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# THE PROTECTION OF FOREIGN INVESTMENTS AND THE EUROPEAN UNION

Francisco Pascual-Vives  
*Universidad de Alcalá*



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# INDEX

I. BASIC NOTIONS

II. CHALLENGES



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## I. BASIC NOTIONS

### Commercial arbitration

(international dispute between 2 legal persons – private nature)

*Gas Natural/Sonatrach*





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## I. BASIC NOTIONS

### Investment Arbitration

(Legal/moral person/s versus State)

*HC Bank v. Italy*



Hamburg  
Commercial  
Bank





## I. BASIC NOTIONS

### Hybrid Character

Exceptional under Public International Law

*State versus State*

*Individual/s versus State*

Subject/Soggeto/Súbdito versus Sovereign entity?

**INTERNATIONAL RESPONSIBILITY OF THE STATE - COMPENSATION**





## I. BASIC NOTIONS

How was investment arbitration agreed?

Convention for the Settlement of Investment Disputes  
between States and nationals = ICSID Convention

Signed on 1965: Decolonization

In force: Italy (since 28 April 1971)

Spain (since 17 September 1994)



## I. BASIC NOTIONS

What are the implications of the ICSID Convention?

**A) States give up the right to  
exercise diplomatic protection**  
(right of State + exhaustion local remedies)

**B) States allow direct claims from investors**  
(administration: ICSID Secretariat or other entities)



## I. BASIC NOTIONS

### Article 27 of the ICSID Convention

- 1. No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.**
2. Diplomatic protection, for the purposes of paragraph 1, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.





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# I. BASIC NOTIONS

## Diplomatic Protection



Hamburg  
Commercial  
Bank



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## I. BASIC NOTIONS

### Investment Arbitration



**Hamburg  
Commercial  
Bank**





## I. BASIC NOTIONS

### Investment Arbitration

**Opens International Litigation to investors**

But...

What can Italy do if an Italian company is expropriated  
or receives an unfair treatment abroad?

**Article 27 of the ICSID Convention**



## I. BASIC NOTIONS

### Article 27 of the ICSID Convention

1. No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

**2. Diplomatic protection, for the purposes of paragraph 1, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.**





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# I. BASIC NOTIONS

## Diplomatic Protection







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## I. BASIC NOTIONS





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## I. BASIC NOTIONS

### International Litigation (was not a case of diplomatic protection)



Villa Vigoni







## I. BASIC NOTIONS

### Investment Arbitration

# What can investors do?

Bring an international claim before  
an international tribunal  
(*ad hoc* arbitral panel)

# Investment Arbitration

*Arbitral panel – 3 different arbitrators (ICSID administration)*

Case No.	Claimant(s)	Respondent(s)	Status
ARB/20/3	Hamburg Commercial Bank AG	Italian Republic	Pending
ARB/18/20	Veolia Propreté SAS	Italian Republic	Pending
ARB/17/14	Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc	Italian Republic	Pending
ARB/16/39	VC Holding II S.a.r.l. and others	Italian Republic	Pending
ARB/16/5	ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG	Italian Republic	Pending
<a href="#">ARB/15/50</a>	Eskosol S.p.A. in liquidazione	Italian Republic	Pending
ARB/15/40	Belenergia S.A.	Italian Republic	Concluded
ARB/15/37	Silver Ridge Power BV	Italian Republic	Pending
ARB/14/3	Blusun S.A., Jean-Pierre Lecorcier and Michael Stein	Italian Republic	Pending



## I. BASIC NOTIONS

HOW CAN AN INVESTMENT  
TRIBUNAL  
BE CONSTITUTED?

**AD HOC NATURE**

**NOT PERMANENT**





## I. BASIC NOTIONS

### **Arbitral tribunal**

3 arbitrators

Investor (claimant): appoints 1 arbitrator

State (respondent): appoints 1 arbitrator

President of the tribunal: appointed by the latter or by  
an appointing authority



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## I. BASIC NOTIONS



**ICSID**

**International Centre for  
Settlement of Investment Disputes**  
WORLD BANK GROUP



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# I. BASIC NOTIONS



THE CAIRO REGIONAL  
CENTRE FOR INTERNATIONAL  
COMMERCIAL ARBITRATION  
مركز القاهرة الإقليمي  
للتحكيم التجاري الدولي





## I. BASIC NOTIONS

### Article 8.5 of the Italy - Argentina BIT

5. In caso di ricorso all'arbitrato internazionale, la controversia sarà sottoposta, a scelta dell'investitore, a uno degli organismi di arbitrato qui di seguito indicati:

a) al Centro Internazionale per la Risoluzione delle Controversie relative ad Investimenti (I.C.S.I.D.), istituito dalla Convenzione sul "Regolamento delle Controversie relative agli investimenti tra Stati e cittadini di altri Stati", aperta alla firma in Washington il 18 marzo 1965, qualora ognuno dei Paesi parte nel presente Accordo vi avesse aderito. Ove questa condizione non sussista, ciascuna delle Parti Contraenti conferisce il proprio consenso affinché la controversia sia sottoposta ad arbitrato, in conformità alla regolamentazione sui "meccanismi" aggiuntivi per la conciliazione e l'arbitrato del Centro Internazionale per il Regolamento delle Controversie relative ad Investimenti.

b) Ad un Tribunale arbitrale "ad hoc" istituito caso per caso. L'arbitrato si effettuerà secondo il Regolamento Arbitrale della Commissione delle Nazioni Unite sul Diritto Commerciale Internazionale (UNCITRAL), di cui alla Risoluzione dell'Assemblea Generale delle Nazioni Unite 31/98 del 15 dicembre 1976. Gli arbitri saranno in numero di tre e, se non cittadini delle Parti Contraenti, dovranno essere cittadini di Paesi che abbiano relazioni diplomatiche con le Parti Contraenti.



## I. BASIC NOTIONS

### **Italy (11 arbitrations)**

9 ICSID

2 SCC

### **Spain (52 arbitrations)**

38 ICSID

14 non-ICSID (SCC + PCA)



## I. BASIC NOTIONS

**31 December 2019**

1.023 investment arbitrations

763 ICSID arbitrations (74,58 %)

260 non-ICSID arbitrations (25,42 %)



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## I. BASIC NOTIONS

# Quiz





## I. BASIC NOTIONS

**Which are the benefits of investment arbitration for foreign investors?**





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# **Pausa / Domande**





## I. BASIC NOTIONS

**Which are the benefits of investment arbitration for foreign investors?**





## I. BASIC NOTIONS

Investment Arbitration

**Foreign investors AVOID domestic courts**

Time-consuming; (im)partiality; ...





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## I. BASIC NOTIONS

### Investment Arbitration

*How can HC Bank bring an international claim against Italy?*



Hamburg  
Commercial  
Bank







## I. BASIC NOTIONS

**Step 1: Host State accepts investment  
arbitration (gives consent)**







## I. BASIC NOTIONS

### Step 2: Parties to the ICSID Convention





## I. BASIC NOTIONS

**What happens if the States are NOT parties to the ICSID Convention?**



## I. BASIC NOTIONS

### Investment Arbitration

**“Ad hoc” nature = Can be administered OUTSIDE the ICSID framework**





## I. BASIC NOTIONS

**Step 1: CONSENT (most important)**

Step 2: party to the ICSID Convention





How can a State **consent** to international (ICSID or non-ICSID) arbitration?



## I. BASIC NOTIONS

### 1) Domestic legislation:

Article 22 of the Investment Law of  
Venezuela



## 2) Investment Contract

Development of a project (infrastructure)

State - investor



### 3) Multilateral Investment Treaty

Article 26.3.a) of the Energy Charter Treaty

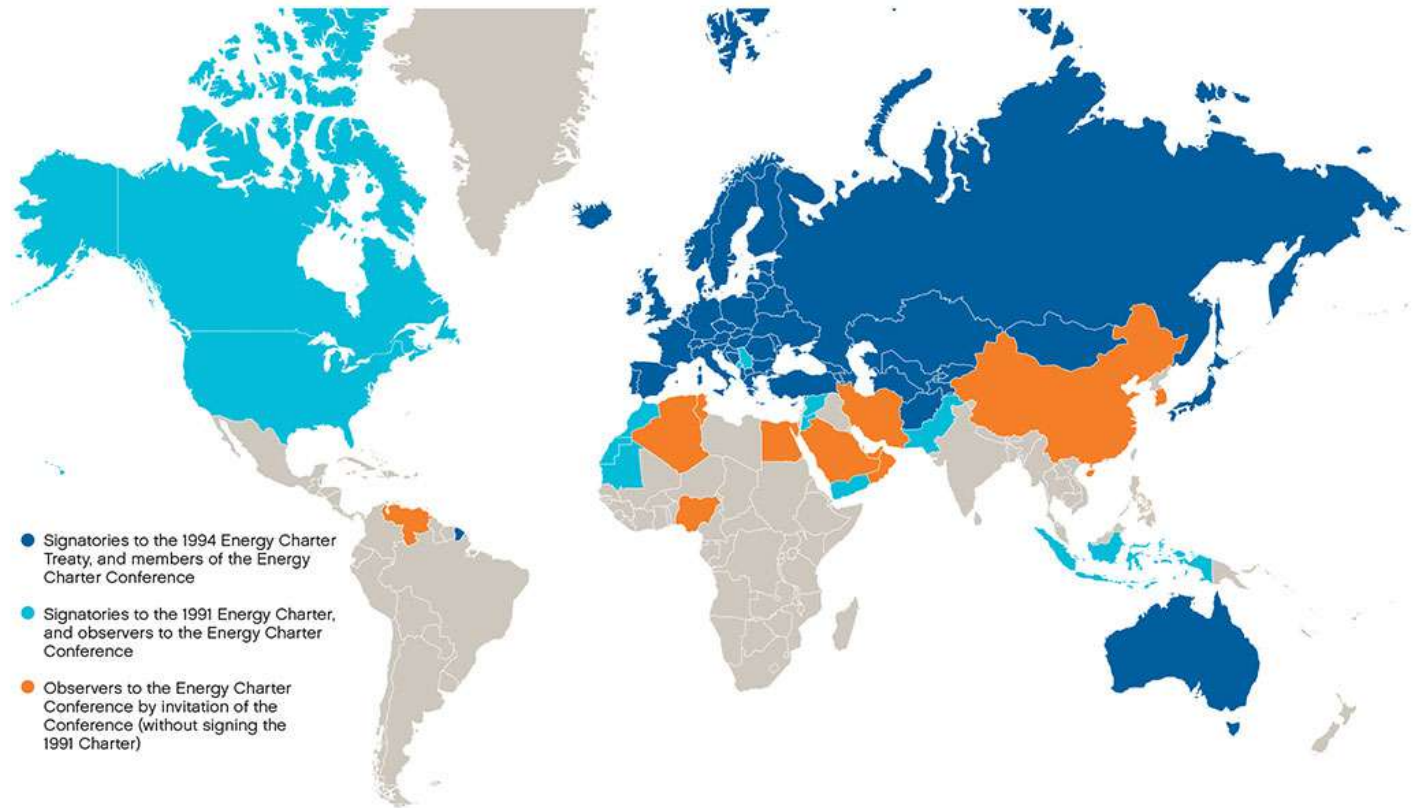
“Subject only to subparagraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article”





# I. BASIC NOTIONS

## Energy Charter Treaty Ratification



Source: [www.encharter.org](http://www.encharter.org)



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## I. BASIC NOTIONS

*Nothing special, just another international treaty...*  
*UNTIL*

Promotion of renewable energies and  
2008 economic crisis





## I. BASIC NOTIONS

# Italy

Case No.	Claimant(s)	Respondent(s)	Status
ARB/20/3	Hamburg Commercial Bank AG	Italian Republic	Pending
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## I. BASIC NOTIONS

International economic and  
investment MULTILATERAL  
agreements concluded by the  
European Union + 27 Member States  
+ third parties







## 4) Bilateral Investment Treaty (BIT)

Article 8.2 Italy - Argentina BIT: “A tale effetto e da i sensi del presente Accordo, ciascuna Parte Contraente conferisce fin d’ora consenso anticipato ed irrevocabile affinché qualsiasi controversia possa essere sottoposta all’arbitrato”.



## I. BASIC NOTIONS

Article 26.3.a) of the Energy Charter Treaty

“Subject only to subparagraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article”



## I. BASIC NOTIONS

### **BIT**

2020 data

2.901 BIT signed

2.341 BIT in force



## I. BASIC NOTIONS

### BIT 2020 data

Germany: 155 BIT

China: 145 BIT

United Kingdom: 110 BIT

The Netherlands: 107 BIT

Italy: 102 BIT

Spain: 87 BIT

Cuba: 60 BIT

United States of America: 47 BIT

Ireland: 1 BIT





Which is the favourite route  
to consent to international  
arbitration?

ICSID or non-ICSID  
arbitration?



## I. BASIC NOTIONS

**31 December 2019**

**1.023 investment arbitrations**

**763 ICSID arbitrations (74,58 %)**

**260 non-ICSID arbitrations (25,42 %)**



## I. BASIC NOTIONS

What makes ICSID arbitration  
the most common way of  
investment arbitration?



## I. BASIC NOTIONS

ICSID awards are **international decisions** according to Article 54.1 of the ICSID Convention

### **Article 54**

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.





## I. BASIC NOTIONS

Non-ICSID awards are **foreign decisions** and must be enforced according to the New York Convention (1958):

### Article V(2)(b)

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.



## I. BASIC NOTIONS

**ICSID award:** international decision  
(fundamental principle of good faith)

**Non-ICSID award:** foreign decision  
(enforcement in the domestic courts)

**States can fight back in both cases...**



## I. BASIC NOTIONS

Some States have withdrawn from the ICSID Convention to “avoid” investment arbitration





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## I. BASIC NOTIONS

# Quiz







## I. BASIC NOTIONS

Can an Italian investor  
initiate an arbitration  
against Bolivia, Ecuador  
and/or Venezuela?



## I. BASIC NOTIONS

How can States fully avoid or  
“escape” from investment  
arbitration?



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# **Pausa / Domande**



## I. BASIC NOTIONS

Can an Italian investor  
initiate an arbitration  
against Bolivia, Ecuador  
and/or Venezuela?





## I. BASIC NOTIONS

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## I. BASIC NOTIONS

How can States fully avoid or  
“escape” from investment  
arbitration?



# I. BASIC NOTIONS

## Italy Withdraws from Energy Charter Treaty

Tuesday, April 21, 2015

*Italy* is reported to have given formal notice to withdraw from the *Energy Charter Treaty (ECT)*.

Rumours of Italy's intention to leave the ECT had been circulating since last autumn. IAREporter now revealed that Italy has delivered its official notice of withdrawal in January 2015.

According to the journal, Italy's decision to withdraw, is to save on costs associated with its membership. This is certainly an unusual justification for a developed country's withdrawal from a multilateral investment protection treaty.

Pursuant to article 47 of the ECT, Italy's withdrawal will take effect upon the expiry of one year after the date of notification, thus in January 2016. However, the provisions of the Treaty will continue to apply to investments made in Italy before such date for a period of further 20 years.

As a consequence:

- With respect to past energy investments, investors can continue to bring their claims against Italy until January 2036. In particular, Italy's withdrawal from the ECT does not prevent PV investors from bringing a claim for last year's feed-in tariff cuts.
- With respect to future energy investments, investors should (i) either ensure the investment is made before January 2016 or (ii) consider to structure the investment so as to obtain protection under a suitable bi-lateral investment treaty (BIT).



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## II. CHALLENGES





## II. CHALLENGES

- 1) Is there a way to promote coherence in investment arbitration?**
- 2) Is there a way to promote transparency in investment arbitration?**
- 3) How to deal with parallel proceedings?**
- 4) Applicable Law to investment arbitration (role of human rights and EU law)**



## II. CHALLENGES

**Is there a way to promote coherence  
in investment arbitration?**

Investment arbitration = *ad hoc* system

**1 *ad hoc* tribunal per case (different arbitrators)**

**1.023 cases**

**2.341 BIT in force potentially to be interpreted**



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## II. CHALLENGES



**OXY** Occidental Petroleum Corporation

BIT Ecuador - United States of America

Broad wording of the clause = breach of the obligation

### **SAME FACTS**

BIT Ecuador - Canada

Narrow wording of the clause = NO breach of the  
obligation



## II. CHALLENGES

### UNCITRAL

States agree on the need to promote coherence, BUT they do not agree on the mechanisms to be implemented







## II. CHALLENGES

### **Solution 1:**

- Create an *ad hoc* appeal system
- Give more weight to the opinion of the affected States by an arbitration (interpretation of the BIT)



## II. CHALLENGES

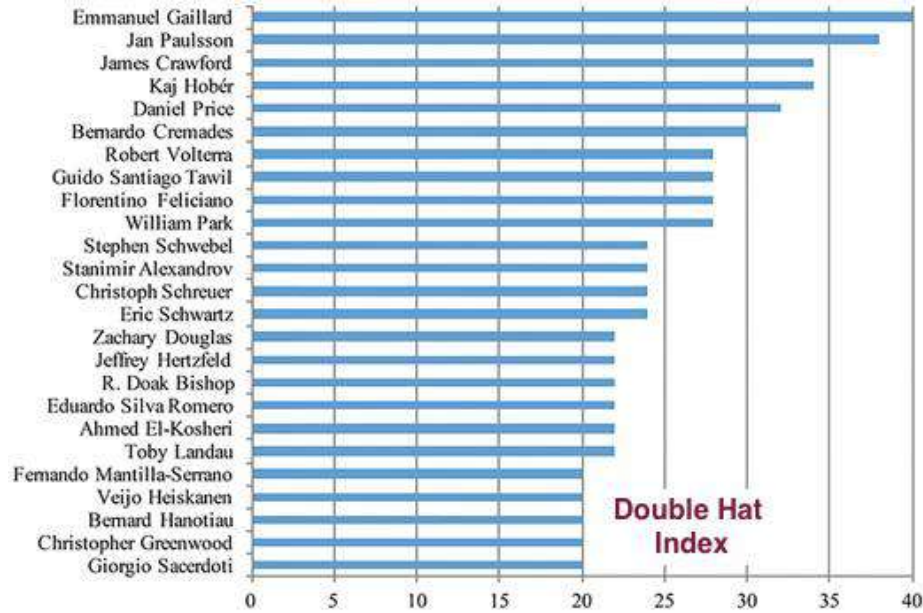
### **Solution 2:**

Create a Multilateral Investment Court and a permanent appeal system





## II. CHALLENGES



## ADVANTAGES







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## II. CHALLENGES



**ANY PROBLEMS?**





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## II. CHALLENGES





## II. CHALLENGES

### Transparency in investment arbitration

What happens in that room?

#### Confidentiality







## II. CHALLENGES

# Transparency in other international courts and tribunals



INTERNATIONAL COURT OF JUSTICE



The Court	The Registry	Cases	Basic Documents	Jurisdiction	Press Room	Practical Information	Publications	Permanent Court of International Justice
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### Multimedia galleries

Case-related videos, photos and audio files

■ 17 February 2020 - 21 February 2020

Immunities and Criminal Proceedings (Equatorial Guinea v. France) – Public hearings on the merits



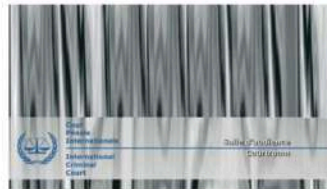
### PRESS ROOM

- Press releases
- Mailing List
- Calendar
- Media Services
- Accreditation
- Multimedia
- Frequently Asked Questions



## II. CHALLENGES

# Transparency in other international courts and tribunals



### Watch ICC hearings

View our webstreaming of hearings, generally shown with a 30-minute delay to allow for any necessary redactions of confidential information.



### Visit us and attend ICC hearings

ICC hearings are generally open to the public, unless the Chamber orders a closed session. Present a valid ID and press pass to the security reception desk to receive a press badge and access the media centre.



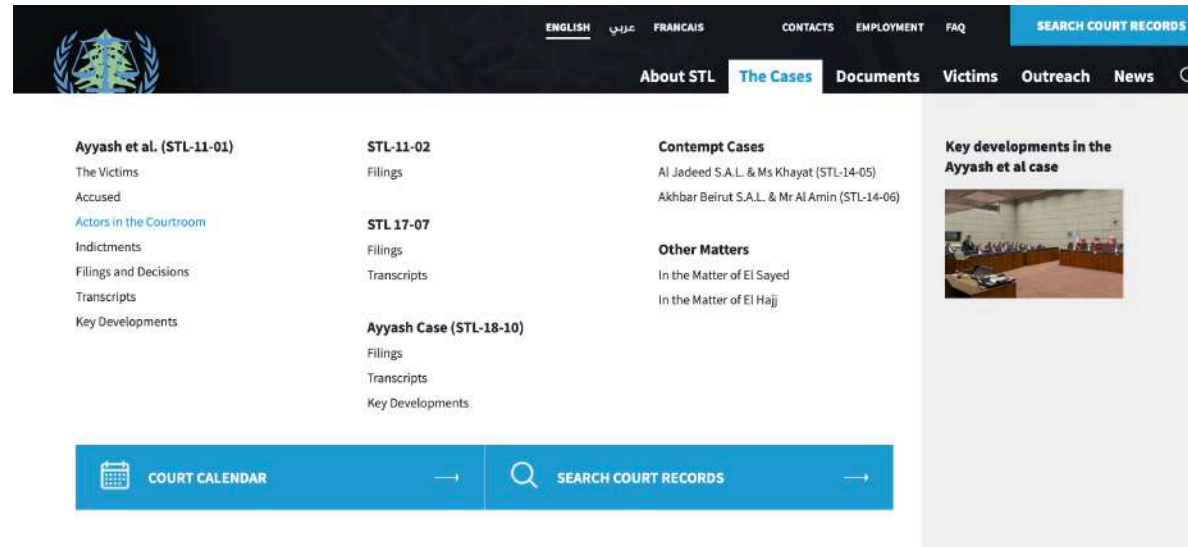
### Media centre and press conferences

Practical information for media on accreditation, attending a hearing, media centre facilities and press conferences.



## II. CHALLENGES

### Transparency in other international courts and tribunals



ENGLISH عربي FRANÇAIS CONTACTS EMPLOYMENT FAQ SEARCH COURT RECORDS

About STL **The Cases** Documents Victims Outreach News

**Ayyash et al. (STL-11-01)**  
The Victims  
Accused  
[Actors in the Courtroom](#)  
Indictments  
Filings and Decisions  
Transcripts  
Key Developments

**STL-11-02**  
Filings

**STL 17-07**  
Filings  
Transcripts

**Ayyash Case (STL-18-10)**  
Filings  
Transcripts  
Key Developments

**Contempt Cases**  
Al Jadeed S.A.L. & Ms Khayat (STL-14-05)  
Akhbar Beirut S.A.L. & Mr Al Amin (STL-14-06)

**Other Matters**  
In the Matter of El Sayed  
In the Matter of El Hajj

**Key developments in the Ayyash et al case**

COURT CALENDAR → SEARCH COURT RECORDS →

## II. CHALLENGES

### Transparency in investment arbitration

What happens in that room?



## II. CHALLENGES

### Transparency in investment arbitration

What happens in that room?

*PV Investors v. Spain*







## II. CHALLENGES

### Transparency in investment arbitration

What happens in that room?

*PV Investors v. Spain*

Claimants (international group of hedge funds)  
requested EUR 1.900.000.000 compensation





## II. CHALLENGES

### Transparency in investment arbitration

#### Spanish Budget 2019

Ministry of Justice (annually): EUR 1.838.000.000

Claimants (hedge funds) requested EUR 1.900.000.000



## II. CHALLENGES

### Transparency in investment arbitration

What happens in that room?

*PV Investors v. Spain* (2020)

*Ad hoc* tribunal **only** granted EUR 91.100.000 (4,8%)



## II. CHALLENGES

### Transparency in investment arbitration

There is a need to know what happens in the room

### Public interest







## II. CHALLENGES

### Transparency in investment arbitration



ICSID International Centre for Settlement of Investment Disputes WORLD BANK GROUP

English Search this site

ABOUT SERVICES PROCESS CASES ARBITRATORS ICSID DOCUMENTS RESOURCES

Home » Case Details

#### Case Details

Belenergia S.A. v. Italian Republic (ICSID Case No. ARB/15/40)

Proceeding	Materials	Procedural Details
<b>(a) Original Proceeding</b>		
Published Decisions		
<ul style="list-style-type: none"> <li>Award of the Tribunal (August 6, 2019) ( English; )</li> </ul>		
Available on the ICSID Website		



ICSID Settlement of Investment Disputes WORLD BANK GROUP

ABOUT SERVICES PROCESS CASES ARBITRATORS ICSID DOCUMENTS RESOURCES

Home » Case Details

#### Case Details

Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic (ICSID Case No. ARB/14/3)

Proceeding	Materials	Procedural Details
<b>(a) Original Proceeding</b>		
Published Decisions		
<ul style="list-style-type: none"> <li>Award of the Tribunal (December 27, 2016)</li> </ul>		
Available on the ICSID Website		
<b>(b) Annulment Proceeding</b>		
Published Decisions		
<ul style="list-style-type: none"> <li>Decision on Annulment</li> </ul>		
Available on the ICSID Website		
<ul style="list-style-type: none"> <li>Decision on Annulment (April 13, 2020) English (Original)</li> </ul>		



## II. CHALLENGES

### Transparency in investment arbitration

There is a need to know what happens in the room





## II. CHALLENGES

### Parallel proceedings

*Lauder v. Czech Republic*

USA - Czech BIT

3-9-2001 (London)

**Damages to the investor (moral person)**

*CME v. Czech Republic*

Netherlands - Czech BIT

13-9-2001 (Stockholm)

**Damages to the investor (legal person)**





## II. CHALLENGES

### Parallel proceedings

*Lauder v. Czech Republic*

USA - Czech BIT

3-9-2001 (London)

**In favour of the State**

*CME v. Czech Republic*

Netherlands - Czech BIT

13-9-2001 (Stockholm)

**US\$ 269.814.000 to the investor**







## II. CHALLENGES

### Parallel proceedings

Risks for the host State

- Double recovery
- Uncertainty
- Inconsistency





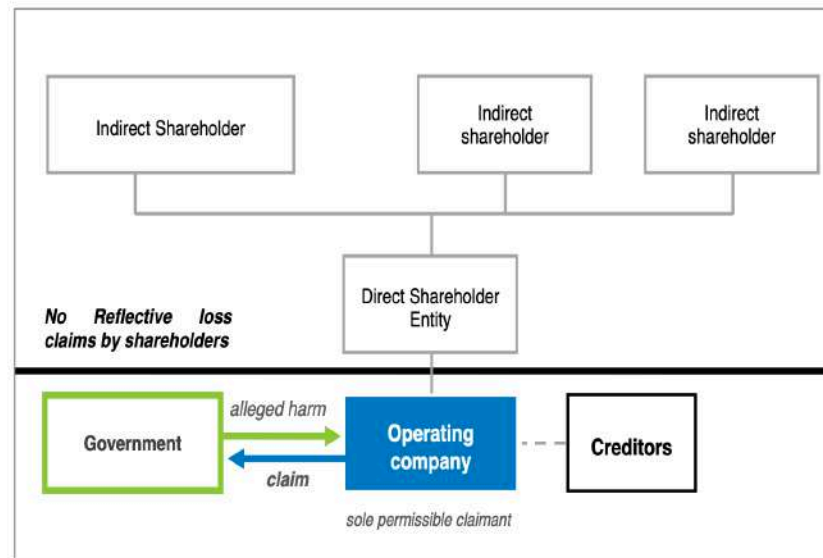


## II. CHALLENGES

### Parallel proceedings



Domestic Law: “No Reflective Loss” principle bars shareholder claims for reflective loss



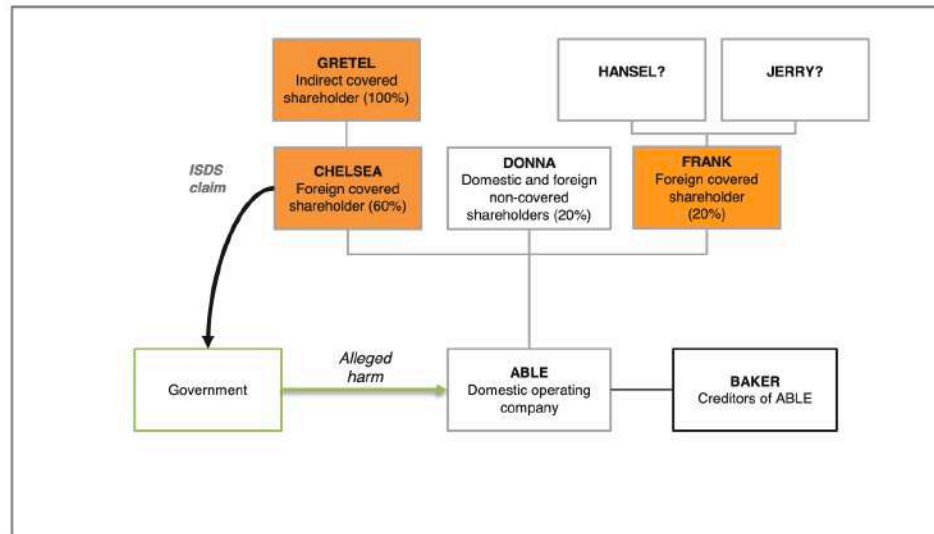


## II. CHALLENGES

### Parallel proceedings



#### ISDS: Reflective Loss Claim



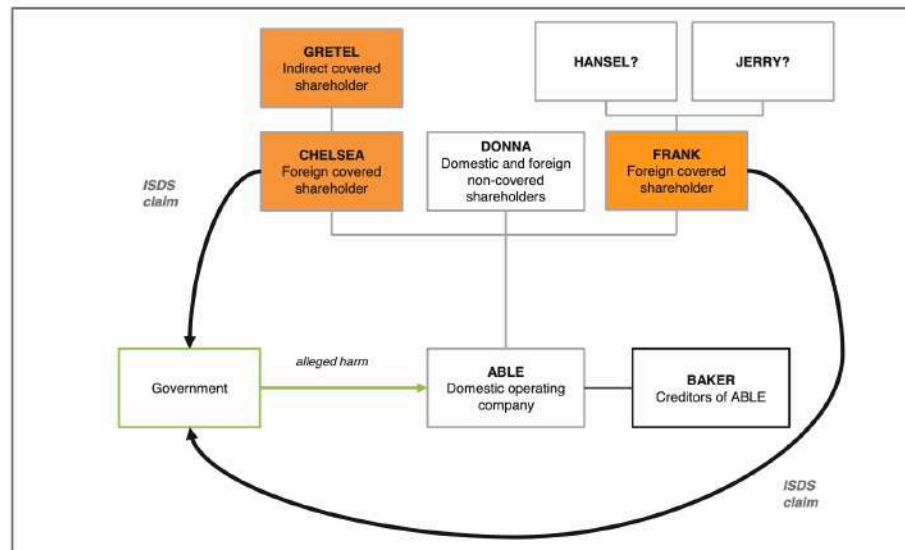


## II. CHALLENGES

### Parallel proceedings



#### ISDS: Multiple Reflective Loss Claims – Unrelated Entities



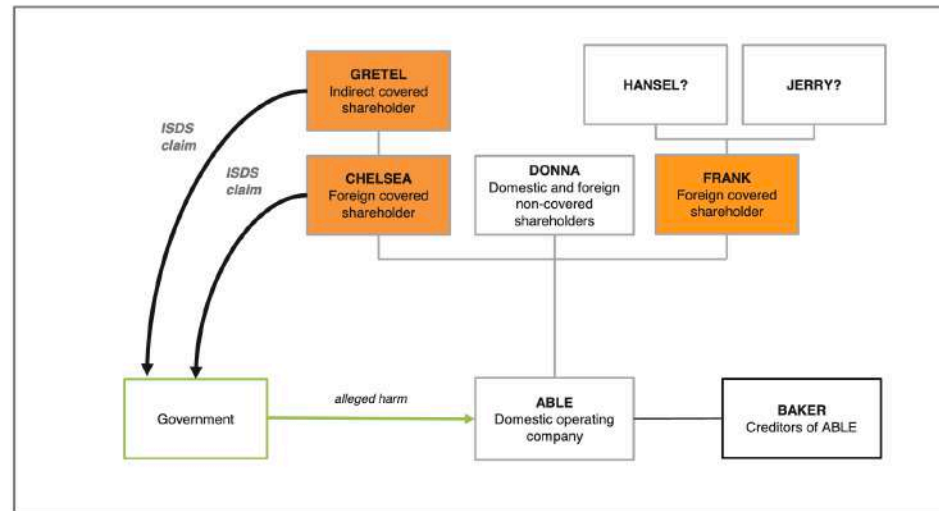


## II. CHALLENGES

### Parallel proceedings



#### ISDS: Multiple Reflective Loss Claims – Related Entities





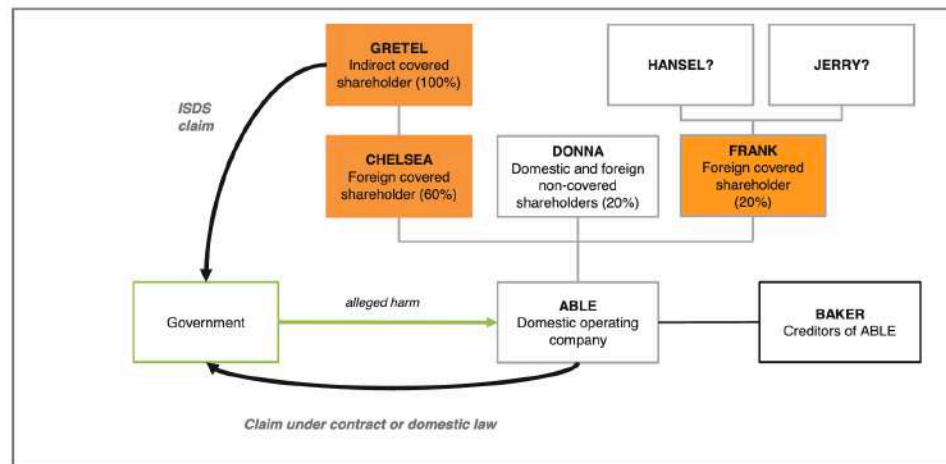


## II. CHALLENGES

### Parallel proceedings



#### ISDS: Potential Claims 2



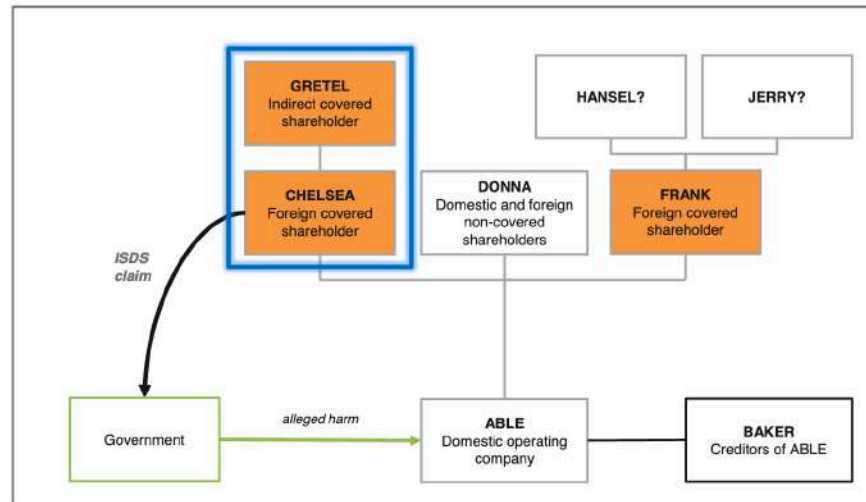


## II. CHALLENGES

### Parallel proceedings



#### ISDS Reflective Loss Claim: **Who is Protected?\***



\* Note: This slide and the next slide have been corrected from the versions discussed at the side meeting. Frank's treaty coverage, which was inadvertently omitted, has been restored. Frank is not protected by the claim by Chelsea. It may bring its own ISDS claim if its individual loss is significant; this would generate multiple claims for the government and high costs while still leaving investors unprotected. Only a company claim protects all investors. On the categories of excluded and potential claimants for reflective loss in ISDS and claim incentives, see Gaukrodger (2013b), pp. 47-48, <http://dx.doi.org/10.1787/5k3w9t44mt0v-en>.

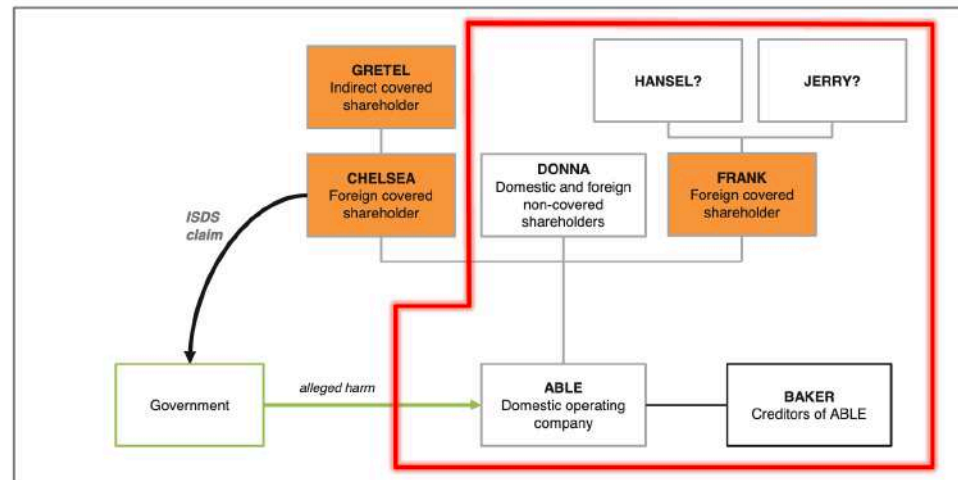


## II. CHALLENGES

### Parallel proceedings



ISDS Reflective Loss Claim: **Who is not Protected?**



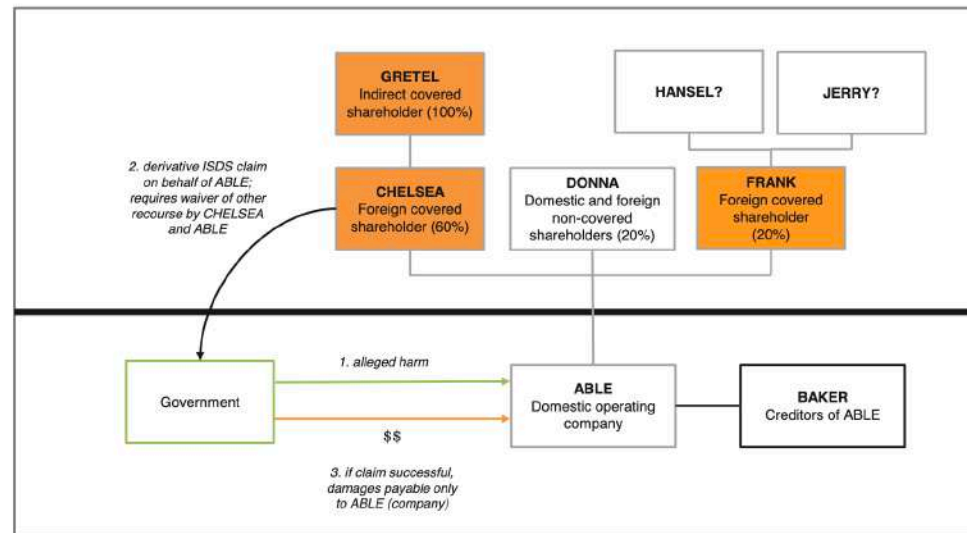


## II. CHALLENGES

### Parallel proceedings: solution?



#### ISDS: NAFTA-style Derivative Claim







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## II. CHALLENGES

Parallel proceedings





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## II. CHALLENGES

### Parallel proceedings





## II. CHALLENGES

### Parallel proceedings







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### Parallel proceedings







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## II. CHALLENGES

### Expropriation





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## II. CHALLENGES





## II. CHALLENGES

a) Investment arbitrations presented by *Yukos'* **majority shareholders:**

- *Hulley Enterprises Limited (Cyprus) v. Russia*
- *Yukos Universal Limited (Isle of Man) v. Russia*
- *Veteran Petroleum Limited (Cyprus) v. Russia*



## II. CHALLENGES

b) Investment arbitrations presented by *Yukos'* minority shareholders:

renta4







## II. CHALLENGES

- a) **Human rights protection cases before the ECtHR**  
(right to liberty; due process; and protection to  
property):





## II. CHALLENGES

Case	Compensation
ECtHR (Khodorkovskiy)	EUR 10.000
<i>ECtHR (Yukos)</i>	<i>EUR 8.100.000.000</i>
<i>PCA (Hulley, Yukos y Veteran)</i>	<i>US\$ 50.000.000.000</i>
SCC ( <i>Orgor</i> SICAV)	US\$ 943.840
SCC ( <i>GBI</i> SICAV)	US\$ 499.680
SCC ( <i>ALOS 34</i> S.L.)	US\$ 277.600
SCC ( <i>Quasar</i> SICAV)	US\$ 305.360
SCC ( <i>RosInvest-Elliott</i> )	US\$ 3.500.000



## II. CHALLENGES

### Applicable Law to investment arbitration

BIT

Can any other rules of public international law be applicable in investment arbitration?

*If so, which role could EU and human rights law play?*



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## II. CHALLENGES

*Human rights and investment arbitration*

Protection of environment

Protection of Indigenous people





## II. CHALLENGES

### *Human rights and investment arbitration*

#### *Chevron v. Ecuador*

Investment arbitration (2011): US\$ 96.355.369  
Ecuador's Supreme Court (2013): US\$ 9.510.776.000



## II. CHALLENGES

### *Human rights and investment arbitration*

#### *Perenco v. Ecuador*

US\$ 471.000.000 compensation as a result of a breach of the BIT,  
but *also* awarded  
US\$ 54.000.000 to Ecuador as an environmental compensation





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## II. CHALLENGES

*Human rights and investment arbitration*

Protection of public health

Tobacco packaging





## II. CHALLENGES

### *Human rights and investment arbitration*

*Philip Morris v. Australia*  
*Philip Morris v. Uruguay*







## II. CHALLENGES

*EU law and investment arbitration*

Promotion of renewable energies





## II. CHALLENGES

ENERGÍAS RENOVABLES

Energía Solar  
Fotovoltaica

**8. ¿ POR QUÉ ES BUENO INVERTIR EN UNA  
INSTALACIÓN SOLAR FOTOVOLTAICA?**

Madrid, 22 de febrero de 2006

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## II. CHALLENGES

### ENERGÍAS RENOVABLES

Energía Solar  
Fotovoltaica

Por que..

- La RENTABILIDAD de su inversión es razonable, pudiendo superar en ocasiones el 9 %, considerando un plazo de 25 años.
- Con el apoyo bancario existe una FINANCIACIÓN SUSTANCIAL de la inversión (80%).
- Cuando decida realizar este tipo de instalaciones,

USTED ESTÁ CONTRIBUYENDO AL DESARROLLO SOSTENIBLE DE SU  
COMUNIDAD, YA QUE ESTÁ EVITANDO LA EMISIÓN DE CO<sub>2</sub> A LA  
ATMÓSFERA





## II. CHALLENGES

ENERGÍAS RENOVABLES

Energía Solar  
Fotovoltaica



**EL SOL PUEDE SER  
SUYO**

**RESPUESTAS A TODAS LAS  
PREGUNTAS CLAVE**

*22 de febrero de 2006*

Madrid, 22 de febrero de 2006



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## II. CHALLENGES

### Spain

- 1) 2007 GDP +3.7%, but in 2009 GDP -3.6%.
- 2) Unemployment grew from 8% in 2007 to 25% in 2012.
- 3) Electric tariff deficit rose from EUR 2.000.000.000 in 2005 to EUR 28.500.000.000 at the end of 2013.



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## II. CHALLENGES





## II. CHALLENGES

### Spain took measures

- 1) Reduced the incentives to renewable energies (affecting foreign and national investors).
- 2) Electricity prices rose (affecting citizens).

#### Lo que se paga en el recibo de la luz

Simulación sobre un recibo de luz de 100 euros. Cifras en euros



Fuente: CNMC

ABC



## II. CHALLENGES

### Spanish “renewable saga”

47 cases against Spain so far

18 finished – 29 pending

14 in favour of the investor

4 in favour of the State





## II. CHALLENGES

### Spanish “renewable saga”

Amount claimed in 18 cases  
EUR 3.865.481.300

Amount granted in 14 cases  
(4 cases in favour of the State)  
EUR 1.089.040.000



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## II. CHALLENGES

### European Commission State-aid regime





## II. CHALLENGES

If the State honours and pays the award (good faith) =  
payment is contrary to State-aid regime =  
Spain (or any other Member State in the same  
situation) must return the State-aid to the European  
Union



## II. CHALLENGES

Spanish “renewable saga”

EUR 1.089.040.000 x 2!!!







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## II. CHALLENGES





## II. CHALLENGES

### **Spanish/European “renewable saga”**

Need to regulate thinking in the long-term

States usually regulate thinking in the short-term  
(elections)



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Grazie mille!

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