



Treaty Series No. 3 (1945)

Agreement

between His Majesty's Government in the United Kingdom
and the Belgian Government relating to

Property in the United Kingdom belonging to Persons resident in Belgium

London, 6th October, 1944

*Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty*

LONDON
HIS MAJESTY'S STATIONERY OFFICE

TWOPENCE NET

AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT IN THE
UNITED KINGDOM AND THE BELGIAN GOVERNMENT RELATING
TO PROPERTY IN THE UNITED KINGDOM BELONGING TO
PERSONS RESIDENT IN BELGIUM.

London, 6th October, 1944.

Foreign Office, London, S.W. 1,

6th October, 1944.

Your Excellency,

I HAVE the honour to inform your Excellency that His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland have had under consideration the means of reconciling the application of the Decree Laws of the 2nd February and 31st October, 1940, and of the two Decree Laws of the 19th February, 1942, with the Trading with the Enemy Act, 1939, the Defence (Trading with the Enemy) Regulations, 1940, and Orders made thereunder, and the Defence (Finance) Regulations as regards the custodianship of assets within the United Kingdom which, subject to the above-mentioned Belgian and United Kingdom legislation, belong to persons or bodies of persons resident in Belgium. The proposals which His Majesty's Government in the United Kingdom make for this purpose are set out in the Memorandum of Agreement annexed to this note, which I have the honour to request that your Excellency will be so good as to lay before the Belgian Government.

2. In transmitting these proposals I should make it clear that they are based upon the understanding of His Majesty's Government in the United Kingdom that the Belgian Decree Laws referred to above, like the Trading with the Enemy legislation of the United Kingdom, are intended to preserve the property in question, and that it will eventually be returned to the persons entitled.

3. If the arrangements proposed in the annexed Memorandum of Agreement meet with the approval of the Belgian Government, I have the honour to suggest that this note and the annexed Memorandum of Agreement, together with the reply from your Excellency informing me that the proposals are accepted by the Belgian Government, shall constitute a formal agreement between our two Governments which will come into effect from to-day's date.

I have, &c.

ANTHONY EDEN.

His Excellency

Baron de Cartier de Marchienne,

&c., &c., &c.

MEMORANDUM OF AGREEMENT.

1. *Belgian Property.*

THE property referred to in this Agreement (hereinafter referred to as "Belgian property") is property situated in the United Kingdom of Great Britain and Northern Ireland which, subject to the provisions of any relevant Belgian legislation, falls within the definition of enemy property contained

in the United Kingdom Trading with the Enemy legislation and is beneficially owned by persons or bodies of persons who are and have been "enemies" within the meaning of the Trading with the Enemy Act, solely because they are and have been resident or carrying on business in Belgium on and since the 31st May, 1940. Such persons and bodies of persons are hereinafter referred to as Belgian persons. Except in so far as provided in paragraphs 14 and 15, the provisions of this Agreement shall not apply—

- (i) to any Belgian ship under requisition by the Belgian Government;
- (ii) to any Belgian property which is now held or will be held by the Office Belge de Gestion et de Liquidation under the provisions of the Arrêté Ministériel of the 6th May, 1941, and the Arrêté Ministériel of the 11th May, 1943, or
- (iii) to property held by Belgian bodies of persons which have transferred their seats to unoccupied territory under the provisions of the Arrêtés-Lois of the 2nd February and the 31st October, 1940, and the 14th February, 1942, or
- (iv) to such other property as the Governments may agree to exclude.

2. Information.

(1) The Government of the United Kingdom shall direct the Custodians of Enemy Property for England and Wales, Scotland and Northern Ireland (hereinafter referred to as "the Custodian") to supply the Belgian Government, or their duly authorised officer, with such information as is or may come within their knowledge regarding Belgian property.

(2) The Belgian Government shall supply the Custodian with such additional information regarding Belgian property as is or may come within their knowledge.

(3) The Belgian Government or their duly authorised officer shall be entitled to make enquiries regarding Belgian property, through the Custodian, whenever they deem it advisable to do so; and the Custodian shall supply to the Belgian Government or their duly authorised officer the information which they may require, and he is entitled to obtain.

3. Debts other than Bank Balances.

The Custodian shall pay the amounts received by him in respect of debts other than bank balances which would, but for the operation of the United Kingdom Trading with the Enemy legislation, be payable to Belgian persons, into accounts to be opened with the Bank of England, the Royal Bank of Scotland, and the Northern Bank, Limited, in the name of the Office Belge de Gestion et de Liquidation, appointed if necessary by the Belgian Government as *commissaire-gérant* or *mandataire-gérant* as the case may be, and shall continue to pay into these accounts any further sums collected by him in future at the request of the Belgian Government. The Custodian shall not, however, be required to collect debts as aforesaid which are payable by or on behalf of the Government of the United Kingdom.

4. Bank Balances.

Money standing to the credit of Belgian persons in the books of a banker on the coming into force of the present Agreement shall be held in the name of the Custodian on behalf of the Belgian Government or, at their request, in the name of the Office Belge de Gestion et de Liquidation, acting if necessary as *commissaire-gérant* or *mandataire-gérant*, as the case may be, and shall, in general, be left undisturbed. The Custodian shall, if possible,

transfer such money to a deposit account and the interest shall be credited to the account. Money deposited in or with the Post Office Savings Bank, a Trustee or Municipal Savings Bank, a Discount House, a Building Society, Friendly Society or similar body shall be treated in the same way unless for practical purposes the two Governments agree otherwise.

5. *Other Moneys.*

Subject to paragraph 6 (2) below, the Custodian shall pay into the accounts referred to in paragraph 3 above all moneys realised from the sale of Belgian property which has been or will hereafter be vested in him and all other moneys received by him not included in paragraphs 3 and 4 which, but for the operation of the United Kingdom Trading with the Enemy legislation, would have been payable to Belgian persons.

6. *Investment.*

(1) Moneys in the accounts referred to in paragraphs 3 and 5 may be invested in United Kingdom Treasury Bills, or in such other securities as the two Governments may agree upon from time to time, and the interest paid to the same accounts.

(2) Money realised from securities which have become payable on maturity or by being drawn for payment or otherwise may either be invested by the Custodian or by the Office Belge de Gestion et de Liquidation, acting, if necessary, as *commissaire-gérant* or *mandataire-gérant* as the case may be, in such other securities of a like nature and under the same jurisdiction as the Belgian Government may request and select (provided no form of reinvestment is directed which would alter jurisdiction) or be paid into the said accounts.

7. *Securities, Real Property and Other Property.*

Securities, real property and other property owned, subject as aforesaid, by Belgian persons shall remain in the names of the present holders, unless at the request of the Belgian Government they are, in cases where such action is deemed necessary to preserve the property, and with the agreement of the Custodian, vested in the Custodian on behalf of the Belgian Government, and transferred by him, if so requested by the Belgian Government, to the Office Belge de Gestion et de Liquidation, or to the *commissaire-gérant* or *mandataire-gérant* appointed by the Belgian Government.

8. *Foreign Currency.*

The Government of the United Kingdom will make any necessary amendment in the Trading with the Enemy legislation to enable the Belgian Government to elect whether uncollected moneys in currencies other than sterling, not being enemy currency, which, but for the occupation of Belgium, would be payable to Belgian persons, shall be paid to the Custodian in sterling or in the original currency in a case where the person by whom that money is payable is able to make immediate payment to the Custodian in the original currency (other than in notes or coin).

9. *Liens and Encumbrances.*

Where any property is to be vested in the Custodian on behalf of the Belgian Government, it shall be sufficient to vest in him only such rights to sell or to transfer, or to confer upon him such rights and powers, as will enable him to complete any act or transactions in respect of which the Belgian

Government require property to be vested, and the latter's interest shall be subject to all rights which the holders of liens, pledges and encumbrances could have exercised against the original owner. This provision applies to all property to be transferred to the Office Belge de Gestion et de Liquidation, or to any *commissaire-gérant* or *mandataire-gérant* appointed by the Belgian Government.

10. *Indemnity.*

The Belgian Government shall indemnify the Custodian to his satisfaction in respect of any liability attaching to the property vested in him or in respect of investments made by him at the request of the Belgian Government.

11. *Fees.*

The Custodian shall not collect the fees prescribed by the Trading with the Enemy (Custodian) Order in respect of the amount of moneys paid to him or held in his name or the value of any property vested in him or of which the right of transfer, management or sale is vested in him under the provisions of this Agreement. Nevertheless, the Custodian may require to be reimbursed by the Belgian Government for any expense incurred in administering Belgian property.

12. *Transfer Guarantee.*

(1) In so far as may be necessary to prevent any exchange difficulties which might otherwise impede the transfer of moneys owing to persons in the United Kingdom where payment has been or shall hereafter be made or tendered by Belgian persons in currencies other than sterling, the Belgian Government shall retain in sterling an amount equal to the moneys from time to time owing by Belgian persons to persons in the United Kingdom. The Belgian Government shall not be required to apply any part of the sterling sum so retained for the settlement of private indebtedness in excess of payment made or tendered by Belgian debtors, resident or carrying on business in Belgium.

(2) The debts due to persons in the United Kingdom which are referred to in this paragraph are all moneys due on or before the date when private communications with Belgium are generally restored.

(3) The amount of the sterling to be retained, the period for which it shall be retained, and the rate of exchange shall be fixed by agreement between the Government of the United Kingdom and the Belgian Government.

13. *Post-Liberation Arrangements.*

(1) To provide against the contingency that debts due to Belgian persons from persons in British territory occupied by the enemy may be collected and dissipated by Custodians or similar officials appointed by or at the instigation of the enemy, and the parallel contingency that debts due to persons in the United Kingdom from Belgian persons may be collected and dissipated by Custodians or similar officials appointed by or at the instigation of the enemy, the Government of the United Kingdom and the Belgian Government in negotiating the Treaties of Peace will endeavour to ensure that moneys collected by such Custodians are made available for payment to the persons concerned.

(2) When private communications with Belgium are restored, the Belgian Government shall assist persons in the United Kingdom who own property in Belgium or to whom debts are due from Belgian persons to trace, identify and recover their property or to trace their debtors, and the

Government of the United Kingdom shall ask the Governments of the British Colonial Dependencies to assist in the tracing, identification and recovery of property held in the British Colonial Dependencies and owned by Belgian persons and in the tracing of debtors.

(3) With a view to re-establishing commercial relations between persons in the United Kingdom and Belgian persons, the respective Governments agree to consider action for the removal of any legal obstacles arising from the war which may prevent an equitable settlement of outstanding indebtedness.

14. *Commercial and Industrial Undertakings.*

(1) The Belgian Government will consult with the Government of the United Kingdom before appointing any person to the supervision of an undertaking carrying on business in the United Kingdom or to the administration of any property therein and, for their part, the Government of the United Kingdom will not withhold without good reason any authority which may be necessary under the United Kingdom Trading with the Enemy legislation to enable him to carry out his duties. The Belgian Government will furnish the Government of the United Kingdom, or their duly authorised officers, at their request, with full information regarding any person so appointed, and the business or property supervised or administered by him.

(2) The Belgian Government, in pursuance of the object of reconciling the application of their legislation with that of the Government of the United Kingdom, undertake that their agents and officers and the persons appointed by them to supervise undertakings carrying on business or to administer property in the United Kingdom will be instructed to limit their activities to the normal course of business, and in their relations with persons in the United Kingdom to have regard to the obligations imposed on the latter by the law of the United Kingdom.

(3) The Belgian Government agree that in exercising control over concerns carrying on business in the United Kingdom no major issue will be decided upon without the Belgian Government having first satisfied themselves that there is no objection on the part of the United Kingdom authorities. The provisions of this article do not apply to the Office Belge de Gestion et de Liquidation.

(4) The Belgian Government formally relieve the Government of the United Kingdom and all persons in the United Kingdom from all responsibility for the actions of *gérants* appointed by them under the Decree Laws, in so far as their legal capacity to represent the owner and to act on his behalf is concerned.

15. *Legal Proceedings.*

(1) With a view to reconciling the application of the Belgian and United Kingdom legislation already referred to, the Belgian Government agree to instruct *gérants* appointed by them not to institute legal proceedings against defendants in the United Kingdom in respect of Belgian property without prior agreement with the appropriate authority in the United Kingdom. It is accepted that, in applying this paragraph, a *gérant* appointed by the Belgian Government shall not be placed in a worse position than the management of any other business in the United Kingdom.

(2) The Belgian Government undertake not to raise, without the prior concurrence of the Government of the United Kingdom, a plea of sovereign immunity in legal proceedings in the United Kingdom in respect of Belgian property referred to in this Agreement.

16. *Defence (Finance) Regulations.*

(1) In respect of Belgian property the provisions of the Defence (Finance) Regulations, 1939, as amended from time to time, will continue to apply as heretofore and, save as expressly provided in paragraph 16 (2), the Treasury shall not be required to modify their normal practice regarding such property. It is, of course, understood that no Defence (Finance) Regulations legislation will be enacted specially discriminating against the Belgian property covered by the Agreement.

(2) The Treasury shall, however, exempt the Custodian from any obligation to offer for sale specified foreign currencies paid to him, or to make returns of any securities vested in him, under the terms of this Agreement.

17. *Colonial Empire.*

The Government of the United Kingdom undertake to ask the Governments of the British Colonial Dependencies to make analogous arrangements.

Belgian Embassy, London, S.W. 1,

Your Excellency,

6th October, 1944.

I HAVE the honour to acknowledge the receipt of your Excellency's note of to-day's date, in which you were good enough to communicate to me, for submission to the Belgian Government, certain proposals of His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland regarding the custody of assets in the United Kingdom belonging to persons or bodies of persons resident in Belgium, having regard to the provisions of the relevant Belgian and United Kingdom legislation.

2. In reply, I have pleasure in informing your Excellency that the Belgian Government accept the arrangements proposed in the Memorandum of Agreement annexed hereto* and agree that our present exchange of notes shall constitute a formal agreement between the two Governments with effect from this day.

I have, &c.

E. DE CARTIER.

The Right Hon. Anthony Eden, M.C., M.P.,
&c., &c., &c.

Foreign Office, London, S.W. 1,

Your Excellency,

6th October, 1944.

By the notes which we have exchanged to-day His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Belgian Government have agreed upon certain arrangements designed to reconcile to the best mutual advantage the custodian legislation of our two countries in their application to assets within the United Kingdom belonging to persons or concerns resident in Belgium at present in enemy occupation.

2. In the Memorandum of Agreement containing the proposed arrangements, which is annexed to my note, the Belgian property to which the arrangements are to apply is defined as being "property situated in the United Kingdom of Great Britain and Northern Ireland which, subject to the provisions of any relevant Belgian legislation, falls within the definition

* Not printed; identical with Memorandum of Agreement enclosed in Mr. Eden's note.

of enemy property contained in the United Kingdom Trading with the Enemy legislation and is beneficially owned by persons or bodies of persons who are, and have been, "enemies" within the meaning of the Trading with the Enemy Act solely because they are and have been resident in or carrying on business in Belgium on and since the 31st May, 1940." His Majesty's Government consider it important to avoid any misunderstanding in the interpretation of this definition, and I am therefore addressing to your Excellency this further note to place on record their understanding in the matter.

3. The intention of His Majesty's Government in the United Kingdom in proposing the arrangements which have just been agreed upon is to transfer to the Belgian Government, or to *gérants* appointed by them and acting under their supervision, the custodianship of assets in the United Kingdom which are beneficially owned by persons or concerns in Belgium who, at the time of the occupation of Belgium, were genuine Belgian persons or concerns and were not subject to control, direct or indirect, by German interests. His Majesty's Government in the United Kingdom feel sure that the Belgian Government will understand that it is not possible for them to apply the new arrangements to property which, while nominally belonging to persons or concerns resident in Belgium, is known to be, or is suspected on good grounds to be, in effect property belonging to, or controlled by, German persons or concerns. I should expect, for example, that it will seldom be possible to deal, during the war, with securities held for Belgian banks, since we do not know for whom the securities are held, but this would not, of course, rule out cases where satisfactory evidence is forthcoming. At the same time, as part of a general arrangement, it might be possible to regard the bank balances of such banks as Belgian property, unless there is reason to believe that the bank itself may have been German controlled before the occupation of Belgium.

4. Besides the possibility that property reported as Belgian is in fact German, it may also happen that property apparently Belgian is in fact of Netherlands, French, or other ownership. His Majesty's Government in the United Kingdom are entering or have entered into arrangements corresponding to the present arrangement with the Royal Norwegian and Royal Netherlands Governments, and similar arrangements may be made with other Allied Governments in the future. It will sometimes be a matter of doubt with which of the Allied Governments His Majesty's Government in the United Kingdom ought to treat over a particular piece of property. I am accordingly to propose, for the consideration of your Government, that the officials concerned should be directed to enter into consultations about the disposal of such property, the officials of each Government which is or may be concerned being invited to participate in such consultations.

5. Subject to the above, I am to confirm that, when the Belgian Government have resumed the administration of the whole of Belgium, all Belgian property as defined in the Agreement shall be at the free disposal of the Belgian Government, and His Majesty's Government in the United Kingdom shall take all such steps as may be necessary for this purpose. All the provisions of the Agreement would then come to an end except those contained in clauses 10, 12, 13 and 16.

6. Where a British debtor is also owed money by a Belgian person, the Custodian will only allow a set-off, where, but for the occupation of Belgium, a legal right of set-off would have existed on the date when the debt of the British debtor became due. In cases where a British debtor is able to show that undue hardship would be caused by payment it is understood that the Belgian Government will in appropriate cases agree that

the Custodian shall refrain from collection, either wholly or in part, until such time as the debtor may reasonably be expected to pay.

7. Where money or property of a British subject is transferred to the Belgian Government under this Agreement, I understand that the Belgian Government will be prepared, on the request of His Majesty's Government in the United Kingdom, to return it to the British subject or his representative or successor.

I have, &c.

ANTHONY EDEN.

His Excellency

Baron de Cartier de Marchienne,

&c., &c., &c.

Belgian Embassy, London, S.W.1,

6th October, 1944.

Your Excellency,

I HAVE the honour to acknowledge the receipt of your Excellency's note of to-day's date in which you were good enough to explain, for the information of the Belgian Government, the interpretation placed by His Majesty's Government in the United Kingdom on certain terms used in the Memorandum of Agreement agreed upon to-day between our two Governments, and to propose a procedure for the application of the Agreement to particular classes of property.

2. I have pleasure in informing your Excellency that the Belgian Government accept the interpretation placed upon the Agreement by His Majesty's Government in the United Kingdom and concur in the procedure proposed for its practical application.

I have, &c.

E. DE CARTIER.

The Right Hon. Anthony Eden, M.C., M.P.,

&c., &c., &c.

Belgian Embassy, London, S.W.1,

6th October, 1944.

Your Excellency,

WITH reference to the notes exchanged to-day between the Belgian Government and His Majesty's Government in the United Kingdom concerning Belgian property in the United Kingdom, I am happy to be able to inform you, on behalf of my Government, that no claim for sovereign immunity in respect of Belgian ships will be made in legal proceedings in the United Kingdom before it has been ascertained from the United Kingdom Minister of War Transport that the United Kingdom authorities have no objection to such a claim being made.

I have, &c.

E. DE CARTIER.

The Right Hon. Anthony Eden, M.C., M.P.,

&c., &c., &c.

Foreign Office, London, S.W.1,

6th October, 1944.

Your Excellency,

I THANK you for the note of to-day's date which you have sent me concerning the circumstances in which claims for sovereign immunity in respect of Belgian ships will be made in legal proceedings in the United

Kingdom. I have the honour to inform your Excellency that His Majesty's Government in the United Kingdom have taken note of the information contained in your note.

I have, &c.

ANTHONY EDEN.

His Excellency
Baron de Cartier de Marchienne,
&c., &c., &c.

Trading with the Enemy Department,
(*Treasury and Board of Trade*),
24, Kingsway, London, W.C. 2,

Dear Monsieur de Schoutheete,

6th October, 1944.

WITH reference to the notes which were exchanged to-day by our two Governments about Belgian assets within the United Kingdom, I have pleasure in setting out the understanding which we have reached with regard to the operation of Articles 3, 4, 7 and 17 of the Memorandum of Agreement.

As we have explained to your officials, a practice has been built up during the war in the Custodian's office and in the Trading with the Enemy Department relating to the release, for a number of approved purposes, of moneys collected by the Custodian and bank balances held to this order. Such releases, which are given under Article 3 (ii) of the Trading with the Enemy (Custodian) Order, relate to outgoings in respect of house property, school fees to children, releases to persons escaping from enemy territory and temporarily resident in neutral territory awaiting their opportunity to take up residence elsewhere, and various other miscellaneous payments, some of which are dealt with *ad hoc*, some on standing authorities and some under general arrangements, which we have made with the banks. I am afraid it would be administratively impracticable to give you particulars of the releases which have been made in the past or are being made at present under standing authorities. Where the money has not been transferred under Article 3 of the Agreement to your account at the Bank of England, I understand that your Government are prepared for us to continue our present practice, subject to your being informed of the amount transferred by each direction given hereafter under Article 3 (ii) of the Trading with the Enemy (Custodian) Order, but that we should consider any representations which you may wish to make in particular cases. I should be grateful for your confirmation that this is your Government's understanding of the position, since, under Article 4 of the Agreement, the bank balances in question will be held in our Custodian's name on behalf of your Government. Where, of course, the only assets held on behalf of the applicant are moneys which have been transferred to your account under Article 3 of the Agreement, the application will clearly be one for your Government to deal with.

Article 7 of the Agreement provides that "Securities, real property and other property owned by Belgian persons shall remain in the names of the present holders unless, at the request of the Belgian Government, they are, in cases where such action is deemed necessary to preserve the property, and with the agreement of the Custodian, vested in the Custodian on behalf of the Belgian Government." In this connection, we have explained to your officials that the practice established by the Board of Trade, acting through the Trading with the Enemy Department, has been

to consult the Custodian's office before vesting in him any property or rights, and to refrain from vesting in him any onerous property, such as shares with calls, attached. In general, property is only vested by us in order to enable it to be sold or transferred, or to enable a company to comply with the provisions of the Companies Act. We regard the object of this Article as implying that your Government and mine will continue the practice which has grown up between the Board of Trade and the Custodian's office. The Custodian has, of course, no intention of withholding his consent unreasonably or of adopting a practice in regard to Belgian property in any way different from that which has prevailed in the past.

With regard to Article 17, I am authorised to inform you that, while His Majesty's Government in the United Kingdom must, of course, reserve full liberty to amend the Defence (Finance) Regulations, 1939, from time to time, it is not the intention to make use of this reservation so as to discriminate against the particular Belgian interests covered by the Agreement.

Your sincerely,
H. S. GREGORY.

Monsieur G. de Schoutheete de Tervarent,
105, Eaton Square, S.W. 1.

*Ministère des Affaires Étrangères,
et de Commerce Extérieur,
105, Eaton Square, S.W. 1.*

Dear Mr. Gregory,

I ACKNOWLEDGE receipt of your letter of to-day's date setting out the understanding reached with regard to the operation of Articles 3, 4, 7 and 17 of the Memorandum of Agreement entered into to-day by our two Governments. My Government have taken note of the information contained therein and agree to the continuation of the practice there set out.

Yours sincerely,

GUY DE SCHOUTHEETE DE TERVARENT.

H. S. Gregory, Esq., C.B.,
Trading with the Enemy Department,
24, Kingsway, London, W.C. 2.

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