

**Note No. 3303/2015**

The Ministry of Foreign and European Affairs of the Republic of Croatia presents its compliments to the Ministry of Foreign Affairs of the Republic of Slovenia and has the honour to notify the following:

The Republic of Croatia considers that it is entitled 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 and entered into force on 29 November 2010). In accordance with Article 60, paragraph 1 of the Vienna Convention on the Law of Treaties, the Republic of Croatia considers that the Republic of Slovenia has engaged in one or more material breaches of the Arbitration Agreement. The Republic of Croatia hereby provides the notification pursuant to Article 65, paragraph 1 of the Vienna Convention that it proposes to terminate forthwith the Arbitration Agreement.

This notification is made pursuant to the *Ruling of the Croatian Parliament on the obligation of the Government of the Republic of Croatia to begin the procedure of termination of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia signed on 4 November 2009*, of 29 July 2015 and in accordance with the *Decision of the Government of the Republic of Croatia to begin the procedure of termination of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia because of its breach*, of 30 July 2015.

By violating one or more provisions that are “essential to the accomplishment of the object or purpose of the [Arbitration Agreement], the Republic of Slovenia has materially breached the Arbitration Agreement within the meaning of Article 60, paragraph 3 of the Vienna Convention. The acts giving rise to the violations are evidenced in the actions recorded in publicly available conversations between the Agent of Slovenia, for which the Republic of Slovenia is internationally responsible, and the arbitrator appointed by Slovenia. These conversations record blatant, systematic and repeated violations of the most fundamental principles of arbitral procedure, including procedural fairness, due process, equality of arms and independence. As a result of the actions of the Republic of Slovenia, the impartiality and integrity of the arbitral proceedings have been irrevocably damaged, giving rise to a manifest violation of the rights of Croatia.

The actions for which Slovenia is internationally responsible have violated *inter alia* Article 6 of the Arbitration Agreement, by violating the agreed procedure and rules of confidentiality and Article 10 of the Arbitration Agreement, which obliges the parties to “refrain from any action or statement which might .... jeopardize the work of the Arbitral Tribunal”.

MINISTRY OF FOREIGN AFFAIRS  
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These provisions are essential to the accomplishment of the object and purpose of the Arbitration Agreement. The illegal and unethical activities of the Agent of Slovenia and the arbitrator appointed by Slovenia have corrupted the entire procedure, by seeking to integrate additional “evidence” and “arguments” after the close of the written proceedings and hearings. Publicly available material establishes that documents were given to an arbitrator by the Agent of Slovenia after the closure of the public proceedings, and were presented by that arbitrator to other arbitrators and the secretariat of the PCA as his own, or were inserted into the official record as a result of these actions by the Tribunal's secretariat. Such actions violate the most fundamental and basic tenets of fairness and integrity in international legal proceedings of this kind. As a result of these acts it is no longer possible to distinguish between evidence and material which is properly part of the official record, and evidence introduced by illicit, unlawful and unethical means.

As a consequence, the entire arbitral process has been tainted and compromised, such that the mechanisms available within the Arbitration Agreement and means at the disposal of the Arbitration Tribunal cannot repair the far-reaching and irreversible damage that has been done. The irreparable harm that has been done to the factual record before the Arbitral Tribunal precludes the Tribunal from accomplishing its main tasks, as provided for in Articles 3 and 4 of the Arbitration Agreement.

Principles of fairness and integrity having been violated, irreparable harm has been done to the legitimacy and prospects of the process. In the absence of any possibility that the arbitral process will now be seen to be fair and proper, and to meet all applicable standards, the object and purpose of the Arbitration Agreement cannot be accomplished.

Taking all this in account, Ministry of Foreign and European Affairs of the Republic of Croatia has the honor to notify its entitlement to propose the termination of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 and entered into force on 29 November 2010.

The Ministry of Foreign and European Affairs of the Republic of Croatia also notifies the Republic of Slovenia that from the date of this note the Republic of Croatia ceases to apply the Arbitration Agreement.

The Ministry of Foreign and European Affairs of the Republic of Croatia shall communicate this notification to the Secretary – General of the United Nations in his capacity as the depositary of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 and entered into force on 29 November 2010.

The Ministry of Foreign and European Affairs of the Republic of Croatia avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Slovenia the assurances of its highest consideration.

