

## ANNEX V

**PROCEDURAL RULES ON CONCILIATION AND ARBITRATION OF CONTRACTS  
FINANCED BY THE EUROPEAN DEVELOPMENT FUND (EDF)**

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## I — INTRODUCTORY RULES

## Article 3

## Article 1

## Scope of application

Disputes relating to a contract financed by the European Development Fund (EDF) which, pursuant to the provisions of the general conditions and the special conditions governing the contract, may be settled by conciliation or by arbitration shall be settled in accordance with these procedural rules.

## Article 2

## Definitions

In these rules, unless the context requires otherwise, the following words and expressions shall have the meaning here assigned to them:

*ACP State*: a State belonging to the African, Caribbean and Pacific group of States which are signatories to the Convention,

*Member State*: a Member State of the European Economic Community (EEC),

*administrative agency*: the agency in the ACP State given the function of settling by administrative methods disputes arising under or in connection with contracts to which the contracting authority is a party,

*the tribunal*: the arbitral tribunal,

*appointing authority*: the authority agreed by the parties to an arbitration, or in the absence of such agreement, identified by these rules, as the authority to appoint an arbitrator,

*contracting authority*: the State or the legal person governed by public or private law which concludes the contract or on behalf of which the contract is concluded,

*the Convention*: the relevant Convention between the ACP States and the EEC,

*the Council of Ministers*: the ACP-EEC Council of Ministers referred to in the Convention,

*the contract*: an EDF contract for works, supplies or services,

*claimant*: the party which commences arbitration proceedings by giving notice to the other party requesting the arbitration and submitting claims,

*respondent*: the party to the arbitration against whom claims are made,

*party*: when used in connection with an arbitration, the claimant or respondent in the arbitration.

## Notice and calculation of time

3.1. Any notice provided by these rules shall be served by registered letter or physically delivered with a request for a dated acknowledgement of receipt in either case. A notice shall be deemed to have been received on the day it is so delivered.

3.2. 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, communication or proposal, is received. If the last day of such period is an official holiday or a non-working day, at the address mentioned in the notice, communication or proposal, the period shall be extended until the first working day which follows. However, official holidays or non-working days occurring during the running of the period of time shall be included in calculating the period.

## Article 4

## Exhaustion of internal administrative procedures

4.1. A dispute shall not be referred to arbitration under these rules unless all internal administrative procedures provided by the ACP State for settlement of such disputes have been or are deemed to have been, exhausted. Recourse to administrative proceedings shall be deemed to have been exhausted if no final decision has been issued by the administrative agency within 120 days of the receipt of the initial application for settlement by it.

4.2. In cases where recourse to administrative procedures by an applicant is, due to the absence of such procedures in the ACP State, not possible, a dispute may be referred to arbitration under these rules only after the applicant has given notice of this compliant to the other party, and no meaningful steps have been taken by that other party to remedy or correct the cause of complaint within 120 days after the receipt of the notice.

## Article 5

## Conciliation

5.1. At any time before a request for arbitration, a person with the right to request the arbitration may request the amicable intervention of the agency financing the contract or the settlement of the dispute by conciliation in accordance with these rules.

- 5.2. If the parties to the dispute agree, the conciliation shall be conducted by a sole conciliator, otherwise it shall be conducted by a committee of three conciliators.
- 5.3. To qualify for appointment as conciliator, the person must have the nationality of one of the signatory States of the Convention.
- 5.4. Where the conciliation is to be conducted by a sole conciliator, the parties to the dispute shall agree on the conciliator. Where the conciliation is to be conducted by a conciliation committee, each of the parties to the dispute shall nominate one of the members of the committee. The third member of the committee who shall be chairman, and who shall be of a nationality other than that of the parties involved, shall be chosen by the other members of the committee.

- 5.5. The party making a request for conciliation shall notify the other party of the request.

The request shall consist of a statement of the case of the applicant and shall be accompanied by copies of relevant papers and documents. The request shall also contain the name and address of the person proposed or nominated as a conciliator.

- 5.6. Within 60 days of receipt of the notice of the request, the other party shall notify the applicant whether he is prepared to accept an attempt at conciliation, and in that event to submit to the applicant a reply to the applicant's case. The reply shall also contain the name and address of the person proposed or nominated by the other party as a conciliator.
- 5.7. Within 30 days of the receipt of the reply, the members of the conciliation committee selected by the parties shall nominate the chairman.
- 5.8. The proceedings of the conciliator or conciliation committee shall be as informal and expeditious as is compatible with a just and objective settlement of the dispute and shall be based on a fair hearing of each party.

Each of the parties may appear in person or be represented by an agent of his choice.

- 5.9. After examining the case, the conciliator or conciliation committee shall submit terms of settlement to the parties.
- 5.10. Should a settlement result, the conciliator or conciliation committee shall draw up and sign a record of the settlement. The record shall be signed by the parties to signify their acceptance thereof. The record of the settlement so signed by the parties shall be binding upon them.

- 5.11. Copies of the record of settlement so signed shall be given to the parties.
- 5.12. Should a settlement not result, the parties shall be at liberty to refer their dispute to arbitration under these rules, in which case, nothing that has transpired in connection with the proceedings before the conciliator or conciliation committee shall in any way affect the legal rights of any of the parties at the arbitration.
- 5.13. No person having sat as a conciliator or a member of a conciliation committee for the settlement of a dispute may be appointed arbitrator for the same matter.

## II — THE TRIBUNAL

### *Article 6*

#### Nationality of arbitrators

To qualify for appointment as an arbitrator, a person must have the nationality of one of the signatory States of the Convention.

### *Article 7*

#### Number of arbitrators

If the parties agree, the tribunal shall be constituted by one arbitrator only. Such agreement must be reached by the parties within 15 days after receipt by the respondent of the notice commencing the arbitration proceedings as provided for in Article 18. If the parties fail to agree to arbitration by one arbitrator within the time specified, or if they otherwise agree, the tribunal shall be constituted by three arbitrators.

### *Article 8*

#### Appointment of sole arbitrator

- 8.1. If a sole arbitrator is to be appointed, the parties shall agree on that arbitrator or upon the appointing authority for making the appointment thereof within 60 days after the commencement of the arbitration proceedings as laid down in Article 18.
- 8.2. Where:
- (a) the parties are unable to agree either on the arbitrator or on the appointing authority within the specified 60 days; or
  - (b) the appointing authority agreed by the parties refuses to act, or fails to appoint the arbitrator,

within 60 days of receipt of the parties' request therefore,

either party may request the most senior in rank from amongst the judges of the International Court of Justice at the Hague who are nationals of the ACP States and the Member States to exercise the powers of the appointing authority.

#### Article 9

##### Appointment of three arbitrators

9.1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who shall be the presiding arbitrator of the tribunal.

9.2. The appointment by each party of an arbitrator shall be made within 60 days from the date of the agreement between the parties that the tribunal be constituted by three arbitrators, or the date when the constitution of the tribunal by a sole arbitrator was, in terms of Article 7.1, excluded.

9.3. If:

- (a) within 30 days after the appointment by each party of his arbitrator, the two appointed arbitrators have not chosen the third arbitrator; or
- (b) within 30 days after the receipt of the notification of the appointment by one party of an arbitrator the other party has not notified the first party of the arbitrator he has appointed,

the required arbitrator shall upon request by either party, be appointed by the appointing authority.

9.4. The appointing authority shall be agreed by the parties not later than 60 days after the particular failure which gives rise to the need to invoke that authority. If after the expiration of that period an appointing authority has not been agreed by the parties, either party may request the most senior in rank from amongst the judges of the International Court of Justice at the Hague who are nationals of the ACP States and the Member States to exercise the powers of the appointing authority.

#### Article 10

##### Appointments by the appointing authority

10.1. When an appointing authority is requested to appoint an arbitrator, the party which makes the request shall send to the appointing authority a copy of the notice of

arbitration specified in Article 18.1 and a copy of the contract under or in connection with which the dispute has arisen. The appointing authority may require from either party such information as he deems necessary to fulfil his function.

10.2. Either party may propose names of persons suitable for appointment as arbitrators to the appointing authority. Where such proposal is made, the full names, addresses and nationalities of the persons proposed shall be given, together with a description of their qualifications.

10.3. The appointing authority shall appoint the arbitrator or arbitrators as promptly as possible. In making the appointment, the appointing authority shall:

(a) have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator of a nationality other than the nationalities of the parties, and of high moral standing, who has a recognized competence in the field of law, technical knowledge or finance applicable to the matters in dispute; and

(b) unless both parties agree otherwise, or the appointing authority decides in his discretion that the procedure is not appropriate for the particular case, use the following list procedure:

(i) the appointing authority shall communicate to both parties an identical list containing at least three names of persons qualified for appointment as arbitrators in terms of Articles 6.1 and 10.3 (a);

(ii) within 30 days after the receipt of this list, each party may return the list to the appointing authority after deleting the name or names to which he objects, and numbering the remaining names on the list in the order of his preference. If the list is not returned or no alteration is made in the order in which the names appear in the original list, the names on that list shall be deemed to have been approved by the party concerned in the order in which they appear;

(iii) upon receipt of the list returned by both parties, or after the expiration of the time limit for the return, whichever is the earlier, the appointing authority shall within 30 days appoint the arbitrator from among the names approved or deemed to be approved, on the list and in accordance with the order of preference indicated by the parties;

(iv) if for any reason the appointment cannot be made according to this procedure, the appointing authority may appoint a

suitable arbitrator, having due regard to the interest of the parties, the nature of the dispute and, where applicable, the fact that one of the parties is a State.

#### Article 11

##### Challenge of arbitrators

- 11.1. A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any facts or circumstances likely to give rise to justifiable doubts or suspicion as to his impartiality or independence. A person appointed arbitrator shall disclose such facts or circumstances to the parties unless they have already been informed by him of these circumstances.
- 11.2. Any arbitrator may be challenged by a party if facts or circumstances exist which give rise to justifiable doubts or suspicion as to his impartiality or competence. However a party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.
- 11.3. A party who intends to challenge an arbitrator shall send a notice of his challenge in writing, stating the reasons therefor to the tribunal, the challenged arbitrator and the other party. The notice shall be sent within 15 days of the constitution of the tribunal or of the appointment of the challenged arbitrator, whichever is later, or within 15 days after the circumstances justifying the challenge become known to the party making the challenge.
- 11.4. Where a challenge made by one party is agreed by the other party, or where the challenged arbitrator withdraws from office, the authority of that arbitrator in the arbitration proceedings shall forthwith terminate. But neither the agreement of the parties to the challenge, nor the withdrawal from office of the challenged arbitrator, implies an acceptance of the validity of the grounds of the challenge issued.
- 11.5. If the other party does not agree to the challenge, or if the challenged arbitrator does not withdraw, a decision on the challenge shall be made as follows:
- (a) where the appointment of the arbitrator was made by an appointing authority, by that authority;
  - (b) where the appointment of the arbitrator was not made by an appointing authority, by the other members of the tribunal, if there are such others;

- (c) in all other cases, or in case of disagreement between the other members of the tribunal, by an appointing authority designated or to be designated in accordance with the procedure provided in Article 9.4.

The decision of the authority specified herein shall be final.

#### Article 12

##### Replacement of arbitrator

- 12.1. In the following cases, a substitute arbitrator shall be appointed in accordance with the procedure laid down in Articles 8,9 and 10 which is applicable to the appointment of the particular arbitrator being replaced:
- (a) a challenge to an arbitrator has been agreed to by the other party; or
  - (b) a challenged arbitrator has withdrawn from office; or
  - (c) notwithstanding the absence of agreement of the other party, or a refusal by the challenged arbitrator to withdraw, a challenge to an arbitrator is sustained; or
  - (d) an arbitrator dies during the course of the arbitration proceedings; or
  - (e) for any other reason, an arbitrator fails to act or it becomes impossible *de jure* or *de facto* for him to perform his functions.
- 12.2. If an arbitrator is replaced, any hearing held previously may, at the discretion of the tribunal, be repeated, and any decision or order made in the course of the proceedings may be set aside by the tribunal.

### III. — THE ARBITRATION PROCEEDINGS

#### Article 13

##### General provisions

- 13.1. Subject to these rules, the tribunal may conduct the arbitration in such manner as it considers appropriate.
- 13.2. The tribunal shall conduct the arbitration as expeditiously and with such due regard for the saving of costs as is consistent with doing justice between the parties. The parties shall be treated with equality, and at any stage of the proceedings each of them shall be given a full opportunity of presenting his case.
- 13.3. If either party so requests at any stage of the proceedings, the tribunal shall hold hearings for presentation of evidence by witnesses, including

expert witnesses, or for oral argument. In the absence of such a request, the tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

- 13.4. All documents or information supplied to the tribunal by one party shall at the same time be communicated by that party to the other party. No such document or information may be used in support of a party's case unless there is proof that it has been communicated to the other party.

#### Article 14

##### Applicable law and procedural rules

- 14.1. The tribunal shall apply the law of the State of the contracting authority to the matters in dispute, unless otherwise specified in the contract, in which case the tribunal shall apply the law so specified. In all cases, the tribunal shall decide in accordance with the terms of the contract, and may take into account the usages of the trade applicable to the transaction.
- 14.2. Where the applicable law is silent on any specific point, the tribunal shall apply the conflict of laws rules resulting from the law applicable to the contract. The tribunal may not decline to make an award on the ground that the law is silent or obscure on the point.
- 14.3. Notwithstanding the provisions of Articles 5.1 and 14.1, if the parties expressly so authorize the tribunal in the course of the arbitration proceedings, it shall decide as amicable compositor or *ex aequo et bono*.
- 14.4. The entire arbitration proceedings shall be conducted in accordance with these rules. In the absence of agreement between the parties, any procedural matter which is not provided for in these rules shall be decided by the tribunal, which shall ensure in particular, in such a case, that the principle of equality between the parties is observed.

#### Article 15

##### Language of the proceedings

- 15.1. Arbitration proceedings shall be conducted and the arbitration award made in the language of the contract, the terms or execution of which gave rise to the dispute.
- 15.2. The tribunal may order that any documents annexed to the statement of claim or statement of defence,

and any other document or exhibit submitted in the course of the proceedings, and which are not drawn up in the language of the proceedings, shall be accompanied by a certified translation into the language of the proceedings.

#### Article 16

##### Venue of the proceedings

- 16.1. Arbitration proceedings shall be conducted in the ACP State in which the contract was awarded or performed. However, the tribunal may, with the agreement of the parties and for good cause, decide to conduct the arbitration in some other place. In deciding on such other place, the tribunal shall have regard to the circumstances of the case, including the costs involved, the convenience of the parties, and the potential adverse effect of the procedural rules of an alternative venue on the parties and the proceedings.
- 16.2. Subject to Article 16.1, the tribunal may hold some hearings and meetings at any place it deems appropriate, having regard to the circumstances of the case.
- 16.3. The tribunal may meet at any place it deems appropriate for the inspection of the works, goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

#### Article 17

##### Representation and assistance

The parties may be represented and/or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and to the tribunal. Such communication must specify whether the person named is appointed for the purpose of representation or assistance.

#### Article 18

##### Commencement of arbitration proceedings

- 18.1. The claimant in an arbitration shall give to the respondent a notice of arbitration. Such notice shall be time-barred unless it is given not later than 90 days after the receipt of the decision closing the final administrative proceedings taken in the ACP State, or, where no such administrative procedures are available, not later than 90 days after the expiry of the 120 days provided for in Article 4.2 for the remedy of a complaint notified to the other party.

18.2. Arbitration proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

18.3. The notice of arbitration shall include the following:

- (a) a demand that the dispute be referred to arbitration;
- (b) the names and addresses of the parties and their nationality at the time of the notice;
- (c) a reference to the contract out of or in relation to which the dispute arises, and the particular clause or clauses in the contract being invoked or challenged;
- (d) the general nature of the claim and the amount involved, if any;
- (e) the relief or remedy sought;
- (f) a brief statement, with dates, of any administrative proceedings or of the notice given of complaints, and the outcome of such steps;
- (g) a proposal as to the number of arbitrators (i. e., one or three).

18.4. The notice of arbitration may also include:

- (a) the name of the person and/or the authority proposed for appointment as a sole arbitrator and/or appointing authority referred to in Article 8.1;
- (b) the notification of the appointment by the claimant of an arbitrator referred to in Article 9.1;
- (c) the statement of claim referred to in Article 19.

#### *Article 19*

##### **Statement of claim**

19.1. Unless the statement of claim was contained in the notice of arbitration, within a time limit to be determined by the tribunal, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators. A copy of the contract shall be annexed thereto.

19.2. The statement of claim, signed and dated by the claimant and/or his duly authorized representative, shall include the following particulars:

- (a) the names and addresses of the parties;
- (b) a statement of the facts supporting the claim;

(c) the points at issue;

(d) the relief or remedy sought.

The claimant shall either annex to his statement of claim all documents he deems relevant or add a reference to the documents or other evidence he will submit.

#### *Article 20*

##### **Statement of defence**

20.1. Within a time limit to be determined by the tribunal, the respondent shall communicate his statement of defence in writing to the claimant and to each of the arbitrators.

20.2. The statement of defence shall reply to the particulars of the statement of claim given in compliance with Article 19.2 (b), (c) and (d). The respondent shall either annex to his statement the documents on which he relies for his defence or add a reference to the documents or other evidence he will submit.

20.3. In this statement of defence, or at a later stage in the arbitration proceedings, if the tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same contract, or rely on a claim arising out of the same contract for the purpose of a set-off.

20.4. The provisions of Article 19.2 shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

#### *Article 21*

##### **Amendments to the claim or defence**

During the course of the arbitration proceedings either party may amend or supplement his claim or defence unless the tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or the undue harm that it would cause to the other party.

#### *Article 22*

##### **Pleas to the jurisdiction of the tribunal**

22.1. The tribunal shall have the power to rule on objections to its jurisdiction.

22.2. The tribunal shall have the power to determine the existence or the validity of the contract. A decision by the tribunal that the contract is null and void shall not affect the validity of the arbitration clause in the contract or the agreement to submit the dispute to arbitration, and therefore, shall not affect the application of these rules.

22.3. A plea that the tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim. This provision shall also apply to new claims and counter-claims admitted in the course of the proceedings.

22.4. In general, the tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the tribunal may proceed with the arbitration and then rule on such a plea in its final award.

#### *Article 23*

##### **Further written statements**

The tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and, if so, the manner in which they shall be presented, and shall fix the time limits for communicating such statements.

#### *Article 24*

##### **Time limits**

The time limits fixed by the tribunal for the communication of written statements (including the statement of claim and statement of defence) shall not, in each case, exceed 45 days. However, the tribunal may extend the time limits if it concludes that an extension is justified.

#### *Article 25*

##### **Evidence**

25.1. Each party shall bear the burden of proving the fact relied on to support his claim or defence.

25.2. The tribunal may, if it considers it appropriate, require the parties to deliver to the tribunal and to the other party, within such time limit as the tribunal shall decide, a summary of the documents and other evidence which that party offers to present in support of the facts in issue set out in his statement of claim or statement of defence.

25.3. At any time during the proceedings, the tribunal may require the parties to produce documents, exhibits or other evidence within such time limit as the tribunal shall determine.

#### *Article 26*

##### **Oral proceedings**

26.1. In the event of an oral hearing, the tribunal shall give the parties adequate advance notice of the date, time and place thereof.

26.2. If witnesses are to be heard, each party shall communicate to the tribunal and to the other party, at least 15 days before the hearing, the names and addresses of the witnesses he intends to call, the subjects upon and the languages in which such witnesses will give their testimony.

26.3. The tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least 15 days before the hearing.

26.4. Hearings shall be held in camera unless the parties agree otherwise. The tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The tribunal is free to determine the manner in which witnesses are examined, without prejudice to the right of each party, at its request, to question witnesses presented by the other party.

26.5. Evidence of witnesses may also be presented in the form of sworn written statements signed by them. However, at the request of either party and with the leave of the tribunal, such witnesses may be heard at a hearing where the parties shall have the opportunity to be present and to question the witnesses.

26.6. The tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

#### *Article 27*

27.1. At the request of either party, the tribunal may take any interim measures it deems necessary in respect of the subject matter of the dispute, including measures for the conservation, preservation or safe-custody of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods. The tribunal may also order the deposit of a sum of money or the provision of a security to guarantee the whole or any part of the amounts in dispute. In the event of failure to do so, the tribunal shall be entitled to draw such conclusions as may logically be imputed to such failure.

27.2. Such interim measures may be established in the form of an interim award. The tribunal shall be entitled to require security for the costs of such measures.

*Article 28***Experts**

- 28.1. The tribunal may appoint one or more independent experts to examine and report to it, in writing on specific issues to be determined by the tribunal. A party shall have the right to object to an expert on the ground of competence and partiality and if such objection is sustained by the tribunal that expert shall withdraw. A copy of the expert's terms of reference, established by the tribunal, shall be communicated to the parties.
- 28.2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the tribunal for decision.
- 28.3. Upon receipt of the expert's report, the 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.
- 28.4. 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 question him. At this hearing either party may call expert witnesses in order to testify on the points at issue. The provisions of Article 26 shall apply to such proceedings.

*Article 29***Default**

- 29.1. If, within the time limit fixed by the tribunal, the claimant has failed to communicate his statement of claim without showing sufficient cause for such failure, the tribunal shall issue an order for the termination of the proceedings. If, within the time limit fixed by the tribunal, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the tribunal shall, after allowing for the particular constraints applying to the respondent, order that the proceedings continue and may make an award even if a defence has by then not been submitted.
- 29.2. If one of the parties, duly notified under these rules, fails to appear at a hearing, without showing sufficient

cause for such failure, the tribunal may proceed with the arbitration.

- 29.3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established time limit, without showing sufficient cause for such failure, the tribunal may make the award on the evidence before it, taking due account of the failure and the bearing it has on the case.

*Article 30***Closure of hearings**

- 30.1. The tribunal may inquire of the parties if they have any further evidence to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearing closed.
- 30.2. The 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 31***Waiver of rules**

A party who refrains from promptly raising an objection to any noncompliance with the provisions of or requirements under these rules shall be deemed to have waived his right to object.

**IV. — THE AWARD***Article 32***Decision**

- 32.1. When there are three arbitrators, an award or other decision of the tribunal shall be made by a majority of the arbitrators. However, if there is no majority, the presiding arbitrator shall have a casting vote, but shall give reasons for exercising that vote.
- 32.2. In the case of questions of procedure, when there is no majority or when the tribunal so authorizes, the presiding arbitrator may decide on his own, subject to review, if any, by the tribunal.

*Article 33***Time, scope, form and effect of the award**

- 33.1. The arbitration award shall be made as soon as possible after the hearing or receipt of evidence of the material which the parties wish to put before the tribunal.
- 33.2. In addition to making a final award, the tribunal shall be entitled to make interim, interlocutory, or partial awards.
- 33.3. The award shall be made in writing and shall be final and binding on the parties. The parties shall carry out the award without delay. Each ACP State or Member State shall recognize as binding every award made pursuant to these rules and shall ensure that it is enforced in its territory, as if it were a final judgment of one of its own courts or tribunals.
- 33.4. The tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 33.5. An award shall be signed and duly certified by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.
- 33.6. The award may be made public only with the consent of both parties.
- 33.7. Copies of the award signed and certified by the arbitrators shall be communicated to the parties by the tribunal.

*Article 34***Enforcement of the award**

- 34.1. In order to obtain the recognition and enforcement of the award in the territory of a signatory State of the Convention, the party concerned must present a certified copy of the award to the authority which that State has designated for the purpose. The order for enforcement shall be appended to the presented copy without any verification other than that of the authenticity of the copy.
- 34.2. Each signatory State shall, within 180 days from the entry into force of these rules, inform the President of the Council of Ministers of the authority which it has designated for this purpose and shall keep him informed of any changes. The President of the Council

of Ministers will transmit such information to the Secretary General of the ACP General Secretariat and to the President of the Commission without delay.

- 34.3. The enforcement of the award shall be regulated by the law relating to the enforcement of judgments which is in force in the State in whose territory the enforcement is to be carried out.

*Article 35***Settlement or other grounds for termination**

- 35.1. If, before the award is made, the parties agree on a settlement of the dispute by other means, the tribunal shall either issue an order for the termination of the proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an award on the agreed terms. The tribunal is not obliged to give reasons for such an award.
- 35.2. If, before the award is made, the continuation of the proceedings becomes unnecessary or impossible for any reason other than settlement under Article 35.1, the tribunal shall inform the parties that unless any objection is received within 30 days, it will issue an order terminating the proceedings. Should either party object within the said 30 days, the tribunal shall not issue such an order until it has heard the parties and determined that there are no justifiable grounds for objection.
- 35.3. Copies of the order for termination of the proceedings or of the award on the agreed terms, signed by the arbitrators, shall be communicated by the tribunal to the parties. Where an award on the agreed terms is made, the provisions of Articles 33.3 and 33.5 to 33.7 shall apply.

*Article 36***Interpretation of the award**

- 36.1. Within 60 days after the receipt of the award, either party, with notice to the other party, may request that the tribunal give an interpretation of the award. Where a new issue is discovered after the time limit provided has expired, the 60 days shall run from the date the new issue is discovered, provided that the maximum time limit for a request based on the discovery of a new issue shall not exceed 120 days from the date of the award.

36.2. The interpretation shall be given in writing as soon as possible after the receipt of the request. The interpretation shall from part of the award and the provisions of Article 33.2 to 33.6 shall apply.

#### Article 37

##### Correction of the award

- 37.1. Within 60 days after the receipt of the award, either party, with notice to the other party, may request the tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of a similar nature. The tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
- 37.2. Such corrections shall be in writing, and the provisions of Article 33.2 to 33.6 shall apply.

#### Article 38

##### Additional award

- 38.1. Within 60 days after the receipt of the award, either party, with notice to the other party, may request the tribunal to make an additional award as to claims presented in the proceedings but omitted from the awards.
- 38.2. If the 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 60 days after the receipt of the request.
- 38.3. When the additional award is made, the provisions of Article 33.2 to 33.6 shall apply.

#### Article 39

##### Fees

- 39.1. The fees of the tribunal shall be reasonable in amount, taking into account the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
- 39.2. If an appointing authority has been agreed upon by the parties or designated by these rules, and if that authority has issued a schedule of fees for arbitrators in international cases which it administers, the tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.

39.3. If such appointing authority has not issued a schedule of fees for arbitrators in international cases, any party fixing its costs request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the tribunal in fixing its fees shall take such information into account to the extent that it considers appropriate in the circumstances of the case.

39.4. In the cases referred to in Articles 39.2 and 39.3, when a party so requests and the appointing authority consents to draw up a proposal for fees, the tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the tribunal concerning the fees.

#### Article 40

##### Costs

- 40.1. The tribunal shall fix the costs of arbitration in its award. The term 'costs' includes only:
- (a) the fees of the tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 39;
  - (b) the travel and other expenses incurred by the arbitrators;
  - (c) the costs of expert advice and of other assistance required by the tribunal;
  - (d) the travel and other expenses of witnesses to the extent such expenses are approved by the tribunal;
  - (e) the costs for legal representation and assistance of the successful party if such costs were claimed during the proceedings, and only to the extent that the tribunal determines that the amount of such costs is reasonable;
  - (f) any fees and expenses of the appointing authority.
- 40.2. Except as provided in Article 40.3, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 40.3. With respect to the costs of legal representation and assistance referred to in Article 40.1 (e), the tribunal,

taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

- 40.4. When the tribunal issues an order for the termination of the proceedings or makes an award on the agreed terms, it shall fix the costs of arbitration referred to in Article 40.1 in the text of that order of award.
- 40.5. No additional fees may be charged by a tribunal for interpretation or correction or completion of its award under Articles 36 to 38.

#### *Article 41*

##### **Deposit of costs**

- 41.1. The tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in Article 40.1 (a), (b) and (c).

- 41.2. During the course of the arbitration proceedings, the tribunal may request supplementary deposits from the parties for valid reasons.

- 41.3. If an appointing authority has been agreed upon by the parties or designated by these rules, and when a party so requests and the appointing authority consents to perform the function, the tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make comments to the tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.

- 41.4. If the required deposits are not paid in full within 30 days after receipt of the request, the tribunal shall inform the parties in order that one or other of them may make the required payment. If such payment is not made, the tribunal may nevertheless decide to continue with, or order the suspension or termination of, the proceedings.

- 41.5. After the award has been made, the tribunal shall render an account to the parties of the deposits received and return any unexpended balance to the parties.