

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Eurohold Bulgaria AD and Euroins Insurance Group AD

v.

Romania

(ICSID Case No. ARB/24/18)

PROCEDURAL ORDER NO. 3

**European Commission — Non-Disputing Party
Application to Intervene**

Members of the Tribunal

Sir Daniel Bethlehem KC, Presiding Arbitrator
Sir Christopher Greenwood KC, Arbitrator
Professor Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Aïssatou Diop

Date: 25 April 2025

BACKGROUND

1. By a Request for Arbitration dated 21 May 2024 (“**Request**”), Eurohold Bulgaria AD and Euroins Insurance Group AD (together, the “**Claimants**”) initiated arbitral proceedings against Romania (the “**Respondent**”) pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Rules 1 and 2 of the ICSID Institution Rules, and Articles 9 and 12 of the Agreement between the Government of the Republic of Bulgaria and the Government of Romania on Mutual Promotion and Protection of Investments. The Request was registered by the ICSID Secretary-General as ICSID Case No. ARB/24/18 on 7 June 2024 and notified on the ICSID website.
2. By a Supplement to Request for Arbitration dated 1 November 2024 (“**Supplementary Request**”), the Claimants “supplement[ed] the Request with additional claims” and requested additional relief.
3. The Tribunal was constituted on 4 November 2024.
4. The proceedings are subject to the ICSID Arbitration Rules in force as of 1 July 2022 (“**ICSID Arbitration Rules**”).
5. Following the First Session, held on 28 November 2024, the Tribunal issued Procedural Order No. 1 on 12 December 2024 (“**PO1**”). PO1 was published on the case-page of the ICSID website.
6. The Respondent having notified the Tribunal and the Claimants of its intention to submit both a manifestly without legal merit objection, pursuant to Rule 41 of the ICSID Arbitration Rules, and an objection to the Supplementary Request, pursuant to Rule 48 of the ICSID Arbitration Rules, PO1 laid down a Procedural Calendar to address those objections. By that Calendar, which was agreed between the Parties, following two rounds of written submissions, a hearing is scheduled to be held on both the Rule 41 and Rule 48 objections on 20–21 May 2025.
7. The fact and date of the Parties’ written filings in respect of these objections was notified on the case-page of the ICSID website.

EUROPEAN COMMISSION REQUEST TO INTERVENE AS A NON-DISPUTING PARTY

8. By an Application for Leave to Intervene as Non-Disputing Party dated 11 April 2025 (“**NDP Application**”), the European Commission (the “**Commission**”) seeks leave to intervene as a non-disputing party, referencing Rule 37(2) of the ICSID Arbitration Rules 2006 (“**2006 Rules**”) [¶ 7]. The Tribunal notes that Rule 37(2) of the 2006 Rules is reflected (but not identically) in Rule 67 of the ICSID Arbitration Rules applicable to these proceedings, *i.e.*, the Rules in force as of 1 July 2022, which lays down a more elaborated set of provisions applicable to the participation of non-disputing parties.
9. In support of its NDP Application, the Commission submits that its “special role in ensuring compliance of EU Member States, such as Romania, with [European] Union law” [¶ 11] would enable it to “provide independent knowledge or insight that is different from that of the disputing parties.” [¶ 19] In further support of its application to intervene, the Commission contends that the Tribunal “has an obligation to review arguments challenging its jurisdiction on its own motion” [¶ 21] and that “the Commission has a significant interest in ensuring that your Tribunal is fully aware of the legal consequences flowing from EU law as interpreted by the CJEU, and considers these in its assessment of the manifestly lacking legal merit objection.” [¶ 27]
10. The Order sought by the Commission includes (a) leave to intervene in the proceedings, (b) leave to file a written *amicus curiae* submission, (c) access to the documents filed in the case, to the extent necessary for its intervention, and (d) leave to attend the hearing in order to present oral arguments and reply to questions. [¶ 28]

OBSERVATIONS OF THE PARTIES

11. Pursuant to ICSID Arbitration Rule 67(3), the Tribunal transmitted the NDP Application to the Parties and invited their views. Each Party submitted observations on 22 April 2025.
12. In summary, the Claimants contend that (a) the Commission has no standing to intervene in a Rule 41 application, (b) the relevant circumstances indicated in ICSID Arbitration Rule 67(2) have not been met, and (c) the mandatory conditions indicated in ICSID Arbitration Rule 67(4) have not been met [¶¶ 3–5 and ¶¶ 6–48]. The Claimants also contend that, should the Tribunal decide to grant the Commission’s request to intervene, the Commission should not be given access to the case file or be permitted to participate in the hearing [¶¶ 49–53]. The Claimants further contend that, in the event that the Commission is permitted to intervene, it must provide an undertaking to pay the Parties’ costs arising from any intervention it makes [¶¶ 54–56]. Finally, the Claimants contend that any further

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intervention that the Commission may seek at a later stage in the proceedings should be subject to a further application [¶¶ 57–59].

13. For purposes of this Order, the Tribunal does not consider it necessary to elaborate on the Claimants’ submissions, but for the following.
14. The Claimants contend that the “mandatory and exhaustive” character of the Rule 41 procedure is plain from its text and that “it is strictly for the Respondent to meet the high legal threshold for an objection under Rule 41.” They contend additionally that “[t]here is no further procedural scope for a non-disputing party either to add to the Respondent’s objection or to provide a different perspective on it, and the corollary of this is that the Tribunal has no power to consider any such intervention by a non-disputing party in the context of a Rule 41 procedure.” [¶ 18]
15. In respect of the application of Rule 67(2), the Claimants contend that the NDP Application does not meet the relevant circumstances indicated in sub-paragraphs (a) or (b) of Rule 67(2), notably, that the Commission’s proposed intervention would not address a matter within the scope of the Rule 41 dispute nor bring a perspective, particular knowledge or insight that is different from that of the Parties on the issues engaged by the Rule 41 objection.
16. With respect to the mandatory requirements of Rule 67(4), and with reference also to Rule 67(7), the Claimants contend that granting the NDP Application in respect of the Rule 41 procedure would cause “undue disruption to the proceedings” given the advanced stage of the Procedural Calendar in respect of this phase of the proceedings. The Claimants further contend that granting the NDP Application would be inherently prejudicial to the Claimants as it would in effect elevate the burden on the Claimants beyond that required by the “abbreviated procedure” contemplated by Rule 41.
17. In its observations on the NDP Application, the Respondent submits that the Application is premature. Elaborating on this submission, the Respondent observes that, given that no issue of EU law is engaged by either its Rule 41 objection or its Rule 48 objection, “[t]here is therefore nothing in the Respondent’s objections on which the Commission could ‘assist the Tribunal to determine a factual or legal issue’.”
18. Beyond this, the Respondent also submits that, given the advanced stage of the Procedural Calendar for the Rules 41 and 48 objections, admitting the NDP Application at this point “would disrupt the May hearing.”

19. This said, the Respondent accepts that the Commission would have “an interest in any continuing proceedings ... and [that] the Application should therefore only be considered if the arbitration proceeds following the Tribunal’s determination of the Respondent’s Rule 41/Rule 48 application.”

TRIBUNAL ANALYSIS

20. The Commission has applied to intervene “at this very early stage in the proceedings” by reference, expressly, to the Respondent’s notified objection under Rule 41 of the ICSID Arbitration Rules [NDP Application, ¶ 5]. While the NDP Application may be read as an application to intervene in the proceedings of a more general nature, the Tribunal notes that any application to intervene must address and satisfy the requirements in Rule 67 of the ICSID Arbitration Rules. It must therefore be sufficiently specific to enable the Parties to assess, and to submit observations on, whether the proposed non-disputing party submission would come within the scope of the “relevant circumstances” contemplated by Rule 67(2) and the requirements of procedural fairness in Rule 67(4) and (7).
21. Given these constraints, the Tribunal considers that the Commission’s NDP Application pertains to the present phase of the proceedings focused on addressing the Respondent’s objections under Rule 41 and Rule 48 of the ICSID Arbitration Rules. While, as will become apparent, the Tribunal considers that the NDP Application must be rejected, this does not preclude the possibility that the Commission may make a fresh, reasoned application to intervene in due course, should the proceedings move beyond the present phase. To be clear, this observation should not be taken as an invitation to the Commission to make such an application, nor as an indication that the Tribunal would be minded to accept any such application. It simply confines the present Decision to the NDP Application currently in issue and the present phase of the proceedings, without prejudice to developments in the future.
22. In this regard, the Tribunal also notes that, while the present NDP Application has not been prejudiced by the Commission’s failure to address the requirements of Rule 67 of the ICSID Arbitration Rules, it observes that the requirements of Rule 67 of the applicable ICSID Arbitration Rules go beyond those set out in Rule 37(2) of the 2006 Rules.
23. The key issues engaged by the present NDP Application are (a) whether intervention by the Commission would assist the Tribunal in addressing the questions engaged by the Respondent’s objections under ICSID Arbitration Rule 41 and Rule 48, and (b) whether the proposed intervention would disrupt the present phase of the proceedings or be unduly burdensome or unfairly prejudicial to either Party. These are the critical considerations

under Rule 67(2), (4)–(7) which, in the circumstances of the present case, require the Tribunal’s assessment.

24. The Tribunal considers that the NDP Application cannot satisfy the requirements of these provisions. Rule 41 establishes an expedited procedure to address a claim that is said to be manifestly without legal merit. This is a threshold contention that the claim advanced is so utterly lacking in legal merit that it should be summarily dismissed before it even gets to an objection to jurisdiction or other challenge to competence. It is a summary procedure subject to tight pleading and decision-making constraints. While the Tribunal does not shut the door to the possibility of non-disputing party submissions in Rule 41 procedures, the expedited nature of Rule 41 proceedings requires that special attention is given, and rigour attached, to the requirements of Rule 67(2)–(7). Failing this, Rule 41 procedures would risk becoming an inequitable or tactical conduit for preliminary objections, requiring a claimant to establish a definitive basis to proceed in an expedited and truncated procedure.
25. Having regard to the Respondent’s Rule 41 and Rule 48 objections, that these objections are rooted in bespoke ICSID procedures, and that they do not engage considerations of EU law on which the Commission’s voice would have special resonance, the Tribunal considers that the NDP Application cannot satisfy the requirements of Rule 67(2). For this reason alone, it must be rejected.
26. Rule 67(4)–(7) establish procedural requirements that have the purpose of ensuring a fair procedure for the Parties (*i.e.*, the disputing parties). Non-disputing party participation may not disrupt the proceedings or unduly burden or unfairly prejudice either party.
27. Given the advanced stage of the Procedural Calendar for addressing the Respondent’s objections under Rules 41 and 48, and that any participation by the Commission at this point would seriously disrupt the proceedings and/or unduly burden or unfairly prejudice one or both Parties, the Tribunal considers that the NDP Application must be rejected for this reason as well.
28. In reaching these conclusions, the Tribunal notes that the Parties, perhaps unusually, and for partially overlapping reasons, agree that the NDP Application should be rejected, without prejudice to the possibility of a further application to intervene in due course, if the case proceeds beyond the current phase.

DECISION

29. For the reasons indicated above, the Tribunal concludes that the European Commission's Application for Leave to Intervene as Non-Disputing Party, dated 11 April 2025, at this stage of the proceedings, is denied.

[signed]

Sir Daniel Bethlehem KC

Presiding Arbitrator
For the Tribunal

25 April 2025