

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**MERCURIA ENERGY GROUP
LIMITED,**

Petitioner,

v.

REPUBLIC OF POLAND,

Respondent.

Case No. 1:23-cv-03572 (TNM)

MEMORANDUM ORDER

Mercuria Energy Group Limited, a private company, obtained a significant arbitration award against the Republic of Poland from a Swedish tribunal. Mercuria petitions for award enforcement, while Poland moves to stay proceedings until Sweden’s high court resolves Poland’s award appeal. Though Mercuria opposes a stay, neither party claims that it would cause hardship. More, the outcome of the appeal is likely to have significant implications for Mercuria’s petition, so judicial efficiency favors a stay. The Court thus stays the case for now.

I.

In 2008, Poland imposed a financial penalty of over \$100 million plus interest on one of Mercuria’s subsidiaries. *See* Pet. to Confirm Arb. Award (“Pet.”) ¶¶ 7, 10, ECF No. 1. The penalty was based on Mercuria’s alleged failure to “establish and maintain compulsory stocks of liquid fuels as prescribed by Polish law.” Resp’t’s Mot. to Dismiss or Stay (“Resp’t’s Mot.”) at 13, ECF No. 9. After litigation, a Polish court overturned the penalty. Pet. ¶ 14. Poland then repaid Mercuria the full penalty but did not compensate the company for its interest payments. *Id.* ¶ 15. Mercuria believed it was entitled to interest and pressed the issue, first with Polish

administrative agencies and then in Polish court. *Id.* ¶¶ 16–17. After a decade of unsuccessful efforts, Mercuria resorted to arbitration in Sweden in 2019. *See id.* ¶¶ 7, 32.

The arbitration was anchored in a provision of the Energy Charter Treaty (“ECT”). *Id.* ¶ 8. The ECT is a multilateral energy sector treaty signed in 1994 as Western Europe sought to integrate Central and Eastern European states into a market economy system. Decl. of Prof. Steffen Hindelang ¶ 17, ECF No. 10. Article 26 of the ECT includes a standing arbitration clause, allowing investors from one state to dispute the treatment of their investments in another state. *See* Pet. ¶ 22. Both Poland and Cyprus—Mercuria’s home state—are signatories to the ECT and members of the European Union. Pet. ¶¶ 20–21.

After a litigated arbitration hearing in which both parties participated, a Swedish tribunal ruled for Mercuria in 2022. Pet. ¶¶ 34–39. Over Poland’s objection, the tribunal concluded that it had jurisdiction to hear the dispute. Pet. ¶ 40. It then awarded Mercuria tens of millions of dollars. *See* Pet. ¶ 43.

In February 2023, Poland filed an application with Sweden’s high court, the Svea Court of Appeal, to annul the award. Decl. of Martin Wallin (“Wallin Decl.”), Ex B, ECF No. 11-2. In its *ex parte* application, Poland reasserted its jurisdictional objections. *See id.* It alleged that under recent EU precedent, the ECT’s arbitration clause does not allow for arbitration of intra-EU disputes where both states are EU members. *See id.* Poland stakes out the same position in its briefing before this Court. *See* Resp’t’s Mot. at 29–32

Sweden’s high court has not ruled on Poland’s appeal yet. Notably though, it has annulled other intra-EU arbitration awards under similar rationales to the one that Poland now advances. *See* Wallin Decl. Exs. H and G. After Mercuria petitioned for enforcement, Poland

moved to dismiss the petition or stay proceedings until completion of its Swedish appeal.
Resp't's Mot. at 1.

II.

In award confirmation proceedings like this, courts may order stays either before or after addressing jurisdiction. *See CEF Energia, B.V. v. Italian Republic*, 19-cv-3443, 2020 WL 4219786, at *4 (D.D.C. July 23, 2020). If a court already has jurisdiction, it usually evaluates the propriety of a stay under a six-factor test the Second Circuit articulated in *Europcar Italia S.P.A. v. Maiellano Tours*, 156 F.3d 310 (2d Cir. 1998). *See LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 879 (D.C. Cir. 2021). But courts can also issue stays using their inherent powers, *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936), and may do so before considering jurisdiction. *See Pub. Citizen v. U.S. Dist. Ct. for D.C.*, 486 F.3d 1342, 1348 (D.C. Cir. 2007) (“[C]ertain non-merits, nonjurisdictional issues may be addressed preliminarily, because jurisdiction is vital only if the court proposes to issue a judgment on the merits.” (cleaned up)); *see also CEF Energia*, 2020 WL 4219786, at *4 (collecting cases where courts have done so).

When considering a pre-jurisdictional stay, a court must “weigh competing interests and maintain an even balance between the court’s interests in judicial economy and any possible hardship to the parties.” *Belize Soc. Dev. Ltd. v. Gov’t of Belize*, 668 F.3d 724,732–33 (D.C. Cir. 2012) (cleaned up).

III.

Jurisdiction is pending, so the Court considers the propriety of a stay under its inherent powers. Judicial economy favors a stay here. If Sweden’s high court annuls the award as it has

done in similar cases, it will open multiple avenues for Poland to argue the award is unenforceable. *See* Resp't's Reply at 11–12 (forecasting Poland's arguments), ECF No. 21. So “it is clear that the outcome of the judicial proceedings in [Sweden's high court] may affect this Court's determinations.” *Hulley Enterprises Ltd. v. Russian Fed'n*, 211 F. Supp. 3d 269, 284 (D.D.C. 2016). More, if the Court were to proceed, it would likely need to address Poland's contention that the arbitration was invalid under EU law—a question already pending before the Swedish high court. This further supports a stay because “[l]itigating essentially the same issue[] in two separate forums is not in the interest of judicial economy or in the parties' best interests.” *CEF Energia*, 2020 WL 4219786, at *5 (quoting *Novenergia II - Energy & Env't (SCA) v. Kingdom of Spain*, 18-cv-01148, 2020 WL 417794, at *3 (D.D.C. Jan. 27, 2020)). Though a stay will slow resolution of Mercuria's petition, the interruption will “still likely be shorter than the possible delay that would occur if this Court were to confirm the award and the Svea Court were to then set it aside.” *Id.* (cleaned up).

A stay is also appropriate because it is not likely to cause significant hardship for either party. Mercuria does not forecast any harm and instead argues only that Poland will not suffer hardship *without* a stay. Pet.'s Opp'n to Resp't's Mot. at 44, ECF No. 13. Poland says a stay will not hurt Mercuria but offers no further discussion of its own potential hardship. Resp't's Reply at 24–25. Accordingly, the Court finds that a stay will benefit judicial economy without causing material hardship to either party.

IV.

Having weighed judicial efficiency against hardship to the parties, the Court will stay this case. For these reasons, it is hereby

ORDERED that Respondent's Motion to Dismiss the Petition or Stay the Proceedings is **GRANTED** in part and **DENIED** in part; and it is further

ORDERED that this case is **STAYED**; and it is further

ORDERED that the parties shall file Joint Status Reports every 90 days updating the Court on the status of the litigation; and it is further

ORDERED that Respondent shall notify this Court within 30 days of receiving the Svea Court of Appeal's ruling on its appeal.

SO ORDERED.

Dated: January 2, 2025

TREVOR N. McFADDEN
United States District Judge