

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MERCURIA ENERGY GROUP LIMITED,

Petitioner,

v.

THE REPUBLIC OF POLAND,

Respondent.

Civil Action No. 1:23-cv-03572-TNM

STATUS REPORT OF FEBRUARY 16, 2024

Mercuria Energy Group Limited (“**Mercuria**”) makes this submission pursuant to the Court’s Order of January 30, 2024, instructing Mercuria to “file a Status Report informing the Court of its foreign service efforts by February 16, 2024, and every 90 days after that date.” As set forth below, Mercuria is in the process of serving the Republic of Poland (“**Poland**”) and will continue to update the Court on its foreign service efforts every 90 days until service is complete.

1. Poland is a foreign state. Accordingly, service on Poland must be effected pursuant to the Foreign Sovereign Immunities Act (the “**FSIA**”). Section 1608 of the FSIA prescribes the exclusive means of service on foreign states, their agencies, and instrumentalities. Under Section 1608(a)(2) of the FSIA, “[s]ervice in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state . . . if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents.”

2. No special arrangement for service exists.

3. The United States and Poland are each signatories to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “**Hague**

Service Convention”). 20 U.S.T. 361. Accordingly, Mercuria is effecting service under Section 1608(a)(2) in accordance with the Hague Service Convention.

4. Under the Hague Service Convention, “[e]ach Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6. Each State shall organize the Central Authority in conformity with its own law.” 20 U.S.T. 361, art. 2. Further, under Article 3 of the Hague Service Convention, “[t]he authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request.” *Id.* at art. 3. Upon receiving the request from the emitting Central Authority, “[t]he Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency.” *Id.* at art. 5. The Central Authority of the State addressed—in this case Poland—“shall complete a certificate” of service and forward it directly to the applicant once service is completed. *Id.* at art. 6.

5. Consistent with the requirements of 28 U.S.C. § 1608(a)(2) and the Hague Service Convention, Mercuria engaged the services of Crowe Foreign Services, 733 SW Vista Ave., Portland, Oregon 97025 (“**Crowe Foreign Services**”), to serve Mercuria’s petition on Poland. Crowe Foreign Services is “competent under the law” to forward the documents to the Central Authority of Poland. *See Minor v. Ramirez Juarez*, Civ. No. 21-237 SMV/GBW, 2021 WL 1700589, at *2 (D.N.M. Apr. 29, 2021) (holding that an agent of Crowe Foreign Services was competent to forward documents to the Central Authority of Mexico since he was authorized to serve process in the United States); *Greene v. Le Dorze*, No. CA 3-96-CV-590-R, 1998 WL 158632, at *2 (N.D. Tex. Mar. 24, 1998) (holding that an agent of Crowe Foreign Services was competent to forward documents to the Central Authority of France since he was authorized to

serve process in the United States); *see also Micula v. Government of Romania*, No. 17-cv-02332 (APM), 2018 WL 10196624, at *4 (D.D.C. May 22, 2018) (recalling that Article 3 of the Hague Service Convention “leaves it to the requesting State to determine who qualifies as a competent authority or judicial officer” and finding plaintiffs’ counsel competent to forward documents to the Central Authority of Romania (emphasis removed) (citation omitted)).

6. After having all of the relevant papers translated into the Polish language, Mercuria provided Crowe Foreign Services with two copies in English and Polish, consistent with Article 3 of the Hague Service Convention, of the following to be forwarded to the Central Authority of Poland for service: (1) the Petition to Confirm Foreign Arbitral Award (ECF No. 1); (2) Notice of Petition (ECF No. 1-1); (3) Proposed and Issued Summons (ECF No. 1-2; ECF No. 3); (4) Civil Cover Sheet (ECF No. 1-3); (5) Collins Declaration and Supporting Exhibits (ECF No. 1-4 to ECF No. 1-8); (6) the Text of the Proposed Order (ECF No. 1-9); and (7) the Rule LCvR 26.1 Disclosure (ECF No. 2) (collectively, the “**Petition and Supporting Papers**”).

7. On February 12, 2024, Crowe Foreign Services sent Mercuria’s Petition and Supporting Papers to the Central Authority of Poland (the Polish Ministry of Justice) in the manner prescribed by the Hague Service Convention. Mercuria’s counsel has followed up with Crowe Foreign Services and has confirmed that the package was delivered to the Polish Ministry of Justice on February 14, 2024. Mercuria’s counsel will continue to follow up with Crowe Foreign Services to inquire whether a certificate of service from Poland is received; however, based on conversations with Crowe Foreign Services, Mercuria’s counsel expects this step to take a few months.

8. Considering that service of process on a foreign state is governed by Fed. R. Civ. P. 4(j)(1) and 28 U.S.C. § 1608, the 90-day time limit for service set forth in Fed. R. Civ. P. 4(m)

is not applicable. Fed. R. Civ. P. 4(m) states explicitly that “[t]his subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1)[.]” The Advisory Committee Notes confirm this to be the case, noting that “[s]ervice in a foreign country often is accomplished by means that require more than the time set by Rule 4(m). This problem is recognized by the two clear exceptions for service on an individual in a foreign country under Rule 4(f) and for service on a foreign state under 4(j)(1).” See Fed. R. Civ. P. 4, Advisory Committee Notes, 2016 Amendment.

CONCLUSION

As requested by the Court in its January 30, 2024 Order, Mercuria will continue to update this Court on the status of service on Poland every 90 days or until service is complete.

Dated: New York, NY
February 16, 2024

Respectfully submitted,

/s/ James E. Berger

James E. Berger (D.C. Bar No: 481408)
Charlene C. Sun (D. C. Bar No: 1027854)
Erin Collins (D.C. Bar No. 1781667)

DLA PIPER LLP (US)

1251 Avenue of the Americas
New York, NY 10020
Tel: (212) 335-4500
Fax: (212) 335-4001
James.Berger@us.dlapiper.com
Charlene.Sun@us.dlapiper.com
Erin.Collins@us.dlapiper.com

Attorneys for Mercuria Energy Group Limited