

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

WASHINGTON D.C.

In the arbitration proceeding between

OPERAFUND ECO-INVEST SICAV PLC AND SCHWAB HOLDING AG

v.

THE KINGDOM OF SPAIN

ICSID CASE No. ARB/15/36

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**Decision on Rectification of the Award**

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*Members of the Tribunal*

Professor Dr. Karl-Heinz Böckstiegel, President of the Tribunal

Prof. MMag. Dr. August Reinisch, LL.M., Arbitrator

Prof. Philippe Sands, Q.C., Arbitrator

*Secretary of the Tribunal*

Mr. Francisco Grob, ICSID

*Assistant to the Tribunal*

Dr. Katherine Simpson

Date of dispatch to the Parties: 28 October 2019

**REPRESENTATION OF THE PARTIES**

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*Representing CperaFund Eco-Invest SICAV  
PLC and Schwab Holding AG:*

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Mr. Luis Pérez de Ayala  
Professor Miguel Gómez Jene  
Dr. José Ángel Rueda García  
Mr. Antonio Delgado Camprubí  
Mr. Boija Álvarez Sanz  
Mr. Antonio María Hierro  
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*Representing the Kingdom of Spain:*

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Mr. Pablo Elena Abad  
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Mr. Juan Antonio Quesada Navarro  
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Ms. Ana María Rodríguez Esquivias  
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## **I. PROCEDURAL HISTORY**

1. On 6 September 2019, an Arbitral Tribunal comprising Prof. Dr. Karl-Heinz Böckstiegel, Prof. MMag. Dr. August Reinisch, LL.M, and Prof. Philippe Sands, Q.C., rendered the award in *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain* (ICSID Case No. ARB/15/36) (the “Award”).
2. On 8 October 2019, pursuant to Article 49(2) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”) and Rule 49 of the Rules of Procedure for Arbitration Proceedings (“ICSID Arbitration Rules”), OperaFund Eco-Invest SICAV PLC and Schwab Holding AG submitted a Request for Rectification of the Award (“Claimants’ Request”) to the Secretary-General of ICSID. The Request was accompanied by the lodging fee in accordance with ICSID Arbitration Rule 49(1)(d).
3. On 10 October 2019, the Secretary-General of ICSID registered the Claimants’ Request and notified the Parties and the Tribunal of its registration pursuant to Rule 49(2) of the ICSID Arbitration Rules.
4. On 15 October 2019, the Tribunal invited the Respondent to submit any comments that it may have on the Claimants’ Request by 22 October 2019.
5. On 22 October 2019, the Respondent filed their Response to the Claimants’ Request (“Respondent’s Response”).
6. On 25 October 2019, the Claimants wrote to the Tribunal. They opined that no further exchanges were necessary and urged the Tribunal to proceed as expeditiously as practicable in rectifying the error.

## **II. RECTIFICATION**

### **A. THE CLAIMANTS’ REQUEST**

7. Pursuant to Article 49(2) of the ICSID Convention, the Claimants request the Tribunal to rectify a clerical error in paragraphs 688 and 746(3) of the Award concerning the Tribunal’s calculation of the compensation awarded to Claimants. The Claimants contend that where paragraphs 688 and 746(3) state that the compensation owed to the Claimants amounts to “USD 29.3 million”, it should have said Euros, as the Claimants

had so requested throughout the proceedings.<sup>1</sup> This correction should be made in both the English and Spanish versions of the Award.

**B. THE RESPONDENT'S POSITION**

8. In its 22 October 2019 letter, the Respondent did not object to Claimants' Request. However, it expressed its disagreement with the Award's findings on jurisdiction, liability and quantum.

**III. THE TRIBUNAL'S DECISION ON RECTIFICATION**

9. Article 49(2) of the ICSID Convention provides, in its relevant part, as follows:

*The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered ... shall rectify any clerical, arithmetical or similar error in the award.*<sup>2</sup>

10. In turn, ICSID Arbitration Rule 49, which sets out the procedure to be followed for rectification of an award refers in its paragraph (1), more generally, to "any error in the award which the requesting party seeks to have rectified."
11. Both provisions clearly refer to an 'error' and to the fact that the purpose of the procedure is the 'rectification' of any such error. According to the aforementioned provisions, the rectification procedure applies to an error, such error must be "in the award," and it must be clerical, or arithmetical, "or similar."
12. The Tribunal, based on the parties' positions and the above reasoning, decides as follows:
  - (a) To rectify paragraph 688 of the Award which shall read:

"688. Since the Tribunal has concluded above that it has no jurisdiction regarding the tax of the TVPEE, the Tribunal deducts in the above table the impact of the Law 15/2012 which both Accuracy and Brattle see as amounting to rather similar figures (10.8 million in the above Table and 10.1 or 10.5 million in Table 5 on page 17 of the Brattle Report). (The much smaller figure

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<sup>1</sup> Claimants' Request for Rectification of the Award, 8 October 2019.

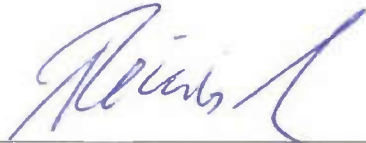
<sup>2</sup> Both the English and Spanish versions are similar to one another in referring more to "clerical, arithmetical or similar error" and "errores materiales, aritméticos o similares del mismo", respectively.

mentioned in §§ 51 – 53 of Claimants’ second post-hearing brief seems to address a different scenario.) Thus, subtracting 10.8 million from 40.1 leads to a final damage amount for Claimants of **EUR 29.3 million.**”

- (b) To rectify paragraph 746(3) of the Award, which shall read:

**“3. Respondent shall pay damages to Claimants amounting to EUR 29.3 million.”**

- (c) Each Party shall bear its own legal representation costs and expenses related to this rectification proceeding and half of the costs of the rectification proceeding as determined by ICSID’s final financial statement.
- (d) The Tribunal Members declare that they do not have any fees or expenses to claim in connection with the rectification proceeding.



Prof. MMag. Dr. August Reinisch, LL.M  
Arbitrator

25 OCT 2019



Prof. Philippe Sands QC  
Arbitrator

25 OCT 2019



Prof. Dr. Karl-Heinz Böckstiegel  
President of the Tribunal

25 OCT 2019