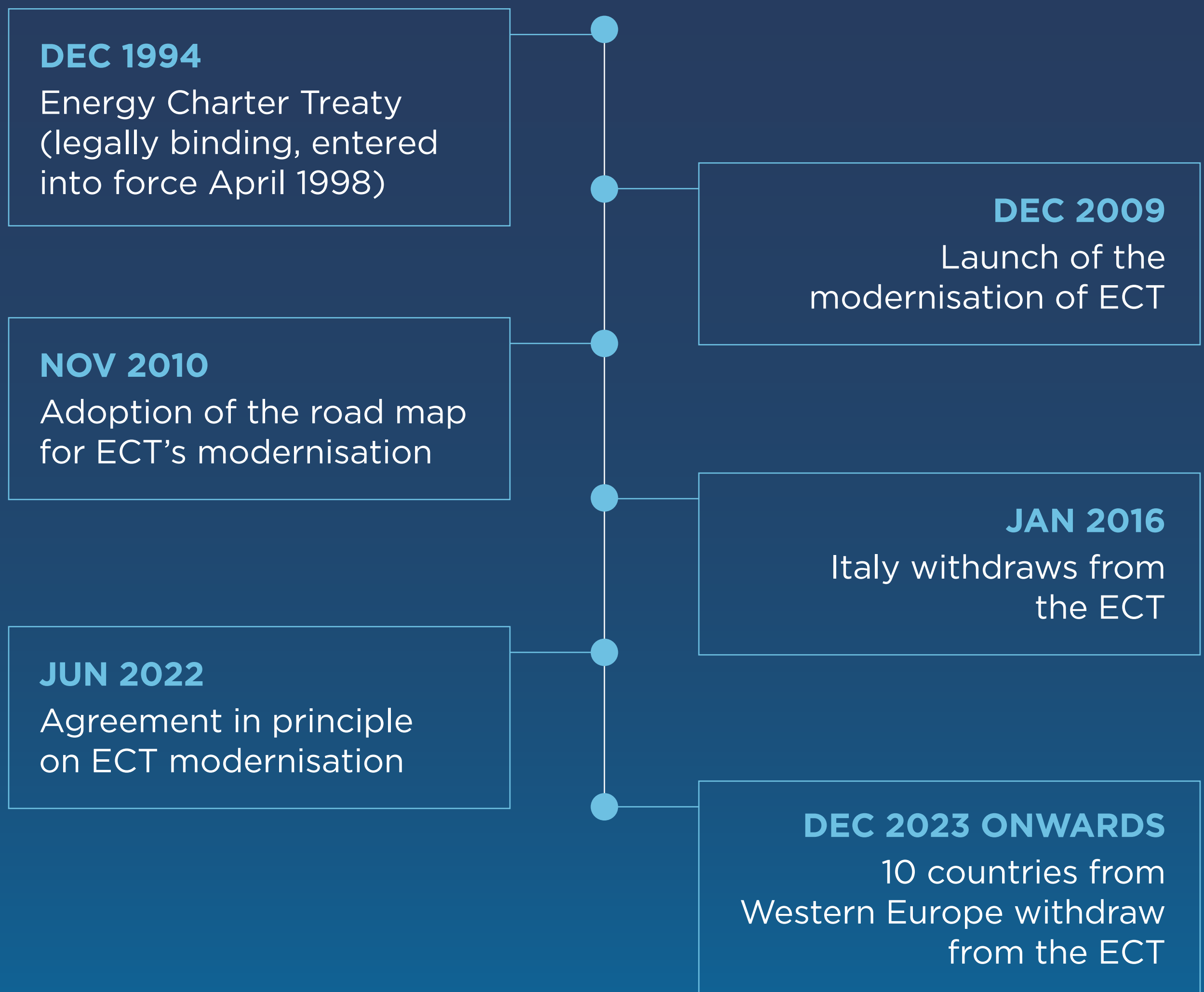


# Withdrawals from the Energy Charter Treaty: Energy Transition or Self-Interest?

A growing number of countries are withdrawing from the Energy Charter Treaty, citing concerns related to the energy transition—yet the arbitration case statistics suggest an alternative motive.

# After nearly 30 years, an increasing number of contracting parties are choosing to withdraw from the ECT



# Over 10 contracting parties have notified their withdrawal, citing three key reasons

Since 2023, the Depositary of the Energy Charter Treaty, Portugal, has received written notifications of withdrawal from the ECT from several member states.

Contracting Party	Date when withdrawal becomes effective	Applicability of Sunset Clause
Italy	1 January 2016	Yes
France	8 December 2023	
Germany	20 December 2023	
Poland	29 December 2023	
Grand-Duchy of Luxembourg	17 June 2024	
Slovenia	14 October 2024	No (applicable from the date when the withdrawal becomes effective)
Portuguese Republic	2 February 2025	
Kingdom of Spain	17 May 2024	
United Kingdom	27 April 2025	
EU & Euratom	28 June 2025	
Kingdom of the Netherlands	28 June 2025	

*By leaving the ECT, contracting parties will still be subject to the Sunset Clause, which will continue to protect the investments, including fossil fuel investments, made as of or before the withdrawal for 20 years from the date of withdrawal.*

Three of the stated key reasons for withdrawal include:

1. Treaty's hindrance of energy transition
2. Treaty's protection of fossil-fuel investments
3. Misalignment with Paris Agreement goals

# Withdrawal reasons have been questioned by the legal industry

“ECT is not a fetter on policy but a defence against inconsistent and arbitrary policy and therefore an attraction for investors and supportive of the energy transition.”

– J. Rogers & J. P. Cowe (Jenner & Block)

“Yet the ECT does not only protect conventional investments. The vast majority of claims against EU Member States have been brought by renewable energy investors.”

– Wendler, Bel & Pettazzi (Freshfields Bruckhaus Deringer)

“The ECT protects all energy sources equally, and in recent years, renewables have been some of the greatest beneficiaries. [...] FDI in clean energy can only work with stable regulatory regimes and protections for investors – heretofore provided by the ECT. If we strip this out completely, clean energy investors will have little protection [...] for the much-needed investments in high-risk projects in hydrogen, floating wind and battery storage”

– R. Power & S. Hill-Smith (Clyde & Co)

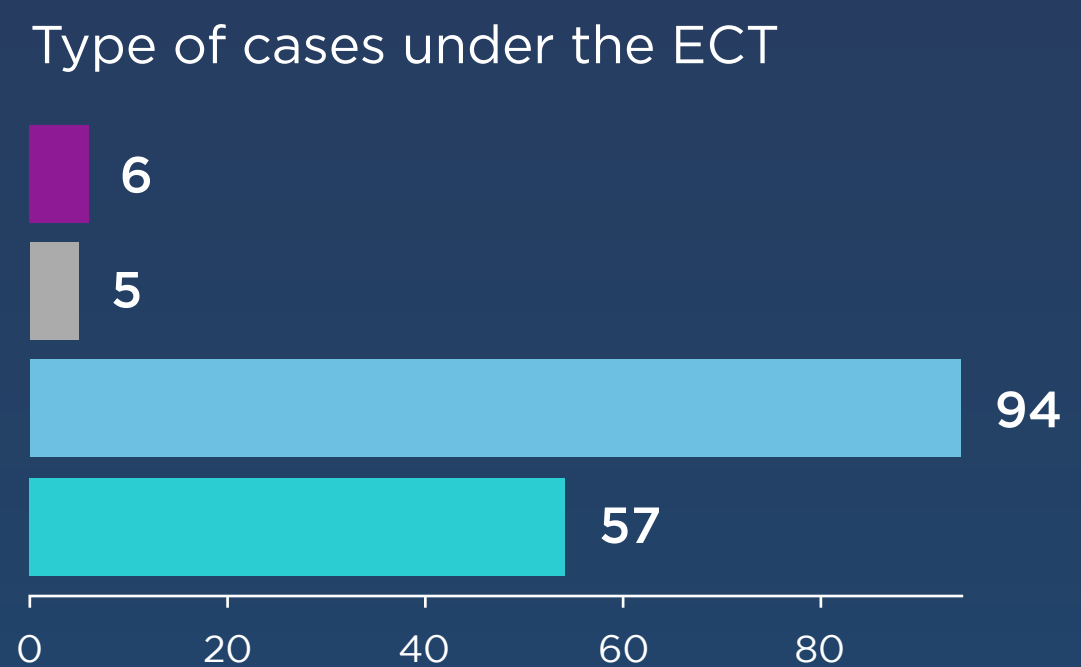
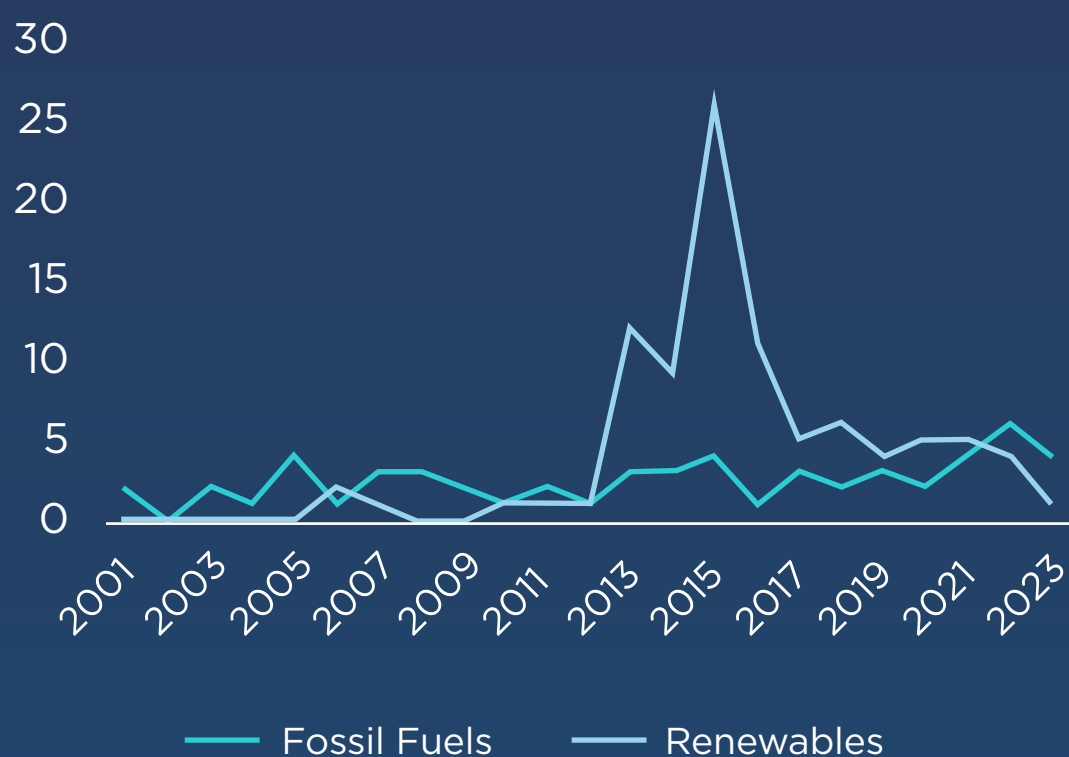
“[Modernised ECT] would include a carve-out of fossil fuels from ECT protections after the revised treaty had been in force for 10 years. In other words, by agreeing to modernise the ECT, rather than withdrawing, parties could have halved the time for which fossil fuel protections would be protected.”

– M. Burgstaller, S. Macpherson (Hogan Lovells)

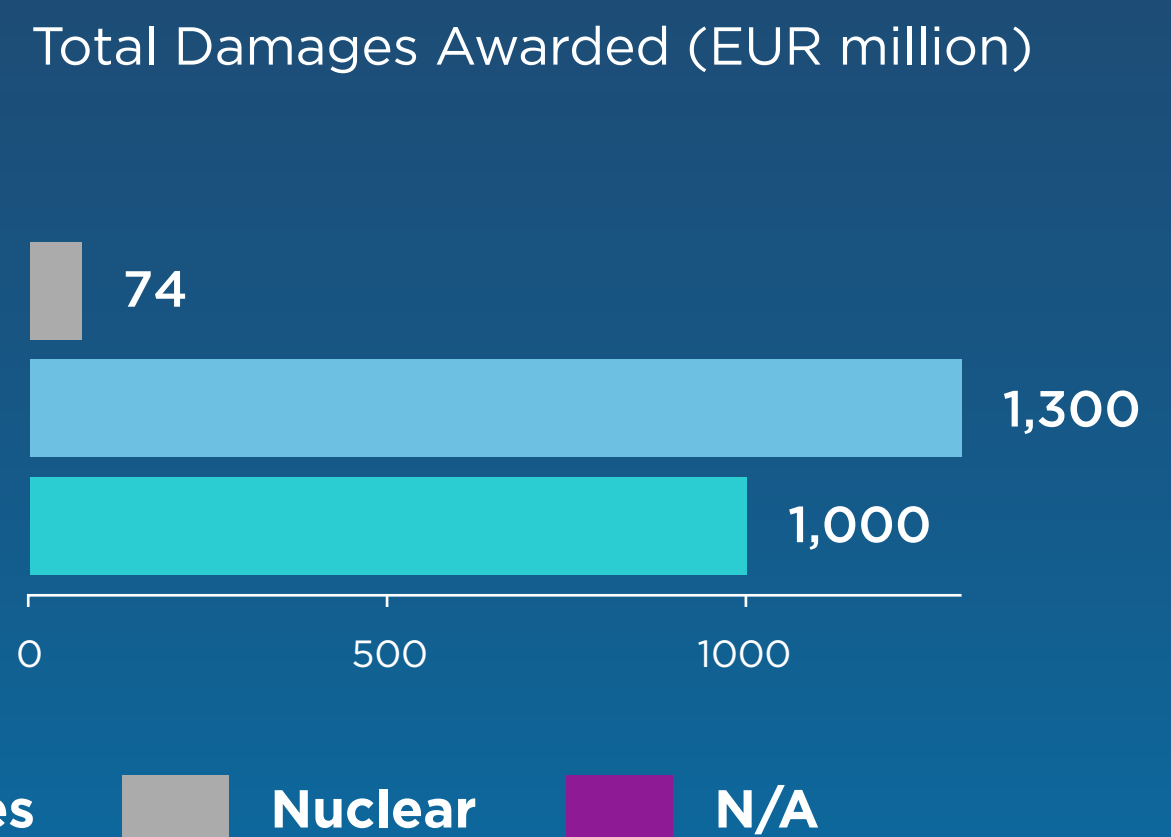
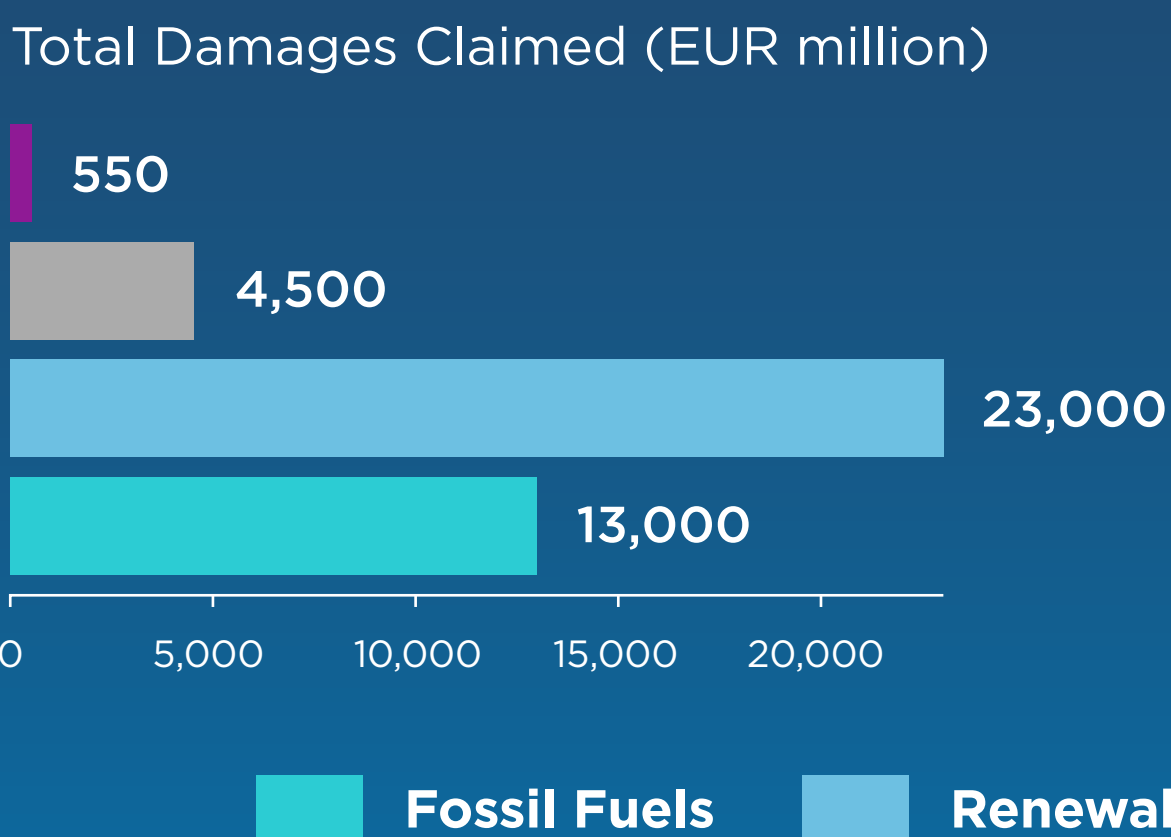
Source: Article on “Leaving The ECT: Bad for Investors, Wrong for The Climate?” “New Law Journal”, Jenner & Block; Withdrawal from the ECT: one step forward, two steps back?”, Freshfields Bruckhaus Deringer; Article on “The Energy Charter Treaty – is it make or break?”, R Power & S. Hill-Smith (Clyde & Co) and Article on Opinion | In defence of a modernised Energy Charter Treaty”, FDI Intelligence.

# Data shows that renewable cases dominate the ECT claims in number and in volume

## 1 Majority of all ECT cases relate to renewable energy claims

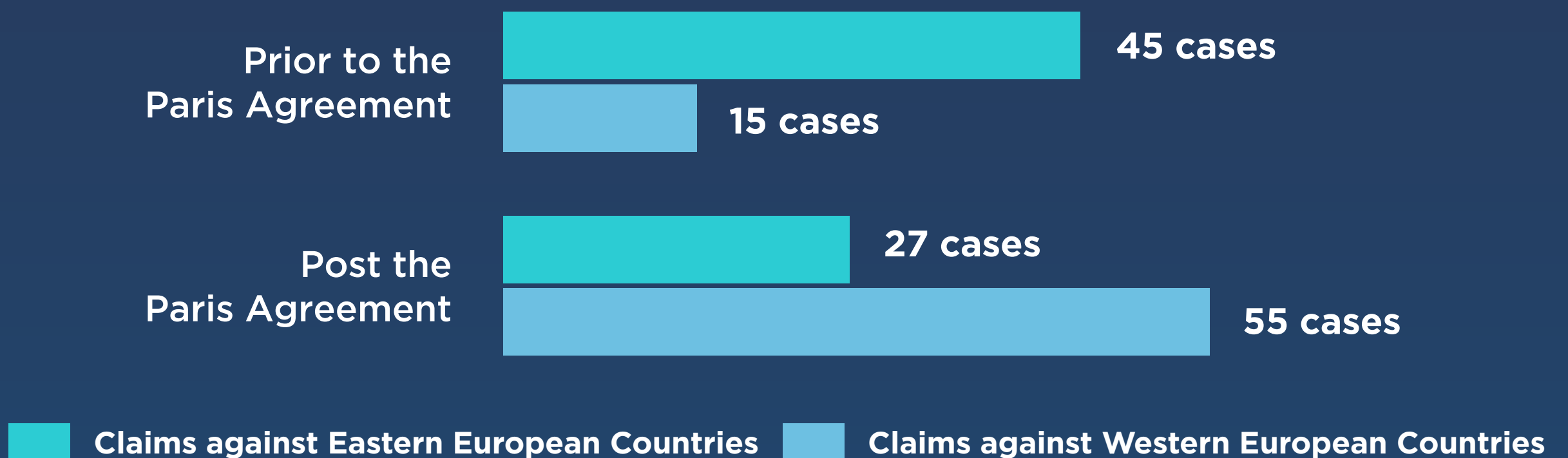


## 2 Total compensation awarded under renewable claims exceed that for fossil fuel claims

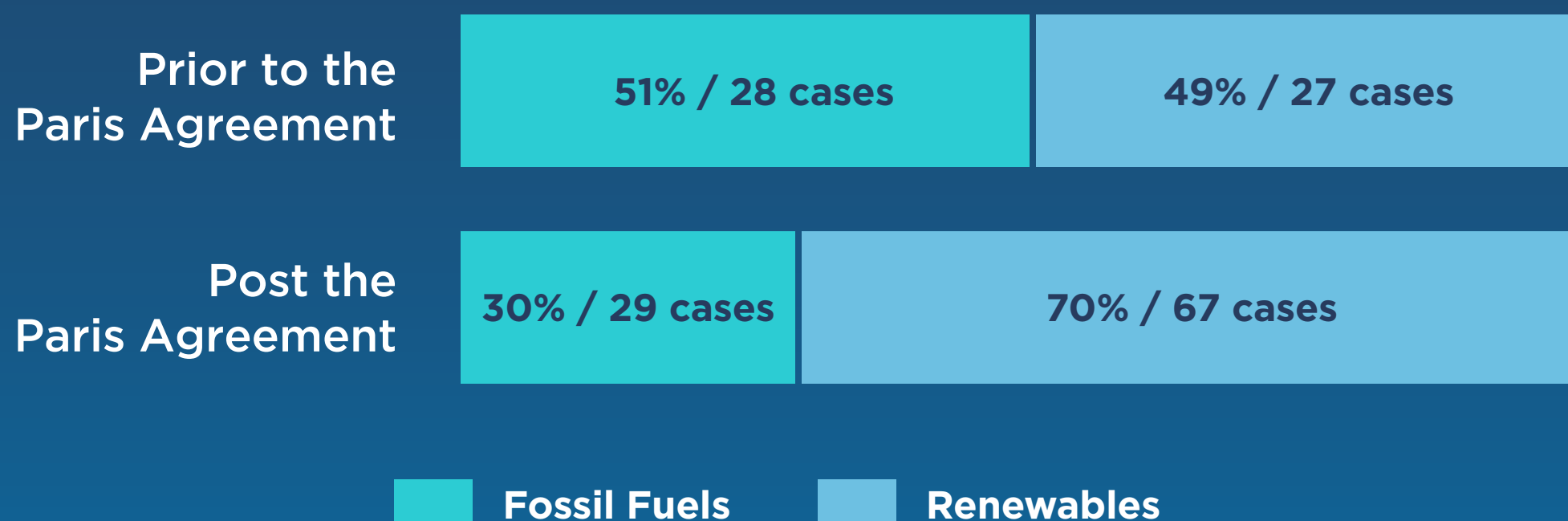


# Statistics confirm that geographical and industry focus shifted post Paris Agreement

## 3 Claims against Western European countries have more than tripled since the Paris Agreement



## 4 Two-thirds of post-Paris Agreement cases are related to regulatory changes in renewables

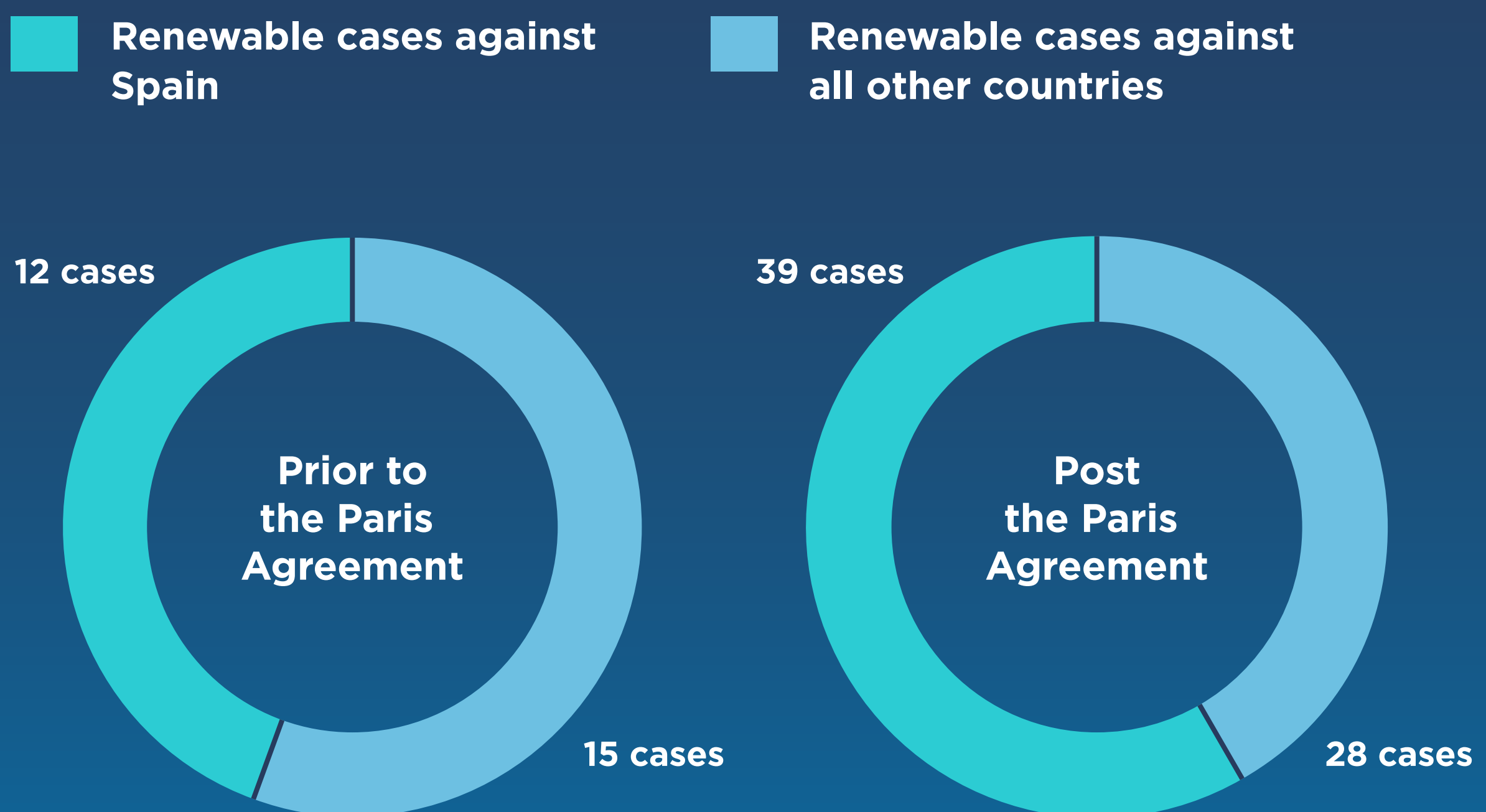


Source: ECT website and UNFCCC website. Value of damages claimed/awarded excludes the Yukos cases. Data for the chart corresponding to #3 is based on the ECT database as of 1 June 2022. All claims up to and including 2014 are considered as being "Prior to the Paris Agreement."

# Spain alone has over 50 renewables-related claims under ECT

Spain's implementation of regulatory reforms affecting the renewable energy sector, resulted in 51 ECT-related claims against Spain.

Overhaul of renewables regime by Spain, which started in mid-2013, was considered by Tribunals to imply a radical and unexpected departure from the regime in place in Spain at the time of investment.



Source: ECT website and UNFCCC website. The data for the chart corresponding to #3 is based on the ECT database as of 1 June 2022.

# Compass Lexecon's experts have worked on over 25 ECT-related arbitrations

Selected engagements:



**ICSID Case No. ARB/21/4  
(RWE AG et al. v.  
Netherlands)**

The analysis of damages involved using Monte Carlo simulated electricity prices in the dispute that arose from the ban to use coal in power generation beyond 2030 (“coal phase-out”).



**ICSID Case No. ARB/20/3  
(Hamburg Commercial  
Bank AG v. Italy)**

The expert assessed the value of Claimant's investments in Italy in the dispute related to the seizure of Claimants' wind farm and green certificates.



**ICSID Case No. ARB/13/32  
(MOL Hungarian Oil & Gas  
v. Croatia)**

The assessment of damages involved estimating the foregone cash flows on the basis of modelled market gas prices due to the failure to take over MOL's natural gas trading business and breaching its contractual pricing obligations.



**ICSID Case No. ARB/14/34  
(RWE Innogy GmbH et al.  
v. Spain)**

The valuation involved estimating the claw-back and the reduction of the remuneration in the dispute arising from changes in the regulatory and economic regime of renewable energy projects.



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