

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2015 Nr. 136

A. TITEL

*Briefwisseling houdende een verdrag tussen het Koninkrijk der Nederlanden en het
Ontwikkelingsprogramma van de Verenigde Naties (UNDP) inzake het African Training and Management
Services (ATMS) Project van het UNDP;
(met bijlagen)
New York, 27 juli 2015*

B. TEKST

Nr. I

MINISTRY OF FOREIGN AFFAIRS

The Hague, 6 July 2015

MINBUZA-2015.289686

Dear Mr. Dieye,

I have the honour to refer to the Treaty between the Kingdom of The Netherlands and the International Finance Corporation ("IFC") concerning the African Training and Management Services (ATMS) Project of the United Nations Development Programme (the "Treaty with IFC") of 13 April 1989. This Treaty with IFC, Attachment A, grants the ATMS project and therefore AMSCO (the "besloten vennootschap met beperkte aansprakelijkheid AMSCO B.V.") several privileges especially concerning taxes and import duties. Afterwards, since 1999, the Treaty with IFC has been, in accordance with its Article 16, paragraph 3, tacitly extended on an annual basis.

IFC informed me that in 2013, the United Nations Development Program ("UNDP") together with IFC and the African Development Bank ("AfDB") renewed the ATMS Project ("ATMS V") for a new period of five years, from January 1, 2013 and ending December 31, 2017.

IFC – on renewal of ATMS V – indicated that it would continue in its role as Executing Agency of the project until 31 December 2015, when IFC shall: (i) cease to be Executing Agency on behalf of UNDP; (ii) exit as Custodian Trustee of the ATMS Foundation; and (iii) exit as shareholder in AMSCO BV. IFC and the Kingdom of the Netherlands have therefore concluded that there is no longer any basis for the Treaty with IFC as of 31 December 2015 and that as a consequence that Treaty ceases to have effect between IFC and the Kingdom of the Netherlands from that same date.

To ensure a smooth transition and successful continuation of the ATMS Project, UNDP has agreed that AMSCO BV will take over the role of Executing Agency, now titled "Implementing Partner", for the remaining period of the Project ending December 31, 2017.

In order to cover the continuing works of AMSCO BV and the ATMS Foundation, the Government of the Kingdom of the Netherlands has the honour to propose a new Treaty, as attached (B), between UNDP and the Kingdom of the Netherlands concerning the African Training and Management Services (ATMS) Project of the United Nations Development Programme. The Treaty proposed is identical to the Treaty with IFC, apart from the elements that reflect UNDP being the Contracting Party instead of IFC.

If the provisions of the Treaty, as attached (B), are acceptable to UNDP, the Government of the Kingdom of the Netherlands has the further honour to propose that the Treaty with UNDP be considered concluded on the date of your affirmative reply and shall enter into force on the date referred to in Article 17 of the Treaty.

I avail myself of this opportunity to transmit to UNDP the assurances of my highest consideration.

Sincerely,

SIEMON TUINSTRA
Director
Legal Affairs Department

Mr. Abdoulaye Mar Dieye
Assistant Administrator and Regional Director Regional Bureau for Africa

United Nations Development Programme
New York

Annex A¹⁾

Annex B

Treaty between the Kingdom of the Netherlands and the United Nations Development Programme (UNDP) concerning the African Training and Management Services (ATMS) Project of the UNDP

The Government of the Kingdom of the Netherlands
and

The United Nations Development Programme,

Considering that the United Nations Development Programme has decided to operate a technical assistance project under project number RAF/86/002/D/01/142, known as the African Training and Management Services Company (ATMS) Project;

Considering that the project is carried out by a special purpose corporation with domicile in the Netherlands established under Netherlands' law, called "African Management Services Company BV (AMSCO)";

Considering that the Treaty between the Kingdom of the Netherlands and the International Finance Corporation (IFC) concerning the African Training and Management Services (ATMS) Project of the United Nations Development Programme, which granted certain privileges for this Project, will cease to have effect on 31 December 2015;

Wishing to enable the continuation of the Project and its execution by AMSCO;

Have agreed as follows:

Article 1

For the purpose of this Treaty:

- a) "AMSCO" means the African Management Services Company BV;
- b) "Government" means the Government of the Kingdom of the Netherlands;
- c) "Staff Member" means a person appointed or employed by AMSCO, other than a person recruited and assigned to hourly rates of pay;
- d) "Official activities of AMSCO" include its administrative activities and activities undertaken pursuant to the United Nations Development Programme Project, as defined in the ATMS Project Document.

Article 2

1. Within the scope of its official activities, AMSCO, its assets, income and other property shall be exempt from all direct taxes.

Direct taxes include income tax, capital tax, corporation tax and direct taxes levied by local authorities.

2. AMSCO shall, on application, be granted exemption from motor vehicle tax in respect of its motor vehicles used for its official activities.

3. AMSCO shall be accorded a refund of value added tax paid on the supply of goods, with the exception of motor vehicles, necessary for its official activities. In this connection it is envisaged that claims for refund will

¹⁾ De tekst van het Verdrag tussen het Koninkrijk der Nederlanden en de Internationale Financieringsmaatschappij (IFC) inzake het African Training and Management Services (ATMS) Project van het Ontwikkelingsprogramma van de Verenigde Naties is niet opgenomen. Deze is gepubliceerd in *Trb.* 1989, 61.

be made only in respect of goods or services supplied on a recurring basis or involving considerable expenditure such as the furnishing of the premises of the Company. AMSCO shall be accorded a refund of the excise duty element included in the price of spirits and hydrocarbons such as fuel oils and motor fuels purchased by the Company and necessary for its official activities.

Article 3

Goods including motor vehicles whose import or export by AMSCO is necessary for the exercise of its official activities shall be exempt from all import duties and taxes and from all prohibitions and restrictions on import or export.

Article 4

Within the scope of its official activities, AMSCO shall be exempt from stock-exchange tax, insurance tax, tax on capital duty and real property transfer tax.

Article 5

1. The provisions of Article 2 and 3 shall not apply to taxes and duties that are no more than charges for public utility services;
2. Goods acquired under Article 2, 4 or imported under Article 3 shall not be sold given away, or otherwise disposed of, except in accordance with conditions agreed with the Government;
3. No exemption shall be granted under Article 2,3 or 4 in respect of goods purchased or imported, or services provided, for the personal benefit of the staff members of AMSCO.

Article 6

The archives of AMSCO shall be inviolable. The president of AMSCO may waive the inviolability.

Article 7

1. The Staff Members:
 - a) shall in accordance with the regulations in force have relief from import duties and taxes (except payments for services) in respect of their furniture and personal effects, including one motor vehicle, at the time of first taking up their post in the Netherlands and shall have the right on the termination of their functions in the Netherlands to export with relief from duties and taxes their furniture and personal effects, subject, in both cases, to the conditions agreed with the Government;
 - b) shall be exempt from Netherlands income tax on the salaries and emoluments paid by AMSCO;
2. In the event that AMSCO operates a system for the payment of pensions and annuities to its former Staff Members and their dependents, the provisions of paragraph (1b) of this Article shall not apply to such pensions and annuities.

Article 8

Privileges are granted to Staff Members in the interest of AMSCO for the purposes of its official activities and not for the personal benefit of the individuals themselves.

Article 9

AMSCO shall co-operate at all times with the appropriate authorities in order to facilitate the proper administration of national legislation, and to prevent any abuse of the privileges and facilities provided for in this Treaty.

Article 10

1. Provided AMSCO establishes its own social security scheme or adheres to a social security scheme, AMSCO and its Staff Members to whom the aforementioned scheme applies shall be exempt from all compulsory contributions to the Netherlands social security organisations. Consequently, they shall not be covered against the risks described in the Netherlands social security regulations.
2. The provisions of paragraph 1 shall apply mutatis mutandis to the spouse, children and other relatives belonging to the household of the persons referred to in paragraph 1, unless they are employed or self-employed in the Netherlands or receive Netherlands social security benefit.

3. Any resident of the Netherlands who receives benefit under AMSCO's social security scheme as referred to in paragraph 1 may be exempted from the Netherlands national insurance schemes by the "Sociale Verzekeringsbank" (Social Insurance Bank) at his or her request, unless he or she is employed or self-employed in the Netherlands.

Article 11

1. The non-Netherlands Staff Members:

- a) shall enjoy exemption from aliens' registration formalities and shall not require a residence permit provided that they hold the personal identity card referred to in paragraph two of this Article; the same shall apply to non-Netherlands members of their families forming part of their households;
- b) shall not require a work permit.

2. The Staff Members and non-Netherlands members of their families forming part of their households shall hold a personal identity card issued by AMSCO stating names date and place of birth, nationality, number of passport (aliens only), and bearing photograph and signature. The identity cards shall be authenticated by the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 12

AMSCO shall provide the Ministry of Foreign Affairs on a regular basis with a list of Staff Members and shall inform the Ministry of the appointment and dismissal of Staff Members individually.

Article 13

This Treaty may be suspended or terminated as follows:

1. a) by the Government in the event:
 - (i) AMSCO's profits are not retained nor applied to the official activities of AMSCO; or
 - (ii) AMSCO carries out any activities other than those contemplated in the ATMS project Document;
- b) by UNDP in the event of a default by AMSCO of any of its obligations under any provision of the Project Document.
2. The Government and UNDP shall consult with each other before suspending or terminating the Treaty.

Article 14

1. Any dispute concerning the interpretation or application of this Agreement that cannot be settled between the Parties in any other way shall be submitted to an arbitral tribunal at the request of either Party.

2. The tribunal shall consist of three arbitrators. One arbitrator shall be appointed by the Government, one by UNDP, and the third arbitrator, who shall be the chairman, shall be appointed by the said arbitrators.

3. If within two months from the date of appointment of the second arbitrator the two arbitrators are unable to agree on the appointment of the third arbitrator, the President of the International Court of Justice shall, at the request of either Party, be invited to appoint the third arbitrator.

4. The arbitrators shall decide on the arbitration procedures to be followed.

5. The arbitral award shall be final and binding on the Parties.

Article 15

As regards the Kingdom of the Netherlands this Treaty shall apply only to the Kingdom in Europe.

Article 16

The Treaty shall automatically terminate on 31 December 2017 or the dissolution of AMSCO, whichever is the earlier.

Article 17

This Treaty shall enter into force on 1 January 2016.

Nr. II

UNITED NATIONS DEVELOPMENT PROGRAMME
REGIONAL BUREAU FOR AFRICA

New York, 27 July 2015

Dear Mr. Tuinstra,

I would like to thank you for your letter, no. MINBUZA2015.289686, dated 6 July 2015, proposing a Treaty between the Kingdom of The Netherlands and the United Nations Development Programme (UNDP) concerning the African Training and Management Services (ATMS) Project of UNDP, as attached to your letter.

UNDP herewith agrees to the provisions of the Treaty proposed and confirms that this Treaty shall be concluded on the date of this letter in reply and shall enter into force on the date referred to in Article 17 of the Treaty.

I avail myself of this opportunity to transmit to you the assurances of my highest consideration.

Sincerely,

ABDOULAYE MAR DIEYE
Assistant Administrator and Regional Director

Mr. Siemon Tuinstra
Director

Legal Affairs Department
Ministry of Foreign Affairs of the Kingdom of the Netherlands
The Netherlands

D. PARLEMENT

Het in de brieven vervatte verdrag, met bijlagen, heeft ingevolge artikel 7, onderdeel a, van de Rijkswet goedkeuring en bekendmaking verdragen juncto artikel 3 van de Wet van 24 december 1947 (*Stb.* H 452) houdende goedkeuring van het Verdrag nopens de voorrechten en immuniteiten van de Verenigde Naties niet de goedkeuring van de Staten-Generaal.

G. INWERKINGTREDING

De bepalingen van het in de brieven vervatte verdrag, met bijlagen, zullen ingevolge artikel 17 van het verdrag op 1 januari 2016 in werking treden. Ingevolge artikel 16 zal het in de brieven vervatte verdrag, met bijlagen, uiterlijk op 31 december 2017 buiten werking treden.

Wat betreft het Koninkrijk der Nederlanden, zal het in de brieven vervatte verdrag, met bijlagen, alleen voor Nederland (het Europese deel) gelden.

Koninkrijk der Nederlanden

Land	Voorlopige toepassing	In werking	Terugwerkende kracht	Buiten werking
Nederland (in Europa)		01-01-2016		31-12-2017
Nederland (Bonaire)				
Nederland (Sint Eustatius)				
Nederland (Saba)				
Aruba				
Curaçao				
Sint Maarten				

J. VERWIJZINGEN

Verbanden

Het in de brieven vervatte verdrag vervangt:

Titel : Verdrag tussen het Koninkrijk der Nederlanden en de Internationale Financieringsmaatschappij (IFC) inzake het African Training and Management Services (ATMS) Project van het Ontwikkelingsprogramma van de Verenigde Naties;
Amsterdam, 13 april 1989
Tekst : *Trb.* 1989, 61 (Engels)
Laatste *Trb.* : *Trb.* 2015, 137

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat het in de brieven vervatte verdrag, met bijlagen, zal zijn bekendgemaakt in Nederland (het Europese deel) op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *negentiende* augustus 2015.

De Minister van Buitenlandse Zaken,

A.G. KOENDERS