Dispute Settlement
Draft Rules of Procedure

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Article 90

1. Failure by a Party to comply with a Treaty obligation or to implement a Decision addressed to it within the required period may be brought to the attention of the Ministerial Council by a reasoned request of any Party, the Secretariat or the Regulatory Board. Private bodies may approach the Secretariat with complaints.

2. The Party concerned may make observations in response to the request or complaint.

Article 91

1. The Ministerial Council may determine the existence of a breach by a Party of its obligations [by decision]

Article 92

1. At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty.
General considerations

I. Dispute Settlement

- An important aspect of assisting in the attainment of the EnC objectives, related to the review of proper Treaty implementation
- A corollary of assuming legally binding obligations by the Parties (once the implementation deadlines have expired)
- an approach fitting the particularities of individual cases and situations within the Parties
- Offers the possibility to enter into a dialogue with the Parties

II. Treaty provisions directly applicable – need for **procedural clarification**

III. First **complaints** have reached the Secretariat
Core characteristics of the procedure

I. "Failure to comply" by a Party (the "Party concerned")
   - Definition
   - Burden of proof

II. Initiation *ex officio* or upon complaint
   - Coordinating *ex officio* proceedings as far as possible
   - Establishing rules on complaints
Core characteristics of the procedure

III. „To be brought to the attention of the MC“

- Preliminary Procedure („the dialogue“). Two main functions:
  - „the request shall be based on concrete factual findings and backed up by sufficient analysis“ (RoP MC): establishment of facts and legal analysis
  - Gives the Party concerned ample possibility to contest and to justify (Article 90(2))

- „by a reasoned request“
  - „the request shall contain a proposal for the Council‘s decision“ (RoP MC)
Core characteristics of the procedure

IV. The Ministerial Council’s Decision

- Optionally prepared by an Advisory Committee (cf. Conclusions of the Montenegro MC: “a formal process that exists at a level below the Ministerial will have to be considered for the issue of non-implementation of Treaty commitments by Treaty Parties”)

- Voting in accordance with the Treaty rules (Article 91(2))

V. Serious and persistent breaches (Article 92)

- Political notion on top of the legal assessment
- Follow-up or stand alone
- No preliminary procedure
- Sanctions according to Article 92

VI. Revocation (Articles 91(2) and 92(2))