



**ARBITRATION IN  
CIS COUNTRIES:  
CURRENT ISSUES  
Brussels, June 21, 2012**





# **SCC INVESTMENT ARBITRATIONS INVOLVING CIS PARTIES**

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## SCC is a dispute resolution option

- Energy Charter Treaty (Part III, art. 26)
- 61 BITs
- 64 BITs (appointing authority)



# Protection of foreign investments

- Multilateral treaties (ECT)
- Bilateral Investment Treaties (BITs)
- National laws
- Investor-Host State Agreement



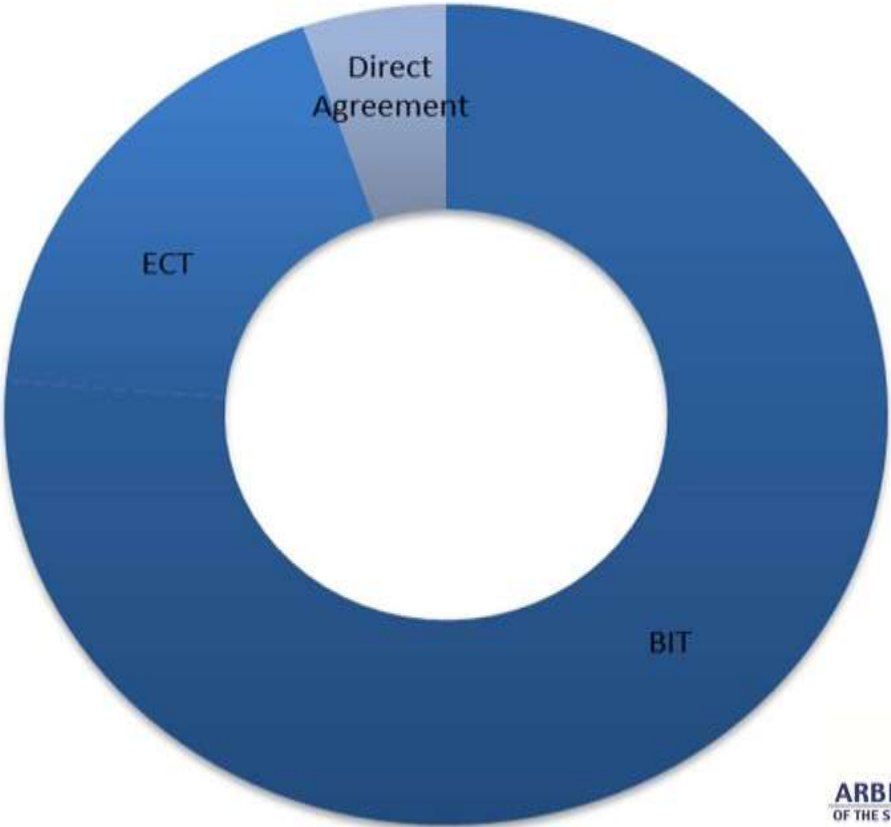
## Investment arbitration

- State as a respondent party;
- Treaty-based, as a rule;
- Claimant asserts breach of protections guaranteed by the Host State (e.g. non-discriminatory treatment)



# Investment Disputes at the SCC 2001-2011

■ BIT (29) ■ ECT (7) ■ Direct Agreement (2)

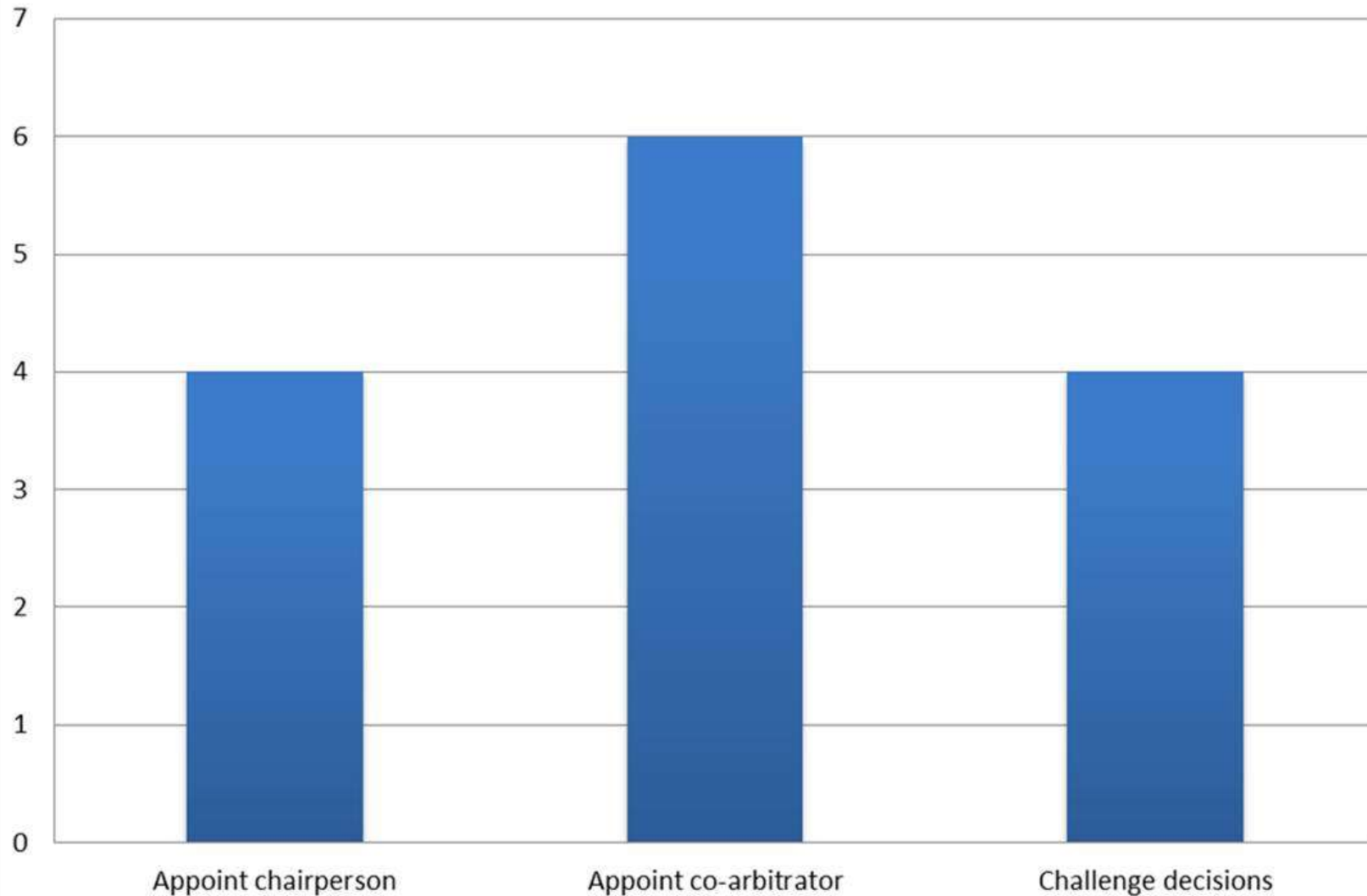


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# SCC as Appointing Authority in Investment Arbitrations



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## CIS-related investment arbitrations

- **Procedural complexity**
  - ✓ 100% jurisdictional objection
  - ✓ 30% bifurcation
  - ✓ 30% multiple claimants
- **High disputed value**
  - ✓ EUR 50 000 000 at an average
- **Settlements are rare (10%)**
- **Failure to participate or to appoint an arbitrator – 20%**



The majority of cases are between West – East parties and concern exploration and/or purchase of oil, gas, gold. A number of disputes concerned co-operation with respect to supplies of electricity.





## **SCC investment disputes: average length**

- **Award in a one-stage proceeding: 21 months**
- **Award in bifurcated proceedings: 30 months**
- **Appointment in ad hoc/UNCITRAL: 3 – 4 weeks**
- **Decision on challenge in ad hoc/UNCITRAL: 8 weeks**



## **SCC investment disputes: average costs**

- Arbitration costs (excl. legal representation) – 330 000 EUR
  - Chairperson – 131 000 EUR
  - Co-arbitrator – 78 540 EUR
    - SCC – 29 985 EUR

## Average claim vs average amount of the award

- Average recovery rate in a “won” case is 30%
  - Full jurisdictional dismissal – 1 case
  - Failure on the merits – ca 50% of the cases



## SCC Rules: "no-nonsense approach"

- The SCC Arbitration Rules (2010) efficiently apply both to commercial and investment disputes;
- Chairperson of neutral nationality is appointed by the SCC. Special attention is paid to the experience, specialization and language skills while choosing a Chairman;
- The fees are value-based for the claims up to 100 mln. EUR;
- The SCC administrative fee has a ceiling of 60 000 EUR.





**THANK YOU**

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