2). Instruments were deposited as follows:

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Luxembourg	30 November 1976
Netherlands	8 August 1978

Subsequently, the Convention entered into force for the third Government on the first day of the second month following the date of deposit of its instrument of ratification, in accordance with article 6(3), as follows:

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Belgium	31 January 1980
(With effect from 1 March 1980.)	

Article 4. In pursuance of article 1, paragraph 2, of the Treaty concerning the Establishment and the Statute of a Benelux Court of Justice,¹ the provisions of this Convention and of the Uniform Law shall be designated as common rules of law for the purpose of the application of chapters III and IV of that Treaty.

Article 5. 1. In respect of the Kingdom of the Netherlands, this Convention shall apply only to the territory in Europe.

2. The Government of the Kingdom of the Netherlands may extend the application of this Convention to Suriname and the Netherlands Antilles by means of a declaration addressed to the Secretary-General of the Benelux Economic Union, who shall forthwith inform the signatory Governments. The declaration shall enter into force on the first day of the second month following the date of receipt of the declaration by the Secretary-General.

Article 6. 1. This Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the Benelux Economic Union, who shall inform the signatory Governments of the deposit of the said instruments.

2. The Convention shall enter into force on the first day of the second month following the date of deposit of the second instrument of ratification.

3. In respect of the third Government to deposit its instrument of ratification, the Convention shall enter into force on the first day of the second month following the date of deposit of that instrument.

Article 7. 1. This Convention may, after consultation between the three signatory Governments, be denounced at any time by any of the Contracting Parties after the expiry of a period of two years reckoned from the date of its entry into force.

2. Denunciation shall take place by means of a notification addressed to the Secretary-General of the Benelux Economic Union, who shall forthwith inform the signatory Governments. The denunciation shall take effect on the first day of the sixth month following the date on which the Secretary-General receives the notification of denunciation.

3. The denunciation shall be valid only in respect of the denouncing Contracting Party.

4. Denunciation by the Government of the Kingdom of the Netherlands may be limited to the territories or one of the territories referred to in article 5, paragraph 2.

Article 8. 1. Each of the signatory Governments may, upon the expiry of the period referred to in article 7, paragraph 1, submit a precisely formulated proposal for amending one or more articles of the Convention or of the Uniform Law; such proposal shall be notified to the other two signatory Governments in the same manner as denunciation. In such case the three Governments shall endeavour to reach agreement.

2. If no agreement has been reached one year after the date of the notification of the other two signatory Governments, the Government which made the proposal may amend its legislation in the manner proposed. The amendment shall be notified to the other two signatory Governments in the same manner as the proposal.

¹ United Nations, *Treaty Series*, vol. 924, p. 2.

In such case neither of the other two signatory Governments shall be bound any longer by the provision which was the subject of the proposal for amendment. Each of the Contracting Parties may even denounce the Convention in accordance with article 7, paragraph 2. The denunciation shall take effect on the first day of the third month following the date on which the Secretary-General receives the notification of denunciation. Article 7, paragraph 3, shall apply to such denunciation.

Article 9. If, after the date of entry into force of this Convention, one of the signatory Governments wishes to become a party to a convention containing provisions which differ from the current Convention or from the Uniform Law, article 8 shall apply as appropriate.

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

DONE at The Hague on 26 November 1973, in triplicate in the French and Dutch languages, both texts being equally authentic.

For the Government of the Kingdom of Belgium:

H. VANDERPOORTEN

For the Government of the Grand Duchy of Luxembourg:

EUG. SCHAUS

For the Government of the Kingdom of the Netherlands:

A. A. M. VAN AGT

ANNEX

UNIFORM LAW RELATING TO PENAL SUMS

Article 1. 1. The judge may, at the request of one party, sentence the other party to pay a sum of money, called a penal sum, in the event of failure to comply with the principal judgement, without prejudice to the right to damages if grounds therefor exist. A penal sum may not, however, be imposed where a party has been sentenced to pay a sum of money.

2. The request may be considered even if it is submitted for the first time in a third-party action or on appeal.

3. The penal sum may not fall due before notification of the judgement by which it is established.

4. The judge may grant the sentenced party a period of time during which the penal sum may fall due.

Article 2. The judge may specify the penal sum as a lump sum, as a fixed sum per unit of time or as a fixed sum per contravention. In the latter two cases the judge may also specify an amount above which no further penal sum may fall due.

Article 3. The penal sum, once due, shall become fully the property of the party that requested the sentence. The said party may take legal action for its recovery by virtue of the title which establishes the penal sum.

Article 4. 1. The judge who has imposed a penal sum may, at the request of the sentenced party, revoke the sentence, suspend it for a period of time fixed by him or reduce the penal sum in the event of permanent or temporary inability of the sentenced party to comply with the principal sentence.

2. To the extent that the penal sum had fallen due before the inability occurred, the judge may not revoke the sentence or reduce the penal sum.

Article 5. 1. The penal sum may not fall due while the sentenced party is in bankruptcy.

2. Penal sums due before the declaration of bankruptcy shall not be counted as liabilities of the bankruptcy.

Article 6. 1. Upon the death of the sentenced party, the penal sum set at a fixed sum per unit of time shall no longer fall due, but the penal sums which fell due before the death shall continue to be payable. The penal sum shall become once again payable by the heirs or beneficiaries of the sentenced party only after the judge who imposed the penal sum so decides. He may change the amount and the conditions.

2. Other penal sums may, at the request of the heirs and other beneficiaries, be cancelled or reduced by the judge who imposed them, either temporarily or permanently and, if necessary, with effect from the date on which the sentenced party died.

Article 7. 1. The penal sum shall become void by prescription upon the expiry of six months from the date on which it fell due.

2. Prescription shall be suspended in the event of bankruptcy or any other legal impediment to the collection of the penal sum.

3. Prescription shall also be suspended during such time as the party that requested the sentence cannot reasonably be expected to be aware that the penal sum has fallen due.

Article 8. The penal sum shall not be taken into account in determining judicial competence and the possibility of appeal.
