

PROTOCOL 6
DISPUTE SETTLEMENT

CHAPTER I

OBJECTIVE AND SCOPE

ARTICLE 1

Objective

The objective of this Protocol is to avoid and settle disputes between the Parties with a view to arrive at mutually acceptable solutions.

ARTICLE 2

Scope

The provisions of this Protocol shall only apply with respect to any differences concerning the interpretation and application of the following provisions, including where a Party considers that a measure adopted by the other Party, or a failure of the other Party to act, is in breach of its obligations under these provisions:

- (a) Title IV (Free movement of goods), except Articles 31, 38 and 39(1), (4) and (5) (insofar as these concern measures adopted under paragraph 1 of Article 39) and Article 45;

(b) Title V (Workers, establishment, supply of services, movement of capital):

- Chapter II (Establishment) Articles 50 to 54 and 56;
- Chapter III (Supply of services) Articles 57, 58 and 59(2) and (3);
- Chapter IV (Current payments and movement of capital) Articles 60 and 61;
- Chapter V (General provisions) Articles 63 to 69;

(c) Title VI (Approximation of laws, law enforcement and competition rules):

- Article 73(2) (intellectual, industrial and commercial property rights) and Article 74(1), (2) first subparagraph, and (3) to (6) (public contracts).

CHAPTER II

DISPUTE SETTLEMENT PROCEDURES

SECTION I

ARBITRATION PROCEDURE

ARTICLE 3

Initiation of the arbitration procedure

1. Where the Parties have failed to resolve the dispute, the complaining Party may under the conditions of Article 126 of this Agreement, submit a request in writing for the establishment of an arbitration panel to the Party complained against as well as to the Stabilisation and Association Committee.
2. The complaining Party shall state in its request the subject-matter of the dispute and, as the case may be, the measure adopted by the other Party, or the failure to act, which it considers to be in breach of the provisions referred to in Article 2 of this Protocol.

ARTICLE 4

Composition of the arbitration panel

1. An arbitration panel shall be composed of three arbitrators.
2. Within 10 days of the date of the submission of the request for the establishment of an arbitration panel to the Stabilisation and Association Committee, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on its composition within the time frame laid down in paragraph 2, either Party may request the chairperson of the Stabilisation and Association Committee, or her or his delegate, to select all three members by lot from the list established under Article 15, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the arbitrators selected by the Parties to act as chairperson.

In case the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be appointed in accordance with the same procedure.

4. The selection of the arbitrators by the chairperson of the Stabilisation and Association Committee, or her or his delegate, shall be done in the presence of a representative of each Party.

5. The date of establishment of the arbitration panel shall be the date on which the chairperson of the panel is informed of the appointment in common agreement between the Parties of the three arbitrators or, as the case may be, the date of their selection in accordance with paragraph 3.

6. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct referred to in Article 18, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement pursuant to paragraph 7 of this Article. If the Parties fail to agree on the need to replace an arbitrator, the matter shall be referred to the chairperson of the arbitration panel, whose decision will be final.

Where a Party considers that the chairperson of the arbitration panel does not comply with the Code of Conduct referred to in Article 18, the matter shall be referred to one of the remaining members of the pool of arbitrators selected to act as chairperson, her or his name being drawn by lot by the chairperson of the Stabilisation and Association Committee, or her or his delegate, in the presence of a representative of each Party, unless otherwise agreed between the Parties.

7. If an arbitrator is unable to participate in the proceeding, withdraws or is replaced pursuant to paragraph 6, a replacement shall be selected within five days in accordance with the selection procedures followed to select the original arbitrator. The panel proceedings will be suspended for the period taken to carry out this procedure.

ARTICLE 5

Arbitration panel ruling

1. The arbitration panel shall notify its ruling to the Parties and to the Stabilisation and Association Committee within 90 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the panel must notify the Parties and the Stabilisation and Association Committee in writing, stating the reasons for the delay. Under no circumstances should the ruling be issued later than 120 days from the date of the establishment of the panel.
2. In cases of urgency, including those involving perishable goods, the arbitration panel shall make every effort to issue its ruling within 45 days from the date of the establishment of the panel. Under no circumstance should it take longer than 100 days from the date of the establishment of the panel. The arbitration panel may give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.
3. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The ruling may contain recommendations on the measures to be adopted for compliance with it.

4. The complaining Party may withdraw its complaint by written notification to the chairperson of the arbitration panel, the Party complained against and the Stabilisation and Association Committee, at any time before the ruling is notified to the Parties and the Stabilisation and Association Committee. Such withdrawal is without prejudice to the complaining Party's right to introduce a new complaint regarding the same measure at a later point in time.

5. The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period not exceeding 12 months. Once the period of 12 months has been exceeded, the authority for the establishment of the panel will lapse, without prejudice to the right of the complaining Party to request at a later stage the establishment of a panel on the same measure.

SECTION II

COMPLIANCE

ARTICLE 6

Compliance with the arbitration panel ruling

Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties will endeavour to agree on the reasonable period of time to comply with the ruling.

ARTICLE 7

Reasonable period of time for compliance

1. No later than 30 days after the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party of the time it will require for compliance (hereinafter referred to as "reasonable period of time"). Both parties shall endeavour to agree on the reasonable period of time.
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party may request the Stabilisation and Association Committee, within 20 days of the notification made under paragraph 1, to reconvene the original arbitration panel to determine the length of the reasonable period of time. The arbitration panel shall notify its ruling within 20 days from the date of the submission of the request.
3. In the event of the original panel, or some of its members, being unable to reconvene, the procedures set out in Article 4 shall apply. The time limit for notifying the ruling remains 20 days from the date of the panel's establishment.

ARTICLE 8

Review of any measure taken to comply with the arbitration panel ruling

1. The Party complained against shall notify the other Party and the Stabilisation and Association Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event that there is disagreement between the Parties concerning the compatibility of any measure notified under paragraph 1 of this Article with the provisions referred to in Article 2, the complaining Party may request the original arbitration panel to rule on the matter. Such request shall explain why the measure is not in conformity with this Agreement. Once re-convened, the arbitration panel will issue its ruling within 45 days of the date of its re-establishment.
3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 4 shall apply. The time limit for notifying the ruling remains 45 days from the date of the panel's establishment.

ARTICLE 9

Temporary remedies in case of non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 8(1) is not in conformity with that Party's obligations under this Agreement, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.
2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time, or of the arbitration panel ruling under Article 8 that a measure taken to comply is not in conformity with this Agreement, the complaining Party shall be entitled, upon notification to the other Party and to the Stabilisation and Association Committee, to suspend the application of benefits granted under the provisions referred to in Article 2 at a level equivalent to the adverse economic impact caused by the violation. The complaining Party may implement the suspension 10 days after the date of the notification, unless the Party complained against has requested arbitration under paragraph 3 of this Article.

3. If the Party complained against considers that the level of suspension is not equivalent to the adverse economic impact caused by the violation, it may request in writing to the chairperson of the original arbitration panel before the expiry of the 10 day period referred to in paragraph 2 for the reconvening of the original arbitration panel. The arbitration panel shall notify its ruling on the level of the suspension of benefits to the Parties and to the Stabilisation and Association Committee within 30 days of the date of the submission of the request. Benefits shall not be suspended until the arbitration panel has issued its ruling, and any suspension shall be consistent with the ruling of the arbitration panel.

4. The suspension of benefits shall be temporary and shall be applied only until any measure found to violate this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the Parties have agreed to settle the dispute.

ARTICLE 10

Review of any measure taken to comply after the suspension of benefits

1. The Party complained against shall notify the other Party and the Stabilisation and Association Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of benefits applied by the complaining Party.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with this Agreement within 30 days of the date of the submission of the notification, the complaining Party may request in writing to the chairperson of the original arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the Stabilisation and Association Committee. The arbitration panel ruling shall be notified within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is not in conformity with this Agreement, the arbitration panel will determine whether the complaining party can continue the suspension of benefits at the original or at a different level. If the arbitration panel rules that any measure taken to comply is in conformity with this Agreement, the suspension of benefits shall be terminated.

3. In the event of the original arbitration panel, or some of its members, being unable to reconvene, the procedures laid down in Article 4 shall apply. The period for notifying the ruling remains 45 days from the date of the panel's establishment.

SECTION III

COMMON PROVISIONS

ARTICLE 11

Open Hearings

The meetings of the arbitration panel shall be open to the public under the conditions laid down in the Rules of Procedure referred to in Article 18, unless the arbitration panel decides otherwise on its own motion or at the request of the Parties.

ARTICLE 12

Information and technical advice

At the request of a Party, or upon its own initiative, the panel may seek information from any source it deems appropriate for the panel proceeding. The panel will also have the right to seek the opinion of experts as it deems appropriate. Any information obtained in this manner must be disclosed to both Parties and shall be open for comments. Interested parties shall be authorised to submit *amicus curiae* briefs to the arbitration panel under the conditions laid down in the Rules of Procedure referred to in Article 18.

ARTICLE 13

Interpretation principles

Arbitration panels shall apply and interpret the provisions of this Agreement in accordance with customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties. They shall not give an interpretation of the *acquis communautaire*. The fact that a provision is identical in substance to a provision of the Treaty establishing the European Communities shall not be decisive in the interpretation of that provision.

ARTICLE 14

Arbitration panel decisions and rulings

1. All decisions of the arbitration panel, including the adoption of the ruling, shall be taken by majority vote.
2. All rulings of the arbitration panel shall be binding on the Parties. They shall be notified to the Parties and to the Stabilisation and Association Committee, which shall make them publicly available unless it decides by consensus not to do so.

CHAPTER III

GENERAL PROVISIONS

ARTICLE 15

List of arbitrators

1. The Stabilisation and Association Committee shall, no later than six months after the entry into force of this Protocol, establish a list of fifteen individuals who are willing and able to serve as arbitrators. Each of the Parties shall select five individuals to serve as arbitrators. The Parties shall also agree on five individuals which shall act as chairperson to arbitration panels. The Stabilisation and Association Committee will ensure that the list is always maintained at this level.
2. Arbitrators should have specialised knowledge and experience of law, international law, Community law and/or international trade. They shall be independent, serve in their individual capacities and not be affiliated with, or take instructions from any organisation or government, and shall comply with the Code of Conduct referred to in Article 18.

ARTICLE 16

Relation with WTO obligations

Upon the eventual accession of Bosnia and Herzegovina to the World Trade Organisation (WTO), the following shall apply:

- (a) Arbitration panels set up under this Protocol shall not adjudicate disputes on each Party's rights and obligations under the Agreement establishing the World Trade Organisation.
- (b) The right of any of the Parties to have recourse to the dispute settlement provisions of this Protocol shall be without prejudice to any action in the WTO framework, including dispute settlement action. However, where a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 3(1) of this Protocol or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.
- (c) Nothing in this Protocol shall preclude a Party from implementing the suspension of obligations authorised by a WTO Dispute Settlement Body.

ARTICLE 17

Time limits

1. All time limits laid down in this Protocol shall be counted in calendar days from the day following the act or fact to which they refer.
2. Any time limit referred to in this Protocol may be extended by mutual agreement of the Parties.
3. Any deadline referred to in this Protocol may also be extended by the chairperson of the arbitration panel, on a reasoned request of either of the Parties or upon his or her own duly based initiative.

ARTICLE 18

Rules of Procedure, Code of Conduct and modification of this Protocol

1. The Stabilisation and Association Council shall, no later than six months after the entry into force of this Protocol establish Rules of Procedure for the conduct of the arbitration panel proceedings.

2. The Stabilisation and Association Council shall, no later than six months after the entry into force of this Protocol complement the Rules of Procedure with a Code of Conduct guaranteeing the independence and impartiality of arbitrators.
3. The Stabilisation and Association Council may decide to modify this Protocol.