

No. 26067

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**FRANCE**  
**and**  
**UNITED KINGDOM OF GREAT BRITAIN**  
**AND NORTHERN IRELAND**

**Exchange of letters constituting an agreement relating to the arbitration rules for the implementation of the Treaty of 12 February 1986 concerning a channel fixed link (with annex). Paris, 29 July 1987**

*Authentic texts: French and English.*

*Registered by France on 7 July 1988.*

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**FRANCE**  
**et**  
**ROYAUME-UNI DE GRANDE-BRETAGNE**  
**ET D'IRLANDE DU NORD**

**Échange de lettres constituant un accord relatif au règlement d'arbitrage pris pour l'application du Traité du 12 février 1986 concernant la liaison fixe transmanche (avec annexe). Paris, 29 juillet 1987**

*Textes authentiques : français et anglais.*

*Enregistré par la France le 6 juillet 1988.*

ÉCHANGE DE LETTRES CONSTITUANT UN ACCORD<sup>1</sup> ENTRE LA FRANCE ET LE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD RELATIF AU RÈGLEMENT D'ARBITRAGE PRIS POUR L'APPLICATION DU TRAITÉ DU 12 FÉVRIER 1986<sup>2</sup> CONCERNANT LA LIAISON FIXE TRANSMANCHE

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN FRANCE AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE ARBITRATION RULES FOR THE IMPLEMENTATION OF THE TREATY OF 12 FEBRUARY 1986<sup>2</sup> CONCERNING A CHANNEL FIXED LINK

I

RÉPUBLIQUE FRANÇAISE  
LE MINISTRE DES AFFAIRES ÉTRANGÈRES

Paris, le 29 juillet 1987

Monsieur l'Ambassadeur,

Me référant aux négociations intervenues entre nos deux pays en vue de la conclusion d'un Règlement d'arbitrage pris pour l'application de l'article 19 du Traité entre la République française et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord concernant la construction et l'exploitation par des sociétés privées concessionnaires d'une liaison fixe transmanche signé à Cantorbéry le 12 février 1986, j'ai l'honneur de vous proposer, d'ordre de mon Gouvernement, les dispositions suivantes :

Les deux Gouvernements donnent leur accord au texte du Règlement d'arbitrage concernant la liaison fixe transmanche qui est annexé à la présente lettre. Ils s'engagent dans leurs relations bilatérales à en appliquer les dispositions, ainsi qu'à le signer et à en appliquer les dispositions avec les concessionnaires parties à la Concession signée le 14 mars 1986 entre le Ministre français de l'Urbanisme, du Logement et des Transports et le Secrétaire d'Etat aux Transports du Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, d'une part, et France-Manche SA et The Channel Tunnel Group Limited, d'autre part.

Je vous serais obligé de me faire savoir si les dispositions qui précèdent recueillent l'agrément de votre Gouvernement. Dans ce cas, la présente lettre et votre réponse constitueront un accord entre nos deux Gouvernements qui entrera en vigueur à la date de l'entrée en vigueur du Traité.

<sup>1</sup> Entré en vigueur le 29 juillet 1987, date de l'entrée en vigueur du Traité du 12 février 1986, conformément aux dispositions desdites lettres.

<sup>2</sup> Nations Unies, *Recueil des Traités*, vol. 1497, n° I-25792.

<sup>1</sup> Came into force on 29 July 1987, the date of the entry into force of the Treaty of 12 February 1986, in accordance with the provisions of the said letters.

<sup>2</sup> United Nations, *Treaty Series*, vol. 1497, No. I-25792.

[TRANSLATION — TRADUCTION]

FRENCH REPUBLIC  
THE MINISTER FOR FOREIGN AFFAIRS

Paris, 29 July 1987

Sir,

[*See letter II*]

Please accept, Sir, etc.

[*Signed*]

JEAN-BERNARD RAIMOND

His Excellency Sir Ewen Fergusson  
Ambassador Extraordinary and Plenipotentiary  
of the United Kingdom of Great Britain  
and Northern Ireland to Paris

[*Annex as under letter II*]

## II

BRITISH EMBASSY  
PARIS  
FROM THE AMBASSADOR

29 July 1987

Your Excellency,

I have the honour to refer to your letter of 29 July 1987 in the following terms in the English language:

“With reference to the negotiations between our two countries with regard to Arbitration Rules to give effect to Article 19 of the Treaty between the French Republic and the United Kingdom of Great Britain and Northern Ireland concerning the construction and operation by private Concessionaires of a Channel Fixed Link signed at Canterbury on 12 February 1986, I have the honour to propose on behalf of my Government, the following arrangements:

“The two Governments shall give their agreement to the text of the Arbitration Rules concerning the Channel Fixed Link which is annexed to this letter. They shall undertake in their bilateral relations to apply those Rules, and also to enter into an agreement to give effect to those Rules with the Concessionaires who are parties to the Concession Agreement signed on 14 March 1986 between

the Secretary of State for Transport of the Government of the United Kingdom of Great Britain and Northern Ireland and le Ministre Français de l'Urbanisme, du Logement et des Transports of the one part and France-Manche S.A. and The Channel Tunnel Group Limited of the other part.

"I would be grateful if you would let me know if these proposals are agreeable to your Government. In that event the present letter and your reply shall constitute an agreement between our two Governments which will enter into force on the date of entry into force of the Treaty.

"I would also wish to take this opportunity to confirm our common understanding that the Arbitration Rules do not apply to any dispute as to the interpretation or application of any special arrangement, in particular as to defence, made pursuant to Article 5 of the Treaty, which, in accordance with the terms of such special arrangements, is to be settled by negotiation between the two Governments.

"Please accept, Sir, the assurance of my high consideration."

Those proposals are agreeable to the Government of the United Kingdom of Great Britain and Northern Ireland and your letter and this reply will constitute an agreement thereon between our two Governments which will enter into force on the date of entry into force of the Treaty.

I also confirm our common understanding that the Arbitration Rules do not apply to any dispute as to the interpretation or application of any special arrangement, in particular as to defence, made pursuant to Article 5 of the Treaty, which, in accordance with the terms of such special arrangement, is to be settled by negotiation between the two Governments.

Please accept, Sir, the assurance of my high consideration.

[*Signed*]

EWEN FERGUSSON

His Excellency the Minister for Foreign Affairs  
Monsieur Jean-Bernard Raimond  
Ministry of Foreign Affairs  
Paris

ANNEX TO THE EXCHANGE OF LETTERS OF THE 29th OF JULY 1987 RELATING  
TO THE ARBITRATION RULES CONCERNING THE CHANNEL FIXED LINK

*Article I. APPLICATION*

1. The provisions of these Rules shall apply to the settlement by arbitration of the disputes described in Article 19 (1) of the Treaty and any other dispute which, in accordance with any other agreement to which the Governments are parties, whether or not the Concessionaires are also parties, is to be determined by the Tribunal constituted in accordance with Article 19 of the Treaty.

2. The provisions of these Rules shall govern the arbitration except that, where any of the provisions of these Rules is in conflict with a provision of any relevant agreement as defined in Article II, the latter provision shall prevail.

*Article II. DEFINITIONS*

In these Rules, the expressions set out below shall have the meanings there assigned to them:

“The Treaty” means the Treaty signed on 12 February 1986 between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link.

“Relevant agreement” means the Treaty or any Protocol or agreement other than these Rules to which Article I.1 of these Rules refers.

“The Governments” means the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic.

“The concessionaires” means The Channel Tunnel Group Limited and France-Manche S.A.

“The Tribunal” means the arbitral tribunal constituted pursuant to Article 19 (2) of the Treaty.

“The Chairman” means the chairman of the Tribunal appointed in accordance with Article 19 (2) of the Treaty.

*Article III. NOTICE AND 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 if it is physically delivered to the addressee or if it is delivered, as applicable, to the following addresses:

— For the Government of the United Kingdom of Great Britain and Northern Ireland, The Treasury Solicitor, Legal Adviser to the Department of Transport, 2 Marsham Street, London SW1P 3EB,

— For the Government of the French Republic, le Ministère de l'Équipement, du Logement, de l'Aménagement du Territoire et des Transports, 246 Boulevard Saint-Germain, Paris (7<sup>e</sup>),

— For The Channel Tunnel Group Limited, The Channel Tunnel Group Limited, Portland House, Stag Place, London SW1E 5BT,

— For France-Manche S.A., France-Manche S.A., Tour Franklin, 100 Terrasse Boieldieu, Puteaux Cédex 11, 92081 Paris la Défense,

or such other address as may be notified to all the parties to these Rules.

2. For the purposes of calculating a period of time under these Rules or any relevant agreement or fixed by the Tribunal, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence of the addressee, the period shall be extended until the first business day

which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

*Article IV. CONSTITUTION OF THE TRIBUNAL*

1. The Tribunal shall be constituted in accordance with the provisions of Article 19 (2) of the Treaty.
2. Before appointing an arbitrator, a party shall, as soon as it is able to do so, inform the other parties to the arbitration of the name of the person it proposes to appoint.

*Article V. PROVISIONAL REGISTRAR*

1. Forthwith upon the entry into force of these Rules and whenever a vacancy arises, the parties to these Rules shall appoint a provisional registrar.
2. The provisional registrar shall act as registrar for each arbitration, unless or until the Tribunal appoints a different registrar in any particular arbitration. Copies of requests for arbitration and all subsequent documents shall be served on the registrar.

*Article VI. PLACE OF ARBITRATION*

1. The place of arbitration shall be Brussels.
2. The 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. The Tribunal may meet at any place it deems appropriate for the inspection of works, other property or documents. The parties to the arbitration shall be given sufficient notice to enable them to be present at such inspection.
4. The award shall be made at Brussels.

*Article VII. LANGUAGE OF ARBITRATION*

1. The parties and the arbitrators shall use the English or the French language during the arbitration. If necessary there shall be simultaneous translation of oral proceedings.
2. Any award shall be made both in the English and French languages.

*Article VIII. GENERAL PROVISIONS RELATING TO THE TRIBUNAL*

1. The Chairman shall preside at the hearings and deliberations of the Tribunal.
2. The decisions of the Tribunal will be taken in accordance with Article 19 (3) of the Treaty.
3. In the case of:
  - a) The death or resignation of any member of the Tribunal, a replacement shall be appointed in accordance with the relevant provisions of Article 19 (2) of the Treaty;
  - b) The refusal or inability to act of any member of the Tribunal, a replacement shall be appointed, at the request of the other members, in accordance with the relevant provisions of Article 19 (2) of the Treaty.
4. In the cases referred to in paragraph 3 the Tribunal shall, after consulting the parties to the arbitration, have discretion as to whether or not its consideration of the dispute shall be recommenced.

*Article IX. GENERAL POWERS OF THE TRIBUNAL*

1. The Tribunal shall be the judge of its own competence and of the applicability of rules as to its composition.
2. The Tribunal shall have power to join separate requests for arbitration.

3. The Tribunal shall have power to compensate for any damage suffered by making a monetary award and, having regard to the responsibilities of the Governments for national security and defence, to make any other award as it thinks just, including an interim award.

4. The Tribunal shall decide on the extent to which a monetary award shall carry interest.

5. Unless the parties to the arbitration decide otherwise, the proceedings, including evidence, shall remain confidential. Awards of the Tribunal shall be made public but, in drawing up and publishing an award, the Tribunal shall have regard to representations by the parties as to matters which should remain confidential.

#### *Article X.* REQUEST FOR ARBITRATION

1. The party initiating recourse to arbitration (hereinafter referred to as “the claimant”) shall give to the other party against which it is claiming (hereinafter “the respondent”) and the provisional registrar notice of a request for arbitration.

2. The provisional registrar shall forthwith serve notice of any such request on the remaining parties to these Rules.

3. The request for arbitration shall include the following:

- a) A demand that the dispute be referred to arbitration,
- b) The names of the parties,
- c) The general nature of the claim and an indication of the amount involved, if any,
- d) The relief or remedy sought.

4. Arbitration proceedings shall be deemed to commence on the date on which the request for arbitration is received by the respondent. Such date is the beginning of the two months period provided by Article 19 (2) (a) of the Treaty for the appointment of an arbitrator.

#### *Article XI.* RULES OF PROCEDURE

1. Save as specifically provided in any relevant agreement or in these Rules, the Tribunal may adopt such procedures as it considers appropriate, provided that the parties to the arbitration are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting its case.

2. The parties shall be represented by agents who may be assisted by counsel and experts.

3. The following documents shall be filed with the Tribunal within the time limits set by it:

- a) A claim by the claimant,
- b) A defence by the respondent,
- c) With the consent or at the request of the Tribunal:
  - i) A reply by the claimant,
  - ii) A rejoinder by the respondent,
  - d) Any counterclaim or defence to a counterclaim.

4. The Tribunal shall decide whether further written statements shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

*Article XII. INTERVENTION BY, AND JOINDER OF, PARTIES*

1. Subject to paragraph 5 of this Article, any party to these Rules which is not a party to an arbitration may intervene in the arbitration.

2. Subject to paragraph 5 of this Article, any party to an arbitration may cause to be joined in the arbitration any party to these Rules which is not a party to the arbitration.

3. Any such intervention shall be effected by giving notice to the Tribunal or, if it is not then constituted, to the provisional registrar. The Tribunal or the provisional registrar, as the case may be, shall thereupon serve such notice on the other parties to these Rules, and Article XI shall apply for the filing of documents respecting any claim, defence or reply by any such intervening or joined party.

4. Where an intervening party or joined party is on such intervention or joinder entitled to appoint an arbitrator, it shall make such appointment within the time fixed by the Tribunal.

5. The Tribunal may refuse to permit a party to intervene or to be joined in an arbitration if it is of the opinion that, having regard to the stage at which such intervention or joinder is proposed, it would be unjust to the existing parties to the arbitration or would unduly and unnecessarily delay the arbitration.

*Article XIII. PROCEEDINGS*

1. When the Tribunal considers that the issues have been sufficiently clarified by the production of the documents referred to in the previous Articles, it shall hold oral hearings unless all the parties to the arbitration request it to make its award without such hearings.

2. The Tribunal shall have power to:

a) Call upon the parties to the arbitration to produce documents and evidence,

b) Hear oral evidence and submissions,

c) Appoint experts, and

d) Make such visits to any place connected with the dispute and there conduct such enquiries as it thinks useful.

3. The Tribunal may draw any conclusion it thinks fit from the failure or refusal or any party to produce any document or give any other evidence required by the Tribunal.

*Article XIV. DEFAULT IN APPEARANCE*

If a party to the arbitration fails to appear or to present its case at any stage in the proceedings, any other party to the arbitration may request the Tribunal to proceed with the arbitration and to make an award. The Tribunal shall notify the party in default of any such request and grant to it a period of grace unless it is satisfied that such party does not intend to appear or to present its case.

*Article XV. SETTLEMENT AND WITHDRAWAL*

1. If the parties to an arbitration file with the Tribunal the full and signed text of any settlement which they may reach during the proceedings, the Tribunal shall record the settlement in the form of an award.

2. If the claimant or claimants give notice of withdrawal from the proceedings, the Tribunal shall record such withdrawal and shall, unless the parties to the arbitration have otherwise agreed, make an award as to the proportions in which the costs and expense of the proceedings shall be payable.

*Article XVI. THE AWARD*

1. The Tribunal shall make its award with all practicable speed.

2. The award shall be in writing and shall be signed by the Chairman. It shall deal with every question submitted to the Tribunal and shall state the reasons upon which it is based.

3. The award shall make provision for the costs of the arbitration process having regard to Article 19 (4) of the Treaty.

4. The award shall be delivered without delay to all parties to these Rules.

5. The award shall be final and binding on all parties to the arbitration. It shall not be subject to any appeal. The Tribunal may, at the request of one of the parties, interpret its own awards and correct any material error in an award.

6. Enforcement of the award shall be governed by the law of the State in which enforcement is sought.

*Article XVII.* ENTRY INTO FORCE

These Rules shall enter into force on the date on which the Treaty enters into force.