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**WHEN DOES ARBITRATION START?
QUESTIONS ON JURISDICTIONAL IMMUNITY FROM THE D.C. CIRCUIT
COURT’S DECISION IN NEXTERA ENERGY GLOBAL HOLDINGS B.V. v.
KINGDOM OF SPAIN**

❖ Note ❖

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I. INTRODUCTION

On August 16, 2024, D.C. Circuit Judge Cornelia Pillard held that the District Court had jurisdiction over the Kingdom of Spain (“Spain”) to enforce the arbitral award it owed to investors in its renewable energy sector.¹ Appealing the decision in the Supreme Court of the United States, Spain asserted the need for the Supreme Court to clarify the extent of a sovereign’s waiver and arbitration agreement required to meet the exceptions to sovereign immunity outlined in the Foreign Sovereign Immunities Act (“FSIA”).²

The question is an extension of a decade long inquiry in the field of international arbitration of whether the ratification of multilateral treaties waives the immunity of sovereign states.³ The Court of Justice of the European Union (“CJEU”) held arbitration clauses in international agreements between EU Member States are precluded as they have an “adverse effect on the autonomy of EU law.”⁴ However,

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¹ *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1111 (D.C. Cir. 2024).

² *Petition for a Writ of Certiorari* at 10, *Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130 (U.S. May 1, 2025).

³ Katie Gonzalez, Laurie Achouk-Spivak & Boaz Morag, *2026 Int’l Arbitration Trends: Awards Against Sovereign States*, LAW360 EXPERT ANALYSIS (Jan. 23, 2026), <https://www.law360.com/articles/2430886/2026-int-l-arbitration-trends-awards-against-sovereign-states>.

⁴ Case C-284/16, *Slowakische Republik v. Achmea BV*, ECLI:EU:C:2018:158, ¶ 59 (Mar. 6, 2018).

both the United Kingdom’s Court of Appeal⁵ and the Australian High Court⁶ have confirmed that ratification of the International Centre for Settlement of Investment Disputes (ICSID) Convention subjects sovereign states to jurisdiction in domestic courts for the enforcement of arbitral awards. On June 29, 2026, the Supreme Court of the United States denied certiorari on Spain’s appeal against the D.C. Circuit Court’s decision,⁷ thereby cementing the U.S. as a pro-enforcement jurisdiction of intra-EU arbitral awards.⁸

Under the FSIA, a foreign state is “immune from the jurisdiction of the courts of the United States and of the States.”⁹ However, exceptions to this immunity exist in particular when the foreign state waives its immunity “explicitly or by implication”¹⁰ or when the suit is to enforce an arbitration agreement between the foreign state “with or for the benefit” of a private party.¹¹ This note explores the remaining ambiguities surrounding these exceptions after the Supreme Court’s decision to deny certiorari.

This note will address the questions raised from the D.C. Circuit’s decision in *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*. Specifically, this Note examines the questions raised on the jurisdiction of U.S. courts in enforcing intra-EU agreements through the implied waiver exception and arbitration agreement exception. Part II of the Note will provide the necessary background on the Energy Charter Treaty and the arguments posited by the Spanish government.¹² Part III will examine the D.C. Circuit Court’s analysis of jurisdiction and how courts in the U.K., Australia, and Singapore have answered the jurisdictional questions raised in the Circuit Court’s decision.¹³ Part IV of the Note identifies remaining questions from the Circuit Court’s decision that future cases may clarify.

⁵ *UK Supreme Court Confirms Spain Cannot Rely on Immunity to Resist Registration of ICSID Awards*, KOBRE & KIM (Mar. 4, 2026), <https://kobrekim.com/news/firm-news/uk-supreme-court-confirms-spain-cannot-rely-on-immunity-to-resist-registration-of-icsid-awards>.

⁶ Noiana Marigo et al, *No Immunity, No EU Law Defences: Federal Court of Australia Enforces Intra-EU ICSID Awards*, FRESHFIELDS (Sep. 8, 2025), <https://riskandcompliance.freshfields.com/post/10213ep/no-immunity-no-eu-law-defences-federal-court-of-australia-enforces-intra-eu-ics>.

⁷ *Spain v. Blasket Invs. LLC*, No. 24-1130, 2026 WL 1855038 (U.S. June 29, 2026).

⁸ *Coming to America: How Cert Denial Opens the Doors to US Enforcement of Intra-EU Awards*, BAKERHOESTETLER (Jun. 29, 2026), <https://www.bakerlaw.com/insights/coming-to-america-how-cert-denial-opens-the-doors-to-us-enforcement-of-intra-eu-awards/>.

⁹ 28 U.S.C. § 1604.

¹⁰ 28 U.S.C. § 1605(a)(1).

¹¹ 28 U.S.C. § 1606(a)(6).

¹² See *infra* Part II.

¹³ See *infra* Part III.

II. BACKGROUND

Since 1998, Spain had encouraged investments in the renewable energy sector through fixed premiums, feed-in tariffs and incentivized investments in the solar and wind industries, leading it to become one of the largest renewable energy producers in Europe.¹⁴ However, the economic repercussions of the 2008 financial crisis led Spain to reevaluate its renewable energy policy as it terminated premiums paid to producers in 2013 and replaced its feed-in tariffs.¹⁵ The change in Spanish renewable energy policies led to a string of lawsuits against the country with 36 of the 125 energy-sector cases registered between 2010 and 2018 pursuant to the ICSID, the Stockholm Chamber of Commerce (“SCC”), and the UNCITRAL rules involving the renewable energy law changes in Spain.¹⁶

One of the parties seeking enforcement of arbitral awards against Spain is Blasket Renewable Investments, which received its interest from Dutch companies AES Solar Energy Coöperatief U.A. (“AES Solar”) and Ampere Equity Fund B.V. (“Ampere”).¹⁷ AES Solar and Ampere had made investments in Spain in 2007 and sought to recover the reduced value of their investments when the Spanish government rescinded the favorable programs.¹⁸

AES Solar and Ampere based their claim against Spain on the arbitration clause of the Energy Charter Treaty (ECT).¹⁹ In 1994, the European Union, its Member States, and 40 other countries around the world signed the ECT to promote long-term cooperation in the energy field.²⁰ The ECT’s primary object was to encourage foreign investment in the energy sector by “establish[ing] a legal framework in order to promote long-term cooperation in the energy field, based on

¹⁴ Borja Fernandez de Troconiz & Alex Ferreres, *Spain Withdraws from the Energy Charter Treaty*, LINKLATERS (May 21, 2024), <https://www.linklaters.com/insights/blogs/arbitrationlinks/2024/may/spainectwithdrawal>.

¹⁵ Borja Fernandez de Troconiz & Alex Ferreres, *Spain Withdraws from the Energy Charter Treaty*, LINKLATERS (May 21, 2024), <https://www.linklaters.com/insights/blogs/arbitrationlinks/2024/may/spainectwithdrawal>.

¹⁶ 1 LAW OF INDEPENDENT POWER § 3:19 (2025).

¹⁷ *Blasket Renewable Invs., LLC v. Kingdom of Spain*, 665 F. Supp. 3d 1, 7 (D.D.C. 2023), rev’d and remanded sub nom; *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1088.

¹⁸ *Blasket Renewable Invs., LLC*, 665 F. Supp. 3d at 5, rev’d and remanded sub nom. *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1088.

¹⁹ *Id.*

²⁰ Rafael Murillo & Laura Lozano, *Spain Withdraws from the Energy Charter Treaty*, FRESHFIELDS (May 31, 2024), [https://riskandcompliance.freshfields.com/post/102j8xq/spain-withdraws-from-the-energy-charter-treaty#:~:text=On%2014%20May%202024%2C%20the,environmental%20aspects%20\(the%20Protocol\)](https://riskandcompliance.freshfields.com/post/102j8xq/spain-withdraws-from-the-energy-charter-treaty#:~:text=On%2014%20May%202024%2C%20the,environmental%20aspects%20(the%20Protocol)).

complementarities and mutual benefits”²¹ As such, the ECT provides substantive protection for foreign investors and their investments.²² In addition, the ECT gives parties the power to arbitrate; contracting parties give “unconditional consent to the submission of a dispute to international arbitration or conciliation” through Article 26(3)(a).²³ However, arbitrations are limited for countries, such as Spain, that are provided in Annex ID who do not allow investors to resubmit the same dispute to international arbitration at a later stage.²⁴

While the companies secured a preliminary award from an arbitration in Switzerland,²⁵ the companies have yet to receive it due to obstacles in finding a forum to enforce the award. Citing the principle that member countries are not allowed to violate EU laws, the Court of Justice of the European Union (“CJEU”) denied the enforcement of the arbitration as it would violate the treaty obligations of EU Member States to “uphold ‘the autonomy of the EU and its legal order.’”²⁶ The CJEU based their decision on the 2018 case *Achmea B.V. v. Slovak Republic* where they held EU Member States are prohibited from entering into bilateral treaties that allow for disputes “which may concern the application or interpretation EU law” to be removed to arbitration in disputes as it created the risk of inconsistent application of EU law.²⁷ The CJEU extended the *Achmea* rule to apply to multilateral treaties containing arbitration agreements in the 2021 case *Republic of Moldova v. Komstroy*.²⁸

Unable to enforce an arbitration award in the EU, in 2021 the companies turned to the District Court of D.C. to enforce their arbitral award against Spain instead.²⁹ While the U.S. is not a signatory to the ECT, it has the obligation to enforce certain arbitral awards due to its status as a signatory to the ICSID Convention and the New York Convention.³⁰ Spain has moved to dismiss the case

²¹ Energy Charter Treaty art. 2, Dec. 17, 1994, 2080 U.N.T.S. 95; *see also* Matthew T. Parish & Charles B. Rosenberg, *An Introduction to the Energy Charter Treaty*, 20 AM. REV. INT’L ARB. 191, 191 (2009).

²² *See* Energy Charter Treaty art. 13, 10(1), Dec. 17, 1994, 2080 U.N.T.S. 95; *see also* Lucy Reed & Lucy Martinez, *The Energy Charter Treaty: An Overview*, 14 ILSA J. INT’L & COMP. L. 405, 407–14 (2008).

²³ Energy Charter Treaty art. 26(3)(a), Dec. 17, 1994, 2080 U.N.T.S. 95.

²⁴ Energy Charter Treaty art. 26(3)(b)(i), annex ID, Dec. 17, 1994, 2080 U.N.T.S. 95.

²⁵ *Blasket Renewable Invs., LLC*, 665 F. Supp. 3d at 5, rev’d and remanded sub nom; *NextEra Energy Glob. Holdings B.V.*, 112 F.4th 1088.

²⁶ *Id.*

²⁷ Case C-284/16, *Slowakische Republik v. Achmea BV*, ECLI:EU:C:2018:158, ¶ 55 (Mar. 6, 2018).

²⁸ Case C-741/19, *République de Moldavie v. Komstroy LLC*, ECLI:EU:C:2021:655, ¶¶ 64–66 (Sep. 2, 2021).

²⁹ *Blasket Renewable Invs., LLC*, 665 F. Supp. 3d at 6, rev’d and remanded sub nom; *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1088.

³⁰ *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1093.

on four grounds: 1) lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act, 2) refusal of enforcement of the award under the New York Convention, 3) violation of the foreign sovereign compulsion doctrine, and 4) dismissal under the doctrine of *forum non conveniens*.³¹ Following conflicting decisions from the district courts,³² the D.C. Court of Appeals entertained the questions of 1) the jurisdiction of the district courts to enforce the arbitration awards against Spain and 2) the power of the district courts to enjoin Spain from seeking anti-suit relief in foreign courts.³³ Of the two questions, this note focuses on the jurisdiction question.

The D.C. Circuit Court held that the district courts had jurisdiction under the FSIA's arbitration exception.³⁴ Citing the FSIA arbitration exception in 28 U.S.C. § 1605(a)(6), the Court explained the district court must find “(1) an arbitration agreement, (2) an arbitration award, and (3) a treaty potentially governing award enforcement” to proceed under the arbitration exception.³⁵ Responding to the Spanish government's denial of the existence of an arbitration agreement, the court held arbitration provisions in an investment treaty can constitute an agreement “for the benefit” and an agreement “with” the private party to arbitrate, and they act as “a unilateral offer to arbitrate.”³⁶ Therefore, the ECT “manifest[ed] . . . [Spain's] consent to arbitrate,” thereby bringing it under arbitration exception of the FSIA.³⁷

III. ANALYSIS

The following analysis provides an overview of the important questions raised in the realm of international arbitration by the D.C.'s Circuit Court's decision. This

³¹ *Blasket Renewable Invs., LLC*, 665 F. Supp. 3d at 7, rev'd and remanded sub nom; *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1088.

³² Compare *Nextera Energy Glob. Holdings B.V. v. Kingdom of Spain*, 656 F. Supp. 3d 201, 214 (D.D.C. 2023), aff'd in part, rev'd in part and remanded, *NextEra Energy Glob. Holdings B.V.*, 112 F.4th 1088 (“[T]he court finds that it has jurisdiction over Spain under the FSIA's arbitration exception, 28 U.S.C. § 1605(a)(6), and rejects this basis for Spain's motion to dismiss”) and *9REN Holding S.Á.R.L. v. Kingdom of Spain*, No. 19-CV-01871 (TSC), 2023 WL 2016933, at *3 (D.D.C. Feb. 15, 2023), rev'd and remanded sub nom. *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th at 1088 (“The court concludes that it has jurisdiction under the FSIA's arbitration exception.”) with *Blasket Renewable Invs., LLC*, 665 F. Supp. 3d at 12, rev'd and remanded sub nom. *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1088 (“Spain lacked the legal authority to make a standing offer to arbitrate to the Companies under the law that applies to both parties... As such, this Court cannot establish jurisdiction under [the] FSIA [arbitration] exception.”)

³³ *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1099.

³⁴ *Id.* at 1105

³⁵ *Id.* at 1100

³⁶ *Id.* at 1101–02 (quoting *BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 50 (2014)).

³⁷ *Id.* at 1102.

Note limits the analysis to three major questions: (1) the waiver of sovereign jurisdictional immunity by a sovereign's agreement to the ICSID Convention; (2) the validity of the ECT's arbitration clause in the presence of conflicting intra-EU and international obligations; and (3) the implications of forum shopping in diverging arbitral award enforcement schemes between the EU and the U.S.

To answer the above questions, this Note focuses on the analysis of jurisdictional sovereign immunity after *Achmea* and *Komstroy* from three courts: the Supreme Court of the United Kingdom, the Federal Court of Australia, and the High Court of Singapore. All three courts held that Spain had waived its sovereign immunity by acceding to the ICSID convention.³⁸ From the three courts' judgments, this Note examines three common themes that are applicable to the U.S. Supreme Court's understanding of the jurisdiction issue: ICSID's function as a closed jurisdiction, the function of the ECT as a valid arbitration agreement, and the internal features of the EU legal order.

A. The ICSID Convention as a Means for the Waiver Exception

Questions remain whether a sovereign's agreement to the ICSID Convention grants district courts jurisdiction in the enforcement of arbitral awards under the waiver exception of the FSIA.³⁹ The waiver exception provides that foreign states are not immune from the jurisdiction of U.S. courts in cases "in which the foreign state has waived its immunity either explicitly or by implication."⁴⁰

The companies contend Spain implicitly waived its immunity by ratifying the ICSID and New York Conventions by "mutually agreeing with other sovereigns to enforce arbitral awards rendered in disputes to which any signatory is a party."⁴¹ The companies emphasize the agreement in Article 54 of the ICSID Convention to recognize an ICSID award as "binding and enforce the pecuniary obligations imposed by that award ... as if it were a final judgment of a court in that State" shows Spain must have contemplated enforcement actions in other contracting States.⁴²

The D.C. Circuit Court declined to rule on the applicability of the waiver exception in the enforceability of Spain's arbitration award as they found jurisdiction under the arbitration exception.⁴³ However, the D.C. Circuit Court cites

³⁸ *Infrastructure Services Luxembourg SÀRL v. Kingdom of Spain*, [2026] 2 WLR 581, [144] (U.K. Sup. Ct.); *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*, [2026] SGHC 43 [71–74] (Sing.); *Blasket Renewable Investments LLC v. Kingdom of Spain* [2025] FCA 1028, [8] (Austl.).

³⁹ Brief for Petitioner at 1–3, *Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130 (May 1, 2025).

⁴⁰ 28 U.S.C. § 1605(a)(1).

⁴¹ *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1099.

⁴² Brief for Respondents, *supra* note 43, at 26.

⁴³ *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1099.

the Second Circuit’s decision in *Blue Ridge Invs., LLC v. Republic of Argentina* to suggest ratification of the ICSID Convention and New York Convention shows a “country implicitly waive[d] its sovereign immunity from suits seeking to enforce awards under that convention.”⁴⁴

On the issue of implicit waiver of jurisdictional immunity under the ICSID Convention, opinions from the U.K., Singaporean, and Australian courts suggest the waiver exception should grant jurisdiction within the United States. By analyzing articles 53 to 55 of the ICSID Convention, the U.K. Supreme Court held that sovereign states waived their adjudicative immunity by agreeing to arbitrate under the ICSID convention.⁴⁵ First focusing its analysis on the plain language of article 54(1), the U.K. Supreme Court reasoned signatory states of the ICSID convention not only have an obligation to “recognise and enforce ICSID awards,” but also to recognize and enforce awards from other countries as if it was a judgment from its own courts.⁴⁶ Such obligation, the U.K. Supreme Court states, would be “inconsistent with the preservation of adjudicative immunity.”⁴⁷ While the U.K. Supreme Court notes that immunity from execution is expressly preserved in article 55,⁴⁸ they held that there was no basis for limiting the waiver of adjudicative immunity found in article 54(1) to awards against private investors.⁴⁹

The U.K. Supreme Court also examined the treaty context and the purpose for the ICSID Convention to examine jurisdictional immunity under the ICSID Convention. The U.K. Supreme Court held that article 54 is part of a “self-contained scheme or closed scheme” which a national court may not re-examine.⁵⁰ Because of the self-contained nature of the ICSID Convention, the U.K. Supreme Court noted domestic courts cannot “refuse to enforce an authenticated ICSID award on grounds of national or international public policy”⁵¹ nor on the basis of jurisdiction or competence.⁵² Furthermore, preservation of adjudicative immunity would render the ICSID Convention’s purpose of “encourag[ing] the flow of private investment and provide protection against sovereign risk” valueless.⁵³ Thus, the U.K. Supreme Court held that Article 54(1) acts as a “clear and unequivocal submission to the adjudicative jurisdiction of the English courts for the purposes of recognising and enforcing the arbitral awards.”⁵⁴

⁴⁴ *Id.* (Citing *Blue Ridge Invs., LLC v. Republic of Argentina*, 735 F.3d 72, 84 (2d Cir. 2013))

⁴⁵ *Infrastructure Services*, [2026] 2 WLR 581, [73-79].

⁴⁶ *Id.* at [82].

⁴⁷ *Id.*

⁴⁸ *Id.* at [85-88].

⁴⁹ *Id.* at [84].

⁵⁰ *Id.* at [98].

⁵¹ *Id.*

⁵² *Id.* at [99].

⁵³ *Id.* at [106-18].

⁵⁴ *Id.* at [118].

The Singapore High Court also held that Spain had submitted itself to the jurisdiction of other courts by entering into the ICSID Convention.⁵⁵ As the U.K. Supreme Court did, the Singapore High Court reasoned that article 54 of the ICSID “bound each Contracting Party to recognise and enforce ICSID awards” and thereby “submitted [each Contracting Party] to the jurisdiction of the courts of the other Contracting Parties for that purpose.”⁵⁶ Citing precedent from the Court of Appeals that held ICSID Convention creates “a self-contained system that is not subject to review by national courts,”⁵⁷ the Court held the ICSID Convention acts as written agreement showing a Contracting Party’s express submission to the jurisdiction of its courts.⁵⁸

The Australian High Court similarly held that Spain waived its immunity for the purpose of recognizing and enforcing ICSID awards in Australia by agreeing to the ICSID Convention.⁵⁹ The Australian High Court added that a tribunal’s determination of its jurisdiction does not need to be proven correct for an ICSID award to be binding.⁶⁰ Lending provisions from sections 33 and 34 of the International Arbitration Act of 1974 that ICSID awards are binding and can only be challenged or appealed as provided in the ICSID, the Australian High Court affirmed that the “closed-loop system,” the ICSID Convention’s exclusive review mechanism provided in articles 50 to 52, only allows for internal review, not a challenge in the court system.⁶¹ The Australian High Court’s holding echoes the U.K. and Singaporean Court’s pro-enforcement stance as it affirms the obligation of Australia and Spain in recognizing arbitral awards as if it was a judgment from their domestic courts.⁶²

B. The Arbitration Exception and Resolving Conflict between EU and International Law

Questions also remain as to the scope of the arbitration exception to sovereign immunity under the FSIA. U.S. courts have jurisdiction over sovereign states in cases

⁵⁵ *NextEra Energy Global Holdings B.V.*, [2026] SGHC 43 [71–74].

⁵⁶ *Id.* at [71].

⁵⁷ *The Republic of India v Deutsche Telekom AG*, [2024] 1 SLR 56 [123] (Sing.).

⁵⁸ *NextEra Energy Global Holdings B.V.*, [2026] SGHC 43, [71].

⁵⁹ *Blasket Renewable Investments LLC*, [2025] FCA 1028 [8] (Austl.).

⁶⁰ *Id.* at [81].

⁶¹ *Id.*

⁶² Leon Chung et al, *Waiving Goodbye to Immunity: A Case Note on Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028, HERBERT SMITH FREEHILLS KRAMER, (Dec. 18, 2025), <https://www.hsfkramer.com/insights/2025-12/waving-goodbye-to-immunity-a-case-note-on-blasket-renewable-investments-llc>.

in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if . . . the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards.⁶³

To proceed under the FSIA's arbitration exception, the D.C. Circuit ruled in *Chevron Corp v. Ecuador* and *LLC SPC Stileks v. Republic of Moldova* that a district court applies a burden-shifting framework to find three "jurisdictional facts:" (1) an arbitration agreement, (2) an arbitration award, and (3) a treaty potentially governing award enforcement.⁶⁴ While Spain does not contest that there was an arbitration award and a treaty potentially governing award enforcement, it argues that an arbitration agreement does not exist as it did not enter into an arbitration agreement "with" the companies.⁶⁵ Spain contends § 1605(a)(6) does not apply unless the sovereign consented to arbitrate differences between itself and the plaintiff.⁶⁶

The D.C. Circuit Court held that while an investment treaty "cannot constitute an agreement to arbitrate with an investor," an arbitration provision meets the plain text of the FSIA's arbitration exception.⁶⁷ An investment treaty can constitute an agreement "for the benefit" of a private party and give rise to a separate agreement "with" a private party.⁶⁸ Because the investment treaty's arbitration provision operates as each sovereign's "unilateral offer to arbitration" to investors, the investment treaty may show the sovereign's consent to arbitration "for the benefit of" private investors.⁶⁹ The Companies further emphasize Spain agreed to arbitrate

⁶³ 28 U.S.C. § 1605(a)(6).

⁶⁴ *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1100 (Citing *Chevron Corp.*, 795 F.3d at 204 & n.2 and *Stileks*, 985 F.3d at 877).

⁶⁵ *Id.* at 1102.

⁶⁶ Brief for Petitioner at 19, *Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130 (May 1, 2025).

⁶⁷ *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1101.

⁶⁸ *Id.*

⁶⁹ *Id.* at 1102.

with them because Spain “unconditional[ly] consent[ed] to arbitrate “[d]isputes between a Contracting Party and an Investor of another Contracting party.”⁷⁰

Spain contends that even if the investment treaty showed an intent to arbitrate with private investors, the offer to arbitrate in Article 26 of the ECT does not extend to EU investors as *Komstroy* does not permit intra-EU arbitration.⁷¹

However, the D.C. Circuit Court held Spain’s agreement to arbitrate “for the benefit” of some investors under the ECT is enough to establish the district court’s jurisdiction to enforce an arbitral award and does not require a court’s inquiry into separate arbitration agreements with private parties.⁷² The Court reiterated that a sovereign’s argument of the scope of the relevant investment treaties’ arbitration provisions was a merit question for the enforceability of the arbitral awards, not a jurisdictional question.⁷³

The Companies further contend that the intra-EU arbitration exception is not a valid way of blocking enforcement of arbitral awards for EU investors as the ECT does not contain a carveout provision for EU investors.⁷⁴ Rather, they emphasize that while a “disconnection clause” to govern relationships between the EU Member States was proposed, the provision was “ultimately dropped from the draft treaty.”⁷⁵

The Companies contend that international law obligations gives jurisdiction under the ICSID Convention.⁷⁶ While Spain may contend internal EU law prohibits an arbitration agreement, the Companies point to the Second Circuit’s holding that signatory states waived their immunity by ratifying the ICSID Convention to purport the Court “shouldn’t intervene to continue entertain[ing] Spain’s requests to break its obligations in the hopes that the U.S. courts will break their[] [international obligation].”⁷⁷ Furthermore, the Companies cite the § 115(1)(b) of the Restatement (Third) of Foreign Relations Law that even if a state declines to give a treaty effect domestically due to a conflict between its international treaty obligations and internal law, “the state’s international obligations remain.”⁷⁸

The decisions from Singapore and Australia also lend insight into resolving the conflict created between the EU legal order and international law. An important objection to jurisdiction is that the EU states could not have agreed to an arbitration

⁷⁰ Brief for Respondent at 24, *Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130 (May 1, 2025) (Citing Energy Charter Treaty art. 26(1), 3(a), Apr. 16, 1994, 2080 U.N.T.S. 100).

⁷¹ *NextEra Energy Glob. Holdings B.V.*, at 1102.

⁷² *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1102-03.

⁷³ *Id.* at 1103.

⁷⁴ Respondent Brief P.24

⁷⁵ *Id.*

⁷⁶ Respondent Brief P.13

⁷⁷ *Id.*

⁷⁸ Respondent Brief P.24

agreement as they are unable to do so under *Achmea* and *Komstroy*. However, in their pro-enforcement judgments, the Singaporean High Court and the Australian High Court both held that the internal EU legal order could not be held to be more important than international law.⁷⁹

The Australian High Court rejected Spain's argument that the prohibition of arbitration between EU investors and EU Member States under the ECT made the award invalid.⁸⁰ While the Australian High Court acknowledged the obligation Spain has to other EU Member States in upholding the EU Law, the court held that this obligation does not modify its international obligations under the ICSID Convention.⁸¹ The Australian Court emphasized that an agreement within the EU does not bind a court outside of EU jurisdiction.⁸²

The Singaporean High Court similarly rejected Spain's intra-EU objection.⁸³ Spain argued that even if it had offered to arbitrate intra-EU disputes, "EU law operates to prevent any valid arbitration agreement from arising."⁸⁴ The Singaporean High Court emphasized that subsequent intra-EU treaties did not modify the agreement set out in the ECT,⁸⁵ and that the primacy of EU law "only operates within the EU system."⁸⁶ Therefore, the Singaporean High Court's decision echoes the Australian High Court's holding that EU law is not binding over international law in third-State courts, and courts must uphold multilateral treaties such as the ECT and the ICSID Convention according to their terms outside the EU.⁸⁷

Additionally, the Singaporean High Court rejected Spain's argument that Article 26 of the ECT was not a valid offer to arbitrate.⁸⁸ The Singaporean High Court reasoned that 1) despite the EU's participation in the ECT, the ECT acted as if individual member states had independently ratified the ECT, 2) the plain

⁷⁹ *Singapore Addresses Intra-EU Objection for the First Time: DNZ v DOA and NextEra v Spain*, HERBERT SMITH FREEHILLS KRAMER, (Apr. 10, 2026), <https://www.hsfkramer.com/notes/arbitration/2026-04/singapore-addresses-intra-eu-objection-for-the-first-time-dnz-v-doa-and-nextera-v-spain>; Andrew McDade et al, *Blasket Renewable Investments LLC v. Kingdom of Spain* [2025] FCA 1028, (Dec. 19 2025), <https://www.hfw.com/insights/blasket-renewable-investments-llc-v-kingdom-of-spain-2025-fca-1028/>.

⁸⁰ *Blasket Renewable Investments LLC v. Kingdom of Spain* [2025] FCA 1028 (Austl.).

⁸¹ *Id.* at [220].

⁸² *Id.* at [221].

⁸³ *NextEra Energy Global Holdings B.V.*, [2026] SGHC 43 [122] (Sing.).

⁸⁴ *Id.* at [107].

⁸⁵ *Id.* at [116].

⁸⁶ *Id.* at [117].

⁸⁷ *Singapore Addresses Intra-EU Objection for the First Time: DNZ v DOA and NextEra v Spain*, HERBERT SMITH FREEHILLS KRAMER, (Apr. 10, 2026), <https://www.hsfkramer.com/notes/arbitration/2026-04/singapore-addresses-intra-eu-objection-for-the-first-time-dnz-v-doa-and-nextera-v-spain>.

⁸⁸ *NextEra Energy Global Holdings B.V.*, at [123].

meaning of Article 26 applies to all investors and does not carve out intra-EU investors, and 3) subsequent agreements were not unanimously agreed so did not affect the original agreement.⁸⁹ The Court also emphasized that Spain had individual obligations under the ECT by being a separate Contracting Party to it.⁹⁰

IV. RECOMMENDATIONS

The D.C. Circuit’s decision in *NextEra Energy Global Holdings B.V. v. Kingdom of Spain* raises important questions in clarifying the role of sovereign immunity in arbitration.

Questions continue to remain on the implication of the arbitration frameworks in cases of sovereign immunity exceptions within U.S. courts. By interpreting the agreement to the ICSID convention as an implied waiver of sovereign immunity, courts from the U.K., Australia, and Singapore affirmed their domestic jurisdiction over Spain. In the current case, the D.C. Circuit Court declined to clarify on the waiver exception.⁹¹ The D.C. Circuit Court mentions its dicta opining the Second Circuit’s “correct” decision in *Seetransport Wiking Trader Schiffahrtsgesellschaft MbH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala and Uzinexportimport* that the “a foreign sovereign waives sovereign immunity when it joins the New York Convention”⁹² and a more recent decision in which it held a similar judgment in an unpublished opinion.⁹³ However, it also notes that it had “not formally adopted [the Second Circuit’s decision in *Seetransport*]” and the United States urged it not to do so.⁹⁴ As such, the application of the ICSID Convention to the FSIA’s waiver exception is currently ambiguous. Not only does the D.C. Circuit Court fail to answer the implication of a State’s agreement to the ICSID Convention on jurisdictional immunity, but questions remain on if the waiver exception will also apply to other arbitral frameworks such as the New York Convention.⁹⁵ Clarification is warranted on the scope of the waiver exception’s

⁸⁹ *Id.* at [120].

⁹⁰ *Id.* at [121].

⁹¹ *NextEra Energy Glob. Holdings B.V.*, 112 F.4th at 1100.

⁹² *Id.* (Citing *Creighton Ltd. v. Gov’t of State of Qatar*, 181 F.3d 118, 119 (D.C. Cir. 1999))

⁹³ *Id.* (Citing *Tatneft v. Ukraine*, 771 F. App’x 9 (D.C. Cir. 2019))

⁹⁴ *Id.* (Citing *Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 27 F.4th 771, 774 (D.C. Cir. 2022))

⁹⁵ In *CCDM Holdings LLC v The Republic of India* [2026] HCA 9 (Austl.), the High Court of Australia declined to extend its holding in *Blasket Renewable Investments LLC v Kingdom of Spain* to the New York Convention. Instead, the High Court of Australia held that “ratification of the New York Convention, by itself, is not a sufficient act of waiver of foreign State immunity.” *CCDM Holdings LLC v The Republic of India* [2026] HCA 9 [42] (Austl.).

impact on the “two principle treaties governing the enforcement of international arbitral awards in foreign jurisdictions.”⁹⁶

Likewise, further clarification is needed on whether the implied waiver exception also applies to other international arbitration frameworks. In granting domestic jurisdiction from the ICSID Convention, the U.K. and Singaporean Courts emphasized the “self-contained or closed scheme” of the ICSID Convention granting domestic jurisdiction for enforcement of the awards.⁹⁷ The self-contained nature of the ICSID Convention “precludes dissatisfied parties from challenging awards other than as provided for in the Convention.”⁹⁸ However, drawing on precedents from the U.K. Court, the U.K. and Singaporean Courts do not extend such arguments to arbitral awards under the New York Convention, and rather, draws a distinction between the two arbitration schemes in their enforcement and review of arbitration awards.⁹⁹ Questions remain whether these differences are sufficient to deny implicit waivers of jurisdictional immunity for arbitral awards given under the New York Convention.

Additionally, the case also raises important questions on the possibility of forum-shopping due to the divergence in the enforcement of intra-EU arbitration awards between the U.S. and the EU. Contrary to the EU’s “progressive[] dismantl[ing of] arbitration mechanisms that circumvent EU judicial oversight,” the U.S. continue to show its strong pro-arbitration stance by enforcing awards.¹⁰⁰ The divergence on arbitration enforcement between the EU and U.S. raises questions of legal fragmentation and its impact on jurisdictional planning of investors.¹⁰¹ Spain describes the current case as an “overt case of forum-shopping,”¹⁰² and emphasizes that while cases invoking the FSIA arbitration exception or a major arbitration treaty has risen from 21 confirmation cases filed between 2000 and 2005 to nearly 300 filed from 2020 to April 2025.¹⁰³ The Clarification is warranted on the impact of jurisdictional problems due to the

⁹⁶ Matthew H. Kirtland and Katie Connolly, *A comparison of the enforcement regimes under the New York and Washington Conventions – A tale of two cities*, Norton Rose Fulbright (May 2018), <https://www.nortonrosefulbright.com/en/knowledge/publications/04f14b2a/a-comparison-of-the-enforcement-regimes-under-the-new-york-and-washington-conventions-mdashbra-tale-of-two-cities>.

⁹⁷ *Infrastructure Services Luxembourg SÀRL*, [2026] 2 WLR 581 UKSC at [98]; *NextEra Energy Global Holdings B.V.*, [2026] SGHC 43 at [72].

⁹⁸ *NextEra Energy Global Holdings B.V.*, [2026] SGHC 43 at [85].

⁹⁹ *Infrastructure Services Luxembourg SÀRL*, [2026] 2 WLR 581 UKSC at [98]; *Id.* at [49].

¹⁰⁰ Mihreteab Taye, *Transatlantic Divergence in Arbitration: Contrasting Enforcement Approaches of the CJEU and U.S. Courts*, 58 INT’L LAW. 433, 434 (2025).

¹⁰¹ *Id.* at 437-38.

¹⁰² Brief for Petitioner at 23, *Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130 (May 1, 2025).

¹⁰³ *Id.*

current divergence in legal framework between the EU and the U.S. and how U.S. courts may address such problems if they exist.

V. CONCLUSION

The case *Kingdom of Spain v. Blasket Renewable Investments LLC* provided an important opportunity for the Supreme Court to define the jurisdictional limits of U.S. courts. Narrowly, the case could have resolved questions on exceptions to sovereign immunity under the FSIA. Broadly, the case had the potential to provide a legal framework for investors navigating the diverging landscape between the EU and U.S. courts. In its amicus brief for the case, the EU noted the case and its implications hold “exceptional importance” to the EU,¹⁰⁴ and that the D.C. Circuit Court’s holding may “fuel decades of disruption for the EU.”¹⁰⁵ It remains to see if a future decision will expand upon this debate to clarify the remaining ambiguities surrounding the requirements of the arbitration and waiver exceptions of the FSIA.

¹⁰⁴ Brief for the European Commission as Amicus Curiae Supporting Petitioner, *Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130, at 2-3 (Jun. 4, 2025).

¹⁰⁵ *Id.*