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From solar dream to legal nightmare

How financial investors, law firms and arbitrators are profiting from the investment arbitration boom in Spain.

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From solar dream to legal nightmare. How financial investors, law firms and arbitrators are profiting from the investment arbitration boom in Spain.

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Content

Introduction

In the last 10 years, Spain has been subject to more investment arbitration lawsuits than any other country. It has received a total of 51 claims, of which 27 have already been resolved, 21 of them in favor of the investor.[1] This means that in eight out of ten claims the investors won. According to the Spanish government, the total amount claimed by foreign investors amounts to almost €8 billion. So far, Spain has been ordered to pay more than €1.2 billion in compensation for the cases it has lost, which is equal to the country's entire spending commitment to fight the climate crisis - or five times what it spent to alleviate energy poverty in 2021. As the cases continue, more and more money from the State coffers will be at stake; not only to pay investors the amounts resulting from the awards, but the lawyers' and experts' fees, the administration costs of the arbitration center and the arbitrators' fees.

All the lawsuits have been brought under the Energy Charter Treaty (ECT), an international trade and investment agreement with more than 53 member states in Europe and Asia. A wide range of stakeholders consider the ECT outdated (including the European Commission and EU member states), for two main reasons. First, its vaguely worded investment protection standards and the highly controversial investor-state dispute settlement (ISDS) mechanism that enforces them allow private investors to challenge public policy measures in the energy sector. Secondly, there is widespread agreement that the ECT is not in line with the objectives of the Paris Agreement on Climate Change or the Sustainable Development Goals.[2]

The ECT provides strong protections for foreign investments in the energy sector, including oil, gas, and coal, against government interference that reduces an investor's profits. Spain is noteworthy because all the lawsuits involved are initiated by foreign investors in the renewable energy sector. Generous incentives approved by the Spanish government in 2007 attracted many foreign and domestic investors. The incentives were revised downwards in the following years. These changes in policy were contested by foreign investors under the ECT. But a close examination of the cases against Spain shows that the ECT is benefiting only transnational investors and specialized law firms at the expense of Spain's solar dream.

Key findings:

1.

The ECT cases against Spain have been used to pay investment awards, lawyers and arbitrators, diverting significant public resources away from environmentally and socially important areas. To date, Spain has been ordered to pay more than €1.2 billion in compensation to foreign investors and €101 million for lawyers and arbitration tribunals. In ongoing cases investors are demanding a further €3 billion, which will in any case incur corresponding procedural costs.

2.

The ECT claims create a discriminatory system. Only large foreign investors or Spanish investors with foreign subsidiaries or mailbox companies have recourse to international arbitration. They can pocket hypothetical future profits, while smaller, domestic investors cannot. This discriminatory treatment shifts money and power towards big corporations and transnational investment funds at the expense of businesses in Spain including SMEs and energy cooperatives who are important agents for a just energy transition and account for 75% of investment in renewable energy.[3]

3.

The ECT overwhelmingly benefits financial and speculative investors. At the time of writing, 89% of the beneficiaries of ECT claims are not renewable energy companies but financial corporations and investment funds that have little or nothing to do with sustainable energy transition. Many invested in the Spanish renewables sector because of above-market returns, buying up existing installations instead of expanding renewable energy production, while pouring money into fossil fuel projects elsewhere at the same time. Half of the companies suing Spain also have investments in the coal, oil, gas, and nuclear energy sectors.

4.

Spain has become an attractive business niche for specialized law firms. The high rate of success of the investor in arbitration cases has made the ECT the favorite treaty to initiate ISDS cases. Specialized Law firms have an active role in advertising the use of investment treaty litigation among their corporate clients. Only six law firms have represented most cases against Spain.

Box 1

Flaws in the ECT's arbitration system

The ECT contains the controversial investor-state dispute settlement (ISDS) mechanism which has enabled foreign investors to sue Spain in international arbitration tribunals. ISDS allows foreign investors to sue a country if they believe that laws, regulations, court decisions or other State measures violate the protections they have under the treaty.[4] This practice has generated widespread criticism from academics, lawyers, and civil society. Below, we highlight some examples on why the system is flawed using the Spanish case:

- It is a unilateral system: the investor is the only one who can initiate a claim and there is no appeal body. The only way to revise the case is asking for annulment. Spain has asked to annul all the favorable cases with hardly any success.
- Arbitration rulings are unpredictable and depend solely on the arbitrators. Cases are decided by three arbitrators, often lawyers, who practice in the private sector; many of them are organized as a small "elite club."[5] How decisive is the fact that these arbitrators come from such a small pool? Investment lawyer George Kahale referred to this practice as: "perhaps the clearest indication of bias in the system is that experienced practitioners can all too often predict the outcome of an investor-state arbitration based on the composition of the tribunal, not the merits of the case."[6] For this reason, Spain now seeks to appoint arbitrators outside this circle.

- The provisions on which ECT investment claims are based are vague and are often interpreted very broadly by the arbitration tribunals. This has led to arbitrators interpreting that Spain had frustrated investors' "legitimate expectations" by making regulatory changes to the renewable regime, and thus treated the investors in an "unfair" and "inequitable" way.[7] But the question on whether the investors have a legitimate expectation over regulatory practice from the States is highly controversial, even among arbitrators.

- ISDS tribunals can use different approaches to calculate the value of assets when awarding compensation. However, in the cases against Spain the arbitrators considered that, since the state frustrated investors "legitimate expectations", compensation would be calculated based on hypothetical profits that investments would have produced over the life of a project.[8] This approach has awarded investors compensation greater than the original investments and in circumstances where Spanish law would not grant compensation.

- Arbitration proceedings under the ECT lack transparency. Participation by third parties, such as affected residents or non-governmental organisations is almost impossible. Indeed, in some cases proceedings are kept completely secret and neither the identity of the claimant investor, nor the defendant state, nor the amount of money involved are known to the public. This is widely criticised as the cases are concerned with public issues and involve public money.

- Arbitrators can lack independence and impartiality.[9] By 2021, Spain had filed a total of 17 petitions to replace at least one of the members of the arbitration tribunal alleging conflicts of interest between the arbitrator and the investor. These included: statements that denote bias against the Spanish government or its legal representatives, a close relationship between the arbitrators and the expert representing the investor or having acted in other cases against Spain in which the circumstances were very similar.

- Arbitration awards can be enforced anywhere in the world. If states lose cases and fail to pay compensation, investors can seize their assets in other countries. Now, at least 10 investors are trying to enforce their awards against Spain in courts in Australia and the United States.[10]

How much is the ECT costing Spain?

According to the Spanish government in 2017, the total amount demanded by foreign investors in only 36 of todays 51 investment arbitration cases amounted to almost €8 billion. So far, Spain has been ordered to pay over €1,2 billion in 21 cases as compensation to investors (see Table 1). This is five times as much money as the Spanish government is spending on protecting the most vulnerable from soaring energy prices.[11]

On top of the compensation Spain has been ordered to pay, additional costs that have been incurred by arbitrators' and expert fees, administrative expenses of the dispute settlement center (such as the World Bank's ICSID or the Stockholm Court of Arbitration) and legal defense fees (lawyers and hiring of experts). According to information obtained through a freedom of information request and publicly available sources, Spanish taxpayers have spent €101 million in arbitration proceedings (legal defense, arbitrators and experts fees, administration fees, logistics, translations, travel) in 25 cases where there is information on the costs available.[12] This means that each case has cost an average of €4 million. If investors continue to win the pending cases, Spain will have spent around €200 million on arbitration proceedings and lawyers, including the ones acting on behalf of the investors.

Spanish taxpayer money spent to pay law firms and arbitrators

€101 million[13] = 2,5 x times

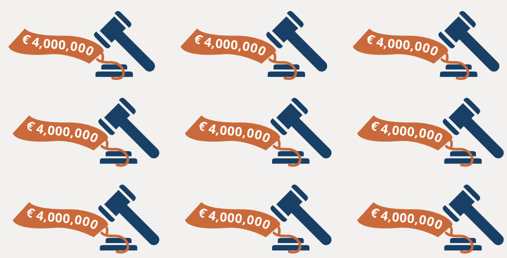
the annual budget for Just Transition in 2022 in Spain

Money awarded so far in 21 cases:

€1,2 billion[14] = 5x times

what is planned to spend to alleviate energy poverty in 2021 in Spain

Average cost per case



For Spanish taxpayers ECT cases cost **an average of €4 million**.

If the investor continues to win the pending cases, **Spain will have spent more than €200 million on arbitration proceeding and investor lawyers**.

Table 1. Costs of concluded arbitrations against Spain [A]

	Case name	Total amount awarded million Euros incl. interest up to December 2021	Legal and arbitration costs for Spain in million Euros[B]
1	9REN Holding v. Spain	43	6.9
2	Antin v. Spain	137.6	5.9
3	BayWa r.e. v. Spain	22[C]	2.5
4	Charanne B.V v. Spain	Award in favour of Spain	0.1[D]
5	Cube Infrastructure v. Spain	35.8	3.9
6	Eiser Infrastructure Limited v Spain	(128)[E]	3.3
7	FREIF Eurowind v. Spain	Award in favour of Spain	0
8	Greentech Energy System v. Spain	48.7	8.4
9	Hydro Energy 1 and Hydroxana v. Spain	30.9[C]	1.9
10	InfraRed and others v. Spain	35.8	7.2
11	Isolux Infrastructure Netherlands v Spain	Award in favour of Spain	0.8
12	JGC v. Spain	23.5[C]	6
13	Masdar Solar v. Spain	(64.5)[G]	2.6
14	NextEra v. Spain	296.3	8.6
15	Novenergia II v. Spain	58.9	4
16	OperaFund v. Spain	34.4	4.2
17	Renergy v. Spain	33[C]	3.7
18	RREEF v. Spain	76.7[H]	4.3
19	RWE Innogy v. Spain	36.7	4[D]
20	SolEs Badajoz v. Spain	51.6	1.9
21	Stadtwerke München v Spain	Award in favour of Spain	0.5
22	STEAG v. Spain	27.6[C]	2.3
23	Sun-flower Olmeda v. Spain	51	5.1
24	The PV Investors v. Spain	94.4[H]	8.4
25	Watkins Holdings v. Spain	90.8	4.5
TOTAL		**1,228**	**101**

A This table includes publicly available information on awards and costs of concluded Energy Charter Treaty arbitrations against Spain. The information is based on published awards and the results of an Freedom of Information request to the Spanish government. Concluded cases where no information is available have been excluded. A number of the awards listed here are currently subject to annulment proceedings.

B This column included the costs Spain has been ordered to pay for the proceeding, including the legal costs for the claimant, its own legal costs and costs of the arbitration.

C No information available on accumulated interest payments.

D Incomplete information available, costs to Spain higher but can't be quantified.

E The award was annuled later and is not included in the total.

F The award has not been published.

G The investor later renounced their right to collect damages, the sum is not included in the total.

H Some of the investors later renounced their right to collect damages, the sum is still included in the total.

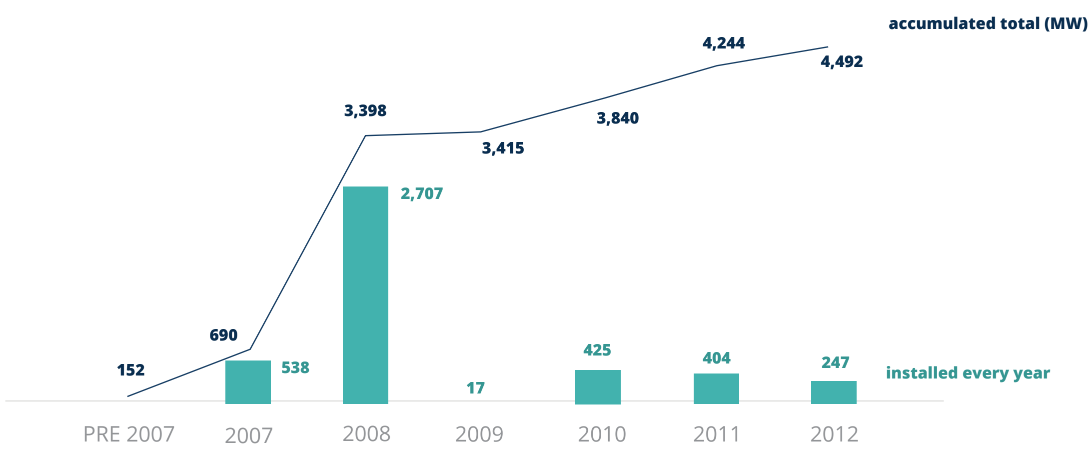
Why is Spain the most sued country under the ECT?

In the late 2000's Spain was lagging European targets for electricity generation from renewable energy sources.[15] In response, the Spanish government introduced a system of incentives to induce more investment in the renewable energy sector centred around feed-in tariffs (FITs) - a premium paid to renewable energy producers on top of the price for electricity.[16] The 2007 incentives led to an immediate investment boom in solar power generation. Newly installed capacity increased almost 27-fold in 2007-2008 compared to 2005-2006 (See Image 1).

This boom was driven by overly generous feed-in tariffs. While the Spanish government had targeted an internal rate of return for solar projects of 5-9%, the actual rate for some large solar installations was closer to 10%-15%. Consequently, Spain became a very attractive country for investors, both national and foreign, in the photovoltaic sector. The incentive system also lacked a built-in mechanism that allowed it to reduce feed-in-tariffs in line with falling costs of solar projects or to limit costs above a certain threshold. This led to a situation whereby in 2009, solar PV received close to 50% of all public support for renewable electricity in Spain, despite providing only 10% of its renewable electricity.

This development was compounded by the burst of the real estate bubble. A lot of capital was diverted from real estate to more profitable investments, which at that moment happened to be solar PV investments.[17] The high rates of return guaranteed for the lifetime of the installation attracted all types of investors, including international financial investors such as large pension and investment funds. The boom was so pronounced that Spain became the priority destination for the vast majority of photovoltaic modules manufactured in the world, especially from China.[18]

Image 1. Installed photovoltaic power



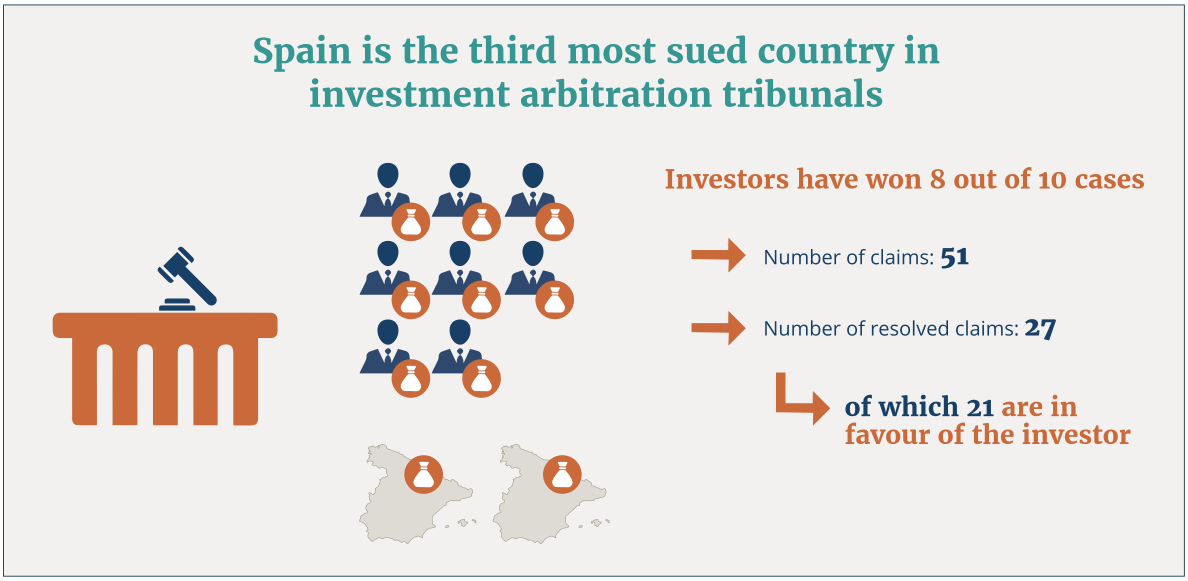
Source: El país, May,3,2013

The shipments were sold to the highest bidder. In some cases purchases were even rescinded, with the material on its way, paying high indemnities, in exchange for its sale to a buyer offering a much higher price.

Solar subsidies cut as the crisis hits

The solar boom coincided with the burst of the real estate bubble in 2008 and the ensuing banking crisis, which quickly turned into a sovereign debt crisis. Spanish sovereign debt went from 40% of GDP in 2007 to more than 100% of GDP in 2013, well beyond the limits demanded by European Union fiscal rules.[19] At the same time, the FITs paid to renewable energy producers mushroomed from €194 million in 2007 to €2.6 billion in 2009, a 13-fold increase. While still lower than subsidies paid to other sources of energy owned by Spain's large energy companies, the government maintained that the renewable incentives were unsustainable in a crisis and included cuts in its package of austerity measures.

Starting in 2008, the Spanish government passed a series of increasingly restrictive measures to reduce the costs of the renewable energy support schemes. This included the recalculation and reduction of FITs and limiting their payments to a maximum of 25 years. Subsequently, PV solar installations plummeted in Spain: in 2009 no new capacity was installed and in the following year additional installations remained at a much lower level. The toughest measures came in 2012, which paralyzed the system of premiums and incentives, replacing it between 2013 and 2014 with a totally different system, in which the facilities would receive only a reasonable rate of return. This was particularly criticized by the solar PV investors benefiting from the earlier 2007 scheme.



While it is outside the scope of this briefing to provide a full assessment of the changes to the renewable energy incentive schemes, a couple of points should be highlighted, nevertheless. The unanticipated explosion of PV installations led to additional costs of €2 billion, which put pressure on the Spanish government to limit them since the money was going to come out of consumer electricity bills, and the country was experiencing a harsh financial crisis.[20]

The changes to Spanish renewable energy policies clearly caused serious problems, in particular to small and medium-sized investors,[21] but important steps have been taken to address them. At European level, progress has also been made to fix the problem of retroactive changes to renewable support schemes. The revised EU Renewable Energy Directive prohibits countries from changing their support schemes retroactively in an unpredictable manner and can be enforced in national and European courts.[22] This democratically legitimized way of dealing with flaws in policy making has the advantage that it applies to and can be relied upon by everyone equally – foreign as well as domestic investors and local communities.

A torrent of international arbitration cases against Spain

These downward changes in the remuneration model have been considered by the renewable energy investor sector as contrary to the principles of legal certainty, legitimate expectations and non-retroactivity of provisions restricting rights.[23] Investors have argued that the regulatory changes made have frustrated their "economic expectations". On this point, it should be noted that the majority position held by the Spanish courts sustains that this "principle of trust" cannot imply the petrification of a specific legal framework, as such changes that are foreseeable and derived from general interest requirements are justified. The position maintained by the Supreme Court in this regard, since 2010, is clear: it rejects the existence of a violation of the principles of non-retroactivity, legal certainty, and legitimate expectations.

While this decision is binding on all judges and courts in Spain, the arbitration tribunals are not bound by this decision. In fact, the arbitrators have had a very different interpretation that gives investor expectations more weight than the State's regulatory practice. This highlights how the ECT reduces the policy space for states, and how investment tribunals shift the balance from public to private interests. In addition, this practice allows for the ECT to be used as an insurance to reduce the regulatory risk that the investor should assume as part of their due dilligence. It leaves Spain and other countries in a very vulnerable position, where they can easily face new lawsuits if they make regulatory change that affect the investments of of a transnational investor, for example the acceleration of fossil fuel phase-out.

In fact, the Spanish government did not anticipate the torrent of investment arbitration proceedings from foreign investors alleging violations of the Energy Charter Treaty. At the time of writing, 27 of the 51 arbitrations have been decided; 21 of them in favor of the investor, although one was later annulled; in 4 of them the investor lost; and 2 have been discontinued. This means that in 77% of the cases against Spain the investor won the case, a percentage much higher than the global average.[24] With such a high rate of success, the ECT became an appealing tool for foreign investors to make money.[25]

The most significant advantage of the ECT is the possibility of securing high compensation payments. Arbitrators have regularly awarded investors compensation greater than their original investments and in circumstances where Spanish law would not consider granting compensation at all. For example, financial company *Watkins* acquired a portfolio of wind farm securities in 2011 for €91 million, valued at €94 million in 2014 following the reforms and sold for €133 million in 2016, constituting "an annual return of 11.2%".[26] Despite this considerable return on their investment, the Watkins claimants received a further €77 million in compensation for their ECT claim. And while being called a "renewable energy investor", Watkins didn't build a single windmill. The fund just bought and sold existing installations at a profit, which was almost tripled by the successful investment claim.

Who is profiting from the renewable energy arbitrations against Spain?

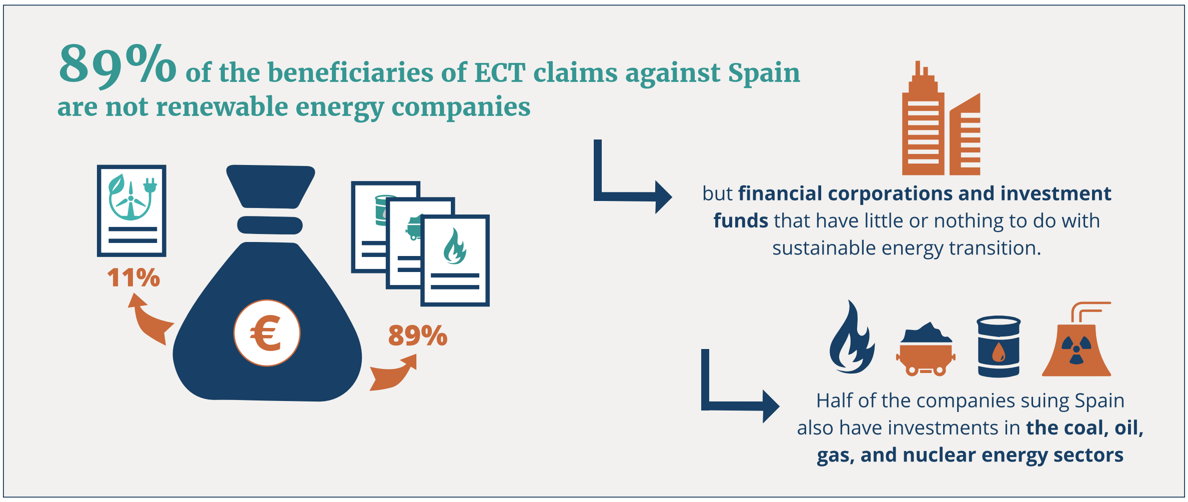
Transnational investors

Broad definitions in the ECT of who or what an investor is has allowed a wide range of actors to bring ISDS claims. Among the claimants are many private equity investors or asset management funds that entered the renewables sector through acquisitions of existing installations rather than greenfield investments, thus contributing little to the actual expansion of renewable energies. Yet, it is exactly these investors that have the financial capacity and legal acumen to use the opportunities provided by the ECT.

In 89% of the cases against Spain the claimant is **not a renewable energy company but an equity fund or other type of financial investor**, with a direct or indirect stake in companies operating in the sector, including banks. These transnational investors are not usually known to the public. They are funds that focus on achieving maximum financial returns in whichever field they operate. The modus operandi of these firms is usually to stay in a certain business sector for five to seven years, after which they divest to reap the profits and find other profitable business niches.[27]

In **half of the cases, the companies suing Spain also had investments in the coal, oil, gas, and nuclear energy sectors.** For example, the 9REN equity fund has only one shareholder which is a private equity fund specializing in energy that manages $32 billion, mostly in fossil energy. It bought a company with photovoltaic assets in Spain and transferred them to shell companies in Luxembourg. In fact, in most cases the renewables portfolio is only a very small part of the company's assets. The money Spain must pay could thus easily end up financing fossil fuel projects.

In addition, the ECT does not offer protection against nationality or jurisdiction shopping. This enables domestic investors to establish a shell company in an ECT member country and sue their own home state through it. **Ten of the eleven supposedly Dutch investors suing Spain are shell companies**: companies with almost no employees but used by large corporations to move capital and avoid paying taxes. This allowed Spanish companies such as Isolux Infrastructure Netherlands and Charanne, owned by some of Spain's richest citizens, to sue Spain through their Dutch subsidiary.



Specialized law firms

Given that the legal costs of arbitration run into the millions of dollars, this type of work has turned the ECT into a money-making machine for specialized law firms. It is not surprising that investment lawyers consider ECT cases against Spain to be attractive, because their high success rate lowers the risk for the investors (their clients). Often the law firms themselves actively seek out clients to offer them these opportunities (see box 2).

Some law firms specialize in investment arbitration as this accounts for a very profitable business niche. Just six law firms — Allen & Overy, King & Spalding, Freshfields, Cuatrecasas, Gómez Acebo & Pombo and Latham and Watkins —represented the investors in the majority of the ECT cases against Spain (39 cases out of 50).

The government has repeatedly challenged the fairness of the investor attorneys' fees, including the number of hours allegedly worked and the average hourly rate. For example, in one of the cases Cuatrecasas law firm claimed to have worked 11.200 hours charging an average hourly rate of €374.[28] Other firms charge even more. For example, King & Spalding charged approximately $744 per hour and the co-counsel of Gomez Acebo & Pombo charged rates ranging from $561 to $760 per hour.[29]

Law firm	N° cases against Spain	What you should know[30]
Allen & Overy (UK)	12	Filed the first arbitration claim under the ECT in 2001, of U.S. energy giant AES against Hungary. Today, most of its arbitration cases under the ECT are against Spain: 12 of the 16 known cases. Notable clients also include Shell, Engie and Total.
King & Spalding (USA)	12	The favorite law firm of the big oil companies. In the ECT it is mainly involved in claims against Spain and Italy. The firm also represents the British oil company Rockhopper in a lawsuit filed against Italy over the Italian government's decision to ban offshore oil drilling.
Cuatrecasas, Goncalvez Pereira (Spain)	9	All of its arbitration cases are against Spain, including the largest award rendered so far - €290 million for NextEra. The head lawyer of the Energy Charter Secretariat joined the institution after almost 12 years with Cuatrecasas – a remarkable example of revolving doors. Also, the former vice-president of the Spanish government, Soraya Sáenz de Santamaría, number two in the Executive during the key years of the energy reforms, is now a partner in the firm.

Box 2

How do investment lawyers advertise the use of investment protection treaty litigation among their corporate clients?

New litigation over the reduction of electricity prices? When Spain announced in September 2021 new measures to reduce the cost of electricity by limiting the so-called "windfall profits", the law firm Cuatrecasas organized a conference to explore ways that their clients could challenge these "unfair" measures.[31] One option that was highlighted was the ECT. The investment lawyers compared this situation with the changes to the renewable's schemes, using it as an example of success and opportunity to bring new cases under the ECT.

New litigation over climate change regulations? Jones Day has already set its sights on its next deal. For this law firm climate change litigation can be seen "an opportunity if brought in the right forum", referring to ISDS. A publication on its website calls on investors to consider using ISDS for "unlawful government interference" related to new regulations to combat climate change.[32]

New litigation over the reduction of fossil fuel use? The law firm Steptoe & Johnson explained to polluting energy producers that "we could have a strong case" that the introduction of binding targets for renewable energy production contravenes their "legitimate expectations that the percentage of energy from non-renewable sources would not be limited".[33] According to Steptoe & Johnson, green energy targets could result in a breach of the fair and equitable treatment standard under investment treaties such as the ECT.

Final remarks

The investment arbitrations of renewable energy investors against Spain are often used as an example of how the ECT can support the energy transition. Yet, the contrary is the case. As this briefing reveals, they come at a huge cost to Spanish taxpayers and put domestic investors at a disadvantage. Their main beneficiaries have been a few law firms charging high rates for their services and large investment funds securing above-market returns, often for installations that they bought up after they had been built, and sold within a few years. This has created a discriminatory system in favour of large transnational investors (or Spanish investors with subsidiaries abroad), leading to disadvantages for small Spanish investors and communities, who are the real drivers of the energy transition.

Crucially, there is no evidence that the rights offered by investment treaties like the ECT actually lead to an increase in investment, let alone investment in renewable energies.[34] Studies suggest that many investors are not even aware of the existence of investment treaties when they decide whether to invest in a country or not.[35] If they were aware, the treaties were not an important factor in their decision-making.

While Spain's erratic policy-making has caused significant problems for the renewable energy sector in the past, the country now ranks in the top 10 destinations worldwide for renewable investments, according to a ranking by the consultancy EY.[36] The authors of the ranking attribute this to "the greater regulatory certainty and clear energy planning in the medium term and, in particular, the ambitious objectives enshrined in the new Climate Change Law and the Integrated National Energy and Climate Plan to 2030."[37] In other words, it has been political and policy changes, not investment arbitration cases that have been able to improve the situation for renewable investors in Spain. Interestingly, most of the decisions taken by the arbitral tribunals taken by the arbitral tribunals did not discuss issues related to energy transition but rather the investors “economic expectations”.[38]

But while the ECT has not promoted a just energy transition, it poses serious obstacles to the phase-out of fossil fuels. In its latest report the Intergovernmental Panel on Climate Change highlighted the danger that treaties like the ECT can “be used by fossil-fuel companies to block national legislation aimed at phasing out the use of their assets”.[39] Fossil fuels currently make up 55% of Spain’s electricity production and research has shown that fossil fuel assets worth €8 billion are protected under the ECT.[40] Spain, like other ECT member states, could face new lawsuits when it accelerates its phase-out of fossil fuels, as the Paris Agreement demands. The simple threat of new lawsuits could be enough for Spain to reconsider passing new regulations that could “damage” the investors “economic expectations” under the Energy Charter Treaty, causing a regulatory chill effect.

The ECT is currently undergoing a reform process, which is supposed to conclude in June 2022. Yet, it has already become apparent that the reform will not make the treaty compatible with the Paris Agreement, and fails to tackle the dangers posed by the ECT’s broad investor rights and the controversial ISDS mechanism.[41] The ECT is thus poised to remain a threat to public budgets and democratic decision making while providing extraordinary legal privileges to some of the richest and most powerful energy investors. Spain and other countries should heed the lesson from the legal nightmare that followed the solar dream and collectively withdraw from the ECT.

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4. These litigation funds support companies' lawsuits against States by covering part of the legal expenses in exchange for obtaining a large share of any possible final award or agreement between the parties. This increases the possibility of new and more expensive lawsuits for States. For example, one of the largest lawsuits against Spain was filed by Abengoa, which found a way to sue its own country through a shell company in Luxembourg (CSP Equity Investments), which initially asked for €840 million, but later sought funding from third parties and increased to 1.2 billion. https://energy-charter-dirty-secrets.org/.

5. CEO and TNI (2012), Profiting from injustice. How law firms, arbitrators and financiers are fuelling an investment arbitration boom: https://www.tni.org/files/download/profitingfrominjustice.pdf.

6. Original quote: "Perhaps the clearest indication of bias in the system is that experienced practitioners too often can predict the outcome of an investor-state arbitration based upon the composition of the tribunal, not the merits of the case" G. Kahale, III (2012) Is Investor-State Arbitration Broken? Transnational Dispute Management, October 2012.

7. Maximiliam Schmidl, "The Renewable Energy Saga from Charanne v. Spain to The PV Investors v. Spain: Trying to See the Wood for the Trees", *Kluwer Arbitration Blog*, February 1, 2021, http://arbitrationblog.kluwerarbitration.com/2021/02/01/the-renewable-energy-saga-from-charanne-v-spain-to-the-pv-investors-v-spain-trying-to-see-the-wood-for-the-trees/.

8. As an example, the expert company in quantification of damages, BDO, considers the claim in the Foresights case to be "disproportionate" as the claimants only invested €25.8 million to acquire their interests in three photovoltaic installations, but demand between €59 and 64 million: Greentech Energy System A/S, Foresight Luxembourg Solar 1 S.A.R.L., Foresight Luxembourg Solar 2 S.A.R.L., GWM Renewable Energy l S.P.A, GWM Renewable Energy ll S.P.A c. El Reino de España, (Case SCC No. 2015/150).

9. United Nations Commission on International Trade Law (UNCTAD, Working GRoup III: Investor-State Dispute Settlement Reform: https://uncitral.un.org/en/working_groups/3/investor-state.

10. Following a favorable sentence to the investors in the cases of Novenergia, Infrastructure Services Luxembourg (before Antin), NextEra Energy, 9REN Holding, Watkins Holdings, Cube Infrastructure, Infrared Capital Partners, Athena Investments (before Greentech), Hydro Energy 1 and Sweden's Hydroxana, the companies have initiated enforcement proceedings in the U.S. and Australia to collect on Spain's assets as soon as the annulment proceedings have been completed.

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