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3 March 2023

URGENT

AES Solar Energy Coöperatief U.A.
Attn. Board of Directors
Herengracht 450
1017 CA Amsterdam

Attn:

Mr J.A.R.A. Zijderveld,
Mr. P. Haskopoulos
Mr. P.C.A. Kager
Mr. C.E. Mathiesen JR

With a copy to: Houthoff

Our ref DR/122097-00009/RBP1/PL8T

Dear mr. Zijderveld, mr. Haskopoulos, mr. Kager, and mr. Mathiesen,

Kingdom of Spain / AES, mr. Zijderveld, mr. Haskopoulos, mr. Kager and mr. Mathiesen

On behalf of the Kingdom of Spain ("**Spain**") we request your immediate attention.

1. **Recent developments**

- 1.1 As you are aware, Spain summoned AES Solar Energy Coöperatief U.A. ("**AES**") and Ampere Equity Fund B.V. ("**AEF**") before the District Court of Amsterdam in order to prevent AES and AEF from evading binding EU state aid rules by seeking enforcement of an arbitral award at the District Court of Columbia. The proceedings before the District Court of Amsterdam are filed under docket number C/13/728512.
- 1.2 On Wednesday 1 March 2023, the interlocutory judge of the District Court of Amsterdam rendered an ex parte judgment on AES, AEF and Blasket Renewable Investments LLC, preventing these parties from filing an anti-suit injunction against Spain in the United States. Following this judgment, yesterday, AES and AEF filed a petition at the District Court of Columbia in order to expedite the process of substitution in the enforcement proceedings in the United States. The aim of this substitution is to replace AES and AEF as claimants by

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Basket Renewable Investments LLC, a company established in the United States. By doing so, AES and AEF aim to make the main proceedings in the Netherlands illusory, as Basket Renewable Investments LLC is no defendant in that proceedings.

2. **You are acting in violation of EU and Dutch laws**

2.1 It is apparent that this substitution has only one purpose: AES and its directors are wilfully avoiding binding EU state aid laws, and are depriving Spain from seeking justice at the court of the Netherlands. AES does not even hide this plan. In its petition to substitute, the US lawyer of AES stated the following:

“Petitioners have therefore requested that the Court substitute Basket as petitioner, so that Basket can carry this case through to judgment regardless of whether Spain succeeds in the Dutch action.”

2.2 If this plan succeeds, Basket Renewable Investments LLC is able to obtain the enforcement judgment in the United States and will, in violation of EU laws and thus through an illegal route, collect state aid from a European Member State. By doing so, AES and its directors are deliberately acting in violation of EU laws and Dutch laws, which may lead to damages in the amount of EUR 15.4 million¹ or even more, considering interests and lawyer’s fees.

3. **Director’s liability**

3.1 This letter serves a first and final warning to AES and to all board members personally, as you can still prevent this process of substitution in the United States. You are all subject to EU law and to Dutch laws. Your actions are in violation of EU and Dutch corporate (liability) laws and they will most likely cause significant damage to Spain.

3.2 The Dutch rules on director’s liability are clear: if one or more directors cause the company to breach its obligations, the directors can be held liable for the damages. The execution of this plan is a textbook example of directors liability:

- I. AES knows that it cannot enforce the arbitral award in the EU because of binding EU laws. Therefore, AES tries to evade EU laws by enforcing the award in the United States.
- II. To prevent this, Spain started proceedings before the District Court of Amsterdam against AES and served the writ of summons on AES via service on mr. Zijderveld in person at his home address on 28 December 2022.
- III. AES then assigned its rights and title of the arbitral award to Basket Renewable Investments LLC and filed a petition for substitution in the United States. The sole aim of this assignment and substitution is to make the proceedings before the District Court of Amsterdam illusory.

¹ This is the amount of the arbitral award.

- IV. Spain obtained an ex parte injunction against AES to start anti-suit injunctions. The inter partes hearing will take place on 13 March 2023.
- V. In response, AES requested to expedite the motion to substitute, in order to finalize the substitution of Basket Renewable Investments LLC even before 13 March 2023.
- 3.3 It is evident that through the substitution, AES will (try to) to evade the Dutch courts and to collect the arbitral award in violation of EU laws, simultaneously depriving Spain of an amount of (at least) EUR 15,4 million.
- 3.4 Following standard Dutch case law, a director can be held liable for damages if he brings about or permits the legal entity to fail to fulfil its legal obligations, while he knew or ought reasonably to have understood that the legal entity's conduct, which he effected or permitted, would result in the legal entity failing to meet its obligations and would not provide redress for the damage arising as a result (frustration of payment and redress).²
- 3.5 In addition, according to article 347 of the Dutch Criminal Code (*Wetboek van Strafrecht*), directors of a company may receive a prison sentence of up to two years, if they wilfully dispose of the company's funds. This provision also aims to protect creditors (in this case: the Kingdom of Spain).

Article 347 Dutch Criminal Code: "*The director or commissioner of a legal entity who, other than in the case of Articles 342 and 343, has excessively consumed, spent or disposed of the legal entity's funds, or has lent his cooperation or consent to this, as a result of which the legal entity suffers serious disadvantage and its continued existence is endangered, shall be punished with imprisonment of not more than two years or a fifth-category fine.*"

- 3.6 Should you be in any doubt of the civil, criminal and financial consequences of your current actions, please contact your law firm Houthoff for advice.

4. **Urgent request**

- 4.1 For the above reasons, we urgently request AES and its directors to confirm that they will not proceed with the substitution of AES by Basket Renewable Investments LLC. We ask you to confirm this ultimately by **Friday 3 March 2023 at 5:00 PM CET** via e-mail to: paul.tjiam@simmons-simmons.com and edwin.vandervelde@simmons-simmons.com.
- 4.2 If you refuse to confirm this unconditionally, Spain reserves the right to immediately and without further notice start proceedings before the Dutch court against AES and its directors, to enjoin them from completing the substitution of AES by Basket Renewable Investments LLC. In addition, Spain holds AES and its directors liable for all damages resulting from a successful substitution, including any enforcement of and measure to enforce the arbitral award by Basket Renewable Investments LLC.

² Dutch Supreme Court 8 December 2006, ECLI:NL:HR:2006:AZ0758.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Paul Tjiam', written over the typed name and title.

Paul Tjiam
Partner
Simmons & Simmons LLP

A handwritten signature in blue ink, appearing to be 'Edwin van der Velde', written over the typed name and title.

Edwin van der Velde
Associate