

Legal woe to continue dulling Spanish solar sector

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Both ongoing and fresh legal proceedings will continue to hinder development of Spain's nascent solar sector under the likely new coalition led by the conservative People's Party (PP). Last week 6,000 small investors in Spain's solar sector became the latest consortium to claim for damages at the Supreme Court against losses they suffered after the government retroactively removed support for the sector in 2012. The case was put forward by the National Association of Fotovoltaic Energy Producers (Anpier), represented by the Holtrop firm of lawyers.

The case will decide the rights of the claimants, and have wider consequences for investment in the sector from small-scale producers.

"Confidence may not recover before legal security has been restored to the pioneering 62,000 fotovoltaics families," Miguel Angel Martínez-Aroca, president of Anpier told ICIS.

It will be several years before the case is resolved, according to Daniel Perez, a lawyer at Holtrop.

Spain has 4.5GW of installed solar capacity, according to Anpier. The small-scale solar sector is growing from a tiny base, and the Spanish Photovoltaic Union reported 22MW of "self-consumption" generation capacity was added in 2014.

Sun tax

The claim relates to capacity small-scale producers generate that would have fed into the grid. There has also been opposition to separate legislation dubbed the "sun tax" that taxes small-scale producers of solar power (see EDEM 15 October 2015).

Whether the controversial laws affecting small producers of solar power for self-consumption are amended is dependent on the make-up of the next government.

While all the major opposition has backed reform of the law, the PP is likely to be the largest party in the next governing coalition.

Retroactive removal

Subsequent legal action has been brought against the Spanish government relating to further reform of the renewables sector which began in 2013. The new rules cut generous feed-in tariffs for producers of renewable energy and backdated the cuts by 18 months. This meant it not only reduced future profit expectations, but also obliged operators to repay 18 months worth of subsidies they had already received.

The reform was introduced to tackle the shortfall between costs and income in Spain's energy sector, known as the tariff deficit.

In January, the first of these cases was concluded at Stockholm's arbitration tribunal. It ruled that the Spanish government had not broken international rules under the Energy Treaty Charter when it retroactively removed support for the photovoltaic sector (see EDEM 26 January).

An appeal against this decision will be passed to the Constitutional Court within the next few days, according to Perez, who added it will be a minimum of two years before a resolution is reached.

It is not expected to be successful.

"I don't think [the Constitutional Court] will rule against [PP's legislation]," said Perez.

This decision has not stemmed the stream of new claims made to the World Bank's international arbitration court (ICSID), where most of the outstanding cases will be heard, however. Perez said this reflected the belief that ICSID could rule in favour of investors. jon.stibbs@icis.com