

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. 5

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: 15 December 2025

I. BACKGROUND AND ISSUES TO BE ADDRESSED

1. On 30 September 2025, the Tribunal issued its Decision on the Respondent’s Rule 41 and Rule 48 Objections (“**Decision**”), subsequently published on the ICSID website pursuant to paragraph 30.2 of the Tribunal’s Procedural Order No. 1 and ICSID Rule 63. The background and procedural history of the case are set out in Sections I and II of the Decision and are not repeated herein. Of relevance for present purposes, the Decision addressed, *inter alia*, the Respondent’s Rule 41 objection concerning the application, in the circumstances of the Claimants’ Request for Arbitration, of the Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union (“**EU Termination Agreement**”).
2. By its Decision, the Tribunal, *inter alia*, dismissed the Respondent’s Rule 41 Objection but directed, “pursuant to Rules 42(6) and 43(3) of the ICSID Rules, that the EU Termination Agreement issues raised by the Respondent through its Rule 41 Objection should be addressed in a separate preliminary phase of the proceedings”; described as a Bifurcated Preliminary Procedure (“**BPP**”).
3. By correspondence to the Parties dated 23 October 2025, the Tribunal invited the Parties’ views on a number of procedural issues concerning the contemplated BPP, including the following:
 - a. the scope of the BPP, notably, whether it should be limited to the EU Termination Agreement issues or should encompass other preliminary objections to jurisdiction or admissibility?
 - b. the procedural schedule and related issues in connection with the BPP; and

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- c. whether the Parties were able to agree on a joint list of issues / questions to be addressed, to ensure that all relevant aspects are canvassed – having regard, *inter alia*, to the issues addressed and questions raised in the Rule 41 proceedings.
4. In separate correspondence dated 21 November 2025, the Parties submitted their respective views to the Tribunal on issues raised in the Tribunal’s above-referenced correspondence. In response to the questions noted above, the Parties’ positions are as follows:
 - a. The Parties agreed that the BPP should be confined to the Respondent’s EU Termination Agreement Objection, as addressed in the Tribunal’s Decision.
 - b. The Parties submitted materially different views on the procedural issues and schedule appropriate to the BPP.
 - c. The Parties agreed to provide a joint list of issues / questions to be addressed in the BPP by 12 December 2025, while reserving their right to address other issues that may arise in the course of the BPP (“**List of Issues**”). This proposed date was subsequently revised by the Parties to 9 January 2026.

II. DECISION

5. The Tribunal has given careful consideration to the Parties’ submissions, in their respective correspondence of 21 November 2025, on the appropriate procedural schedule and related issues with respect to the BPP. Having regard to the Parties’ disagreement on the various issues, the Tribunal herein directs the procedural schedule and related issues applicable to the BPP, reserving to later decision other aspects that are appropriately deferred to a subsequent procedural order. Insofar as the Tribunal has not adopted a procedural proposal by either Party, that proposal is rejected.

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6. The Tribunal notes the Parties' agreement that the BPP should be confined to addressing the Respondent's EU Termination Agreement objection, the scope of which was addressed in the Parties' submissions on the Respondent's Rule 41 Objection and the Tribunal's 30 September 2025 Decision ("**EU Termination Agreement Objection**" or "**EU Termination Agreement Issues**"). The Tribunal is content to proceed on this basis and accordingly directs that the BPP shall be confined to the Respondent's EU Termination Agreement Objection.

7. The Tribunal notes, further, the Parties' commitment to provide a List of Issues to be addressed in the BPP by 12 December 2025 and looks forward to receiving this in due course. The Tribunal acknowledges the Parties' reservations of position in respect of issues that may emerge in the course of the BPP and affirms that the Parties will not be constrained in their submissions by the List of Issues. Without prejudice to any differences of view between the Parties on what ought to be included on the agreed List of Issues, the Tribunal encourages the Parties to include on that List as full as possible an indication of the issues to be addressed.

8. The Tribunal recalls its Procedural Order No. 4 of 4 December 2025 ("**PO4**"), pursuant to which it directed a cut-off date of Tuesday, 30 December 2025, for any applications under Rules 67 and/or 68 of the ICSID Arbitration Rules 2022 ("**ICSID Rules**"). Without prejudice to a decision on any such applications in due course, for purposes of efficient time-management planning, the procedural schedule addressed below applicable to the BPP proceeds on the presumed basis that Non-Disputing Party ("**NDP**") and/or Non-Disputing Treaty Party ("**NDTP**") applications will be forthcoming and that such submissions will be permitted. In that event, the Tribunal will address the disclosure of relevant documents to such NDP/NDTP in a procedural order responsive to the application/s in question. For the avoidance of doubt, in the event of any NDP and/or NDTP applications under ICSID Rules 67 and/or 68, the Tribunal will invite the Parties' views pursuant to an appropriate schedule.

9. The Procedural Schedule applicable to the BPP is set out in **Appendix A** hereto (“**Procedural Schedule**”). It shall be controlling save in the event of amendment by the Tribunal, either *proprio motu* or following reasoned application by a Party. The Parties shall be consulted prior to any variation of the Procedural Schedule.

10. Recalling ICSID Rule 36(3), which provides that the Tribunal “may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceedings”, as well as ICSID Rule 37, the Tribunal directs as follows:
 - (a) Within 7 days following the filing of the submissions indicated at Items 1, 2 and 3 of the Procedural Schedule, either Party may submit a particularised list of any document/s the production of which it considers (i) essential to a fair and reliable adjudication of the issues engaged by the BPP, (ii) are in the possession and control of the other Party, and (iii) are free from disclosure impediments (“**Document List**” or “**DL**”). The DL shall be accompanied by a reasoned statement supporting each item on the List. The DL must be document-specific, rather than cast in terms of a class or category of documents.

 - (b) The other Party shall have 7 days from receipt of the DL to respond.

 - (c) Having regard to the Parties’ submissions on the DL and its case management responsibilities, the Tribunal will consider whether to call upon the other Party to produce any referenced document/s, and whether any limitations or conditions are warranted in respect of any such production. The Tribunal hereby gives notice that, if at all, it will exercise its powers under ICSID Rule 36(3) only sparingly, if it is persuaded that production of the document/s in question is/are essential to a fair and reliable adjudication of the issues engaged by the BPP. The Tribunal will not endorse “fishing expeditions” or references to documents covered by privilege or

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other form of confidentiality.

- (d) The Party called upon to produce any document/s shall do so within 7 days of the Tribunal's direction. The Tribunal will take note of any refusal to produce the document/s in question or any undue delay in doing so.

11. The Tribunal gives the following further directions with respect to itemised steps on the Procedural Schedule:

- (a) The Claimants' Statement of Jurisdiction (Item 1), although only required to be bare-bones in character, is nonetheless expected to set out the Claimants' affirmative case on jurisdiction generally, *i.e.*, not confined to the issues engaged by the BPP, having regard to the Tribunal's appreciation that the wider jurisdictional context of the BPP issues may be relevant to properly situate the Parties' EU Termination Agreement Issue submissions.¹
- (b) Notwithstanding the bare-bones character of the Claimants' Statement of Jurisdiction (Item 1), the Claimants are expected to submit any relevant evidence on which they rely in support of their jurisdictional case on the EU Termination Agreement Issues along with their Statement of Jurisdiction.²
- (c) The Parties are thereafter expected to exhibit such evidence as is available to them in support of their respective contentions along with their first substantive written submission, *i.e.*, Item 2, in the case of the Respondent, and Item 3, in the case of the Claimants. This is without prejudice to the subsequent submission of responsive evidence alongside the Parties' second-round written submissions.

¹ This paragraph should be read alongside the Tribunal's letter transmitting the Procedural Order, as adopted.

² This paragraph should be read alongside the Tribunal's letter transmitting the Procedural Order, as adopted.

- (d) In the event of receipt of an NDP and/or NDTP application under ICSID Rules 67 and/or 68 within the time-limit set in PO4, in addition to inviting the Parties' views on such application/s, the Tribunal will also invite the Parties' views on whether the Tribunal should call upon an NDP and/or NDTP applicant to produce any particularised document/s considered to be (i) essential to a fair and reliable adjudication of the issues engaged by the BPP, (ii) in the possession and control of the NDP/NDTP, and (iii) free from disclosure impediments.
 - (e) The same considerations as are set out in Paragraph 10 above shall apply with regard to the particularisation of a list of any document/s in the possession and control of an NDP/NDTP following the filing of any NDP/NDTP submissions (Item 4) save that the Tribunal will be additionally sensitive to the proper limits of calling upon a non-party to produce documents and the confidentiality that may properly attach to communications between the European Commission and EU Member States.
 - (f) Paragraph 21.6 of PO1 shall apply to the submission of documents following the close of the written phase of the BPP.
12. The Tribunal will in due course address the procedure and arrangements applicable to the BPP hearing, following consultation with the Parties. Without prejudice to such directions in due course, as this is an issue that was raised by the Claimants, the Tribunal takes the opportunity to note that it is at present firmly minded that any allocation of time for oral submissions during the hearing will appropriately encompass time taken up by Tribunal questions and responses thereto. Separately, as this was an issue raised by the Respondent, the Tribunal affirms that it does not envisage a hearing procedure by which a Party may address questions to an NDP/NDTP participant in the hearing. Oral submissions will be addressed to the Tribunal alone. Insofar as questions may be raised for response by any

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participant in the course of the hearing, this would be at the instance of the Tribunal alone.

13. Save as may be varied or supplemented by this Procedural Order, Procedural Order No. 1 (“**PO1**”) shall apply to the BPP. In the event of doubt, the Tribunal shall rule on the matter, either *proprio motu* or following a reasoned application by a Party, in response to which the other Party shall be afforded a reasonable opportunity to comment.

14. The Tribunal reserves all other issues of procedure relevant to the BPP to further decision in due course.

For the Tribunal

[signed]

Sir Daniel Bethlehem KC

President of the Tribunal

15 December 2025

APPENDIX A

BPP PROCEDURAL SCHEDULE

No.	Action	Party	Date
1.	Statement of Jurisdiction <i>[bare-bones but not confined to EU Termination Agreement Issues]</i>	Claimants	15 January 2026 <i>[1 month]</i>
2.	Objection to Jurisdiction and/or Admissibility <i>[confined to EU Termination Agreement Issues]</i>	Respondent	12 March 2026 <i>[8 weeks]</i>
3.	Response to Objection to Jurisdiction and/or Admissibility <i>[confined to EU Termination Agreement Issues]</i>	Claimants	7 May 2026 <i>[8 weeks]</i>
4.	[NDP/NDTP submissions]	[NDP/NDTP]	18 June 2026 <i>[6 weeks]</i>
5.	Reply to Claimants' Response [and any NDP/NDTP submissions]	Respondent	13 August 2026 <i>[8 weeks]</i>
6.	Rejoinder to Respondent's Reply [and any NDP/NDTP submissions]	Claimants	8 October 2026 <i>[8 weeks]</i>
7.	Case Management Conference / Pre-hearing call	All	2–6 November 2026 <i>[4 weeks]</i>
8.	In-person hearing window	All	11–15 January 2027 <i>[10 weeks]</i>