

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Eurus Energy Holdings Corporation
Respondent on Annulment

v.

Kingdom of Spain
Applicant

(ICSID Case No. ARB/16/4)
Annulment Proceeding

DECISION ON LIFTING THE STAY OF ENFORCEMENT

Members of the ad hoc Committee

Prof. Bernard Hanotiau, President of the *ad hoc* Committee
Ms. Katherine González Arrocha, Member of the *ad hoc* Committee
Dr. Penelope Ridings, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Veronica Lavista

17 June 2024

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I. BRIEF PROCEDURAL HISTORY

1. This Decision is issued in the annulment proceedings commenced by the Kingdom of Spain against the award rendered on 14 November 2022 in the case *Eurus Energy Holdings Corporation v. The Kingdom of Spain*, ICSID Case No. ARB/16/4 (the “**Award**”).
2. This decision continues to use the term “**Claimant**” or “**Eurus**” to refer to Eurus Energy Holdings Corporation and “**Respondent**”, “**Spain**” or “**Applicant**” to refer to the Kingdom of Spain, as in the Arbitration. Claimant and the Respondent are collectively referred to as the “**Parties**”.
3. On 12 September 2023, Spain filed an application for the annulment of the Award (the “**Application for Annulment**”).
4. On 19 March 2024, the *ad hoc* Committee issued its Decision on the Request to Continue the Stay of Enforcement of the Award (the “**Stay Decision**”). The Committee decided as follows:
 - “(i) REJECTS Spain’s request that the stay of enforcement of the Award should be continued without security or other conditions, until the decision on the Application for Annulment is rendered by the Committee;
 - (ii) REJECTS Eurus’ request that Spain provide an unconditional undertaking duly signed by Spain’s relevant authorities that it recognizes the Award as final and binding and that it shall pay the amounts ordered in the Award within 60 days from the notification of the Committee’s Decision upholding the Award;
 - (iii) DECIDES that the stay of enforcement of the Award should continue subject to Spain posting appropriate security within 30 days of the Committee’s decision fixing the amount of said security;
 - (iv) DECIDES that, pending the Committee’s decision at point (iii) above, the provisional stay of enforcement of the Award shall continue;
 - (v) INVITES the Parties to file submissions on the amount of security by Friday, 29 March 2024;
 - (vi) RESERVES its decision on costs for its decision on annulment; and

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(vii) REJECTS all other requests for relief.”¹ [emphasis added]

5. On 12 April 2024, the Committee issued its Decision on the Amount of Security to be Posted by Spain (the “**Security Amount Decision**”). The Committee decided as follows:

“(i) The provisional stay of enforcement of the Award shall continue for the duration of these annulment proceedings, provided that within thirty (30) days of this Decision, *i.e.*, by Monday, 13 May 2024, Spain places the following amounts in escrow with a reputable Western Bank which is neither Spanish nor controlled by Spanish interests:

a. EUR 109,448,382.61 (comprising EUR 106.2 million in damages awarded to Eurus in the Award, plus EUR 3,248,382.61 in interest);

b. USD 4,438,560.05 (comprising the USD 4,332,197.16 in costs awarded to Eurus in the Award plus USD 106,362.89 in interest); and

c. USD 96,678.08 and JPY 8,511,249.75 (comprising the USD 95,816.76 and JPY 8,435,421.33 in costs awarded to Eurus in the Rectification Decision, plus USD 861.32 and JPY 75,828.42 in interest),

totalling EUR 109,448,382.61, USD 4,535,238.13 and JPY 8,511,249.75;

(ii) If Spain does not present proof of the above to Eurus and the Committee by Monday, 20 May 2024, the Committee may order the termination of the stay of enforcement of the Award either upon application of a Party or upon the Committee’s discretion.

(iii) The costs necessary for the constitution and maintenance of the escrow established pursuant to paragraph 21(i) and (ii) above shall be borne by Spain.

(iv) The Committee reserves its decision on the costs for its decision on annulment.”²

6. Spain presented no proof of compliance with the Security Amount Decision by the deadline of 20 May 2024.
7. On 29 May 2024, the Committee wrote to the Parties noting the above, and stating that, in light of Spain’s lack of compliance, it was minded to order the termination of the stay of enforcement of the Award upon its own motion. Before making a decision, the Committee invited the Parties to make submissions on why/why not the Committee should not exercise its discretion to lift the stay of enforcement.

¹ Stay Decision, at 122.

² Security Amount Decision, at 21.

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8. On 4 June 2024, the Parties filed their respective submissions (“**Spain’s Submission on Lifting the Stay**” and “**Eurus’ Submission on Lifting the Stay**”, respectively).

II. SPAIN’S POSITION

9. In its Submission on Lifting the Stay, Spain reiterated its previously expressed position that it was opposed to the security ordered by the Committee. Spain considers that the Committee should not lift the stay of enforcement for the following reasons: (i) the security was not appropriate for a sovereign nation such as Spain, which is one of the most advanced democracies in the world; (ii) Spain has complied and will comply with its international obligations, including those under the ICSID Convention and under EU law, and the stay of enforcement of the Award is the method by which Spain can reconcile its obligations under these two legal regimes; (iii) the factors that support the grant of a stay, support an unconditional stay, and Eurus has not been able to show a single case where Spain failed to comply with its obligations under the ICSID Convention; (iv) the requested security would be equal to imposing a cost or fine on Spain, effectively penalizing it for requesting the annulment of the Award; (v) annulment proceedings are not intended to put Eurus in a better position than it would have been in without the security; and (vi) the posting of security in order to secure the enforcement of an award that could be annulled in its entirety makes no sense.³

III. EURUS’ POSITION

10. Eurus requested that the Committee order the termination of the stay of enforcement of the Award, noting the following. In its Stay Decision, the Committee found that the stay of enforcement of the Award could only continue subject to Spain providing adequate security. This issue having been decided, it cannot be reopened, for instance, because Spain has failed to provide security. The *raison d’être* of the Security Amount Decision was to maintain the stay of enforcement of the Award, to the benefit of Spain, until the Committee could rule on the Application for Annulment. However, Spain failed to post the security ordered by the Committee, which further underscores the very real nature of the risk that Spain will not comply with the Award if it is confirmed. According to Eurus, there are no concrete prospects that Spain will voluntarily pay the Award to Eurus – especially if one were to look at steps that Spain has taken in other cases to avoid complying with adverse awards.⁴

³ Spain’s Submission on Lifting the Stay, at 2-8.

⁴ Eurus’ Submission on Lifting the Stay, at 2-17.

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IV. THE *AD HOC* COMMITTEE'S DECISION

11. The Committee recalls that, in its Stay Decision, it concluded that the “stay of enforcement of the Award should [...] continue subject to Spain posting security”.⁵ The reasons which prompted the Committee to reach this conclusion were the following: (i) there is a real risk of Spain delaying compliance and even not complying with the Award as a result of its decision to defer paying adverse ICSID awards until receipt of European Commission approval;⁶ (ii) the balance of harms favored continuing the stay of enforcement subject to Spain posting adequate security; (iii) this solution had the added advantage that it did not require Spain to make any payment contrary to its EU law obligations.⁷ The Committee expressly found that this solution did not put Eurus in a better position than it would have been in had no annulment proceedings been commenced, as that would have meant that the Award would have become immediately payable.⁸
12. The Committee subsequently invited both Parties to comment on the appropriate amount of security that should be posted by Spain in order to continue the stay of enforcement. Despite being given an opportunity to do so, Spain did not put forward any arguments on this issue, but continued to dispute the findings of the Committee in the Stay Decision. In the Security Amount Decision, the Committee refused to reopen the conclusions it had reached in the Stay Decision. It also found that a reasonable and proportionate solution, which adequately balanced the interests of both Spain and Eurus, was to require Spain to post security equal to the amount of the principal set out in the Award, plus any interest due shortly before the filing of the Application for Annulment.⁹
13. The Committee granted Spain 30 days to comply with the Security Amount Decision. The Committee also decided that, “[i]f Spain [did] not present proof of [compliance with the Security Amount Decision] to Eurus and the Committee by Monday, 20 May 2024, the Committee may order the termination of the stay of enforcement of the Award either upon application of a Party or upon the Committee’s discretion”.¹⁰
14. Spain did not present proof of compliance with the Security Amount Decision by the set deadline. Instead, its Submission on Lifting the Stay shows that Spain wishes to re-open

⁵ Stay Decision, at 90.

⁶ Stay Decision, at 91-100.

⁷ Stay Decision, at 105-116.

⁸ Stay Decision, at 117.

⁹ Security Amount Decision, at 13, 14.

¹⁰ Security Amount Decision, at 21(ii).

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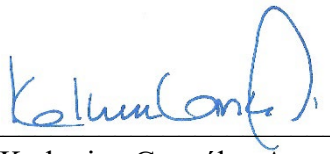
points that the Committee has already decided in the Stay Decision, and has already signalled it will not revisit, in the Security Amount Decision. The Committee will not reopen these conclusions here. Indeed, none of the conclusions reached by the Committee in the Stay Decision or the Security Amount Decision have changed or warrant reconsideration. In any event, Spain has not referred to any intervening circumstance that would have materially affected the Committee's assessment of the need for Spain to post security in exchange for the continuation of the stay of enforcement of the Award. Spain's attempt to relitigate these issues is thus unavailing.

15. Considering Spain's failure to post security, in breach of the Committee's Stay Decision and Security Amount Decision, the Committee considers that the continuation of the stay of enforcement of the Award is no longer justified. Consequently, the Committee hereby terminates the stay of enforcement of the Award.

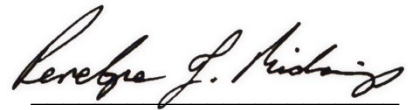
V. DECISION

16. For all the reasons specified above, the Committee decides as follows:

- (i) Terminates the stay of enforcement of the Award;
- (ii) Reserves its decision on the costs for its decision on annulment.



Ms. Katherine González Arrocha
Member of the *ad hoc* Committee



Dr. Penelope J. Ridings
Member of the *ad hoc* Committee



Prof. Bernard Hanotiau
President of the *ad hoc* Committee