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The Authors

Matthew T. Adams, Antje Baumann, Katherine Bell, Lisa Berger, Dina Berkaliyeva, Vilius Bernatonis, James H. Boykin, Stavros Brekoulakis, Cavinder Bull, Rita de Carvalho, Ondrej Cech, Antonia Cermak-Kietaibl, Vod K.S. Chan, Chrystalla Christoforou, Barbara Concolino, Sofia Elena Cozac, Sára Darnót, Borna Dejanović, Egishe Dzhazoyan, Vivian Elvers, Sarah Yvonne Enzi, Catrice Gayer, Agis Georgiades, Amaryllis Germanidis, Duarte G. Henriques, Rishika Jain, Arush Khanna, Judith Knieper, Justin Friedrich Krahé, Niam Leinwather, Eric Leikin, Courtney Lotfi, Eveli Lume, Peter Machherndl, Tamara Manasijevic, Marlene Maurer, Maximilian Albert Mueller, Max Murtinger, Irina Nazarova, Pınar Noberi, Petra Pataki, Camilla Perera – de Wit, Markus Petsche, Nikolaus Pitkowitz, Jessica Puhr, Matej Pustay, Milica Savić, Helena Schnur, Albertas Šekštelo, Arman Shaikenov, Valikhan Shaikenov, Iain Sheridan, Ana Stanič, Ben Steinbrück, Wei Sun, Sofia Svinkovskaya, Johannes Tropper, Doğuhan Uygun, Florian Wagner, Anna Weinzierl, Irene Welser, Stephan Wilske, Mathias Wittinghofer, Roland Ziadé

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Enforcement of Intra-EU Investment Awards
Trends Within and Beyond the EU

*Eveli Lume/Matej Pustay**)

I. Introduction

This article examines the evolving practice and jurisprudence of the enforcement of intra-EU investment awards – *i.e.*, awards rendered in disputes between a European Union ("**EU**") Member State and an investor from another Member State – across selected jurisdictions.

The enforcement of intra-EU investment arbitration awards has emerged as a particularly contentious and complex issue in contemporary international investment law. This development follows the decisions of the Court of Justice of the European Union ("**CJEU**") in *Achmea v. Slovakia*, *Komstroy v. Moldova*, and *PL Holdings v. Poland*, which found arbitration clauses providing for intra-EU investment arbitration to be incompatible with EU law.

These decisions had a significant impact on enforcement of intra-EU investment awards within the EU. At the same time, their impact outside of the EU has been limited. This divergence between EU and non-EU approaches has resulted in a fragmented enforcement landscape – one in which the fate of an intra-EU award often depends on the jurisdiction in which enforcement is sought.

According to the United Nations Conference on Trade and Development (UNCTAD) Investment Dispute Settlement Navigator, 81 intra-EU investment arbitration cases have been decided since 2018,[1]) and another eight cases are currently pending.[2])

*) The authors wish to thank *Ms. Helena Švandová* and *Ms. Oleksandra Hnatiuk* (both Squire Patton Boggs) for their valuable assistance with research for this article.

1) With the exclusion of the cases which were discontinued and decided in favor of neither party.

2) UNCTAD's Investment Dispute Settlement Navigator, available at https://investmentpolicy.unctad.org/investment-dispute-settlement (last accessed: 3 November 2025).

II. The *Achmea, Komstroy* and *PL Holdings* Decisions

The CJEU has rendered three landmark decisions concerning the compatibility of intra-EU investment arbitration agreements with EU law. The first was the Grand Chamber's decision in *Achmea v. Slovakia* in which the CJEU held that arbitration clauses contained in intra-EU bilateral investment treaties ("**BITs**") are incompatible with EU law.[3]) The CJEU based its conclusion on Articles 267 and 344 of the Treaty on the Functioning of the European Union ("**TFEU**"), finding that these provisions confer exclusive authority to interpret EU law to the courts of the EU Member States and, ultimately, on the CJEU.

Accordingly, EU Member States are precluded from submitting disputes that could involve interpretation of EU law to investment tribunals, which remain outside of the EU judicial system.[4]) The CJEU also relied on the principle of mutual trust between the Member States, enshrined in Article 4(3) of the Treaty on European Union ("**TEU**"), which requires that EU law be respected and applied uniformly throughout the Union.[5])

Following the *Achmea* decision, on 15 January 2019, EU Member States signed a declaration on the legal consequences of the *Achmea* decision and on investment protection in which the Member States recognized the consequences of the *Achmea* decision and committed to terminate the intra-EU BITs (the "**2019 Declaration**").[6])

On 29 May 2020, all the Member States – except for Austria, Finland, Sweden, and Ireland – signed the Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union (the "**Termination Agreement**"). Member States agreed to terminate their intra-EU BITs along with their sunset clauses, designed to afford post-termination treaty protection to investments made prior to the termination.[7])

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[3]) *Slovak Republic v Achmea BV,* Case C-284/16, ECLI:EU:C:2018:158 (CJEU 2018).

[4]) *Ibid.,* at 62.

[5]) *Ibid.,* at 34, 58.

[6]) Finland, Luxembourg, Malta, Slovenia, Sweden, and Hungary did not sign the declaration. *See* European Commission, *Declaration of the Member States of 15 January 2019 on the legal consequences of the Achmea judgment and on investment protection*, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, 17 January 2019, available at https://finance.ec.europa.eu/publications/declaration-member-states-15-january-2019-legal-consequences-achmea-judgment-and-investment_en (last accessed: 1 November 2025).

[7]) Official Journal of the European Union, *Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union*, OJ L 169, 29 May 2020, pp. 1–41. ELI: 22020A0529(01) (last accessed: 1 November 2025).

The CJEU subsequently extended the *Achmea* reasoning in its Grand Chamber decision of 2 September 2021 in *Komstroy v Moldova*,[8]) holding that the arbitration clause in Article 26 of the Energy Charter Treaty ("**ECT**") is also incompatible with EU law insofar as it applies to intra-EU disputes.

Finally, in *PL Holdings v. Poland* (decision of 26 October 2021),[9]) the CJEU addressed the question whether an *ad hoc* arbitration agreement between an EU Member State and an investor from another EU Member State that is, in substance, identical to the arbitration clause in the intra-EU BIT between these EU Member States is compatible with EU law. Such an *ad hoc* agreement was considered to have been concluded tacitly under *lex arbitri* (Swedish law) based on Poland's conduct in the arbitration. The CJEU held that Articles 267 and 344 TFEU preclude national legislation allowing for the conclusion of such *ad hoc* agreements.[10])

Further to the *Komstroy* decision on the arbitration clause in the ECT, on 26 June 2024, all EU Member States except for Hungary issued a declaration, stating a common understanding that in light of the *Komstroy* decision, the investor-state arbitration clause in Article 26 of the ECT should be interpreted as not being applicable to intra-EU investment disputes.[11]) Following that declaration, on 10 September 2025, the European Parliament and Council approved the Agreement between the Member States on the interpretation and application of the Energy Charter Treaty, which mirrors the 26 June 2024 declaration. It provides that the ECT *"could not in the past and cannot now or in the future*" serve as the legal basis for an intra-EU arbitration.[12])

These developments have prompted objections to the jurisdiction of investment tribunals (a so-called intra-EU objection) in the ongoing intra-EU investment arbitrations as well as new investment arbitrations commenced ever since. Investment tribunals have not approached these objections consistently. Many investments tribunals have rejected the intra-EU objection

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[8]) *Republic of Moldova v. Komstroy LLC*, Case C-741/19, ECLI:EU:C:2021:655 (CJEU 2021).

[9]) *Republic of Poland v. PL Holdings Sàrl,* Case C109/20, ECLI:EU:C:2021:875 (CJEU 2021).

[10]) *Ibid*., at 70.

[11]) European Commission, *Declaration on the legal consequences of the judgment of the Court of Justice in Komstroy and common understanding on the nonapplicability of Article 26 of the Energy Charter Treaty as a basis for intraEU arbitration*, Directorate-General for Energy, 28 June 2024, available at https://energy.ec.europa.eu/publications/declaration-legal-consequences-judgment-court-justice-komstroy-and-common-understanding-non_en (last accessed: 1 November 2025).

[12]) Hungary is not a party to the agreement. European Parliament and Council of the European Union, *Decision (EU) 2025/1904 of the European Parliament and of the Council of 10 September 2025 on the approval by the Union of the Agreement on the interpretation and application of the Energy Charter Treaty*, OJ L, 19 September 2025, available at https://eur-lex.europa.eu/eli/dec/2025/1904/oj (last accessed: 3 November 2025).

and upheld their jurisdiction in intra-EU investment arbitrations.[13]) However, there are also investments tribunals that upheld the intra-EU objection.[14])

III. Enforcement of Intra-EU Awards

A. General Comments

Enforcement of investment awards is primarily governed by two international conventions: the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**NYC**"), to the extent the award qualifies under that Convention, and the 1966 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**"). The latter establishes a self-contained regime for enforcement of investment awards rendered under the ICSID framework.

Article V of the NYC sets forth specific grounds for rejection of recognition and enforcement of arbitral awards.[15]) As explained in Section B below,

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[13]) *E.g., NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/14/11, Decision on Jurisdiction, Liability and Principles of Quantum, 12 March 2019, para. 357; *B3 Croatian Courier Coöperatief U.A. v. Republic of Croatia*, ICSID Case No. ARB/15/5, Award (Excerpts), 5 April 2019, para. 567; *VM Solar Jerez GmbH, M Solar Verwaltungs GmbH, Solarizz Holding Verwaltungs-GmbH, M Solar GmbH & Co. KG, Solarizz Holding GmbH & Co. KG and Helmut Vorndran v. Kingdom of Spain*, ICSID Case No. ARB/19/30, Decision on Jurisdiction, Liability and Principles of Quantum, 14 May 2025, paras. 326–328; *United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi v. Republic of Estonia*, ICSID Case No. ARB/14/24, Award, 21 June 2019, paras. 531–560.

[14]) *E.g., Green Power K/S and Obton A/S v. Spain*, SCC Case No. V 2016/135, 16 June 2022.

[15]) Article V (1) of the NYC provides that recognition and enforcement of the award may be refused if *"(a) [t]he parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) [t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or (c) [t]he award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or (d) [t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or (e) [t]he award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made*." Additionally, recognition and enforcement of an arbitral award may also be

respondent States have invoked several of these grounds to oppose recognition and enforcement of intra-EU investment awards, in particular the invalidity of the underlying arbitration agreement, the annulment of the award at the seat of arbitration, or the contention that recognition or enforcement of the intra-EU investment award would contradict the enforcing State's public policy.[16])

In contrast, the ICSID Convention requires each contracting State to *"recognize [awards] rendered pursuant to [the ICSID Convention] as binding and enforce the pecuniary obligations imposed by [those awards] within [their] territories as if [they] were a final judgment of a court in [those States]"*.[17]) Consequently, respondent States opposing the enforcement of ICSID intra-EU awards have also relied on more general defenses – most notably, sovereign immunity.

In addition to the above defenses, a further issue arises uniquely in the context of enforcement of intra-EU awards: the question of unlawful state aid under EU law. The EU Commission, the CJEU and certain courts of the Member States have repeatedly found that intra-EU investment awards may represent unlawful stated aid under EU law and, thus, cannot be enforced by the Member States' courts with the consequence that any amounts already paid should be recovered by the EU Member States.

This issue was first addressed with respect to an intra-EU ICSID case *Ioan Micula, Viorel Micula and others v. Romania (1).* In that case, claimants prevailed and obtained an ICSID award upholding their claim for damages.[18]) The EU Commission, however, subsequently issued a decision stating that the tribunal's award represents unlawful state aid ("**Decision 2015/1470**").[19]) As a result, the EU Commission ordered that Romania shall not pay the damages

refused under Article V (2) of the NYC in the instances when *"(a) [t]he subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) [t]he recognition or enforcement of the award would be contrary to the public policy of that country." See Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 10 June 1958, 21 U.S.T. 2543, 330 U.N.T.S. 38, Art. V.

[16]) *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 10 June 1958, 21 U.S.T. 2543, 330 U.N.T.S. 38, Arts. V(1)(a), V(1)(e) and V(2)(b).

[17]) *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, 18 March 1965, 575 U.N.T.S. 159, Art. 54(1).

[18]) *Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania [I]*, ICSID Case No. ARB/05/20, Final Award, 11 December 2013, para. 1329.

[19]) *Micula v. Romania*, 2015/1470, 30 March 2015, (EU) 2015/1470 OJ L 232, pp. 43–70. European Commission, *Commission Decision (EU) 2015/1470 of 30 March 2015 on State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania — Arbitral award Micula v Romania of 11 December 2013*, *Official Journal of the European Union* L 232/43, 4 September 2015, Article 1. This decision was subject to further proceedings but was eventually upheld by the General Court of the EU in October 2024.

awarded in the award and shall recover any payments that had already been made under the award.[20])

Decision 2015/1470 was, subsequently, challenged by claimants, who prevailed in the first instance. The General Court concluded that the EU Commission did not have competence to order Romania to refrain from paying the damages and that the legal classification of the arbitral award as an *"advantage"* and *"aid"* for the purposes of Article 107 of the TFEU was incorrect. As a result, the General Court annulled the Decision 2015/1470.[21])

The General Court's decision was, however, annulled by the CJEU on 25 January 2022 and the case was remanded back to the General Court.[22]) The CJEU noted, *inter alia*, that *"with effect from Romania's accession to the European Union, the system of judicial remedies provided for by the EU and TFEU Treaties replaced that arbitration procedure"* and, as a result, *"the consent given to that effect by Romania, from that time onwards, lacked any force"*.[23])

In its subsequent decision, the General Court upheld the Decision 2015/1470.[24]) The court found that the award issued by the *Micula* tribunal was *"adopted by the arbitral tribunal on 11 December 2013, that is to say, after Romania's accession to the European Union"* and, as a result, the award *"cannot […] produce any effects and cannot thus be executed with a view to paying the compensation granted by that award"*.[25]) The General Court held that, as a consequence, *"a court or tribunal of a Member State ruling on the enforcement of an arbitral award is required to set aside that award and, therefore, may not*

[20]) European Commission, *Commission Decision (EU) 2015/1470 of 30 March 2015 on State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania — Arbitral award Micula v Romania of 11 December 2013*, *Official Journal of the European Union* L 232/43, 4 September 2015, Article 2. In a more recent case, the EU Commission issued essentially the same decision with respect to the investment award issued in *Infrastructure Services (Antin) v. Spain*. *See* European Commission, *Commission Decision (EU) 2025/1235 of 24 March 2025 on the measure State aid SA.54155 (2021/NN) implemented by Spain – Arbitration award to Antin (notified under document C(2025) 1781)*, OJ L, 25 June 2025.

[21]) *European Food SA and Others v European Commission*, Joined Cases T-624/15 RENV, T-694/15 RENV & T-704/15 RENV, Judgment of 2 October 2024, ECLI:EU:T:2024:659 (GC 2024), para. 28.

[22]) *Commission v European Food SA and Others* (Case C-638/19 P), ECLI:EU:C:2022:50 (CJEU 2022) para. 156.

[23]) *Ibid*., at 145.

[24]) Judgment of the General Court in Case T-624/15 RENV, 2 October 2024, para. 431.

[25]) *European Food SA and Others v European Commission*, Joined Cases T-624/15 RENV, T-694/15 RENV & T-704/15 RENV, Judgment of 2 October 2024, ECLI:EU:T:2024:659 (GC 2024), para. 101.

in any case proceed with its enforcement in order to enable its beneficiaries to obtain payment of damages which it awarded them".[26])

The prohibition of enforcing intra-EU awards by the Member States' courts was also confirmed by the CJEU in its decision on a request for a preliminary ruling filed by the Brussels Court of Appeal, which was seized to enforce the *Micula* award.[27]) In that decision, the CJEU concluded that *"Articles 267 and 344 TFEU, must be interpreted as meaning that a court of a Member State seised of the enforcement of the arbitral award which was the subject of Commission Decision (EU) 2015/1470 of 30 March 2015 concerning State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania – Arbitral award in the Micula v Romania case of 11 December 2013, is required to disregard that award and, consequently, may not in any case proceed with its enforcement in order to enable its beneficiaries to obtain payment of the damages awarded to them*".[28])

This shows that, in the view of the EU Commission and the CJEU, intra-EU investment awards and their enforcement qualify as unlawful state aid, requiring the Member States' courts to deny their enforcement and to recover any amounts already paid under such awards.

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[26]) *European Food SA and Others v European Commission*, Joined Cases T-624/15 RENV, T-694/15 RENV & T-704/15 RENV, Judgment of 2 October 2024, ECLI:EU:T:2024:659 (GC 2024), para. 102.

[27]) The Brussels Court of Appeal referred the following preliminary questions to the CJEU: *"1) Should Decision 2015/1470 be understood as referring to payments due from Romania even in the event that the payments are recovered [from it] following enforcement proceedings for the arbitral award […] of 11 December 2013, initiated before the courts of a Member State other than Romania?; 2) Does Union law require, in itself and ex officio, that a court of a Member State (other than Romania), seised of an action [against] enforcement proceedings of an arbitral award […] which has the force of res judicata under the national procedural rules of that Member State, set aside that award, solely on the ground that a non-final decision of the Commission adopted after the award considers that enforcement of the award is contrary to the [Union] State aid regime?; 3) Does EU law, in particular the principle of sincere cooperation or the principle of res judicata, allow a national court of a Member State (other than Romania) to fail to comply with its international obligations under the ICSID Convention if the Commission has adopted a decision subsequent to the award, which considers that the enforcement of the award would be contrary to the EU State aid regime, even if the Commission participated in the arbitration proceedings (including the application to set aside the award) and raised its arguments relating to the EU State aid regime?" DA and Others v Romanian Air Traffic Services Administration (Romatsa) and Others*, Case C-333/19, Order of 21 September 2022 (CJEU Tenth Chamber 2022). para. 22.

[28]) *DA and Others v Romanian Air Traffic Services Administration (Romatsa) and Others*, Case C-333/19, Order of 21 September 2022 (CJEU Tenth Chamber 2022), para. 46.

B. Comparative Overview of the Practice of Recognition and Enforcement of Intra-EU Awards

This section examines approaches taken by certain national courts, both within and outside the EU, regarding intra-EU investment awards.[29]) The section primarily focuses on decisions issued in the context of recognition and enforcement proceedings but discusses also certain decisions in set-aside proceedings.

This is because the arguments raised by respondent States in set-aside proceedings often mirror those raised in enforcement proceedings, typically relying on the CJEU's reasoning in the *Achmea*, *Komstroy* and *PL Holdings* decisions. Accordingly, to fully understand how national courts approach the CJEU's reasoning – and how they may respond to efforts to enforce intra-EU investment awards – it is helpful to consider decisions from both recognition and enforcement and set-aside contexts.

1. Recognition and Enforcement Within the EU

a) Germany

German courts have played a notable role in applying the CJEU's case law on the compatibility of investor-state arbitration clauses with EU law. The German Federal Court of Justice (*Bundesgerichtshof,* "**BGH**") was the referring court in the *Achmea v. Slovakia* proceedings that led to the CJEU's *Achmea* decision. Following that decision, on 31 October 2018, the *Achmea* award was set aside.[30])

Thereafter, German courts have continued to apply *Achmea*'s reasoning, consistently finding intra-EU investment arbitration clauses to be incompatible with EU law. A notable example is the BGH decision of 27 March 2025 concerning the recognition and enforcement of the UNCITRAL intra-EU investment award in *Antaris and Michael Gode v. Czech Republic*.[31]) In that case, the BGH refused recognition and enforcement of a cost award rendered in favor of the Czech Republic against German investors. The investors had initiated investment arbitration under arbitration clauses in Article 10(2) of the Czechia-Germany BIT and Article 26(2) of the ECT.

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[29]) This section provides certain examples of national court decisions that are considered as representative of how the intra-EU awards are treated in various jurisdictions. Given the limited scope of this article, this section does not aim to provide the full list and overview of all national courts' decision addressing enforcement or setting aside of the intra-EU awards.

[30]) German Federal Court of Justice (BGH), Decision dated 31 October 2018, I ZB 2/15.

[31]) German Federal Court of Justice (BGH), Decision dated 27 March 2025, I ZB 2/15.

The tribunal upheld its jurisdiction but dismissed the investors' claim and awarded costs to the Czech Republic. Referring to the *Achmea* and *Komstroy* decisions, the BGH found both arbitration clauses incompatible with Articles 267 and 344 of the TFEU and therefore invalid under the law governing these arbitration clauses within the meaning of Article V(1)(a) of the NYC. The court interpreted that law to be public international law, including EU law.[32])

The BGH further concluded that in terms of enforceability, a cost award in favor of a Member State should not be treated differently from an award granting damages to an investor, where both are based on an invalid arbitration clause.[33]) It remains to be seen how German courts would address a cost award arising from a tribunal's declining jurisdiction in intra-EU investment arbitration.

Noteworthy are also the BGH's rulings extending the *Achmea* and *Komstroy* reasoning to ICSID arbitrations. On 27 July 2023, the BGH issued a trio of rulings concerning three separate intra-EU ICSID arbitrations under the ECT.[34]) One proceeding was brought against Germany (*Mainstream Renewable Power Ltd and others v. Federal Republic of Germany*),[35]) while two others involved German investors bringing claims against the Netherlands (*RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands, Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v. Kingdom of the Netherlands*).[36]) In all three cases, the respondent States requested German courts to declare the inadmissibility of the respective ICSID proceedings. Section 1032(2) of the German Civil Procedure Code ("**ZPO**") allows such a determination before the tribunal is formed. The BGH found that German courts had jurisdiction to decide over Germany's and the Netherland's requests by applying Section 1032(2) of the ZPO by analogy to delocalized proceedings, such as ICSID arbitrations.[37])

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[32]) German Federal Court of Justice (BGH), Decision dated 27 March 2025, I ZB 2/15, para 35 *et seq*.

[33]) German Federal Court of Justice (BGH), Decision dated 27 March 2025, I ZB 2/15, para 40 *et seq*.

[34]) German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 43/22; German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 74/22; German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 75/22.

[35]) *Mainstream Renewable Power, Ltd., International Mainstream Renewable Power, Ltd., Mainstream Renewable Power Group Finance, Ltd., Horizont I Development, GmbH, Horizont II Renewable, GmbH and Horizont III Power GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/21/26.

[36]) *RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands,* ICSID Case No. ARB/21/4; *Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v. Kingdom of the Netherlands*, ICSID Case No. ARB/21/22.

[37]) German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 75/22, paras. 33–48; German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 43/22, paras. 33–49; German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 74/22, paras. 18–44.

The court further held that a review under Section 1032(2) of the ZPO was not precluded by the *Kompetenz-Kompetenz* principle enshrined in Article 41(1) of the ICSID Convention, even if – unlike under German law – that principle applied from the commencement of the ICSID proceedings, rather than from the constitution of the arbitral tribunal. In the BGH's view, the specific circumstances arising from the obligation to safeguard the primacy of EU law justified such a review. Here, the court relied on the principle of effectiveness of EU law (*effet utile*). Referring to the CJEU's decisions issued with respect to the *Micula* award, the BGH found that if a post-award review of ICSID awards by the Member States' courts is mandatory, a pre-award (upstream) review must likewise be permissible. The court found this to be even more the case, because a finding of inadmissibility under Section 1032(2) of the ZPO would preclude any later declaration of enforceability in Germany.[38])

Relying on *Komstroy*, the BGH concluded that the arbitration clause in Article 26 of the ECT was incompatible with EU law and accordingly held the arbitral proceedings inadmissible.[39])

German courts have also entertained Section 1032(2) requests regarding localized intra-EU arbitrations seated in Germany. A well-known example is the 11 February 2021 decision of the Higher Regional Court of Frankfurt, which concerned a UNCITRAL arbitration under the Austria-Netherlands BIT. The court held the arbitration to be inadmissible due to the BIT's arbitration clause's incompatibility with EU law,[40]) and the BGH subsequently dismissed the investors' appeal.[41])

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[38]) German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 75/22, para. 52; German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 43/22, para. 52; German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 74/22, para. 47.

[39]) German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 75/22, paras. 126–127; German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 43/22, paras. 117–120. In the proceedings concerning the cases *RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands* and *Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v. Kingdom of the Netherlands*, the Cologne Higher Regional Court had also found the arbitral proceedings to be incompatible with EU law. In the first case, this finding was appealed by investors and in the second case, such an appeal was later withdrawn. The BGH thus only had to confirm the finding of the Cologne Higher Regional Court in the first case. In addition, in both cases, the Netherlands had also requested an abstract declaration of inadmissibility of any arbitration proceedings between the parties based on the arbitration clause in the ECT. The BGH rejected this application by finding that such an abstract request was not covered by Section 1032(2) of the ZPO (German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 74/22, paras. 45 *et seq*.; German Federal Court of Justice (BGH), Decision dated 27 July 2023, I ZB 75/22, paras. 140 *et seq*.).

[40]) Higher Regional Court of Frankfurt (OLG Frankfurt), Decision dated 11 February 2021, 26 SchH 2/20.

[41]) German Federal Court of Justice (BGH), Decision dated 17 November 2021, I ZB 16/21.

b) Sweden

Swedish courts have likewise followed the CJEU's rulings. Unlike German courts – which have primarily relied on the invalidity of the underlying arbitration clause – Swedish courts have based their reasoning on public policy (*ordre public*) considerations, finding that the enforcement of intra-EU awards would be manifestly incompatible with Swedish public policy.

One example is the 27 May 2024 decision of the Svea Court of Appeal in *CEF Energia v. Italy*, which concerned Italy's request to have an investment award rendered in an ECT arbitration pursuant to the SCC Arbitration Rules and seated in Stockholm declared invalid and set aside. Relying on *Achmea* and *Komstroy* decisions, the court upheld this request on the ground that the arbitration clause in Article 26 of the ECT was incompatible with EU law, rendering any award based on it unlawful. The court held that as the enforcement of such an award would manifestly contradict Swedish public policy, it must be declared invalid.[42])

In another case concerning a cost award in favor of Poland, Swedish courts distinguished the effects of such an award based on the investors' nationality. The case, *Festorino Invest Limited and others v. Poland,* concerned an ECT arbitration under the SCC Arbitration Rules seated in Stockholm and involved four investors from EU Member States and one Swiss citizen domiciled in Switzerland.[43]) On 20 December 2023, the Svea Court of Appeal found the that the entire arbitral award must be declared invalid on the ground that it contradicted Swedish public policy.[44])

However, Poland requested that the award be upheld to the extent it dismissed the Swiss investor's claims and awarded Poland its costs. On 26 May 2025, the Swedish Supreme Court partially reinstated the award on that basis, holding that the incompatibility of Article 26 of the ECT with EU law – and therefore with Swedish public policy – applied only to the part of the award concerning EU investors.[45]) The Supreme Court, however, upheld the Svea Court of Appeal's decision to invalidate the award to the extent it concerned EU investors.[46])

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[42]) *CEF Energia BV v. Italian Republic*, SCC Case No. 2015/158, Judgment of the Svea Court of Appeal, 27 May 2024, paras. 53–54.

[43]) *Festorino Invest Limited, Fosontal Limited, Petry Salesny, Peter Derendinger and Petra Roijcka v. The Republic of Poland*, SCC Case No. 2018/098, Award, 30 June 2021.

[44]) *Festorino Invest Limited, Fosontal Limited, Petry Salesny, Peter Derendinger and Petra Roijcka v. The Republic of Poland*, SCC Case No. 2018/098, Judgment of the Svea Court of Appeal, 20 December 2023.

[45]) *Festorino Invest Limited, Fosontal Limited, Petry Salesny, Peter Derendinger and Petra Roijcka v. The Republic of Poland*, SCC Case No. 2018/098, Judgment of the Supreme Court of Sweden, 26 May 2025.

[46]) *Ibid.,* at 26.

c) France

French courts addressed the effects of the intra-EU investment awards in the context of two annulment proceedings brought by the Republic of Poland against two investment awards rendered in *Strabag et al. v. Poland*, an intra-EU arbitration under the Austria-Poland BIT,[47]) and *Slot Group v. Poland*, an intra-EU arbitration under the Czechia-Poland BIT, both seated in Paris.[48]) In both cases, the Paris Court of Appeal, referring to the CJEU's reasoning in *Achmea* and *PL Holdings*, held that investment tribunals had wrongly asserted jurisdiction based on dispute resolution clauses in the respective intra-EU BITs, as those clauses were incompatible with EU law.[49])

The court further found that, since Poland's consent expressed in the arbitration clauses of the relevant BITs was contrary to EU law, which is binding on all Member States, it was unnecessary to assess the validity of the arbitration agreement under the Vienna Convention on the Law of Treaties ("**VCLT**") or the parties' common intention, both of which it deemed irrelevant for the outcome.[50])

Consequently, the Court of Appeal annulled the awards issued in both cases.[51])

d) The Netherlands

Dutch courts addressed issues concerning enforceability of intra-EU investment awards when Spain applied for a declaratory judgment[52]) confirming that the investment award issued in *AES and others v. Spain*, an ECT

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[47]) *Strabag SE, Raiffeisen Centrobank AG and Syrena Immobilien Holding AG v. Republic of Poland*, ICSID Case No. ADHOC/15/1, Judgment of the Paris Court of Appeal 19 April 2022.

[48]) *Slot Group a.s. v. Republic of Poland*, PCA Case No. 2017-10, Judgment of the Paris Court of Appeal (Department 5 – Chamber 16) 20/14581, 19 April 2022.

[49]) *Slot Group a.s. v. Republic of Poland*, PCA Case No. 2017-10, Judgment of the Paris Court of Appeal (Department 5 – Chamber 16) 20/14581, 19 April 2022, paras. 68–69; *Strabag SE, Raiffeisen Centrobank AG and Syrena Immobilien Holding AG v. Republic of Poland*, ICSID Case No. ADHOC/15/1, Judgment of the Paris Court of Appeal 19 April 2022, paras. 85–91.

[50]) *Slot Group a.s. v. Republic of Poland*, PCA Case No. 2017-10, Judgment of the Paris Court of Appeal (Department 5 – Chamber 16) 20/14581, 19 April 2022, para. 70; *Strabag SE, Raiffeisen Centrobank AG and Syrena Immobilien Holding AG v. Republic of Poland*, ICSID Case No. ADHOC/15/1, Judgment of the Paris Court of Appeal 19 April 2022, para. 90.

[51]) *Slot Group a.s. v. Republic of Poland*, PCA Case No. 2017-10, Judgment of Paris Court of Appeal on Set-Aside Application, 19 April 2022; *Strabag SE, Raiffeisen Centrobank AG and Syrena Immobilien Holding AG v. Republic of Poland*, ICSID Case No. ADHOC/15/1, Judgment of the Paris Court of Appeal 19 April 2022.

[52]) Spain applied for the declaratory judgment in the context of proceedings that it initiated against the beneficiaries of the award and in which it sought an order preventing the beneficiaries from enforcing the award. *See AES Solar and others (PV*

arbitration under the UNCITRAL Arbitration Rules seated in Switzerland, represented an unlawful state aid. On 5 February 2025, the Amsterdam District Court granted Spain's request, finding that the compensation awarded to the claimants by the investment tribunal constituted unlawful state aid unless the EU Commission declares the award compatible with the internal market. The court also ordered the investors to repay the amount already recovered under the award.[53])

e) Lithuania

The Supreme Court of Lithuania addressed the issue of enforcement of intra-EU investment awards in the context of domestic litigation initiated by Lithuania against the investors during the pendency of a related ICSID arbitration, *Veolia et al. v. Lithuania*, initiated under the France-Lithuania BIT.[54]) Lithuania initiated the domestic proceedings following the *Achmea* decision, after withdrawing its counterclaim in the ICSID arbitration and opting to pursue the matter before its national courts instead.

Referring to the *Achmea*, *Komstroy*, and *PL Holdings* rulings, on 18 January 2022, the Lithuanian Supreme Court held in proceedings related to Lithuania's counterclaim that the arbitration clause in the France-Lithuania BIT was incompatible with EU law. Consequently, it found that when the investors initiated ICSID arbitration, no valid offer to arbitrate existed, and thus no valid arbitration agreement could have been formed.[55])

In a separate decision on the investors' request to stay the domestic proceedings over Lithuania's counterclaim pending the outcome of the ICSID arbitration, the Supreme Court found no sufficient grounds for suspension. Referring to its 18 January 2022 decision, the CJEU's jurisprudence, and the Termination Agreement, the court concluded that *"EU Member States cannot recognize and enforce arbitral awards made under intra-EU bilateral investment*

Investors) v. The Kingdom of Spain, PCA Case No. 2012-14, Judgment of the Amsterdam District Court, 5 February 2025, sections I–IV.

[53]) *AES Solar and others (PV Investors) v. The Kingdom of Spain*, PCA Case No. 2012-14, Judgment of the Amsterdam District Court, 5 February 2025, para. 7.59

[54]) Hristina Todorovic, *Lithuanian Supreme Court declines to stay domestic court proceedings pending outcome of parallel intra-EU ICSID arbitration, signaling state's intention to deny recognition and enforcement of ICSID award,* 7 March 2025, available at https://www.iareporter.com/articles/lithuanian-supreme-court-declines-to-stay-domestic-court-proceedings-pending-outcome-of-parallel-intra-eu-icsid-arbitration-signaling-states-intention-to-deny-recognition-and-enforcement-of/ (last accessed: 3 November 2025); *Veolia Environnement S.A., Veolia Energie International S.A., UAB Vilniaus Energija and UAB Litesko v. Republic of Lithuania*, ICSID Case No. ARB/16/3, Judgment of the Supreme Court of Lithuania, 18 November 2024.

[55]) *Veolia Environnement S.A., Veolia Energie International S.A., UAB Vilniaus Energija and UAB Litesko v. Republic of Lithuania*, ICSID Case No. ARB/16/3, Decision of the Supreme Court of Lithuania, 18 January 2022.

treaties, as this would be contrary to the principle of supremacy of EU law".[56]) The court held that there was no need to stay the domestic proceedings because any future ICSID award *"under EU law will not be able to produce legal effects and be enforced in the territory of the Republic of Lithuania*".[57])

2. Recognition and Enforcement Outside the EU

a) United Kingdom

The United Kingdom ("**UK**") occupies a rather distinct position in relation to intra-EU investment arbitrations. When the CJEU rendered its *Achmea* judgment, the UK was still an EU Member State. However, it did not sign the Termination Agreement in 2020.[58])

Shortly after its withdrawal from the EU but before the end of the transition period, the UK Supreme Court addressed the enforcement of the intra-EU ICSID award in *Ioan Micula, Viorel Micula and others v. Romania (1)*. On 19 February 2020, the court lifted the stay of enforcement that had been stayed pending the outcome of EU proceedings concerning the EU Commission's decision prohibiting Romania from paying the award on the grounds that it constituted illegal state aid.[59]) The Supreme Court held that *"the duty of sincere co-operation* [between EU and Member States] *is not applicable in this case and there is no impediment to the lifting of the stay, which is an unlawful measure in international law and unjustified and unlawful in domestic law*".[60]) It further concluded that maintaining the stay would be incompatible with the UK's obligations to enforce ICSID awards under Article 54(1) of the ICSID Convention.[61])

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[56]) *Veolia Environnement S.A., Veolia Energie International S.A., UAB Vilniaus Energija and UAB Litesko v. Republic of Lithuania*, ICSID Case No. ARB/16/3, Judgment of the Supreme Court of Lithuania, 18 November 2024, para. 55.

[57]) Hristina Todorovic, *Lithuanian Supreme Court declines to stay domestic court proceedings pending outcome of parallel intra-EU ICSID arbitration, signaling state's intention to deny recognition and enforcement of ICSID award,* 7 March 2025, available at https://www.iareporter.com/articles/lithuanian-supreme-court-declines-to-stay-domestic-court-proceedings-pending-outcome-of-parallel-intra-eu-icsid-arbitration-signaling-states-intention-to-deny-recognition-and-enforcement-of/ (last accessed: 3 November 2025); *Veolia Environnement S.A., Veolia Energie International S.A., UAB Vilniaus Energija and UAB Litesko v. Republic of Lithuania*, ICSID Case No. ARB/16/3, Judgment of the Supreme Court of Lithuania, 18 November 2024, para. 56.

[58]) The UK was, however, a signatory to the 2019 Declaration preceding the Termination Agreement. *See supra,* Section I; *Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union*, 2020 O.J. (L 169), 1.

[59]) *Micula and others v. Romania*, [2020] UKSC 5, paras. 29–36.

[60]) *Ibid*., para. 118.

[61]) *Ibid*., para. 86.

The UK courts subsequently addressed the enforcement of intra-EU investment awards also with respect to *Infrastructure Services* (*Antin) v. Spain*, an ICSID arbitration under the ECT. Spain resisted enforcement of the award issued in that case, invoking state immunity from the UK domestic proceedings under the UK State Immunity Act 1978.[62]) Spain argued that the exception from state immunity based on Section 9(1)[63]) of the UK State Immunity Act 1978, on which investors relied in their submissions, did not apply.[64])

While Spain did not dispute that the UK State Immunity Act 1978 removed state immunity where a state had agreed in writing to submit a dispute to arbitration, it challenged the effect of the arbitration clause in Article 26 of the ECT on the grounds that the *Achmea* and *Komstroy* decisions confirmed that this provision did not apply between EU Member States and investors from EU Member States.[65])

The High Court dismissed Spain's reliance on the *Achmea* and *Komstroy* decisions, finding no basis to conclude that Article 26 of the ECT did not extend to the investors.[66]) The High Court further held that Spain could not rely on immunity because, by acceding to the ICSID Convention, it had consented in writing to submit investment disputes to arbitration, thereby satisfying the exception from immunity under Article 9(1) of the UK State Immunity Act 1978.[67])

Finally, referring to the UK's obligations under the ICSID Convention, the High Court held that it would be *"wrong in law to allow […] argument by Spain based on EU law, as explained in Achmea and Komstroy by the CJEU, to trump the existing treaty obligations of the ICSID Convention, as enacted into domestic law here by the 1966 Act"*.[68])

b) Switzerland

In the reported cases, Swiss courts have rejected the respondent State's challenges based on the intra-EU objection. For example, on 3 April 2024, the Swiss Supreme Court dismissed Spain's application to set aside an intra-EU

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[62]) *Infrastructure Services Luxembourg S.à r.l. v. Spain*, [2023] EWHC 1226 (Comm), paras. 4, 40, 53.

[63]) Under this exception, a state's adjudicative immunity is removed with respect to proceedings related to an arbitration in which it has agreed to arbitrate, including proceedings for the recognition of any resulting award.

[64]) *Infrastructure Services Luxembourg S.à r.l. v. Spain*, [2023] EWHC 1226 (Comm), paras. 91–92.

[65]) *Infrastructure Services Luxembourg S.à r.l. v. Spain*, [2023] EWHC 1226 (Comm), paras. 44–45, 101, 104; *Infrastructure Services Luxembourg S.à r.l. v. Spain*, [2024] EWCA Civ 1257, para. 8(i).

[66]) *Infrastructure Services Luxembourg S.à r.l. v. Spain*, [2023] EWHC 1226 (Comm), paras. 87–88, 101.

[67]) *Ibid*., paras. 95, 114.

[68]) *Ibid*., para. 125.

award in *EDF Energies Nouvelles v. Spain*, an UNCITRAL Arbitration initiated under the ECT and seated in Geneva.[69]) Spain had argued, relying on the reasoning of the *Komstroy* decision, that its consent to arbitrate in Article 26 of the ECT did not extend to intra-EU disputes.[70])

Interpreting Article 26 of the ECT pursuant to the principles in Article 31 of the VCLT, the Supreme Court found no indication that Article 26 of the ECT excluded disputes with investors from EU Member States.[71]) The court further rejected Spain's reliance on the 2019 Declaration, finding that it did not constitute a subsequent agreement on interpretation of the ECT or a subsequent practice within the meaning of Articles 31(3)(a) and (b) of the VCLT. The court reasoned that the 2019 Declaration had not been signed by all Member States, referred only to the *Achmea* judgment – which it considered irrelevant for ECT arbitrations – and could not have retroactive effect on arbitral proceedings that had already been initiated against Spain.[72]) As for the *Komstroy* judgment, the Supreme Court found that it was not binding on it, as Switzerland is not an EU Member State.[73])

In a disagreement with the CJEU, the Swiss Supreme Court held that no conflict existed between Article 26 of the ECT on the one hand and Articles 267 and 344 of the TFEU on other hand.[74]) It also ruled out the application of Article 30(3) of the VCLT, which governs the relationship between successive treaties relating to the same subject matter, finding that the ECT and the TFEU concern different subject matters.[75])

Finally, the Supreme Court held that Article 16 of the ECT confirms that Article 26 of the ECT should take precedence over any less favorable dispute resolution method in the TFEU. This provisions states that "[w]*here two or more Contracting Parties […] enter into a subsequent international agreement, whose terms in either case concern the subject matter of Part III or V of this Treaty […] nothing in such terms of the other agreement shall be construed to derogate from any provision of Part III or V of this Treaty or from any right to dispute resolution with respect thereto under this Treaty, where any such provision is more favourable to the Investor or Investment*".[76]) The court found this to be a specific conflict rule adopted by the parties to the ECT, confirming

[69]) *EDF Energies Nouvelles S.A. v. Kingdom of Spain*, PCA Case No. AA613, Final Award, 11 April 2023.

[70]) *EDF Energies Nouvelles S.A. v. Kingdom of Spain*, Case No. 4A_244/2023 (Swiss Fed. Trib. 3 April 2024), para. 7.2.1.

[71]) *Ibid*., para. 7.7.6.

[72]) *Ibid*., para. 7.7.5.

[73]) *Ibid*., para. 7.8.2.

[74]) *Ibid*., para. 7.8.2.

[75]) *Ibid*., para. 7.8.3.2.

[76]) *Energy Charter Treaty*, Dec. 17 1994, 2080 U.N.T.S. 95, art. 16.

that the investor's right to submit a dispute to arbitration in accordance with Article 26 of the ECT must be guaranteed.[77])

Swiss courts have also dismissed challenges to other intra-EU awards such as the ECT awards in *AES and others v. Spain* discussed above[78]) and in *Natland Investment Group et al. v. Czech Republic*.[79])

c) United States

The United States ("**U.S.**") have become a significant forum for the recognition and enforcement of intra-EU investment awards. A large bulk of the available case law concerns intra-EU investment awards issued against Spain. Early case law on such awards produced divergent outcomes, leading Spain to file a petition for certiorari to the U.S. Supreme Court,[80]) which remains pending.

The initial cases concerned the recognition petitions relating to three intra-EU renewable energy awards rendered under the ECT against Spain, all brought before the U.S. District Court for the District of Columbia ("**D.C. District Court**"). Similarly to the *Infrastructure Services* (*Antin)* case before UK courts, in reliance on the *Komstroy* decision, Spain argued that it was immune from enforcement under the U.S. Foreign Sovereign Immunities Act ("**FSIA**") because there was no valid arbitration agreement.

The judges within the D.C. District Court reached differing results. With respect to the ICSID awards in the ECT arbitrations *NextEra*[81]) and *9Ren*,[82]) on 15 February 2023, one judge held that the FSIA arbitration exception applied because the relevant consideration under that exception is whether there exists an arbitration agreement or not. That judge found that Spain's challenge based on the CJEU's rulings did not affect the agreement's existence but the question of the agreement's arbitrability.[83]) The judge also issued an anti-anti-suit

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[77]) *EDF Energies Nouvelles S.A. v. Kingdom of Spain*, Case No. 4A_244/2023 (Swiss Fed. Trib. 3 April 2024), para. 7.8.3.2.

[78]) *AES and others ("The PV Investors") v. Spain*, Case No. 4A_187/2020 (Swiss Fed. Trib. 23 February 2021).

[79]) *Natland Investment Group v. Czech Republic*, Case No. 4A_66/2024 (Swiss Fed. Trib. 13 June 2024).

[80]) *Kingdom of Spain v. Blasket Renewable Investments, LLC, et al.*, Petition for Writ of Certiorari to the U.S. Court of Appeals for the D.C. Circuit, No. 23-7031 (U.S. filed 1 May 2025).

[81]) *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/14/11, Award, 31 May 2019.

[82]) *9REN Holding S.a.r.l v. Kingdom of Spain, ICSID Case No. ARB/15/15*, Award, 31 May 2019.

[83]) *NextEra Energy Global Holdings B.V., et al. v. Kingdom of Spain*, No. 1:2019-cv-01618 (D.D.C. 15 February 2023), Memorandum Opinion, p. 14; *NextEra Energy Global Holdings B.V., et al. v. Kingdom of Spain*, No. 1:2019-cv-01618 (D.D.C. 15 February 2023), Order; *9Ren Holding S.a.r.l. v. Kingdom of Spain*, No. 1:19-cv-01871 (D.D.C.

injunction against Spain who had sought injunctions before EU domestic courts to restrain the US enforcement.[84])

In contrast, concerning an UNCITRAL award in *AES and Others v. Spain*, on 29 March 2023, a different judge of the D.C. District Court dismissed the enforcement petition. The judge disagreed with *NextEra* and *9Ren*, holding that the intra-EU objection concerned the validity of the arbitration agreement itself. On that basis, the court found no valid agreement to arbitrate and dismissed the case for lack of jurisdiction under the FSIA.[85])

The issue then proceeded to the Circuit Court of Appeals for the District of Columbia, which held on 16 August 2024 that U.S. courts could accept jurisdiction under the FSIA arbitration exception, but that they lack authority to issue anti-anti-suit injunctions.[86]) It also found that the doctrine of *forum non conveniens*, which allows courts to decline jurisdiction in favor of a more appropriate forum, does not apply to international arbitral awards sought to be enforced under the ICSID or the NYC.[87]) The court added, however, that it does not "*address the merits question whether [ECT's] arbitration provision extends to EU nationals and thus whether Spain ultimately entered into legally valid agreements with the companies*",[88]) leaving that issue open.

In May 2025, Spain filed a petition for a writ of certiorari with the U.S. Supreme Court, challenging the appellate court's conclusions.[89]) In October 2025, the Supreme Court invited the U.S. Solicitor General to submit briefs presenting the views of the United States.[90])

While the Supreme Court proceedings are pending, the D.C. District Court has, in 2025 alone, issued several decisions against Spain concerning other intra-EU investment awards in support of their recognition, including in

15 February 2023), Memorandum Opinion, p. 13; *9Ren Holding S.a.r.l. v. Kingdom of Spain*, No. 1:19-cv-01871 (D.D.C. 15 February 2023), Order.

[84]) *NextEra Energy Global Holdings B.V., et al. v. Kingdom of Spain*, No. 1:2019-cv-01618 (D.D.C. 15 February 2023), Order; *9Ren Holding S.a.r.l. v. Kingdom of Spain*, No. 1:19-cv-01871 (D.D.C. 15 February 2023), Order.

[85]) *Blasket Renewable Investments LLC v. Kingdom of Spain*, No. 21-3249 (D.D.C. 29 March 2023), Memorandum Opinion, pp. 17–20; *Blasket Renewable Investments LLC v. Kingdom of Spain*, No. 21-3249 (D.D.C. 29 March 2023), Order.

[86]) *NextEra Energy Global Holdings B.V., et al. v. Kingdom of Spain*, No. 23-7031, (D.C. Cir. 16 August 2024), Opinion of the D.C. Cir., p. 41.

[87]) *Ibid*., at 29.

[88]) *Ibid*., at 28.

[89]) *Kingdom of Spain v. Blasket Renewable Investments, LLC, et al*., Petition for Writ of Certiorari to the U.S. Court of Appeals for the D.C. Circuit, No. 23-7031 (U.S. filed 1 May 2025).

[90]) The Supreme Court of the United States, *Orders in Pending Cases*, Order List: 607 U.S., 6 October 2025, p. 3, ref. 24-1130.

RREEF v. Spain,[91]) *InfraRed v. Spain* on the next day,[92]) *Watkins v. Spain*,[93]) *Antin v. Spain*,[94]) and *Cube v. Spain*[95]). All of these cases involved ICSID awards. In addition to the arguments considered in *NextEra*, *9Ren*, and *AES*, the court has also rejected Spain's reliance on the foreign sovereign compulsion doctrine, with Spain arguing that it should allow the court to defer to foreign laws or courts to avoid Spain paying unlawful state aid if the awards were enforced. The court held that this does not override the concrete comity obligations imposed on the U.S. by international treaties, including the ICSID Convention, which requires U.S. courts to enforce ICSID awards.[96])

A different approach has been recently taken in cases involving investment awards that have been set aside in the EU. On 8 September 2025, the D.C. District Court rejected the enforcement of an SCC award in an ECT arbitration in *Mercuria Energy Group v. Poland (2)* on the grounds that it had been set aside in Sweden based on the CJEU's jurisprudence on the incompatibility of the underlying arbitration clause with EU law. While the court stated that foreign judgments annulling arbitral awards may be disregarded if they were

[91]) *Blasket Renewable Investments LLC v. Kingdom of Spain*, No. 1:19-cv-3783 (D.D.C. 12 August 2025), Memorandum Opinion; *Blasket Renewable Investments LLC v. Kingdom of Spain*, No. 1:2019-cv-01618 (D.D.C. 12 August 2025), Order.

[92]) *Blasket Renewable Investments LLC v. Kingdom of Spain*, Civil Action No. 20-817 (JDB) (D.D.C. 13 August 2025), Memorandum Opinion; *Blasket Renewable Investments LLC v. Kingdom of Spain*, Civil Action No. 20-817 (JDB) (D.D.C. 13 August 2025), Order.

[93]) *Blasket Renewable Investments LLC v. Kingdom of Spain*, Civil Action No. 20-1081 (BAH) (D.D.C. 11 September 2025), Memorandum Opinion; *Blasket Renewable Investments LLC v. Kingdom of Spain*, Civil Action No. 20-1081 (BAH) (D.D.C. 11 September 2025), Order.

[94]) *Infrastructure Services Luxembourg s.a.r.l., et al. v. Kingdom of Spain*, Civil Action No. 18-1753 (LLA) (D.D.C. 12 August 2025), Memorandum Opinion & Order.

[95]) *Cube Infrastructure Fund SICAV v. Kingdom of Spain*, Civil Action No. 20-1708 (LLA) (D.D.C. 14 August 2025), Memorandum Opinion; *Cube Infrastructure Fund SICAV v. Kingdom of Spain*, Civil Action No. 20-1708 (LLA) (D.D.C. 14 August 2025), Order.

[96]) *Blasket Renewable Investments LLC v. Kingdom of Spain*, No. 1:19-cv-3783 (D.D.C. 12 August 2025), Memorandum Opinion, pp. 10–12; *Blasket Renewable Investments LLC v. Kingdom of Spain*, Civil Action No. 20-817 (JDB) (D.D.C. 13 August 2025), Memorandum Opinion, pp. 15–20; *Blasket Renewable Investments LLC v. Kingdom of Spain*, Civil Action No. 20-1081 (BAH) (D.D.C. 11 September 2025), Memorandum Opinion, pp. 17–18; *Infrastructure Services Luxembourg s.a.r.l., et al. v. Kingdom of Spain*, Civil Action No. 18-1753 (LLA) (D.D.C. 12 August 2025), Memorandum Opinion, pp. 11–14; *Cube Infrastructure Fund SICAV v. Kingdom of Spain*, Civil Action No. 20-1708 (LLA) (D.D.C. 14 August 2025), Memorandum Opinion, pp. 7–8.

"'repugnant to fundamental notions of what is decent and just in the' United States," the court found this standard not to be met in the *Mercuria*'s case.[97])

Finally, the interaction between enforcement of intra-EU investment awards and EU state aid rules was addressed in the enforcement proceedings of the ICSID award in *Ioan Micula, Viorel Micula and others v. Romania (1)*, initiated in 2014. After the EU Commission found that payment of the award would constitute unlawful state aid, the D.C. District Court stayed enforcement proceedings. In 2019, it lifted the stay and confirmed the *Micula* award, holding that EU state aid rules could not serve as a defense against the award's enforcement and that the U.S. was obliged to enforce the award under the ICSID Convention.[98]) The D.C. Circuit Court of Appeals upheld this ruling in 2022, reaffirming that in U.S. courts, the enforcement obligations of the U.S. under the ICSID Convention prevail over EU law considerations.[99])

d) Australia

Like U.S. courts, the Federal Court of Australia addressed enforcement of intra-EU ICSID awards in the cases *RREEF*, *Watkins*, *NextEra*, and *9REN* against Spain.[100]) Spain opposed the enforcement of these awards by arguing that they were not binding under Article 53 of the ICSID Convention due to the conflict of the dispute resolution systems under the ECT and the ICSID Convention with *"the principle of autonomy"* of the EU judicial system. Spain argued that such conflict had to be resolved in favor of EU law.[101])

The Australian court rejected this argument, finding that it *"made good only within the EU system"* and that such conflict can be *"resolved in favour of the EU foundational treaties, but only within the EU system"*.[102]) The court thus rejected the notion that such conflict would relieve Spain from obligations under the ICSID Convention.[103])

The Federal Court found that the *Achmea* and *Komstroy* rulings addressed only EU law and did not assert that it had primacy over international law outside the EU legal system.[104]) The court also rejected the relevance of the

[97]) *Mercuria Energy Group Limited v. Republic of Poland*, Case No. 1:23-cv-03572 (D.D.C. 8 September 2025), Memorandum Opinion, p. 9.

[98]) *Ioan Micula, et al. v. Government of Romania,* Case No. 17-cv-02332 (APM) (D.D.C. 11 September 2019), Memorandum Opinion; *Ioan Micula, et al. v. Government of Romania,* Case No. 17-cv-02332-APM (D.D.C. 20 September 2019), Order and Final Judgment.

[99]) *Ioan Micula, et al. v. Government of Romania,* No. 20-7116 (D.C. Cir. 24 June 2022), Judgment.

[100]) *Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028, 29 August 2025, paras. 1, 7.

[101]) *Ibid*., para. 78.

[102]) *Ibid*., para. 205.

[103]) *Ibid*., para. 205.

[104]) *Ibid*., para. 206.

26 June 2024 declaration on the basis that it was issued long after the awards had been rendered, not all Member States had signed the declaration, and that it did not purport to modify the ICSID Convention.[105]) It concluded that *"as a matter of public international law, Spain is obliged to the other Contracting States to the ICSID Convention to comply with the ICSID awards against it; it is no answer, on the international plane, for Spain to say that to do so would be in conflict with its EU obligations (including as to State aid)"*.[106])

IV. Conclusion

Since the CJEU's *Achmea*, *Komstroy*, and *PL Holdings* decisions, a growing body of case law from national courts both within and outside the EU has emerged concerning intra-EU investment awards. This case law provides valuable insight into how courts interpret the CJEU's reasoning and how they may approach enforcement of such awards.

Within the EU, national courts have thus far aligned with the CJEU's position, finding intra-EU investment arbitration clauses incompatible with EU law. While much of the case law concerns set-aside proceedings, it strongly indicates that enforcement would be likewise denied. Notably, in the rulings of the BGH in *Antaris and Michael Gode v. Czech Republic* and of the Swedish Supreme Court in *Festorino Invest Limited and others v. Poland*, this approach was extended to cost awards in favor of respondent States, with courts drawing no distinction between investor- and State-favorable awards where the underlying arbitration clause is incompatible with EU law. Although relatively few ICSID intra-EU awards have been tested in EU courts, the decisions of the BGH and the Lithuanian Supreme Court suggest that such awards would face similarly significant obstacles.

Outside the EU, on the other hand, most reported enforcement actions have involved ICSID awards, which have proven more resilient to EU law objections. Courts in jurisdictions such as the United Kingdom, Switzerland, the United States, and Australia have largely rejected defenses based on the intra-EU objection or EU state aid rules, relying instead on their international obligations under the ICSID Convention. These courts have upheld the validity of intra-EU arbitration agreements and permitted enforcement. However, a recent decision of the D.C. District Court in *Mercuria Energy Group v. Poland (2)* indicates that enforcement of non-ICSID awards annulled in the EU on *Achmea*-related grounds may still be refused.

Enforcement within the EU presents further challenges due to the potential application of EU state aid rules. The EU Commission, the CJEU, and certain courts of the Member States have held that intra-EU investment awards qualify

[105]) *Ibid*., paras. 217 *et seq*.
[106]) *Ibid*., para. 212.

as unlawful stated aid under EU law, thereby precluding the payment of the awarded sums by the respondent State – either voluntarily or involuntarily through enforcement proceedings. From the perspective of the Member States, this position appears to apply irrespective of the jurisdiction in which enforcement is sought. According to the EU Commission and the CJEU, Member States are also under obligation to recover any awarded amounts already paid – either voluntarily or involuntarily through enforcement proceedings – to investors under such awards. Relying on this reasoning, such a recovery was ordered by the Amsterdam District Court *AES and others v. Spain* where investors currently seek enforcement before U.S. courts.

Taken together, these developments reveal a fragmented enforcement landscape. Within the EU, enforcement of intra-EU awards – including ICSID and non-ICSID awards – is effectively precluded, whereas outside the EU, enforcement continues, albeit with varying degrees of scrutiny depending on the award's status and the jurisdiction in question.