

BELGIUM-LUXEMBOURG ECONOMIC UNION

1. Historical background and establishment.

The Belgium-Luxembourg Economic Union (BLEU) was established by the Convention establishing an economic union between Belgium and Luxembourg, signed in Brussels on July 25, 1921 (9 LNTS 223). Taking into account the economic situation following the First World War and Luxembourg being a very small country, it had a vital interest in integrating itself into a larger economic unit. To this end Luxembourg strengthened her ties with Germany to which she had been economically attached since her accession to the ---) Zollverein (German Customs Union) in 1842. Not surprisingly therefore the 1921 Convention shows affinities with the Zollverein agreements in many respects. Belgium on the other hand showed mainly a political interest in strengthening her links with her neighbour.

The BLEU Convention entered into force on May 1, 1922 upon ratification on March 6, 1922. It was to remain in force for a period of 50 years and to be extended thereafter automatically for successive periods of ten years unless denounced with one year's advance notice. The original Convention thus terminated in 1972 and was successively prolonged in 1982 and in 1992. It is to be noted that the operation of the Union was interrupted by the German occupation in 1940. The Union was re-established immediately after the end of military operations in Western Europe on May 1, 1945.

The original Convention was amended and supplemented by a number of protocols, mostly of a technical nature, from which two must be singled out for their political importance. By an additional Convention of May 23, 1935, a common regime was introduced for the regulation of imports, exports and transit to fill a gap which was apparent in the original Convention. A general revision of the 1921 Convention was effected by a protocol signed at Brussels on January 29, 1963 which codified the whole matter and to which a "Consolidated Convention" was annexed (547 UNTS 39).

New problems arose when Belgium and Luxembourg took part in the creation of the ---) Benelux Economic Union and, later on, in the setting up of the ---) European Economic Community (EEC). The priority of the Belgium-Luxembourg Economic Union has been recognized in the respective treaties (Arts. 94 of the Benelux Treaty and 233 of the EEC Treaty). Thus, Belgium and Luxembourg have maintained and even developed their special economic relationship within the new European framework.

On September 16, 1999 Belgium and Luxembourg agreed to a profound assessment of the original 1921 Convention, as amended, in order to bring it more in conformity with actual European and global developments. The two countries also confirmed to maintain and strengthen their preferential relations within the BLEU framework. Furthermore, since the introduction of the euro thoroughly changed the existing monetary system, the monetary association installed since 1935 needed to be abolished. Finally the reform of the Belgian state into a federal state structure necessitated that next to the Belgian federal state also the regions should become involved as contracting parties given their jurisdiction *ratione materiae*.

Following negotiations a new convention was signed on December 18, 2002 to which Belgium (the federal State as well as the Regions) and Luxembourg are contracting parties. Ratification acts have been exchanged on December 21, 2004 and the Convention entered into force on February 1, 2005. Three separate protocols of December 18, 2002 provide for the withdrawal of respectively the protocol of May 23, 1935 concerning excises on alcohol, the protocol of January 29, 1963 concerning agriculture and the protocol of March 9, 1981 concerning the monetary association. Within this general framework the Regions and

Communities have concluded separate cooperation agreements with the Grand Duchy concerning subjects under their jurisdiction (e.g. customs union and excise union, concessions, agriculture, culture, education...).

2. Main purposes

It was clear that the 1921 Convention aimed from the beginning at the creation of a unified economic territory between the two countries to be a prelude of a future common market since it provided for a full and complete freedom of trade between them. The 2002 Convention introduces an ambitious economic integration attempt between Belgium and Luxembourg the basis of which is the establishment of an economic union founded on a customs and excise union. Accordingly, the territories of the parties are to be considered as forming one single territory with respect to customs, common excises and taxes with equivalent effect (with the exception of environmental taxes) as well as concerning common measures for the regulation of external economic transactions. The 2002 Convention stresses that none of its provisions can restrict the European Union provisions (art.46).

3. Structure

From the point of view of its structure, the 1921 Convention was based throughout on the economic leadership of Belgium. A Mixed Administrative Council composed of two Belgian nationals and one Luxembourg national was set up with the task of administering the customs union. Moreover, the Convention provided for the creation of an advisory body to be called the Superior Council of the Union. The latter organ, however, never played a significant role. The 1935 Protocol set up a Mixed Administrative Commission with the task of advising the two Governments on matters of external trade and of managing the common system of import and export controls. This commission became rapidly the focus of the Union's administration. The institutional framework was revised and completed by the 1963 Protocol which provides for a threefold structure. The same structure is maintained in the 2002 Convention. Henceforth, the Union comprises three organs: a Committee of Ministers, an Administrative Commission and a Board of Customs.

The Committee of Ministers, composed of members of both Governments, is empowered to take by mutual agreement such decisions as are necessary for the sound functioning of the Union. The Administrative Commission composed of delegates (civil servants) of both Governments is entrusted with the task of ensuring on a permanent basis the application of the Convention and a regular liaison between the two Governments. It prepares proposals to be submitted to the Committee of Ministers for decision making. The Commission takes decisions by mutual agreement between the two delegations. In the event of disagreement, the matter is referred to the Committee of Ministers (art.41-42).

The Board of Customs is composed of three members: the Belgian Director-General of Customs and Excises, who is the Chairman of the Board, the Luxembourg Director of Customs and Excises and one high ranking customs official appointed by the Belgian Government. The Board is assisted by two excise experts appointed by the Board from the Belgian Customs and Excises Department. Decisions of the Board of Customs can, however, only be taken by mutual agreement, any divergence being referred to the Committee of Ministers (art 15). The task of the Board of Customs is to provide for administrative uniformity within the Union with respect to customs, common excises and taxes with equivalent effect (with the exception of environmental taxes) and to manage the common receipts of the Union. Common expenses for administration and taxation (e.g. salaries of the

respective staff involved, expenses for accommodation, expenses for vehicles...) will be divided between the two Union members in relation to their respective parts in the common receipts due to each partner.

Both in the 1921 Convention and in the consolidated text of 1963 provisions have been made for ---) arbitration for the settlement of disputes. However, resort has never been had to this means of solving disputes and the 2002 Convention expressly refers to settling disputes in a diplomatic manner (art. 45). Before going into the details of the substantive provisions, it is worth mentioning that the Convention does not contain any escape or safe guard clause. Thus, neither party may take measures of its own within the Union or try to isolate its national territory economically from the territory of the other party.

4. Fields of activities

4.1 Customs, excises and taxes

The basis of the Convention is a customs union and an excise union. Legal provisions and regulations regarding customs, excises and taxes with equivalent effect (with the exception of environmental taxes) are common within the Union. Customs duties between the two countries were abolished from the outset; there was a single customs tariff for the Union until this tariff was merged with the Benelux tariff which, in turn, was merged with the common tariff of the EEC. The parties each maintain a separate customs administration but both administrations act under the same legislation and apply the same principles, coordination being assured by the Board of Customs. Under the original Convention the proceeds of customs and excise duties had to be pooled and divided between the parties in proportion to the population of their territories (approximately 1:30).

Pursuant to the decision of April 21, 1970 on the European Communities' own resources, the proceeds of customs duties have to be turned over directly to the Communities. As a consequence, only the proceeds of excise duties and taxes with equivalent effect (with the exception of environmental taxes) are henceforth pooled and divided between the parties. By a protocol of October 27, 1971 (871 UNTS 246), for the purpose of the division of these duties the ratio of the population was replaced by the ratio of the consumption in both countries, which gave a more favourable yield to Luxembourg.

The 2002 Convention determines as common receipts primarily the proceeds of import duties imposed on behalf of the European Union and allocated to the member states in conformity with the EU's decision to reimburse taxation costs as well as the proceeds of common excise and taxes with equivalent effect (with the exception of environmental taxes). The division of these common receipts will now be arranged following the ratio of the population for the proceeds derived from import duties and on the basis of consumption as far as proceeds from excises and taxes with equivalent effect are concerned (art. 7).

Apart from customs and excise properly speaking, each of the two States maintains its own fiscal system in the fields of both direct and indirect taxation. Taking account of the differences of fiscal policy in both countries, it has never appeared possible to unify indirect taxes, and this has entailed the substitution of a "fiscal frontier" for the old customs frontier. In this particular field, the Belgium-Luxembourg Economic Union has been by-passed by the efforts of the European Union towards harmonization, gradually bringing down the Luxembourg "fiscal wall".

4.2. Entry, establishment and services

The Convention guarantees for nationals of both States freedom of movement and of establishment and lays down the principle of equal treatment for the nationals of each of the parties in respect of the exercise of professional occupations in the fields of agriculture, trade and industry, including financial operations, transport and employment of labour. The same principles apply to companies established under the legislation of one of the parties (arts. 17 to 23). The Convention also guarantees subjects of the two countries equal treatment as far as civil rights are concerned as well as legal and judicial protection.

4.3. Economic policy and legislation

The Convention provides for harmonization of the two parties' policies in the economic, financial and social fields including prices and the elimination of any disparities which might disturb competitive conditions in the markets of the two countries. The parties have undertaken to render each other assistance with a view to ensuring the effectiveness of the economic policy measures taken in the two countries and more specifically with respect to competition policy, consumer financing and protection and security of consumers and trade regulations. As regards the supply of fuel, power and commodities, the two countries are to be placed on a footing of absolute equality; they agree to develop uniform legal provisions with respect to the wine trade including the protection of "appellations contrôlées". Taking into consideration its situation as a land-locked country, Luxembourg has received the assurance of being given free access to maritime transport through the Belgian ports. In view of facilitation of traffic both countries agree to consult each other on a regular basis. Permissions and concessions issued for the transport of dangerous goods by one country will be mutually recognised (arts. 24 to 29).

4.4. External trade

Treaties and agreements relating to the protection of economic interests and in particular agreements with respect to encouragement and reciprocal protection of investments, agreements concerning commodities as well as maritime agreements are common to the Union. They are concluded by Belgium in the name of the Union, after consultation with the Government of Luxembourg. The Luxembourg Government may sign such treaties and agreements jointly with Belgium, if it so wishes. The two Governments are obliged to take all necessary measures to ensure that those treaties and agreements which are common to the Union are uniformly applied in the two States. For the moment Belgium concluded some fifty investment agreements with third countries on behalf of the Union, in particular with countries not being a member of the ---) OECD. A standard agreement draft has been developed by the Belgian federal government, the governments of the Regions and the Luxembourg government in 1994, as amended in 2002.

Commercial policy as well as legislative and administrative measures relating to the regulation of external trade, in particular by the establishment of economic restrictions such as quotas and licences, are common to the two countries. The Administrative Commission is entrusted with the administration of the quotas and licences established for the Union. It has the power to issue import, export and transit licences and to collect the corresponding duties, charges and levies. Here again it must be remarked that since the matter of commercial policy has been taken over by the EEC, the Belgium-Luxembourg Union acts as a sub-system inside the Common Market (arts. 30 to 35).

4.5. Monetary provisions

Under the 1921 Convention, Luxembourg agreed to withdraw the bank notes then in circulation (at that time, Luxembourg francs and German marks, then both of little value) and to replace them by Belgian notes put at her disposal on a long-term loan basis by the National Bank of Belgium. In fact, this meant the complete integration of Luxembourg into the Belgian monetary system. Apart from a short period in the late 1930s, the Luxembourg franc was always maintained at par with the Belgian franc.

Much litigation has come out of this arrangement, which, over the years, has been amended several times. A protocol defining a regime of "monetary association" was annexed to the 1963 protocol and replaced in turn by a Protocol of March 9, 1981 which was withdrawn by the Protocol of December 18, 2002. Indeed, the original monetary association between Belgium and Luxembourg reached its objectives with the introduction of the euro as a single currency.

4.6. Agriculture

The 2002 Convention introduces a new chapter 6 on agriculture. Jurisdiction is given to the Committee of Ministers to take the necessary measures in order to develop a joint system aimed at protecting vital agricultural interests of both countries within the framework of the -- -) Benelux and the ---) European Community the latter of which is of course leading the way towards a general agricultural policy. Belgium (including the Regions) and Luxembourg will consult with each other on matters of agricultural policy and coordinate their respective views within the EEC or other international organisations. They will assist each other on different levels of decision making and eventually reciprocally represent each other in international institutions (arts. 36-40).

5. Evaluation

It cannot be denied that within the wider European institutional developments of the 20th century and beyond the Belgium-Luxembourg Economic Union is but a limited experiment. It can nevertheless be considered as a remarkable example of far reaching economic integration between two countries. Moreover, it has been functioning successfully for a considerable period of time and the two countries have recently expressed the wish to maintain this bilateral relationship intact in spite of the creation of the Benelux Economic Union and the EEC. Long lasting preferential political and historical relations between the two member states, going back for centuries, no doubt substantially attributed to the success of this economic integration. But also the spirit of fair cooperation which has prevailed throughout the years cannot be ignored.

The BLEU is no doubt the better example of a full economic union encompassing the field of customs and external trade, economic policy and legislation, establishment and services as well as agriculture. The introduction of the single currency in a number of member states of the European Union, including Belgium and Luxembourg, strongly maintained and further strengthened the realisation of an economic union between the two countries. The development of the BLEU allowed for a strong interpenetration of Belgian and Luxemburg economies on the official as well as on the private level; industry, commerce and banking are largely integrated. From a legal point of view, the original framework provided in the 1921 Convention was considerably revised and amended in the now prevailing 2002 Convention. With its concise expression of the essential principles and its relative simplicity and flexibility in structure and decision making, it surpasses other treaties bearing on the same subject. The two member states showed by adapting a long lasting framework to modern requirements in actual times that there is still a bright future ahead for the BLEU.

For the text of the 2002 Convention see: Protocole portant modification de la Convention coordonnée instituant l'Union économique belgo-luxembourgeoise, Bruxelles 18 décembre 2002, *Moniteur belge* 6 janvier 2005.

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