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Job 18-21673

Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands on the use and management of the territorial sea between 3 and 12 nautical miles from the coast

The Federal Republic of Germany and the Kingdom of the Netherlands

Confirming that the friendly relations between the Federal Republic of Germany and the Kingdom of the Netherlands are based on the principles of good-neighbourliness and bilateral cooperation,

Having regard to the Treaty of 8 April 1960 between the Federal Republic of Germany and the Kingdom of the Netherlands concerning arrangements for cooperation in the Ems Estuary and the Supplementary Agreement to that Treaty of 14 May 1962,

Having regard to the Treaty of 1 December 1964 between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the lateral delimitation of the continental shelf in the vicinity of the coast,

Having regard to the Treaty of 9 December 1980 between the Federal Republic of Germany and the Kingdom of the Netherlands on the joint provision of information and navigation advice in the Ems Estuary by means of land-based radar and high-frequency radio facilities,

Having regard to the Agreement of 22 December 1986 between the Government of the Federal Republic of Germany and the Government of the Kingdom of the Netherlands concerning navigation arrangements in the Ems Estuary and the Agreement of 5 April 2001 amending and supplementing that Agreement,

Having regard to the United Nations Convention on the Law of the Sea of 10 December 1982 to which both the Federal Republic of Germany and the Kingdom of the Netherlands are contracting parties,

Considering that the United Nations Convention on the Law of the Sea has resulted in an extension of the outer limit of the territorial sea, transposed into domestic law by the Kingdom of the Netherlands on 9 January 1985 and by the Federal Republic of Germany on 16 November 1994,

Desiring, in the light of the increasing intensity of shipping traffic from and into the ports of both States along the Ems, to conclude further agreements on traffic control and the management of the channel,

Have agreed as follows

Section I. General

Article 1. Purpose

(1) Conscious of their shared interests and mindful of the particular interests of the other Contracting Party, the Contracting Parties wish to create legal certainty surrounding the assignment of jurisdiction, rights and responsibilities between the Contracting Parties with regard to certain activities, establish the conditions for equal and efficient access to the ports of both Contracting Parties and ensure cooperation with regard to shipping traffic within the area governed by this Treaty.

(2) Conscious of their shared interests and mindful of the particular interests of the other Contracting Party, the Contracting Parties will cooperate in accordance with the following articles and in a spirit of good-neighbourliness.

(3) The Contracting Parties aim to ensure the navigability of the channel and unhindered access by sea from and to the German and Dutch ports along the Ems.

Article 2. Definitions

In this Treaty,

“Ems-Dollard Treaty” means the Treaty of 8 April 1960 between the Federal Republic of Germany and the Kingdom of the Netherlands concerning arrangements for cooperation in the Ems Estuary;

“Ems Estuary” means the area referred to in article 7 of the Ems-Dollard Treaty in conjunction with section 1 of annex B to that Treaty;

“Territorial sea” means the territorial sea within the meaning of article 2 of the United Nations Convention on the Law of the Sea of 10 December 1982;

“Line” means the line defined in article 6;

“Shipping traffic emergencies” means shipping accidents, critical situations and other situations that pose an immediate danger to a ship, its crew or the environment;

“Channel” means the buoyed channel referred to in article 10;

“Buoys” means floating navigation marks;

“Improvement works” means widening or deepening the bottom profile of the channel as described in article 13 by dredging, to serve the interests of shipping traffic;

“Maintenance works” means dredging the bottom of the channel as described in article 13 to maintain the existing profile, to serve the interests of shipping traffic;

“Commission” means the Western Ems Commission defined in article 19.

Article 3. Area of applicability

The provisions of this Treaty shall govern the territorial sea up to 12 nautical miles from the coast in the area to the north of the Ems Estuary.

Article 4. Sans préjudice

The provisions of this Treaty shall have no bearing on the question of the course of the international border in the territorial sea between 3 and 12 nautical miles from the coast. In addition, the provisions of this Treaty shall have no bearing on the question of the course of the international border in the Ems Estuary. Each Contracting Party reserves its legal position with regard to those questions.

Section II

Applicability of domestic laws with regard to particular matters

Article 5. Material applicability

With regard to:

- a) Renewable energy installations and any other installations;
- b) Cables and pipelines;
- c) Non-living natural resources, notwithstanding the fact that both Contracting Parties reserve their legal positions on the legal status of the Treaty of 1 December 1964 between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the lateral delimitation of the continental shelf in the vicinity of the coast in the area between 3 and 12 nautical miles from the coast;

the area to the west of the line referred to in article 6 is governed exclusively by the laws of the Kingdom of the Netherlands and the area to the east of that line exclusively by the laws of the Federal Republic of Germany.

Article 6. Line

(1) The line shall start at the northernmost point c” of the line agreed upon in the Supplementary Agreement to the Ems-Dollard Treaty of 14 May 1962, which divides the border area in the Ems Estuary lengthwise, and shall end at point E1, defined in the Treaty of 1 December 1964 between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the lateral delimitation of the continental shelf in the vicinity of the coast. The line shall coincide with the border as defined in the Treaty of 1 December 1964 between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the lateral delimitation of the continental shelf in the vicinity of the coast.

(2) The line shall be formed by a geodetical line that connects points c” and E1, expressed in geographical coordinates:

	Latitude (north)	Longitude (east)
Point c”	53°36’15.4”	6°24’45.4”
Point E1	53°45’0.3”	6°19’53.4”

The positions of the points referred to in this article shall be determined by the latitude and longitude as defined in the World Geodetic System 1984 (WGS 84).

Section III. Maritime traffic

Article 7. Traffic management

- (1) The Contracting Parties shall establish a joint traffic management system for shipping traffic in the channel from and to the ports of both Contracting Parties along the Ems.
- (2) They shall, for that purpose, establish a joint traffic control centre, which shall be subject to German law. The activities of the traffic control centre shall be carried out by the Federal Republic of Germany on the basis of the traffic rules developed and laid down by the Commission referred to in article 19. The joint traffic control centre shall have authority to issue binding instructions to shipping traffic.
- (3) The Contracting Parties shall each bear half of the costs for the operational activities of the traffic control centre;
- (4) The responsibility and liability for decisions of the traffic control centre shall be borne by the Federal Republic of Germany in accordance with German law. The amount of any compensation owed for damage resulting from action taken by the traffic control centre in correct application of the joint traffic rules shall be apportioned equally between the Contracting Parties, by arrangement between them.
- (5) Ships shall be processed on a first-come, first-served basis. Care shall be taken to give deep-draught ships advantage of the first available high tide. The Commission shall set out criteria for cases in which a departure from those rules may be allowed.
- (6) The Commission shall subject the joint shipping traffic management system and its operation to an annual evaluation. Moreover, if the current situation so requires, the Commission shall hold ad hoc discussions on the joint traffic management system.

Article 8. Emergencies in the channel affecting shipping traffic

- (1) The traffic control centre shall report emergencies directly to the competent authority appointed by the Contracting Parties. The competent authority shall ensure further evaluation, the coordination of measures and the exchange of further information.
- (2) Regardless of any initial action taken by the traffic control centre to ensure the safety and flow of shipping traffic, the following shall apply to any subsequent measures taken in response to emergencies, unless otherwise provided for by the Contracting Parties:
 1. If the affected vessels are German, such measures shall be taken by the Federal Republic of Germany;
 2. If the affected vessels are Dutch, such measures shall be taken by the Kingdom of the Netherlands;
 3. If the affected vessels belong to a third State, the Contracting Party responsible shall be that of the first port of destination for vessels arriving from the sea, and that of the last port of departure for vessels leaving to the sea;
 4. For affected vessels other than those referred to in subparagraphs 1 to 3, the Contracting Parties shall agree on ad hoc arrangements.
- (3) Liability for damage caused by measures taken under paragraph 2 shall be governed by the domestic laws of the Contracting Party taking the measure.

Article 9. Pilotage

- (1) Pilotage aboard ships arriving from or leaving for the open seas shall be ensured:
 - By the Federal Republic of Germany for ships whose first port of call, or last port of departure, is German,
 - By the Kingdom of the Netherlands for ships whose first port of call, or last port of departure, is Dutch.
- (2) Pilotage aboard ships travelling between German and Dutch ports shall be ensured by pilots licensed in either Contracting Party.
- (3) Liability for damage caused by pilots shall be governed by the domestic laws of the Contracting Party that issued the license of the causing pilot.

Article 10. Channel

- (1) The course of the channel in the Treaty area shall be determined by the positions of the buoys on the date of entry into force of this Treaty.

(2) Any changes in the positions of the buoys and, consequently, in the course of the channel shall be recorded by the Commission and shall be confirmed by the Contracting Parties.

(3) The Contracting Parties shall announce changes in the course of the channel in their official gazettes.

(4) In the event of insignificant natural changes in the course of the channel, the positions of individual buoys may be adjusted without following the procedure described in paragraphs 2 and 3. The Commission shall submit its definition of insignificant changes to the Contracting Parties for approval.

Article 11. Sounding

Either Contracting Party may, in the interests of traffic safety, carry out measurements, soundings and hydrological research in the channel.

Article 12. Buoys

The Federal Republic of Germany shall continue to be responsible for placing, operating and maintaining the buoys in the channel and shall bear the related costs.

Article 13. Works in the shipping channel

(1) Both Contracting Parties shall be entitled to carry out works to improve the channel or remove shipping obstacles, including shipwrecks, from the channel, and shall issue permits for that purpose. The works shall be carried out by the Contracting Party that initiates them; that Party shall also bear the related costs, unless agreed otherwise. The works referred to in the first sentence shall be governed by the domestic laws of the Contracting Party that carries them out.

(2) Maintenance works to keep the bottom profile of the channel in the same state as on the date of entry into force of this Treaty shall be carried out by the Federal Republic of Germany, which shall also bear the related costs. Maintenance operations stemming from improvement works already performed or performed in the future shall be carried out by the Contracting Party that initiates them; that Party shall also bear the related costs, unless agreed otherwise.

Article 14. Duty to notify

When either Contracting Party intends to carry out new works or measures to upgrade or maintain the channel, or intends to authorize such works or measures, that Party shall notify the Commission as early as possible before the work or measures are started.

Article 15. Objections

Either Contracting Party may, within a reasonable period, bring an objection before the Commission in respect of planned or ongoing works or measures, or in respect of a lack of action in the areas of improvement and maintenance, the removal of shipwrecks, sounding in the interests of traffic safety, or buoying, and shall state as its reason an expected or actual breach of the obligations assumed under this Treaty.

Article 16. Retroactive objections

(1) After the works or measures have been completed, a Contracting Party affected by adverse effects may demand the establishment and maintenance of installations to counter any damage, or may claim compensation, provided that the adverse effects could not have been foreseen in whole or in part.

(2) Claims under paragraph 1 shall be inadmissible if lodged more than 30 years after the completion of the portion of the works or measures that have caused the adverse effects.

Article 17. Suspension of planned works or measures following objections

(1) A Contracting Party shall be required to suspend any planned works or measures to which the other Contracting Party has objected, pending adoption by the Governments of the Contracting Parties of a recommendation by the Commission as described in article 21, paragraph 1, or completion of their consultations as described in article 21, paragraph 2, unless the other Contracting Party accepts a different arrangement. The issuance of a statement as referred to in article 21, paragraph 3, shall be equivalent to a completion of the consultations between the Contracting Parties.

(2) Paragraph 1 shall not be applicable if a Contracting Party is unable to postpone the works or measures being objected to without significantly undermining its interests. If, in such cases, the other

Contracting Party suffers any damage, that Party shall remain entitled to compensation and measures to prevent further damage.

Article 18. Duty to notify in connection with other activities

The duty to notify referred to in article 14 shall extend by analogy to all other works and measures, as well as to the commercial uses referred to in section II of this Treaty whenever traffic in the channel is likely to be affected. That is not the case for articles 15, 16 and 17.

Section IV. Establishment of the Commission

Article 19. Western Ems Commission

(1) The Contracting Parties shall establish a standing commission for shipping matters affecting the channel.

(2) Each Government shall appoint as Commission members three experts, at least one of whom shall be familiar with local conditions. The first Commission members shall be appointed within three months of the entry into force of this Treaty. The Governments may appoint alternate Commission members.

(3) The Commission shall meet at least once a year; in addition, it may meet as it deems necessary or at the request of either Government. Other experts may be invited to attend meetings of the Commission. Decisions of the Commission shall be adopted by unanimity. The Commission may adopt its own rules of procedure.

(4) The Commission shall consult as necessary with the Ems Commission referred to in chapter 8 of the Ems-Dollard Treaty on all matters related to the work and responsibilities of both Commissions.

Article 20. Responsibilities of the Commission

The Commission shall have the following responsibilities:

- a) The adoption of decisions regarding the course of the channel referred to in article 10;
- b) The definition of insignificant natural changes and their submission to the Contracting Parties; the application of the relevant criteria as referred to in article 10, paragraph 4, following the consent of the Contracting Parties;
- c) The development and adoption of traffic rules governing the channel;
- d) The development and adoption of criteria for exemptions from the rules governing the processing of ships by the traffic control centre;
- e) Regular evaluation of those rules and criteria;
- f) Annual evaluation of the performance of the traffic control centre and the joint traffic management system referred to in article 7;
- g) The holding, as necessary, of ad hoc consultations regarding the joint traffic management system;
- h) The receipt and exchange of information regarding planned and ongoing new works or measures to improve or maintain the channel;
- i) The receipt and exchange of information regarding planned and ongoing soundings as referred to in article 11;
- j) The holding of consultations regarding issues related to works and measures to improve and maintain the channel, remove shipwrecks, or conduct buoing, measurements, soundings or hydrological research, whenever either Contracting Party fears that unhindered access to and from German and Dutch ports may be affected, as well as consultations regarding joint traffic management;
- k) The inspection of the channel and the buoys, and the submission of reports on the findings of those inspections to the Governments;
- l) The submission of recommendations to the Governments;
- m) The examination of objections lodged under article 15 and claims lodged under article 16.

Article 21. Procedure for objections

(1) In the cases described in article 20, subparagraph m, the Commission shall strive to make recommendations to the Governments of the Contracting Parties.

(2) If the Commission fails to reach agreement on a recommendation in the cases referred to in paragraph 1, or if either Contracting Party informs the other that, in its view, the consultations have reached a point at which further consultations are unlikely to yield results, the Contracting Parties themselves shall strive to come to an agreement.

(3) Should the Contracting Parties fail, or be unable, to reach agreement, despite a recommendation from the Commission, the consultations shall be deemed to have been ended after either Contracting Party has made a statement to that effect.

Article 22. Navigation Arrangements Ems Estuary

The traffic rules contained in annex A to the Agreement of 22 December 1986 between the Government of the Federal Republic of Germany and the Government of the Kingdom of the Netherlands concerning navigation arrangements in the Ems Estuary and amended and supplemented by the Agreement of 5 April 2001, (Navigation Arrangements Ems Estuary), shall govern the channel by analogy.

Section V. Settlement of disputes

Article 23. Consultations

Disputes between the Contracting Parties regarding the interpretation and application of this Treaty, and regarding their rights and duties under this Treaty, shall be settled wherever possible through negotiations between the Governments of the Contracting Parties.

Article 24. Arbitration tribunal

(1) Disputes regarding the interpretation and application of this Treaty may, at the request of either Contracting Party, be brought before an arbitration tribunal for settlement in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States.

(2) Arbitration tribunals shall be formed on a case-by-case basis; each Contracting Party shall appoint a member; the members shall agree on a chairperson, who shall be a citizen of a third State, and the chairperson shall be appointed by the Governments of the Contracting Parties. The members shall be appointed within two months, and the chairperson within three months, after one Contracting Party has notified the other of its wish to bring dispute before an arbitration tribunal.

(3) If the time limits referred to in paragraph 2 are not adhered to, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice in The Hague to make the necessary appointments. If the President is a citizen of either Contracting Party or is prevented from acting for any other reason, his or her substitute shall make the appointments. If the substitute is also a citizen of either Contracting Party or is prevented from acting, his or her substitute shall make the appointments.

(4) The arbitration tribunal shall decide, by simple majority, on the basis of this Treaty and of international law. Its decisions shall be binding and shall be honoured by the Contracting Parties. Each Contracting Party shall bear the costs of the arbitrator whom it has appointed and of its representation before the arbitration tribunal; the costs of the chairperson and other costs shall be borne in equal measure by the Contracting Parties. In all other respects, the arbitration tribunal shall establish its rules of procedure after consultation with the Contracting Parties and on the basis of internationally accepted procedural principles.

Section VI. Final provisions

Article 25. Entry into force

(1) This Treaty requires ratification; the instruments of ratification shall be exchanged as soon as possible.

(2) This Treaty shall enter into force on the first day of the second month following the exchange of the instruments of ratification.

(3) Before its entry into force, this Treaty shall be applied provisionally from the date of its signature in accordance with the domestic laws of the Contracting Parties.

Article 26. Registration

This Treaty shall be registered with the Secretariat of the United Nations by the Federal Republic of Germany in accordance with Article 102 of the Charter of the United Nations, as soon as it has entered into force.

IN WITNESS WHEREOF the plenipotentiaries have signed this Treaty.

DONE on the Ems on 24 October 2014 in two originals, each in the German and Dutch languages, both versions being equally authentic.

For the Federal Republic of Germany:

For the Kingdom of the Netherlands:

Joint declaration with regard to the Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands on the use and management of the territorial sea between 3 and 12 nautical miles from the coast

Pending the entry into force of the Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands on the use and management of the territorial sea between 3 and 12 nautical miles from the coast, the Contracting Party that will not have jurisdiction under the assignment of jurisdictions set out in article 5, subparagraph b, of the Treaty shall refrain from claiming funds for environmental rebalancing measures, financial compensation or any other payments provided for in permits that it may already have issued. This provision shall be without prejudice to any claims for the payment of permit fees.

The Contracting Party that has jurisdiction following the entry into force of the Treaty shall be responsible for adhering to European Union legislation on the protection of nature and the environment.

SIGNED on the Ems on 24 October 2014.

For the Federal Republic of Germany:

For the Kingdom of the Netherlands:
