

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Infrastructure Services Luxembourg S.A.R.L.,

37 Avenue John F. Kennedy  
1855 Luxembourg, Luxembourg

Energia Termosolar B.V.,

Amstelveenseweg 760  
1081 JK, Amsterdam, Netherlands,

*Petitioners,*

v.

Kingdom of Spain,

Abogacia General del Estado  
Calle Ayala, 5  
28001 - Madrid  
Spain

*Respondent.*

**Civil Action No.** \_\_\_\_\_

**Petition to Enforce Arbitral Award**

Petitioners Infrastructure Services Luxembourg S.A.R.L. (formerly Antin Infrastructure Services Luxembourg S.A.R.L.) and Energia Termosolar B.V. (formerly Antin Energia Termosolar B.V.) bring this action to enforce an arbitral award (the “Award”) issued on June 15, 2018 in ICSID Case No. ARB/13/31 against Respondent, the Kingdom of Spain (“Spain”), following arbitration proceedings conducted in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”). Pursuant to Article 54 of the ICSID Convention and 22 U.S.C. § 1650a, arbitral awards issued under the ICSID Convention are not subject to collateral attack and must be enforced and given the same full faith and credit as if the award were a final judgment of a court

in the United States. Accordingly, Petitioners request that this Court (1) enter an order enforcing the Award in the same manner as a final judgment issued by a court of one of the several states, and (2) enter judgment in Petitioners' favor in the amounts and currency denominations specified in the Award.

A certified copy of the Award is attached as Exhibit A to the Declaration of Matthew S. Rozen ("Rozen Decl."), Exhibit 1 hereto. A copy of the ICSID Convention is attached hereto as Exhibit 2.

### **Parties**

1. Petitioners Infrastructure Services Luxembourg S.A.R.L. and Energia Termosolar B.V. are the entities that obtained the Award. Infrastructure Services Luxembourg S.A.R.L. is a private limited liability company incorporated under the laws of Luxembourg. Energia Termosolar B.V. is a private limited liability company incorporated under the laws of the Netherlands. At the time of the Award, Infrastructure Services Luxembourg S.A.R.L. was named Antin Infrastructure Services Luxembourg S.A.R.L., and Energia Termosolar B.V. was named Antin Energia Termosolar B.V. Infrastructure Services Luxembourg S.A.R.L. changed its name on July 23, 2018, and Energia Termosolar B.V. changed its name on July 25, 2018.

2. Respondent, the Kingdom of Spain, is a foreign state within the meaning of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1332, 1391(f), 1602-1611.

### **Jurisdiction and Venue**

3. This Court has subject-matter jurisdiction over this action pursuant to the FSIA, 28 U.S.C. § 1330(a), because this is a "nonjury civil action against a foreign state" on a claim "with respect to which the foreign state is not entitled to immunity" under the FSIA. Pursuant to Section 1605(a)(1) of the FSIA, Spain is not entitled to immunity from this Court's jurisdiction

in an action to enforce an ICSID Convention award because it has waived that immunity by agreeing to the ICSID Convention. *See Blue Ridge Investments, L.L.C. v. Republic of Argentina*, 735 F.3d 72, 84 (2d Cir. 2013). Further, pursuant to Section 1605(a)(6) of the FSIA, Spain is not immune from suit because this is an action to enforce an arbitral award governed by the ICSID Convention, which is a treaty in force in the United States for the recognition and enforcement of arbitral awards. *Id.* at 85.

4. This Court also has subject-matter jurisdiction pursuant to 22 U.S.C. § 1650a(b), which provides that “[t]he district courts of the United States . . . shall have exclusive jurisdiction over actions and proceedings” to enforce awards entered under the ICSID Convention.

5. This Court has personal jurisdiction over Spain pursuant to the FSIA, 28 U.S.C. § 1330(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(f)(1) and (4).

6. The Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, *et seq.* does “not apply to enforcement of awards rendered pursuant to the [ICSID] convention.” 22 U.S.C. § 1650a(a). Thus, the FAA’s jurisdictional requirements do not apply to this action.

### **The Underlying Dispute**

7. Beginning in 2007, Spain adopted legislation with the goal of attracting investment in renewable energy production, including concentrated solar power projects, within its territory. Award ¶¶ 91-108 (Rozen Decl., Exhibit A). In reliance on the financial incentives and inducements provided by these legislative measures, Petitioners invested approximately EUR 139.5 million in solar power projects in Spain’s territory. *Id.* ¶¶ 109-34, 359. Spain subsequently adopted a series of laws between 2012 and 2014 retrenching on, and eventually revoking, the economic incentives on which Petitioners had relied in investing in solar power

projects. *Id.* ¶¶ 139-53. The rescission of these incentives caused substantial harm to the value of Petitioners' investments. *Id.* ¶¶ 154, 725.

8. Petitioners' investments in solar power projects were protected by the Energy Charter Treaty ("ECT"), which "establishes a legal framework in order to promote long-term co-operation in the energy field." Award ¶¶ 209-10, 216 (Rozen Decl., Exhibit A); *see generally* ECT (Exhibit 3 hereto).

9. Spain is a contracting party to the ECT,<sup>1</sup> and consented to submit disputes arising under that treaty to arbitration under the ICSID Convention. *See* ECT, art. 26(3)(a), (4)(a)(i) (Exhibit 3 hereto).

10. Article 26(3)(a) of the ECT provides that "each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration . . . in accordance with the provisions of this Article." Article 26(4)(a)(i) further provides that where "the Contracting Party of the Investor and the Contracting Party . . . to the dispute are both parties to the ICSID Convention," the dispute will be submitted for arbitration under that convention.

11. Spain is a party to the ICSID Convention.<sup>2</sup> Infrastructure Services Luxembourg S.A.R.L. and Energia Termosolar B.V. are investors under the ECT, and are incorporated under the laws of Luxembourg and the Netherlands, respectively, both of which are also contracting parties to the ICSID Convention<sup>3</sup> and the ECT.<sup>4</sup> ECT, art. 1(7) (Exhibit 3 hereto); Award

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<sup>1</sup> <https://energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/signatories-contracting-parties/>.

<sup>2</sup> <https://icsid.worldbank.org/en/Pages/icsiddocs/List-of-Member-States.aspx>.

<sup>3</sup> *Id.*

<sup>4</sup> <https://energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/signatories-contracting-parties/>.

¶¶ 209-10 (Rozen Decl., Exhibit A). Accordingly, Spain consented to arbitrate the underlying dispute pursuant to the ICSID Convention.

12. On November 1, 2013, Petitioners filed a request with the International Centre for Settlement of Investment Disputes (“ICSID”) for arbitration under the ICSID Convention. Award ¶ 6 (Rozen Decl., Exhibit A). Petitioners contended that Spain’s legislative actions that resulted in the devaluation of Petitioners’ investments constituted a breach of Spain’s obligations under the ECT. *Id.* ¶ 155.

13. An ICSID arbitral tribunal (the “Tribunal”) was constituted on August 7, 2014. Award ¶ 10 (Rozen Decl., Exhibit A). The Tribunal conducted a Hearing on Jurisdiction and Merits in Paris, France, from October 19 through October 25, 2016. *Id.* ¶ 33.

14. On June 15, 2018, the Tribunal issued the Award, finding that Spain had breached its obligations under Article 10(1) of the ECT by failing to accord fair and equitable treatment to Petitioners’ investments within Spain’s territory. Award ¶ 748(b) (Rozen Decl., Exhibit A).

15. The Award requires Spain to pay EUR 112 million as damages. Award ¶ 748(c) (Rozen Decl., Exhibit A). The Award further requires Spain to pay interest on the damages award at a rate of 2.07 percent from June 20, 2014 until the Award is paid in full, compounded monthly. *Id.* ¶ 748(d). In addition, the Award requires Spain to pay USD 635,431.70 in arbitration costs and GBP 2,447,008.61 in legal representation costs and expenses. *Id.* ¶ 748(e).

16. The ICSID Convention provides that a party that believes an arbitral award contains a “clerical, arithmetical or similar error” may request that the tribunal rectify the error. ICSID Convention, art. 49(2) (Exhibit 2 hereto). Unlike other forms of relief from an arbitral award, a request for rectification does not stay enforcement of the award. *Compare id.*, art. 49(2), *with id.*, art. 52(5) (party who seeks “annulment” of an arbitral award may request a stay

of enforcement, and enforcement shall be stayed provisionally pending a ruling on that request). Accordingly, the ICSID Convention provides that “[t]he award shall be binding on the parties” and “[e]ach party shall abide by and comply with the terms of the award,” notwithstanding the pendency of a request for rectification of the award. *Id.* art. 53(1).

17. On July 24, 2018, Spain submitted a Request for Rectification of the Award to the Tribunal, alleging that the Tribunal erred in computing the amount of compensatory damages. Spain has requested that the Tribunal (a) reduce the award of compensatory damages from EUR 112 million to EUR 84 million, and (b) reduce the award of costs to correspond with the reduced damages computation. Spain has not applied for or obtained a stay of enforcement of the Award pending its request. Thus, the Award remains binding and enforceable, notwithstanding Spain’s Request for Rectification.

18. The Tribunal has not ruled on Spain’s Request for Rectification as of the filing of this Petition. If the Tribunal were to grant Spain’s request, any adjusted amounts would “become part of the award.” *See* ICSID Convention, art. 49(2) (Exhibit 2 hereto).

#### **Legal Basis for Relief**

19. The ICSID Convention provides that contracting parties must “recognize an award rendered pursuant to [the] Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State.” ICSID Convention, art. 54(1) (Exhibit 2 hereto). The ICSID Convention further provides that a contracting state “with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.” *Id.*

20. The United States is a contracting party to the ICSID Convention and is therefore obligated to enforce the Award as if it were a final judgment of a court in the United States.<sup>5</sup>

That obligation is fulfilled by 22 U.S.C. § 1650a, which provides:

(a) An award of an arbitral tribunal rendered pursuant to chapter IV of the convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States. The Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) shall not apply to enforcement of awards rendered pursuant to the convention.

21. Arbitral awards issued against a foreign state pursuant to the ICSID Convention may be enforced by bringing a plenary action in federal court in compliance with the requirements for commencing a civil action under the Federal Rules of Civil Procedure, and with the personal jurisdiction, service, and venue requirements of the FSIA. *See Micula v. Gov't of Romania*, 104 F. Supp. 3d 42, 49-50 (D.D.C. 2015); *Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 100, 117-18, 119-20 (2d Cir. 2017).

22. Awards issued pursuant to the ICSID Convention are not subject to collateral attack in enforcement proceedings under 22 U.S.C. § 1650a. “Member states’ courts are ... not permitted to examine an ICSID award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award; under the Convention’s terms, they may do no more than examine the judgment’s authenticity and enforce the obligations imposed by the award.” *Mobil Cerro*, 863 F.3d at 102. The ICSID Convention therefore “reflects an expectation that the courts of a member nation will treat the award as final.” *Id.*; *see also id.* at 118 (noting that an “ICSID award-debtor ... [is] not ... permitted to make substantive challenges to the award”); *see also* ICSID Convention, arts. 53(1), 54(1) (Exhibit 2 hereto). Consistent with

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<sup>5</sup> <https://icsid.worldbank.org/en/Pages/icsiddocs/List-of-Member-States.aspx>.

this mandate, 22 U.S.C. § 1650a(a) provides that the FAA “shall not apply to enforcement of awards rendered pursuant to the convention,” thereby “mak[ing] [the FAA’s defenses] unavailable to ICSID award-debtors in federal court proceedings.” *Mobil Cerro*, 863 F.3d at 120-21. District courts thus enforce ICSID awards without allowing substantive challenges to enforcement of the awards. *See, e.g., Duke Energy Int’l Peru Investments No. 1 Ltd. v. Republic of Peru*, 904 F. Supp. 2d 131, 132-34 (D.D.C. 2012); *Republic of Panama v. Jurado*, No. 8:12-cv-1647, Doc. 18 (M.D. Fla. June 13, 2013).

### **Cause of Action and Request for Relief**

23. Arbitral awards issued pursuant to the ICSID Convention are subject to mandatory enforcement in the courts of the United States, which must give those awards the same full faith and credit as a final judgment issued by a state court. 22 U.S.C. § 1650a(a).

24. The Award was rendered in accordance with the ICSID Convention against Spain and in Petitioners’ favor. Petitioners are therefore entitled to enforce the Award’s pecuniary obligations against Spain.

25. Accordingly, Petitioners are entitled to an order (a) enforcing the Award in the same manner as a final judgment issued by a court of one of the several states, and (b) entering judgment in Petitioners’ favor in the amount specified in the Award.

26. Petitioners request that the Court enter judgment in the currencies specified in the Award. *See* Award ¶ 748(c), (e) (Rozen Decl., Exhibit A). This Court has authority to enter judgment in a foreign currency when requested by the judgment creditor. *See Cont’l Transfert Technique Ltd. v. Federal Gov’t of Nigeria*, 603 F. App’x 1, 4 (D.C. Cir. 2015); *Cont’l Transfert Technique Ltd. v. Federal Gov’t of Nigeria*, 932 F. Supp. 2d 153, 158 (D.D.C. 2013), *aff’d*, 603

F. App'x 1 (D.C. Cir. 2015); *accord Leidos, Inc. v. Hellenic Republic*, 881 F.3d 213, 220 (D.C. Cir. 2018).

WHEREFORE, Petitioners request that the Court enter an order:

(a) enforcing the Award against Spain in the same manner as a final judgment issued by a court of one of the several states; and

(b) entering judgment against Spain and in Petitioners' favor in the following amounts and currency denominations:

- (1) EUR 112 million in compensatory damages;
- (2) interest thereupon from June 20, 2014 to the date of payment in full at the rate of 2.07 percent, compounded monthly;
- (3) USD 635,431.70 in arbitration costs; and
- (4) GBP 2,447,008.61 in legal representation costs and expenses;

or any other adjusted amount that subsequently becomes part of the Award pursuant to Article 49(2) of the ICSID Convention.

Dated: July 27, 2018

Respectfully submitted,

/s/ Stuart F. Delery

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