

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

UAB E ENERGIJA (LITHUANIA)

Claimant

and

REPUBLIC OF LATVIA

Respondent

ICSID Case No. ARB/12/33

DECISION ON RECTIFICATION

Members of the Tribunal

Dr. Paolo Michele Patocchi, President of the Tribunal

Prof. Dr. August Reinisch, Arbitrator

Mr. Samuel Wordsworth QC, Arbitrator

Secretary of the Tribunal

Ms. Geraldine R. Fischer

Date of dispatch to the Parties: 3 May 2018

REPRESENTATION OF THE PARTIES

Representing UAB E energija (Lithuania):

Mr. Mark Beeley
Mr. Alexander Slade
Vinson & Elkins RLLP
20 Fenchurch Street
24th Floor
London EC3M 3BY
United Kingdom

and

Mr. Agris Repšs
ZAB Sorainen
Kr. Valdemāra iela 21
LV-1010 Riga
Republic of Latvia

Representing the Republic of Latvia:

Mr. Jānis Citskovskis
Ms. Inese Gailīte
Ms. Ilze Dubava
Ms. Nērika Lizinska
State Chancellery, Latvia
Brīvības Boulevard 36
LV-1520 Riga
Republic of Latvia

TABLE OF CONTENTS

- I. PROCEDURAL HISTORY 1
- II. RECTIFICATION 2
 - A. The Respondent’s Case on Rectification 2
 - B. The Claimant’s Case on Rectification 2
 - C. The Tribunal’s Decision on Rectification 3
- III. COSTS 5
 - A. The Parties’ Positions 5
 - B. The Tribunal’s Decision on Costs 5
- IV. DECISION 7

I. PROCEDURAL HISTORY

1. On 22 December 2017, the Tribunal rendered the award in the case *UAB E energija (Lithuania) v. Republic of Latvia* (ICSID Case No. ARB/12/33) (the “Award”), which was dispatched on the same day to the Parties by the Secretariat of the International Centre for Settlement of Investment Disputes (ICSID).
2. On 26 January 2018, the Tribunal informed the ICSID Secretariat of a clerical mistake in paragraph 1168 and points 5 and 6 of the Award’s operative part, noting that the Tribunal had no authority to rectify this error on its own motion, and asked the Secretariat to forward its communication to the Parties. On the same day, the Secretariat of ICSID notified such letter to the Parties.
3. On 2 February 2018, 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 ICSID Rules of Procedure for Arbitration Proceedings (the “Arbitration Rules”), the Respondent submitted a request for rectification of the Award (the “Request”) to the Secretary-General of ICSID. A signed copy of the Request was later submitted on 5 February 2018. The Request was also accompanied by the lodging fee.
4. On 7 February 2018, the Secretary-General of ICSID registered the Request and notified the Parties of its registration.
5. On 8 February 2018, the Tribunal acknowledged receipt of the Request and set out a briefing schedule for the Request.
6. On 21 February 2018, the Claimant filed its observations on the Respondent’s Request.
7. On 28 February 2018, the Respondent filed its reply to the Claimant’s observations.
8. On 8 March 2018, the Claimant filed its rejoinder to the Respondent’s reply.

II. RECTIFICATION

A. THE RESPONDENT'S CASE ON RECTIFICATION

9. The Respondent submits that the Award contains an arithmetic error in paragraph 1168 that is repeated in points 5 and 6 of its operative part.
10. In paragraph 1165 of the Award, the Respondent notes that the Tribunal ordered it to pay 50% of the costs incurred by the Claimant to the exclusion of any success fee and subject to an examination of the amounts claimed. The Tribunal found in paragraph 1168 of the Award that the Claimant was entitled to 50% of the amounts of EUR 744,946 (Legal fees and expenses of Salans/Vinson&Elkins), EUR 300,478 (Legal fees and expenses of Sorainen), EUR 29,462 (Dr. Blumberga's Expert Opinion) and USD 421,470.21 (the Claimant's share of the costs of arbitration) and USD 25,000 (the lodging fee).
11. According to the Respondent, the Claimant was therefore entitled to the amounts of EUR 537,443 and USD 223,235.11. The Respondent submits that the Award erroneously indicates the total amounts due by the Respondent to be EUR 1,074,886.00 and USD 446,470.21 in paragraph 1168 and points 5 and 6 of the operative part.

B. THE CLAIMANT'S CASE ON RECTIFICATION

12. The Claimant states that the Tribunal violated the confidentiality of its deliberations by sending the Parties the letter dated 26 January 2018 informing them of an error contained in points 5 and 6 of the Award's operative part (see paragraph 2 above). According to the Claimant, such letter raises questions as to whether the Tribunal prejudged any application for correction. The Claimant accepts that there is a *prima facie* contradiction in the Award between paragraph 1165 and the figures contained in paragraph 1168. According to the Claimant, the Tribunal is best placed to know which of these two paragraphs was in error.
13. However, the Claimant notes that if the costs awarded to it are reduced to EUR 537,443 and USD 223,235.11, it would recover only a total amount of approximately EUR 613,241 before interest. According to the Claimant, such an outcome would be surprising notably because the Tribunal had found, among others, that (i) Latvia had

violated the BIT on multiple occasions, (ii) Latvia's breaches of the BIT were clear-cut and (iii) Latvia had to provide full restitution to the Claimant.

14. The Claimant further considers such a reduction "extraordinary" in circumstances where the costs incurred by the Claimant were very reasonable and proportionate and were increased by the Respondent's objections to jurisdiction.
15. The Claimant finally made a number of statements criticising the Tribunal's decision and letter of 26 January 2018 that are irrelevant for present purposes as the Tribunal's decision on costs is open to review only insofar as it contains a clerical, arithmetical or similar error.

C. THE TRIBUNAL'S DECISION ON RECTIFICATION

16. Article 49(2) of the ICSID Convention reads as follows:
 - (2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.
17. Rules 49(3) and 49(4) of the ICSID Arbitration Rules provide:
 - (3) The President of the Tribunal shall consult the members on whether it is necessary for the Tribunal to meet in order to consider the request. The Tribunal shall fix a time limit for the parties to file their observations on the request and shall determine the procedure for its consideration.
 - (4) Rules 46-48 shall apply, *mutatis mutandis*, to any decision of the Tribunal pursuant to this Rule.
18. The present decision deals solely with the Respondent's Request submitted pursuant to Article 49(2) of the ICSID Convention.

19. Article 49(2) of the ICSID Convention and ICSID Arbitration Rule 49(3) and (4) allow the Tribunal to rectify any clerical, arithmetical or similar error upon a party's request made within 45 days after the award was issued, after hearing the parties.
20. There is no dispute between the Parties that the Request was filed within the prescribed time limit and accompanied by the relevant lodging fee.
21. In paragraph 1165 of the Award the Tribunal ordered the Respondent to pay 50% of the costs incurred by the Claimant to the exclusion of any success fee and subject to an examination of the amounts claimed.
22. In paragraph 1168 of the Award the Tribunal determined that the Claimant was entitled to 50% of the amounts of EUR 744,946 (legal fees and expenses of Salans/Vinson & Elkins), EUR 300,478 (legal fees and expenses of Sorainen), EUR 29,462 (Dr. Blumberga's Expert Opinion), USD 421,470.21 (the Claimant's share of the costs of the arbitration) and USD 25,000 (lodging fee). No award of costs was made with respect to the Expert Reports of Dr. Hesmondhalgh.
23. Paragraph 1168 of the Award erroneously indicates the total amounts due by the Respondent to be EUR 1,074,886 and USD 446,470.21. Such erroneous amounts were reproduced in points 5 and 6 of the operative part of the Award.
24. The 50% reduction ordered by the Tribunal in paragraphs 1165 and 1168 of the Award was not reflected in the amounts awarded to the Claimant in paragraph 1168 and the operative part of the Award. This is an obvious, inadvertent clerical mistake, which falls within the scope of ICSID Convention Article 49(2).
25. The correct total amounts that should have been indicated in paragraph 1168 and in points 5 and 6 of the operative part of the Award are therefore EUR 537,443 and USD 223,235.11.
26. The Tribunal therefore rectifies paragraph 1168 and points 5 and 6 of the operative part of the Award which shall now read as follows:

Paragraph 1168: The Tribunal finds that the Claimant shall be entitled to 50% of the amounts of EUR 744,946 (legal fees and expenses of Salans/Vinson & Elkins), EUR 300,478 (legal fees and expenses of Sorainen), EUR 29,462 (Dr. Blumberga's

Expert Opinion) and its share of the costs of the arbitration USD 421,470.21 (ICSID/Tribunal) plus the lodging fee (USD 25,000); *i.e.* a total amount of EUR 537,443 and USD 223,235.11. The Tribunal makes no award of costs with respect to the Expert Reports of Dr. Hesmondhalgh. This amount in turn represents 43% of the amount of costs and fees claimed by the Claimant excluding any success fee.

Point (5): The Respondent shall pay the Claimant an amount of EUR 537,443 for the Claimant's costs and fees.

Point (6): The Respondent shall pay the Claimant an amount of USD 223,235.11 for the Claimant's share of the costs of the arbitration plus the lodging fee.

III. COSTS

A. THE PARTIES' POSITIONS

27. The Respondent requests that the lodging fee of USD 10,000 be waived as the error in the Award was not due to its fault or omission. Alternatively, the Respondent requests that the lodging fee be split between the Parties, considering that the error under consideration equally affects both Parties.
28. The Claimant requests that the lodging fee be borne entirely by the Respondent.

B. THE TRIBUNAL'S DECISION ON COSTS

29. ICSID Arbitration Rule 49(1)(d) requires the Party seeking a rectification of the award to pay a lodging fee.
30. According to ICSID Arbitration Rule 49(2) the Secretary-General shall register the request and notify the parties of the registration "upon receipt of the request and of the lodging fee".

31. Regulation 16 of the ICSID Administrative and Financial Regulations reads as follows:

The party or parties (if a request is made jointly) wishing to institute a conciliation or arbitration proceeding, requesting a supplementary decision to, or the rectification, interpretation, revision or annulment of an arbitral award, or requesting resubmission of a dispute to a new Tribunal after the annulment of an arbitral award, shall pay to the Centre a non-refundable fee determined from time to time by the Secretary-General.

32. No provision in the ICSID Convention, the ICSID Arbitration Rules or the ICSID Administrative and Financial Regulations contemplates a waiver of the lodging fee. In any event, that would be a matter for the Secretary-General, not the Tribunal.
33. The Tribunal therefore rejects the Respondent's request that the lodging fee paid by the Respondent be waived.
34. Article 61(2) of the ICSID Convention provides the following:

In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

35. ICSID Arbitration Rule 47(1)(j) states that the award shall contain the Tribunal's decision regarding the costs of the proceedings. Such Rule is applicable in the present case *mutatis mutandis* (Rule 49(4) of the ICSID Arbitration Rules).
36. The Parties have not made any other requests regarding the allocation of costs in relation to the procedure following the Respondent's Request. Absent agreement between the Parties, the Tribunal has broad discretion under these provisions to decide which Party shall bear the costs of the present procedure. The lodging fee is the sole point in dispute.
37. The Tribunal considers that none of the Parties bear any responsibility for the error contained in paragraph 1168 and points 5 and 6 of the operative part of the Award. Nonetheless, the Respondent is the beneficiary of the rectification.

38. The Tribunal, therefore, decides that the lodging fee due for the registration of the Request shall be borne entirely by the Respondent.

IV. DECISION

For the reasons set out above, the Tribunal decides as follows:

- (1) Paragraph 1168 of the Award dated 22 December 2017 is amended as follows:

“The Tribunal finds that the Claimant shall be entitled to 50% of the amounts of EUR 744,946 (legal fees and expenses of Salans/Vinson & Elkins), EUR 300,478 (legal fees and expenses of Sorainen), EUR 29,462 (Dr. Blumberga’s Expert Opinion) and its share of the costs of the arbitration USD 421,470.21 (ICSID/Tribunal) plus the lodging fee (USD 25,000); *i.e.* a total amount of EUR 537,443 and USD 223,235.11. The Tribunal makes no award of costs with respect to the Expert Reports of Dr. Hesmondhalgh. This amount in turn represents 43% of the amount of costs and fees claimed by the Claimant excluding any success fee.”

- (2) Point 5 of the operative part of the Award dated 22 December 2017 is amended as follows:

“The Respondent shall pay the Claimant an amount of EUR 537,443 for the Claimant’s costs and fees.”

- (3) Point 6 of the operative part of the Award dated 22 December 2017 is amended as follows:

“The Respondent shall pay the Claimant an amount of USD 223,235.11 for the Claimant’s share of the costs of the arbitration plus the lodging fee.”

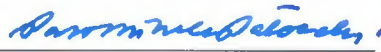
- (4) The Respondent is responsible for the lodging fee.



Samuel Wordsworth QC
Arbitrator
Date: 22 April 2018



Prof. August Reinisch
Arbitrator
Date: 25 April 2018



Dr. Paolo Michele Patocchi
President
Date: 19 April 2018