

## Statistics of ECT Cases

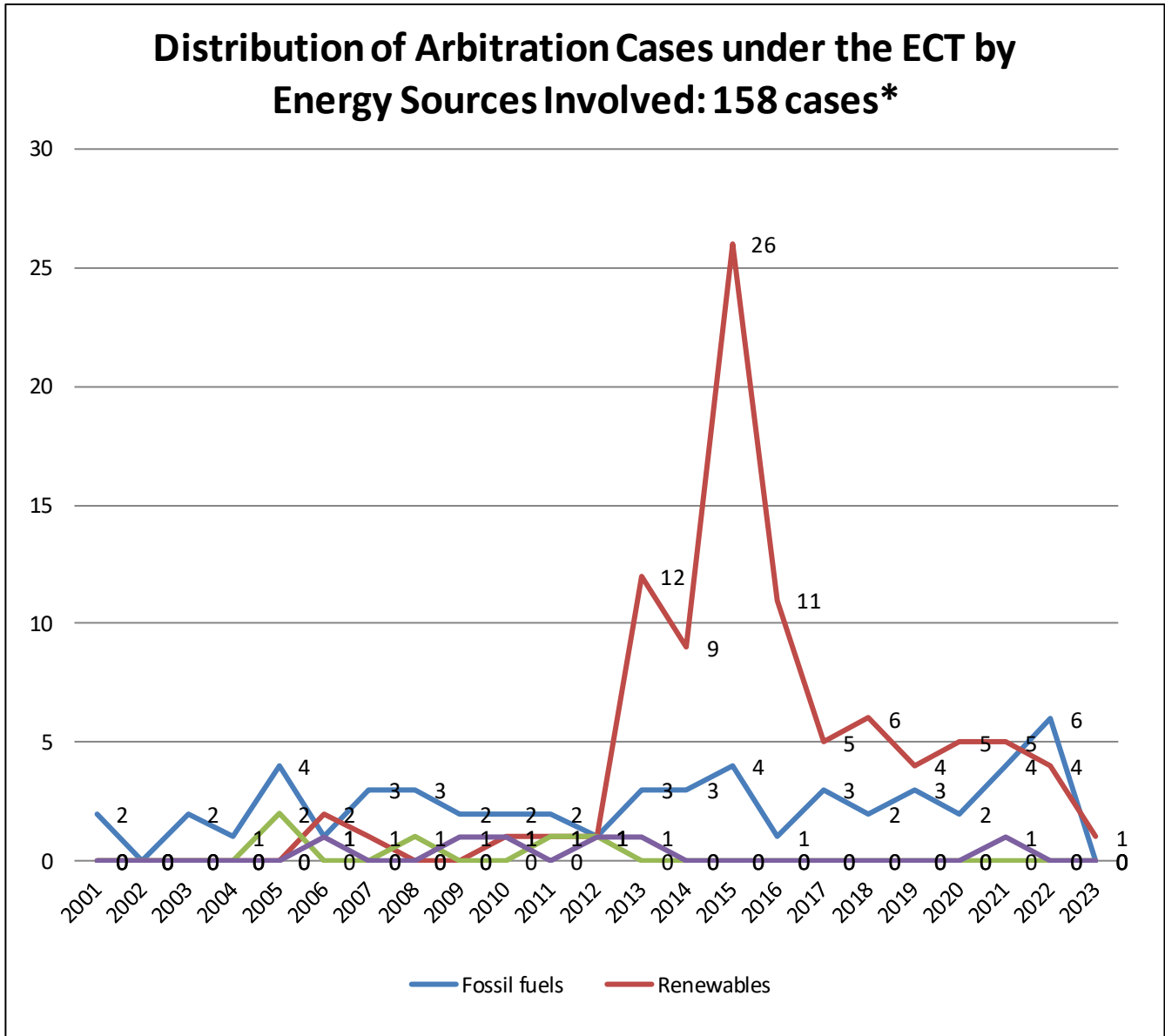
(as of 1/5/2023)

*As of 1 May 2023, the Secretariat is aware of 158 investment arbitration cases instituted under the Energy Charter Treaty (sometimes invoked together with a bilateral investment treaty).*

*Since parties to investment arbitration under Article 26 ECT are not obliged to notify the Secretariat of the existence or substance of their dispute, some awards (and even the existence of some proceedings) remain confidential. The Secretariat compiles information (which cannot be considered as exhaustive) from delegates and public sources (including specialised reporting services). The Secretariat assumes no responsibility for eventual errors or omissions in these data and welcomes any additional information or clarification on specific cases (at [legalaffairs@encharter.org](mailto:legalaffairs@encharter.org)).*

## Statistics of ECT Cases

(as of 1/5/2023)



Fossil Fuels		Renewables		Nuclear		N/A	
Total Damages Claimed***	Total Damages Awarded***	Total Damages Claimed	Total Damages Awarded	Total Damages Claimed	Total Damages Awarded	Total Damages Claimed	Total Damages Awarded
approx. EUR 13 billion + the Yukos cases (EUR 87 billion)	approx. EUR 1 billion + the Yukos cases (EUR 40 billion)	approx. EUR 23 billion	approx. EUR 1.25 billion	approx. EUR 4.5 billion	approx. EUR 74 million	approx. EUR 550 million	0

**\* 53 cases are still pending and in some of the cases, there is no publicly available information on the exact amounts claimed and/or awarded; one case involves more than one form of energy sources.**

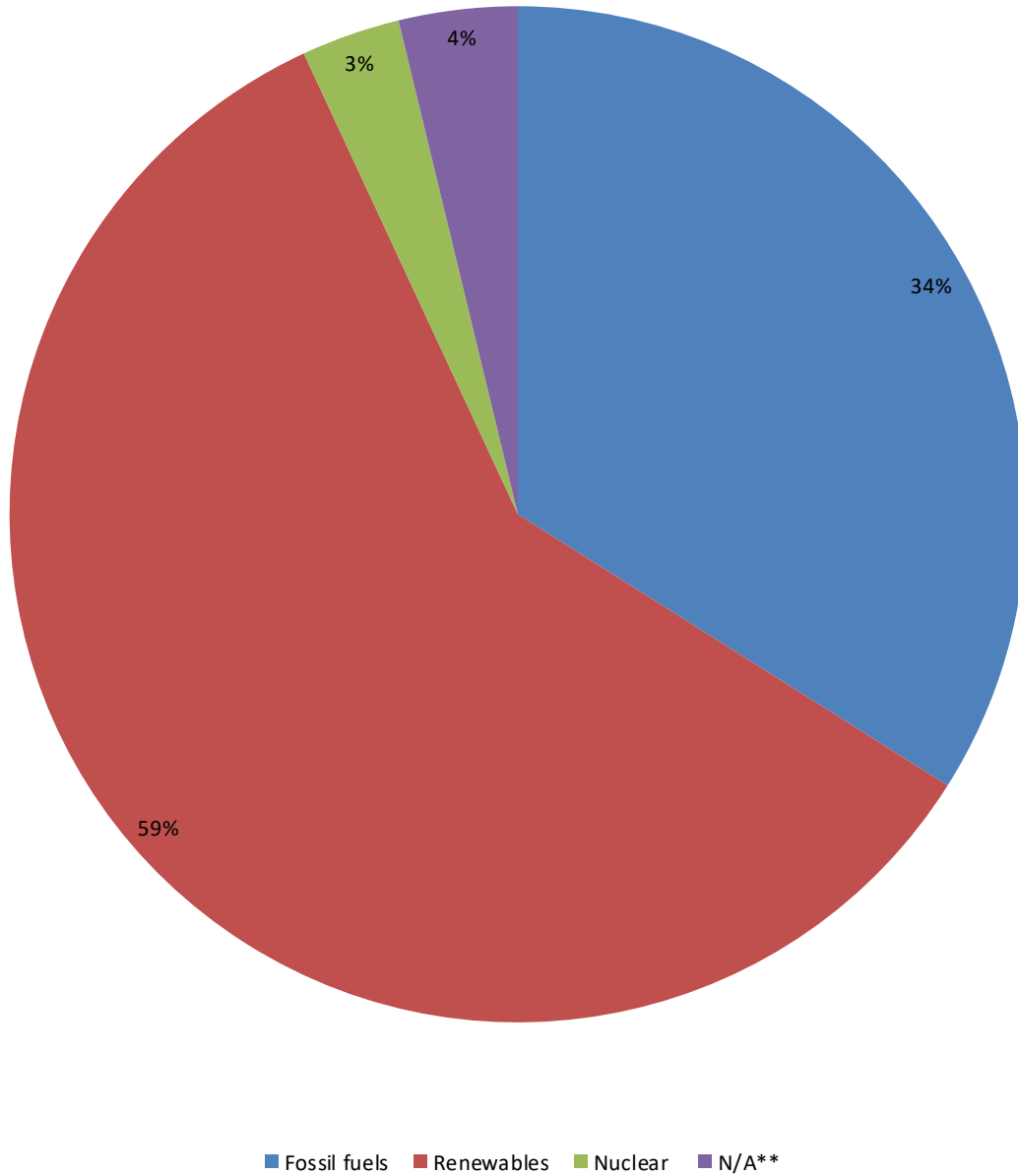
**\*\* In six cases, it has not been possible to identify particular energy sources.**

**\*\*\* Excluding tax gross-up and interest on damages claimed and awarded.**

## Statistics of ECT Cases

(as of 1/5/2023)

### Distribution of Arbitration Cases under the ECT by Energy Sources Involved: 158 cases\*



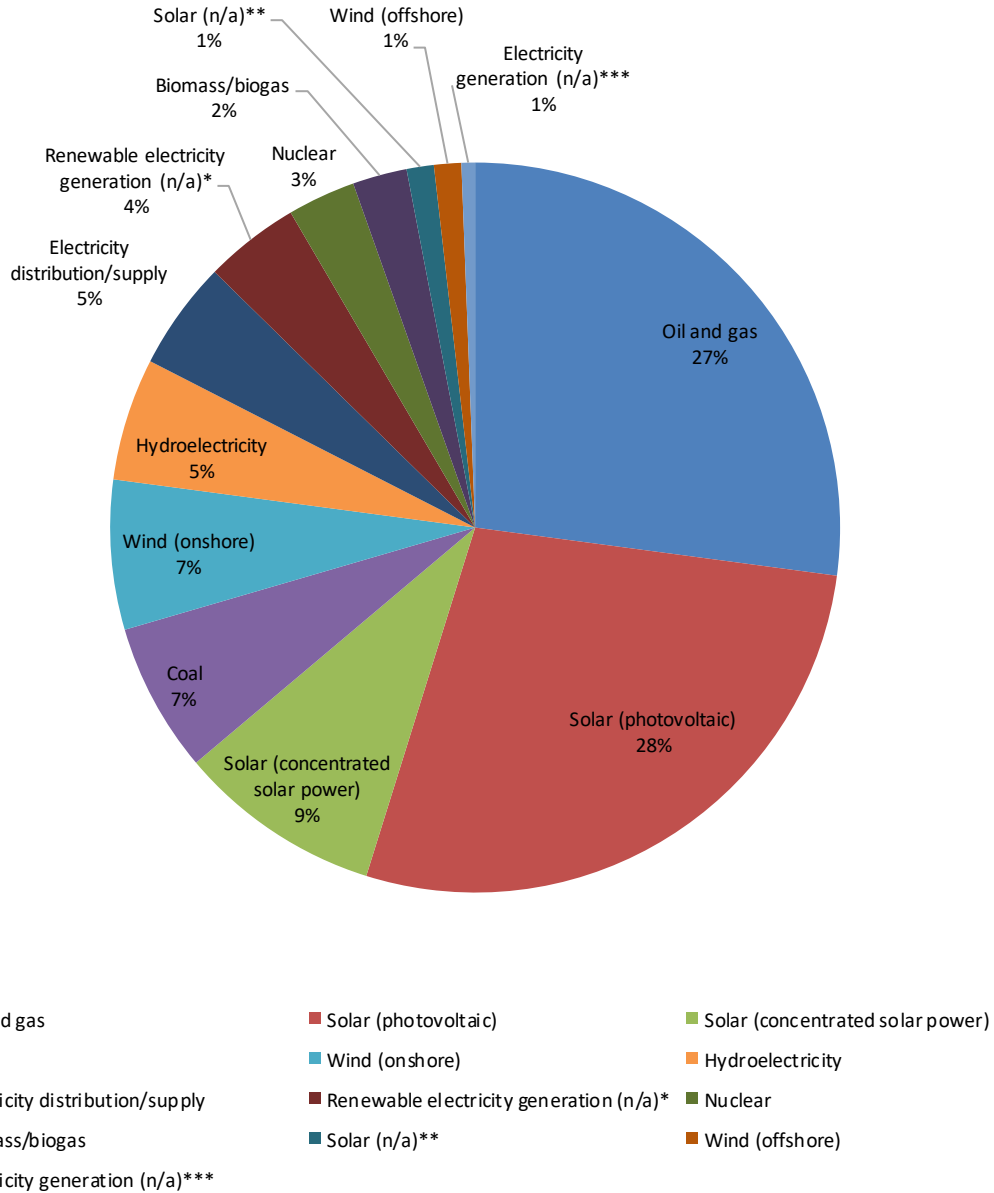
*\* One case involves more than one form of energy sources.*

*\*\* In six cases, it has not been possible to identify particular energy sources.*

# Statistics of ECT Cases

(as of 1/5/2023)

## Distribution of Arbitration Cases under the ECT by Sub-Sector: 158 cases



*\* In seven cases, it has not been possible to identify particular renewable electricity generation technology employed.*

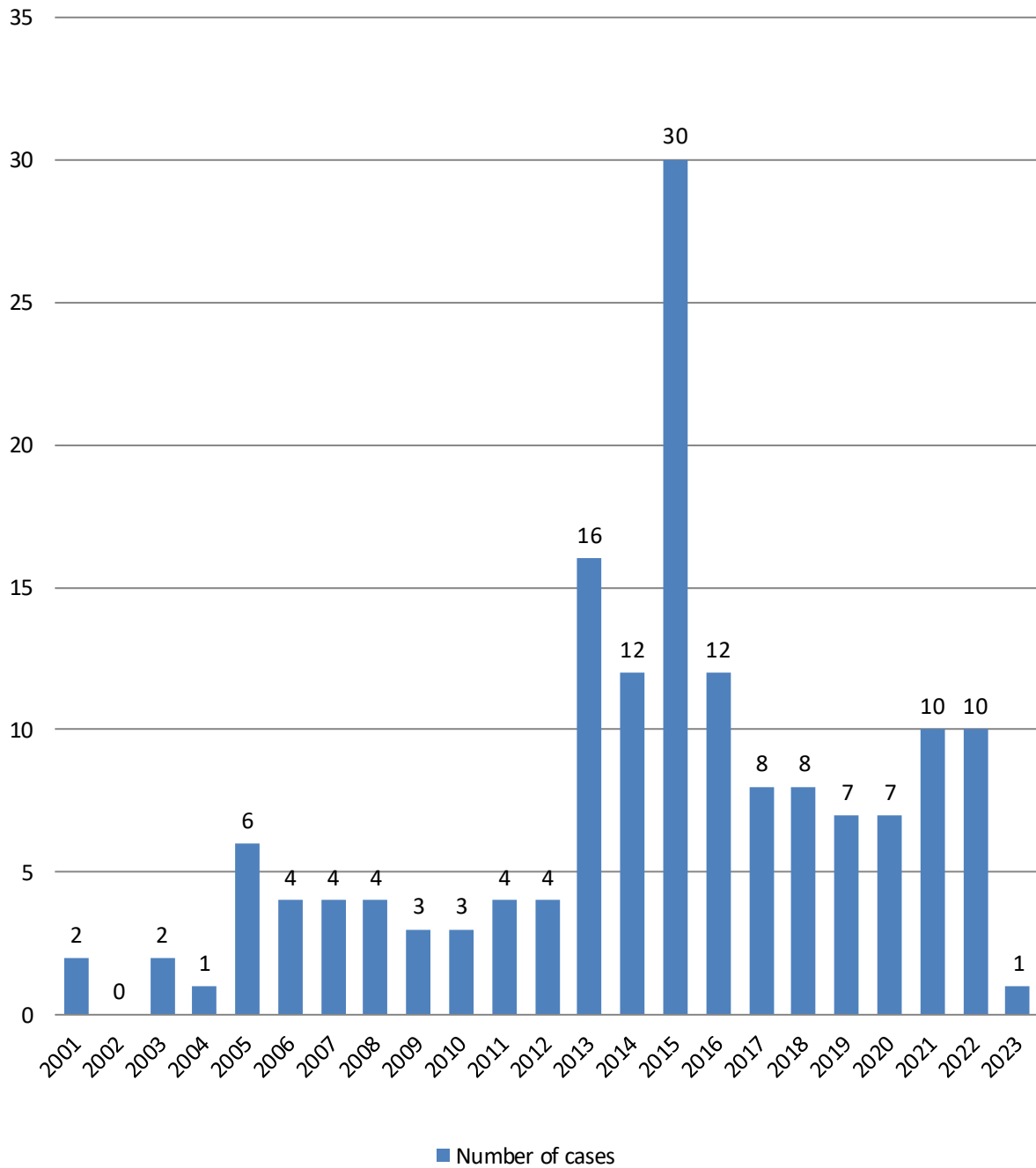
*\*\* In two cases, it has not been possible to identify particular solar electricity generation technology employed.*

*\*\*\* In one case, it has not been possible to identify particular sub-sector.*

## Statistics of ECT Cases

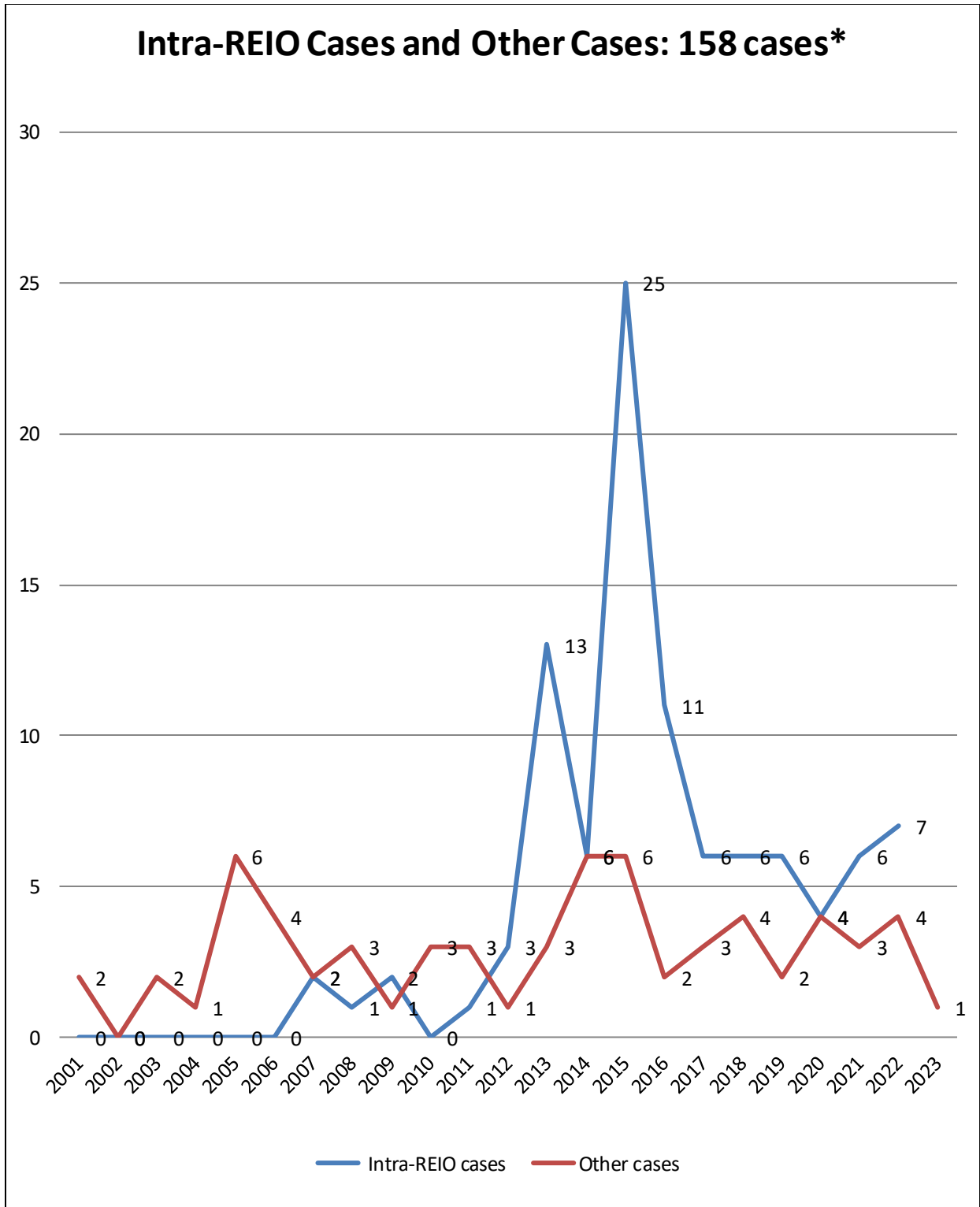
(as of 1/5/2023)

### Number of Arbitration Cases under the ECT: 158 cases



# Statistics of ECT Cases

(as of 1/5/2023)

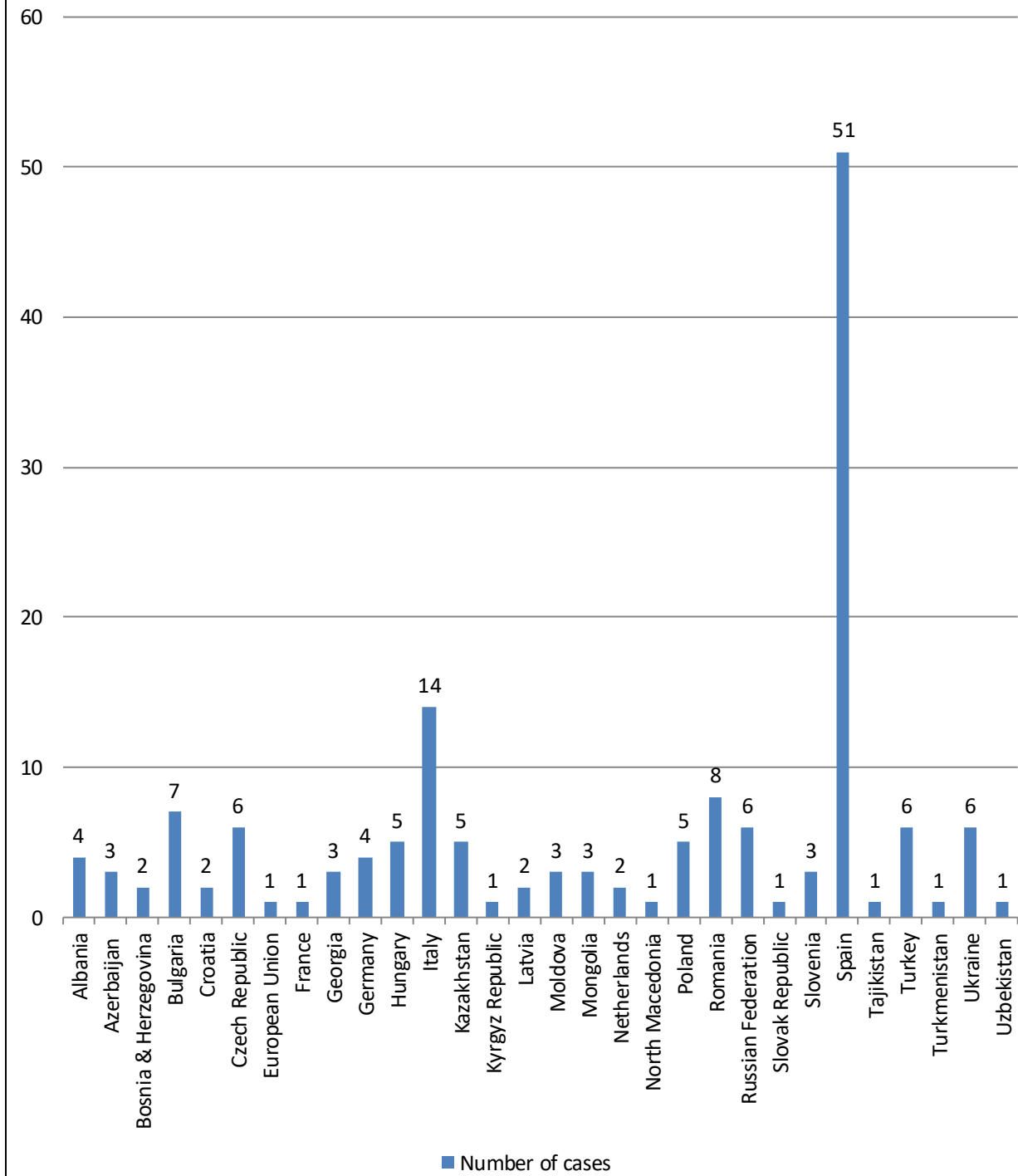


\* Cases with mixed claimants are included in both categories. Therefore, the numbers indicated may be higher than the actual number of cases instituted in a given year.

# Statistics of ECT Cases

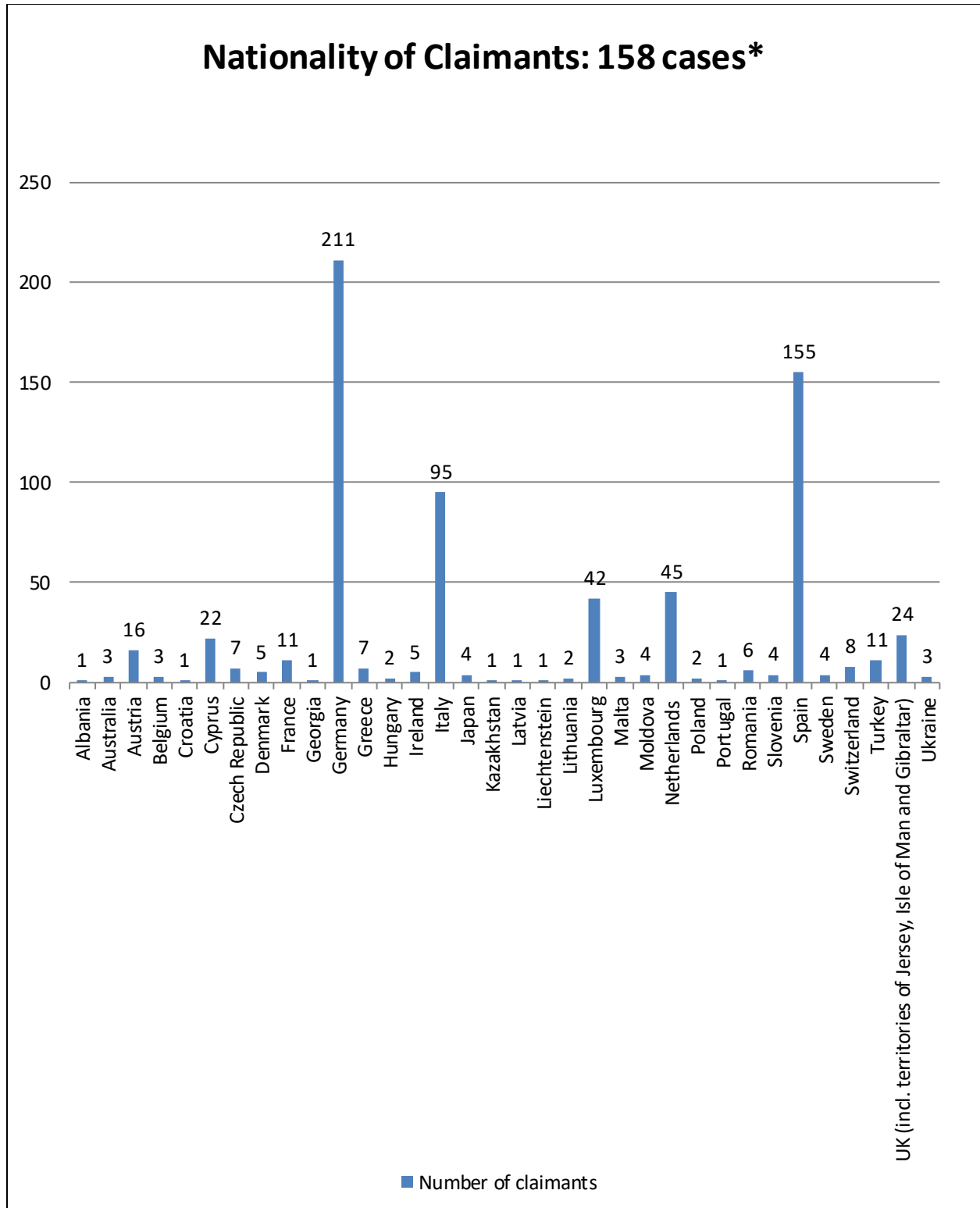
(as of 1/5/2023)

**Respondents: 158 cases**



## Statistics of ECT Cases

(as of 1/5/2023)



*\* In case of double nationality of a claimant, both nationalities are taken into account.*

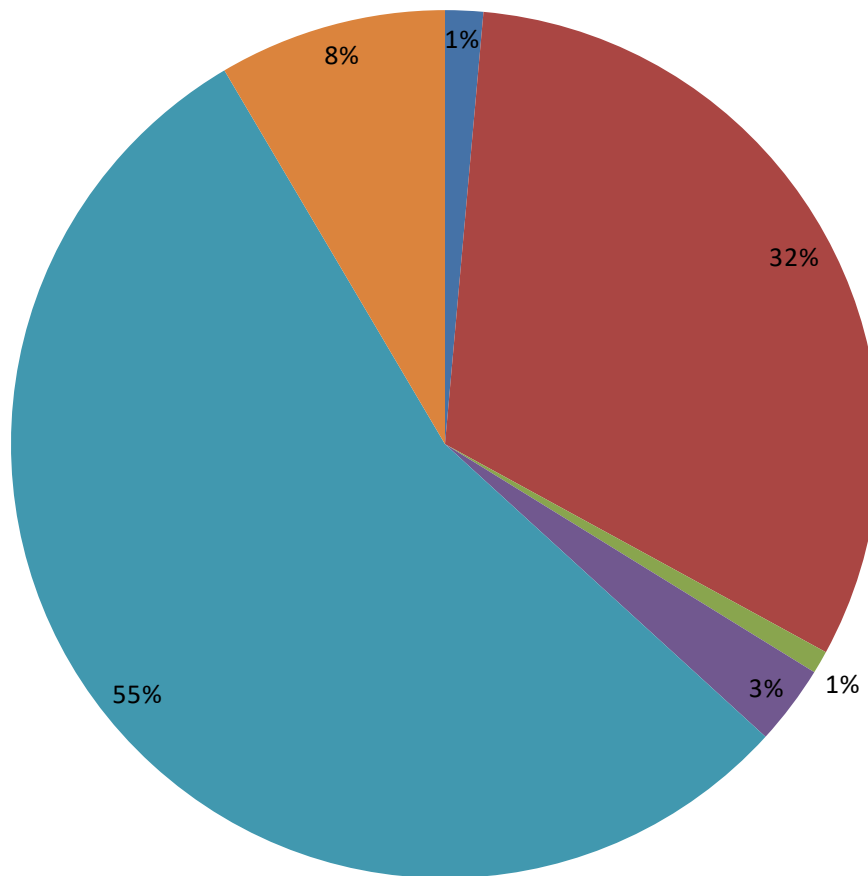
*A case may be instituted by more than one claimant.*



## Statistics of ECT Cases

(as of 1/5/2023)

### Type of Claimants: 158 cases



■ Large corporations (10)\*\*

■ Banks (6)

■ SMEs (387)

■ Holdings (223)

■ Investment funds (21)

■ Individual investors (60)

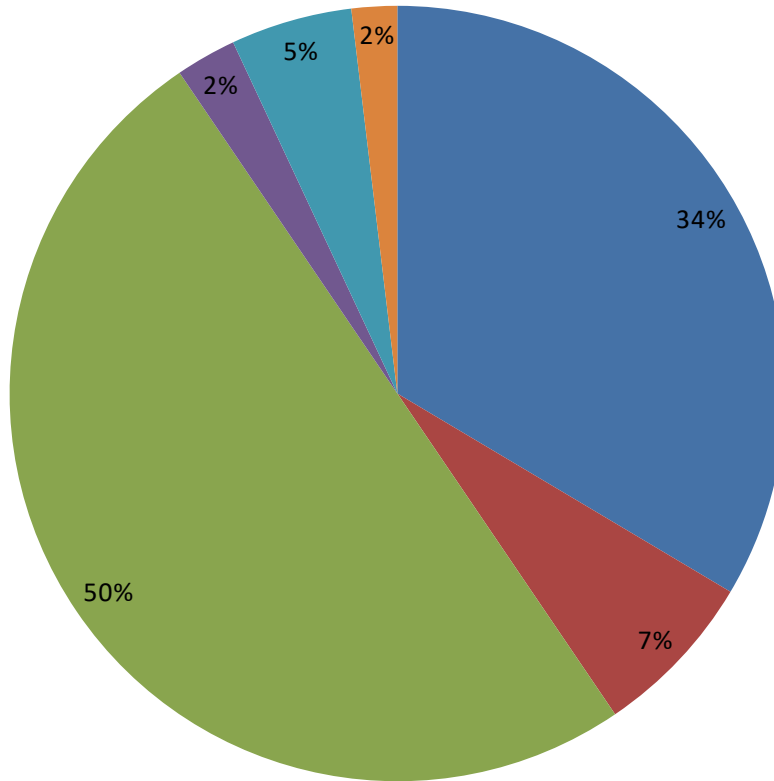
\* A case may be instituted by more than one claimant.

\*\* Listed on Platts Top 250 Global Energy Company Rankings (2021) and/or UNCTAD's World's Top 100 Non-financial MNEs Ranked by Foreign Assets (2021).

## Statistics of ECT Cases

(as of 1/5/2023)

### Status of Arbitration Cases under the ECT: 158 cases



■ Pending (53)

■ Settled (11) of which (4) were embodied in an award

■ Awards (79) of which (18) pending annulment proceedings

■ Awards rendered (4) but investors renounced their right to collect damages (3) or pursue annulment actions (1)

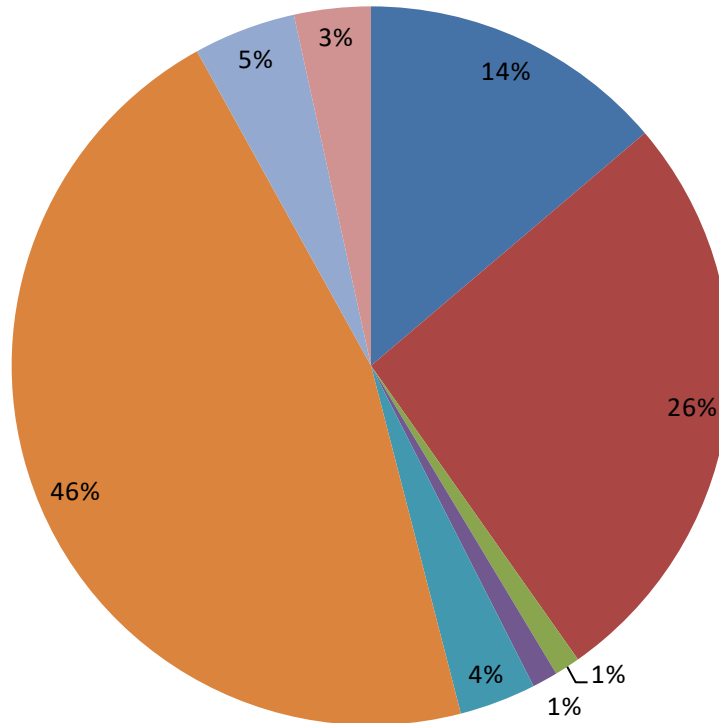
■ Discontinued (8)

■ Awards annulled (3) of which (1) pending resubmission proceedings

## Statistics of ECT Cases

(as of 1/5/2023)

### Outcome of Final Awards (87), including (4) Settlement Agreements Embodied in Awards\*



- No jurisdiction (12)
- No breach of the ECT (23)
- Alternative ECT claim dismissed (1)\*\*
- Manifest lack of legal merit - Rule 41(5) ICSID Arbitration Rules (1)
- Breach of the ECT but no damages awarded (3)
- Breach of the ECT and damages awarded (40)
- Settlement agreement embodied in an award (4)
- Outcome is unknown (3)

\* Excluding annulled awards.

\*\* Having found the State liable under another international agreement, the tribunal dismissed an alternative claim under the ECT.

## Statistics of ECT Cases

(as of 1/5/2023)

	Damages Claimed*	Damages Awarded*	Ratio
<i>Nykomb Synergetics Technology Holding AB v. Latvia</i> (16 December 2003)	LVL 7,097,680 + specific performance	LVL 1,600,000 + specific performance	<b>23%</b>
<i>Petrobart Limited v. Kyrgyz Republic</i> (29 March 2005)	USD 4,084,652	USD 1,130,859	<b>27.7%</b>
<i>Ioannis Kardassopoulos v. Georgia</i> (3 March 2010)	USD 15,8 million	USD 15.1 million	<b>95.5%</b>
<i>Khan Resources Inc., Khan Resources B.V., and Cauc Holding Company Ltd. v. Mongolia</i> (10 January 2011)	USD 326 million	USD 80 million	<b>24.5%</b>
<i>Remington Worldwide Limited v. Ukraine</i> (28 April 2011)	USD 36 million	USD 4.5 million	<b>12.5%</b>
<i>Anatolie Stati, Gabriel Stati, Ascom Group S.A. and Terra Raf Trans Trading Ltd. v. Kazakhstan</i> (19 December 2013)	USD 2.6 billion	USD 500 million	<b>19.2%</b>
<i>Yukos Universal Limited v. Russian Federation; Hulley Enterprises Limited v. Russian Federation; Veteran Petroleum Limited v. Russian Federation</i> (18 July 2014)	USD 114,174 billion	USD 50.02 billion	<b>43.8%</b>
<i>EDF International S.A. v. Hungary</i> (4 December 2014)	estim. EUR 300 million	EUR 107 million	<b>33.3%</b>
<i>Aktau Petrol Ticaret A.Ş. v. Kazakhstan</i> (13 November 2017)	USD 150 million	USD 22.7 million	<b>15.1%</b>
<i>Masdar Solar &amp; Wind Cooperatief U.A. v. Spain</i> (16 May 2018)	EUR 260 million	EUR 64.5 million**	<b>24.8%</b>

\* Excluding tax gross-up and interest on damages claimed and awarded.

\*\* According to the Ministry for Ecological Transition and Demographic Challenge of Spain, the investors have submitted a waiver under Royal Decree-Law 17/2019, renouncing their right to collect damages in exchange for a new incentive scheme.

## Statistics of ECT Cases

(as of 1/5/2023)

<i>Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V. v. Spain</i> (15 June 2018)	EUR 238 million	EUR 101 million	<b>42.4%</b>
<i>Foresight Luxembourg Solar 1 S.à.r.l. and others v. Spain</i> (14 November 2018)	EUR 50 million	EUR 39 million	<b>78%</b>
<i>Greentech Energy Systems A/S, NovEnergia II Energy &amp; Environment (SCA) SICAR, and NovEnergia II Italian Portfolio S.A. v. Italy</i> (23 December 2018)	EUR 25.06 million	EUR 11.9 million	<b>47.5%</b>
<i>CEF Energia B.V. v. Italy</i> (16 January 2019)	EUR 10.3 million	EUR 9.6 million	<b>93.2%</b>
<i>9REN Holding S.à.r.l. v. Spain</i> (31 May 2019)	EUR 52.2 million	EUR 41.76 million	<b>80%</b>
<i>NextEra Energy Global Holdings B.V., NextEra Energy Spain Holdings B.V. v. Spain</i> (31 May 2019)	EUR 521.4 million	EUR 290.6 million	<b>55.7%</b>
<i>Cube Energy SCA and others v. Spain</i> (15 July 2019)	EUR 74.1 million	EUR 33.7 million	<b>45.5%</b>
<i>SolEs Badajoz GmbH v. Spain</i> (31 July 2019)	EUR 82 million	EUR 40.5 million	<b>49.4%</b>
<i>InfraRed Environmental Infrastructure GP Limited v. Spain</i> (2 August 2019)	EUR 75.7 million	EUR 28.2 million	<b>37.5%</b>
<i>OperaFundEco-Invest SICAV PLC Schwab Holding v. Spain</i> (6 September 2019)	EUR 42 million	USD 29.3 million	<b>69.8%</b>
<i>RREEF Infrastructure (GP) Limited and RREEF Pan-European Infrastructure Two Lux S.à.r.l. v. Spain</i> (11 December 2019)	EUR 441 million	EUR 59.6 million**	<b>13.5%</b>
<i>Watkins Holdings S.à.r.l. and others v. Spain</i> (21 January 2020)	EUR 123.9 million	EUR 77 million	<b>62.1%</b>

\*\* According to the Ministry for Ecological Transition and Demographic Challenge of Spain, the investors have submitted a waiver under Royal Decree-Law 17/2019, renouncing their right to collect damages in exchange for a new incentive scheme.

## Statistics of ECT Cases

(as of 1/5/2023)

<i>The PV Investors v. Spain</i> (28 February 2020)	EUR 1.16 billion	EUR 91.1 million**	<b>12.7%</b>
<i>Hydro Energy 1 S.à.r.l. and Hydroxana Sweden AB v. Spain</i> (5 August 2020)	EUR 132.1 million	EUR 30.9 million	<b>23.4%</b>
<i>ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH and InfraClass Energie 5 GmbH &amp; Co. KG v. Italy</i> (14 September 2020)	EUR 28.6 million	EUR 16 million	<b>56%</b>
<i>RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v. Spain</i> (18 December 2020)	EUR 267.7 million	EUR 28 million	<b>10.5%</b>
<i>BayWa r.e. Renewable Energy GmbH and BayWa r.e. Asset Holding GmbH v. Spain</i> (25 January 2021)	EUR 61.9 million	EUR 22 million	<b>35.5%</b>
<i>Sun-Flower Olmeda GmbH &amp; Co KG and others v. Spain</i> (22 June 2021)	EUR 69 million	EUR 47.3 million	<b>68.5%</b>
<i>Yukos Capital S.à.r.l. v. Russian Federation</i> (23 July 2021)	USD 2,697,000,000 (loan principal) + contractual interest under loan agreement	USD 2,630,706,272.17 + contractual interest under loan agreement	<b>97.5%</b>
<i>STEAG GmbH v. Spain</i> (17 August 2021)	EUR 79 million	EUR 27.7 million	<b>35%</b>
<i>JGC Holdings Corporation v. Spain</i> (9 November 2021)	EUR 161 million	EUR 23.5 million	<b>14.6%</b>
<i>RENERGY S.à.r.l. v. Spain</i> (6 May 2022)	EUR 141 million	EUR 32.9 million	<b>23.3%</b>
<i>MOL Hungarian Oil and Gas Company Plc v. Croatia</i> (5 July 2022)	USD 1.1 billion	USD 184 million	<b>16.7%</b>
<i>Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd., and Rockhopper Exploration Plc v. Italy</i> (22 August 2022)	EUR 281.7 million	EUR 190.7 million	<b>67.7%</b>
<i>Cavalum SGPS S.A. v. Spain</i> (29 September 2022)	EUR 59.2 million	EUR 7.4 million	<b>12.5%</b>

\*\* According to the Ministry for Ecological Transition and Demographic Challenge of Spain, the investors have submitted a waiver under Royal Decree-Law 17/2019, renouncing their right to collect damages in exchange for a new incentive scheme.

## Statistics of ECT Cases

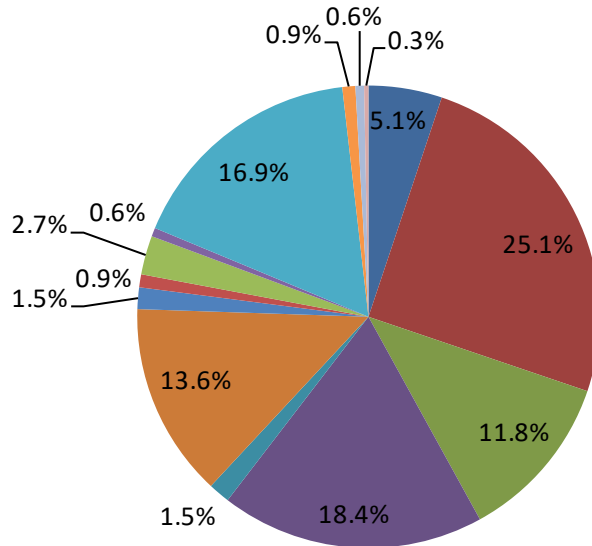
(as of 1/5/2023)

<i>Triodos SICAV II v. Spain</i> (24 October 2022)	N/A	EUR 10.4 million	N/A
<i>Eurus Energy Holdings Corporation v. Spain</i> (14 November 2022)	EUR 173 million	EUR 106.2 million	<b>61.4%</b>
<i>Mercuria Energy Group Ltd. v. Poland</i> (29 December 2022)	PLN 152,862,917.25 + contractual interest under loan agreement	PLN 145,094,420.2 + contractual interest under loan agreement	<b>95%</b>

## Statistics of ECT Cases

(as of 1/5/2023)

### Breaches Alleged: 89 cases\*



- 10(1). Stable, equitable, favourable and transparent conditions
- 10(1). Fair and equitable treatment
- 10(1). Most constant protection and security
- 10(1). Unreasonable or discriminatory measures
- 10(1). Treatment less favourable than that required by international law
- 10(1). Umbrella clause
- 10(7). National Treatment
- 10(7). Most-favoured-nation treatment
- 10(12). Effective means for assertion of of claims and enforcement of rights
- 11. Key personnel
- 13. Expropriation
- 14. Transfer of funds
- 22(1). Ensure a state enterprise conducts activities in a manner consistent with a Contracting Party's obligations under Part III of the ECT
- 10(2)-(3). Discrimination

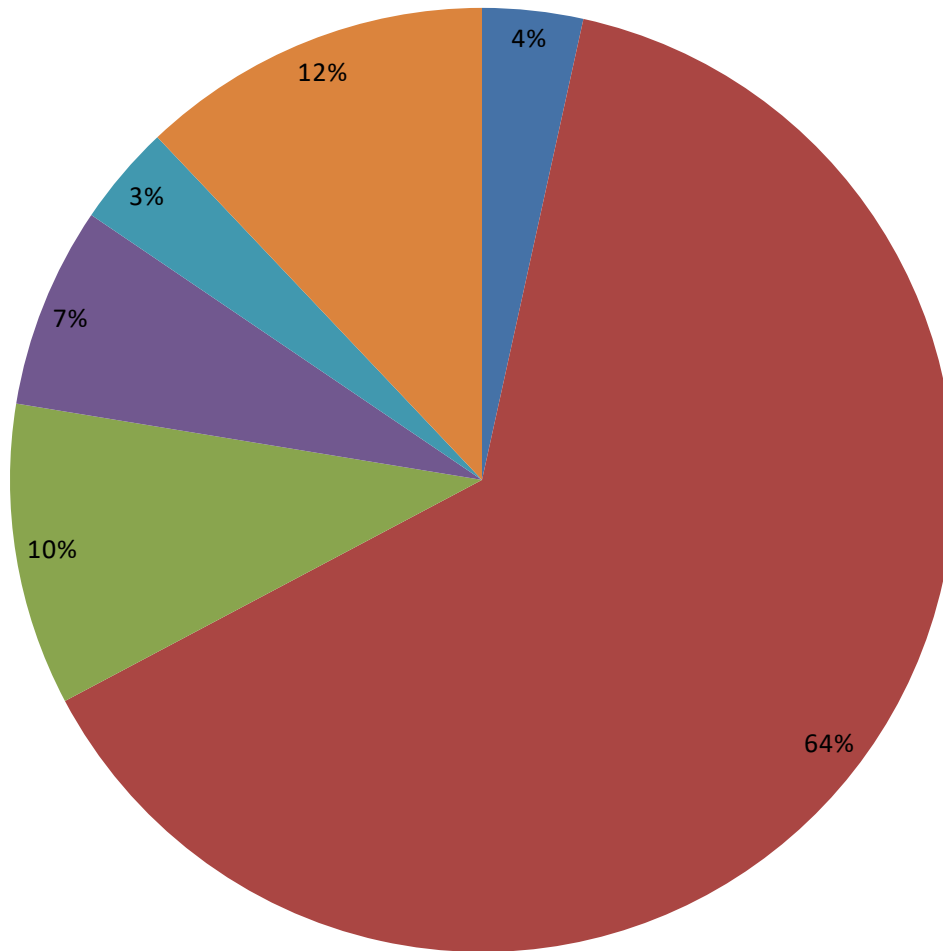
\* *The remaining 69 cases are not considered due to lack of public information.*



## Statistics of ECT Cases

(as of 1/5/2023)

### Breaches Found: 45 cases\*



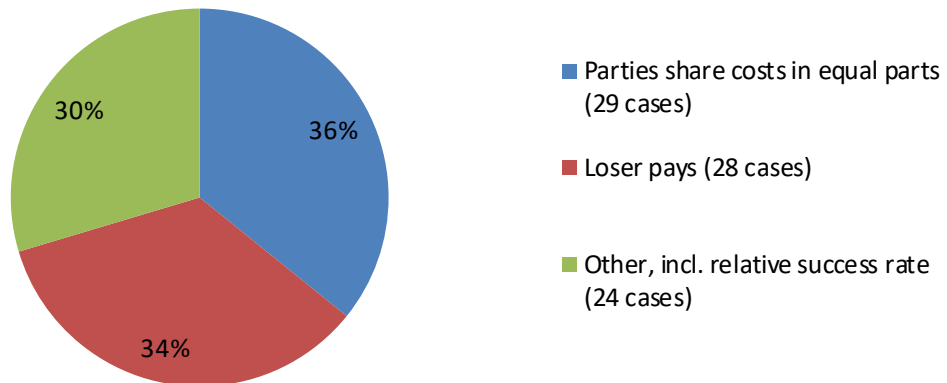
- 10(1). Stable, equitable, favourable and transparent conditions
- 10(1). Fair and equitable treatment
- 10(1). Unreasonable or discriminatory measures
- 10(1). Umbrella clause
- 10(12). Effective means for assertion of of claims and enforcement of rights
- 13. Expropriation

*\* Based on cases in which such information is publicly available.*

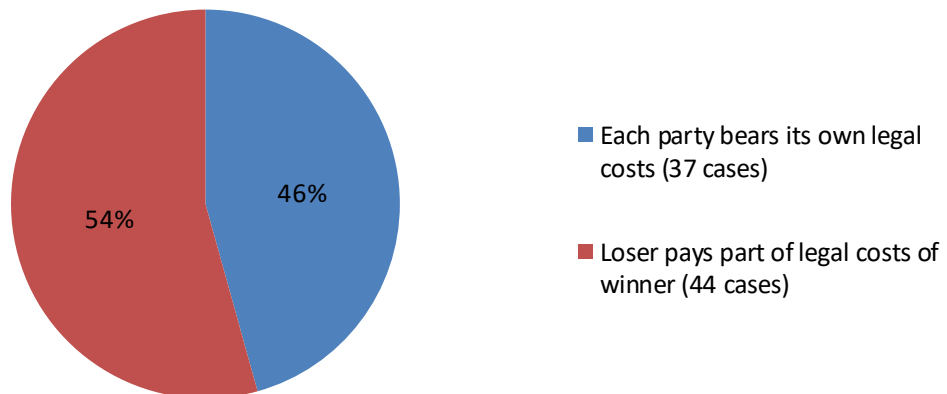
## Statistics of ECT Cases

(as of 1/5/2023)

### Allocation of Costs of Arbitration between Parties: 81 cases\*



### Legal Costs: 81 cases\*

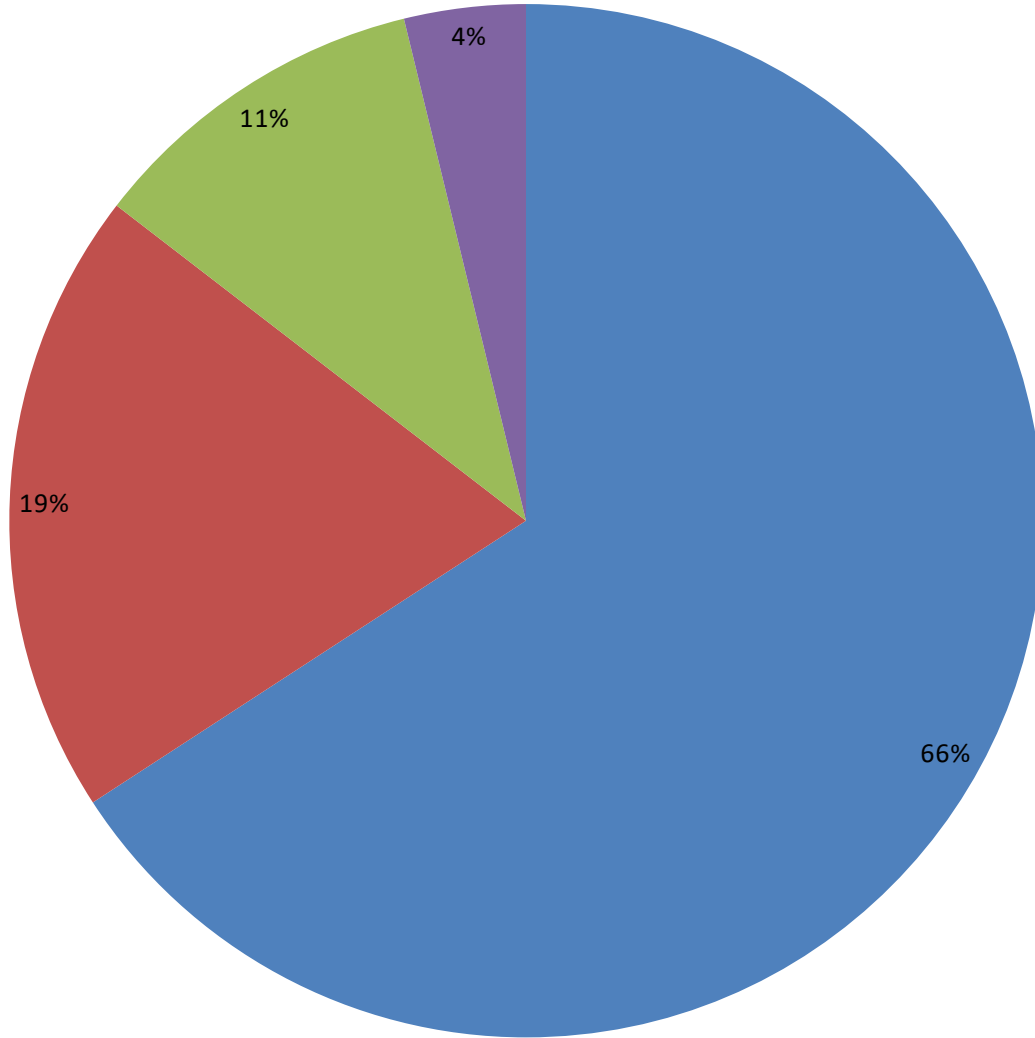


\* Based on cases in which such information is publicly available.

# Statistics of ECT Cases

(as of 1/5/2023)

## Procedural Rules Applied: 158 cases

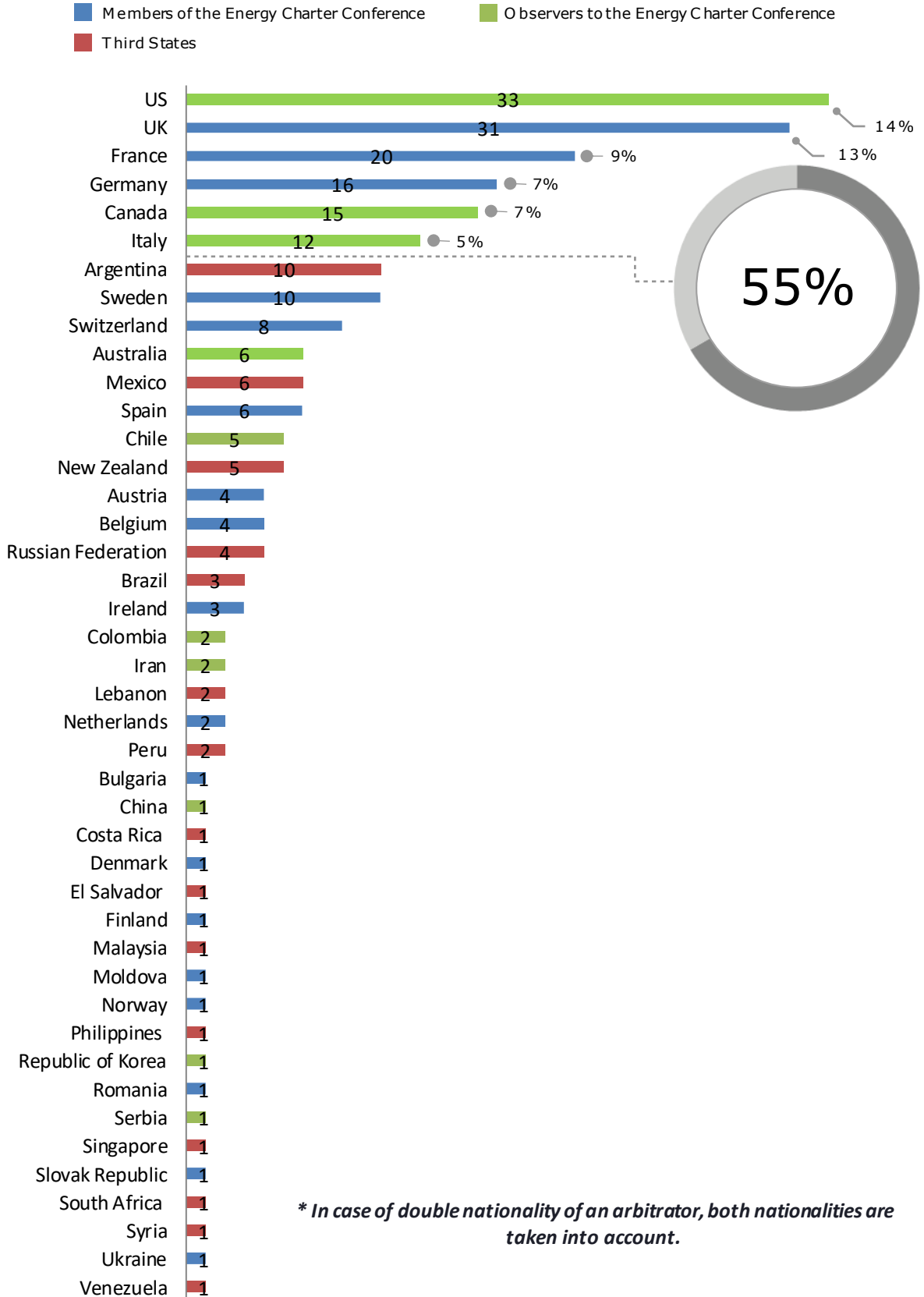


- ICSID Rules, incl. Additional Facility (104)
- SCC Rules (31)
- UNCITRAL Rules, PCA-administered (17)
- UNCITRAL Rules, ad hoc (6)

# Statistics of ECT Cases

(as of 1/5/2023)

## Number of Arbitrators per Nationality\*



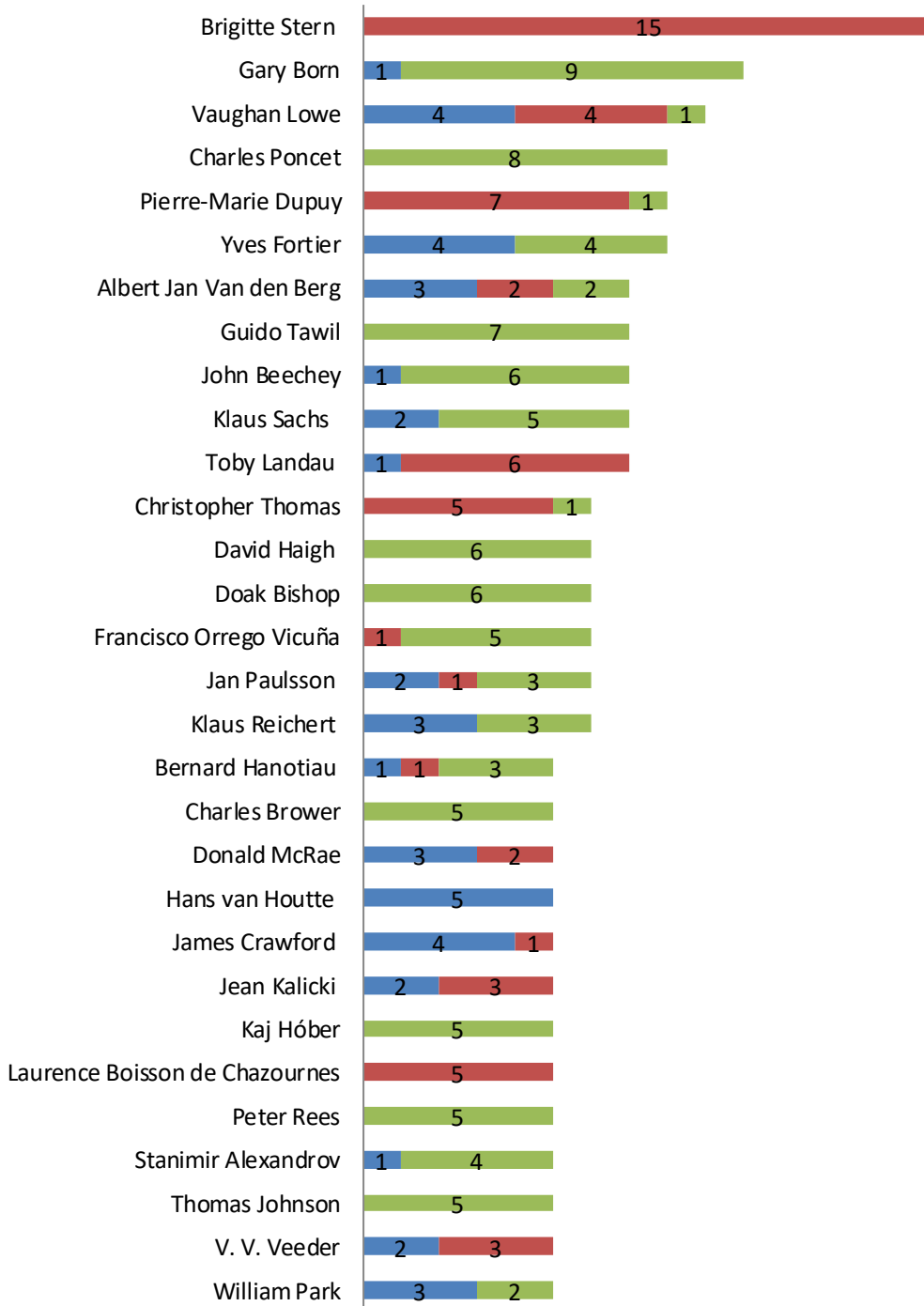
\* In case of double nationality of an arbitrator, both nationalities are taken into account.

## Statistics of ECT Cases

(as of 1/5/2023)

### Arbitrators with Five or More Appointments

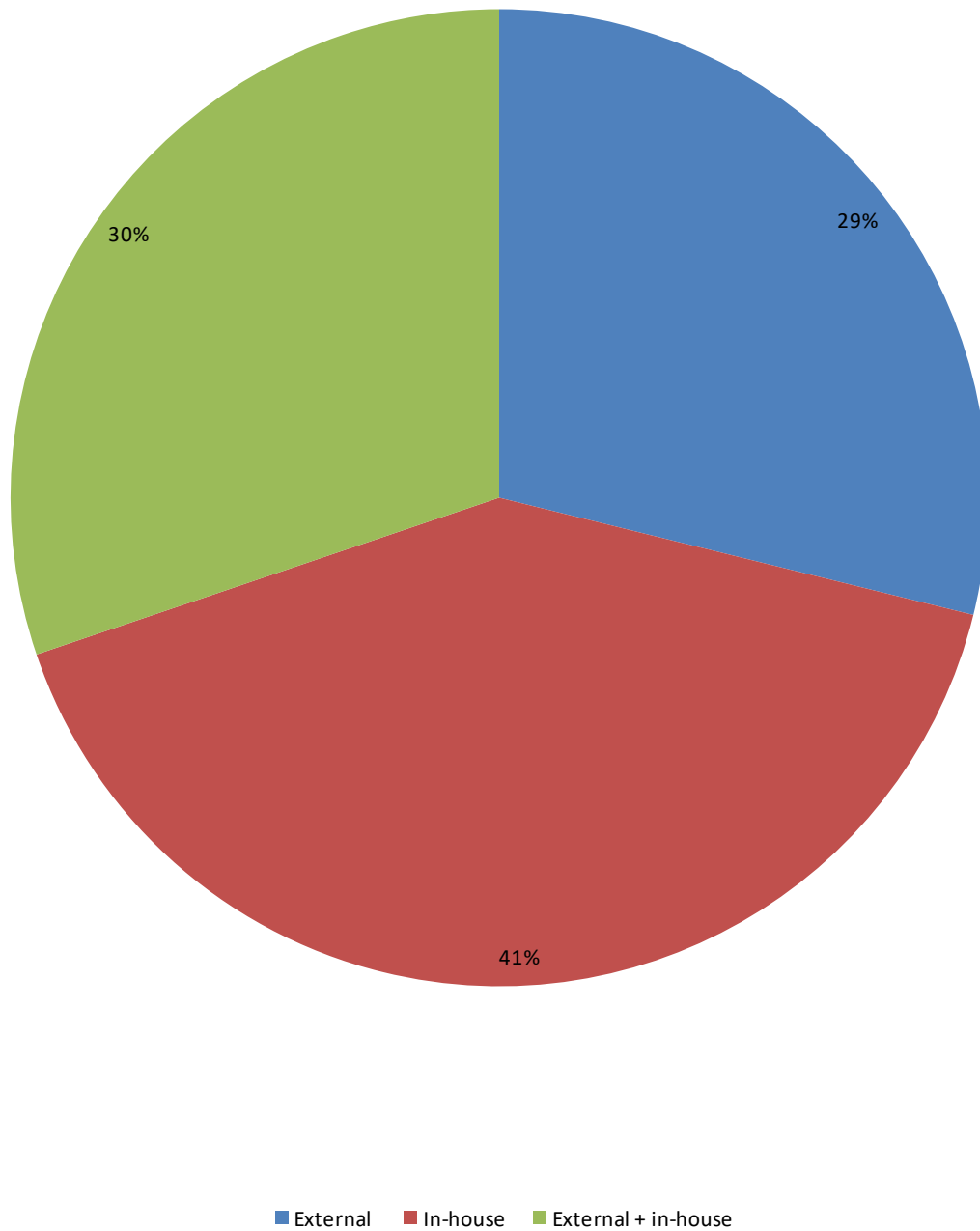
■ Number of Appointments as a Chair     
 ■ Number of Appointments by Respondents  
■ Number of Appointments by Claimants



## Statistics of ECT Cases

(as of 1/5/2023)

### Choice of Counsel among Respondents\*

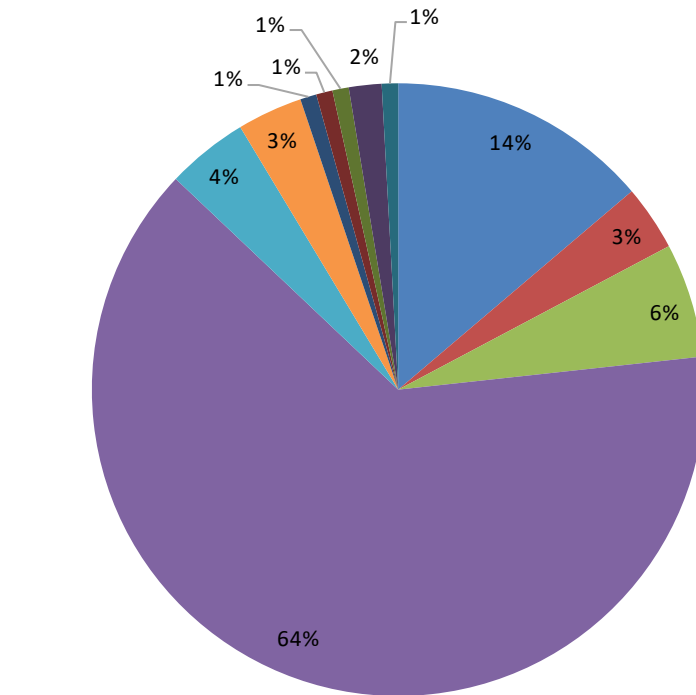


\* Based on 149 cases in which information on respondents' counsel is publicly available.

## Statistics of ECT Cases

(as of 1/5/2023)

### State Agency Representing Respondent\*



- Ministry of Finance
- Ministry of Justice
- Ministry of Economy
- State Attorney General's Office
- Ministry of Energy
- Ministry of Foreign Affairs
- State Public Prosecutor's Office
- State Chancellery
- Ministry of Infrastructure and Regional Development
- Office of Prime Minister
- Legal Services of the European Commission

*\* Based on 106 cases in which respondents were represented by in-house counsel or in-house counsel together with external co-counsel.*

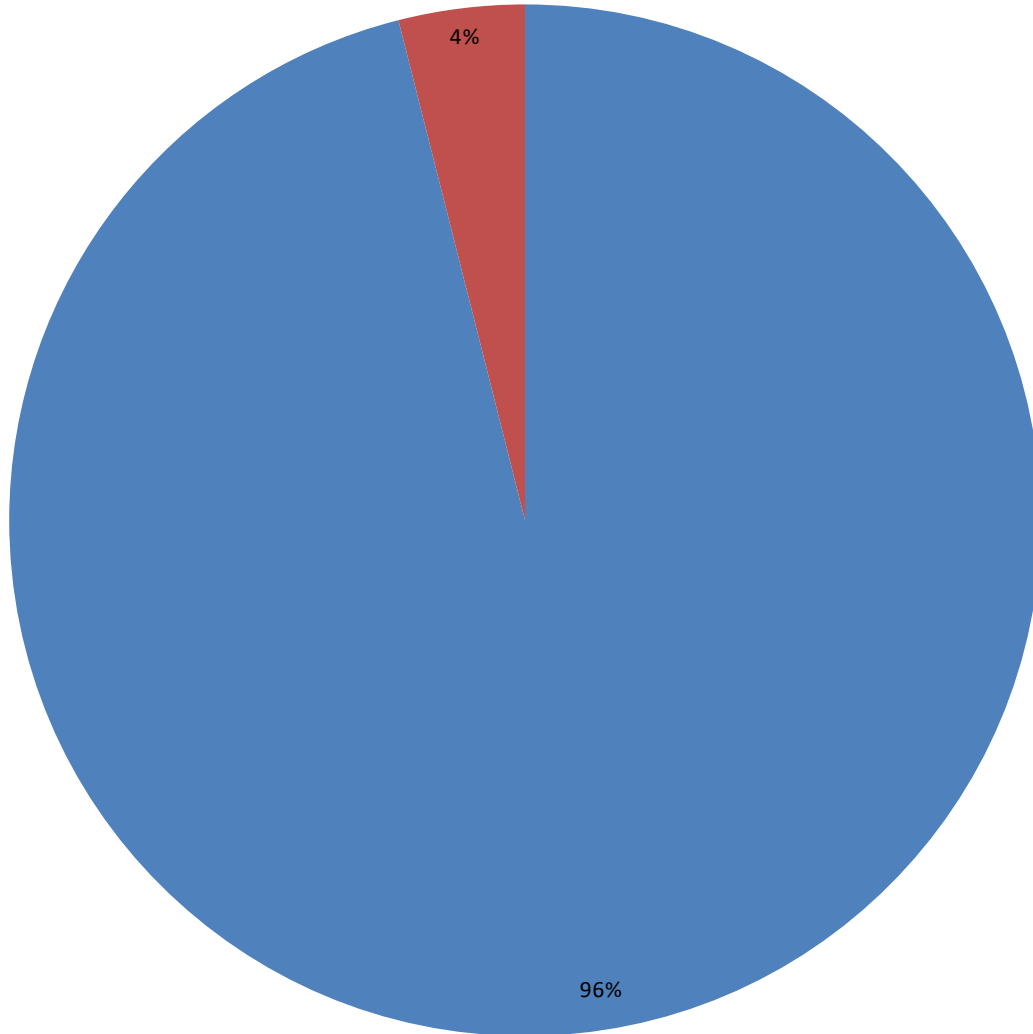
*A respondent may be represented by more than one agency in the same case.*

*The names of the ministries may vary in different states.*

## Statistics of ECT Cases

(as of 1/5/2023)

### Choice of Counsel among Claimants\*



■ External ■ External + in-house

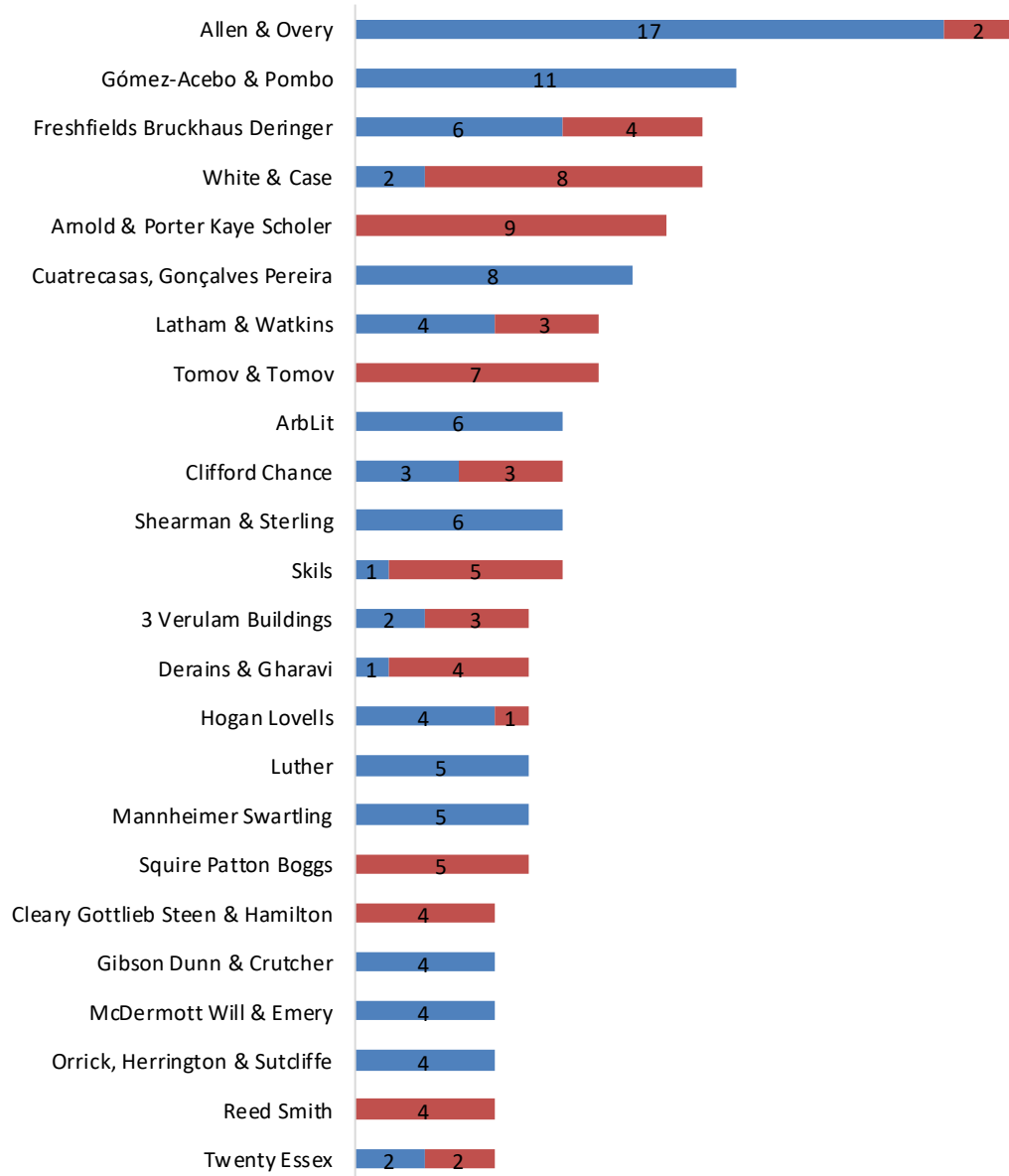
\* Based on 152 cases in which information on claimants' counsel is publicly available.



# Statistics of ECT Cases

(as of 1/5/2023)

## Law Firms and Barristers' Chambers Representing Disputing Parties in Five or More Cases



■ Acting for Claimant(s) (number of cases)

■ Acting for Respondent (number of cases)

## Statistics of ECT Cases

(as of 1/5/2023)

### Law Firms and Barristers' Chambers Representing Disputing Parties in Two or More ICSID Annulment Proceedings

