

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Gabriel Resources Ltd. and Gabriel Resources (Jersey)

Applicants on Annulment

v.

Romania

Respondent on Annulment

(ICSID Case No. ARB/15/31)

Annulment Proceeding

PROCEDURAL ORDER NO. 3

Members of the ad hoc Committee

Dr. Eduardo Zuleta Jaramillo, President of the *ad hoc* Committee

Prof. Lawrence Boo, Member of the *ad hoc* Committee

Prof. Dr. Maxi Scherer, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Sara Marzal Yetano

Assistant to the Committee

Ms. Maria Marulanda Mürrle

1 October 2025

I. BACKGROUND

1. On 25 August 2025, the Committee issued Procedural Order No. 2 denying the application filed on 15 July 2025 by the European Commission (the “**Commission**”) requesting leave to intervene in the present proceedings.
2. On 15 September 2025, the Commission requested the Committee to reconsider its decision and admit the Commission as a non-disputing party.
3. On the same date, the Committee invited the Parties to submit their observations on the Commission’s request by 22 September 2025.
4. On 22 September 2025, the Parties submitted their respective observations on the Commission’s request.

II. THE REQUEST FOR RECONSIDERATION

5. The Commission states that, despite the error in its initial application in referring to Romania as the applicant on annulment, its conclusion regarding the violation of EU law in the Tribunal’s jurisdictional finding remains unchanged. The Commission argues that in making a finding on the merits, the Tribunal accepted the existence of an agreement to arbitrate, which is precisely the point the Commission objects to.¹
6. The Commission argues that an international court or tribunal has an obligation to review arguments challenging its jurisdiction on its own motion and therefore the Commission’s submission does not fall outside the scope of the Committee’s mandate. The Commission notes that it is not decisive that the issue of jurisdiction was not raised as a ground for annulment and avers that the Committee is required to confirm the Tribunal’s jurisdiction which was disputed by both Romania and the Commission in the underlying arbitration.²
7. The Commission further submits that its intervention would bring perspective, particular knowledge or insight that is different from that of the disputing parties, particularly

¹ Commission’s Request for Reconsideration dated 15 September 2025 (the “**Commission’s Request**”), p. 1.

² Commission’s Request, pp. 1-2.

because the Commission considers solely the general interest of the Union as a whole. According to the Commission, its intervention poses a significant interest which is to avoid any conflict between arbitration awards and EU law and to ensure that the Committee is fully aware of the legal consequences flowing from EU law, as interpreted by the CJEU.³

8. According to the Commission, the Committee's analysis in Procedural Order No. 2 may have been affected by the Commission's initial error in identifying Romania as the applicant on annulment. Thus, the Commission requests that the Committee reconsider its decision in Procedural Order No. 2 and admit the Commission as a non-disputing party.

III. THE PARTIES' POSITIONS

A. THE APPLICANTS' POSITION

9. The Applicants submit that the Committee should deny the Commission's request for reconsideration.
10. The Applicants assert that:

“[the] error, however, was not material to the Committee's decision to deny the request to intervene. Rather, the principal point, as the Committee noted, was that the European's Commission's request to intervene was premised on challenging the Tribunal's decision on jurisdiction, which is not a subject of these annulment proceedings”⁴

11. Regarding the Commission's argument that an international court or tribunal has an obligation to review arguments challenging its jurisdiction on its own motion, the Applicants submit that there is no basis to request reconsideration on that ground and in any event, the legal principle does not support the Commission's request. The Applicants state that:

“[a]lthough it is correct that an ICSID ad hoc committee is the judge of its own competence the Committee's jurisdiction is not co-extensive

³ Commission's Request, p. 2.

⁴ Applicants' Comments to the Commission's Request dated 22 September 2025 (the “**Applicants' Comments**”), p. 1.

with that of the Tribunal in the arbitration. Rather, the Committee's jurisdiction is established by and limited to the scope defined by Article 52 of the ICSID Convention and the application for annulment presented"⁵

12. According to the Applicants, in an annulment proceeding where the application for annulment does not seek annulment on the basis of the tribunal's jurisdictional decision, as in the present case, it is outside the power of the Committee to review the tribunal's decision on jurisdiction.
13. The Applicants conclude that the Commission's request to intervene does not satisfy the requirements of ICSID Arbitration Rule 37(2) and therefore there is no basis to reconsider Procedural Order No. 2.

B. ROMANIA'S POSITION

14. Romania submits that it maintains its position as set out in its communication dated 31 July 2025 in response to the Commission's initial application.
15. Romania notes that it did not object to the Commission's application, but it rather deferred to the Committee whether to admit the application, should the Committee find that the points raised by the Commission would be of assistance in the determination of any of the issues within the scope of the annulment proceeding.⁶

IV. THE COMMITTEE'S ANALYSIS

16. Having reviewed the Commission's request for reconsideration and the Parties' observations, the Committee concludes that there is no basis to reconsider its prior decision denying the Commission's request for leave to participate as a non-disputing party in these annulment proceedings.
17. In Procedural Order No. 2, the Committee determined that the Commission's proposed intervention, which is aimed at challenging the Tribunal's jurisdictional findings, did not satisfy the requirements of ICSID Arbitration Rule 37(2) because the legal basis for the

⁵ Applicants' Comments, pp. 1-2.

⁶ Romania's Comments to the Commission's Request dated 22 September 2025.

Tribunal's jurisdiction under the UK-BIT is not a subject of these annulment proceedings.⁷

18. The Commission's request for reconsideration does not present any new arguments, facts or circumstances that were not already before the Committee and carefully considered when issuing Procedural Order No. 2. The Commission's error in identifying the applicant on annulment did not bear on the Committee's conclusions.
19. Accordingly, the Committee confirms its decision in Procedural Order No. 2.

V. ORDER

20. For the reasons stated above, the Committee denies the Commission's request for reconsideration.

On behalf of the Committee,

[*Signed*]

Dr. Eduardo Zuleta Jaramillo
President of the Committee
Date: 1 October 2025

⁷ Procedural Order No. 2, para. 19.