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CERTIFICATE

IOAN MICULA, VIOREL MICULA AND OTHERS

v.

ROMANIA

(ICSID CASE NO. ARB/05/20)

Interpretation

I hereby certify that the attached document is a true copy of the Tribunal's Decision on Interpretation dated December 7, 2023, and the Separate Opinion of J. Christopher Thomas KC.

Meg Kinnear
Secretary-General

Washington, D.C., December 7, 2023

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

IOAN MICULA, VIOREL MICULA AND OTHERS

Claimants

and

ROMANIA

Respondent

ICSID Case No. ARB/05/20
Interpretation proceeding

DECISION ON ROMANIA'S APPLICATION FOR INTERPRETATION

Members of the Tribunal
Dr. Laurent Lévy, President of the Tribunal
Dr. Stanimir Alexandrov, Arbitrator
Mr. J. Christopher Thomas, KC, Arbitrator

Secretary of the Tribunal
Ms. Aurélia Antonietti

Assistant to the Tribunal
Ms. Ksenia Panerai

Date of dispatch to the Parties: 7 December 2023

REPRESENTATION OF THE PARTIES

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List of Abbreviations

Application	Romania's Application for Interpretation of 18 February 2022
Award	Award in ICSID Case No. ARB/05/20 rendered on 11 December 2013
Awarded Amount	RON 376,433,229, plus interest, as set out in paragraph 1329 of the Award
Awarded Interest	Interest on the amounts specified in subparagraph (c) of paragraph 1329 of the Award, (*i.e.*, a total of RON 376,433,229) , at 3-month ROBOR plus 5%, compounded on a quarterly basis, calculated from the (following dates) until full payment of the Award, as set out in paragraph 1329 of the Award
CJEU	Court of Justice of the European Union
EC	European Commission
EU	European Union
Hearing	Hearing of 15 April 2023 in Washington DC
ICSID Arbitration Rules	ICSID Rules of Procedure for Arbitration proceedings 2006 version
Local Currency Issues	Whether the damages awarded to the Claimants in the Award may be converted into local currencies in domestic enforcement proceedings and, if so, at what rate and what is the appropriate time of the conversion
Original arbitration	The arbitral proceedings in ICSID Case No. ARB/05/20 that lasted from 2005 till 2013
Rejoinder	Claimants' Rejoinder of 3 May 2023
Reply	Respondent's Reply of 13 April 2023
RI-[#]	Respondent's Exhibit
RIL-[#]	Respondent's Legal Authority
The 2015 State Aid Decision	A suspension injunction in 2015 prohibiting Romania from paying the Award until it is decided by the European Commission whether the Award constituted unlawful state aid

Transcript	Transcript of the Hearing

1. Romania's Application for Interpretation filed on 18 February 2022 ("the Application") relates to ICSID Case No. ARB/05/20 that lasted for more than seven years, *i.e.*, from mid-2005 until late 2013 ("the original arbitration"). In this subsequent proceeding, Romania now seeks an interpretation of the Award rendered on 11 December 2013 in the original arbitration ("the Award"). The Tribunal now renders its Decision on the Application, that Mr. J. Christopher Thomas' Separate Opinion ("Separate Opinion") is accompanying.

I. THE PARTIES

2. The Applicant in this interpretation proceeding is Romania (the "Applicant" or "Romania" or "the Respondent"). It was the Respondent in the original arbitration.

3. Opposing the Application are two individuals and three entities that were the Claimants in the original arbitration ("the Claimants"): (i) Mr. loan Micula; (ii) Mr. Viorel Micula; (iii) S.C. European Food S.A.; (iv) S.C. Starmill S.R.L.; and (v) S.C. Multipack S.R.L.

4. The Claimants and the Respondent are collectively referred to as the "Parties." The Parties' representatives and their addresses are listed above on page (i).

II. THE TRIBUNAL

5. The Tribunal in this proceeding is composed as follows:

Dr. Laurent Lévy

Dr. Stanimir A. Alexandrov

Mr. J. Christopher Thomas

6. Two of the three arbitrators in the present proceedings, Dr. Laurent Lévy (president) and Dr. Stanimir Alexandrov, were members of the Tribunal that issued the Award. In view of the decision of the third arbitrator, Prof. Georges Abi-Saab, to decline to serve in this proceeding, Mr. J. Christopher Thomas was appointed in his stead.

7. The Tribunal Secretary in this proceeding is:

Ms. Aurélia Antonietti
ICSID MSN C3-300
1818 H Street, N.W. Washington
DC 20433 USA

8. The Tribunal Assistant in this proceeding – appointed with the Parties' consent – is:

Ms. Ksenia Panerai (formerly Koroteeva)

III. PROCEDURAL HISTORY

9. On 18 February 2022, ICSID received Romania's Application for Interpretation of 18 February 2022 ("Application").

10. On 4 March 2022, the Secretary-General of ICSID registered the Application in accordance with Rule 50 of the ICSID Rules of Procedure for Arbitration Proceedings (the "Arbitration Rules") and notified the Parties of the registration. In accordance with ICSID Arbitration Rule 51(1)(a), the Secretary-General transmitted the Application to the members of the Tribunal that served in the original arbitration, Dr. Laurent Lévy (President), Prof. Georges Abi-Saab and Dr. Stanimir A. Alexandrov. In accordance with ICSID Arbitration Rule 51(1)(b), the Secretary-General asked the members of the Tribunal to inform the Centre whether they were willing to take part in the consideration of the Application.

11. On 17 March 2022, the Secretary-General informed the Parties that Dr. Laurent Lévy and Dr. Stanimir A. Alexandrov expressed their willingness to take part in the consideration of the Application, but that Prof. Georges Abi-Saab had informed the Centre that he is not in a position to act in the interpretation proceeding. The Secretary-General thus informed the Parties that the Tribunal cannot be reconstituted and invited them to proceed to constitute a new Tribunal.

12. On 11 May 2022, the Respondent appointed Mr. J. Christopher Thomas KC, a national of Canada, as co-arbitrator. Mr. Thomas accepted his appointment on 12 May 2022.

13. On 27 May 2022, the Claimants appointed Dr. Stanimir A. Alexandrov, a national of Bulgaria, as co-arbitrator. Dr. Alexandrov accepted his appointment on 8 June 2022.

14. On the same date, the Claimants proposed the appointment of Dr. Laurent Lévy, a national of Brazil and Switzerland, as President of the Tribunal. The Respondent accepted Dr. Lévy's appointment on 16 June 2023.

15. On 1 July 2022, the Secretary-General, in accordance with ICSID Arbitration Rule 6(1), notified the Parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed constituted on that date. Ms. Aurélia Antonietti, ICSID Senior Legal Counsel/Team Leader, was designated to serve as Secretary of the Tribunal.

16. On 6 July 2023, the Center sent to the Parties the initial advance payment request inviting each party to make a payment of USD 150,000. The Centre received the Respondent's payment on 17 August 2023. No payment was received from the Claimants.

17. On 8 July 2023, the Tribunal proposed to appoint Ms. Ksenia Panerai (formerly Koroteeva) as an assistant to the Tribunal. The Claimants and the Respondent consented to Ms. Panerai's appointment respectively on 18 July 2022 and 28 July 2022.

18. On 3 August 2022, the Claimants filed two requests: (i) to re-allocate the advance on costs; and (ii) to order security for costs (the "Requests").

19. On 2 September 2022, the Respondent provided its comments on the Claimants' Requests, asking the Tribunal to reject them.

20. In accordance with ICSID Arbitration Rule 13(1), the Tribunal held a first session by video conference with the Parties on 29 September 2022. During the first session, the Parties confirmed that the Claimants' Requests are ripe for the Tribunal's decision.

21. Following the first session, on 3 October 2022, the Tribunal issued Procedural Order No. 1 recording the agreement of the Parties on procedural matters and the decision of the Tribunal on disputed issues. Procedural Order No. 1 provides, *inter alia*, that the applicable Arbitration Rules would be those in effect from 1 January 2003, that the procedural language would be English, and that the place of proceeding would be Washington, D.C.

22. On 11 October 2022, the Tribunal rendered a Decision on the Claimants' Request for Re-allocation of Advance on Costs and Security for Costs dismissing both Requests.

23. On 2 November 2022, the Centre notified to the Parties the Claimants' default in paying the amount requested in the Centre's letter of 6 July 2022. The Respondent paid the Claimants' share of the advance on 29 November 2022.

24. On 8 December 2022, the Respondent filed its Memorial on interpretation (the "Memorial") along with an expert report of Prof. Emeritus Maurice Mendelson KC.

25. On 9 March 2023, the Claimants filed their Counter-Memorial on interpretation (the "Counter-Memorial").

26. On 16 March 2023, the Respondent requested leave to submit a Reply Memorial. The Claimants opposed such request on 20 March 2023.

27. On 22 March 2023, the Tribunal informed the Parties that it would benefit from an additional round of submissions.

28. On 13 April 2023, the Respondent filed its Reply on interpretation (the "Reply").

29. On 21 April 2023, the Tribunal issued Procedural Order No. 2 concerning the organization of the hearing.

30. On 3 May 2023, the Claimants filed their Rejoinder on interpretation (the "Rejoinder").

31. A hearing on interpretation was held in Washington D.C. on 15 April 2023 (the "Hearing"). The following persons were present at the Hearing:

Tribunal :

Dr. Laurent Lévy	President
Dr. Stanimir A. Alexandrov	Arbitrator
Mr. J. Christopher Thomas KC	Arbitrator
Ms. Ksenia Panerai	Assistant to the Tribunal

ICSID Secretariat:

Mr. Benjamin Garel	Acting Secretary of the Tribunal
Mr. Shay Lakhter	Paralegal

For the Claimants:

Mr. Francis Vasquez	F.A. Vasquez Consulting
Mr. Hansel Pham	White & Case LLP
Ms. Jacqueline Chung	White & Case LLP
Ms. Ena Cefo	White & Case LLP
Ms. Caitlin Walczyk	White & Case LLP
Mr. Jacob Bachmaier	White & Case LLP
Mr. Antonio Nittoli	White & Case LLP
Mr. Eric Smith	White & Case LLP
Mr. Luke Sobota	Three Crowns LLP
Dr. William Sullivan	Three Crowns LLP
Ms. Rocío Digon	White & Case LLP (participated virtually)
Ms. Hannah Rubashkin	White & Case LLP (participated virtually)

Prof. Jan Paulsson	Independent consultant (participated virtually)
Prof. Donald Childress	Three Crowns LLP (participated virtually)
Mr. Ioan Micula	Party (participated virtually)
Ms. Oana Popa	Party (participated virtually)
Ms. Diana Radu	Party (participated virtually)
Mr. Viorel Micula	Party (participated virtually)
Ms. Daniela Ioana Blahuta Aron	Party (participated virtually)
Ms. Medora Purle	Party (participated virtually)
Ms. Carmen Purle	Party (participated virtually)
Mr. Călin Vidican	Party (participated virtually)

For the Respondent :

Mr. Matthew Weldon	K&L Gates LLP
Ms. Ioana Salajanu	SLV Legal

Court Reporter :

Mr. David Kasdan

32. The Parties filed their submissions on costs on 12 June 2023 ("C-Costs" and "R-Costs" respectively).

33. On 13 June 2023, the Center asked the Parties to make a second advance payment of USD 100,000 each. The Respondent's payment was received on 18 July 2023. On the same date, the Centre notified the Parties of the Claimants' default in making the requested payment. The Respondent paid the Claimants' share of the advance on 2 August 2023.

34. The proceeding was closed on 8 September 2023.

IV. BACKGROUND OF ROMANIA'S APPLICATION FOR INTERPRETATION

35. The original arbitration started in 2005. The procedural history of the original arbitration is described in detail in the Award.[1]

36. On 11 December 2013, the Claimants were awarded RON 376,433,229 plus interest (the "Awarded Amount") as damages. The operative part of the Award rendered in the original arbitration reads as follows:

> "For the reasons stated in the body of this Award, the Tribunal makes the following decision:
>
> a. The Claimants' claim that the Respondent has violated Article 2(4) of the BIT by failing to observe obligations entered into with the Claimants with regard to their investments is dismissed by majority.
>
> b. The Claimants' claim that the Respondent has violated Article 2(3) of the BIT by failing to ensure fair and equitable treatment of the Claimants' investments is upheld by majority. In view of this decision, the Tribunal does not need to determine whether the Respondent has breached the BIT by impairing the Claimants' investments through unreasonable or discriminatory measures (Article 2(3) of the BIT, second part) or by expropriating the Claimants' investments without the payment of prompt, adequate, and effective compensation (Article 4(1) of the BIT).
>
> c. As a result of the Respondent's breach of the BIT, the Claimants are awarded and the Respondent is ordered to pay RON 376,433,229 as damages, broken down as follows:
>
> i. RON 85,100,000 for increased costs of sugar;
>
> ii. RON 17,500,000 for increased costs of raw materials other than sugar or PET;
>
> iii. RON 18,133,229 for the lost opportunity to stockpile sugar; and
>
> iv. RON 255,700,000 for lost profits on sales of finished goods.
>
> d. The Respondent is ordered to pay interest on the amount specified in sub-paragraph (c) above, at 3-month ROBOR plus 5%, compounded on a quarterly basis, calculated from the following dates until full payment of the Award:
>
> i. With respect to the claims for increased cost of sugar and other raw materials, interest shall be calculated from 1 March 2007.
>
> ii. With respect to the claim for the lost opportunity to stockpile sugar, interest shall be calculated from 1 November 2009.
>
> iii. With respect to the claim for lost profits on sales of finished goods, interest shall be calculated from 1 May 2008.

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1 Award, paras. 10-129.

> e. The Claimants on one side and the Respondent on the other shall bear the costs of the arbitration in equal shares, and each Party shall bear its own legal and other costs incurred in connection with this case.
>
> f. All provisional measures recommended by the Tribunal will cease to have effect as of the date of dispatch of this Award.
>
> g. All other claims or prayers for relief are dismissed."

37. On 9 April 2014, Romania filed an annulment application against the Award. That application was dismissed on 26 February 2016.[2]

38. After the Award was rendered, the Claimants commenced enforcement proceedings in various countries: Romania,[3] Sweden,[4] the United Kingdom,[5] Belgium,[6] Luxembourg and the United States.[7]

39. In the meantime, in light of Romania's accession to the European Union (the "EU"), the Award was subjected to examination by the European Commission (the "EC").[8] On 30 March 2015, the EC issued a suspension injunction prohibiting Romania from paying the Award until the EC decided whether the Award constituted (unlawful) state aid ("the 2015 State Aid Decision").[9]

40. On 18 June 2019, the General Court annulled the 2015 State Aid Decision. It ruled that satisfying the Award would not constitute impermissible state aid since the Award

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2 *Micula et al., v. Romania*, ICSID Case No. ARB/05/20, Decision on Annulment, 26 Feb. 2016, **Exh. CI-3**, paras. 178-203, 225-235, 281-307, 349.

3 *See* Counter-Memorial, paras. 20-27. See also Decision of the Bucharest Tribunal in Case No. 2143/3/2015 dated 4 Feb. 2015, **Exh. CI-34**, at 3; Decision of the Bucharest Tribunal No. 194 in Case No. 8804/3/2015 dated 18 Feb. 2016, **Exh. CI-42**; Declaration of Oana Popa in Support of Motion for Judgment and Confirmation, Ioan Micula, et al. v. Gov't of Romania, No. 17-cv-02332-APM (D.D.C. 28 June 2018) (No. 26-5), **Exh. CI-48**, para. 6.

4 *See* Memorial, paras. 47-49. *See also* Ioan Micula, et al. v. Ministry of Public Finance of Romania, Svea Court of Appeals, Opinion, ÖÄ 1657-19 dated 31 Mar. 2021, **Exh. RI-20**.

5 *See* Memorial, paras. 52-53.

6 *See* Memorial, paras. 45-46.

7 *See* Memorial, paras. 38-44; Counter-Memorial, paras. 28-37. *See also* Order, Micula, et al. v. Gov't of Romania, No. 1:15-mc-00107-LGS (S.D.N.Y. 28 Apr. 2015) (No. 13), **Exh. CI-38**; Order, Micula v. Gov't of Romania, No. 15-3109-cv (2d Cir. 23 Oct. 2017) (No. 134), **Exh. CI-44**; Memorandum Opinion, Ioan Micula, et al. v. Gov't of Romania, No. 1:17-cv-02332-APM (D.D.C. 11 Sept. 2019) (No. 86), at 29, **Exh. CI-5**; Order & Final Judgment, Micula v. Gov't of Romania, No. 1:17-cv-02332-APM (D.D.C. 20 Sept. 2019) (No. 88), **Exh. CI-9**; Judgment, Ioan Micula, et al. v. Gov't of Romania, No. 20-7116 (D.C. Cir. 24 June 2022) (per curiam), **Exh. CI-11**.

8 Application, paras. 14-19; Memorial, paras. 21-24

9 Commission Decision (EU) 2015/1470 on State Aid SA 38517 (2014/C) (ex 2014/NN) implemented by Romania dated 30 Mar. 2015, at 1-2, **Exh. CI-36**, Art. 1; Memorandum Opinion and Order, Ioan Micula, et al. v. Gov't of Romania, No. 17-cv-02332-APM (D.D.C. 22 Dec. 2022) (No. 203), **Exh. CI-76**, at 3.

compensated the Claimants for incentives that were repealed prior to Romania's accession to the EU.[10] On 25 January 2022, the Court of Justice of the European Union (the "CJEU") set aside that decision[11] and remanded the case back to the General Court. The Tribunal understands that the proceedings in the General Court are ongoing.

41. The Parties agree that the enforcement of the Award and other post-Award activities - briefly mentioned above - have limited relevance to the interpretation of the Award.[12] That said, they are relevant to understanding the nature of Romania's Application, *i.e.*, whether it is a real request for interpretation, within the meaning of the ICSID Convention, and whether it is an abuse of process.

V. THE PARTIES' PRAYERS FOR RELIEF

42. In the Application for Interpretation, the Respondent asked for the following relief:[13]

> "The Applicants respectfully request that the Tribunal issue its interpretation as to the Award as follows:
>
> a) The 'pecuniary obligations' of the Award (as referred to in Article 54 of the ICSID Convention) owed by Romania to the Claimants are RON 376,433,229, plus interest, as set out in paragraphs 1329 of the Award (the 'Awarded Amount'), and there are no other pecuniary obligations under the Award.
>
> b) In order to 'abide by and comply with the terms of the award' as required by Article 53 of the ICSID Convention, Romania is only required under the Award to pay the Awarded Amount to Claimants, and Claimants are entitled to nothing more than the Awarded Amount under the Award.
>
> c) Romania has abided by and complied with the terms of Award by paying Claimants the Awarded Amount, and thus Claimants have no other remedy under the Award.
>
> d) By seeking to continue enforcement of the Award after Romania paid the Awarded Amount, and collect further monies from Romania under the Award, Claimants have failed and continue to fail to abide by and comply with the terms of the Award."

43. In the Memorial, the Respondent's prayer for relief was slightly modified:[14]

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10 Judgment of the General Court dated 18 June 2019, **Exh. RI-5**, paras. 67, 79, 111

11 Judgment of the CJEU in Case No. C-6831/19 P dated 25 Jan. 2022, **Exh. CI-67**, at 21.

12 Reply, para. 12. Specifically, the Respondent says that these facts "are not relevant to the decision of the Tribunal as to its ultimate interpretation of the Award."

Rejoinder, para. 6. The Claimants state that "[t]he following facts are essential to the Tribunal's consideration of the Request because, as Romania concedes, its conduct in enforcement activities is relevant to whether this Request is proper, or otherwise, an abuse of process."

13 Application, para. 46.

14 Memorial, para. 65.

> "The Applicants respectfully request that the Tribunal issue its interpretation as to the Award as follows:
>
> a) The 'Pecuniary Obligations' of the Award, as Referred to in Article 54 of the ICSID Convention, Require that Romania Only Pay to the Claimants the Awarded Amount (i.e., RON 376,433,229, plus interest, as set out in paragraph 1329 of the Award), and There Are No Other Pecuniary Obligations Under the Award.
>
> b) In Order to 'Abide by and Comply with the Terms of the Award' as Required by Article 53 of the ICSID Convention, Romania is Only Required to Pay the Awarded Amount to Claimants.
>
> c) Romania's Payment of the Awarded Amount to Claimant Operates to Satisfy the Terms of Award and Discharge the Pecuniary Obligations Under the Award, and Claimants Have No Other Remedy Under the Award.
>
> d) Claimants' Continued Enforcement of the Award After Romania's Payment of the Awarded Amount to Claimant Amounts to a Failure by Claimants To Abide By and Comply with the Terms of the Award."

44. In the Reply, the Respondent confirmed the prayer for relief as set out in the Memorial:[15]

> "Applicant respectfully requests that the Tribunal
>
> (a) grant the request and issue its interpretation as requested by Romania, and to the extent the Tribunal disagrees with any of the requested interpretations, that it reformulates such interpretation as it deems just and proper;
>
> (b) award Romania's its costs, including its attorneys fees and the fees of its experts; and
>
> (c) grant such other relief as it may deem just and proper."

45. The Claimants ask for the following relief:[16]

> "For the foregoing reasons, Claimants request that the Tribunal:
>
> • DECLARE Romania's Request for Interpretation inadmissible; or alternatively,
>
> • DENY Romania's Request for Interpretation on the merits; and in any event
>
> • ORDER Romania to reimburse Claimants' attorney's fees and expenses and to pay all arbitration fees, expenses, and other costs of the present proceeding; and
>
> • GRANT such other relief as it may deem just."

VI. ADMISSIBILITY OF ROMANIA'S APPLICATION

46. The Parties' arguments, insofar as they are necessary to decide the Respondent's Application, have been recounted below, although the Tribunal may further develop the Parties' position in the analysis itself. While it has considered all of the Parties'

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15 Reply, p. 20 para. 38.

16 Counter-Memorial, para. 96; Rejoinder, para. 42.

arguments, for reasons of procedural economy, the Tribunal has reproduced only what it views as the most important and relevant arguments for its decision.

1) The Claimants' Position

47. In the Claimants' view, a request for interpretation is admissible, if it satisfies the following requirements: (i) there has to be a dispute between the original parties as to the meaning or scope of the award; (ii) the purpose of the application must be to obtain an interpretation of the award; and (iii) the dispute must at least have some practical relevance to the award's implementation.[17] For the Claimants, Romania's Application does not meet any of them.

a) Meaning or Scope of the Award

48. The Claimants submit that there is no dispute between the Parties as to the meaning or the scope of the Award.[18] The Respondent does not point to any term or phrase in the Award that may be susceptible to multiple interpretations or is objectively ambiguous. In the Claimants' view, there is nothing ambiguous about the Award, including the recitation of damages in paragraph 1329 of the Award.[19]

49. For the Claimants, Romania's focus on the Award's "pecuniary obligations" is an attempt to manufacture a dispute where none exists. The term "pecuniary obligations" is not mentioned by the Award, which the Respondent asks to interpret.[20] Rather, the term appears only in Article 54 of the ICSID Convention.[21] In light of this, for the Claimants,

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17 Counter-Memorial, para. 54, referring to *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Decision on the Application by Wena Hotels Ltd. for Interpretation of the Arbitral Award dated 8 December 2000, 31 Oct. 2005, **Exh. RIL-1** ("*Wena v. Egypt*"), para. 24.

18 Counter-Memorial, paras. 57-59; Rejoinder, paras. 20-23.

19 Counter-Memorial, paras. 58, 65; Rejoinder, paras. 20-23.

20 Rejoinder, para. 20. The Tribunal observes that the term is in fact mentioned in the Award, but only in the quotation of the text of Article 54 to which the Tribunal referred in passing and again in the discussion of whether a tribunal can award non-pecuniary as well as pecuniary relief. See paras. 1310-1311, where the Tribunal noted that Article 54(1) "should not be interpreted as limiting ICSID tribunals to awarding pecuniary relief." It is, however, correct to say that the Tribunal did not turn its mind to how Article 54 would govern any possible enforcement activities concerning its Award.

21 Article 54 of the ICSID Convention reads as follows: "(1) Each Contracting State shall recognize an award rendered pursuant to this 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. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state (2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have

the real dispute between the Parties is whether the damages awarded to the Claimants in the Award may be converted into local currencies in domestic enforcement proceedings and, if so, at what rate and at what time the conversion should be performed.[22] However, the Parties' dispute about the enforcement of the Award falls squarely outside the scope of the Tribunal's mandate, as it is subject to the competence of local courts.[23]

b) Purpose to Obtain a True Interpretation

50. Moreover, the Claimants argue that Romania's Application does not seek a true interpretation of any term in the Award. The Claimants maintain that the real issue in dispute is what is defined in this Decision as the Local Currency Issues, which are subject to the competence of enforcement courts rather than the Tribunal's.[24] In the Claimants' submission, the ICSID Convention assigns the roles to ICSID tribunals and the Contracting States as follows: arbitral tribunals decide disputes, the courts of the Contracting States enforce and execute awards. Specifically, Article 54 of the ICSID Convention[25] provides that the Contracting States shall recognize any ICSID award as binding and empowers an award creditor to turn to the Contracting States, whose role is to enforce pecuniary obligations in accordance with the law of the enforcement jurisdiction if the debtor has failed to satisfy it voluntarily.[26] Contrary to Romania's contention, the fact that Article 50(2) of the ICSID Convention[27] allows a tribunal to stay

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designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation. (3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought." (Underlining added)

22 Rejoinder, para. 23. For the sake of convenience, the Tribunal will refer to these issues as "the Local Currency Issues."

23 Counter-Memorial, paras. 67, 72, 76; Rejoinder, paras. 25-26.

24 Counter-Memorial, paras. 60-66; Rejoinder, paras. 24-27.

25 See fn. 21 above.

26 Counter-Memorial, para. 62; Rejoinder, para. 25, referring to Article 54(1) of the ICSID Convention (see fn. 21 above).

27 Article 50 of the ICSID Convention reads as follows: "(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General. (2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision."

enforcement of an award pending an interpretation request does not mean that Romania's Application falls within the scope of the Article 50(1) inquiry.[28]

51. Thus, for the Claimants, Romania's Application is not a true request for interpretation of the Award, but a "thinly veiled attempt to interfere with its enforcement under Article 54 of the ICSID Convention",[29] principally because Romania is "unhappy with the U.S. courts' determination."[30]

c) Practical Relevance to the Award's Implementation

52. The Claimants argue further that Romania's Application is not focused on resolving ambiguity within the Award that would affect its future implementation, but rather, Romania is trying to interfere with the way that the Award has already been enforced in domestic courts, especially in the US.[31]

d) Abuse of process

53. The Claimants add that Romania's Application is so vexatious as to warrant its dismissal under the doctrine of abuse of process. That doctrine is rooted in the principle of good faith and "prohibits the exercise of a procedural right in contravention of the purpose for which that right was established." The Claimants cite decisions where tribunals have found abuse of process when a party's "motivation for initiating arbitration" is "to harass and exert pressure on another party", or when a party "initiates more than one proceeding to resolve the same or related dispute in order to maximize its chances of success."[32]

54. In the Claimants' view, Romania's Application is abusive in three specific ways.

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28 Rejoinder, para. 27.

29 Counter-Memorial, para. 65.

30 Counter-Memorial, para. 81; Rejoinder, para. 3.

31 Counter-Memorial, paras. 66-72; Rejoinder, paras. 28-29.

32 Counter-Memorial, paras. 74-77, referring to John P. Gaffney, Abuse of Process, JOURNAL OF WORLD INVESTMENT & TRADE 515, 521 (2010), **Exh. CIL-26**; Vaughan Lowe, Overlapping Jurisdiction in International Tribunals, 20 AYBIL 191, 203 (1999), **Exh. CIL-27**; Jan Paulsson, Jurisdiction and Admissibility, in GLOBAL REFLECTIONS ON INTERNATIONAL LAW, COMMERCE AND DISPUTE RESOLUTION, ICC PUBLISHING 617 (2005), **Exh. CIL-28**; John David Branson, The Abuse of Process Doctrine Extended: A Tool for Right Thinking People in International Arbitration, JOURNAL OF INTERNATIONAL ARBITRATION, **Exh. CIL-29**; Emmanuel Gaillard, Abuse of Process in International Arbitration, 32 ICSID REV. – F.I.L.J. 17, 18 (2017), **Exh. CIL-30**. *See also* Rejoinder, paras. 30-35.

55. First, Romania is using the Application to evade its obligations to pay the judgment rendered by US courts enforcing the Award. [33]

56. Second, Romania initiated this interpretation proceeding in order to resolve the same or related dispute - that has already been resolved in domestic courts - in order to maximize its chances of success," which in turn "is highly prejudicial" to the Claimants.[34]

57. Third, Romania's Application is yet "another attempt to harass and intimidate [the] Claimants into withdrawing their valid enforcement proceedings." Romania has threatened the Claimants and their related companies by commencing numerous enforcement actions, revoking licenses, and filing dilatory and meritless claims in multiple fora.[35]

2) The Respondent's Position

58. As mentioned previously,[36] the Claimants proposed the test that this Tribunal should apply to determine the admissibility of a request for interpretation and relied on *Wena Hotels*.[37] The Respondent in principle agrees with the test set out by the Claimants. However, for the Respondent, it is "not necessary to show the existence of a dispute in a specific manner."[38] Romania emphasises that the *Wena Hotels* and *ATA Construction* cases, taken together, show that objective ambiguity is not required.[39] Rather, it is important that the Parties have divergent views on definite points in relation to the Award's meaning or scope.[40]

59. Romania underlines and confirms that it does not seek an interpretation of how or in what manner enforcement proceedings are conducted.[41] Rather, it seeks interpretation of the Award and advances four independent prayers for relief[42] that are summarised below.

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33 Counter-Memorial, paras. 79-80; Rejoinder, paras. 32-33.

34 Counter-Memorial, para. 81; Rejoinder, para. 34.

35 Counter-Memorial, para. 82; Rejoinder, para. 35.

36 *See* para. 47 above.

37 Counter-Memorial, para. 54.

38 Reply, para. 39.

39 Reply, para. 38.

40 Memorial, para. 66.

41 Reply, para. 61.

42 See paras. 42-44 above.

a) Meaning or Scope of the Award

i. Romania's Prayer for Relief (a)

60. In Prayer for Relief (a), Romania seeks an interpretation of what Romania's "pecuniary obligations" are under the Award.[43] Romania requests that the Tribunal declare that the pecuniary obligations imposed by the Award "are RON 376,433,229, plus interest, as set out in paragraph 1329 of the Award (the 'Awarded Amount')", and there are no other pecuniary obligations under the Award.[44]

61. In Romania's view, the Parties dispute what Romania's "pecuniary obligations" are. The Respondent alleges that it paid in full the amounts awarded to the Claimants in the Award, *i.e.,* RON 376,433,229 plus interest, as set out in paragraph 1329 of the Award, but the Claimants have continued their enforcement proceedings, premised upon the Award, and seek to collect amounts beyond the pecuniary obligations of the Award. The Respondent stresses that in the United States proceeding that additional amount comes to nearly an additional USD 100 million.[45]

62. Thus, Romania asks this Tribunal to "declare that the pecuniary obligations imposed by the Award are the Awarded Amount (in RON) only" such that "Romania is not obligated by the Award to pay any other amount or value that may be implicated based upon the [conversion] of RON to any other currency."[46]

ii. Romania's Prayer for Relief (b)

63. In Prayer for Relief (b), Romania seeks a declaration that in order to abide by and comply with the terms of the Award, under Article 53 of the ICSID Convention,[47] Romania must

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43 Application, para. 2; Memorial, paras. 65-74; Memorial, p. 24, paras. 38-42; Reply, paras. 36-40. For convenience purpose, the Tribunal quotes anew Memorial, para. 65: "a) The 'Pecuniary Obligations' of the Award, as Referred to in Article 54 of the ICSID Convention, Require that Romania Only Pay to the Claimants the Awarded Amount (i.e., RON 376,433,229, plus interest, as set out in paragraph 1329 of the Award), and There Are No Other Pecuniary Obligations Under the Award."

44 Memorial, paras. 68-69; Memorial, p. 24, paras. 38-42. The precise wording of Prayer for Relief (a) is reproduced in paras. 42-44 above.

45 Memorial, p. 18, para. 70.

46 Memorial, pp. 25-26, paras. 42, 49. The precise wording of Prayer for Relief (b) is reproduced in paras. 42-44 above.

47 Article 53 of the ICSID Convention reads as follows: "(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

only "pay the Awarded Amount as mandated by the Tribunal according to the terms of the Award in RON, and Romania is not required to pay any other amount based upon the conversation (sic) of RON into any other currency."[48]

64. For the Respondent, there is a dispute between the Parties as to whether Romania has abided by and complied with the terms of the Award, and what Romania must do in order to abide by and comply with the terms of the Award.[49] In the Respondent's view, Romania has abided by and complied with the pecuniary obligations stated in the Award, and has satisfied the Award in full based upon the Claimants' expert calculation, which calculated the Awarded Amount in RON.[50]

65. Romania reiterates that the Award does not state that Romania must pay the required RON under its operative part ("dispositif") based upon the exchange rate of USD or any other foreign currency at the time of the Award. For the Respondent, there is nothing in the Award that indicates that the measure or value of USD has any relevance to the pecuniary obligations of the Award.[51]

iii. Romania's Prayer for Relief (c)

66. In Prayer for Relief (c), Romania asks the Tribunal to confirm that payment of the Awarded Amount to the Claimants operates to satisfy the terms of the Award and discharge the pecuniary obligations under the Award, and the Claimants have no other remedy under the Award.[52] The Respondent asks the Tribunal what it takes for the Award to be satisfied under the terms of the Award and the ICSID Convention. In the Respondent's view, there is "no better or more appropriate authority to determine that question than this Tribunal, as that question relates to the meaning of the Award and defining and clarifying the pecuniary obligations of the Award." For Romania, the Tribunal may provide clarification and guidance in general as to the enforcement of the Award in light of the Tribunal's orders and the terms of the Award.[53]

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(2) For the purposes of this Section, 'award' shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52."

48 Memorial, p. 26, para. 49.

49 Memorial, pp. 25-27, paras. 43-52.

50 Memorial, p. 25, para. 45.

51 Memorial, p. 26, para. 48.

52 Memorial, pp. 27-28, paras. 53-58.

53 Memorial, p. 28, para. 56.

iv. Romania's Prayer for Relief (d)

67. In Prayer for Relief (d), Romania asks the Tribunal to interpret the Claimants' continued enforcement of the Award after Romania's payment of the Awarded Amount to the Claimants amounts to a failure by the Claimants to abide by and comply with the terms of the Award. For Romania, the Claimants are trying to expand and increase the pecuniary obligations of the Award. This is a violation of the terms of the Award.[54]

b) Purpose to Obtain a True Interpretation

68. Romania confirms that it does not seek to change or overturn any aspect of the Award. Neither does it seek the Tribunal's opinion on the judgments rendered in the US or any other national court decision.[55] Rather, the purpose of this proceeding is simply to obtain clarification and interpretation from the Tribunal as to the meaning or scope of the Award's operative paragraphs relating to the payments that need to be made by Romania to Claimants, *i.e.,* the pecuniary obligations under the Award.[56]

69. Further, Romania points out that decisions rendered pursuant to Article 50 of the ICSID Convention[57] have a special and direct effect on the interpretation of the Award for purposes of recognition and enforcement under Articles 53-55 of the ICSID Convention.[58] Consequently, the jurisdiction and authority of this Tribunal must necessarily extend to the issues raised by Romania in regard to the implementation of the Award.[59]

c) Practical Relevance to the Award's Implementation

70. For Romania, disputes relating to the recognition and enforcement of an arbitral award clearly satisfy the third prong of the *Wena Hotels* test for the simple reason that they have a direct impact upon how the award is to be satisfied.[60] In light of the dispute

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54 Memorial, p. 29, paras. 59-62.

55 Reply, paras. 41-43.

56 Memorial, pp. 19-20, paras. 75-80.

57 *See* fn. 27 above.

58 Memorial, p. 20, para. 79.

The text of Articles 53 and 54 are reproduced in fn. 21 and 47 above. Article 55 of the ICSID Convention reads as follows: "[n]othing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution."

59 Memorial, pp. 20, para. 78.

60 Memorial, pp. 21-24, paras. 81-90, Reply, paras. 44-46.

between the Parties over enforcement of the Award ("even impacting the amount to be paid under the Award"), the present dispute does have practical relevance to the Award's implementation, and the third prong of the *Wena Hotels* test is satisfied.[61] In Romania's view, if clarification of the pecuniary obligations of an Award is insufficient to demonstrate "practical relevance to the implementation of the Award", it is difficult to imagine what would be sufficient.[62]

d) Abuse of Process

71. Finally, Romania rejects any suggestion that its Application is abusive.

72. First, Romania satisfied the Award directly after it was permitted to by the General Court Order. This is not the conduct of a party trying to evade paying the Award.[63]

73. Second, Romania is not asking the Tribunal to judge the decisions of national courts, or weigh in on any issues of national law.[64] The fact that this proceeding may be relevant to certain decisions to be made in national courts is not nefarious.[65]

74. Third, this proceeding does not represent another proceeding to "resolve the same or related dispute." This proceeding concerns the clarification of the pecuniary obligations of the Award and related issues, while the national litigation concerns the execution of a national judgment.[66] No court has or is considering the question of whether, post-payment of the Awarded Amount, the Award has been satisfied under the ICSID Convention, or whether there are further pecuniary obligations in the Award with which Romania must comply.[67]

75. Finally, Romania does not harass or intimidate the Claimants into withdrawing their enforcement proceedings. For Romania, the Claimants are harassing Romania, "seeking to obtain a huge windfall."[68]

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61 Memorial, para. 90.

62 Reply, para. 45.

63 Reply, para. 51.

64 Reply, paras. 47-54.

65 Reply, para. 50.

66 Reply, para. 52.

67 Reply, para. 53.

68 Reply, para. 54.

3) The Tribunal's Analysis

76. As a preliminary remark, the Tribunal notes that none of the Parties raised any objections to the Tribunal's jurisdiction to decide on Romania's Application. For the avoidance of doubt, the Tribunal refers to and adopts the jurisdictional findings made in (i) the Decision on Jurisdiction and Admissibility of 24 September 2008; and (ii) the Award.[69] Accordingly, the Tribunal has jurisdiction to decide on Romania's Application seeking the interpretation of the Award.

77. However, the Claimants contest the admissibility of the Application, a question to which the Tribunal now turns.

78. The Parties agree that admissibility is governed by Article 50 of the ICSID Convention and Rule 50 of the ICSID Arbitration Rules.

79. Article 50 of the ICSID Convention allows disputing parties to request interpretation of an award if there is a dispute between the parties as to the meaning or scope of the award:

> "(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.
>
> (2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter."

80. Article 50 of the ICSID Arbitration Rules contains several requirements, which an application for the interpretation shall satisfy:

> "(1) An application for the interpretation […] shall: (a) identify the award to which it relates; (b) indicate the date of the application; (c) state in detail: (i) in an application for interpretation, the precise points in dispute; […] (d) be accompanied by the payment of a fee for lodging the application."

81. Both Parties cite *Wena Hotels*, where the tribunal spelled out two "main conditions" for the admissibility of an application for interpretation and to which it added a third consideration:

> "76. Taken together, the relevant provisions of the ICSID Convention and the ICSID Arbitration Rules thus establish two main conditions for the admissibility of an application for interpretation: first, there has to be a dispute between the original parties as to the meaning or scope of the award; second, the purpose of the application must be to obtain an interpretation of the award. […]

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69 *See* Decision on Jurisdiction and Admissibility of 24 September 2008; Award, paras. 284 – 285.

> 87. It is true that interpretation proceedings are particularly relevant if a dispute about the exact meaning of the award is likely to prevent its execution. However, neither Article 50(1) of the ICSID Convention nor the ICSID Arbitration Rules establish such a requirement for the admissibility of an application for interpretation, and it seems possible that there are situations where a party may have a valid interest to obtain an interpretation of an award, even though its enforcement is not (directly) concerned. However, the Tribunal agrees with the view taken by a commentator to the ICSID Convention that the dispute must at least have some practical relevance to the award's implementation; mere theoretical discussions about the award's meaning or scope are not sufficient."[70]

82. The findings of the tribunal in *Wena Hotels* were confirmed by the tribunal in *ATA Construction*:

> "35. The parties agree that the requirements for an ICSID Article 50 'post-award interpretation' were concisely summarized by the Wena tribunal (cf. Wena v. Egypt, Decision on the Application for Interpretation of the Award, ICSID Case No. ARB/98/4 (31 October 2005), paragraphs 76 and 106) as follows: (1) there must be a dispute between the parties over 'the meaning or scope' of the award; (2) the purpose of the application must be to obtain a true interpretation of the award, rather than to reopen the matter; and (3) the requested interpretation 'must have some practical relevance to the Award's implementation'."[71]

83. Therefore, the Parties and the Tribunal agree that Romania's Application is admissible if it seeks a declaration of the meaning or scope of the Award on a subject-matter that the Parties dispute with a view to achieve a concrete result rather than to deliver a general opinion of fact and/or law. Thus, the Application should satisfy three requirements: (i) there must be a dispute between the Parties as to the meaning or scope of the Award; (ii) the purpose of the Application must be to obtain an interpretation of the Award; (iii) the dispute must have at least some practical relevance to the Award's implementation. The Tribunal will analyse each requirement in turn.

84. In addition, the Parties have raised several issues relating to steps taken by one side or the other in the aftermath of the Award's issuance, such as whether Romania engaged in abusive conduct, especially by failing to perform its obligations under the Award, and whether the Claimants abused the process by seeking compensation that exceeds what the Award granted, thus creating injustice and unfairness. The Tribunal has doubts whether it has the mandate to engage in such issues. In any event, as explained below, the Tribunal considers that it is unnecessary to do so.

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70 *Wena v. Egypt*, paras. 76, 87.

71 *ATA Construction, Industrial and Trading Company v. The Hashemite Kingdom of Jordan*, ICSID Case No. ARB/08/2, Decision on Interpretation and on the Request for Provisional Measures, 7 March 2011, **Exh. RIL-3** ("*ATA v. Jordan*"), para. 35.

a) "Meaning or Scope" of the Award

85. It is undisputed that interpretation is limited to the scope and meaning of an award, specifically to those points that have been decided with binding force.[72] In other words, the interpretative mandate of a tribunal is limited to the findings the tribunal has made in the award. Those findings, in turn, are based on the facts presented by the parties and their respective prayers for relief. Therefore, interpretation cannot concern issues that were not analysed in the award. As observed by the *ATA Construction* tribunal, "*Conversely, the Award cannot be said to mean something it did not say.*"[73] Interpretation may be available to clarify an award to assist the parties in the resolution of a dispute having arisen post award and including facts that the arbitrators ignored; however, the interpreting tribunal will only be empowered to establish the meaning of the award, not to add to it or amend it.

86. Moreover, interpretation cannot be used for seeking either a reconsideration of the original decision or the correction of clerical errors.[74] Further, it is inappropriate to use interpretation proceedings to request a new decision.[75]

87. The Parties disagree whether interpretation under the applicable ICSID rules will be admissible only if there is an actual ambiguity in an award and thus a need to clarify an ambiguous term or whether it will suffice that the Parties have different readings of an award. The Claimants rely on *Wena Hotels* to take an objective approach, specifically whether a third-party reader or a tribunal may have trouble in understanding the terms of the award. By contrast, Romania - relying on *Wena Hotels* and, more heavily, on *ATA Construction* - adopts a more subjective approach and considers that it will suffice if the Parties are in disagreement on the meaning of the award, even if the terms of the award are not ambiguous.

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72 *Wena v. Egypt*, paras. 76, 87.

73 *ATA v. Jordan*, para. 43.

74 *David Minnotte and Robert Lewis v. Republic of Poland*, ICSID Case No. ARB(AF)/10/1, Decision on the Request for Interpretation of the Award dated 22 Oct. 2014, **Exh. CIL-11** ("*Minnotte and Lewis v. Poland*"), paras. 7, 12-13; *Archer Daniels Midland Co., et al v. The United Mexican States*, ICSID Case No. ARB(AF)/04/05, Decision on Request for Interpretation of the Award dated 10 July 2008, **Exh. CIL-12** ("*Midland v. Mexico*"), para. 23; *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Correction and Interpretation of the Award dated 13 June 2003, **Exh. CIL-13** ("*Feldman v. Mexico*"), paras.12-13.

75 *Feldman v. Mexico*, paras. 9-11; *Minnotte and Lewis v. Poland*, paras. 7, 12-13.

88. The *ATA Construction* tribunal appeared to suggest that a difference of interpretation between the Parties may be sufficient, whether or not the text of the award is clear.[76] The *ATA Construction* tribunal engaged with one of the two requests for interpretation, although it believed that the impugned decision in the award "is clear and means what it says." It appears to have done so, however, because both Parties, as opposed to just one of them, requested such a relief.[77] On that basis, the *ATA Construction* tribunal proceeded to decide on that request for interpretation even though it observed that "[t]*he Tribunal has some difficulty in seeing how its Award could be misunderstood."*[78] Thus, *ATA Construction* does not support unambiguously the proposition that a disagreement of the parties on the meaning of an award is sufficient to trigger the need for interpretation.

89. The text of Article 50(1) of the ICSID Convention could be interpreted as lending credence to the Respondent's position as it provides: "if any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation[…]." This provision seems to imply that interpretation is admissible provided the parties disagree, even if there is no lack of clarity to mend. This subjective approach to the interpretation of Article 50 of the ICSID Convention, however, could lead to an outcome where even frivolous requests for interpretation would be admissible: for example, the parties could be in dispute although an award does not suffer of any ambiguity.

90. In the Tribunal's view, clarifying an ambiguity is the essence of interpretation proceedings. Indeed, according to the tribunal in *Wena Hotels*,[79] a request for interpretation "must be directed towards clarifying an ambiguity." The tribunal in *Wena* cited several commentators, who opine that interpretation of an award is helpful where a ruling is so ambiguous that the parties could *legitimately* disagree as to its meaning. The requirement that the parties must legitimately disagree on the meaning or scope of an award introduces an element of objectivity.

91. The *Wena* tribunal referred to *Fouchard, Gaillard and Goldmann on International Commercial Arbitration*:

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76 *ATA v. Jordan*, para. 36, specifically "[f]irstly, there is a dispute between Jordan and ATA over 'the meaning or scope' of the Award."

77 *Ibid*., para. 44.

78 *Ibid*., para. 40.

79 *Wena v. Egypt*, para. 85.

> "85. Commentators on international arbitration also share this approach to determine the existence of a dispute as to the meaning or scope of an award. It is stated: 'The interpretation of an arbitral award is only really helpful where the ruling, which is generally presented in the form of an order, is so ambiguous that the parties could legitimately disagree as to its meaning. By contrast, any obscurity or ambiguity in the grounds for the decision does not warrant a request for interpretation of the award'."[80]

92. The Tribunal finds nothing surprising in this finding of the *Wena Hotels* tribunal, which is an expression and confirmation of the well-known maxim of law "*In claris non fit interpretatio"* or "*In claris non est locus conjecturis*."

93. At the same time and as already indicated, the Tribunal notes that the tribunal in *ATA Construction* apparently proceeded with interpretation of its award in spite of its view that the terms of that award were clear (although it did so because both parties had raised the issue).[81] Consequently, interpretation of an award may be warranted, at least in some cases, even if its terms appear clear.

94. While the Tribunal finds the *Wena Hotels* reasoning persuasive, the Tribunal does not need to make a choice between the two approaches. What matters for the Tribunal in this proceeding is that interpretation – whether it relates to any ambiguous term or not – is strictly limited to the scope and meaning of the Award and concerns the issues that were decided with binding force, as established earlier.[82] In light of this, the Tribunal will now analyse whether the Parties have a dispute that relates to the scope or meaning of the Award and, in doing so, will address individually each of the Respondent's Prayers for Relief.

95. There will be some commonality in the sections below in relation to an overarching issue: interpretation cannot extend beyond the text, for which interpretation is sought. While the Respondent states that its request complies with that rule, it actually seeks pronouncements from the Tribunal on facts subsequent to the Award, mostly in connection with its enforcement, particularly in the United States.

i. Romania's Prayer for Relief (a)

96. In Prayer for Relief (a), the Respondent asks the Tribunal to order that the "pecuniary obligations" of the Award, as referred to in Article 54 of the ICSID Convention, require

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80 *Ibid.*, para. 85, referring to Craig, Park and Paulsson, International Chamber of Commerce Arbitration (3rd ed. 2002), that referred to Fouchard, Gaillard and Goldmann, On International Commercial Arbitration (1999), p. 776

81 *ATA v. Jordan*, paras. 39-44.

82 *See* para. 19 above.

that Romania only pay to the Claimants the Awarded Amount and that there are no other pecuniary obligations under the Award. The Respondent added and clarified during the Hearing that it seeks an interpretation that the damages should be calculated only in RON and "there is no other currency that is relevant to that question."[83]

97. The Tribunal cannot grant Romania's Prayer for Relief (a) for several reasons.

98. First, Romania's Prayer for Relief (a) is based on specific provisions of the applicable legal framework that the Award did not consider,[84] specifically Article 54 of the ICSID Convention. Article 54 relates to enforcement, a subject matter that the Tribunal did not address. Although the Award briefly mentions this article, the Tribunal did not issue any binding ruling on how Article 54 operates in relation to the findings made in the Award. The Tribunal simply noted that Article 54 – together with Article 53 - will "apply in any event to the Award":[85]

> "340. The Tribunal finds that it is not desirable to embark on predictions as to the possible conduct of various persons and authorities after the Award has been rendered, especially but not exclusively when it comes to enforcement matters. It is thus inappropriate for the Tribunal to base its decisions in this case on matters of EU law that may come to apply after the Award has been rendered. It will thus not address the Parties' and the Commission's arguments on enforceability of the Award.
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> 341. That being said, the Tribunal notes that Articles 53 and 54 of the ICSID Convention, which are reproduced below, apply in any event to the Award: [omitted]."

The Tribunal made that statement in the context of Romania's jurisdictional objection that EU authorities might prohibit Romania from enforcing the Award. The Tribunal refused to consider Romania's objection, explicitly declined to address the arguments on the enforceability of the Award, and found that it was "not desirable to embark on predictions as to […] enforcement matters." Thus, the Tribunal did not make in the Award any binding rulings based on Article 54 of the ICSID Convention.

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83 *See* Transcript, p. 58, lines 15-22.

> MR WELDON: "So, I thought that was worth pointing to the Tribunal in some respects that is what Romania is asking for in this case, that what was intended was that the damages be calculated in RON and paid in RON, and that was what would provide for compliance with the Award. And we note there are no other obligations, there is no other currency that's relevant to that question."

84 Neither the Respondent's prayers for relief in the original arbitration (*see* paras. 282-283 of the Award) nor the Claimants' prayers for relief (*see* para. 262 of the Award) do refer to Article 54 of the ICSID Convention.

85 *See* Award, paras. 340-341.

99. In light of the above, the Tribunal considers that it cannot make any rulings based on Article 54 in this interpretation proceeding. It is of course correct that the Tribunal operates under the ICSID Convention and may have regard to all its provisions. However, in this interpretation proceeding, the Tribunal's mandate is limited to the findings made in the Award with binding force, *i.e.*, its "Chapter XI, Decision." As the Tribunal did not make any binding pronouncements based on Article 54 in the Award, it cannot do so in this interpretation proceeding either. Proceeding otherwise would result in going beyond what was decided in the Award, *i.e.*, beyond its scope, which is not the purpose of interpretation proceedings.

100. Second, the Tribunal considers that Paragraph 1329 of the Award,[86] which is the focus of Romania's Request for Relief (a), is clear. The Parties have not shown, and have not even sought to allege, that the wording of that paragraph of the Award is unclear, [87] and rightly so. In fact, in its Prayer for Relief (a) Romania restates the finding of the Tribunal made in Paragraph 1329 of the Award, adding however the word "only."[88] In the Tribunal's view, such change would possibly create ambiguity where there is none and may lead to two possible results, none of which is warranted in this interpretation proceeding:

    a. On the one hand, adding "only" to the Tribunal's findings may result in a tautology, which would not assist either in the interpretation of the Award or in establishing the true meaning of its terms. In this context, Romania argues that by adding "only" it seeks the confirmation of the findings made in the Award.[89] The Tribunal finds the Respondent's statement calling for a "confirmation" difficult to reconcile with the notion of interpretation: in reality, Romania does not seek a restatement of what the Tribunal stated in the Award. Rather, by referring to Article 54 of the ICSID Convention, as described above,[90] Romania is asking that the Tribunal interpret the ICSID Convention rather than the Award, whose findings are abundantly clear and do not need a "confirmation."

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86 See para. 36 above.

87 Moreover, the Tribunal takes note that none of the enforcement courts ever had any issues with enforcing the Award during the past seven years, which is an additional reassurance that the Award, and the findings of the Tribunal as reflected in the Award, are clear.

88 Such change appears for the first time in the Respondent's Prayer for Relief in the Memorial (not in the Application), which is then confirmed in the Reply.

89 Reply, para. 43.

90 See paras. 98-99 above.

b. On the other hand, if introducing the word "only" had any substantive meaning, *i.e.*, if it added to or explained the text of the Award, then doing so would result in correcting the findings of the Award. However, this correction is not a relief that the Parties are seeking in this proceeding and rightly so. Any request for correction of the Award would be time-barred: the time limit to seek correction – 45 days after the date on which the award was rendered – has long expired.[91]

101. Thus, adding "only" to Paragraph 1329 of the Award as requested by Romania is neither possible nor appropriate in this proceeding.

102. Finally, as follows from the Respondent's written[92] and oral[93] submissions, Romania's Prayer for Relief (a) in effect seeks to impugn the currency used in the enforcement proceedings in the United States (the US dollar). There is no issue whether the ICSID framework allows for the filing of an application for interpretation of an award at any time. However, as a matter of experience and pure logic, as more time passes after the issuance of the award, the more difficult it becomes for the party seeking interpretation to establish its concrete need for the interpretation sought, i.e. its interest. A request for general interpretation of the award - without any concretely applicable consequences - would become more and more difficult to admit with the passage of time; presumably, any application for general interpretation of the award would have been filed earlier. In other words, if a party seeks interpretation of an award *in abstracto*, without any concrete interest, a long time after the issuance of the award, the real reasons behind such

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91 *See* Article 49 of the ICSID Convention, which states that "[t]he Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched. (2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered."

92 Memorial, p. 49.

93 *See*, *e.g.*, Transcript, p. 24, lines 4-9.

> MR. WELDON: "Is the Award Amount pegged to the U.S. dollar or some other currency as to value? That's another question which the Parties appear to dispute. Did the Tribunal intend to peg this amount 8 to U.S. dollar, Great British [sic] pounds, to yen, to any other currency?"

See also Transcript, p. 28, lines 4-9.

> MR. WELDON: Specifically, it is about whether an award expressly 5 denominated in a particular currency can be satisfied 6 in that currency, even if the Rate of Exchange between 7 it and other currencies has changed, and also whether 8 the award-debtor can satisfy the Award if it pays the 9 full amount ordained in that Award.

conduct are required to be clear. In the present case, what has essentially been nine years after the Award was issued is a long period. The Respondent does not show any concrete and actual legal interest in clarifying the Tribunal's findings in the Award other than in connection with the US proceedings. However, the Tribunal never considered the issue of the RON's conversion into another currency for enforcement purposes: that issue was not addressed in the Award and arose subsequently during the enforcement proceedings in the US courts. Indeed, the Award made its reasoning and calculations in RON and, thus, retained the currency, in which the Parties denominated their prayers for relief.[94] However, the Award does not contain any restrictions on the currency used to discharge the obligations arising from the Award, *e.g.,* in connection with the enforcement of the Award, as none of the Parties ever raised this issue during the original arbitration. Thus, the Award could not and did not consider what the Parties and the enforcing courts would do to enforce the Award, whether in relation to the currency of the payment to discharge the Award's obligations or otherwise.

103. In sum, in the original arbitration the Tribunal did not venture outside of its remit; in particular, the Tribunal did not consider whether enforcement would allow or even require the conversion of the awarded RON claim into a different currency, let alone at what date such conversion should be performed or what would be the rate of interest on the amount in a different currency (other than RON).[95] The Tribunal notes that, in the US enforcement proceedings and as extensively discussed by the Parties in their submissions, the US court converted the Awarded Amount from RON to USD as of the date of the Award. Whether such decision is correct or not under US law is not for this Tribunal to determine. Making any determination on those issues would result in this Tribunal's interference[96] with the enforcement proceeding, in this case, the enforcement proceedings in the US and, in particular, in relation to currency conversion and its consequences, *i.e.*, matters that the Tribunal never considered. In any event, any dispute concerning the enforcement of an award and the scope of the enforcement activity of a court in a

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94 The Tribunal notes that at some point the Parties quantified some claims in euros, but, in the end, asked the Tribunal to adjudicate the claims in RON (*see* fn. 165 of the Award).

95 Likewise, neither did the Tribunal consider other matters that might arise after the rendition of the Award, like whether payment could be made by set-off or into an escrow account and under what conditions, just to take two examples that did materialize since 2013.

96 The Tribunal notes Romania's argument that the Tribunal's decision on the Application may be relevant to the enforcement proceedings in the US, as it forms part of the Award pursuant to Article 53(2) of the ICSID Convention. However, this argument is as uncontroverted as unavailing. The difficulty would possibly not have arisen if the request for interpretation had addressed a genuine ambiguity that would have been apparent; to put it mildly, that ambiguity does not exist and made its way in the aftermath of the impugned US enforcement proceeding.

Contracting State (in this case, the US courts) is beyond an ICSID tribunal's competence. Thus, as a matter of law, the interpretation that the Respondent is seeking is in fact an interpretation of the ICSID Convention rather than of the Award.[97]

104. In light of the above, the Tribunal considers that Romania's Prayer for Relief (a) does not concern the scope or meaning of the Award and goes beyond the findings made in the Award. Consequently, it is inadmissible.

ii. Romania's Prayer for Relief (b)

105. In Prayer for Relief (b), Romania asks the Tribunal to interpret whether in order to "abide by and comply with the terms of the Award" as required by Article 53 of the ICSID Convention, Romania is only required to pay the Awarded Amount to the Claimants (and the Claimants are entitled to nothing more).

106. For the Tribunal, Prayer for Relief (b) is similar to Romania's Prayer for Relief (a) and is inadmissible for the same reasons. Like Romania's Prayer for Relief (a), Prayer for Relief (b) is based on Articles 53 and 54 of the ICSID Convention, which the Award did not address.[98] As mentioned earlier, the Award does not contain any binding rulings based on Articles 53 and 54 of the ICSID Convention. Consequently, any interpretation based on those Articles of the ICSID Convention in this proceeding would go beyond what was decided in the Award.[99] Moreover, as discussed above, the matter in dispute between the Parties appears to be the decision of the US courts to convert the Awarded Amount from RON to USD as of the date of the Award, or related issues arising in the aftermath of the Award in the context of the US enforcement proceedings. The Tribunal reiterates that it is not within its mandate, and outside the scope of an interpretation proceeding, to opine on whether the decisions of US courts and their consequences are correct.[100]

107. Thus, the Tribunal concludes that the Respondent's Prayer for Relief (b) does not relate to the scope or meaning of the Award and is thus inadmissible.

iii. Romania's Prayer for Relief (c)

108. In Prayer for Relief (c), Romania asks the Tribunal to interpret whether Romania's payments of the Awarded Amount to the Claimants operate to satisfy the terms of Award

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97 *See* para. 96 ff above.

98 See fn. 47 above.

99 See Award, paras. 340-341.

100 See para. 101 above.

and discharge the pecuniary obligations under the Award, and thus the Claimants have no other remedy under the Award.

109. This Prayer for Relief is equally inadmissible for several reasons.

110. First, it relates to facts that occurred after the Award was rendered. In essence, Romania asks the Tribunal to consider the effects of Romania's payments allegedly made to the Claimants after 2013. These facts, unknown at the time, are not discussed in the Award and, consequently, cannot be subject to the Tribunal's interpretation. Moreover, the Tribunal is not a court overseeing the enforcement proceedings carried out in the national courts of the Contracting States.

111. Second, the Respondent's request relates to issues that were not decided with binding force in the Award. The request is based on events that took place after the Award was rendered, *i.e*., the Respondent's alleged payments pursuant to the Award and its compliance with the Award.[101] By definition, those events could not have been addressed in the Award.

112. Consequently, Romania's Prayer for Relief (c) is inadmissible, as it is based on facts and raises legal questions that were never considered – let alone decided with binding force – in the Award.

iv. Romania's Prayer for Relief (d)

113. Finally, the Respondent asks the Tribunal to interpret whether the Claimants' continued enforcement of the Award after Romania's alleged payment of the Awarded Amount to the Claimant amounts to a failure by the Claimants to abide by and comply with the terms of the Award.

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101 The Respondent admitted during the Hearing that the issue at stake is the compliance with the Award, even though the Respondent's position was contradictory.

See Transcript, p. 181, lines 1-2.

> MR. WELDON: "But it's a question of, well, upon payment of that calculation, is that compliance with the Award?"

See Transcript, p. 178, lines 13-20.

> ARBITRATOR ALEXANDROV: "Is the question of whether Respondent has satisfied the Award a question that is before us now?"
>
> MR. WELDON: "No. I think the question before you is what is required under the Award for satisfaction, what does compliance mean."

114. This request is equally inadmissible for the reasons stated earlier. First, it is based on facts that occurred after the Award was rendered. Second, it raises a legal issue, and even a new claim, (*i.e*., whether the Respondent complied with the terms of the Award and paid the Award), that was never raised during the original arbitration. Consequently, the Tribunal cannot interpret issues that are outside the scope of the Award.

b) Purpose to Obtain a True Interpretation

115. The failure to satisfy the first requirement of the applicable test (*i.e*., the existence of a dispute as to the *meaning or scope* of the award) is enough to dismiss the Respondent's Application. However, for the sake of completeness, the Tribunal will analyse the second prong of the applicable test, *i.e.,* whether the purpose of Romania's Application is to obtain a true interpretation of the Award.

116. Based on the prayers for relief put forward by the Respondent, the Tribunal is doubtful that Romania is seeking a genuine interpretation of the Award. As analysed above, none of Romania's prayers for relief concern the scope or meaning of the Award. Rather, they either raise new legal and factual issues that were never discussed, let alone resolved, in the original arbitration or may cause ambiguity to arise where there is none (as with adding the word "only"). This leads the Tribunal to conclude that Romania wishes to tackle issues associated with the enforcement of the Award, rather than the terms of the Award itself.[102] Moreover, the record of this proceeding does not show that either the Respondent prior to filing its Application in 2022, or the Claimants, or any of the enforcement courts – whether in Romania, Sweden, the United Kingdom, Belgium, Luxembourg or the United States – during the seven years of the enforcement proceedings have ever expressed any difficulty in understanding the scope and meaning

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102 The Tribunal understands that the Respondent is looking for "a central authority" that would "clarify" enforcement issues. See Transcript, pp.175-176, lines 3-22, 1-3.

> MR. WELDON: "[…] if you're going to project that upon the Award itself under the ICSID Convention, that can't be right because, like I said, well, then, what country do we go to find clarity? Is it the Romanian court system? Is it the U.S. court system? Is it the English court system? Or the Swedish court system? Which one is going to tell us that the Award has, in fact, been satisfied, or is it just the highest number so we just have to keep paying until the highest number is paid? It can't be the latter. They could go file a case in Australia today. So, on what basis would they be able to file it under the Award? The outstanding amount is--there's an outstanding amount on the Judgment in the U.S., but how could they go to Australia and say the Award hasn't been satisfied, please recognize this and enforce it under Article 54. That's a big--that's a big issue. There has to be some sort of central role for you to say oh, no, this is what is required under the Award, otherwise we wouldn't--you could just put his--register this in every country and as long as local law would let you, just keep collecting. And that can't be the intention of--behind this Treaty."

of the Award. Interpretation is a proceeding to ascertain the meaning and scope of a text, here the Award, and nothing more. As instruments establishing methods of interpretation of legal instruments, such as the Vienna Convention on the Law of Treaties, show, interpretation will first and foremost look at the text itself. This is not what Romania is asking the Tribunal to do.

117. With these considerations in mind, the Tribunal reiterates its conclusion made above that the Respondent's Application is inadmissible.

118. Thus, for the sake of procedural economy and mindful of its decision on costs below, the Tribunal finds it unnecessary to analyse whether the Respondent's Application constitutes an abuse of process. The two arbitrators of the Majority ("the Majority") have studied the Separate Opinion that their esteemed Colleague, the third Arbitrator ("the Minority") prepared. The Majority has no comments on the Separate Opinion. The Majority considers the reasoning in the Decision to be sufficient to reject the Request for Interpretation. The Minority arbitrator would rather reject it on a different ground, i.e., for being untimely. Thus, the three arbitrators unanimously agree that the Application should be rejected although they do so for different reasons. The Tribunal has thus not considered it necessary to address in its Decision Claimants' additional argument that the Request for Interpretation constitutes an abuse of process. Had it done so, the Tribunal, either unanimously or by majority, would have considered whether Respondent's untimely filing of its Application constitutes an abuse of process, which would appear in the circumstances to be an additional ground for rejecting the Application.

VII. COSTS

1) The Claimants' Position

119. The Claimants request that the Tribunal order Romania to bear all costs incurred by the Claimants in connection with Romania's Application, including the fees of the Claimants' counsel, translation costs, travel expenses, and other costs associated with the Hearing. The Claimants also request that Romania bear all costs of this interpretation proceeding, including the fees and expenses of the members of the Tribunal and ICSID, and the charges for the use of the facilities at the Centre.[103]

[103] C-Costs, para. 2.

120. The Claimants maintain that their costs are reasonable.[104] Moreover, they attempted in good faith to reduce the costs of this proceeding as much as possible.[105] Specifically, they maintained since the outset of the proceedings that only one round of written submissions was necessary. Moreover, as regards the Hearing, they advocated that no Hearing was necessary and, in any event, it should be limited to one presentation per Party which should last only 90 minutes.[106] Romania's demands forced the Claimants to more than double their fees by preparing additional submissions and participating in a Hearing.[107]

121. The Claimants' legal fees and costs incurred in the proceeding as of 31 May 2023 are set forth below:[108]

	Claimants' Costs Through The Counter-Memorial Submission		**Claimants' Costs After The Counter-Memorial Submission**	
	Fees	**Expenses**	**Fees**	**Expenses**
FA Vasquez Consulting	€ 52,571.50	€ 0	€ 37,739.50	€ 0
Three Crowns	€ 43,000[28]	€ 0	€ 57,000	€ 0
White & Case	$ 325,052.45	$ 571.56	$ 420,681.10	$ 9,056.38
TOTAL US$	$ 325,052.45	$ 571.56	$ 420,681.10	$ 9,056.38
TOTAL EUR	€ 95,571.50	€ 0	€ 94,739.50	€ 0

122. Thus, the Claimants request the following relief:[109]

> "For the foregoing reasons, Claimants request that the Tribunal:
>
> • Order Romania to pay all costs and legal fees incurred by Claimants in relation to the proceeding; and
>
> • Order Romania to bear all costs of the proceeding, including the fees and expenses of the members of the Tribunal and ICSID, and the charges for the use of the facilities at the Centre."

104 C-Costs, paras. 10-12.

105 C-Costs, para. 8.

106 C-Costs, para. 8.

107 C-Costs, para. 9.

108 C-Costs, para. 12.

109 C-Costs, para. 13.

2) The Respondent's Position

123. The Respondent has incurred the following costs in connection with this arbitration:[110]

Description	Amount (USD)	Amount (GBP)
ICSID / Tribunal Fees and Expenses	310,000	
Counsel Fees and Expenses	310,400	
Expert Fees		55,500
TOTAL	**620,400**	**55,500**

124. Moreover, in mid-July – early August 2023, the Respondent paid further advance on costs in the amount of USD 200 000, on behalf of both Parties. Thus, the Respondent's overall payment of the advance on costs amounts to USD 510,000.[111]

125. The following is a summary of the counsel fees incurred by Romania in connection with these proceedings, namely the fees for attorneys Ms. Ioana Salajanu and Mr. Matthew Weldon:[112]

Invoice No.	Amount (USD)
20	23,760
22	8,400
23	1,880
26	11,060
27	57,980
28	93,440
30	66,160
32	47,720
TOTAL	**310,400**

126. The following is a summary of the expert fees incurred by Romania in connection with these proceedings, namely the fees of Prof. Maurice Mendelson, KC:[113]

110 R-Costs, para. 6.

111 R-Costs, para. 8.

112 R-Costs, para. 9.

113 R-Costs, para. 10.

Invoice No.	Amount (GBP)
160081	22,500
161412	30,000
TOTAL	**52,500**

127. For Romania, its costs are indisputably reasonable.[114] Romania submits that it should be awarded all of its costs, regardless of the outcome of this interpretation proceeding because this dispute arises due to the Claimants' "opportunistic, unjust, and improper efforts to collect an additional $100 million in excess of what the Tribunal ordered Romania to pay Claimants in the Award."[115]

128. Thus Romania respectfully requests that "the Tribunal award it all of its costs, comprised of USD 620,400 and GBP 52,500, together with interest at the rate of LIBOR +2% as from the date of the Award until payment."[116]

3) The Tribunal's Analysis

129. It is well established that ICSID tribunals have "broad discretion to decide on the allocation of costs," including with respect to "post-Award applications" such as Romania's Application.[117]

130. The Tribunal discussed the principles of costs allocation in the Award:[118]

> "1326. The Parties agree that the Tribunal has broad discretion to allocate all costs of the arbitration, including legal fees and expenses, between the Parties as it deems appropriate, pursuant to Article 61 of the ICSID Convention. Both sides argue that a costs award is warranted because they should prevail in the arbitration and because the other party has conducted the arbitration in a manner which has led to delay and increased costs.
>
> 1327. The Tribunal has considered all the circumstances of this case: the procedure (including the jurisdictional phase, the Parties' requests for production of documents, the Claimants' requests for provisional measures, the Respondent's request for revocation of provisional measures, the Claimants' request for a site visit, the merits phase of the proceeding, the Claimants' revised request for relief, and multiple hearings) as well as the Parties' substantive arguments on jurisdiction, admissibility and the merits. As evidenced by Section II above, there were numerous procedural issues and difficult legal questions

114 R-Costs, paras. 28-31.

115 R-Costs, paras. 15-20.

116 R-Costs, para. 37.

117 *Bosh International, Inc. v. Ukraine*, ICSID Case No. ARB/08/11, Award dated 25 Oct. 2012, **Exh. CIL-53**, para. 288; *Midland v. Mexico*, para. 65; *Minnotte and Lewis v. Poland*, paras. 14-17.

118 See paras. 1326-1328 of the Award.

> involved in the jurisdictional and merits phases. Many of these issues were far from clear-cut and involved meritorious arguments by both Parties. The Claimants have prevailed on jurisdiction and have established a breach of the fair and equitable standard under the BIT. They have, however, only been partially successful in regard to their claims for damages, which evolved during the proceedings.
>
> 1328. In light of these factors, the Tribunal has concluded that it is fair overall that both sides (that is, the five Claimants on one side and the Respondent on the other) bear the costs of the arbitration (the fees and expenses of the Members of the Tribunal and the charges for the use of the facilities of the Centre) in equal shares, and that each side bears its own legal and other costs incurred in connection with this case."

131. Both the Claimants and the Respondent seek an award of the entirety of the costs related to this interpretation proceeding, including the legal fees and the costs of the arbitration (the fees and expenses of the Members of the Tribunal and the charges for the use of the facilities of the Centre). Those amount to (in USD):

Arbitrators' fees and expenses	
Dr. Laurent Lévy	134,596.94
Dr. Stanimir Alexandrov	60,700.00
Mr. J. Christopher Thomas KC	78,868.90
Ksenia Panerai 's fees and expenses	62,737.17
ICSID's administrative fees	84,000
Direct expenses	9,555.16
Total	**430,458.17**

The above costs have been paid out of the advances made by the Respondent.[119]

132. The Claimants' legal and other costs exceed the Respondent's by about 20% and there is no excessive disproportion, especially as there is only one Respondent while there are five Claimants, who have retained two different teams of lawyers.

133. As described above, the Tribunal concluded that the Respondent's Application is inadmissible. In these circumstances, mindful of its wide discretion afforded in cost allocation and with due regard to the Parties' relative success and failure in submitting

[119] The remaining balance will be reimbursed to Romania.

their claims and defenses, the Tribunal considers that the cost allocation most appropriately reflecting the outcome of the proceedings is for the Respondent to bear the entirety of the interpretation proceeding's costs and the entirety of the Parties' costs. The Tribunal considers that the Claimants' costs in the amount of **USD 755,361.49 plus EUR 190,311**[120] are reasonable given the length of submissions, the nature of the dispute and the complexity of the issues involved. Moreover, the Respondent did not raise any objections to the reasonableness of the Claimants' costs. For the sake of avoiding any doubt, the Tribunal has noted the Respondent's argument that the Claimants should bear all costs regardless of the outcome of this interpretation proceeding because this dispute arises due to the Claimants' "opportunistic, unjust, and improper efforts to collect an additional $100 million in excess of what the Tribunal ordered Romania to pay Claimants in the Award." In the view of the Tribunal, first, the record is definitely insufficient to establish that assertion and, second, even if it were so, seeking interpretation would not have been the appropriate remedy and has in fact resulted in a squandering of funds.

134. While making this decision, the Tribunal is mindful that the Claimants' Request for Security for Costs was dismissed. At the same time, the Tribunal appreciates the Claimants' attempts to reduce the costs of this proceeding as much as possible and, in light of that, will not alter the cost allocation described above.[121]

VIII. DECISION

135. For the foregoing reasons, the Arbitral Tribunal renders the following decisions:

a. The claims made in the Respondent's Application for Interpretation are inadmissible;

b. The Respondent shall bear all costs of the proceeding, including the fees and expenses of the members of the Tribunal and ICSID, and the charges for the use of the facilities at the Centre;

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120 The Tribunal makes the following calculations based on the table presented in the Claimants' Costs Submission: 1) **TOTAL USD**: USD 325,052.45 (fees through the Counter-Memorial Submission) + USD 571.56 (expenses through the Counter-Memorial Submission) + USD 420,681.10 (fees after the Counter-Memorial Submission) + USD 9,056.38 (expenses after the Counter-Memorial Submission) = USD 755,361.49; and 2) **TOTAL EUR**: EUR 95,571.50 (fees through the Counter-Memorial Submission) + EUR 94,739.50 (fees after the Counter-Memorial Submission) = EUR 190,311.

121 See para. 133 above.

c. The Respondent shall pay USD 755,361.49 plus EUR 190,311 to the Claimants, as a contribution to the legal fees and other expenses, which the Claimants incurred in connection with this proceeding;

d. All other requests for relief are dismissed.

Dr. Stanimir A. Alexandrov
Arbitrator

Date: 7 December 2023

Mr. J. Christopher Thomas KC
Arbitrator

Date: 7 December 2023

(*subject to the attached Separate Opinion*)

Dr. Laurent Lévy
President of the Tribunal

Date: 7 December 2023