

**RULES OF PROCEDURE**  
**FOR**  
**THE ARBITRATION**  
**REGARDING THE "IJZEREN RIJN"**  
**BETWEEN**  
**THE KINGDOM OF BELGIUM**  
**AND**  
**THE KINGDOM OF THE NETHERLANDS**

Whereas a dispute has arisen between the Kingdom of Belgium and the Kingdom of the Netherlands regarding the use and modernization of the so-called IJzeren Rijn (Iron Rhine) on the territory of the Netherlands, which the two States have been unable to settle by negotiations;

Whereas the two States have decided to submit this dispute to an Arbitral Tribunal;

The Kingdom of Belgium and the Kingdom of the Netherlands agree as follows:

## **Section I - Introductory Rules**

### **Article 1**

#### ***Scope of Application***

1. The Arbitration shall be conducted in accordance with the Arbitration Agreement of July 23, 2003 and these Rules
2. To the extent that any question of procedure is not expressly governed by these Rules, that question shall be decided by the Arbitral Tribunal taking into account relevant international arbitral practice.
3. The International Bureau of the Permanent Court of Arbitration (the 'International Bureau') shall:
  - a. take charge of the archives of the arbitration proceedings;
  - b. act as a channel of communication between the Parties and between the Parties and the Arbitral Tribunal,
  - c. provide secretariat services, and
  - d. serve as registry.

### **Article 2**

#### ***Notice, Calculation of Periods of Time***

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received when it has been delivered to the addressee. Notice shall be deemed to have been received on the day it is so delivered.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-work day in the State of the addressee, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

### **Article 3**

#### ***Commencement of the arbitral proceedings***

The proceedings are deemed to have commenced on September 1, 2003, or on the date on which Article 5, paragraph 4 has been implemented.

### **Article 4**

#### ***Representation and Assistance***

Each Party shall appoint an agent. The Parties may also be assisted by persons of their choice. The name and address of the agent must be communicated in writing to the other Party, to the International Bureau and to the Arbitral Tribunal after it has been appointed.

## **Section II - Composition of the Arbitral Tribunal**

### **Article 5**

#### ***Number and Appointment of Arbitrators***

1. The Arbitral Tribunal shall consist of five arbitrators. The Parties shall, before July 1, 2003 each appoint two arbitrators, one of which may be chosen from among their respective nationals.
2. The four arbitrators thus appointed shall, by common agreement, appoint the fifth arbitrator before September 1, 2003. He will act as the presiding arbitrator of the Arbitral Tribunal. He shall not have the nationality of one of the Parties, nor be in the service of one of the Parties.
3. Each Party shall communicate the names of its arbitrators, their full names, addresses and nationalities, together with a description of their qualifications, to the other Party and to the International Bureau..
4. If either Party fails to nominate the arbitrators referred to in paragraph 1 or if the presiding arbitrator is not agreed upon before the dates specified in paragraph 1 and paragraph 2 respectively, the Secretary General of the Permanent Court of Arbitration, who is hereby designated as the appointing authority, may be requested by either Party to appoint an arbitrator or arbitrators, including the presiding arbitrator, as promptly as possible. In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
5. In appointing arbitrators pursuant to these Rules, the Parties and the appointing authority are free to designate persons who are not Members of the Permanent Court of Arbitration at The Hague.

### **Article 6**

#### ***Replacement of an Arbitrator***

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Article 5 that was applicable to the appointment or choice of the arbitrator being replaced. Any resignation by an arbitrator shall be addressed to the Arbitral Tribunal and shall not be effective unless the Arbitral Tribunal determines that there are sufficient reasons to accept the resignation, and if the Arbitral Tribunal so determines the resignation shall become effective on the date designated by the Arbitral Tribunal. In the event that an arbitrator whose resignation is not accepted by the Tribunal nevertheless fails to participate in the arbitration, the provisions of paragraph 3 of this Article shall apply.
2. In the event that an arbitrator fails to participate in the arbitration due to a protracted de jure or de facto impossibility of his performing his functions by illness or circumstances being, in the view of the Arbitral Tribunal, beyond the power of the

arbitrator, the procedure in respect of the replacement of an arbitrator as provided in paragraph 1 of this Article shall apply.

3. In the event that an arbitrator fails to participate in the arbitration for reasons other than those referred to in the previous paragraph, the other arbitrators shall, unless the Parties agree otherwise, have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of an arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, or award without the participation of an arbitrator, the other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the other arbitrators determine not to continue the arbitration without the non-participating arbitrator, the Arbitral Tribunal shall declare the office vacant, and a substitute arbitrator shall be appointed within thirty days pursuant to paragraph 1 of this Article, unless the Parties agree on a different method of appointment.

## **Article 7**

### ***Repetition of Hearings in the Event of the Replacement of an Arbitrator***

If under Article 6 the presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the Arbitral Tribunal.

## **Section III - Arbitral Proceedings**

### **Article 8**

#### ***General Provisions***

1. Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity of presenting its case.
2. All documents or information supplied to the Arbitral Tribunal by one Party shall be communicated by the International Bureau to the other Party. A copy shall be filed with the International Bureau.

### **Article 9**

#### ***Place of Arbitration***

1. The place of the arbitration shall be The Hague.
2. The Arbitral Tribunal may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
3. After inviting the views of the Parties, the Arbitral Tribunal may meet at any place it deems appropriate for the inspection of property or documents. The Parties shall be given sufficient notice to enable them to be present at such inspection.
4. The award shall be made at The Hague.

### **Article 10**

#### ***Languages***

1. Both Parties agree that English is to be used in the proceedings. English shall be considered as the authentic language.
2. Paragraph 1 shall not prejudice the right of either Party to deliver documents referred to in Article 12 in French or Dutch. The Arbitral Tribunal shall, if deemed necessary, request the International Bureau to provide a translation in English of those documents.
3. Paragraph 1 shall not prejudice the right of either Party to use Dutch or French in the oral hearings referred to in Article 13 or the use of any language by the experts referred to in Article 14.

## **Article 11**

### ***Pleadings***

1. On or before October 1, 2003 the Kingdom of Belgium shall communicate a Memorial.
2. On or before the 120<sup>th</sup> day after the date on which it has received the Memorial, the Kingdom of the Netherlands shall communicate a Counter-Memorial
3. On or before the 60<sup>th</sup> day after the date on which the Kingdom of Belgium has received the Counter-memorial, the Kingdom of Belgium may submit a Reply.
4. On or before the 60<sup>th</sup> day after the date on which the Kingdom of the Netherlands has received the Reply, the Kingdom of the Netherlands may submit a Rejoinder.
5. Any written pleadings referred to in paragraphs 1 up to and including 4 shall be communicated to the Arbitral Tribunal, the International Bureau and the other Party and shall be confidential.
6. In case Article 5, paragraph 4 is applicable, the dates referred to in paragraphs 1 up to and including 4 shall move forward by the number of additional days it took for the appointing authority to appoint the arbitrator or arbitrators concerned.
7. There shall be annexed to the original of every pleading referred to in paragraphs 1 up to and including 4 copies of any relevant documents adduced in support of any facts alleged in it.
8. During the course of the arbitral proceedings either Party may amend or supplement its pleadings unless the Arbitral Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other Party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the Arbitration Agreement.

## **Article 12**

### ***Evidence***

1. Each Party shall have the burden of proving the facts relied on to support its pleadings.
2. The Arbitral Tribunal may, if it considers it appropriate, require a Party to deliver to the Tribunal and to the other Party, within such a period of time as the Arbitral Tribunal shall decide, a summary of the documents and other evidence which that Party intends to present in support of the facts in issue set out in its pleadings.
3. At any time during the arbitral proceedings the Arbitral Tribunal may call upon the Parties to produce documents, exhibits or other evidence within such a period of time as the Arbitral Tribunal shall determine. The Tribunal shall take note of any refusal to do so as well as any reasons given for such refusal.

## **Article 13**

### ***Hearings***

1. At the request of either Party, the Arbitral Tribunal shall, following the exchange of pleadings as referred to in Article 11, paragraphs 1 up to and including 4, hold an oral hearing.
2. In the event of an oral hearing, the Arbitral Tribunal shall give the Parties adequate advance notice of the date, time and place thereof.
3. If witnesses are to be heard, at least thirty days before the hearing each Party shall communicate to the Arbitral Tribunal and to the other Party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.
4. The International Bureau shall make arrangements for the translation in English of oral statements made at a hearing and for a record of the hearing in English.
5. Hearings shall be held in camera. The Arbitral Tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The Arbitral Tribunal is free to determine the manner in which witnesses are examined.
6. Evidence of witnesses may also be presented in the form of written statements signed by them.
7. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## **Article 14**

### ***Experts***

1. The Arbitral Tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the Tribunal. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the Parties.
2. Within a period of time to be determined by the Arbitral Tribunal, the Parties shall be given the opportunity to express, in writing, any comments regarding the expert's terms of reference.
3. The Parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may request of them. Any dispute between a Party and such expert as to the relevance and appropriateness of the required information or production shall be referred to the Arbitral Tribunal for decision.
4. Upon receipt of the expert's report, the Arbitral Tribunal shall communicate a copy of the report to the Parties who shall be given the opportunity to express, in writing, their opinion on the report. A Party shall be entitled to examine any document on which the expert has relied in his report.
5. At the request of either Party the expert, after delivery of the report, may be heard at a hearing where the Parties shall have the opportunity to be present and to interrogate the expert. At this hearing either Party may present expert witnesses in

order to testify on the points at issue. The provisions of Article 13 shall be applicable to such proceedings.

6. The Arbitral Tribunal shall, if deemed necessary, request the International Bureau to provide a translation in English of the terms of reference referred to in paragraph 1 of this Article and the reports referred to in paragraph 4 of this Article, or any other documents submitted by the expert. In accordance with Article 10, the Parties shall communicate in English.

## **Article 15**

### ***Failure to Appear or to Make Submissions***

1. If one of the Parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitral Tribunal may proceed with the arbitration.
2. If one of the Parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitral Tribunal may make the award on the evidence before it.

## **Article 16**

### ***Closure of Hearings***

1. The Arbitral Tribunal may inquire of the Parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The Arbitral Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a Party, to reopen the hearings at any time before the award is made.

## **Article 17**

### ***Waiver of Rules***

A Party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

## **Section IV - The Award**

### **Article 18**

#### ***Decisions***

1. Any award or other decision of the Arbitral Tribunal shall be made by a majority of the arbitrators. No separate nor dissenting opinions shall be attached to the final award or to any other award referred to in article 19, paragraph 1.
2. The Arbitral Tribunal shall make its final award on or before the 120<sup>th</sup> day following the date of receipt by the International Bureau of the last written pleading referred to in Article 11, paragraphs 1 up to and including 4.
3. Article 21 shall be applicable in case the Arbitral Tribunal judges the period of 120 days referred to in paragraph 2 of this Article too short to make the final award.
4. In the case of questions of procedure, when there is no majority or when the Arbitral Tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the Arbitral Tribunal.

### **Article 19**

#### ***Form and Effect of the Award***

1. In addition to making a final award, the Arbitral Tribunal shall be entitled to make interim, interlocutory, or partial awards.
2. The award shall be made in writing and shall be final and binding on the Parties. The Parties undertake to carry out the award without delay.
3. The Arbitral Tribunal shall state the reasons upon which the award is based.
4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. If any of the arbitrators fails to sign, the award shall state the reason for the absence of the signature(s).
5. The award shall be made public.
6. Copies of the award signed by the arbitrators shall be communicated to the Parties by the International Bureau.

### **Article 20**

#### ***Applicable Law***

The Arbitral Tribunal shall decide in accordance with the law agreed upon by both Parties and referred to in the Arbitration Agreement.

## **Article 21**

### ***Interim Measures of Protection***

1. Subject to Article 18, paragraph 3, the Arbitral Tribunal may, at the request of either Party, take any interim measures it deems necessary to preserve the respective rights of either Party.
2. Such interim measures may be established in the form of an interim award. The Arbitral Tribunal shall be entitled to require security for the costs of such measures.
3. Interim measures shall cease to apply at the date of the final award referred to in Article 19, paragraph 4.

## **Article 22**

### ***Settlement or Other Grounds for Termination***

1. If, before the award is made, the Parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both Parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the Arbitral Tribunal shall inform the Parties of its intention to issue an order for the termination of the proceedings. The Arbitral Tribunal shall have the power to issue such an order unless a Party raises justifiable grounds for objection.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated to the Parties by the International Bureau. Where an arbitral award on agreed terms is made, the provisions of Article 19, paragraphs 2 and 4 to 6, shall apply.

## **Article 23**

### ***Interpretation of the Award***

1. Within sixty days after the receipt of the award, either Party, with notice to the other Party, may request that the Arbitral Tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 19, paragraphs 2 to 6, shall apply.

## **Article 24**

### ***Correction of the Award***

1. Within sixty days after the receipt of the award, either Party, with notice to the other Party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of Article 19, paragraphs 2 to 6, shall apply.

## **Article 25**

### ***Additional Award***

1. Within sixty days after the receipt of the award, either Party, with notice to the other Party, may request the Arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the Arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of Article 19 paragraphs 2 to 6, shall apply.

## **Article 26**

### ***Costs***

1. The costs shall be borne by the Parties in equal share
2. The Parties shall fix the costs of arbitration after consultation of the International Bureau. The term 'costs' includes only:
  - (a) The fees of the Arbitral Tribunal;
  - (b) The travel and other expenses incurred by the arbitrators;
  - (c) The costs of expert advice and of other assistance required by the Arbitral Tribunal;
  - (d) The travel and other expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal;
  - (e) Any fees and expenses of the appointing authority and the International Bureau.
3. The fees of the Arbitral Tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.
4. Each Party shall bear its own expenses of arbitration.

5. When the Arbitral Tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in paragraph 1 of this Article, in the text of that order or award.
6. No additional fees may be charged by the Arbitral Tribunal for interpretation or correction or completion of its award under Articles 21 to 24

## **Article 27**

### ***Deposit of Costs***

1. The International Bureau following the commencement of the arbitration, may request each Party to deposit an equal amount as an advance for the costs referred to in Article 26 paragraphs 1 and 2, subparagraphs (a), (b), (c) (d) and (e). All amounts deposited by the Parties pursuant to this paragraph and to paragraph 2 of this Article shall be directed to the International Bureau, and disbursed by it for such costs, including, *inter alia*, fees to the arbitrators, the Secretary-General and the International Bureau.
2. During the course of the arbitral proceedings the Arbitral Tribunal may request supplementary deposits from the Parties.
3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the Arbitral Tribunal shall so inform the Parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the arbitral proceedings.
4. After the award has been made, the International Bureau shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.