



Netherlands No. 2 (2005)

Agreement

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands relating to the Transmission of Natural Gas through a Pipeline between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands

The Hague, 21 March 2005

[The Agreement is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 2005*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
RELATING TO THE TRANSMISSION OF NATURAL GAS THROUGH A
PIPELINE BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE KINGDOM OF THE
NETHERLANDS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government Kingdom of the Netherlands,

Recalling the Agreement between them signed at London on 6 October 1965¹ relating to the Delimitation of the Continental Shelf under the North Sea between the two countries, including the Protocol signed at London on 25 November 1971², and the Exchange of Notes signed on 28 January and 7 June 2004, amending the Agreement;

Desiring to facilitate the Construction and Use of a pipeline between Bacton in the United Kingdom and Anna Paulowna in the Kingdom of the Netherlands for the transmission of natural gas and to establish mutual arrangements in matters relating thereto including safety, inspections, security of supply, access and use, environmental protection and exchange of information;

Noting the relevance of a number of provisions of the law of the European Union to the access, use and operation of the Pipeline;

Recognising that both the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands are bound by the rules of international law concerning the protection of the environment from pollution, including those reflected in Part XII of the United Nations Convention on the Law of the Sea, done at Montego Bay Jamaica on 10 December 1982³;

Have agreed as follows:

ARTICLE 1

Definitions

In this Agreement, unless the context otherwise requires:

¹ Treaty Series No. 23 (1967) Cmnd 3253

² Treaty Series No. 6 (1973) Cmnd 5193

³ Treaty Series No. 81 (1999) Cm 4524

"Associated Facilities" means the pressure regulating facilities, filtration equipment, pressure safety system, metering facilities, compressing facilities, cooling and heating facilities, which may be installed and operated in connection with the Pipeline in the municipality of Anna Paulowna in the Netherlands and in Bacton in the United Kingdom;

"Authorisation" means any authorisation, consent, approval, licence or permit issued under the law of either State, relating to the Construction and Use of the Pipeline;

"Construction and Use" includes design, fabrication, installation, laying, operation, maintenance and decommissioning;

"Interconnector Consultation Group" means the group established under Article 17;

"Inspector" means any person authorised by either Government or a competent authority to carry out inspection activities relating to the Construction and Use of any part of the Pipeline;

"Natural Gas" means all processed, natural gaseous hydrocarbons as well as liquids and other substances transmitted with such hydrocarbons;

"Operator" means the person referred to in Article 5 and authorised in accordance with Article 4 who organises or supervises the Construction and Use of the Pipeline;

"Pipeline" means the pipeline for the transmission of Natural Gas between the pigtrap situated at the facilities named "Noord-Holland" located in the municipality of Anna Paulowna in the Netherlands and, in the United Kingdom, the pigtrap situated at the Shell-Bacton terminal, and includes those pigtraps;

and the singular includes the plural unless the context otherwise requires.

ARTICLE 2

Jurisdiction

(1) The Pipeline shall be constructed and used in accordance with the terms of this Agreement and in accordance with and subject to the law of the State under whose jurisdiction it lies.

(2) The two Governments agree that any part of the Pipeline located on the Continental Shelf appertaining to the United Kingdom of Great Britain and Northern Ireland shall be under the jurisdiction of the United Kingdom of Great Britain and Northern Ireland and any part of the Pipeline located on the Continental

Shelf appertaining to the Kingdom of the Netherlands shall be under the jurisdiction of the Kingdom of the Netherlands.

(3) Nothing in this Agreement shall be interpreted as affecting the jurisdiction which each State has under international law over the Continental Shelf which appertains to it, or in any other maritime zones established by either State in conformity with international law.

(4) Nothing in this Agreement shall be interpreted as prejudicing or restricting the application of the law of either State, or the exercise of jurisdiction by their Courts, in conformity with international law.

ARTICLE 3

Direction of Transmission

The two Governments recognise that, subject to Article 4 of this Agreement, the Pipeline or any part thereof may be used for the transmission of Natural Gas in either direction, and the provisions of this Agreement apply equally to such use of the Pipeline.

ARTICLE 4

Authorisation

(1) Each Government shall, in accordance with and subject to its law, issue any necessary Authorisation for the Construction and Use of the Pipeline or any part thereof.

(2) Neither Government shall grant, alter, modify, revoke or reissue the primary Authorisation for the Construction and Use of the sub-sea section of the Pipeline or any part thereof without prior consultation with the other Government. The Government that grants such Authorisation shall send a copy of it to the other Government.

(3) Operation of the Pipeline, or any part thereof, shall not commence until each Government has issued all necessary Authorisations in accordance with its national legal requirements.

ARTICLE 5

Operator of the Pipeline

Any Operator or change of Operator of the Pipeline or any part thereof shall require, in accordance with and subject to their respective law, Authorisation by both Governments after prior consultation between them.

ARTICLE 6

Safety

- (1) Each Government shall have the right to determine, in accordance with its own law, the safety measures which are to govern the Construction and Use of the part of the Pipeline under its jurisdiction.
- (2) Without prejudice to paragraph (1) of this Article, the competent authorities of the two Governments shall consult one another with a view to ensuring that there are appropriate safety measures for the Pipeline and that the Pipeline is subject to compatible safety standards.
- (3) The competent authorities of the two Governments shall consult one another from time to time in order to review the implementation of the safety measures referred to in paragraph (2) of this Article and to ensure the competent authorities have access to all necessary information.

ARTICLE 7

Environmental Protection and Damage

- (1) Each Government undertakes to make every endeavour, in accordance with its law, to ensure as far as it is practicable that the Construction and Use of the Pipeline shall not cause pollution or damage to the marine, coastal or land environment or to sensitive habitats or ecosystems.
- (2) The competent authorities of the two Governments shall consult one another with a view to ensuring that there are appropriate environmental measures for the Pipeline and that the Pipeline is subject to compatible environmental standards.
- (3) Each Government undertakes to make every endeavour, in accordance with its law, to ensure as far as it is practicable that the Construction and Use of the Pipeline shall not cause damage to facilities onshore or offshore, amenities, vessels or fishing gear.

(4) The competent authorities of the two Governments shall consult one another as to the manner in which the provisions of this Article are to be implemented including the manner of implementation to apply in an emergency.

ARTICLE 8

Other Uses of the Sea

Each Government undertakes to take such steps as appear to it to be necessary or expedient to prevent the Construction and Use of the Pipeline interfering with legitimate uses of the sea.

ARTICLE 9

Inspections

(1) Each Government affirms that it has sole responsibility for all inspections of that part of the Pipeline under its jurisdiction and of the operations carried out within its jurisdiction in relation to such part, and that it is responsible for its own Inspectors.

(2) Without prejudice to paragraph (1) of this Article, each Government shall take steps to ensure that safety or pollution Inspectors of the other Government at all stages of the Construction and Use of the Pipeline have:

- (a) access, in accordance with the procedures specified in paragraph (3) of this Article to the part of the Pipeline under the jurisdiction of the other; and
- (b) access to all necessary information including prior notification of any inspections and also including, as appropriate, reports of inspections that have been made. Any information supplied by one Government or competent authority to the other Government or competent authority under this paragraph shall not be further disclosed by the receiving Government or competent authority without the prior approval of the supplying Government or competent authority.

(3) Unless the two Governments agree otherwise, following a request by an Inspector of one Government (the "Visiting Inspector") to the competent authorities of the other Government (the "Host Government") to visit part of the Pipeline under the jurisdiction of the Host Government, the Operator shall be required to give access to the Visiting Inspector and his equipment provided that he is accompanied by an Inspector appointed by the Host Government. The Host Government shall, upon the request of the Visiting Inspector, procure such information as the Visiting Inspector may require to satisfy himself that the

fundamental interests of his Government in respect of safety or pollution prevention are met.

(4) Each Government shall ensure that if it is informed or if it becomes apparent to it (whether by or through an Inspector or otherwise) that the safe operation of the Pipeline may be in doubt or that there may be a risk of damage or pollution arising from the Pipeline, this information shall be communicated immediately to the Operator and to an Inspector of the other Government.

(5) The competent authorities of the two Governments shall consult one another and agree practical measures for the implementation of paragraph (4) of this Article including the manner of implementation to apply in an emergency.

(6) This Article shall also apply to the Associated Facilities.

ARTICLE 10

Security Arrangements

The competent national authorities for protective security of each Government shall consult one another with a view to concluding such arrangements in relation to the physical protection of the Pipeline and the Associated Facilities as shall from time to time seem appropriate to them.

ARTICLE 11

Access and Use

(1) The two Governments agree that the Pipeline may be used for the transmission of any Natural Gas for which contractual arrangements for the supply of transportation services have been made.

(2) Provided the necessary capacity is available in the Pipeline, each Government, in accordance with and subject to its law, shall make use of such powers as it may have to assist persons wishing to make use of that capacity for the transmission of Natural Gas on fair commercial terms. Subject to any conditions relating to the utilisation of capacity which may apply to the Pipeline, the use of such powers shall not prejudice the efficient operation of the Pipeline for the transmission of quantities of Natural Gas for which contractual arrangements for the supply of transportation services have been made that are the subject of an exemption from a national regulatory regime relating to access to and use of Natural Gas pipelines pursuant to Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

(3) The competent authorities of the two Governments shall consult one another with a view to ensuring that their respective regulatory regimes relating to access and use of the Pipeline are compatible.

ARTICLE 12

Connection to the Pipeline

(1) The connection of any pipeline to the Pipeline shall be in accordance with and subject to the law of the State under whose jurisdiction the connection lies. Before any connection to the Pipeline is made, the two Governments shall agree any further arrangements which may be necessary. The two Governments shall ensure that as part of such arrangements the connection of any pipeline to the Pipeline does not prejudice safety measures for the Pipeline and shall also agree suitable arrangements for the measurement of Natural Gas entering the Pipeline through such a connection.

(2) Articles 6, 7, 8 and 9 of this Agreement shall apply to that part of any connecting pipeline between the Pipeline and the first isolation valve.

ARTICLE 13

Tax

Profits, gains and capital in respect of the Construction and Use of the Pipeline shall be taxed in accordance with the law of the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands respectively and in accordance with the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains between the two countries, signed at The Hague on 7 November 1980¹ as amended by the Protocols signed at London on 12 July 1983² and at The Hague on 24 August 1989 and any further Protocols to that Convention or any Convention replacing that Convention as may enter into force in the future.

ARTICLE 14

Security of Supply, Transit and Emergency Arrangements

(1) Each Government undertakes to make every effort to ensure the uninterrupted flow of Natural Gas contracted for transmission through the Pipeline, but without prejudice to the right of each Government, in accordance with and

¹ Treaty Series No. 38 (1981) Cmnd 8268

² Treaty Series No. 37 (1992) Cm 1962

subject to its law, to take emergency measures with respect to the availability and use of energy supplies.

(2) Subject to paragraph (1) of this Article, the two Governments shall place no obstacles in the way of Natural Gas intended for sale in third country markets which is transmitted through the Pipeline out of their territories.

(3) The two Governments, recognising each other's legitimate interest in safeguarding supplies of Natural Gas to consumers and in maintaining system security and operational capability, shall consult each other with a view to establishing a framework for co-operation in the event of a serious disruption of Natural Gas supplies through the Pipeline.

ARTICLE 15

Exchange of Information

(1) Subject to their respective law, the two Governments or their competent authorities shall co-operate in providing a free flow of information between them about matters relating to:

- (a) the operation of the Pipeline and the utilisation of its capacity; and
- (b) the operation or regulation of the market for Natural Gas in either State with respect to sub-paragraph (a).

(2) Any information supplied by one Government or competent authority to the other Government or competent authority under paragraph (1) of this Article shall not be further disclosed by the receiving Government or competent authority without the prior consent of the supplying Government or competent authority.

(3) Where one Government, in order to ensure safe, effective and stable operations of its national transmission system, places obligations on its onshore and offshore pipeline system or terminal operators to provide information about forecast or actual gas flows through their pipeline systems or terminals, or seeks to establish voluntary arrangements for the provision of that information, the other Government shall not hinder or impede the provision of such information by the Operator of the Pipeline.

ARTICLE 16

Decommissioning

- (1) Each Government shall ensure that the decommissioning of the Pipeline, or any part thereof, under its jurisdiction shall be undertaken in compliance with its law.
- (2) Each Government shall, on receipt of any proposal for the decommissioning of the Pipeline, or any part thereof, consult the other Government with a view to ensuring that possibilities for potential further economic use of the Pipeline are not neglected.
- (3) Subject to paragraph (1) of this Article, if no such potential further economic use is identified, the two Governments shall consult one another on the proposed arrangements for decommissioning with a view to agreeing a mutually acceptable response. If the two Governments agree arrangements which are not uniform over the whole length of the Pipeline, each Government shall seek to procure, so far as is reasonably practicable, that the arrangements for the decommissioning of the part or parts of the Pipeline within its jurisdiction shall not prejudice alternative arrangements for the further use or decommissioning of the part or parts of the Pipeline within the jurisdiction of the other Government.

ARTICLE 17

The Interconnector Consultation Group

The two Governments shall establish a Interconnector Consultation Group for the purpose of facilitating the implementation of this Agreement. The Interconnector Consultation Group shall consist of representatives of each Government. The Interconnector Consultation Group shall consider matters referred to it by either or both of the Governments, and its procedures shall be subject to such further arrangements as the two Governments may agree from time to time.

ARTICLE 18

Settlement of Disputes

- (1) Any dispute about the interpretation or application of this Agreement, except for disputes relating to matters covered by Article 13 of this Agreement, shall be resolved through the Interconnector Consultation Group or, failing that, by negotiation between the two Governments.
- (2) If any such dispute cannot be resolved in the manner specified in paragraph (1) of this Article or by any other procedure agreed on by the two Governments, the

dispute shall be submitted, at the request of either Government, to an Arbitral Tribunal composed as follows:

Each Government shall designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairperson and who shall not be a national of, or habitually reside in, the United Kingdom of Great Britain and Northern Ireland or the Kingdom of the Netherlands or a third State having a direct interest in the dispute. If either Government fails to designate an arbitrator within three months of a request to so do, either Government may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within one month of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. The Tribunal shall determine its own procedure, save that all decisions shall be taken, in the absence of unanimity, by a majority vote of the members of the Tribunal. The decisions of the Tribunal shall be final and binding upon the two Governments. Each Government shall bear its own costs and the two Governments shall share the costs of the Chairperson of the Tribunal.

ARTICLE 19

Limitation

In relation to the Kingdom of the Netherlands, this Agreement shall only apply to the Kingdom in Europe. In relation to the United Kingdom, this Agreement shall only apply to the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 20

Entry into Force

- (1) Each Government shall notify the other in writing through the diplomatic channel of the completion of their respective requirements for entry into force of this Agreement. The Agreement shall enter into force on the date of the later of the two notifications.
- (2) This Agreement shall be applied provisionally from 1 January 2006.
- (3) The two Governments may amend or terminate this Agreement at any time by agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at The Hague this 21st day of March 2005 in the English language.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

C R BUDD

For the Government of the Kingdom of
the Netherlands:

BEN BOT



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