

No. 13176

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**BELGIUM, LUXEMBOURG  
and  
NETHERLANDS**

**Treaty concerning the establishment and the statute of a  
Benelux Court of Justice. Signed at Brussels on  
31 March 1965**

**Additional Protocol to the above-mentioned Treaty (*Use of  
languages before the Court*). Signed at Brussels on  
25 October 1966**

**Protocol concluded in application of article 1, paragraph 2,  
of the above-mentioned Treaty of 31 March 1965.  
Signed at The Hague on 29 April 1969**

**Additional Protocol to the above-mentioned Treaty of  
31 March 1965, relating to the jurisdictional protec-  
tion of persons in the service of the Benelux Economic  
Union. Signed at The Hague on 29 April 1969**

*Authentic texts: French and Dutch.*

*Registered by Belgium on 25 March 1974.*

## [TRANSLATION — TRADUCTION]

TREATY<sup>1</sup> CONCERNING THE ESTABLISHMENT AND THE  
STATUTE OF A BENELUX COURT OF JUSTICE

His Majesty the King of the Belgians,  
His Royal Highness the Grand Duke of Luxembourg,  
Her Majesty the Queen of the Netherlands,

Considering it desirable to promote uniformity in the application of rules of law common to Belgium, Luxembourg and the Netherlands,

Have decided, to that end, to conclude a Treaty establishing a Benelux Court of Justice and have appointed their Plenipotentiaries, namely:

His Majesty the King of the Belgians:

His Excellency Mr. H. Fayat, Deputy Minister for Foreign Affairs;

His Royal Highness the Grand Duke of Luxembourg:

His Excellency Mr. P. Werner, Minister for Foreign Affairs;

Her Majesty the Queen of the Netherlands:

His Excellency Mr. J. M. A. H. Luns, Minister for Foreign Affairs;

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

## CHAPTER I. ESTABLISHMENT, PURPOSE AND SEAT OF THE COURT

*Article 1.* 1. A Benelux Court of Justice shall be established.

2. The Court shall have the task of promoting uniformity in the application of rules of law common to Belgium, Luxembourg and the Netherlands which are designated:

—Either by a convention;

—Or by a decision of the Committee of Ministers provided for by the Treaty of 3 February 1958<sup>2</sup> instituting the Benelux Economic Union.

3. The decision of the Committee of Ministers may exclude the application of either chapters III and V or chapter IV of this Treaty.

4. The Committee of Ministers shall take its decision after obtaining the opinion of the Benelux Consultative Interparliamentary Council. The Govern-

<sup>1</sup> Came into force on 1 January 1974, i.e. the first day of the month which followed the date of the deposit of the third instrument of ratification with the Secretariat-General of the Benelux Economic Union, in accordance with article 16(2). The deposit of the instruments was effected as follows:

Belgium .....	22 October	1969
Netherlands .....	1 July	1971
Luxembourg .....	14 December	1973

<sup>2</sup> United Nations, *Treaty Series*, vol. 381, p. 165.

ment of each country shall arrange to have it published, before the date of its entry into force, in the manner provided for by the domestic law of each country.

*Article 2.* 1. The permanent seat of the Court shall be at the place where the Secretariat-General of the Benelux Economic Union is established. The registry shall be established at the headquarters of that secretariat.

2. The Court may also sit at another location in one of the three countries.

## CHAPTER II. ORGANIZATION

*Article 3.* 1. The Court shall consist of nine judges, including a president, a first and a second vice-president and six deputy judges. It shall have a *Parquet* with three *avocats généraux*, including a chief of *Parquet*. The Court shall be assisted by three registrars, including a chief registrar. The judges and deputy judges shall be chosen from among the members of the Supreme Court of each of the three countries. For the Grand Duchy of Luxembourg, the judges and deputy judges may also be chosen from among the members of the *Comité du Contentieux* of the Council of State. The *avocats généraux* shall be chosen from among the members of the *Parquet* of the Supreme Court of each of the three countries. The registrars shall be chosen at the proposal of the Secretary-General from among the members of the Secretariat-General of the Benelux Economic Union.

2. The judges, deputy judges, *avocats généraux* and registrars shall be appointed in equal numbers for each of the three countries, by decision of the Committee of Ministers. The judges, deputy judges and *avocats généraux* shall form part of the Benelux Court as long as they are on active service as such in their own countries. However, Luxembourg judges, deputy judges and *avocats généraux* who have reached retirement age may continue to discharge their duties in the Benelux Court until the age of 70 years. The same age limit shall also apply to judges and deputy judges chosen from among the members of the Luxembourg Council of State.

3. Should a judge, deputy judge or *avocat général* no longer meet the requirements for discharging his duties in the Benelux Court, the Court shall issue a statement to that effect. If a judge, deputy judge or *avocat général* submits his resignation, it shall be delivered to the President of the Court, or, if the President himself is resigning, to the Chief of *Parquet*. In such cases, the President of the Court or the Chief of *Parquet* shall so inform the Committee of Ministers, which shall give official notification of the fact. Such official notification shall make the place vacant. Registrars shall be dismissed by the Committee of Ministers.

4. Members of the Court and *Parquet* who remain members although they have ceased, owing to retirement, to belong to the judiciary of their countries shall be subject to the incompatibilities applicable to members of the Supreme Court in their own countries. They shall remain subject to the disciplinary power of their own countries.

5. The duties of president and of first and second vice-president in the Benelux Court shall be allocated by rotation among the three countries and for three-year periods. Each three-year mandate begun and interrupted must be completed by a judge of the same nationality. The President and a first and a second vice-President of different nationalities shall be elected by an absolute

majority of the members present at a general assembly of the Court. However, the first election to the post of President of the Court shall be made by an absolute majority of the members of the Court designated as such by the Committee of Ministers and present at the general assembly. The order of succession of the nationalities to the presidency and the vice-presidencies established in the voting during the first nine years of the Court's operation shall be repeated by rotation thereafter.

6. The duties of chief of *Parquet* in the Benelux Court shall be allocated by rotation among the three countries and for three-year periods. Each three-year mandate begun and interrupted must be completed by an *avocat général* of the same nationality. During the first nine years the order of succession of the nationalities to the post of chief of *Parquet* shall be determined by age. The same order of succession shall be repeated by rotation thereafter.

*Article 4.* 1. The members of the Court and of the *Parquet* shall discharge their duties impartially and independently.

2. Before the general assembly, in plenary meeting, the President shall take an oath that he will discharge his duties with integrity, exactitude and impartiality and that he will maintain the secrecy of the deliberations. The members of the Court and of the *Parquet* shall take the same oath, administered by the President.

3. The registrars shall take an oath, administered by the President, to discharge their duties with integrity and exactitude and to maintain the secrecy of the deliberations.

4. The oath shall be taken, or, if so desired, replaced by a promise, in accordance with the procedures provided for by the national legislation of the person required to take the oath.

5. The members of the Court and of the *Parquet* and the registrars shall not be remunerated. Travel and subsistence costs shall be covered by the budget of the Secretariat-General of the Benelux Economic Union.

*Article 5.* 1. In principle, nine judges—three from each country—shall attend sittings of the Court. However, in the cases provided for under its internal regulations, the Court may sit with three judges present, one from each country. The *avocat général* should preferably be a national of the country in which the merits of the case are *sub judice*.

2. Internal regulations to be established by the Court meeting in general assembly shall determine, *inter alia*, the composition of the Court at its sittings, the referring of cases, where necessary, to chambers composed of three judges, the relative ranking of members, holidays, general assemblies, the intervention of the *Parquet*, the manner of voting, the preparation of the roll, the scheduling of hearings and the functioning of the registry.

3. Members of the Court and of the *Parquet* who have, at any level, participated as members of a national jurisdiction in a decision rendered in a case brought before the Court shall declare themselves incompetent. This shall not apply to a decision by which the national jurisdiction has confined itself to staying judgement in accordance with the provisions of article 6 of this Treaty.

4. The Minister of Justice of each of the three countries shall communicate in writing directly with the *Parquet* of the Court. He may, through that channel,

transmit to the Court a brief describing his views on a question in litigation, provided that he transmits copies thereof to the Ministers of Justice of the other two countries. The Members of the *Parquet* shall not be obliged to defend the opinion expressed by the Minister.

5. The *avocats généraux* shall be interchangeable irrespective of the country from which they come. If all officers are unable to fulfil their duties, the Court shall designate one of its members or deputy members to discharge their duties temporarily.

### CHAPTER III. JURISDICTIONAL FUNCTIONS

*Article 6.* 1. In the cases specified hereunder, the Benelux Court shall consider questions of interpretation of the rules of law designated in article 1 which arise in connexion with litigation pending either before the jurisdictions of one of the three countries, sitting in their territory in Europe, or before the College of Arbitrators provided for under the Treaty instituting the Benelux Economic Union.

2. When it appears that the solution of a difficulty relating to the interpretation of a rule of law designated under article 1 is required for a judgement in a case pending before a national jurisdiction, that jurisdiction, if it believes that it needs a decision in the matter in order to render its judgement, may even as a matter of routine, stay any final judgement in order to obtain a decision of the Benelux Court on the question of interpretation.

3. Under the conditions specified in the preceding paragraph, a national jurisdiction whose decisions are not subject to a jurisdictional appeal under national law must bring the question of interpretation before the Benelux Court.

4. The jurisdiction referred to in paragraphs 2 and 3 shall, however, proceed with the case:

1. If it believes that the question of interpretation which has arisen is not such as to give rise to a reasonable doubt.
2. If the case is particularly urgent in nature.

It may proceed with the case if it concurs with the solution previously given by the Benelux Court in connexion with another dispute or in an advisory opinion.

5. The decision requesting an interpretation shall set forth the facts in relation to which the interpretation to be given by the Benelux Court is to be applied. The decision need not be engrossed, nor need formal notice thereof be given, but a certified copy of it shall be sent by the registrar to the Benelux Court as a matter of routine and as quickly as possible. The Court shall transmit copies of it to the Ministers of Justice of the three countries. The Court may request that the pertinent records should be sent to it.

6. The jurisdiction which, without at the same time ruling on the merits, takes a decision in accordance with paragraph 2 of this article on the advisability of requesting an interpretation by the Benelux Court may rule that an appeal against its decision may be brought as soon as the decision is given or that it may be brought in conjunction with an appeal against the decision to be given subsequently on the merits.

*Article 7.* 1. In disposing of the request for interpretation, the Court shall decide only on the reply to be given to the question which is submitted to it. In witness a certified copy of the decision thereof shall be issued by the registrar of the Court. The said copy shall be sent by the registrar of the Court, as quickly as possible, to the jurisdiction before which the merits of the case are *sub judice* and to the parties or their authorized agents.

2. The national jurisdictions which thereafter rule on the case shall be bound by the interpretation resulting from the decision given by the Benelux Court.

3. The procedural time-limits which are to be observed before the national jurisdiction and the time-limits for prescription shall be automatically suspended for such time as the matter is *sub judice* before the Benelux Court, namely from the day on which the stay of proceedings is declared in pursuance of article 6 until the day on which the decision is entered at the registry in accordance with the provisions of paragraph 1 of this article.

*Article 8.* The Benelux Court may deal with a request for an interpretation even if the decision of the national judge requesting that interpretation has not yet acquired the force of *res judicata* in accordance with the provisions of his national law.

*Article 9.* 1. When, for the interpretation of a rule of law designated under article 1, it is necessary to define a legal institution or the relationships resulting from it and such definition has not been set out by such a rule of law, the Benelux Court shall make the definition in accordance with the law of the country in which the decision requesting an interpretation was given.

2. The Benelux Court shall not be competent to determine whether the application of a rule of law to which a rule of law designated under article 1 refers is contrary to public policy (*ordre public*).

#### CHAPTER IV. ADVISORY FUNCTIONS

*Article 10.* 1. Each of the three Governments may request the Benelux Court to give an advisory opinion on the interpretation of a rule of law designated under article 1.

2. The request shall be communicated by the registry of the Court to the other two Governments, which may address their comments to the Court. The Court shall forthwith insert in the official journal of each of the three countries a notice briefly stating the subject of the request.

3. Parties involved in judicial or arbitral proceedings in which the same question is being debated may also address their comments to the Court, which may stay its own judgement until the jurisdiction before which the dispute has been brought take a decision in the matter.

4. In the exercise of its advisory functions, the Court shall be guided by the provisions of this Treaty which apply to jurisdictional matters, in so far as it considers them to be applicable.

## CHAPTER V. COLLEGE OF ARBITRATORS

*Article 11.* 1. When it appears that the solution of a difficulty relating to the interpretation of a rule of law designated under article 1 is required for a decision in a case pending before the College of Arbitrators provided for under the Treaty instituting the Benelux Economic Union, the College of Arbitrators if it believes that it needs a decision in the matter in order to render its judgement, must stay, even as a matter of routine, any final judgement in order to obtain a decision of the Benelux Court on the question of interpretation.

2. The College of Arbitrators shall, however, proceed with the case:

1. If it believes that the question of interpretation which has arisen is not such as to give rise to a reasonable doubt;
2. If the case is particularly urgent in nature.

3. It may proceed with the case if it concurs with the solution previously given by the Benelux Court in connexion with another dispute or in an advisory opinion.

4. It shall be bound by the interpretation resulting from the decision given by the Benelux Court.

## CHAPTER VI. JUDICIAL PROCEDURE AND COSTS

*Article 12.* 1. The jurisdictional functions of the Court shall, in principle, be exercised in accordance with the rules traditionally observed by courts of law.

2. The Court shall lay down its rules of procedure and submit them to the Committee of Ministers for approval.

3. Proceedings before the Court shall, as a rule, be in writing. The Court may decide to hold oral and public debates at such a place, date and hour as it may determine.

4. Each party shall be entitled to submit a statement outlining its arguments and conclusions, within a time-limit which shall be fixed by the President. Where the nature of the case so requires the parties may be granted a time-limit within which to submit a statement in reply. Such time-limits may be extended.

5. Those permitted to plead before the Court shall be the members of the bars of the three countries and any other persons approved by the Court for a specific case.

6. The deliberations of the Court shall take place in private and remain secret. The judgement shall state the reasons on which it is based; it shall bear the names of the judges who have given it, and it shall be read in open court. The judgement shall not be subject to any right of appeal.

7. The languages used by and before the Court shall be Dutch and French. The papers bearing on a case must always be accompanied by a translation in the other language. The proceedings, the oral arguments and the judgement shall be in the language used for proceedings before the jurisdiction where the merits of the case are *sub judice*. The Court may authorize departures from the latter rule

in so far as oral arguments are concerned. If oral debates take place, a written summary of the arguments and a translation of it must be submitted.

8. A translation service shall be attached to the registry of the Court. It shall issue free of charge all the translations provided for above.

*Article 13.* 1. In jurisdictional matters, the Court shall fix the amount of the costs incurred before it. The said costs shall include the fees earned by counsel for the parties in so far as that it is in accordance with the legislation of the country in which the merits of the case are *sub judice*.

2. The costs thus determined shall form part of the expenses on which the national jurisdiction shall decide.

3. In the three countries, papers bearing on cases before the Benelux Court and the Court's decisions or opinions shall be exempt from stamp and registration formalities and fees and from all other taxes.

#### CHAPTER VII. FINANCIAL CLAUSE

*Article 14.* The operating costs of the Court, the registry and the translation service shall be entered in the budget of the Secretariat-General of the Benelux Economic Union.

#### CHAPTER VIII. FINAL PROVISIONS

*Article 15.* 1. With regard to the Kingdom of the Netherlands, this Treaty shall apply only to the territory situated in Europe.

2. The Government of the Kingdom of the Netherlands may extend the application of this Treaty to Surinam or to the Netherlands Antilles by a declaration to that effect, to be addressed to the Secretariat-General of the Benelux Economic Union.

*Article 16.* 1. This Treaty 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 instituting the Benelux Economic Union.

IN WITNESS WHEREOF, the Plenipotentiaries have signed this Treaty and have thereto affixed their seals.

DONE at Brussels on 31 March 1965, in triplicate in the Dutch and French languages, both texts being equally authentic.

For the Kingdom of Belgium:

H. FAYAT

For the Grand Duchy of Luxembourg:

P. WERNER

For the Kingdom of the Netherlands:

J. LUNS



## [TRANSLATION — TRADUCTION]

ADDITIONAL PROTOCOL<sup>1</sup> TO THE TREATY CONCERNING THE  
ESTABLISHMENT AND THE STATUTE OF A BENELUX  
COURT OF JUSTICE<sup>2</sup> (USE OF LANGUAGES BEFORE THE  
COURT)

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

Referring to article 12, paragraph 7, of the Treaty concerning the establishment and the statute of a Benelux Court of Justice, signed at Brussels on 31 March 1965;<sup>2</sup>

Considering it desirable to lay down rules for the use of languages before the Benelux Court of Justice in cases in which a decision to request an interpretation has been given in the German language;

Have decided, to that end, to conclude an additional protocol to the said Treaty and have agreed on the following provisions:

*Article 1.* Article 12, paragraph 7, of the Treaty concerning the establishment and the statute of a Benelux Court of Justice is supplemented by the following provision, which shall form its second paragraph:

“When a decision requesting an interpretation has been given in the German language, the Court may order either that the proceedings and the judgement should be in Dutch or that they should be in French. Papers bearing on a case must always be accompanied by a translation in the other two languages. Oral arguments may be in one of the three languages; a written summary of the arguments and a translation of it in the other two languages must be submitted.”

*Article 2.* 1. This Protocol 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 form an integral part of the Treaty concerning the establishment and the statute of a Benelux Court of Justice, signed at Brussels on 31 March 1965.

<sup>1</sup> Came into force on 1 January 1974, i.e. the first day of the month which followed the date of the deposit of the third instrument of ratification with the Secretariat-General of the Benelux Economic Union, in accordance with article 2(2). The deposit of the instruments was effected as follows:

Belgium .....	22 October	1969
Netherlands .....	1 July	1971
Luxembourg .....	14 December	1973

<sup>2</sup> See p. 42 of this volume.

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

DONE at Brussels on 25 October 1966, in triplicate in the Dutch and French languages, both texts being equally authentic.

For the Government of the Kingdom of Belgium:

P. HARMEL

For the Government of the Grand Duchy of Luxembourg:

C. DUMONT

For the Government of the Kingdom of the Netherlands:

J. A. DE VOS VAN STEENWIJK

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## [TRANSLATION — TRADUCTION]

PROTOCOL<sup>1</sup> CONCLUDED IN APPLICATION OF ARTICLE 1,  
PARAGRAPH 2, OF THE TREATY CONCERNING THE ESTABLISHMENT AND THE STATUTE OF A BENELUX COURT OF JUSTICE<sup>2</sup>

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

Referring to the Treaty concerning the establishment and the statute of a Benelux Court of Justice, signed at Brussels on 31 March 1965,<sup>2</sup>

Desiring to designate those conventions signed by the Contracting Parties whose provisions are to be considered common rules of law under article 1, paragraph 2, of the said Treaty,

Having regard to the opinion of the Benelux Consultative Interparliamentary Council of 29 November 1968,

Have decided, to that end, to conclude a Protocol and have agreed on the following provisions:

*Article 1.* In application of article 1, paragraph 2, of the Treaty concerning the establishment and the statute of a Benelux Court of Justice, the following shall be designated as common rules of law:

A. For the application of chapter III of the said Treaty, the provisions contained in:

1. The Convention between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands relating to the unification of excise duties and of fees for the warranty of articles of precious metals and Protocol signed at The Hague on 18 February 1950;<sup>3</sup>

Supplemented by:

- (a) The Third Protocol to the Convention relating to the unification of excise duties and of fees for the warranty of articles of precious metals of 18 February 1950, signed at The Hague on 11 December 1958,<sup>4</sup>
- (b) The Fourth Protocol to the Convention relating to the unification of excise duties and of fees for the warranty of articles of precious metals of 18 February 1950, signed at The Hague on 29 March 1962,<sup>5</sup> and

<sup>1</sup> Came into force on 1 January 1974, i.e. the first day of the month that followed the date of deposit of the third instrument of ratification with the Secretariat-General of the Benelux Economic Union, in accordance with article 6(2). The instruments were deposited as follows:

Belgium .....	17 February 1971
Netherlands .....	20 December 1971
Luxembourg .....	14 December 1973

<sup>2</sup> See p. 42 of this volume.

<sup>3</sup> United Nations, *Treaty Series*, vol. 123, p. 45.

<sup>4</sup> *Ibid.*, vol. 387, p. 342.

<sup>5</sup> *Ibid.*, vol. 548, p. 334.

- (c) The Fifth Protocol to the Convention relating to the unification of excise duties and of fees for the warranty of articles of precious metals of 18 February 1950, signed at The Hague on 29 April 1968;<sup>1</sup>
2. The Convention between Belgium, Luxembourg and the Netherlands concerning co-operation with regard to customs and excise, signed at Brussels on 5 September 1952;<sup>2</sup>
  3. The Agreement between Belgium, Luxembourg and the Netherlands concerning reciprocal assistance in the collection of taxes, signed at Brussels on 5 September 1952;<sup>3</sup>
  4. The Agreement concerning the removal of restrictions on capital transfers between the Netherlands and the Belgo-Luxembourg Economic Union and Protocol of signature, signed at Brussels on 8 July 1954;<sup>4</sup>
  5. The Labour Treaty between Belgium, Luxembourg and the Netherlands and Protocol of signature, signed at The Hague on 7 June 1956;<sup>5</sup>
  6. The Protocol between Belgium, Luxembourg and the Netherlands concerning national treatment in the award of public works contracts and the purchase of goods,<sup>6</sup> and Protocol of Signature, signed at Brussels on 6 July 1956;
  7. The Treaty instituting the Benelux Economic Union, the annexed Convention containing the transitional provisions, as amended by the Decisions of the Committee of Ministers of the Benelux Economic Union of 15 May 1961 and 21 January 1963, the Protocol of Application and the Protocol of Signature, signed at The Hague on 3 February 1958;<sup>7</sup>
  8. The Protocol between Belgium, Luxembourg and the Netherlands instituting a new schedule of import duties, and annex, signed at Brussels on 25 July 1958,<sup>8</sup> and the additional protocols to it and their annexes;
  9. The Convention between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands on the transfer of control of persons to the external frontiers of Benelux territory, signed at Brussels on 11 April 1960;<sup>9</sup>
  10. The Convention of application of articles 55 and 56 of the Treaty instituting the Benelux Economic Union, signed at Brussels on 19 September 1960;<sup>10</sup>
  11. The Convention between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands concerning co-operation in the regulation of imports, exports and transit traffic, signed at The Hague on 16 March 1961;
  12. The Treaty between Belgium, Luxembourg and the Netherlands on judicial competence, bankruptcy, and the authority and application of judicial deci-

<sup>1</sup> United Nations, *Treaty Series*, vol. 718, p. 397.

<sup>2</sup> *Ibid.*, vol. 247, p. 329.

<sup>3</sup> *Ibid.*, vol. 256, p. 3.

<sup>4</sup> *Ibid.*, vol. 287, p. 27.

<sup>5</sup> *Ibid.*, vol. 381, p. 145.

<sup>6</sup> *Ibid.*, vol. 312, p. 109.

<sup>7</sup> *Ibid.*, vol. 381, p. 165.

<sup>8</sup> *Ibid.*, vol. 352, p. 3.

<sup>9</sup> *Ibid.*, vol. 374, p. 3.

<sup>10</sup> *Ibid.*, vol. 480, p. 432.

sions, arbitral awards and *Actes Authentiques* and Protocol, signed at Brussels on 24 November 1961;

13. The Benelux Convention on trade marks and its annex, Benelux uniform law on trade marks, signed at Brussels on 19 March 1962;<sup>1</sup>
14. The Protocol concerning civil liability of officers assigned to the territory of another party, annexed to 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, signed at Brussels on 27 June 1962;<sup>2</sup>
15. The Convention concluded pursuant to article 37, paragraph 2, of the Treaty instituting the Benelux Economic Union, signed at Brussels on 14 January 1964;<sup>3</sup>
16. The Convention of mutual assistance between Belgium, Luxembourg and the Netherlands in respect of the collection of the turnover tax, the purchase tax and other similar taxes, signed at Brussels on 25 May 1964;<sup>4</sup>
17. The Treaty concerning the establishment and the statute of a Benelux Court of Justice, signed at Brussels on 31 March 1965<sup>5</sup> and the Additional Protocol to the said Treaty, signed at Brussels on 25 October 1966;<sup>6</sup>
18. The Benelux Convention concerning designs or models and its annex, Benelux uniform law on designs or models, signed at Brussels on 25 October 1966;
19. This Protocol;

B. For the application of chapter IV of the said Treaty, the provisions contained in:

1. The Conventions listed under A;
2. 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, signed at Brussels on 27 June 1962.

*Article 2.* The word "interpretation" in article 3, paragraph 2, of the Protocol of Application annexed to the Treaty instituting the Benelux Economic Union, signed on 3 February 1958, shall be deleted.

*Article 3.* The word "interpretation" in article 16 of the Convention between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands on the transfer of control of persons to the external frontiers of Benelux territory, signed on 11 April 1960, shall be replaced by the word "application".

*Article 4.* 1. This Protocol shall be applicable to the provisions of the Conventions listed in article 1 which are in force, and to those among them which have not yet entered into force on the date of the entry into force of this Protocol, as from the date of their entry into force.

<sup>1</sup> United Nations, *Treaty Series*, vol. 704, p. 301.

<sup>2</sup> *Ibid.*, vol. 616, p. 79.

<sup>3</sup> *Ibid.*, vol. 565, p. 312.

<sup>4</sup> *Ibid.*, vol. 620, p. 149.

<sup>5</sup> See p. 42 of this volume.

<sup>6</sup> See p. 49 of this volume.

2. It shall also be applicable to the provisions of those Additional Protocols referred to in article 1, A, 8, which, although not yet in force, are being applied provisionally in each of the three States.

*Article 5.* 1. With regard to the Kingdom of the Netherlands, this Protocol shall apply only to the territory situated in Europe.

2. The Government of the Kingdom of the Netherlands may extend the application of this Protocol to Surinam and the Netherlands Antilles by a statement to that effect, to be addressed to the Secretariat-General of the Benelux Economic Union.

*Article 6.* 1. This Protocol 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 concerning the establishment and the statute of a Benelux Court of Justice, signed at Brussels on 31 March 1965.

IN WITNESS WHEREOF the undersigned, being duly authorized for the purpose, 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:

P. HARMEL

For the Government of the Grand Duchy of Luxembourg:

G. THORN

For the Government of the Kingdom of the Netherlands:

J. LUNS

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## [TRANSLATION — TRADUCTION]

ADDITIONAL PROTOCOL<sup>1</sup> TO THE TREATY CONCERNING THE  
ESTABLISHMENT AND THE STATUTE OF A BENELUX  
COURT OF JUSTICE<sup>2</sup> RELATING TO JURISDICTIONAL PRO-  
TECTION OF PERSONS IN THE SERVICE 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,

Having regard to the Treaty concerning the establishment and the statute of a Benelux Court of Justice; signed at Brussels on 31 March 1965,

Having regard to the Recommendation of the Benelux Consultative Inter-parliamentary Council of 15 January 1965 and the opinion given by that Council on 29 November 1968,

Desiring to accord jurisdictional protection to persons in the service of the Benelux Economic Union through the establishment of an administrative jurisdiction,

Have decided, to that end, to conclude an additional protocol to the Treaty establishing a Benelux Court of Justice and have agreed on the following provisions:

## CHAPTER I. COMPETENCE

*Article 1.* Persons in the service of the Benelux Economic Union shall have the right of jurisdictional appeal in the cases provided for in this Protocol, in the manner herein provided for.

*Article 2.* 1. The Benelux Court of Justice shall be competent to deal with the appeals referred to in article 1.

2. Such competence shall be exercised by a Chamber, composed of three judges, one from each country, designated by the Court from among its members for a period of three years. The Court shall designate from among them the President and his deputy. The Court may designate one or several deputies for each of the judges.

*Article 3.* The said Chamber shall deal with appeals:

(a) Of the Secretary-General and Assistant Secretaries-General and of former Secretaries-General and Assistant Secretaries-General against decisions, gen-

<sup>1</sup> Came into force on 1 January 1974, i.e. the first day of the month that followed the date of deposit of the third instrument of ratification with the Secretariat-General of the Benelux Economic Union, in accordance with article 41(2). The instruments were deposited as follows:

Belgium .....	25 January 1971
Netherlands .....	20 December 1971
Luxembourg .....	14 December 1973

<sup>2</sup> See p. 42 of this volume.

eral or individual, of the Committee of Ministers relating to their salaries, pensions and other social allowances to their being put on half pay by reason of illness or infirmity, to their being retired by reason of physical incapacity or to the entitlements of their widows or orphans to pensions and other social allowances;

- (b) Of persons other than those referred under (a) who are or have been in the service of the Union against decisions, general or individual, of an organ of the Union relating to their salaries, pensions and other social allowances, to the pensions and other social allowances of their widows or orphans, to disciplinary penalties more serious than a written reprimand, to suspension measures, to being put on half pay, to the definitive cessation of duties and, in general, to any decision affecting their legal situation;
- (c) Of the widows and orphans of the persons referred under (a) and (b) against decisions, general or individual, of an organ of the Union relating to their pensions and other social allowances.

*Article 4.* The Committee of Ministers may decide that persons exercising or having exercised supervisory functions within the institutions of the Union shall be considered, for the application of the provisions of article 3, to be among the persons referred to under (a) of that article.

*Article 5.* In the case of the death of the persons referred to in articles 3 and 4, their right of appeal may be exercised by their heirs and successors; the latter may also continue a case already initiated.

*Article 6.* The appeal shall not have any effect of suspension, unless the President of the Chamber so orders.

## CHAPTER II. INTERNAL APPEAL

*Article 7.* Appeals before the Chamber of the Court, introduced by one of the persons referred to in article 3 (b) and (c) and article 5, shall be receivable only if the contested decision was taken after a prior internal appeal to the authority which took or is considered to have taken the decision. Internal appeals must be brought within one month after the date on which the party concerned learned of the decision which he is contesting.

*Article 8.* 1. A ruling on an internal appeal shall be made only after a prior opinion has been given by an Advisory Committee composed, in equal numbers, of national officials of each of the three countries designated by the Committee of Ministers and of members elected by secret ballot and for a period of three years, by and from among the persons referred to in article 3 (b), in accordance with the rules to be laid down by the Committee of Ministers. The Advisory Committee shall be presided over by a judge from the judiciary of one of the three countries, appointed by the Committee of Ministers and entitled to vote in the Advisory Committee.

2. The President and each member shall have a deputy, designated according to the procedures provided for in paragraph 1.

*Article 9.* 1. The opinion of the Advisory Committee shall be communicated forthwith to the authority whose decision is contested and to the person who brought the internal appeal.



2. The authority shall rule on the internal appeal and shall state the reasons for its ruling.

*Article 10.* The Advisory Committee shall lay down its internal regulations and its rules of procedure and submit them to the Committee of Ministers for approval.

### CHAPTER III. FAILURE TO TAKE A DECISION

*Article 11.* When three months have elapsed since a person referred to in article 3 or 5 has requested in writing that an authority should take a decision or since the opinion referred to in chapter II has been communicated, the authority shall be considered, if it has not taken a decision, as having taken a decision to dismiss the appeal.

*Article 12.* The authority may, in a decision which states the reasons on which it is based and which is communicated to the party concerned, extend the time-limit referred to above by not more than two months.

### CHAPTER IV. GROUNDS FOR APPEAL

*Article 13.* Unless they are brought against a decision imposing a disciplinary penalty or suspension pending judgement with or without withholding of salary, appeals may be based only on the violation of written law or of due form, on the overstepping or abuse of authority or on the violation of any general legal principle.

### CHAPTER V. REPRESENTATION OF AND ASSISTANCE TO PARTIES

*Article 14.* The Secretary-General shall represent the Union in the proceedings, unless he has a personal interest in their outcome. In that case, the Committee of Ministers shall designate the person who will represent the Union.

*Article 15.* The representative of the Union may appear in person or delegate to represent him an Assistant Secretary-General, a member of the bar of one of the three countries or any other person approved by the Chamber for a specific case; he may also arrange to be represented in the hearing by an Assistant Secretary-General, by such a member of the bar or by such other person approved by the Chamber.

*Article 16.* The appellant may appear in person or delegate to represent him a member of the bar of one of the three countries or any other person approved by the Chamber for a specific case; he may also arrange to be assisted in the hearing by such a member of the bar or by such other person approved by the Chamber.

### CHAPTER VI. PROCEDURE

*Article 17.* The appeal shall be brought by means of a petition deposited at the registry of the Court within two months after the date on which the appellant learned of the contested decision or the date on which a decision to dismiss the case is considered to have been taken in accordance with the provisions of chapter III.

*Article 18.* 1. Within a time-limit to be fixed by the President of the Chamber, the representative of the Union shall deposit at the registry of the Court a memorandum in reply to the petition initiating the appeal.

2. The said memorandum shall be accompanied by all the documents in the Union's possession which may be useful in the investigation of the case. The documents to be attached to the memorandum shall include, in particular, the documents and the opinion of the Advisory Committee and the decision taken on the internal appeal.

*Article 19.* The appellant and his counsel may examine the documents deposited by the Union at the registry of the Court.

*Article 20.* The President of the Chamber may order the parties to deposit additional papers and documents at the registry of the Court.

*Article 21.* The parties shall be summoned to the hearing. Hearings shall be public, unless, for reasons relating to public policy or morality (*ordre public ou les bonnes mœurs*), the Chamber decides otherwise.

*Article 22.* The Chamber shall hear the witnesses and experts which it has summoned, either of its own motion or at the request of the parties.

*Article 23.* The President of the Chamber shall administer an oath to the witnesses and experts before they are heard. The oath shall be sworn, or, if so desired, replaced by a promise in accordance with the procedures provided for by the national legislation of the witness or the expert.

*Article 24.* The President of the Chamber shall fix equitable compensation for the witnesses and experts. The compensation shall be advanced by the Union.

*Article 25.* When they can prove that they have an interest in the case, the persons referred to in articles 3 and 5 shall be permitted to intervene in the proceedings.

*Article 26.* The Court shall lay down the rules of procedure of the Chamber and shall submit them to the Committee of Ministers for approval.

#### CHAPTER VII. USE OF LANGUAGES

*Article 27.* 1. The appellant and the experts shall use the language which they would have used before the administrative jurisdiction of their country. The case shall be dealt with in that language.

2. Witnesses shall use the language of their choice.

3. Documents and oral statements shall be translated free of charge by the registry.

#### CHAPTER VIII. JUDGEMENTS OF THE COURT

*Article 28.* Where the appeal relates to a decision concerning salaries, pensions or other social allowances, the Chamber may, if it considers the appeal justified, annul the contested decision and, if necessary, itself determine the legal relations between the parties. It may also sentence a party to the payment of a sum resulting from such legal relations and, if equity so requires, award compensation for the damage suffered.

*Article 29.* Where the appeal relates to a decision imposing a disciplinary penalty or a suspension, the Chamber may, if it considers the appeal justified, set aside the contested decision and, if necessary, replace it with such penalty or suspension as it considers equitable. It may also award to the appellant at the expense of the Union, if equity so requires, compensation for the damage suffered.

*Article 30.* Where the appeal relates to a decision other than those referred to in articles 28 and 29, the Chamber may, if it considers the appeal justified, annul the contested decision.

*Article 31.* In cases where the Chamber annuls or sets aside a decision, it may determine whether and to what extent the effects of that decision remain valid in respect of the past.

*Article 32.* In its final judgement, the Chamber shall determine the costs and rule on the question of contribution to their payment. It may include in the said costs all or part of the costs of the representation of or assistance to the appellant.

*Article 33.* The registrar of the Court shall inform the parties, as quickly as possible, of any judgement given.

#### CHAPTER IX. ENFORCEMENT

*Article 34.* Judgements of the Chamber which entail a pecuniary obligation shall be enforceable.

*Article 35.* Enforcement shall be governed by the rules of civil procedure in force in the State in whose territory it takes place. The enforcement order shall be issued, without any verification other than making sure that the judgement is authentic, by the national authority which the Government of each of the Benelux countries shall designate for that purpose and of which it shall inform the Court and the Secretary-General.

*Article 36.* After the formalities referred to have been carried out at the request of the party concerned, the latter may pursue the enforcement procedure by applying directly to the competent body, in accordance with national legislation.

*Article 37.* Enforcement may be suspended only in pursuance of a judgement of the Chamber. However, supervision of the regularity of the enforcement measures shall be the responsibility of the national jurisdictions.

#### CHAPTER X. FINAL PROVISIONS

*Article 38.* The provisions of articles 2 to 5 and 12 to 14 of the Treaty concerning the establishment and the statute of a Benelux Court of Justice shall be applicable to the procedure referred to in this Protocol, unless the latter provides otherwise.

*Article 39.* 1. The Benelux Court of Justice shall consider questions relating to the interpretation of the provisions of this Protocol for the application of chapters III and V of the Treaty concerning the establishment and the statute of a Benelux Court of Justice.

2. Such competence shall be exercised by the Chamber provided for in article 2 of this Protocol.

*Article 40.* This Protocol shall form an integral part of the Treaty concerning the establishment and the statute of a Benelux Court of Justice, signed at Brussels on 31 March 1965.

*Article 41.* 1. This Protocol 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.

IN WITNESS WHEREOF the undersigned, being duly authorized for the purpose, 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:

P. HARMEL

For the Government of the Grand Duchy of Luxembourg:

G. THORN

For the Government of the Kingdom of the Netherlands:

J. LUNS

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