



PCA PRESS RELEASE

ARBITRATION BETWEEN THE REPUBLIC OF CROATIA AND THE REPUBLIC OF SLOVENIA

THE HAGUE, 19 AUGUST 2015

Slovenia demands continuation of arbitration proceedings – Arbitral Tribunal clarifies further procedural steps

On 13 August 2015, the Arbitral Tribunal received observations from the Republic of Slovenia on a letter dated 31 July 2015 from the Republic of Croatia. In that letter, Croatia had informed the Tribunal that Croatia intended to terminate the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia signed on 4 November 2009.¹

In its observations, Slovenia informs the Tribunal that “Slovenia has objected to Croatia’s purported unilateral termination of the Arbitration Agreement”. In Slovenia’s view, the Tribunal “has the power and the duty to continue the proceedings” as it would otherwise be open to any party wishing to delay or prevent the making of an arbitral award to frustrate an arbitration agreement. Slovenia also argues that “Croatia has achieved its vital interest and joined the EU through the operation of Article 9 of the Arbitration Agreement it now wishes to terminate”. Finally, Slovenia states “it is a general principle of international law governing arbitration proceedings that any tribunal has the power to determine the scope of its own competence (*Kompetenz-Kompetenz* principle)”, a principle that is in Slovenia’s view confirmed by Article 3, paragraph 4 of the Arbitration Agreement, Article 6, paragraph 4 of the Arbitration Agreement and Article 34, paragraph 2 of the PCA Optional Rules for Arbitrating Disputes between Two States.

Following the resignation of Professor Budislav Vukas (on 30 July 2015) and Judge Ronny Abraham (on 3 August 2015), the Tribunal had invited each Party to appoint a replacement arbitrator. No appointment was made by Croatia. Slovenia informed the Tribunal on 13 August 2015 that “in order to preserve the integrity, independence and impartiality of the Arbitral Tribunal and the ongoing proceedings, it will refrain from appointing a member of the Tribunal to replace Judge Abraham”. Instead, Slovenia requested “the President of the Arbitration Tribunal, Judge Gilbert Guillaume, in exercise of his powers under Article 2, paragraph 2, of the Arbitration Agreement, to appoint a member of the Arbitration Tribunal”.

Article 2, paragraph 2 of the Arbitration Agreement provides that, “[i]n case that no appointment has been made within [15 days], the respective member shall be appointed by the President of the Arbitral Tribunal”. Since neither Party has made an appointment within 15 days after the resignation of Professor Vukas and Judge Abraham, it now falls to the President to appoint the remaining two members of the Tribunal.

Once the Tribunal has been re-constituted, the Tribunal intends to consider the Parties’ positions carefully, including in respect of the effect of Croatia’s stated intention to terminate the Arbitration

¹ A summary of Croatia’s letter dated 31 July 2015 is contained in a PCA Press Release dated 5 August 2015, which is available on the PCA’s Case Repository (www.pcacases.com).

Agreement and in respect of the possible implications for the present proceedings of the events reportedly underlying Croatia's decision. In this regard, the Tribunal may invite further submissions from the Parties on questions of fact and law as may be necessary.

Further information about the proceedings is available on the PCA Case Repository (<http://www.pcacases.com>).

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