

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2005 Nr. 336

A. TITEL

*Overeenkomst opgesteld op basis van artikel K.3, lid 2, onder c), van het Verdrag betreffende de Europese Unie ter bestrijding van corruptie waarbij ambtenaren van de Europese Gemeenschappen of van de lidstaten van de Europese Unie betrokken zijn;
Brussel, 26 mei 1997*

B. TEKST

De Nederlandse, de Engelse en de Franse tekst van de Overeenkomst zijn geplaatst in *Trb.* 1997, 249.

D. PARLEMENT

De artikelen 1, 5 en 7 van de Rijkswet van 22 juni 2001 (*Stb.* 2001, 315) luiden als volgt:

„Artikel 1

De op 26 mei 1997 te Brussel tot stand gekomen Overeenkomst, opgesteld op basis van artikel K.3, lid 2, onder c), van het Verdrag betreffende de Europese Unie, ter bestrijding van corruptie waarbij ambtenaren van de Europese Gemeenschappen of van de lidstaten van de Europese Unie betrokken zijn, waarvan de Nederlandse tekst is geplaatst in *Tractatenblad* 1997, 249, wordt goedgekeurd voor Nederland.

Artikel 5

Goedgekeurd wordt dat bij de binding van het Koninkrijk aan het in artikel 1 genoemde verdrag voor Nederland het volgende voorbehoud wordt gemaakt;

Met betrekking tot het eerste lid van artikel 7 kan door Nederland rechtsmacht worden uitgeoefend in de volgende gevallen:

onderdeel a:

ter zake van het strafbare feit dat geheel of gedeeltelijk op Nederlands grondgebied wordt gepleegd;

onderdeel b:

– ter zake van het overeenkomstig artikel 2 strafbaar gestelde feit, ten aanzien van Nederlandse ambtenaren en voorts ten aanzien van Nederlanders die geen Nederlands ambtenaar zijn voor zover daarop door de wet van het land waar het feit begaan is, straf is gesteld,

– ter zake van de overeenkomstig de artikelen 3 en 4 strafbaar gestelde feiten, ten aanzien van zowel Nederlanders als Nederlandse ambtenaren voor zover daarop door de wet van het land waar het feit begaan is, straf is gesteld;

onderdeel c:

ten aanzien van Nederlanders voor zover op het strafbare feit door de wet van het land waar het begaan is, straf is gesteld;

onderdeel d:

ten aanzien van personen in de openbare dienst van een in Nederland gevestigde instelling van de Europese Gemeenschappen of van een in Nederland gevestigde overeenkomstig de Verdragen tot oprichting van de Europese Gemeenschappen ingesteld orgaan voor zover op het strafbare feit door de wet van het land waar het begaan is, straf is gesteld.

Artikel 7

Indien een vraag die betrekking heeft op de uitlegging van de artikelen 1 tot en met 4 en 12 tot en met 16 van het in artikel 1 genoemde verdrag aan de orde komt in een zaak aanhangig voor een tot de rechterlijke macht behorend gerecht dan wel een administratieve rechter waarvan de beslissingen niet vatbaar zijn voor hoger beroep en deze instantie een beslissing op dit punt noodzakelijk acht voor haar uitspraak, is deze instantie gehouden zich tot het Hof van Justitie van de Europese Gemeenschappen te wenden, voor zover bij die zaak leden of ambtenaren van de communautaire instellingen of uit hoofde van de Verdragen tot oprichting van de Europese Gemeenschappen opgerichte organen betrokken zijn in de uitoefening van hun functies.”

Deze Rijkswet is gecontrasigneerd door de Minister van Justitie A. H. KORTHALS en de Minister van Buitenlandse Zaken J. J. VAN AARTSEN. Voor de behandeling in de Staten-Generaal zie Kamerstukken II 2000/2001, nr. 27 509 (R 1671); Hand. II 2000/2001, blz. 4929; Kamerstukken I 2000/2001, nr. 27 509 (R 1671) (285, 285a); Hand. I 2000/2001, zie vergadering d.d. 19 juni 2001.

E. PARTIJGEGEVENS

Kennisgeving van de voltooiing van de vereiste procedures is voorzien in artikel 13, tweede lid, en toetreding is voorzien in artikel 14, eerste lid, van de Overeenkomst.

Partij	Onder-tekening	Ratifi-catie	Type ¹⁾	In werking	Opzeg-ging	Buiten werking
België	26-05-97	12-03-02	R	28-09-05		
Cyprus		25-10-04	T	28-09-05		
Denemarken	26-05-97	02-10-00	R	28-09-05		
Duitsland	26-05-97	08-10-03	R	28-09-05		
Estland		17-01-05	T	28-09-05		
Finland	26-05-97	18-12-98	R	28-09-05		
Frankrijk	26-05-97	04-08-00	R	28-09-05		
Griekenland	26-05-97	11-04-01	R	28-09-05		
Hongarije		13-06-05	T	28-09-05		
Ierland	26-05-97	11-03-03	R	28-09-05		
Italië	26-05-97	06-03-03	R	28-09-05		
Letland		14-06-04	T	28-09-05		
Litouwen		28-05-04	T	28-09-05		
Luxemburg	26-05-97	30-06-05	R	28-09-05		
Nederlanden, het Koninkrijk der (voor Nederland)	26-05-97	28-03-02	R	28-09-05		
Oostenrijk	26-05-97	19-01-00	R	28-09-05		
Polen		25-01-05	T	28-09-05		
Portugal	26-05-97	03-12-01	R	28-09-05		
Slovenië		21-09-04	T	28-09-05		
Slowakije		30-09-04	T	28-09-05		
Spanje	26-05-97	20-01-00	R	28-09-05		
Verenigd Koninkrijk, het	26-05-97	11-10-99	R	28-09-05		

Partij	Onder- tekening	Ratifi- catie	Type ¹⁾	In werking	Opzeg- ging	Buiten werking
Zweden	26-05-97	10-06-99	R	28-09-05		

¹⁾ DO=Definitieve ondertekening, R=Ratificatie, aanvaarding, goedkeuring of kennisgeving, T=Toetreding, VG=Voortgezette gebondenheid

Verklaringen, voorbehouden en bezwaren

Cyprus, 25 oktober 2004

Bearing in mind Paragraph 4 of Article 12 of the Convention, the Republic of Cyprus declares that it recognizes the competence of the European Court of Justice as provided for in Paragraph 3 of Article 12 of the Convention.

Denemarken, 2 oktober 2000

With reference to Article 7(2), the reservation is made that in the circumstances described in the first phrase of Article 7(1)(b), Denmark may make Danish jurisdiction conditional on the offence also being punishable under the legislation of the country in which the offence was committed (double criminality).

With reference to Article 10(2)(a) to (c), Denmark shall not be bound by Article 10(1) in the cases listed in Article 10(2)(a), (b) and (c). As regards the acts listed in Article 10(2)(b), this declaration covers offences under Chapter 12 (Offences against the independence and safety of the State), Chapter 13 (Offences against the Constitution and the supreme authorities of the State) and Chapter 14 (Offences against public authority) of the Danish Criminal Code, and offences which may be similarly categorised. Denmark understands Article 10(2)(b) inter alia to include acts described in §8(1) of the Danish Criminal Code. Furthermore, Denmark interprets Article 10 as only applying to the ability to impose punishment, not the ability to deprive someone of their rights.

With reference to Article 12(4), Denmark accepts that any court in Denmark may request the Court of Justice of the European Communities to give a preliminary ruling on a matter concerning the interpretation of Articles 1 to 4 and 12 to 16 raised in a case pending before it and involving members or officials of Community institutions or bodies set up in accordance with the Treaties establishing the European Communities, acting in the exercise of their functions, if the court considers that decision on that matter is necessary to enable it to give judgment.

With reference to Article 13(4), Denmark declares that the Convention shall apply to it from the first day of the month following the expiry of a period of 90 days after the date of deposit of its declaration, in its relationships with those States which have made the same declaration.

The Faroe Islands and Greenland are not covered by the Convention for the time being.

Duitsland, 8 oktober 2003

Re Article 10: The Federal Government declares in accordance with Article 10(2)(a) that the Federal Republic of Germany is not bound by Article 10(1) if the act which was the subject of the judgment rendered abroad took place entirely or partly on its territory, unless the act took place partly on the territory of the Member State where the judgment was rendered.

Re Article 12: The Federal Government declares in accordance with Article 12(4) that the Federal Republic of Germany recognises the decisions of the Court of Justice of the European Communities. A national court against whose decisions there is no judicial remedy under national law shall refer matters to the Court of Justice of the European Communities for a preliminary ruling pursuant to Article 12(3), if it considers that a decision on those matters is necessary to enable it to give judgment.

Re Article 13: The Federal Government declares in accordance with Article 13(4) that as far as the Federal Republic of Germany is concerned, this Convention shall apply to its relations with Member States that have made the same declaration from the first day of the month following the expiry of a period of 90 days after the date of deposit of its declaration.

Estland, 17 januari 2005

The Republic of Estonia declares that pursuant to Article 12, paragraph 4 of the Convention a court of Estonia may ask the European Court of Justice to give a preliminary ruling on a matter concerning the interpretation of the Convention raised in a case pending before it, if it considers that a decision on that matter is necessary to enable it to give judgement.

Finland, 18 december 1998

1. Finland applies the rules laid down in Article 7(1)(b) of the Convention in respect of its own nationals in accordance with Chapter I(11) of the Finnish criminal code only if the offence is also punishable under the law of the place where the offence was committed and would also be considered a punishable offence before a court of the foreign state. No stricter penalties may be imposed in Finland than those prescribed under the law of the place of the offence.
2. Finland does not apply the rules as laid down in Article 7(1)(c) and (d) of the Convention.
3. Article 10(1) of the Convention does not bind Finland in the cases mentioned in Article 10(2)(a) to (c).
4. Finland accepts that, in accordance with Article 12(3) of the Convention, any Finnish court may ask the European Court of Justice to give a preliminary ruling in the cases referred to in the Article.

Frankrijk, 4 augustus 2000

1. Declaration pursuant to Article 12(4):

In accordance with the declaration made by France on 4 March 2000 pursuant to Article 35 of the Treaty on European Union, the French Republic hereby states that it accepts the jurisdiction of the Court Of Justice of the European Communities to give preliminary rulings on any question concerning the interpretation of Article 1 to 4 and 12 to 16 of the convention, under the conditions laid down in Article 12(3) thereof.

2. Declaration pursuant to Article 7(2):

Where the offences covered by Articles 2, 3 and 4 of this convention are committed outside the territory of the French Republic, France states, in accordance with the provisions of Article 6(2), that charges for such offences may be brought against the persons listed in Article 7(1)(b), (c) and (d) only at the request of the public prosecutor. Prosecution must be preceded by a complaint by the victim or by his legal successor(s) or by official denunciation of the offence by the authorities of the country in which it was committed.

Griekenland, 11 april 2001

Greek courts will have jurisdiction to try corruption offences in any of the cases referred to in Article 7(1) of the Convention ratified by the present law.

The provisions of the present law will also apply where the corruption offence was committed by a Greek national abroad, even where the act is not a criminal offence under the law of the State in which it was committed.

Pursuant to Article 10(2) and Article 15(1) of the Convention, Greece will not be bound by Article 10(1) of the Convention in the cases referred to in Article 10(2)(b) and (c) of the Convention.

Pursuant to Article 12(4) of the Convention, Greece accepts the competence of the Court of Justice of the European Communities to give preliminary rulings as laid down in that Article, provided a Greek court requests such a ruling.

Hongarije, 13 juni 2005

Reservations:

In accordance with Article 7(2) of the Convention, the Republic of Hungary declares that it will not apply the rule on jurisdiction laid down in Article 7(1)(c).

In accordance with Article 10(2) of the Convention, the Republic of Hungary declares that it shall not be bound by Article 10(1) if the facts which were the subject of the judgment rendered abroad constitute an offence directed against the security or other essential interests of the Republic of Hungary (Article 10(2)(b)).

In accordance with Article 10(2) of the Convention, the Republic of Hungary declares that it shall not be bound by Article 10(1) if the facts

which were the subject of the judgment rendered abroad were committed by an official of the Republic of Hungary contrary to the duties of his office (Article 10(2)(c)).

Declaration:

The Republic of Hungary accepts the jurisdiction of the European Court of Justice, in accordance with Article 35(3)(b) of the Treaty on European Union.

Italië, 6 maart 2003

Italy will apply without restriction the jurisdiction rules set out in points (a) and (d) of Article 7(1) of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, whereas it will apply the rules set out in points (b) and (c) subject to the conditions currently laid down in Articles 7, 9 and 10 of the Italian Penal Code. Italy will not be bound by Article 10(1) in the cases set out in paragraph 2(a), (b) and (c) of that Article.

Pursuant to Article 13(4), Italy will apply the Convention, with the exception of Article 12 thereof, in its relationships with those Member States which have made the same declaration.

Litouwen, 28 mei 2004

... And whereas, having regard to Paragraph 2 of Article 7 of the Convention the Seimas of the Republic of Lithuania declares that the Republic of Lithuania does not apply the jurisdiction rules provided for in Sub-paragraphs c and d of Paragraph 1 of Article 7 of this Convention;

And whereas, having regard to Paragraph 4 of Article 12 of the Convention the Seimas of the Republic of Lithuania declares that the Republic of Lithuania recognizes the competence of the International Court of Justice as provided for in Paragraph 3 of Article 12 of the Convention.

Luxemburg, 30 juni 2005

1. Pursuant to Article 7(2) of the Convention, drawn up on the basis of Article K.3(2) (c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, signed in Brussels on 26 May 1997, the Government of the Grand-Duchy of Luxembourg hereby declares that, with the exception of cases covered by Article 7(1)(a) of the convention, it will apply the jurisdiction rules laid down in Article 7(1)(b), (c), and (d) only if the perpetrator of the offence is of Luxembourg nationality.

2. Pursuant to Article 12(4) of the Convention, drawn up on the basis of Article K.3(2) (c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, signed in Brussels on 25 May 1997, the Government of the Grand-Duchy of Luxembourg

hereby declares that it accepts the jurisdiction of the Court of Justice of the European Communities in accordance with the rules laid down in Article 12(3) of the Convention.

Nederlanden, het Koninkrijk der, 28 maart 2002

De Nederlandse regering verklaart dat met betrekking tot artikel 7, eerste lid, door Nederland rechtsmacht kan worden uitgeoefend in de volgende gevallen:

onderdeel a: ter zake van het strafbare feit dat geheel of gedeeltelijk op Nederlands grondgebied wordt gepleegd;

onderdeel b: ter zake van het overeenkomstig artikel 2 strafbaar gestelde feit, ten aanzien van Nederlandse ambtenaren en voorts ten aanzien van Nederlanders die geen ambtenaar zijn voor zover daarop door de wet van het land waar het feit begaan is, straf is gesteld,

ter zake van de overeenkomstig de artikelen 3 en 4 strafbaar gestelde feiten, ten aanzien van zowel Nederlanders als Nederlandse ambtenaren voor zover daarop door de wet van het land waar het feit begaan is, straf is gesteld;

onderdeel c: ten aanzien van Nederlanders voor zover op het strafbare feit door de wet van het land waar het begaan is, straf is gesteld;

onderdeel d: ten aanzien van personen in de openbare dienst van een in Nederland gevestigde instelling van de Europese Gemeenschappen of van een in Nederland gevestigde overeenkomstig de Verdragen tot oprichting van de Europese Gemeenschappen ingesteld orgaan voor zover op het strafbare feit door de wet van het land waar het begaan is, straf is gesteld.

Oostenrijk, 19 januari 2000

1. Pursuant to Article 7(2):

Pursuant to Article 7(2) of the Convention, the Republic of Austria hereby declares that it shall be bound by Article 7(1)b) of the Convention in respect of offences committed by its nationals only if the acts are also punishable in the country in which they were committed.

2. Pursuant to Article 10(2):

Pursuant to Article 10(2) of the Convention, the Republic of Austria hereby declares that it shall not be bound by Article 10(1) of the Convention in the following cases:

a) if the facts which were the subject of the judgment rendered took place on its own territory either in whole or in part; in the latter case, this exception shall not apply if those facts took place partly on the territory of the Member State where the judgment was rendered;

b) if the facts which were the subject of the judgment rendered abroad constitute one of the following offences:

– Exploitation of a business or industrial secret in favour of foreign interests (Article 124 of the Penal Code)

– High treason and preparations to that end (Articles 242 and 244 of the Penal Code)

- Subversive links (Article 246 of the Penal Code)
- Debasing the State and its image (Article 248 of the Penal Code)
- Attacks on supreme organs of the State (Articles 249 to 251 of the Penal Code)
- Treason (Articles 252 to 258 of the Penal Code)
- Punishable acts committed against the armed forces of the State (Articles 259 and 260 of the Penal Code)
- Punishable acts committed against an Austrian official (Article 74, fourth line of the Penal Code) in the performance of his duties, or by virtue thereof
- Offences against the Foreign Trade Law and
- Offences against the War Materials Law;
- c) if the facts which were the subject of the foreign judgment rendered were committed by an Austrian official (Article 74, fourth line of the Penal Code) contrary to the duties of his office.

3. Pursuant to Article 12(4):

a) The Republic of Austria recognises the jurisdiction of the Court of Justice of the European Communities in accordance with Article 12(3) of the Convention.

b) The Republic of Austria reserves the right to make provision in its national law to the effect that, where a question relating to the interpretation of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union is raised in a case pending before a national court or tribunal against whose decision there is no judicial remedy under national law, that court or tribunal will be required to refer the matter to the Court of Justice.

4. Pursuant to Article 13(4):

The Republic of Austria declares that this Convention, with the exception of Article 12 thereof, shall apply to it in its relationships with those Member States which have made the same declaration.

Portugal, 3 december 2001

In accordance with Article 7(2) of the Convention, the Portuguese Republic declares that:

a) Where the offender is a Portuguese national but not a Portuguese official, it will apply the jurisdiction rule in Article 7(1)b) of the Convention only if:

the offender is found in Portugal;

the acts are also punishable under the legislation of the place where they were perpetrated, save where no punitive authority is exercised there;

in addition, the acts constitute extraditable offences and extradition cannot be granted.

b) It will not apply the jurisdiction rule in Article 7(1)c) of the Convention.

In accordance with and for the purposes of Article 12(4) of the Convention, the Portuguese Republic declares that it accepts the competence of

the Court of Justice to give preliminary rulings concerning the interpretation of the Convention, as provided in Article 12(3) of the Convention. In accordance with and for the purposes of Article 13(4) of the Convention, the Portuguese Republic will apply the Convention in its relations with those Member States which have made a similar declaration.

Spanje, 20 januari 2000

Reservation:

Spain declares, in accordance with Article 15, and in relation to Article 10(2), that it is not bound by paragraph 1 of that Article in the cases provided for in subparagraphs a), b) and c).

Declaration:

Spain declares, in accordance with Article 15, and in relation to Article 12(4) and (5), that it accepts the competence of the Court of Justice, for matters referred for preliminary rulings by Spanish courts against the decisions of which there is no judicial remedy.

Verenigd Koninkrijk, het, 11 oktober 1999

The United Kingdom will not apply the rules laid down in paragraph 1 b), c) and d) of Article 7.

Zweden, 10 juni 1999

... in accordance with Article 7(2) of the Convention, that:

a) Sweden does not intend to exercise jurisdiction in cases where the offence was committed against a Community official referred to in Article 1 or against a member of one of the European Community institutions referred to in Article 4(1) who is at the same time a national of Sweden (Article 7(1)c)), and

b) Sweden does not intend to exercise jurisdiction in cases where the offender is a Community official working for an institution or body which has its headquarters in Sweden (Article 7(1)d));

in accordance with Article 10(2) of the Convention, that:

Sweden will be able to bring proceedings against a person who has been convicted of the same offence in another State which is a member of the European Union, if the offence was:

a) wholly or partly committed on Swedish territory (Article 10(2)a)), or
b) directed against Sweden's security or other equally essential interests of Sweden (Article 10(2)b));

in accordance with Article 12(4) and (5) of the Convention, that:

Swedish courts are able to seek preliminary rulings by the Court of Justice of the European Communities on the interpretation of the Convention. This option will not be limited to courts of final instance;

in accordance with Article 13(4) of the Convention, that:

the Convention is- even before it enters into force- applicable in Sweden's relationships with those Member States which have made the same declaration.

F. VOORLOPIGE TOEPASSING

De Overeenkomst werd ingevolge artikel 13, vierde lid, voorlopig toegepast tussen:

Zweden en Oostenrijk vanaf 1 mei 2000
 tussen bovengenoemde staten en Denemarken vanaf 1 januari 2001
 tussen bovengenoemde staten en Portugal vanaf 1 april 2002
 tussen bovengenoemde staten en Italië vanaf 1 juli 2003
 tussen bovengenoemde staten en Duitsland vanaf 1 februari 2004.

G. INWERKINGTREDING

De bepalingen van de Overeenkomst, die tussen verscheidene lidstaten voorlopig werden toegepast, zijn ingevolge artikel 13, tweede en derde lid, op 28 september 2005 in werking getreden.

Voor de staten die na 28 september 2005 hun akte van toetreding hebben nedergelegd bij de depositaris, treedt de Overeenkomst ingevolge artikel 14, vierde lid, in werking 90 dagen na de datum van nederlegging van de akte.

De Overeenkomst is ingevolge artikel 13, derde lid, voor het Koninkrijk der Nederlanden op 28 september 2005 in werking getreden.

Wat betreft het Koninkrijk der Nederlanden, geldt de Overeenkomst alleen voor Nederland.

J. VERWIJZINGEN

Zie *Trb.* 1997, 249.

Verbanden

Zie het Publicatieblad van de Europese Unie van 10 september 2003, L 226/27 voor het Besluit 2003/642/JBZ van de Raad van 22 juli 2003 betreffende de toepassing van de Overeenkomst op Gibraltar.

Overige verwijzingen

Titel	: Verdrag betreffende de Europese Unie; Maastricht, 7 februari 1992
Laatste <i>Trb.</i>	: <i>Trb.</i> 2004, 122
Titel	: Protocol bij de Overeenkomst aangaande bescherming van de financiële belangen van de Europese Gemeenschappen; Dublin, 27 september 1996
Laatste <i>Trb.</i>	: <i>Trb.</i> 2002, 172

- Titel : Verdrag tot oprichting van de Europese Gemeenschap voor Kolen en Staal;
Parijs, 18 april 1951
Laatste *Trb.* : *Trb.* 2002, 145
- Titel : Verdrag tot oprichting van de Europese Gemeenschap voor Atoomenergie;
Rome, 25 maart 1957
Laatste *Trb.* : *Trb.* 2004, 121
- Titel : Verdrag tot oprichting van de Europese Gemeenschap;
Rome, 25 maart 1957
Laatste *Trb.* : *Trb.* 2004, 120
- Titel : Verdrag tot instelling van één Raad en één Commissie welke de Europese Gemeenschappen gemeen hebben, met Protocol betreffende de voorrechten en immuniteiten van de Europese Gemeenschappen;
Brussel, 8 april 1965
Laatste *Trb.* : *Trb.* 2004, 101
- Titel : Protocol betreffende het Statuut van het Hof van Justitie van de Europese Gemeenschap;
Brussel, 17 april 1957
Laatste *Trb.* : *Trb.* 2004, 77
- Titel : Europees Verdrag betreffende uitlevering;
Parijs, 13 december 1957
Laatste *Trb.* : *Trb.* 2002, 54

Uitgegeven de *dertigste* december 2005.

De Minister van Buitenlandse Zaken,

B. R. BOT