

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

MOL HUNGARIAN OIL AND GAS PLC

Claimant

v.

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

Respondent

AMENDED REQUEST FOR ARBITRATION

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TABLE OF CONTENTS

Contents

I.	INTRODUCTION	1
II.	THE PARTIES TO THE DISPUTE	3
	A. The Claimant.....	3
	B. The Respondent	4
III.	SUMMARY OF THE DISPUTE	5
	A. MOL’s Initial Investment In INA In 2003.....	5
	B. MOL’s Increased Investment In INA In 2008	6
	C. The Parties’ Agreements Reflecting The Government’s Undertakings Regarding INA’s Gas Business	9
	D. The Government’s Breach Of The Gas Master Agreement.....	13
	E. Additional Measures Aimed At Diminishing The Value Of MOL’s Investment In INA And Otherwise Violating The Protections Owed To MOL under the ECT	15
IV.	THE PRESENT DISPUTE ARISES UNDER THE ENERGY CHARTER TREATY.....	21
	A. MOL’s Efforts To Settle This Dispute Amicably.....	22
	B. Parties’ Consent To Arbitrate	23
	C. The Claimant Is An Investor Protected Under The Energy Charter Treaty	23
	D. MOL Holds An Investment Protected Under The Energy Charter Treaty	24
	E. The Government Of Croatia Has Breached Its Obligations Under Article 10(1) Of The Energy Charter Treaty	25
	F. The Government of Croatia Has Breached Its Obligations Under Article 13 Of The Energy Charter Treaty	26
V.	ICSID JURISDICTIONAL REQUIREMENTS.....	26
	A. Nationality.....	27
	B. Legal Dispute	27
	C. Investment.....	28
	D. Croatia Has Consented To Arbitration Under The ICSID Convention.....	28
	E. Excluded Disputes	28
	F. Exhaustion of Local Remedies	28

VI.	PROCEDURAL MATTERS	29
VII.	REQUEST FOR RELIEF	30
VIII.	CONCLUSION.....	30

I. INTRODUCTION

1. MOL Hungarian Oil and Gas Company Plc (“MOL” or “Claimant”) is and has been for many years one of the largest foreign investors in Croatia. This arbitration relates to and arises out of MOL’s investment of over USD 1.8 billion in Croatia’s most significant energy company, Industrija Nafta dd (“INA” or the “Company”).

2. MOL first invested in Croatia in 2003, when it acquired 25% + 1 share of INA following a tender issued by the Government of the Republic of Croatia (the “Government of Croatia” or the “Government”). In 2008, MOL increased its shareholding to become the single largest shareholder in INA and thereby took management control of the Company. Since investing in the company, MOL has undertaken numerous measures to improve INA’s financial standing, and has modernized and expanded INA by making important investments in INA’s key assets. MOL’s investments have significantly contributed to the Croatian economy as well as to Croatia’s energy security and independence.

3. Today, MOL remains the single largest shareholder in INA, holding 49.08% percent of the Company. The next largest shareholder is the Government of Croatia itself, with 44.84% of the Company. Having invested so significantly in INA, MOL has endeavored to work in partnership with the Government to grow and improve the Company for the benefit of all of its shareholders.

4. For reasons having nothing to do with MOL’s management of the Company, the Government of Croatia has failed to observe its obligations with respect to MOL’s investment in INA and Croatia, and has undertaken a series of measures designed to take back control of INA, without compensation and in violation of MOL’s legal rights. The Government’s conduct – its actions and inaction – have violated its obligations to MOL under international law and Croatian

law, causing MOL substantial damages (to be quantified in the course of these proceedings). Having tried unsuccessfully to resolve this matter amicably and in good faith with the Government, MOL has had no choice but to commence this arbitration.

5. Accordingly, MOL, a company constituted in accordance with the laws of Hungary, hereby requests the institution of arbitration proceedings against the Government of Croatia, in accordance with Articles 25 and 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“ICSID Convention”) and Rules 1 and 2 of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (“Institution Rules”).

6. This arbitration is brought pursuant to the Energy Charter Treaty of 1994 (“ECT”), which was ratified by Croatia on 31 October 1997¹ and by Hungary on 8 April 1998.² Article 26 of the ECT sets forth Croatia’s consent to arbitrate disputes before the International Centre for Settlement of Investment Disputes (“ICSID”). The present Request for Arbitration serves as MOL’s consent to arbitrate its disputes concerning the Government’s breach of its obligations under the ECT.

7. MOL’s claims arise out of, *inter alia*, the Government’s: (a) failure to observe its obligations and undertakings to MOL; (b) unfair and inequitable treatment of MOL’s investment in INA; (c) unreasonable and discriminatory measures that have impaired MOL’s investment in INA; (d) failure to accord MOL’s investment in INA full protection and security; and (e) failure to create a stable, equitable, and transparent framework for MOL’s investment. MOL

¹ Croatia’s Instrument of Ratification of the ECT and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects dated 31 October 1997. The Instrument of Ratification was deposited by Croatia on 9 December 1997 (Exh. C-001).

² Hungary’s Instrument of Ratification of the ECT and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects dated 1 April 1998. The Instrument of Ratification was deposited by Hungary on 8 April 1998 (Exh. C-002).

specifically reserves its rights to amend or supplement its claims in the course of these proceedings.

8. Pursuant to Article 2 of the Institution Rules, MOL sets out below the particulars of the Parties (II); a summary of the dispute arising under the ECT (III); fulfillment of the conditions to submit a dispute to arbitration under the ECT (IV); compliance with the prerequisites for ICSID jurisdiction (V); the proposals of MOL concerning the constitution of the Arbitral Tribunal, the place of arbitration and the language of the arbitration (VI); and a preliminary statement of the relief sought (VII).

II. THE PARTIES TO THE DISPUTE

A. The Claimant

9. MOL is a vertically integrated oil and gas company with operations in several countries. It is incorporated under the laws of Hungary and maintains its headquarters in Budapest. MOL's core business comprises the extraction, production and trading of hydrocarbons. MOL's contact details are as follows:

MOL Hungarian Oil and Gas Company Plc
Attn.: Mr. Pál Kara, General Counsel (pkara@mol.hu)
Október huszonharmadika u.18
Budapest, 1117
Hungary

10. MOL has authorized Weil, Gotshal & Manges LLP to institute and pursue these proceedings on its behalf.³ MOL is represented in this arbitration by:

Arif H. Ali
Alexandre de Gramont
Samaa A. Haridi
Marguerite Walter
Erica Franzetti

³ See MOL's Board of Directors Resolution dated 25 November 2013 (Exh. C-003) and letter from MOL to ICSID dated 25 November 2013 (Exh. C-004).

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11. All correspondence and communications intended for Claimant in this arbitration should be directed to its counsel and to Mr. Kara.

B. The Respondent

12. The Respondent in this arbitration is the Republic of Croatia represented by the Government of the Republic of Croatia. Respondent's contact details are as follows:

Office of the Prime Minister
Republic of Croatia
Trg sv. Marka 2
10 000 Zagreb
Croatia
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13. MOL's counsel understands that the following counsel is representing Respondent in connection with this dispute:

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III. SUMMARY OF THE DISPUTE

A. MOL's Initial Investment In INA In 2003

14. INA, the largest company in Croatia, is a medium-sized European oil company. As the largest Croatian taxpayer, INA plays a leading role in the Croatian hydrocarbon industry and enjoys a strong position in the region in oil and gas exploration, production, processing, and distribution activities. INA's largest shareholders are MOL and the Croatian Government, while a minority of INA's shares are owned by private and institutional investors. INA's shares have been listed on the London and Zagreb stock exchanges since 1 December 2006. The INA Group is composed of several affiliated companies wholly or partially owned by INA, with its headquarters in Zagreb, Croatia.

15. In the early 2000s – after nearly forty years of exclusive government ownership – the Government of Croatia began the process of privatizing INA, in accordance with a recommendation by the International Monetary Fund.

16. In 2002, the Croatian Parliament, under then Prime Minister Ivica Račan, passed the INA Privatization Act, paving the way for private ownership in INA.⁴ The INA Privatization Act provided for the transfer of a significant portion of the Government's shares in INA to a number of target groups, including, as a first step, the direct sale of 25% plus one share to a “Strategic Investor.”⁵

17. The INA Privatization Act defines “Strategic Investor” as “one or a number of legal entities performing the business activity related to production, processing and sale of oil

⁴ Law on the Privatization of INA-Industrija Nafta d.d. (INA-Oil Industry) (Official Gazette 32/02) (Exh. C-005)

⁵ Article 4 (1), Point 3 of the INA Privatization Act (Exh. C-005). In addition, the law provided for the public offering of a minimum of 15% to Croatian citizens and legal entities, as well as foreign investors; the free transfer of 7% to Croatian war veterans and their families; and the direct sale of a maximum of 7% to INA's employees (Article 4 (1), Points 1-2 and 4 of the INA Privatization Act).

and gas and which are ready to assume joint and several liability for regular fulfillment of their contractual obligations.”⁶ Under the law, the Government was to retain 25% plus one share of INA until its accession to the European Union (“EU”), and then privatize its remaining shares in accordance with legislation to be adopted upon EU accession.

18. In order to implement the INA Privatization Act, the Government of Croatia invited bids for the sale of 25% plus one share of INA from potential “Strategic Investors” in 2002. MOL’s bid was declared the winning bid in July 2003, with a cash offer of USD 505 million.

19. To memorialize their respective shareholders’ rights in INA, MOL and the Government entered into the Shareholders’ Agreement dated 17 July 2003 (the “Shareholders’ Agreement”).⁷ The Shareholders’ Agreement granted MOL the right to delegate two members to INA’s seven member Supervisory and Management Boards, including INA’s chief financial officer.⁸ The Shareholder’s Agreement also granted MOL co-decision rights with the Government over certain reserved matters, including the approval or amendment of INA’s business plan. The Shareholders’ Agreement also provided for a five-year “lock-up” period; *i.e.*, MOL undertook not to sell or dispose of the share package acquired from the Government for a period of five years following completion of the transaction without the Government’s prior consent.⁹ The transaction was completed on 10 November 2003, when the Croatian and Hungarian competition authorities gave their approval for the transaction to go forward.

B. MOL’s Increased Investment In INA In 2008

⁶ Article 6 (3) of the INA Privatization Act (Exh. C-005).

⁷ Shareholders’ Agreement dated 17 July 2003 (Exh. C-006).

⁸ *See* Sections 7.1, 7.2 and 7.2.2 of the Shareholders’ Agreement (Exh. C-006).

⁹ Section 11.1 of the Shareholders’ Agreement (Exh. C-006)

20. In the 2003-2007 period, the Government of Croatia continued the process of privatizing INA, in accordance with the INA Privatization Act.¹⁰ The Government eventually diluted its shareholding in INA below 50%, by floating 15% of INA's shares on the Zagreb Stock Exchange and transferring 14% to INA's employees and Croatian war veterans. At the beginning of 2008, the Government and MOL started negotiating the modification of the Shareholders' Agreement. Several factors conditioned the negotiations:

- a.) First, by diluting its stake below 50%, the Government forfeited its right to nominate a majority of INA's seven-member Supervisory and Management Boards under the terms of the Shareholders' Agreement and accepted that it would be entitled to nominate two members only.¹¹ The remaining members of INA's Supervisory Board were to be elected by a simple majority of the shareholders at INA's shareholders' meeting (and the remaining members of INA's Management Board were to be elected by a simple majority of INA's Supervisory Board).¹²
- b.) Second, INA's financial situation turned dire as the global financial crisis hit Croatia – and INA – particularly hard, while INA's capital expenditures were at a peak as a result of previous investment commitments made by INA's Government-dominated management.

¹⁰ See para III.A.14 above.

¹¹ See Sections 7.1.1.(a) and 7.2.1. (a) of the Shareholders' Agreement (providing that a Shareholder with more than 25% but less than 50% of the Shares can nominate two members of the Supervisory and Management Boards) (Exh. C-006).

¹² See Sections 7.1.1.(c) and 7.2.1. (c) of the Shareholders' Agreement (Exh. C-006). One member of INA's Supervisory Board was to be nominated by employee representatives, in accordance with Croatian company law.

c.) Third, Croatian gas price regulations required INA to sell gas at below regional market prices domestically, while INA had to buy gas on the international market at much higher prices to satisfy local demand, which caused huge losses to INA.

d.) Fourth, the five-year prohibition on MOL's selling of its shares in INA under the Shareholders' Agreement was set to expire in November 2008. The Government wanted – and, indeed, needed – for MOL to remain in Croatia, maintain its ownership interest and save INA from bankruptcy.

21. In order to avert the risk that INA would breach the covenants under its USD 1 billion main financing agreement, the Government and MOL first had to find a swift solution to the mounting losses in INA's gas business. Therefore, the Government and MOL agreed to spin off the gas business from INA.

22. From MOL's standpoint, if the Government was going to acquire the gas storage business, it also made sense for the Government to acquire the gas trading business, as these are closely linked. The gas storage business was lucrative; the gas trading business was losing money because of the manner in which the Government had been regulating domestic gas prices.

23. In August 2008, the Government and MOL confirmed that the Government would take over parts of the gas business:

The initiative to unbundle a state-owned Trading and Storage Co. from INA has been confirmed.

The new Trading Co. shall have the gas supply obligation in Croatia, and to undertake rights and obligations from INA's existing gas source and gas sales contracts.¹³

24. The agreement to transfer the gas business to the Government allowed INA to treat the loss-making gas business as a "Discontinued Operation" on its 2008 balance sheet, and

¹³ Meeting memo of 26 August 2008 regarding the Croatian gas market structure (Exh. C-007)

thus to avert the breach of INA's USD 1 billion syndicated loan agreement, which would have led to the certain bankruptcy of the company at the end of 2008.¹⁴

25. Relying on the fact that the Government had agreed to acquire INA's gas storage *and* trading businesses, MOL took steps to acquire additional shares in INA, in the second half of 2008. By October 2008, MOL had increased its stake in INA from 25% plus 1 share to 47.15%, thereby becoming INA's single largest shareholder in a transaction in which MOL paid 6.2 billion Croatian Kuna ("HRK") – or approximately USD 1.1 billion – for the newly acquired shares.¹⁵

C. The Parties' Agreements Reflecting The Government's Undertakings Regarding INA's Gas Business

26. To implement the agreement that had been reached regarding INA's gas business, the Government and MOL entered into the Gas Master Agreement,¹⁶ pursuant to which INA's gas storage and trading businesses were to be spun off into separate subsidiaries (hereafter the Gas Storage Company and the Gas Trading Company) and transferred to the Government by 31 January 2009 and 1 July 2009 respectively.¹⁷ The Gas Trading Company would take over INA's statutory obligation to supply certain consumer groups (such as households) with gas at regulated prices.¹⁸ The Government agreed that it would acquire both the Gas Storage Company and the

¹⁴ See INA's Annual Report for 2008 (Exh. C-008), at p. 15:

In the context of all operations in 2008, the INA Group recorded a loss of HRK 1,099 million for the year (compared to a net profit of HRK 869 million in 2007), out of which the loss on gas business (discontinued operations) was HRK 1,450 million. Not including losses from discontinued activities, INA had a net profit of HRK 352 million.

¹⁵ See MOL Investor Flash Report dated 10 October 2008 (Exh. C-009).

¹⁶ Gas Master Agreement between the Republic of Croatia and MOL dated 30 January 2009 (Exh. C-010).

¹⁷ See Articles 2.1.1, 3.1.1 and 3.2.1 of the Gas Master Agreement (Exh. C-010).

¹⁸ See Article 2.1.2 of the Gas Master Agreement (Exh. C-010):

Gas Trading Company, not only to relieve INA of its loss-making gas business, but also for reasons of “national security” and in anticipation of its accession to the EU.¹⁹

27. To further cushion the integration of Croatia’s gas market into the higher priced EU market, the Government and MOL agreed that INA would enter into a 15-year gas supply agreement with the Gas Trading Company (the “Long Term Gas Supply Agreement”),²⁰ under which INA would sell domestically produced gas to the Gas Trading Company at a price hedged against the average gas sales price of INA during 2008. If international market prices were to increase compared to such hedged price, INA would only incorporate a certain portion of such price increase in the sale price to the Gas Trading Company and would absorb the shortfall amount.²¹

28. INA’s expected losses under the Long Term Gas Supply Agreement were to be set off by capped mining royalties payable by INA to the Government, which would gradually

The Parties agree that upon the separation of the Gas Trading Activity to the Trading Co., the gas procurement obligation in Croatia as per Article 38 of the Law on Gas Market shall be placed on the Trading Co. Immediately upon the signing of this Agreement, the Government shall use its best endeavors in order to the adoption and announcement, all in accordance with Croatian law, of the Amendment of the Law on Gas Market and to bring it into force as soon as possible after the signing of this Agreement but not later than 31st March, 2009.

¹⁹ Gas Master Agreement (Exh. C-010), Recitals (A), (B), and (C).

²⁰ Section 2.2.1 (*Long Term Gas Supply Agreement*) of the Gas Master Agreement (Exh. C-010).

²¹ INA’s obligation to absorb such shortfall amount would gradually decrease from 99% in 2009 to 10% in 2013 and would stabilize at 5% from 2014 onwards (*see* Section 7 (*Price*) of Schedule 2 (*Term Sheet of the Long Term Gas Supply Agreement*) of the Gas Master Agreement (Exh. C-010)). INA would also provide an USD 100 million credit line to the Gas Trading Company under very favorable terms, in order to finance the Gas Trading Company’s purchases under the gas import contract [Gazprom] that would be assigned by INA to the Gas Trading Company (Section 2.2.1.3 of the Gas Master Agreement). In addition, INA’s refineries would purchase gas from the Gas Trading Company at a price guaranteeing the recovery of the Gas Trading Company’s costs plus a margin (Section 2.2.4 of the Gas Master Agreement).

increase over the term of the Long Term Gas Supply Agreement.²² The capping of mining royalties was key to the feasibility and implementation of the Gas Master Agreement.²³

29. Accordingly, the discounts provided by INA to the Gas Trading Company were linked to the implementation of the royalty rates agreed in the Gas Master Agreement. The price discounts to be provided by INA to the Gas Trading Company (which was to be owned by the Government) were to be financed through a reduction in the hydrocarbon royalty rates payable by INA to the Government. The parties agreed that were Croatia to increase such royalties in contravention of the Gas Master Agreement, then INA would be free to increase the gas price charged to the Gas Trading Company to compensate for such royalty increase.²⁴

30. In order to further consolidate INA's financial position and to reflect INA's changed ownership structure, the Government and MOL executed the First Amendment to the Shareholders' Agreement ("FASHA") on the same day as the Gas Master Agreement.²⁵ The FASHA removed the adoption of INA's business plan from the reserved matters that required the affirmative vote of both the Government and MOL and, as a reflection of MOL's increased

²² Section 2.2.2 (*Royalty Agreement*) of the Gas Master Agreement (Exh. C-010).

²³ See Recital (E) of the Gas Master Agreement (Exh. C-010) (emphasis added).

²⁴ See Schedule 2 (*Term Sheet of the Long Term Gas Supply Agreement*), Section 7 (*Price*) of the Gas Master Agreement (Exh. C-010):

All calculations of sales price of gas P according to this Article shall be valid only if the amount of royalty is set according to the Royalty Agreement. Should higher royalty be applied than agreed in the Royalty Agreement, Seller shall be entitled to modify the gas price in a way that Seller should be in the same economic situation as if the Royalty Agreement would apply.

²⁵ First Amendment to the Shareholders Agreement relating to INA-INDUSTRIJA NAFTE d.d. dated 30 January 2009 (Exh. C-011)

shareholding, formalized MOL's right to nominate a majority of the members of INA's Supervisory and Management Boards.²⁶

31. The FASHA allowed MOL to include INA among the companies consolidated under the MOL Group's balance sheet. Such consolidation placed MOL under an indirect obligation to maintain INA's liquidity, as INA's bankruptcy would henceforth cause MOL to breach the financial covenants under the loan agreements between MOL and its creditors (cross-default). Similar to the original Shareholders' Agreement, the FASHA contained a lock-up period, prohibiting MOL from selling any of its shares (including the shares acquired in the course of the public offering and not only the ones acquired from the Government) for a five-year period following the FASHA's effective date. In addition, the Government was granted a right of first refusal and, subject to various conditions, a repurchase right over all of the shares held by MOL in INA. It was agreed that if the Government breached any of its material obligations under the Gas Master Agreement (such as the obligation to purchase the Gas Trading Company), the lock-up period, right of first refusal and repurchase right specified in the FASHA would terminate and MOL would be free to dispose of any or all of its shares in INA at its own discretion.²⁷

²⁶ MOL's control over INA was approved by the European Commission on 18 May 2009. (See MOL Investor Flash Report dated 18 May 2009 (Exh. C-012).

²⁷ See Sections 11.2.2 and 13.2 of the FASHA (Exh. C-011).

D. The Government's Breach Of The Gas Master Agreement

32. As agreed, MOL had INA spin off its gas storage business and gas trading business into separate entities.²⁸ Yet – while the Government proceeded to acquire the lucrative Gas Storage Company – it refused to acquire the money-losing Gas Trading Company, leaving it as a wholly-owned subsidiary of INA. The deadline for the Government's acquisition of the Gas Trading Company from INA under the Gas Master Agreement – 1 July 2009 – came and went with no action on the part of the Government.

33. On 3 July 2009, MOL sent the Government a Notice of Breach of the Gas Master Agreement.²⁹ In the meantime, the Croatian Prime Minister at the time, Mr. Ivo Sanader, had resigned his position on 1 July 2009, to be succeeded as Prime Minister by Ms. Jadranka Kosor. In the ensuing months, MOL proceeded to negotiate with the new administration of Prime Minister Kosor, in an effort to seek an amicable resolution of the Government's breach of the Gas Master Agreement.

34. At the end of September 2009, the Government of Croatia assured MOL of its commitment to acquire the Gas Trading Company³⁰ and, on 16 December 2009, the Government and MOL entered into the First Amendment to the Gas Master Agreement ("FAGMA"). The FAGMA was intended to remedy the Government's failure to acquire the Gas Trading Business, but it also went beyond that. The FAGMA comprised a new package of measures intended to consolidate INA's finances by mitigating its losses accrued in respect of the Gas Trading

²⁸ Thus, the gas storage business was spun off into Podzemno skladište plina d.o.o., a fully owned subsidiary of INA, and the gas trading business was spun off into Prirodni Plin d.o.o (or "PP" by its Croatian acronym), also fully owned by INA. Podzemno skladište plina d.o.o. was transferred to an entity controlled by Croatia (the Croatian Gas Transmission System Operator, Plinacro) by way of a purchase and sale agreement executed on 30 January 2009. PP is owned to this day by INA, due to the Government's failure to honor its commitments to MOL.

²⁹ Letter from MOL to Croatia dated 3 July 2009 (Exh. C-013).

³⁰ Letter from Croatia to MOL dated 29 September 2009 (Exh. C-014)

Business and to restructure Croatia's gas sector in anticipation of EU Accession. The FAGMA, just as the Gas Master Agreement, comprised a set of inter-connected elements, which, taken together, were intended to foster and promote the operation of INA and the further development of Croatia's gas market.

35. Among other things, MOL agreed in the FAGMA to provide INA with sufficient financing to cover the tax debt and default interest that INA had accumulated as a result of its poor financial condition in the amount of HRK 1 billion – approximately USD 170 million. The Government, for its part, accepted a number of obligations under the FAGMA, including that:

- It would honor its previous agreement to acquire the Gas Trading Company (Prirodni Plin d.o.o or "PP" by its Croatian acronym) from INA – and that it would do so on or before 1 December 2010;³¹
- Effective 1 January 2010, INA (PP) would be allowed to increase the price of gas marketed to household consumers by 33 lipas/m³.³² Until the extended deadline for Croatia's acquisition of PP, further price increases would be subject to Government approval and would allow PP to operate without "Gas Losses";³³
- Effective from 1 January 2010, INA (PP) would be allowed to increase the price of gas marketed to non-household consumers by 30 lipas/ m³;³⁴ and
- The royalties imposed on INA with respect to existing hydrocarbon exploitation fields would not be increased by more than 0.5% annually between 2010 and 2014 and would be set at 10% from 2015 to 2025. The royalty for all new exploitation fields would be 10%.³⁵

³¹ FAGMA, Section 2.2 (Exh. C-015).

³² Croatia's official currency is the kuna (HRK). One kuna equals 100 lipas.

³³ FAGMA, Sections 4.1.1, 4.2 and 4.4 (Exh. C-015).

³⁴ FAGMA, Section 4.1.2 (Exh. C-015).

³⁵ FAGMA, Sections 6.2-6.4 (Exh. C-015).

36. Although MOL fulfilled its side of the deal and provided financing to INA to repay its accumulated tax debt,³⁶ the Government once again failed to honor its obligations and undertakings to MOL.

37. It not only refused to acquire the Gas Trading Company, it proceeded to increase the mining royalty rates above those specified in the FAGMA, despite knowing that such royalty rates were critical to preserve INA's liquidity position.³⁷ The Government also breached various other provisions of the FAGMA and, in 2011, it unexpectedly introduced regulatory caps on the price of gas marketed by INA to non-household consumers, thereby intervening in private law contracts and causing further harm to INA.

38. In order to avert INA's bankruptcy caused by the continued losses with respect to the Gas Trading Company, MOL was forced to provide additional financing to INA in excess of USD 460 million in the 2009-2011 period.

E. Additional Measures Aimed At Diminishing The Value Of MOL's Investment In INA And Otherwise Violating The Protections Owed To MOL under the ECT

39. Not only has the Government of Croatia failed to observe its obligations to MOL under the Gas Master Agreement and the FAGMA, it has also undertaken a series of measures designed to damage and impair MOL's investment in INA in contravention of the Shareholders' Agreement and the FASHA, in an apparent effort to take back INA's management rights without adequate compensation to MOL, and in violation of MOL's rights under international and Croatian law. Such measures include regulatory action, inaction, delays, and harassment – plainly calculated to make it as difficult as possible for MOL to manage INA successfully and to

³⁶ See INA's Annual Report for 2009 (Exh. C-016), p. 46.

³⁷ See para III.C.28 above.

diminish the value of MOL's investment in INA. The following is a non-exclusive summary of such measures:

(a) In December 2010, in an effort to bring its shareholding above 50%, MOL made a public offering for the approximately 8% of INA's shares that were free floating (*i.e.*, available for purchase) on the Zagreb Stock Exchange. However, Croatian pension funds, acting in concert, managed to pre-empt MOL's offer, preventing MOL from buying sufficient shares to cross the 50% threshold. MOL, suspecting concerted action prohibited by the Croatian Capital Markets Act, filed a complaint with the Croatian Financial Services Supervisory Agency ("HANFA"). HANFA responded by rejecting MOL's complaint almost immediately without any substantial investigation. This was followed by an official decision rejecting MOL's complaint on 24 March 2011. MOL filed an administrative claim against HANFA's decision before the administrative court on 26 April 2011. Over two and a half years later, MOL has yet to receive a response from the court. However, shortly after filing its administrative claim, on 18 May 2011, HANFA issued a decision asserting that MOL was engaged in market manipulation, leading to spurious criminal charges being filed against key executives of MOL five days later. On 15 June 2011, MOL filed an administrative claim against that decision as well – but, once again, never received a response. Subsequently, HANFA suspended temporarily – and then indefinitely – any trading of INA shares on the Zagreb Stock Exchange, clearly with the aim of preventing MOL from purchasing additional INA shares.³⁸

³⁸ In the same time frame – March 2011 – the Croatian Government tabled a proposal to amend the INA Privatization Act which would have limited individual shareholding in INA to below 49%. The amendment was torpedoed by the EU, citing free movement of capital requirements.

(b) The Government has failed to grant or uphold critical licenses and permits necessary for INA to carry out important investments in its refineries and to conduct hydrocarbon exploration activities, in breach of the Government's undertakings to MOL under the Shareholders' Agreement.³⁹ In particular:

(i) In 2009, INA sought routine permits that would have enabled it to invest approximately USD 450 million in modernizing the Rijeka refinery (one of only two refineries in Croatia), and to generate substantial additional profits once the modernization project was completed. However, the improvements were inexplicably blocked by local authorities and the Government by delaying, without explanation, the issuance of the necessary permits; and

(ii) On 29 July 2011, the Ministry of Economy, Labor and Entrepreneurship unexpectedly revoked INA's hydrocarbon exploration licenses for the Sava, Drava and North-West regions in Croatia, alleging a failure by INA to conduct exploration activities in compliance with Croatian hydrocarbon regulations. Although INA invested hundreds of millions of kunas in exploration activities in the referred regions and regularly reported such activities to the Ministry (the last report was submitted literally days before the Ministry revoked INA's exploration licenses), no action has been taken either by the Ministry or the Croatian courts in

³⁹ See Section 9.1.3 of the Shareholders' Agreement (Exh. C-006):

9.1 The Government undertakes to the Strategic Investor that:

* * *

"9.1.3 it will use its reasonable efforts, subject to Croatian Law, to assist INA to obtain all the licences that it needs to carry out the Business and that it will deal with any applications for such licences fairly and promptly in accordance with Croatian Law"

the more than two years since INA challenged the legality of the Ministry's decision revoking INA's exploration licenses.

(c) Croatian authorities have asserted false and baseless accusations against MOL and its Chairman-CEO, Mr. Zsolt Hernádi, of offering a bribe to Croatia's former Prime Minister, Ivo Sanader, to induce the Government to enter into the FASHA and the Gas Master Agreement. The alleged grounds for the accusations do not come remotely close to satisfying minimum standards for asserting such serious criminal charges. Indeed, based on the same factual record that is available to the Croatian authorities, Hungarian authorities have conducted their own criminal investigation and have concluded that neither MOL nor any of its executives have offered or given a bribe to any person or committed any other crime in relation to INA.⁴⁰ Nevertheless, the Croatian Government has continued to pursue these criminal charges in a grossly misguided and plainly illegal effort to harass and intimidate MOL into surrendering management control of INA.⁴¹ In addition, the Croatian Government has threatened to rescind its various agreements with MOL, in the event that the bribery conviction of Mr. Sanader is confirmed; based on

⁴⁰ See, 30 January 2012 Press Communique of the Attorney General's Office (Exh. C-017).

⁴¹ Indeed, the Government has made it clear in widely publicized statements that its purpose is to coerce MOL into relinquishing control over INA.

For example, on 27 October 2011, in an overt attack against MOL, the Government requested that the Croatian Public Prosecutor's Office

take all necessary measures by instituting legal proceedings and obtaining provisional measures in order to protect the ownership and management rights...in INA. (Exh. C-018)

Numerous Government statements followed, in which the Government has threatened to use its administrative powers against MOL, unless MOL accepts the Government's demands. For instance, on 28 October 2013, Croatia's Minister of Finance, Slavko Linic stated that "MOL is a bad partner, and a bad partner can always be changed" and went on to assert, in response to a question whether Croatia was ready to use its "state levers" in order to create "impossible conditions," that "[i]t certainly does, we can change the amounts of the concession, we can shut down the filling stations." (Exh. C-019)

statements to the press by Croatian government officials and legislators, there appears to be little doubt regarding the preordained outcome of the pending judicial review proceedings.⁴² Indeed, on 17 January 2014, the Government initiated arbitration against MOL to invalidate the FASHA, the Gas Master Agreement and the FAGMA – attempting to use Mr. Sanader’s first instance conviction (in proceedings to which MOL was not a party) to “nullify” the FASHA, the Gas Master Agreement and the FAGMA and thereby expropriate MOL’s rights under those agreements.⁴³

(d) The Croatian Parliament recently adopted the new Energy Act, which authorizes the Government to unilaterally impose on owners of energy infrastructure, such as INA, maintenance and development obligations serving the “Energy Strategy interests” of the Government of Croatia.⁴⁴

⁴² For example, on 6 December 2012, Croatia’s Minister of Finance, Slavko Linic, commenting on the first instance conviction of former Prime Minister Ivo Sanader on bribery allegations involving MOL stated that

I believe that this [the Sanader verdict] might help MOL to understand that the Government will insist on this and that there really is no need to wait for the final verdict, because partners are only satisfied if both sides are satisfied with the agreements, and we are not satisfied. (Exh. C-020)

Not surprisingly, former Prime Minister Ivo Sanader’s conviction was preceded by various statements of the Croatian Government directed against MOL. To mention just one, on 9 September 2013, Croatia’s Minister of Economy, Ivan Vrdoljak, declared that

INA is never going to be a subsidiary of MOL as long as I am the minister of economy. This is going to be our first condition in the negotiations. (Exh. C-021)

⁴³ See Government’s Notice of Arbitration against MOL (17 January 2014) (the “NOA”), Ex. C-027. (Although the Government’s NOA does not explicitly mention the FAGMA, it seeks “a binding declaration nullifying the Gas Master Agreement (and any and all amendments thereto) . . .”). We are also attaching MOL’s Response to the Government’s NOA as Exhibit C-028 hereto. We are not including the exhibits to the NOA or to MOL’s Response (many of which have already been submitted with MOL’s Request for Arbitration in this case), but would of course be pleased to provide them upon this Tribunal’s request.

⁴⁴ The present Request for Arbitration serves as a notice to Croatia that in MOL’s view the provisions of the Energy Act, inasmuch as they apply to INA, are in breach of Croatia’s obligations under the Energy Charter Treaty. MOL reserves its right to supplement or amend its claims against Croatia in relation to the implementation of the Energy Act by Croatia.

(e) On 27 February 2014, the Government adopted a series of measures relating to the Croatian gas market. Despite MOL's warnings and protests,⁴⁵ these measures came into effect on 1 April 2014 and are plainly targeted at MOL's investment in INA. The new measures removed responsibility for supplying gas to household consumers from INA's subsidiary, PP (*i.e.*, the Gas Supply Company that the Government was required but refused to acquire from INA), and transferred it to a Government-owned company, HEP.⁴⁶ The measures require that INA now supply gas to HEP at Government-controlled prices and in Government-mandated quantities.⁴⁷ The new terms imposed by the Government require INA to supply gas to HEP at artificially depressed rates – but then allow HEP to sell the same gas to household consumers at higher rates, and thus at a profit to HEP.⁴⁸ The Government is effectively taking profit that could be made by INA and transferring that profit to a Government-owned entity, without any purpose other than to inflict harm on INA while enriching HEP. In addition, the new measures reserve 70% of the capacity of the Gas Storage Company (*i.e.*, the entity that the Government acquired from INA) – which maintains Croatia's only gas storage facility – to HEP.⁴⁹ To enable HEP to occupy 70% of the facility, the Government required PP to dispose of the

⁴⁵ See Letter from Arif H. Ali to Stephen Díaz Gavin (6 March 2014), attaching letter from József Simola, MOL Group CFO, to Minister of Economy Ivan Vrdoljak (6 March 2014), Ex. C-029.

⁴⁶ Government Decision 2014/489 on Determining of a Supplier on the Gas Wholesale Market (27 February 2014), Ex. C-030.

⁴⁷ Government Decision 2014/487 on the Gas Price at which the Natural Gas Produced Is Obligated to Sell Natural Gas Produced on the Territory of the Republic of Croatia to the Supplier on the Gas Wholesale Market (27 February 2014), Ex. C-031; Government Decision 2014/490 on Prescribing the Obligation to the Producer of Natural Gas to Sell Natural Gas to the Supplier on the Wholesale Market (27 February 2014), Ex. C-032.

⁴⁸ Government Decision 2014/488 on the Gas Price at which the Supplier on the Gas Wholesale Markets is Obligated to Sell to Gas Suppliers in the Public Service of Gas Supply for the Customers from the Household Category (27 February 2014), Ex. C-033.

⁴⁹ Government Decision 2014/491 on Establishing Priorities When Conducting Procedure for Capacity Allocation of the Gas Storage System to the Supplier on the Gas Wholesale Market (27 February 2014), Ex. C-034.

gas it had stored there for household supply on very short notice and at a huge loss. The measures also deprived INA of the necessary storage capacity to fulfill its newly created supply obligation to HEP. In the meantime, the Government has also increased, yet again, the hydrocarbon royalties payable by INA, in further breach of its undertakings to MOL. These measures violate the Government's obligations to INA under both Articles 10(1) and 13 of the ECT.

40. As explained under Section IV.E below, the Government's above-described failure to observe its commitments to MOL and the regulatory actions taken by the Government are in direct breach of Croatia's obligations under the Energy Charter Treaty.

IV. THE PRESENT DISPUTE ARISES UNDER THE ENERGY CHARTER TREATY

41. MOL brings its claims pursuant to the ECT. The ECT is the first multilateral instrument for the promotion of cooperation in the energy sector. It provides for the creation of a non-discriminatory energy market and sets forth binding obligations concerning, among others, the promotion and protection of investments in the energy sector. The ECT's investment promotion and protection regime is established in Part III of the Treaty, entitled "Investment Promotion and Protection," which provides for the following undertakings, *inter alia*, by the Contracting Parties:

- encourage and create stable, equitable, favourable and transparent conditions for Investors;
- accord fair and equitable treatment to Investments;
- assure the most constant protection and security to Investments;
- not impair the management, maintenance, use, enjoyment or disposal of investments by unreasonable or discriminatory measures; and

- observe any obligation a Contracting Party has entered into with an Investor or an Investment of an Investor.

42. The ECT provides for a binding dispute settlement mechanism with respect to investment disputes. Under Article 26 of the ECT, disputes between a Contracting Party and an Investor of the other Contracting Party relating to the Investor's Investment and concerning the Contracting Party's violations of its obligations under Part III of the ECT, may be referred to international arbitration at the request of the Investor.

A. MOL's Efforts To Settle This Dispute Amicably

43. Since 2011, MOL has made every effort to reach an amicable settlement of the Government's breaches of its commitments to MOL and the future of the parties' strategic cooperation concerning INA.⁵⁰ Despite the increasingly hostile environment in Croatia, MOL has repeatedly attempted to reach a negotiated resolution to the dispute. Finally, on 24 July 2013, MOL informed the Government that it would resort to international arbitration to enforce its lawful claims, unless an amicable resolution to the dispute could be reached by the end of September 2013.⁵¹

44. Despite MOL's continued efforts to settle amicably the issues in dispute, the Government and MOL have not reached an agreement and their disputes have not been settled amicably within the three-month period running from the date of the notification of MOL's claim.

⁵⁰ See 13 July 2011 Letter from MOL to Croatia (Exh. C-022).

⁵¹ See 24 July 2013 letter from MOL to Croatia (Exh. C-023).

B. Parties' Consent To Arbitrate

45. Pursuant to Article 26(3) of the ECT, a Contracting Party gives in the Treaty its unconditional consent to the submission of a dispute between itself and an Investor to international arbitration. The Government of Croatia has, therefore, given its consent to submit the disputes between the parties to international arbitration.

46. In this Request for Arbitration, MOL consents to the submission of its disputes with the Government of Croatia to international arbitration under Article 26(4)(a)(i) of the ECT. MOL submits its dispute with the Government of Croatia to international arbitration in accordance with Article 26 of the ECT and the Institution Rules, reserving the right to amend and supplement its claims.

C. The Claimant Is An Investor Protected Under The Energy Charter Treaty

47. The ECT offers its protection to persons defined as investors under the Treaty. Article 1(7)(a)(ii) of the ECT defines “Investor” with respect to a Contracting Party as “a company or other organization organized in accordance with the law applicable in that Contracting Party.”

48. MOL was incorporated in Hungary on 1 October 1991.⁵² Hungary ratified the ECT on 1 April 1998.⁵³ The Claimant is, therefore, a company organized in accordance with the law of a Contracting Party, and is an “Investor” within the meaning of Article 1(7)(a) of the ECT.

⁵² MOL Corporate Registry Extract dated 24 October 2013 (Exh. C-024).

⁵³ Hungary’s Instrument of Ratification of the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects dated 1 April 1998. (Exh. C-002). The Instrument of Ratification was deposited by Hungary on 8 April 1998.

D. MOL Holds An Investment Protected Under The Energy Charter Treaty

49. Article 1(6) of the ECT broadly defines “Investment” as follows:

“Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) intellectual property;
- (e) returns;
- (f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the “Effective Date”) provided that the Treaty shall only apply to matters affecting such investment after the Effective Date.

“Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter efficiency projects” and so notified to the Secretariat.

50. As explained in Section III.A above, MOL holds 49.08% of the equity, management control of INA and debt owed to MOL by INA. Similarly, MOL holds rights “conferred by law

or contract” and “by virtue of . . . licenses and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.”⁵⁴ Such equity, management control, debt and other rights constitute “Investment[s]” within the meaning of Article 1(6)(b) of the ECT.

E. The Government Of Croatia Has Breached Its Obligations Under Article 10(1) Of The Energy Charter Treaty

51. The actions and inaction of the Government of Croatia as described above have breached, *inter alia*, the requirements of Article 10(1) of the ECT that:

- (a) the Government observe any obligations it has entered into with an Investor or an Investment of an Investor;
- (b) the Government accord fair and equitable treatment to Investments of Investors;
- (c) the Government provide the most constant protection and security to Investments of Investors;
- (d) the Government not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of Investment of Investors;
- (e) the Government encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in its Area.

52. The Government’s breaches of Article 10(1) have caused MOL to suffer substantial damages in an amount to be proven in the course of this arbitration.

⁵⁴ Article 1(5) of the ECT defines “Economic Activity in the Energy Sector” as “an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products” Under Article 1(4), “Energy Materials and Products” “means the items included in Annex EM,” which include the types of hydrocarbon products here at issue.

F. The Government of Croatia Has Breached Its Obligations Under Article 13 Of The Energy Charter Treaty

53. The actions and inactions of the Government of Croatia as described above have breached, *inter alia*, the requirements of Article 13(1), which provide in part:

Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be nationalized, expropriated or subjected to a measure or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as “Expropriation”) except where such Expropriation is:

- (a) for a purpose which is in the public interest;
- (b) not discriminatory;
- (c) carried out under due process of law; and
- (d) accompanied by the payment of prompt, adequate and effective compensation.

54. The Government’s breaches of Article 13 have caused MOL to suffer substantial damages in an amount to be proven in the course of this arbitration.

V. ICSID JURISDICTIONAL REQUIREMENTS

53. The ICSID Convention sets forth certain conditions that must be satisfied in order for ICSID to retain jurisdiction over a dispute submitted to it. These are:

- a) the dispute must be “between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State”⁵⁵
- b) the dispute must be “legal”⁵⁶
- c) the dispute must be one “arising directly out of an investment”,⁵⁷

⁵⁵ See ICSID Convention, Article 25(1).

⁵⁶ See *id.*

⁵⁷ See *id.*

- d) the parties to the dispute must “consent in writing to submit [the dispute] to the Centre”⁵⁸
- e) the dispute must not fall within the class or classes of disputes which the Contracting State that is a party to the dispute would not consider submitting to the jurisdiction of the Centre;⁵⁹ and
- f) the absence of any prerequisite regarding the exhaustion of local administrative or judicial remedies.⁶⁰

54. As demonstrated below, the instant dispute between MOL and Croatia satisfies the prerequisites for ICSID jurisdiction.

A. Nationality

55. MOL is incorporated in Hungary. Hungary became a party to the ICSID Convention on 6 March 1987, and remains a party to this day.⁶¹ Accordingly, MOL is a national of a Contracting State for the purposes of the ICSID Convention.

56. Croatia is also a party to the ICSID Convention, which it signed on 16 June 1997.⁶² The ICSID Convention entered into force in Croatia on 22 October 1998 and remains in force to this day.⁶³

B. Legal Dispute

57. This dispute involves the Government of Croatia’s violations of the ECT, customary international law, and Croatian law. The acts and omissions of the Government of

⁵⁸ *See id.*

⁵⁹ *See id.*, Article 25(4).

⁶⁰ *See id.*, Article 26.

⁶¹ *See* List of Contracting States and other Signatories of the Convention (as of 1 November 2013), (Exh. C-025).

⁶² *Id.*

⁶³ *Id.*

Croatia described above and to be developed further in the course of this proceeding violate, *inter alia*, Article 10 of the ECT.

58. Thus, the Government's violations of the ECT provisions, as well as its violations of customary international law and Croatian law, involve Claimant's legal rights and entitle Claimant to legal remedies.

C. Investment

59. Although the term "investment" is not defined in Article 25 of the ICSID Convention, the term is widely understood to have a broad definition such as that found in the ECT. As demonstrated in Section III.D above, MOL holds an investment protected under the ECT. Thus, this dispute arises directly out of an investment, as required by Article 25(1) of the ICSID Convention.

D. Croatia Has Consented To Arbitration Under The ICSID Convention

60. Claimant has consented to ICSID arbitration by virtue of this Request for Arbitration. Croatia's consent to arbitration under the ICSID Convention is laid out in Article 26 of the ECT.

E. Excluded Disputes

61. The present dispute between MOL and the Government of Croatia does not relate to any of the exclusions to ICSID jurisdiction. Therefore, there is no Treaty-based barrier to ICSID's exercise of jurisdiction.

F. Exhaustion of Local Remedies

62. The ECT contains no requirement that a party bringing an international arbitration against the Government under the ICSID Convention first exhaust any local administrative or judicial remedies.

VI. PROCEDURAL MATTERS

63. There is no agreement between the parties regarding the number of arbitrators or the method for the constitution of the Arbitral Tribunal. As a result, for the purposes of Rule 2 of the ICSID Arbitration Rules, Claimant proposes that a three-member Arbitral Tribunal be appointed and the 20-day time limit contained in Rule 2(1)(b) of the ICSID Arbitration Rules run from the date of registration of this Request.

64. Claimant proposes that the Tribunal be appointed in accordance with the following procedure:

- a) Within 30 days of the registration of the Request, Claimant shall appoint its arbitrator;
- b) Within 30 days of the appointment of Claimant's arbitrator, Respondent shall appoint its arbitrator;
- c) The two arbitrators so appointed shall, in consultation with the parties, jointly select a third arbitrator to serve as President of the Arbitral Tribunal, within 30 days of the appointment of Respondent's arbitrator; and
- d) In the event that a party fails to appoint its arbitrator or the two party-appointed arbitrators are unable to reach agreement on the identity of the President of the Arbitral Tribunal within the time limits specified above, the Chairman of the ICSID Administrative Council shall appoint the arbitrator or arbitrators not yet appointed and shall designate the President of the Arbitral Tribunal.

65. Claimant further proposes that the place of arbitration be at the seat of ICSID in Washington, D.C., and that the language of the arbitration be English.

66. MOL respectfully requests that the foregoing be taken as Claimant's proposal for the purposes of Rule 2(1)(a) of the ICSID Arbitration Rules.

VII. REQUEST FOR RELIEF

67. Specifically reserving its rights to supplement or otherwise amend its claims and the relief requested in connection therewith, Claimant requests an award granting it the following relief:

- a) A declaration that the Government of Croatia has violated the Energy Charter Treaty, customary international law and Croatian law with respect to Claimant and its investment;
- b) An order requiring Respondent to comply with all of its obligations and undertakings under the Gas Master Agreement, the Shareholders' Agreement, the FASHA and the FAGMA;
- c) An order for Respondent to cease all harassment of MOL and INA officials;⁶⁴
- d) Damages resulting from Respondent's breaches of the Energy Charter Treaty;
- e) All costs of this proceeding, including attorneys' fees;
- f) Pre- and post-award interest; and
- g) Such other relief as the Tribunal may deem appropriate in the circumstances.

VIII. CONCLUSION

68. For the reasons set forth above, Claimant respectfully requests that ICSID promptly register this arbitration against the Republic of Croatia, represented by the Government of the Republic of Croatia.

⁶⁴ Claimant reserves its rights to seek interim relief or provisional measures in this regard.

Respectfully submitted,



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