

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

In the Matter of the Application of

IOAN MICULA,  
Teatrului Street no. 1-2  
Oradea, Bihor County, Romania

VIOREL MICULA,  
Colinelor Street no. 32-48  
Oradea, Bihor County, Romania

S.C. EUROPEAN FOOD S.A.,  
13 Septembrie Street,  
Ștei, Bihor County, Romania

S.C. STARMILL S.R.L., and  
41 Drăgănești,  
Pantasesti Village, Bihor County, Romania

S.C. MULTIPACK S.R.L.,  
41 Drăgănești,  
Pantasesti Village, Bihor County, Romania

*Petitioners,*

v.

THE GOVERNMENT OF ROMANIA,  
Ministry of Public Finance,  
Strada Apolodor nr. 17, sector 5,  
cod 050741, București, Romania

*Respondent.*

Civil Action No. 17-CV-2332

**PETITION TO CONFIRM ICSID ARBITRATION AWARD AND ENTER JUDGMENT**

Petitioners Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L., and S.C. Multipack S.R.L. (collectively, “Petitioners”) hereby file this petition and state as follows:

**NATURE OF ACTION**

1. By this action, Petitioners respectfully seek recognition of an arbitration award pursuant to 22 U.S.C. § 1650(a) and Article 54 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “ICSID Convention”), and entry of judgment thereon. The arbitration award (the “Award”) was rendered in favor of Petitioners against the Government of Romania (“Romania”) on December 11, 2013, following an arbitration conducted in Paris, France under the auspices of the International Centre for the Settlement of Investment Disputes (“ICSID”). The Award imposed pecuniary obligations on Romania in the amount of 376,433,229 Romanian Leu (RON) plus 5% interest, compounded on a quarterly basis, with respect to certain amounts and periods specified in the Award. A true and correct copy of the Award, certified by ICSID’s Secretary-General, is attached as Exhibit A to this Petition.

2. To date, the Award has not been satisfied.

3. Enforcement of the Award has not been stayed by the ICSID Tribunal.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to 22 U.S.C. § 1650a(b). As provided in Section 1650a(a), the “obligations imposed by [the Award] . . . [shall] be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.” 22 U.S.C. § 1650a(a).

5. In addition, this Court has jurisdiction pursuant to 28 U.S.C. § 1330 because this action is a nonjury civil action against a foreign state as defined in 28 U.S.C. § 1603(a) on a claim for judgment with respect to which the foreign state is not entitled to immunity pursuant to 28 U.S.C. § 1605(a)(1) and (6) and § 1610(a)(1) and (6).

6. Moreover, the Federal Arbitration Act (“FAA”) (9 U.S.C. §§ 1-307) does not apply to “enforcement of awards rendered pursuant to the [ICSID] convention.” 22 U.S.C. § 1650(a). Therefore, the Petitioners are not required to meet the FAA’s jurisdictional requirements.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(f)(4).

### **PARTIES**

8. Petitioner Ioan Micula is a Swedish national and a party in whose favor the Award was issued.

9. Petitioner Viorel Micula is a Swedish national and a party in whose favor the Award was issued.

10. Petitioner S.C. European Food S.A. is a Romanian company in whose favor the Award was issued.

11. Petitioner S.C. Starmill S.R.L. is a Romanian company in whose favor the Award was issued.

12. Petitioner S.C. Multipack S.R.L. is a Romanian company in whose favor the Award was issued.

13. Respondent is the Government of Romania. Romania signed the ICSID Convention on September 6, 1974, and deposited its instrument of ratification on September 12, 1975. The Convention entered into force for Romania on October 12, 1975. Romania was represented by counsel and actively participated in the ICSID arbitration that resulted in the Award.

### **THE DISPUTE AND THE AWARD**

14. On August 2, 2005, the Claimants filed a Request for Arbitration dated July 28,

2005, with ICSID. The subject matter of the arbitration concerned a dispute arising from Romania's introduction and subsequent revocation of certain economic incentives for the development of disfavored regions of Romania (the "Economic Incentives"). Claimants asserted that, in reliance on the Economic Incentives, they made substantial investments in one such region, and that Romania's premature revocation of the Economic Incentives was in breach of its obligations under the Agreement Between the Government of the Kingdom of Sweden and the Government of Romania on the Promotion and Reciprocal Protection of Investments (the "BIT" or the "Treaty"), which resulted in damages to the Claimants.

15. An ICSID arbitral tribunal (the "Tribunal") was duly constituted on September 12, 2006 and ultimately issued the Award dated December 11, 2013. The Respondent was found to have violated Article 2(3) of the BIT by failing to ensure fair and equitable treatment of the Claimants' investments in Romania.

16. The Tribunal issued a damages award in Petitioners' favor in the amount of 376,433,229 Romanian Leu (RON), as detailed in paragraph 1329(c) of the Award.

17. The Tribunal also awarded interest at the rate of 3-month Romanian Interbank Offer Rate (ROBOR) plus 5%, compounded on a quarterly basis, from the starting dates included in paragraph 1329(d) of the Award:

- (a) May 1, 2007 for claims relating to the increased cost of sugar and other raw materials;
- (b) November 1, 2009 for claims relating to the lost opportunity to stockpile sugar; and
- (c) May 1, 2008 for claims relating to lost profits on sales of finished goods.

18. On April 9, 2014, Romania filed an Application for Annulment of the Award (the "Application") with ICSID. In the Application, Romania requested a stay of enforcement of the Award under Rule 54(2) of the ICSID Arbitration Rules and Article 52(5) of the ICSID

Convention, pending the outcome of its Application. On April 18, 2014, ICSID's Secretary General registered the Application and granted a provisional stay of enforcement of the Award pending the appointment of an *ad hoc* Committee to consider the Application.

19. On May 12, 2014, an *ad hoc* Committee (the "Committee") was constituted in accordance with Article 52(3) of the ICSID Convention. On May 22, 2014, Romania filed a Request for a Continuation of the Stay of Enforcement with the Committee (the "Request"), urging the Committee to issue an order continuing the stay of enforcement of the Award pending the decision on annulment. The Committee granted the Request on August 7, 2014, but conditioned upon the provision by Romania of a written assurance specifying that it shall make full payment of the Award if the Committee does not grant annulment and stating that such commitment by Romania to fulfill its pecuniary obligations under the Award would be subject to no conditions whatsoever (the "Assurance"). The Committee further held that a failure by Romania to produce the Assurance within 30 days of receiving notification of its decision would result in an automatic revocation of the stay of enforcement (the "Stay").

20. Romania failed to produce the requisite Assurance. Consequently, on September 15, 2014, the Committee held that the Stay was automatically revoked, effective as of September 7, 2014.

21. On February 26, 2016, the ICSID Committee rejected Romania's Application. The ICSID Committee held that (1) the Tribunal had applied the 1995 European Agreement to the dispute and had found that E.U. law did not apply; (2) the Tribunal had properly dealt with the issue of enforceability of the Award; and (3) though the damages awarded were "collective," they were nonetheless properly proven. A true and correct copy of the ICSID Committee decision denying Romania's Application is attached as Exhibit B to this Petition.

22. The Award is thus final and not subject to further challenge before the ICSID Tribunal or the ICSID Committee.

23. On April 11, 2014, Petitioner Viorel Micula filed an *ex parte* petition in this Court for confirmation of the Award, in the proceeding styled *Micula v. The Government of Romania*, Civil No. 1:14-cv-00600 (the “Prior D.C. Action”). On September 29, 2014, Petitioner Viorel Micula filed an updated and corrected *ex parte* petition for confirmation of the Award. On April 16, 2015, the Honorable Amit P. Mehta issued an order denying without prejudice Petitioner Viorel Micula’s updated and corrected petition, stating that “[a] filed plenary action must be brought on behalf of all claimants to the ICSID award against the Government of Romania, not only Petitioner Viorel Micula.” Case 1:14-cv-00600-APM (ECF No. 12). On May 22, 2015, counsel for the Government of Romania appeared in the Prior D.C. Action. Case 1:14-cv-00600-APM (ECF Nos. 16, 17, and 19). On August 31, 2015, Petitioner Viorel Micula voluntarily dismissed without prejudice the Prior D.C. Action. Case 1:14-cv-00600-APM (ECF No. 21).

24. On April 21, 2015, Petitioners Ioan Micula, S.C. European Food S.A., S.C. Starmill S.R.L., and S.C. Multipack S.R.L. filed an *ex parte* petition to recognize the Award in the United States District Court for the Southern District of New York, styled *Micula, et al. v. The Government of Romania*, Case No 1:15-mc-00107 (the “Prior N.Y. Action”). On April 21, 2015, United States District Court Judge Naomi Buchwald issued an order and judgment recognizing the Award. Case 1:15-mc-00107 (ECF No. 3). On April 27, 2015, Petitioner Viorel Micula moved on consent to intervene and amend the April 21, 2015 order and judgment, and on April 28, 2015, Judge Buchwald issued an amended order and judgment recognizing the Award on behalf of the Petitioners. Case 1:15-mc-00107 (ECF Nos. 9 and 13).

25. On May 18, 2015, counsel to Romania appeared in the Prior N.Y. Action. Case 1:15-mc-00107 (ECF Nos. 18-20). On May 19, 2015, Romania moved to vacate or stay the amended judgment and order. Case 1:15-mc-00107 (ECF No. 22). On June 15, 2015, Romania filed an amended motion to vacate or stay judgment. Case 1:15-mc-00107 (ECF No. 30). On August 5, 2015, the Honorable Lorna G. Schofield issued a decision and order denying Romania's amended motion to vacate and/or stay judgment. Case 1:15-mc-00107 (ECF Nos. 65-66).

26. On September 2, 2015, Romania filed a motion to reconsider the August 5, 2015 decision and order issued by Judge Schofield. Case 1:15-mc-00107 (ECF No. 80). On September 9, 2015, Judge Schofield denied Romania's motion for reconsideration. Case 1:15-mc-00107 (ECF No. 82). Romania filed a notice of appeal on October 2, 2015. Case 1:15-mc-00107 (ECF No. 85).

27. On October 23, 2017, the United States Court of Appeals for the Second Circuit issued a summary order reversing the orders of the district court, vacating the amended judgment, and remanding the case to the district court with the instruction to dismiss the petition without prejudice. Case 15-3109 (ECF No. 132-1) (the "Second Circuit Decision"). In its summary order, the Second Circuit vacated the judgment "without prejudice to the Petitioners' filing an action to enforce the ICSID award in compliance with the FSIA and in a court in which venue is proper." *Id.*

28. On October 24, 2017, in response to the Second Circuit Decision, Judge Schofield vacated the amended judgment, dismissed the petition without prejudice, and directed the Clerk of Court to close the Prior N.Y. Action. Case 1:15-mc-00107 (ECF No. 138).

29. To date, nearly four years since the Award was issued, Romania has not satisfied

its obligations under the Award.

30. Petitioners are in compliance with Article 54(2) of the ICSID Convention and are entitled to immediate recognition of the Award in accordance with Articles 53 and 54 of Chapter IV of the ICSID Convention, as implemented in the United States by 22 U.S.C. § 1650(a).

### **LEGAL BASIS FOR RELIEF**

31. Article 54 of the ICSID Convention requires contracting parties to “recognize an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State.”

32. The United States is a contracting party to the ICSID Convention and is therefore obliged to recognize and enforce the pecuniary obligations imposed by the Award as if it were a final judgment of a court of the United States. This obligation is set out in 22 U.S.C. § 1650a(a)-(b), which provides in relevant part:

- (a) An award of an arbitral tribunal rendered pursuant to chapter IV of the convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States. The Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) shall not apply to enforcement of awards rendered pursuant to the convention.
- (b) The district courts of the United States shall have exclusive jurisdiction over actions and proceedings under subsection (a) of this section, regardless of the amount in controversy.

### **COUNT I FOR RECOGNITION OF ARBITRATION AWARD PURSUANT TO 22 U.S.C. § 1650a**

33. Petitioners restate and incorporate all the foregoing paragraphs of the Petition as if set forth fully herein.

34. A binding arbitration award under the ICSID Convention has been issued in Petitioners' favor.



35. The United States is a signatory to the ICSID Convention. Awards issued pursuant to the ICSID Convention are subject to recognition and enforcement in the United States pursuant to 22 U.S.C. § 1650a.

36. Respondent has not paid the Award in full.

37. Petitioners are entitled to an order recognizing such arbitral award as a judgment pursuant to Article 54 of the ICSID Convention, 22 U.S.C. § 1650a and entering judgment thereon in the amount of RON 376,433,229 plus interest on this amount at a rate of 3-month ROBOR plus 5%, compounded quarterly with respect to the amounts and periods detailed in paragraph 1329(d) of the Award.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners respectfully request that the Court enter judgment in favor of Petitioners and against Respondent and request the following relief:

(a) Ordering that the pecuniary obligations in the Award in favor of Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L., and S.C. Multipack S.R.L. and against Romania be recognized and entered as a judgment by the Clerk of this Court in the same manner and with the same force and effect as if the Award were a final judgment of this Court, as authorized by 22 U.S.C. § 1650a and Article 54 of the ICSID Convention; and

(b) Ordering that, in accordance with the pecuniary obligations contained in the Award, Romania shall pay to Petitioners the sum of RON 376,433,229 together with post-Award interest at a rate of 3-month ROBOR plus 5% compounded quarterly with respect to the amounts and periods detailed in paragraph 1329(d) of the Award.

Dated: Washington, D.C.  
November 6, 2017

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