Spain’s EU Law Defence Rejected in Australian Award Ruling

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In a landmark decision clarifying the relationship between European Union law and public international law obligations, the Federal Court of Australia has delivered a comprehensive judgment in *Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028. Stewart J has ordered the enforcement of four arbitral awards, totalling approximately €500 million, against the Kingdom of Spain, providing a robust affirmation of the integrity of the international investment arbitration system. The judgment navigates a complex intersection of foreign State immunity, treaty interpretation, and the so-called “intra-EU objection” that has been litigated fiercely in courts worldwide.

The proceedings arose from Spain’s alterations to its renewable energy regulatory framework in the early 2010s. Foreign investors, alleging that these changes breached the fair and equitable treatment standard under Article 10 of the Energy Charter Treaty (ECT), initiated arbitrations under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). Having secured favourable awards from ICSID tribunals, the investors, or their assignees, sought to enforce those awards in Australia under the *International Arbitration Act 1974* (Cth). Spain resisted, mounting a multifaceted defence that struck at the very foundation of its consent to arbitrate.

Spain’s primary contention was that it was immune from the Court’s jurisdiction pursuant to section 9 of the *Foreign*

States Immunities Act 1985 (Cth). While the High Court's recent decision in *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl* [2023] HCA 11 held that accession to the ICSID Convention constitutes a waiver of immunity for enforcement proceedings, Spain sought to distinguish the present case. It argued that the High Court's ruling did not govern a situation where the binding status of the awards themselves was in dispute. This challenge to the awards' validity was predicated on the jurisprudence of the Court of Justice of the European Union (CJEU), notably in cases such as *Achmea* and *Komstroy*. Those decisions established that arbitration clauses in investment treaties are incompatible with the foundational treaties of the EU when applied to disputes between an EU Member State and an investor from another Member State. Spain argued that this principle of EU law rendered its offer to arbitrate under the ECT inapplicable to the EU-based investors, meaning no valid arbitration agreement was ever formed. Consequently, the awards were not "binding" under Article 53 of the ICSID Convention, and Spain had not waived its immunity in respect of them.

Stewart J firmly rejected this line of reasoning by returning to the fundamental architecture of the ICSID Convention. His Honour affirmed the widely-held view that the Convention establishes a "self-contained or closed-loop system" for the review and enforcement of awards. The Court found that once an ICSID tribunal has determined its own jurisdiction and rendered an award, and internal remedies such as annulment have been exhausted, the role of a domestic court in an enforcement proceeding is circumscribed. As the Full Court had previously noted, the sole issue for a competent court under Article 54(2) of the Convention is the presentation of a certified copy of the award. An Australian court cannot look behind the award to re-examine the tribunal's jurisdiction or merits. This principle, the Court reasoned, is central to the Convention's object of providing legal security for international investments by mitigating sovereign risk.

Critically, the judgment addressed the apparent conflict between Spain's obligations under EU law and its duties under the ICSID Convention. Stewart J determined that the primacy of EU law, as articulated by the CJEU, is a rule that operates within the autonomous EU legal order. It does not extinguish Spain's pre-existing obligations under public international law owed to non-EU states such as Australia. As a party to the ICSID Convention, but not the EU treaties, Australia's obligation under Article 54 to recognise and enforce the awards remained unaffected by Spain's "juridical dilemma".

The Court also dismissed Spain's alternative contention that the EU treaties had effected an *inter se* modification of the ICSID Convention among EU Member States. Applying the principles of treaty modification reflected in the Vienna Convention on the Law of Treaties, Stewart J found that the obligations under the ICSID Convention, particularly those concerning the recognition and enforcement of awards, were *erga omnes partes*—owed to all contracting states collectively, not merely bilaterally. Such obligations, which protect the common interest in the stability of the entire investment framework, cannot be modified by a sub-group of parties without affecting the rights of others.

Further, the Court resolved a novel issue concerning the assignment of the awards. In two of the proceedings, the original award creditors had assigned their rights to Blasket Renewable Investments LLC. Spain argued that the Court lacked power to enforce an award in favour of a non-party to the original arbitration. His Honour rejected this, concluding that the rights under an ICSID award, once given the force of law in Australia, constitute a chose in action capable of assignment. Nothing in the ICSID Convention itself prohibits such an assignment.

The decision in *Blasket* represents a significant contribution to the global jurisprudence on the enforcement of investor-state awards. It confirms that an Australian court will not

permit a foreign state to use conflicts within another legal order, however profound, as a shield to resist its clear obligations under public international law as implemented into Australian domestic law. The judgment provides unequivocal support for the principle that the ICSID regime is a self-contained system, reinforcing Australia’s status as a reliable and pro-enforcement jurisdiction.

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