INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Eurohold Bulgaria AD and Euroins Insurance Group AD

v.

Romania

(ICSID Case No. ARB/24/18)

PROCEDURAL ORDER NO. 6

ON THE
RULE 67 APPLICATION BY THE EUROPEAN COMMISSION
AND THE
RULE 68 APPLICATION BY THE REPUBLIC OF BULGARIA

Members of the Tribunal
Sir Daniel Bethlehem KC, Presiding Arbitrator
Sir Christopher Greenwood KC, Arbitrator
Professor Brigitte Stern, Arbitrator

Secretary of the Tribunal
Ms. Aïssatou Diop

Date: 16 February 2026

I. BACKGROUND AND ISSUES TO BE ADDRESSED

1. This Procedural Order addresses the applications to intervene in the present proceedings by, respectively, the European Commission ("**Commission**"), pursuant to Rule 67 of the ICSID Arbitration Rules 2022 ("**ICSID Rules**"), and the Republic of Bulgaria ("**Bulgaria**"; together, the "**Applications**" and the "**Interveners**"), pursuant to Rule 68 of the ICSID Rules. Relevant background to these Applications, and to the Tribunal's decisions in respect thereof, is as follows.

2. On 30 September 2025, the Tribunal issued its Decision on the Respondent's Rule 41 and Rule 48 Objections ("**Decision**"). The background and procedural history of the case are set out in Sections I and II of the Decision and are not repeated herein. Of relevance for present purposes, the Decision addressed, *inter alia*, the Respondent's Rule 41 objection concerning the application, in the circumstances of the Claimants' Request for Arbitration, of the Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union ("**EU Termination Agreement**").

3. By its Procedural Order No. 3 dated 25 April 2025 ("**PO3**"), the Tribunal denied an Application for Leave to Intervene as Non-Disputing Party by the Commission "at this stage of the proceedings." By a decision communicated to the Parties by letter dated 27 September 2025, the Tribunal denied the Respondent's request for leave to submit into the record of the proceedings an additional document comprising "a formal communication transmitted by the Republic of Bulgaria" setting out Bulgaria's position on the legal effect of the EU Termination Agreement and related matters.

4. By its Decision, the Tribunal, *inter alia*, dismissed the Respondent's Rule 41 Objection but directed, "pursuant to Rules 42(6) and 43(3) of the ICSID Arbitration Rules, that the EU Termination Agreement issues raised by the Respondent through its Rule 41 Objection should be addressed in a separate preliminary phase of the proceedings", described as a Bifurcated Preliminary Procedure ("**BPP**").

5. By Procedural Order No. 4 dated 4 December 2025 on ICSID Arbitration Rules 67 and 68 Applications ("**PO4**"), the Tribunal prescribed a cut-off date of 30 December 2025 in respect of any application under Rule 67 or Rule 68 of the ICSID Rules.

6. By an Application for Leave to Intervene as Non-Disputing Party dated 26 December 2025, the Commission seeks leave to intervene in the proceedings pursuant to Rule 67 of the ICSID Rules ("**Rule 67 Application**"). In support of its Application, the Commission contends that the submissions it has in contemplation, disputing the jurisdiction of the Tribunal, would assist the Tribunal, *inter alia*, "with a matter within the scope of the dispute by allowing the reasons why Articles 19(1) TEU, 267 and 344 TFEU and the general principles of Union law of autonomy of the EU legal order and mutual trust between EU Member States preclude intra-EU investment arbitration, as well as the follow-up given to that finding in the Termination Treaty, to be explained" (Rule 67 Application, ¶ 23). The Commission further contends that "[t]he proceedings […] raise important questions concerning the interplay between the EU Treaties, the Bulgaria–Romania BIT and the ICSID Convention" and that the Commission "brings to this dispute a perspective, particular knowledge or insight that is different from that of the disputing parties concerning the EU Treaties" (Rule 67 Application, ¶ 24). The Commission contends, additionally, that it "has a significant interest in ensuring that [the] Tribunal is fully aware of the legal consequences flowing from EU law as interpreted by the CJEU, and considers these in its assessment of the EU Termination Agreement issues raised by the Respondent." (Rule 67 Application, ¶ 34)

7. The Order sought by the Commission requests the Tribunal to

   a. grant the Commission leave to intervene in the present proceedings;
   b. set a deadline for the Commission to file a written *amicus curiae* submission;
   c. allow the Commission access to the documents filed in the case, to the extent necessary for its intervention in the proceedings;
   d. allow the Commission to attend hearings in order to present oral argument and reply to the questions of the Arbitral Tribunal at those hearings.

   (Rule 67 Application, ¶ 35).

8. By an Application for Leave to Intervene as Non-Disputing Treaty Party dated 30 December 2025, Bulgaria seeks leave to intervene in the proceedings pursuant to Rule 68 of the ICSID Rules ("**Rule 68 Application**"). On the scope of its anticipated intervention, Bulgaria indicates that it intends "to provide a short explanation about the termination of the Agreement between the Government of Romania and the Government of the Republic of Bulgaria on Mutual Promotion and Protection of Investments, signed in Bucharest on 1

June 1994, and the non-applicability of its investor-State arbitration provision."

9. By Procedural Order No. 5 dated 15 December 2025 ("**PO5**"), unpublished at the time of the applications to intervene, the Tribunal addressed the scope of the BPP, directing that it shall be confined to what was described as the Respondent's "**EU Termination Agreement Objection**". The Tribunal also laid down a Procedural Schedule for the BPP and gave directions regarding possible calls for the production of essential documents. In respect of each of these aspects, the terms of PO5 had in contemplation the possibility of Non-Disputing Party ("**NDP**") and Non-Disputing Treaty Party ("**NDTP**") applications to intervene. The terms of PO5 remain controlling of the issues addressed therein, save only for any revision/s that may be warranted in due course. No such revisions are intended by the present Procedural Order.

10. In the course of what the Tribunal will, for ease of reference, describe as the "**Rule 41 Proceedings**", and correspondence shortly thereafter, the Tribunal sought and obtained from the Parties agreement on certain questions relevant to possible intervention in the event that the Tribunal were to decide on what is now the BPP.

11. Having been invited to do so, the Parties submitted written observations on the Commission's and Bulgaria's applications to intervene, in the case of the Respondent, on 20 January 2026 ("**Respondent's Observations**"), and, in the case of the Claimants, for reason of a Tribunal-sanctioned 24-hour delay to the prescribed filing date, on 21 January 2026 ("**Claimants' Observations**").

12. The Claimants agree that the Commission should be permitted to intervene by way of both written and oral submissions but propose conditions with respect to that intervention as follows (Claimants' Observations, ¶¶ 1.1 – 1.3.7):

- written submissions should be limited to 10 pages;
- access to relevant documents should only be given after the Claimants have filed their first-round written submissions;
- the Claimants reserve their rights with respect to the call for documents procedure laid down in PO5;
- referencing the scope of the Commission's proposed intervention, the Claimants observe that "the Commission may address these issues to the extent that they

consider them relevant to the EU Termination Agreement Objection;

- the intervention should be subject to the condition that the Commission undertakes to pay the costs arising from its intervention.

13. With respect to Bulgaria's application, the Claimants note that Bulgaria has "in principle, a right to intervene as an NDTP, so long as its application falls within the ambit of Rule 68(1) and subject to any conditions that may be imposed under Rule 68(2)" (Claimants' Observations, ¶ 2.1). This said, the Claimants observe that the scope of Bulgaria's anticipated intervention—the termination (rather than the interpretation) of the Romania–Bulgaria bilateral investment treaty ("**BIT**") on which the Claimants rely, and the non-applicability of the BIT's arbitration clause—"fails to comply with the requirements or intended function of Rule 68(1) and should be refused." (Claimants' Observations, ¶ 2.7)

14. In the alternative, in the event that the Tribunal agrees to Bulgaria's intervention, the Claimants propose "stringent conditions" in respect of that intervention, as follows (Claimants' Observations, ¶ 2.8):

- Bulgaria's access to documents on the record should only be permitted to the extent relevant to the matters upon which it is permitted to intervene and that, for this purpose, the Parties should provide redacted versions of their submissions;
- written submissions should be limited to 10 pages;
- the Claimants reserve their rights with respect to the call for documents procedure laid down in PO5;
- Bulgaria should not be permitted to participate in the BPP hearing; and
- the intervention should be subject to the condition that Bulgaria undertakes to pay the costs arising from its intervention.

15. The Respondent agrees that the Commission should be permitted to intervene by way of written submissions. While not opposed in principle to the Commission's participation at the hearing, the Respondent "does not see any reason or additional value in the Commission making oral arguments on the limited point that is in issue in the BPP, including for the reason (but not limited thereto) that the addition of such oral submissions would unduly burden the Parties. The Respondent also proposes a number of conditions with respect to the Commission's intervention as follows (Respondent's Observations, § I):

- the written submissions should be confined to the "EU Termination Agreement Issues" and the termination process of intra-EU BITs;
- the written submissions should be limited to 10 pages;
- the Commission's access to pleadings and documents should include everything submitted in both the Rule 41 and BPP proceedings and should be granted promptly to facilitate the preparation of the Commission's written submission; and
- it would not be appropriate for the Commission to be asked to produce any documents.

16. With respect to Bulgaria's application, the Respondent agrees that Bulgaria should be permitted to intervene, by way of both written and oral submissions, although confined to the scope of the intervention proposed in Bulgaria's Rule 68 Application. The Respondent further proposes additional conditions in respect of Bulgaria's intervention as follows (Respondent's Observations, § II):

- Bulgaria's access to pleadings and documents should include those submitted in both the Rule 41 and BPP proceedings and should be granted promptly to facilitate the preparation of Bulgaria's written submission;
- it would not be appropriate for Bulgaria to be asked to produce any documents;
- oral submissions should be addressed to the Tribunal alone; the Parties may not ask questions of Bulgaria; and
- the Tribunal's questions "should not entail any fact-finding exercise."

II. ANALYSIS AND DECISION

17. The Tribunal has given careful consideration to the Parties' submissions on the question of the Commission's and Bulgaria's proposed interventions, made both in the course of the Rule 41 Proceedings and through their respective written observations on the applications to intervene.

A. ICSID Rules 67 and 68 and the purpose of interventions

18. ICSID Rules 67 and 68 provide as follows:

"**Rule 67**
Submission of Non-Disputing Parties

(1) Any person or entity that is not a party to the dispute ('non-disputing party') may apply for permission to file a written submission in the proceeding. The application shall be made in the procedural language(s) used in the proceeding.

(2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:

(a) whether the submission would address a matter within the scope of the dispute;

(b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties;

(c) whether the non-disputing party has a significant interest in the proceeding;

(d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and

(e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.

(3) The parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission in the proceeding and on any conditions for filing such a submission.

(4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to the format, length, scope or publication of the written submission and the time limit to file the submission.

(5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the last written submission on the application.

(6) The Tribunal shall provide the non-disputing party with relevant documents filed in the proceeding, unless either party objects.

(7) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.

Rule 68
Participation of Non-Disputing Treaty Party

(1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute ("non-disputing Treaty Party") to make a submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.

(2) The Tribunal shall ensure that non-disputing Treaty Party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the making of the submission by the non-disputing Treaty Party, including with respect to the format, length, scope or publication of the submission, and the time limit to file the submission.

(3) The Tribunal shall provide the non-disputing Treaty Party with relevant documents filed in the proceeding, unless either party objects.

(4) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party."

19. As the terms of Rule 67 make plain, intervention by an NDP is a discretionary matter for decision by the Tribunal, subject to procedural conditions. The terms of Rule 68 suggest that intervention by an NDTP is as of right—"[t]he Tribunal shall permit […]"—although the formulation of the second sentence in Rule 68(1) ("The Tribunal may […] invite"), and the terms of Rule 68(2) ("The Tribunal shall ensure"), indicates that an entitlement to intervene may not be exercised other than subject to conditions that the Tribunal may, in the exercise of its discretion, impose with respect to such intervention and that permission to intervene is subject to the Tribunal's appreciation that it would not disrupt the proceedings or unduly burden or unfairly prejudice either Party. As noted in paragraph 3 above, the Tribunal denied the Respondent's 11th-hour request for leave to submit into the record of the proceedings a communication from Bulgaria setting out, *inter alia*, its position on the legal effect of the EU Termination Agreement as this would not have comported with the fair and efficient case-management of the (at that point far advanced) Rule 41 Proceedings.[1]

[1] For the avoidance of doubt, the Tribunal notes that the application in question was by the Respondent and was not an application to intervene by Bulgaria pursuant to Rule 68. Having regard to the terms of Rule 68(2), the Tribunal's apprehension of issues going to fairness and efficiency would have been relevant to the consideration of a Rule 68 application made at the same point.

20. The purpose of intervention, whether under Rule 67 or Rule 68, is to assist the Tribunal's appreciation of the issues of which it is seised, subject to necessary and appropriate safeguards, to be assessed by the Tribunal, to ensure that any such intervention does not disrupt the proceedings and that the disputing Parties are not unduly burdened or unfairly prejudiced thereby (Rule 67(4) and Rule 68(2)). The assessment of disruption, burden and prejudice is a matter for determination by the Tribunal in the light of the circumstances of the case and whether what will almost invariably be some measure of disruption to an inter-partes process, and some measure of burden and prejudice to one or other, or both, Parties, would be unwarranted, undue or unfair. An appreciation that an intervention may be expected to assist the position of a disputing party is not a yardstick relevant to such assessment as it is in the interests of the fair, efficient and robust administration of the arbitral process that a party prevail or fall short with respect to the contentions that they advance by reference to the full panoply of arguments and evidence that may be relevant to the tribunal's appreciation of the issues. This is particularly the case in circumstances in which an application to intervene goes to a matter of competence, jurisdiction or admissibility as these are issues that a tribunal is required to assess *proprio motu*, regardless of the position of the parties.

B. The utility of interventions by the Commission and/or Bulgaria

21. In its Decision on the Respondent's Rule 41 objection, the Tribunal stated:

> "95. The Respondent's Rule 41 Objection in the present case is evidently weighty and serious, and grounded in a manifestly credible assertion of legal rights arising from a relevant and applicable, even if contestable, legal instrument in the form of the EU Termination Agreement, of which both Parties are fully aware. It cannot be easily dismissed. Equally, however, there are serious, credible and considered legal arguments, and perhaps also contentions of fact, on the other side of the equation that properly warrant weighing in the balance.
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> 96. The Claimants submit that there is complexity in the issues raised by the Rule 41 Objection that warrant more careful and complete scrutiny. They note that this is the first case in which the purported termination of an intra-EU investment treaty, and its Sunset Clause, by the EU Termination Agreement is being tested.
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> 97. The Tribunal has sympathy for these contentions and notes that, when pushed in the Hearing, both Parties acknowledged that there were issues to be addressed or to be more fully explored beyond those that had been canvassed in the Parties' submissions. The Tribunal agrees.

> 98. In PO3, the Tribunal denied the Commission's NDP Application. In the circumstances of that Application, it was necessarily rejected. As a consequence, however, the Tribunal and the Parties were denied the possibility of hearing the Commission on the interpretation and application of the EU Termination Agreement. The Tribunal notes also that, in addition to the possibility of a non-disputing party application under Rule 67 of the ICSID Rules, Rule 68 of the ICSID Rules holds the possibility of participation in the proceedings by a non-disputing Treaty Party, here Bulgaria, being the other party to the BIT and whose bilateral agreement with Romania, through the medium of the EU Termination Agreement, is said to have resulted in the termination of the BIT.
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> 99. This observation should not be taken as giving the Commission, or Bulgaria, *carte blanche* with respect to possible applications under Rules 67 or 68 of the ICSID Rules in respect of the proceedings to come. Any such application would fall to be assessed on its merits, in accordance with the requirements of the relevant rules."

22. The Tribunal affirms this appreciation and in particular, in the context of the present Applications, that the Tribunal and the Parties did not have the benefit, in the context of the Rule 41 Proceedings, of hearing the Commission and Bulgaria on matters that were highly germane to the issues engaged by those proceedings. This is all the more so in the context of the BPP, which will require the Tribunal to reach a definitive view on issues that it declined to determine in the context of the abbreviated Rule 41 process.

C. Permission to intervene

23. Having regard to the preceding, and considering that the interventions of the Commission and Bulgaria would materially assist the Tribunal in its appreciation of the issues that stand at the core of the BPP, the Tribunal concludes that both Applications should be permitted subject to the conditions specified below with respect to each intervention, on the basis that permission to intervene given herein is confined to the BPP phase of the proceedings alone. In reaching this conclusion, the Tribunal does not consider that either intervention would materially disrupt the proceedings or unduly burden or prejudice either Party, noting in this regard that the Procedural Schedule and other arrangements laid down in PO5 had in contemplation the possibility of Rule 67 and/or Rule 68 interventions, with a result that no further procedural accommodation is required at this stage.

24. The Tribunal further concludes that both the Commission and Bulgaria should be permitted to intervene by way of a single round of simultaneous written submissions, to follow the conclusion of the first-round written submissions of the disputing Parties, and a single-

round of oral submissions at the hearing scheduled in the BPP. The dates applicable in respect of these commitments are given in Appendix A to PO5, which, for ease of reference, will be transmitted to the Commission and Bulgaria along with this Procedural Order. For the avoidance of doubt, the Tribunal notes that it expects the Interveners to make themselves available to participate in the hearing on the dates fixed in PO5.

25. In response to the Claimants' submission that participation by Bulgaria in the hearing would be exceptional, the Tribunal observes that it does not read Rule 68 as in any way precluding the possibility of oral submissions. In the present circumstances, the Tribunal considers that Bulgaria's participation in the hearing, to enable it to address any questions that the Tribunal may have in response to Bulgaria's written submissions, will assist the Tribunal's inquiry.

26. In similar vein, while the Tribunal notes the Respondent's submission that, while it is not opposed to the participation of the Commission in the hearing, it questions the utility of such participation and considers that it would unduly burden the Parties, the Tribunal disagrees. Having regard to the anticipated scope of the Commission's written intervention, and that the Tribunal would like to reserve the possibility of raising questions with the Commission in the light of its written submissions, the Tribunal considers that the Commission's participation in the hearing will assist the Tribunal's inquiry.

D. The limitation of the role of the Interveners in the oral phase

27. Having regard to the preceding, the Tribunal makes it clear that the role of the Interveners, including in the oral phase of the proceedings, is to assist the Tribunal. The Interveners will not, by their interventions, become parties to the proceedings. Nor will they be witnesses, open to examination or cross-examination by the Parties. Given this, when it comes to the hearing, the Interveners will be expected to address themselves to the Tribunal alone, not to the Parties, even if they engage with the Parties' submissions. The Parties will accordingly be directed that they will not be permitted to put questions to the Interveners. Any enquiries going to the Interveners will come from the Tribunal alone.

28. If further comfort is necessary, the Tribunal emphasises that the intervention of the Commission and Bulgaria should not place either Intervener in an adversarial position vis-à-vis either Party. The Tribunal's task, in the BPP, is limited to addressing issues of law,

and (if necessary) any associated issues of fact, that go to the application on the Romania–Bulgaria BIT in the light of the EU Termination Agreement.

E. The scope of the permitted interventions

29. As directed in PO5, the BPP is confined to addressing "the Respondent's EU Termination Agreement Objection", also referred to as the "EU Termination Agreement Issues" (PO5, ¶ 6). For the avoidance of doubt, the Tribunal makes it clear that the EU Termination Agreement Objection includes, necessarily and unavoidably, the contention that the EU Termination Agreement had the effect of terminating the Romania–Bulgaria BIT, including the Sunset Clause in Article 12(3) thereof, on which the Claimants rely to establish the Tribunal's jurisdiction. Although not the only issue engaged by the BPP, the key questions will be the purported effect of Article 2 and Annex A—or possibly Article 12(2) and Annex B—of the EU Termination Agreement on the Romania–Bulgaria BIT, having regard to the interpretation and application of that BIT, including the termination and sunset provisions thereof. The Tribunal emphasises this point as it does not accept the Claimants' position, recounted above, that the intended scope of Bulgaria's intervention "fails to comply with the requirements or intended function of Rule 68(1)". In the Tribunal's view, the scope of Bulgaria's proposed intervention goes directly to issues contemplated by Rule 68 in the context of the present case.

30. The Tribunal directs that the Commission's and Bulgaria's interventions are to be confined to issues engaged by the Respondent's EU Termination Agreement Objection, including insofar as these implicate the conclusion, interpretation and application of the EU Termination Agreement itself, the relationship between and interaction of the EU Termination Agreement and the Romania–Bulgaria BIT specified in Annex A of the EU Termination Agreement, and the interpretation and application of the termination and sunset provisions of the Romania–Bulgaria BIT, in particular in Article 12(2) and (3) thereof.

31. In so directing, the Tribunal also makes it clear that it considers that the application, meaning and effect of what may be contended to be relevant and applicable rules and principles of public international law, of European Union law, and of the municipal law of both Bulgaria and Romania will come within the purview of the BPP inquiry. It is not the Tribunal's inclination or intention to trespass into areas of law that are not necessary for

the determination of the issues of which it is seised in the BPP. At the same time, the Tribunal does not consider that anticipatory objections to the relevance, interpretation or application of potentially applicable principles of law going to the interpretation and application of treaties—in respect of which the Tribunal is presumptively competent under the BIT—should confine the scope of the interventions. If at all, these will be issues for the Claimants and Respondent, as the disputing Parties, to address once the interventions of the Commission and Bulgaria have been made.

F. Written questions from the Tribunal

32. Beyond the preceding appreciation and directions, which go to the general scope of the Commission's and Bulgaria's interventions, the Tribunal notes that the Parties' submissions in the Rule 41 Proceedings raised or suggested a number of questions that the Tribunal has in the forefront of its mind as it contemplates the issues engaged by the BPP and the decision that will be required of it in due course. These are set out in the Annex to this Procedural Order, by reference, respectively, to the Commission and to Bulgaria. The Commission and Bulgaria, and the Parties, should accordingly proceed on the basis that the permitted scope of the respective interventions encompasses the issues engaged by the indicated questions.

33. As stated in the attached Annex, in setting out the questions indicated therein, the Tribunal firmly cautions both the Parties and the Interveners that they should not read into the questions any view or any inclination of the Tribunal on the merits of the issues, nor any direction of travel in the Tribunal's consideration of the issues. The questions arise from or are suggested by the Parties' submissions in the Rule 41 Proceedings and are identified at this stage simply with a view to ensuring that the Tribunal is fully informed on issues that may be relevant to its deliberations in due course. The Parties and the Interveners should also not read into any question either an understanding or a misunderstanding by the Tribunal on any issue. The questions are posed, including in the specifics of their formulation, as the Tribunal wishes to have on the record of the proceedings the views of the Interveners, and in due course of the Parties, on the issues raised.

34. With regard to the preceding, the Tribunal notes that the Respondent contends that the interventions should not entail what it describes as a "fact-finding exercise" and that it would not be appropriate for either Intervener to be asked to produce any documents. On

the issue of the production of documents, this is addressed in PO5, and the Tribunal sees no need at this point to vary, or elaborate on, the directions given therein. The position stated therein vis-à-vis the (at that point hypothetical) interveners is both clear and limited.

35. This is relevant, as well, to the issue of the mooted "fact-finding" exercise, with respect to which the Tribunal, as stated in PO5, will exercise its powers under ICSID Rules 36(3), 67(4) and 68(2) only sparingly, if at all. This said, the Tribunal expects that, insofar as the Interveners make submissions, including in response to the questions posed by the Tribunal, which properly warrant evidential support, relevant evidence will be provided.

G. Page limits

36. Having regard to the issues engaged by the BPP inquiry, and the Tribunal's questions going thereto, the Tribunal does not consider it appropriate to impose a page limit on the interventions. It nonetheless firmly encourages succinctness in the interventions and underlines that the interventions are permitted for the purpose of assisting the Tribunal's appreciation of the issues. The interventions should not, by their prolixity or engagement with issues that go beyond the scope of the proceedings, of themselves become unduly burdensome or unfairly prejudicial to the disputing Parties.

H. Costs

37. The purpose of the interventions is to assist the Tribunal's appreciation of the issues of which it is seised, having regard to the contentions of the disputing Parties. Accordingly, the Tribunal does not consider it appropriate to condition either intervention on an undertaking by either Intervener to pay costs associated with their respective interventions.

I. Access to relevant documents

38. If the Interveners' submissions are to be engaged, focused and useful, access to relevant documentation is appropriate. The Parties accept this, although there is disagreement about when access should be permitted, what documents should be provided to Bulgaria, and other conditions that might properly be imposed.

39. As a preliminary matter, the Tribunal considers that each Intervener should be provided

with documents on the record of the proceedings that are or may be relevant to the preparation of their written submission—this being addressed further below—four weeks after the filing of the Respondent's Objection to Jurisdiction and/or Admissibility ("**Respondent's Objections**"), currently scheduled, pursuant to PO5, to take place on 12 March 2026, with the result that relevant documents would be made available to the Interveners on 9 April 2026. The reasons for this direction are as follows.

40. First, the BPP is confined to addressing "the Respondent's EU Termination Agreement Objection". Given this, it is appropriate that the Respondent crystallises its EU Termination Agreement Objection before the Interveners are afforded access to relevant documents. The four-weeks delay, following the filing of the Respondent's Objections, is to afford an opportunity for any applications to be made and addressed regarding any limitations on disclosure that may be said to be appropriate with regard to that filing.

41. Second, it is a reasonable expectation that the interventions will be broadly supportive of the Respondent's position that the EU Termination Agreement had the effect of terminating both the Romania–Bulgaria BIT and its Sunset Clause. Given this, it is appropriate that the Interveners have sight of the Respondent's case at an early stage, but only once it has been filed.

42. Third, following on from the immediately preceding point, the issues to be addressed by the Interveners, including the Tribunal's written questions, will require careful consideration. Under PO5, the Interveners are afforded six weeks from the filing of the Claimants' Response to Objection to Jurisdiction to Jurisdiction and/or Admissibility ("**Claimants' Response**"). This is shorter than the time afforded to the disputing Parties to prepare their respective first and second round written submissions, i.e., eight weeks, in each case. Given this, and what will be required of the Interveners, the Tribunal considers that they should be afforded sight of the Respondent's first-round written submissions in advance of receipt of the Claimants' first-round written submissions, and that the four-week period is appropriate for this purpose.

43. Fourth, having regard to the fact of second-round written submissions by the disputing Parties, the Tribunal does not consider that either disputing Party will be either materially advantaged or materially disadvantaged by the directed schedule. The Claimants' timing proposal seeks to limit the Interveners' access to relevant documents until after the filing

of the Claimants' Response. The Tribunal considers this to be inappropriate. The Respondent's timing proposal seeks to afford the Interveners immediate access, prior to the crystallisation of the Respondent's written case. The Tribunal considers this to be inappropriate as well.

44. Having regard to these considerations, the Tribunal considers its directions given above to be reasonable and appropriate in the circumstances.

45. On the question of the documents relevant to the preparation of the Interveners' submissions, given the overlapping issues engaged by the anticipated submissions, the Tribunal does not consider it either necessary or appropriate to differentiate between the documents to which each Intervener should be permitted access. This assessment is underlined by the appreciation that the Interveners will, in due course, be provided with the disputing Parties' second-round written submissions, which may be expected to address the written interventions compendiously, with the result that a differential record of documentary disclosure to the Interveners may become unworkable. The same appreciation arises from the fact that the Interveners are expected to participate in the hearing, during which it would become unwieldy to adopt a differential approach to access to the documentary record.

46. This said, the Tribunal is attentive to confidentiality concerns and fully appreciates that there may be parts of the documentary record that, for reasons of confidentiality, should be restricted to the disputing Parties alone—governed as they are by the confidentiality constraints of the arbitration that are applicable to them as Parties (notably, but not confined to ¶ 30 of Procedural Order No. 1)—or by reference to other considerations that may apply differentially to the Commission and Bulgaria. Subject to the consideration addressed in the preceding paragraph, therefore, and what follows below, the Tribunal agrees that, before access to any document is granted to the Interveners, the Parties should be afforded an appropriate opportunity to make submissions on any redactions that they may consider to be warranted with respect to such documents. Such application would have to be attentive to the direction given above that the Interveners are to be afforded access to the same docket of materials.

47. Having regard to the documents identified below, to which the Tribunal considers the Commission and Bulgaria should be afforded access by 9 April 2026, the Parties are

directed to make any application for redactions in respect of these documents, attaching the documents with highlighting of the proposed redactions, on the basis of a full, reasoned explanation supporting the proposed redactions, on the following schedule:

(a) by **Thursday, 5 March 2026**, in respect of all documents on the record as of the date of this Procedural Order, with the other Party being afforded until **Thursday, 19 March 2026** to comment on the proposed redactions, after which the Tribunal will rule on the matter;

(b) by **Thursday, 19 March 2026**, in respect of the Respondent's Objections and any documents submitted therewith, with the other Party being afforded until **Thursday, 26 March 2026** to comment on the proposed redactions, after which the Tribunal will rule on the matter;

(c) **within one week** following the submission of all documents scheduled to be submitted into the record after 12 March 2026, with the other Party being afforded **one week** after receipt of the application in question to comment on the proposed redactions, after which the Tribunal will rule on the matter

48. The documents, or parts of documents, to which the Tribunal considers the Interveners should be given access are the following:

A. Documents on the record as of the date of this Procedural Order

(a) **Section V** of the Claimants' Request for Arbitration dated 21 May 2024 and all exhibits and legal authorities on the record that are referred to therein.

(b) **Section II** of the Respondent's Objections Under Rules 41 and 48 of the ICSID Arbitration Rules dated 20 December 2024 and all exhibits and legal authorities on the record that are referred to therein.

(c) **Section I** of the Claimants' Submission on Rules 41 and 48 Objections dated 31 January 2025 and all exhibits and legal authorities on the record that are referred to therein.

(d) **Section II** of the Respondent's Reply on Rules 41 and 48 Objections dated 21 February 2025 and all exhibits and legal authorities on the record that are referred to therein.

(e) **Sections I – IV** of the Claimants' Rejoinder on Rules 41 and 48 Objections and all exhibits and legal authorities on the record that are referred to therein.

(f) **Electronic pages 1–4** and **numbered pages 1–105, 116–203 and 218–228** of the Day 1 Transcript of the Rule 41 hearing; and

(g) **Electronic pages 1–4** and **numbered pages 1–59, 64–119 and 127–144** of the Day 2 Transcript of the Rule 41 hearing.[2]

(h) The Claimants' Statement of Jurisdiction dated 16 January 2026 and all exhibits and legal authorities on the record that are referred to therein.

B. Documents to be submitted into the record after the date of this Procedural Order

(i) The Respondent's Objection to Jurisdiction and/or Admissibility scheduled, pursuant to PO5, to be submitted on or before 12 March 2026 and all exhibits and legal authorities on the record that are referred to therein.

(j) The Claimants Response to Objection to Jurisdiction and/or Admissibility scheduled, pursuant to PO5, to be submitted on or before 7 May 2026 and all exhibits and legal authorities on the record that are referred to therein.

(k) The Respondent's Reply to Claimants' Response and the NDP / NDTP Written Submissions scheduled, pursuant to PO5, to be submitted on or before 13 August 2026 and all exhibits and legal authorities on the record that are referred to therein.

(l) The Claimants' Rejoinder to Respondent's Reply and the NDP / NDTP Written

[2] For the avoidance of doubt, Demonstratives used by either Party during the Rule 41 hearing are excluded from the scope of these directions.

Submissions scheduled, pursuant to PO5, to be submitted on or before 8 October 2026 and all exhibits and legal authorities on the record that are referred to therein.

49. With a view to ensuring the completeness of the documentary record relevant to the BPP that should be disclosed to the Interveners, the Parties are afforded until **Thursday, 19 March 2026** to make any application that they consider to be warranted to vary the directions given in paragraph 48 above.

50. At the direction of the Tribunal, the Tribunal Secretariat will in due course make the documents indicated herein for disclosure to the Commission and Bulgaria available to the Interveners through an appropriate document-sharing website separate from the document-sharing website that is available to the Tribunal and the Parties for purposes of these proceedings.

51. Having regard to considerations of confidentiality, data privacy and cybersecurity, including (but not limited to) those addressed in ¶¶ 30–31 of Procedural Order No. 1, before any case documentation is shared with the Interveners, each will be requested and expected to provide an appropriate undertaking with respect to confidentiality, data privacy and cybersecurity, including as regards the non-disclosure of any information derived from these proceedings to any persons or organisation not engaged in the preparation of their submissions in these proceedings.

52. Having regard to the decisions, directions and arrangements set out herein applicable to the intervention by the Commission and Bulgaria in the BPP phase of the proceedings, the Tribunal:

a. grants the Commission and Bulgaria leave to intervene in the BPP phase of the present proceedings to make written and oral submissions subject to the conditions set out in this Procedural Order;
b. directs that the Procedural Schedule set out in Procedural Order No. 5 applies in respect of these submissions;
c. directs that the Commission and Bulgaria be provided with access to the documents indicated herein subject to the arrangements indicated herein, including (but not restricted to) the confidentiality, data privacy and cyber-security undertakings required herein; and

d. directs that other arrangements pertaining to the intervention of the Commission and Bulgaria in the BPP shall be as addressed in this Procedural Order subject to any variation thereof as may be necessary or appropriate in due course, either on application by a Party or by an Intervener, or on the basis of the Tribunal's appreciation *proprio motu*.

53. **The Commission and Bulgaria are requested to respond within <u>one week</u> of receipt of this Procedural Order to affirm their intervention in the proceedings on the terms herein prescribed.**

54. The Tribunal reserves all other issues of procedure relevant to the BPP, including as may arise with respect to the interventions of the Commission and Bulgaria, to further decision in due course.

For the Tribunal

[signed]

Sir Daniel Bethlehem KC
Presiding Arbitrator

16 February 2026

ANNEX

Bifurcated Preliminary Procedure — Questions for Interveners

Having reviewed the record of the Rule 41 Proceedings on the issue of the conclusion, interpretation and application of the Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union (OJ L 169/1. 29.05.2020; "**EU Termination Agreement**") and its effect on the Agreement between the Government of Romania and the Government of the Republic of Bulgaria on Mutual Promotion and Protection of Investments ("**Romania–Bulgaria BIT**"), the Tribunal considers that it would be assisted in its understanding of the issues by submissions from the European Commission ("**Commission**") and the Republic of Bulgaria ("**Bulgaria**"; together "**the Interveners**"), *inter alia*, on the questions set out below, without prejudice to other issues which each Intervener may consider appropriate to address, subject to the strict limits of the permission granted by the Tribunal in respect of each intervention.

In addressing the questions below, or any other issues considered to be relevant, each Intervener is invited to submit any relevant documentation in support of its submissions.

In setting out the questions that follow, the Tribunal firmly cautions both the Parties and the Interveners that they should not read into the questions any view or any inclination of the Tribunal on the merits of the issues, nor any direction of travel in the Tribunal's consideration of the issues. The questions arise from or are suggested by the Parties' submissions in the Rule 41 Proceedings and are identified at this stage simply with a view to ensuring that the Tribunal is fully informed on issues that may be relevant to its deliberations in due course. The Parties and the Interveners should also not read into any question either an understanding or a misunderstanding by the Tribunal on any issue. The questions are posed, including in the specifics of their formulation, as the Tribunal wishes to have on the record of the proceedings the Interveners, and in due course the Parties', views on the issues raised.

Questions for the European Commission

Subject to the scope of the permitted intervention indicated in this Procedural Order, the Tribunal directs that permission to the Commission to make written and oral submissions pursuant to Rule 67 of the ICSID Arbitration Rules 2022 is limited to (a) the conclusion, interpretation and application of the EU Termination Agreement, (b) principles of European Union law that may be

said to be relevant and applicable to the conclusion, interpretation and application of the EU Termination Agreement, (c) principles of public international law that may be relevant and applicable to the conclusion, interpretation and application of the EU Termination Agreement, and (d) the conclusion, interpretation and application of the EU Termination Agreement having regard to the terms of Article 12(2) and (3) of the Romania–Bulgaria BIT.

For the avoidance of doubt, the Tribunal directs that the Commission should not address the interpretation and application of the Romania–Bulgaria BIT other than for purposes of informing its submissions on the conclusion, interpretation and application of the EU Termination Agreement or as may be warranted in response to a question raised below.

1. The Tribunal has on the record of these proceedings (Claimants' Exhibit C-0088) Law No. 18 of 17 March 2017 of the Romanian Parliament approving the termination of the validity of the agreements on the promotion and mutual protection of investments concluded by Romania with the Member States of the European Union. Item 2 of the Annex to this Law refers to the Romania–Bulgaria BIT in issue in these proceedings. Having regard to this Law, is it the Commission's position that the Tribunal has no jurisdiction because the Romania–Bulgaria BIT was terminated by Article 2 and Annex A of the EU Termination Agreement or because the BIT's Sunset Clause was terminated by Article 12(2) and Annex B of the EU Termination Agreement, or for some other reason?

2. What is the international legal character and status of the EU Termination Agreement, in particular, is it (a) a multilateral treaty, (b) a treaty that operates as a series of bilateral agreements between its different States' Parties, (c) an EU treaty / agreement, (d) a hybrid agreement of some sort, and/or (e) an international agreement of some other character?

3. What role did the Commission play in encouraging and/or facilitating EU Member States', and in particular Bulgaria and Romania's, negotiation and conclusion of the EU Termination Agreement and/or in requiring them to conclude the Agreement, including with respect to the drafting and finalisation of the terms of the EU Termination Agreement?

4. Does the Commission consider that the principle reflected in Article 52 of the VCLT is of any relevance with respect to the conclusion, interpretation or application of the EU Termination Agreement?

5. Having regard to Article 19(1) of the Treaty on European Union ("**TEU**"), referenced in the 12th Preambular Paragraph of the EU Termination Agreement, what steps, if any, were taken by the Commission or, to the Commission's knowledge, by individual Member States, and in particular Romania and Bulgaria, to ensure that "remedies sufficient to ensure effective legal protection of investors' rights under Union law" were in place before the EU Termination Agreement was concluded or entered into force?

6. Having regard to the 14th Preambular Paragraph of the EU Termination Agreement, have any steps been taken by the Commission, or are any such steps in contemplation, arising out of the circumstances of the present arbitration?

7. Having regard to the 16th Preambular Paragraph of the EU Termination Agreement, and the circumstances, *inter alia*, of the present arbitral proceedings, what measures and/or actions, if any, does the Commission consider may be necessary within the framework of European Union law in order to ensure the effective legal protection of cross-border investments within the European Union?

8. What are the implications of the EU Termination Agreement in circumstances in which a claimant advances a colourable contention that the effect of the EU Termination Agreement is purportedly to deprive the claimant of protections afforded to it by an intra-EU Bilateral Investment Treaty ("**BIT**") without the elaboration and substitution of remedies sufficient to ensure the effective legal protection of the claimant's rights to legal protection having regard to which the claimant says it made investments covered by the BIT?

9. Does the Commission consider the ***Solange*** principle, relevant to the protection of fundamental rights within the European Union, to have relevance and/or application, by analogy, in the context of international arbitral proceedings with regard to the safeguarding of an investor's rights derived from a BIT in circumstances in which the framework of legal protection of a BIT has been terminated by the EU Termination Agreement but arguably without the elaboration and substitution of remedies sufficient to ensure the effective legal protection of the investment?

10. As a matter of (a) EU law, and/or (b) public international law, does the EU Termination Agreement have direct effect, in the sense of being directly opposable to and binding upon

a putative claimant asserting rights under a BIT said to have been terminated by the EU Termination Agreement? Is this a relevant inquiry?

11. If the EU Termination Agreement does not have direct effect vis-à-vis a putative claimant proposing to assert rights under a BIT said to have been terminated by the EU Termination Agreement, on what legal basis, if any, does the EU Termination Agreement terminate the BIT rights of a putative claimant?

12. Insofar as a BIT said to have been terminated by the EU Termination Agreement required a BIT Contracting Party to serve timely written notice of termination of the BIT to the other Contracting Party, is the EU Termination Agreement to be considered as timely written notice of termination and, if so, on what basis?

13. As regards the Romania–Bulgaria BIT in issue in the present proceedings, does the Commission consider there to have been any other instrument or communication that might be said to amount to a timely written notice of termination, having regard to the Commission's asserted position that the BIT, or at the very least its Sunset Clause, was terminated by the EU Termination Agreement?

14. Having regard to the EU Termination Agreement, does the Commission consider that the principles reflected in Articles 54 and/or 58 of the Vienna Convention on the Law of Treaties 1960 ("**VCLT**") are of any relevance with respect to the conclusion, interpretation or application of the EU Termination Agreement?

15. Having regard to the EU Termination Agreement, does the Commission consider that the principle reflected in Article 59 of the VCLT is of any relevance with respect to the conclusion, interpretation or application of the EU Termination Agreement?

16. Having regard to the EU Termination Agreement, does the Commission consider that the principle reflected in Article 70(1)(b) of the VCLT is of any relevance with respect to the conclusion, interpretation or application of the EU Termination Agreement?

17. Does the Commission consider that the doctrines of legitimate expectations or acquired rights vis-à-vis the Romania–Bulgaria BIT have any relevance and/or application with

respect to the asserted continuing protection of such rights in the kinds of circumstances in issue in the present arbitral proceedings?

18. Having regard to the record of the case and the Parties' submissions on these matters, the Commission is invited to address any other issue that it considers may assist the Tribunal in the present phase of the proceedings relevant to (a) the conclusion, interpretation and application of the EU Termination Agreement, (b) other relevant and applicable principles of European Union law that may be said to be relevant to the conclusion, interpretation and application of the EU Termination Agreement, (c) principles of public international law that may be relevant to the conclusion, interpretation and application of the EU Termination Agreement, and (d) the conclusion, interpretation and application of the EU Termination Agreement having regard to the terms of Article 12(2) and (3) of the Romania–Bulgaria BIT.

Questions for the Republic of Bulgaria

Subject to the scope of the permitted intervention indicated in this Procedural Order, the Tribunal directs that permission to Bulgaria to make written and oral submissions pursuant to Rule 68 of the ICSID Arbitration Rules 2022 is limited to (a) the conclusion, interpretation and application of the EU Termination Agreement, (b) principles of European Union law that may be said to be relevant to the conclusion, interpretation and application of the EU Termination Agreement, (c) principles of public international law that may be relevant to the conclusion, interpretation and application of the EU Termination Agreement, (d) the conclusion, interpretation and application of the EU Termination Agreement, having regard to the terms of Article 12(2) and (3) of the Romania–Bulgaria BIT, and (e) any question of interpretation of the Romania–Bulgaria BIT relevant to the asserted termination of the BIT either by the EU Termination Agreement or by the agreement, or by any instrument or measure, of Bulgaria and/or Romania.

For the avoidance of doubt, the Tribunal directs that Bulgaria should not address any question of the interpretation and application of the Romania–Bulgaria BIT that is not relevant to the assessment of the contention that the Claimants' asserted procedural rights to pursue a remedy in these proceedings under the Romania–Bulgaria BIT were terminated either by the EU Termination Agreement or by the agreement, or by any instrument or measure, of Bulgaria and/or Romania. Bulgaria should not, in particular, address any issue going either to other potential objections to jurisdiction and/or admissibility or to any issue going to the merits of the Claimants' case.

1. The Tribunal has on the record of these proceedings (Claimants' Exhibit C-0088) Law No. 18 of 17 March 2017 of the Romanian Parliament approving the termination of the validity of the agreements on the promotion and mutual protection of investments concluded by Romania with the Member States of the European Union. Item 2 of the Annex to this Law refers to the Romania–Bulgaria BIT in issue in these proceedings. Is there any similar measure of Bulgarian law that addresses the termination of the Romania–Bulgaria BIT? If so, it would assist the Tribunal to be provided with a copy of the measure in question (in the language of the arbitration).

2. Having regard to the Romanian Law referenced above, and possibly a corresponding Bulgarian measure terminating the Romania–Bulgaria BIT, is it Bulgaria's position that the Tribunal has no jurisdiction in these proceedings in consequence of the termination of the Romania–Bulgaria BIT in 2017 or because the Romania–Bulgaria BIT was terminated by Article 2 of the EU Termination Agreement or because the BIT's Sunset Clause was terminated by Article 12(2) and Annex B of the EU Termination Agreement, or for some other reason? If Bulgaria makes no contention that the Tribunal lacks jurisdiction in these proceedings, does Bulgaria consider the Romania–Bulgaria BIT still to be in force or to be no longer operative for some other reason?

3. What role did the Commission play in encouraging and/or facilitating Bulgaria and Romania's negotiation and conclusion of the EU Termination Agreement and/or in requiring them to conclude the Agreement, including with respect to the drafting and finalisation of the terms of the EU Termination Agreement?

4. Does Bulgaria consider that the principle reflected in Article 52 of the VCLT is of any relevance with respect to the conclusion, interpretation or application of the EU Termination Agreement?

5. Having regard to Article 12(2) of the Romania–Bulgaria BIT, was timely written notification of termination of the BIT served by either Contracting Party on the other and, if so, please provide a copy of such notification?

6. If timely written notification of termination of the Romania–Bulgaria BIT was not served by either Contracting Party on the other, is the EU Termination Agreement or any other

communication by the Commission or otherwise under European Union law to be considered as timely written notice of termination for purposes of Article 12(2) of the BIT?

7. Having regard to Article 19(1) of the TEU, referenced in the 12th Preambular Paragraph of the EU Termination Agreement, what steps, if any, were taken by Bulgaria to ensure that "remedies sufficient to ensure effective legal protection of investors' rights under Union law" were in place vis-à-vis investments by Bulgarian investors in Romania before the EU Termination Agreement was concluded or entered into force?

8. What are the implications of the EU Termination Agreement in circumstances in which a claimant advances a colourable contention that the effect of the EU Termination Agreement is purportedly to deprive the claimant of protections afforded to it by a BIT without the elaboration and substitution of remedies sufficient to ensure the effective legal protection of the claimant's rights to legal protection having regard to which the claimant says it made investments covered by the BIT?

9. Does Bulgaria consider the ***Solange*** principle, relevant to the protection of fundamental rights within the European Union, to have any relevance and/or application, by analogy, in the context of international arbitral proceedings with regard to the safeguarding of an investor's rights derived from a BIT in circumstances in which the framework of legal protection of a BIT has been terminated by the EU Termination Agreement but arguably without the elaboration and substitution of remedies sufficient to ensure the effective legal protection of the investment?

10. Does Bulgaria consider that the principles reflected in Articles 54 and/or 58 of the VCLT are of any relevance with respect to the conclusion, interpretation or application of the EU Termination Agreement?

11. Does Bulgaria consider that the principle reflected in Article 59 of the VCLT is of any relevance with respect to the conclusion, interpretation or application of the EU Termination Agreement?

12. Does Bulgaria consider that the principle reflected in Article 70(1)(b) of the VCLT is of any relevance with respect to the conclusion, interpretation or application of the EU Termination Agreement?

13. Does Bulgaria consider that the doctrines of legitimate expectations or acquired rights vis-à-vis the Romania–Bulgaria BIT have any relevance and/or application with respect to the asserted continuing protection of such rights in the kinds of circumstances in issue in the present arbitral proceedings?

14. Having regard to the record of the case and the Parties' written submissions on these matters, Bulgaria is invited to address any other issue that it considers may assist the Tribunal in the present phase of the proceedings relevant to (a) the conclusion, interpretation and application of the EU Termination Agreement, (b) principles of European Union law that may be said to be relevant to the conclusion, interpretation and application of the EU Termination Agreement, (c) principles of public international law that may be relevant to the conclusion, interpretation and application of the EU Termination Agreement, (d) the conclusion, interpretation and application of the EU Termination Agreement having regard to the terms of Article 12(2) and (3) of the Romania—Bulgaria BIT, (e) any questions, above, addressed to the European Commission, and, (f) any question of interpretation of the Romania–Bulgaria BIT relevant to the asserted termination of the BIT by the EU Termination Agreement.