

Amsterdam District Court rules that enforcement of awards qualifies as state aid

by *Practical Law Arbitration*, with *OSK Advocaten*

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In *Spain v AES and others* (ECLI:NL:RBAMS:2025:732), the Amsterdam District Court ruled that the enforcement of awards against Spain qualified as state aid.

Geert Wilts, OSK Advocaten

The Amsterdam District Court has ruled that enforcement of two Energy Charter Treaty (ECT) awards ordering Spain to pay Dutch investors EUR27 million in damages constitutes state aid and has ordered the investors to return any amounts collected through enforcement.

First, the court ruled that the provisions of the ECT were part of EU legislation, so that Spain was required to comply with the awards. On the other hand, Spain was also required to comply with the EU provisions on state aid. Therefore, Spain's payment obligation under the awards could be considered an advantage for the investors that distorted competition in the EU internal market. The fact that the tribunal had ruled that the damages awarded to the investors were compatible with the internal market was considered irrelevant. The European Commission (EC) has exclusive jurisdiction to rule if state aid is compatible with the internal market.

The court then turned to the implications of the judgment in *Romania v Micula and others* (ECLI:EU:T:2024:659), discussed in [Legal update, Judgment dismissing appeals against European Commission decision finding that compensation paid by Romania following arbitral award constituted unlawful state aid \(General Court\)](#). There, the General Court of the CJEU ruled that Spain's payment obligation under the awards qualified as state aid, originating at the moment the awards were upheld by the Swiss Supreme Court.

The court further ruled that Spain had not waived its right to file its claims in these proceedings. Spain had registered the potential state aid issue with the EC within a reasonable time after the awards were upheld by the Swiss Supreme Court. Spain was also not judged to have abused its right to register the potential state aid with the EC. The fact that the investors had assigned their claims under the awards to another party was considered irrelevant, as the investors were the parties to have benefited from state aid.

Overall, the court ruled that any successful enforcement of the awards in the US or elsewhere would amount to an unjustified enrichment of the investors, and accordingly they were ordered to return to Spain any amounts collected through enforcement.

The judgment will have implications for other cases involving the relationship between the ECT or other investment treaties providing for arbitration on the one hand, and EU state aid provisions on the other hand. Investors being awarded claims against EU states may be left with a Pyrrhic victory.

Case: *Spain v AES and others* (ECLI:NL:RBAMS:2025:732) (5 February 2025).

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