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U.S. Courts Defy EU Doctrine: A New Frontier for Intra-EU Arbitration Enforcement

In a series of landmark decisions, US courts have emerged as a surprising yet powerful ally for investors seeking to enforce intra-EU arbitral awards—sidestepping the European Union's legal resistance rooted in the Achmea and Komstroy judgments.
The recent rulings by the D.C. District Court and the D.C. Circuit Court of Appeals have not only cleared major hurdles but have also signaled a strategic shift in global arbitration enforcement[1].

Historical Context: From Achmea to Washington D.C.

The Rise of Intra-EU BITs

In the 1990s and early 2000s, EU Member States signed dozens of bilateral investment treaties (BITs) with each other. These treaties aimed to protect cross-border investments by granting investors access to international arbitration—typically under ICSID or UNCITRAL rules—if their rights were violated. For years, these mechanisms operated in parallel with EU law, largely unchallenged.

The Achmea Earthquake (2018)

Everything changed in 2018 when the Court of Justice of the European Union (CJEU) issued its landmark ruling in *Achmea B.V. v. Slovakia*. The Court held that arbitration clauses in intra-EU BITs were incompatible with EU law because they undermined the autonomy of the EU legal order and bypassed the jurisdiction of EU courts.[2]

This decision triggered a domino effect:
- EU Member States began terminating their intra-EU BITs en masse.
- The European Commission ramped up its campaign against investor-state dispute settlement (ISDS) within the EU.
- Arbitral tribunals and national courts across Europe were thrown into legal uncertainty.

Komstroy and the Energy Charter Treaty (2021)

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[1] *Blasket Renewable Investments, LLC v. Kingdom of Spain* (formerly *RREEF Infrastructure (G.P.) Ltd v. Kingdom of Spain)*,
Blasket Renewable Investments, LLC v. Kingdom of Spain (formerly *Infrared Environmental Infrastructure GP Ltd v. Kingdom of Spain*),
Infrastructure Services Luxembourg S.A.R.L. et al. v. Kingdom of Spain, and
Cube Infrastructure Services Luxembourg S.A.R.L and others v Kingdom of Spain.

[2] https://www.noerr.com/en/insights/achmeas-constitutional-complaints-related-to-intra-eu-arbitration-are-dismissed

The CJEU doubled down in *Komstroy v. Moldova*, extending the Achmea logic to the multilateral Energy Charter Treaty (ECT). It ruled that even arbitration under the ECT between EU investors and EU states was invalid under EU law. This was a major blow to investors relying on the ECT for protection in renewable energy disputes, especially against Spain, Italy, and others.[3]

Enter the United States: A Legal Escape Hatch

While European courts were busy dismantling intra-EU arbitration, U.S. courts quietly became a refuge for frustrated investors. The key turning point came with the D.C. Circuit's decision in *NextEra v. Spain* (2024), which confirmed that U.S. courts have jurisdiction under the Foreign Sovereign Immunities Act (FSIA) to enforce ICSID awards—even if they arise from intra-EU disputes.[4]
This was followed by the D.C. District Court's 2025 ruling enforcing four ICSID awards against Spain. These decisions mark a clear rejection of the EU's anti-arbitration stance and open a new enforcement frontier.

Why This Matters

The historical arc—from the proliferation of BITs to Achmea's crackdown and now U.S. defiance—illustrates a deep legal schism between the EU and the rest of the world. While the EU seeks to centralize legal authority and eliminate ISDS within its borders, U.S. courts are upholding treaty-based investor protections and refusing to defer to EU doctrine.

This divergence is more than academic-it's strategic. Investors now have a credible enforcement venue outside Europe, reshaping the risk calculus for states and investors alike.

Key Cases: Building the US Enforcement Precedent

1. Achmea B.V. v. Slovak Republic (CJEU, 2018)

- The Court of Justice of the European Union (CJEU) ruled that arbitration clauses in intra-EU BITs are incompatible with EU law.
- This decision became the cornerstone of the EU's campaign against investor-state arbitration within the bloc.

2. Micula v. Government of Romania (D.D.C. 2019; D.C. Cir. 2020)

- A U.S. federal court enforced an ICSID award against Romania despite objections from the European Commission, which argued that the award violated EU state-aid law in light of *Achmea*.[5]

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[3] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://caneurope.org/content/uploads/2021/10/CJEU-ruling_Sep-2021_background-final.pdf

[4] https://law.justia.com/cases/federal/appellate-courts/cadc/23-7031/23-7031-2024-08-16.html

[5] https://www.fenwickelliott.com/research-insight/newsletters/international-quarterly/us-court-appeals-micula-award-romania

- The court held that the ICSID Convention and the Foreign Sovereign Immunities Act (FSIA) provided a sufficient legal basis for enforcement in the U.S.

3. NextEra Energy Global Holdings v. Kingdom of Spain (D.C. Cir. 2024)

- The D.C. Circuit ruled that U.S. courts have jurisdiction to enforce intra-EU ICSID awards under the FSIA's arbitration exception.
- This decision removed a major procedural hurdle and opened the door for more enforcement actions in the U.S.

4. Blasket Renewable Investments v. Kingdom of Spain (D.D.C. 2025)

- The D.C. District Court rejected Spain's substantive defenses based on EU law and enforced four ICSID awards totaling over €220 million.
- These rulings solidified the U.S. judiciary's stance that EU objections do not override treaty-based enforcement obligations under ICSID.

What These Cases Reveal

- **Legal Autonomy**: U.S. courts apply international treaty law and domestic statutes like FSIA, not EU jurisprudence.
- **Investor Strategy**: These precedents empower investors to bypass EU resistance and pursue enforcement in U.S. courts.
- **Global Legal Fragmentation**: The cases highlight a growing transatlantic divide in the treatment of investment arbitration.

The Legal Breakthrough

In August 2025, the D.C. District Court rejected Spain's defenses against enforcement of four intra-EU ICSID awards, in favor of investors including Blasket Renewable Investments and Cube Infrastructure[6].

This followed the D.C. Circuit's 2024 decision in *NextEra v. Spain*, which confirmed that U.S. courts have jurisdiction under the Foreign Sovereign Immunities Act (FSIA) to enforce such awards—even when EU law claims they are invalid. [7]

Spain's arguments, based on the European Court of Justice's (CJEU) interpretation that intra-EU arbitration violates EU law, were firmly dismissed. U.S. judges emphasized that ICSID awards, once finalized, are not subject to second-guessing by domestic courts—even if the EU insists otherwise.[8]

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[6] https://riskandcompliance.freshfields.com/post/102l05b/another-major-hurdle-cleared-dc-district-court-enforces-intra-eu-icsid-awards-in

[7] https://www.wilmerhale.com/en/insights/client-alerts/20240911-dc-circuit-resolves-district-court-split-on-the-enforcement-of-intra-eu-investment-treaty-awards-in-the-united-states
https://www.debevoise.com/insights/publications/2024/10/dc-circuit-gives-with-one-hand-and-takes-with-the

[8] https://riskandcompliance.freshfields.com/post/102l05b/another-major-hurdle-cleared-dc-district-court-enforces-intra-eu-icsid-awards-in

Attachment of sovereign assets

In the US an award creditor will face different sovereign immunity rules depending on whether it commences attachment proceedings before or after the arbitration award has been enforced as a judgment by a court with jurisdiction over the award. Specifically, for post-enforcement judicial proceedings, the Foreign Sovereign Immunities Act (FSIA) allows for attachment of property of a foreign state without requiring the award creditor to prove that the state has explicitly waived sovereign immunity from attachment. If an award creditor seeks attachment before enforcement of the award, however, the FSIA effectively treats the proceedings as one for prejudgment attachment, notwithstanding the fact that an award has been issued. Accordingly, award creditors who seek attachment prior to reducing their award to a judgment face the difficult task of demonstrating that the sovereign has explicitly waived its immunity from prejudgment attachment.[9]

In Blasket Renewable Investments LLC v. Kingdom of Spain, 23-7038 (D.C. Cir. 2024), the US Court of Appeals for the District of Columbia Circuit addressed the enforceability of intra-EU investment awards based on the Energy Charter Treaty (ECT) against Spain. It was affirmed that US courts have jurisdiction to enforce such awards under the Foreign Sovereign Immunities Act (FSIA), despite Spain's reliance on the Achmea and Komstroy rulings from the Court of Justice of the European Union (CJEU) to contest the validity of intra-EU arbitration agreements.
The case involved three awards (i.e. NextEra Energy v. Spain, ICSID Case No. ARB/14/11; 9REN Holding v. Spain, ICSID Case No. ARB/15/15; AES Solar v. Spain, PCA Case No. 2012-14), which were issued in favour of investors from the Netherlands and Luxembourg. Spain argued that the CJEU's rulings invalidated the ECT's investor-state dispute settlement (ISDS) mechanism for intra-EU disputes, and therefore, the arbitration agreements were void. Spain also filed actions in Dutch and Luxemburgish courts seeking anti-suit injunctions to prevent the investors from pursuing their enforcement efforts in the US. In response, the investors asserted that the FSIA's arbitration and waiver exceptions to immunity apply and asked the US District Court to issue "anti" anti-suit injunctions preventing Spain from seeking anti-suit injunctions in foreign courts.
In first instance at the US District Court level, found that the court has jurisdiction under the FSIA's arbitration exception on the NextEra and 9REN cases and granted the "anti" anti-suit injunctions (see NextEra Ruling of 2023 and 9REN Ruling of 2023). In contrast, with respect to the AES Solar award (which had been assigned to Blasket Renewable), the US District Court, found that Spain was immune under the FSIA and granted Spain's motion to dismiss the case (see Blasket Ruling of 2023). This evinced an inconsistent interpretation of the FSIA arbitration exception on immunity from jurisdiction at the US District Court level.
On appeal, Spain contested the District Court's jurisdictional rulings in NextEra and 9REN, while investors sought to overturn the dismissal in Blasket.

[9] https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/4th-edition/article/enforcement-strategies-where-the-opponent-sovereign

The US Court of Appeals focused on the existence of the arbitration agreement. It held that the FSIA's arbitration exception applied because the ECT constituted an agreement to arbitrate for the benefit of private investors. Whether such arbitration agreement covered intra-EU investors was a question of the scope of the agreement, not its existence. The US Court of Appeals thus confirmed the first instance rulings in NextEra and 9Ren, while reversing the first instance ruling in Blasket.

As such, the US Court of Appeals has now taken a uniformed approach on the FSIA, interpreting the arbitration exception to immunity from jurisdiction more broadly.
Interestingly, on the same ruling the US Court of Appeals overturned the "anti" anti-suit injunctions issued against Spain, emphasising the need to respect international comity and the sovereignty of foreign states.

It is also noted that the Foreign Sovereign Immunities Act (FSIA) provides immunity from execution for the "property in the United States of a foreign state." It does not confer immunity on a foreign state's property located abroad. The limitation makes sense: to the extent that a foreign sovereign's property located outside the United States is not subject to the jurisdiction of U.S. courts, immunity is not relevant. Yet a court in the United States with personal jurisdiction over a foreign state may have the power to order various forms of relief that would reach or relate to property located abroad. A court might order discovery about those assets, or it might order the transfer of those assets into the United States to facilitate the enforcement of a judgment against them. Is foreign sovereign immunity implicated by such orders? For discovery, no. For transfer, yes.
A foreign sovereign that is subject to personal jurisdiction in New York potentially makes all its global assets potentially available for measures of execution. Under the FSIA, personal jurisdiction is conferred to the extent that an exception to immunity applies. In *Bainbridge* itself, the waiver of immunity also included a forum selection clause that consented to personal jurisdiction, so the result is sensible. But under 1605(a) the same outcome would result from a simple waiver of immunity that did not select a forum or waive personal jurisdiction defenses. Given the very broad reach of New York law over foreign assets, Judge Preska's approach to immunity is very sound. The *Bainbridge* case also provides practical support for Justice Ginsburg's position reasoning in *NML Capital*. Why should discovery about foreign assets be broader than discovery about domestic assets if the same immunity limitations effectively apply in both situations? Fortunately, FRCP 26(b)(1) requires a proportionality analysis for all discovery requests. And discovery about a foreign sovereign's assets located abroad and not in commercial use—even if relevant—may impose a burden that outweighs its potential benefit.

Implications: A Transatlantic Legal Divide

Investor Empowerment

These rulings embolden investors who have long faced legal roadblocks within the EU. With U.S. courts now offering a viable enforcement path, award creditors gain leverage and a credible threat of collection—even when EU Member States refuse to comply.

Challenge to EU Legal Doctrine

The U.S. judiciary has made it clear: it does not defer to the CJEU's interpretation of intra-EU arbitration. This marks a fundamental divergence in legal philosophy, where U.S. courts prioritize treaty obligations (like the ICSID Convention and Energy Charter Treaty) over regional doctrines.

Strategic Shift in Enforcement

Investors are increasingly turning to U.S. jurisdictions to enforce awards that face resistance in Europe. The U.S. is becoming a preferred venue—not just for enforcement, but for shaping the future of international investment arbitration.

The Caveat: Anti-Anti-Suit Injunctions

While jurisdiction is now settled, the D.C. Circuit has limited the ability of U.S. courts to issue anti-anti-suit injunctions against foreign sovereigns. This means that EU Member States can still attempt to block enforcement through European courts, creating procedural friction3. Yet, the overall trajectory favors investors, especially in ICSID cases where U.S. courts' review is exceptionally narrow.

A New Enforcement Landscape

The U.S. is no longer just a passive observer in intra-EU arbitration disputes—it's a battleground where EU legal orthodoxy meets global enforcement pragmatism. For investors, this is more than a legal win; it's a strategic opportunity to bypass European resistance and hold states accountable. It will be interesting to see the way forward as we recently saw that the US Supreme Court asked the US Solicitor General to file briefs expressing the views of the US on a pending request for certiorari submitted by Spain in the NextEra v. Spain, 9Ren v. Spain, AES and others ("The PV Investors", now "Blasket" following an assignment of rights under the award) v. Spain intra-EU arbitration cases.[10]

U: https://moussaspartners.gr/

[10] https://www.iareporter.com/articles/us-supreme-court-asks-us-government-for-input-on-intra-eu-arbitration-question/