

UPDATE ON ICSID ARBITRATION AWARD: EISER INFRASTRUCTURE LTD V KINGDOM OF SPAIN

15 MAY 2017 • ARTICLE



On 4 May 2017, the ICISD Arbitral Tribunal gave an award against Spain in an arbitration relating to measures the country adopted in 2009-13 that affected, among other technologies, the incentive regime in favour of concentrated solar power (“CSP”) plants.

A statement released by Spain’s Energy Ministry revealed that arbitrators John R. Crook (Chair), Stanimir A. Alexandrov and Campbell Alan McLachlan ruled in favour of British investors Eiser Infrastructure Ltd and Energia Solar Luxembourg in the case they brought against Spain.

The decision may be relevant to similar arbitrations currently pending before the ICSID in Spain as well as those pending in Italy in relation to the so-called *Spalma-Incentivi* Decree, which Italy adopted in 2014.

The award arises out of measures taken by Spain to roll back certain incentives and benefits that were previously offered to promote investment in the solar power sector.

In summary, the tribunal considered that the continuous regulatory changes that the Spanish Government approved after the claimants had invested almost £1bn in CSP plants have had a “devastating effect” over such investments and breached Article 10 of the Energy Charter Treaty (“ECT”) (which includes a fair and equitable treatment guarantee, as well as stability and umbrella commitments). For that reason, the tribunal ruled that Spain should pay the claimants €128m in compensation plus interest.

The *Eiser* ruling is the first of numerous cases brought before the ICSID against Spain and Italy in relation to the renewable sector.

Indeed, even in Italy, the sudden cuts to the Feed-in Tariff regime for the photovoltaic sector introduced by the *Spalma-Incentivi* Decree led to a rise in international investment arbitrations against Italy. These arbitrations are currently pending and alleged violation of the ECT, in particular, the principles of fair and equitable treatment.

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