

Rules for Binding Opinion Proceedings

Rules for Binding Opinion Proceedings of Stichting Geschillenoplossing Automatisering (SGOA) (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 the terms below have the following meanings:

- a. 'Foundation': Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Automation Disputes), with its office in Rijswijk;
- b. 'Board': the Board of the Foundation;
- c. 'Bureau': the Bureau of the Foundation as provided for by the latter's articles;
- d. 'Binding Opinion Committee': an arbitration board made up in accordance with these Rules, which will give its decision by means of an opinion binding on the parties;
- e. 'secretary': the secretary of the Board or his deputy;
- f. 'Binding Opinion Agreement': a written agreement between the parties laying down that these Rules will 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 import the male gender, they will include the female gender where necessary.

3. Applicability

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

- a. that these Rules will 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 will therefore not institute any legal or arbitral proceedings with regard to the dispute concerned except for requesting a provisional decision from the President of the District Court or an arbitration board in summary arbitral proceedings if the party concerned considers it necessary for the preservation of rights, such as expiry of terms;
- c. that they will submit to the award of the Binding Opinion Committee.

4. Confidentiality

Unless otherwise agreed in writing, the parties will give no information to third parties about their case pending before the Binding Opinion Committee. This requirement of confidentiality will 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 will be given in writing, by an electronic means of communication if desired.

6. Language

The Binding Opinion proceedings may be conducted in Dutch or English. Should either of the parties so demand, any documents relating to the case will, 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 will 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 email to an email address designated for that purpose by the Bureau.

7.2 The application will contain the following information:

- a. Name, address, place of residence, telephone number, fax number and email 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 making clear what is keeping the parties divided.

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

The Foundation will not consider any disputes in which the claim of the claimant does not exceed € 2,500. This limit will not apply to any counterclaim of the opposite party.

8. List Procedure

8.1 As soon as possible after receipt of the application referred to in Article 7, the Bureau will send each of the parties an identical list of names of persons eligible for appointment as a binding adviser. This list will 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 will be compiled by the Bureau in consultation with the secretary. At the request of either of the parties the Bureau will send the parties a short personal profile drawn up by it of the persons named in the list.

8.2 Each party may cross 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 this rewritten list to the Bureau within fourteen days.

8.3 After comparing the parties' preferences, the Bureau will appoint under Article 9 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 will appoint another binding adviser.

9. Binding Opinion Committee

9.1 The members of the Binding Opinion Committee will be impartial and independent and must not have or have had any close personal or business ties with either of the parties. They will 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 will 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 Foundation.

9.2 Unless the parties have agreed in writing that the Binding Opinion Committee will be formed by one member, the Binding Opinion Committee will consist of three members. If the Binding Opinion Committee consists of three members, they will appoint one from their number to be chairman. The chairman may be assisted by an assigned 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 or both of the rewritten lists within fourteen days, within seven days following the expiry of the fourteen days concerned the Board will appoint the members of the Binding Opinion Committee. This term may be extended by the Board for compelling reasons, in which case the Bureau will notify the parties of the extension and its reason.

9.4 The appointment of a member of the Binding Opinion Committee will be confirmed by the Bureau in a letter of appointment addressed to the same. The member will accept his appointment in writing. It will 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 will 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 will 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 will 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 will be free to send the documents by email to an email 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 will 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 will simultaneously be sent by them by post to the other party.
- 10.5 The Binding Opinion Committee will give the parties the opportunity to explain their standpoints at an oral hearing, unless both parties have decided not to do so.
- 10.6 The Binding Opinion Committee will fix the time and place of the session within four weeks of deadline by which the documents referred to in Article 10.3 could be submitted. The chairman will consult the parties beforehand on the time of the session. After the time and place of the session have been fixed, the Bureau will inform the parties in writing with due observance of a reasonable term of notice prior to the session. This will 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 will in any case give the parties the opportunity to explain their case before the Binding Opinion Committee, make comments and requests and respond to any statements made by the other party.
- 10.8 Each party may have itself represented by a lawyer or other representative who has written authorization for that purpose.
- 10.9 If the Binding Opinion Committee has declared in writing the investigation closed, the Committee will in principle not consider any records and other documents submitted thereafter by one or more of the parties.
- 11. Evidence**
The admissibility of the evidence, the assignment of the burden of proof and the evaluation of the evidence will entirely be at the discretion of the Binding Opinion Committee.
- 12. Decision**
- 12.1 The Binding Opinion Committee will give its decision in all fairness, taking due account of current business practices.
- 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 will not mention any view of any member of the Binding Opinion Committee deviating from the majority decision.
- 12.4 The Binding Opinion Committee will give its decision as soon as possible.
- 12.5 The decision will 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 will 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 for 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 will send each party a copy of the decision.
- 12.8 A copy of the decision will be kept in the records of the Foundation for ten years. Each party may in that period request the Bureau to provide a copy of the decision, certified by the latter, upon 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 Articles 13.1 and 13.2 must be made in writing in triplicate to the head of the Bureau. A copy of such request will be sent direct to the other party by the requesting party. Within thirty days of receipt of such request the other party will have the opportunity to express in writing its views on such a request. The other party will send a copy of its response, if any, direct to the requesting party.
- 13.4 If the Binding Opinion Committee makes the correction or rectification, this will be stated in a separate document by the same; this document will 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 will give the parties the opportunity to be heard.
- 13.6 Any supplementary Binding Opinion will 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 will inform the parties. A copy of this notice will be signed by all members of the Binding Opinion Committee.
- 14. Costs**
- 14.1 **Costs in General**
The costs of the Binding Opinion include 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 disbursements of the members of the Binding Opinion Committee, any third parties that may be consulted and the assigned secretary.

- 14.2 Each party will 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 will be due to the Foundation by the applicant to cover administrative expenses, as well as a registration fee. The Bureau will inform the applicant of this amount after receipt of the application referred to in Article 7.2.
- 14.4 The administrative expenses will be calculated on the basis of the scale fixed by the Board, contained in the Appendix to these Rules. The registration fee will likewise be fixed in accordance with the relevant provisions of the Appendix to these Rules. The scale of administrative expenses and the registration fee may be changed by the Board in the interim in accordance with Article 14.4. If the administrative expenses cannot be calculated on the basis of the Appendix, the Bureau will decide.
The amounts given in the Appendix to these Rules will always be exclusive of turnover tax.
- 14.5 A registration fee will likewise be payable 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 will likewise be fixed in accordance with the relevant provisions of the Appendix to these Rules.
- 14.6 If a counterclaim is brought by the defendant, administrative expenses will be payable by it as well, calculated in accordance with Article 14.4. The Bureau will inform the defendant of the amount of the administrative expenses and the registration fee within one week after the counterclaim was brought.
- 14.7 The Bureau will be responsible for the collection of the administrative expenses and registration fee due, plus turnover tax. If after the second demand in writing by the Bureau any party has failed to pay the administrative expenses and registration fee required of him, plus turnover tax, within fourteen days, such party will be deemed to have withdrawn its claim or counterclaim, 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 counterclaim as long as the party concerned has failed to pay the administrative expenses and registration fees due, plus turnover tax.
- 15. Fees and disbursements of the members of the Binding Opinion Committee**
- 15.1 The fees and disbursements of the members of the Binding Opinion Committee will be fixed by the Bureau after consultation with the members concerned. In fixing the fees, the Bureau will take into account the time spent on the case by the chairman, the financial importance of the case and its complexity.
- 15.2 The disbursements of the members of the Binding Opinion Committee will include any reasonable travel and accommodation expenses, costs of assistance, costs of experts, costs of meeting rooms, postage, telephone and fax charges and cost of photocopies.

16. Advances

- 16.1 The Bureau is entitled to demand an advance from the applicant from which the fees and disbursements of the members of the Binding Opinion Committee will be paid as far as possible. If the defendant has brought a counterclaim, it too may be required by the Bureau to pay an advance. Unless expressly stated otherwise in the request by the Bureau to pay an advance, the amount stated therein in respect of the advance will always be exclusive of turnover tax. If a demand is made on the claimant or defendant to pay an advance, the advance demanded must be paid plus turnover tax payable thereon.
- 16.2 The costs of experts and of other technical assistance will likewise be paid out of the advance if and insofar as such costs are incurred by the Foundation or members of the Binding Opinion Committee.
- 16.3 At the request of the Bureau, the chairman of the Binding Opinion Committee will 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 will inform the members of the Binding Opinion Committee of the advance.
- 16.6 The members of the Binding Opinion Committee and the Bureau may suspend their work at any time with regard to the claim or counterclaim, 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 will be deemed to have withdrawn its claim or counterclaim, as the case may be.
- 16.7 The Foundation will not be liable to pay any costs not secured by an advance. No interest will accrue on the amount of the advance paid.
- 16.8 If either the claim or the counterclaim is withdrawn, all expenses incurred by the Foundation and not secured by the advance will be recovered by it from the applicant on withdrawal of the claim and from the defendant on withdrawal of the counterclaim. In that case the Bureau may also decide to divide the expenses equally between the parties.

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 will be liable for any act or omission with regard to any Binding Opinion to which these Rules apply.

18. Unforeseen Matters

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

19. Amendments

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

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