

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

MOL HUNGARIAN OIL AND GAS PLC,

Petitioner,

v.

THE REPUBLIC OF CROATIA,

Respondent.

Civil Action No. 23-cv-218 (AHA)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF
MOL’S CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h), Petitioner MOL Hungarian Oil and Gas Plc (“MOL”) submits the following statement of material facts as to which there is no genuine issue, and which entitle it to judgment as a matter of law.

1. MOL is a corporation incorporated under the laws of Hungary, with its principal place of business in Budapest. Award, July 5, 2022 (First Declaration of Michael A. Losco, Jan. 25, 2023 (“First Losco Decl.”), Ex. A, ECF 1-2) (the “Award”) ¶ 1; Petition to Enforce Arbitration Award, Jan. 25, 2023, ECF 1 (the “Petition”) ¶ 7.

2. Respondent the Republic of Croatia (“Croatia”) is a foreign state within the meaning of the Foreign Sovereign Immunities Act. Petition ¶ 8; *see also* 28 U.S.C. §§ 1602 *et seq.*

3. Hungary, Croatia, and the United States are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270 (First Losco Decl., Ex. I, ECF 1-10) (the “ICSID Convention”). Petition ¶¶

7-8; *see List of Contracting States and Other Signatories of the Convention (as of Aug. 25, 2024)*, INT'L CENTRE FOR SETTLEMENT OF INV. DISPUTES, <https://tinyurl.com/5fnk2dha>.

4. An application for interpretation, revision, or annulment pursuant to Article 51 or 52 of the ICSID Convention is the sole means of recourse to challenge an award rendered under the ICSID Convention. Petition ¶ 41; ICSID Convention arts. 51, 52, 53(1).

5. Article 54 of the ICSID Convention provides that “[e]ach 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.” Petition ¶ 43; ICSID Convention art. 54.

6. The United States’ obligations under Article 54 of the ICSID Convention are implemented in U.S. law at 22 U.S.C. § 1650a(a), which provides: “An award of an arbitral tribunal rendered pursuant to chapter IV of the convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.” 22 U.S.C. § 1650a(a).

7. Croatia and Hungary are both Contracting Parties to the Energy Charter Treaty, Dec. 17, 1994, 2080 U.N.T.S. 95 (1995) (First Losco Decl., Ex. H, ECF 1-9) (the “ECT”). Decision on Respondent’s Application under ICSID Arbitration Rule 41(5), Dec. 2, 2014, ECF 1-2 ¶ 3 (at 231).

8. Article 26(3)(a) of the Energy Charter Treaty provides, “each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.” ECT art. 26(3)(a).

9. On November 26, 2013, MOL accepted Croatia’s standing offer to arbitrate disputes under the ECT by filing a request for ICSID arbitration in the proceeding captioned *MOL Hungarian Oil and Gas Plc. v. Republic of Croatia*, ICSID Case No. ARB/13/32 (the “Arbitration”). Petition ¶ 18; Award ¶ 6.

10. In the Arbitration, MOL alleged that Croatia had breached its obligations under the ECT and that MOL was entitled to damages. Award ¶¶ 570-71.

11. On April 14, 2014, a three-member ICSID arbitral tribunal (the “Tribunal”) was constituted, comprising an arbitrator appointed by MOL, an arbitrator appointed by Croatia, and a third, presiding arbitrator appointed by agreement of the parties. Award ¶¶ 9-11.

12. In the Arbitration, Croatia objected to the jurisdiction of the Tribunal, including on the basis that European Union law precluded the arbitration of intra-EU disputes under the ECT pursuant to the decisions of the Court of Justice of the European Union in Case C-284/16, *Slovak Republic v. Achmea B.V.* and Case C-741/19, *Republic of Moldova v. Komstroy LLC* (the “intra-EU objection”). Award ¶¶ 454-89.

13. The Tribunal held three evidentiary hearings on the merits and jurisdiction, spanning 22 days between February 2017 and March 2018. Petition ¶ 33; Award ¶¶ 84, 127, 162.

14. On July 5, 2022, the Tribunal issued the Award, in which it ordered Croatia to pay (i) US \$183.94 million in damages, plus interest at a rate of LIBOR plus two percent per annum from April 1, 2014, until the date of the Award (July 5, 2022); (ii) 60% of the costs of arbitration; (iii) EUR 856,308.69 for MOL’s costs relating to Croatia’s application under ICSID Arbitration Rule 41(5); and (iv) interest on the above sums at a rate of LIBOR plus two percent per annum “until the date of payment.” Award ¶ 708; Petition ¶ 38.

15. The Award further provided: “For any period of time after LIBOR ceases to be operative, the rate to be applied in its place will be whatever rate is generally considered equivalent to LIBOR in respect of sums due in US dollars.” Award ¶ 708(11).

16. In the Award, the Tribunal thoroughly analyzed and rejected Croatia’s intra-EU objection. *Id.* ¶¶ 454-89.

17. The 120-day deadline for either party to file an application for annulment of the Award under Article 52 of the ICSID Convention expired on November 2, 2022. *See* ICSID Convention art. 52.

18. Croatia did not file an application for annulment of the Award. *See Case Details: MOL Hungarian Oil and Gas Company Plc v. Republic of Croatia (ICSID Case No. ARB/13/32), Procedural Details, INT’L CENTRE FOR SETTLEMENT OF INV. DISPUTES, <https://tinyurl.com/wece62f9>*. The Award is therefore final and binding on the parties.

19. On January 25, 2023, MOL commenced this action by filing the Petition, accompanied by authentic copies of the Award, MOL’s Request for Arbitration (First Losco Decl., Ex. B, ECF 1-3) and Amended Request for Arbitration (First Losco Decl., Ex. C, ECF 1-4), the ECT, and the ICSID Convention.

20. On March 8, 2023, Croatia was served with a copy of the summons and Petition. Certificate of Service, Apr. 12, 2023, ECF 7, ¶ 6; ECF 7-3.

21. Croatia has not paid any portion of the Award.

Dated: December 2, 2024

Respectfully submitted,

/s/ Steven A. Engel

Steven A. Engel
DC Bar No. 484789
Arif Hyder Ali
DC Bar No. 434075
DECHERT LLP
1900 K Street, NW
Washington, DC 20006
Tel.: (202) 261-3300
steven.engel@dechert.com
arif.ali@dechert.com

Michael A. Losco*
NY Bar No. 5356505
Harnelle St Cloud*
NY Bar No. 6103691
DECHERT LLP
1095 Avenue of the Americas
New York, NY 10036
Tel.: (212) 698-3500
michael.losco@dechert.com
*Admitted *pro hac vice*

Alexandre de Gramont
DC Bar No. 430640
WOMBLE BOND DICKINSON (US) LLP
2001 K Street, NW
Suite 400 South
Washington, DC 20006
Tel.: (202) 857-4541
Alex.deGramont@wbd-us.com

*Counsel for Petitioner
MOL Hungarian Oil and Gas Plc*