

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Nexo AG, NDS EOOD and Mirastar EOOD

v.

Republic of Bulgaria

(ICSID Case No. ARB/24/2)

PROCEDURAL ORDER NO. 2

Decision on Bifurcation

Members of the Tribunal

Prof. Hans van Houtte, President of the Tribunal

Dr. Michael Pryles, Arbitrator

Prof. Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Izabela Chabinska

22 January 2026

I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. This proceeding relates to a dispute submitted to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) on the basis of the Agreement between the Swiss Confederation and the Republic of Bulgaria concerning the promotion and reciprocal protection of investments signed on 28 October 1991 and entered into force on 26 October 1993 (the “**BIT**” or “**Treaty**”) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States dated 18 March 1965 (the “**ICSID Convention**”).
2. The claimants are (i) Nexo AG (“**Nexo**”), a public limited company (*Aktiengesellschaft*) and constituted under the laws of the Swiss Confederation; and (ii) NDS EOOD (“**NDS**”) and (iii) Mirastar EOOD (“**Mirastar**”), two companies incorporated in the Republic of Bulgaria (together, “**Claimants**”).
3. The respondent is the Republic of Bulgaria (“**Bulgaria**” or “**Respondent**”).
4. Together, Claimants and Respondent are referred to as the “**Parties**”.
5. On 29 December 2023, Claimants submitted their “**Request for Arbitration**” to the Centre.
6. On 18 January 2024, the ICSID Secretary-General registered the Request for Arbitration in accordance with Article 36(3) of the ICSID Convention and notified the Parties of the registration.
7. By letter of 5 March 2024, ICSID informed the Parties, pursuant to Rule 15(2) of the 2022 ICSID Rules of Procedure for Arbitration Proceedings (the “**Arbitration Rules**”), that the Tribunal was to be constituted in accordance with Article 37(2)(b) of the ICSID Convention and ICSID Arbitration Rule 16. Accordingly, the Tribunal is to consist of three arbitrators, one arbitrator appointed by each Party, and the third, presiding arbitrator appointed by agreement of the Parties.
8. On 26 April 2024, Claimants appointed Dr. Michael Pryles, a national of the Commonwealth of Australia and the Republic of Austria, as their arbitrator; on 30 April 2024, Respondent appointed Prof. Brigitte Stern, a national of the French

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Republic, as its arbitrator. Dr. Pryles and Prof. Stern subsequently accepted their appointments.

9. By Respondent's email of 16 May 2025 and Claimants' email of 17 May 2025, the Parties informed ICSID of their agreement to appoint Prof. Hans van Houtte, a national of the Kingdom of Belgium, as the President of the Tribunal.
10. Pursuant to ICSID Arbitration Rule 21(1), on 6 June 2025, the ICSID Acting Secretary-General informed the Parties that all three arbitrators had accepted their appointments, and therefore the Tribunal was deemed to have been constituted as of that date. Ms. Izabela Chabinska, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
11. In accordance with ICSID Arbitration Rule 29(1), on 4 August 2025, the Tribunal held a first session with the Parties by video conference.
12. Following the first session, on 22 August 2025, the Tribunal issued Procedural Order No. 1, setting out the agreed terms for the conduct of the proceeding. Annex B to Procedural Order No. 1 sets forth the agreed procedural calendar, including the briefing schedule for the Parties' submissions on bifurcation.
13. In accordance with the agreed procedural calendar, the Parties made the following submissions:
 - On 20 October 2025, Respondent filed its Request for Bifurcation ("**Respondent's Request**"), together with Exhibits R-0001 through R-0035 and Legal Authorities RL-0001 through RL-0015;
 - On 17 November 2025, Claimants filed their Response on Bifurcation ("**Claimants' Response**"), together with Exhibits C-0001 through C-0015 and Legal Authorities CL-0001 through CL-0045;
 - On 3 December 2025, Respondent filed its Reply on Bifurcation ("**Respondent's Reply**"), together with Exhibit R-0036-BG and Legal Authorities RL-0016 through RL-0027; and

- On 17 December 2025, Claimants filed their Rejoinder on Bifurcation (“**Claimants’ Rejoinder**”), together with Exhibits C-0016 through C-0023 and Legal Authorities CL-0046 through CL-0053.

II. PARTIES’ POSITIONS

A. RESPONDENT’S POSITION

(1) Respondent’s objections to jurisdiction

14. Respondent objects to the Tribunal’s jurisdiction on several grounds that, in its view, warrants bifurcation in accordance with ICSID Arbitration Rule 44(2).

a. Expiration of the BIT before the alleged wrongful act and Claimants’ purported consent to arbitration

15. According to Respondent and as reflected in the BIT’s authentic Bulgarian version, the BIT was no longer in force at the time of the alleged wrongful acts and of Claimants’ purported consent to arbitration. The BIT thus cannot serve as the basis of the Tribunal’s jurisdiction.
16. Indeed, Respondent points out, the BIT entered into force on 26 October 1993 for a term of ten years and, absent notice of termination, could be extended for five years. As there was no notice of termination, as referenced in BIT Article 13(1), the BIT thus expired on 27 October 2008 in accordance with its terms. Respondent emphasises that the BIT was thus not in force at the time of the alleged wrongful acts and of Claimants’ purported consent to arbitration.¹
17. In Respondent’s view, the fact that the BIT could only be renewed once is not an extraordinary phenomenon. Also, other Bulgarian BITs provide for a single renewal instead of repeating renewals.²
18. Where Claimants observe that the BIT is nevertheless published in Switzerland’s collection of laws and is also listed on Bulgaria’s Ministry of Economy and Industry website as in force, Respondent refers to *CSOB v. Slovakia* in pointing out that a

¹ Respondent’s Request, paras. 2, 12-16.

² Respondent’s Reply, para. 15.

publication in the official collection of laws, or a notice that the BIT is in force, is not decisive.³

19. Respondent adds that neither is the object and purpose, as stated in the BIT itself – namely to protect investments – a basis for interpreting the BIT as repeatedly renewing; this is shown by many investment treaties with the same object and purpose, which are either not renewed or protect investments without giving recourse to investor-State arbitration.⁴
20. Claimants, however, argue that the authentic German text⁵ and Switzerland’s unauthentic translations thereof in Italian and French refer to the possibility of repeating renewals. Respondent, from its side, insists that the Bulgarian version of the BIT is very clear and leaves no room for interpretation. One may not try to reconcile the two authentic versions of the BIT (German and Bulgarian) by adding an additional provision to the Bulgarian text, which is very clear by itself.⁶
21. It is a fact, Respondent argues, that Bulgaria and Switzerland may submit disputes about the interpretation of the BIT, including for instance whether it has been terminated, to arbitration under BIT Article 12. However, the Tribunal has full competence to address the temporal scope of the BIT as Bulgaria and Switzerland have not commenced a procedure over this issue under BIT Article 12.⁷

b. Nexo AG is not an “investor” under BIT Article 1(3)(b)

22. BIT Article 1(3)(b) defines “investor” of a Contracting Party to include “legal entities ... which are constituted or otherwise duly organized under the law of that Contracting

³ Respondent’s Reply, paras. 12-13, referring to Claimants’ Response, paras. 25-28; *Československá obchodní banka, a. s. v. Slovak Republic*, ICSID Case No. ARB/97/4, Decision on Jurisdiction, 24 May 1999, **RL-0017**, paras. 44-48.

⁴ Respondent’s Reply, para. 14.

⁵ According to Respondent, the German version contains the language “*‘jeweils’* (‘each’) ... *‘weitere fünf Jahre’*”; however, the Bulgarian version speaks only of *one* renewal. Adapting the former provision in the German version would be less extensive than adding a new provision in the Bulgarian version. Conciliatory interpretation under VCLT Article 33(4) does not allow inserting a provision, from one authentic text (German) into another authentic text (Bulgarian) where it was missing: Respondent’s Reply, paras. 17-19.

⁶ Respondent’s Reply, para. 16, referring to Claimants’ Response, para. 31.

⁷ Respondent’s Reply, para. 20.

Party and have their *seat* in the territory of that same Contracting Party and are carrying out *real economic activities* there” (emphasis added by Respondent).⁸

23. There is no dispute that Nexo AG is incorporated in Switzerland.⁹ However, for Respondent, Claimant Nexo AG nevertheless does not qualify as an “investor” of Switzerland under BIT Article 1(3)(b) for two separate reasons: (i) Nexo AG never had its seat in Switzerland; and (ii) Nexo AG never had real economic activities in Switzerland. Jurisdiction *ratione personae* with respect to Nexo AG therefore is lacking.¹⁰
24. For Respondent, “seat” refers to the location of a company’s effective place of management and central administration.¹¹ With reference to *Alps Finance v. Slovak Republic* and other cases, for Respondent, the following factors are relevant to whether a Swiss-incorporated company has its seat in Switzerland: (i) whether its board of directors or its shareholders regularly meet there; (ii) whether its top management is based there; (iii) whether the company has a certain number of employees working there; (iv) whether the company has a Swiss address and/or Swiss telephone as its points of contact for third parties; and (v) whether the company incurred general expenses or overhead costs to maintain its physical location at the seat.¹²
25. However, Respondent argues that there is no evidence that (i) Nexo AG’s Board of Directors and shareholders ever convened in Switzerland; (ii) Nexo AG’s top management was based there; (ii) Nexo AG ever had any employee in Switzerland; (iv) Nexo AG provided a Swiss point of contact for third parties; and (v) Nexo AG incurred general expenses and overhead costs to maintain a physical location in Switzerland.¹³
26. Where in response Claimants argue that “seat” is “legal domicile under Swiss company law” and that Nexo AG meets that criterion “by virtue of its incorporation and

⁸ Respondent’s Request, para. 18; Agreement between the Swiss Confederation and the Republic of Bulgaria concerning the promotion and reciprocal protection of investments, signed 28 October 1991 and entered into force 26 October 1993, **R-0001**, Art. 1(3)(b).

⁹ Respondent’s Request, para. 20.

¹⁰ Respondent’s Request, para. 21.

¹¹ Respondent’s Request, para. 23.

¹² Respondent’s Request, paras. 24-25, referring to, *inter alia*, *Alps Finance and Trade AG v. Slovak Republic*, *ad hoc*, Award, 5 March 2011 (“*Alps Finance v. Slovak Republic*”), **RL-0009**, paras. 215-217.

¹³ Respondent’s Request, para. 26; Respondent’s Reply, paras. 21-23.

registration in Zug under the domicile ‘c/o Sibla’”,¹⁴ Respondent, again referring to *Alps Finance v. Slovak Republic*, maintains that, to make the ‘seat’ requirement of the BIT effective (‘*effet utile*’), a seat – when mentioned in a BIT – should be more than a legal domicile to trigger investment protection.¹⁵

27. As to Claimants’ argument that the two directors of Nexo AG were subject to pre-trial criminal investigations in Bulgaria and had moved to the United Arab Emirates, Respondent finds it irrelevant for the issue at stake, as there is no evidence that at any rate they would have held company meetings in Switzerland.¹⁶
28. Moreover, for Respondent, the “ordinary meaning of real economic activities” requires a corporate presence, operations and employees in Switzerland.¹⁷ However, there is no evidence of Nexo AG’s operations and employees in Switzerland, where Nexo AG merely served as a conduit for intra-group money transfers, but did not carry out real economic activities. For example, Respondent asserts that whenever Nexo AG had to provide certain services, such as client payment processing and contracting for software development and advertising, it immediately subcontracted these services to its Bulgarian subsidiary NDS for execution in Bulgaria.¹⁸
29. Respondent does not agree with Claimants that real, *i.e.*, “genuine” economic activities simply exclude “fake” activities. It also excludes holding companies that maintain “a mere shell of an existence”.¹⁹
30. Respondent also does not agree with Claimants that, for a holding or financial company, “real economic activities” do not require “the same footprint as an industrial or client-facing enterprise”.²⁰ There is no authority interpreting a Swiss BIT in this manner. Moreover, according to this view, the qualification “real” would become superfluous

¹⁴ Respondent’s Reply, para. 24, referring to Claimants’ Response, para. 41.

¹⁵ Respondent’s Reply, paras. 25-27. *See also* Respondent’s Request, para. 24.

¹⁶ Respondent’s Reply, para. 28, referring to Claimants’ Response, para. 43.

¹⁷ Respondent’s Request, para. 33.

¹⁸ Respondent’s Request, para. 34. *See also* Respondent’s Reply, paras. 30-31, referring to Claimants’ Response, paras. 46-47.

¹⁹ Respondent’s Reply, para. 30.

²⁰ Respondent’s Reply, para. 32, referring to Claimants’ Response, para. 47.

and any company with its seat in Switzerland and performing its administrative formalities, filing and paying taxes, etc., would already have “economic activities”.²¹

c. NSD and Mirastar are not “investors” under BIT Article 1(3)(c)

31. According to Respondent, the Bulgarian Claimants NDS and Mirastar rely on Nexo AG’s control and alleged seat and economic activities in Switzerland, to claim that they as well have to be considered as “investors” under BIT Article 1(3)(c).²² The fact that Nexo AG is not entitled to claim under the BIT would therefore also dispose of NDS’s and Mirastar’s claims under the BIT.²³

d. NDS and Mirastar are not “investors” under ICSID Convention Article 25(2)(b)

32. Under ICSID Convention Article 25(2)(b), NDS and Mirastar, with the nationality of the Party to the dispute (Bulgaria), can only be Parties in an ICSID arbitration when they are under the control of a company of the other Contracting Party (*i.e.*, Nexo AG, a Swiss company) and the Parties have agreed that they “should be treated as a national of another Contracting State for the purpose of this Convention”.²⁴
33. According to Respondent, NDS and Mirastar, are, however, controlled by Bulgarian nationals and therefore not under foreign control. They thus are not within the jurisdiction *ratione personae* of the ICSID Convention.²⁵

²¹ Respondent’s Reply, paras. 32-33, referring to, *inter alia*, *Mabco Constructions SA v. Republic of Kosovo*, ICSID Case No. ARB/17/25, Decision on Jurisdiction, 30 October 2020, **CL-0028**, para. 395. Respondent explains that Mabco was more than a holding company and conducted its project planning business with a significant number of employees in Switzerland; also in that case, tax payments were not taken into account as “economic activity”.

²² Respondent’s Request, para. 37; Respondent’s Reply, paras. 35-37. Respondent recalls that under BIT Article 1(3)(c), investors may also be “legal entities, established under the law of a third State or the law of the other Contracting Party which are, directly or indirectly, controlled by nationals of the respective Contracting Party or by legal entities having their seat in the territory of the respective Contracting Party and carrying out real economic activities there”: Respondent Request, para. 41.

²³ Respondent’s Request, paras. 41-45; Respondent’s Reply, para. 36.

²⁴ Respondent’s Request, paras. 48-51; Respondent’s Reply, para. 39.

²⁵ Respondent’s Reply, paras. 36-37, 39.

e. Claimants' claims are not covered by the BIT's arbitration provisions

34. Respondent recalls that under BIT Article 11(2)(a), obligations arising under BIT Article 7(1), *i.e.*, relating to expropriations, have to be submitted to international arbitration. The claims, submitted by Claimants, however, do not concern expropriation.²⁶
35. Under BIT Article 11(2)(b), “disputes regarding other questions of interpretation or application of this Agreement may be submitted to international arbitration if both parties agree”; however, Respondent points out that there is no such agreement in the present case.²⁷
36. Respondent does not agree with Claimants that the Protocol to Article 11, which provides that disputes may be submitted to ICSID arbitration as soon as Bulgaria and Switzerland have acceded to the ICSID Convention, amended BIT Article 11(2)(b) and expanded the scope of arbitrable disputes. According to Respondent, it only made ICSID available for the settlement of the disputes which under BIT Articles 11(2)(a) and (b) could be submitted to international arbitration.²⁸
37. Respondent disagrees with Claimants that the BIT’s object and purpose require it to systematically provide arbitration for all investment disputes and not only for expropriations. Many investment treaties limit arbitration to a small subset of the host State’s treaty obligations.²⁹
38. In response to Claimants’ reliance in their Response that BIT Article 8, instead of BIT Article 11(2), allows for other, more favourable dispute resolution provisions of other Bulgarian BITs, Respondent observes that this reference is not only belated but also irrelevant. BIT Article 8 only provides for a more favourable treatment under “international law existing ... between the Contracting Parties” to the BIT, not between Bulgaria and a third state.³⁰

²⁶ Respondent’s Request, paras. 53-54, Respondent’s Reply, para. 40.

²⁷ Respondent’s Request, para. 55.

²⁸ Respondent’s Request, paras. 56-60; Respondent’s Reply, paras. 41-42.

²⁹ Respondent’s Reply, para. 43, referring to Claimants’ Response, para. 66.

³⁰ Respondent’s Reply, para. 44.

(2) Respondent's reasons for bifurcation

39. Respondent recalls that “[t]he ICSID Convention and the ICSID Arbitration Rules (2022) confer upon the Tribunal the authority to address matters of jurisdiction and competence as preliminary questions in a separate phase prior to addressing the merits of the dispute”. Under ICSID Arbitration Rule 44(2), relevant circumstances for bifurcation are (i) whether bifurcation would materially reduce the time and cost of the proceeding; (ii) whether it would dispose of all or a substantial portion of the dispute; (iii) whether the preliminary objections are not so intertwined with the merits that bifurcation is impractical.³¹
40. In Respondent's views, all of these jurisdictional objections, which are based upon narrow issues of law and fact, are dispositive of all of Claimants' claims. They are not intertwined with the merits and can be efficiently addressed in a preliminary phase. Bifurcation is thus warranted under ICSID Arbitration Rule 44(2).³²
41. In the past, some tribunals applying earlier versions of the Arbitration Rules also considered whether a preliminary objection was *prima facie* “serious and substantial”, what in fact boiled down to being not frivolous or vexatious. In any event, if “serious and substantial” should involve a separate, higher test other than “not frivolous” (which again, Respondent underlines is not a requirement included in the current Arbitration Rules), Respondent argues that its objections satisfy it.³³
42. Respondent further argues that its reservation of the right to raise additional objections at a later stage, if additional grounds are raised, does not weigh against deciding the decisive objections already submitted.³⁴
43. Respondent also argues that Claimants agreed to the schedule for the bifurcated phase contained in Procedural Order No. 1, Annex B, and they cannot now complain about

³¹ Respondent's Request, paras. 7-8.

³² Respondent's Request, paras. 2-6. Respondent disagrees with Claimants that the issue of whether Nexo AG has its seat and real economic activities in Switzerland overlaps with the merits. Claimants' assertion that more evidence on these issues will be submitted in the future, cannot be accepted as Procedural Order No. 1, Annex B directs Claimants to produce all evidence by 22 September 2025: *see* Respondent's Reply, paras. 8-10.

³³ Respondent's Request, para. 9; Respondent's Reply, para. 2.

³⁴ Respondent's Reply, para. 3.

the length of the bifurcated phase.³⁵ In any event, bifurcation would not cause Claimants irreparable harm which could not be compensated by an award of damages.³⁶

44. On the other hand, Respondent asserts, efficiency not only entails the duration of the proceeding, but also the possible substantial cost savings if there would be no need to litigate the merits of the dispute.³⁷
45. Respondent maintains that the requested bifurcation should cover only jurisdictional issues. Whatever impact the revocation of the arrest warrant by the Sofia City Court might have on the merits of the case does not affect the necessity to preliminarily decide on the jurisdiction of the Tribunal.³⁸

B. CLAIMANTS' POSITION

(1) Claimants' response to Respondent's objections to jurisdiction

a. The BIT is not terminated but still in force

46. Claimants highlight that the BIT is listed as in force in Switzerland and Bulgaria on the websites of several intra-governmental organisations.³⁹
47. Claimants concede that, other than in the authentic German version of the BIT, where the BIT can be successively extended several times for five years, the Bulgarian authentic text only provides for one renewal, although it does not mention the intention that the BIT is terminated without possible further extension. For Claimants, very clear language would be required to conclude that the BIT cannot be further extended.⁴⁰
48. In Claimants' view, pursuant to VCLT Articles 31-33, the language of the BIT should be interpreted to provide for ongoing renewals, as expressed in the German authentic text, which expressly provides for repeat renewals. This best reconciles the wording of BIT Article 13(1) in the two authentic versions.⁴¹ Although both authentic versions are

³⁵ Respondent's Reply, para. 4.

³⁶ Respondent's Reply, para. 5.

³⁷ Respondent's Reply, para. 7.

³⁸ Respondent's Reply, para. 6.

³⁹ Claimants' Response, paras. 25-28.

⁴⁰ Claimants' Response, paras. 23-24, 29.

⁴¹ Claimants' Response, paras. 29-31; Claimants' Rejoinder, paras. 20-21.

equal, Claimants highlight that the BIT had been negotiated in German.⁴² Besides, according to Claimants, the practice of Bulgaria and Switzerland is to enter into agreements with automatic renewals or with an indefinite period but subject to notice of termination.⁴³

49. Claimants point out that Respondent's references to other BITs, which exclude repeat renewals, have limited relevance to the matter before the Tribunal which has to be decided on its own.⁴⁴
50. Claimants state that in the alternative, if there would be a dispute as to the duration of the BIT in spite of the shared statements of Bulgaria and Switzerland that it is in force, BIT Article 12 provides for the Contracting Parties to solve such dispute and the Tribunal would therefore be required to suspend the current proceeding.⁴⁵

b. Nexo AG has its seat in Switzerland

51. Claimants assert that Nexo AG has its seat in Switzerland and satisfies BIT Article 1(3)(b).⁴⁶
52. Claimants state that Nexo AG has been incorporated in Switzerland and has its registered office in Zug, where it maintains its Swiss address and corporate records under the care of Sibla Services. It pays Swiss corporate taxes, operates a Swiss bank account and has Swiss legal counsel.⁴⁷
53. According to Claimants, the notion of "seat" in BIT Article 1(3)(b) is indeed an autonomous treaty concept, denoting a company's genuine and stable administrative connection with its home State through its registered office. It is a formal requirement, distinct from "effective management", "place of administration" or "real economic activity" – as is confirmed by the *Tenaris v. Venezuela* tribunal.⁴⁸ Where its directors

⁴² Claimants' Rejoinder, para. 19.

⁴³ Claimants' Response, para. 32.

⁴⁴ Claimants' Rejoinder, paras. 22-26.

⁴⁵ Claimants' Response, para. 33; Claimants' Rejoinder, para. 27.

⁴⁶ Claimants' Response, para. 34; Claimants' Rejoinder, para. 29.

⁴⁷ Claimants' Response, para. 34.

⁴⁸ Claimants' Response, paras. 35-38 (Claimants add that stricter criteria may apply to "permanent" seat and "real" seat); Claimants' Rejoinder, para. 28, referring to, *inter alia*, *Tenaris S.A. and Talta-Trading E Marketing*

reside, where its board meetings occur, how many employees it has, whether it has a Swiss telephone number, etc., is irrelevant to determine whether the seat of the company is in Switzerland.⁴⁹

54. Claimants finally observe that the objection that Nexo AG never had its seat in Switzerland, cannot be addressed in isolation of the merits of the case. Its legal and administrative presence in Switzerland cannot be examined without an analysis of all its functions within the Nexo Group and thus overlaps with the merits.⁵⁰
55. Moreover, as further required under BIT Article 1(3)(b), Nexo AG has “genuine” or “real economic activities” in Switzerland. This requirement does not necessitate a particular type of economic activity or profitability, or a specific degree of physical presence. It requires that the investor maintains a genuine link to the home State and is *bona fide*. Nexo AG meets this test. A holding company, corporate service provider or financial company, like Nexo AG, does not need to demonstrate the same operational footprint as an industrial or client-facing enterprise. Nexo AG’s financial operations, administrative services, contract procurement, tax filings and bank transactions are relevant indicators of economic substance.⁵¹
56. However, for Claimants, the evaluation of Nexo AG’s “genuine economic activity” is inseparable from issues central to the merits and requires examination of its financial operations, control of subsidiaries and other transactions, with examination of extensive evidence, including fact witness testimony and, potentially, expert evidence. Bifurcation thus would not materially reduce time and costs.⁵²

Sociedade Unipessoal LDA v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/11/26, Award, 29 January 2016, **RL-0010**, paras. 198, 201-227.

⁴⁹ Claimants’ Response, para. 42; Claimants’ Rejoinder, paras. 31, 45.

⁵⁰ Claimants’ Response, para. 45.

⁵¹ Claimants’ Response, paras. 45-51. Besides, Claimants add, the Sofia City Prosecutor’s Office expressly confirmed that the conduct of one of Nexo’s managers “in the territory of ... the Swiss Confederation” from early 2018 on was being investigated: *see* Claimants’ Rejoinder, para. 45.

⁵² Claimants’ Response, para. 53.

c. NDS and Mirastar are “investors” under BIT Article 1(3)(c)

57. Claimants argue that Nexo AG, “a Swiss national”, owns 100 percent of the Bulgarian company NDS and indirectly owns the Bulgarian company Mirastar.⁵³ NDS and Mirastar are thus “investors” under BIT Article 1(3)(c) and ICSID Convention Article 25(2)(b).⁵⁴
58. According to Claimants, the first prong is that under BIT Article 1(3)(c), the BIT’s protection is also extended to the Bulgarian entities NDS and Mirastar, controlled by the Swiss company Nexo AG. The second prong is that under ICSID Convention Article 25(2)(b), NDS and Mirastar, although Bulgarian companies, can be treated as Swiss companies by agreement of the Parties as they are directly or indirectly controlled by a Swiss company, whereby “control” must only be assessed under the Treaty. Moreover, Claimants state, the nationality of any ultimate beneficial owner(s) is irrelevant: NDS is 100% owned and directed by Nexo AG, and Mirastar is 100% owned by NDS.⁵⁵
59. Arbitration practice is reluctant to bifurcate objections involving the determination of “ownership” or “control” related to control-issues. Even under arbitration rules that have a presumption in favour of bifurcation (*e.g.*, the UNCITRAL Rules), bifurcation of *ratione personae* objections has consistently been refused as these may require a tribunal to delve into matters that would overlap with the merits.⁵⁶

d. Claimants’ claims are covered by the BIT’s arbitration provisions

60. Claimants argue that BIT Article 11(2)(a) covers all disputes under the BIT. Indeed, the Protocol ad Article 11 BIT, which was concluded simultaneously with the BIT and forms an integral part thereof, states that once Bulgaria becomes party to the ICSID Convention, disputes “shall at the request of the investor be subjected to ... jurisdiction of the International Centre for Settlement of Investment Disputes”. Bulgaria’s accession became effective in 2001 and constituted Bulgaria’s “standing proposal” to

⁵³ Claimants’ Rejoinder, para. 36.

⁵⁴ Claimants’ Response, para. 55.

⁵⁵ Claimants’ Response, paras. 56-60.

⁵⁶ Claimants’ Response, paras. 62-63.

refer disputes to arbitration. The investors have accepted this proposal and perfected the agreement by filing the Request for Arbitration. The agreement, required under BIT Article 11(2)(b), has thus been concluded and the claims can be brought before the Tribunal. Concluding otherwise would be against the purpose of the BIT, would not change the pre-existing regime and would not give any *effet utile* to the Protocol.⁵⁷

61. Moreover, pursuant to BIT Article 8, Claimants are entitled to rely on provisions providing for ICSID jurisdiction from treaties between Bulgaria and other States, including Article VIII(2) of the Bulgaria-Türkiye BIT and Article 7(2) of the Bulgaria-Lebanon BIT.⁵⁸ The reference to Article 8 is not “belated”: Claimants invoked Article 8 as soon as Respondent advanced its objections to jurisdiction.⁵⁹
62. Besides, Claimants observe that they also will invoke BIT Article 8 in relation to Respondent’s substantive obligations,⁶⁰ which is one reason more not to grant bifurcation.

(2) Claimants’ response to Respondent’s reasons for bifurcation

63. Claimants maintain that under the ICSID Arbitration Rules, there is no presumption in favour of bifurcation. The Tribunal must undertake an overall assessment of all factors militating for and against bifurcation. Only if all the criteria in ICSID Arbitration Rule 44(2) are satisfied cumulatively, and if bifurcation would be fair and lead to procedural efficiency, should the Tribunal decide to bifurcate.⁶¹ In case of doubt, it should not bifurcate.⁶²
64. For Claimants, none of Respondent’s grounds for objections warrant bifurcation in accordance with the ICSID Arbitration Rules.
65. First, Respondent’s objections are not sufficiently substantial and serious to allow bifurcation. Indeed, for bifurcation, it is not sufficient that an objection is not merely “frivolous”; the objection must be “serious” and ‘substantial’. Claimants here rely on

⁵⁷ Claimants’ Response, para. 66; Claimants’ Rejoinder, paras. 39-40.

⁵⁸ Claimants’ Response, para. 66.

⁵⁹ Claimants’ Rejoinder, para. 42.

⁶⁰ Claimants’ Rejoinder, para. 42.

⁶¹ Claimants’ Response, paras. 8-9.

⁶² Claimants’ Response, para. 7.

Eco Oro v. Colombia: “a higher threshold must be applied than merely requiring that the objection is not frivolous or vexatious”.⁶³ In fact, the objection must not only be substantial and serious, but carry sufficient weight and importance to justify bifurcation.⁶⁴

66. For Claimants, several grounds for bifurcation relied on by Respondent are frivolous and insubstantial.
67. The assessment of whether an objection is “substantial” must be conducted “on the record as it stands”, *i.e.*, based upon the facts and legal arguments advanced in the Request for Bifurcation. Respondent falls short of satisfying this test.⁶⁵ The objections must have a reasonable chance of success, which Respondent’s objections do not have.⁶⁶
68. Second, bifurcation is not advisable when many issues proposed for bifurcation will need extended factual enquiries, overlapping with the evidentiary requirements of the merits phase.⁶⁷
69. Even in disputes under the 1976 UNCITRAL Rules, which do contain a presumption in favour of bifurcation, tribunals accepted that a partial overlap of facts in preliminary and merits issues is sufficient to deny bifurcation.⁶⁸
70. Claimants furthermore refer to many ICSID arbitrations where bifurcation was refused because jurisdictional issues intertwined with merits-related factual inquiries.⁶⁹
71. In fact, Claimants argue that, apart from the alleged Treaty expiration, each objection requires factual determinations of Claimants’ corporate structure, operations, management, activities and control, as well as the mechanics of investment – *i.e.*, the

⁶³ Claimants’ Response, para. 4, referring to *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, 28 June 2018, **CL-0004**, para. 51.

⁶⁴ Claimants’ Rejoinder, paras. 2-3

⁶⁵ Claimants’ Response, para. 6, quoting *Almaden Minerals Ltd. and Almadex Minerals Ltd. v. United Mexican States*, ICSID Case No. ARB/24/23, Procedural Order No. 3, 25 July 2025 (“*Almaden v. Mexico*”), **CL-0001**, para. 24.

⁶⁶ Claimants’ Response, para. 4.

⁶⁷ Claimants’ Response, para. 2.

⁶⁸ Claimants’ Response, paras. 19-20.

⁶⁹ Claimants’ Rejoinder, para. 4 and fn. 9.

same facts that must be assessed for the merits. For instance, establishing whether Nexo AG maintained its seat in Switzerland or exercised supervisory authority over NSD and Mirastar demands an inquiry into decision-making, funds-flows and the allocation of responsibilities intra group and requires inquiries which sit at the core of the merits.⁷⁰ Past tribunals have refused to bifurcate where objections on investor status, control or economic activity required extensive factual exploration; as this the case here, bifurcation should therefore be denied.⁷¹

72. Third, Claimants believe that Respondent has not shown that bifurcation of its objections will enhance procedural efficiency, *i.e.*, will significantly contribute to clarify and simplify the dispute and/or materially reduce the merits phase.⁷²
73. Referring to academic writings, Claimants point out that bifurcation does not necessarily shorten the duration of the arbitral procedure. As found by an ICSID working group, where jurisdiction was upheld in bifurcated proceedings, the proceedings took, on average, around 2 years longer than in non-bifurcated proceedings. Another study concluded that, in the case of unsuccessful objections to jurisdiction, arbitral procedures could take an additional eighteen months.⁷³
74. In the past, tribunals have refused bifurcation where the “saving” would be 3 months, while, if unsuccessful, bifurcation would add 18 months to the length of the proceeding.⁷⁴ Claimants observe that Procedural Order No. 1 provides for over a year of bifurcation proceeding, which will cause a delay that is disproportionate to its benefits. Were Respondent’s objections bifurcated, a separate reasoned award would be rendered “some time in 2027”.⁷⁵
75. Claimants argue that in the present case, there is a substantial risk that bifurcation will delay resolution and increase costs. Respondent’s assertions that Claimants allegedly

⁷⁰ Claimants’ Rejoinder, paras. 10-12.

⁷¹ Claimants’ Rejoinder, para. 7.

⁷² Claimants’ Response, paras. 2, 12.

⁷³ Claimants’ Response, para. 10.

⁷⁴ Claimants’ Response, para. 11.

⁷⁵ Claimants’ Response, paras. 17, 22.

delayed commencement of the arbitration and agreed with the proposed timetable for a bifurcated phase, are irrelevant as well as factually incorrect.⁷⁶

76. Claimants observe that Respondent's challenges are numerous and complex. Each jurisdictional objection will require considerable time to gather and present evidence and legal arguments.⁷⁷ On the other hand, Claimants point out, it is very unlikely that the merits will require extensive investigations and pleadings while, if bifurcation would be granted, the jurisdictional phase would take almost as long as a combined jurisdictional and merits phase.⁷⁸ This is another argument not to grant bifurcation.⁷⁹
77. Claimants furthermore observe that a delayed award on the merits cannot adequately compensate the damage caused to Claimants by the continuous harassment of Nexo executives and the ongoing losses of human capital and customer goodwill.⁸⁰
78. Claimants finally note that Respondent reserves the right to advance further jurisdictional objections in the future. Respondent thus substantially weakens its own arguments for bifurcation. Indeed, such reservation undermines the alleged efficiency of Respondent's request for bifurcation as jurisdictional objections still may arise at a later stage.⁸¹

III. TRIBUNAL'S ANALYSIS

79. Respondent requests the Tribunal to bifurcate the proceeding and to decide Respondent's objections as preliminary questions. This Procedural Order analyses the reasons for possible bifurcation, without prejudice to its ultimate decisions on the substance of Respondent's preliminary objections.

⁷⁶ Claimants' Rejoinder, para. 14, referring to Respondent's Reply para. 4.

⁷⁷ Claimants' Response, paras. 13, 21. Claimants add that they are entitled to submit additional evidence addressing Respondent's arguments on, *i.e.*, governance and operation of Nexo AG: Claimants' Rejoinder, paras. 15-16.

⁷⁸ Claimants' Rejoinder, para. 9.

⁷⁹ Claimants' Response, para. 16.

⁸⁰ Claimants' Response, paras. 14-15. According to Claimants, the fact that, after the raid on the Nexo premises, Mr. Trenchev tried to mitigate damage, does not affect the substantial damages which have actually been suffered: Claimants' Rejoinder, para. 8.

⁸¹ Claimants' Response, para. 5, referring to Respondent's Request, para. 64. *See also* Claimants' Rejoinder, para. 9.

A. APPLICABLE LEGAL STANDARD

80. The BIT is silent on the Tribunal's authority to bifurcate the proceeding and to decide jurisdictional objections as preliminary issues. Respondent's request is thus governed only by the ICSID Convention and the current ICSID Arbitration Rules (2022).
81. Article 41(2) of the ICSID Convention provides:

Any objection by a party that the dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

82. Should a respondent have objections to jurisdiction, ICSID Arbitration Rule 42 allows it to submit a request for bifurcation, and ICSID Arbitration Rule 44(2) establishes standards to decide on such requests:

(2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:

(a) bifurcation would materially reduce the time and costs of the proceeding;

(b) determination of the preliminary objection would dispose of all or a substantial part of the dispute; and

(c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.

83. The ICSID Convention and the ICSID Arbitration Rules thus confer upon tribunals the authority to address matters of jurisdiction and competence as preliminary questions in a separate phase of the proceeding, prior to addressing the merits of the dispute. Only when the criteria mentioned in ICSID Arbitration Rule 44(2) are cumulatively fulfilled, should tribunals decide to bifurcate.⁸²
84. In applying ICSID Arbitration Rule 44(2), tribunals are not limited to the three standards mentioned there, which is clear from the term "including" which precedes the

⁸² See S. Schill, et al. (eds.), *Schreuer's Commentary on the ICSID Convention*, 2022, "Article 41 – Decision on Jurisdiction" (excerpt), **RL-0007**, p. 794; see also, e.g., *Cairn Energy plc and Cairn UK Holdings Limited v. Republic of India*, PCA Case No. 2016-07, Procedural Order No. 4, 19 April 2017, **CL-0008**, para. 77; *Abertis Infraestructuras, S.A. v. Argentine Republic*, ICSID Case No. ARB/23/39, Procedural Order No. 2, 2 July 2024, **CL-0006**, para. 18.

list of these three standards.⁸³ Procedural fairness and efficiency should be the overall considerations.⁸⁴

85. In practice, tribunals retain a broad discretion to decide whether bifurcation of preliminary issues is in the best interest of the case in light of its particular circumstances. The assessment is largely contextual.
86. Under the ICSID Convention and Arbitration Rules, there is no presumption in favour of bifurcation.⁸⁵ Bifurcation will only be granted when it contributes to the fairness and efficiency of the arbitral process.

B. ANALYSIS

87. The Tribunal will now examine the key considerations, relevant for a decision whether or not to grant the Request for Bifurcation.

(1) Are the preliminary objections serious and substantial?

88. Under earlier versions of the ICSID Arbitration Rules, it sometimes was held that only claims which were *prima facie* serious and substantial could be the object of bifurcation. In all events, bifurcation of frivolous and vexatious claims would be excluded.⁸⁶
89. Although the present ICSID Arbitration Rules (2022) do not limit bifurcation to claims that are serious and substantial, for Claimants this requirement continues to persist. Moreover, Claimants argue that the threshold for “serious and substantial” claims is higher than merely not frivolous and vexatious.⁸⁷
90. The Tribunal does not deem it necessary to enter into this debate. It observes that Respondent’s objections, as pleaded, are well documented and argued with factual and

⁸³ See, e.g., *Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Decision on Bifurcation, 21 January 2015 (“*Gavrilović v. Croatia*”), **CL-0009**, para. 66.

⁸⁴ See, e.g., *Glencore Finance (Bermuda) Ltd. v. Plurinational State of Bolivia*, PCA Case No. 2016-39, Procedural Order No. 2, 31 January 2018, **CL-0014**, para. 56.

⁸⁵ ICSID Working Paper No. 1, Vol. 3, 2 August 2018, as cited in *Almaden v. Mexico*, **CL-0001**, para. 23.

⁸⁶ See, e.g., *Scholz Holding GmbH v. Kingdom of Morocco*, ICSID Case No. ARB/19/2, Procedural Order No. 2, 14 February 2020, **RL-0001**, para. 40; *Gran Columbia Gold Corp. v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3, 17 January 2020, **RL-0002**, para. 25; *Emmis International Holding, B.V., Emmis Radio Operating, B.V. and Mem Magyar Electronic Media Kereskedelmi és Szolgáltató Kft v. Hungary*, ICSID Case No. ARB/12/2, Decision on Bifurcation, 13 June 2013, **RL-0003**, para. 37.

⁸⁷ Claimants’ Response, paras. 4-5.

legal support and with many references to awards and decisions. From their side, Claimants, who reject Respondent's objections, argue equally well, with also many citations to awards and decisions. Claimants' serious and substantial rebuttals confirm that Respondent's objections are not frivolous and vexatious, nor easily countered in a few well-chosen words. They are serious and substantial claims, requiring extensive examination.

(2) Would determination of the preliminary objections dispose of all or of a substantial part of the dispute?

91. The Tribunal observes that the determination of each of the preliminary objections in favour of Respondent, will dispose of all or a substantial part of the dispute:

- Objection No. 1, *i.e.*, that the BIT is not in force at the moment of the alleged wrongful acts and of Claimants' purported consent to arbitration, if successful, would lead to the Tribunal's lack of jurisdiction *ratione temporis*.
- Objection No. 2, *i.e.*, that Nexo AG does not have its seat in Switzerland and thus is not an investor under BIT Article 1(3)(b), if successful, would lead to the Tribunal's lack of jurisdiction *ratione personae* over Nexo AG.
- Objection No. 3, *i.e.*, that Nexo AG has no real or genuine economic activities in Switzerland and thus is not an investor under BIT Article (3) (b), if successful, would similarly lead to the Tribunal's lack of jurisdiction *ratione personae* over Nexo AG.
- Objection No. 4, *i.e.*, that NDS and Mirastar do not qualify as investors under BIT Article 1(3)(c) because Nexo AG, their directly or indirectly controlling company, is not covered by the BIT, if successful, leads to the Tribunal's lack of jurisdiction *ratione personae* over NDS and Mirastar.
- Objection No. 5, *i.e.*, that even if NDS and Mirastar are covered by the BIT, they cannot be parties to an ICSID arbitration because the agreement required under ICSID Convention Article 25(2)(b) is missing, if successful, leads to the Tribunal's lack of jurisdiction *ratione personae* over NDS and Mirastar.

- Objection No. 6, *i.e.*, that Claimants’ claims are not covered by the BIT because the agreement required by BIT Article 11(2)(b) is missing, if successful, leads to the Tribunal’s lack of competence *ratione materiae* over all claims.
92. Claimants erroneously argue that only when *all* of Respondents’ objections succeed, the merits must not be litigated. This is not correct.
93. If either Objection No.1, or Objection Nos. 2 or 3 in combination with Objection No. 4, or Objection No. 6, result in the Tribunal finding that it has no jurisdiction to deal with the claims, then the whole dispute will be disposed of in the preliminary, bifurcated proceeding. If, on the other hand, solely Objection Nos. 4 or 5 are successful, all claims submitted by NDS and Mirastar will be inadmissible and the dispute will be substantially reduced as well.
94. To address Claimants’ remarks and their reference to the *Gavrilović v. Croatia* decision, dividing the arbitral proceeding in two phases thus would have great procedural advantage in the present case.⁸⁸

(3) Are the preliminary objections and the merits so intertwined as to make bifurcation impractical?

95. For Claimants, bifurcation should be refused, not only when the facts in the preliminary issues and the merits are “inextricably linked”, but already when there is a “considerable factual overlap”, even when the factual questions raised by the jurisdictional objections may be narrower than the facts relevant to the merits.⁸⁹
96. For Claimants, to determine whether Nexo AG had its seat and economic activities in Switzerland, and whether it controlled NDS and Mirastar, a fact-intensive examination of how Nexo AG functioned within the broader Nexo group is required. Board resolutions, financial management, movement of funds, tax compliance and contractual operations will have to be examined. The same elements also need to be analysed for the merits. Determining whether Nexo AG’s activities in Switzerland are “genuine”, allegedly necessarily overlaps with the merits.⁹⁰ In brief, Claimants point out that the

⁸⁸ See Claimants’ Response, para. 17 with reference to *Gavrilović v. Croatia*, CL-0009, para. 83.

⁸⁹ Claimants’ Response, para. 20.

⁹⁰ Claimants’ Response, paras. 45, 48-51; Claimants’ Rejoinder, paras. 10-12.

documentary and witness evidence that the Tribunal will have to consider in the merits phase to evaluate Respondent's unfair treatment of the investors, will be substantially the same as the Tribunal will be reviewing in the jurisdictional phase.⁹¹ To summarize, for Claimants, "each objection, apart from alleged treaty expiration, requires factual determination of the Claimants' corporate structure, operations, management, activities and control, as well as the mechanics of investment in the Respondent: the same facts that the Tribunal will assess for the merits, including attribution, the character of the measures, causation and damages".⁹²

97. The Tribunal observes that not only Objection No. 1 (treaty expiration), but also Objection No. 4 (NDS and Miramar's standing under the BIT), Objection No. 5 (NDS's and Miramar's standing under ICSID Convention Article 25(2)(b)) and Objection No. 6 (claims covered by the BIT) do not require any factual evidence about the operations of Claimants.
98. Moreover, as also Respondent points out, for the determination of Objection Nos. 2, 3 and 4 (related to the notion of "control") under ICSID Arbitration Rule 44(2), legal notions like "seat", "real economic activity" and "control" are narrow and discrete.⁹³ The content and interpretation of these notions is far more decisive than the factual evidence, which, moreover, is easy to assemble and present. No very detailed investigation into Nexo AG's operations is therefore necessary.
99. Besides, there is no presumption that bifurcation will be successful and that the objections on jurisdiction will be accepted.

(4) Would bifurcation materially reduce the time and costs of the proceeding?

100. The bifurcated jurisdictional proceeding would take 13 months' (from the end of January 2026 to mid-February 2027) procedural time for the preparing and filing of briefs and holding a hearing on jurisdiction. Claimants object that this timing may not be realistic as each jurisdictional objection will require considerable time to gather and

⁹¹ Claimants' Response, paras. 52- 53.

⁹² Claimants' Rejoinder, para. 7.

⁹³ Respondent's Request, paras. 28, 47, 51.

present evidence and to present legal argument.⁹⁴ However, when Procedural Order No. 1 was being prepared, Claimants and Respondent agreed that 13 months were sufficient for preparing and filing the briefs and holding a bifurcated hearing on jurisdiction.

101. Allowing several months for possible post-hearing briefs and the Tribunal's deliberations, the bifurcated proceeding on jurisdiction as a whole would take some eighteen months. Together with the initial stage of the arbitration proceeding (the Tribunal was constituted on 6 June 2025), a bifurcated proceeding would thus take some 25 months.
102. If with bifurcation, the Tribunal decides that it has no jurisdiction and/or competence, the arbitration would come to an end after some 25 months, while academic research, quoted by Claimants, found that non-bifurcated cases took on average 3 years and 2 months.⁹⁵
103. If, on the other hand, with or without bifurcation, the Tribunal would decide that it has jurisdiction, referring again to academic research, Claimants submit that bifurcation would extend the arbitration proceeding by one to two years (or even more).⁹⁶ Any delay in rendering the final award, as Claimants point out, may affect Claimants' effective compensation for their loss of human capital and customer goodwill.⁹⁷
104. Moreover, Claimants are confident that the merits phase should not be particularly extended in this case where a decision on the merits is not complex in terms of submissions, documents, witnesses and expert testimony and issues to be evaluated.⁹⁸ Claimants allege that the jurisdictional phase will take almost as long as a combined jurisdictional and merits phase.⁹⁹ In Claimants' view, successful bifurcation thus would not save significant time.
105. The Tribunal accepts that, if Claimants are correct with their assessment of the merits part, the potential time and cost savings of the bifurcation may be less significant.

⁹⁴ Claimants' Response, para. 21.

⁹⁵ Claimants' Response, para. 10.

⁹⁶ Claimants' Response, para. 10.

⁹⁷ Claimants' Response, paras. 14-15; Claimants' Rejoinder, para. 8.

⁹⁸ Claimants' Response, para. 16.

⁹⁹ Claimants' Rejoinder, para. 9.

However, as Respondent has not yet submitted its view on the complexity of the merits, the Tribunal cannot, without further ado, accept Claimants' estimate.

106. However, in any event, the Tribunal's jurisdiction must be established before merits can be examined, either in a bifurcated proceeding or as a prelude in the merits phase.
107. The six preliminary objections, submitted by Respondent, seem serious and substantial; four of them, if successful, would – each of them – preliminarily dispose of all claims; two of them, if successful, would substantially reduce the dispute.
108. Even if time and costs would not be as much reduced by bifurcation than is some other arbitrations, where merits and quantum would be more complex, one or more successful objections could dispose of all or a substantial part of the dispute. This outweighs the risk of no bifurcated objection being successful and the arbitration having to enter the merits phase. Taking into account all circumstances and considerations, the Tribunal concludes that the costs and time saved in the former hypothesis outweighs the limited extra time and costs in the latter hypothesis.
109. In addition, Claimants point out that Respondent's reservation of the right to raise new objections if new grounds arise,¹⁰⁰ goes against the purpose of bifurcation and defeats any claim to efficiency.¹⁰¹ In response, Respondent stresses that it was a mere reservation and that it did not withhold any actual objections.¹⁰² Bifurcation of the present objections would not become less efficient.
110. From its side, Respondent observes that Claimants should not criticize the length of a bifurcation procedure as they themselves allegedly have delayed commencement of the arbitration by well over a year.¹⁰³ Claimants argue that this assertion is irrelevant and factually incorrect.¹⁰⁴ The Tribunal will not address this issue, which it considers immaterial for the decision to be taken.

¹⁰⁰ Respondent's Request, para. 64.

¹⁰¹ Claimants' Rejoinder, para. 9.

¹⁰² Respondent's Reply, para. 3.

¹⁰³ Respondent's Reply, para. 4.

¹⁰⁴ Claimants' Rejoinder, para. 14.

IV. ORDER

111. For the above-mentioned reasons:

- (1) The Request for Bifurcation is hereby fully granted.
- (2) The provisional Procedural Calendar for the bifurcated procedure is attached as Annex A to this Procedural Order.

On behalf of the Tribunal,

[signed]

Prof. Hans van Houtte
President of the Tribunal
Date: 22 January 2026

Annex A – Procedural Calendar

Event	Date
Respondent's Memorial on Preliminary Objections	Fri., 17 Apr. 2026
Claimants' Counter-Memorial on Preliminary Objections	Fri., 10 July, 2026
Respondent's Reply on Preliminary Objections	Fri., 4 Sept., 2026
Claimants' rejoinder on Preliminary Objections	Fri., 30 Oct., 2026
Parties to confirm which witnesses and experts (if any) they wish to examine	Week of 2 Nov., 2026
Tribunal to indicate whether it wishes to examine any witnesses/experts not called for examination by the Parties	Week of 9 Nov., 2026
Pre-hearing organizational meeting	Week of 16 Nov., 2026
Hearing on preliminary objections	Week of 8 Feb., 2027
Tribunal's Decision or Award on Jurisdiction	TBD 2027