

## GOVERNMENT OF MONTENEGRO

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## Reaction by Ministry of Economy: Decision of ICSID arbitral tribunal is mandatory

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Podgorica, Montenegro (24 November 2016) – Regarding the statement of the Central European Aluminum Company (CEAC) that it has sought the annulment of the decision on the lack of jurisdiction of the Arbitral Tribunal of the International Centre for Settlement of Investment Disputes (ICSID) in Paris in proceedings between the company and Montenegro, the Ministry of Economy once again emphasises that the decision of the ICSID arbitral tribunal in Paris becomes mandatory once it has been reached and is not subject to appeal.

We reiterate that the investment arbitration proceedings between CEAC Holdings Limited and Montenegro ended on 26 July, when the arbitral tribunal declined jurisdiction to decide on this dispute. The arbitral tribunal decided that the CEAC has to bear the costs of the arbitration proceedings and legal representation in the amount of approximately EUR 900,000, including the compensation of Montenegro's costs in these proceedings.

The only mechanisms that can be used are set out in the ICSID Convention and the Arbitration Rules. All these mechanisms, however, can be initiated under extremely restrictive conditions. Generally, the request for annulment of the ICSID arbitration decision has been to date unsuccessful in most cases. For instance, statistics show that in the period from 2011 until now, only 2 out of 35 decisions were annulled in cases of requests for annulment of the tribunal decisions.

The mechanism the CEAC is going to use against the decision of the tribunal is an annulment procedure. Reasons that may lead to the annulment concern only the most serious procedural flaws. More specifically, the reason for the annulment can only be improper composition of the tribunal, exceeding powers of the arbitrators, the tribunal corruption, and violation of basic procedural rules or lack of reasoning for the decision. Overall, we think that it will be extremely difficult for the CEAC to prove the existence of any such serious flaw, especially bearing in mind the expertise, qualifications and experience of the arbitrators who made decision in the proceedings. In any case, the annulment procedure does not allow the review of the decision or review of the substance of the decision, because the findings and decision of the arbitral tribunal are final. In other words, the annulment request does not allow the review of the decision of the arbitral tribunal about the non-existence of the CEAC's headquarters in Cyprus.

The request for annulment of the arbitration will be decided by a special ad hoc committee appointed by the Chairman of the Administrative Council. This ad hoc committee is composed of 3 members to be elected from the list of ICSID. Members of the Committee must not be (i) identical to the members of the tribunal that issued the decision or (ii) of the same nationality as the arbitrators who reached the decision or the parties to the proceedings.

### MINISTRY OF ECONOMY OF MONTENEGRO

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