

Sheppard Mullin Obtains the Annulment of the European Commission's State Aid Decision in the Micula Case Before the General Court of the EU

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In a long-awaited ruling on June 18, 2019, the General Court of the EU (GCEU) annulled the European Commission's (Commission) State aid decision in the Micula case. Jacques Derenne, partner, and Dimitris Vallindas, counsel, of Sheppard Mullin's Brussels office represented Viorel Micula and his companies before the GCEU in this landmark victory.

In 2005, in the context of its EU accession talks, Romania repealed certain incentives to invest in disfavored areas. Relying on these incentives, Viorel and Ioan Micula, Swedish citizens, through several of their companies, had made substantial investments in Romania. As a consequence, the Micula brothers initiated arbitration proceedings with the *International Centre for Settlement of Investment Disputes, ICSID*. They argued that the conditions of the revocation of the incentives were in breach of the fair and equitable treatment principle under the 2002 Sweden-Romania Bilateral Investment Treaty. In 2013, the arbitral tribunal awarded compensation to the claimants.

The Commission intervened as *amicus curiae* in the arbitration proceedings, claiming in substance that any compensation re-establishing the advantages of the repealed incentives would constitute incompatible State aid under EU law. Having been unsuccessful, the Commission adopted its decision in 2015 prohibiting Romania from paying the awarded damages. It decided that their payment would constitute incompatible State aid under EU rules.

In its ruling on June 18, the GCEU upheld the applicants' argument that the Commission lacked competence to apply EU State aid rules in the present case, as all material events which resulted in the award occurred before Romania's accession to the EU on January 1, 2007. For the GCEU, the right to receive compensation arose at the time when Romania repealed the incentives in 2005, (i.e. pre-accession). The award was merely an ancillary element of the compensation at issue and could not serve as a basis of the Commission's competence to retroactively exercise its powers to a situation predating accession. The GCEU did not rule on whether such an arbitral award in respect of a post-accession investment would be enforceable or within the Commission's competence to block.

The GCEU also upheld a second argument put forward by the applicants, namely that the compensation in question did not confer any advantage to the recipients, at least pre-accession. As the Commission made no distinction between pre- and post-accession compensation, its decision classifying the entirety of compensation as aid was necessarily unlawful. Micula is now in a favorable position to enforce the arbitral award.

The Commission may decide to appeal on points of law the GCEU judgment before the Court of Justice of the EU, or it may adopt a new decision, possibly focusing on post-accession compensation.

The court documents are available [here](#) and [here](#).

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Practice Areas

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