

## **SECTION II**

# **ARBITRATION OF DISPUTES OF LIMITED FINANCIAL IMPORTANCE**



## **PRELIMINARY PROVISIONS**

### **Article 1 Scope**

1. Section II shall apply if the principal claim and the counterclaim, if any, together do not exceed the amount of € 12.500,00.
2. In the event that the principal claim and the counterclaim together exceed € 12.500,00 in the course of the proceedings, Section II of the Rules shall still apply, unless otherwise agreed by the parties, in which case the proceedings shall be governed by the Arbitration Rules set out in Section I of these Rules.

### **Article 2 Terminology**

In this Section, the words "*Arbitral Tribunal*" shall mean the sole Arbitrator appointed or whose nomination was approved by the Appointments Committee or by the Chairman in accordance with the following provisions.

## **COMMENCEMENT OF THE PROCEEDINGS**

### **Article 3 Request for Arbitration of disputes of limited financial importance**

1. A party wishing to have recourse to arbitration of disputes of limited financial importance under the CEPANI rules shall submit its Request for Arbitration to the Secretariat.

The Request for Arbitration shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail addresses and VAT-number, if any, of each of the parties;
- b) a recital of the nature and circumstances of the dispute giving rise to the claim;

- c) a statement of the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim;
- d) any comments as to the seat of the arbitration, the language of the arbitration and the applicable rules of law.

Together with the Request, Claimant shall provide copies of all agreements, in particular the arbitration agreement, the correspondence between the parties and other relevant documents.

The Request for Arbitration and the documents annexed thereto shall be supplied in two copies.

- 2. Claimant shall also attach to the Request for Arbitration proof of the dispatch to Respondent of the Request and the documents annexed thereto.
- 3. The date on which the Secretariat receives the Request for Arbitration of disputes of limited financial importance and the annexes thereto and the payment of the registration costs such as determined under article 2 of the annexe I.I, shall be deemed to be the date of commencement of the arbitral proceedings. The Secretariat shall confirm this date to the parties.

Modified by the decision of the General Assembly of CEPANI of June 13<sup>th</sup> 2007

#### **Article 4 Answer to the Request for Arbitration and filing of a counterclaim**

- 1. Within twenty-one days from the date of the commencement of the arbitral proceedings, Respondent shall send its Answer to the Request for Arbitration to the Secretariat.

The Answer shall include, *inter alia*, the following information:

- a) name, first name and the name in full, description, address, telephone and fax numbers, e-mail address and VAT-number, if any, of Respondent;
- b) its comments as to the nature and circumstances of the dispute that gives rise to the claim;
- c) its response to the relief sought;
- d) any comments as to the seat of the arbitration, the language of the arbitration and the applicable rules of law.

The Answer and the documents annexed thereto shall be supplied in two copies.

2. Respondent shall also attach to the Answer proof of the dispatch, within the same time limit of twenty-one days, to Claimant of the Answer and the documents annexed thereto.
3. Any counterclaim made by Respondent shall be filed with its Answer and shall include:
  - a) a recital of the nature and circumstances of the dispute that gives rise to the counterclaim.
  - b) an indication of the object of the counterclaim and, if possible, a financial estimate of the amount of the counterclaim.
4. The time limit mentioned in paragraph 1 may be extended pursuant to a reasoned request of Respondent, or on its own motion, by the Secretariat.

#### **Article 5      Exchange of memoranda**

1. Within twenty-one days from the date on which Respondent submits its Answer and the annexes thereto to the Secretariat, Claimant shall submit a Reply to the Secretariat and transmit said Reply at the same time to Respondent.
2. Within twenty-one days from the date on which Claimant has submitted its Reply and the annexes thereto to the Secretariat, Respondent shall submit a Second Reply to the Secretariat and transmit said Second Reply at the same time to Claimant.
3. Subsequently, Claimant shall have a period of fourteen days from the date on which Respondent has submitted its Second Reply to the Secretariat during which it may itself submit a Second Reply to the Secretariat and transmit said Second Reply at the same time to Respondent.
4. Finally, Respondent shall have a period of fourteen days from the date on which Claimant has submitted its Second Reply to the Secretariat during which it may submit a Last Reply to the Secretariat and transmit said Last Reply at the same time to Claimant.
5. These time limits may be extended pursuant to a reasoned request of the parties or one of them. Any demand for extension shall be directed to the Arbitral Tribunal, if constituted, or to the Secretariat. If necessary, the Secretariat may extend these time limits upon its own motion.

## **Article 6 Lack of an apparent arbitration agreement**

In the event that there is no apparent arbitration agreement, the arbitration may not proceed should Respondent not answer within the period of twenty-one days mentioned in Article 4, or should Respondent refuse arbitration in accordance with the CEPANI Rules.

## **Article 7 Effect of the arbitration agreement**

1. When the parties agree to resort to CEPANI for arbitration, they thereby submit to the Rules, including the annexes, which are in effect on the date of the commencement of the arbitral proceedings, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.
2. If, notwithstanding an apparent arbitration agreement, one of the parties refuses to submit to arbitration, or fails to take part in the arbitration, the arbitration shall nevertheless proceed.
3. If, notwithstanding an apparent arbitration agreement, a party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, the arbitration shall proceed without CEPANI deciding on the admissibility or merits of the pleas. In such case the Arbitral Tribunal shall itself rule on its jurisdiction.
4. Unless otherwise agreed, the Arbitral Tribunal shall not cease to have jurisdiction by reason of the nullity or the non-existence of the contract, provided that the Arbitral Tribunal upholds the validity of the arbitration agreement.

## **Article 8 Documents**

All pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be sent to each party and to the arbitrator. A copy of these communications shall be sent to the Secretariat.

A copy of any communication from the Arbitral Tribunal to the parties shall be sent to the Secretariat.

## **Article 9 Written notifications or communications and time limits**

1. The Request for Arbitration, the Answer to the Request for Arbitration, all pleadings, the appointment of the arbitrator and the notification of the Award shall be valid if they are made by delivery against receipt, by registered mail, courier, fax or any other means of telecommunication that proves their dispatch. All other notifications and communications made pursuant to these Rules may be made by any other form of written communication.

If a party is represented by counsel, all notifications or communications shall be made to the latter, unless that party requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the party, as notified either by the party in question or by the other party.

2. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it is received or should have been received by the party itself, by its representative or its counsel.
3. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

## **THE ARBITRAL TRIBUNAL**

### **Article 10 General provisions**

1. Only those persons who are independent of the parties and of their counsel and who comply with the rules of good conduct set out in Schedule II, may serve as arbitrators in arbitration proceedings organized by CEPANI.
2. The Appointments Committee or the Chairman shall appoint or approve the nomination of the Arbitral Tribunal. The parties may nominate the Arbitral Tribunal by mutual consent, subject to the approval of the Appointments Committee or the Chairman.

3. The arbitrator who was appointed or whose nomination has been approved, shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature so as to call into question the arbitrator's independence in the eyes of the parties. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
4. An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the arbitration.
5. The decisions of the Appointments Committee or the Chairman as to the appointment, approval or replacement of an arbitrator shall be final. These decisions do not have to state the reasons for the decision.
6. By accepting to serve, every arbitrator undertakes to carry out his responsibilities until the end in accordance with these Rules.

#### **Article 11 Appointment of the Arbitral Tribunal**

The Appointments Committee or the Chairman appoints or approves the nomination of the Arbitral Tribunal within a period of eight days from the payment by the parties, or by one of them, of the advance on arbitration costs in accordance with the provisions of Article 26. It will thereby take into account more particularly the availability, the qualifications and the ability of the Arbitrator to conduct the arbitration in accordance with these Rules.

#### **Article 12 Challenge of the arbitrator**

1. A challenge for reasons of any alleged lack of independence or for any other reason, shall be communicated to the Secretariat in writing and shall contain the facts and circumstances on which it is based
2. In order to be admissible the challenge must be communicated by a party, either within one month of the receipt by that party of the notification of the arbitrator's appointment, or within one month of the date on which that party was informed of the facts and circumstances which it invokes in support of its challenge, whichever date is the later.
3. The Secretariat shall forward the request for challenge to the Challenge Committee. The latter shall rule on the admissibility and on the merits of the challenge, after that it has given the arbitrator an opportunity to present its comments in writing within a time period fixed by the Challenge Committee. These comments shall be communicated to the parties and to the arbitrator. They can answer to these comments within the time period fixed by the challenge Committee.

### **Article 13 Replacement of the arbitrator**

1. In the event of an arbitrator's death, challenge, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all parties, the arbitrator shall be replaced.
2. An arbitrator shall also be replaced when the Appointments Committee or the Chairman finds that the arbitrator is prevented *de jure* or *de facto* from fulfilling his duties in accordance with these Rules or within the allotted time limits.  
In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the arbitrator and the parties to comment in writing to the Secretariat within the time limit allotted by it. Such comments shall be communicated to the parties and to the arbitrator.
3. When an arbitrator has to be replaced, the Appointments Committee or the Chairman shall have discretion to decide whether or not to follow the original appointment process.  
Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if, and to what extent, prior proceedings shall be repeated.

### **Article 14 Multi-party arbitration**

When several contracts containing the CEPANI arbitration clause give rise to disputes that are closely related or indivisible, the Appointments Committee or the Chairman is empowered to order the joinder of the arbitration proceedings.

This decision shall be taken either at the request of the Arbitral Tribunal, or, prior to any other issue, at the request of the parties or of the most diligent party, or upon CEPANI's own motion.

The Appointments Committee or the Chairman shall make its decision after having summoned the parties, and, if need be, the arbitrator who has already been appointed.

They may not order the joinder of disputes in which an interim award or an award on admissibility or on the merits of the claim has already been rendered.

## **THE ARBITRAL PROCEEDINGS**

### **Article 15    Transmission of the file to the Arbitral Tribunal**

Provided that the advance on arbitration costs has been fully paid, the Secretariat shall transmit the file to the Arbitral Tribunal as soon as the latter has been appointed or its nomination approved.

### **Article 16    Language of the arbitration**

1. The language of the arbitration shall be determined by mutual agreement between the parties. Failing such an agreement, the language or languages of the arbitration shall be determined by the Arbitral Tribunal, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
2. The Arbitral Tribunal shall have full authority to decide which of the parties shall bear the translation costs, if any, and to what extent.

### **Article 17    Seat of the arbitration**

1. The Appointments Committee or the Chairman shall determine the seat of the arbitration, unless the parties have agreed otherwise.
2. Unless otherwise agreed by the parties and after having consulted with them, the Arbitral Tribunal may decide to hold its hearings and meetings at any other location that it considers appropriate.
3. The Arbitral Tribunal may deliberate at any place that it considers appropriate.

### **Article 18    Examination of the case**

1. The Arbitral Tribunal shall proceed within as short a time as possible to examine the case by all appropriate means. It may, *inter alia*, obtain evidence from witnesses and appoint one or more experts.
2. The Arbitral Tribunal may decide the case solely on the basis of the documents submitted by the parties, unless the parties or one of them requests a hearing.

3. Either at the request of a party or upon its own motion, the Arbitral Tribunal, subject to the giving of reasonable notice, may summon the parties to appear before it on the day and at the place specified by it.
4. If any of the parties, although duly summoned, fails to appear, the Arbitral Tribunal shall nevertheless be empowered to proceed, provided it has ascertained that the summons was duly received by the party and that there is no valid excuse for its absence.

In any event, the Award shall be deemed to be contradictory.

5. The hearings shall not be public. Save with the approval of the Arbitral Tribunal and the parties, persons not involved in the proceedings shall not be admitted.
6. The parties shall appear in person or through duly authorized representatives or counsel.
7. New claims or counterclaims must be presented in writing. The Arbitral Tribunal may refuse to examine such new claims if it considers that they might delay the examination or the ruling on the original claim. It shall consider any other relevant circumstances.

#### **Article 19 Interim and conservatory measures**

1. Without prejudice to Article 1679, paragraph 2, of the Belgian Judicial Code, each party may ask the Arbitral Tribunal, as soon as it has been appointed, to order interim or conservatory measures, including the provision of guarantees or security for costs. Any such measure shall take the form of an order, setting out the reasons for the decision, or, if the Arbitral Tribunal considers it appropriate, an Award
2. All measures ordered by the ordinary courts in relation to the dispute must be communicated immediately to the Arbitral Tribunal and to the Secretariat.

### **THE ARBITRAL AWARD**

#### **Article 20 Time limit for the Arbitral Award**

1. The Arbitral Tribunal shall render the Award within twenty-one days of the date on which the Last Reply was submitted to the Secretariat or, if

the proceedings are not based solely on documents, of the date of the last hearing.

2. This time limit may be extended pursuant to a reasoned request from the Arbitral Tribunal, or upon its own motion, by the Secretariat.

#### **Article 21 Award by consent**

Should the parties reach a settlement after the appointment of the Arbitral Tribunal, the settlement shall be recorded in the form of an Award made by consent of the parties if so requested by the parties and if the Arbitral Tribunal agrees to do so.

#### **Article 22 Making of the Award**

The Arbitral Award is deemed to be made at the seat of the arbitration and on the date stated in the Award.

#### **Article 23 Notification of the Award to the parties; Deposit of the Award**

1. Once the Award has been made, the Arbitral Tribunal shall transmit it to the Secretariat in as many original versions as there are parties involved, plus one original version for the Secretariat
2. The Secretariat shall notify the Award, signed by the Arbitral Tribunal, to the parties, provided that the arbitration costs have been fully paid to the CEPANI by the parties or by one of them.
3. Solely if one of the parties so requests, within a period of one month from the notification of the Award, the Award shall be filed at the registry of the Civil Court of the seat of the arbitration.

#### **Article 24 Final nature and enforceability of the Award**

1. The Award is final and is not subject to appeal. The parties undertake to comply with the Award without delay.
2. By submitting their dispute to arbitration under CEPANI Rules and except where an explicit waiver is required by law, the parties waive their right to any form of recourse insofar as such a waiver can validly be made.

## **ARBITRATION COSTS**

### **Article 25 Nature and amount of the arbitration costs**

1. The arbitration costs shall include the fees and expenses of the Arbitrator, as well as the administrative expenses of the Secretariat. They shall be fixed by the Secretariat on the basis of the amount of the principal claim and of any counterclaim, according to the Scale of Arbitration Costs in effect on the date of the commencement of the arbitral proceedings.
2. Other costs and expenses relating to the arbitration, such as the fees and expenses of any experts appointed by the Arbitral Tribunal or the expenses incurred by the parties, are not included in the arbitration costs. The Arbitral Tribunal can decide about such costs or expenses.
3. The Secretariat may fix the arbitration costs at a higher or lower figure than that which would result from the application of the Scale of Arbitration Costs, should this be deemed necessary due to the exceptional circumstances of the case.
4. Should the amount in dispute exceed € 12.500,00 in the course of the proceedings, the Secretariat may increase the amount of the arbitration costs in accordance with the Scale of Arbitration Costs.

### **Article 26 Advances on arbitration costs**

1. The advance required to cover the arbitration costs as determined in accordance with Article 25, paragraph 1 shall be paid to CEPANI prior to the appointment or the approval of the nomination of the Arbitral Tribunal by the Appointments Committee or the Chairman.
2. Further advance payments may be required if and when any adjustments are made to the arbitration costs in the course of the proceedings.
3. The advance on arbitration costs, as well as the additional advance on arbitration costs shall be payable in equal shares by Claimant and Respondent. However, any party shall be free to pay the whole of the advance on arbitration costs should the other party fail to pay its share.
4. Where a counterclaim is filed, the Secretariat may, at the request of the parties or one of them, or upon its own motion, fix separate advances on arbitration costs for the principal claim and the counterclaim.

When the Secretariat has set separate advances on arbitration costs, each of the parties shall pay the advance on arbitration costs corresponding to its principal or counterclaim. The Arbitral Tribunal shall proceed only with respect to those claims or counterclaims in regard to which the whole of the advance on arbitration costs has been fully paid.

5. When a request for an additional advance on arbitration costs has not been complied with, and after consultation with the Arbitral Tribunal the Secretariat may direct the Arbitral Tribunal to suspend its work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant claims or counterclaims on the basis of which the additional advance is calculated shall be considered as withdrawn. A party shall not be prevented on the grounds of such a withdrawal from reintroducing the same claim or counterclaim at a later date in another proceeding.

#### **Article 27    Decision on arbitration costs**

1. The arbitration costs shall be finally fixed by the Secretariat.
2. The final award shall mention the arbitration costs, as determined by the Secretariat, and decide which of the parties shall bear them or in what proportion they shall be borne by the parties. When the parties have reached an agreement on the allocation of the arbitration costs, the Award shall record such agreement.

### **ADDITIONAL PROVISIONS**

#### **Article 28    General rule**

Unless otherwise agreed by the parties, all issues that are not specifically provided for herein shall be subject to Chapter VI of the Belgian Judicial Code.