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Spain Tops the Ranking as the Most Non-compliant State: Main Findings of the 2024 Report on Compliance With Investment Treaty Awards

Nikos Lavranos (NL-Investmentconsulting) · Friday, January 3rd, 2025

The third updated edition of the “[Report on compliance with investment treaty awards by States](#)” (the “2024 Report”) was released in November 2024. The Report was conducted in the summer of 2024 by the present author (see for coverage of the 2023 version of the report [here](#) and [here](#)).

In light of the [termination of intra-EU international investment agreements \(“IIAs”\)](#), the [withdrawal of the EU and many EU member states from the Energy Charter Treaty \(“ECT”\)](#) as well as the ongoing discussions of reforming the Investor-State Dispute Settlement (“ISDS”) mechanism, in particular within [UNCITRAL Working Group III](#), this Report analyses the track record of States’ compliance with adverse ISDS awards compared to the last report published in November 2023.

Whereas the discussion usually focuses on whether IIAs and ISDS contained in them are pro-investor biased and thus should be reformed or even completely removed as has been the case within the EU, the question to what extent States comply with their international obligations and pay awards rendered against them is only gradually receiving attention.

One notable example is the “[Compliance with and Enforcement of ICSID Awards Study](#)” published by International Centre for Settlement of Investment Disputes (“ICSID”) in June 2024. However, this study only covers the compliance with ICSID awards until the end of 2021 and thus does not capture more recent developments.

The research for the 2024 Report covers the developments from October 2023 until September 2024 with updates until 1 November 2024 and is based on publicly available sources (free sources as well as behind paywalls such as ICSID, UNCTAD Investment Policy Hub, ITALAW, GAR, IA Reporter and Jus Mundi). The research compiled the known investment treaty arbitration disputes regarding the top twenty countries which have faced most of such disputes. Subsequently, the research collected available information regarding the outcome of those disputes, focusing in particular on the question whether or not States have complied with those awards by paying the amount of compensation.

More specifically, the following five broad classifications were used to classify the status and outcome of the cases:

- **State prevailed** = Arbitral tribunal declined jurisdiction, dismissed the case or otherwise discontinued the arbitration proceedings.
- **Paid by State** = covers all the situations in which Respondents paid (in part or in full) adverse awards.
- **Unpaid by State** = covers all the situations in which Respondents refused to pay a final and binding adverse award by initiating annulment, setting aside procedures or using other procedures which lead to delay of payment or even non-payment of the award.
- **Pending** = covers the situations of arbitral procedures which are still pending at the international level as well as enforcement procedures at the domestic level.
- **Otherwise resolved** = covers settlement agreements and similar situations which have led to the termination of the arbitral procedure prior to rendering a final award.

Compared to the [2023 results](#), the 2024 Report reveals the following notable developments.

Key Trends in State Compliance With Investor-State Treaty Arbitration Awards

First, the Report confirms that the total number of ISDS disputes continues to rise. Similarly, the Report finds that – in contrast to public perception – States continue to prevail in more cases than investors.

Second, both the number of unpaid awards as well as the outstanding amount of compensation also continued to increase compared to 2023. Accordingly, the number of Spain’s unpaid awards has risen from 15 to 24, while the outstanding amount of compensation has increased from at least USD 1.3 billion to USD 1.5 billion. In addition, Spain has incurred interest rates and legal fees totalling USD 350 million. The 2024 Report also reveals that Spain has been facing more than 50 intra-EU ECT claims resulting in damages claims totalling more than USD 10 billion so far.

In terms of adverse ECT awards, Spain tops the ranking followed by Italy and Romania, which have 14 and 8 unpaid adverse awards outstanding, respectively.

Third, the 2024 Report underscores again the high number of EU Member States, in particular Spain, Czech Republic, Poland, Romania, Hungary, Croatia, Slovakia, Italy, Bulgaria, Germany and the Netherlands, which have faced and continue to face multiple IIA and ECT disputes in the past years.

Fourth, the Report confirms one of the most notable emerging trends of the past 12 months which is the divergent developments regarding the recognition and enforcement of intra-EU awards *within the EU* as opposed to *outside the EU*.

Within the EU, domestic courts of EU Member States have been faithfully implementing the CJEU’s *Achmea*, *Komstroy*, *Micula*, *PL Holding* judgments (see previous coverage [here](#)) by effectively preventing the recognition and enforcement of intra-EU ISDS awards within the EU. Accordingly, Swedish and French courts have annulled several adverse ISDS awards by implementing the CJEU’s ban on intra-EU arbitration. Even more remarkable is the German Supreme Court’s decision in the *RWE/UNIPER and Mainstream* case deciding that the ICSID ECT proceedings against the Netherlands are “inadmissible” on the basis of the CJEU’s jurisprudence, which eventually resulted in the discontinuance of that case.

In stark contrast to the situation within the EU, enforcement of intra-EU awards outside the EU is significantly more successful. Indeed, as already noted in the 2023 Report, Australia and the UK have emerged as preferred investor-friendly jurisdictions for the successful recognition and enforcement of intra-EU BITs/ECT awards. Based on recently rendered judgments by Swiss courts, Switzerland can be added to this list as well.

Moreover, the U.S. Court of Appeals for the D.C. Circuit recently held in the *Nextera and Blasket* cases that Spain cannot hide behind sovereign immunity in order to avoid enforcement of intra-EU ECT awards in the US. Following this decision, the U.S. District Court of Columbia has enforced the *Blasket* award. These decisions confirm the fact that the US remains a preferred jurisdiction for the recognition and enforcement of intra-EU awards.

2024 International Law Compliance Index

Based on the results of the Report, the [2024 International law Compliance Index](#) has been updated. The Index ranks the countries by the number of unpaid awards and the outstanding amount of compensation.

Accordingly, Spain ranks number 1 in the world as the most non-compliant State, followed by Venezuela, Russia, Mexico, and Argentina. In addition, it is worth noting that within the top 20 non-compliant countries, Poland, Czech Republic, Croatia, Italy and Romania feature as well.

This probably explains to some extent why the EU and the EU Member States have chosen to terminate the intra-EU IIAs and withdraw from the ECT, thereby hoping that the number of cases and adverse awards will decline and ultimately stop altogether. However, this hope may be in vain since several ECT cases have been initiated even after the withdrawals were announced and one case after the withdrawal took effect and the sunset clause applied, *i.e.*, cases against [EU](#), [Denmark](#), [Germany](#), [Finland](#), [Hungary](#), [Poland](#), the [Netherlands](#), [Croatia](#) and [Spain](#).

In any event, the non-compliance with awards undoubtedly undermines the respect and effectiveness of the ICSID Convention as well as international (treaty) law more generally.

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