

- **Landlord Exit** - Some landlords may choose to sell their properties rather than deal with the increased complexities and risks associated with longer tenancies.
- **Increased Investor Caution** - Property investors, who often rely on rental income, may become more cautious about entering the market due to the perceived uncertainties.
- **Increased costs** - Landlords are likely to make more use of lawyers to get tenancy documentation right, incur greater legal costs in evicting tenants and this increase may well also be reflected in higher insurance premiums.

Impact on the Legal Profession

Housing Lawyers will need to be braced for the changes. There are likely to be a flurry of landlords serving section 21 notices before any changes take effect, and once changes come into force there is likely to be an increase in contested court hearings, and therefore increased demand for legal services. Legal Aid for housing

claims has been cut significantly over the years, and there is likely to be an upsurge in the amount of tenants appearing as litigants in person. Housing Lawyers will also need to ensure their clients are making use of any new Ombudsman Scheme where applicable.

Impact on Private tenants

The abolition of Section 21 may also influence the types of tenant's landlords are willing to accept. To mitigate risks, landlords might:

- **Prioritize professional tenants** - Those with stable incomes and strong rental history may be favoured.
- **Increase screening processes** - More rigorous checks on potential tenants' financial situations, employment history, and references could become commonplace.
- **Require guarantors or larger deposits** - To reduce the risk of rent arrears, landlords may demand guarantors for tenants or even greater security deposits.

- **Pass increased costs onto tenants** - increased legal costs, screening fees and insurance premiums are likely to be passed onto tenants by landlords in the form of higher rents.

These changes could disproportionately affect young people, those on low incomes, or individuals with less traditional employment, limiting their housing options. The private rented sector will undergo a period of significant change. The success of the reforms will depend on a careful balance between the rights of landlords and tenants, as well as effective implementation and enforcement.

Ironically, the changes may well create a tighter rental market, potentially driving up rents and reducing tenant choice. Disputes may also end up taking longer if an Ombudsman Scheme is not properly funded; the government must be wary of the law of unintended consequences.

Farhan Asghar, CEO, The Solicitors, Advocates & Barristers Inc



The Rise of the English Jurisdiction as Europe's Leading Venue for Arbitration Award Enforcement Against Recalcitrant EU States.

In the grand tradition of British legal fortitude, one cannot help but acknowledge the unbeatable supremacy of London in enforcing arbitration awards against the sometimes capricious EU member states in the international scenario. It is an irony, indeed, that while our continental brethren embroil themselves in bureaucratic entanglements and juridical contortions, London remains an unassailable stronghold of legal integrity and reliability. Nowhere is this more evident than in the context of arbitration awards, where the English courts stand unmarred by the political machinations of the EU's Nomenklatura.

By **Josep Galvez**, Barrister at 4-5 Gray's Inn Square Chambers and former Spanish Judge.

To grasp the paramount importance of English jurisdiction, one must first cast a discerning eye over the travails faced by claimants in other venues. Take, for instance, the Arbitration Institute of the Stockholm Chamber of Commerce—a venue ostensibly esteemed but, in reality, a tangle of legal uncertainties. The Svea Court of Appeal, under the pall of the European Court of Justice's (CJEU) doctrines in *Achmea* and *Komstroy* judgements, has shown a propensity to uphold decisions that are inimical to the principles of fair investment arbitration as it will be examined below.

As is well known, in the case of *Achmea B.V. v. The Slovak Republic* (C-284/16)

ECLI:EU:C:2018:158, the CJEU held on 6 March 2018 that arbitration clauses in bilateral investment treaties (BITs) between EU member states are incompatible with EU law. This decision has been nothing short of a seismic tremor, reverberating through the chambers of arbitration across the EU. The ripple effects were felt in *Komstroy LLC v. Moldova* (C-741/19) *ECLI:EU:C:2021:655*, where the CJEU extended its reasoning to the Energy Charter Treaty (ECT), further unsettling the arbitral landscape. These decisions have significantly impacted the enforcement of arbitration awards in other European venues, leading to legal uncertainties and challenges.

The English Courts: A Beacon of Judicial Prudence

Against this backdrop, the English jurisdiction emerges as a paragon of judicial prudence in Europe. With its storied tradition of upholding the integrity of international commitments, the English courts provide a secure haven for those seeking justice against rebellious EU member states. The *Micula* case serves as a sterling example. In *Micula & Ors v Romania* [2017] EWHC 31 (Comm), a judgment dated 20 January 2017, Blair J dismissed Romania's application to set aside registration despite the State and the European Commission's objections. Ultimately, the UK Supreme



Court in *Micula & Ors v Romania* [2020] UKSC 5 allowed the enforcement of the arbitration award in favour of the Micula brothers, rooted in upholding international arbitration agreements, as enshrined in the Arbitration Act 1996 and the ICSID Convention. The Court underscored that “the duty of sincere cooperation is not applicable in this case and there is no impediment to the lifting of the stay, which is an unlawful measure in international law and unjustified and unlawful in domestic law.” [118].

On 14 March 2024, the subsequent CJEU decision against the UK in *European Commission v United Kingdom*, Case C-516/22 ECLI:EU:C:2024:231, accentuated the dogmatic and blind adherence to the EU’s *diktat*. Indeed, this interventionist stance disregarded the nuanced and complex realities of international legal commitments while raising significant concerns about the EU’s respect for its member states’ judicial systems’ sovereignty and willingness to compromise international legal principles for rigid regulatory uniformity.

The Swedish Courts: A Study in Contrast

Conversely, the Swedish courts have yet to show such fortitude. On the contrary, Sweden’s Svea Court of Appeal has actively annulled several intra-EU investment arbitration awards, spotlighting the ongoing legal tensions between EU law and international arbitration.

Significant cases include the annulment of the award in *Novenergia II v Spain*, Case No. T 4658-18, on 13 December 2022, the Svea Court of Appeal deemed the dispute under the Energy Charter Treaty (ECT) non-arbitrable under EU law, aligning with the Achmea judgment that intra-EU arbitration agreements are incompatible with EU law, similarly, in *CEF Energia BV v Italian Republic*, Case No. T 3229-19, on 28 March 2019, the Svea Court of Appeal again annulled an award binding Italy to pay millionaire compensation to a Dutch investor, citing its incompatibility with EU law. Fur-

ther, on 20 December 2023, the same court annulled an intra-EU investment award in *Festorino Invest Limited and others v. Republic of Poland*, Case No. T 12646-21, because the award violated Swedish public policy due to its conflict with fundamental EU legal principles. Most recently, on March 27, 2024, the Svea Court of Appeal annulled another intra-EU investment arbitration award against Spain in *Triodos SICAV II v. Kingdom of Spain*, Case No. T 15200-22), continuing its established practice of invalidating intra-EU arbitration decisions because they conflict with EU law, leaving claimants perplexed and dismayed.

English Courts and the Inviolability of Arbitral Awards

The divergence in the approaches of the English and continental courts can be attributed to the foundational principles of English law. The doctrine of precedent, the rigorous application of legal principles, and the insulation from the EU’s political influences ensure that the English judiciary remains steadfast in its commitment to justice. This distinction highlights the significance of the English legal system, which prioritises the sanctity of international arbitration agreements over the overarching objectives of the EU, particularly after Brexit. Furthermore, the efficiency of the Commercial Court, the availability of interim relief measures, and the predictability of legal outcomes make London an attractive venue for arbitration enforcement. The case management procedures and the expertise of the judges in handling complex commercial disputes add a layer of reliability.

In *Infrastructure Services Luxembourg and Energia Termosolar v Spain* [2023] EWHC 1226 (Comm), the High Court favoured recognising and enforcing intra-EU awards against Spain issued under the ICSID Convention. Likewise, on 27 March 2023, the High Court allowed the seizure of Spanish assets within its jurisdiction to satisfy the arbitration award rendered under the ECT. This decisive action was taken in response

to Spain’s intransigence in honouring the arbitral award, demonstrating the English courts’ willingness to enforce international arbitration awards with tangible consequences for defaulters.

The Basket case is particularly instructive as it showcases the practical mechanisms available within the English legal system for enforcing arbitral awards. When Spain refused to comply with the arbitral tribunal’s decision, the claimants sought relief from the High Court, which did not hesitate to order the seizure of Spanish assets, including bank accounts and properties held in the UK. This robust enforcement action underscores the efficacy and reliability of the English jurisdiction, offering a clear contrast to the hesitancy and obstructionism encountered in other European courts.

The enforcement of these arbitration awards has led investors to seek court permission to seize state-owned assets. With its definitive position against sovereign immunity claims, London is a prime venue for such enforcement actions. This is evidenced by court orders entitling investors to seize properties of Spanish state organisations like the Instituto Cervantes, the London premises of the country’s language and cultural centre, though Spain’s appeals continue. Therefore, the High Court ruled that intra-EU arbitration decisions can be recognised in the UK, and the seizure of assets is a significant development, potentially exposing other EU nations to similar consequences if they fail to honour investment arbitration awards.

A Broader EU Problem

This scenario is not limited to Spain. Other EU nations, such as Italy and Romania, face multiple claims under the ECT, and countries like the Czech Republic are embroiled in contentious disputes that could lead to asset seizures. The political implications of these cases are substantial, with EU governments wary of the public backlash from paying arbitration debts and the European Commission scrutinizing whether such payments constitute illegal state aid. However, delaying payment only exacerbates the situation, as interest accrues on outstanding debts, complicating the EU’s and its member state’s reputation as a reliable destination for foreign investments.

Spain’s predicament serves as a cautionary tale for other EU nations. As Spain’s appeal in London proceeds, the outcome will likely set a precedent for the vulnerability of state-owned assets across the EU area. The English courts’ unwavering commitment to enforcing arbitration awards and their resistance to political pressures make London the premier venue for such enforcement actions. Investors can rely on the English judiciary’s independence and procedural robustness to ensure justice is served, reinforcing London’s status as the gold standard in international arbitration.

Accordingly, claimants would be well advised to seek refuge in the time-honoured tradition of English justice, where the rule of law reigns supreme and the arbitral process is afforded the respect it duly deserves. For investors and claimants alike, London remains the gold standard, the proper venue where the sanctity of arbitration is upheld and the rule of law remains intact. Thus, as in many other fields, the English jurisdiction stands resplendent in international arbitration amidst the murky waters of the EU’s legal entanglements.

Josep Galvez, Barrister at 4-5 Gray’s Inn Square Chambers and former Spanish Judge