

D. Rules for Binding Opinion Proceedings

Rules for Binding Opinion Proceedings of Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Automation Disputes)

1. Object

The Board of Stichting Geschillenoplossing Automatisering has laid down the following Rules for resolving, by means of an opinion binding on the parties, disputes relating to information and communication technology, or for ending or preventing uncertainty concerning the rules applicable to the parties in law.

2. Definitions

In these Rules:

- a. 'Stichting' means Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Automation Disputes), having its office in Rijswijk;
- b. 'Board' means the Board of the Stichting;
- c. 'Bureau' means the Bureau of the Stichting as provided for by the latter's Articles of Association;
- d. 'Binding Opinion Committee' means an arbitration board made up in accordance with these Rules, which shall give its decision by means of an opinion binding on the parties;
- e. 'Secretary' means the secretary of the Board or his deputy;
- f. 'Binding Opinion Agreement' means a written agreement between the parties laying down that these Rules shall apply to the resolution of a dispute between them or to ending or preventing uncertainty concerning the rules applicable between them in law.

Wherever in these Rules words are importing the male gender, they shall include the female gender where necessary.

3. Applicability

These Rules shall apply if the parties have agreed in writing:

- a. That these Rules shall apply to the dispute dividing them or to the uncertainty concerning the rules applicable to them in law;
- b. That they wish to resolve their dispute, or end or prevent the uncertainty between them concerning the rules applicable between them in law, exclusively by means of an opinion binding on them, and that they shall therefore not institute any legal or arbitral proceedings in regard to the dispute concerned except for requesting the President of the District Court or an arbitration board in summary arbitral proceedings for a provisional decision if the party concerned considers it necessary for the preservation of rights, such as expiry of terms;
- c. That they shall submit to the award of the Binding Opinion Committee.

4. Confidentiality

Unless otherwise agreed in writing, the parties shall give no information to third parties about their case pending before the Binding Opinion Committee. This requirement of confidentiality shall also apply to the members of the Binding Opinion Committee and to any third parties that may be involved in its work.

5. Notices

Any notice referred to herein shall be given in writing, by an electronic means of communication if desired.

6. Language

The Binding Opinion proceedings can be conducted in Dutch or English. On demand by either of the parties, any documents relating to the case shall, at the expense of the party asking for a translation, be translated by a sworn translator designated by the Bureau.

7. Institution of Binding Opinion Proceedings

7.1 Binding Opinion proceedings shall commence on the day of receipt by the Bureau of an application signed by one of the parties. This application must be made in writing or by sending it by e-mail to an e-mail address designated for that purpose by the Bureau.

7.2 The application shall contain the following information:

- a. Name, address, place of residence, telephone number, telefax number and e-mail address of the parties;
- b. A copy of the Binding Opinion Agreement referred to in Article 2;
- c. An accurate description of the decision requested and an explanation that is such that it shows what is keeping the parties divided;

7.3 Immediately after receipt of the application the Bureau shall acknowledge its receipt to the parties in writing, stating the date of receipt.

7.4 The Stichting shall not consider any disputes in which the claim of the plaintiff does not exceed € 2,500.--. This limit shall not apply to any counter-claim of the opposite party.

8. List Procedure

8.1 As soon as possible after receipt of the application mentioned in Article 7, the Bureau shall send each of the parties an identical list of names of persons eligible for appointment as a binding adviser. This list shall contain at least three names where a single binding adviser is to be appointed and at least six names where three binding advisers are to be appointed. This list shall be made up by the Bureau in consultation with the secretary. At the request of either of the parties the Bureau shall send the parties a short personal profile, drawn up by it, of the persons named in the list.

- 8.2 Each party may strike off from the list of names the person such party has strong objections to, and number the remaining names in order of its preference. The parties must return to the Bureau, within fourteen days, the list thus rewritten.
- 8.3 After comparing the parties' preferences, the Bureau shall under Article 9 appoint one or three binding advisers, with due observance of the said preferences.
- 8.4 In the event that the parties are not found to have any identical preference for one or more binding advisers or if the Bureau has not received the rewritten list of names within fourteen calendar-days, the Bureau may directly appoint one or more Binding Advisers from the list in accordance with Article 9.
- 8.5 If a person is unwilling or unable to accept the invitation of the Bureau to act as a binding adviser or is found to be unable to act as a binding adviser for any other reasons, and if not enough persons acceptable to each of the parties remain on the list returned, the Bureau itself shall appoint some other binding adviser.

9. Binding Opinion Committee

- 9.1 The members of the Binding Opinion Committee shall be impartial and independent and have, or have had in the past, no close personal or business ties with either of the parties. They shall not have any direct or indirect interest in the outcome of the Binding Opinion proceedings. The Board may at any time withdraw the appointment of a member of the Binding Opinion Committee if he does not comply with the provisions of this Article. In that case the Board shall as soon as possible, after consultation with the parties, appoint to be a member of the Binding Opinion Committee another expert whose name appears on the list of experts of the Stichting.
- 9.2 Unless the parties have agreed in writing that the Binding Opinion Committee shall be formed by one member, the Binding Opinion Committee shall consist of three members. If the Binding Opinion Committee consists of three members, they shall appoint one from their number to be chairman. The chairman may have himself assisted by an attached secretary.
- 9.3 Within seven days following receipt by the Bureau of both rewritten lists referred to in Article 8, or if the Bureau has not received one of the rewritten lists, or both, within fourteen days, within seven days following the expiry of the fourteen days concerned, the Board shall appoint the members of the Binding Opinion Committee. This term may be extended by the Board for weighty reasons, in which case the Bureau shall notify the parties of the extension and its reason.
- 9.4 The appointment of a member of the Binding Opinion Committee shall be confirmed by the Bureau in a letter of appointment addressed to the same. The member shall accept his appointment in writing. It shall suffice to sign and return a copy of the appointment letter to the Bureau.
- 9.5 Immediately after appointment of the Binding Opinion Committee, the Bureau shall give the parties notice in writing of the appointment, stating the name and address of the chairman of the Binding Opinion Committee.

10. Procedure

- 10.1 During the proceedings, no member of the Binding Opinion Committee shall be permitted to be in contact with either of the parties about any content-related aspects of the Binding Opinion proceedings otherwise than in the presence of the other party, unless he has permission from the other party and the other members of the Binding Opinion Committee.
- 10.2 All documents the parties wish to bring to the knowledge of the Binding Opinion Committee shall be sent by them in quadruplicate to its chairman unless the Binding Opinion Committee is formed by one member, in which case all documents must be sent in duplicate. The parties shall be free to send the documents by e-mail to an e-mail address of the Bureau stated by the same.
- 10.3 Until four weeks after the notice referred to in Article 9.5 was sent, the parties shall be given the opportunity to give a written explanation of the decision they have asked for. This explanation must be sent to the chairman of the Binding Opinion Committee, accompanied by copies of the documentary evidence the parties wish to invoke.
- 10.4 Copies of all documents sent by the parties to the Binding Opinion Committee shall simultaneously be sent by them by post to the other party.
- 10.5 The Binding Opinion Committee shall give the parties the opportunity verbally to explain their standpoints in a session, unless both parties have decided not to.
- 10.6 The Binding Opinion Committee shall fix the time and place of the session within four weeks of the latest point in time when the documents referred to in Article 10.3 could be submitted. Previously the chairman shall consult with the parties on the time of the session. After the time and place of the session have been fixed, the Bureau shall inform the parties in writing with due observance of a reasonable term of notice prior to the session. This shall also apply to any subsequent sessions that in the opinion of the Binding Opinion Committee might be necessary.
- 10.7 In special cases, after consulting with the parties, the Binding Opinion Committee may deviate from the procedure described in the preceding paragraphs, but shall in any case give the parties the opportunity to explain their case before the Binding Opinion Committee, make remarks and requests and react to any statements made by the other party.
- 10.8 Each party may have itself represented by an attorney-at-law or other attorney duly authorized in writing for that purpose.
- 10.9 If the Binding Opinion Committee has in writing declared the investigation closed, the Committee shall in principle take no notice of any deeds and other documents submitted thereafter by one or more of the parties.

11. Evidence

The admissibility of the evidence, the assignment of the onus of proof and the valuation of the evidence shall entirely be in the discretion of the Binding Opinion Committee.

12. Decision

- 12.1 The Binding Opinion Committee shall give their decision like good men and true, taking due account of the relevant usages of trade.
- 12.2 The decision may also include:
- a. The mere determination of the quality or condition of goods;
 - b. The mere determination of the amount of any damages or of any sum of money due.
- 12.3 The decision shall not mention any view of any member of the Binding Opinion Committee deviating from the majority decision.
- 12.4 The Binding Opinion Committee shall give its decision as soon as possible.
- 12.5 The decision shall be put in writing in quadruplicate and signed by each of the members of the Binding Opinion Committee.
- 12.6 In addition to the award of the Binding Opinion Committee, the decision shall in any case contain:
- a. The names and places of residence of the members of the Binding Opinion Committee;
 - b. The names and places of residence of the parties;
 - c. The date of the decision;
 - d. The place where the decision was given;
 - e. The grounds of the decision given;
 - f. The costs of the Binding Opinion, as fixed.
- 12.7 Immediately after the decision has been given and after its costs have been paid by the parties, the Bureau shall send each party a copy of the decision.
- 12.8 A copy of the decision shall be kept in the records of the Stichting for ten years. Each party may in that period request the Bureau to provide a copy of the decision, certified by the latter, against payment of the costs.

13. Rectification of Binding Opinion and Supplementary Binding Opinion

- 13.1 Each of the parties may request the Binding Opinion Committee, until thirty calendar-days following the date of the Binding Opinion, to correct any apparent arithmetical or writing error therein.
- 13.2 If the Binding Opinion Committee has failed to decide on one or more matters referred to its judgment, either party may request the Binding Opinion Committee, until thirty calendar-days following the date of the Binding Opinion, to give a supplementary Binding Opinion.
- 13.3 Any request referred to in Article 13.1 and 13.2 must be made in writing in triplicate to the head of the Bureau. A copy of such request shall be sent directly to the other party by the requester. Within thirty days of receipt of such request the other party

shall have the opportunity to express in writing its views on such request. The other party shall send a copy of its reaction, if any, directly to the requester.

- 13.4 If the Binding Opinion Committee makes the correction or rectification, it shall be stated in a separate document by the same; this document shall be deemed to form part of the Binding Opinion.
- 13.5 Before the Binding Opinion Committee decides on the request for a supplementary Binding Opinion, it shall give the parties the opportunity to be heard.
- 13.6 Any supplementary Binding Opinion shall be considered to be a Binding Opinion.
- 13.7 If the Binding Opinion Committee rejects the request for the correction, rectification or supplementation of an award, the head of the Bureau shall inform the parties. A copy of this notice shall be signed by all members of the Binding Opinion Committee.

14. Costs

14.1 Costs in General

By 'costs of the Binding Opinion' is understood the costs which in the opinion of the Binding Opinion Committee were necessarily entailed by the Binding Opinion, as well as the administrative expenses, registration fee and the fees and out-of-pocket expenses of the members of the Binding Opinion Committee, any third parties that may be consulted and the attached secretary.

- 14.2 Each party shall bear its own costs.
- 14.3 On the institution of the Binding Opinion proceedings a fixed amount calculated in accordance with the provisions of the following paragraph shall be due to the Stichting by the applicant to cover administrative expenses, as well as a registration fee. The Bureau shall inform the applicant of this amount after receipt of the application referred to in Article 7.2.
- 14.4 The administrative expenses shall be calculated on the basis of the scale fixed by the Board, contained in the Appendix hereto. The registration fee shall likewise be fixed in accordance with the relevant provisions of the Appendix hereto. The scale of administrative expenses and the registration fee may between times be changed by the Board in accordance with Article 14.4. If the administrative expenses cannot be calculated on the basis of the Appendix, the Bureau shall decide.
The amounts given in the Appendix hereto shall always be exclusive of value added tax.
- 14.5 A registration shall likewise be due by the defendant unless the defendant's defence is exclusively aimed at making the plea of incompetent jurisdiction of the binding adviser and the defence to that effect is fully accepted by the latter. The registration fee shall likewise be fixed in accordance with the relevant provisions of the Appendix hereto.
- 14.6 If a counter-claim is raised by the defendant, administrative expenses shall be due by him as well, calculated in accordance with Article 14.4. The Bureau shall inform the defendant of the amount of the administrative expenses and the registration fee within one week after the counter-claim was raised.

14.7 The Bureau shall see to the collection of the administrative expenses and registration fee due, plus value added tax. If after the second demand in writing by the Bureau any party has failed to pay, within fourteen calendar-days, the administrative expenses and registration fee due by it, plus value added tax, such party shall be deemed to have withdrawn its claim or counter-claim, as the case may be.

14.8 The Binding Opinion Committee and the Bureau may at any time suspend their work with regard to the claim or counter-claim as long as the party concerned has failed to pay the administrative expenses and registration fees due, plus value added tax.

15. Fees and Out-of-pocket Expenses of the Members of the Binding Opinion Committee

15.1 The fees and out-of-pocket expenses of the members of the Binding Opinion Committee shall be fixed by the Bureau after consultation with the members concerned. In fixing the fees, the Bureau shall take into account the time spent on the case by the chairman, its financial importance and its complexity.

26.2 The out-of-pocket expenses of the members of the Binding Opinion Committee shall include, among other things, any reasonable travelling and hotel expenses, cost of assistance, costs of experts, costs of meeting-rooms, postage, telephone and telefax charges and cost of photocopies.

16. Advances

16.1 The Bureau may require of the applicant an advance from which to pay the fees and out-of-pocket expenses of the members of the Binding Opinion Committee as far as possible. If the defendant has raised a counter-claim, he, too, may be required by the Bureau to pay an advance. Unless expressly otherwise stated in the request by the Bureau to pay an advance, the amount stated therein in respect of the advance shall always be exclusive of value added tax. If a demand is made on the plaintiff or defendant to pay an advance, the advance demanded must be paid plus its value added tax.

16.2 The costs of experts and of other technical assistance shall likewise be paid out of the advance if and insofar as such costs are incurred by the Stichting or members of the Binding Opinion Committee.

16.3 At the request of the Bureau, the chairman of the Binding Opinion Committee shall consult with the Bureau about the amount of the work and costs expected by the Binding Opinion Committee, in order to fix the amount of the advance.

16.4 The Bureau may at any time demand supplementation of the advance.

16.5 The Bureau shall inform the members of the Binding Opinion Committee of the advance.

16.6 The members of the Binding Opinion Committee and the Bureau may at any time suspend their work with regard to the claim or counter-claim, as the case may be, as long as the party concerned has not paid the advance required of it. If after the second demand in writing by the Bureau a party has failed to pay the advance required of it within

fourteen calendar-days, such party shall be deemed to have withdrawn its claim or counter-claim, as the case may be.

16.7 The Stichting shall not be liable to pay any costs not secured by an advance. No interest shall be allowed on the amount of the advance paid.

16.8 In case of withdrawal of the claim or counter-claim, as the case may be, all expenses incurred by the Stichting and not secured by the advance shall be recovered by it from the applicant on withdrawal of the claim and from the defendant on withdrawal of the counter-claim. In that case the Bureau may also decide to divide the expenses between the parties in equal shares.

17. Exclusion of Liability

Neither the Foundation nor the members of the Board in person, the staff of the Bureau and/or any members of the Binding Opinion Committee shall be liable for any act or failure to act with regard to any Binding Opinion governed by these Rules.

18. Unforeseen Matters

In all cases not provided for by these Rules, the Board of the Stichting shall decide. The Board may authorize the secretary of the Stichting to take such decisions. In the course of the proceedings the decisions shall be taken in consultation with the chairman of the Binding Opinion Committee.

19. Amendments

The Board may at any time make amendments to these Rules.

These Rules were laid down by the Board of Stichting Geschillenoplossing Automatisering in The Hague on December 17, 2002 and filed with the Clerk of the District Court of The Hague on March 18, 2003 under number 29/2003.