UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EUROFINSA, S.A.,	:	
	:	
Petitioner,	:	Civil Action No.: 23-3013 (RC)
	:	
v.	:	Re Document No.: 18
	:	
THE GABONESE REPUBLIC,	:	
	:	
Respondent.	:	

MEMORANDUM OPINION

GRANTING PETITIONER'S MOTION FOR DEFAULT JUDGMENT

I. INTRODUCTION

Petitioner Eurofinsa, S.A. is a limited liability company incorporated in Spain. Eurofinsa's predecessor-in-interest contracted with Respondent the Gabonese Republic ("Gabon") to rehabilitate a stadium in Gabon's capital. Gabon eventually breached its contractual obligations, so Eurofinsa terminated the contract and initiated arbitration. In 2020, an arbitral tribunal issued a final order awarding Eurofinsa a money judgment. Eurofinsa has petitioned this Court to enforce the award pursuant to the Federal Arbitration Act and the New York Convention. Gabon has not responded to Eurofinsa's petition or entered an appearance in this action. For the reasons discussed below, Eurofinsa's motion for default judgment and confirmation of the underlying award is granted.

II. FACTUAL AND PROCEDURAL BACKGROUND

Eurofinsa is a Spanish company that specializes in global infrastructure projects.[1] Pet. to Recognize & Enforce Arb. Award ("Pet.") ¶ 1, ECF No. 1. In June 2009, Eurofinsa's predecessor-in-interest contracted with Gabon to repair the President Omar Bongo Ondimba Multi-Purpose Stadium in Gabon's capital. *Id.* ¶ 2. The parties amended the initial contract in 2015. *Id.* After Gabon failed to fulfill its contractual obligations, Eurofinsa suspended its performance and ultimately terminated the contract. *Id.* ¶ 3. Pursuant to a provision in the amended contract, Eurofinsa initiated arbitration proceedings under the rules of the International Chamber of Commerce International Court of Arbitration ("ICC"). *Id.* ¶¶ 4, 5.

Both parties actively participated in the arbitration, which culminated in a three-day hearing before an arbitral tribunal. *Id.* ¶¶ 5–7. The tribunal issued a final award on October 15 2020 ("the Award"), ordering Gabon to pay Eurofinsa over 12 million euro plus interest. *Id.* ¶ 8; Award 22899/DDA, Ex. A to Pet., ECF No. 1-4. To date, Gabon has not paid any portion of the Award. Pet. ¶ 10; Mem. of Law in Supp. of Pet'r's Mot. Default J. and Confirmation of Arb. Award ("Mot. Default J.") ¶ 6, ECF No. 18-1.

Eurofinsa initiated this enforcement action on October 11, 2023, invoking the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), the Federal Arbitration Act ("FAA"), and the Foreign Sovereign Immunities Act ("FSIA"). *See generally* Pet.; Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3; 9 U.S.C. § 207; 28 U.S.C. § 1602 *et seq*. Gabon was served with a copy of the complaint and summons

[1] Because Gabon has not appeared in this action, the Court relies on Eurofinsa's account of the facts.

on December 11, 2023. *See* Return of Service Aff., ECF No. 15; Mot. Default J. ¶ 7. Pursuant to the FSIA, it had 60 days to file an answer or other responsive pleading. 28 U.S.C. § 1608(d).

When Gabon failed to respond by the statutory deadline, Eurofinsa requested that the Clerk of Court enter default against Gabon pursuant to Federal Rule of Civil Procedure 55(a). Mot. Entry of Default, ECF No. 16. The Clerk entered default on February 16, 2024. Clerk's Entry of Default, ECF No. 17. Eurofinsa then moved for default judgment. Pet'r's Mot. Default J. and Confirmation of Arb. Award, ECF No. 18. Eurofinsa served Gabon a copy of its motion for default judgment and, when Gabon again failed to respond, filed a notice of Gabon's failure to oppose. Certificate of Service, ECF No. 23; Notice of the Gabonese Republic's Failure to Oppose Mot. Default J., ECF No. 24. To date, Gabon has yet to enter an appearance or otherwise participate in this action.

III. LEGAL STANDARDS

A. Subject-Matter Jurisdiction

Under the Foreign Sovereign Immunities Act, 22 U.S.C. § 1602 *et seq.*, United States courts are generally barred from exercising jurisdiction over foreign sovereigns and their instrumentalities. But the FSIA contains exceptions. *See Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993); 28 U.S.C. § 1605(a). For one, a foreign state is not entitled to immunity from an action to enforce an arbitral award if "the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards." 28 U.S.C. § 1605(a)(6). The D.C. Circuit has held that the FSIA's arbitration exception requires a district court to find three jurisdictional facts: "(1) an arbitration agreement, (2) an arbitration award, and (3) a treaty potentially governing award enforcement." *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1100

(D.C. Cir., 2024) (citing *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 877 (D.C. Cir. 2021) and *Chevron Corp. v. Ecuador*, 795 F.3d 200, 204 (D.C. Cir. 2015)).

A federal court can enter default judgment against a foreign sovereign as long as one of the FSIA's exceptions applies and "the claimant[s] establish[] [their] right to relief by evidence satisfactory to the court." 28 U.S.C. § 1608(e); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 232 (D.C. Cir. 2003) ("The court . . . has an obligation to satisfy itself that plaintiffs have established a right to relief."). This standard mirrors the default judgment standard of Federal Rule of Civil Procedure 55(d). *Hamen v. Islamic Republic of Iran*, 401 F. Supp. 3d 85, 90 (D.D.C. 2019) (citing *Owens v. Republic of Sudan*, 864 F.3d 751, 785 (D.C. Cir. 2017), *vacated and remanded sub nom. Opati v. Republic of Sudan*, 590 U.S. 418 (2020)); *Hill v. Republic of Iraq*, 328 F.3d 680, 683 (D.C. Cir. 2003)). After a defendant (or respondent) has failed to plead or otherwise defend against an action, the plaintiff (or petitioner) may request that the clerk of the court enter default against that defendant. *See* Fed. R. Civ. P. 55(a). Following the clerk's entry of default, if the plaintiff or petitioner's claim is not for a sum certain, Rule 55(b)(2) permits the plaintiff or petitioner to apply to the court for entry of default judgment. *See* Fed. R. Civ. P. 55(b)(2). This process provides the defendant or respondent an opportunity to move the court to set aside the default before the court enters default judgment. *See* Fed. R. Civ. P. 55(b)–(c).

"Notwithstanding its appropriateness in some circumstances, 'entry of default judgment is not automatic.'" *Braun v. Islamic Republic of Iran*, 228 F. Supp. 3d 64, 74 (D.D.C. 2017) (quoting *Mwani v. bin Laden*, 417 F.3d 1, 6 (D.C. Cir. 2005)) (footnote omitted)). Because "strong policies favor the resolution of disputes on their merits," *Jackson v. Beech*, 636 F.2d 831, 832 (D.C. Cir. 1980), the court "normally" must view the default judgment as "available only

when the adversary process has been halted because of an essentially unresponsive party." *Id.* at 835 (quoting *H. F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe*, 432 F.2d 689, 691 (D.C. Cir. 1970) (per curiam)). Even if a defendant appears "essentially unresponsive," *id.*, the court still has an "affirmative obligation" to ensure that it has subject matter jurisdiction over the suit. *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1092 (D.C. Cir. 1996). The "FSIA leaves it to the court to determine precisely how much and what kinds of evidence . . . plaintiff[s] must provide, requiring only that it be 'satisfactory to the court.'" *Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1047 (D.C. Cir. 2014) (quoting 28 U.S.C. § 1608(e)).

B. Personal Jurisdiction

The Court should also "satisfy itself that it has personal jurisdiction before entering judgment against an absent defendant." *Mwani*, 417 F.3d at 6. "Although the plaintiffs retain 'the burden of proving personal jurisdiction,'" "in the absence of an evidentiary hearing," plaintiffs can "satisfy that burden with a *prima facie* showing." *Braun*, 228 F. Supp. 3d at 74 (internal quotation marks omitted) (quoting *Mwani*, 417 F.3d at 6–7). To make the required *prima facie* showing, plaintiffs may rely on "their pleadings, bolstered by such affidavits and other written materials as they can otherwise obtain." *Mwani*, 417 F.3d at 7.

IV. ANALYSIS

A. Subject-Matter Jurisdiction

There is no question that Respondent Gabon is a foreign state within the meaning of the FSIA. *See* 28 U.S.C. § 1603(a). Under the FSIA, "a foreign state is presumptively immune from the jurisdiction of United States courts[,]" and a federal court has subject matter jurisdiction only if "a specified exception applies[.]" *Saudi Arabia*, 507 U.S. at 355 (citing *Verlinden B.V. v.*

Central Bank of Nigeria, 461 U.S. 480, 488–89 (1983)). Eurofinsa argues that the arbitration exception applies here because its three conditions are met: there is an arbitration agreement, an arbitration award, and a treaty governing award enforcement. *See NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1100. The Court agrees.

The parties' underlying contract includes an agreement to arbitrate disputes under the auspices of the ICC. Ex. B to Mot. Default J. art. 61, ECF No. 1-5. And an arbitral tribunal issued the Award pursuant to that agreement. *See* Original Award 22899/DDA, Ex. A to Pet. (French), ECF No. 1-4; Award 22899/DDA (English). The only remaining issue is whether a qualifying treaty governs the Award's enforcement. Eurofinsa argues that the New York Convention governs enforcement of the Award. *See* Pet. ¶¶ 17–19. The D.C. Circuit has determined that "the New York Convention 'is exactly the sort of treaty Congress intended to include in the [FSIA's] arbitration exception.'" *Creighton Ltd. v. Gov't of State of Qatar*, 181 F.3d 118, 123–24 (D.C. Cir. 1999) (quoting *Cargill Int'l S.A. v. M/T Pavel Dybenko*, 991 F.2d 1012, 1018 (2d Cir. 1993)); *see also* 9 U.S.C. §§ 201–208 (codifying the New York Convention as federal law).

An arbitration award falls within the scope of the New York Convention when "(1) there is a written agreement; (2) the writing provides for arbitration in the territory of a signatory of the convention; (3) the subject matter is commercial; and (4) the subject matter is not entirely domestic in scope." *Customs & Tax Consultancy LLC v. Democratic Republic of the Congo*, 2019 WL 4602143, at *3 (D.D.C. Sept. 23, 2019) (citing *Africard Co. v. Republic of Niger*, 210 F. Supp. 3d 119, 123 (D.D.C. 2016)); *see also* 9 U.S.C. § 202. Those criteria are met here. The parties had a written agreement that provided for arbitration in France, which has been a party to the New York Convention since 1959. *See* United Nations Treaty Collection, Convention on the

Recognition and Enforcement of Foreign Arbitral Awards, at https://perma.cc/NY8N-2HVT. The Award was rendered within the territory of France. Award 22899/DDA ¶ 17; *id.* at 173; *see also* New York Convention, art. 1(1) ("This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought . . . ."). The subject matter of the underlying contract was commercial in nature—construction work on a public stadium—and the contract was to be performed abroad by non-U.S. citizens, so it was not domestic in scope. *See* Pet. ¶ 19. The Court thus concludes that the FSIA's arbitration exception applies and that it has subject-matter jurisdiction over Eurofinsa's petition.[2]

B. Personal Jurisdiction

"Personal jurisdiction exists over a non-immune sovereign so long as service of process has been made under section 1608 of the FSIA." *Estate of Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 255 (D.D.C. 2006) (citation omitted); 28 U.S.C. § 1330(b) ("[P]ersonal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction . . . where service has been made under section 1608 of this title."). Section 1608 provides four methods of service, in descending order of preference: (1) "special arrangement for service between the plaintiff and the foreign state or political subdivision;" (2) service "in accordance with an applicable international convention on service of judicial documents;" (3) service "by sending a copy of the summons and complaint and a notice of suit" including translations "into the official language of the foreign state, by any form of mail

[2] *See* 9 U.S.C. § 203 ("The district courts of the United States . . . shall have original jurisdiction over [an action falling under the New York Convention] regardless of the amount in controversy."); *see also* 28 U.S.C. § 1330(a) ("The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state . . . .").

requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned," or (4) service

> by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1608(a).

There is no indication of a special service arrangement between Eurofinsa and Gabon. Mot. Default J. ¶ 11. Nor is Gabon a party to a treaty providing for service in foreign civil matters. *Id.*; *see VAMED Mgmt. und Serv. Gmbh v. Gabonese Republic*, No. 22-cv-37373, 2024 WL 1092232, at *3 (D.D.C. March 13, 2024) (finding the same). Eurofinsa was therefore entitled to serve Gabon using the third method: by sending a copy of the summons and complaint and a notice of the suit to the head of Gabon's ministry of foreign affairs. 28 U.S.C. § 1608(a)(3). Because Eurofinsa has done so, *see* Return of Service Aff. and Mot. Default J. ¶ 12, the Court concludes that it has personal jurisdiction over Gabon.

C. Right to Relief

Turning to the merits, the Court finds that Eurofinsa is entitled to a default judgment because it has established its "claim or right to relief by evidence satisfactory to the [C]ourt." *See* 28 U.S.C. § 1608(e). In other words, Eurofinsa has met its burden to show that the Award should be enforced pursuant to the New York Convention and its implementing legislation. *See* 9 U.S.C. § 207. As discussed above, the Court agrees with Eurofinsa that the New York Convention governs enforcement of the Award. *See supra* Section III(A).

The Convention states that "[e]ach Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon[.]" New York Convention, art. III. Federal law provides that "[t]he court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." 9 U.S.C. § 207. A state "may refuse to enforce the award only on the grounds explicitly set forth in Article V of the Convention." *TermoRio S.A. E.S.P. v. Electranta S.P.*, 487 F.3d 928, 935 (D.C. Cir. 2007) (quoting *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 23 (2d Cir. 1997)). The party challenging enforcement bears the burden of establishing that any of those grounds applies. *Sterling Merchant Fin. Ltd. v. Republic of Cabo Verde,* 261 F. Supp. 3d 48, 53 (D.D.C. 2017) ("The party resisting confirmation bears the heavy burden of establishing that one of the grounds for denying confirmation in Article V applies." (internal quotation marks omitted)).

On this record, there are no grounds for the Court to refuse to enforce the Award. Because Gabon has not appeared, it does not raise any objections to enforcement. Nor does the Court recognize any barrier to enforcement *sua sponte*. *See* New York Convention, art. V(2). The Court will therefore enforce the Award against Gabon.

D. Calculation of Award Amount

All that remains is to calculate the total amount Gabon owes Eurofinsa under the Award. The tribunal's final order directed Gabon to pay Eurofinsa:

- €11,234,374 for unpaid invoices, plus interest at a rate of 3.66%, *see* Award 22899/DDA ¶ 460, divided as follows:
    - €2,582,434.00 for invoice no. 8½, with interest beginning to accrue from September 9, 2016,[3] *see id.* ¶ 440;

[3] Eurofinsa refers to the first invoice as provisional statement no. 8½, *see, e.g.*, Mot. Default J. ¶ 2, but the Award refers to it as both provisional statement no. 8. *and* no. 8½. *Compare* Award 22899/DDA ¶¶ 397–99, 432 (labeling it Provisional Statement no. 8), *with id.*

  - €5,007,562.00 for provisional statement no. 9, with interest beginning to accrue from December 21, 2016, *see id.* ¶ 446;
  - €3,644,379.00 for provisional statement no. 10, with interest beginning to accrue from April 28, 2017, *see id.* ¶ 454;
- €70,336.00 for additional costs incurred as a result of Gabon's delays, plus interest at the rate of 3.66% from the date of the Award until full payment, *see id.* ¶ 552;
- €720,263.21 for lost profits, plus interest at the rate of 3.66% from the date of the Award until full payment, *see id.* ¶ 645;
- $120,000 USD for ICC arbitration costs, *see id.* ¶ 916; and
- €189,131.00 for lawyers' fees associated with the arbitration proceedings, *see id.* ¶ 919.

See also id. ¶ 924 (summarizing the Award); Pet. at ¶ 8 (quoting Award 22899/DDA ¶ 924). The Award also requires Eurofinsa to pay Gabon €437,400 for "non-conformities that were not resolved," plus interest "at the 6-month LIBOR rate + 2%, capitalized every six months," from the date of the Award until full payment. Award 22899/DDA ¶ 924.

"Conversion of foreign currency amounts into dollars at judgment is the norm, rather than the exception." *Africard Co. Ltd.*, 210 F. Supp. 3d at 128 (quotation omitted and citation cleaned up). If the foreign currency has depreciated since the injury or breach, judgment is typically given at the rate of exchange applicable on the date of injury or breach. *Id.* (citing Restatement (Third) of Foreign Relations Law § 823 cmt. c). If the foreign currency has appreciated since the date of the breach, judgment is typically given at the rate of exchange applicable on the date of judgment. *Id.* at 128–129.

According to the European Central Bank, on the date the Award was issued, 1 Euro equaled 1.1698 dollars. *See* Ex. D to Pet.'s Proposed Default J. and Supporting Decls., ECF No. 26-6. On January 17, 2025, 1 Euro equaled 1.0298 dollars. *See* European Central Bank, Euro Foreign Exchange Reference Rates – U.S. Dollar, available at https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/htm

¶ 924 (Provisional Statement no. 8 ½). The Court understands that Provisional Statements 8 and 8½ are one and the same.

l/index.en.html. Eurofinsa has requested that the Court use the exchange rate in effect when the Award was issued. Decl. of Mauricio Toledano Maroues ("Maroues Decl.") ¶ 6, ECF No. 26-2. Because the Euro has depreciated since the date of the Award, the Court agrees to use that rate.

In total, Eurofinsa is entitled to $120,000 for ICC arbitration costs plus $221,245.44 in lawyers' fees.[4] For the sums awarded with interest, Eurofinsa is entitled to, in aggregate, $18,075,157.00.

Sum Awarded (Euro)	**Daily Interest Accrued (Euro)[5]**	**Date Interest Began to Accrue**	**Days Since Interest Began to Accrue**	**Total Interest Accrued (Euro)**	**Total with Interest (Euro)**	**Total with Interest (USD)**
2,582,434.00	258.95	September 9, 2016	3,053	790,547.35	3,373,008.35	3,945,745.17
5,007,562.00	502.13	December 21, 2016	2,950	1,481,283.50	6,488,845.50	7,590,651.47
3,644,379.00	365.44	April 28, 2017	2,822	1,031,271.68	4,675,650.68	5,469,576.17
70,366.00	7.06	October 15, 2020	1,556	10,985.36	81,351.36	95,164.82
720,263.21	72.22	October 15, 2020	1,556	112,347.32	832,637.53	974,019.38

The judgment is offset by the amount Eurofinsa owes Gabon: €437,400 plus interest at the 6-month LIBOR rate + 2%, capitalized every six months. As Eurofinsa explains, the 6-month LIBOR rate was discontinued on December 31, 2021. Maroues Decl. ¶¶ 11–19. The Court agrees with Eurofinsa that the most appropriate replacement rate is EURIBOR, which has

[4] The initial Award amount for lawyers' fees, in Euro, is €189,131.00, which converted to USD is $221,245.44. Eurofinsa claims that the lawyers' fees amount to $221,358.92, Maroues Decl. ¶ 6, but that calculation is mistaken.

[5] To calculate the daily interest rate, the Court divided the annual interest rate of 3.66% by 365 and rounded to the nearest one hundredth. *See Africard*, 210 F. Supp. 3d at 129 n.9.

been approved by the World Bank as LIBOR's successor. *See id.* ¶ 13 and nn. 4–8. The total offset amount is $518,250.34. *See* Ex. B to Pet.'s Proposed Default J. and Supporting Decls. at 2, ECF No. 26-4.

Adding all of these sums, the total judgment in Eurofinsa's favor is $18,416,402.40 minus $518,250.34, for a total of $17,898,152.10. As mandated by 28 U.S.C. § 1961, Eurofinsa is also entitled to post-judgment interest until full payment is made. *See VAMED*, 2024 WL 1092232 at *6.

V. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Eurofinsa's Motion for a Default Judgment is **GRANTED**. Eurofinsa is further awarded judgment in the amount of $17,898,152.10. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: January 17, 2025

RUDOLPH CONTRERAS
United States District Judge