Two arbitration awards in two different investor disputes have been declared invalid by the Svea Court of Appeal on March 27, 2024, and May 27, 2024.

Zellberg has previously written an article about how two arbitration awards in November 2022 were set aside within a very short period of time, and how unusual it is for arbitration awards that are objected for various reasons to be set aside or declared invalid. However, once again, two contested arbitration awards have been declared invalid within a period of two months. This time, both contested arbitration awards concerned international investment disputes. Both cases were examined by the Svea Court of Appeal, and it can be concluded from the awards that the maintenance of arbitration awards that have been examined against the background of arbitration clauses based on international investment disputes is clearly incompatible with the principles of EU law and thus also incompatible with the legal order in Sweden, which is why they have been declared invalid by the Court of Appeal.

The first case ruled by the Svea Court of Appeal on March 27, 2024 (T 15200-22) concerned a dispute between the Kingdom of Spain ("**Spain**") and the company Triodos Sicav II ("**Triodos**") from Luxembourg, where the Court of Appeal declared the arbitration award regarding investments within the EU invalid due to its incompatibility with fundamental provisions and principles governing the legal order of the European Union and thus also the Swedish legal system.

The case concerned Triodos invoking an arbitration procedure at the Arbitration Institute of the Stockholm Chamber of Commerce ("**SCC**"), and they so-called SCC rules, against Spain according to Article 26 of the Energy Charter Treaty, in 2017. In 2022, the arbitration tribunal announced that Spain had violated Article 10.1 of the Energy Charter Treaty and awarded damages to Triodos. Spain then contested the arbitration award and requested that the Svea Court of Appeal declare the arbitration award invalid based on Section 33, paragraph 1, section 1 or 2 of the Swedish Arbitration Act (1999:116) ("**SAA**"). Spain claimed that the arbitration award violated Sweden's legal order or, alternatively, that the dispute between the parties was not arbitrable. Spain referred to the judgments of the Court of Justice of the European Union in *Achmea* (C-284/16), *Komstroy* (C-741/19), and *PL Holdings* (C-109/20), arguing that the arbitration award involved interpretation and appliance of EU law, which falls exclusively within the competence of the Court of Justice of the European Union and cannot be examined by a Swedish arbitration tribunal. Furthermore, Spain argued that the arbitration award should be set aside according to Section 34, paragraph 1, section 1 of the SAA, as there was no valid arbitration agreement.

In the award, the Svea Court of Appeal referred to the aforementioned cases from the Court of Justice of the European Union, where the Court of Appeal noted that the Court of Justice had commented on arbitration clauses in international investment agreements, entered into between two or more EU Member States, and the compatibility of the agreements with EU law. The Court of Appeal also applied the arbitral award from the Supreme Court in the

pioneering case between Poland vs. PL Holdings (NJA 2022 p. 965), where the Supreme Court determined that arbitration award arising from a dispute resolution clause in an international investment agreement between an EU member state and an investor from another member state is incompatible with the fundamental provisions and principles governing EU law, and consequently, the Swedish legal order. The court clarified that such arbitration awards should be examined against the rules on invalidity regarding violations of procedural public policy. Considering the mentioned jurisprudence, the Svea Court of Appeal in the current case stated that since the dispute concerned an investment within the EU and between Member States, the maintenance of the arbitration award would obviously be incompatible with Swedish legal order. Therefore, the court declared the arbitration award invalid based on Section 33, paragraph 1, section 2 of the SAA and consequently found no reason to consider Spain's further claims.

Two months after the Svea Court of Appeal invalidated the arbitration award between Spain and Triodos, the Court of Appeal announced another award concerning essentially the same legal issues, i.e., whether the arbitration award regarding another international investment dispute was incompatible with the provisions and principles within EU law and thereby incompatible with Swedish legal order. The arbitration award was announced on May 27, 2024 (T 4236-19) and concerned a dispute between the Republic of Italy ("Italy") and the company CEF Energis B.V. ("CEF") from Netherlands. This case also concerned an investment dispute between a Member State and an investor domiciled within the European Union. In accordance with what Spain argued in previous case, Italy argued that the arbitration award should be declared invalid according to Section 33, paragraph 1, sections 1 or 2 of the SAA, or alternatively be set aside according to Section 34, paragraph 1, section 1 of the SAA.

Just as in the case between Spain and Triodos, the Svea Court of Appeal declared the arbitration award invalid on the grounds that an international investment dispute adjudicated with the support of an arbitration clause in an international investment agreement is incompatible with fundamental provisions and principles that regulate the legal order in the EU and thereby also incompatible with Swedish legal order. The claims and grounds in the case between Italy and CEF as well as between Spain and Triodos were in several respects very similar. The Court of Appeal provided essentially the same award in this case by again referring to the jurisprudence of the Court of Justice of the European Union and to NJA 2022 p. 965 and concluded the same judgment as in the case between Spain and Triodos.

Based on these two awards from the Svea Court of Appeal, it can now be considered established that if an arbitration award is deemed to conflict with Swedish (or other EU member state) legal order, there are grounds to invalidate the arbitration award on the basis of Section 33, paragraph 1, section 2 of the SAA, as it can be considered invalid on the grounds of violation of procedural order. Although it is very unusual for arbitration awards to be set aside or invalidated in Sweden, the possibilities of contest arbitration awards are a very important legal procedure since arbitration awards are otherwise final as they cannot be appealed to a higher instance.