

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Pawlowski AG and Projekt Sever s.r.o.

v.

Czech Republic

(ICSID Case No. ARB/17/11)

PROCEDURAL ORDER NO. 3

Members of the Tribunal

Prof. Juan Fernández-Armesto, President of the Tribunal
Mr. John Beechey, CBE, Arbitrator
Prof. Vaughan Lowe, QC, Arbitrator

Secretary of the Tribunal

Ms. Lindsay Gastrell

Assistant to the Tribunal

Ms. Mélanie Riofrio Piché

13 March 2019

WHEREAS

1. This arbitration arises between Pawlowski AG and Projekt Sever s.r.o. [**“Claimants”**] and the Czech Republic [**“Respondent”**] under the Agreement between the Czech and Slovak Federal Republic and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments, which entered into force on August 7, 1991. Claimants and Respondent shall be jointly referred to as the **Parties**.
2. On August 14, 2018 the Arbitral Tribunal issued Procedural Order [**“PO”**] no. 2 with specific instructions for the production of documents phase.
3. On February 21, 2019 the Tribunal received each Party’s Document Production Schedule [**“DPS”**].
4. The following Procedural Order sets out the Tribunal’s decisions on each Party’s DPS.

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5. The Tribunal has drafted this PO guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) [**“IBA Rules”**]¹ and pursuant to PO no. 2. The reasons for the Tribunal’s decision are contained in the attached Annex A (for Claimants’ DPS) and Annex B (for Respondent’s DPS).
6. The Tribunal notes that Claimants’ DPS contains several requests invoking specific allegations made by Respondent in certain paragraphs of its Counter-memorial on the merits. Respondent has objected to the production of the corresponding Document, alleging that these requests breach para. 19 of PO no. 1 and the principle that document production phase should not be used to put the other party to proof.
7. Accepting this principle, the Tribunal has only admitted Claimants’ requests whenever it considered that they were *prima facie* relevant and material to prove their own case.
8. Each Party shall produce all Documents, in compliance with the decisions adopted by the Tribunal in the Annexes A and B, on the date established in the Procedural Calendar. Contested Documents shall only be delivered to the counterparty, without copying the Tribunal. The receiving Party may marshal any of such Documents as evidence with the following written submissions.
9. On the date established in the Procedural Calendar, each Party will deliver to its counterparty and to the Tribunal, the following **“Affidavits”**:
 - a first Affidavit signed by the chief legal officer of such Party drafted in accordance with Annex III of PO no. 2 and

¹ According to para. 7 of PO no. 2 the Parties have agreed to be guided by the IBA Rules for the production of documents in this arbitration.

- a second Affidavit signed by the head external legal counsel to such Party drafted in accordance with Annex IV of PO no. 2.
10. If a Party, without satisfactory explanation, and in contravention of the Tribunal's instructions, fails to produce a Document, the Tribunal may infer that such Document is adverse to the interest of that Party. Likewise, if a Party absent satisfactory explanation fails to deliver any of the Affidavits, the Tribunal will make appropriate inferences.

[signed]

Juan Fernández-Armesto
President of the Tribunal

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Date: 13 March 2019