

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

CEF Energia, B.V.	Petitioner,
	v.
The Italian Republic	Respondent.

Case No. 1:19-cv-03443

Greentech Energy Systems A/S (now known as Athena Investments A/S), Novenergia General Partner S.A. (acting as liquidator of Novenergia II Energy & Environment (SCA) SICAR) Novenergia II Italian Portfolio	Petitioners,
	v.
The Italian Republic	Respondent.

DECLARATION OF JAKOB RAGNWALDH

Jakob Ragnwaldh states the following upon penalty of perjury:

1. I am over the age 21 and am competent to make this declaration.
2. I am an attorney duly admitted to practice in Sweden. I am a Partner at the firm of Mannheimer Swartling. I have personal knowledge of the facts set forth herein.
3. I represent CEF Energia, B.V. (“CEF”) before Swedish courts in connection with The Italian Republic’s (“Italy” or “Respondent”) efforts to set aside the award rendered by a tribunal constituted under the auspices of the Arbitration Institute of the Stockholm Chamber of Commerce (“SCC”) in favor of CEF and against Italy on January 16, 2019 (the “CEF Award”).
4. I make this declaration in support of the Reply and Opposition filed by CEF and the petitioners in former Civil Action No. Case No. 1:19-cv-03444 (Greentech Energy Systems

A/S (now known as Athena Investments A/S), Novenergia General Partner S.A. (acting as liquidator of Novenergia II Energy & Environment (SCA) SICAR) Novenergia II Italian Portfolio) to the Italian Republic's Motions to Transfer and to Stay the CEF and Greentech actions, and to provide this Court with necessary context regarding the Swedish proceedings, Swedish law, and recent developments at the Svea Court of Appeals.

I. Court Proceedings in the Svea Court

5. First, I provide clarification regarding the proceedings before the Svea Court of Appeals relating to the CEF Award.

6. On April 16, 2019, Italy initiated proceedings in the Svea Court of Appeal in Sweden ("Svea Court") seeking to annul the CEF Award while simultaneously requesting, on an *ex parte* basis, that enforcement of the CEF Award not be permitted pending resolution of its annulment petition.

7. On April 23, 2019, before CEF had been heard in the proceeding, the Svea Court issued an order suspending or staying enforcement activity of the CEF Award "until further notice" (hereinafter the "Order"). A true and correct copy of that Order, along with an accompanying English translation, can be found at Dkt. 26-101, Exhibit 1 to the Hope Declaration. Although the Order stated that the Svea Court found that "reasons existed" to suspend enforcement of the Award, it did not state what those reasons were or otherwise explain why it was suspending the Award.

8. The merits of Italy's application seeking to annul the CEF Award, however, have not yet been adjudicated. Furthermore, as noted by the Svea Court, the *ex parte* order was issued "without affording CEF Energia an opportunity to submit a response." Dkt. 26-101, p. 1.

9. In Swedish law, there is no distinction between a stay and a suspension in the context of the enforcement of arbitral awards. In fact, none of those terms are actually used in Swedish law. Rather, they may be used to translate into English the Swedish term "inhibition,"

which is used to describe the stay of enforcement activities of an award. Under Swedish law, the term “inhibition” does not address the validity of the underlying award in question, but merely speaks to the procedural posture of the award in question—that, pending further resolution or decision from the Swedish courts, an award cannot be enforced in Sweden.

10. The fact that the Order is limited to the procedural posture of the CEF Award is clear from the text of the Order itself. The Svea Court issued the Order, noting that it was “stay[ing] execution of the award until further notice.” Dkt. 26-101, p. 2.

11. On July 3, 2019 CEF submitted its Statement of Defense to the Svea Court. While CEF did not request that the order to stay enforcement in Sweden be lifted, this was because the Svea Court has issued stay orders in all pending ECT cases of which I am aware, and has declined to lift the stay in the cases where the respondent made a request to that effect. Therefore, it was my assessment that a request to lift the stay order at this stage of the proceeding would be futile.

12. On November 8, 2019 Italy submitted its reply to CEF’s Statement of Defense to the Svea Court. The Svea Court has not yet afforded CEF an opportunity to reply to Italy’s submission of November 8, 2019.

13. On December 12, 2019, the Swedish Supreme Court decided to request a preliminary ruling from the CJEU in connection with the set aside proceeding brought by Poland in the case of *PL Holdings v. Poland*.¹

¹ That case concerns a partial and a final arbitral award issued in favor of PL Holdings against Poland connected with the Belgium-Luxembourg Economic Union and the Republic of Poland bilateral investment treaty (“Benelux-Poland BIT”). As in this case, post-arbitral proceedings in PL Holdings began in the Svea Court, where, as Italy has done here, Poland sought an order setting aside the awards rendered against it. Also as here, the Svea Court stayed enforcement of the awards shortly after Poland filed its set-aside application. In February 2019, however, despite having stayed enforcement of the awards, the Svea Court dismissed Poland’s application to set aside the awards issued against it, which, like Italy’s application in this case, was premised on an argument that the *Achmea* decision invalidated the arbitration clause contained within the Benelex-Poland BIT (the Svea Court only set aside a limited part of the final award relating to pre-award interest due to an excess of mandate). The Svea Court rejected Poland’s argument largely on the basis that Poland failed to raise that jurisdictional objection during the arbitration, and

14. While the precise question or questions the Supreme Court will ask of the CJEU have not yet been certified in that case, it is likely that the referred question(s) will concern the extent to which a State may voluntarily enter into an arbitration agreement directly with an investor in a dispute under a BIT (a bilateral investment treaty) between EU member states in case the arbitration clause in the BIT is invalid. The question(s) may also concern the extent to which a State may waive its objections to an arbitral tribunal's jurisdiction under the Benelux-Poland BIT based on the CJEU's *Achmea* decision.

15. On January 24, 2020, the Svea Court orally informed CEF that it intends to await the Swedish Supreme Court's decision on what question(s) to refer to the CJEU in the *PL Holdings* case, in order to determine whether any question is relevant to Italy's annulment action against CEF, before deciding how to proceed in the case between Italy and CEF.

16. I do not believe that the question(s) that will ultimately be referred to the CJEU in the *PL Holdings* case (a case which likely turns on whether Poland waived its jurisdictional objections by failing to raise them in the arbitration) will have a direct impact on the CEF proceeding, given that the *PL Holdings* case concerns a BIT rather than a multilateral treaty like the ECT (which includes both non-EU Member States and the EU itself). However, should the Svea Court consider the Supreme Court's questions in the *PL Holdings* case relevant, the process of referring questions would likely cause a significant delay in the Swedish set aside proceeding in the CEF case. Based on my experience, should the Svea Court ultimately stay the case pending the CJEU's decision on the questions referred to it in *PL Holdings*, I believe this could result in up to a two-year delay before the set aside proceeding is resumed.

confirmed the awards. A true and correct copy of that decision is attached as **Exhibit A**. Notwithstanding the appeal pending before the Swedish Supreme Court, the *PL Holdings* awards remain enforceable.

17. Notwithstanding the fact that the Swedish proceedings remain ongoing, the CEF Award remains valid and binding as a matter of Swedish and international law.

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

Executed on February 5, 2020 in Stockholm.



Jakob Ragnwaldh