

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

LLC ENERGOALLIANCE,

Petitioner,

v.

REPUBLIC OF MOLDOVA,

Respondent.

Civil Action No.

DECLARATION OF VIACHESLAV LYCH

I, Viacheslav Lych, hereby declare and state as follows:

1. I am over the age 21 and am competent to make this Declaration.
2. This Declaration is made upon personal knowledge, information, or belief, and insofar as it is made upon information or belief, I believe the same to be true.
3. I am an attorney duly admitted to practice law in Ukraine by the Bar Qualification Disciplinary Commission of the Kyiv Region, Certificate of Attorney No. 2928, and am the co-founder and managing partner of Viacheslav Lych & Partners, a Legal Association, a Ukrainian law firm. I have been acting as counsel for LLC Energoalliance, a company organized in Ukraine (“Energoalliance”) in the matter of the Arbitration between Energoalliance and the Republic of Moldova (“Moldova”).
4. I submit this Declaration in support of Energoalliance’s Petition to Confirm Arbitration Award and Enter Judgment. The arbitration award was issued on October 25, 2013 in *ad hoc* arbitration pursuant to the arbitration rules of the United Nations Commission on International Trade Law (“UNCITRAL”) (the “Award”). True and correct copies of the Award with a writ of execution (an *Exequatur*) issued by the High Court of Paris and certified

translation thereof are attached hereto as Exhibits A (Award and *Exequatur* in Original Russian and French), B (certified translation of Award), and C (certified translation of *Exequatur*).

5. The dispute at issue arose out of the supply of electricity in 1999 – 2000 from Ukraine to the Republic of Moldova. In 1999, Energoalliance became a party to a complex transaction involving two agreements for the supply of electricity to Moldtranselectro, a Moldovan state-owned entity. Other parties to the agreements included Ukrenerg, a Ukrainian power producer, and Derimen Properties Ltd., a company registered in the British Virgin Islands.

6. Pursuant to the first agreement (“Agreement 01/01”), Energoalliance purchased electricity from Ukrenerg in the amount confirmed by Moldtranselectro on a monthly basis. Pursuant to the second agreement (“Agreement 24/02”), Energoalliance sold electricity to Derimen for delivery to Moldtranselectro.

7. The role of Derimen was to provide bridge financing in order to reconcile differences between Ukrainian legislation and Moldovan business practices. On the one hand, Ukrainian currency control legislation required exporters to receive payments within 90 days of the export subject to hefty fines for payment delays. On the other hand, due to economic difficulties in the country, Moldovan companies often delayed payments and paid for electricity with barter instead of cash. Therefore, if Energoalliance were to sell electricity directly to Moldtranselectro, it would bear the risk of regulatory fines if Moldtranselectro did not meet its contractual obligations. Thus, by providing intermediate financing, Derimen served as an integral part of the supply chain.

8. In 2000, Moldtranselectro failed to make payments for supplied electricity to Derimen and the parties concluded a tri-partite assignment agreement under which Derimen assigned its Moldtranselectro receivables to Energoalliance (“Agreement 06/20”). On August

22, 2000, Moldtranselectro confirmed the amount of the receivables of US\$ 20,287,682.29 but informed Energoalliance that it was unable to fulfill its payment obligations.

9. From that point on, various branches of the Moldovan government engaged in conduct preventing Energoalliance from collecting the debt.

10. Specifically, on October 2, 2000, the Government of Moldova adopted Resolution No. 1000 ("Resolution 1000"), which purported to transfer the assets of Moldtranselectro to three newly formed state-owned companies without also transferring Moldtranselectro's debts. This left Moldtranselectro without means of paying the debts owed to Energoalliance.

11. In another episode, on July 4, 2002, the Auditing Chamber of the Republic of Moldova in *ex parte* proceeding adopted Resolution No. 66 ("Resolution 66"). In a decision defying common sense, the Auditing Chamber held that the electricity delivered by Energoalliance should be deemed as not supplied and ordered Moldtranselectro to cancel the existing debts to Energoalliance. Neither Energoalliance nor Deriman were parties to the Auditing Chamber proceeding.

12. During the period from 2002 to 2009 Energoalliance engaged in numerous appeals and litigations in Moldovan courts, to no avail. After years of attempts to obtain satisfaction through the Moldovan judicial system, Energoalliance sought recourse to the international investment dispute resolution process.

13. On May 12, 2010, as required by Article 26, Section 1 of the Energy Charter Treaty ("ECT"), Energoalliance sent a request for amicable resolution of its dispute with Moldova and received no response. A true and correct copy of the request for amicable resolution and negotiation is annexed to this Declaration as Exhibit D (including translation certificate).

14. On July 8, 2010 and August 18, 2010, Energoalliance issued notices of arbitration to Moldova requesting an *ad hoc* arbitration in accordance with the UNCITRAL Arbitration Rules pursuant to Article 26(4)(b) of the ECT. True and correct copies of the arbitration notices issued by Energoalliance are annexed to this Declaration as Exhibits E and F, respectively (including translation certificates). Energoalliance and Moldova each made written submissions to the duly constituted arbitral tribunal and appeared for a final hearing on Energoalliance's claims, which was held at the International Chamber of Commerce in Paris, France from July 4-6, 2012. At the hearing, both parties, through counsel, presented their arguments and evidence to the arbitral tribunal.

15. The Award was issued on October 25, 2013. The Arbitration Tribunal held that in adopting Resolution 1000 and Resolution 66, Republic of Moldova breached its obligation in that it failed to "create stable, equitable, favourable and transparent conditions" with regard to the Energoalliance's investment and to ensure that the Energoalliance's investment enjoys "fair and equitable treatment" as required by Article 10(1) of the ECT. Award at ¶¶ 346 & 356. As a result of Moldova's breaches, the arbitral tribunal ordered it to pay Energoalliance the following amounts.

- a. MLD 195,547,212 (one hundred ninety-five million, five hundred forty-seven thousand, two hundred and twelve Moldovan Lei) as the amount of Energoalliance's lost investment;
- b. MLD 357,916,008 (three hundred fifty-seven million, nine hundred sixteen thousand and eight Moldovan Lei) as interest for the period up to May 31, 2012;
- c. MLD 39,417,175 (thirty-nine million, four hundred seventeen thousand, one hundred seventy five Moldovan Lei) as interest for the period between June 1, 2012 and the date of the award;
- d. \$ 200,000 (two hundred thousand United States Dollars) as Energoalliance's attorneys' fees in arbitration;

- e. \$ 340,000 (three hundred forty thousand United States Dollars) as arbitration costs.

Id. at ¶¶ 413, 422, 427, 424, & 435 (summarized at ¶ 436).

16. The Award was subsequently confirmed and a writ of execution (an *Exequatur*) issued by the High Court of Paris. A true and correct copy of the Award with the writ of execution attached in the original Russian and French are annexed to this Declaration as Exhibit A. Certified translations of the Award and the writ of execution are annexed to this Declaration as Exhibits B and C, respectively.

17. Based on a letter from the Chairperson of the Arbitration Tribunal dated October 25, 2013, a copy of the decision was delivered to both Energoalliance's and Moldova's arbitration counsel by courier on the same day. A true and correct copy of this letter and a certified translation is annexed to this Declaration as Exhibit G.

18. On November 25, 2013, Moldova filed an application with the Paris Court of Appeal seeking to annul the Award based on substantially the same grounds Moldova raised during the arbitration proceedings and that were rejected by the arbitral tribunal. Moldova did not seek a stay of enforcement proceedings; nor has the French court granted any such stay. Moldova's application is still pending.


19. On April 15, 2014, Energoalliance sent a letter to Moldova seeking voluntary enforcement of the Award. A true and correct copy of this letter in both English and Russian is annexed to this Declaration as Exhibit H (including translation certificate).

20. On August 5, 2014, Moldova rejected Energoalliance's request that it voluntarily comply with the award. A true and correct copy of this letter in both English and Russian is annexed to this Declaration as Exhibit I (including translation certificate). As of the date of this Declaration, Moldova has failed to pay any of the Award amounts.

21. Based on my personal knowledge, I declare that the documents attached to this Declaration are genuine.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: November 04, 2014



Viacheslav Lych