**PART IV**

**DISPUTE AVOIDANCE AND SETTLEMENT**

**CHAPTER1**

**OBJECTIVE, SCOPE AND PARTIES**

**ARTICLE 62**

**Objective**

The objective of Part IV of this Agreement is to establish methods for avoiding and settling any disputes that may arise between the Parties in order to arrive at a mutually satisfactory solution.

**ARTICLE 63**

**Scope1.**

Part IV applies to any dispute regarding the interpretation or application of this Agreement, subject to the provisions of Articles 20 and21 hereof. Notwithstanding paragraph1of this Article, the procedure set out in Article 98 of the Cotonou Agreement shall apply in the event of disputes concerning the financing of development cooperation.

**ARTICLE 64**

The Parties to the dispute

1.The European Union and its Member States are considered to be a single Party for the purposes of preventing and settling disputes arising from the application of this Agreement.

2.ECOWAS, the UEMOA and all the West African States, including Mauritania, are also considered to be a single Party for the purpose of preventing and settling disputes arising from the application of this Agreement.

**CHAPTER 2**

**DISPUTE AVOIDANCE: CONSULTATION AND MEDIATION**

**ARTICLE 65**

**Consultation**

1.The Parties shall endeavour to settle disputes covered by Article 63 of this Agreement by entering into consultations in good faith in order to reach a mutually satisfactory solution.

**2**.Any Party wishing to enter into consultations shall do so by presenting a request in writing to the other Party with a copy to the Joint Implementation Committee of the EPA, specifying the measure in question and the provisions of this Agreement with which, in its opinion, the measure fails to comply.

**3.** The consultations shall be initiated within forty (40) days of the date on which the request was submitted. They shall be considered closed within sixty (60) days of the date on which the request was submitted unless the two Parties agree to pursue them. The information exchanged during the consultations shall remain confidential.

**4**.In urgent situations, in particular those involving perishable or seasonal foodstuffs, the consultations shall be initiated within fifteen (15) days of the date on which the request was submitted, and shall be considered closed within thirty (30) days of the date on which the request was submitted.

**5**.At all stages in the avoidance and settlement of disputes, the European Union Party shall devote special attention to the situation and to the particular concerns and interests of the States and the West African region.

**6**.If the consultations are not initiated within the time limits specified in paragraph3 or paragraph4 of this Article or if the consultations are closed without the Parties’ reaching agreement on a mutually satisfactory solution, the applicant shall have the option of invoking the arbitration procedure provided for in this Agreement.

**ARTICLE 66**

**Mediation**

**1**.If the consultations do not lead to a mutually satisfactory solution, the Parties may, by amicable agreement, resort to a mediator. Unless the Parties decide otherwise, the terms of reference of the mediation shall be as set out in the consultation request.

**2**.Unless the Parties to the dispute agree on a choice of mediator within ten (10) days of the mediation request being submitted, the Chairperson of the Joint Implementation Committee of the EPA or his/her delegate, on being requested to do so by either of the Parties, shall choose by lot a mediator from among the persons on the list referred to in Article83 of this Agreement and who are not citizens of the Parties. The selection shall be made within twenty (20) days of the mediation request being submitted, in the presence of a representative from each of the Parties.

**3**.The mediator shall convene a meeting of the Parties at the latest thirty (30) days after being appointed. The mediator shall receive the submissions of each Party no later than fifteen (15) days before the meeting, and shall give an opinion no later than forty-five (45) days after having been selected.

**4**.The mediator’s opinion may include one or more recommendations on how to resolve the dispute consistent with the provisions referred to in Article63 of this Agreement. The mediator’s opinion shall not be binding.

**5**.The Parties may agree to modify the time limits referred to in paragraph3of this Article. The mediator may also decide to modify these time limits at the request of either Party or on his/her own initiative, depending on the particular difficulties affecting the Party concerned or the complexity of the case. The mediation procedures and in particular the information exchanged and the positions adopted by the Parties during these procedures shall remain confidential.

**CHAPTER 3**

**DISPUTE SETTLEMENT PROCEDURES**

**Section I**

**Arbitration procedure**

**ARTICLE 67**

**Initiation of the arbitration procedure**

**1**.Where the Parties do not succeed in settling their dispute after having recourse to the consultations provided for in Article 65 of this Agreement or after engaging in the mediation referred to in Article 66 hereof, the applicant may request the establishment of an arbitration panel.

**2**.A request for an arbitration panel to be formed shall be sent in writing to the respondent and the Joint Implementation Committee of the EPA. In its request, the applicant shall describe the specific situation and/or the measure in question and set out the reasons why the situation and/or measure violates the provisions of this Agreement.

**ARTICLE 68**

**Setting up an arbitration panel**

**1**.The arbitration panel shall be composed of three arbitrators.

**2**.Within ten (10) days of the request for the establishment of an arbitration panel being submitted to the Joint Implementation Committee of the EPA, the Parties shall consult one another 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 the composition of the arbitration panel within the time frame laid down in paragraph 2 of this Article, either Party may request the Chairperson of the Joint Implementation Committee of the EPA, or his/her delegate, to select all three members of the panel by lot from the list established under Article83 of this Agreement, one from among the persons proposed by the applicant, one from among the persons proposed by the respondent and the third from among those selected by both Parties to chair the meetings. If the Parties have agreed on the selection of one or more of the members of the arbitration panel, the remaining member(s) shall be selected according to the same procedure.

**4**.The Chairperson of the Joint Implementation Committee of the EPA or his/her delegate shall select the arbitrators by lot within five (5) days of receiving the request referred to in paragraph 3 of this Article in the presence of a representative of each Party. The time and date of the selection shall be communicated to the Parties. No failure by either of the Parties to send their representative following an invitation shall in any way affect the validity of the selection.

**5**.The date on which the arbitration panel is established shall be the date on which the three arbitrators are deemed to have been selected.

**6**.The arrangements for responsibility for the arbitration fees are defined in the procedural rules.

**ARTICLE 69**

**Interim report by the arbitration panel.**

The arbitration panel shall submit to the Parties an interim report containing both the descriptive sections and its observations and conclusions, generally within one hundred and twenty (120) days at the latest from the date on which the panel was established. In the fifteen (15) days following the presentation of the interim report by the arbitration panel, each Party shall have the option of submitting remarks in writing to the panel concerning specific aspects of the interim report.

**ARTICLE 70**

**Arbitration panel ruling**

**1**.The arbitration panel shall transmit its ruling to the Parties and the Joint Implementation Committee of the EPA at the latest one hundred and fifty (150) days following the establishment of the arbitration panel. If it considers that this time limit cannot be complied with respect, the Chairperson of the panel shall inform the Parties and the Joint Implementation Committee of the EPA thereof in writing, giving reasons for the delay and stating the date on which the panel plans to conclude its work. The arbitration ruling should under no circumstances be delivered any later than one hundred and eighty (180) days from the date on which the arbitration panel was established.

**2**.In urgent situations, including those involving perishable and seasonal foodstuffs, the panel shall endeavour to deliver its ruling within seventy-five (75) days of being established. Under no circumstance shall it take longer than ninety (90) days from the date of its establishment. The panel may deliver a preliminary ruling on whether the case is urgent within ten (10) days of being formed.

**3**.Each Party may ask an arbitration panel to recommend ways in which the respondent could achieve compliance.

**Section II**

**Achieving compliance**

**ARTICLE 71**

Compliance with the arbitration panel ruling Each Party shall take all the measures necessary to comply with the arbitration panel ruling. The Parties shall endeavour to agree on a time limit for compliance with the ruling.

**ARTICLE 72**

Reasonable time limit for compliance1.At the latest thirty (30) days after the Parties have been informed of the panel ruling, the respondent shall inform the applicant and the Joint Implementation Committee of the EPA in writing of the time it will need to achieve compliance (“reasonable time limit”).

**ARTICLE 73**

**Review of measures taken to comply with the arbitration panel ruling**

**1**.The respondent shall notify the other Party and the Joint Implementation Committee of the EPA before expiry of the reasonable time limit of any measures it has taken to comply with the arbitration ruling.

**2**.In the event of a disagreement between the Parties concerning the compatibility of the measures notified under paragraph1of this Article with the provisions of this Agreement, the applicant may make a written request for a ruling by the panel on the matter. The request shall indicate the specific measures in question and state why they are incompatible with the provisions of this Agreement. The panel shall communicate its ruling within ninety (90) days of the date on which the request was submitted. In urgent situations, including cases in which perishable and seasonal foodstuffs are in question, the panel shall deliver its ruling within forty-five (45) days of the request being submitted.

**3**.Where the arbitration panel or some of its members are unable to attend further meetings, the procedures set out in Article68 of this Agreement shall be applied. The time limit for delivering a ruling shall be one hundred and five (105) days from the date on which the request referred to in paragraph2of this Article was submitted.

**ARTICLE 74**

**Temporary remedies in the event of non-compliance**

**1**.If the respondent fails to report measures it has taken to comply with the arbitration panel ruling before expiry of the reasonable time limit, or if the arbitration panel rules that the measures notified under Article73(1) of this Agreement are not compatible with its obligations under the provisions of Article71 hereof, the respondent shall, if so requested by the applicant, submit to the applicant an offer for temporary compensation.

**2**.If the Parties do not agree on compensation within thirty (30) days of the reasonable time limit or of the ruling by the arbitration panel referred to in Article 73 of this Agreement that the compliance measures that have been taken are not compatible with the provisions referred to in Article 71 hereof, the applicant shall be authorised, after having informed the other Party, to take appropriate measures. In taking such measures, the applicant shall endeavour to select measures that as little as possible affect the achievement of the objectives of this Agreement. If applicable, the temporary measures shall take account of their impact on the economies of the West African States and should not affect the provision of development aid for the West African region.

**3**.The European Union Party shall show moderation in its requests for compensation or when adopting the appropriate measures in accordance with paragraphs1 and 2 of this Article and shall take account of the status of the West African States as developing countries.

The appropriate measures or compensation shall be temporary and shall cease to be applied when the measure recognised as being incompatible has been withdrawn or amended in such a way as to make it comply with the provisions of Article 71 of this Agreement or when the Parties agree to terminate the dispute settlement procedure.

**ARTICLE 75**

**Examination of the compliance measures following the adoption of appropriate measures**

**1**.The respondent shall inform the other Party and the Joint Implementation Committee of the EPA of the measures it has taken to comply with the ruling of the arbitration panel and request that the appropriate measures taken by the applicant shall cease to be applied.

**2.**If the Parties do not reach an agreement on the compatibility of the notified measures with the provisions of this Agreement within thirty (30) days of the notification being submitted, the applicant shall make a request in writing for the arbitration panel to rule on the matter. Such a request shall be reported simultaneously to the other Party and the Joint Implementation Committee of the EPA. The ruling of the arbitration panel shall be delivered within forty-five (45) days of submission of the request and shall be reported to the Parties and the Joint Implementation Committee of the EPA. If the arbitration panel rules that the measures taken by the party against which the ruling was delivered are not in conformity with the relevant provisions of this Agreement, it shall consider whether it is appropriate for the applicant to continue to apply the measures taken. If it considers that the measures taken are not in conformity, it shall terminate the application of the measures taken by the applicant.

Where the arbitration panel or some of its members are unable to attend further meetings, the procedures set out in Article68 of this Agreement shall be applied. The time limit for delivering a ruling shall be sixty (60) days from the date on which the request referred to in paragraph 2 of this Article was submitted.

**Section III**

**Common and transitional provisions**

**ARTICLE 76**

Mutually satisfactory solution. The Parties may agree on a solution to a dispute any time. They shall inform the Joint Implementation Committee of the EPA of their agreement. The adoption of a mutually satisfactory solution shall terminate the procedure.

**ARTICLE 77**

Procedural rules Procedural rules shall be adopted by the Joint Implementation Committee of the EPA within three (3) months of it being set up.

**ARTICLE 78**

General and technical information at the request of a Party or on its own initiative, the arbitration panel may obtain general and technical information from any source, including the Parties concerned by the dispute, if it deems this to be appropriate for the arbitration proceedings. The panel shall also be authorised to obtain the opinion of experts if it considers this appropriate. Information obtained in this manner must be disclosed to each of the Parties and submitted to them for their comments.

**ARTICLE 79**

**Languages of submission**

**1**.Thecommon working languages of the Parties for procedures for the prevention and settlement of disputes shall be English, French and Portuguese.

**2**.The Parties shall make their written or oral submissions in one of those three official languages.

**ARTICLE 80**

**Rules of interpretation**

The arbitration panel shall interpret the provisions of this Agreement in accordance with the customary rules of interpretation of public international law, including those set out in the Vienna Convention of1969 on the Law of Treaties. The rulings of the arbitration panel shall neither add to nor diminish the rights and obligations set out in this Agreement.

**ARTICLE 81**

**Arbitration panel rulings**

**1**.The arbitration panel shall make its rulings by consensus. Where a ruling cannot be made by consensus, it shall be made by majority vote.

**2**.The ruling shall set out the substantive findings, the applicability of the relevant provisions of this Agreement and the reasoning underpinning the findings and conclusions reached by the arbitration panel. The Joint Implementation Committee of the EPA shall make the arbitration ruling known to the public, unless it decides otherwise.

**3**.The ruling of the arbitration panel shall expressly state the way in which account has been taken of the flexibility, including the special and differential treatment, provided for in this Agreement if it has been invoked by either of the Parties. Notwithstanding the provisions of Article64 of this Agreement, the measures taken to comply with the ruling of the arbitration panel shall specifically apply to the State or States whose measures have been ruled to be contrary to this Agreement. Consequently, no State may be made subject to a penalty if no fault can be attached to it for failure to meet an obligation arising from this Agreement.

**ARTICLE 82**

**Transitional provision**

To take account of the special situation of West Africa, the Parties agree that, for a transitional period of ten (10) years following the entry into force of this Agreement, the European Union Party shall give full preference to consultation and mediation as ways of settling disputes and shall display moderation in its demands.

**CHAPTER 4**

**GENERAL PROVISIONS**

**ARTICLE 83**

**List of arbitrators**

**1**.The Joint Implementation Committee of the EPA shall prepare a list of fifteen (15) arbitrators within three (3) months at the latest of being set up. Each Party shall appoint one third of the arbitrators. The two Parties shall agree on the choice of the remaining third of arbitrators, who shall not be nationals of either Party and could be called upon to chair the arbitration panel. The Joint Implementation Panel of the EPA shall ensure that the said list is always complete and that the different specialisms of international trade and economic and trade partnership between the two regions are represented.

**2**.The arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, act individually and not under the instructions of any organisation or government, shall not be affiliated to the administration of either Party, and shall observe the Code of Conduct appended to the Procedural Rules.

**ARTICLE 84**

**Links with the WTO obligations**

**1**.The arbitration bodies set up under this Agreement shall not be authorised to rule on disputes relating to the rights and obligations of each Party pursuant to the WTO Agreement.

**2**.Recourse to the dispute settlement provisions of this Agreement shall be without prejudice to any action in connection with the WTO, including dispute settlement action. However, when a Party has initiated a dispute settlement procedure with regard to a given measure either under Article 67(1) of this Agreement or under the WTO Agreement, it may not initiate a dispute settlement procedure for the same measure with the other forum before concluding the first procedure. For the purposes of this paragraph, a Party shall be considered to have initiated a dispute settlement procedure under the WTO Agreement once it has requested the establishment of a panel pursuant to Article6of the Dispute Settlement Understanding set out in Annex2to the WTO Agreement.

**3**.This Agreement cannot prevent a Party from applying the suspension of obligations authorised by the WTO Dispute Settlement Body. The WTO Agreement cannot prevent the Parties from suspending the benefits granted under this Agreement.

**ARTICLE 85**

**Time limits**

**1**.All the limitation periods laid down in this Part, including the times by which the arbitration panels must deliver their rulings, shall be expressed in calendar days from the day following the act or fact to which it refers. If the last day is a non-working day, the time limit shall be deemed to fall on the next working day.

**2**.Any time limit provided for in this Part of the Agreement may be extended by mutual agreement between the Parties.

**ARTICLE 86**

**Cooperation**

The Parties agree to cooperate, including financially, in accordance with the provisions of Part III of this Agreement, with regard to legal aid and in particular with regard to building up capacities in order to make possible the use by the West Africa Party of the dispute settlement mechanism provided for in this Agreement.

**PART V**

**GENERAL EXCEPTIONS**

**ARTICLE 87**

General exception clause Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods or services or on establishment, nothing in this Agreement shall be construed to prevent the adoption or application by either Party of measures:

**(a)**necessary to protect public morals, order or safety;

**(b)**necessary to protect the life or health of humans, animals or plants;

**(c)**necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement including those relating to:

(i)the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contractual payments;

(ii)protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii)security;

(iv)customs enforcement; or(v)the protection of intellectual property rights;

**(d)**relating to the import or export of gold or silver;

**(e)**concerning the protection of national treasures of artistic, historic or archaeological value;

**(f)** relating to the conservation of non-renewable natural resources if such measures imply restrictions on domestic production or consumption of goods, domestic supply or consumption of services or domestic investors;

**(g)**relating to the products of prison labour;

**(h)**essential for the acquisition or distribution of products of which there is a general or local scarcity. However, these measures should be compatible with the principle that the Parties are entitled to a fair share of the international supply of the products in question. All the measures referred to above that are incompatible with the other provisions of this Agreement shall be eliminated as soon as the circumstances giving rise to them have ceased to exist.

**ARTICLE88**

**Security exceptions**

1. Nothing in this Agreement shall be construed:

**(a)**as requiring either Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

**(b)**as preventing the Parties from taking any action deemed necessary for the protection of their essential security interests:(i)relating to fissile or fissionable materials or the materials from which they are derived;(ii)relating to economic activities carried out directly or indirectly for the purpose of supplying or provisioning a military establishment;(iii)connected with the production of or trade in arms, munitions and war material;(iv)relating to government contracts essential for national security or for national defence purposes;(v)taken in time of war or other emergency in international relations;

**(c)**as preventing the Parties from taking any action in order to honour their obligations for the purpose of maintaining international peace and security.

**2**.The Joint Implementation Committee of the EPA shall be informed to the fullest extent possible of measures taken under paragraph1(b) and (c) of this Article and of their termination dates.