

Partner James Rogers Discusses European Commission Rules Antin Award in ICLG

News

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By: James Rogers

The European Commission has ruled that Spain's obligation to pay EUR 101 million in compensation to Antin Infrastructure Services, as required by an arbitration award rendered under the Energy Charter Treaty, constitutes unlawful and incompatible state aid under EU law. The Commission has directed Spain not to comply with the award and to resist its enforcement.

Partner James Rogers recently spoke with ICLD about the decision, noting that it “follows the CJEU's findings in Achmea and Komstroy, which established that intra-EU investor-State arbitration is incompatible with EU law. In these cases, the CJEU emphasised that such arbitral proceedings undermine the autonomy of the EU and infringe upon the jurisdiction of the CJEU. Essentially, the CJEU found that it was for the European courts to decide questions of EU law, which should not be left to arbitrators acting under investment treaties and outside the European legal system.”

As James explains, in Antin, the European Commission has extended the principle established in Achmea and Komstroy, finding that Spain’s payment of the award would therefore breach Article 107(1) TFEU on state aid, distorting competition and being incompatible with the internal market.

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